



Office of the Inspector General
U.S. Department of Justice



Progress Report on the Department of Justice's Implementation of the Prison Rape Elimination Act

EXECUTIVE SUMMARY

The *Prison Rape Elimination Act of 2003* (PREA) required the Attorney General to promulgate regulations that adopt national standards for the detection, prevention, reduction, and punishment of prison rape. On June 20, 2012, after notice and comment rulemaking, the Department of Justice (Department or DOJ) published the National Standards to Prevent, Detect, and Respond to Prison Rape (Standards). This OIG progress report examines DOJ's early efforts to implement and comply with PREA since publication of the Standards.

DOJ is responsible for the implementation of the Standards, including management of the audit process in which facilities demonstrate compliance with the Standards to an independent auditor. In addition, several DOJ components have management and operational obligations under PREA. The Office of Justice Programs (OJP) has been assigned responsibility to manage PREA implementation, and DOJ components with operational responsibilities under PREA include the Federal Bureau of Prisons (BOP), the U.S. Marshals Service (USMS), the Federal Bureau of Investigation (FBI), and the Office of the Inspector General (OIG).¹ A PREA Working Group has also been formed, in part to resolve questions regarding interpretations of the Standards.

The OIG identified several emerging issues with the Department's implementation of the Standards. One such issue relates to the USMS's use of intergovernmental agreements (IGAs) that allow the USMS to house federal detainees in state and local detention facilities. The Standards require new or renewed USMS IGAs with state and local detention facilities to include language that obligates these facilities to comply with the Standards. However, the USMS's IGAs are typically of an indefinite length, and therefore modifications to the USMS's existing IGAs are typically made only when the state or local detention facility (IGA facility) asks for a rate increase or other modification. Thus, IGA facilities that do not ask for rate increases or other modifications to existing IGAs could therefore continue indefinitely to hold federal detainees without a contractual obligation to comply with the Standards. This issue also affects the BOP and the Department of Homeland

¹ The Standards require the OIG to comply with requirements for external investigative agencies that conduct investigations of sexual abuse in confinement settings. This progress report does not assess the OIG's implementation of PREA due to the inherent conflict that would be created were this office to evaluate its own compliance with the Standards. We note, however, that the OIG has provided specialized PREA training to its investigators, conducted a review of its investigative policies to ensure that they conform to the requirements of PREA and the Standards, and complied with all BOP requests for PREA-related documentation.

Security's (DHS) U.S. Immigration and Customs Enforcement, both of which sometimes adopt the terms of the USMS's IGAs when housing inmates and detainees in state and local facilities.

Additionally, the Standards place requirements on external investigative agencies that conduct investigations of sexual abuse in confinement settings, including investigative entities within the DOJ, related to uniform evidence protocols, specialized training, and the conduct of investigations. Until recently, DOJ components' compliance with these external investigator standards was evaluated by independent PREA auditors, but new interpretive guidance from the PREA Working Group has led to independent auditors no longer making these assessments. According to several members of the PREA Working Group, including OJP officials, no other mechanism is currently in place within the Department to assess the compliance of DOJ components subject to the external investigator standards. We also found that the USMS cannot ensure its compliance with the external investigative standards because it does not have an adequate system to identify all USMS investigations where the requirements apply.

We identified other potential issues relating to OJP's management of PREA implementation. For example, the Standards require agencies that use IGA and other contract facilities to conduct monitoring "to ensure that the contractor is complying with the PREA Standards." Guidance from the PREA Working Group states that these facilities do not have to be "immediately and perfectly" compliant with the Standards, but instead must demonstrate "substantive progress" toward achieving compliance. USMS officials with whom we spoke expressed uncertainty as to what circumstances would cause them to deem IGA facilities to be out of compliance with PREA, and therefore out of compliance with the terms of IGAs, in such a way that they would be required to remove USMS detainees. These uncertainties may contribute to inconsistency when assessing the compliance of contract facilities with PREA, and an unduly lenient interpretation of "substantive progress" could result in slower implementation of the Standards. Other potential issues we identified include challenges with development of an online auditing tool, and the need for increased communication with DHS about the interaction of the Standards with DHS's separate standards.

We also identified several possible issues related to PREA audits at BOP institutions, including likely difficulties implementing the cross-gender pat-down standard, challenges locating outside organizations capable of providing sexual assault support services at BOP institutions, and inconsistencies among independent PREA auditors' preliminary assessments of BOP institutions.

Because the DOJ's implementation of PREA is ongoing, we do not make recommendations to the DOJ about how to address the areas of concern we have identified. However, we encourage the DOJ and its relevant components take appropriate action to address the issues described in this report, particularly the priority challenges highlighted in the conclusion. As PREA implementation progresses and more facilities across the country undergo PREA audits and implement PREA, these issues will likely become increasingly significant if left unresolved.

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BACKGROUND

The Office of the Inspector General (OIG) examined the progress of the Department of Justice's (DOJ) implementation of the *Prison Rape Elimination Act of 2003* (PREA).² PREA required the Attorney General to promulgate regulations that adopt national standards for the detection, prevention, reduction, and punishment of prison rape. PREA established the National Prison Rape Elimination Commission (Commission), which studied prison rape and recommended national standards to the Attorney General on June 23, 2009. The Attorney General subsequently established a PREA Working Group, chaired by the Office of the Deputy Attorney General, which reviewed the Commission's recommendations and developed final standards.

On June 20, 2012, after notice and comment rulemaking, DOJ published the National Standards to Prevent, Detect, and Respond to Prison Rape (Standards).³ The Standards took effect on August 20, 2012, and apply to all federal, state, and local confinement facilities. There are separate standards for four different types of confinement facilities: (1) adult prisons and jails; (2) lockups; (3) community confinement facilities; and (4) juvenile facilities.

DOJ and several of its components have management and operational obligations under PREA. In general, DOJ is responsible for the implementation of the Standards, including management of the audit process in which facilities demonstrate compliance with the Standards to an independent auditor. Agencies are required to audit one-third of their facilities during each year of a 3-year audit cycle, with all facilities audited by the end of the third year. The first 3-year audit cycle began on August 20, 2013.

The Deputy Attorney General assigned responsibility for managing PREA implementation to the Assistant Attorney General for OJP. Within OJP, a PREA Management Office in the Bureau of Justice Assistance (BJA) manages PREA-related responsibilities. As part of its responsibilities, the PREA Management Office manages the BJA's cooperative agreement with the National PREA Resource Center (PRC), which provides training, support, and technical assistance for PREA implementation nationwide.⁴

² 42 U.S.C. §§ 15601 *et seq.*

³ In addition to rape, the Standards are designed to prevent, detect, and respond to sexual abuse and sexual harassment in confinement settings.

⁴ The PRC is operated by the National Council on Crime and Delinquency in conjunction with a variety of partners, including the American Correctional Association, Abt Associates, American University, The Moss Group, Inc., and Just Detention International.

DOJ components with operational obligations under PREA include the Federal Bureau of Prisons (BOP), the U.S. Marshals Service (USMS), the Federal Bureau of Investigation (FBI), and the OIG.⁵ In addition, other offices within DOJ help resolve questions regarding interpretation of the Standards through participation in a PREA Working Group that the PREA Management Office within BJA coordinates.⁶

Scope of the Review

This progress report examines DOJ's efforts to implement and comply with PREA since publication of the Standards on June 20, 2012.⁷ Because implementation is in its early stages, this report identifies challenges that have arisen thus far and provides notice to DOJ components of areas of PREA implementation that the OIG has found to be of present concern, or that we believe may well be of future concern as implementation progresses.

PREA IMPLEMENTATION: EMERGING ISSUES

I. USMS Intergovernmental Agreements

The USMS is responsible for housing and transporting federal detainees from the time they are brought into federal custody until they are acquitted, incarcerated, or released on bond, while the BOP is responsible for federal prison inmates serving a sentence of imprisonment after conviction for a violation of the federal criminal code. To meet their needs for detention space, the USMS and the BOP enter into Intergovernmental Agreements (IGAs), which

⁵ The Standards require the OIG to comply with requirements for external investigative agencies that conduct investigations of sexual abuse in confinement settings. This progress report does not assess the OIG's implementation of PREA due to the inherent conflict that would be created were this office to evaluate its own compliance with the Standards. We note, however, that the OIG has provided specialized PREA training to its investigators, conducted a review of its investigative policies to ensure that they conform to the requirements of PREA and PREA Standards, and complied with all BOP requests for PREA-related documentation.

⁶ Offices and components that are designated as part of the PREA Working Group include the Civil Rights Division, Access to Justice Initiative, OJP, BOP, National Institute of Corrections, Office on Violence Against Women, and the USMS. Other offices may offer assistance when appropriate.

⁷ To assess PREA implementation at the DOJ, we conducted interviews of DOJ and non-DOJ officials, reviewed public and internal DOJ documents, and analyzed preliminary and final PREA audit reports of BOP institutions.

are formal agreements between the USMS or BOP and a state or local government to house federal detainees in state and local detention facilities at an agreed-upon daily rate. As of March 2014, the USMS had 925 actively used IGAs with state and local facilities across the country.⁸ As of April 2014, the BOP had 123 actively used IGAs.⁹ In addition, the BOP and DHS's U.S. Immigration and Customs Enforcement (ICE) "ride" on a number of USMS IGAs, meaning these agencies use the same terms with the facility that the USMS has negotiated. As of April 2014, the BOP has such arrangements with 100 state and local detention facilities.

The USMS and BOP have both been proactive regarding inserting PREA compliance language into contracts with many of their third-party facilities. BOP has modified all of their contracts with privately operated facilities to include PREA compliance language, and USMS officials told us that the USMS also has modified all of its contracts with privately operated facilities. The BOP has also modified all of its contracts with Residential Reentry Centers (RRCs), often referred to as halfway houses, to include PREA compliance language.

In contrast, the USMS has taken a passive approach with regard to modifying IGAs to include PREA compliance language, generally electing to wait to insert such language until the facility that has entered the IGA with the USMS (IGA facility) requests some modification to its existing IGA. The USMS's IGAs are flexible agreements that allow the USMS or the state or local facility to opt out of the agreement at any time. Consequently, IGAs do not terminate on a given date, but rather last as long as both parties are satisfied with the agreement. The terms of existing IGAs are most commonly modified when state or local facilities ask the USMS for an increase in the daily rate that the USMS pays to house its detainees. Generally, the terms of the IGAs allow state and local facilities to ask for such rate increases every 3 years.¹⁰

Under the Standards, the USMS is required to include in any new or renewed IGA language obligating the state or local facility to adopt and comply with the Standards, and to monitor such facilities to ensure PREA compliance.

⁸ USMS officials told us that, generally, "actively used" IGAs are IGAs with facilities that have been used in the last year.

⁹ The BOP uses IGAs primarily for temporarily housing inmates who are being sent from BOP Residential Reentry Centers (RRC) to BOP institutions.

¹⁰ A previous OIG review found that the USMS could improve how it negotiates IGAs with state and local facilities. See U.S. Department of Justice Office of the Inspector General, *Audit of the Intergovernmental Agreement Detention Space Negotiation Process*, Audit Report 11-21 (March 2011).

As of January 2014, the USMS had inserted PREA compliance language into 134 of its 925 (14 percent) actively used IGAs; most commonly, these modifications were made when IGAs were modified pursuant to a facility's request for a rate increase. USMS officials told us they will monitor these facilities' compliance with the Standards by the addition of a PREA component to the existing annual inspections that the USMS conducts of all actively used IGA facilities.

Because USMS IGAs are of an indefinite length, the possibility exists that state or local facilities that hold USMS detainees will continue to do so without becoming contractually obligated to comply with PREA. USMS officials we interviewed expressed the belief that most IGA facilities would ask for a rate increase after 3 years and that PREA compliance language would be added to many IGAs through this modification and renewal method. The USMS stated that it therefore did not plan to ask IGA facilities to insert PREA compliance language into IGAs unless it was a new IGA, a renewal of an IGA, or a modification to the terms of an IGA. However, USMS officials acknowledged that some IGA facilities may not ask for a rate increase and, consequently, that the USMS cannot predict when all IGAs will include PREA compliance language.¹¹ As a result, it is possible that the USMS may in some circumstances have no alternative to housing detainees at noncompliant facilities.¹² Such a scenario is likeliest in geographically isolated areas where the USMS has few options for detention space, and among IGA jails, whose local governments have fewer financial incentives to comply with PREA.¹³

¹¹ Unlike the USMS's IGAs, the BOP's IGAs are for a fixed number of years, at which point both parties must agree to renewal. Many current IGAs have 3-year durations between renewals, although the BOP is in the process of transitioning to 10-year durations. BOP officials told us that the BOP is contacting all of its actively used IGA facilities to seek modifications to include PREA compliance language. We were told that if IGA facilities resist inserting PREA compliance language into IGAs, the BOP will no longer use those facilities.

¹² After reviewing a draft of this report, the USMS emphasized that, in some areas of the country, the USMS may not have the flexibility to stop using non-compliant IGA facilities to house its detainees because no suitable alternate facilities exist.

¹³ There are no financial penalties for non-compliant local governments or federal entities. In contrast, PREA provides that any state that is not in "full compliance" with the Standards shall be subjected to a 5-percent reduction in any DOJ funds that the state would otherwise receive for prison purposes for the fiscal year. The state can avoid this reduction if its governor pledges to spend the funds that the state would otherwise lose on efforts to bring the state into full compliance. According to the Department, as of June 30, 2014, 49 of the 56 states and territories that are subject to PREA had either announced that they are in compliance with PREA or had submitted assurances to the Department committing to spending the relevant DOJ funds to come into compliance. Additionally, BJA and PRC officials

Continued

We encourage the USMS to address this issue immediately so as to avoid, to the best of its ability, the possibility of knowingly housing its detainees in facilities that are not PREA compliant. Among the options available to the USMS are: urging its existing IGA facilities to voluntarily agree to comply with PREA; using PREA as a factor in considering which IGA facilities to use; and, particularly in areas where no alternate PREA-compliant facility exists, affirmatively seeking to add PREA compliance language to IGAs, even in the absence of a facility's request for a rate increase or other modification to its IGA.

II. External Investigator Standards

The Standards place certain requirements on external investigative agencies that conduct investigations of sexual abuse in confinement settings. Generally, these requirements include: (1) following certain protocols for conducting sexual abuse investigations in confinement settings; (2) having in place a policy governing the conduct of sexual abuse investigations; and (3) providing specialized training to investigators who conduct sexual abuse investigations. The Standards specify that any DOJ component that conducts investigations in confinement settings must comply with these requirements.¹⁴ During our review, we identified two issues that have prevented the Department from ensuring its full compliance with the external investigator standards. Those issues are described below.

Assessing Compliance of External Investigator Standards

The Standards state that the certified independent PREA auditor shall make a compliance determination for each standard, including those relating to external investigative entities, and until April 2014 this continued to be the case. However, on April 23, 2014, the PREA Working Group issued interpretive guidance directing auditors to find a facility compliant even if an external investigative entity is found to be not compliant.¹⁵ Members of the PREA

told the OIG that in the seven states and territories that have neither complied nor submitted assurances, some individual facilities had requested PREA audits or had them performed.

¹⁴ DOJ components that investigate sexual abuse in confinement settings include the OIG, FBI, BOP, and USMS. The OIG has primary jurisdiction over cases that involve allegations of staff sexual abuse, while the FBI has primary jurisdiction over cases that involve inmate-on-inmate sexual abuse.

¹⁵ OJP provides guidance to auditors by making available an Auditor Compliance Tool that facilitates evaluating compliance of individual Standards. This tool has been updated to reflect this new interpretive guidance.

Working Group told us that the goal of the new interpretive guidance was to free individual facilities from being held responsible for non-compliance by external investigative entities.

While these members told us that this goal was broadly shared among the members of the PREA Working Group, some members also expressed the concern that there is no current mechanism by which to determine whether DOJ external investigative entities are in compliance with the PREA standards. Several members of the PREA Working Group, including OJP officials, subsequently confirmed that no such mechanism exists within the Department to ensure that assessments of the external investigative standards are conducted. We believe that an assessment of whether DOJ components subject to the external investigative standards have in place the required policies and training protocols is an important aspect of PREA's implementation.

In this regard, we note that in at least two instances, independent PREA auditors who conducted audits of BOP institutions expressed doubt about whether one such component, the FBI, was in compliance with the external investigator requirements. In the first instance, an auditor noted in a final audit report that the Taft Correctional Institution, a BOP owned and contracted facility, had made repeated requests to the FBI for documentation to substantiate that the FBI was in compliance with its obligations under the three standards but had not received such documentation. For each of these three standards, the auditor specifically noted that the FBI was not compliant, although the auditor simultaneously found, pursuant to guidance from the PREA Working Group, that the facility had met each standard.

In the second instance an auditor reached a similar conclusion based on an exchange of information between OJP, the FBI, and the BOP. In December 2013, OJP sent a letter to the FBI notifying it of the standards with which the FBI is required to comply and expressing concern on behalf of the BOP that the FBI had yet to produce documentation to demonstrate that it was in compliance with the Standards. In response, the FBI stated that it was in full compliance with the Standards, but that it did not need to demonstrate that compliance because it was unaware of any requirement to do so. After the BOP inquired directly to the FBI about the FBI's compliance, the FBI sent a letter to the BOP outlining why it believed it was compliant. The information in this letter was subsequently provided to at least one independent PREA auditor,

who found that the information was not sufficient to find that the FBI was PREA compliant.¹⁶

FBI officials told us that the FBI's standards and training as they existed immediately prior to the promulgation of the Standards were already sufficient to comply with the subsequently promulgated Standards. These FBI officials stated that even though it does not have policies uniquely applicable to sexual abuse investigations in confinement settings, the FBI's current policies that are applicable to a prison rape investigation are sufficient to meet the Standards' requirements. Similarly, these FBI officials told us that despite not providing training exclusively covering prison rape investigations to its agents who might conduct sexual abuse investigations in confinement settings, the breadth of the FBI's criminal investigative training meets the requirement. The officials also stated that, in part because it conducts so few sexual abuse investigations in confinement settings – a total of 15 between calendar years 2009 and 2013 – they do not anticipate that the FBI will conduct any additional training exclusively applicable to these investigations.¹⁷ They emphasized their view that no policies or training beyond what the FBI already offers its agents is required under the Standards.

We have not attempted to confirm either the independent PREA auditors' conclusions or the FBI's statements regarding their compliance with the Standards. We also note that the PREA Working Group's April 2014 interpretive guidance directs auditors to find a facility compliant even if an external investigative entity may not be compliant. However, we believe that similar questions regarding DOJ components' compliance with the external investigator standards could arise in the future. We therefore encourage ODAG in coordination with OJP, the PREA Working Group, and affected components to develop a mechanism to assess whether relevant DOJ components have in place the policies and training protocols required by the external investigator standards.

USMS's Tracking of Sexual Abuse Investigations in Third-Party Facilities

USMS policy authorizes USMS personnel to investigate sexual abuse allegations by a USMS detainee if the USMS determines that the allegations are

¹⁶ We emphasize that such a finding does not necessarily imply that the FBI had in fact failed to comply with the Standards.

¹⁷ The FBI stated that these 15 investigations include all full investigations, preliminary investigations, and assessments that were opened over a five-year period from 2009 to 2013.

not being properly investigated by other law enforcement entities. USMS officials told us that USMS personnel are most commonly involved with sexual abuse investigations in third-party facilities not operated by the USMS, such as IGA facilities.¹⁸

During our review, USMS officials determined that the system the USMS uses to track sexual abuse allegations by detainees in USMS custody does not capture the data necessary to determine the extent to which USMS personnel are involved in such investigations. To ensure compliance with these standards we encourage the USMS to develop a method to identify all USMS investigations that are subject to the external investigator standards and to ensure that those standards are met.

III. OJP Challenges in Implementing PREA

The Deputy Attorney General assigned the responsibility to manage PREA implementation to the Assistant Attorney General for OJP. Within OJP, the BJA manages DOJ's PREA implementation with the PRC. The following sections discuss several challenges that OJP faces as it manages this implementation.

Uncertainty as to What "Complying with the PREA Standards" Means for IGA Facilities

The Standards require that new or renewed IGAs include both a requirement to comply with PREA and that the contracting agency conduct contract monitoring "to ensure that the contractor is complying with the PREA Standards." Guidance from the PREA Working Group states that facilities do not have to be "immediately and perfectly" compliant with the Standards, but must demonstrate "substantive progress." Therefore, the contracting agencies, including the USMS and BOP, appear to have flexibility in determining whether IGA facilities that have PREA compliance language included in the terms of the agreement are PREA compliant.

However, USMS officials we spoke with were uncertain as to what circumstances would cause them to deem IGA facilities to be out of compliance with PREA, and therefore out of compliance with the terms of IGAs, in such a way that they would be required to remove USMS detainees. The flexibility afforded the contracting agency under the Standards to determine whether IGA facilities have demonstrated "substantive progress" toward PREA compliance

¹⁸ The USMS told us that it has not conducted any investigations in the lockups it operates since creation of its sexual abuse tracking system in February 2012.

may result in uncertainty on the part of IGA facilities about what, specifically, they must do to comply with their IGAs. This flexibility may also result in inconsistency among the contracting agency officials responsible for determining whether specific IGA facilities have complied with the PREA compliance language in their agreements. Depending on the circumstances, this uncertainty could also result in less timely implementation of the Standards at IGA facilities. Therefore, we encourage ODAG in coordination with OJP and the PREA Working Group, to develop a method for measuring “substantive progress” that fosters consistency when assessing PREA compliance across IGA facilities and promotes the objectives of PREA.

Certifying Enough Auditors to Meet Demand

The Standards require that one-third of an agency’s confinement facilities be audited within each year of a three-year audit cycle, and that all confinement facilities be audited by the end of the third year. The first audit cycle began in August 2013. The PREA statute itself further provides that any state for which the governor does not certify that his or her state is in full compliance with the Standards, including meeting deadlines for conducting audits, shall be subjected to a 5-percent reduction in any DOJ funds that the state would otherwise receive for prison purposes for the fiscal year. The statute also provides that each state can avoid this reduction if its governor pledges to spend the 5-percent of funds that the state would otherwise lose solely on efforts to bring the state into full compliance.¹⁹

The BJA and the PRC are responsible for ensuring that there are enough certified independent PREA auditors to meet the nationwide demands of federal, state, and local confinement facilities. As of June 2014, 377 auditors had been trained, of which 259 had been certified. Every auditor must undergo a name check through the FBI’s National Name Check Program prior to certification, and that name check can take months to complete. The BJA and the PRC anticipate there will be more than 600 DOJ Certified PREA Auditors by the end of calendar year 2014.

In March 2014, PRC officials told us that if one-third of the OJP-estimated 8,000 confinement facilities subject to PREA auditing requirements were to request an audit before the end of the first year of the audit cycle in August 2014, there would not be enough auditors to meet nationwide auditing requirements. However, after the conclusion of the first year of the audit cycle, OJP officials told us that, factoring in the lack of confinement facility readiness

¹⁹ There are no financial penalties for non-compliant local governments or federal entities.

to undergo PREA audits, the number of certified auditors had kept pace with the PREA audits needed by facilities nationwide.

Developing an Online Auditing Tool

As part of its responsibilities, the PRC developed an audit instrument that is used by the independent PREA auditors. The auditor fills out the audit instrument as he or she assesses each of the applicable standards. Some standards require assessment of agency-wide policies, while others are specific to the individual facility being audited.²⁰

Currently, the audit instrument is available to auditors only in hard copy while a partner of the PRC develops an online auditing tool. In our interviews with BOP officials, we were told that the lack of an online auditing tool has caused significantly more time to be spent on the administrative portions of conducting an audit than should be necessary. BOP officials told us that personnel in its Central Office and facilities have spent many hours supplying information to auditors in a process that may be sped up through use of the online auditing tool. A member of the PREA Working Group also told us that at least one auditor has expressed frustration with the cumbersome process of completing a preliminary audit report without an online auditing tool.

BJA and PRC officials told us that the electronic version of the auditing tool was not in the DOJ's original PREA implementation plans and that a decision was made to develop the online auditing tool soon after development of the audit instrument had begun. They said that they had hoped that the online auditing tool would be available by the time the first audit cycle began in August 2013, but that making the online tool compliant with the *Federal Information Security Management Act* had delayed its implementation. As of February 2014, these officials were not able to provide a timeline for completion of the online auditing tool.

Coordinating with the Department of Homeland Security

On March 7, 2014, the DHS published its Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities (DHS's PREA Standards). DHS's PREA Standards are similar to the DOJ's Standards, including a similar audit requirement, but they include provisions tailored to immigration detention facilities that are not part of the DOJ's Standards.

²⁰ BOP has established an audit of its Central Office to assess agency-wide policies annually instead of having PREA auditors assess these policies during every facility audit.

In our interviews with BJA officials and members of the PREA Working Group, we were told that DHS officials have met with DOJ officials to ask questions about DOJ's experience creating the Standards, but that there has yet to be discussion about how the two sets of standards will interact. We believe that questions about the interaction between the DOJ's and DHS's PREA Standards are certain to arise, and therefore a mechanism for ongoing coordination will be necessary.

For example, similarly to USMS and BOP, U.S. Immigration and Customs Enforcement (ICE) uses state and local confinement facilities to house its immigration detainees. For facilities used by both ICE and the USMS, ICE often "rides" on USMS IGAs, meaning it uses the same terms with the facility that USMS has set out. In these situations, a facility that has PREA compliance language in its IGA would have to comply only with the DOJ's Standards. However, facilities that maintain separate IGAs with DOJ and DHS may have to comply with both the DOJ's and the DHS's standards and undergo separate audits by DOJ and DHS, the substance of which may substantially overlap with each other.

Because questions about the interaction of the two sets of standards are likely to arise, we encourage OJP and the PREA Working Group to coordinate with DHS on the respective DOJ and DHS sets of PREA standards to identify potential implementation issues and to minimize duplication of efforts. We also encourage coordination with other relevant federal entities should additional, analogous standards be developed.

IV. BOP Audit Challenges

The BOP is the only DOJ component required to undergo PREA audits of confinement facilities that it operates.²¹ There are 120 BOP facilities, each of which is required to undergo an audit during each 3-year audit cycle. The BOP entered into a contract with the American Correctional Association to conduct all of its PREA audits during fiscal year 2014. BOP officials told us that the BOP was largely already in compliance with PREA when the Standards were published.

The BOP's 14 privately operated contract institutions and 182 RRCs are also subject to the audit requirement. The BOP has modified all of its agreements with contract and RRC facilities to include PREA compliance

²¹ The USMS's lockups are not subject to the audit requirement because they are not used to house detainees overnight.

language. While the BOP must monitor these agreements to ensure compliance with the contract, hiring an independent auditor and complying with the Standards are responsibilities of each contract and RRC facility.

The BOP planned audits for 34 of its institutions and its Central Office during the first year of the PREA audit cycle, which began on August 20, 2013, and ended on August 19, 2014. After an analysis that included preliminary audit reports completed between August 20, 2013, and April 8, 2014, 12 reports showed that the audited facilities ranged from 48-percent compliance with applicable Standards to 95-percent compliance.²² However, pursuant to the Standards, institutions that are found in a preliminary audit report not to be compliant with an applicable Standard are afforded a 180-day corrective action period, during which the institution and the auditor develop a corrective action plan to achieve compliance. BOP officials expressed confidence that all standards not met in preliminary audit reports would be resolved by the time of the final audits. As of August 2014, final audit reports had been released for 22 BOP institutions, and all institutions had been found to meet or exceed all of the applicable Standards. In addition, three reports assessing BOP institutions containing findings of noncompliance with the PREA Standards were finalized by PREA auditors and provided to the BOP in 2014, but as of August 2014 these reports had not been released because BOP was contesting the findings.

During our review, we identified several challenges related to audits of BOP's facilities, contract facilities, and RRCs. The following sections discuss these areas in more detail.

Cross-Gender Pat-Down

We were told by BOP officials that implementing a cross-gender pat-down restriction will be a significant task for the BOP. This standard, which goes into effect for select institutions on August 20, 2015, including the BOP, states that institutions shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. BOP officials said that because only female staff will be allowed to pat down female inmates, correctional officer shifts at BOP institutions will need to be adjusted to ensure there is adequate female staff to conduct such searches. Changes in staff shifts will be subject to negotiations between the BOP and the national correctional officer union.

²² Unlike final PREA audit reports, preliminary PREA audit reports are not required to be made available to the public.

Inmate Access to Outside Confidential Support Services

The Standards require confinement facilities to maintain or attempt to enter into agreements with community organizations that are able to provide inmates with confidential emotional support services related to sexual abuse. The BOP has attempted to assist its institutions in finding and entering into agreements with such community organizations. In May 2013, the BOP sent a letter to all of its regional PREA coordinators explaining the requirement and attached a memorandum of understanding template that could be used by BOP institutions.

However, BOP officials stated that many institutions have encountered challenges finding such community organizations. They told us that some institutions in geographically remote locations have found it particularly difficult to locate organizations in their area, and that some organizations capable of providing the needed services have been unwilling to enter into a memorandum of understanding with a large BOP institution due to the impact that such a commitment would have on their personnel and resources.

Inconsistency Among Auditors' Findings

BJA officials stated that all auditor applications are scrutinized so that only those with extensive corrections experience are allowed to train and become auditors. In general, the DOJ officials we interviewed were satisfied with the performance of the independent PREA auditors to date. However, in our review of preliminary audit reports of BOP institutions, we found a number of inconsistencies among different auditors' findings. For example, for the cross-gender pat-down standard, which does not go into effect until August 2015 and is thus not applicable to BOP institutions, most auditors marked that the standard had not been met, some marked that the standard had been met, and others marked that the standard was not applicable. While the inconsistencies we identified were all contained in preliminary audit reports, not final audit reports, and while these findings pertain to a standard that has not yet gone into effect, they nevertheless illustrate the potential for PREA auditors to reach inconsistent conclusions.

The PRC officials we interviewed also expressed concerns about inconsistencies among auditors' findings, particularly regarding standards that might be incorrectly marked as having been met. They noted that while standards that are incorrectly marked as having not been met can be fixed during the 180-day corrective action period, standards that are incorrectly marked as met are likely to go unnoticed. Any unidentified noncompliance may therefore not be discovered and cured until the next audit 3 years later.

Officials from the PRC, as well as a member of the PREA Working Group, told us that a small amount of inconsistency among auditors is inevitable. They emphasized that the BJA and the PRC provide auditors with a rigorous 40-hour training course, but that the auditors, who are independent, are left to make their own determinations and a small amount of inconsistency must be expected. However, DOJ officials told us that BJA plans to develop a quality control program, the details of which have not yet been determined.

CONCLUSION

DOJ and its components have important management and operational responsibilities under PREA and have made significant progress on the process of implementing PREA. They also face a number of challenges pertaining to implementation of the Standards. As PREA implementation progresses and more federal, state, and local facilities across the country undergo audits and otherwise implement PREA, many of these challenges, if left unresolved, will become increasingly significant. In particular, the OIG encourages the Department and its relevant components to address the following priority challenges:

- USMS develop a plan to address the inclusion of PREA compliance language in USMS active IGAs in a more timely fashion.
- ODAG in coordination with OJP, the PREA Working Group, and affected components develop a mechanism to assess whether relevant DOJ components have in place the policies and training protocols required by the external investigator standards.
- USMS develop a method to identify all USMS investigations that are subject to the external investigator standards and to ensure that those standards are met.
- ODAG in coordination with OJP and the PREA Working Group develop a method for measuring “substantive progress” that fosters consistency when assessing PREA compliance across IGA facilities and promotes the objectives of PREA.
- OJP and the PREA Working Group develop a method for coordinating with DHS on the respective DOJ and DHS sets of PREA standards to identify potential implementation issues and to minimize duplication of efforts.

APPENDIX I: LIST OF ACRONYMS

BJA	Bureau of Justice Assistance
BOP	Federal Bureau of Prisons
DHS	Department of Homeland Security
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
ICE	U.S. Immigration and Customs Enforcement
IGA	Intergovernmental Agreement
OIG	Office of the Inspector General
OJP	Office of Justice Programs
PRC	PREA Resource Center
PREA	<i>Prison Rape Elimination Act of 2003</i>
RRC	Residential Reentry Center
USMS	U.S. Marshals Service

APPENDIX II: OJP RESPONSE TO DRAFT REPORT



U.S. Department of Justice


Office of Justice Programs

Washington, D.C. 20531

OCT -3 2014

MEMORANDUM TO: Michael E. Horowitz
Inspector General
United States Department of Justice

THROUGH: Nina S. Pelletier
Assistant Inspector General for Evaluation and Inspections
Office of the Inspector General
United States Department of Justice

FROM: Karol V. Mason 
Assistant Attorney General

SUBJECT: Response to the Office of the Inspector General's Draft
Report, *Progress Report on the Department of Justice's
Implementation of the Prison Rape Elimination Act*

The Office of Justice Programs (OJP) appreciates the opportunity to review and respond to the Office of the Inspector General's (OIG's) draft report, entitled *Progress Report on the Department of Justice's Implementation of the Prison Rape Elimination Act*, transmitted on September 19, 2014.

Although no formal recommendations were included in the draft progress report, the OIG encouraged the Department and its relevant components to address five priority challenges, of which three involve OJP's role in implementing the Prison Rape Elimination Act of 2003.

Introduction

On August 27, 2013, Deputy Attorney General (DAG) James M. Cole signed the Prison Rape Elimination Act (PREA) Implementation Plan. This plan charged OJP with implementation of the regulations promulgated under PREA in August 2012, "most notably responsibilities related to the process by which facilities are audited for compliance with the PREA Standards" (*PREA Implementation Plan, p. 1*). In order to carry out these vast responsibilities, OJP established the PREA Program Management Office (PMO) in the Bureau of Justice Assistance (BJA). The historic nature of PREA and the unprecedented development of national standards to prevent sexual abuse in confinement settings have required the PMO to develop a number of groundbreaking processes, instruments, and protocols to implement the PREA Standards. The PMO, among many other significant duties

and responsibilities, chairs the Department's PREA Working Group. The mission of this group, which is explained in more detail below, is to issue interpretative guidance on questions of first impression related to the PREA Standards.

Since DAG Cole signed the PREA Implementation Plan, the PMO has utilized a multi-faceted, highly successful strategy to carry out the Department's PREA responsibilities. While work remains to be done, the PMO has made remarkable progress supporting and facilitating implementation of PREA nationwide. This response explains this progress, identifies emerging priorities related to PREA implementation, and outlines plans for the future.

OJP and the PMO anticipated the "priority challenges" related to OJP and the PREA Working Group that are identified by the OIG in its draft progress report on PREA. The PMO has already taken steps to address them, and strategic work on these and other challenges will continue into the future.

A central element of the PMO's work on PREA implementation is collaboration. Since its inception in late August 2013, the PMO has worked to promote collaboration across the key Department components that have a stake in PREA implementation, between the Department and other federal agencies that have requirements under PREA, and among the Department and numerous external constituent groups that are working to implement PREA at the state, local, and tribal levels. The PMO recognizes that collaboration is a critical prerequisite for successful PREA implementation, and the PMO always relies upon collaboration in carrying out the components of its PREA implementation strategy. These components include:

- Creating and implementing a robust PREA audit process to assess compliance with the PREA Standards in confinement facilities across the nation;
- Delivering targeted training and technical assistance (TTA) to the field on issues such as establishing "zero tolerance" cultures related to sexual abuse and sexual harassment in confinement facilities; eliminating these serious problems in adult prisons and jails, juvenile facilities, community confinement facilities, and lockups; and coming into compliance with the PREA Standards;
- Developing and operationalizing a comprehensive outreach and education strategy that focuses on external constituent groups that are impacted by PREA and the PREA Standards;
- Partnering with other Department components to support implementation of the PREA Standards in those components that have responsibilities under PREA, and to provide interpretative guidance to the field on issues of first impression related to the PREA Standards;
- Working closely with other federal agencies, so that they can leverage the lessons learned from the Department's successful PREA implementation efforts, and the tools created by the Department to promote implementation activities nationwide; and

- Directing a robust national grant program, *Demonstration Projects to Establish "Zero Tolerance" Cultures for Sexual Assault in Correctional Facilities*, which provides much-needed resources to state, local, and tribal jurisdictions to carry out PREA-related activities.

This response summarizes OJP's and the PMO's accomplishments related to each of these strategies, and highlights key steps to be taken to build upon the momentum related to PREA implementation. These steps address numerous priorities, including the specific challenges identified in the OIG's draft progress report on PREA.

The National Council on Crime and Delinquency (NCCD) serves as a critical partner to the PMO in carrying out many of the implementation strategies that are described below. In 2010, BJA conceived of and released a solicitation seeking the establishment of the National PREA Resource Center (PRC). Through a competitive process, a cooperative agreement was awarded to NCCD, which has since been supplemented and is fully funded through 2016. NCCD has worked collaboratively with the PMO to direct the activities of the PRC. The PRC's mission is to address sexual safety in confinement facilities, and to assist state and local jurisdictions with implementation of the PREA Standards. The PRC's website is www.prearesourcecenter.org, and more information about the important resources offered by the PRC is included below.

Creation and Implementation of the PREA Audit Process

The PREA Implementation Plan prioritized the PMO's support for the PREA audit process, and the first year of the initial PREA audit cycle commenced on August 20, 2013. As a result, the PMO, in collaboration with the PRC, has spent significant time, effort, and resources on the audit function of the PREA Standards. In fact, the PMO's and the PRC's most significant accomplishment to date has been creating and implementing a comprehensive, historic, and unprecedented PREA audit process. Key milestones achieved by OJP, which reflect the Department's audit-related responsibilities as outlined in the PREA Standards (see §§ 115.401–405), include:

- Developing an extensive auditor training curriculum and exam;
- Identifying expert faculty members to deliver presentations, and facilitating small groups focused on auditing scenarios and building interviewing skills;
- Delivering seven week-long auditor trainings for 563 auditor candidates;
- Finalizing four lengthy, detailed, and complex audit instruments that reflect the four facility types included in the PREA Standards;
- Processing more than 1,000 auditor applications;
- Coordinating the certification and posting process for 349 Department-certified PREA auditors;
- Initiating an ongoing support and education program for Department-certified PREA auditors;
- Beginning development of a quality assurance process focused on PREA audits that includes a peer review component; and
- Instituting a PREA audit appeals process.

The PREA Standards focus on four confinement facility types: prisons and jails, community confinement, lockups, and juvenile. There are 52 prisons and jails standards, 47 community confinement facilities standards, 42 lockup standards, and 50 juvenile facilities standards. The vast majority of these standards have multiple sub-sections, which create several hundred specific requirements for each facility type. Because many of these requirements go beyond existing policies and procedures, and focus on specific practices that have been implemented in confinement facilities, the PREA audit process reflects a fundamental shift in the way that correctional facility audits are traditionally and typically performed. While the compliance determination process includes a thorough document review that is usually part of correctional audits, it also incorporates staff and inmate/detainee/resident interviews, as well as tours and direct observations of confinement facilities.

Auditor Training

In order to equip PREA auditors to conduct document reviews, interviews, and facility tours competently, and to use the information collected during an audit to come to accurate and consistent conclusions about whether or not a facility is in compliance with the PREA Standards, the PMO, in collaboration with the PRC, has designed an intensive, 40-hour training course for PREA auditor candidates. During the course, in addition to receiving information about the standards in lecture-style presentations, the candidates participate in small group sessions designed to develop and enhance their interviewing skills, and to use complex information from various sources to make accurate and consistent determinations about facility compliance with the PREA Standards. Candidates are also expected to conduct extensive document reviews in advance of the onsite training that focus on standards compliance scenarios. The completed pre-work is discussed throughout the training. The week-long training concludes with a thorough written examination of the content covered. Passing the examination is a requirement of being certified by the Department as a PREA auditor.

Participants are asked to complete evaluations of the event overall, as well as of each presenter and presentation. PRC staff review the evaluations and, in collaboration with the PMO, make necessary revisions to the agenda and materials to ensure participants are trained to carry out their auditing responsibilities effectively. Participants, who already possess significant correctional experience and training, consistently report that the event is the highest quality and the most comprehensive and thorough training of their professional careers.

PREA Auditor Training dates include:

- June 2013
- November 2013
- January 2014
- March 2014
- June 2014
- July 2014
- September 2014

- November 2014
- Three training sessions anticipated in 2015
- Three training sessions anticipated in 2016

Certified Auditors

With ongoing support from the PMO, the PRC utilizes an online application portal to receive and host auditor applications. The original application solicitation, launched on August 15, 2013, closed on April 30, 2014; a new application process was launched May 1, 2014. This two-part application process is designed to elicit clearer and more useful information from applicants that is related to the specific requirements and criteria associated with acceptance as a PREA auditor candidate.

The first part of this process focuses on a review of PREA auditor candidate applications against three threshold criteria:

1. Does the applicant possess three years of significant auditing, monitoring, quality assurance, investigations, or substantially similar experience with the facility type in which certification(s) are sought?
2. Does the applicant have a bachelor's degree, or a high school diploma and experience substitution?
3. Does the applicant have at least two reference letters from someone in a field related to the relevant set of standards, or a single endorsement from a qualified employing entity?

Each candidate's application is reviewed against these criteria and receives a score of 1 (Yes) or 0 (No) for each question. Those who receive a total of three points are advanced to the second part of the application process, which includes a thorough review of each candidate's employment and experience related to auditing, monitoring, quality assurance, investigations, and related activities. Those who receive a score of two or less are removed from the active candidates list. Where appropriate, these candidates are contacted by the PRC, and given the opportunity to update and add to their application information and materials.

More than 1,000 completed PREA auditor applications have been submitted, with many more started and awaiting completion. The candidates are diverse in terms of geography, auditing experience, and the type(s) of auditing certifications sought. Recently, the PMO approved a consolidation of auditor certification types from four (prisons and jails, community confinement, lockups, and juvenile) to two (adult facilities and juvenile facilities). The decision to consolidate the certification types was made after careful consideration by the PMO and the PRC, and with extensive feedback and input from the community of Department-certified PREA auditors, and from agencies and facilities that are undergoing audits. Initial feedback on this consolidation has been very favorable.

To date, the PMO, in collaboration with the PRC, has trained 563 individuals seeking PREA auditor certification; 349 have passed the written examination after the auditor training as well as the required criminal background check¹ and have been certified by the Department as PREA auditors. It is expected that this number will increase by at least 90 when the candidates from the July 2014 training class are certified, bringing the total to 439. With the auditor trainings in late September and November 2014, the PMO expects there to be more than 600 Department-certified PREA auditors by the end of 2014. To date, the number of certified auditors has kept pace with the PREA audits requested by confinement facilities nationwide.

The PRC website maintains a dedicated page that lists the certified auditors and includes a brief biographical statement, date of certification, certification type(s), and state of residence. This list is searchable by certification type and state of residence.

Training Date	Number of Auditors Certified
June 2013	43
November 2013	77
January 2014	77
March 2014	62
June 2014	90
July 2014	90 (anticipated)

PREA Audit Instruments

The development of comprehensive, accurate audit instruments for all four sets of standards has been a significant and time-intensive undertaking for the PMO and the PRC. The audit instrument for prisons and jails was released pending final revisions in May 2013. A draft of the juvenile facilities instrument was made available to Department-certified PREA auditors in June 2013, and the community confinement facilities instrument was made available to auditors in November 2013.

Final revisions to the prisons and jails instrument, which included a thorough legal review and approval by OJP's Office of General Counsel (OGC), were completed and incorporated in the final instrument that was released in April 2014. The juvenile facilities instrument was also finalized and released in April 2014. The community confinement facilities instrument was beta tested in September 2013 and released in final in May 2014. The lockups instrument was beta tested in December 2013 and was released in final in the summer of 2014. Feedback on the tools from both Department-certified PREA auditors and agencies and facilities being audited has been extremely positive.

¹ The background check for PREA auditor candidates is limited to the Federal Bureau of Investigation's (FBI) National Name Check Process (NNCP). If a candidate's name is flagged by the NNCP, the PMO requests that the individual make a request to the FBI's Criminal Justice Information Services (CJIS) Division for the results of their criminal background check to be sent to the PMO. The PMO makes this request because OJP does not possess the legal authority to make this request directly to the CJIS Division. The results of the background check are used by OJP's Office of Administration to make a mitigation determination.

Neither the PREA Standards nor the PREA Implementation Plan signed by DAG Cole contemplates the need for an online version of the audit instruments. However, given the significant complexities and burdens associated with collecting, organizing, and securely retaining documents and information related to PREA audits, the PMO and the PRC initiated development of an online version of the audit instruments shortly after the PREA Implementation Plan was approved. The tool, which is highlighted in the OIG's draft progress report on PREA as an important resource for the field, will allow audit documents to be completed electronically, and reference materials to be uploaded and stored securely and digitally, versus the auditor keeping hard copies of all materials used in an audit.

The development process associated with the online tool has been extensive because of the data security requirements imposed under the Federal Information Security Management Act (FISMA). While addressing issues related to FISMA has extended the time required to complete development of the tool, the PMO and the PRC recognize the importance of ensuring that sensitive information reviewed or collected as part of PREA audits is appropriately safeguarded. A final version of the tool has been completed and is currently undergoing a security review by OJP's Office of the Chief Information Officer (OCIO). The PRC and the subcontractor that developed the tool, Abt Associates, are poised to immediately make the needed security changes identified by OCIO, so that the tool can be made available as expeditiously as possible. As an interim measure, and in recognition of the needs of Department-certified PREA auditors and the field, the PMO and the PRC are working diligently to develop fillable PDF versions of the audit instrument documents, and will make these widely available in the coming weeks.

Ongoing Support and Assistance for Auditors

Before the first PREA auditors were certified by the Department, the PMO and the PRC recognized that auditors may encounter interpretive challenges or other issues during their critical audit work. To support auditors in the field, the PMO and the PRC have established multiple methods for auditors to obtain expert guidance. For less urgent needs, such as questions related to document reviews that take place in advance of the onsite portions of audits, or the development of written audit reports, auditors may submit an email query to which the PRC will respond within three business days. Recognizing that some auditors may need assistance while at facilities during audits, the PRC operates a helpline and works to respond to inquiries in less than 24 hours during the work week.

Additional auditor support is provided by the PMO and the PRC through frequent webinars and newsletters. In March 2014, the PMO and the PRC conducted the first auditor webinar, which featured four Department-certified PREA auditors who participated in the June 2013 training. They shared with participants their lessons learned from conducting audits, and, in the case of one auditor, their experience with being audited. Key topics covered included contract development, document review, establishing a Limited Liability Company (LLC), and effective strategies for communicating with facility staff members about audits. In May 2014, a second webinar on final audit report writing was held, emphasizing the critical importance of detail and clarity in final reports to support the findings of audits. Two additional webinars were held in September 2014 that focused on the new auditor certification

process, practical differences auditing in different facility types, reporting responsibilities, and corrective action plans.

The PMO and the PRC provide two main communication mechanisms to disseminate critical information consistently to auditors over time. The first is notification of recently issued requests for proposals (RFP) or other solicitations for audit contracts received by the PRC from external entities. Second, in order to keep auditors abreast of recent audit-related updates, the PMO and the PRC have issued three newsletters to all Department-certified PREA auditors to advise them of recent interpretive guidance, issued by the Department's PREA Working Group, in the form of frequently asked questions (FAQs) and other auditor resources. These newsletters will continue to be disseminated approximately every two months and include new FAQs made available by the working group.

Recognizing the importance of keeping all auditors as informed as possible, the PRC, on behalf of the PMO, tracks what information auditors receive and when, and makes sure to disseminate previously distributed information to new auditors once they are certified. With support and guidance from the PMO, the PRC is in the process of creating an online portal for Department-certified PREA auditors to give them ready, round-the-clock access to all archived materials.

PREA Audit Tracking

The PMO and the PRC are working to finalize data collection forms on PREA audits in order to track audits that are taking place across the nation, and to inform audit quality assurance and peer review efforts. In the fall of 2014, these forms will be posted on the PRC website, and the PMO will communicate with all Department-certified PREA auditors and the field requesting submission of this information. The PMO and the PRC are also developing more sophisticated tools for both auditor and audit tracking, including concrete guidance and requirements for auditors to report their audit activities and findings.

Even without these mechanisms for reporting, the PMO and the PRC receive ad hoc information about completed and ongoing audits through communications with Department-certified PREA auditors. These communications reveal that hundreds of PREA audits have been—or are being—conducted in dozens of states. The PMO's and the PRC's goal in the coming months is to institutionalize information collection and reporting processes related to PREA audits occurring across the nation.

PREA Audit Quality Assurance and Peer Review

On September 17, 2014, the PMO and the PRC convened a productive strategic meeting to discuss the goals and next steps associated with a quality assurance process for PREA audits that includes a peer review component. The quality assurance process, which is highlighted in the OIG's draft progress report on PREA, will build upon the audit tracking activities that are explained above, and will be implemented, along with supporting peer review activities, in 2015. The PMO anticipates that the quality assurance process will:

- Promote the accuracy of PREA audit results;
- Enhance the credibility of and confidence in the PREA audit process on the part of the field and Department-certified PREA auditors;
- Improve inter-rater reliability among Department-certified PREA auditors in their conduct of audits;
- Assist in the identification of important trends in agencies' and facilities' efforts and ability to comply with the PREA Standards, so that TTA activities can be adjusted accordingly; and
- Promote accountability among Department-certified PREA auditors for the misapplication and/or misunderstanding of the PREA Standards, and for conduct-related issues.

PREA Audit Appeal Process

OJP's OGC, with input from the PMO and the PREA Working Group, developed a PREA Audit Appeal Process that was approved by OJP's Assistant Attorney General (AAG) Karol V. Mason and posted on the PRC website in the summer of 2014. Any agency may lodge an appeal with the Department regarding any specific PREA audit finding that it believes to be incorrect. Such an appeal must be lodged within 90 days of the auditor's final determination. Each audit appeal will be reviewed by a three-person panel that is composed of members of the PREA Working Group, including one representative from the PMO. Pursuant to the PREA Implementation Plan, the panel's findings are forwarded to OJP AAG Mason for a final decision regarding the appeal.

Delivery of Training and Technical Assistance to the Field

The PMO recognizes that successful PREA implementation requires the delivery of targeted TTA to the field on issues such as establishing "zero tolerance" cultures related to sexual abuse and sexual harassment in confinement facilities; eliminating these serious problems in adult prisons and jails, juvenile facilities, community corrections facilities, and lockups; and coming into compliance with the PREA Standards. As a result, the PMO has worked closely with the PRC to establish and improve over time a very robust, cost-effective TTA process that is responsive to the diverse needs of the field related to PREA.

Targeted TTA Providers

The PMO's and the PRC's work would not be possible without the efforts and support of their expert TTA partners. In the fall of 2013, and with support and approval from the PMO, the PRC released two RFPs to identify TTA partners for the PRC's current TTA strategy. One RFP focused on core TTA to continue field-initiated assistance and major resource development. The second RFP focused on special projects to be responsive to resource gaps for specific target groups such as lockups and community confinement facilities. Nearly \$2 million was awarded to seven six providers with contracts ranging from 12 to 24 months, commencing in January 2014. The selected TTA providers include:

- American Jail Association
- American University's Washington College of Law, Project on Addressing Prison Rape
- International Association of Chiefs of Police
- Just Detention International
- National Association of State Mental Health Program Directors
- The Moss Group
- Vera Institute of Justice

The PRC, in collaboration with the PMO, provides oversight to these providers to ensure that their deliverables address the needs of the field, are innovative, build upon and leverage one another, and do not duplicate resources that are already available. The following are selected examples of pending TTA resources that are currently being finalized by the PMO, the PRC, and their TTA partners:

- Articles and manuals for prosecutors on PREA
- Comic books for talking about PREA with inmates
- A cross-gender pat search instructional video and facilitator's guide

The PMO, the PRC, and its TTA partners will concentrate on developing and/or enhancing PREA-focused resources on topic areas and issues that reflect major questions and needs articulated by the field. The PMO and the PRC will focus on the following areas and issues through the end of 2015:

- Staffing plans
- Youthful inmates
- Limiting the use of segregation
- Cross-gender supervision
- Inmate education
- Inmates with disabilities
- Effects of trauma training for staff
- PREA in Action
- PREA fact sheets

Regional Training Events and Training Curricula

Prior to the establishment of the PMO by DAG Cole, but under guidance from BJA, the PRC began conducting regional trainings across the nation on key issues related to PREA. A total of 26 regional trainings were conducted. All were well attended by representatives from agencies and facilities seeking guidance and information to further their PREA implementation efforts. Across all of the regional trainings, nearly 370 jurisdictions/organizations participated in at least one event, with 100 attending more than one.

Because these events were well received by justice system policymakers and practitioners, and given the relatively high cost associated with delivering live trainings, the PRC, in collaboration with the PMO, has worked with the individuals involved in delivering the trainings to translate the materials used into curricula. This curricula development effort will ensure that the field has access to high-quality, comprehensive training materials, in recognition that in-person training events cannot possibly serve the number of people who need to be trained on issues related to PREA. From December 2013 through the spring of 2014, the PRC, in collaboration with the PMO, released the following curricula:

- *Specialized training: Investigating sexual abuse in confinement settings*
- *Specialized training: PREA medical and mental health standards*
- *Preventing and addressing sexual abuse in tribal detention facilities: The impact of the Prison Rape Elimination Act*
- *Human resources and administrative investigations employee training*
- *Gender-responsive strategies – adults*
- *Gender-responsive strategies – juveniles*
- *Employee training on PREA*
- *What You Need to Know* (inmate education video and facilitator’s guide)

The response from the field to the inmate education video and facilitator’s guide has been overwhelmingly positive and reflects the field’s typical response to the release of materials by the PMO and the PRC. In fact, the demand for the video was so great immediately following its release that it shut down the online points of access for downloading. Since its release, the video has been watched on YouTube nearly 6,000 times and downloaded hundreds of times.

This 16-minute video is an example of the kind of practical, easy-to-use resource that is being made available to the field by the PMO and the PRC to support PREA implementation. It can be utilized to provide inmates with necessary information during the intake process, as well as during a more comprehensive education related to PREA, per the requirements of the PREA Standards. While the video can be viewed independently, feedback from the many policymakers and practitioners in the field who are leveraging this resource reveals that its use in conjunction with the accompanying facilitator’s guide provides an effective approach to inmate education on PREA.

Webinars

To date, the PRC, in collaboration with the PMO, has hosted 55 webinars, all of which are archived on the PRC website. These webinars are primarily targeted to corrections professionals and community stakeholders to assist in PREA implementation. Twenty of these webinars were broadcasted during the latter half of 2013. In total, nearly 15,000 people participated in the live broadcasts and there have been more than 12,600 views of the archived webinars. The PMO, in partnership with the PRC, will continue to offer webinars and archive them on the PRC website.

Field-Initiated TTA

The PMO and the PRC continue to encourage jurisdictions to request field-initiated TTA using a website request form. Each request is reviewed and triaged to determine if PRC staff can respond or if it requires onsite or remote assistance that relies upon the specialized expertise of the PMO's and the PRC's TTA partners.

The web-based request for assistance is a successful method of addressing the field's significant need for targeted support related to PREA. More than 1,350 requests were submitted to PRC during the past year. Requests are commonly submitted by prison and jail staff members, police, representatives of community corrections and juvenile detention facilities, and national associations, networks, and coalitions. The types of field-initiated requests include training, policy reviews, general information, and presentations. To ensure efficient use of PRC resources, PRC staff members often encourage requestors to review and utilize the previously mentioned curricula and other targeted training materials.

Developing and Operationalizing a Comprehensive Communication and Outreach Strategy

A continuing priority for the PMO and the PRC is to communicate proactively with key constituent groups and national organizations that are impacted by, or have a stake in, PREA implementation. The PMO and the PRC employ several strategies to carry out this important priority. These strategies are described below.

National Organizations

Representatives from OJP, the PMO, and the PRC have conducted multiple information sessions on PREA and participated in many committee and board meetings at major national conferences and other events hosted by national organizations. These organizations include:

- American Correctional Association
- American Jail Association
- American Probation and Parole Association
- Association of State Correctional Administrators
- Correctional Accreditation Managers Association
- Council of Juvenile Correctional Administrators
- Inmate and victim advocacy organizations (such as the Raising the Bar Coalition)
- International Association of Chiefs of Police
- International Association of Correctional Training Personnel
- International Community Corrections Association
- National Association of Counties
- National Commission on Correctional Health Care
- National Criminal Justice Association
- National Governors Association

- National Sheriffs' Association
- North American Association of Wardens and Superintendents

The feedback and input provided to OJP, the PMO, and the PRC in conferences and meetings sponsored by these organizations have been very valuable in shaping the assistance and support related to PREA that is provided to the field. In addition, the outreach and education sessions have been excellent opportunities for representatives of OJP, the PMO, and the PRC to answer specific questions about PREA implementation and clarify misperceptions about the statute and the standards.

A noteworthy example of this outreach and education is a recent face-to-face meeting at OJP with numerous members of the Raising the Bar Coalition. The coalition's mission is to advocate for full, effective implementation and monitoring of, and compliance with, the PREA Standards. Prior to the meeting, the PMO received questions from the coalition and prepared responses, which were used to guide the productive discussion. Going forward, the PMO will convene additional meetings with the coalition approximately twice a year. The PMO's strategic, proactive education and outreach efforts to the organizations listed above and others will also continue into the future.

Communication and Outreach Related to the May 15, 2014 PREA Deadline

As the historic May 15, 2014 deadline approached for governors to submit, for the first time, certifications of full compliance with the PREA standards or assurances that not less than 5% of certain Department grant programs for prison purposes would be used to come into full compliance with the standards in the future, the PMO and the PRC worked together to educate the field about the implications of submitting a certification or assurance, or doing neither. For example, in March 2014, the PMO and the PRC co-hosted a webinar on PREA and the associated May 15 responsibilities of governors for the National Governors Association and the National Criminal Justice Association. The PMO and the PRC have also served as critical points-of-contact on PREA implementation for grant managers and staff from the Office on Violence Against Women (OVW) and OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP), the two other Department entities with grant programs impacted by PREA.

In addition, on February 11, 2014, OJP AAG Mason and OVW Principal Deputy Director Bea Hanson sent a letter to all of the nation's state and territorial governors outlining their responsibilities related to the May 15 deadline. In the days prior to this deadline, AAG Mason and Principal Deputy Director Hanson sent another letter to the governors' chiefs of staff, governors' criminal justice policy advisors, and each state's administering agencies regarding the implications of the deadline and the reduction of certain Department grant funds in states and territories whose governors did not submit a certification or assurance.

As a result of these efforts, for the first time in our nation's history, state and territorial governors provided information to the federal government regarding their states' efforts to combat sexual abuse in correctional facilities. Two states provided to the Attorney General

certifications of full compliance, and 47 states and territories provided assurances to use certain DOJ funds to achieve full compliance in the future.

Following the May 15, 2014 deadline, the PMO, in collaboration with OJP's OGC, and the Department entities that administer the grant programs impacted by PREA (OJP's BJA, OJP's OJJDP, and OVW) worked to:

- Calculate the amounts of the grant reallocations and reductions;
- Develop solicitation guidance outlining how reallocated funds could be used by states and territories whose governors submitted assurances to work to come into compliance with the PREA Standards in the future; and
- Communicate proactively with the impacted states and territories about reallocations and reductions, and the specific expectations associated with the solicitation guidance.

The PMO is now working in collaboration with OJP's BJA and OJP's OJJDP to conduct enhanced monitoring of the states and territories whose governors submitted assurances. This enhanced monitoring will help to ensure that the PREA-related activities in these states and territories that are funded by the reallocated grant funds are being used to bring these states and territories into compliance with the PREA Standards.

In addition, OJP, in collaboration with the PMO, will communicate with the states and territory that submitted neither a certification nor an assurance. These communications will emphasize the importance of these jurisdictions' obligations under the PREA Standards, answer questions they have about PREA, and encourage submission of a certification or assurance next year.

PREA-Related Notifications

The PMO and the PRC are committed to providing the members of the national organizations listed above and others with accurate, timely information about the PREA Standards, including PREA event announcements, available resources, and guidance issued by the PREA Working Group. This is accomplished through monthly e-blasts and periodic special notifications when essential information needs to reach the field before the next scheduled blast. Since June 2013, the PRC, in collaboration with the PMO, has sent 26 event blasts reaching nearly 11,000 individuals in the field. Information included in these blasts is also posted on the PRC website, which is described below.

PRC Website

The PRC website (www.prearesourcecenter.org) is the focal point for all of the information and resources provided to the field by the PMO and the PRC, with new material added on an almost daily basis. The PMO and the PRC continuously review the website content to ensure that messaging is consistent and that accurate information is readily available and easily accessed. The homepage banners and entries to the *News and Events* page are updated regularly. Since its launch in May 2012, the PRC website has had more than 361,300 total views, more than 173,000 of them unique. In the last year alone, the website has had more

than 200,000 visitors, more than 95,000 of them unique. Anecdotal information collected by the PMO and the PRC at the national conferences and meetings of the organizations listed above reveals that website visitors find it to be an invaluable tool and source of PREA-related information.

The PRC website's most frequently visited pages during the last year, aside from the home page, include:

- Curricula (more than 137,400 views)
- PREA Essentials: Prison and Jail Standards (more than 137,400 views)
- Training and Technical Assistance (more than 72,300 views)
- List of Certified Auditors (more than 49,500 views)
- Audit Homepage (more than 49,400 views)
- FAQ (more than 102,600 views)
- "About" Page (more than 56,600 views)

The *PREA Essentials* page on the PRC website is a particularly important and helpful resource. It is intended to guide professionals in their implementation of specific PREA Standards. Each category on the page contains a brief synopsis of the specific standards in that category; links to both an online version of those standards and helpful resources related to those standards, sorted by correctional facility type; and, where relevant, a discussion of key issues raised by those particular standards. The issues and resources covered on this page are, by design, not exhaustive, but rather offer a snapshot of those that may be of particular interest to policymakers and practitioners working to implement PREA.

Partnering with Other Department Components to Support PREA Implementation

While OJP and the PMO do not have any authority over other Department components and, therefore, cannot compel them to comply with the PREA Standards, OJP AAG Mason and the PMO work closely with other Department components on issues related to PREA implementation. This work is accomplished primarily at twice-monthly meetings of the PREA Working Group. This long-standing group's mission has evolved over time from completing the PREA Standards to providing interpretative guidance to the field on issues of first impression related to the standards. The working group is also a venue where members share information about and discuss the challenges associated with PREA implementation. Chaired and directed by the PMO, the group's members include leaders from the following Department components:

- Office of the Deputy Attorney General (ODAG)
- Office of OJP's Assistant Attorney General (OAAG)
- Access to Justice
- Bureau of Prisons (BOP)
- Civil Rights Division (CRT)
- National Institute of Corrections (NIC)
- OVW
- U.S. Marshals Service (USMS)

- OJP's BJA
- OJP's Office for Civil Rights (OCR)
- OJP's OGC
- OJP's OJJDP

The PMO will encourage the Federal Bureau of Investigation to participate in the working group.

The group has issued approximately 70 FAQs that address issues of first impression related to the PREA Standards. The issues reflect questions and concerns from the field as local, state, and federal agencies and facilities nationwide work towards implementation of the PREA Standards.

One example of an FAQ that is referenced in the OIG's draft progress report on PREA is as follows:

Question: *Is a public agency that contracts with another public agency or private agency for the confinement of inmates, detainees, or residents out of compliance with §§ 115.12, 115.112, 115.212, and 115.312 if the contracted facility is determined to be noncompliant with one or more provisions of the PREA Standards by either its required triennial audit, or by the contracting agency's contract monitoring?*

Answer: *Not necessarily. §§ 115.12, 115.112, 115.212, and 115.312 require that new or renewed contracts for the placement of inmates include both a requirement to comply with PREA, and that the contracting agency conduct contract monitoring "to ensure that the contractor is complying with the PREA Standards." The Standard does not require that the contracted facility be immediately and perfectly compliant with the Standards. Rather, the contracted facility must demonstrate a commitment to be PREA compliant and be actively and effectively working toward achieving compliance with all the Standards. The contracted agency should be able to demonstrate to the contracting agency substantive progress toward achieving such compliance, and the progress should be documented.*

For a discussion regarding the contract monitoring obligations of a contracting agency, see FAQ #1 under Contracts.

Last updated February 19, 2014.

This FAQ is also related to the following priority challenge identified in the OIG's draft progress report on PREA:

ODAG in coordination with OJP and the PREA Working Group develop a method for measuring "substantive progress" that fosters consistency when assessing PREA compliance across IGA facilities and promotes the objectives of PREA.

The working group continuously examines existing FAQs to identify those in need of revision and clarification, and has begun making needed changes in several of them. At the direction of and with oversight from ODAG, the working group plans to provide guidance about the meaning of "substantive progress" as it relates to the FAQ above, and OJP and the PMO plan

to work with ODAG to “develop a method for measuring substantive progress that fosters consistency when assessing PREA compliance across IGA facilities and promotes the objectives of PREA.”

A second example of an FAQ that is referenced in the OIG’s draft progress report on PREA is as follows:

***Question:** Can an auditor find a federal Bureau of Prisons, state, county, or other local or private facility compliant with the PREA Standards if an entity external to the confining agency, which conducts criminal investigations of sexual abuse in the facility being audited, is not compliant with the external investigative entity’s obligations under § 115.21, § 115.22, § 115.34, and § 115.71?*

***Answer:** Yes, provided that the confining agency and facility being audited has met its own specific obligations under these standards. For example, § 115.21(f) requires the confining agency to request that the relevant external investigating agency follow the PREA Standards regarding a uniform evidence protocol and forensic medical evaluations.*

The four PREA Standards referenced above explicitly apply to DOJ and state entities that are responsible for investigating allegations of sexual abuse in adult prisons, jails, lockups, community corrections facilities, and juvenile facilities. See, §§ 115.21(g)(2), 115.22(e), 115.34(d), and 115.71(k)&(l).

This FAQ clarifies the role of Department-certified PREA auditors in assessing external investigative agencies’ compliance with the PREA Standards. The FAQ makes clear that, for example, it is not appropriate for an auditor who is auditing a BOP facility to assess the Federal Bureau of Investigation’s (which conducts some criminal investigations of sexual abuse in BOP facilities) compliance with the PREA requirements of external investigative agencies. This FAQ is also related to the following priority challenge identified in the OIG’s draft progress report on PREA:

ODAG, in coordination with OJP, the PREA Working Group, and affected components, develop a mechanism to assess whether relevant DOJ components have in place the policies and training protocols required by the external investigator standards.

OJP and the PMO have long recognized the need for more information to guide the efforts of local, state, and federal agencies to comply with the PREA requirements of external investigators. At the direction of ODAG, OJP and the PMO plan to leverage the expertise of the PRC and the PREA Working Group to develop a user-friendly tool or checklist to assist state, local, and federal agencies in assessing whether they have in place the policies and training protocols required by the external investigator standards. OJP and the PMO are available to support ODAG in any ODAG-led effort to promote implementation by other Department components of policies, procedures, and practices related to the PREA requirements for external investigative agencies. However, as stated above, OJP and the PMO do not possess any authority over other Department components and cannot compel them to comply with any of the PREA Standards.

Another example of the PMO's ongoing efforts to partner with and support other Department components' PREA implementation efforts is inviting representatives from those components to participate in the auditor trainings. To date, 34 such representatives have participated in the training. The breakdown of the Department components and the number of representatives from each who have participated in the training are as follows:

- OAAG – 2
- BOP – 18
- CRT – 2
- NIC – 1
- USMS – 1
- OJP's BJA – 3
- OJP's OCR – 3
- OJP's OGC – 1
- OJP's OJJDP – 3

NIC has been, and remains, a valued collaborative partner of the PMO and the PRC in the delivery of critical information to the field related to PREA implementation. For example, NIC has made five e-learning courses on PREA available to the field, and the NIC Information Center includes a wide variety of PRC resources.

Working with Other Federal Agencies to Support PREA Implementation

Since its inception, the PMO has been recognized as a leader at the federal level in PREA implementation efforts, and has worked diligently to support the efforts of other federal agencies in fulfilling their requirements under PREA. For example, months prior to the release of the OIG's draft progress report on PREA, the PMO was already working with the Department of Homeland Security (DHS) to share lessons learned related to PREA implementation, with the goal of assisting the current and future implementation efforts of DHS. Through conference calls and face-to-face meetings with DHS staff, the PMO, with support from the PRC, has:

- Provided extensive information to DHS on the mission and ongoing efforts of the PREA Working Group to issue interpretative guidance to the field on the PREA Standards;
- Shared lessons learned from the successful work of the PRC and the methods being used to provide support and assistance to the field on issues related to PREA implementation; and
- Conducted a demonstration of the online PREA audit tool and discussed its applicability to the future PREA audit efforts of DHS.

The PMO's ongoing work with DHS will minimize duplication of efforts and result in more cost-effective investments related to PREA implementation on the part of both the Department and DHS. A priority challenge identified in the OIG's draft progress report on PREA that is related to the PMO's long-standing, ongoing coordination effort with DHS is:

OJP and the PREA Working Group develop a method for coordinating with DHS on respective DOJ and DHS sets of PREA standards to identify potential implementation issues and to minimize duplication of efforts.

Going forward, the PMO will continue to coordinate with DHS on PREA implementation efforts, and will take direction from ODAG regarding how to ensure this coordination effort is most effective. The PMO will also invite DHS to participate in PREA Working Group meetings.

Another example of the PMO's ongoing efforts to partner with and support other federal agencies in these agencies' PREA implementation is the provision of seats in the auditor trainings to representatives from these agencies. To date, 18 such representatives have participated in the training. The breakdown of federal agencies and the number of representatives from each who have participated in the training are as follows:

- Department of Defense/United States Military – 10
- DHS – 5
- Department of the Interior – 3

The PMO's efforts to partner with and support other federal agencies in PREA implementation will continue into the future.

Directing the BJA Grant program, Demonstration Projects to Establish "Zero Tolerance" Cultures for Sexual Assault in Correctional Facilities

The PMO directs the grant program, *Demonstration Projects to Establish "Zero Tolerance" Cultures for Sexual Assault in Correctional Facilities*, which provides much-needed resources to jurisdictions across the nation to carry out PREA implementation activities. Since fiscal year (FY) 2011, 49 PREA grant awards have been made to state and local/county jurisdictions. In addition, the PRC, in coordination with the PMO, has made 43 awards to local/county jurisdictions. The total amount of the PREA grant awards made since FY 2011 exceeds \$22.5 million. Examples of noteworthy activities funded through these grants include:

- Enhancements to management information systems to allow tracking of sexual abuse incidents, investigations, outcomes, and other PREA-specific information;
- Development of inmate education brochures, posters, and curricula related to PREA (usually in both English and Spanish);
- Creation of PREA training curricula for confinement facility staff members, volunteers, and contractors;
- Development, review, and revision of PREA policies and procedures;
- Establishment of management staff positions to assume PREA compliance duties; and
- Formalization of collaborative partnerships between agencies that oversee confinement facilities and providers of rape crisis services, including Sexual Assault Nurse Examiners (SANEs), crisis counseling, and ongoing mental health services.

A number of states that were awarded PREA grants have implemented innovative and promising PREA-related practices. Examples include:

- Georgia – Established on-call SANE nurses to respond to sexual assaults in confinement facilities;
- Kansas – Is working to create a memoranda of understanding with a rape crisis clinic for every confinement facility;
- Louisiana – Hosted multi-state leadership conference on PREA issues;
- Maine – Developed and implemented intake screening and assessment tools focused on risk of sexual victimization and abusiveness; and
- Massachusetts – Made changes to state statutes now restricting the sentencing of those under the age of 18 to juvenile settings.

The PMO, in collaboration with the PRC, is analyzing the work and accomplishments of the grantees, so that others may learn from their experiences and to inform the development of future grant solicitations, should additional PREA appropriations be made available.

Conclusion

In the 13 months since DAG Cole signed the PREA Implementation Plan in late August 2013, the PMO has worked tirelessly to carry out the Department's historic and unprecedented PREA implementation responsibilities. As described above, a great deal has been accomplished during the past year. On May 15, 2014, the governors of 49 of the 56 states and territories submitted to the Department certifications of full compliance with the PREA Standards or assurances that their states would use not less than 5% of impacted Department grant funds to come into full compliance with the standards in the future. In collaboration with the PRC, the PMO is making critical resources and expertise available to jurisdictions and agencies nationwide that are working to come into compliance with the PREA Standards. While work remains to be done and priorities, many of which are highlighted in this document, continue to emerge, the PMO has made remarkable progress supporting and facilitating implementation of PREA nationwide. The PMO's assiduous and collaborative work to promote sexual safety in confinement facilities across the country will continue into the future.

Thank you for your continued support and assistance. If you have any questions regarding this response, please contact Jeffery A. Haley, Acting Director, Office of Audit, Assessment, and Management, on (202) 616-2936.

cc: Mary Lou Leary
Principal Deputy Assistant Attorney General

Mareen A. Henneberg
Acting Deputy Assistant Attorney General
for Operations and Management

cc: Denise O'Donnell
Director
Bureau of Justice Assistance

Robert Listenbee
Administrator
Office of Juvenile Justice and Delinquency Prevention

William Sabol
Acting Director
Bureau of Justice Statistics

William Sabol
Acting Director
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Joye Frost
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Leigh Benda
Chief Financial Officer

Rafael A. Madan
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Jeffery A. Haley
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Acting Director
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Richard P. Theis
Director, Audit Liaison Group
Internal Review and Evaluation Office
Justice Management Division

OJP Executive Secretariat
Control Title IT20141002155347

APPENDIX III: BOP RESPONSE TO DRAFT REPORT

U.S. Department of Justice


Federal Bureau of Prisons

PROGRAM REVIEW DIVISION

Washington, DC 20534

October 3, 2014

MEMORANDUM FOR NINA S. PELLETIER
ASSISTANT INSPECTOR GENERAL
EVALUATION AND INSPECTIONS
OFFICE OF INSPECTOR GENERAL

FROM:  Sara M. Revell
Assistant Director

SUBJECT: Response to the Office of Inspector General's (OIG)
Final Draft Report: Progress Report on the
Department of Justice's Implementation of the Prison
Rape Elimination Act

The Bureau of Prisons (BOP) appreciates the opportunity to provide a response to the OIG's Final Draft Report: Progress Report on the Department of Justice's Implementation of the Prison Rape Elimination Act. Please find below the Bureau's comments.

The Bureau of Prisons has strived, and continues to strive, to lead the nation's correctional agencies by example through its compliance with the PREA regulations. The agency implemented additional protocols towards the goal of 100 percent compliance in meeting the Prison Rape Elimination Act:

- In addition to PREA audits, the Program Review Division, conducts program reviews at Bureau facilities, and provides technical assistance and training on the PREA compliance process.

- The agency's National PREA Coordinator is actively engaged in the PREA process by providing guidance to all institutions and conducting quarterly meetings with key staff in the Central Office and Regional Offices to identify problems/areas of concern.
- Outside of the standardized PREA training, leadership positions receive additional PREA training during New Warden's training, New Associate Warden's training, and Principles of Leadership.

Finally, on page 11 of the draft report, the information stated below is inaccurate:

"As of June 2014, final audit reports had been released for 25 BOP institutions, and all institutions had been found to meet or exceed all of the applicable Standards. In addition, three reports assessing BOP institutions containing findings of noncompliance with the PREA Standards were finalized by PREA auditors and provided to the BOP in 2014, but as of August 2014 these reports had not been released because BOP was contesting the findings."

Instead, on August 29, 2014, the agency provided OIG the correct information after the Exit Conference, as follows:

"As of **August 2014**, final audit reports had been released for **22** BOP institutions, and all institutions had been found to meet or exceed all of the applicable Standards. In addition, three reports assessing BOP institutions containing findings of noncompliance with the PREA Standards were finalized by PREA auditors and provided to the BOP in 2014, but as of August 2014 these reports had not been released because BOP was contesting the findings."

("bolded" text is the only needed change in this paragraph)

If you have any questions regarding this response, please contact me at (202) 353-2302.

APPENDIX IV: USMS RESPONSE TO DRAFT REPORT



U.S. Department of Justice
United States Marshals Service
Office of the Associate Directors

Alexandria, VA 22301

October 10, 2014

MEMORANDUM TO: Nina S. Pelletier
Assistant Inspector General
Evaluation and Inspections Division
Office of the Inspector General

FROM: William D. Snelson *William D. Snelson*
Associate Director for Operations

SUBJECT: Response to Formal Draft Report: Progress Report on the
Department of Justice's Implementation of the Prison Rape
Elimination Act

This is in response to correspondence from the Office of the Inspector General (OIG) requesting a formal written response to the subject draft report.

In 2003, the United States Congress passed the Prison Rape Elimination Act (PREA). The purpose of the act is to establish zero tolerance standards for prison rape, and to make the prevention of rape a top priority within the prison systems and law enforcement communities. The United States Marshals Service (USMS) has actively participated in every aspect of the development of those standards and has proactively implemented agency-applicable standards.

- Beginning in 2007, the USMS provided testimony before the PREA Commission regarding the incidence of sexual assault on federal prisoners remanded to the USMS.
- In 2009, the USMS participated on the Department of Justice (DOJ) PREA Working Group to develop PREA standards.
- From 2010 through 2012, the USMS:
 - Published USMS Policy Directive 9.8, *Prevention of Prisoner Sexual Abuse*, to comply with PREA, and to create a zero tolerance policy to prevent sexual abuse of federal prisoners in the care and custody of the USMS.

- Developed and implemented an annual online mandatory PREA training module for operational personnel to learn responsibilities under PREA. All USMS operational employees receive instruction relating to the prevention, detection, and appropriate timely response to sexual abuse. Training is conducted on an annual basis.
- Developed and implemented the Suspicious Activity, Assault, Incident, and Death (SAID) module within the USMS Justice Detainee Information System (JDIS) to track sexual assault/misconduct information and investigations. An associated policy is being revised to implement mandatory reporting using the SAID module in JDIS for all incidents of sexual abuse. Specific data, required by the Final Rule for collection by USMS, is documented in the SAID module in JDIS.
- Ensured all USMS cellblocks display signage, provided by the Prisoner Operations Division (POD), in appropriate locations, informing all prisoners that the USMS has a zero tolerance policy toward sexual abuse, and that all prisoners are encouraged to report any and all instances of sexual abuse. These posters provide instructions to all prisoners received at a USMS cellblock on how and where to report sexual abuse.
- In 2014, POD revised USMS Policy Directive 9.7, *Review of Non-Federal Detention Facilities* and associated inspection forms, ensuring that PREA was incorporated into all facility reviews. Newly revised forms contain PREA related questions in the compliance review process. USMS:
 - Revised form USM-218, *Detention Facility Monitoring Report*, used for review of Inter-Governmental Agreement (IGA) facilities to address USMS agency compliance.
 - Revised Federal Performance-Based Detention Standards, used for reviewing non-federal detention facilities, to address PREA requirements.
 - Updated USMS Conditions of Confinement Training to include a PREA module.
 - Appointed a PREA Coordinator for USMS.
 - Added PREA language to all new and renewed IGAs and to all private detention contracts. In order to comply with the original mandate, the USMS included the following language in all new and modified IGAs: "The Facility must post the Prisoner Rape Elimination Act brochure/bulletin in each housing unit of the Facility. The Facility must abide by all relevant PREA regulations."

With respect to the priority challenges listed in the formal draft report, we offer the following comments regarding those that apply specifically to USMS:

- *USMS develop a plan to address the inclusion of PREA compliance language in USMS active IGAs in a more timely fashion.*

The USMS is reviewing the feasibility of a nation-wide modification to all actively used IGAs, incorporating the language currently being used in new/renewed IGAs.

- *USMS develop a method to identify all USMS investigations that are subject to the external investigator standards and to ensure that those standards are met.*

The USMS has determined that the Agency does not have clear statutory authority to conduct such investigations, and will not conduct sexual assault investigations in confinement settings. The USMS is currently amending policy to reflect this. USMS Policy 9.8, *Prevention of Prisoner Sexual Abuse*, states that in a non-federal facility, the USMS will coordinate with the proper local authorities, as well as FBI and DOJ-OIG, to ensure the allegations are properly investigated. Furthermore, all case records associated with sexual misconduct are maintained in the SAID module within JDIS, which is managed and monitored by the USMS. This data is made available to appropriate law enforcement agencies when requested.

Thank you for the opportunity to comment on this report. We appreciate the OIG's recognition of the steps we have already taken, as well as its guidance regarding future steps that could be taken to further implement this important legislation. The USMS takes its role in the implementation of PREA very seriously.

Should you have any questions or concerns regarding this response, please contact Ms. Isabel Howell, Audit Liaison, at 202-307-9744.

cc: Richard Theis, Director
DOJ Audit Liaison Group

Mary T. Myers
Audit Liaison Group

Gerald Auerbach
General Counsel, USMS

APPENDIX V: OIG ANALYSIS OF COMPONENT RESPONSES

The Office of the Inspector General provided a draft of this report to the Office of Justice Programs (OJP), Federal Bureau of Prisons (BOP), U.S. Marshals Service (USMS), Office of the Deputy Attorney General (ODAG), Federal Bureau of Investigation (FBI), and Civil Rights Division (CRT). OJP's response is included in Appendix II to this report. BOP's response is included in Appendix III. USMS's response is included in Appendix IV. ODAG, FBI, and CRT did not submit responses.

We are encouraged by the responses submitted by some Department components indicating that they are taking steps to address the challenges discussed in this progress report. Timely and appropriate action will decrease the potential that these challenges become increasingly significant as the number of Prison Rape Elimination Act (PREA) audits increase at federal, state, and local facilities across the country. The Office of the Inspector General is committed to ensuring that the Department and its components satisfy their important management and operational responsibilities under PREA, and will continue to monitor PREA implementation.



Office of the Inspector General
U.S. Department of Justice
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