



October 2014

IMMIGRATION DETENTION

Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards

Why GAO Did This Study

DHS has reported that the number of noncitizens in immigration detention has increased from about 230,000 in fiscal year 2005 to about 440,600 in fiscal year 2013. ICE applies various sets of detention standards—such as medical services—at over 250 facilities owned by ICE or private contractors, or owned by or contracted to state and local governments. GAO was asked to examine differences in cost, standards, and oversight across types of facilities.

This report addresses the extent to which (1) ICE has processes to track costs, (2) standards vary across facility types and the reasons for any differences, and (3) oversight and the results of that oversight vary across facility types. GAO reviewed ICE data and information on costs, detention population, standards, and oversight for 166 facilities that held detainees for 72 hours or more, from fiscal years 2011 through 2013, reviewed facility contracts, and interviewed federal contractors and DHS and ICE officials.

What GAO Recommends

GAO recommends, among other things, that ICE assess the extent to which it has appropriate controls for tracking facility costs, document reasons why facilities cannot be transitioned to the most recent standards, and review reasons for differences in inspection results. DHS concurred with all recommendations but one to document reasons why facilities cannot be transitioned to the most recent standards because, among other reasons, DHS believes it already has sufficient documentation. As discussed in this report, GAO continues to believe in the need for such documentation.

View [GAO-15-153](#). For more information, contact Rebecca Gambler at (202) 512-8777 or gambler@gao.gov.

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What GAO Found

Within the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) uses two different methods to collect and assess data on detention costs; however, these methods do not provide ICE with complete data for managing detention costs across facilities and facility types. One method uses the agency's financial management system to estimate total detention costs per detainee per day for the purposes of developing ICE's annual detention budget request. However, ICE identified errors in the entry of data into this system and limitations in the system make it difficult for ICE to accurately record expenditures for individual facilities. ICE's other method involves the manual tracking of monthly costs by individual facilities for the purposes of reviewing data on individual facility costs. However, this method does not include data on all costs for individual facilities, such as for medical care and transportation, and such costs are not standardized within or across facility types. Thus, ICE does not have complete data for tracking and managing detention costs across facilities and facility types. ICE has taken some steps to strengthen its financial management system, such as implementing manual work-arounds to, among other things, better link financial transactions to individual facilities. However, ICE has not assessed the extent to which these manual work-arounds position ICE to better track and manage costs across facilities or facility types and the extent to which additional controls are needed to address limitations in its methods for collecting and assessing detention costs, in accordance with federal internal control standards. Conducting these assessments could better position ICE to have more reliable data for tracking and managing costs across facility types.

GAO's analysis of ICE facility data showed that ICE primarily used three sets of detention standards, with the most recent and rigorous standards applied to 25 facilities housing about 54 percent of ICE's average daily population (ADP) as of January 2014. ICE plans to expand the use of these standards to 61 facilities housing 89 percent of total ADP by the end of fiscal year 2014; however, transition to these standards has been delayed by cost issues and contract negotiations and ICE does not have documentation for reasons why some facilities cannot be transitioned to the most recent standards in accordance with internal control standards. Documenting such reasons could provide an institutional record and help increase transparency and accountability in ICE's management of detention facilities.

GAO's analysis of ICE facility oversight programs showed that ICE applied more oversight mechanisms at facilities housing the majority of the ADP in fiscal year 2013. For example, 94 percent of detainees were housed in facilities that received an annual inspection. GAO's analysis of ICE's inspection reports showed that inspection results differed for 29 of 35 facilities inspected by both ICE's Enforcement and Removal Operations (ERO) and Office of Detention Oversight (ODO) in fiscal year 2013. ICE officials stated that ODO and ERO have not discussed differences in inspection results and whether oversight mechanisms are functioning as intended. Assessing the reasons why inspection results differ, in accordance with internal control standards, could help ICE better ensure that inspection mechanisms are working as intended.

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Abbreviations

ADP	average daily population
AOR	area of responsibility
CDF	contract detention facility
CFMF	Contract Financial Monitoring File
COR	contracting officer representative
DHS	Department of Homeland Security
DIGSA	dedicated intergovernmental service agreement
DOJ	Department of Justice
DSM	detention service manager
ERO	Enforcement and Removal Operations
FFMS	Federal Financial Management System
FPMS	Facility Performance Management System
ICE	U.S. Immigration and Customs Enforcement
IGA	intergovernmental agreement
IHSC	ICE Health Service Corps
IPERA	Improper Payments Elimination and Recovery Act
IPERIA	Improper Payments Elimination and Recovery Improvement Act
IPIA	Improper Payments Information Act
NDS	National Detention Standards
OAQ	Office of Acquisition Management
OBPP	Office of Budget and Program Performance
ODO	Office of Detention Oversight
ODPP	Office of Detention Policy and Planning
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OPR	Office of Professional Responsibility
ORSA	Operation Review Self-Assessment
PBNDS	Performance-Based National Detention Standards
SCA	Services Contracting Act
SPC	service processing center
USMS	U.S. Marshals Service

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October 10, 2014

Congressional Requesters

The Department of Homeland Security (DHS) reported that the number of aliens in immigration detention has increased from a total of about 230,000 over the course of fiscal year 2005 to a total of about 440,600 over the course of fiscal year 2013,¹ and that appropriations for detention have more than doubled, from about \$700 million in 2005 to nearly \$2 billion in fiscal year 2014.² Federal law mandates that DHS maintain 34,000 immigration detention beds to house aliens each day in fiscal year 2014,³ and DHS's U.S. Immigration and Customs Enforcement (ICE) has responsibility to provide safe, secure, and humane confinement for aliens in the United States who may be subject to removal while they await the resolution of their immigration cases or have been ordered removed from the United States.⁴ ICE fulfills this responsibility by applying various sets of detention standards at over 250 detention facilities that are either owned by ICE, owned by private contractors, or owned by or contracted to state and local governments. These standards cover a variety of issues, including detainee safety, security, care, and the administration and management of the facilities.⁵ To oversee the operations of these

¹These figures reflect the number of instances in which individuals were checked into U.S. Immigration and Customs Enforcement (ICE) detention facilities over the course of each fiscal year; some individuals may have been admitted more than once or to more than one facility during a fiscal year.

² Aliens may be removed from the United States for violations such as illegally entering the United States, failing to abide by the terms and conditions of admission, engaging in violent crimes, perpetrating document and benefit fraud, engaging in terrorist activities, or participating in drug smuggling. The Immigration and Nationality Act provides DHS with broad authority to detain aliens believed to be removable while awaiting a determination of whether they should be removed from the United States and mandates that DHS detain certain categories of aliens. (See 8 U.S.C. §§ 1225, 1226, 1226a, 1231.)

³Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 5, 251.

⁴See 8 U.S.C. §§ 1225, 1226, 1226a, 1231.

⁵These standards generally cover seven areas: detainee safety (e.g., environmental health and safety); detainee, staff, and facility security (e.g., sexual abuse and assault prevention and intervention and searches of detainees); detainee order (e.g., disciplinary system); detainee care (e.g., medical care); detainee activities (e.g., recreation); detainee justice (e.g., grievance system and law libraries and legal material); and administration and management (e.g., detention files and staff training).

facilities and ensure that they adhere to detention standards, DHS and ICE employ a variety of oversight mechanisms that can include a mix of annual, biennial, or self-inspections; periodic compliance inspections of selected facilities; and continuous on-site monitoring by a detention service manager.

Various ICE components have roles and responsibilities for detention management. ICE's Enforcement and Removal Operations (ERO) identifies, apprehends, and removes aliens when it deems necessary, and oversees the confinement of detainees across facilities in accordance with immigration detention standards. ICE's Office of Acquisition Management (OAM) negotiates and manages detention facility contracts and agreements, and the Office of Detention Policy and Planning (ODPP) leads efforts to design detention standards used at facilities managed by ERO. ICE's Office of Budget and Program Performance (OBPP) develops and analyzes budget projections, and ERO's Operations Support Division tracks facility expenditures and allocations. Detention facility oversight is conducted by both ERO and the Office of Detention Oversight (ODO), which is located in ICE's Office of Professional Responsibility (OPR). ERO's Custody Management contracts with an inspector to conduct annual or biennial inspections at facilities to assess compliance with ICE detention standards and oversees self-assessment inspections, which apply to selected facilities. ERO also oversees the on-site Detention Monitoring Program, created in 2010, which places ICE detention service managers (DSM) at selected facilities to continuously monitor compliance with ICE detention standards. ODO generally conducts periodic inspections of selected facilities based on designated risk factors.

You asked us to review differences in costs, standards, and oversight across the various types of immigration detention facilities.⁶ This report addresses the following questions: (1) How do federal costs compare across different types of immigration detention facilities, and to what extent does ICE have processes to track and manage these costs? (2) To what extent do the federal standards that govern conditions of confinement vary across different types of immigration detention facilities, and what are the reasons for any differences? (3) To what extent do federal oversight and the results of that oversight vary across different types of immigration facilities?

To determine how federal costs compare across different types of immigration detention facilities, we analyzed ICE fiscal year 2013 data, the most recent fiscal year for which data were available, related to ICE expenditures for detention facilities.⁷ To determine the reliability of these data, we conducted data testing, reviewed documentation, and interviewed agency officials. We determined that some of these data were sufficiently reliable to provide a general indication of approximate ranges of costs across and within facility types, but have limitations as discussed later in the report. To determine the reasons for possible differences in facility costs, we analyzed ICE documents, including an ICE-funded study of detention bed rate costs across facilities, and interviewed agency

⁶DHS defines an immigration detention facility as a confinement facility operated by or affiliated with ICE that routinely holds persons for over 24 hours. However, of the 251 facilities authorized by ICE to hold detainees as of August 2013, we limited our analysis to the 166 facilities that were designated to hold detainees for 72 hours or longer because of the frequent turnover in the detainee population at short-term facilities—such as holding facilities and prisons—which temporarily house detainees waiting for ICE transfer. Of these 166 facilities, ICE documentation showed that 155 held at least one detainee in fiscal year 2013, while 11 facilities did not hold any detainees during this time period. In addition to the under-72-hour facilities, we also excluded three federal prisons where ICE had detention bed space in fiscal year 2013; two of the prisons housed a few detainees and the third prison was discontinued for immigration detainees as of the end of calendar year 2013, according to Bureau of Prisons and ICE officials. We also excluded facilities for juvenile detainees—individuals under 18 years of age—because these facilities are overseen by the Department of Health and Human Services.

⁷These data were drawn from the Contract Financial Monitoring File, a manual tool maintained by ICE ERO Operations Support Division to monitor contract obligations and costs, and from ICE's Federal Financial Management System.

officials.⁸ We assessed the methodology for the ICE-funded study and determined that it was sufficiently reliable for our purposes. To determine the extent to which ICE has processes to track and manage detention facility costs, we analyzed relevant documents, such as ICE financial management guidance and GAO reports, and interviewed agency officials.⁹ We assessed our findings related to ICE's financial management practices against *Standards for Internal Control in the Federal Government* and ICE's fiscal years 2010-2014 strategic plan.¹⁰ We also analyzed the extent to which ICE's average daily population (ADP) in its facilities met the guaranteed minimums—the number of beds ICE pays for each day regardless of their utilization—in those facilities. We interviewed agency officials about future plans to develop guidance related to factoring cost into detainee placement decisions, and assessed those plans against *Standards for Internal Control in the Federal Government*.¹¹ We reviewed relevant laws, such as the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012, as well as related Office of Management and Budget guidance.¹² We analyzed a sample of invoices and supporting documentation submitted to ICE by detention services contractors in December 2013—specifically, 31 of the 158 invoices submitted by facility contractors to ICE by February 2014 for services provided in December 2013, the month for which ICE indicated that changes it made to its invoicing process were implemented—to determine the extent to which these invoices met ICE's

⁸U.S. Immigration and Customs Enforcement Office of the Chief Financial Officer. *Detention Bed Space Procurement Analysis; Report on ICE Detention Sourcing* (Washington D.C.: April 2014). The purpose of the study was to analyze the effectiveness of the ICE detention bed procurement process, develop a common approach to the procurement of detention beds, and recommend solutions to ICE to improve its approach, particularly for ICE-owned service processing centers (SPC).

⁹See GAO, *High-Risk Series: An Update*, [GAO-13-283](#) (Washington, D.C.: February 2013), and *DHS Financial Management: Additional Efforts Needed to Resolve Deficiencies in Internal Controls and Financial Management Systems*, [GAO-13-561](#) (Washington, D.C.: Sept. 30, 2013).

¹⁰GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington D.C.: November 1999).

¹¹[GAO/AIMD-00-21.3.1](#).

¹²Pub. L. No. 112-248, 126 Stat. 2390.

requirements. We assessed these invoices against ICE's requirements and *Standards for Internal Control in the Federal Government*.¹³

To assess the extent to which federal standards that govern conditions of confinement vary across different types of immigration detention facilities, and reasons for any differences, we identified ICE detention standards, including the 2000 National Detention Standards (NDS), the 2008 Performance-Based National Detention Standards (PBNDS), and the 2011 PBNDS and analyzed the extent to which ICE applied these standards across detention facilities.¹⁴ We analyzed the three sets of standards to assess similarities and differences among the standards. To identify the standards to which each facility was held, we analyzed the standards included in 166 facility contracts and agreements in place as of January 2014, the period in which ICE had last provided us a list of facilities that are authorized to house detainees for over 72 hours when we began our analysis. To determine the percentage of ICE detainees who were covered by each set of standards during fiscal year 2013, the most recent fiscal year for which data were available, we analyzed the standards to which each facility was held against the ADP. In addition, we analyzed ERO's plans to implement the 2011 PBNDS and interviewed relevant ICE officials to determine why standards might vary by facility type. Further, we analyzed 41 waivers ICE granted to facilities to exempt them from certain detention standards and which were in effect as of August 2014, when we performed the analysis; these waivers were approved from fiscal years 2012 through August 2014. We also assessed the extent to which ICE documented its decision-making process for determining which standards to apply at which facilities against *Standards for Internal Control in the Federal Government*.¹⁵

¹³[GAO/AIMD-00-21.3.1](#).

¹⁴ICE has a fourth set of detention standards, the 2007 Residential Standards. We excluded these standards because at the time we conducted our work, the standards applied to two facilities that housed less than 2 percent of the average daily detention population in fiscal year 2013. As of September 2014, ICE reported that it has significantly increased the number of detainees in family detention because of a recent surge in parents with children illegally crossing the southwest border, and therefore is now using three facilities to house family units in Berks, Pennsylvania; Artesia, New Mexico; and Karnes, Texas.

¹⁵[GAO/AIMD-00-21.3.1](#).

To assess how federal oversight compares across different types of immigration detention facilities, we identified the various oversight mechanisms ICE used at detention facilities in fiscal year 2013 and analyzed differences in their use and results.¹⁶ With respect to ERO's inspection program, we analyzed ERO inspection data for fiscal year 2013, the most recent fiscal year for which inspection data were available. We assessed the reliability of these data by conducting data testing, such as checking for duplicate entries and interviewing officials, and we determined that these data were sufficiently reliable for the purposes of this report. We compared the percentage of fiscal year 2013 ADP in immigration detention facilities by facility type and oversight mechanisms used at facilities with the percentage of ICE's ADP at each facility to determine what percentage of detainees were housed in facilities at which ICE used the various oversight mechanisms. To determine how the results of facility inspections may vary across the two ICE offices that conduct facility inspections, we compared the results of ICE inspections for facilities that were inspected by both ICE offices in fiscal year 2013, and interviewed agency officials as to reasons for any differences in inspection results. We also assessed ICE's review of inspection results against *Standards for Internal Control in the Federal Government*.¹⁷ Additional details on our scope and methodology are contained in appendix I.

We conducted this performance audit from March 2013 to October 2014, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹⁶We analyzed the extent to which ICE used (1) annual and biennial facility inspections conducted by an ERO contractor, (2) annual facility self-inspections conducted under ERO's Operational Review Self-Assessment (ORSA) process, (3) ERO's detention service manager on-site monitoring program, and (4) Office of Detention Oversight risk-based facility inspections, at 166 ICE facilities authorized to hold detainees for over 72 hours as of August 2013.

¹⁷[GAO/AIMD-00-21.3.1](#).

Background

Legislation and Requirements Pertaining to Immigration Detention

The Immigration and Nationality Act, as amended, provides ICE with broad authority to detain aliens believed to be removable while awaiting a determination of whether they should be removed from the United States as well as aliens ordered removed, and mandates that ICE detain certain categories of aliens.¹⁸ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 increased the number of aliens subject to mandatory detention, resulting in the former Immigration and Naturalization Service expanding the number of detention beds available to meet the mandate.¹⁹ The Intelligence Reform and Terrorism Prevention Act of 2004 directed the Secretary of Homeland Security to further increase the number of detention beds by 8,000 annually starting in fiscal year 2006 and continuing through fiscal year 2010.²⁰ Subsequently, the House Appropriations Committee began incorporating a mandate into the annual appropriations bill. The fiscal year 2014 appropriation act requires DHS to maintain 34,000 detention beds per day.²¹

Detention Population, Facility Types, and Locations

Immigration custody is civil, not criminal, detention, and is not to be punitive; rather, ICE is to confine detainees for the administrative purpose of holding, processing, and preparing them for removal. According to ICE data, during fiscal year 2013, the agency housed an average of 32,805 detainees in its detention facilities each day and held detainees for an average of about 27 days.²² ICE detainees include a mix of men and women from a wide variety of countries and with criminal and noncriminal

¹⁸See 8 U.S.C. §§ 1225, 1226, 1226a, 1231.

¹⁹Pub. L. No. 104-208, div. C, tit. III, subtit. A, F, §§ 302, 303, 305, 386, 110 Stat. 3009-546, 3009-579 to 3009-587, 3009-597 to 3009-607, 3009-653 to 3009-654. Aliens subject to mandatory detention include those who are in the United States without legal documentation or with fraudulent documentation, inadmissible or deportable on criminal or national security grounds, certified as terrorist suspects, or under final orders of removal. Aliens not subject to mandatory detention may be detained, paroled (granted temporary permission to enter and be present in the United States), or released on bond. See 8 U.S.C. §§1225, 1226, 1226a, 1231.

²⁰Pub. L. No. 108-458, tit. V, subtit. B, § 5204(a), 118 Stat, 3638, 3734.

²¹Pub. L. No. 113-76, 128 Stat. 5, 251.

²²These data are approximations for ICE detention facilities.

backgrounds.²³ When detention facilities admit aliens, they are to use a classification system that separates detainees by threat risk and special vulnerabilities by assigning them a custody level of low, medium, or high. From fiscal years 2010 through 2013, about 44 percent of ICE detainees were of a low custody level, 41 percent were of a medium custody level, and 15 percent were of a high custody level.²⁴

ERO oversees the confinement of ICE detainees in approximately 250 detention facilities that it manages in conjunction with private contractors or state or local governments, of which 166 were authorized to house detainees for over 72 hours, as of August 2013.²⁵ Over 90 percent of the facilities are operated under agreements with state and local governments and house about half of ICE's total detention population, together with, or separately from, other confined populations. The remaining facilities house exclusively ICE detainees and are operated by a mixture of private contractors and ICE, state, and local government employees. Table 1 presents information about the number and types of facilities that ICE uses to house detainees, the entities that own and operate them, and the percentage of the detainee population confined in each facility type.

²³ICE generally does not detain children, with the exception of children whom the agency detains with their families at a family residential facility. ICE must transfer unaccompanied alien children less than 18 years of age who are unlawfully in the United States without a parent or other legal guardian to the Department of Health and Human Services Office of Refugee Resettlement's custody within 72 hours of determining that they are unaccompanied alien children. See 8 U.S.C. § 1232(b)(3).

²⁴ICE's custody classification system considers various factors including the detainee's most recent charge or conviction, the most serious conviction in the individual's criminal history, any other prior felony convictions, any attempts to escape from custody, if the individual has a history of assaultive behavior, and the individual's behavioral history. In 2010, ICE shifted its overall enforcement priorities with a June 2010 policy memorandum that detailed the priorities for alien apprehension, detention, and removal as follows: (1) aliens who pose a danger to national security or a risk to public safety—including aliens convicted of crimes—and (2) recent illegal entrants and aliens who are fugitives or otherwise obstruct immigration controls. According to the memo, ICE established these priorities because it has resources to remove only approximately 400,000 aliens per year from the country, less than 4 percent of the estimated illegal alien population in the United States.

²⁵The remaining facilities were authorized to house detainees for up to 72 hours.

Table 1: U.S. Immigration and Customs Enforcement (ICE) Over-72-Hour Detention Facility Types and Detainee Populations, as of August 2013

Facility type	Description	Number of facilities	Percentage of detainee population
Service processing center	Facilities owned by ICE, operated by a mix of ICE employees and contractor staff, that exclusively house ICE detainees.	6	11
Contract detention facility	Facilities owned and operated by private companies under direct ICE contract that exclusively house ICE detainees.	7	18
Dedicated intergovernmental service agreement ^a	Facilities owned by state and local governments or private entities, operated under agreements with state and local governments, that exclusively house ICE detainees.	9	24
Family residential	Facility owned and operated by a local government entity that houses children and their families and exclusively houses ICE detainees.	1	<1
Nondedicated intergovernmental service agreement	Facilities owned by state and local governments or private entities, operated under agreement by state and local governments, that house ICE detainees in addition to other confined populations (e.g., inmates), either together or separately.	72	28
U.S. Marshals Service (USMS) intergovernmental agreement or contract	Facilities owned and operated by state and local governments or private entities under agreement or contract with USMS within the Department of Justice (DOJ) to house federal prisoners until they are acquitted or convicted. ICE takes out task orders against the USMS intergovernmental agreement and contracts to house immigration detainees at these facilities, either together with or separately from other populations.	71	19

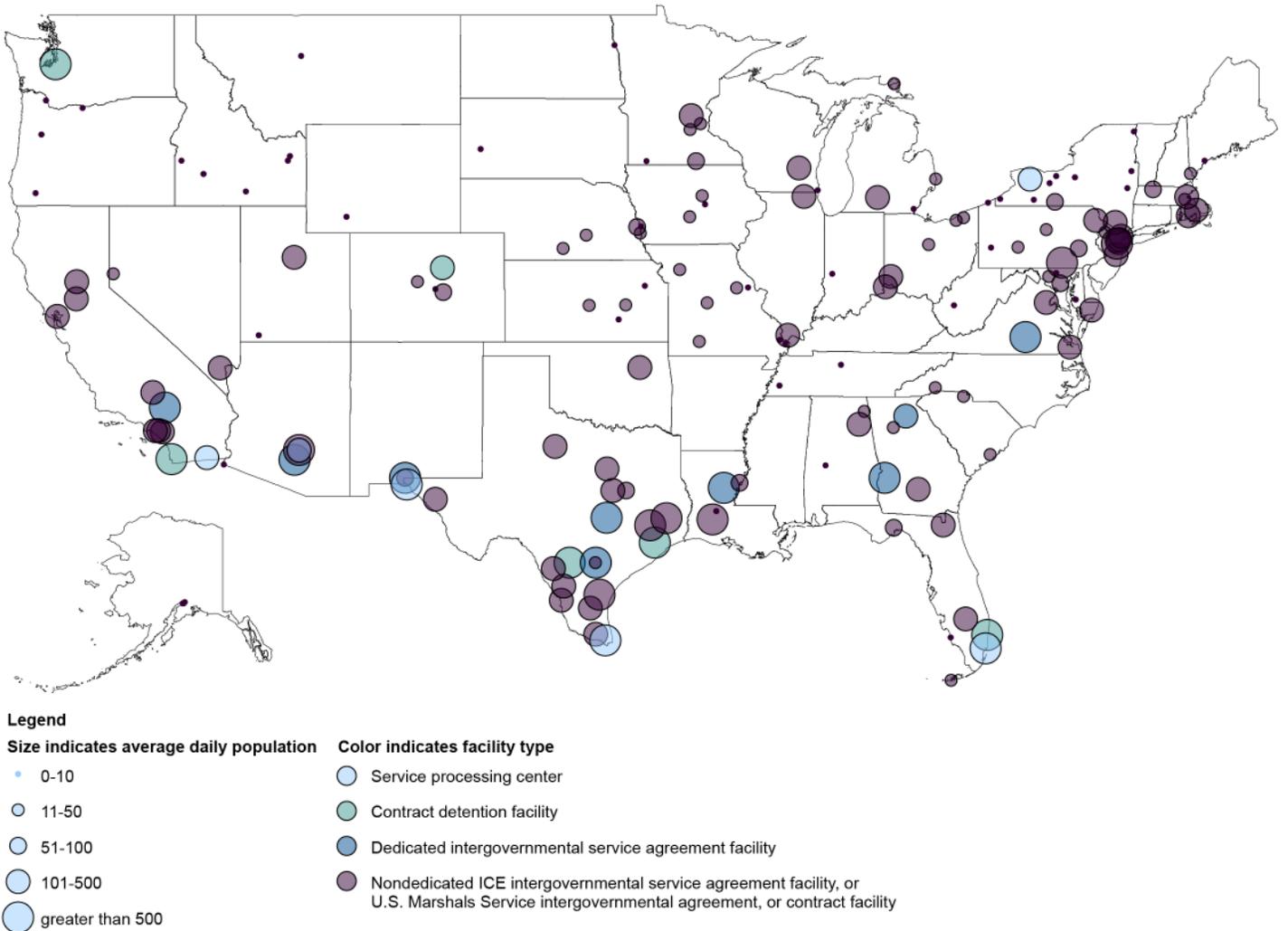
Source: GAO analysis of ICE information. | GAO-15-153

Notes: ICE authorizes facilities to house detainees for up to 72 hours or more than 72 hours. In addition to the over-72-hour facilities listed in this table, ICE also had 85 facilities authorized to house detainees for up to 72 hours, as of August 2013. These consisted of 31 nondedicated intergovernmental service agreement facilities and 54 USMS intergovernmental agreement facilities. In addition to the 85 facilities authorized to house detainees for up to 72 hours and the facilities listed in this table, ICE also used 3 facilities operated by the DOJ Federal Bureau of Prisons to confine detainees, but the majority of detainees were removed from these facilities by the end of calendar year 2013.

^aICE initially used 1 of these facilities as a family residential facility, but in 2009 converted it to a women-only facility; for the purposes of this review, we considered it to be a facility operating under a dedicated intergovernmental service agreement (DIGSA).

ICE’s detention facilities are located across the United States. In general, facilities that house the most detainees and exclusively ICE detainees are concentrated in the states along the southern United States border, while facilities that house fewer detainees are more evenly distributed across the nation. Figure 1 presents the locations of ICE’s over-72-hour facilities by size and type.

Figure 1: U.S. Immigration and Customs Enforcement (ICE) Detention Over-72-Hour Facility Locations, as of August 2013



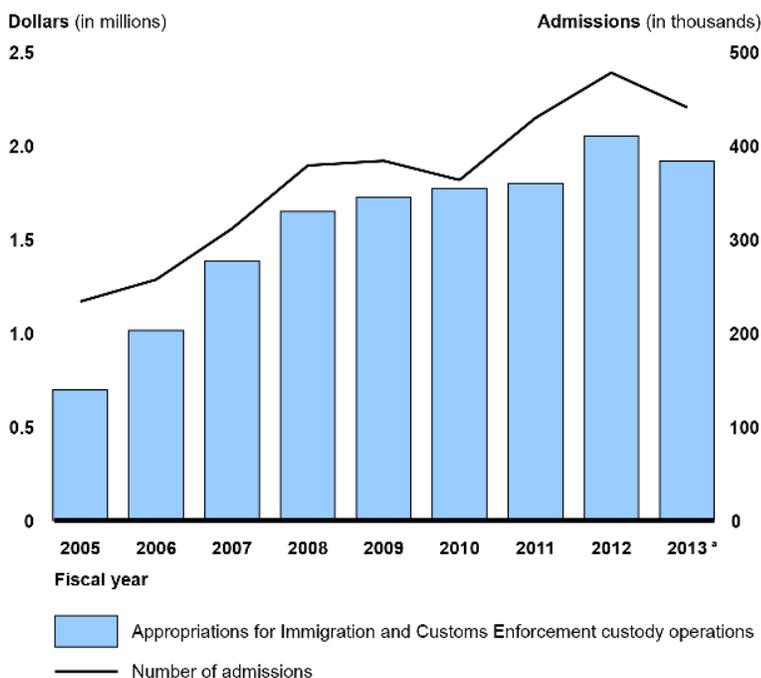
Source: GAO analysis of ICE information; Mapinfo (map). | GAO-15-153

Detention Costs

The number of admissions to detention and related appropriations has more than doubled since 2005, as shown in figure 2. In fiscal year 2014, Congress provided about \$2.8 billion for detention and removal

operations, which include ICE’s maintenance of 34,000 detention beds, as required by law.²⁶

Figure 2: Appropriations for Immigration Detention and Number of Detainees, Fiscal Years 2005-2013



Source: GAO analysis of ICE data. | GAO-15-153

Note: Costs include total enacted appropriations for each year.

^aFiscal year 2013 costs includes a .132 percent across-the-board-reduction and sequestration, prior to reprogramming.

Detention Standards

ICE primarily uses three sets of national detention standards with varying requirements to govern the conditions of confinement in its detention facilities. ICE establishes the set of standards applicable to each detention facility through an individual contract or agreement with the facility. Accordingly, different facilities are governed by different standards. Table 2 provides information about each of these three sets of standards.

²⁶Pub. L. No. 113-76, 128 Stat. 5, 251.

Table 2: U.S. Immigration and Customs Enforcement (ICE) Detention Standards

2000 National Detention Standards (NDS)	These standards are derived from the American Correctional Association's <i>Standards for Adult Local Detention Facilities</i> , Third Edition, and were developed by the former Immigration and Naturalization Service within the Department of Justice (DOJ) in consultation with various stakeholders, including the American Bar Association—an association of attorneys—and organizations involved in pro bono representation and advocacy for immigration detainees. Following the creation of the Department of Homeland Security (DHS) in 2002, DHS became responsible for immigration detention and began operating the detention system under the 2000 NDS.
2008 Performance-Based National Detention Standards (PBNDS)	ICE revised the 2000 NDS to integrate changes included in, and moved to a performance-based format more in line with, the American Correctional Association's <i>Performance-Based Standards for Adult Local Detention Facilities</i> , Fourth Edition. The 2008 PBNDS, which ICE developed in coordination with agency stakeholders to apply to adult detention populations, prescribe the expected outcomes of each detention standard and the expected practices required to achieve them. The 2008 PBNDS also include more detailed requirements for service processing centers and contract detention facilities.
2011 PBNDS	ICE revised the 2008 PBNDS to improve conditions of confinement in various ways, including medical and mental health services, access to legal services and religious opportunities, communication with detainees with no or limited English proficiency, the process for reporting and responding to complaints, and recreation and visitation. The 2011 PBNDS also expanded the more detailed requirements for service processing centers and contract detention facilities included in the 2008 PBNDS to dedicated intergovernmental service agreement facilities or, in some cases, to all facilities.

Source: GAO analysis of ICE information. | GAO-15-153

Note: A fourth set of detention standards—the 2007 Family Residential Standards—pertained to two facilities as of August 2013—one owned and operated by a local government entity that houses children and their families, and exclusively houses ICE detainees; the other, as of 2009, designated to house women only. For the purposes of this review we considered the women-only facility to be a facility managed as a dedicated intergovernmental service agreement facility. The Family Residential Standards are based on ICE analysis of family detention operations and state statutes that affect children. Less than 2 percent of ICE's average daily population is held in residential facilities. U.S. Marshals Service intergovernmental agreement facilities are under agreements to adhere to DOJ detention standards. Facilities under private contract with the U.S. Marshals Service are to adhere to the Federal Performance-Based Detention Standards, which incorporate elements of American Correctional Association standards, DOJ standards, and the 2000 NDS.

Incomplete ICE Data and Limitations in Controls to Track and Manage Costs Limit Assessment of Cost Variances across Detention Facility Types

ICE Does Not Have Complete Data for Managing Detention Costs and Operations

ICE has two offices, OBPP and ERO Operations Support Division, that use different methods to collect and assess data on detention expenditures and costs for different purposes; however, these two methods do not provide ICE with complete data for managing detention costs across facilities and facility types. First, for the purposes of developing ICE's annual budget requests for detention, ICE's OBPP developed a method to estimate total detention costs per detainee per day. ICE refers to this as the bed-rate—or the total cost to house 1 detainee for 1 day. OBPP estimates this bed rate for budgetary purposes by conducting standardized, repeatable queries of ICE's financial management system—the Federal Financial Management System.²⁷ These standardized queries provide ICE with an average overall bed rate and the average bed rate for each of ICE's 24 areas of responsibility.²⁸ However, ICE officials stated that through fiscal year 2013 these queries did not produce data that can be used to track or manage costs for individual facilities or facility types because of errors in how ICE field office personnel enter data into ICE's Federal Financial Management System and limitations in the system that make it difficult for ICE to accurately record expenditures for all individual facilities. Specifically, OBPP officials said that field office personnel manually enter financial codes for each expenditure to categorize and provide descriptive

²⁷ICE OBPP's bed rate estimate captures all detention-related costs including medical costs and ICE overhead costs, but does not include transportation costs.

²⁸ICE ERO divides its operations geographically, and operates 24 field offices, each of which oversees operations in its area of responsibility.

information about that expenditure—such as if it was for detention operations—which allows ICE to link expenditures to specific facilities, among other things. However, OBPP officials have found significant coding errors in these data fields for costs incurred through fiscal year 2013. For example, according to the officials, charges for 5 facilities operating under intergovernmental service agreements (IGSA) in five states were erroneously assigned to a SPC, because, according to ICE officials, the facilities were in different counties with the same name. In addition, while ICE could link expenditures to individual facilities of certain types—specifically SPCs, contract detention facilities (CDF), and facilities operating under a dedicated intergovernmental service agreement (DIGSA)—in its Federal Financial Management System in fiscal year 2013, it could not link expenditures to individual facilities operating under an IGSA because there were not codes in ICE’s Federal Financial Management System to link expenditures to IGSA during fiscal year 2013. According to ICE officials, in fiscal year 2014, ICE introduced new financial coding processes. These processes are intended to address this limitation and allow costs to be linked to all types of facilities, including IGSA facilities; however, as ICE has recently begun to implement these new processes, it is too soon to determine the extent to which they will provide ICE with more reliable cost data across individual facilities and facility types.

Second, for the purposes of tracking monthly costs at individual facilities, among other purposes, ICE ERO’s Operations Support Division—the budget office within ERO—developed a mechanism to manually track monthly costs by facility, called the Contract Financial Monitoring File, according to ICE ERO Operations Support Division officials. Specifically, the Operations Support Division developed the Contract Financial Monitoring File to monitor obligations and monthly expenditures related to the primary contract for each detention facility using information manually taken from facility invoices and contracts in addition to data in the Federal Financial Management System, according to ERO officials and Contract Financial Monitoring File guidance. The Operations Support Division developed this manual tool to work around the limitations in the Federal Financial Management System, which, in addition to those limitations discussed above, does not automatically interface with ICE’s invoice

management system, according to ICE officials.²⁹ Operations Support Division officials said they use the Contract Financial Monitoring File data to determine how much funding to allocate to each facility and to track expenditures and contract pricing at a single facility over time, among other uses. However, these data have limitations that preclude using the data to track and manage costs across individual facilities and facility types. For example, the Contract Financial Monitoring File data do not consistently or completely capture costs for facilities because some facility contracts include services such as medical care and transportation, while other contracts do not.³⁰ For facilities with contracts that do not include such services, ICE or service providers contract with a third-party to provide these services. As a result, ICE officials said that some higher-cost facilities may therefore be providing services that are not provided by lower-cost facilities, or that are provided and billed by third parties. For example, ERO officials said that ICE provides medical care at most CDFs either through the ICE Health Service Corps or through a separate third-party contract with a health care provider, instead of directly through the facility operator.³¹ ICE's medical costs paid for through headquarters—which, according to ICE officials totaled about \$157.6 million in fiscal year 2013—are not reflected in facility invoice costs, and therefore are not included in the Contract Financial Monitoring

²⁹A 2012 assessment of ICE's current financial system's capabilities conducted by Booz Allen Hamilton found that the Federal Financial Management System lacked managerial cost accounting mechanisms to automatically report on key metrics—such as costs per detainee bed. The assessment found that ICE had to manually extract and analyze the data needed to report on these key metrics from the Federal Financial Management System—a labor-intensive process that required ICE to dedicate significant staff resources to report on costs of specific programs, projects, or activities. Booz Allen Hamilton Inc., *Core Financial System Analysis of Alternatives Project Final Capability Assessment Report for Department of Homeland Security U.S. Immigration and Customs Enforcement Office of the Chief Financial Officer* (Washington D.C.: Jan. 27, 2012).

³⁰The Contract Financial Monitoring File data include ICE payments for services billed under the primary detention contract or agreement for each facility for CDFs and facilities operating under IGSA and under DIGSA. For SPCs, ICE tracks expenditures associated with the primary detention contracts as well as maintaining a separate tracking spreadsheet for costs associated with ancillary contracts that address other facility-related services—such as food, maintenance, or trash collection—provided through separate contracts.

³¹ICE Health Service Corps (IHSC) serves as the medical authority for ICE. IHSC provides direct care to detainees housed at 21 facilities throughout the nation and oversees medical care for detainees housed at non-IHSC-staffed detention facilities across the country. When necessary, it authorizes and pays for off-site specialty and emergency care, consultations, and case management.

File as costs to those individual facilities. Other facilities that directly provide these services would reflect these costs in facility invoices, and these costs would therefore be tracked separately in the Contract Financial Monitoring File. Further, some facilities provide transportation for detainees as part of the primary detention contract, and therefore the Operations Support Division captures these costs—which composed up to 47 percent of total facility expenditures in fiscal year 2013—for each facility in the Contract Financial Monitoring File. However, at other facilities, transportation services are not included in the facility contract. For these facilities, ICE provides transportation services for detainees through separate contracts with transportation providers, which ERO tracks separately, and does not link these costs to individual facilities in the Contract Financial Monitoring File.³² In addition, the file's cost data do not include ICE overhead costs that vary across facilities. These costs include, among other things, shared utilities and telecommunication charges that occur in the field but are paid for through ICE service-wide contracts, according to an ICE official. As a result of these limitations, the Contract Financial Monitoring File data cannot be used for tracking and managing cost data across individual facilities and facility types.

Since 2009, ICE has taken some steps to strengthen how it tracks and manages detention costs and expenditures. However, we identified limitations in ICE's controls and processes in three areas. These limitations relate to (1) collecting and maintaining cost data, (2) ensuring cost is considered in placing aliens in detention facilities, and (3) preventing improper payments to detention facility operators.

Collecting and maintaining cost data. ICE is in the process of planning to upgrade its new financial management system; however, ICE does not have a target time frame for when this upgrade will occur, according to ICE officials. The agency, however, has taken steps to manually track and manage costs, referred to as manual work-arounds. First, ICE has required field office personnel to use a new coding system to link all financial transactions entered into the Federal Financial Management

³²For some field offices, ICE consolidated transportation for all facilities within the field offices' areas of responsibility (AOR) to reduce costs, according to ICE officials. For example, ICE consolidated transportation for all facilities within the San Antonio Field Office's AOR in fiscal year 2012 as a cost reduction measure. In these instances, ICE ERO Operations Support Division tracks costs associated with the transportation contract but does not assign the costs to specific facilities.

System to individual facilities, including IGSAAs, to help ICE more reliably track costs. According to ICE OBPP officials, this requirement began in fiscal year 2014. Second, ICE has taken steps to help ensure that expenditures are correctly applied to obligations in the Federal Financial Management System. These steps include developing standard operating procedures for linking obligations to expenditures and, beginning in the third quarter of fiscal year 2014, requiring personnel to input a specific period of performance for each facility expenditure, according to ICE officials. Finally, as a manual work-around for estimating transportation costs, ICE has developed a statement of work to study transportation costs to optimize ICE's ground and air transportation networks and identify any inefficiencies in the current process.³³

Although these manual work-arounds are positive steps that should help strengthen the completeness and reliability of ICE data on detention facilities costs, ICE has not assessed the extent to which these manual work-arounds are sufficient to address data limitations and allow it to reliably compare costs among and across facilities and facility types, according to ICE officials. ICE officials said they have not conducted such an assessment because they have focused on higher priorities, such as developing a national bed rate to support the agency's annual budget request. In addition, ICE has not assessed the extent to which additional internal controls are needed to address the challenges we identified and collect and maintain more complete data on costs and expenditures for individual facilities. For example, as previously discussed, ICE identified data entry errors made by staff in entering cost data into the Federal Financial Management System. ICE also identified challenges in tracking and maintaining complete data on all costs or expenditures associated with individual facilities, including costs for medical care and transportation, for example. ICE has not assessed the extent to which additional controls, such as a process to check for data entry errors, could help the agency track and maintain more complete data on detention facility costs, as ICE stated that the agency recently implemented the manual work-arounds.

The *ICE Strategic Plan FY2010-2014* states that ICE will proactively identify and correct financial and operational risks and continually

³³According to an ICE official, ICE had not started the study as of August 2014, but plans to issue a request for proposal in September 2014.

strengthen internal controls to safeguard the public's resources and trust. ICE has strengthened some controls, but it has not assessed the extent to which it has appropriate internal controls in place for all tracking and reporting of financial information to link costs to individual facilities. *Standards for Internal Control in the Federal Government* notes that internal controls are an integral part of each system that management uses to regulate and guide its operations, and that control activities are an integral part of an entity's planning, implementing, review, and accountability for stewardship of government resources and achieving effective results.³⁴ Furthermore, the standards state that control activities, which include a wide range of diverse actions and maintenance of related records, need to be clearly documented and help to ensure that all transactions are completely and accurately recorded.³⁵ Assessing the extent to which ICE's manual work-arounds could provide ICE with more complete data on facility costs and the extent to which additional controls may be needed could better position ICE to have more reliable data for tracking and managing costs across facilities and facility types. Moreover, as ICE is in the process of planning for upgrading its financial management system, assessing the extent to which the appropriate internal controls are in place for tracking and managing detention facility costs and developing any additional controls deemed necessary could help provide ICE with more complete data to help ensure that ICE is accurately tracking costs and has the data needed to appropriately and effectively manage detention costs.

Ensuring cost is considered in placing aliens in detention facilities.

ICE ERO officials stated that field office personnel are to take cost into account, as appropriate, when making detainee placement decisions; however, ICE headquarters does not have a process or controls in place to ensure that field offices are appropriately considering cost in order to promote efficient field office management. ERO field offices are responsible for deciding where to house detainees within their areas of responsibility and are to consider a variety of factors, including cost, when making detainee placement decisions, according to ICE officials. ICE ERO officials stated that other factors that may be more important than cost in making placement decisions include whether (1) the detainee has medical needs that can be best served by a particular facility, (2) the

³⁴[GAO/AIMD-00-21.3.1.](#)

³⁵[GAO/AIMD-00-21.3.1.](#)

detainee has an attorney or family located near a particular facility, and (3) there are transportation requirements to bring the detainee to the facility.

ERO officials stated that field offices are to place detainees in facilities that have guaranteed minimum populations when possible, as ICE pays for these beds regardless of whether or not they are used.³⁶ In addition, facilities that have guaranteed minimums tend to have tiered pricing—meaning the contractor charges a lower per diem for each detainee housed above an agreed-upon guaranteed minimum number of detainees and below the facility’s full capacity—than at other facilities that do not have guaranteed minimums.

In 2009, the DHS Office of the Inspector General reported that ICE had not fully implemented its National Detention Management Plan, resulting in mixed progress in moving toward a more cost-effective strategy for acquiring detention bed space.³⁷ Since then, according to ICE officials, the agency has taken steps to ensure that cost is taken into account, as appropriate, in deciding where to house detainees. For example, ICE ERO headquarters develops daily capacity reports that show the percentage of capacity filled at SPCs, CDFs, DIGSAs, and large IGSAAs. According to ICE ERO headquarters officials, if they notice that a particular area of responsibility has open space in facilities with guaranteed minimums, they can call the field office director to find out why the guaranteed minimum is not being met.

However, our analysis of ICE data showed that in some cases ICE did not fill all guaranteed minimum bed spaces, effectively paying for beds that the agency did not use. Specifically, our analysis of the ADP and ICE’s contractual guaranteed minimums at selected dedicated facilities for fiscal years 2011 through 2013 showed instances where ICE paid for beds it did not use. For example, our analysis showed that the ADP at a CDF had fewer detainees than the guaranteed minimum for each fiscal year, 2011 through 2013, which is the equivalent of about \$3.6 million in bed space that ICE did not use, based on the per diem rates for this period. According to ICE officials, the guaranteed minimum had been negotiated

³⁶Guaranteed minimums generally apply to ICE’s dedicated facilities.

³⁷DHS Office of the Inspector General, *Immigration and Customs Enforcement Detention Bedspace Management*, OIG-09-52 (Washington D.C.: April 2009).

with the facility by USMS, which previously used the facility, and ICE renegotiated a lower guaranteed minimum in fiscal year 2012. However, we noted that the ADP in fiscal years 2012 and 2013 remained below the revised guaranteed minimum number of beds.³⁸ ERO officials also said that during that timeframe ICE moved detainees from the CDF to a new facility that ERO opened nearby that was intended to better meet ICE's civil detention goals.

We also found instances through fiscal year 2014—as of July 2014—in which ICE placed the guaranteed minimum of detainees in facilities, but did not take advantage of the tiered pricing structure, which would have provided less costly bed rates for detainees placed above the guaranteed minimum. For example, at one CDF, ICE met the guaranteed minimum each year from fiscal years 2011 through 2013 and also housed additional detainees at the facility, for whom ICE was charged a lower bed rate because the facility has a tiered pricing structure. However, the number of detainees housed over the guaranteed minimum also decreased each year over that time period. Therefore, because ICE did not maximize the number of detainees over and above the guaranteed minimum, the average cost per detainee at the facility increased from \$133 per day in 2012 to \$135 per day in 2013.³⁹ In addition to our analysis, ICE's bed space procurement study—published in April 2014—found that at certain SPCs, ICE underutilized facilities with guaranteed minimums. Therefore ICE could conserve resources by better filling the capacity above the guaranteed minimum, as it costs ICE less per detainee to house detainees in these facilities.⁴⁰

ICE officials discussed efforts to better ensure cost-effective placement decisions across field offices. For example, ICE officials stated that they plan to provide guidance to field offices regarding how to use cost as a factor in detainee placements, among other considerations. As part of the

³⁸In fiscal years 2012 and 2013, the guaranteed minimum was 285 beds per day; the ADP in those years was 253 and 271, respectively.

³⁹As described above, these costs may not include the full costs of detention at that facility. ICE ERO Operations Support Division did not have complete data for fiscal year 2011.

⁴⁰U.S. Immigration and Customs Enforcement Office of the Chief Financial Officer. *Detention Bed Space Procurement Analysis; Report on ICE Detention Sourcing*, April 2014.

guidance, ERO officials said they will be working with ICE OBPP to develop and share cost reports and facility utilization reports with field office management. While ICE's plan to develop and issue this guidance is a positive step, as of August 2014, ICE did not have plans to monitor the extent to which field offices consider and implement cost as a factor in making detainee placement decisions over time, according to ICE officials. In particular, ICE's daily capacity reports are intended to provide information to ICE personnel regarding bed space availability on a daily basis. However, ICE ERO does not currently use these reports or other data to monitor and ensure field offices are appropriately considering cost in making detainee placement decisions over time. The ICE strategic plan for fiscal years 2010-2014 notes that to expend government resources wisely, ICE will work to increase efficiency in every step of the removal process—from apprehension through removal. Furthermore, *Standards for Internal Control in the Federal Government* notes that managers need to compare actual performance with planned or expected results throughout the organization and analyze significant differences, and should monitor the quality of performance over time.⁴¹ Developing an oversight mechanism to ensure that field offices comply with guidance to place detainees, whenever possible, in facilities with guaranteed minimums and tiered pricing could provide ICE with better assurance that it is cost-effectively managing detainee placement.

Preventing improper payments to detention facility operators. ICE has taken steps to strengthen internal controls over the process used to pay contractors for detention services; however, ICE ERO remained designated as at high risk for making improper payments in fiscal year 2013 by DHS. ICE uses manual internal controls over the process to review invoices and pay contractors for detention services. Contractors at all ICE detention facilities are to receive payment for providing detention services by submitting invoices to ICE for review and payment. Contractors are to submit summary invoices to the Burlington finance center and all required invoice support documentation to the contracting officer representative (COR) at the ICE ERO field office overseeing the facility. Burlington finance center personnel are to provide an initial review of the summary invoice to ensure that the necessary contract information is correctly recorded and if it is, are to notify the COR that the invoice is available for approval. The COR is then required to review the invoice to

⁴¹[GAO/AIMD-00-21.3.1.](#)

verify that it accurately reflects work completed in accordance with requirements in the contract. The COR is also to ensure that all required supporting documentation is received prior to approving an invoice.

The Improper Payments Information Act (IPIA) of 2002, the Improper Payments Elimination and Recovery Act (IPERA) of 2010, and the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012 require agencies to review payments made by their components in order to identify those susceptible to significant improper payments and to carry out cost-effective programs for identifying and recovering overpayments made to contractors.⁴² Improper payments are calculated as the percentage of the total dollar value of payments made in each year that were improper.⁴³ For fiscal year 2013, a significant improper payment was defined as exceeding \$10 million of all program or activity payments

⁴²Pub. L. No. 107-300, 116 Stat. 2350; Pub. L. No. 111-204, 124 Stat. 2224; Pub. L. No. 112-248, 126 Stat. 2390. The term “improper payment” means any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements and includes any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment, payments for services not received, and any payment that does not account for credit for applicable discounts. Pub. L. No. 107-300, § 2(d)(2), 116 Stat. at 2351, redesignated as § 2(g)(2) by Pub. L. No. 112-248, § 3(a)(1), 126 Stat. at 2390. OMB Circular A-123 Appendix C, Part 1, *Requirements for Effective Measurement and Remediation of Improper Payments* also requires a payment to be considered an improper payment when an agency’s review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation.

⁴³The DHS Office of the Chief Financial Officer Risk Management and Assurance reviews and approves ICE proposed testing plans and procedures, statistically selects representative ICE sample points to be tested, and validates ICE testing results through an independent quality assurance process. In addition, Risk Management and Assurance calculates the ICE improper payment rate using the DHS-mandated statistical methodology that stratifies payments by dollar value. Once the ICE improper payment rate has been identified, the DHS Office of the Chief Financial Officer Risk Management and Assurance extrapolates the total estimated improper payment amount.

and 1.5 percent of program payments, or exceeding \$100 million alone.⁴⁴ IPERIA of 2012 applied these thresholds to fiscal year 2014 and each fiscal year thereafter.⁴⁵

DHS's annual review of component improper payments has highlighted that ICE ERO had unacceptable levels of improper payments.⁴⁶ ICE ERO reduced improper payment amounts by nearly half from fiscal year 2011 to 2012, but remains designated as at high-risk for making improper payments. DHS reported that in fiscal year 2012 testing of fiscal year 2011 payments, ICE ERO made an estimated \$133 million in improper payments (approximately 8 percent of all payments), and fiscal year 2013 testing of fiscal year 2012 payments showed that ICE made an estimated \$73 million in improper payments (approximately 4 percent of all payments).

ICE has taken several steps to address the primary reasons for improper payments. ICE's analysis of the findings revealed that most of ERO's improper payments were caused by either unresolved discrepancies between the invoice and contract documents or that ERO personnel responsible for invoice approval did not ensure sufficient documentation had been provided by contractors to support the payment of invoices. To reduce the improper payment rate, ICE ERO issued requirements aimed at standardizing the invoice submission and review process across facilities, and strengthening the process, among other actions. These requirements include a requirement that facilities provide an itemized list

⁴⁴IPIA of 2002 required the head of each agency to identify all programs and activities that may be susceptible to significant improper payments, and for an improper payment exceeding \$10 million, provide an estimate and a report to Congress. Pub. L. No. 107-300, 116 Stat. at 2350. For purposes of fiscal year 2013, IPERA of 2010 amended IPIA to define a significant improper payment as exceeding \$10 million of all program or activity payments and 1.5 percent of program payments, or exceeding \$100 million alone. See Pub. L. No. 111-204, § 2(a), 112 Stat. at 2224; OMB Circular A-123 Appendix C, Part I. IPERIA of 2012 did not change the fiscal year 2013 thresholds, but it did, among other things, direct OMB on an annual basis to identify high-priority federal programs for greater levels of oversight and review in which the highest dollar value or highest rate of improper payments occur or for which there is a higher risk of improper payments. See Pub. L. No. 112-248, § 3(a), 126 Stat. at 2390.

⁴⁵Pub. L. No. 112-248, § 4, 126 Stat. at 2392.

⁴⁶This improper payment rate is for all ICE ERO payments, including payments for detention facilities services as well as payments for other goods and services, such as phone service.

of charges and list contract line items on invoices, among other things. According to ICE officials, as of September 2013, ICE had updated all facility contracts with the new requirements, and invoices submitted by facilities for services in December 2013 and later should meet the new requirements.

However, our review of a sample of 31 of 158 invoices from 15 facilities for detention services provided in December 2013 showed that corrective actions taken by DHS and ICE had not yet fully addressed issues of the completeness and accuracy of invoices and supporting documentation submitted by detention contractors. Specifically, our review showed that 13 invoices from 6 facilities did not include all invoice elements required in ICE's new guidance. Examples of missing elements included unit prices for mileage and the contractor's address. In addition, our analysis showed that 20 invoices from 11 facilities did not include all required supporting documentation, as specified in ICE's new invoice submission and review guidance. Invoices for transportation charges were the type of invoice that was most commonly missing supporting documentation. For example, invoices included the dates detainees were transported, but did not include elements such as the names of detainees, or the number of detainees transported.

Standards for Internal Control in the Federal Government notes that control activities should be efficient and effective in accomplishing the agency's control objectives, and should occur at all levels of the agency.⁴⁷ The standards also note that the responsibility for good internal control rests with managers, and that management sets the objectives, puts the control mechanisms in place, and monitors and evaluates the controls.⁴⁸ In June 2014, ICE issued a policy manual to provide general instruction and guidance to CORs in recording the receipt and acceptance of goods and services, including the processing of contractor invoices, and plans to further assess the need for additional controls through April 2015. Such an assessment of internal controls is necessary as ICE ERO has remained at high risk for improper payments despite issuance of past guidance. By taking additional steps to help ensure that personnel responsible for reviewing and paying invoices follow internal control procedures contained in the new guidance to ensure proper payment,

⁴⁷ [GAO/AIMD-00-21.3.1](#).

⁴⁸ [GAO/AIMD-00-21.3.1](#).

and that their actions are appropriately overseen and reviewed by management, ICE ERO could have better assurance that its detention management practices are in compliance with relevant laws to safeguard federal resources for detention services.

ICE Data Indicate Generally Higher Costs per Detainee per Day at ICE-Owned Facilities

Despite the limitations we identified with ICE's data on facility costs, we determined—by interviewing officials and checking data for errors—that data maintained by the ICE ERO Operations Support Division in its Contract Financial Monitoring File were sufficiently reliable to provide a general indication of approximate cost ranges across and within facility types for fiscal year 2013. Our analysis of these data indicated that ICE generally spent more per detainee per day at ICE-owned SPCs than at other types of detention facilities. Specifically, our analysis indicated that while the median expenditure per detainee per day at SPCs was about \$200, these costs were lower at about \$120 for CDFs and about \$75 for IGSA and facilities operated under USMS intergovernmental agreement (IGA) or contract.⁴⁹ Our analysis of these data also indicated that the range of costs within a facility type was greatest for SPCs than for other types of facilities. Specifically, our analysis showed that the range between the lowest- and highest-cost SPC facilities was about \$195, while the range was lower for IGSA and IGAs (about \$110), CDFs (about \$80), and DIGSAs (about \$50).⁵⁰

⁴⁹Furthermore, our analysis indicated that while ICE spent at least \$150 per day at 4 SPCs and 1 IGSA, ICE spent less than \$150 per detainee per day at all CDFs and DIGSAs in fiscal year 2013. Our analysis of expenditures at SPCs includes expenditures associated with the primary detention contract as well as expenditures associated with ancillary contracts for services like maintenance and food, among others. For the purposes of this review, we did not include ICE's family residential facilities in this analysis, as they serve a unique population and thus provide a unique service compared with ICE's other over-72-hour facilities.

⁵⁰The approximate lowest and highest costs across facility types were as follows: SPCs—about \$105 to about \$300, CDFs—about \$70 to about \$150, DIGSAs—about \$65 to about \$115, and IGSA/IGAs—about \$40 to about \$150. For the purposes of our review, IGSA include both facilities with which ICE has agreements with the locality and USMS IGAs at which ICE houses detainees using a rider on a USMS agreement. For six IGSA, ICE data do not distinguish costs by individual facilities. For these facilities, we estimated the cost per detainee per day based on the average daily population in each of the facilities and the total costs for all facilities associated with the IGSA associated with each of the facilities. These IGSA include only those facilities that were authorized to house detainees for the full fiscal year 2013. Ten authorized IGSA holding less than 1 percent of ICE's ADP in fiscal year 2013 either did not house detainees in fiscal year 2013 or housed detainees for only part of the year. These facilities are excluded from the analysis.

ICE officials cited labor costs—which compose approximately 70 percent of all facility costs—as one of the common reasons for the differences in the ranges of costs across types of detention facilities. ICE officials stated that the agency has limited ability to negotiate labor rates in its detention and ground transportation contracts because they are subject to the Service Contract Act (SCA) of 1965, which, among other things, specifies prevailing wages by geographic area.⁵¹ ICE officials stated that as a result of the SCA's requirements, facilities that are located in more expensive areas tend to have higher labor costs.

Factors that influence the amount of labor needed also affect overall costs at a particular facility, according to ICE officials. For example, a facility's design and physical layout affect the number of staff needed to monitor the facility, and therefore affect older facilities, which usually have more blind corners and require more staff, according to officials. Other cost drivers include characteristics of the detainee population held at the facility, such as a large population with specialized medical needs that increase staff costs; the distance between the facility and other locations, such as immigration courts, which affects transportation costs; and the extent to which there are other nearby facilities that can house immigration detainees, which can lower costs because of competition, according to ICE officials.

ICE has taken steps to more specifically identify the reasons for cost differences across facility types, including hiring a contractor to identify actions the agency could take to more efficiently manage the procurement options for dedicated facilities.⁵² ICE officials stated that they

⁵¹Every contract, with certain exceptions, entered into by the United States or the District of Columbia in excess of \$2,500, in which the principal purpose is to furnish services through the use of service employees, is subject to the McNamara-O'Hara Service Contract Act (SCA). See 41 U.S.C. §§ 6701-6707. The SCA requires contractors and subcontractors performing services on prime contracts in excess of \$2,500 to pay service employees no less than the wage rates and fringe benefits found prevailing in the locality, or the rates contained in a predecessor contractor's collective bargaining agreement. The Secretary of Labor determines the prevailing wage rate for job classifications in each locality, which differs by geographic location. Certain types of federal contracts—such as those for construction, the carriage of freight or personnel, and contracts for public utility services, among others—are not subject to the SCA.

⁵²U.S. Immigration and Customs Enforcement Office of the Chief Financial Officer. *Detention Bed Space Procurement Analysis; Report on ICE Detention Sourcing*. This study was funded by ICE and conducted by Deloitte Consulting LLP. It focused on dedicated facilities because the main purpose was to analyze procurement options for the SPCs.

conducted this point-in-time study because understanding costs by facility is critical to ensuring that detention facilities are managed within budget and in a cost-effective manner. As part of its assessment of procurement options, the study identified the following cost drivers for each dedicated facility type:

- **ICE-owned SPCs.** The most prevalent issues the study identified at all six SPCs included the use of separate service contracts for guards, food, facility maintenance, and other services, which can increase overhead costs in contracts, as well as low detainee-to-staff ratios compared with ratios at other facility types.⁵³ For example, all six SPCs were found to have a lower detainee-to-staff ratio than the national average of 3.1 to 1, with one SPC having a detainee-to-staff ratio of 1.3 to 1.
- **Privately owned CDFs.** The most prevalent issues the study identified for the seven CDFs included high profit margins for contracts that do not guarantee a minimum amount of business over a longer time period, and facility construction costs that are initially factored into the per diem rate, but are not removed upon completion of payment for the construction debt.⁵⁴ For example, the study found that at older CDFs, the contractor had already paid off most of the building costs, but the per diem rate had not decreased despite the reduced total cost of operations on the part of the contractor, according to ICE officials.
- **Government- and privately owned DIGSAs.** The study noted that the most prevalent issues for DIGSAs were difficult to determine because these facilities were unwilling to fully disclose financial documentation.⁵⁵ However, issues at DIGSAs included high profit margins for contracts that do not guarantee a minimum amount of

⁵³Other issues at SPCs contributing to higher costs included poor facility design, which necessitated higher staffing levels (four facilities), location in areas with higher wages, inefficient use of transportation (four facilities), and a need to consolidate detention bed capacity among facilities within common operating areas.

⁵⁴Other issues at CDFs contributing to higher costs were a need to consolidate detention bed capacity among facilities within common operating areas and the lack of competition that drives up prices.

⁵⁵The study noted that DIGSA contractors sometimes under staff their facilities, which has an effect of increasing profit margins at the expense of detainee risk management.

business over a longer time period.⁵⁶ For example, one contractor for a DIGSA had a profit margin of 20 percent.

- **Government- and privately owned IGSA**s. According to officials, the study did not specifically examine costs at individual IGSA

ICE Applied Different Federal Standards across Facilities but Has Not Documented Reasons for the Differences

ICE Applies the Most Rigorous Detention Standards to 15 Percent of Facilities Housing Over Half of Detainees

ICE detention standards vary in rigor as defined by the number and content of standards in place to protect detainees and focus on performance outcomes. Since 2000, ICE has primarily used three sets of detention standards—the 2000 NDS, the 2008 PBNDS, and the 2011 PBNDS.⁵⁷ In regard to the number of standards, the 2000 NDS contains 38 standards related to aspects of detainee care and services and facility operation, while the 2008 PBNDS contains 41 standards and the 2011 PBNDS contains 42 standards. These standards are discussed in further detail in appendix II. ICE has added standards over time to address issues of heightened concern or to address gaps in procedures. For

⁵⁶Another issue at two DIGSAs included a need to consolidate detention bed capacity among facilities within common operating areas.

⁵⁷A fourth set of detention standards—the 2007 Family Residential Standards—pertained to two facilities in fiscal year 2013. For the purposes of this review, we excluded these standards from our analysis given that less than 2 percent of ICE’s detainee population was held in facilities governed by the standards in fiscal year 2013.

example, ICE added a standard in the 2008 PBNDS to address sexual abuse and assault, and a standard in the 2011 PBNDS to address medical care for women. According to ICE ODPP officials, the agency made enhancements or revisions to 39 of the 42 standards in the 2011 PBNDS, such as in the areas of medical and mental health care. In regard to the content of standards, ICE noted certain additional requirements that were applicable to a different extent across facility types. For example, under the NDS and 2008 PBNDS, ICE requires ICE-owned SPCs and privately owned CDFs to conform to these additional requirements, while ICE states that government- or privately owned DIGSAs and IGSAAs may adopt, adapt, or develop alternatives to the procedures provided they meet or exceed the intent represented by the additional requirements. Appendix III provides more detailed information on the additional requirements that SPCs and CDFs are required to follow. ICE officials said that under the 2011 PBNDS, some of these more substantive requirements became applicable to all facilities and ICE also introduced a new concept of optimal provisions that agency officials characterize as more stringent than the mandatory provisions, and therefore contractors may choose to adopt the optimal provisions voluntarily. While these optimal provisions are voluntary, ICE states that facility implementation of these provisions would further effective facility operation at the level intended by ICE under the revised standards. Appendix IV provides additional information on optimal provisions and an example. Finally, in regard to the focus of the standards, ICE officials explained that the 2008 PBNDS and 2011 PBNDS shifted language from expressing what is to be done under the required policies and procedures to focus on the results or outcomes the required procedures are expected to accomplish; they also provide a higher level of procedural detail than the 2000 NDS. ICE officials stated that the expected outcomes each standard is intended to produce are stated, rather than assumed, and the prescribed expected practices represent what is to be done to accomplish those expected outcomes. For example, while both the NDS and PBNDS include policies and procedures related to medical care, the 2000 NDS states that facilities “must have a procedure in place” to ensure that medical staff are alerted to health care requests in a timely manner, while the 2008 PBNDS states that health care needs “will be met in a timely and efficient manner,” and that each facility shall have a procedure to ensure that sick call requests are “received and triaged by appropriate medical personnel within 48 hours.”

According to ICE officials, ICE is to specify in each facility’s contract or agreement the standards to which the facility is to be held. Our analysis of ICE documents, however, showed that in fiscal year 2013, ERO held 3

(2.5 percent) of the 118 facilities that had the 2000 NDS or nonfederal standards cited in the contract or agreement to the more rigorous 2008 PBNDS during the inspection process.⁵⁸ For facilities operating under a contract that cites the NDS, ERO officials stated that field officials responsible for overseeing the facilities, or the administrators operating the facilities, may decide to inspect them to the 2008 PBNDS if the officials judge that the facilities are able to meet the more rigorous requirements, and the facilities agree to this practice, or if the facilities themselves ask to be held to more rigorous standards. An ICE official responsible for detention policy explained that ERO inspecting a facility to more rigorous standards than those cited in the facility's contract or agreement can be beneficial to ICE and detainees because it permits the agency to hold facilities accountable for more rigorous requirements. According to this official, it can be more efficient and cost-effective for ICE to ensure that facilities adhere to more rigorous standards through the inspection process rather than modifying the facilities' contracts or agreements to include the more rigorous standards because, for example, facility contractors may request to open negotiations for the entire contract, which could be a time-consuming process, as well as request additional funding from ICE for the change in contract terms. For example, inspecting a facility to the 2008 PBNDS when the facility contract cites the 2000 NDS standards allows ERO to hold the facility accountable to standards for sexual abuse and assault prevention and intervention that would not be required of the facility if it was inspected under the 2000 NDS, which do not include those provisions.

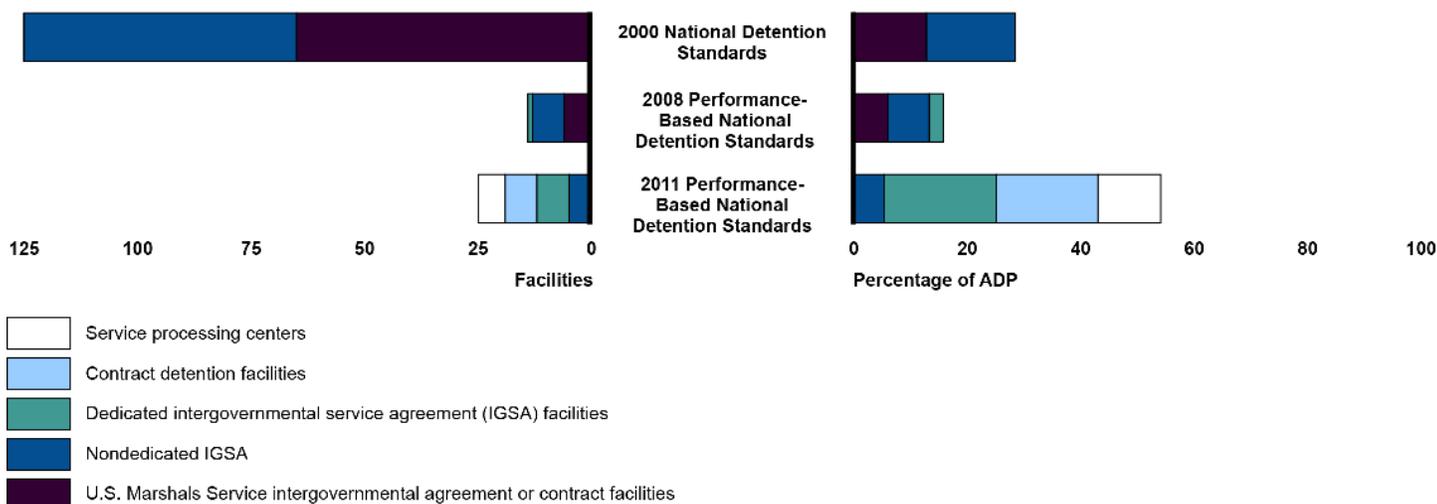
ICE officials reported that as of January 2014, 20 of the 22 facilities that exclusively house ICE detainees—SPCs, CDFs, and DIGSAs—as well as 5 IGSA, were held to the most recent and rigorous 2011 PBNDS. In fiscal year 2013, ICE housed approximately 54 percent of its ADP in these 25 facilities. Fourteen of the remaining 141 IGSA facilities—or approximately 16 percent of ADP—are held to the 2008 PBNDS, while the remaining 125 IGSA facilities—or 28 percent of ADP—that house ICE detainees along with other populations are held to 2000 NDS (see fig.3).⁵⁹

⁵⁸With respect to the nonfederal standards, ICE officials explained that facility contracts and agreements that were signed before the 2000 NDS were implemented usually specify that contractors are to be held to state, local, or "other" standards. ICE officials said that in such cases, the facilities are generally inspected to the 2000 NDS.

⁵⁹These numbers and percentages exclude two family residential facilities that were held to the 2007 Family Residential Standards in fiscal year 2013.

Furthermore, ODPP officials stated that a number of facilities, regardless of whether they have been updated to the 2011 PBNDS, have voluntarily adopted the Sexual Abuse and Assault Prevention and Intervention standard of the 2011 PBNDS, which requires, among other things, that written sexual abuse and assault prevention and intervention policies and procedures include components beyond those of the 2008 PBNDS, such as a statement of a zero tolerance policy for all forms of sexual abuse or assault.⁶⁰

Figure 3: Detention Standards and Average Daily Population (ADP) by Facility Type, Fiscal Year 2013



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-15-153

Note: Two facilities—one nondedicated IGSA and one dedicated IGSA—not included in this figure were held to the 2007 Family Residential Standards in fiscal year 2013 and housed less than 2 percent of the ADP.

⁶⁰The sexual abuse and assault prevention and intervention provisions for the 2011 PBNDS address the same topical areas as the 2008 PBNDS and are similarly intended to apply to adult facilities. However, the 2011 PBNDS include additional requirements, such as broader requirements within the topical areas, such as that intergovernmental service agreement facilities designate a sexual abuse and assault prevention and intervention coordinator rather than only ICE-owned SPCs and privately owned CDFs. See GAO, *Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse*, GAO-14-38 (Washington, D.C.: Nov. 20, 2013), for more information on how sexual abuse and assault provisions are addressed in detention facility standards.

As of April 2014, ICE officials said that they were in the process of requesting that additional facilities authorized to hold detainees for 72 hours or longer implement the most recent 2011 PBNDS, and documenting that change in facility contracts. Specifically, ICE officials stated that they planned to request that all such facilities with an ADP of 150 detainees or greater adopt the 2011 PBNDS by the end of fiscal year 2014.⁶¹ If implemented, this would increase the number of facilities held to the 2011 PBNDS from 25 to 61 facilities, or from 54 percent to 89 percent of the ADP. According to ICE officials, implementing the 2011 PBNDS has taken longer than anticipated. In April 2012, ICE disseminated an implementation plan to dedicated facilities requesting that they adopt the 2011 PBNDS over a staggered 6-month period.⁶² According to ODPP officials, ICE reached out to dedicated facilities first because they house the greatest population of detainees and because any increased costs would be spread across the entire population of the facility.⁶³ ODPP officials said that ICE did not meet the plan's original milestones because most facility contractors submitted extensive questions about the new standards and then requested that ICE modify their contract or agreement to include higher per diem rates to cover estimated costs of complying with the higher standards. ICE's attempts to minimize the potential increased costs associated with adopting the newer standards required lengthy negotiations with facilities to arrive at cost-neutral contracts.⁶⁴ In the case of nondedicated facilities that house fewer ICE detainees, ICE officials said it may not be cost-effective for the agency to negotiate with the facility contractors to increase standards for relatively few detainees who are held in detention or are held for short periods of time. For example, in fiscal year 2013, 46 facilities housed fewer than 10 detainees during the year, and the time these detainees spent in detention averaged less than 14 days. In addition, some facilities may be limited in their ability

⁶¹All 6 SPCs, 7 CDFs, and 9 DIGSAs had an average ADP of 150 or greater in fiscal year 2013; 39 nondedicated IGsAs and IGAs had an average ADP of 150 or greater in fiscal year 2013. According to ICE ODPP officials, the type and size of facilities that ICE may ask to adopt the 2011 PBNDS are subject to change.

⁶²Facilities were given 3 months from the respective contract modification deadline to come into full compliance with the 2011 PBNDS.

⁶³ODPP officials said that during this time, they also pursued 2011 PBNDS implementation opportunities at nondedicated facilities, with an initial focus on facilities housing larger numbers of detainees.

⁶⁴We previously reported that not all ICE facilities are bound to the most recent detention standards because of resource considerations. See [GAO-14-38](#).

to comply with higher standards because of reasons such as space limitations. For example, the 2011 PBNDS require that detainees in administrative segregation receive at least 1 hour of daily exercise opportunities outside of the living area, but according to ICE officials, some facilities that house ICE detainees may not have space to expand the opportunities for outdoor recreation.⁶⁵

ICE Did Not Have Documentation for Reasons Why Standards Vary across Facilities

ICE has not documented the reasons for using different standards across facilities or why the 125 facilities under 2000 NDS as of January 2014 had not been transitioned to the 2011 PBNDS. ICE officials said that reasons different standards were used across facilities include cost issues as well as facilities' ability to comply with recent standards.⁶⁶ These officials also stated that agency implementation plans for progressively adopting the 2008 and 2011 PBNDS across certain facilities served to document the agency's rationale for using different standards across facilities. However, while these plans documented which facilities were to receive requests to adopt the newer standards, they do not document the reasons why these facilities were chosen or why remaining facilities cannot be transitioned to the most recent standards. For example, the implementation plan for the 2011 PBNDS did not explain why some smaller—in terms of facility type and ADP—facilities that were not listed in the plan were transferred to the 2011 PBNDS, while other, similar facilities not included in the plan were not transferred to the newer standards.

ICE officials said that in certain instances, detention facilities can have standards waived after a review and approval by ICE. Specifically, the agency may choose to waive certain detention requirements for a facility if the contractor can comply with all but a specific detention standard, such as the 2011 PBNDS standard for outdoor recreation, which describes detainees' access to exercise and recreation activities within

⁶⁵The 2011 PBNDS define administrative segregation as a nonpunitive form of separation from the general detention population used for administrative reasons. Administrative segregation may be available, among other reasons, for detainees awaiting investigations or hearings for violations of facility rules; detainees scheduled for release within 24 hours; and, under more limited circumstances, detainees who require protective custody or separation from the general population for medical reasons.

⁶⁶An ICE-contracted study on detention bed space acquisition management reported that implementing 2011 PBNDS at IGSA's would not be cost-neutral and would require significant contracting action, reporting in April 2014 that only 29 of 191 facilities had met the newest standards.

the appropriate security restraints. These officials said that waivers are granted infrequently and usually only after ICE has (1) reviewed the facility contractor's request, (2) worked with the facility contractor to identify a work-around solution that would allow the facility to comply with the standard, and (3) confirmed that the facility has a "better than acceptable" process in place that meets the intent of the standard even if it does not meet the strict letter of the standard. According to ICE ERO, as of August 2014, waivers were in effect for 41 standard components—the line items that compose the standards—across 35 facilities; these waivers were approved from fiscal year 2012 through August 2014.⁶⁷ Our analysis of these waivers showed that 22 (54 percent) of the waivers are related to a component of the environmental health and safety standard, which requires facilities to, among other things, maintain a dedicated barbering space and test power generators every 2 weeks. For example, one facility lacks a separate barbering facility and has collocated barbering services in a multipurpose room that is also used for dental appointments. Another 6 (15 percent) of the 41 waivers relate to a component of the key and lock standard, which requires facilities to ensure that an on-site security officer completes locksmith training. In these instances, facilities have agreed to use a contractor to install and repair locks because they say training a security officer to perform that function would be too expensive. The remaining 13 waivers address a variety of other standards.⁶⁸ According to ERO officials, copies of approved waivers are provided to the facility contractor and to the ICE ERO field office that oversees the facility; copies are also to be provided to ODO officials upon request.

Standards for Internal Control in the Federal Government specifies that all transactions and other significant events should be clearly documented and the documentation should be readily available for review. According to ICE officials, implementation of the 2011 PBNDS at facilities with an ADP of fewer than 150 is to be conducted on a case-by-case basis. However, ICE ERO was not able to provide documentation of the reasons it decided to implement the 2008 or 2011 PBNDS at some of these

⁶⁷Of these 41 waivers, 22 were approved in fiscal year 2012, 12 in fiscal year 2013, and 7 in fiscal year 2014.

⁶⁸These waivers addressed, among other things, components in the following standards: Personal Hygiene, Hold Rooms in Detention Facilities, Facility Security and Control, and Special Management Unit Security Measures.

facilities while keeping other facilities at the older, less rigorous 2000 NDS or 2008 PBNDS. A senior ICE official stated that ICE relies on institutional knowledge within the agency to track reasons for assigning certain standards to individual facilities. For example, our analysis identified 1 facility that reverted to 2008 PBNDS after attempting to adopt the higher 2011 PBNDS; ICE officials stated that the rationale for this decision had not been documented.⁶⁹ Documenting reasons why facilities cannot be transitioned to the most recent standards could help strengthen ICE's ability to oversee facilities' compliance with detention standards and could provide an institutional record of decisions ICE has made about why facilities are held or not held to certain standards.

ICE Uses More Oversight Mechanisms at Facilities with Greater Detainee Populations, with Some Inconsistencies in Results across Key Mechanisms

Amount of ICE Oversight Is Driven by Detainee Population and Resources

ICE uses four mechanisms for assessing facilities' compliance with detention standards: (1) annual or biennial inspections conducted by an ERO contractor, (2) annual self-inspections conducted by facility staff under ERO's Operational Review Self-Assessment (ORSA) process, (3) periodic compliance inspections of selected facilities by ODO personnel, and (4) on-site monitoring provided by an ERO detention service manager (DSM).⁷⁰ ICE officials responsible for detention oversight stated

⁶⁹ICE later identified an official who explained that the contractor had asked that the facility be inspected to the 2011 PBNDS, and when it did not pass the inspection, ICE moved the facility back to the 2008 PBNDS.

⁷⁰ERO allows self-inspections at certain facilities that maintain an ADP of less than 10 detainees.

that these different oversight mechanisms complement one another and serve different purposes. ERO inspections are to assess compliance with all applicable detention standards at each facility. Likewise, self-inspections, which apply to more than half of the smallest IGSA and IGAs—generally those with an ADP of fewer than 10 detainees—cover key components of the detention standards. ODO is to conduct in-depth compliance inspections that focus on certain standards and facilities selected through a risk-based approach.⁷¹ DSMs are to monitor facility adherence to ICE’s detention standards on a day-to-day basis and provide facilities with technical guidance, including guidance advising how to implement corrective action plans, as needed.

Our analysis of ICE oversight programs conducted in fiscal year 2013 showed that ICE applied varying types of oversight mechanisms at its detention facilities, with facilities having larger and dedicated detainee populations generally having more types of oversight mechanisms than facilities with small detainee populations. Specifically, in fiscal year 2013, ICE generally employed more types of oversight mechanisms at ICE-owned SPCs and IGSA with dedicated and large detainee populations than at privately owned CDFs or at IGSA and IGAs with small ICE detainee populations, as shown in figure 4.⁷² For example, all of the six SPCs were subject to continuous on-site monitoring, five received comprehensive ERO inspections, and three received an in-depth ODO compliance inspection during the year.⁷³ Of the seven privately owned CDFs, all seven received ERO inspections, six were subject to on-site

⁷¹ODO officials stated that ODO selects the facilities it inspects using a risk-based model that uses deficiencies identified in ERO’s annual inspections, number and type of allegations, deficiencies identified in prior ODO inspections, average daily detention population, and the date of the last ODO inspection at a facility.

⁷²Five medium IGSA and USMS IGA facilities (1 percent)—ranging in average daily population from 69 to 137—had on-site monitors during fiscal year 2013 and are excluded from this analysis.

⁷³The SPC that did not receive an ERO inspection in fiscal year 2013 was transitioning from the 2008 to the 2011 PBNDS and requested additional time to prepare for an inspection under the 2011 PBNDS.

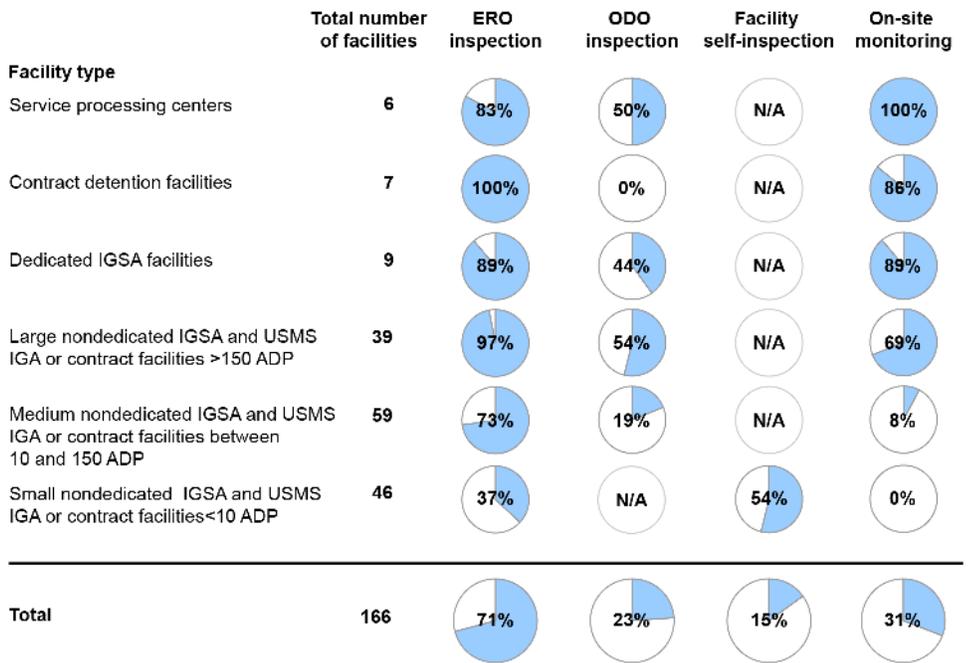
monitoring,⁷⁴ and none received an ODO compliance inspection.⁷⁵ ICE typically applied fewer types of oversight mechanisms at facilities with small detainee populations—generally less than 10 ADP—where more than half received oversight in the form of a self-inspection and about a third were inspected by ERO. These small facilities were not subject to ODO compliance inspections and did not have DSMs. Eighteen facilities that housed about 1 percent of total ADP in fiscal year 2013 were not subject to any of the four types of oversight mechanisms. ICE officials attributed this to various reasons, such as ICE not holding detainees in the facility during the year, ICE deciding to no longer use the facility, and the fact that some facilities met the criteria for biennial review and therefore they were not inspected in fiscal year 2013 (their next scheduled inspection was in fiscal year 2014).⁷⁶

⁷⁴ICE ERO reported in August 2014 that a DSM had been hired for the seventh CDF.

⁷⁵ODO officials stated that ODO conducts compliance inspections of CDFs; however, the frequency with which CDFs are inspected is dependent on the outcome of ODO's risk-based methodology and the date of a CDF's last inspection. The result is that all CDFs are inspected over a 2- to 3-year cycle.

⁷⁶Of the 18 facilities that did not receive any of the four types of ICE oversight mechanisms during fiscal year 2013, 8 were IGSAAs with ADPs ranging from about 17 to about 77 detainees, and 10 were USMS IGAs with ADPs ranging from 0 to 28 detainees.

Figure 4: U.S. Immigration and Customs Enforcement (ICE) Oversight Mechanisms Used at Detention Facilities in Fiscal Year 2013, by Facility Type



ADP Average daily population
 ERO Enforcement and Removal Operations
 IGA Intergovernmental agreement
 IGSA Intergovernmental service agreement
 ODO Office of Detention Oversight
 USMS U.S. Marshals Service

 Percentage of facilities inspected
 N/A Not applicable

Source: GAO analysis of ICE data. | GAO-15-153

Note: According to ICE officials, during fiscal year 2013, a DSM position at one CDF was vacant for part of the fiscal year. These officials reported that as of August 2014, the vacant position had been filled and all CDFs had a DSM.

ICE ERO officials stated that the agency determines which ERO oversight mechanisms are to be used at facilities primarily based on the size of the facility—total detainee population—and available resources, among other factors. For example, facilities that have an ADP of between 10 and 50 are inspected by a contractor on an annual basis, or a biennial basis if their past two inspections were satisfactory.⁷⁷ Because of time and

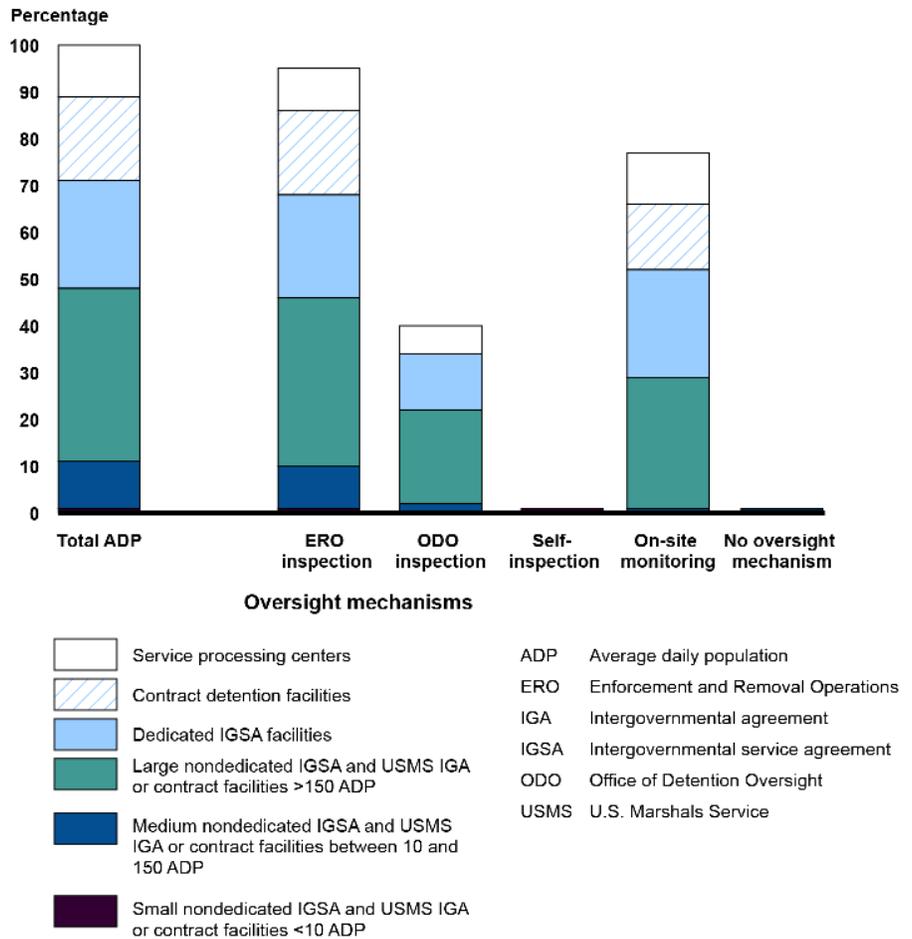
⁷⁷ERO selected 34 facilities for biennial inspection in fiscal year 2013.

resource concerns, facilities that have an ADP of fewer than 10 may not be inspected by ERO, but are required to perform self-inspections on an annual basis and report the results of the inspections to ERO. According to ERO officials, DSMs are to monitor facility conditions on a day-to-day basis.⁷⁸ However, ERO officials also stated that ERO generally reserves on-site monitoring for facilities with large populations of 100 or more detainees and that resource constraints currently limit further expansion of the program. According to ODO officials, resource constraints also limit the number of facilities ODO can inspect on an annual basis.

Our analysis of the number of detainees confined in facilities where ICE used varying oversight mechanisms showed that in fiscal year 2013, nearly all ICE detainees were housed in facilities that were subject to at least one form of oversight. Further, in fiscal year 2013, the majority of detainees—94 percent of ICE’s average daily population—were in facilities that received an annual ERO inspection—and continuous on-site monitoring by a DSM—78 percent of ICE’s average daily population—as shown in figure 5. About 40 percent of ICE’s average daily population of detainees were held in facilities that received an in-depth ODO compliance inspection in fiscal year 2013. A small minority of detainees—about 1 percent of ICE’s average daily population—was housed in facilities that conducted a self-inspection. Additionally, less than 1 percent of the average daily population was not subject to any of these oversight mechanisms during fiscal year 2013.

⁷⁸The inspection contractor previously provided on-site monitoring at detention facilities; however, resource considerations led ICE to take back this role in the form of the DSM program. As of April 2014, ICE had 40 DSMs covering 52 facilities. ICE officials said they hope to expand the DSM program and bring on an additional 18 DSMs to eventually cover about 90 percent of the detained population. However, expansion plans are on hold because of budget constraints.

Figure 5: Percentage of Fiscal Year 2013 Average Daily Population in Detention Facilities Covered by Type of U.S. Immigration and Customs Enforcement (ICE) Oversight Mechanism



Source: GAO analysis of ICE data. | GAO-15-153

ICE Has Not Assessed Reasons for Inconsistencies in Facility Inspection Results

ERO and ODO conducted inspections at many of the same facilities, but collectively their inspections showed different results in fiscal year 2013. Specifically, our analysis of ICE inspection results showed that ERO and ODO included 35 of the same facilities in their inspections conducted during fiscal year 2013, and in 29 of these inspections, ODO found more

deficiencies than ERO across facility types (see table 3).⁷⁹ Collectively, for those 35 facilities, ODO identified 448 deficiencies and ERO identified 343 deficiencies. For these facilities inspected under the 2000 NDS and the 2008 and 2011 PBNDS, these deficiencies represented failure to comply with one or more components that constitute a detention standard, but not failure to comply with the overall standard.⁸⁰

Table 3: Number of Deficiencies Identified by Enforcement and Removal Operations (ERO) and Office of Detention Oversight (ODO) Inspections in Fiscal Year 2013, by Facility Type

Facility type	Number of facilities inspected by both ERO and ODO in fiscal year 2013	Number of deficiencies identified by ERO and ODO	
		ERO	ODO
Service processing center	3	8	17
Contract detention facility	0	N/A	N/A
Dedicated intergovernmental service agreement	4	13	19
Intergovernmental service agreement and inter-governmental agreement	28	322	412
Total	35	343	448

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data. | GAO-15-153

For the 35 facilities at which both ICE ERO and ODO conducted an inspection in fiscal year 2013, in some cases ERO and ODO found different facility deficiencies within the same standards. This included

⁷⁹ODO did not inspect CDFs in fiscal year 2013. In 4 of the 35 instances in which a facility was inspected by both ERO and ODO, ERO identified a greater number of deficiencies than ODO, and in 2 instances the inspection results were identical (either an equal number of deficiencies or no deficiencies). In each of these 35 instances, ERO and ODO assessed facilities against the same set of standards (the 2000 NDS, 2008 PBNDS, or 2011 PBNDS, as applicable).

⁸⁰ICE ERO has designated certain component standards in the checklist it uses to inspect facilities against the 2008 and 2011 PBNDS as “priority components.” The 2008 and 2011 PBNDS inspection checklists identify 100 and 111 priority components, respectively. According to ICE ERO officials, priority components represent areas—usually health, security, and safety issues—that are of critical importance. Failure of any 5 priority components, or 3 priority components within the same standard, results in a failed inspection. ERO officials said the contractor who performs annual and biennial inspections is to immediately notify ERO if a deficiency in a priority component is identified. According to ERO officials, ICE began using priority components in its inspections in March 2013.

three standards that ICE has determined are some of the highest-priority standards, because they have a high potential for adverse effects: Medical Care, Special Management Units, and Use of Force.⁸¹ For example:

- **Medical Care.** ICE ERO and ODO inspection reports differed in the extent to which they found deficiencies in medical care for the same facilities, including facility inspection reports in which only ERO found deficiencies, facility reports in which only ODO found deficiencies, and reports in which both ERO and ODO found deficiencies but the specific deficiencies differed. For example, at one IGSA, ODO found that the facility was not properly safeguarding detainee medical information, as all facility staff had access to each detainee's medical intake form. At this same facility, ICE ERO did not find any deficiencies related to medical care.
- **Special Management Units.** ERO and ODO inspection reports differed in the extent to which they identified deficiencies pertaining to special management unit standards. For example, at one facility, ERO found the facility deficient in most elements of the special management unit standard, as the facility did not have a special management unit. ODO noted that the facility did not operate a special management unit and therefore did not report the absence as a deficiency. At another facility, ODO reported that the facility's policies and procedures did not require the facility administrator to consult with ERO's Detention Management Division prior to approving the placement of an individual in a special management unit cell, which would provide ERO an opportunity to consult with DHS or ICE legal counsel as required by the standard. At that same facility, an ERO inspection found that the facility met all components of the special management unit standard.
- **Use of Force.** ODO and ERO inspections both found deficiencies related to the use of force standard. For example, at one facility, ODO found two deficiencies in the standard: (1) the facility had no procedures established for after-action reviews of use of force incidents, and (2) facility policy did not require calculated use of force incidents to be video-recorded, as required by the standards. At this

⁸¹Special management units are areas of facilities designed to segregate detainees from the general population for administrative or disciplinary reasons.

same facility, ERO found one use of force deficiency—staff were not trained in use of force team techniques, as required.

ICE officials told us they have not assessed the extent to which ODO compliance inspection results showed a greater number of deficiencies at facilities in fiscal year 2013, or the extent to which ERO contract inspections have the capacity to fully capture deficiencies in facilities' compliance with relevant detention standards. However, ICE officials cited several reasons as to why ERO and ODO inspection results may differ across facilities:⁸²

- **Timing of inspections.** According to ICE officials, between inspections, facilities may resolve previously identified deficiencies or may incur new ones. In fiscal year 2013, ERO and ODO inspections at the 35 facilities ranged from less than 1 to 10 months apart.
- **Coverage and depth of inspections.** According to an ICE official, ODO's in-depth compliance inspections are more likely to identify a greater number of deficiencies. For example, in reviewing the medical care standard, ERO inspectors may select 10 files to review to determine if a facility is following policies and procedures. ODO may check 50 files to assess overall compliance and may look beyond the standards and inspection checklist requirements addressed by ERO to address any quality of care concerns that have been raised.
- **Reporting of results.** According to ICE officials, differences in ERO and ODO reporting styles can make it difficult to assess the extent to which inspection results differ. ERO's contracted inspector uses a checklist to identify deficiencies in the components that compose the standards, and determine whether the number of deficient components rises to the level of a deficiency in standards. ODO does not use a checklist and reports its findings in a narrative descriptive report and identifies deficiencies in components but does not assess whether these deficiencies meet the threshold of a deficient standard. For example, if the ICE ERO inspection sheet does not include a component directly related to a particular part of the standard, ODO may cite a deficiency that ERO may not find or identify.

⁸²While ERO and ODO inspections both review facilities' compliance with detention standards, ODO can also evaluate issues that are outside the standards, such as issues of high priority or interest to ICE management.

Given the different purposes of ODO and ERO inspections, it is reasonable to expect in some cases the respective findings differ, according to differences in the depth and scope of the inspections. However, without assessing why these differences occur, ICE is not well positioned to determine the extent to which the oversight mechanisms are functioning as intended. Moreover, *Standards for Internal Control in the Federal Government* calls for operational information to be recorded and communicated to management and others within the entity so that the entity can determine whether compliance requirements are being met. In addition, management is to ensure there is adequate and effective communication between internal and external stakeholders to help ensure appropriate decisions are made based on reliable and relevant information.⁸³

ICE officials stated that ERO and ODO have not discussed differences in their inspection findings and have not addressed broader issues of why ERO and ODO inspection results differed across almost all inspections conducted at the same facilities within fiscal year 2013, or to what extent oversight mechanisms are functioning as intended. Assessing the underlying reasons why ERO and ODO inspection results may differ, and the extent to which these differences may reflect broader issues, could help ICE ensure that inspection mechanisms are working as intended and the extent to which any changes may be needed to ensure safe, secure, and humane confinement.

Conclusions

As the number of aliens in detention facilities has dramatically increased over the past decade, so too have the associated costs of maintaining and operating what is now the nation's largest civil detention system. ICE has recently taken steps to assess the primary drivers of facility costs by types of facilities while continuing to improve confinement standards and maintain a robust oversight program. However, ICE faces challenges in the extent to which it can use its financial management system—including manual work-arounds—to reliably identify and compare facility costs, a fundamental aspect of effectively estimating and controlling the cost of operations. Assessing and developing additional internal controls over the management of facility cost data could help ensure that the mechanisms ICE has in place, or is developing, to identify facility costs are accurate

⁸³[GAO/AIMD-00-21.3.1.](#)

and reliable, and provide ICE with more reliable data to effectively manage detention costs. Similarly, while we recognize that ICE faces competing priorities in determining detainee placement, developing an oversight mechanism to ensure that field offices comply with guidance to appropriately consider costs in making detainee placement decisions could help ensure that the agency is effectively managing the costs of housing detainees. Moreover, although ICE has taken steps to reduce the improper payment rate for facility contractors, taking additional steps to ensure that responsible personnel follow internal control procedures to ensure contractor payments are accurate and properly supported could provide additional assurance that ICE's detention management practices comply with relevant laws and are effectively protecting federal resources.

As it seeks to more efficiently manage facility costs, ICE is also in the process of applying more rigorous detention standards to generally larger detention facilities. Documenting the reasons why remaining facilities are not held to the new standards could provide the agency with an institutional record and enhance the transparency and accountability of the agency's process for managing detention facilities.

Finally, identifying the underlying reasons why inspections conducted by ERO and ODO for the same facilities may result in different findings could help ICE better ensure that oversight mechanisms are working as intended and inspection results are accurately reflecting facilities' compliance with relevant standards.

Recommendations for Executive Action

To enhance ICE's ability to analyze and manage detention facility costs, ensure transparency and accountability in the management of detention facilities, and strengthen the oversight mechanisms that ensure detention facilities provide safe, secure, and humane confinement, we recommend that the Director of U.S. Immigration and Customs Enforcement take the following five actions:

- assess the extent to which ICE has appropriate internal controls for tracking and managing detention facility costs and develop additional controls as necessary;
- develop an oversight mechanism to ensure that field offices comply with guidance to appropriately consider costs in making detainee placement decisions;

-
- take additional steps to help ensure that personnel responsible for reviewing and paying facility detention invoices follow internal control procedures to ensure proper payments;
 - document the reasons facilities cannot be transitioned to the most recent standards; and
 - review reasons for differences between ERO and ODO inspection results and assess the extent to which differences reflect broader issues with the inspection mechanisms themselves to help ensure the mechanisms are working as intended.

Agency Comments and Our Evaluation

We provided a draft of this report to DHS and DOJ for their review and comment. In an e-mail from DOJ's Audit Liaison on September 10, 2014, DOJ indicated that it did not have any comments on the draft report. DHS provided written comments, which are summarized below and reproduced in full in appendix V, and technical comments, which we incorporated as appropriate. DHS concurred with four of the five recommendations in the report and described actions underway or planned to address them. DHS did not concur with one recommendation in the report.

With regard to the first recommendation, that ICE assess the extent to which ICE has appropriate internal controls for tracking and managing detention facilities costs and develop additional controls as necessary, DHS concurred and stated that the ICE Office of the Chief Financial Officer developed enhanced financial coding to identify expenditures by individual detention centers and began collecting data in fiscal year 2014. DHS stated that ICE will monitor expenditures to determine proper allocation, future funding requirements, and if additional internal controls are required. DHS provided an estimated completion date of September 30, 2015. These planned actions, if fully implemented, should address the intent of the recommendation.

With regard to the second recommendation, that ICE develop an oversight mechanism to ensure that field offices comply with guidance to appropriately consider costs in making detainee placement decisions, DHS concurred and stated that ICE ERO will develop such an oversight mechanism using the Self-Inspection Program. DHS provided an estimated completion date of September 30, 2015. To the extent that the Self-Inspection Program provides ICE with oversight of field office compliance with the guidance, these planned actions, if fully implemented, should address the intent of the recommendation.

With regard to the third recommendation, that ICE take additional steps to help ensure that personnel responsible for reviewing and paying facility detention invoices follow internal control procedures to ensure proper payments, DHS concurred. DHS stated that ICE had issued a new policy applicable to all program offices and will assess if additional internal controls are required and implement any needed ones, as appropriate. DHS estimated a completion date of April 30, 2015. To the extent that ICE assesses the status and need for internal controls necessary to ensure personnel compliance with the policies to ensure proper payments, these planned actions, if fully implemented, should address the intent of the recommendation.

With regard to the fourth recommendation, that ICE document the reasons facilities cannot be transitioned to the most recent standards, DHS did not concur. DHS stated that ICE believed it had already appropriately documented the rationale for the decisions made in the course of implementing PBNDS 2011 and that additional documentation is not necessary in this regard. DHS stated that it established and followed an implementation plan for transitioning facilities to PBNDS 2011 first focusing on dedicated facilities, to be followed by non-dedicated intergovernmental service agreement facilities with an average daily population of 150 or greater and that on an ongoing basis, has been making efforts to incorporate PBNDS 2011 into facility agreements as contracting opportunities arise. DHS stated that the implementation process was labor-intensive and time-consuming, and ICE made an assessment of which facilities represent priorities for transitioning to PBNDS 2011 given the limits on agency personnel and resources, and in recognition of the fact that not all 250 facilities could be transitioned at once, or quite possibly, compelled to transition at all. DHS stated that our findings and recommendation appeared to presume PBNDS 2011 as a starting point for all detention facilities, with ICE making decisions on a case-by-case basis whether to make an exception and deviate from that norm. DHS noted that as ICE does not have the authority to unilaterally impose new detention standards upon facilities, it can only request that a facility adopt the new standards with the facility retaining the right to refuse implementation or to request additional funds as a condition of compliance.

We continue to believe that ICE should document the reasons why individual facilities cannot be transitioned to the most recent standards. In our report, we noted that ICE makes requests to facilities to adopt new standards and that facilities' adoption of new standards may involve contract negotiations between ICE and the facilities. For example, in our report, we noted that ICE has attempted to minimize the potential

increased costs associated with adopting the newer standards and that these attempts have required lengthy negotiations with facilities to arrive at cost-neutral contracts. Further, as noted in our report, ICE's implementation plan discusses priorities for transitioning facilities to the 2011 PBNDS. In its comments to our draft report, DHS discussed the reasons why some smaller (less than 150 ADP) nondedicated facilities have been transitioned to the 2011 PBNDS—these facilities were transitioned because their contracts had come up for renegotiation of the per diem rate—however, the 2011 PBNDS implementation plan did not document these reasons or why remaining facilities cannot be transitioned to the most recent standards. For example, the implementation plan for the 2011 PBNDS did not explain why some smaller facilities that were not listed in the plan were transferred to the 2011 PBNDS, while other, similar facilities not included in the plan were not transferred to the newer standards. Specifically, the plan did not discuss why the 125 individual facilities under 2000 NDS as of January 2014 were not transitioned to 2011 PBNDS. Documenting reasons why facilities cannot be transitioned to the most recent standards would help strengthen ICE oversight of facility detention standards and provide an institutional record of decisions ICE has made about why facilities are held or not held to certain standards. It would also provide more transparency and accountability to facility contractors and to the public regarding ICE management decisions that result in different standards of care for detainees across facilities.

With regard to the fifth recommendation, that ICE review reasons for differences between ERO and Office of Detention Oversight inspection results and assess the extent to which differences reflect broader issues with the inspection mechanisms to ensure the mechanisms are working as intended, DHS concurred. DHS estimated that ERO and ODO would complete such action by March 30, 2015, and stated that it was important to note that ODO must maintain independent oversight authority when conducting inspections, and that any proposed changes must be reviewed by senior ICE leadership prior to implementation, as appropriate. This planned action, if effectively implemented, should address the intent of the recommendation.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, the Attorney General of the United States, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions, please contact me at (202) 512-8777 or gablerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix VI.



Rebecca Gambler
Director
Homeland Security and Justice

List of Requesters

The Honorable Bennie G. Thompson
Ranking Member
Committee on Homeland Security
House of Representatives

The Honorable Suzan DelBene
House of Representatives

The Honorable Adam Smith
House of Representatives

The Honorable Juan Vargas
House of Representatives

Appendix I: Objectives, Scope, and Methodology

This report addresses the following three objectives:

1. How do federal costs compare across different types of immigration detention facilities, and to what extent does Immigration and Customs Enforcement (ICE) have processes to track and manage these costs?
2. To what extent do the federal standards that govern conditions of confinement vary across different types of immigration detention facilities, and what are the reasons for any differences.
3. To what extent do federal oversight and the results of that oversight vary across different types of immigration facilities?

In this report, we assessed the costs to the federal government of housing ICE detainees at different types of facilities, the federal standards that govern confinement conditions at those facilities, and ICE oversight mechanisms for ensuring compliance with these standards. The Department of Homeland Security (DHS) defines an immigration detention facility as a confinement facility operated by or affiliated with ICE that routinely holds persons for over 24 hours. However, of the 251 facilities authorized by ICE to hold detainees as of August 2013, we limited our analysis to the 166 facilities that were designated to hold detainees for 72 hours or longer because of the frequent turnover in the detainee population at short-term facilities—such as holding facilities—which temporarily house detainees waiting for ICE transfer.¹ These 166 facilities also exclude three federal prisons where ICE had detention bed space in fiscal year 2013; two of the prisons housed a few detainees and the third prison was discontinued for immigration detainees as of the end of calendar year 2013, according to Bureau of Prisons and ICE officials. We also excluded facilities for juvenile detainees—individuals under 18 years of age—because these facilities are regulated by the Department of Health and Human Services.

To determine how federal costs compare across different types of immigration detention facilities, we analyzed ICE fiscal year 2013 data, the most recent fiscal year for which data were available, related to ICE expenditures for detention facilities. These data include the Contract Financial Monitoring File (CFMF), a manual tool maintained by ICE Office of Enforcement and Removal Operations' (ERO) Operational Support

¹ICE documentation showed that 155 of these facilities held at least one detainee in fiscal year 2013, while 11 facilities did not hold any detainees during this time period.

Division to budget and track costs at individual facilities, and ICE Office of Budget and Program Performance (OBPP) fiscal year 2013 data drawn from ICE's Federal Financial Management System (FFMS). ICE OBPP uses these data to calculate ICE's average facility "bed rate"—the average cost to house one detainee for 1 day. To determine the reliability of the CFMF, we conducted data testing to look for anomalies, reviewed related documentation, and interviewed knowledgeable agency officials. We determined that these data were sufficiently reliable for our purposes, but have limitations as discussed in this report. To assess the reliability of ICE OBPP's bed rate data, we tested the data and interviewed knowledgeable agency officials. We determined that the data are not reliable for reporting on the differences in cost by facility type, as discussed in this report. To determine the reasons for possible differences in costs, we analyzed ICE documents, including an ICE-funded study of detention bed rate costs across facilities and in particular at ICE-owned service processing centers (SPC), and interviewed agency officials.² We assessed the methodology for the ICE-funded study and determined that it was reliable for our purposes. To determine the extent to which ICE has processes in place to track and manage detention facility costs, we analyzed relevant documents, including DHS annual financial reports, previous GAO reports related to DHS financial management, and ICE financial management guidance, and interviewed agency officials.³ We assessed our findings related to ICE's financial management practices against *Standards for Internal Control in the Federal Government* and ICE's 2010-2014 strategic plan.⁴ We also analyzed the extent to which ICE's average daily population (ADP) in its

²U.S. Immigration and Customs Enforcement Office of the Chief Financial Officer. *Detention Bed Space Procurement Analysis; Report on ICE Detention Sourcing*. The purpose of the study was to analyze the effectiveness of the ICE detention bed procurement process, develop a common approach to the procurement of detention beds, and recommend solutions to ICE to improve its approach. The focus of the study was on 23 facilities that housed over 52 percent of the average daily detainee population in 2012, including ICE-owned service processing centers, privately owned contract detention facilities (CDF), and government-owned facilities under dedicated intergovernmental service agreements (DIGSA).

³See GAO, *High-Risk Series: An Update*, [GAO-13-283](#) (Washington, D.C.: Feb. 2013), and *DHS Financial Management: Additional Efforts Needed to Resolve Deficiencies in Internal Controls and Financial Management Systems*, [GAO-13-561](#) (Washington, D.C.: Sept. 30, 2013).

⁴GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington D.C.: Nov. 1999).

facilities met the guaranteed minimums—the number of beds ICE pays for each day regardless of their utilization—in those facilities. We assessed ICE’s plans to develop guidance for the field related to considering cost in detainee placements against *Standards for Internal Control in the Federal Government*.⁵ We reviewed relevant laws, including the Improper Payments Information Act (IPIA) of 2002, the Improper Payments Elimination and Recovery Act (IPERA) of 2010, and the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012, as well as related Office of Management and Budget guidance.⁶ We analyzed a sample of invoices and supporting documentation submitted to ICE by detention services contractors for services provided in December 2013 to determine the extent to which these invoices met ICE’s requirements for invoice elements and supporting documentation, and were managed in accordance with *Standards for Internal Control in the Federal Government*.⁷ We selected invoices from December 2013 because, according to ICE officials, invoices from December 2013 and later should adhere to ICE’s new invoice submission and review guidance. We analyzed 31 of the 158 invoices for detention services in December 2013 that ICE had received by February 2014. The selection included invoices from a range of facility types. Results of our analysis are not generalizable beyond the sample, but they provide insight into facility invoice adherence to the new guidance. To determine the extent to which ICE has processes to track and manage detention facility costs and plans for developing guidance related to detainee placements, we also interviewed cognizant agency officials.

To assess the extent to which the federal standards that govern conditions of confinement vary across different types of immigration detention facilities and reasons for any differences, we identified ICE detention standards, including the 2000 National Detention Standards (NDS), the 2008 Performance-Based National Detention Standards (PBNDS), and the 2011 PBNDS and analyzed the extent to which ICE

⁵[GAO/AIMD-00-21.3.1](#).

⁶Pub. L. No. 107-300, 116 Stat. 2350; Pub. L. No. 111-204, 124 Stat. 2224; Pub. L. No. 112-248, 126 Stat. 2390.

⁷[GAO/AIMD-00-21.3.1](#).

applied these different standards across detention facilities.⁸ We analyzed these three sets of standards to assess the similarities and differences among the standards in terms of the number, content, and application across facilities. To identify the standards to which each facility was held, we first analyzed the standards included in 166 facility contracts and agreements in place as of August 2013, the date that ICE had provided us a list of facilities that are authorized to house detainees for over 72 hours when we began our analysis. Because ERO officials told us that facilities can be inspected to higher standards than those specified in the signed contract or agreement, we next analyzed ERO inspection data to identify the standards to which facilities were inspected in fiscal year 2013, or the most recent year inspected. If a facility was inspected to a more rigorous set of standards than those identified in its contract or ERO's facilities list, we categorized the facility by the standards to which it was inspected. Finally, we updated our analysis to incorporate facility standards updated by ERO in facility contracts or agreements as of January 2014, to capture all updates made during 2013. To determine the percentage of ICE detainees who were covered by each set of standards during fiscal year 2013, we analyzed the standards to which each facility was held against the ADP. In addition, we assessed the extent to which ICE documented its decision-making process for determining which standards to apply at which facilities in accordance with *Standards for Internal Control in the Federal Government*.⁹ Further, we analyzed 41 waivers ICE had granted to detention facilities to exempt them from certain detention standards, and which were still in effect in August 2014, when we performed the analysis. These waivers were approved from fiscal year 2012 through August 2014. We assessed these waivers to identify the specific standards for which ICE has issued waivers. We also interviewed ICE officials to determine the reasons why standards vary by facility type and ERO's plans to implement the most recent set of detention standards at facilities.

⁸ICE has a fourth set of detention standards, the 2007 Residential Standards. We excluded these standards because at the time we conducted our work, the standards applied to two facilities that housed less than 2 percent of the average daily detention population in fiscal year 2013. Because one of these facilities did not, as of January 2014, house children, for the purposes of our review, we considered this facility to be a DIGSA. The remaining over-72-hour facility held less than 1 percent of ICE's average daily detainee population during fiscal year 2013.

⁹[GAO/AIMD-00-21.3.1](#).

To assess how federal oversight compares across different types of immigration detention facilities, we identified the various oversight mechanisms ICE used at detention facilities in fiscal year 2013 and analyzed differences in their use and results. Specifically, we analyzed the extent to which ICE used (1) annual and biennial facility inspections conducted by the ERO contractor, (2) annual facility self-inspections conducted under ERO's Operational Review Self-Assessment (ORSA) process, (3) ERO's detention service manager (DSM) on-site monitoring program, and (4) Office of Detention Oversight (ODO) risk-based facility inspections at 166 ICE facilities authorized to hold detainees for over 72 hours as of August 2013. With respect to ERO's inspection program, we analyzed ERO inspection data for fiscal year 2013, the most recent fiscal year for which inspection data were available. To determine the reliability of ERO's inspection data, which are maintained in ERO's Facility Performance Management System (FPMS), we conducted data testing to identify anomalies and interviewed knowledgeable agency officials. We concluded that the FPMS data were sufficiently reliable for the purposes of this report. We interviewed cognizant agency officials regarding these mechanisms and the reasons why different oversight mechanisms were used at different facilities. We compared the percentage of fiscal year 2013 ADP in immigration detention facilities by facility type and oversight mechanisms used at facilities to determine what percentage of detainees are housed in facilities at which ICE uses the various oversight mechanisms. To determine the extent to which the results of oversight mechanisms vary, we compared the results of ICE ERO's annual inspections and ICE ODO inspection results for the 35 facilities that received both an ERO and ODO inspection in fiscal year 2013. Specifically, we compared ERO and ODO inspection results across the 35 facilities to determine differences in the overall number of deficiencies identified by each office. We also compared ERO and ODO facility inspection results for selected facilities across three standards that ICE has identified as high priority—medical care, special management unit, and use of force—to illustrate differences between ERO and ODO inspections of the same facilities. We also interviewed ICE ERO and ODO agency officials regarding the reasons for any differences in results between the two oversight mechanisms. We assessed the extent to which ICE addressed the differences in the results of the two oversight mechanisms and communicated these differences to management and

others within the agency in accordance with *Standards for Internal Control in the Federal Government*.¹⁰

We conducted this performance audit from March 2013 to October 2014, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹⁰[GAO/AIMD-00-21.3.1.](#)

Appendix II: Comparison of U.S. Immigration and Customs Enforcement (ICE) Detention Standards

U.S. Immigration and Customs Enforcement primarily uses three sets of national detention standards with varying requirements to govern the conditions of confinement in its detention facilities—the 2000 National Detention Standards (NDS), the 2008 Performance-Based National Detention Standards (PBNDS), and the 2011 PBNDS.¹ The 2000 NDS contains 38 standards related to aspects of detainee care and services and facility operation, while the 2008 PBNDS contains 41 standards, and the 2011 PBNDS contains 42 standards, as shown in table 4.

Table 4: Comparison of U.S. Immigration and Customs Enforcement (ICE) Detention Standards

Detention standards category and subcategory	2000 National Detention Standards (NDS)	2008 Performance-Based National Detention Standards (PBNDS)	2011 PBNDS
Safety			
Emergency plans	•	•	•
Environmental health and safety	•	•	•
Transportation by land	•	•	•
Security			
Admission and release	•	•	•
Custody classification system ^a	•	•	•
Contraband	•	•	•
Facility security and control ^b	•	•	•
Funds and personal property	•	•	•
Hold room in detention facilities	•	•	•
Key and lock control	•	•	•
Population counts	•	•	•
Post orders	•	•	•
Searches of detainees	○	•	•
Sexual abuse and assault prevention and intervention	○	•	•
Special management units ^c	•	•	•
Staff-detainee communications	•	•	•

¹A fourth set of detention standards—the 2007 Family Residential Standards—pertains to facilities that house children and their families, and exclusively house ICE detainees. The Family Residential Standards are based on ICE analysis of family detention operations and state statutes that affect children. Less than 2 percent of ICE’s average daily detention population was held in residential facilities in fiscal year 2013.

**Appendix II: Comparison of U.S. Immigration
and Customs Enforcement (ICE) Detention
Standards**

Detention standards category and subcategory	2000 National Detention Standards (NDS)	2008 Performance-Based National Detention Standards (PBNDS)	2011 PBNDS
Tool control	●	●	●
Use of force and restraints ^d	●	●	●
Order			
Disciplinary system ^e	●	●	●
Care			
Food service	●	●	●
Hunger strikes	●	●	●
Medical care	●	●	●
Medical care for women	○	○	●
Personal hygiene	○	●	●
Significant self-harm and suicide prevention and intervention	●	●	●
Terminal illness, advance directives, and death	●	●	●
Activities			
Correspondence and other mail	●	●	●
Trips for nonmedical emergencies	●	●	●
Marriage requests	●	●	●
Recreation	●	●	●
Religious practices	●	●	●
Telephone access	●	●	●
Visitation	●	●	●
Voluntary work program	●	●	●
Issuance and exchange of clothing, bedding, and towels	●	○	○
Justice			
Detainee handbook	●	●	●
Grievance system	●	●	●
Law libraries and legal material ^f	●	●	●
Legal rights group presentations	●	●	●
Administration and management			
Detention files	●	●	●
Interviews and tours ^g	○	●	●
Staff training	○	●	●
Detainee transfers	●	●	●

Legend: ● = applicable standard ○ = standard not applicable

Source: GAO analysis of ICE data. | GAO-15-153

**Appendix II: Comparison of U.S. Immigration
and Customs Enforcement (ICE) Detention
Standards**

Notes: The 2000 NDS groups standards under four categories—Detainee Services, Security and Control, Health Services, and Terminology. For the purposes of comparison, we present the NDS standards using the seven categories published in the 2008 and 2011 PBNDS.

^aIn the 2000 NDS, Custody Classification system is referred to as Detainee Classification System.

^bIn the 2000 NDS, the Facility Security and Control standard is referred to as Security Inspections.

^cIn the 2000 NDS, this standard consists of two separate standards—the Unit for Administrative Segregation and the Unit for Disciplinary Segregation.

^dIn the 2000 NDS, this standard is referred to as Use of Force.

^eIn the 2000 NDS, this standard is referred to as Disciplinary Policy.

^fIn the 2000 NDS, this standard is referred to as Access to Legal Material.

^gIn the 2008 PBNDS, this standard is referred to as News Media Interview and Tours.

Appendix III: Example of an Italicized Requirement

In addition to the procedures that all detention facilities are expected to meet, U.S. Immigration and Customs Enforcement (ICE) detention standards can require specific types of facilities to conform to more detailed procedures; however, all sets of standards identify these detailed procedures in italicized text (referred to as “italicized requirements”). ICE’s 2000 National Detention Standards (NDS) and the 2008 Performance-Based National Detention Standards (PBNDS) require service processing centers (SPC) and contract detention facilities (CDF) to conform to the more detailed procedures; facilities operating under a nondedicated intergovernmental service agreement (IGSA), however, may either conform to the italicized procedures or adopt, adapt, or establish alternative procedures. The 2011 PBNDS require all dedicated facilities—SPCs, CDFs, and those dedicated facilities operating under an intergovernmental service agreement (DIGSA)—to conform to the more detailed procedures; nondedicated IGSA may choose to conform to or adopt alternative procedures. According to ICE, the italicized procedures are intended to make conditions of confinement more uniform at facilities where only ICE detainees are housed. Table 5 presents an example of an italicized procedure from the 2011 PBNDS. For a complete list of 2011 PBNDS italicized procedures, go to <http://www.ice.gov/detention-standards/2011/>.

Table 5: Example of an Italicized Procedure in the 2011 Performance-Based National Detention Standards (PBNDS)

Contraband

C. Destruction of Contraband

Expected practices (All facility types)	Italicized requirement (Dedicated facilities)
<ul style="list-style-type: none"> The facility administrator shall establish a procedure for the destruction of contraband items. 	<ul style="list-style-type: none"> <i>Contraband may be destroyed when no longer needed for disciplinary action or criminal prosecution. It may also be kept for official use, such as use as a training tool, if secured in the facility armory when not in use.</i> <ol style="list-style-type: none"> <i>The Chief of Security, or equivalent, shall determine whether an item shall be destroyed.</i> <i>The Chief of Security shall send the facility administrator a memorandum, through official channels, describing what is to be destroyed and the rationale for destruction.</i> <i>The facility administrator shall require that an item of questionable ownership be held for 120 days before its destruction can be considered, to afford the detainee ample opportunity to obtain proof of ownership and appeal the decision in accordance with standard “6.2 Grievance System.”</i> <i>Where disciplinary action is appropriate, the facility administrator shall defer his/her decision about the property until the disciplinary case, including any appeals, is resolved.</i> <i>The officer who physically destroys the property and at least one official observer shall attest, in writing, to having witnessed the property’s destruction.</i> <i>A copy of the property disposal record shall be given to the detainee, and another copy shall be placed in the detainee’s detention file.</i>

Source: 2011 PBNDS. | GAO-15-153

Appendix IV: Example of an Optimal Provision in U.S. Immigration and Customs Enforcement's (ICE) 2011 Performance-Based Detention Standards (PBNDS)

In the 2011 PBNDS, ICE introduced the concept of optimal provisions—nonmandatory provisions that facilities may choose to implement, but are not required.¹ According to ICE, implementation of these provisions furthers the effective operation of a facility at the level intended under the revised 2011 PBNDS.² ICE reports that these optimal provisions allow for a range of compliance across its diverse facilities, which facilitates the immediate implementation of the revised standards—at minimal cost—while ICE continues to lay the groundwork for future reform of the detention system. Table 6 provides an example of an optimal provision in the 2011 PBNDS. For a complete listing of all optimal provisions in the 2011 PBNDS, go to <http://www.ice.gov/detention-standards/2011/>.

¹According to ICE officials, when a facility adopts one or more optimal standards, the standards are documented in the facility's contract with ICE and the facility is contractually bound to meet the optimal provisions in ICE's inspection of the facility.

²Not all standards in the 2011 PBNDS contain optimal provisions. Of the 42 standards in the 2011 PBNDS, the following 10 standards also include optimal provisions: Admission and Release; Special Management Units; Use of Force and Restraints; Medical Care; Medical Care (Women); Significant Self-harm and Suicide Prevention and Intervention; Terminal Illness, Advance Directives, and Death; Recreation; Telephone Access; and Law Libraries and Legal Material.

**Appendix IV: Example of an Optimal Provision
in U.S. Immigration and Customs
Enforcement's (ICE) 2011 Performance-Based
Detention Standards (PBNDs)**

Table 6: Example of an Optimal Procedure in the 2011 Performance-Based National Detention Standards (PBNDs)

Recreation standard

B. Recreation schedule

Expected practices	Optimal requirement
<ul style="list-style-type: none"> If outdoor recreation is available, all general detention detainees shall have access for at least one hour, seven days a week, at a reasonable time of day, weather permitting. 	<ul style="list-style-type: none"> <i>General population detainees shall have access at least four hours a day, seven days a week to outdoor recreation, weather and scheduling permitted. Daily indoor recreation shall also be available. During inclement weather detainees shall have access to indoor recreational opportunities, with access to natural light.</i>
<ul style="list-style-type: none"> Detainees shall have access to clothing appropriate for weather conditions. 	
<ul style="list-style-type: none"> If only indoor recreation is available, each general population detainee shall have access for no less than one hour, seven days a week and shall have access to natural light. 	
<ul style="list-style-type: none"> Recreation schedules shall be provided to detainees or posted in the facility. 	
<ul style="list-style-type: none"> Under no circumstances shall the facility require detainees to forgo basic law library privileges for recreation privileges. 	

Source: 2011 PBNDs. | GAO-15-153

Appendix V: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

September 23, 2014

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-15-153, "IMMIGRATION DETENTION: Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards"

Dear Ms. Gambler:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO's) work in planning and conducting its review and issuing this report.

DHS is committed to managing the costs of detainees as effectively as possible and placing detainees at facilities that meet current standards. Many of the issues highlighted in this report have been previously recognized, and actions have been taken, are ongoing, or planned to address them. For example, starting in Fiscal Year (FY) 2014, Immigration and Customs Enforcement (ICE) enhanced its ability to recognize costs incurred by individual detention facilities and strengthened its controls over the detention payment process.

ICE has also made significant progress in implementing its new detention standards, which include enhanced safeguards and guarantee improved conditions of confinement. As discussed below, ICE's most recent set of detention standards – the 2011 Performance Based National Detention Standards (PBNDS 2011) – currently applies to facilities housing approximately 60 percent of ICE's average detainee population (ADP), including all dedicated facilities (i.e., those housing exclusively ICE detainees). Of particular note, implementation of PBNDS 2011 at dedicated facilities was accomplished at no cost to the government.

The draft report contained four recommendations with which the Department concurs and one with which it non-concurs. Specifically, GAO recommended that the Director of ICE:

Recommendation 1: Assess the extent to which ICE has appropriate internal controls for tracking and managing detention facilities costs and develop additional controls as necessary.

Response: Concur. The ICE Office of the Chief Financial Officer (OCFO) developed enhanced financial coding to identify expenditures by individual detention centers and began collecting data in FY 2014. ICE will monitor expenditures to determine proper allocation, future funding requirements, and if additional internal controls are required. Estimated Completion Date (ECD): September 30, 2015.

Recommendation 2: Develop an oversight mechanism to ensure that field offices comply with guidance to appropriately consider costs in making detainee placement decisions.

Response: Concur. The ICE Enforcement and Removal Office (ERO) will develop an oversight mechanism to ensure that field offices comply with guidance to appropriately consider costs in making detainee placement decisions using the Self Inspection Program. ECD: September 30, 2015.

Recommendation 3: Take additional steps to help ensure that personnel responsible for reviewing and paying facility detention invoices follow internal control procedures to ensure proper payments.

Response: Concur. In July 2014, ICE OCFO issued a new “Receipt & Acceptance” policy applicable to all program offices, including ERO. ICE will assess if additional internal controls are required and implement any needed ones, as appropriate. ECD: April 30, 2015.

Recommendation 4: Document the reasons facilities cannot be transitioned to the most recent standards.

Response: Non-concur. ICE is committed to appropriately documenting its decisions and believes that it has already appropriately documented the rationale for the decisions made in the course of implementing PBNDS 2011. ICE does not believe additional documentation is necessary in this regard.

ICE’s most recent set of detention standards – PBNDS 2011 – currently applies to facilities housing approximately 60 percent of ICE’s ADP, including all dedicated facilities. ICE implemented these standards through a methodical and predetermined plan, which was documented and disseminated throughout the agency, and outlined in public testimony before Congress.¹ All decisions ICE has made in the course of implementing PBNDS 2011 have been fully consistent with this plan.

Under the implementation plan, dedicated facilities were the first to be requested to implement the revised standards; ICE will now be turning to a second category of detention facilities where PBNDS 2011 implementation will likely be more difficult: non-dedicated Intergovernmental Service Agreement (IGSA) facilities with an ADP of 150 or greater. On an ongoing basis, ICE has been making efforts to incorporate PBNDS 2011 into facility agreements as contracting opportunities arise (in particular, whenever an IGSA requests renegotiation of its contract to increase its per diem rate).

GAO’s findings and recommendation appear to presume PBNDS 2011 as a starting point for all detention facilities, with ICE making decisions on a case-by-case basis whether to make an exception and deviate from that norm. In fact, ICE does not have the authority to unilaterally impose new detention standards upon facilities; it can only request that a facility adopt the new standards, but the facility retains the right to refuse implementation or to request additional funds as a condition of compliance. As the draft report notes, the implementation process, even for the

¹U.S. House, Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, “Holiday on ICE: The U.S. Department of Homeland Security’s New Immigration Standards,” Hearing, March 28, 2012 (Serial No. 112-104) Washington, Government Printing Office, 2012.

22 dedicated facilities, was labor-intensive and time consuming; this was because contractors submitted extensive detailed questions about the new standards, followed by “Requests for Equitable Adjustment” requesting increases in per diem rates as a condition of adopting the new standards. Through a rigorous process of vetting and demanding justification for each claimed cost, ICE determined that the vast bulk of these requests were unfounded or unjustified. ICE was accordingly able to implement the standards at zero cost at each of these facilities, ultimately saving the agency more than \$4 million in claimed annual costs.

ICE made an assessment of which facilities represent priorities for transitioning to PBNDS 2011 given the limits on agency personnel and resources, and in recognition of the fact that not all 250 facilities could be transitioned at once (or, quite possibly, compelled to transition at all). The characteristics that weigh in favor of priority attention being given to dedicated facilities were straightforward. Initial focus was placed on dedicated facilities because they housed the largest populations of ICE detainees, where improved standards would affect the greatest numbers of detainees, and because costs could be better distributed across the detained population. Similarly, in the next round of implementation requests, ICE will be focusing on non-dedicated facilities where adoption of standards will be easier to achieve – those with larger populations of ICE detainees. Consistent with the implementation plan, PBNDS 2011 has only been implemented at non-dedicated facilities with smaller ADPs (below 150) in those cases where ICE has negotiated an increased per diem in response to a request from an IGSA.

ICE requests that GAO consider this recommendation resolved and closed.

Recommendation 5: Review reasons for differences between ERO and ODO [Office of Detention Oversight] inspection results and assess the extent to which differences reflect broader issues with the inspection mechanisms themselves to help ensure the mechanisms are working as intended.

Response: Concur. ERO and ODO will review and assess whether any differences to the inspection mechanisms need to be evaluated to ensure the mechanisms are working as intended. It is important to note – when considering any potential changes – that ODO, as part of the Office of Professional Responsibility, must maintain its independent oversight authority when conducting facility inspections and any proposed changes must be reviewed by senior ICE leadership prior to implementation, as appropriate. ECD: March 30, 2015.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



John H. Crumpacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the contact named above, Lacinda Ayers (Assistant Director), Pedro A. Almoguera, Carla D. Brown, Frances A. Cook, Michele Fejfar, Allyson R. Goldstein, Barbara A. Guffy, Melissa Hargy, Paul D. Kinney, Amanda K. Miller, Jessica S. Orr, James J. Ungvarsky, John Warner, and Eric M. Warren made significant contributions to this report.

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