



# **THE UNITED STATES MARSHALS SERVICE'S COOPERATIVE AGREEMENT PROGRAM**

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

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# THE UNITED STATES MARSHALS SERVICE'S COOPERATIVE AGREEMENT PROGRAM

## EXECUTIVE SUMMARY

The United States Marshals Service (USMS) is responsible for the custody and transportation of detainees awaiting trial in federal courts. Most of the 49,000 USMS detainees in custody daily are held in state, local, and private jail facilities. One of the Department of Justice's strategic goals is to ensure the fair and efficient operation of the federal justice system. The Department seeks to achieve this goal in part by providing for the safe, secure, and humane confinement of detained persons awaiting trial and sentencing through a multi-pronged approach using:

- Cooperative Agreement Program (CAP) agreements with state and local jails, where capital investment funding is provided in exchange for guaranteed bed space;
- Intergovernmental Service Agreements (IGAs) with state and local jails, where a daily rate is paid to the jails to house detainees;
- private jail facilities, where a daily rate is paid to house detainees; and
- federal detention facilities, where the government pays for construction and operation of the facilities.

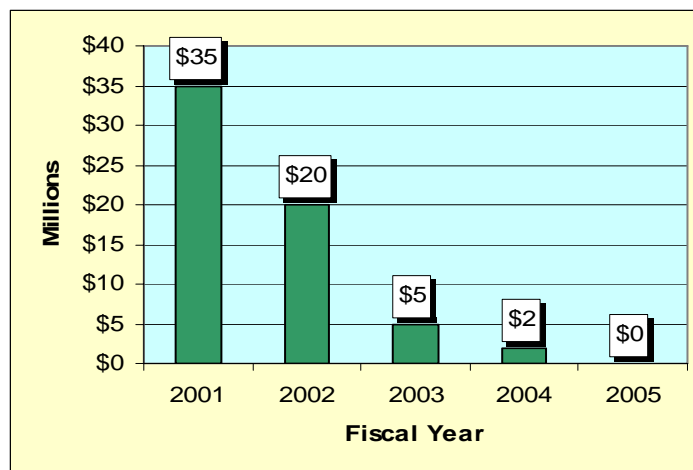
Detention and incarceration is a top management challenge in the Department of Justice in part because of the current overcrowding rate in federal prisons. Overcrowding in federal prisons also limits the option of using federal prisons to house USMS detainees. In addition, the USMS is reluctant to use private jail facilities because the jails usually require a minimum number of detainees to be housed. Consequently, the USMS primarily has used IGAs and CAP agreements to meet its needs for detention space.

In locations where detention space is scarce, the USMS negotiates with state and local governments to provide an agreed-upon amount of CAP funds to improve local jail facilities or expand jail capacities. In return, the state and local governments guarantee the USMS an agreed-upon number of bed spaces for a specified number of years. Use of the bed space also requires an IGA between the USMS and the facility. When the USMS uses the bed space guaranteed by the CAP, it pays a jail day rate to the facility

for each detainee negotiated through the IGA. The jail day rate is based on the annual operating cost of the facility and can be periodically modified.

For many years, CAP agreements have been a significant tool used by the USMS to guarantee detention space in court cities where detention space is scarce.<sup>1</sup> Since 1982, the USMS has awarded about \$285 million to counties and municipalities under CAP agreements, resulting in more than 13,600 guaranteed spaces for federal detainees. However, in recent years Congress steadily reduced the appropriation for the CAP program and eliminated funding for the program altogether for Fiscal Year (FY) 2005.

**CAP Funds Appropriated<sup>2</sup>  
FY 2001 – FY 2005**



Source: Office of Justice Programs Appropriations

Our audit focused on whether the USMS has developed adequate plans, in the absence of CAP funding, to secure jail space in cities where CAP agreements will expire during the next three fiscal years, and where jail space is scarce but no CAP agreements exist.

While bed spaces guaranteed by CAP agreements are decreasing and CAP funding was eliminated in FY 2005, the USMS's average daily detainee

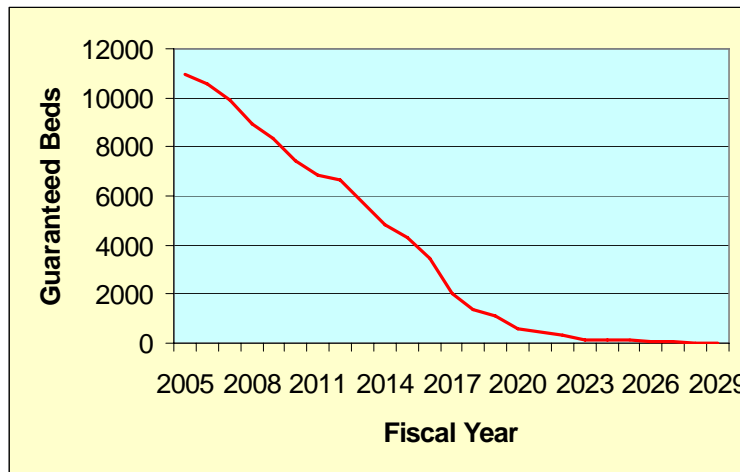
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<sup>1</sup> Court cities are the cities throughout the United States where the Federal courts are located and to which the USMS must transport detainees.

<sup>2</sup> The CAP funding is appropriated annually in the Office of Justice Programs approved budget and the funds are transferred to the USMS for management and execution of the CAP program. The CAP funds appropriated for FY 2001 through FY 2003 included funds for both the USMS and Immigration and Naturalization Service (INS) CAP agreements. The INS was transferred from the Department of Justice to the Department of Homeland Security in March 2003. The CAP funds appropriated after FY 2003 are for USMS CAP agreements only.

population increased by about 34 percent from FY 2001 to FY 2004. As of FY 2005, the USMS has active CAP agreements that guarantee 11,203 bed spaces that will expire between 2005 and 2029. Thirty-one CAP agreements, guaranteeing 1,318 bed spaces annually, will expire during the remainder of FY 2005 through FY 2007. The remaining 149 active CAP agreements, guaranteeing 9,885 bed spaces annually, will expire from FY 2008 through FY 2029. The following chart illustrates the loss of the 11,203 beds guaranteed through CAP funding as of January 13, 2005, if CAP funds are not restored in future appropriations.

**Declining Number of Guaranteed Beds from Expiring CAP Agreements (FY 2005 - FY 2029)**



Source: USMS CAP Agreement Files

In addition, the USMS has identified 47 court cities where detention space is a serious or emergency problem but, because CAP funding has been eliminated, funds are not available to award CAP agreements. The USMS identified 41 of the 47 court cities as having a serious problem and the remaining 6 court cities as having an emergency problem. In court cities with an emergency situation, the USMS District offices must transport detainees to out-of-district facilities from 40 to 400 miles from the court city. One District reported that it is transporting detainees to 15 different jails in 5 different states.

The USMS has continued to secure detention space through traditional means such as the use of IGAs, private jail contracts, and Federal Bureau of Prisons (BOP) facilities. However, it is questionable whether the USMS will be able to meet detention space needs through these traditional means once CAP funding expires. USMS officials told us that finding detention space across the country will not be a problem but finding bed space in close proximity to the court cities where bed space is needed will be a problem. The officials said that they plan to use traditional methods for securing jail

space, such as negotiating IGA agreements with state and local governments and private jail contractors, and housing detainees at BOP facilities. However, the USMS's plans were only verbally expressed and the USMS provided no evidence to show that it had performed research or analyses to determine: 1) whether state and local governments with expiring CAP agreements would continue housing prisoners, and at what cost, through IGAs in the absence of CAP funds; and 2) alternate locations, where detainees could be housed, and at what cost, if current CAP sites decide to discontinue housing USMS detainees when CAP funding ends. Because the USMS had not thoroughly researched and addressed these issues, we concluded that the USMS cannot assure that adequate detention space, at a reasonable cost, will be available to meet the USMS's detention space needs as existing CAP agreements expire.

In addition, in evaluating the CAP funding appropriated for FY 2001 through FY 2005, we determined that the USMS could not document what happened to part of the funds appropriated for the INS. At the beginning of FY 2004, the USMS had a balance of \$10,339,540 that had been appropriated for the INS CAP agreements. The USMS provided documentation to show that Congress rescinded \$9,600,000 because the INS had been transferred to the Department of Homeland Security, leaving a balance of \$739,540. We inquired of USMS and Office of the Federal Detention Trustee (OFDT) officials as to what happened with the remaining \$739,540, but neither could provide an explanation.<sup>3</sup>

We also determined that based on the USMS's documentation, the USMS's available balance for CAP agreements at the end of FY 2004 was \$2,441,848. However, documentation provided by the OFDT showed the balance should be \$2,191,269, a difference of \$250,579. Similarly, we asked USMS and OFDT officials to explain the difference, but neither could.

In this report, we recommend that the USMS develop specific plans for securing detention space absent CAP funding. We also recommend that the USMS address the:

- \$739,540 in CAP funds provided for INS CAP agreements that was not rescinded by Congress, and
- \$250,579 difference between the available balance for CAP agreements at the end of FY 2004 based on the USMS's records

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<sup>3</sup> The OFDT was created in FY 2001 to centralize the detention functions within the Department of Justice.

(\$2,441,848) and the available balance for CAP agreements at the end of FY 2004 based on documentation provided by OFDT (\$2,191,269).

## TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	1
Background.....	1
Budget Responsibilities for the CAP.....	3
Funding History for the CAP.....	4
Prior Audit Reports.....	5
Audit Approach.....	8
<b>FINDINGS AND RECOMMENDATIONS</b> .....	9
<b>1. THE USMS HAS NOT MADE ADEQUATE PLANS TO SECURE DETENTION SPACE IN THE ABSENCE OF CAP FUNDING</b> .....	9
CAP Funding Reductions .....	9
Detainee Increases .....	11
Agreement Expiration and Detention Problems.....	12
Plans to Secure Detention Space Without CAP Agreements.....	16
Conclusion.....	17
Recommendation.....	18
<b>2. THE USMS AND THE OFDT COULD NOT RECONCILE THE BALANCE OF CAP FUNDS AVAILABLE FOR EXPENDITURE</b> .....	19
Funding Discrepancies.....	19
Recommendations .....	21
<b>STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS</b> .....	22
<b>STATEMENT ON INTERNAL CONTROLS</b> .....	23
<b>ACRONYMS</b> .....	24
<b>APPENDIX I – AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY</b> ...	25
<b>APPENDIX II – SCHEDULE OF DOLLAR-RELATED FINDINGS</b> .....	28
<b>APPENDIX III – EXAMPLES OF FY 2004 DISTRICT DETENTION STATUS SURVEYS</b> .....	29
<b>APPENDIX IV – CAP AGREEMENTS EXPIRING FROM FY 2005 THROUGH FY 2007</b> .....	32
<b>APPENDIX V – CAP AGREEMENTS EXPIRING AFTER FY 2007</b> .....	34

**APPENDIX VI – USMS’S RESPONSE TO THE DRAFT REPORT ..... 42**

**APPENDIX VII – OFDT’S RESPONSE TO THE DRAFT REPORT ..... 45**

**APPENDIX VIII – OFFICE OF THE INSPECTOR GENERAL ANALYSIS  
AND SUMMARY OF ACTIONS NEEDED TO CLOSE  
THE REPORT ..... 47**



# INTRODUCTION

## Background

A strategic objective of the Department of Justice (Department) is to provide for the safe, secure, and humane confinement of detained persons awaiting trial and sentencing. One of the Department's strategies to achieve this objective is to acquire needed detention capacity through a multi-pronged approach that includes agreements with state and local governments, contracts with private vendors, construction and operation of federal detention facilities, and the use of alternatives to detention. In November 2004, the Office of the Inspector General (OIG) included detention and incarceration as a top Department management challenge because of the current overcrowding rate in federal prisons and problems noted in our audits and reviews relating to medical contracting costs.

The United States Marshals Service (USMS) assumes custody of individuals arrested by federal agencies and houses and transports detainees. Each day, the USMS houses about 49,000 detainees in federal, state, local, and private jails throughout the nation. Bed space for housing detainees are provided through:

- Cooperative Agreement Program (CAP) agreements with state and local jails, where the Department provides capital investment funding in exchange for guaranteed bed space;
- Intergovernmental Service Agreements (IGAs) with state and local jails, where the Department pays a daily rate to the jails;
- private jail facilities, where the Department pays a daily rate to house detainees; and
- federal detention facilities, where the Department pays for construction and operation of the facilities.

Overcrowding in federal prisons limits the option of using federal prisons to house USMS detainees. In addition, the USMS is also reluctant to use private jail facilities because the jails usually require a minimum number of detainees to be housed at the facilities. Consequently, the USMS primarily has used IGAs and CAP agreements to meet its need for detention space.

The USMS contracts with about 1,300 state and local governments for jail space. Seventy-five percent of the detainees in the USMS's custody are detained in state, local, and private jail facilities.

In locations where detention space is scarce, the USMS provides state and local governments with funds from the Cooperative Agreement Program (CAP) to improve local jail facilities or to expand jail capacities. In return, the state and local governments guarantee the USMS space for Federal detainees for an agreed-upon number of years.<sup>4</sup> Use of the bed space also requires an IGA between the USMS and the facility. When the USMS uses the bed space guaranteed by the CAP, it pays a jail day rate to the facility for each detainee as negotiated through the IGA. The jail day rate is based on the annual operating cost of the facility and can be periodically modified.

The USMS has internal guidelines to determine if a CAP agreement is needed to secure detention space in areas where detention space is scarce. According to the USMS CAP Training Manual, prior to awarding a CAP agreement the USMS's Prisoner Services Division should consider: 1) the results of annual detention status surveys completed by USMS District offices for each court city, 2) whether a reported shortfall in the number of required detention bed spaces is continuous and is not based on a temporary increase in the detainee population, 3) if there is a more economical way to meet the detention need in the local court city, 4) whether existing Bureau of Prisons (BOP) facilities located within a reasonable distance have space for USMS detainees and are being fully utilized, 5) whether any detention facilities within a reasonable distance could be utilized by participating in an Intergovernmental Agreement (IGA) or by expanding an existing IGA, and 6) if existing CAP agreements in the District can be expanded or extended to meet bed space needs.<sup>5</sup>

The USMS Prisoner Services Division annually reviews CAP agreements that are about to expire and determines the need for expanding or continuing the agreements. To aid in this review, the Prisoner Services Division obtains an annual survey from each USMS District office for each of the 280 federal court cities in the United States. Appendix III of this report contains examples of FY 2004 federal court city surveys. The Appendix

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<sup>4</sup> Congress mandated that any CAP agreement with a cost per bed space that exceeds \$25,000 must remain in effect for no less than 15 years.

<sup>5</sup> An IGA is a formal written agreement between the USMS and a state or local government to house federal detainees at a fixed per diem rate based on actual and allowable costs for the same level of service provided to state or local prisoners in a specific facility.

contains three examples, one each for the reported Detention Status categories of "no problem," "serious," and "emergency."<sup>6</sup> Before determining if a CAP agreement is needed, the U.S. Marshal in a particular district must coordinate with the BOP to ensure that existing BOP facilities located within a reasonable distance from the federal court city in question that have space specifically dedicated to house USMS detainees are being fully utilized.<sup>7</sup> Use of BOP space takes priority because this space is provided at no cost to the USMS. If there is no BOP space available, the District must identify all facilities within a reasonable distance to the court city that may be interested in entering into an IGA with the USMS. According to USMS guidelines, new cooperative agreements should be considered as a solution only when IGA participation and existing cooperative agreements are not viable options to adequately meet detention bed space needs.

As of January 13, 2005, the USMS was managing 180 active CAP agreements totaling about \$208 million and guaranteeing 11,203 bed spaces.

### **Budget Responsibilities for the CAP**

While the USMS has primary responsibility for implementing the CAP within the Department of Justice, the budget responsibilities for the CAP involve multiple agencies. CAP funding, if provided by Congress, is contained each year in the Office of Justice Programs (OJP) appropriation. However, OJP has no responsibility for implementing the CAP. Prior to FY 2003, OJP transferred the CAP funding to the USMS for implementation of the program. Beginning in FY 2003, OJP transferred the CAP funding to the Office of the Federal Detention Trustee (OFDT), which then transferred the

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<sup>6</sup> Prisoner Services Division staff told us that they assume there is no problem if a District does not complete a survey for a court city. Besides reporting the Detention Status for each court city, the Districts are requested to describe other initiatives that might affect local jail population and thus bed space needs, such as current drug, gun, immigration, and violent crime initiatives. The Districts are also asked to identify local facilities with jail construction or renovation plans, and additional local jails with available beds, that could house detainees for Districts experiencing emergency bed space shortages.

<sup>7</sup> The USMS defines reasonable distance as a drive of one hour or less each way from the court city to the detention facility, taking into consideration factors such as typical weather conditions, road conditions, traffic, and geography.

CAP funding to the USMS.<sup>8</sup> Before FY 2004, the CAP budget was processed as follows.

- The USMS submitted its request for CAP funding through OJP to the Department of Justice's Justice Management Division (JMD).
- JMD analyzed the USMS's CAP funding request and made recommendations to accept, increase, or decrease the USMS's request. The revised CAP funding request was then included in the Department of Justice's budget submission to the Office of Management and Budget (OMB).
- The OMB reviewed the CAP funding request and made recommendations to accept, increase, or decrease the request. The revised CAP funding request was then included in the President's budget request to Congress.
- Congress debated the President's budget request and made appropriations, which may or may not have included funds for the CAP.

Initial budget estimates are submitted about 18 months before the start of the fiscal year and therefore the FY 2004 budget initially was compiled in the spring of 2002. Until the spring of 2003, the USMS had been responsible for preparing the budget for its detention activities. At that time, the OFDT took over the detention budget planning function by preparing the FY 2005 budget request and making recommendations regarding the CAP funding request before it was submitted to JMD.

### **Funding History for the CAP**

The Attorney General is authorized to make payments from funds appropriated for the support of United States detainees by entering into contracts or cooperative agreements with any state, territory, or political subdivision thereof for the necessary construction, physical renovation, acquisition of equipment, supplies, or materials required to establish

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<sup>8</sup> In FY 2001, Congress approved the Department of Justice's request to establish the OFDT. Historically, the confinement of persons in federal custody awaiting trial or immigration proceedings was the responsibility of the USMS and the former Immigration and Naturalization Service (INS). The detention activities of the former INS were transferred to the new Bureau of Immigration and Customs Enforcement when the Department of Homeland Security (DHS) was created in March 2003.

acceptable conditions of confinement and detention services.<sup>9</sup> In return, the state or local jurisdiction must agree to provide guaranteed bed space for federal detainees within its correctional system.

Since 1982, the USMS has awarded about \$285 million to state and local jurisdictions under CAP agreements that have provided more than 13,600 guaranteed spaces for federal detainees. However, in recent years, Congress reduced the appropriation for the program from \$35 million in FY 2001 to no appropriation in FY 2005, as shown in the following table.

**Budget Requests and Approvals  
FY 2001 through FY 2006  
(In Millions)**

Organization	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
<b>USMS Request</b>	\$167	\$45	\$35	\$46	\$2	\$52
<b>OFDT Recommendation</b>	N/A	N/A	N/A	N/A	N/A <sup>10</sup>	\$20
<b>JMD Recommendation</b>	\$35	\$60	\$5	\$5	\$2	\$2
<b>OMB Recommendation</b>	\$35	\$35	\$0	\$0	\$0	\$0
<b>Congressional Appropriation</b>	\$35	\$20	\$5	\$2	\$0	Not Enacted

Source: USMS Prisoner Services Division, OFDT, JMD, Appropriations as Enacted

As explained in detail in the first finding of this report, for FY 2005 neither the Department nor OMB requested an increase above the \$2 million CAP appropriation for FY 2004. For reasons not specified in its accompanying report, Congress provided no appropriation for the CAP in FY 2005.

**Prior Audit Reports**

The OIG previously audited the USMS CAP and, in a March 1992 report, we found that the USMS did not:

- consistently apply criteria for proposed CAP projects and thus did not have adequate assurance that CAP funds were disbursed only where needed;

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<sup>9</sup> The funding authority regarding cooperative agreements for detention services is contained in Title 18, United States Code, Section 4013.

<sup>10</sup> Beginning in FY 2005, the USMS submitted its budget requests through the OFDT. However, the OFDT did not make a funding recommendation for the CAP in FY 2005.

- have a satisfactory system for forecasting its prisoner workload and detention space requirements;
- obtain guarantees of jail space of sufficient duration when it awarded CAP funds for construction, expansion, or renovation of buildings;
- adhere to its policy of mandating periodic reports from both the local USMS Districts and the recipients of awards; and
- always enforce the terms of the CAP agreements by recouping funds from jurisdictions which failed to honor the agreements.<sup>11</sup>

In response to our 1992 report, the USMS stated that it had:

- established an enhanced review process to identify and prioritize CAP projects;
- continued efforts to obtain longer guarantees for CAP projects that fund construction, expansion, or renovation of buildings;
- worked with the BOP, INS, and other members of the Department's Detention Planning Committee to develop projections for detention requirements from FYs 1993 through 1997;
- modified the USMS's Prisoner Population Management System to capture the daily prisoner population totals to obtain an actual average daily prisoner population each month;
- took steps to hold U.S. Marshals accountable for progress report submissions; and
- reached agreement with three jails that had not complied with the CAP agreement terms by increasing the number of USMS detainees that the jails would house each year.

In September 1992, the General Accounting Office (GAO) reported that OMB staff believed CAP bed space was less economical than BOP bed

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<sup>11</sup> Office of the Inspector General Audit Report number 92-8, "United States Marshals Service Cooperative Agreement Program," March 1992.

space and that OMB staff preferred to fund more permanent BOP jails.<sup>12</sup> However, the GAO report indicated that CAP bed space is cost effective and fills needs the BOP cannot meet. The GAO also reported that the BOP believed it was not cost-effective to build jails with capacities of less than 500 beds. The GAO recommended that the Director of the OMB reexamine the OMB's concerns about the cost effectiveness of CAP bed space and more carefully evaluate and balance a variety of cost elements in assessing the cost-effectiveness of this program.

In response to the GAO's 1992 report, OMB said that it would take the recommendation into consideration. However, OMB disagreed with the assumptions underlying the GAO's analysis of comparative CAP and BOP costs in two respects. First, OMB disagreed with the GAO's use of the current average per diem because many of the current rates were negotiated years earlier, and if renegotiated at that time would result in a higher average cost. Second, OMB disagreed with the GAO's use of 30 years as the useful life of a BOP facility before major renovation or repair costs are required because BOP facilities continue to be used past the 30-year point without renovation.

In December 2004, we issued a report on the OFDT in which we found that although the OFDT had been in place for almost four years, it had not completed the goal of centralizing and overseeing the Department's detention activities. The former INS's transfer to the DHS, leadership vacancies, and other obstacles had complicated the OFDT's ability to build a firm foundation with a clearly defined organizational purpose. In addition, funds had to be transferred to the OFDT from other Department initiatives to cover detention fund shortages.<sup>13</sup>

We made 11 recommendations to assist the Department and the OFDT in improving its management of detention activities. In response to our 2004 report, the OFDT stated that it undertook various corrective actions, including:

- requiring the USMS to develop a district-level operating plan that must be submitted to the OFDT for approval for FY 2005,

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<sup>12</sup> The GAO report is entitled "Federal Jail Bedspace: Cost Savings and Greater Accuracy Possible in the Capacity Expansion Plan," report number GAO/GGD-92-141, September 1992. On July 7, 2004, the GAO was renamed the Government Accountability Office.

<sup>13</sup> Office of the Inspector General Audit Report number 05-04, "Department of Justice Office of the Federal Detention Trustee," December 2004.

- refining the model for projecting future detention space needs by incorporating measurable and reliable leading indicators, and
- updating the FY 2006 budget request to ensure that a shortfall does not occur.

## **Audit Approach**

Our audit approach focused on whether the USMS had developed plans, in the absence of CAP funding, for: 1) replacing bed spaces that will no longer be guaranteed when existing CAP agreements expire, and 2) securing detention space in court cities where jail space is scarce but no CAP agreements exist. To achieve these objectives, we reviewed applicable federal laws, regulations, policies, manuals, memoranda, USMS files, and prior audit reports. We also interviewed officials from the USMS's headquarters and selected District offices, JMD, the OFDT, and OMB. For additional details of our audit methodology, see Appendix I.



## **FINDINGS AND RECOMMENDATIONS**

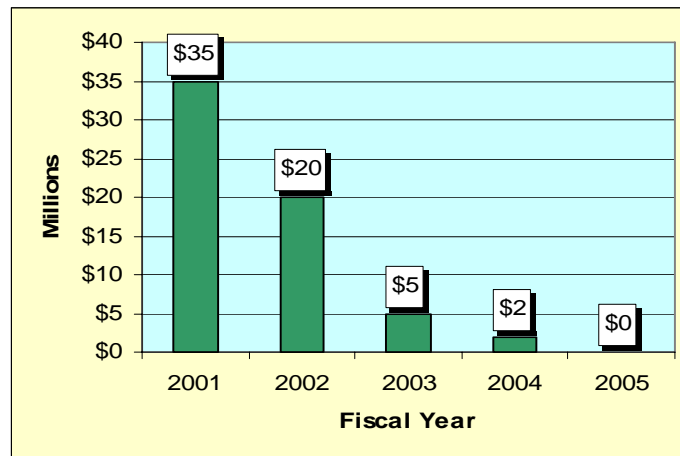
### **1. THE USMS HAS NOT MADE ADEQUATE PLANS TO SECURE DETENTION SPACE IN THE ABSENCE OF CAP FUNDING**

CAP funding has declined significantly over the last five years and was eliminated completely in FY 2005. In addition, OMB has recommended that no CAP funds be provided for FY 2006. The need for USMS detention space has increased by 34 percent since FY 2001. The USMS currently has 180 CAP agreements, guaranteeing 11,203 bed spaces annually that will expire between FY 2005 and FY 2029. Of these, 31 agreements, guaranteeing 1,318 bed spaces, will expire between FY 2005 through FY 2007. An additional 149 CAP agreements, guaranteeing 9,885 bed spaces annually, will expire between FY 2008 and FY 2029. Further, the USMS has identified 47 court cities where detention space is a serious or emergency problem but funds are not available to secure guaranteed detention space through CAP awards. The USMS continues to secure detention space by using IGAs, private jail contracts, and BOP space. However, the USMS has not determined whether jails with expiring CAP agreements will continue to house USMS detainees at a reasonable cost after the CAP agreements expire. Therefore, the USMS cannot provide assurance that it will be able to meet its detention space needs as existing CAP agreements expire.

#### **CAP Funding Reductions**

CAP agreements have historically been a significant tool to guarantee detention space in certain court cities. Since 1982, the USMS awarded about \$285 million to counties and municipalities under CAP agreements guaranteeing more than 13,600 spaces for federal detainees. In recent years, Congress steadily reduced the appropriation for the CAP, and eliminated CAP funding altogether in FY 2005, as shown in the following chart.

## CAP Funds Appropriated FY 2001 – FY 2005



Source: Office of Justice Programs Appropriations

The following paragraphs describe the funding reductions experienced by the CAP during FY 2001 through FY 2006.

For FY 2001, the USMS submitted a proposed budget for \$167 million in CAP funding. This amount was for both the USMS's and the former INS's CAP agreements and included an increase of \$132 million over the appropriated funding for FY 2000. In its analysis and recommendations, JMD noted that the USMS and the INS had not consolidated their CAP funding request as had been previously recommended by the OMB. Instead, the two agencies merely submitted separate lists of each agency's priority CAP agreement needs. The Department requested that only \$35 million be approved for both the USMS and INS in FY 2001. The President's budget included the requested \$35 million for FY 2001 and Congress appropriated \$35 million for both the USMS and INS.

For FY 2002, the USMS submitted a proposed budget reflecting an increase of \$10 million above the \$35 million appropriated for FY 2001. This request was for USMS CAP agreements only. The Department increased the USMS's \$45 million request to \$60 million to provide funding for the INS CAP agreements. The President's budget included a total of \$35 million for both the USMS and INS. Congress reduced the President's request by \$15 million, appropriating \$20 million for the USMS and INS for FY 2002, indicating that the two components had retained over \$20 million of unobligated CAP funds that could have been used in FY 2002.

For FY 2003, the USMS submitted a proposed budget for \$35 million in CAP funding. This amount included funding for both USMS and INS CAP agreements. The Department reduced the request by \$30 million to \$5 million, and the President's budget recommended no CAP funding at all for FY 2003. Congress appropriated \$5 million for both the USMS and INS.

For FY 2004, the USMS submitted a proposed budget for \$46 million in CAP funding for USMS and INS agreements. The Department reduced the USMS's request by \$41 million to the \$5 million level appropriated for FY 2003 and the President's budget recommended no funding at all for FY 2004. Congress appropriated \$2 million for the USMS alone.

For FY 2005, the USMS did not request any increase over the \$2 million in CAP funding appropriated for the previous fiscal year, and the OFDT made no recommendation on the proposed budget. The Department forwarded the \$2 million request to OMB. The President's budget did not recommend any CAP funds for FY 2005, and Congress subsequently eliminated funding for the CAP altogether for FY 2005.

For FY 2006, the USMS submitted to the OFDT a proposed budget for \$52 million in CAP funding. The OFDT reduced the USMS's request to \$19.8 million and requested that the CAP appropriation be included in the OFDT's budget instead of in the OJP's budget and subsequently transferred to the OFDT. The Department disapproved the increase because it did not agree with the OFDT's request that the CAP appropriation be included in the OFDT's budget. JMD staff told us they believed that the OFDT did not have the staff to properly administer the program. Therefore, the Department recommended only the base amount of \$2 million. The President's budget did not include any funding for the CAP, and Congress has not acted on the FY 2006 budget proposal as of June 2005.

### **Detainee Increases**

While CAP funding has decreased dramatically since FY 2001, the USMS average daily detainee population has increased from 36,965 to 49,405, or about 34 percent over the same time period. This increase, shown for each year in the table on the next page, has necessitated the increased use of methods other than the CAP program for housing the detainee population.

## USMS Average Daily Population Increases

Fiscal Year	Average Daily Detainee Population	Rate of Increase from Prior Year
2001	36,965	---
2002	40,114	8.5%
2003	43,984	9.6%
2004	49,405	12.3%

Source: USMS

The USMS has thus far met demands for detention space through the use of CAP agreements, IGA agreements with state and local governments, private jail contracts, and space at BOP prisons.

### Agreement Expiration and Detention Problems

Many CAP agreements will expire between 2005 and 2007, thus ending guarantees for about 1,300 beds, and many more will expire by the end of 2029. To perform our analysis, we obtained the USMS's CAP Beds Report as of October 18, 2004. The CAP Beds Report identifies all court cities with active CAP agreements and contains the following data:

- State
- District
- Court City
- Recipient Jail
- USMS Beds Guaranteed
- Years Agreement is in Effect
- USMS Funding
- Average Cost Per Bed
- Year Beds Become Available
- Year Agreement Expires

We also obtained the CAP agreements to confirm the expiration date of each agreement. The period of the agreement commences on the date the project funded by the CAP agreement is completed and payments by the United States Marshals Service are fulfilled. To calculate the expiration date of each agreement, we reviewed two reports in the CAP agreement files located at USMS headquarters. These two reports are the "USMS District CAP Agreement Financial Closeout Report" and the "Recipient CAP Agreement Financial Closeout Report." The first report identifies the date all work was completed on the project that was funded by the CAP agreement. The second report identifies the date that the recipient of the CAP award received final payment from the USMS. We took the latter of the two dates

and added the duration of the agreement to determine the expiration date of each. If only one or neither report was in the CAP agreement file, we relied on the best documentation available in the file to determine the completion date of the project and the date the recipient received final payment from the USMS, and used the later date.

We found that as of FY 2005, the USMS has 180 active CAP agreements guaranteeing 11,203 bed spaces annually that will expire between FY 2005 and FY 2029. Specifically, we determined that the USMS had 31 CAP agreements, guaranteeing 1,318 bed spaces annually, that will expire between FY 2005 through FY 2007. A listing of these agreements showing the beds guaranteed and expiration dates is in Appendix IV. The remaining 149 CAP agreements, guaranteeing 9,885 bed spaces annually, will expire from FY 2008 through FY 2029. A listing of these agreements showing the beds guaranteed and expiration dates is in Appendix V. The following tables show the number of agreements that will expire each fiscal year and the number of beds that will no longer be guaranteed from FY 2005 through FY 2029.

**Number of CAP Agreements that Will Expire Each Fiscal Year and Resulting Number of Beds That Will No Longer Be Guaranteed  
FY 2005 - FY 2007**

<b>Fiscal Year</b>	<b>Number of Agreements That Will Expire</b>	<b>Number of Beds That Will No Longer Be Guaranteed</b>
2005	5	236
2006	11	372
2007	15	710
<b>Total</b>	<b>31</b>	<b>1,318</b>

Source: USMS Prisoner Services Division

**Number of CAP Agreements that Will Expire Each Fiscal Year and the Resulting Number of Beds That Will No Longer Be Guaranteed  
FY 2008 – FY 2029**

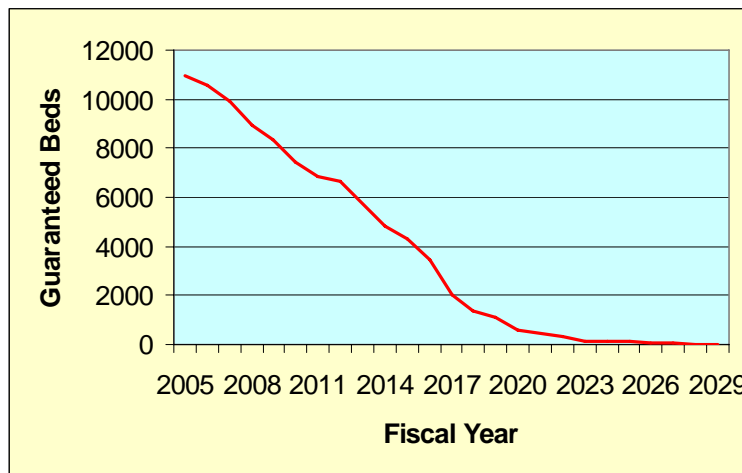
<b>Fiscal Year</b>	<b>Number of Agreements That Will Expire</b>	<b>Number of Beds That Will No Longer Be Guaranteed</b>
2008	20	959
2009	13	568
2010	15	923
2011	11	611

Fiscal Year	Number of Agreements That Will Expire	Number of Beds That Will No Longer Be Guaranteed
2012	7	187
2013	8	920
2014	15	915
2015	7	470
2016	12	868
2017	10	1,430
2018	9	687
2019	4	237
2020	4	555
2021	3	95
2022	2	104
2023	4	195
2024	0	0
2025	1	22
2026	1	75
2027	1	20
2028	1	24
2029	1	20
<b>Total</b>	<b>149</b>	<b>9,885</b>

Source: USMS Prisoner Services Division

The following chart illustrates the loss of guaranteed beds if CAP funds are not restored in future appropriations.

**Declining Number of Guaranteed Beds from Expiring CAP Agreements  
FY 2005 – FY 2029**



Source: USMS CAP Agreement Files

One tool used by the USMS to determine if an existing CAP agreement needs to be expanded or a new CAP agreement needs to be established is the annual detention status survey that Districts complete for each of the approximately 280 court cities in the federal judicial system. In the surveys, Districts are requested to identify their current detention status as either “no problem”, “serious”, or “emergency.” We obtained the 253 surveys submitted by the District offices for FY 2004. For the 31 CAP agreements expiring during the remainder of FY 2005 through FY 2007, we compared the agreements to the annual detention status surveys submitted by USMS District offices for FY 2004. This comparison showed the detention status reported for the 31 court cities covered by the soon-to-expire CAP agreements as follows.

**CAP Agreements Expiring FY 2005 – FY 2007  
District Detention Status Reported as of October 2004**

<b>FY</b>	<b>No Report</b>	<b>No Problem</b>	<b>Serious</b>	<b>Emergency</b>	<b>Totals</b>
<b>2005</b>	3	1	1	0	5
<b>2006</b>	6	3	2	0	11
<b>2007</b>	2	5	7	1	15
<b>Totals</b>	11	9	10	1	31

Source: USMS Prisoner Services Division

For the 11 court cities citing an existing serious or emergency problem, the expiration of these CAP agreements will worsen the detention space problem. Since there was no report or no problem cited for the court cities covered by the remaining 20 CAP agreements, we contacted officials in the District offices that submitted these agreements and asked whether the expiration of the CAP agreements would, in the absence of additional CAP funding, cause the District a problem in securing adequate detention space. For 10 of the 20 agreements, the officials stated that expiration of the agreements would cause a problem in the District’s ability to secure adequate detention space in the applicable court cities. For the remaining 10 agreements, the District officials did not believe that expiration of the agreements would cause problems in securing detention space. From the data and follow-up interviews, expiration of CAP agreements between FY 2005 through FY 2007 will significantly affect the USMS’s ability to acquire detention space in 21 of the 31 court cities where CAP agreements are currently in place.

Detention problems could also worsen in other court cities because CAP agreements can no longer be awarded beyond the current balance of unobligated CAP funds. The FY 2004 detention status surveys identified

47 court cites where detention space is rated as being either a serious or emergency situation and where no CAP agreements currently exist. The USMS identified 41 of the 47 court cities as having a serious situation and the remaining 6 court cities as having an emergency situation. The six court cities with an emergency situation were Tucson, Arizona; Bangor, Maine; Rouses Point, New York; Aiken, South Carolina; Laredo, Texas; and Brattleboro, Vermont.

According to the 2004 detention status surveys, the most serious problems were in Tucson, Arizona; Rouses Point, New York; and Brattleboro, Vermont. For Tucson, Arizona, the USMS reported that it has a contract with a local private jail for 3,000 beds to house USMS detainees, but exceeds this total by an average of 900 detainees each day.<sup>14</sup> Consequently, the USMS must move the excess detainees to out-of-district facilities. For Rouses Point, New York, the USMS reported that new detainees are transported to jails in northern Vermont, which is a 400 mile trip. In Brattleboro, Vermont, the USMS reported that the local jail space is exhausted and it is housing detainees in 15 different jails in 5 states.

Since CAP funding is no longer available to extend existing CAP agreements or award new CAP agreements, it is critical that the USMS develop alternate plans for securing detention space in court cities reporting serious or emergency situations. If current CAP facilities will not allow the USMS to continue to house detainees in their space, the USMS should determine if other jail space is available at a BOP facility, another local jail willing to enter into an IGA, or a private jail facility.

### **Plans to Secure Detention Space Without CAP Agreements**

Given that no new CAP funding is available to help the USMS secure detention space, we asked USMS and OFDT officials whether they had: 1) made plans to secure detention space for the 31 court cities with CAP agreements that will expire from FY 2005 through FY 2007, 2) developed long-term plans to secure detention space for the 149 CAP agreements that will expire after FY 2007, and 3) developed plans to secure detention space in court cities identified in the FY 2004 surveys as having a serious or emergency detention space situation and where no CAP agreements exist. While neither the USMS nor the OFDT provided any specific plans to secure detention space for expiring CAP agreements, the USMS stated that it planned to continue using traditional methods to secure

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<sup>14</sup> The contract for 3,000 beds at the Tucson, Arizona private jail is for housing the USMS detainees and the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) detainees. About 81 percent of the space is used for USMS detainees and about 19 percent is used for ICE detainees.



detention space such as the use of IGAs, private jail contracts, and BOP facilities. We asked USMS and OFDT officials if they had contacted officials at jails whose CAP agreements are scheduled to expire within the next three fiscal years to determine if the jail officials plan to reduce the number of beds guaranteed by the agreements. Officials of both the USMS and OFDT said that they had not contacted jail officials to determine their intentions when the agreements expire.

The USMS officials told us that finding bed space is not a problem, but finding bed space in close proximity to the court cities where bed space is needed is a problem. The USMS's plans were vague and only verbally expressed. The USMS provided no evidence to show that it had performed research or analyses to determine: 1) whether state and local governments with expiring CAP agreements would continue housing prisoners, and at what cost, through IGAs in the absence of CAP funds; and 2) alternate locations, where detainees could be housed, and at what cost, if current CAP sites decide to discontinue housing USMS detainees when CAP funding ends.

OFDT officials said that detention space, in the absence of CAP funding, can be met with IGAs. They said that the USMS has in the past relied too heavily on the CAP program to provide bed space for its detainees. One OFDT official said that the CAP is not worth the money because jail officials already have an incentive to house USMS detainees through IGAs. Since the duration of a CAP agreement is typically 15 to 20 years, OFDT believes the USMS is reluctant to house its detainees in another jail that may have a lower per diem rate because they have invested funds in the CAP facility. Another OFDT official said that the CAP program should be funded but not at the level requested by the USMS. However, the OFDT had not performed any analyses to show that CAP agreements were or were not cost effective. Given the elimination of CAP funding in FY 2005, we did not undertake such an analysis for the purpose of this report. In addition, like the USMS, the OFDT provided no evidence to show that it had performed research or analyses to support its position that the USMS could meet its detention space needs at a reasonable cost with IGAs.

## **Conclusion**

Since FY 2001, the funding appropriated for the CAP program has sharply declined and was eliminated altogether for FY 2005. Further, the OMB proposed no funding for the program for FY 2006. However, the USMS's need for detention space has steadily increased since FY 2001. As of January 13, 2005, the USMS had 31 CAP agreements, guaranteeing 1,318 bed spaces annually, that will expire between FY 2005 through FY 2007. In addition, another 149 CAP agreements that guarantee 9,885 bed spaces

annually will expire from FY 2008 through FY 2029. The USMS has identified 47 court cities where detention space is a serious or emergency problem but funds are not available to award CAP agreements to secure guaranteed detention space in these cities. Although CAP funding has been eliminated and many CAP agreements will expire over the next few years, the USMS has not determined whether jails with expiring CAP agreements will continue to house USMS detainees at a reasonable cost after the CAP agreements expire. Therefore, the USMS cannot provide assurance that it will be able to meet its detention space needs as existing CAP agreements expire.

## **Recommendation**

We recommend that the USMS:

1. Develop specific plans for securing detention space in the event that CAP funding is not restored in future appropriations. At a minimum, the plans should address:
  - whether existing CAP sites plan to continue housing USMS detainees through an IGA when their CAP agreement ends, and at what cost; and
  - what alternate facilities will be available to house detainees if the CAP sites decide to discontinue housing detainees when their CAP agreement ends, and at what cost.

## **2. THE USMS AND THE OFDT COULD NOT RECONCILE THE BALANCE OF CAP FUNDS AVAILABLE FOR EXPENDITURE**

While seeking to determine the funding history of the CAP since FY 2001, we identified \$990,119 that could not be supported by either the USMS or the OFDT. Of the \$990,119, \$739,540 is the balance of the \$10.3 million appropriated for INS CAP agreements before the INS was transferred to the Department of Homeland Security. Neither the USMS nor OFDT could provide documentation to show that \$739,540 had been rescinded, spent, or otherwise accounted for. The other \$250,579 is the difference between what USMS records support as the balance of CAP funds available to the USMS and what OFDT records support as the balance available. Neither the USMS nor the OFDT could provide documentation to reconcile the difference.

### **Funding Discrepancies**

In December 1999, the USMS and the INS entered into a Memorandum of Understanding establishing an agreement for a single Department CAP administered by the USMS's Prisoner Services Division.

We interviewed and obtained documentation from the USMS, OFDT, and JMD officials regarding the accounting for CAP funds carried forward from FY 2000 and appropriated from FY 2001 through 2004. Based on the interviews and documentation provided, the following table shows the accounting of CAP funds since the beginning of FY 2001.

## CAP FUNDING ANALYSIS

<b>Funding Action (2001)</b>	<b>USMS</b>	<b>INS</b>	<b>Total</b>
Balance Carried Forward From FY 2000	\$2,107,604	\$17,400,000	\$19,507,604
(+) Appropriated for FY 2001	\$21,000,000	\$14,000,000	\$35,000,000
(-) Reprogrammed for FY 2001	\$0	\$0	\$0
(-) Rescinded for FY 2001	\$46,200	\$30,800	\$77,000
(+) Deobligated for FY 2001	\$0	\$0	\$0
(-) Obligated for FY 2001	\$10,346,000	\$12,400,000	\$22,746,000
Balance Carried Forward To FY 2002	\$12,715,404	\$18,969,200	\$31,684,604
<b>Funding Action (2002)</b>	<b>USMS</b>	<b>INS</b>	<b>Total</b>
Balance Carried Forward From FY 2001	\$12,715,404	\$18,969,200	\$31,684,604
(+) Appropriated for FY 2002	\$12,000,000	\$8,000,000	\$20,000,000
(-) Reprogrammed for FY 2002	\$2,436,364	\$0	\$2,436,364
(-) Rescinded for FY 2002	\$0	\$0	\$0
(+) Deobligated for FY 2002	\$200,000	\$500,000	\$700,000
(-) Obligated for FY 2002	\$20,358,340	\$14,741,660	\$35,100,000
Balance Carried Forward To FY 2003	\$2,120,700	\$12,727,540	\$14,848,240
<b>Funding Action (2003)</b>	<b>USMS</b>	<b>INS</b>	<b>Total</b>
Balance Carried Forward From FY 2002	\$2,120,700	\$12,727,540	\$14,848,240
(+) Appropriated for FY 2003	\$3,000,000	\$2,000,000	\$5,000,000
(-) Reprogrammed for FY 2003	\$2,563,636	\$0	\$2,563,636
(-) Rescinded for FY 2003	\$19,500	\$13,000	\$32,500
(+) Deobligated for FY 2003	\$980,329	\$8,125,000	\$9,105,329
(-) Obligated for FY 2003	\$3,055,000	\$12,500,000	\$15,555,000
Balance Carried Forward To FY 2004	\$462,893	\$10,339,540	\$10,802,433
<b>Funding Action (2004)</b>	<b>USMS</b>	<b>INS</b>	<b>Total</b>
Balance Carried Forward From FY 2003	\$462,893	\$10,339,540	\$10,802,433
(+) Appropriated for FY 2004	\$2,000,000	\$0	\$2,000,000
(-) Reprogrammed for FY 2004	\$0	\$0	\$0
(-) Rescinded for FY 2004	\$21,045	\$9,600,000	\$9,621,045
(+) Deobligated for FY 2004	\$0	\$0	\$0
(-) Obligated for FY 2004	\$0	\$0	\$0
Balance Carried Forward To FY 2005	\$2,441,848	\$739,540	\$3,181,388

Source: USMS Prisoner Services Division, JMD, Appropriations as Enacted

The USMS could not document what happened to part of the funds appropriated for the INS. As shown in the CAP Funding Analysis table, at the beginning of FY 2004 the USMS had a balance of \$10,339,540 that had been appropriated for INS CAP agreements. The USMS provided documentation to show that Congress rescinded \$9,600,000 because the INS had been transferred to the Department of Homeland Security, leaving a balance of

\$739,540. As shown in the table, the \$739,540 remained unspent at the beginning of FY 2005. We asked USMS and OFDT officials to document what happened to the \$739,540. Despite repeated inquiries, neither organization could provide an explanation. Therefore, we question \$739,540 as unsupported.

The USMS's balance of CAP funds at the beginning of FY 2005 was \$2,441,848, as is also shown in the preceding table. However, documentation provided by the OFDT showed that the balance available for USMS CAP agreements should be \$2,191,269, a difference of \$250,579. We asked USMS and OFDT officials to explain the reason for the difference. Neither organization was able to provide an explanation. Therefore, we question \$250,579 as unsupported. The two questioned amounts are shown in the following table.

### **Summary of Unsupported Costs**

<b>USMS Balance Carried Forward To FY 2005</b>	\$2,441,848
<b>OFDT Balance Carried Forward To FY 2005</b>	\$2,191,269
<b>Difference Between USMS &amp; OFDT Balances Carried Forward to FY 2005</b>	\$250,579
<b>Balance Remaining at USMS after INS Recission</b>	\$739,540
<b>Total Unsupported Amount</b>	\$990,119

Source: USMS and the OFDT Records

### **Recommendations**

We recommend that the USMS:

2. Remedy the questioned cost associated with the \$739,540 in CAP funds provided for INS CAP agreements that was not rescinded by Congress.
3. Remedy the questioned cost associated with the \$250,579 difference between the available balance for CAP agreements at the end of FY 2004 based on the USMS's records (\$2,441,848) and the available balance for CAP agreements at the end of FY 2004 based on documentation provided by the OFDT (\$2,191,269).

## STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

We audited the USMS's management of the CAP. The audit period covered October 2000 to February 2005. The audit was conducted in accordance with the generally accepted *Government Auditing Standards*.

Compliance with laws and regulations is the responsibility of the USMS. In connection with the audit and as required by the *Standards*, we reviewed procedures, activities, and records to obtain reasonable assurance about the USMS's compliance with laws and regulations that, if not complied with, we believe could have a material effect on program operations.

Our audit included examining, on a test basis, evidence about laws and regulations. The specific laws and regulations for which we conducted tests are contained in:

- Department of Justice Appropriations Act, 2001;
- Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002;
- Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2003;
- Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004; and
- Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005.

We also reviewed the following guidelines related to the CAP program:

- FY 2004 Performance and Accountability Report, and
- The USMS CAP Training Manual

Except for instances of non-compliance identified in the Finding and Recommendations section of this report, the USMS was in compliance with the laws and regulations referred to above. With respect to those transactions not tested, nothing came to our attention that caused us to believe that the USMS was not in compliance with the referenced laws and regulations above.

## STATEMENT ON INTERNAL CONTROLS

In planning and performing our audit of the USMS's management of the CAP, we considered internal controls for the purpose of determining our auditing procedures. This evaluation was not made for the purpose of providing assurance on the USMS's internal controls as a whole. We noted, however, a matter that we consider to be a reportable condition under the *Government Auditing Standards*.

Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal controls that, in our judgment, could adversely affect the USMS's ability to effectively manage the CAP. As discussed in the Findings and Recommendations section of this report, we determined that the USMS had not adequately planned to ensure that jail space will not become scarce in areas where CAP agreements will expire within the next three fiscal years. Specifically, the USMS had not contacted jails with agreements that will expire within the next three fiscal years to determine if the jails intend to reduce the number of bed spaces previously guaranteed to the USMS.

Because we are not expressing an opinion of the USMS's internal controls as a whole, this statement is intended solely for the information of the USMS in managing the CAP. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

## ACRONYMS

<b>BOP</b>	Bureau of Prisons
<b>CAP</b>	Cooperative Agreement Program
<b>DHS</b>	Department of Homeland Security
<b>FY</b>	Fiscal Year
<b>GAO</b>	Government Accountability Office
<b>IGA</b>	Intergovernmental Agreement
<b>INS</b>	Immigration and Naturalization Service
<b>JMD</b>	Justice Management Division
<b>OFDT</b>	Office of the Federal Detention Trustee
<b>OIG</b>	Office of the Inspector General
<b>OJP</b>	Office of Justice Programs
<b>OMB</b>	Office of Management and Budget
<b>USMS</b>	United States Marshals Service



**AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY**

The objective of the audit was to determine whether the USMS has developed adequate plans, in the absence of CAP funding, to secure jail space in court cities where CAP agreements will expire during the next three fiscal years, and where jail space is scarce but no CAP agreements exist. We performed our audit work in accordance with *Government Auditing Standards* and, accordingly, included such tests of the records and procedures, as we deemed necessary.

As part of the audit, we reviewed applicable federal laws, regulations, policies, manuals, memoranda, USMS files, and prior audit reports issued by the GAO and the Office of the Inspector General. We also interviewed officials from the USMS's headquarters and selected District offices, JMD, the OFDT, and OMB. We conducted fieldwork at the USMS headquarters in Arlington, Virginia, the OFDT in Washington, D.C., and JMD in Washington, D.C.

To determine the history of funding for the CAP, we interviewed officials at JMD the USMS, OFDT, OJP, and OMB, and obtained and analyzed documentation of:

- annual budget requests for FY 2001 through FY 2006,
- enacted appropriations for FY 2001 through FY 2005,
- JMD's analysis and recommendations related to the annual CAP budget,
- funds re-programmed from the CAP by the USMS to cover deficits in the federal prisoner services account during FY 2001 through FY 2004,
- funds deobligated from CAP for FY 2001 through FY 2004, and
- funds obligated for new CAP agreements during FY 2001 through FY 2004.

To determine how the USMS's detention space needs changed during FY 2001 through FY 2004, we contacted a USMS official and obtained the average daily detainee population for each fiscal year.

To determine the extent to which CAP agreements will expire, how many guaranteed detention spaces will be affected by the expiring agreements, and whether detention problems may result from the expiring agreements, we performed the following.

- We obtained the USMS's listing of active CAP agreements as of October 18, 2004, showing the number of detention beds guaranteed by the agreements and when the agreements expire.
- We determined the expiration dates on the USMS's list of active agreements were not always accurate, so we reviewed the USMS's CAP agreement files as of January 13, 2005, for all 180 active CAP agreements and calculated when the agreements would actually expire. We also reviewed the files for all 180 active agreements to verify that the number of guaranteed bed spaces recorded on the list for each agreement was correct.
- We performed an aging analysis of the listing of active CAP agreements to identify the number of agreements and guaranteed bed spaces that would expire in the near-term (FY 2005 through FY 2007) and long-term (beyond FY 2007).
- We compared the list of 31 CAP agreements guaranteeing 1,318 bed spaces that will expire in FY 2005 through FY 2007 to the detention status surveys submitted by USMS District offices for FY 2004 to identify the Districts who either indicated on the surveys that detention space was not a problem or did not submit a survey. We then telephonically contacted officials in these District offices to discuss whether the expiration of the CAP agreements in FY 2005 through FY 2007 would, in the absence of additional CAP funding, cause problems in the District's ability to secure detention space in the applicable court cities.

To determine whether the USMS had other court cities where CAP agreements are not in place and where detention space may be a problem, we obtained and reviewed the 253 annual detention status surveys that USMS Districts completed for FY 2004 in which they identified their current detention status as either no problem, serious, or emergency. We then compared the surveys to the 180 active CAP agreements to identify the number of court cities whose detention status was reported as serious or emergency in the surveys but no CAP agreements were in place.

To determine whether the USMS and OFDT had developed definitive plans to secure detention space in the absence of CAP funding, we interviewed officials at the USMS and OFDT.

To determine whether the USMS could account for all the CAP funding appropriated since FY 2001, we performed an analysis of the funding history documentation previously discussed to identify the amount of CAP funds:

- appropriated for FY 2001 through FY 2004;
- rescinded, re-programmed, and deobligated for FY 2001 through FY 2004; and
- expended for FY 2001 through FY 2004.

We interviewed USMS and OFDT officials to obtain explanations for ending balances that could not be reconciled to the documentation provided by the USMS and OFDT.

SCHEDULE OF DOLLAR-RELATED FINDINGS

<b>QUESTIONED COSTS:</b>	<b>AMOUNT</b>	<b>PAGE</b>
Unsupported costs related to CAP funds provided for INS CAP agreements that were not rescinded by Congress	\$739,540	20 – 21
Unsupported costs for the difference between the available balance for CAP funds at the end of FY 2004 based on the USMS's records and the available balance for CAP funds at the end of FY 2004 based on the OFDT's records	\$250,579	21
<b>TOTAL QUESTIONED COSTS</b>	<b>\$990,119</b>	

**Questioned Costs** are expenditures that do not comply with legal, regulatory or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

**APPENDIX III**

**EXAMPLES OF FY 2004 DISTRICT DETENTION STATUS SURVEYS**

District 08 District of Arizona

<b>Federal Court City: Flagstaff (District 08)</b>					
<b>Detention Status</b> No Problem					
The Flagstaff suboffice utilizes space at the Coconino County Jail. Adequate bedspace is available.					
			<u><b>Description of Initiative</b></u>		
<b>Drug Initiative :</b> Y			Ongoing HIDTA Initiatives.		
<b>Gun Initiative :</b> Y			ATF office opened within last one year		
<b>Immigration Initiative :</b> Y			ICE considering opening a full time office in Flagstaff		
<b>Violent Crime Initiative :</b> Y			Ongoing FBI initiatives to combat violent crime on the Navajo and Hopi Reservations		
<b>Other Initiative :</b>					
<b>Inter-Agency Issues</b>					
Should ICE open a full-time office in Flagstaff, bedspace competition will become an issue.					
<b>Facilities with Jail Construction Renovation Plans</b>					
<b>Facility Name</b>	<b>Location</b>		<b>Miles From Court</b>	<b>Contact</b>	
NONE					
<b>Construction Comments</b>					
Additional local jails with available beds that that could house prisoners for districts experiencing emergency bedspace shortages					
<b>Facility Name</b>	<b>Beds</b>	<b>Location</b>	<b>Miles From Court</b>	<b>Transport</b>	<b>Contact</b>
NONE				No	
				No	
				No	

**District 03 Southern District of Alabama**

**Federal Court City: Mobile (District 03)**

**Detention Status**    Serious

We were previously housing 100+ inmates at our local jail. They were overcrowded and cut us to our IGA cap of 50 prisoners, but no females.

**Description of Initiative**

**Drug Initiative :** Y  
**Gun Initiative :**  
**Immigration Initiative :**  
**Violent Crime Initiative :**  
**Other Initiative :**

**Inter-Agency Issues**

No

**Facilities with Jail Construction Renovation Plans**

<b>Facility Name</b>	<b>Location</b>	<b>Miles From Court</b>	<b>Contact</b>
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**Construction Comments**

None

**Additional local jails with available beds that that could house prisoners for districts experiencing emergency bedspace shortages**

<b>Facility Name</b>	<b>Beds</b>	<b>Location</b>	<b>Miles From Court</b>	<b>Transport</b>	<b>Contact</b>
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No

No

No

**District 06 District of Alaska**

**Federal Court City: Anchorage (District 06)**

**Detention Status** Emergency

D/AK has a CAP agreement for 50 beds (within the entire state) with the Alaska Department of Corrections. Alaska DOC is the only entity in the state which can provide prisoner housing. Attempts at a second CAP for an additional 50 beds have been unsuccessful because DOC's daily rate would include the cost of housing 50 additional Alaska state prisoners in Arizona to make space for the extra 50 federal inmates. U.S. Senator Ted Stevens was considering funding \$30 million dollars to build two additional pods at the Anchorage City Jail for federal prisoners; however, USMS HQ said the Cooperative Agreement Program could not be used to move the funds to the State. Anchorage is the main district office, and as such, the Anchorage City Jail (West) and Hiland Mountain Correctional Center (in Eagle River) house most of the federal prisoners kept in Alaska.

**Description of Initiative**

**Drug Initiative :** Y  
**Gun Initiative :** Y

Drug Demand Reduction National Initiative  
 Project Safe Streets and Neighborhoods ( combination of Safe Streets and PSN)

**Immigration Initiative :**  
**Violent Crime Initiative :**  
**Other Initiative :**

**Inter-Agency Issues**

BOP does not meet the MOU standard on designation time limits for prisoners. Also, prisoners with severe medical issues take much longer to get housing. Example: ██████████, AK federal prisoner with severe Type I diabetes was sentenced and designation was requested as of 3/19/04. BOP sections/personnel are confused among themselves about whether or not to designate ██████████ to a medical or regular facility. This confusion has led to an even longer delay in designation. BOP now advises D/AK it will be 30-60 days before ██████████ can be transferred out of D/AK. The SDUSM estimates guard hire alone for 7 days required hospital stay for ██████████ will be \$7,000. The cost of a required medical test alone will be approximately \$10,000.

**Facilities with Jail Construction Renovation Plans**

Facility Name	Location	Miles From Court	Contact		
<b>Construction Comments</b>					
<b>Additional local jails with available beds that that could house prisoners for districts experiencing emergency bedspace shortages</b>					
Facility Name	Beds	Location	Miles From Court	Transport	Contact
				No	
				No	
				No	

**APPENDIX IV**

**CAP AGREEMENTS EXPIRING FROM FY 2005 THROUGH FY 2007**

	<b>State</b>	<b>Court City</b>	<b>Recipient Jail</b>	<b>Auditor Calculated Expiration Date</b>	<b>Beds Guaranteed</b>
1	Kansas	Wichita	Sedgwick County	4/30/2005	20
2	Utah	Salt Lake City	Salt Lake County	4/30/2005	75
3	Florida	Jacksonville	Baker County	6/30/2005	40
4	Kentucky	Paducah	McCracken County	6/30/2005	15
5	Oregon	Portland	Multnomah County	8/1/2005	86
<b>5</b>	<b>Subtotal for FY 2005</b>				<b>236</b>
6	Kansas	Topeka	Jackson County	10/20/2005	15
7	Ohio	Cleveland	Lake County	10/30/2005	60
8	Texas	McAllen	Hidalgo County	10/31/2005	50
9	Florida	Key West	Monroe County	12/31/2005	15
10	Florida	Ft. Myers	Lee County	2/4/2006	50
11	North Carolina	Greensboro	Guilford County	3/28/2006	40
12	Mississippi	Jackson	Madison County	3/31/2006	50
13	Florida	Jacksonville	Jacksonville/Duval	4/26/2006	25
14	Florida	Ft. Myers	Charlotte County	7/30/2006	30
15	North Carolina	Durham	Orange County	8/7/2006	20
16	Nebraska	Omaha	Sarpy County	9/3/2006	17
<b>11</b>	<b>Subtotal for FY 2006</b>				<b>372</b>
17	Arizona	Yuma	Yuma County	10/3/2006	50
18	Michigan	Grand Rapids	Newaygo County	10/11/2006	60
19	Ohio	Columbus	Franklin County	10/20/2006	90
20	Louisiana	Baton Rouge	East Baton Rouge Parish	11/21/2006	20
21	Georgia	Macon	Bibb County	12/19/2006	30
22	New Mexico	Albuquerque	Sandoval County	3/2/2007	96
23	Delaware	Wilmington	Delaware Dept. of Corrections	3/6/2007	6



	<b>State</b>	<b>Court City</b>	<b>Recipient Jail</b>	<b>Auditor Calculated Expiration Date</b>	<b>Beds Guaranteed</b>
24	Michigan	Marquette	Marquette County	3/10/2007	10
25	Virginia	Norfolk	City of Virginia Beach	5/13/2007	20
26	Tennessee	Nashville	Davidson County	6/17/2007	30
27	Washington	Spokane	Yakima County	7/1/2007	30
28	Alabama	Mobile	Mobile County	7/15/2007	50
29	Michigan	Detroit	Wayne County	8/5/2007	128
30	Arkansas	Little Rock	Faulkner County	9/21/2007	15
31	Massachusetts	Boston	Essex County	9/30/2007	75
<b>15</b>	<b>Subtotal for FY 2007</b>				<b>710</b>
<b>31</b>	<b>Totals for FY 2005 – FY 2007</b>				<b>1,318</b>

**APPENDIX V**

**CAP AGREEMENTS EXPIRING AFTER FY 2007**

	<b>State</b>	<b>Court City</b>	<b>Recipient Jail</b>	<b>Auditor Calculated Expiration Date</b>	<b>Beds Guaranteed</b>
1	Maryland	Baltimore	Queen Anne's County	10/6/2007	16
2	Missouri	St. Louis	Ste. Genevieve County	10/16/2007	50
3	North Carolina	Bryson City	Swain County	11/25/2007	15
4	California	Fresno	Fresno County	12/11/2007	95
5	Missouri	St. Louis	City of Jennings	12/11/2007	50
6	Texas	Houston	Montgomery County	12/30/2007	100
7	Ohio	Toledo	Lucas County	1/7/2008	10
8	South Carolina	Columbia	Lexington County	2/11/2008	70
9	Kentucky	Lexington	Franklin County	2/13/2008	20
10	Virginia	Roanoke	City of Roanoke	3/12/2008	50
11	Colorado	Denver	Denver County	3/22/2008	25
12	Texas	Beaumont	Jefferson County	4/1/2008	75
13	Texas	Houston	Harris County	5/14/2008	100
14	West Virginia	Charleston	West Virginia Regional Jail Authority	6/1/2008	60
15	New Mexico	Albuquerque	Valencia County Juvenile Detention	6/15/2008	10
16	Georgia	Albany	Colquitt County	7/1/2008	30
17	Mississippi	Oxford	Lafayette County	7/4/2008	50
18	Ohio	Dayton	Montgomery County	8/3/2008	48
19	North Carolina	Asheville	Buncombe County	9/2/2008	27
20	Louisiana	Lafayette	Lafayette Parish	7/4/2008	58
<b>20</b>	<b>Subtotal for FY 2008</b>				<b>959</b>

	<b>State</b>	<b>Court City</b>	<b>Recipient Jail</b>	<b>Auditor Calculated Expiration Date</b>	<b>Beds Guaranteed</b>
21	South Carolina	Charleston	Charleston County	10/1/2008	25
22	Kansas	Topeka	Shawnee County	11/3/2008	17
23	North Carolina	Raleigh	Johnston County	11/30/2008	20
24	Iowa	Sioux City	Woodbury County	12/15/2008	15
25	Texas	McAllen	Starr County	1/23/2009	80
26	South Carolina	Florence	Florence County	2/1/2009	25
27	Florida	West Palm Beach	Palm Beach County	4/11/2009	100
28	South Carolina	Columbia	Orangeburg County	6/2/2009	15
29	Louisiana	New Orleans	Tangipahoa Parish	6/20/2009	60
30	Maine	Portland	Cumberland County	8/12/2009	56
31	West Virginia	Beckley	West Virginia Regional Jail Authority	8/16/2009	30
32	Virgin Islands	St. Thomas	Virgin Islands Department of Corrections	8/17/2009	25
33	Texas	McAllen	Starr County	9/14/2009	100
<b>13</b>	<b>Subtotal for FY 2009</b>				<b>568</b>
34	North Carolina	Greenville	Vance County	10/3/2009	25
35	West Virginia	Wheeling	West Virginia Regional Jail Authority	10/23/2009	60
36	Vermont	Burlington	Franklin County	10/28/2009	15
37	California	Los Angeles/ San Diego	San Bernardino County	11/1/2009	320
38	North Carolina	Asheville	Burke County	12/8/2009	18
39	Florida	Orlando	Seminole County	12/15/2009	90
40	Utah	Salt Lake City	Davis County	1/13/2010	120

	<b>State</b>	<b>Court City</b>	<b>Recipient Jail</b>	<b>Auditor Calculated Expiration Date</b>	<b>Beds Guaranteed</b>
41	California	San Diego	Imperial County	3/1/2010	100
42	Wisconsin	Madison	Dane County	3/6/2010	30
43	New York	Rochester	Monroe County	4/1/2010	40
44	Michigan	Kalamazoo	Kalamazoo County	6/23/2010	20
45	Virginia	Harrisonburg	Rockingham County	6/26/2010	20
46	Maine	Portland	Maine Department of Corrections	8/22/2010	20
47	Mississippi	Aberdeen	Monroe County	9/6/2010	5
48	New York	Syracuse	Onondaga County	9/27/2010	40
<b>15</b>	<b>Subtotal for FY 2010</b>				<b>923</b>
49	Pennsylvania	Scranton	Pike County	1/1/2011	50
50	Louisiana	New Orleans	St Tammany Parish	1/15/2011	65
51	Iowa	Des Moines	State of Iowa	1/23/2011	160
52	Florida	Tallahassee	Wakulla County	3/1/2011	15
53	Texas	Sherman	Grayson County	3/1/2011	35
54	Texas	Corpus Christi	Nueces County	4/4/2011	96
55	Delaware	Wilmington	Delaware Department of Corrections	6/25/2011	10
56	Arkansas	El Dorado	Union County	7/3/2011	10
57	Texas	San Antonio	Wilson County	7/16/2011	60
58	Minnesota	Minneapolis	Anoka County	7/26/2011	60
59	Virginia	Norfolk	Chesapeake City	8/26/2011	50
<b>11</b>	<b>Subtotal for FY 2011</b>				<b>611</b>
60	Wyoming	Casper	Converse County	11/4/2011	5
61	Michigan	Kalamazoo	Van Buren County	12/11/2011	10
62	New York	Rochester	Niagara County	2/1/2012	40

	<b>State</b>	<b>Court City</b>	<b>Recipient Jail</b>	<b>Auditor Calculated Expiration Date</b>	<b>Beds Guaranteed</b>
63	Kansas	Wichita	Harvey County	4/30/2012	25
64	Vermont	Rutland	Addison County	5/8/2012	21
65	Iowa	Des Moines	Polk County	9/1/2012	50
66	Missouri	Springfield	Greene County	9/1/2012	36
<b>8</b>	<b>Subtotal for FY 2012</b>				<b>187</b>
67	New York	Syracuse	Westchester County	10/6/2012	5
68	Pennsylvania	Scranton	Lackawanna County	10/10/2012	10
69	Michigan	Grand Rapids	Mecosta County	1/15/2013	10
70	Idaho	Boise	Canyon County	1/21/2013	15
1	New York	Albany	Montgomery County	2/9/2013	30
72	Texas	El Paso	El Paso County	8/1/2013	500
73	Georgia	Atlanta	Atlanta City Jail	8/11/2013	300
74	California	San Francisco	Alameda County	8/19/2013	50
<b>8</b>	<b>Subtotal for FY 2013</b>				<b>920</b>
75	New York	Albany	Oneida County	10/6/2013	35
76	Florida	Tampa	Hillsborough County	11/9/2013	150
77	Alabama	Mobile	Baldwin County	12/1/2013	100
78	Arizona	Phoenix	Pinal County (juvenile)	12/1/2013	10
79	North Carolina	Durham	Orange County	1/27/2014	75
80	Montana	Billings	Yellowstone County (juvenile)	2/3/2014	3
81	Vermont	Burlington	Vermont Department of Corrections	3/8/2014	40
82	Iowa	Cedar Rapids	Sioux County	3/10/2014	15
83	Connecticut	Bridgeport	Connecticut Department of Corrections	3/17/2014	50
84	North Carolina	Greenville	Pitt County	4/14/2014	100

	<b>State</b>	<b>Court City</b>	<b>Recipient Jail</b>	<b>Auditor Calculated Expiration Date</b>	<b>Beds Guaranteed</b>
85	Texas	San Angelo	Runnels County	4/28/2014	12
86	Louisiana	Alexandria	Rapides Parish	5/1/2014	25
87	California	Sacramento	Sacramento County	5/17/2014	200
88	Virginia	Norfolk	Tidewater Regional Jail	7/26/2014	50
89	Oklahoma	Tulsa	Tulsa County	8/25/2014	50
<b>15</b>	<b>Subtotal for FY 2014</b>				<b>915</b>
90	North Dakota	Grand Forks	Grand Forks County	12/15/2014	15
91	Virginia	Richmond	Northern Neck Regional Jail	1/28/2015	150
92	Oregon	Eugene	Lane County	3/30/2015	50
93	Alaska	ALL COURT CITIES	Alaska Department of Corrections	5/4/2015	50
94	California	Fresno	Fresno County	6/13/2015	80
95	Florida	Key West	Dade County	7/13/2015	115
96	Mississippi	Hattiesburg	Forrest County	8/28/2015	10
<b>7</b>	<b>Subtotal for FY 2015</b>				<b>470</b>
97	South Dakota	Rapid City	Pennington County (juvenile)	10/1/2015	6
98	Illinois	Rockford	Ogle County	10/10/2015	20
99	Missouri	Cape Girardeau	Cape Girardeau County	12/1/2015	42
100	New York	Buffalo	Erie County	12/13/2015	60
101	North Carolina	Winston-Salem	Forsyth County	12/31/2015	80
102	Utah	Salt Lake City	Weber County	1/10/2016	100
103	Wisconsin	Milwaukee	Milwaukee County	2/15/2016	50
104	Texas	Del Rio	Maverick County	4/1/2016	150
105	Indiana	South Bend	St. Joseph County	4/9/2016	30
106	Indiana	Hammond	Lake County	5/3/2016	30

	<b>State</b>	<b>Court City</b>	<b>Recipient Jail</b>	<b>Auditor Calculated Expiration Date</b>	<b>Beds Guaranteed</b>
107	Arizona	Phoenix	Pinal County	6/20/2016	250
108	Kentucky	Lexington	Fayette County	8/10/2016	50
<b>12</b>	<b>Subtotal for FY 2016</b>				<b>868</b>
109	Texas	Waco	McLennan County	1/13/2017	60
110	Texas	Brownsville	Cameron County	2/1/2017	300
111	Virginia	Charlottesville	Central Virginia Regional Jail	2/6/2017	150
112	Nevada	Las Vegas	City of North Las Vegas	2/15/2017	450
113	North Carolina	Charlotte	Mecklenburg County	4/1/2017	350
114	Nebraska	Omaha	Cass County	5/10/2017	30
115	Idaho	Pocatello	Bannock County	5/30/2017	15
116	Oklahoma	Muskogee	Muskogee County	7/8/2017	25
117	Nebraska	Omaha	Saline County	8/1/2017	20
118	Louisiana	Lake Charles	Calcasieu Parish	9/1/2017	30
<b>10</b>	<b>Subtotal for FY 2017</b>				<b>1,430</b>
119	Indiana	Indianapolis	Marion County	10/1/2017	90
120	Indiana	Hammond	Porter County	10/1/2017	40
121	New York	Albany	Albany County	10/1/2017	55
122	South Carolina	Anderson	City of Anderson	10/3/2017	40
123	Kentucky	Cincinnati	Boone County	11/5/2017	30
124	California	Fresno	Fresno County	12/31/2017	260
125	North Carolina	Asheville	McDowell County	7/25/2018	32
126	Nebraska	Omaha	Douglas County	8/6/2018	100
127	Kansas	Wichita	Butler County	8/12/2018	40
<b>9</b>	<b>Subtotal for FY 2018</b>				<b>687</b>
128	North Dakota	Bismarck	Burleigh County	10/20/2018	12

	<b>State</b>	<b>Court City</b>	<b>Recipient Jail</b>	<b>Auditor Calculated Expiration Date</b>	<b>Beds Guaranteed</b>
129	Tennessee	Chattanooga	Hamilton County	2/10/2019	100
130	Florida	Pensacola	Escambia County	9/1/2019	50
131	Nebraska	Omaha	Pottawattamie County	9/1/2019	75
<b>4</b>	<b>Subtotal for FY 2019</b>				<b>237</b>
132	Tennessee	Knoxville	Knox County	10/15/2019	45
133	South Carolina	Columbia	Lexington County	3/20/2020	30
134	New Mexico	Las Cruces	Dona Ana County	5/4/2020	300
135	Minnesota	Minneapolis	Sherburne County	8/1/2020	180
<b>4</b>	<b>Subtotal for FY 2020</b>				<b>555</b>
136	Wyoming	Casper	Natrona County	12/14/2020	15
137	Missouri	Springfield	St. Clair County	3/28/2021	60
138	Pennsylvania	Pittsburgh	Cambria County	8/8/2021	20
<b>3</b>	<b>Subtotal for FY 2021</b>				<b>95</b>
139	Texas	Pecos	Town of Pecos City	6/1/2022	94
140	North Dakota	Fargo	Cass County	8/15/2022	10
<b>2</b>	<b>Subtotal for FY 2022</b>				<b>104</b>
141	Alabama	Montgomery	City of Montgomery	10/3/2022	68
142	Iowa	Cedar Rapids	Linn County	10/28/2022	80
143	Montana	Great Falls	Cascade County	1/11/2023	35
144	Arizona	Phoenix	Pinal County (juvenile)	1/12/2023	12
<b>4</b>	<b>Subtotal for FY 2023</b>				<b>195</b>
<b>0</b>	<b>Subtotal for FY 2024</b>				<b>0</b>
145	Montana	Missoula	Missoula County	11/14/2024	22
<b>1</b>	<b>Subtotal for FY 2025</b>				<b>22</b>



	<b>State</b>	<b>Court City</b>	<b>Recipient Jail</b>	<b>Auditor Calculated Expiration Date</b>	<b>Beds Guaranteed</b>
146	Guam	Agana	Government of Guam	8/1/2026	75
<b>1</b>	<b><i>Subtotal for FY 2026</i></b>				<b>75</b>
147	Montana	Billings	Yellowstone County	1/28/2027	20
<b>1</b>	<b>Subtotal for FY 2027</b>				<b>20</b>
148	Indiana	Hammond	City of Hammond	10/18/2027	24
<b>1</b>	<b>Subtotal for FY 2028</b>				<b>24</b>
149	Ohio	Cleveland	City of Bedford Heights	7/8/2029	20
<b>1</b>	<b>Subtotal for FY 2029</b>				<b>20</b>
<b>149</b>	<b>Totals for FY 2008 – FY 2029</b>				<b>9,885</b>

USMS's RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

United States Marshals Service

Office of the Director

Washington, DC 20530-1000

June 1, 2005

MEMORANDUM TO: Guy K. Zimmerman  
Assistant Inspector General for Audit  
Office of the Inspector General  
*Donald A. Samlata*

FROM: *FOR*: Benigno G. Reyna  
Director

SUBJECT: OIG Draft Audit Report: The United States Marshals Service's  
Cooperative Agreement Program (CAP)

Thank you for the opportunity to provide comments on the subject draft audit report. Our comments and proposed corrective actions are detailed below:

**Recommendation 1:** Develop specific plans for securing detention space in the event that CAP funding is not restored in future appropriations. At a minimum, the plans should address:

- Whether existing CAP sites plan to continue housing USMS detainees through an Intergovernmental Agreement (IGA) when their CAP agreement ends, and at what cost; and
- What alternate facilities will be available to house detainees if the CAP sites decide to discontinue housing detainees when their CAP agreement ends, and at what cost.

**USMS Response: (Agree)** The CAP has been successful in helping USMS acquire guaranteed bed space in court cities, while also enabling the local governments to expand or improve their jails. In working cooperatively with the state and local governments over the years, the USMS has established long-standing working relationships and goodwill with local and federal agencies. As a result, the local governments are often willing to continue to house USMS prisoners when the CAP agreements expire. However, in some cases, losing bed space at the end of a CAP agreement cannot be avoided, even if additional CAP funding is offered to the local government.

We believe we have adequate procedures in place to replace bed space as current CAP agreements expire. Historically, the district offices search for additional bed space in local jails and enter into new IGAs. While we always locate bed space to house USMS prisoners, it may be located further from the federal court city than is ideal.

To assist USMS districts in locating needed bed space, Prisoner Operations staff at USMS Headquarters maintain data on available bed space in all USMS districts. This is accomplished effectively through the annual detention survey conducted by the Witness Security and Prisoner Operations Division (WPD). For example, as part of the survey, all USMS district offices were asked to respond to the following:

“For the purpose of contingency planning, are there additional local jails in your area with available beds that could house prisoners for your district or other districts experiencing emergency bed space shortages? (Please list name, location, number of beds, and distance from court, whether or not the facility transports, and contact person at facility.)”

In light of OIG’s focus on expiring CAP agreements, and to address OIG’s recommendation, a new question will be added to the next detention survey, as follows:

“Are there any CAP agreements in your district which will expire in the next 3 years? If so, will the jail continue to house USMS prisoners after the CAP guarantee has expired? If not, where do you plan to house these prisoners after the CAP guarantee has expired? Please provide anticipated costs, if known.”

District responses to this question will provide the data necessary to resolve Recommendation 1. Additionally, it should be noted that USMS is participating in a working group with the Federal Bureau of Prisons (BOP), Federal Bureau of Immigration and Customs Enforcement (BICE), and the Office of the Federal Detention Trustee (OFDT) to establish new procedures for awarding IGAs. It is anticipated that local governments will be more receptive to the revised IGA process than the current system and, as a result, additional space will become available for longer periods of time. The working group has established a deadline of October 1, 2005 to implement the new procedures.

**Recommendation 2:** Remedy the questioned cost associated with the \$739,540 in CAP funds provided for INS CAP agreements that was not rescinded by Congress.

**Recommendation 3:** Remedy the questioned cost associated with the \$250,579 difference between the available balance for CAP agreements at the end of FY 2004 based

on the USMS's records (\$2,441,848) and the available balance for CAP agreements at the end of FY 2004 based on documentation provided by the OFDT (\$2,191.269).

**USMS Response to Recommendations 2 and 3: (*Agree*)** The Witness Security and Prisoner Operations Division, in concert with the OFDT, will perform an in-depth reconciliation of the reported balances. The results of the reconciliation will be provided under separate cover immediately after completion.

If you need additional information or clarification, please contact Mike Urenko, Acting Chief, Programs and Assistance Branch, Witness Security and Prisoner Operations Division, at 202-307-9749.

## OFDT'S RESPONSE TO THE DRAFT REPORT



U. S. Department of Justice

Office of the Detention Trustee

Washington, D.C. 20530

May 27, 2005

MEMORANDUM FOR GUY K. ZIMMERMAN  
ASSISTANT INSPECTOR GENERAL  
FOR AUDIT

*[Handwritten Signature]*

FROM: Stacia A. Hylton  
Federal Detention Trustee

Subject: Draft Audit Report for the United States Marshals Service's  
(USMS) Cooperative Agreement Program Comments

The Office of the Federal Detention Trustee (OFDT) appreciates the opportunity to review the Office of the Inspector General's (OIG) draft audit report of the United States Marshals Service (USMS) Cooperative Agreement Program (CAP). OFDT would like to take this opportunity to provide clarification on a few points attributed to the OFDT within the report, specifically, on page 17, where the report attributes several statements by OFDT officials. These statements do not accurately reflect the position of this office. However, I am glad to address these issues in this memorandum. It appears from reading the report that the statements, when taken out of context, provide a negative connotation of OFDT's position. Therefore, I would like to clarify.

Auditors from your office contacted OFDT staff members to comment on expiring CAP arrangements and how the bed space provided to the USMS through these agreements would be replaced. Simply because the CAP expires does not necessarily mean the corresponding Intergovernmental Agreement (IGA) cannot be continued. In fact, the majority of prior expired CAP agreements still have IGA's in place. At this time, there has been no indication provided to this office to suggest that the jurisdictions providing bed space through a CAP/IGA would not continue to provide the space under an IGA un-associated with a CAP. We will work with the USMS to ascertain if current information indicates less of a critical need for space in CAP facilities.

Additional discussion ensued concerning the need for CAP in the future. The report seems to suggest that OFDT does not see a need for the program and was critical of USMS past

practices. We do not believe this was relayed to the OIG in the fashion the report suggests. OFDT explained its position that the government should first use business process improvements to more efficiently use existing bed space prior to investing in additional infrastructure through CAP, which is the basic purpose of the CAP program.

Lastly, you include a statement of the lack of analysis regarding CAP and IGA bed space. We have conducted analyses and, while no general trends emerge, there are a few examples that show that costs associated with CAP facilities are rising at a higher rate than other surrounding facilities. For example, the Milwaukee County Jail per diem rate rose from the Fiscal Year (FY) 2004 rate of \$60.00, to an audited rate of \$104.21, while the average rate paid at other facilities in the area is approximately \$65.00. Another example would be the Lucas County, Ohio facility, which increased from a FY 2004 rate of \$70.00, to an audited rate of \$112.40, while the average rate paid to other jails in the area is approximately \$70.00. Based on these analyses OFDT did not approve these rate increases. These are just a few examples of what we have seen.

OFDT and the USMS are working closely together to find the most efficient detention bed space through CAP, IGA, and other arrangements. These efforts are on-going and include attempts to create equitable pricing arrangements for IGAs that provide the Government a fair and reasonable price for services, to develop a long-range Advance Procurement Plan to address population management, and to support the CAP by the cost effective use of any future funding.

We hope this information helps clarify the statements attributed to OFDT officials. If you have any questions, please do not hesitate to contact me, at (202) 353-4601.

## APPENDIX VIII

### OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NEEDED TO CLOSE THE REPORT

We provided the draft report to both the USMS and OFDT for comment. The USMS response, included in this report as Appendix VI, agrees with each of our recommendations and proposes corrective action sufficient to resolve the recommendations. Our analysis of the status of the recommendations begins on page 49 of this appendix.

The OFDT response is included in this report as Appendix VII. The OFDT does not comment on our recommendations and, instead, focuses on what it considers to be mischaracterizations of information provided to us by OFDT staff. After reviewing the OFDT's response and our contemporaneous records of conversation with OFDT staff, we believe the report accurately portrays the information provided to us during interviews on January 11, 2005, with the Director of Operations and the Budget Director of the OFDT. The following five paragraphs discuss the current positions taken by the OFDT in its response to the draft audit report and our analysis of those positions.

The OFDT response states that simply because a CAP agreement expires does not necessarily mean the corresponding IGA cannot be continued. However, our report does not say that IGAs cannot be continued when a CAP agreement expires. Instead, we report that the USMS provided no evidence to show that it had performed research or analyses to determine: (1) whether state and local governments with expiring CAP agreements would continue housing prisoners, and at what cost, through IGAs in the absence of CAP funds; and (2) alternate locations where detainees could be housed, and at what cost, if current CAP sites decide to discontinue housing USMS detainees when CAP funding ends. Because the USMS has not thoroughly researched and addressed these issues, we concluded that the USMS cannot assure that adequate detention space, at a reasonable cost, will be available to meet detention needs as existing CAP agreements expire. In response to our recommendation, the USMS has now agreed to conduct the appropriate research.

The OFDT also states in its response that, while we noted a lack of analyses on CAP agreements, it has in fact conducted such analyses. The OFDT discusses, as anecdotal examples, two reviews of individual agreements. When interviewed during the audit, OFDT officials did not provide any analyses on either the cost effectiveness of CAP agreements or

the ability of the USMS to meet detention needs at a reasonable cost with IGAs. While the two reviews cited by the OFDT are helpful, those reviews alone are not meaningful for 180 CAP agreements currently in place, provide no basis for determining if CAP agreements are cost effective, and provide no insight on the USMS's ability to meet its detention needs at a reasonable cost with IGAs.

Also in its response, the OFDT states that the majority of prior expired CAP agreements still have IGAs in place. While we do not have sufficient data to verify this statement, recent OFDT policy changes may significantly affect the USMS's ability to continue housing detainees at facilities with expiring CAP agreements. The OFDT issued a policy, effective February 4, 2005, stating that, as a temporary measure, no new IGAs can be awarded and no existing IGAs can be extended at an increased price because of detention funding shortfalls. Until and unless additional detention funding is obtained and this policy restriction is lifted, state and local jurisdictions may be more likely to discontinue housing detainees when CAP agreements expire.

The OFDT also states that there has been no indication that jurisdictions providing bed space through a CAP agreement would not continue to provide the space under an IGA not associated with a CAP agreement. As noted in our audit, neither the OFDT nor the USMS had contacted the jurisdictions with expiring CAP agreements to determine whether the jurisdictions would continue housing USMS detainees after the CAP agreements expire. The OFDT response seems to indicate that it is incumbent upon the jurisdictions to notify the USMS or the OFDT of such decisions. However, the USMS or OFDT must take the lead in this matter and the USMS's proposed action regarding surveys addresses our concern.

The OFDT response also suggests the report does not accurately reflect what we were told by OFDT staff in regard to the need for the CAP in the future. The OFDT officials we interviewed told us that detention space needs, in the absence of CAP funding, can be met with IGAs. They also said that the USMS has in the past relied too heavily on the CAP program to provide bed space for its detainees. The Director of Operations said that the CAP is not worth the money because jail officials already have an incentive to house USMS detainees through IGAs. He also said that, because the duration of a CAP agreement is typically 15 to 20 years, the USMS is reluctant to house its detainees in another jail that may have a lower per diem rate because they have invested funds in the CAP facility. The Budget Director said that the CAP program should be funded but not at the level requested by the USMS. The OFDT officials presented these statements as



accurate representations of their position on the CAP program, and we did not remove the comments from the context of the interview.

We also provided portions of the draft report to the JMD for a review of pre-decisional budget information contained in the report. The JMD expressed no concerns about the budget data but informally suggested some minor wording changes, which we have incorporated in the budget discussion on page 10 of the report.

The status of the recommendations and the action necessary to close the recommendations are presented below.

1. **Resolved.** This recommendation is resolved based on the USMS's agreement to modify its annual detention survey to capture information on expiring CAP agreements and to plan accordingly. The recommendation can be closed when we receive and review the plans developed.
2. **Resolved.** This recommendation is resolved based on the USMS's agreement to remedy the questioned costs. The recommendation can be closed when we receive and review documentation supporting the remedy completed.
3. **Resolved.** This recommendation is resolved based on the USMS's agreement to remedy the questioned costs. The recommendation can be closed when we receive and review documentation supporting the remedy completed.