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United States Government Accountability Office
Washington, DC 20548

September 30, 2010

The Honorable Barbara Mikulski
Chairwoman
The Honorable Richard Shelby
Ranking Member
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
U.S. Senate

The Honorable Alan Mollohan
Chairman
The Honorable Frank R. Wolf
Ranking Member
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
House of Representatives

Subject: Office of the Federal Detention Trustee's (OFDT) Cost Estimation Methods Reflect Features of Best Practices, but Processes Could be Enhanced

This letter formally transmits a summary of an oral briefing we gave on August 30, 2010 and subsequent agency comments (see enclosure). We gave this briefing in response to the Conference Report accompanying the Consolidated Appropriations Act, 2010 (H.R. Rep. No. 111-366, at 662 (2009) (Conf. Rep.)), which directed us to evaluate the methods the Office of the Federal Detention Trustee (OFDT) uses to project the federal detainee population and the per diem rates OFDT pays for detention services, as well as other factors that are translated into OFDT's annual budget request. In conducting this work, we analyzed OFDT's documentation of its detainee population and cost estimation model, compared OFDT's projections in the President's budget submission with actual values of detainee population and costs, and interviewed OFDT and Department of Justice (DOJ) officials to (1) assess how OFDT develops its detainee population and cost estimates; (2) determine the extent to which OFDT follows best practices for developing high-quality cost estimates; and (3) determine the reasons why OFDT required funds in addition to its annual appropriation in fiscal years 2005, 2008, and 2009.

In summary, OFDT develops its annual budget request for DOJ using three general steps: (1) estimating cost increases needed to maintain current service levels, (2) projecting the changes in the detainee population, and (3) estimating the costs associated with detainee population and other program changes.

OFDT's process for estimating the federal detainee population and costs reflects some of the features of GAO's best practices for cost estimation, but OFDT has not adopted enough of the practices to meet the four characteristics that we associate with high-quality cost estimates. Specifically, we determined that OFDT's cost estimation processes substantially met the features that characterize accurate and comprehensive cost estimates and partially met the features that characterize well-documented and credible cost estimates. OFDT documents the purpose, formulas, and data sources behind its cost estimates, but many of the technical aspects of OFDT's cost estimation model are fully understood only by the individual who runs the model. Further, the President's annual budget request to Congress for OFDT has begun to include estimates of how an increase in the number of individuals charged with drug, weapons, or immigration offenses may affect program costs, but, as a best practice, OFDT also could perform analyses that account for the risks and uncertainties in the model's assumptions and estimates.

OFDT and DOJ officials attributed OFDT's need for additional funding to several factors, including unanticipated increases in the detainee population, higher per diem rates resulting from limited available detention bed space, and limited financial reserves at the beginning of the fiscal year. More specifically, law enforcement initiatives related to immigration have significantly increased the total detainee population. OFDT officials stated that it is difficult to incorporate such initiatives into its detainee population model because OFDT, as part of the federal budget process, must submit its projections for a fiscal year 18-24 months before that fiscal year and the law enforcement initiative begin. In addition, since OFDT has limited flexibility in how it spends its funds and its annual costs exceed \$1 billion, even a small difference between projected and actual costs could result in OFDT facing costs that exceed its appropriated funds by tens of millions of dollars. For additional information on the results of our work, see slides 12 through 15 in the enclosure.

As a result of our findings, we are recommending that OFDT improve its documentation of the calculations it uses in its detention population and cost estimation model. We are also recommending that OFDT quantify the extent to which costs could vary due to the inherent risks in key assumptions, data inputs, and other factors.

In commenting on a draft of this briefing, the Department of Justice concurred with our recommendations and provided technical comments that we incorporated where appropriate.

We are sending copies of this report to the appropriate congressional committees. We are also sending copies to the Attorney General of the United States, as well as

the Federal Detention Trustee. This report will be available at no charge on our Web site at <http://www.gao.gov>. Should you or your staff have questions concerning this report, please contact me at (202) 512-8777 or MaurerD@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Joy Gambino, Assistant Director; Karen Richey, Assistant Director; Daren Sweeney, Senior Analyst; Edith Sohna, Senior Analyst; Pedro Almoguera, Senior Economist; and Janet Temko, Senior Attorney. Michele Fejfar, Adam Vogt, and Melissa Wolf provided additional technical assistance.

A handwritten signature in black ink that reads "David C. Maurer". The signature is written in a cursive style with a long, sweeping tail on the final letter.

David C. Maurer
Director, Homeland Security and Justice

Enclosure



Briefing on the Office of Federal Detention Trustee's Methods for Estimating Costs

**Prepared for the
Senate and House Appropriations Committees**

**Subcommittees on
Commerce, Justice, Science,
and Related Agencies**

Briefing Overview

- Introduction
 - Objectives, Scope, and Methodology
 - Results in Brief
 - Background
 - Findings
 - Conclusions
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 - Agency Comments
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-

Introduction

The Office of the Federal Detention Trustee (OFDT) was established within the Department of Justice (DOJ) in fiscal year 2001.¹ OFDT's mission is to centrally manage the funds to detain individuals charged with federal crimes as they await adjudication.

Previously, DOJ's United States Marshals Service (USMS) managed federal detention resources, but with the creation of OFDT, the two components now work in tandem—OFDT has responsibility for the budgeting and USMS maintains the day-to-day responsibility for housing its detainees and transporting them to court proceedings.

¹Pub. L. No. 106-553, 114 Stat. 2762, 2762A-52 (2000) (appropriating funds to establish a Federal Detention Trustee).

Introduction (cont'd.)

From 2001 through 2009, the number of detainees under USMS custody increased from 37,124 to 58,746 per day. About 45 percent of this increase occurred because of a rise in immigration-related arrests along the Southwest border of the United States, and one-third of the remaining increase resulted from a rise in drug-related charges.

Reflecting the increase in the number of USMS detainees, OFDT's budget for detention services has increased from \$775 million in fiscal year 2003 (the first year OFDT assumed responsibility for managing program resources from the USMS) to \$1.44 billion in fiscal year 2010.

Approximately 90 percent of OFDT's program costs result from expenses related to USMS detainee housing and subsistence. The majority of remaining expenditures support detainee services, such as health care, medical guards, and prisoner transportation.

Introduction (cont'd.)

In certain recent years, OFDT has needed funding in excess of its annual appropriation. For example:

- Fiscal year 2005: OFDT received \$184 million in supplemental funding from the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005.²
- Fiscal year 2008: OFDT received \$20 million through a transfer from DOJ's Assets Forfeiture Fund.³
- Fiscal year 2009: OFDT received \$60 million in supplemental funding through the Supplemental Appropriations Act, 2009.⁴

²Pub. L. No. 109-13, 119 Stat. 231, 270 (2005).

³A transfer shifts all or part of the budget authority in one fund account to another. DOJ's Assets Forfeiture Fund is an account that receives proceeds from assets forfeited and can be used, for example, to pay for property seizure and detention costs.

⁴Pub. L. No. 111-32, 123 Stat. 1859, 1860 (2009).

Objectives, Scope, and Methodology

Objectives

The Conference Report accompanying the Consolidated Appropriations Act, 2010, directed us to review OFDT's methods for determining resource requirements.⁵ In response to this mandate, this report addresses the following three questions:

1. How does OFDT develop its detainee population and cost estimates when developing its annual budget requests?
2. To what extent do OFDT's methods for estimating costs and its detainee population follow established best practices?
3. What factors contributed to OFDT's need for funds in excess of its appropriation in recent years and what actions, if any, has OFDT taken to better account for these factors in its annual budget estimations?

⁵H.R. Rep. No. 111-366, at 662 (2009) (Conf. Rep.).

Objectives, Scope, and Methodology (cont'd.)

Scope and Methodology: Objective 1

To determine how OFDT estimates its detainee population and its costs when developing its annual budget request to DOJ, we:

- analyzed OFDT documentation, including its detainee population model and budget development guidelines to understand the steps OFDT uses to estimate detainee population and costs;
- interviewed cognizant program officials from DOJ's central budget office and OFDT's and USMS' budget development offices, to learn about OFDT's methods for estimating costs. We also interviewed OFDT's Statistician to obtain information on OFDT's methods for estimating detainee population increases; and
- reviewed the Office of Management and Budget's (OMB) and DOJ's budget development guidance, including OMB's *Circular A-11*, to obtain information on federal budget formulation standards and the requirements OFDT must follow in preparing its annual budget request to DOJ.⁶

⁶Office of Management and Budget, *Preparation, Submission, and Execution of the Budget*, Circular No. A-11 (Washington, D.C.: Executive Office of the President, June 2008).

Objectives, Scope, and Methodology (cont'd.)

Scope and Methodology: Objective 2

To determine the extent to which OFDT's methods for estimating costs and its detainee population model follow established best practices, we:

- analyzed the cost estimates contained in the President's annual budget submission to Congress for OFDT for fiscal years 2005 through 2009;
- interviewed OFDT budget officials, including the Assistant Trustee for Budget, Finance and Forecasting, to understand how OFDT developed its detainee and budget cost estimates; and
- compared the description OFDT provided for how it develops its detainee projections and cost estimates against the criteria for best practices we identified in our *Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs*.⁷

⁷GAO, *GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs*, GAO-09-3SP (Washington, D.C.: March 2009).

Objectives, Scope, and Methodology (cont'd.)

Scope and Methodology: Objective 3

To determine the factors that contributed to OFDT's need for funds in excess of its annual appropriations in 2005, 2008, and 2009, and what actions, if any, OFDT has taken to better account for these factors in its annual budget estimations, we:

- reviewed OFDT documentation, including reported costs for maintaining key operations, and compared these costs to requests for funding included in the President's annual budget submission to Congress for OFDT for fiscal years 2005 through 2009;
- interviewed OFDT and DOJ budget development officials to obtain their perspectives on the factors contributing to why OFDT's costs in recent years have exceeded the funding levels in OFDT's enacted appropriation. We also asked these officials to discuss what, if any, actions OFDT has taken to account for these factors.

Objectives, Scope, and Methodology (cont'd.)

Scope and Methodology

- To assess the reliability and consistency of the information we obtained about OFDT's methods for estimating costs for its annual budget submission, we compared the summary figures contained in the President's annual budget submission to Congress for OFDT for fiscal years 2005 through 2009 against the more detailed information contained in the budget appendices.
- We also interviewed USMS and OFDT officials knowledgeable about controls in place to maintain the integrity of data on (1) USMS detainees, which OFDT uses in its detainee projection model; and (2) annual costs OFDT reported between 2003 and 2009. As a result, we determined that the data were sufficiently reliable for the purposes of this report.
- To ensure the technical accuracy of the briefing, we provided a draft of this briefing to DOJ and OFDT and met with those officials to obtain technical comments which we incorporated as appropriate.

Objectives, Scope, and Methodology (cont'd.)

Scope and Methodology

We conducted this performance audit from February 2010 through August 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the work to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.⁸

⁸For more information on our scope and methodology, see slides 32-35 and 42.

Results in Brief

- OFDT develops its annual budget request to DOJ using three general steps: (1) estimating cost increases needed to maintain current service levels, (2) projecting detainee population changes, and (3) estimating the costs associated with detainee population.
- Although OFDT cost estimation methods reflect features of best practices, the methods do not employ enough of these practices to meet the four characteristics of a high-quality cost estimate. Using GAO's guide for developing high-quality cost estimates, we found that OFDT has substantially met the features that characterize accurate and comprehensive cost estimates, and partially met the features that characterize well-documented and credible cost estimates. OFDT could improve by:

Results in Brief (cont'd.)

- Documenting key assumptions. OFDT acknowledges that its cost estimation model is not fully documented and is known only by its Statistician. Documenting all steps for developing its cost estimate, including which elements are included in each of its major cost categories, would better position OFDT to recreate its estimates in the event of attrition within its budget office among those who have developed initial cost estimates.
 - Providing cost ranges to reflect best and worst cases. OFDT does not formally conduct risk analyses, nor does it assess the likelihood of costs varying due to outside events. While not required by DOJ, such an analysis would provide a more comprehensive picture of risks associated with these cost estimates.
-

Results in Brief (cont'd.)

OFDT and DOJ officials attributed the need for additional funds in recent years to unanticipated increases in the detainee population in 2005, limited financial reserves in 2008, and increases in average detainee housing and subsistence rates in 2009. Since the detainee population is the most significant driver of OFDT's costs, OFDT states that it continually adjusts its detainee projection model to better predict growth. However, since OFDT has limited flexibility in how it spends its funds and its annual costs exceed \$1 billion, even a small difference between projected and actual costs could result in OFDT facing costs that exceed its appropriated funds by tens of millions of dollars.

Results in Brief (cont'd.)

To improve OFDT's cost estimation process, we are recommending that the Attorney General instruct the Federal Detention Trustee to take the following two actions:

1. Improve documentation of calculations used to (a) project the number of USMS detainees and (b) estimate program costs.
2. Quantify the extent to which its costs could vary due to changes in key cost assumptions—and submit a risk-adjusted cost estimate, along with an associated confidence level and corresponding budget documentation—to DOJ to facilitate decision making.

Background - OFDT's mission

OFDT's mission is to manage and regulate the federal detention program and the Justice Prisoner & Alien Transportation System (JPATS), which transports USMS detainees to DOJ's Bureau of Prisons (BOP) facilities after they have been convicted and sentenced.⁹

- OFDT is responsible for managing the funds associated with federal detention and overseeing federal detention activities, whereas USMS is responsible for the custody and movement of USMS detainees.
- OFDT began developing projections and budget estimates for federal detention activities in fiscal year 2003 in preparation for the President's Budget submission to Congress for fiscal year 2005. OFDT assumed responsibility for JPATS operations from USMS in fiscal year 2007.

⁹JPATS transports sentenced prisoners who are in BOP's custody, as well as criminal/administrative aliens in the custody of the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE), to hearings, court appearances, and detention facilities.

Background - A detainee's path through the federal detention system

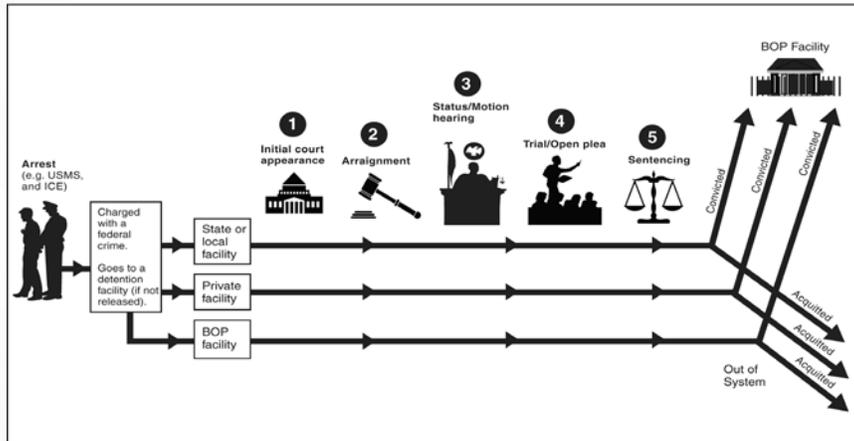
Entrance: An individual who is arrested for a federal crime must be brought before a court for an initial hearing. After the hearing, the individual is either released or remanded to the custody of USMS until the case is adjudicated. USMS takes custody and transports him/her to a facility for detention, as figure 1 illustrates.

Detention: USMS houses the majority of its detainees in facilities operated by state or local governments and private entities. In fiscal year 2009, only about 20 percent of USMS detainees were housed in BOP facilities.

Exit: Once a USMS detainee's case is adjudicated, the individual exits detention. If convicted, USMS takes the individual from the detention facility to a BOP facility to serve his/her sentence.

Background - A detainee's path through the federal detention system (cont'd.)

Figure 1



Source: GAO analysis of OFDT data; and Art Expression (clipart).

Note: Pursuant to the Bail Reform Act of 1984, a person charged with a federal crime must appear before a judicial officer who is required to issue an order either releasing or detaining that person pending trial. 18 U.S.C. § 3141. The person may be released on personal recognizance or subject to other conditions. 18 U.S.C. § 3142.

Background - OFDT's payments for use of detention facilities, by facility type

BOP facilities: OFDT does not pay BOP for use of its detention facilities, as BOP recovers any USMS detention-related costs for USMS detainees through its annual appropriation.

State and local government facilities: OFDT pays state and local governments for housing and subsistence based on per diem rates—the rate for housing one detainee for 1 day in detention—that are negotiated between the facility and USMS, with OFDT's final approval. The rates are established through an Intergovernmental Agreement (IGA) and cover housing, subsistence, and a few other costs, such as those for medical care provided at the facility.

Private detention facilities: OFDT negotiates with each private facility for housing and subsistence, paying a set amount for a guaranteed number of beds.

Background - Federal budget formulation process

Through the multiphase federal budget formulation process, OFDT is required to identify resource requirements and estimate costs for a fiscal year 18-24 months before the fiscal year involved begins.

OMB guides this process, assisting the President in the submission of the Budget of the United States Government—or “the President’s Budget”—to the Congress.

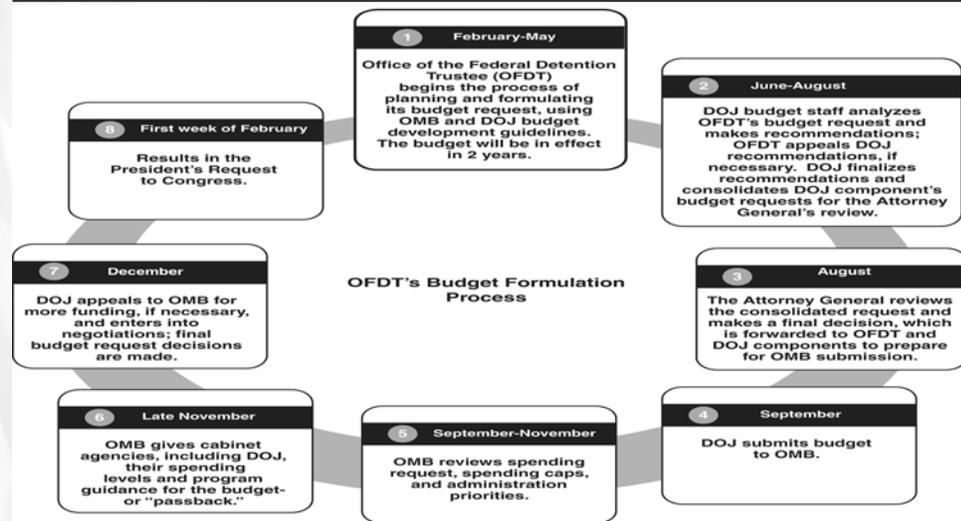
Key steps follow:

- OMB issues Circular A-11 to federal agencies, providing detailed instructions for submitting budget data and materials, as well as criteria for developing budget submissions;
- DOJ issues to all components, such as OFDT, its annual budget development guidelines;

Background - Federal budget formulation process (cont'd.)

- OFDT submits its budget request to DOJ's budget staff about a year and a half prior to the budget year in question;
 - the Attorney General analyzes all DOJ components' budget requests in light of department wide priorities and submits the DOJ annual budget submission to OMB; and
 - OMB assists the President in making final decisions on all agencies' budgets and submitting the President's Budget to Congress, which aggregates submissions for all of DOJ's components, including OFDT.
-
- Figure 2 provides a high-level overview of this process.

Background – OFDT’s budget formulation process



Source: GAO analysis of OFDT information.

Background - OFDT's budget composition

OFDT's appropriated budget is comprised of one account: Detention Services. This account funds:

- Housing and Subsistence (which comprises about 90 percent of the account);
- Health Care;
- Medical Security Guards;¹⁰
- Ground Transportation;
- JPATS, representing costs associated with the transport of USMS detainees to BOP facilities after they have been convicted and sentenced; and
- "Other"—including administrative costs and meals for prisoners, as necessary, during transportation to medical facilities or courts.

OFDT's enacted fiscal year 2010 appropriation was about \$1.4 billion.¹¹

¹⁰Accounts for costs of guarding detainees who obtain medical care outside a detention facility.

¹¹Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat. 3034, 3123 (2009).

Background - OFDT's funds in excess of appropriations

OFDT assumed responsibility from the USMS for projecting the detainee population and estimating program costs in fiscal year 2003 in preparation for the fiscal year 2005 budget cycle. Including FY 2005, there have been 3 fiscal years in which OFDT has been provided with additional funds in excess of its annual appropriation, as shown in table 1.

Background - OFDT Supplemental Appropriations and Transfers

Table 1: OFDT Supplemental Appropriations and Transfers (dollars in thousands)

Fiscal year	President's budget submission	Enacted appropriation	Additional funds above enacted appropriation	Additional funds above enacted appropriation as percentage of OFDT enacted budget
2005	\$938,810	\$885,994	\$184,000	21
2006	\$1,222,000	\$1,177,000	\$0	n/a
2007	\$1,332,326	\$1,225,816	\$0	n/a
2008	\$1,294,226	\$1,225,920	\$20,000	2
2009	\$1,295,319	\$1,295,319	\$60,000	5

Sources

FY 2005 – Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, 119 Stat. 231, 270.

FY 2008 – Transfer from another DOJ account—the Assets Forfeiture Fund.

FY 2009 – Supplemental Appropriations Act, 2009, Pub. L. No. 111-32, 123 Stat. 1859, 1860 (2009).

Background – OFDT challenges

According to OFDT officials, there are several factors that complicate the management of resources for USMS detention activities:

OFDT serves all USMS detainees: USMS must accept, house, and transport detainees and OFDT is responsible for paying for USMS detainee housing and transportation costs. OFDT fulfills this responsibility through indefinite-term contracts.¹² Thus, USMS is limited in how it can reduce services in order to reduce detention costs. According to OFDT and USMS officials, while USMS attempts to place detainees in lower-cost facilities when possible, it must also satisfy the requests of courts to keep detainees within close proximity to the courthouse where they will be tried.

¹²Once a state or local jail receives an OFDT rate review, the jail may not request another review for at least 3 years.

Background - OFDT challenges

OFDT's costs are subject to several factors beyond OFDT's control:

- New federal law enforcement initiatives, policy decisions by the U.S. Attorneys' Offices on what types of offenses to target, and rulings by individual courts affect the number of USMS detainees and the length of time they remain in the federal detention system.
- Availability of space at detention facilities also can significantly affect the housing and subsistence rates that OFDT must pay. For example, state and local jails are increasingly reserving space for their own inmates. As a result, USMS has recently placed a larger number of federal detainees in private facilities, which—on average—have higher rates than state and local facilities.

Objective 1- How does OFDT estimate its costs and detainee population when developing its annual budget submission?

OFDT estimates costs using three general steps:

Step 1: OFDT estimates the costs necessary to provide services for the current USMS detainee population in the next fiscal year.

Step 2: OFDT projects USMS detainee population changes for the budget year.

Step 3: OFDT estimates costs to accommodate projected USMS detainee population changes for the budget year.

Objective 1- Estimating costs to maintain current services (Step 1)

First, OFDT estimates how much more it will cost to provide services to the current number of detainees in the next fiscal year. Per guidance from DOJ, OFDT begins by using the prior year's enacted budget as a baseline, then makes adjustments to this base by estimating likely cost increases.

- To estimate changes in detention services costs, OFDT has developed a set of internal cost indices. These indices employ standard econometric techniques and reflect methodologies used by the Bureau of Labor Statistics (BLS) and the Bureau of Economic Analysis (BEA). OFDT also applies the Consumer Price Index, the Employment Cost Index for State and Local Government Workers, and the Medical Care Service Index to make adjustments to the costs of detention-related services, such as health care, prisoner transportation, and medical guard services. Whenever possible, OFDT will also adjust costs to reflect rate changes in specific contracts for detention services.
- To estimate average annual operating cost increases, OFDT analyzes obligations from the prior year, as well as growth in the average daily population (ADP) and the number of detainees received by type of offense over the past 5 years.

Objective 1- Projecting population changes (Step 2)

Second, OFDT uses a statistical model to project increases in the ADP in state, local, and private detention facilities.

- The model uses time series data to predict the primary factors that influence ADP: the number of persons arrested for federal offenses and booked by the USMS, and the length of time detainees are held in detention.
- In addition, the model uses statistical techniques to track the length of time USMS detainees remain in detention and in which specific detention facilities they will be placed. OFDT's model projects ADP by estimating the number of individuals charged across nine different types of offenses in six different geographical regions.¹³
- Because the model is based on historical data, it assumes that the future will reflect changes of the past. OFDT officials state that they attempt to anticipate changes that may not reflect historical trends, but they emphasize that many of these changes, such as law enforcement initiatives that focus on a certain type of offense, are largely beyond OFDT's control and difficult to project.
- OFDT's model relies primarily on data systems from USMS: the Justice Detainee Information System and the Prisoner Tracking System.

¹³The nine offense categories are: violent crime, property crime, drug offenses, weapons offenses, immigration offenses, other new offenses, supervision violations, material witness violations, and not reported offenses.

Objective 1- Estimating costs of expected detainee population changes (step 3)

Third, OFDT estimates costs to accommodate projected detainee population changes for the budget year.

- Once the model has projected the ADP by region and detention facility, OFDT estimates total costs using the following formula:

$$\textit{Total Detention Costs} = \textit{ADP} * \textit{365 days in the year} * \textit{the housing and subsistence rate at each facility}$$

- OFDT adjusts the costs of detention-related services, such as health care and prisoner transportation, to reflect changes in the size of the detention population.

Objective 2 - To what extent do OFDT's methods for estimating its costs follow established best practices?

Using the 12 best practices outlined in our *Cost Estimating and Assessment Guide (Guide)*, we found that OFDT has substantially met the features that characterize accurate and comprehensive cost estimates, and partially met the features that characterize well-documented and credible cost estimates.

- The *Guide* has identified 12 best practices that are the basis for effective cost estimation.¹⁴ We associate these practices with 4 characteristics: accurate, comprehensive, well-documented, and credible. OMB endorsed this guidance as being sufficient for meeting most cost estimating requirements, including for budget formulation.
- If followed correctly, these best practices should result in reliable and valid cost estimates that (a) can be easily and clearly traced, replicated, and updated; and (b) enable managers to make informed decisions.

¹⁴See app. I for a description of these cost estimating practices.

Objective 2 – Extent to which OFDT’s cost estimation methods reflect GAO’s cost estimation best practices

As table 2 illustrates, although OFDT’s cost estimation methods reflect features of best practices, the methods do not employ enough of these features to meet the four characteristics of a high-quality cost estimate. The following provides the definitions we used in assessing OFDT’s methods for estimating its costs in its annual budget submission to DOJ:

Met – OFDT provided evidence that its methods encompass all of the characteristic’s features;

Substantially Met – OFDT provided evidence that its methods encompass a large portion of the characteristic’s features;

Partially Met – OFDT provided evidence that its methods encompass about half of the characteristic’s features;

Minimally Met – OFDT provided evidence that its methods encompass a small portion of the characteristic’s features;

Not Met - OFDT provided no evidence that its methods encompass any of the characteristic’s features.

DOJ officials reported being satisfied with OFDT’s cost estimation methods, noting that they could not identify any area needing improvement.

Objective 2 – Extent to which OFDT’s cost estimation methods reflect GAO’s cost estimation best practices

Table 2: OFDT’s Performance in Meeting the Features of Key Cost Estimation Characteristics

Characteristic	Feature	OFDT performance
Accurate	The cost estimates should provide for results that are unbiased and should not be overly conservative or optimistic. In addition, the estimates should be updated regularly to reflect material changes in the program, and steps should be taken to minimize mathematical mistakes and their significance. Among other things, the estimate should be grounded in a historical record of cost estimating and actual experiences on comparable programs.	Substantially met
Comprehensive	The cost estimates should include both government and contractor costs over the program’s full life cycle, from the inception of the program through design, development, deployment, and operation and maintenance to retirement. They should also provide an appropriate level of detail to ensure that cost elements are neither omitted nor double counted and include documentation of all cost-influencing ground rules and assumptions.	Substantially met

Objective 2 – Extent to which OFDT’s cost estimation methods reflect GAO’s cost estimation best practices

Table 2 (continued)

Characteristic	Feature	OFDT performance
Well-documented	The cost estimates should have clearly defined purposes and be supported by documented descriptions of key program or system characteristics. Additionally, they should capture in writing such things as the source data used and their significance, the calculations performed and their results, and the rationale for choosing a particular estimating method. Moreover, this information should be captured in such a way that the data used to derive the estimate can be traced back to, and verified against, their sources. The final cost estimate should be reviewed and accepted by management.	Partially met
Credible	The cost estimates should discuss any limitations in the analysis performed due to uncertainty surrounding data or assumptions. Further, the estimates’ derivation should provide for varying any major assumptions and recalculating outcomes based on sensitivity analyses, and their associated risks/uncertainty should be disclosed. Also, the estimates should be verified based on cross-checks using other estimating methods and by comparing the results with independent cost estimates.	Partially met

Source: GAO analysis.

Objective 2 - OFDT's cost estimating methods *substantially met* characteristics for accuracy

Consistent with best practices, OFDT frequently updates its cost estimate with actual costs and accounts for program changes in its detainee projection model and its cost estimating methods *substantially met* characteristics for accuracy.

- For example, OFDT updates data on the average detainee population, average housing and subsistence rate, and the number of individuals charged with specific offenses on a monthly basis. It determines differences between budget targets and actual expenditures on almost a real-time basis. OFDT also continually adjusts its cost estimation methodology to improve the precision and reliability of its estimates.
 - As shown in table 3, OFDT's projections as reflected in the President's budget for fiscal years 2005 through 2009 for average housing and subsistence rates at facilities operated by private companies or state and local governments have been within 3 percent of actual average rates each fiscal year.
 - As shown in table 4, OFDT's projections as reflected in the President's budget for fiscal years 2008 through 2009 for ADP at facilities operated by private companies or state and local governments have been within 4 percent of the actual value—an improvement in accuracy from prior fiscal years.
-

Objective 2 – OFDT’s average housing and subsistence rate projections have been accurate within 3 percent each year

Table 3: Average Projected and Actual Housing and Subsistence Rates for USMS Detainees in Facilities Operated by Private Companies or State and Local Governments (dollars in millions)

Fiscal year	Projected In President’s Budget	Actual	Percentage difference
2005	\$62.9	\$61.9	1.61
2006	\$63.4	\$62.7	0.97
2007	\$64.7	\$64.4	0.53
2008	\$69.4	\$67.5	2.85
2009	\$67.4	\$69.0	-2.33

Source: GAO analysis of OFDT data and President’s Budget.

Objective 2 – OFDT’s detainee population projections since 2006 have been accurate

Table 4: Average Projected and Actual USMS Detainee Population in Facilities Operated by Private Companies or State and Local Governments

Fiscal year	Projected In President’s Budget	Actual	Percentage difference
2005	37,197	41,780	-11
2006	48,558	44,515	9.08
2007	49,870	43,813	13.8
2008	46,050	44,254	4.06
2009	46,337	46,373	-0.08

Source: GAO analysis of OFDT data and President’s Budget.

Objective 2 - OFDT's cost estimating methods *substantially met* characteristics for accuracy

- OFDT's cost estimates are based on a methodology that generally follows the 12-step best practices for cost estimation; however, high-quality cost estimates usually fall within a range of possible costs, illustrating variance across best and worst case scenarios.
 - OFDT does not formally conduct risk-based analyses of how its estimates may be affected by the uncertainty of external factors. Such factors include:
 - changes in the number of persons arrested and charged by specific offense category,
 - evolving law enforcement policies or prosecutorial priorities of U.S. Attorneys,
 - the time it takes to process court cases, and
 - BOP's capacity to accept detainees once they have been sentenced to federal facilities.
-

Objective 2 - OFDT's cost estimating methods *substantially met* characteristics for accuracy

- An analysis that considers these uncertainties would indicate the chances that actual costs could differ from the cost estimate. It would also provide a range of how high or low costs could be, depending on events.
 - Since an uncertainty analysis provides a range of costs that span best and worst case spreads, best practice suggests that it is better for decision makers to know the range of potential costs that surround an estimate and the reasons that drive the range rather than just having a point estimate from which to make their decision.
 - While not required by DOJ, such a risk-based analysis would provide a more comprehensive picture of likely costs and the confidence levels associated with any estimate.
-

Objective 2 - OFDT's cost estimating methods *substantially met* characteristics for being comprehensive

OFDT relies on current and prior years' actual costs to ensure that each year's cost estimate neither double-counts nor omits costs. OFDT investigates any anomalies between its budget requests to DOJ and actual expenditures to identify estimation problems that can be corrected in the current year's budget formulation, and its cost estimating methods *substantially met* characteristics for being comprehensive.

- However, OFDT does not provide a standardized dictionary that defines each of the cost elements that comprise its major cost categories. Defining each cost element would allow OFDT to track specific cost elements and better identify when major cost categories may run higher than anticipated.
- OFDT's cost estimation model contains many assumptions. For instance, the model assumes that historical trends are good predictors of future events. The model also makes assumptions about increases in housing and subsistence rates and how inflation will affect cost items such as health and transportation services. However, OFDT does not assess the risks associated with each of these assumptions. Such an assessment of these risks would provide a level of confidence associated with its cost estimates.

Objective 2 - OFDT's cost estimating methods *partially met* characteristics for being well-documented

Consistent with best practices, OFDT clearly defined the purpose of its cost estimates, and its calculations and results *partially met* characteristics for being well-documented.

- We reviewed the President's Budget for OFDT, as well as the associated detainee population model, and found that OFDT officials had documented the formulas they used to calculate cost elements in the model. OFDT has also well-documented the data sources used in its model and the rationale for the type of estimation method used.
 - However, OFDT officials also acknowledged that some of the more technical aspects of OFDT's detainee projection model were fully understood only by the individual who ran the model. For example, OFDT made changes to its model to reflect the greater emphasis being placed on arresting and prosecuting individuals charged with immigration offenses. However, OFDT could not provide us with a document that explained in detail what these changes were. Best practices include providing enough detail so that the documentation serves as an audit trail to allow for clear tracking of cost estimates over time.
 - Documenting all steps for developing its cost estimate would better position OFDT to recreate its estimates in the event of attrition within its budget office among those who have developed initial cost estimates.
-

Objective 2 - OFDT's cost estimating methods *partially met* characteristics for credibility

OFDT monitors key changes in detention population and average housing and subsistence rates and documents these changes for OFDT leadership, and its cost estimating methods *partially met* characteristics for credibility.

- Consistent with best practices, OFDT has performed sensitivity analyses that show how changes in the number of persons charged with drug, weapons, or immigration offenses will affect the length of detention and thus the average daily population of detainees. OFDT presented this analysis for the first time in its fiscal year 2011 President's Budget.
- However, OFDT does not perform sensitivity analyses on other important cost drivers such as average housing and subsistence rates or assumptions that affect the size of the detainee population, such as changes in laws or policies.
- OFDT states that it performs cross-checks and validates its cost estimates by using actual costs as benchmarks. However, OFDT did not provide us with any specific documents to indicate that it performs these actions.

Objective 3 – What factors contributed to OFDT’s need for funds in excess of its appropriation in recent years and what actions, if any, has OFDT taken to better account for these factors in its annual budget estimations?

In each of the years in which OFDT needed funds in excess of its appropriation, OFDT and DOJ officials attributed the primary cause to the following:

- In 2005: Unanticipated increases in the detainee population.
- In 2008: Lack of sufficient financial reserves, which resulted from a \$145 million rescission of unobligated balances at the end of fiscal year 2007.¹⁵
- In 2009: Increases in average detainee housing and subsistence rates because more detainees were housed in private detention facilities, which—on average—tend to have higher rates than state and local facilities.

¹⁵A rescission is legislation enacted by Congress that cancels the availability of budgetary authority previously enacted before the authority would otherwise expire. See GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: September 2005).

Objective 3 – What factors contributed to OFDT’s need for funds in excess of its appropriation in recent years and what actions, if any, has OFDT taken to better account for these factors in its annual budget estimations?

However, OFDT officials also explained that the following factors consistently complicate their modeling in any fiscal year:

- unpredictable increases in law enforcement activity, particularly immigration-related enforcement and arrests by the Department of Homeland Security (DHS) at the Southwest Border;
- the lack of financial reserves at the end of the fiscal year to cover any unexpected increases in costs in a subsequent year; and
- difficulty quantifying the effect of any single factor, such as length of detention, increases in arrests for certain offenses, or housing and subsistence cost changes, because the various factors that affect costs often occur concurrently.

Given that the detainee population is the most significant driver of OFDT’s costs, OFDT states that it has begun to adjust its detainee projection model to reflect the greater number of individuals charged with immigration offenses. However, because OFDT’s costs exceed \$1 billion, even a small difference between projected and actual cost drivers, such as the detainee population, could result in OFDT’s need for funding in excess of its appropriation by tens of millions of dollars.

Objective 3 – Factors contributing to OFDT’s need for funds in excess of its appropriation

Unpredictable Increases in Law Enforcement Activity

For example, OFDT states that in fiscal year 2009, a DHS initiative to increase immigration enforcement in Southwest Border states, known as Operation Streamline, significantly increased the number of individuals arrested and charged with immigration offenses above what OFDT projected.

- Between fiscal year 2008 and 2009, 161,720 individuals were charged with immigration offenses.¹⁶ This total is almost 60 percent greater than between fiscal year 2006 and fiscal year 2007.
- In fiscal year 2009, the number of individuals charged with immigration offenses accounted for 40 percent of all USMS detainees—compared to 32 percent in fiscal year 2007.

¹⁶A portion of those charged with immigration offenses in fiscal year 2008 were detained during fiscal year 2009.

Objective 3 – Factors contributing to OFDT’s need for funds in excess of its appropriation

Lack of Financial Reserves

Both OFDT and DOJ officials stated that, to avoid the need for funding in excess of its appropriation, it would benefit OFDT to carry a balance at the end of each fiscal year. Officials agreed that a carryover balance between \$20 million and \$30 million would provide sufficient cushion to cover unexpected or increased costs in federal detention activities for up to 10 days. As shown in Table 5, in each year since fiscal year 2005 that OFDT has needed funds in excess of its appropriation, its financial balance at the beginning of the fiscal year was less than \$5 million. For example:

- OFDT began fiscal year 2008 with a carryover balance from fiscal year 2007 of \$137.7 million; however, Congress eliminated this balance, plus additional money, through a rescission of \$145 million.¹⁷
- Additionally, the amount enacted in OFDT’s fiscal year 2008 appropriation was about \$69 million less than what the President Budget’s requested for OFDT. Congress later provided \$20 million in supplemental funds for fiscal year 2008.
- OFDT ended fiscal year 2008 with \$3.4 million in carryover funds, an amount that OFDT officials said was too low to account for the increased costs in federal detention activities in fiscal year 2009.

¹⁷Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844,1936 (2007).

Objective 3 – Factors contributing to OFDT’s need for funds in excess of its appropriation

Table 5: OFDT Expenditures, Financial Reserves at the Start of the Fiscal Year, and Funding in Excess of Appropriations (dollars in thousands)

Fiscal year	OFDT expenditures	Financial reserve from prior fiscal year carryover	Funding received in excess of appropriation
2005	\$1,042,636	\$4,662	\$184,000
2006	1,126,567	30,207	0
2007	1,181,290	85,576	0
2008	1,256,753	0 ^a	20,000
2009	1,353,682	3,431	60,000

Source: GAO analysis of OFDT data.

^a The actual carryover amount was \$137.7 million, but this amount was eliminated via a \$145 million rescission included in OFDT's fiscal year 2008 appropriation.

Objective 3 – Factors contributing to OFDT’s need for funds in excess of its appropriation

Difficulty Quantifying the Effect of Any Single Factor

OFDT and DOJ officials both stated that it is difficult to quantify the effect of a specific event or initiative, such as Operation Streamline, on OFDT’s costs. For instance,

- A law enforcement official stationed in a location participating in Operation Streamline may actually operate in another location and make an immigration arrest that is unaffiliated with Operation Streamline.
- Some individuals arrested and charged under Operation Streamline may have been previously charged with other offenses, such as gun or drug-related crimes. According to an OFDT official, these individuals probably would be prosecuted on these charges, rather than for immigration offenses.

Further, detention costs are also affected by the judicial system. For instance, a backlog at a court may increase detention time, or a judge may request that a detainee be placed at a higher-cost detention facility that is closer to the court.

Objective 3 – Factors contributing to OFDT’s need for funds in excess of its appropriation

The Detainee Population Is the Most Significant Cost Driver

Most of the increases in OFDT’s costs have occurred in its Detainee Housing and Subsistence cost category, although other cost categories have also experienced significant cost increases within a given year.

- Detainee housing and subsistence accounted for \$82 million of the total \$97 million increase in OFDT’s total program costs in fiscal year 2009, and about two-thirds of that rise is directly attributable to an increase in the number of detainees that year. About half of the remaining increase in total program costs came from prisoner transportation, which in fiscal year 2009 rose 35 percent over the previous year.
- Detainee housing and subsistence accounted for \$65.6 million of the total \$75.4 million increase in OFDT’s total program costs in fiscal year 2008. Over half of the remaining increase in total program costs came from the cost category “Other,” which included services such as meals while prisoners are traveling to judicial proceedings.

Objective 3 – Factors contributing to OFDT’s need for funds in excess of its appropriation

OFDT Is Adjusting Its Model to Better Predict Costs by:

- Increasing projections for the number of detainees charged with immigration offenses. However, because detainees charged with immigration offenses tend to be detained on average for half the time of detainees who are charged with federal weapons or drug offenses, an increase in the number of individuals charged with immigration offenses would not necessarily increase the total average daily population. The effect on average daily population would depend on other factors such as the size of the increase in the number of those charged with immigration offenses and the proportion of detainees charged with other types of offenses.
- Using leading indicators. OFDT is now employing variables, such as increases in the number of law enforcement personnel or assistant U.S. attorneys in a judicial district, as leading indicators of where the arrests will be and where detainees will need to be housed in the future; however, as noted, law enforcement officials may not always operate where they were hired.
- Monitoring space at state and local facilities. OFDT is now closely monitoring the available bed space at state and local detention facilities. An increase in the number of state and local inmates has diminished the space available for federal detainees at these facilities. As a result, OFDT and USMS have begun to use more private facilities to house federal detainees. Private facilities tend on average to have higher housing and subsistence rates than state and local facilities.

Objective 3 – Factors contributing to OFDT’s need for funds in excess of its appropriation

Small Differences between Projections and Actual Figures Can Significantly Affect Costs

OFDT’s budget is approximately \$1.4 billion. As a result, even when the projections for OFDT in the President’s Budget are close to the program’s actual costs within a few percentage points, the differences in dollars are significant:

- In fiscal year 2009, as shown in table 6, although OFDT’s estimates in the President’s Budget of detainee population and average housing and subsistence rate were both within 2.5 percent of the actual values, its costs for housing and subsistence were \$46.4 million higher than appropriated funding.
- In fiscal year 2008, as shown in table 7, although OFDT’s estimates in the President’s Budget of detainee population and average housing and subsistence rate were both within 4 percent of the actual values, its costs for housing and subsistence were \$35.5 million lower than appropriated funding.¹⁸

¹⁸Even though the President’s Budget request for OFDT overestimated costs in fiscal year 2008, OFDT still experienced the need for additional funding to sustain its operations because \$145 million was rescinded by the fiscal year 2008 appropriations act.

Objective 3 – Small percentage differences in estimates result in large dollar differences in costs

Table 6: Comparison of Projected and Actual Costs, Fiscal Year 2009 (dollars in thousands)

Statistic or cost category	Difference between values projected in President's Budget submission and actual values
Average daily detainee population at facilities operated by private companies or state and local governments	-0.08% ^a
Average housing and subsistence rate at facilities operated by private companies or state and local governments	-2.33%
Housing and subsistence costs	- \$46.4 million

Source: GAO analysis of OFDT data and President's Budget.

^a Negative values denote that OFDT's projection in the President's Budget underestimated the actual value.

Objective 3 – Small percentage differences in estimates result in large dollar differences in costs

Statistic or cost category	Difference between values projected in President's Budget submission and actual values
Average daily detainee population at facilities operated by private companies or state and local governments	4%
Average housing and subsistence rate at facilities operated by private companies or state and local governments	2.85%
Housing and subsistence costs	\$35.5 million

Source: GAO analysis of OFDT data and President's Budget.

Note: Positive values denote that OFDT's projection in the President's Budget overestimated the actual value.

Conclusions

OFDT's methods for estimating costs follow many of GAO's best practices and substantially meet the characteristics of accurate and comprehensive cost estimates. However, even if OFDT underestimates costs by a small percentage, this could mean program costs exceed OFDT's appropriations by tens of millions of dollars. OFDT has limited ability to cut services, reduce costs, or draw on other accounts in response to such unforeseen increases in detention housing and subsistence costs because:

- it is required to cover costs associated with housing and transporting all USMS detainees, and
- housing and subsistence expenses comprise approximately 90 percent of OFDT's costs.

Conclusions

As a result, OFDT is susceptible to needing more funding to pay for unanticipated cost increases.

To further improve its cost estimation practices, OFDT could:

- More fully document the assumptions and calculations that it employs in its USMS detainee projection model. By improving documentation of all steps for developing its cost estimate, OFDT would be better positioned to recreate its estimates in the event of attrition within its budget office among those who have developed initial cost estimates.
- Conduct an uncertainty analysis to quantify how likely various scenarios are to occur. If OFDT provided this information to DOJ, DOJ could more fully understand the range of potential costs—and the potential need for more funding—if estimating assumptions for key cost drivers, such as detainee population growth, do not hold true.

Recommendations for Executive Action

To improve OFDT's cost estimation process, we are recommending that the Attorney General instruct the Federal Detention Trustee to take the following two actions:

1. Improve documentation of calculations used to (a) project the number of USMS detainees and (b) estimate program costs.
2. Quantify the extent to which its costs could vary due to changes in key cost assumptions—and submit a risk-adjusted cost estimate, along with an associated confidence level and corresponding budget documentation—to DOJ to facilitate decision making.

Agency Comments

- We provided a draft of these briefing slides to the Department of Justice (DOJ), OFDT, and USMS for review and comment. In an e-mail received on September 24, 2010, DOJ concurred with the recommendations in our report and did not provide written comments to include in this report. DOJ also provided technical comments which we incorporated as appropriate.

Appendix I – GAO’s Twelve Step Cost Estimating Practices

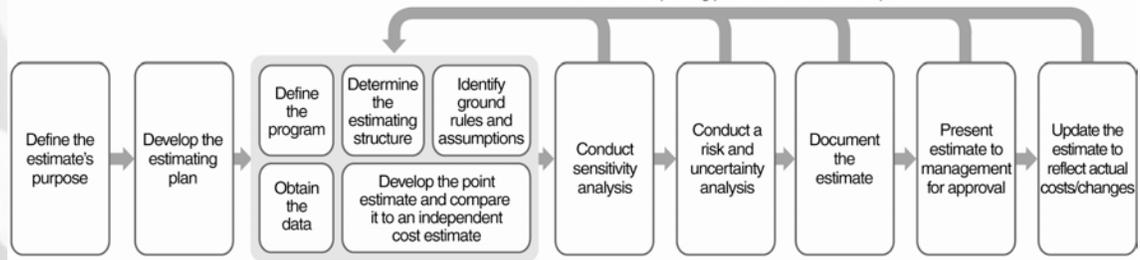
Initiation and research
Your audience, what you are estimating, and why you are estimating it are of the utmost importance

Assessment
Cost assessment steps are iterative and can be accomplished in varying order or concurrently

Analysis
The confidence in the point or range of the estimate is crucial to the decision maker

Presentation
Documentation and presentation make or break a cost estimating decision outcome

Analysis, presentation, and updating the estimate steps can lead to repeating previous assessment steps



Source: GAO

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