

PREA Audit: Subpart B Sexual Abuse Investigations Audit Report



U.S. Customs and
Border Protection

AUDITOR

| | | | |
|-------------------------|---|--------------------------|---------------------------|
| Name of Auditor: | (b) (6), (b) (7)(C) | Organization: | Creative Corrections, LLC |
| Email Address: | (b) (6), (b) (7)(C)@creativecorrections.com | Telephone Number: | (b) (6), (b) (7)(C) |

AGENCY

| | |
|------------------------|------------------------------------|
| Name of Agency: | U.S. Customs and Border Protection |
|------------------------|------------------------------------|

PROGRAM OFFICE

| | |
|--------------------------------|---------------------------------------|
| Name of Program Office: | Office of Professional Responsibility |
|--------------------------------|---------------------------------------|

Information About the Organization

| | |
|------------------------------|---|
| Name of Office Head: | Matthew Klein |
| Title: | Assistant Commissioner |
| Physical Address: | U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW Room 8.3A, |
| Mailing Address: (if) | N/A |
| Telephone Number: | (b) (6), (b) (7)(C) |

AUDIT FINDINGS

NARRATIVE OF AUDIT PROCESS AND DESCRIPTION OF FACILITY CHARACTERISTICS:

Directions: Discuss the audit process to include the date(s) of the audit, names of all individuals consulted, audit methodology, and a summary describing the program office and division responsible for conducting sexual abuse investigations.

A remote PREA compliance audit of the Customs and Border Protection (CBP), Office of Professional Responsibility (OPR) Sexual Assault/Sexual Abuse Investigations (SAAI) Program of the Investigative Operations Division (IOD) took place from Tuesday, June 25, 2019 through Thursday, June 27, 2019. The Audit was conducted by (b) (6), (b) (7)(C) a Certified PREA Auditor, contracted for Creative Corrections, LLC of Beaumont, Texas.

The audit followed a conference call on May 1, 2019 to review IOD operations and to discuss methodology for the first remote PREA compliance audit.

Those participating in the call were:

- (b) (6), (b) (7)(C) Prevention of Sexual Abuse (PSA) Coordinator, Privacy and Diversity Office (PDO), HQ
- (b) (6), (b) (7)(C) Assistant Director, Office of Professional Responsibility (OPR), Investigative Operations Division (IOD)
- (b) (6), (b) (7)(C) Coordinator, Sexual Abuse and Assault Investigations (SAAI), Office of Professional Responsibility (OPR), Investigative Operations Division (IOD)
- (b) (6), (b) (7)(C) Deputy Prevention of Sexual Assault (PSA) Coordinator, Privacy and Diversity Office (PDO), HQ
- (b) (6), (b) (7)(C) Program Manager, Creative Corrections, LLC
- (b) (6), (b) (7)(C) Certified PREA Auditor, Creative Corrections, LLC

OPR/IOD has a full-time SAAI/PREA Coordinator at Headquarters who reports to an Assistant Director of IOD. Special Agents (SA) operate from regional offices throughout the United States and report to a regional supervisor within their office. Agents and Supervisors responding to PREA investigations within component operations or holding facilities work in coordination with the SAAI Coordinator.

Following the conference call, the Auditor was able to review CBP PREA materials including the Commissioner's Memorandum, "CBP's Policy on Zero Tolerance for Sexual Abuse and Assault, dated March 11, 2015; CBP Directive 2130-030, "Prevention, Detection and Response to Sexual Abuse and Assault in CBP Holding Facilities", January 19, 2018; and

CBP National Standards on Transportation, Detention and Search (TEDS), October, 2015.

The Auditor was also able to review responsive HQ documents including OPR/IOD's Special Agent Internal Operating Procedures (IOP), specifically Chapters 3.10, 9 and 12 as they relate to case management, evidence handling and sexual assault and abuse investigations respectively. The Auditor was also provided with redacted copies of SAAI investigations from Office of Field Operations (OFO) and Border Patrol (BP). These reports were for all CBP facilities where either a PREA Compliance audit had been completed and the audit report was accepted, or where there is a compliance audit scheduled to be completed during the first audit cycle. Investigations of facilities yet to be audited will not be addressed in this compliance audit to maintain accuracy and proper analysis of collected data.

During the remote audit, the Auditor conducted seven Subject Matter Expert (SME) interviews and 13 random staff Special Agent (SA) interviews. The SME interviews included four HQ SME's and three SME field Supervisors. Where the Auditor interviewed a Special Agent (SA) who had conducted a PREA investigation of facilities not from the current cycle of PREA compliance audits, the Auditor queried the SA about investigative procedures, evidentiary protocols, and cooperation from component personnel and inter-agency partners.

In the two cases where a PREA investigation had occurred in a facility where a PREA audit had occurred during the current cycle, the Auditor examined the SA's investigative process in determining the conclusion to the investigation. In all SA interviews, the Auditor questioned the SA's about their PALMS and specific PREA training, the availability and quality of technology at component facilities, and the cooperation of component agencies during and following investigations.

SUMMARY OF OVERALL FINDINGS:

Directions: Discuss audit findings to include a summary statement of overall findings and the number of provisions which the program office has achieved compliance at each level: Exceeds Standard, Meets Standard, and Does Not Meet Standard.

A close-out telephonic conference call was conducted on Thursday, June 27, 2019 at 11:00 (ET). Those participating in the conference call were:

- (b) (6), (b) (7)(C) Prevention of Sexual Abuse (PSA) Coordinator, Privacy and Diversity Office (PDO), HQ
- (b) (6), (b) (7)(C) Assistant Director, Office of Professional Responsibility (OPR), Investigative Operations Division (IOD)
- (b) (6), (b) (7)(C) Coordinator, Sexual Abuse and Assault Investigations (SAAI), Office of Professional Responsibility (OPR), Investigative Operations Division (IOD)
- (b) (6), (b) (7)(C) Deputy Prevention of Sexual Assault (PSA) Coordinator, Privacy and Diversity Office (PDO), HQ
- (b) (6), (b) (7)(C) Certified PREA Auditor, Creative Corrections, LLC

The Auditor gave a synopsis report of the documents reviewed, investigative reports reviewed, and the Special Agents (SA) and Subject Matter Experts (SME) interviewed. The Auditor reviewed 12 redacted investigative files; two were from ports, which had completed the PREA compliance audit. The remainder are scheduled for audit. The Auditor interviewed 16 identified SAs and 4 HQ SMEs.

The Auditor found OPR/IOD/SAAI was in substantial compliance with all standards applying specifically to sexual abuse/sexual assault investigations. These standards are 115:121; 115:122; 115:134; 115:171; 115:172; and 115:187. Compliance is based on triangular analysis of agency policy, local policy, and local practice. Compliance was determined based on review of completed investigative reports for exhaustion of available investigative resources and thorough analysis by the investigator. The Auditor applied the investigative reports to each standard provision of 115:171. This analysis was corroborated by interview and review of scenarios presented to interviewed investigators (Special Agents) by the Auditor. On a consistent and substantial basis, the Auditor was presented with reports of interagency cooperation with federal, state, and municipal law enforcement and component agency personnel from CBP. The Auditor consistently heard a clear responsibility to exhaust all available resources in both criminal and administrative investigations during SA and Field SME interviews.

| SUMMARY OF AUDIT FINDINGS | |
|--|---|
| Number of standards exceeded: | 0 |
| Number of standards met: | 6 |
| Number of standards not met: | 0 |
| OVERALL DETERMINATION | |
| <input type="checkbox"/> Exceeds Standards (Substantially Exceeds Requirements of Standards) | <input checked="" type="checkbox"/> Low Risk |
| <input checked="" type="checkbox"/> Meets Standards (Substantial Compliance; Complies in All Material Ways with the Standards for the Relevant Review Period) | <input type="checkbox"/> Not Low Risk |
| <input type="checkbox"/> Does Not Meet Standards (Requires Corrective Action) | |

PROVISIONS

Directions: In the notes, the auditor shall include the evidence relied upon in making the compliance or non-compliance determination for each provision of the standard, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Corrective Action Plan Final Determination, accompanied by information on specific corrective actions taken by the facility. Failure to comply with any part of a standard provision shall result in a finding of "Does not meet Standard" for that entire provision, unless that part is specifically designated as Not Applicable. For any provision identified as Not Applicable, provide an explanation for the reasoning. If additional space for notes is needed, please utilize space provided on the last page.

§115.121(a) and (b) – Evidence protocols and forensic medical examinations.

- Exceeded Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does not meet Standard (requires corrective action)

Notes:

The agency meets the standard.

(a)The agency meets the standard provision. CBP OPR/IOD/SAAI has developed evidence protocols satisfying the requirements of CBP Directive 2130-030 in Chapter 9 of OPR/IOD/SAAI's Internal Operating Procedures. These procedures mirror the best practices of national law enforcement agencies and include provisions for forensic examinations at local medical facilities; victim advocacy; evidence preservation, handling, retention and proper documentation; proper interviewing and video preservation; and coordination with federal, state and local law enforcement in sharing investigative reports, evidence, findings and continued agency action. This protocol was detailed during the SME interview with the OPR/SAAI Director. Investigative requirements and evidence protocols were consistently reported during Field SME and SA interviews and echoed Chapters 9 and 12 of OPR IOD's IOP manual. The Agency meets the standard provision.

(b)The Agency meets the standard provision. SME interviews with the OPR SAAI Director and OPR SAAI Oversight Coordinator confirmed SA's have been trained to coordinate and maximize local resources for crisis intervention and support services for sexual abuse victims at Ports of Entry or Border Patrol station holding/processing centers. This practice was confirmed by several interviewed SA's who have performed PREA investigations. They also confirmed total cooperation from component agency supervisory personnel.

**See Additional Notes

§115.122(a) (b) and (e) – Policies to ensure investigation of allegations and appropriate agency oversight.

- Exceeded Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does not meet Standard (requires corrective action)

Notes:

The agency meets the standard.

(a)The Agency meets the standard provision. Both the Commissioner's Memorandum dated 3/11/2015 and CBP Directive 2130-030 require that all allegations of sexual abuse and sexual assault be referred to the Joint Intake Center (JIC) for investigation. The JIC shall insure by procedure that the Office of the Inspector General is also notified. All interviewed SME's reported that the OIG has the first right of refusal over all investigations. If the OIG refuses, the OPR/IOD shall ensure any criminal investigation is exhausted and then conduct the administrative investigation, again to the exhaustion of all available evidence. This procedure was confirmed by all interviewed SMEs.

(b)The Agency meets the standard provision. CBP OPR/IOD/SAAI utilizes a two tier review system for the review and oversight of all investigations conducted by the regional offices to ensure all investigative protocols are followed. The OPR/IOD/SAAI Oversight Coordinator SME reports all OPR/IOD/SAAI investigations are first reviewed by the HQ Investigative Review Team (IRT). The IRT ensures the SAs and Supervisors at the regional level have followed all investigative steps outlined in Chapters 9 and 12 of the IOP manual. The second step involves a PREA specific review conducted by the OPR/IOD/SAAI PREA Coordinator. The IOD Assistant Director confirmed the documentation and storage of all investigative records for at least 5 years in the Joint Integrity Case Management System (JICMS).

(e) The Agency meets the standard provision. Upon receipt of an allegation of sexual abuse/assault that meets the requirements of U nonimmigrant status, OPR shall ensure that the detainee is advised of U nonimmigrant status. This was confirmed by the SME interview with the OPR/IOD/SAAI PREA Coordinator.

§115.134(a) and (b) – Specialized training: Investigations.

- Exceeded Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does not meet Standard (requires corrective action)
- Not Applicable (provide explanation in notes):

Notes:

The Agency meets the standard.

(a)The Agency meets the standard provision. Interviews with all HQ and field SMEs and all SA's confirms that all SMEs are required to attend a two week special investigative (OPR-SA) training which includes specialized training in sexual abuse investigations and cross-agency coordination. Since the initiation of PREA, this specialized training has included Module VIII on PREA investigations and is now facilitated by the OPR/IOD/SAAI PREA Coordinator.

(b)The Agency meets the standard provision. Interview with the OPR/IOD Assistant Director and the OPR/IOD/SAAI PREA Coordinator confirmed the documentation of this training for all SAs and Supervisors. Interviewed SAs confirmed they had received the specialized training and had signed an acknowledgement.

§115.171(a) through (e) – Criminal and administrative investigations.

- Exceeded Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does not meet Standard (requires corrective action)

Notes:

The Agency meets the standard.

(a)The Agency meets the standard provision through substantial compliance. Interviewed SMEs, SAs and review of 12 redacted investigative reports confirms that OPR/IOD responded to all allegations promptly, supported investigations by local, state and federal law enforcement, and were thorough until all available evidence had been exhausted. The investigations were conducted objectively and by specially trained investigators as required by the standard.

(b)The Agency meets the standard provision. Interview with the OPR/IOD Assistant Director confirmed that all substantiated and unsubstantiated allegations made during the audit period were followed with complete administrative investigations regardless of the outcome of the criminal investigation.

(c)The Agency meets the standard provision. The Auditor was able to review the OPR-IOP manual, specifically chapters 3.10, 9 and 12 to confirm that the Agency/OPR have developed procedures to: (1) Preserve direct and circumstantial evidence, including any physical and DNA evidence and any available electronic monitoring data; (2) Interview alleged victims, suspected perpetrators and witnesses; (3) Reviewing prior complaints and reports of sexual abuse involving the alleged perpetrator; (4) Assessment of the alleged credibility of an alleged victim, suspect or witness, without regard to the individual's status as detainee, staff or employee, and without requiring any detainee who alleges sexual abuse to submit to a polygraph; Documentation of each investigation by written report, which will include a description of the physical and testimonial evidence, the reasoning behind credibility assessments and investigative facts and findings; and (6)Retention of such reports for as long as the alleged abuser is detained or employed by the agency, plus five years. Such procedures shall establish the coordination and sequencing of the two types of investigations, in accordance with paragraph (b) of this section, to ensure the criminal investigation is not compromised by the administrative investigation.

(d)The Agency meets the standard provision. Interview with the OPR/IOD/SAAI PREA Coordinator and the field SMEs confirmed that the investigation shall not terminate because of the departure of the victim or abuser from the employment or control of the agency.

(e)The Agency meets the standard provision. All SME and SA interviews confirmed the Agency's requirement for complete cooperation with outside investigators.

§115.172 – Evidentiary standard for administrative investigations.

- Exceeded Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does not meet Standard (requires corrective action)
- Not Applicable (provide explanation in notes):

Notes:

The Agency meets the standard.

Interviews with all SMEs confirmed that the standard of evidence for an administrative investigation is the preponderance of evidence.

§115.187(a) – Data collection.

- Exceeded Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does not meet Standard (requires corrective action)
- Not Applicable (provide explanation in notes):

Notes:

The Agency meets the standard.

(a)The Agency meets the standard provision. Interview with the OPR/IOD Assistant Director confirmed that all Agency case records associated with claims of sexual abuse are securely maintained in the JICMS in accordance with DHS PREA standards and applicable Agency procedures. The DHS OIG shall maintain all records associated with any sexual abuse investigations retained by the OIG.

ADDITIONAL NOTES

Directions: Please utilize the space below for additional notes, as needed. Ensure the provision referenced is clearly specified.

**The Auditor reviewed Agency requirements, procedures and practice by CBP/OPR/IOD/SAAI in meeting the requirements of 115:121. The Auditor’s finding that CBP/OPR/IOD/SAAI is compliant with 115:121 should not be misconstrued as indicating that all CBP Ports of Entry or Border Patrol Stations have achieved substantial compliance in their requirement under 115:121. The requirement to ensure that local procedures are in place to provide forensic examinations by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs), where practicable, to sexual abuse victims is assessed and determined locally during on-site PREA audits by certified PREA auditors.

AUDITOR CERTIFICATION:

I certify that the contents of the report are accurate to the best of my knowledge and no conflict of interest exists with respect to my ability to conduct an audit of the agency under review. I have not included any personally identified information (PII) about any detainee or staff member, except where the names of administrative personnel are specifically requested in the report template.

(b) (6), (b) (7)(C)
Auditor’s Signature

September 17, 2019
Date