

First Step Act Annual Report

April 2022



Table of Contents

Introduction	1
Executive Summary	1
I. A Summary of the Department's Activities and Efforts in Carrying Out the First Step Act ...	5
II. An Assessment of Bureau of Prisons' Implementation of the Risk and Needs Assessment System and Compliance with 18 U.S.C. § 3621(h)	8
A. Implementation and Validation of Risk and Needs Assessment Tools	8
1. Implementation of the Risk Assessment Tool (PATTERN) and Revalidation Efforts	8
2. Implementation of the Needs Assessment Tool (SPARC-13) and Revalidation Efforts.....	18
B. Implementation of the Risk and Needs Assessment System Through Scoring, Referral to Programs and Ongoing Engagement, and Time Credits	25
1. PATTERN Risk Assessments	25
2. Time Credits Eligibility by PATTERN Classification.....	26
3. Referral to Programs, Tracking Participation, Ongoing Engagement	27
4. Time Credits Rule	27
5. Good Conduct Time (GCT) Rule/Changes.....	29
6. FSA Audit Activities.....	30
III. A Summary and Assessment of the Types and Effectiveness of the Evidence-Based Recidivism Reduction (EBRR) Programs and Productive Activities (PAs) in Prisons Operated by the Bureau of Prisons	32
A. Approved EBRR Programs and Activities	32
B. FSA Program Participation	33
C. FSA Program Capacities	35
D. FSA Program Evaluations	35
E. Partnerships with Volunteers	36
F. BOP's Additional FSA Implementation Activities.....	39
1. BOP Efforts to Assist with Identification	39
2. Transfers Closer to Home	40
3. Elderly and Terminally Ill Pilot Program.....	41
4. Home Confinement.....	41
5. Drug Treatment.....	45

6. FSA Staffing Resources.....	46
7. Retroactive Application of the FSA to Crack-Cocaine Offenders.....	48
8. Compassionate Release.....	50
IV. The Rates of Recidivism Among Individuals Who Have Been Released from Federal Prisons.....	53
Recidivism Data Tables.....	54
V. The Status of Prison Work Programs at Facilities Operated by the Bureau of Prisons.....	57
VI. The Operational Policies and Guidance Issued.....	60
VII. An Assessment of Progress Made Towards Carrying Out the Purposes of the FSA, Including Any Savings.....	63
VIII. An Assessment of Budgetary Savings.....	65
IX. Statistics on Inmates with Dyslexia.....	66

Introduction

The First Step Act (FSA or the Act), passed into law in December 2018, was heralded as the culmination of a bipartisan effort to improve criminal justice outcomes, and to reduce the size of the federal prison population, while also maintaining public safety. Under Section 101 of the Act, now codified in 18 U.S.C. § 3634, the Attorney General is required to submit a report beginning two years after the date of enactment, and annually thereafter for a period of five years. The reports are to be delivered to the Committees on the Judiciary of the Senate and the House of Representatives and the Subcommittees on Commerce, Justice, Science, and Related Agencies of the Committees on Appropriations of the Senate and the House of Representatives. The first such Report was submitted to Congress and subsequently published on December 21, 2020.¹ This is the second Annual Report submitted pursuant to Section 3634.

Executive Summary

This Report reflects the ongoing efforts of the Department of Justice (the Department) to make the goals of the First Step Act a reality and summarizes the Department's activities in that respect during the period since the publication of the last annual Report, in December 2020. The Report includes information responsive to the requirements of Section 3634:

- I. A Summary of the Department's Activities and Efforts in Carrying Out the First Step Act.
- II. An Assessment of the Bureau of Prisons' Implementation of the Risk and Needs Assessment System and Compliance with 18 U.S.C. § 3621(h).
- III. A Summary and Assessment of the Types and Effectiveness of the Evidence-Based Recidivism Reduction Programs and Productive Activities in Prisons Operated by the Bureau of Prisons.
- IV. The Rates of Recidivism Among Individuals Who Have Been Released from Federal Prisons.
- V. The Status of Prison Work Programs at Facilities Operated by the Bureau of Prisons.
- VI. The Operational Policies and Guidance Issued.
- VII. An Assessment of Progress Made Towards Carrying Out the Purposes of the FSA, Including Any Savings.
- VIII. An Assessment of Budgetary Savings.
- IX. Statistics on Inmates with Dyslexia.

Section I highlights the Department's progress and efforts in implementing the FSA since the last Report.

¹ See U.S. Department of Justice (USDOJ), *The Attorney General's First Step Act Section 3634 Annual Report* (Dec. 2020), <https://nij.ojp.gov/first-step-act/the-attorney-generals-first-step-act-section-3634-annual-report-december-2020.pdf>.

Section II discusses the implementation and revalidation of the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN), the Department's inmate recidivism risk assessment tool, including the annual external analysis of PATTERN across the areas of predictive validity, dynamic validity, and racial and ethnic neutrality. In this section, the Department announces that it will implement an updated version of the tool, PATTERN 1.3, and adjust the cut points of eligibility for inmates to earn time credits to accrue towards prerelease custody and supervised release, while maintaining public safety. In addition, this Section discusses the development and implementation of the Standardized Prisoner Assessment for Reduction in Criminality (SPARC-13), the BOP's assessment system for inmates' critical reentry and criminogenic needs, i.e., the major risk factors associated with impacting an individual's risk for criminal conduct. Finally, this Section also discusses the promulgation of the good conduct time rule, and the time credits rule to maximize credits for successful participation in rehabilitation programming.

Section III summarizes the BOP's work to develop, expand, evaluate, and audit the evidence-based recidivism reduction (EBRR) programs and productive activities (PAs) offered pursuant to the FSA since the last Report. This Section includes data on inmate participation in the EBRR programs and PAs, and the need for increased staffing to support increased programming capacity. This Section also summarizes the BOP's efforts to implement FSA mandates such as expanding partnerships with volunteers; assisting releasing inmates with obtaining identification; placing inmates in facilities closer to their homes; expanding the use of home confinement, including for the elderly and the terminally ill; expanding drug treatment services; and addressing legal issues involved in the retroactive application of the FSA to crack-cocaine offenders and to compassionate release.

Section IV provides data on recidivism rates for inmates released from federal prisons under the FSA since the last Report.

Section V discusses expansions since the last Report to BOP inmate work programs such as apprenticeships, vocational training, and opportunities to obtain skills-based, industry-standard certifications, as well as additional work assignments and job training available through Federal Prison Industries.

Section VI lists the policies and guidance issued by the BOP to implement the FSA's requirements.

Section VII provides a brief assessment of the progress that the Department made to fulfill the purposes of the FSA, such as refining its currently employed needs assessment system, increasing delivery of FSA programming, using needs assessments to make individualized determinations of appropriate programming, developing a divisional research plan, and enhancing staffing for FSA initiatives and programs.

Section VIII addresses the issue of budgetary savings from the implementation of the FSA, noting that it is still too early to make a determination of any savings achieved.

Section IX discusses the testing conducted among BOP inmates to screen for the prevalence of dyslexia among prisoners in BOP facilities and the resulting data for such persons since the last Report.

Publications Developed in Response to the FSA

Additional information about the Department's implementation of the FSA can be found in the following reports and publications released since the enactment of the FSA.

October 2020 – Present

- [The First Step Act Section 3634 Annual Report](#), published December 2020.
- [2020 Review and Revalidation of the First Step Act Risk Assessment Tool](#), published January 2021.
- [Federal Prisoner Statistics Collected Under the First Step Act, 2020](#), published February 2021.
- [First Step Act: Needs Assessment](#), published June 2021.
- [First Step Act: Approved Programs Guide](#), published July 2021.
- [First Step Act: Review and Revalidation of the Bureau of Prisons Needs Assessment System, Fiscal Year 2022](#), published October 2021.
- [Federal Prisoner Statistics Collected under the First Step Act, 2021](#), published November 2021.
- [2021 Review and Revalidation of the First Step Act Risk Assessment Tool](#), published December 2021.
- [FSA Time Credits Rule](#), published January 2022.
- [Good Conduct Time Credit Under the First Step Act](#), published February 2022.
- [First Step Act: Initial Review of the SPARC-13 Needs Assessment System](#), published March 2022.

December 2018 – September 2020

- [The First Step Act of 2018: Risk and Needs Assessment System](#), published July 2019.
- [First Step Act: Best Practices for Academic and Vocational Education for Offenders](#), published July 2019.
- [Stakeholder Statements Submitted in Response to NIJ's First Step Act Listening Sessions](#), published July 2019.
- [Key Components of the Federal Bureau of Prisons' Current Needs Assessment System](#), published August 2019.
- [Stakeholder Statements Submitted to NIJ's September Listening Sessions: Comments on the Department of Justice's Report, The First Step Act of 2018: Risk and Needs Assessment System](#), published September 2019.
- [The First Step Act of 2018: Risk and Needs Assessment System – Update](#), published January 2020.
- [Data Collected Under the First Step Act, 2019](#), published March 2020.
- [First Step Act Implementation: Fiscal Year 2020 90-Day Report](#), published June 2020.
- [Needs Assessment in the Federal Bureau of Prisons](#), published August 2020.

FSA Resources Online

In an effort to inform the public about FSA activities, the BOP has established an FSA Resource Page on its public website: <https://www.bop.gov/inmates/fsa/index.jsp>.

Reports and other pertinent FSA documents released by the Department in support of the implementation of the Act are also located on the National Institute of Justice's (NIJ) public website: <https://nij.ojp.gov/topics/articles/nijs-role-under-first-step-act>.

I. A Summary of the Department's Activities and Efforts in Carrying Out the First Step Act

The Department and the BOP continued to make progress in fully implementing the FSA since the last Report, and those efforts are ongoing. In particular, the Department further implemented and updated the Risk and Needs Assessment System (RNAS), and expanded inmates' abilities to participate in evidence-based rehabilitative programming. The RNAS consists of the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN), a risk assessment system released by the Attorney General in July 2019, and the Standardized Prisoner Assessment for Reduction in Criminality (SPARC-13) system, a needs assessment system released by the BOP in January 2020.

Significant FSA activities since the last Report include:

- **Update to the PATTERN risk assessment system:** In consultation with external research experts engaged by NIJ, the BOP implemented updates to PATTERN² to minimize errors in scoring inmates' recidivism risk levels. The BOP made progress toward that goal in significant part by automating PATTERN in June 2021. As a result of this automation, the BOP was able to ensure that any errors formerly introduced by manual entry of inmate information by staff were corrected. Additionally, the BOP has been able to optimize ongoing staff work by standardizing risk assessment and eliminating manual scoring. During inmates' regular progress review meetings, the Unit Management Team³ reviews the inmates' risk levels and factors contributing to their risk scores. The BOP's Office of Research and Evaluation (ORE) provided support to the NIJ consultants in their ongoing work to conduct the annual revalidation of PATTERN. In addition, following the NIJ consultants' PATTERN revalidation report published in December 2021,⁴ the BOP will implement the revised version of the tool, "PATTERN 1.3," which adjusts various item weights in the prior tool to enhance predictive validity. In conjunction with the shift to PATTERN 1.3, and at the direction of the Attorney General, the Department will also adopt new "cut points" (score ranges for making different recidivism risk level assignments) for PATTERN's risk level categories under the "general tool," in an effort to mitigate against various racial and ethnic disparities associated with prior risk level categories and enhance opportunities for eligible inmates to earn time credits that accrue towards prerelease custody and supervised release, while maintaining public safety.

² See National Institute of Justice (NIJ), *2020 Review and Revalidation of the First Step Act Risk Assessment Tool* (Jan. 2021), <https://www.ojp.gov/pdffiles1/nij/256084.pdf>.

³ In the BOP, a "Unit Management Team" is comprised of the unit manager, case manager, and correctional counselor (also known as a "unit team") whose mission is to determine and help address inmate needs and to monitor inmate participation and progress in developing and maintaining prosocial behaviors that benefit staff, inmates, victims, and society.

⁴ See NIJ, *2021 Review and Revalidation of the First Step Act Risk Assessment Tool* (Dec. 2021), <https://www.ojp.gov/pdffiles1/nij/303859.pdf>.

- **Improvement of the SPARC-13 needs assessment system:** The BOP took important steps toward improving SPARC-13, including developing tracking assignments, adding new assessment measures, and implementing the reassessment of those measures. BOP has continued to take these steps since the last Report, including by tracking inmate participation in programs and automating needs assessments.
- **Engagement of contracting partners to review EBRR programs and PAs:** The BOP has implemented protocols for internal and external review of the EBRR program and PA submissions using a third-party contractor.⁵ EBRR programs and PAs are reviewed for evidence of their effectiveness in achieving recidivism reduction and for their suitability in the federal correctional setting.
- **Finalization and implementation of the Time Credits (TC) rule to maximize rehabilitation programming and credits:** In November 2020, the BOP, working under the direction of the Attorney General, proposed regulations to implement the FSA's requirement to allow inmates to earn TC through successful participation in EBRR programs and PAs. The Department appreciated the thoughtful and insightful feedback from external stakeholders and the public during the notice-and-comment period. After a thorough review of that feedback, listening sessions, and internal deliberation, a number of key changes were made in the rule, which was finalized and made public on January 13, 2022. Implementation of the rule has already begun, with more than 6,100 eligible inmates being transferred to supervised release or prerelease custody as of April 5, 2022.
- **Monitoring programming availability and participation across BOP institutions:** Since the last Report, the BOP established a partnership with the Department's Civil Division, specifically the Advanced Data Analysis and Mining (ADAM) Lab, to develop prototype dashboards to analyze and present BOP data using geospatial software. The objective of this project is to determine how best to use this software technology platform – for which the Department is already licensed – for purposes of FSA quality-assurance monitoring. The BOP is currently working to engage Fiscal Year (FY) 2022 contract engineering resources to establish this geospatial capability in the BOP's cloud computing environment. The infrastructure to be developed will be used to display dashboards based on metrics the BOP will identify to gauge FSA performance (e.g., EBRR program and PA availability and inmate participation across BOP facilities). Additionally, select subject-matter experts within the BOP will be trained in the technology for ongoing development and maintenance of the proposed dashboards.
- **Engaged with stakeholders and expanded partnerships:** The Department has engaged with outside stakeholders to receive a broad range of views about the implementation of the FSA and to maximize the effective delivery of recidivism-reduction

⁵ The BOP engaged the MITRE Corporation, an external, not-for-profit organization without conflicts of interest, to support the development and execution of the review process. External programs are reviewed for evidence demonstrating effectiveness in reducing recidivism as well as additional BOP-established criteria. The BOP decides which programs are included on the approved list using the information from the independent reviews. See <https://www.bop.gov/inmates/fsa/programs.jsp> (bottom of page "Have an idea for a program?").

programming and rehabilitation to incarcerated persons. In July 2021, the Department held two listening sessions, in which 16 organizations participated and presented their concerns and views. The BOP has meanwhile forged a variety of partnerships with external individuals and organizations, including individual volunteers, volunteer-based organizations that provide visitation, mentoring, and other services, and contractors that assist with inmate programs and activities in all institutions. The BOP's modified operations due to the COVID-19 pandemic limited volunteer-led activities. The BOP, however, continues to work with community partners to provide a variety of services to inmates and has begun to resume these activities when it is safe to do so.

II. An Assessment of Bureau of Prisons' Implementation of the Risk and Needs Assessment System and Compliance with 18 U.S.C. § 3621(h)

A. Implementation and Validation of Risk and Needs Assessment Tools

Making the promise of the FSA a reality for incarcerated persons continues to be a priority for the Department and for the Administration. In July 2019, the Department announced the details of the RNAS it had developed pursuant to the FSA. The initial RNAS was further refined and improved based on feedback from the Independent Review Committee (IRC) and external stakeholders. This update and publication of the new RNAS occurred on January 15, 2020.⁶ Since that time the BOP has continued to implement improvements both to the risk assessment tool (PATTERN) and risk assessment process, and to the needs assessment tool (SPARC-13) and processes. The Department aims to make the benefits of the FSA as widely available as possible without compromising predictive reliability. Each set of activities is discussed below.

1. Implementation of the Risk Assessment Tool (PATTERN) and Revalidation Efforts

a. Improvements to and Automation of the Risk Assessment Tool ("PATTERN 1.2-R")

After PATTERN was initially released in July 2019 pursuant to Title I of the FSA, the BOP began training staff to use the new system. Recognizing, however, that the Department was continuing to refine PATTERN, the BOP waited until the tool was finalized before starting to implement it. The BOP wanted to ensure that inmates were receiving scores from the correct tool, that staff were not performing redundant tasks, and that inmates were not confused by changes to the risk assessment process. After input from the IRC and a series of stakeholder engagement sessions, the proposed PATTERN tool that had been announced in July 2019 was modified to address concerns that had been raised by stakeholders and the IRC. Specifically, certain inputs generally believed to cause racially disparate impact (such as age of first arrest) were omitted from the tool entirely. The PATTERN tool was then finalized and published in January 2020, and the BOP assessed all inmates using the revised tool, known as "PATTERN 1.2." In addition, the BOP's Office of Information Technology (OIT) began work to develop an automated PATTERN tool for integration into the BOP's inmate management systems. PATTERN contained four risk

⁶ See USDOJ, "Department of Justice Announces Enhancements to the Risk Assessment System and Updates on First Step Act Implementation" (Jan. 15, 2020), <https://www.justice.gov/opa/pr/departments-justice-announces-enhancements-risk-assessment-system-and-updates-first-step-act>; USDOJ, *The First Step Act of 2018: Risk and Needs Assessment System – Update* (Jan. 2020), <https://www.bop.gov/inmates/fsa/docs/the-first-step-act-of-2018-risk-and-needs-assessment-system-updated.pdf>.

models: (1) male general recidivism, (2) male violent recidivism, (3) female general recidivism, and (4) female violent recidivism.⁷

Over the following months in 2020, as part of the annual PATTERN revalidation effort, the NIJ's research experts began conducting several analyses of the PATTERN 1.2 tool. The BOP's Office of Research and Evaluation (ORE) worked with the NIJ consultants and the BOP's Correctional Programs Division to develop a PATTERN simulation tool to enable ORE to assist NIJ consultants in validating PATTERN and comparing test results. By January 2021, the NIJ consultants had identified several coding, specification, and scoring discrepancies⁸ in PATTERN 1.2 and recommended immediate corrections to the BOP. The BOP adopted these recommendations, updating its field guidance and scoring sheets with the corrections made to the item and scoring errors, thereby refining the tool into version "PATTERN 1.2-Revised" (1.2-R). The BOP then began to reassess the risk scores for all inmates who were affected by the prior scoring errors.⁹ By June 2021, PATTERN 1.2-R was in full implementation.

Currently, all inmates are assessed for their PATTERN risk score and level using the automated PATTERN 1.2-R tool. Once PATTERN is further refined (see below), OIT will adjust PATTERN automation to update the calculation of BOP inmate risk scoring and levels.

b. Annual Revalidation Effort

The FSA mandates that the Department review, validate, and release publicly its risk assessment tool – PATTERN – on an annual basis.¹⁰ Specifically, 18 U.S.C. §§ 3631(b)(4)(D)-(E) requires that the risk assessment tool be assessed annually for (1) predictive validity, (2) dynamic validity, and (3) racial and ethnic neutrality. In March 2021, the team of expert consultants contracting with NIJ throughout 2020 began their annual 2021 review and revalidation study for PATTERN 1.2-R. Upon review of that tool, they proposed a refined version of the tool, PATTERN 1.3, because although version 1.2-R had been revised to correct item and

⁷ For the purposes of the revalidation studies, general recidivism has been defined as a return to BOP custody or a re-arrest within three years of release from BOP custody, excluding all traffic offenses except driving under the influence and driving while intoxicated, and violent recidivism has been defined as a re-arrest for a suspected act of violence within three years of release from BOP custody.

⁸ See 2020 Review and Revalidation of the First Step Act Risk Assessment Tool, *supra* note 2.

⁹ As part of this process, the BOP's ORE advised the BOP's Office of Information Technology (OIT) about the needed changes in the tool so that OIT's automation of PATTERN would be consistent with the revisions and the intended scoring of PATTERN 1.2-R. In April 2021, OIT executed a software application of the revised PATTERN tool, and performed an automated reassessment of the risk scores of all inmates in BOP custody. OIT also provided BOP Unit Management staff access to the PATTERN automation within the BOP's "Insight" inmate case management system, so that the Unit Management staff could reassess an individual inmate's score as needed during an inmate's Program Review.

¹⁰ For more information on the development of PATTERN, see USDOJ, *The First Step Act of 2018: Risk and Needs Assessment System* (July 2019), https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system_1.pdf. For more information about revisions made to PATTERN (i.e., version 1.2), see *The First Step Act of 2018: Risk and Needs Assessment System – Update*, *supra* note 6.

scoring errors that the NIJ consultants identified in 2020, version 1.2-R maintained the scoring scheme developed for version 1.2.

After consultation with staff from the BOP's ORE, the NIJ consultants proposed the updated version of PATTERN, which adjusted item weights based on the results of statistical models run with the corrected version of the variables. The NIJ consultants based the 2021 review and revalidation of the tool's predictive validity, dynamic validity, and racial and ethnic neutrality on PATTERN 1.3. A summary of the results from those assessments of PATTERN 1.3 is presented below.¹¹

Predictive Validity. PATTERN 1.3 is effective at distinguishing between recidivists and non-recidivists. Predictive validity was primarily assessed using the Area Under the Curve (AUC) statistic, a measure of how often a randomly selected recidivist would have a higher risk assessment score than a randomly selected non-recidivist. Across the four PATTERN risk tools, the AUCs ranged from .75 to .79 for the cohort (i.e., group of inmates) released from BOP custody in FY 2016, and .77 to .79 for the FY 2017 release cohort. These AUCs are high when compared to other risk assessment tools used for correctional populations, which further suggests that PATTERN is relatively accurate at predicting recidivism.¹² The total PATTERN scores are further used to assign individuals into one of the four Risk Level Categories (RLCs) of minimum, low, medium, and high. The revalidation analyses from both release cohorts revealed that the RLCs provided meaningful distinctions of recidivism risk, with average recidivism rates increasing across each successive level.

Dynamic Validity. PATTERN 1.3 displays dynamic validity. Specifically, assessment findings demonstrated that individuals were capable of changing their risk scores and RLCs during their period of confinement,¹³ and that these changes were related to recidivism risk. Across the four gender/recidivism tools examined, approximately 25 to 35 percent of individuals had a lower RLC designation during their last assessment compared to their first, and between 3 and 5 percent had a higher risk designation. Individuals whose risk scores and levels increased from the first to last assessment were generally more likely to recidivate, whereas those whose risk scores and levels were lower at the last assessment were less likely to recidivate.

Racial and Ethnic Neutrality. Racial and ethnic neutrality were assessed through the comparison of AUC values and differential prediction analyses. Across both assessment years, the AUCs separated by race/ethnicity ranged from .63 to .83, with most values falling in the .70 range. In addition, statistical analyses revealed that some of the PATTERN tools predicted recidivism differently across racial and ethnic groups. Differential prediction analysis estimates

¹¹ The review and revalidation included the analysis of an additional FY 2016 ($n = 42,353$) and FY 2017 ($n = 38,333$) BOP release cohorts. For the full report, see NIJ, *2021 Review and Revalidation of the First Step Act Risk Assessment Tool* (Dec. 2021), <https://www.ojp.gov/pdffiles1/nij/303859.pdf>.

¹² For more information, see *The First Step Act of 2018: Risk and Needs Assessment System*, supra note 10.

¹³ For example, individuals can decrease their risk score by participating in programs or increase their risk score by engaging in institutional misconduct.

recidivism rates separately for Black, Hispanic, Native American, and Asian individuals, compared to White individuals, while controlling for the appropriate PATTERN score. These results can indicate whether there are no differences, or whether the score overpredicts for a group (meaning, for a given PATTERN score, that group has a lower recidivism rate than the White group, on average), or underpredicts (meaning, for a given PATTERN score, that group has a higher recidivism rate than the White group, on average).

For the FY 2016 and FY 2017 revalidation samples in the general recidivism tools, the differential prediction analysis demonstrated that there was a 2 to 3 percent overprediction of recidivism for Black and Hispanic males, an 8 percent overprediction for Asian males, and a 14 to 15 percent underprediction of Native American males, relative to White males. There was also a 6 to 7 percent overprediction for Black females, a 4 to 5 percent overprediction for Hispanic females, and a 12 to 13 percent underprediction for Native American females, relative to White females.

For the violent recidivism tools, most results were not statistically significant with the following exceptions: the risk of violent recidivism for Black males was underpredicted relative to White males by 4 to 5 percent in both revalidation samples, and risk for Black females was underpredicted relative to White females by 2 percent for the FY 2016 revalidation sample. There were also statistically significant overprediction results in the interaction models, which are designed to test whether the relationship between race and recidivism varies significantly across changes in the risk score, as explained further in the revalidation report, in the range of 2 to 3 percent for Native American males in both revalidation samples and for Native American females in the FY 2017 sample.

Adoption of PATTERN 1.3 and Continued Study and Evaluation of the Recidivism Tool.

To date, as confirmed by the NIJ consultants' review and revalidation report, PATTERN demonstrates evidence of high levels of predictive and dynamic validity. There is also evidence, however, of differential prediction based on race and ethnicity. The Department is committed to making all necessary revisions and updates to the risk assessment system to ensure that racial disparities are reduced to the greatest extent possible, as required by the FSA, 18 U.S.C. § 3631(b)(5). The NIJ consultants confirmed that the differential prediction findings associated with version 1.3 were not the result of changes made to the tool; they were also present in versions 1.2 and 1.2-R. Thus, transitioning to PATTERN 1.3 will neither exacerbate nor solve these racial bias issues. They have also confirmed that version 1.2-R is not a viable option for continued use as it is based on results derived from coding errors and misspecifications.

Accordingly, the Department will implement PATTERN 1.3 as it continues to consider all legally permissible options for reducing the differential prediction based on race and ethnicity to the greatest extent possible. Implementation of PATTERN 1.3 is estimated to take place on May 7,

2022. At that time, all inmates will be rescored with the PATTERN 1.3 tool and eligible inmates' time credits will be recalculated accordingly.¹⁴

While PATTERN 1.3 will be implemented in the immediate term, the Attorney General has directed the continued study of the tool to improve the equitability, efficiency, and predictive validity of the risk assessment system. The NIJ consultants, collaborating with the Department's subject matter experts, BOP staff, and external stakeholders and experts, will consider further refinements to the tools' inputs and scoring scheme. This analysis will include an exploration of the inclusion of additional information in PATTERN (e.g., more recent programming data), and how that may be used to improve prediction and fairness. It will also include an evaluation of the current definition of recidivism utilized in PATTERN. The Department will engage outside stakeholders, criminal justice scholars, experts, and formerly incarcerated persons, in its comprehensive consideration of these issues and its continuing work to evaluate, refine, and improve its risk assessment tool as required by the FSA.

c. Adjustment of Risk Level Cut Points

In assessing the adoption of PATTERN 1.3, the Department also reevaluated the "cut points" that are used to determine the risk level categories associated with the violent and general recidivism tools. Cut points define the score ranges in which individuals qualify as "minimum," "low," "medium," or "high" recidivism risk. To conduct the cut point reevaluation, the NIJ expert consultants analyzed data from the cohort of individuals released from BOP in FY 2016 and FY 2017, which is the same data analyzed by the NIJ expert consultants in their 2021 review and revalidation of PATTERN.

At the direction of the Attorney General, the following cut points will be used going forward for each tool under PATTERN 1.3.

Violent Recidivism Tool Cut Points

As stated above, PATTERN evaluates each inmate's predicted risk of violent recidivism under a separate tool. Based on the data analyzed by the NIJ expert consultants in their 2021 review and revalidation of PATTERN, the Department and BOP consider the evaluation under the violent tools to be a critical component to advancing the goal of public safety. For the violent recidivism tools, the cut points for the risk level categories for PATTERN 1.3 will not be changed for either the male or female populations from where they are set currently. As shown in Table 1a below, this means that for males in the minimum risk level category (RLC) under the violent tool, with PATTERN 1.3, the predicted risk of violent recidivism is 1.4 percent, and for males in the low RLC, the predicted risk of violent recidivism is 9.2 percent. As shown in Table 1b below,

¹⁴ The First Step Act sets up a structure for eligible inmates to earn time credits through successful participation in approved EBRR Programs or PAs, which are assigned to inmates based on their risk and needs assessments. Eligible inmates are able to apply time credits earned toward prerelease custody or early transfer to supervised release if they demonstrate a minimum or low risk of recidivism in their final assessment(s). See 18 U.S.C. § 3624(g). Inmates that are ineligible under the FSA to earn and/or apply time credits towards prerelease custody or supervised release may still earn other benefits for completing recidivism reduction programming, such as increased privileges (commissary, visiting, and telephone). See *infra*, pp. 28-30.

females in the minimum RLC under the violent tool have a predicted risk of violent recidivism of 1.6 percent, and females in the low RLC have a predicted risk of violent recidivism of 7.6 percent.

In addition, Tables 1a and 1b demonstrate that most of the individuals score in the minimum or low risk level groups under the violent tools. Among males, 57.6 percent of the population falls into either the minimum or low RLC for violent recidivism, and among females, 94 percent of the population falls into either the minimum or low RLC for violent recidivism.

Table 1a. Male Violent Tool Cut Points [Unchanged]

	PATTERN Score	Population Percentage	Group Population Percentage	Recidivism Rate	Group Recidivism Rate
Minimum	-11 to 7	16.8	57.6	1.4	6.9
Low	8 to 24	40.8		9.2	
Medium	25 to 31	15.9	42.4	20.2	30.1
High	32 to 71	26.5		36.1	

Table 1b. Female Violent Tool Cut Points [Unchanged]

	PATTERN Score	Population Percentage	Group Population Percentage	Recidivism Rate	Group Recidivism Rate
Minimum	-11 to 1	50.1	94.0	1.6	4.4
Low	2 to 11	43.9		7.6	
Medium	12 to 17	5.5	6.1	19.4	21.4
High	18 to 30	.6		39.1	

As a general matter, the violent PATTERN tool operates to impose a public safety check on the operation of the FSA’s system for awarding earned time credits and permitting inmates to transfer out of correctional settings at an earlier date than their sentences otherwise provide. The First Step Act provides that a “prisoner being placed in prerelease custody” after earning time credits must “ha[ve] been determined under the System to be a minimum or low risk to recidivate pursuant to the last 2 reassessments of the prisoner” (unless he or she qualifies for a warden-administered exception). 18 U.S.C. § 3624(g)(1)(D)(i). For a prisoner “being placed in supervised release” after earning time credits, the prisoner must “be a minimum or low risk to recidivate pursuant to the last reassessment of the prisoner.” 18 U.S.C. § 3624(g)(1)(D)(ii). To determine this eligibility, all inmates receive scores under both the general PATTERN tool and the violent PATTERN tool. If the risk level category under the violent tool is higher, the violent

tool classification overrides the general tool classification. As a result, no male or female whose risk level exceeds that associated with the “low” category for the violent tool will be eligible to use time credits towards transfer to prerelease custody or supervised release. In other words, the violent tool’s override feature imposes an outer bound on the risk of violent recidivism for any individual in BOP custody who is able to apply earned time credits towards prerelease custody. The FSA’s exclusions list also precludes individuals with certain crimes of conviction from the application of earned time credits towards prerelease custody or supervised release, serving as an additional public safety check.

By maintaining the violent tool cut points where they stand today, based on the current cohort data and analysis of the PATTERN tools, the Department will ensure that only inmates with very low predicted rates of violent recidivism may use time credits towards transfer to prerelease custody or supervised release. As noted, males in the low violent RLC have a predicted rate of violent recidivism of only 9.6 percent, and females in the low RLC have a predicted rate of violent recidivism of only 7.6 percent.

General Recidivism Tool Cut Points

As the cut points for the violent tool will remain the same, the cut points for the risk level categories for the general PATTERN recidivism tool will be revised. These revisions are being undertaken to advance three goals: (1) to enhance opportunities for eligible individuals to earn time credits (and an additional amount of time credits¹⁵) that accrue towards prelease custody or supervised release; (2) to help mitigate the effects of various racial and ethnic disparities associated with previous risk groupings; and (3) to continue to ensure that the PATTERN’s risk level designations promote public safety and the reduction of recidivism.

Table 2a presents the new PATTERN cut points for the general male tool. Table 2b shows how these new cut points are estimated to result in broader opportunities among males for earning time credits towards prerelease custody – both the general inmate population and for males by racial and ethnic group. Tables 3a and 3b present the same information for the general female tool. As stated above, the data in these tables is derived from the NIJ consultants’ review and revalidation of the PATTERN 1.3 tool and cut points against the FY 2016 and FY 2017 cohort data. The data thus provides an estimate – but not necessarily final numbers – regarding how the cut points would operate when applied to the current BOP inmate population.

¹⁵ Under the First Step Act, qualifying for a minimum or low risk RLC not only enables an inmate to use time credits towards transfer to prerelease custody or supervised release, but also enables the inmate to earn 15 days of time credits for every 30 days of programming, as compared to 10 days of time credits.

Table 2a. New Male General Tool Cut Points

	PATTERN Score	Population Percentage	Group Population Percentage	Recidivism Rate	Group Recidivism Rate
Minimum	-22 to 5	10.5	55.2	8.7	28.1
Low	6 to 39	44.7		32.7	
Medium	40 to 54	23.0	44.8	62.9	73.1
High	55 to 109	21.8		80.4	

Table 2b. Impacts of New Male General Tool Cut Points

	Total	White	Black	Hispanic	Native American	Asian
Current – Percent Males in Lower Risk Level Groups	44.0	55.7	31.7	51.0	21.7	70.0
Current – Ratio of White:Minority	-	-	1.76:1	1.09:1	2.57:1	0.80:1
New – Percent Males in Lower Risk Level Groups	55.2	65.2	43.1	64.4	33.8	78.9
New – Raw Difference from Current	11.2	9.5	11.5	13.4	12.2	8.9
New – Percent Increase from Current	25.5	17.0	36.3	26.2	56.1	12.7
New – Ratio of White:Minority	-	-	1.42:1	1.00:1	1.70:1	0.84:1

Table 3a. New Female General Tool Cut Points

	PATTERN Score	Population Percentage	Group Population Percentage	Recidivism Rate	Group Recidivism Rate
Minimum	-27 to 7	30.0	83.2	8.5	25.7
Low	8 to 38	53.3		35.4	
Medium	39 to 52	11.5	16.8	61.6	65.7
High	53 to 102	5.3		74.5	

Table 3b. Impacts of New Female General Tool Cut Points

	Total	White	Black	Hispanic	Native American	Asian
Current – Percent Females in Lower Risk Level Categories	78.3	79.0	73.9	81.9	64.8	91.1
Current – Ratio of White:Minority	-	-	1.07:1	0.97:1	1.22:1	0.87:1
New – Percent Lower Risk Level Groups	83.2	83.7	79.4	86.6	73.0	93.0
New – Raw Difference from Current	5.0	4.7	5.5	4.7	8.2	1.9
New – Percent Increase from Current	6.4	5.9	7.5	5.8	12.7	2.1
New – Ratio of White:Minority	-	-	1:05:1	0.97:1	1.15:1	0.90:1

As Tables 2a, 2b, 3a, and 3b demonstrate, under the new cut points for the general PATTERN tools, 55 percent of BOP’s male population and 83 percent of its female population are projected to fall into the minimum and low risk level categories under the general tool, and thereby presumptively qualify to earn time credits towards prerelease custody or supervised release.¹⁶ This is a significant expansion as compared to the projected application of the current cut points for the general PATTERN 1.3 tool. Currently, it is estimated that approximately 44 percent of the male population and 78 percent of the female population would

¹⁶ The qualification is presumptive but not guaranteed. If an inmate’s violent PATTERN risk category is a medium or higher, or if he or she has a crime of exclusion under the First Step Act, or if the inmate’s final PATTERN score at the time of release is no longer minimum or low, then that inmate will not qualify.

fall into the minimum and low risk level categories. By these efforts to expand eligibility for the minimum and low categories, the Department will be able to enhance the incentives among a broader group of inmates to participate in recommended programming, and thus work to fulfill the statute's overall mission of expanding participation in EBRR activities throughout the BOP. This expanded participation will further assist to expand rehabilitative efforts, reduce recidivism, improve success for those leaving BOP custody, and improve public safety.

In addition, the cut point adjustments are estimated to reduce racial disparities for the individuals who fall within the lower-level risk categories of minimum and low, as well as to mitigate some of the racial differential prediction issues for eligible individuals falling into these lower risk categories. Under the revised cut points for the general tool, the percentages of the Black male population and Hispanic male population estimated to qualify as minimum or low risk are projected to be 36 and 26 percent greater than previously, while the percentages of the Black and Hispanic female population that fall into these two lower risk categories are also estimated to be 7.5 percent and 5.8 percent greater. It is important to note that these estimated expansions in the Black and Hispanic populations, who will now qualify for the minimum and low RLCs and can presumptively apply earned time credits towards prerelease custody and supervised release, will not directly correct the racial differential prediction rates found to be associated with the PATTERN tool, including version 1.3. But making these cut point adjustments for the general tool is an important step towards mitigating the racial disparities associated with the tool, in accordance with the Department's statutory mandate under 18 U.S.C. § 3631(b)(5). As noted above, the Department will continue to pursue efforts to reduce racial disparities "to the greatest extent possible," 18 U.S.C. § 3631(b)(5), and will continue to evaluate and work to improve the tool more broadly.

The revised cut points for the general PATTERN tool will also ensure that the predicted rates of recidivism among those falling within the minimum and low risk level categories are consistent with public safety. Males in the minimum and low risk level categories for the general tool will have an average projected risk of recidivism of 28.1 percent, and females in the minimum and low risk level categories will have an average projected risk of recidivism of 25.7 percent.

The Department also considered the predicted rates of recidivism among those inmates who are actually permitted to utilize time credits to be placed in prerelease custody or on supervised release, that is, those individuals who do not have crimes of exclusion under the FSA, under 18 U.S.C. § 3632(d)(4)(D). The rates of predicted recidivism under the new cut point scheme are even lower for the "time credits eligible" populations. Tables 4 and 5, below, set forth the estimated application of the new cut points for the general PATTERN tool for just the time credits eligible population.

Table 4. New Male General Tool Cut Points – Time Credits Eligible Population Only

	PATTERN Score	Population Percentage	Group Population Percentage	Recidivism Rate	Group Recidivism Rate
Minimum	-22 to 5	13.7	67.6	7.2	26.1
Low	6 to 39	53.9		30.9	
Medium	40 to 54	20.4	32.4	60.8	67.0
High	55 to 109	11.9		77.6	

Table 5. New Female General Tool Cut Points – Time Credits Eligible Population Only

	PATTERN Score	Population Percentage	Group Population Percentage	Recidivism Rate	Group Recidivism Rate
Minimum	-27 to 7	31.9	85.7	8.3	25.1
Low	8 to 38	53.9		35.0	
Medium	39 to 52	10.3	14.3	60.3	63.7
High	53 to 102	4.0		72.7	

In sum, the shift to PATTERN 1.3 and to the updated cut points set forth above will ensure that the Department continues, as required by the FSA, to accurately assess risk among the BOP population and protect public safety, while working to fulfill the statute’s overall mission of reducing recidivism risk and preparing inmates for reentry. The updated version of the tool and the revised cut points are anticipated to result in expanded opportunities for the earning of time credits under the FSA system, which will in turn incentivize a greater number of inmates to participate in evidence-based recidivism reduction programs and productive activities and reduce their predicted risk of recidivism even further. At the same time, the Department will continue to evaluate the PATTERN tool and particularly its differential prediction findings for racial and ethnic groups – through a transparent and inclusive process – to ensure that the Department’s risk assessment system mitigates racial disparities to the greatest extent possible under the law.

2. Implementation of the Needs Assessment Tool (SPARC-13) and Revalidation Efforts

The BOP has taken important steps to improve its system for assessing inmates’ critical reentry and criminogenic needs (as required by the FSA, see 18 U.S.C. § 3632(a)(3)) following the system’s initial implementation. As part of building the technology infrastructure necessary to support the system, the BOP implemented tracking methods to ensure proper recording of

information. Unique identifiers were created in the agency's inmate management database for each approved EBRR program and PA. Thus, when an inmate signs up for, participates in, and completes a program, staff key the appropriate codes to ensure the inmate management systems record and store that information. The BOP's case management system (called "Insight") has also been modified to display needs assessment information; and because the BOP's inmate management system (Sentry) and Insight are integrated, an inmate's assessed needs entered in either system will display in both systems. Having the needs information populate in both systems allows the BOP to run nationwide rosters regarding every need category for the eventual evaluation of both staffing resource needs and program capacity.

An improved needs assessment system, collectively known as the Standardized Prisoner Assessment for Reduction in Criminality (SPARC-13), was launched in January 2020 and memorialized in BOP Program Statement 5400.01, *First Step Act Needs Assessment*, issued on June 25, 2021.¹⁷ In January 2020, every inmate in BOP custody for more than 28 days was provided with the individualized results of the inmate's risk and needs assessment, and inmates began enrolling in programs designed to address identified needs.

a. Assessment and Measurement of Needs

Prior to the passage of the FSA, the BOP had a longstanding process in place for assessing and addressing inmates' needs. The FSA has led to the formalization and enhancement of the BOP's needs assessment system. As the name signals, SPARC-13 assesses thirteen needs of inmates. In September 2019, the BOP convened an expert group of scholars and practitioners (including an IRC representative) to provide input to the Department. The group identified twelve clearly defined needs for which each BOP inmate would be assessed. The twelve are: Anger/Hostility; Antisocial Peers; Antisocial Cognitions; Education; Family/Parenting; Finance/Poverty; Medical; Mental Health; Recreation/Leisure/Fitness; Substance Use; Trauma; and Work. A thirteenth need, Dyslexia, was statutorily required by the FSA. Each need is assessed individually in a way that corresponds to its complexity and definition as described further below, as well as in a comprehensive report recently published by BOP about its needs assessment system.¹⁸

The BOP has adopted or formalized measures and data sources for the assessment of each need. For needs that rely on historical data, information is drawn from the comprehensive legal and social history in the Presentence Investigation Report (PSR) completed by United States Probation Officers. The PSR is a structured report required by law to be conducted by a U.S. Probation Officer prior to a defendant's sentencing. See 18 U.S.C. § 3552. The goal of the report is to enable the sentencing court to make "a fair sentencing decision and assist corrections and community corrections officials in managing offenders under their

¹⁷ See BOP, "First Step Act Needs Assessment," Program Statement 5400.01 (June 25, 2021), <https://www.bop.gov/policy/progstat/5400.01.pdf>.

¹⁸ See BOP, *First Step Act: Initial Review of the SPARC-13 Needs Assessment System* (March 2022), https://www.bop.gov/inmates/fsa/docs/bop_fsa_needs_validation_report_2021.pdf.

supervision.”¹⁹ This narrative document contains a wealth of information from a multitude of sources including existing criminal history records, educational systems, hospitals and counseling centers, family members, associates, and others who corroborate records and reports.

Other needs require psychological or educational assessments, and the tools used to assess them are delineated below. The BOP has selected each of these tools based on a thorough review of the research literature and in consultation with both the BOP’s internal experts and external experts based at universities who convened for consultation in September 2019. The IRC too includes a professor who is well published in this subject area, and her expert consultation was sought as well. A number of citations, provided as footnotes herein, provide examples of studies of the various tools BOP uses to assess needs, and include details about these tools’ development and validation.

- The Anger/Hostility need is assessed by the Brief Anger-Aggression Questionnaire (BAAQ).²⁰ The BAAQ is a six-item questionnaire that yields a score between 0 and 24. The reliability and validity of the BAAQ have been tested and confirmed through four studies completed on a clinical outpatient population and on a nonviolent control sample.²¹ Results from the four studies suggested an appropriate level of consistency over time, and the BAAQ was found to measure levels of overt anger and aggression as intended.²² The BAAQ is a useful screening tool because of its ability to rapidly provide an estimate of anger dysregulation.
- The Antisocial Peers need and Cognitions need are assessed by the Measures of Criminal Attitudes and Associates (MCAA) tool.²³ The MCAA is a two-part self-report questionnaire designed to measure criminal thinking style and antisocial associates. Part A is a quantified self-report measure of antisocial associates. Part B contains four attitude scales: Violence, Entitlement, Antisocial Intent, and Associates. The MCAA has

¹⁹ Office of Probation and Pretrial Services, Administrative Office of the United States Courts, “The Presentence Investigation Report,” Publication 107 (Mar. 2006), at I-1.
http://cdn.ca9.uscourts.gov/datastore/library/2013/02/26/Horvath_presentence.pdf.

²⁰ Ronald R. Mauro, Peter P. Vitaliano, and Timothy S. Cahn, “A Brief Measure for the Assessment of Anger and Aggression,” *Journal of Interpersonal Violence* 2, no. 2 (1987): 166-78,
<https://journals.sagepub.com/doi/10.1177/088626087002002003>.

²¹ Id.

²² Id.

²³ Jeremy F. Mills and Daryl G. Kroner, *Measures of Criminal Attitudes and Associates User Guide* (June 2001),
https://www.researchgate.net/publication/267028189_Measures_of_Criminal_Attitudes_and_Associates_User_Guide.

demonstrated significant associations with other measures of criminal thinking style²⁴ and predictive validity for the outcomes of general and violent recidivism.²⁵

- The Dyslexia need must be assessed using measures that meet certain specifications required by the FSA. The BOP instituted a two-phase screening process to assess dyslexia. First, all inmates must complete a screening instrument to examine symptoms across statutorily defined functional domains. Inmates who reach the threshold for possible dyslexia are then administered the Woodcock-Johnson IV, a psychometrically robust test capable of formal assessment of dyslexia.
- The Education need is assessed by first looking for the presence or absence of a high school diploma or its equivalent. Next, this need is assessed by measuring achievement on core content areas through the use of the Test of Adult Basic Education (TABE) and Comprehensive Adult Student Assessments System (CASAS), of which the latter is used exclusively for English as a Second Language learners.
- The Family/Parenting need is assessed by the Family Assessment Device (FAD-12).²⁶ FAD-12 is a 12-item questionnaire on a Likert scale (from strongly agree to strongly disagree) that elicits the respondents' perception of their family relationships. This measure has been used in a variety of settings²⁷ to determine individuals' beliefs about their families' reliability, supportiveness, and acceptance. FAD-12 is considered a dynamic measurement and can be re-administered at various points throughout the course of treatment to assess improvements in the nature of the individuals' family relationships and to evaluate the efficacy of selected interventions.
- The Finance/Poverty need is assessed through a series of questions on personal history and circumstances and information drawn from the PSR.
- The Medical need is assessed through completion of a medical history and a physical examination performed by a medical practitioner at a BOP institution. The intake screening serves as an assessment of acute medical concerns; the initial physical examination consists of, but is not limited to, the following components: medical and mental health, dental care, and ordering of appropriate laboratory and diagnostic tests.
- The Mental Health need is assessed through the diagnoses and services that are identified by the Psychology Services Inmate Questionnaire (PSIQ). The PSIQ is a

²⁴ Jeremy F. Mills, Daryl G. Kroner, and Adelle E. Forth, "Measures of Criminal Attitudes and Associates (MCAA): Development, Factor Structure, Reliability and Validity," *Assessment* 9, no. 3 (2002): 240-53, <https://journals.sagepub.com/doi/10.1177/1073191102009003003>.

²⁵ Jeremy F. Mills, Daryl G. Kroner, and Toni Hemmati, "The Measures of Criminal Attitudes and Associates (MCAA): The Prediction of General and Violent Recidivism," *Criminal Justice and Behavior* 31, no. 6 (2004): 717-33, <https://journals.sagepub.com/doi/10.1177/0093854804268755>.

²⁶ Nathan B. Epstein, Lawrence M. Baldwin, and Duane S. Bishop, "The McMaster Family Assessment Device," *Journal of Marital and Family Therapy* 9, no. 2 (1983): 171-80, <https://onlinelibrary.wiley.com/doi/10.1111/j.1752-0606.1983.tb01497.x>.

²⁷ Robert I. Kabacoff, et al., "A Psychometric Study of the McMaster Family Assessment Device in Psychiatric, Medical, and Nonclinical Samples," *Journal of Family Psychology* 3, no. 4 (1990): 431-39, <https://psycnet.apa.org/record/1990-27230-001>.

structured interview tool developed by the BOP that functions as a self-reporting instrument delivered to inmates upon arrival at their designated institutions. It requests key mental health information in support of effective triage and long-term care. Inmates are asked a series of questions that allow staff to identify a need for crisis care (e.g., suicide ideation), acute care (e.g., anxiety, distress), and historical conditions that would prompt routine care (e.g., history of mental health treatment).²⁸

- The Recreation/Leisure/Fitness need is assessed through participation in a Chronic Care Clinic (CCC), which is available agency-wide. CCCs function as a means for inmates with ongoing medical needs to be tracked and seen by a health care provider at clinically appropriate intervals. In this way, inmates can be assigned to recreational and leisure activities, which assist the inmates in managing their chronic conditions.²⁹
- The Substance Use need is assessed by a review of substance use information presented in the PSR. Substance use occupies its own section in the PSR, and that section provides an overview of an inmate's lifelong substance use history up to the present, if any.³⁰
- The Trauma need is assessed by the Adverse Childhood Experiences Scale (ACES).³¹ ACES is a widely used³² and reliable³³ tool that measures childhood exposure to different types of trauma: psychological, physical, or sexual abuse; neglect; mental illness; domestic violence; divorce; and having an incarcerated parent. Adverse childhood experiences were found to be associated with significant increases in a number of negative social, behavioral health, and physical health outcomes.
- The Work need is assessed through a series of questions and information drawn from the PSR.

²⁸ See BOP, "Psychology Services Manual," Program Statement P5310.17, https://www.bop.gov/policy/progstat/5310_017.pdf.

²⁹ See BOP, "Patient Care," Program Statement P6031.04, https://www.bop.gov/policy/progstat/6031_004.pdf.

³⁰ Office of Probation and Pretrial Services, Administrative Office of the United States Courts, "The Presentence Investigation Report," Publication 107 (Mar. 2006), at II-8 http://cdn.ca9.uscourts.gov/datastore/library/2013/02/26/Horvath_presentence.pdf.

³¹ Vincent J. Felitti, et al., "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study," *American Journal of Preventive Medicine* 14, no. 4 (1998): 245-58, <https://www.sciencedirect.com/science/article/abs/pii/S0749379798000178?via%3Dihub>.

³² Robert H. Stensrud, Dennis D. Gilbride, and Robert M. Bruinekool, "The Childhood to Prison Pipeline: Early Childhood Trauma as Reported by a Prison Population," *Rehabilitation Counseling Bulletin* 62, no. 4 (2019): 195-208, <https://journals.sagepub.com/doi/10.1177/0034355218774844>.

³³ Ricardo Pinto, Liliana Correia, and Ângela Maia, "Assessing the Reliability of Retrospective Reports of Adverse Childhood Experiences among Adolescents with Documented Childhood Maltreatment," *Journal of Family Violence* 29, no. 4 (2014): 431-38, <https://link.springer.com/article/10.1007/s10896-014-9602-9>.

b. Needs Assessment Process

The BOP's policy on FSA Needs Assessment (PS5400.01) directs staff to follow the new needs assessment process, outlines staff responsibilities, and provides timeframes for initial needs assessment and reassessment. Inmates are initially reviewed at the BOP's Designation & Sentence Computation Center³⁴ and are designated to an institution that addresses their security level and basic needs. Once inmates arrive at their designated facility, they attend Admission & Orientation where they become acquainted with the programs the institution offers and the assessment processes. Inmates are also reminded of the initial needs assessments at intake with Psychology Services.

The BOP's inmate computer system (TRULINCS) has an electronic bulletin board which displays and details for inmates the availability of the assessments. Inmates complete the assessments for Anger/Hostility, Antisocial Peers, Cognitions, and Family/Parenting on TRULINCS. The Health Services department is responsible for the assessment of the Medical and Recreation/Leisure/Fitness needs as part of the intake process. Education staff similarly assess Dyslexia, Education, and Work needs as part of the intake process. Unit Management assesses Substance Use needs during the initial intake and the Finance/Poverty need at the first team meeting. Psychology Services is responsible for the remaining needs areas: Trauma and Mental Health, which are also administered as part of the intake process. Because the self-reporting measures lower the assessment response rate, the BOP is implementing a variety of creative strategies to increase participation, including exploring the use of tablet computers as part of the intake process to increase participation in the self-reporting measures.

Once needs are assessed and entered into BOP systems, Unit Management staff, in consultation with other departments and the inmate, make targeted program recommendations for an inmate's identified needs areas. The needs assessment process is standardized across inmates and designed to be dynamic and flexible to incorporate individualized planning. To further promote standardization, the BOP has automated the SPARC-13 needs assessment system to ensure that recommended programming is tied to the assessed needs. Because such programs are identified to address inmate needs, in accordance with the FSA, inmates are reassessed a minimum of every 180 calendar days by Unit Management during the routine program review (team meeting) process to account for any change of circumstances, e.g., receipt of an incident report or completion of an EBRR program or PA. Unit Management relays reassessment results to inmates during the team meeting; results of the reassessment are cataloged in the BOP's systems, including the inmates' electronic central file.

As with PATTERN, SPARC-13 must be revalidated on an ongoing basis. See 18 U.S.C. § 3631(b)(4). For this upcoming revalidation effort, the BOP has worked in partnership with the NIJ to solicit an external analysis and review of the BOP's needs assessment tool. On October 1, 2021, the NIJ released a Statement of Work (SOW) to solicit proposals from qualified

³⁴ See BOP, "Designations," https://www.bop.gov/inmates/custody_and_care/designations.jsp.

consultants to complete the annual review and revalidation of the BOP's SPARC-13 system.³⁵ Created by the NIJ in collaboration with the BOP and the Office of General Counsel of the Department's Office of Justice Programs (OJP), the SOW specifically requests needs assessment expertise from qualified individuals to complete an evaluation within calendar year 2022. In creating the SOW, the NIJ collaborated with the BOP to ensure that the content of the SOW includes accurate information about the BOP's current needs assessment process (such as the number and types of assessments currently being used across the BOP, criminogenic needs assessed, and use of public domain tools). Proposals responsive to the SOW were due by December 30, 2021. No submissions were received from the first offering. The SOW offering was then extended until February 18, 2022, and, during this period, some submissions were received; the external independent peer-review process to evaluate qualified submissions is currently underway.

Using a SOW to contract out the annual review and revalidation has a number of advantages. By using a SOW, the NIJ can engage qualified experts as consultants and provide funds to the consultants through a consulting agreement. (Note that the NIJ can only engage in consulting agreements with qualified individuals – not businesses, academic institutions, or non- or for-profit organizations.) This funding avenue allows the NIJ to onboard the selected consultants quickly and begin the Department's required background investigation and clearance process. Additionally, the NIJ will use its independent peer-review process to evaluate the SOW submissions. As noted in the timeline below, this process can be completed in a matter of months. Further, the NIJ will coordinate efforts between the risk and needs assessment teams to ensure timely completion of the Section 3631 review and revalidation mandate.

The NIJ and the BOP have the following plan for calendar year 2022:

- Conduct an external independent peer review of qualified submissions in response to the SOW.
- Informed by comments from the independent peer reviewers and internal reviews by subject matter experts, evaluate the consultant submissions with the BOP, the OJP, the Office of Legal Policy, and the Office of the Deputy Attorney General (ODAG).
- Finalize selections and make notifications.
- Upon consultants' acceptance, begin the background investigation process.
- Provide required technology and research assistance to consultants, as needed.
- Work with the BOP to provide funding to support the needs assessment tasks.

The above plan is intended to ensure that the Department fully complies with the requirements of the FSA, and continually improves the BOP's risk and needs assessments to further fulfill the FSA's larger objective of improving the reentry outcomes for federal inmates.

³⁵ NIJ, "Consultant Statement of Work: Review and Revalidation of the Bureau of Prisons Needs Assessment System, Fiscal Year 2022" (Oct. 1, 2021), <https://nij.ojp.gov/funding/NIJ-2022-FSA.pdf>.

B. Implementation of the Risk and Needs Assessment System Through Scoring, Referral to Programs and Ongoing Engagement, and Time Credits

As described above, over the past year, the Department has undertaken numerous efforts to improve and automate both the risk assessment tool and the needs assessment tool used by the BOP to carry out the First Step Act, and it is continuing to engage in efforts to revalidate each tool through external expert reviews. At the same time that it has worked to improve the tools, the Department has worked to implement the Risk and Needs Assessment System as mandated by the First Step Act, by ensuring that every inmate has both an initial and periodically updated PATTERN scores, ensuring that every inmate is referred to programs after his or her needs are assessed, and ensuring that every inmate's participation in those programs is systematically tracked so that inmates can earn and apply time credits in accordance with the final Time Credits rule. The Department's implementation of the FSA in these ways may be further understood by a review of various statistical measures described below.

1. PATTERN Risk Assessments

The tables below provide an overview of inmate PATTERN risk levels across the BOP population since publication of the last annual Report using the version of the tool (1.2-R) and the cut points currently in effect at the BOP. By approximately May 7, 2022, the BOP will shift to using PATTERN 1.3 and the revised cut points for the general tool set forth above. Below, data is provided that shows simulated PATTERN scores for inmates on both September 26, 2020 (the end of the reporting period for the 2020 annual Report) and January 2022, using PATTERN 1.2-R and the general tool across the entire BOP population, for both males and females. After the BOP shifts to PATTERN 1.3 and the revised cut points, it will release an addendum to this Report or publish information on its website that updates the information below.

PATTERN Overall Risk Levels, as simulated* on September 26, 2020
(using tool PATTERN 1.2-R)

Recidivism Risk Level	Frequency	Percent
Minimum	21,783	15.93
Low	43,363	31.72
Medium	26,114	19.10
High	45,444	33.24
Total	136,704	99.99

*Simulated risk levels using the corrected PATTERN 1.2-R tool as released in February 2021.

PATTERN Overall Risk Levels, as assessed on January 29, 2022 (using tool PATTERN 1.2-R)

Recidivism Risk Level	Frequency	Percent
Minimum	18,134	13.58
Low	40,468	30.30
Medium	26,928	20.16
High	48,020	35.96
Total	133,550	100

2. Time Credits Eligibility by PATTERN Classification

The data presented below is accurate as of January 31, 2022. It shows the number of inmates in BOP custody determined to be eligible and ineligible for earning time credits as well as those whose eligibility has not yet been determined, again using the PATTERN 1.2-R tool and cut points currently in effect.³⁶ The percentages in parentheses show the relative share of the numbers of inmates within each column. After the BOP shifts to PATTERN 1.3 and the revised cut points, it will release an addendum to this Report that updates the information below.

PATTERN Classification Level	TC Eligible	TC Ineligible	TC Unassigned	D.C. Code Offenders*
High	24,358 (37.97%)	19,383 (31.96%)	92 (4.51%)	1,136 (47.93%)
Medium	12,921 (20.58%)	11,458 (18.89%)	90(4.41%)	492 (20.76%)
Low	17,899 (28.51%)	19,749 (32.57%)	94 (4.61%)	627 (26.46%)
Minimum	7,239 (11.53%)	9,807 (16.17%)	17 (0.83%)	101 (4.26%)
Unassigned	370 (0.59%)	246 (0.41%)	1,748 (85.64%)	14 (0.59%)
Total	62,787	60,643	2,041	2,370

* The number of District of Columbia (D.C.) Code offenders includes all who had either a concurrent or a consecutive D.C. Code conviction.

Note: The total number of inmates represented in this table differs from those in the PATTERN tables due to the dynamic nature of the inmate population, which fluctuates daily based on such factors as releases, admissions, and transfers. The Unit Team has 28 days from the inmate's arrival to determine an inmate's eligibility and the inmate's risk score. The "TC Unassigned" column shows the numbers of inmates whose

³⁶ While all inmates in BOP custody are eligible to receive various in-prison incentives and rewards by successfully participating in EBRR programs and PAs, the FSA excludes certain categories of inmates from receiving TC. Those categories are: (1) the inmate completed the EBRR program before the enactment of the FSA on December 21, 2018 or before the start of inmate's current imprisonment sentence as defined in 18 U.S.C. § 3585(a); (2) the inmate is serving a sentence for a conviction under one of the statutory provisions listed in 18 U.S.C. § 3632(d)(4)(D); and/or for purposes of applying TC, (3) the inmate is the subject of a final order of removal from the United States under U.S. immigration laws. 18 U.S.C. §§ 3632(d)(4)(B), (D), (E). Other than TC, each inmate who successfully participates in an EBRR program is entitled to receive certain additional phone or, if available, video conferencing privileges and may also receive additional visitation privileges upon the warden's discretion. 18 U.S.C. § 3632(d)(1). In addition, an inmate who requests transfer to a facility closer to the inmate's residence upon release and is successfully participating in an EBRR program must be considered for requested placement, subject to bed availability, the inmate's security designation, and a variety of factors including the current warden's recommendation. 18 U.S.C. § 3632(d)(2). All inmates who successfully participate and complete EBRR programming are also eligible to receive additional incentives that the BOP may establish, such as increased commissary spending limits and product offerings, extended email access opportunities, consideration for transfer to preferred housing units, and/or other incentives that the BOP may set. 18 U.S.C. § 3632(d)(3).

PATTERN classification levels had been determined but not yet their TC eligibility because the inmates had not yet been in BOP custody for 28 days, as of January 31, 2022.

3. Referral to Programs, Tracking Participation, Ongoing Engagement

The Department is committed to offering programming with definable, measurable outcomes that will reduce offender risk and subsequent recidivism as well as address other critical reentry needs. Prior to the passage of the FSA, the BOP offered a wide range of programming to inmates. Under the FSA, the BOP has greatly expanded programs both in the agency's capacity to offer them to a larger number of inmates, and in the variety in the types of programs offered. Along with this growth, the BOP has improved both tracking of inmate participation and program referral processes.

As noted above, inmates complete a series of questionnaires upon arrival to a designated BOP facility as part of the needs assessment process. Within 28 days of arrival, inmates meet with their Unit Management Team to discuss the results of both the risk and needs assessments. This process repeats approximately every six months until the final stages of incarceration, when contact with the unit team increases prior to release.

During the meetings between inmates and their unit team, the BOP updates the PATTERN scores and SPARC-13 findings for the inmates, and staff members recommend specific programs for the individual inmates based on the needs identified. Every need maps onto and is intended to be addressed by one or more recommended programs. Additionally, the unit team works with each inmate to prioritize the order in which the inmate will participate in the programs. While some programs are staged to be offered at particular points in the service of sentence, the inmate may have a pressing need addressed by one particular program that should be prioritized. For example, an inmate with a history of being abused would initially be assigned to, and likely take, a trauma treatment program to alleviate symptoms, which would later help the inmate obtain maximum benefits from a work program. Participation in all programs remains voluntary, and after discussing options with their unit team, inmates sign up to participate in their chosen programs. This process is also an important part of promoting increased self-sufficiency and decision-making abilities that encourages healthy reentry.

As part of FSA implementation in January 2020, the BOP assigned a unique identifier to each program. When an inmate signs up for and successfully participates in or completes a program, the staff delivering the program update and load that information into BOP systems. Information is automated to be shared between the BOP's primary inmate management systems. This integration ensures appropriate monitoring and tracking of inmate participation to better inform BOP staff where operational gaps exist and improvements can be made.

4. Time Credits Rule

In recognition of the value of evidence-based recidivism programming, FSA directs that except for those who are deemed ineligible under the Act, inmates shall receive TC for successful completion of EBRR programs and PAs. A "prisoner," as defined by the FSA, "means a person sentenced to a term of imprisonment pursuant to a conviction for a Federal criminal offense, or a person in the custody of the Bureau of Prisons." 18 U.S.C. § 3635(4). The FSA also provides that a prisoner who successfully completes an EBRR program or PA assigned based on the

inmate's risk and needs assessment and is determined to be eligible under the criteria set forth in 18 U.S.C. § 3632 (see footnote 36) shall earn TC that may be applied toward prerelease custody (i.e., transfer to a Residential Reentry Center or home confinement for service of a portion of the inmate's sentence) or supervised release (i.e., early satisfaction of the inmate's term of imprisonment).

On November 25, 2020, the BOP published a proposed rule on TC in the Federal Register. The proposed rule would amend 28 C.F.R. part 523 to establish the procedures for the earning, awarding, loss, and restoration of TC. Among other things, that proposed rule established an eight-hour accrual system and proposed that TC would be awarded as of January 25, 2020, the date by which an initial risk and needs assessment was conducted for all inmates. The BOP received approximately 250 comments from the public, including stakeholders and members of Congress. Many of the comments scrutinized the rigidity of the eight-hour accrual method, and encouraged an approach that would instead turn on an inmate's compliance with the requirements of any given program, and thereby result in the greatest number of inmates earning the largest amount of TC. Many comments also argued that TC should be awarded back to the date of enactment of the First Step Act, on December 21, 2018. The Department appreciated the thoughtful responses to the proposed rule.

On October 18, 2021, the BOP published a Notice to reopen the comment period for additional 30 days to request further public comment only on the issue of whether District of Columbia Code offenders in BOP custody are eligible for TC under 18 U.S.C. § 3632(d)(4). The proposed rule clearly excluded D.C. Code offenders from eligibility for TC, and no commenter specifically addressed the exclusion of D.C. Code offenders during the initial comment period. Nevertheless, the BOP recognized that the FSA is ambiguous as to whether D.C. Code offenders are eligible to earn and apply TC, and that commenters during the initial notice-and-comment period may not have fully considered this issue. The new comment period gave the public the opportunity to offer considerations that could help inform BOP's resolution of the legal ambiguity in the FSA. The comment period for the Notice opened on October 18, 2021, and closed on November 17, 2021.

As a result of the feedback received during the public comment period, the BOP made several significant changes to the rule. The final rule eliminates the definition of a day as an 8-hour period, and instead defines a day as a calendar day, allowing eligible inmates to earn 10 to 15 days of time credits for every 30 days of successful participation in EBRR programs and PAs. In addition, subject to BOP's determination of eligibility, inmates will be awarded time credits retroactively to December 21, 2018, the date of enactment of the First Step Act. The rule also explains the circumstances under which an inmate may forfeit time credits, reduces the amount of credits that may be forfeited for any given act, and shortens the period of time over which forfeited credits may be restored. Collectively, these provisions will ensure the broadest possible eligibility and application of time credits.

Concerning D.C. Code offenders, the final rule defers to the D.C. Council, which is considering legislation on a range of criminal justice measures, including legislation that would facilitate re-entry and adjust the length and terms of sentences. While the D.C. Council reaches its decision, D.C. Code offenders in BOP custody remain ineligible to receive time credits. If the D.C. Council

declines to act, the BOP will review this matter and determine whether additional rulemaking is warranted.

On January 13, 2022, the Department announced the final rule and the BOP began implementing the Time Credits program. The final rule officially published in the *Federal Register* on January 19, 2022.³⁷ Implementation began with immediate releases for inmates who, as of the retroactive date of applicability, had earned time credits in an amount that exceeded their days remaining to serve, who were less than 12 months from release, and who had a supervised release term as part of their sentences, such that they could be moved directly to supervised release. As of April 5, 2022, more than 6,100 inmates have been released from Residential Reentry Centers (RRCs), home confinement, and secure facilities. An estimated 3,155 inmates have been placed in an RRC or home confinement and have a projected release method based on earned time credits. Implementation will continue to occur on a rolling basis in the months ahead, as the BOP continues to calculate and apply time credits for all eligible incarcerated individuals in accordance with the published rule and updated PATTERN 1.3.

5. Good Conduct Time (GCT) Rule/Changes

Under the FSA, qualifying inmates earn up to 54 days of GCT credit for each year of sentence imposed by the court, instead of for each year of sentence actually served, with GCT credit for the last year of the inmate's imprisonment term to be issued on "the first day of the last year of the term of imprisonment." 18 U.S.C. § 3624(b). As stated in the initial FSA Annual Report, prior to the FSA, qualifying inmates earned up to 54 days of good conduct time (GCT) credit for each year served and, in accordance with the pre-FSA language of 18 U.S.C. § 3624(b), the BOP prorated the amount of GCT credit earned for the final year of sentence served. On July 19, 2019, the BOP began applying the new GCT calculation under the FSA, resulting in immediate release of 3,163 inmates from BOP custody.

On December 31, 2019, the BOP published in the Federal Register a proposed rule explaining this change to GCT calculation. The proposed rule also presented three alternatives for calculating GCT under the FSA for the "last year of a term of imprisonment," 18 U.S.C. § 3624(b), and explained the BOP's preference for the third alternative, which would award prorated credit for any portion of the final year of the sentence imposed. The BOP explained that this alternative was the most consistent with congressional intent as expressed in the text of the FSA. The BOP also explained that this proration alternative was the most reasonable and logical option that treats all eligible inmates equitably. The BOP received 74 comments, most of which urged adoption of the second alternative, under which the BOP would award a full 54 days of GCT credit for any partial final year of the sentence imposed, regardless of the length of the partial final year. In the proposed rule, the BOP had explained that the second alternative – which treats an inmate with one day remaining in the final year of the imposed sentence identically with another inmate with 365 days remaining in the final year by awarding 54 days of

³⁷ See FSA Time Credits Rule, <https://www.federalregister.gov/documents/2022/01/19/2022-00918/fsa-time-credits>.

GCT credit to both – would result in GCT credits being applied unfairly and incongruously among eligible inmates.

On February 11, 2022, the BOP published the final rule on GCT credit in the *Federal Register*.³⁸ In the final rule, the BOP reiterated its reasons for adopting the third alternative method of GCT credit calculation that prorates any time remaining in each inmate’s final year of sentence imposed, ensuring that an inmate receives “up to 54 days” – but no more – “for each year” imposed and partial credit for partial years at the end of the sentence imposed. This rule explained that the proration method maintains the maximum rate at which inmates can earn GCT credit at 54 days per year, as directed by the text of the statute, whereas the second alternative would permit inmates serving partial-year sentences to exceed this statutory rate. Recognizing that the second alternative would contravene the statutory command and lead to arbitrary and unwarranted disparities among inmates, the BOP announced the proration method as the most fair and consistent calculation method that fulfills Congress’s intent in the enactment of the FSA.

6. FSA Audit Activities

The BOP offers programs across all sites, and local facilities match needs assessment results to the services that remediate the needs to determine which programs to offer. Thus, it is important BOP continue to monitor program participation by location. As mentioned above, since the last Report, the BOP established a partnership with the Department’s Civil Division, specifically the Advanced Data Analysis and Mining Lab (ADAM Lab), to develop prototype dashboards to analyze and present BOP data using geospatial software. The objective of this project is to assess the use of geospatial software technology for purposes of FSA quality-assurance monitoring. The BOP is currently working to engage engineering resources to establish a geospatial technology infrastructure in the BOP’s cloud environment. The infrastructure will then be used by BOP to display dashboards containing certain metrics, selected by BOP, to help gauge both inmate participation in programs and the availability of programs (EBRRs and PAs) across BOP facilities. Subject-matter experts within BOP will also be trained to maintain the programs, and make ongoing developments and improvements, on a continual basis.

As also previously mentioned, the BOP has taken additional steps to address the FSA’s requirement to perform an audit and quality assurance of the SPARC-13 needs assessment system. Since the last Report, the BOP conducted an internal targeted review of the use of SPARC-13 by BOP staff to determine their and inmates’ understanding of how needs are assessed, what is being measured, and what programs are available to address identified needs. Due to operational restrictions presented by the COVID-19 pandemic, the BOP

³⁸ See Good Conduct Time Credit Under the First Step Act, <https://www.federalregister.gov/documents/2022/02/11/2022-02876/good-conduct-time-credit-under-the-first-step-act>.

conducted that review internally. The results of that audit are published on the BOP's public website.³⁹

During FY 2022, the BOP plans to engage outside consultants to perform a review of the BOP's use of both PATTERN and SPARC-13. This audit will review the BOP's use of the RNAS and assess whether such use is consistent for quality assurance purposes. The audit will continue to be performed annually by appropriate external experts via an approved contracting process.

³⁹ See First Step Act: Initial Review of the SPARC-13 Needs Assessment System, *supra* note 18.

III. A Summary and Assessment of the Types and Effectiveness of the Evidence-Based Recidivism Reduction (EBRR) Programs and Productive Activities (PAs) in Prisons Operated by the Bureau of Prisons

A. Approved EBRR Programs and Activities

The Department is pleased to report that the addition of professional program delivery staff and some specialized new programs have led to expanded programming capacity since the last Report. Additionally, the BOP has established clear procedures for adopting new programming. The BOP's research consultant reviews external proposals for new programming.⁴⁰ Proposals for programs by internal BOP staff are submitted to the BOP's Reentry Services Division (RSD) with supporting materials that include, at a minimum, a facilitator's guide, complete curriculum, supporting research, and any handouts that would be provided to inmates. All internal program proposals are evaluated for evidence of recidivism reduction – i.e., whether the program meets or fails to meet the FSA's requirement that an EBRR program "has been shown by empirical evidence to reduce recidivism" or "is likely to be effective in reducing recidivism." 18 U.S.C. § 3635(3). Once the program is reviewed, RSD evaluates whether the program meets or fails to meet the EBRR program criteria. RSD ultimately determines whether a program will be approved as an EBRR program for use within the BOP.

In January 2020, the BOP created the First Step Act Approved Programs Guide (FSA Programs Guide), in accordance with the FSA requirement that the BOP develop a list of programs meeting the statutory definitions of EBRR programs and PAs. The FSA Programs Guide⁴¹ is a collection of the BOP's robust reentry programs designed to ensure that all sentenced inmates have the skills necessary to succeed upon their return to the community. The programs listed in the guide are standardized across institutions, described in the BOP's national policies, implemented with dedicated resources, and reviewed on a regular basis to ensure program fidelity. The initial guide issued in January 2020 was comprised of 70 EBRR programs and PAs. Since the last Report, stakeholders submitted eleven external submissions, of which the BOP approved four new programs: "7 Habits on the Inside"; "Resilience Support"; "Money Smart for Adults;" and "Aleph Institute." The BOP also added an internally proposed program, "Disabilities

⁴⁰ The external programs were reviewed for evidence demonstrating effectiveness in reducing recidivism and for use by an established framework, particularly in a correctional setting. Using the information from the independent reviews, the BOP assigned a final evidence rating to each proposal based on program design and outcome standards; after which summaries were created to help determine whether and how the proposed program would be used in BOP institutions. Of the five possible ratings, only the programs rated as "Effective" and "Promising" were considered for adoption and inclusion in the First Step Act Approved Programs Guide.

⁴¹ See BOP, First Step Act Approved Programs Guide, https://www.bop.gov/inmates/fsa/docs/fsa_program_guide_2201.pdf

Education Program,” as well as more PAs. Altogether, the BOP now has more than 83 EBRR programs and PAs in the FSA Program Guide. All approved programs are designed to build upon individual successes and to address one or more of the BOP’s thirteen defined needs. The passage of the Time Credits rule in January 2022 expanded the services which qualify as PAs. Only structured EBRR programs and PAs with a facilitator-led curriculum are listed in the FSA Programs Guide. Other activities (e.g., inmate work assignments) may also be recommended by staff to address individual inmate needs as well as qualify for time credits for eligible offenders.

Because there is such a wide range of programs addressing all thirteen identified criminogenic needs areas, the BOP has focused on building capacity in existing programs. The agency has achieved expansion in significant part through the addition of full-time program delivery staff (see more information in staffing section below). Efforts to continue increasing programming opportunities for inmates in accordance with the FSA, even during the COVID-19 pandemic, remain a priority for the BOP.

While building capacity in existing programs, the BOP is also developing a number of new programs, as noted above and described below in the next section. To further complement those efforts, the BOP has initiated a new contract action to engage outside expertise to review and evaluate state correctional programs to determine their applicability to BOP. As of March 3, 2022, three contracts have been awarded for the study of specific EBRRs, specifically the BRAVE program, the Anger Management Program, and BOP’s Drug Abuse Programs.

B. FSA Program Participation

The BOP’s philosophy and strategy for inmate reentry into the community is based on the premise that reentry preparation begins on the first day of an inmate’s incarceration. Inmates are encouraged to begin preparing for reintegration into the community when they arrive at their designated facility to serve their sentence and, through the motivating actions of staff, throughout their confinement. Across institutions, the BOP offers a variety of inmate programs to address criminogenic and reentry needs related to education, employment, substance use, and mental health to assist inmates’ successful transition back to the community. Specialized treatment programs are offered for special populations including, but not limited to, sex offenders, women, transgender offenders, aging offenders, and individuals with co-existing disorders. The BOP also provides accommodations to people with disabilities to ensure comparable and fulsome access to FSA programs.

Ensuring and expanding inmate participation in EBRR programs and PAs has been challenging during the COVID-19 pandemic. In March 2020, the BOP modified institution operations to ensure the health and safety of inmates, staff, and community members. The resulting social distancing and virus mitigation measures decreased access to programming. At the end of the reporting period for the last Report, full-service delivery had not resumed at all locations. Nonetheless, even under these conditions, since the last Report, and through January 31, 2022, there were 151,669 completions, and on January 31, 2022, there were 76,399 inmates participating in EBRR programs and PAs. The BOP monitors program participation and has recorded a marked increase in participation over the course of FY 2021.

Since the last Report, the BOP advanced many existing initiatives and created new initiatives in efforts to expand the quality and quantity of services and program opportunities for the inmate population. The BOP used \$362,680,000 in appropriated FSA funding to expand reentry programs and their delivery. There were numerous procurements initiated during this time, which focused on increasing the EBRR program and PA offerings for inmates, as well as for establishing innovative practices.

Some of the procurements include:

- **A program to train women for careers in historically predominantly male work force sectors.** This training includes a practical application providing women job training in fields such as HVAC (heating, ventilation, and air conditioning) and commercial driver's licensure. Part of this contract includes the development of a curriculum for women to explore career interests and options, secure employment, address workplace issues, and maintain employment in fields whose workforce has historically been predominantly male.
- **A new blanket purchase agreement to engage motivational speakers.** A contract was awarded to four separate companies that provide speaking engagements to the BOP inmate population. The guest speakers are people who have been released from federal or state prisons and who discuss their real-life struggles and achievements both while incarcerated and once released to their communities. These individuals discuss how they used prison programs as a foundation for creating personal change and achieving reentry success. By sharing those experiences, the speakers seek to inspire current inmates to make similar choices. The FSA encourages this type of activity, and these speakers can encourage higher participation and peer support for EBRR programs such as social learning and communication, victim impact classes, and other restorative justice programs.
- **The development of a three-pronged, research-based curriculum for individuals who self-identify as transgender.** The curriculum includes resource tools for transgender inmates being released, an interactive and facilitated support group focused on transgender-specific topics and needs, and a transition acceptance module.
- **The addition of a new curriculum to manage anger.** Prior to FY 2021, the BOP was using a non-residential Anger Management protocol that was not specifically designed for correctional populations. FSA funding supported the development of a new protocol specifically for the BOP population. This protocol links to other BOP interventions and is supported by audio soundtracks, which make the protocol accessible to diverse populations and extends programming beyond group sessions.
- **An enhancement of BOP's non-residential Criminal Thinking protocol.** This intervention was designed to identify and reduce thought patterns and behaviors that foster recidivism. Updates to this protocol include engaging interactive activities for group therapy sessions and improvements to support both low- and moderate- intensity interventions (as high-intensity interventions are offered in residential programs). In addition, the protocol is supported with audio tracks that make the curriculum accessible to inmates with disabilities and extend programming time outside of group therapy.

C. FSA Program Capacities

The BOP's greatest resource in delivering programs is its staff. BOP is one of the largest civilian employers of doctoral level psychologists in the United States and also employs chaplains and teachers among its complement of service-delivery professionals. These positions have long provided treatment, training, and self-improvement services across BOP facilities. Since the last Report, the BOP allotted 109 new positions in program delivery disciplines to expand the capacity of its more than 80 EBRR programs and PAs. In addition to the aforementioned professions, the newly-added positions include the Special Populations Coordinator, who delivers gender-responsive programs, and a new vocational counselor position, which is currently pending position classification. Every new position adds capacity to the BOP's FSA programs.

Ordinarily, each BOP institution monitors the needs assessed within the local institution population to determine which programs to offer. Some large, residential programs, such as the Residential Drug Abuse Program, target a subset of the population for intensive services. For programs such as these, RSD monitors program completions and determines when and where more staffing is needed. For most programs, however the institutions have the ability to add cohorts and increase participant capacity as needed. Thus, if a facility is offering Anger Management but has a large group of inmates with needs remediated by this program that location could add an additional section of the program to meet the population needs. Under COVID-19 pandemic mitigation strategies, the BOP has had to limit capacity in programs to promote social distancing.

D. FSA Program Evaluations

The BOP has undertaken several major actions to study its programs to ensure their quality and validate their impact.

Since the last Report, the RSD procured independent evaluation services to explore outcomes of some of its largest and most robust reentry programs. Recidivism studies are lengthy endeavors; inmates must first complete programs, and then be released from prison for a period of time for analyses to be conducted. Additionally, while programs are designed to promote successful reentry, many of these programs have other priorities, such as symptom reduction or behavioral modification. Thus, the BOP has awarded funds to credentialed researchers capable of studying a variety of both short- and long-term measures of program efficacy. Programs for which contracts were awarded include:

- **Drug Treatment Programs:** The BOP has contracted for a five-year evaluation of its suite of drug treatment programs. This evaluation will examine the effectiveness of Drug Education, Non-Residential Drug Treatment, Residential Drug Treatment, and Medication Assisted Treatment programs.
- **Anger Management:** The BOP has contracted for a three-year evaluation of its Anger Management program.

- **BRAVE:** The BOP has contracted for a five-year evaluation of its BRAVE (Bureau Rehabilitation and Values Enhancement) program, an intensive cognitive-behavioral program targeting younger offenders.

Additionally, as part of both the FSA roll-out and an ongoing Government Accountability Office audit, the BOP contracted with an outside vendor for an evaluation of Federal Prison Industries (FPI) in 2019. Because of a number of methodological concerns, including changes to the FPI program, the final report could not reach a determination on the difference in recidivism rates between FPI participants and matched non-participants. That was primarily because both groups also participated in other programs and received various other treatments, making it impossible to isolate the effect of those other programs and treatments. While not useful as an outcome study, this analysis did help the FPI develop future goals to gauge recidivism performance, including developing parameters to ensure FPI program fidelity across all locations and planning for a dashboard to track measurable outcomes from FPI participation.

In another independent program evaluation effort, the BOP transferred more than \$12 million to the NIJ for evaluation of additional BOP programs. Through a competitive solicitation process, the NIJ will award funds to qualified researchers to study outcomes of seven programs to be designated. Similarly, the BOP's ORE is conducting an evaluation of an eighth program, called Resolve, which is the BOP's cognitive-behavioral program designed to address the trauma-related mental health needs of inmates.

Finally, as part of this overall evaluative effort, the BOP will contract with criminal justice consultants experienced in correctional program delivery to conduct a review of available research related to the BOP's EBRR programs to determine the strength of the evidentiary basis of the programs, in ways comparable to non-BOP programs with research-supported evidentiary basis.

E. Partnerships with Volunteers

Community partners play a vital role in providing valuable mentorship, support, and educational opportunities to incarcerated persons. The BOP has a long history of working with external organizations to recruit community volunteers to assist with inmate services. The BOP engages in both paid and non-paid partnerships to instill hope in inmates, help inmates make meaningful connections, and provide encouragement to inmates that assists in their personal growth and in their ability to return to their communities as law-abiding citizens. The BOP defines a paid partnership as a contract between the government and an external organization that delivers inmate programming and services for compensation. A non-paid partnership provides inmate programming and services on a voluntary basis. These partnerships have included such areas as faith-based, academic, vocational, wellness, mental health, and interpersonal skills services.

As of October 1, 2020 (the beginning of the period since the last annual Report was issued), the use of volunteers and contractors remained suspended due to the COVID-19 pandemic, based on an earlier modification of BOP operations to mitigate the spread of the COVID-19 virus in keeping with guidance from the Centers for Disease Control (CDC). On October 3, 2020, limited activities resumed for Visitation Volunteer Services as local conditions permitted and as volunteers were willing. Similarly, faith-based volunteers and contractors were permitted to

resume activities on November 13, 2020, under the same CDC guidelines. On April 13, 2021, volunteers and contractors providing FSA programming were allowed to resume their activities if community and facility transmission rates remained sufficiently low.⁴² To support and expand volunteer activities, the BOP instituted voluntary partnerships with external groups and individuals at all 122 institutions. Since the last Report, and as of December 31, 2021, 1,397 volunteers and contractors provided 103,333 hours of service at BOP institutions, significantly boosted by the voluntary partnerships.

To fulfill the goals of the FSA, the BOP took steps to transform the volunteer recruitment and application process to increase the number of skilled volunteers for the agency and to ensure the availability of essential reentry programming at all BOP institutions. The goals of this initiative are:

- **Recruit Skilled Volunteers:** Through digital marketing, the BOP finds volunteers who have the right skills, in the right locations, and at the right volume to support priority initiatives.
- **Make Volunteer Management Simple:** As the volunteer pool grows, so does the need for an intuitive tracking system. The new technology system allows BOP Reentry Affairs Coordinators (RACs) to easily post volunteer opportunities and track applications.
- **Report Progress with Data:** The new technological system enables automatic generation of reports to allow RACs and the BOP's Community Reentry Branch to make data-driven decisions that influence volunteer programs.

To support these goals, the BOP has developed a three-pronged solution that involves a digital marketing campaign, an online public portal, and a volunteer recruitment management system. All three elements work together to engage a new generation of BOP volunteers and encourage them to apply to support our institution's most critical inmate programming needs. To date, the implementation strategy has included the following:

- **Digital Marketing Campaign (the Inside Influence Campaign):** An initial awareness campaign launched on July 27, 2021, directing public users to a new volunteer page on the BOP's public website.⁴³ This initial campaign was designed to direct users to the "Inside Influence" portal for volunteer resources and applications. Each week of the awareness campaign saw a steady increase in public interest, evidenced by 476 potential volunteers signing up to receive email notifications from Inside Influence prior to the volunteer portal deployment (discussed next).
- **Public Volunteer Portal (the Inside Influence Portal):** The public volunteer portal of the BOP's website allows prospective volunteers to navigate and learn more about the

⁴² The BOP is currently operating its facilities based on a comprehensive COVID-19 pandemic strategy. An institution's operational level (Level 1, Level 2, or Level 3) is based on the institution's COVID-19 medical isolation rate, combined percentage of staff and inmate completed vaccinations series, and community transmission rates. Depending on those factors, an institution's ability to engage in various activities is modified. See BOP, "BOP COVID-19 Operational Levels," https://www.bop.gov/coronavirus/covid19_modified_operations_guide.jsp.

⁴³ BOP, "Leave a Legacy of Good—Volunteer," <https://www.bop.gov/jobs/volunteer.jsp>.

BOP, view “Day in the Life” stories from current volunteers, review FAQs and initiate contact through a “Contact Us” feature. More importantly, for the first time in BOP history, community members are able to search for volunteer opportunities by reviewing relevant postings near them and submit a digital application to express their interest.

- **Volunteers Influencing Inmate Outcomes System (VIOS):** By using the VIOS, BOP staff can complete digital Annual Needs Assessments, run statistical reports to determine recruitment status and institution needs, and enter postings to advertise their volunteer vacancies. Once a prospective volunteer applies to a posting, the RAC of the institution that posted the vacancy is able to review and manage the application and engage with applicants through VIOS.

The VIOS system is currently deployed to two BOP regions. With the procurement of additional software licenses, the system will expand nationally. In addition to these recruitment efforts, the BOP recently partnered with the District of Columbia Department of Corrections’ READY (Resources to Empower And Develop You) Center and the Prince George’s County (Maryland) Health Department Bridge Center to assist inmates being released to those areas with release planning. These partnering agencies provide resources for the inmate population including the completion and collection of intake forms before their release.

The BOP also collaborates with Native American and Alaskan Native communities to provide reentry services. The BOP has presented information at Tribal Intergovernmental Reentry Workshops in February 2019 and April 2021 to provide an overview of the inmate intake process, reentry programs, and reentry initiatives. The BOP also works with the National Indian Council on Aging and the U.S. Department of Labor to direct reentry resources for the aging Native American population and to help secure post-release employment.

The BOP continues its work with the Executive Office for United States Attorney’s Offices and United States Probation Offices (USPO) to host virtual reentry resource fairs and workshops. These events educate inmates on community resources and services readily available post-release. Both United States Attorneys’ Offices and USPOs participate in annual mock job fairs, reentry resource fairs, Release Preparation Programs/Release Orientation Programs, and other reentry related events.

Also, since the last Report, the BOP started a new partnership with the D.C. Board of Elections, which led to a wider effort to educate inmates on their voting rights. The District of Columbia passed legislation in 2020 allowing incarcerated D.C. citizens to vote. The partnership provided registration and voting material to the BOP’s D.C.-citizen inmates enabling absentee voting. As a result, the BOP initiated similar efforts for the States of Maine and Vermont, where incarcerated residents are also allowed to vote while serving their sentences. To facilitate voter awareness throughout its inmate population, the BOP updated its Admissions and Orientation program and its Release Preparation Programs/Release Orientation Programs to educate inmates on their voting rights.

Because visitation plays such a critical role in enabling inmates to maintain community ties, the BOP maintains ongoing partnerships with two organizations that provide visitation services to inmates who normally do not have connections with family and friends outside prison. The first

and largest visitation volunteer organization of its kind is the Prisoner Visitation and Support (PVS) program. During normal operations, PVS volunteers visit inmates who need friendship and mentoring. Their mission is to “provide prisoners with regular face-to-face contact from the world outside of prison to help them cope with prison life and prepare for a successful reentry into society.”⁴⁴ PVS provides supportive service to federal and military prisoners. A second organization the BOP partners with is Aleph Visitation Circle, which provides similar services to inmates. Although the typical visitation services provided by these partners were suspended for a large period of time due to the COVID-19 pandemic, the BOP implemented a program to allow the volunteers to write letters to inmates in lieu of visits. As mentioned previously, in-person visitation has now resumed where it is safe to do so.

The BOP’s additional partnership efforts included contributing information to the District of Columbia Public Defender Service’s new “D.C. Reentry Navigator” resource, a 900+ page comprehensive book that provides reentry resources for people arrested, charged, tried, or convicted under D.C. laws. The BOP distributed hard copies of the book to D.C. inmates in BOP institutions across the country and key staff. The BOP also posted the information on the agency’s public and intranet websites.

Another important item to note is that all BOP institutions maintain local partnerships with child support agencies, motor vehicle departments, libraries, local colleges and universities, tribal communities, workforce development agencies, Veterans Administration offices, faith-based organizations, and other stakeholders to help further assist inmates with successfully reintegrating back into their communities.

F. BOP’s Additional FSA Implementation Activities

1. BOP Efforts to Assist with Identification

Individuals leaving incarceration should not have to navigate the administrative hurdles to securing identification on their own. The BOP continues to help inmates obtain identification prior to release. Since the last Report, the BOP initiated a partnership with the Transportation Security Administration, which was later extended to include the forensic unit of U.S Immigration and Customs Enforcement. The purpose of the partnership was to discuss Real ID requirements for inmates being released to the community who need to engage in domestic air travel. The BOP also discussed options for enhancing the security measures of the inmate ID used within BOP facilities. Through this partnership, market research was conducted to explore manufacturing options to enhance the security measures of the inmate ID card. Market research led to the BOP’s initial contact and tour of the Government Publishing Office (GPO) for potential production of BOP inmate IDs, which can be used for interstate travel upon release and for obtaining state and local photo IDs. The BOP is continuing discussions with GPO to refine this initiative.

Additionally, the BOP initiated contact with the U.S. Marshal Service (USMS) to request agreement, through an MOU, for deputy marshals transporting inmates to and from BOP

⁴⁴ For more information about PVS, see <https://www.prisonervisitation.org>.

facilities to turn over any inmate identification in their possession to the BOP for inclusion in the inmate central file. This new agreement has been memorialized in an MOU pending USMS signature.

2. Transfers Closer to Home

Inmates benefit from maintaining ties with their families and communities during their terms of imprisonment. Incarcerating offenders close to home can help promote that connection. Prior to the passage of the FSA, the BOP sought to place inmates within 500 miles of their release residence, as available and appropriate. The BOP calls these “nearer release transfers.” The FSA further refined this effort by requiring nearer release transfers, even if the inmate is already within 500 miles of their release residence if another facility is closer.⁴⁵

From October 1, 2020 to January 31, 2022, the BOP conducted 2,829 Nearer Release Transfers. As of January 29, 2022, 78,132 inmates (68 percent of 115,419 inmates in typical institutions with release residences within the continental United States) were placed within 500 miles of their residence. The following table shows inmate distance within legal residence by institutional security level, as of January 29, 2022.

Facility Security Level	Within 500 Miles of Legal Residence	Greater Than 500 Miles from Legal Residence	Inmate’s Legal Residence Unavailable	Total
Administrative	8,969	3,616	240	12,825
High	8,629	9,781	209	18,619
Medium	36,347	13,819	527	50,693
Low	22,041	8,091	349	30,481
Minimum	2,146	619	36	2,801
Total	78,132 (68%)	35,926 (31%)	1,361 (1%)	115,419

During the COVID-19 pandemic, the BOP canceled all inmate nearer release transfers to mitigate potential disease transmission. This action involved moving a large number of inmates out of BOP Special Housing Units and into private correctional facilities, and temporarily lowering or setting population caps at all BOP low- and minimum-security facilities in order to decrease COVID-19 exposure incidents in facilities where, due to their physical layout, populations are unable to socially distance. With the advent of additional mitigation strategies including vaccinations, the BOP has resumed nearer release transfers, while continuing efforts to evenly disperse the inmate population across its facilities based on security levels. Additionally, the BOP is still using target population caps at minimum- and low-security facilities to mitigate COVID-19 concerns.

⁴⁵ The BOP considers a variety of factors in designating inmates to specific institutions, including the inmate’s security designation, programmatic needs, mental and medical health needs, faith-based needs, and recommendations of the sentencing court. The BOP’s decision-making as to designations is not judicially reviewable. See 18 U.S.C. § 3621(b).

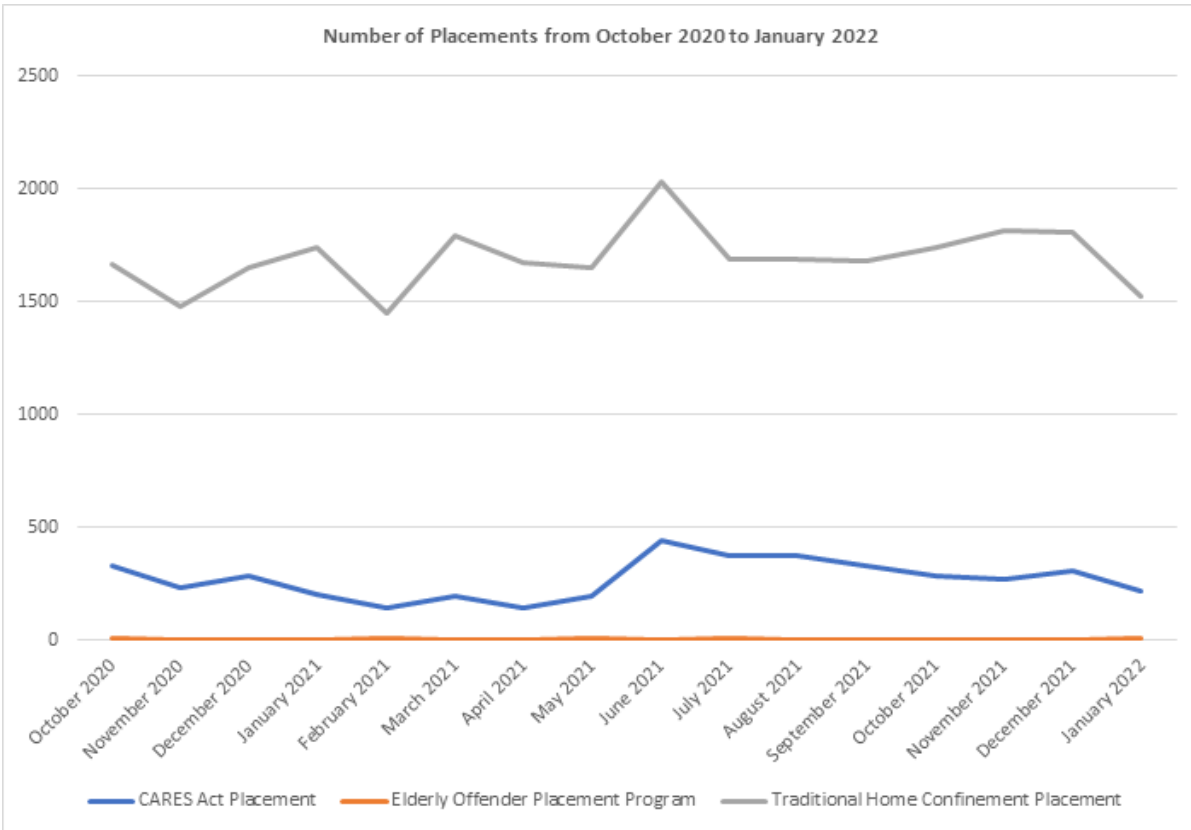
3. Elderly and Terminally Ill Pilot Program

The BOP has continued to implement this Second Chance Act program to release to home confinement eligible elderly and terminally ill offenders. Section 603(a) of the FSA reauthorized and modified the Pilot Program for Eligible Elderly Offenders and Terminally Ill Offenders conducted under the Second Chance Act, 34 U.S.C. § 60541. Section 603(a) allows offenders who are over 60 years of age, have served two-thirds of their sentence, are not convicted of a crime of violence, and do not have a history of escape to be placed on home confinement for the remaining portion of their sentence. To meet this standard, the BOP instituted a process in which each institution case manager conducted an initial caseload review for inmates who were 60 years of age or older and met the established criteria. Once inmates were determined to be eligible, they were submitted for placement on home confinement. Case managers are continuing to review their caseload and identify inmates for home confinement once they meet the criteria. Eligible inmates are then processed by Residential Reentry Management staff and, if approved, moved to their home communities on the appropriate date. On October 1, 2020, the time period immediately after the prior Report was published, there were 512 inmates participating in this pilot program. The population fluctuates daily as individuals are released into home confinement or complete their sentences. As of January 29, 2022, there were 191 inmates participating. The BOP has placed approximately 1,179 inmates in this program since April 2019.

4. Home Confinement

The BOP is committed to placing inmates in the community commensurate with their needs. Since the last Report, the BOP has dramatically increased home confinement utilization by **more than ten-fold**. The population thus grew from approximately 3,000 inmates on home confinement at any given time before the COVID-19 pandemic to more than 31,500 inmates, as of January 29, 2022. Increased placements on home confinement have primarily been due to pandemic-related releases under the CARES Act. Specifically, from October 2020 through January 2022, the BOP transferred 4,352 inmates to home confinement pursuant to CARES Act authority, which along with the increased authority given to the BOP by the FSA, has led to inmates being placed in home confinement for longer durations.

The following graph and table show the number of BOP inmates transferred to home confinement each month under the “traditional” program (based on existing prerelease custody policies), CARES Act authority, and the Pilot Program for Eligible Elderly Offenders and Terminally Ill Offenders from October 1, 2020 through January 29, 2022.



Note: The number of Elderly Offender Home Confinement placements for the months in the above graph is not zero but rather shows an average of 6 per month. Since the inception of the Elderly Offender pilot program in 2007, a total of 1,185 placements have been made.

Number of Placements from October 1, 2020 to January 29, 2022

	CARES Act	Elderly Offender Pilot	Other ("Traditional")
October 2020	332	12	1,668
November 2020	235	6	1,478
December 2020	290	6	1,652
January 2021	205	7	1,742
February 2021	142	9	1,454
March 2021	195	3	1,798
April 2021	147	2	1,677
May 2021	197	8	1,656
June 2021	443	7	2,034
July 2021	376	8	1,690
August 2021	376	6	1,688
September 2021	328	3	1,686
October 2021	288	7	1,744
November 2021	275	7	1,819
December 2021	307	7	1,809
January 2022	216	9	1,526
Grand Total	4,352	107	27,121

The CARES Act authorizes the Director of the BOP to lengthen the amount of time a prisoner may be placed in home confinement beyond the statutory maximum normally allowed under 18 U.S.C. § 3624(c)(2), as the Director deems appropriate. That authority exists during and for 30 days after the national emergency caused by the COVID-19 pandemic, provided that the Attorney General has made a finding that the emergency conditions materially affect the functioning of the BOP. The President declared the COVID-19 outbreak a national emergency beginning March 1, 2020, prior to enactment of the CARES Act, and extended the national emergency on February 24, 2021. On April 3, 2020, after the passage of the CARES Act, the Attorney General found that COVID-19 emergency conditions were materially affecting the functioning of the BOP. The President's declaration and the Attorney General's finding are still in effect as of the date of the publication of this Report.

Following guidance from the Attorney General, the BOP Director has exercised his discretion under the CARES Act to place thousands of inmates in home confinement during the pandemic emergency. These actions removed vulnerable inmates from congregate settings where COVID-19 spreads easily and quickly and reduced crowding in BOP correctional facilities. Inmates placed in home confinement remain in BOP custody and are subject to ongoing supervision, including monitoring, drug and alcohol testing, and check-in requirements. They are not permitted to leave their residences except for work or other pre-approved activities such as counseling, or medical appointments. Inmates who violate these conditions or commit new crimes while in home confinement may be disciplined and returned to secure custody. Violations of the conditions of confinement requiring return have been rare during the pandemic emergency, however, and very few inmates placed in home confinement under the CARES Act have committed new crimes.

Although the CARES Act plainly states that the BOP Director's authority to lengthen the maximum period of home confinement exists during the covered emergency period, the Act is silent about what happens to an inmate who was placed in home confinement under this authority, but who has more than the lesser of ten percent of her sentence or six months remaining in her term of imprisonment after the covered emergency period expires. The Department's view, as explained in a December 21, 2021 opinion of the Office of Legal Counsel (OLC) and supported by the views of the BOP, is that the statute allows such individuals to remain in home confinement after the covered emergency period ends, as the BOP Director deems appropriate. This reading, which differs from an earlier OLC opinion, is supported by the text, structure, and purpose of the CARES Act and is the better reading of the statute, as more fully explained in the December 21, 2021 opinion. This reading also aligns with the BOP's consistent position that the more appropriate reading of the statute is to permit the BOP to conduct individualized assessments – as it does in making prisoner placements in other contexts – to determine whether any inmate should be returned to secure custody after the COVID-19 emergency ends.

The Department's interpretation of the statute is also consistent with recent congressional support for increasing the use of home confinement as part of reentry programming, as the Second Chance Act of 2007 and the First Step Act of 2018 demonstrate. This interpretation is operationally sound and provides flexibility in managing BOP-operated institutions and cost savings for the BOP. It is further supported by evidence that the BOP can appropriately manage public safety concerns related to inmates in home confinement, and by the penological and societal benefits of allowing inmates to effectively prepare for life after the conclusion of their criminal sentences. Finally, this interpretation permits the BOP to take into account whether returning CARES Act inmates to secure custody, thereby increasing crowding in BOP facilities, risks new, potentially serious COVID-19 outbreaks in prisons even after the broader national emergency has passed.

For all of these reasons, the Department proposes to specifically provide the BOP Director with authority to allow prisoners who have been placed in home confinement under the CARES Act to remain in home confinement after the conclusion of the covered emergency period, in the Director's discretion. The Department is preparing regulations to implement this decision.

5. Drug Treatment

Programs offered by the BOP to address substance use benefit inmates and society. The BOP has a robust drug treatment strategy and offers a variety of research-based drug treatment programs with demonstrated efficacy. Offenders who have identified drug treatment needs receive an individualized treatment plan to address those needs. One of the most valuable programs for individuals with diagnosed substance use disorders is the Residential Drug Abuse Program, the BOP's most intensive treatment program that typically lasts nine months in duration. During calendar year 2021, more than 43,413 inmates participated in institution-based drug treatment programs such as:

- Drug Education: 19,378 participants
- Non-Residential Drug Abuse Program: 13,570 participants
- Residential Drug Abuse Program: 10,465 participants

An additional 11,852 inmates participated in community-based treatment. The FSA requires the BOP to expand access to Medication Assisted Treatment (MAT).⁴⁶ In the wake of the opioid crisis, this program is an important treatment option for those suffering from opioid use disorder. All three medications used for MAT, as well as all of the programming associated with MAT, are available for offenders in the BOP who meet criteria for treatment. This population includes inmates entering the BOP and have a history of active opioids use, who are:

- currently on MAT;
- at risk of relapse;
- nearing transfer to community placement; and
- preparing for release from custody.

Since May 2019, 14,378 inmates in the BOP have been screened for MAT, with more than 1,455 offenders participating in the MAT program. The percentage of offenders beginning MAT has increased by 15 percent each month since May 2021. MAT program participants are engaged in psychosocial treatment and services to address individual treatment needs, including individual and group therapy, as well as referrals to other programs such as vocational training and trauma treatment.

With this expansion of MAT in the BOP, several BOP institutions use community resources to prescribe medication. As a result, the BOP has worked to expand internal capacity to relieve the already stressed community providers. Separately, thirty-one MAT Psychologist positions have been allocated to the field to provide education, assessment, and treatment to offenders with opioid use disorders, along with 79 Health Services staff. The BOP has worked to increase the number of BOP providers who have Drug Abuse Treatment Act (DATA) 2000 waivers that

⁴⁶ Medication Assisted Treatment is “the use of medications, in combination with counseling and behavioral therapies, to provide a ‘whole-patient’ approach to the treatment of substance use disorders. Medications used in MAT are approved by the Food and Drug Administration (FDA) and MAT programs are clinically driven and tailored to meet each patient’s needs”. See SAMHSA, “Medication-Assisted Treatment (MAT)” (Oct. 13, 2021), <https://www.samhsa.gov/medication-assisted-treatment>. Within the BOP, MAT services are facilitated by the BOP's Health Services Division and Reentry Services Division.

enable them to prescribe buprenorphine. Currently, the BOP has 143 prescribers with a DATA 2000 waiver.

The BOP is also working with the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Drug Enforcement Administration to implement Opioid Treatment Programs (OTP) within BOP institutions, thereby avoiding the need to rely on community resources. Within the OTP plan, the BOP is working to implement an innovative “hub and spoke” model that will allow all BOP-managed institutions to directly provide all three U.S. Food and Drug Administration approved MAT medications (methadone, buprenorphine, and naltrexone). Under the “hub and spoke” model, the BOP’s seven medical referral centers will serve as OTPs (hubs) and the remaining institutions will serve as medications units (spokes) connected to one of the hubs for logistical and clinical support. The hubs will provide direct oversight of the program, ensuring that all inmates have access to the three medications. Currently, inmates requiring methadone for opioid use disorder treatment receive medication through community clinics that are contracted by the BOP. Buprenorphine is prescribed by BOP practitioners with a DATA 2000 waiver. As part of the BOP’s continuing training of staff on MAT services, technical and clinical guidance was published for health care providers. This guidance standardized treatment approaches on an individualized basis, regardless of the inmate’s proximity to the completion of the sentenced imposed at the time of treatment entry.

As inmates transfer to Residential Reentry Centers (RRCs) located throughout the nation, the BOP’s community-based treatment service providers ensure continuity of care during that critical time. Oversight of inmates at RRCs is conducted collaboratively between the BOP and its treatment and residential contractors who work together to ensure early identification of drug treatment issues, needed referrals, and continued access to needed counseling services and psychotropic medications. To that end, the BOP ensures that MAT services initiated in prison facilities continue upon transfer to community custody. In addition to those who began MAT while incarcerated, many offenders also choose to begin MAT in the community with contracted treatment providers.

6. FSA Staffing Resources

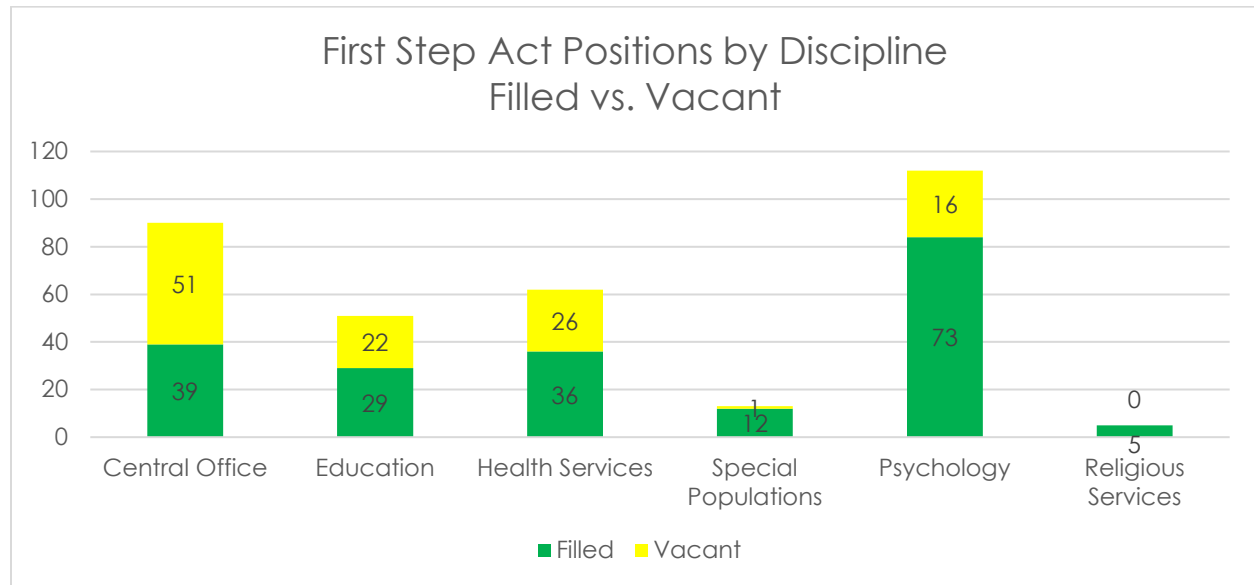
The Department and the BOP are committed to fully staffing BOP institutions. Appropriate staffing, along with training and funding, is key to full implementation of the FSA. In the last two years, the BOP has made significant progress in hiring for correctional services positions as well as for positions designed to prioritize FSA program delivery, including professionals in education, physical and mental health, and religious services. For example, as of early November 2021, the BOP had filled dedicated positions in several fields that directly support FSA implementation, including appointing Mental Health Treatment Coordinators.

In the last calendar year, the BOP has hired over 3,800 staff in positions across the agency. In 2021, the BOP’s hiring initiative resulted in over 2,000 new staff. Beginning in July 2021, due to budgetary constraints, the BOP largely shifted its focus to retaining the staffing levels that it reached through these hiring initiatives.

BOP continues to fill positions that support FSA implementation. From both FY 2020 and FY 2021 funding, BOP was authorized for 329 FSA-funded positions. This includes more than 100

positions to expand capacity in FSA programs. As of September 30, 2021, 111 of these positions were onboarded. As of January 31, 2022, BOP had filled 202 (61 percent) of dedicated FSA positions.

The hiring of dedicated FSA positions that directly support FSA implementation is displayed further below.



In addition, as of January 31, 2022 the BOP had:

- Made tentative offers or given entry on duty dates to an additional 33 individuals. This group represents another 10 percent of the 329 funded FSA positions;
- 34 positions for which vacancy announcements were posted, interviews were being conducted, or had candidates in the background check process.
- 60 vacancy announcements that remained to be posted. This reflects, in part, vacancies requiring a second posting due to lack of qualified applicants after the first announcement.

The BOP will continue to make a sustained and focused effort to fill these positions. The current goal is to fill 100 percent of the 329 positions with dedicated FSA funding by the end of calendar year 2022.

Finally, the Department and the BOP are dedicated to identifying hiring and staffing strategies to reduce overreliance on augmentation and overtime. The BOP is using several approaches to address over reliance on augmentation and overtime, including:

- **Staffing Assessment:** In June 2021, the BOP awarded a contract to an independent, external organization, NTT Data Services. This contractor will assist the BOP in identifying quantifiable risks associated with current staffing levels, including overtime use and staff schedule augmentation. NTT Data Services will assess the risks associated with overtime and augmentation, provide overtime usage recommendations,

and provide an overtime calculation tool. With the understanding that overtime is sometimes inevitable, the BOP will use employed analytical strategies developed by the vendor, including thresholds to determine when overtime can become significantly riskier and produce negative outcomes. Utilizing this approach, the BOP will have additional tools that will help identify early indications of staffing risks and allow the agency to make informed staffing decisions.

- **Psychologist hiring:** The recruitment of staff in certain BOP locations is always challenging, but the recruitment and hiring of professional staff (e.g., clinical psychologists, teachers, and chaplains) is even more difficult due to competing industries and employers. Because of the highly specialized nature of the work performed by psychologists, the BOP has also retained a consultant to assess hiring strategies for treatment specialists, pre-doctoral psychology interns, and psychologists. The consultant is assisting with streamlining information, reducing barriers, and increasing the efficiency of hiring processes. The campaign will be ready for active deployment by April of 2022.
- **Targeted hiring campaigns:** The BOP has engaged Accenture, an external, independent consulting firm, to conduct innovative and targeted marketing and recruitment campaigns to attract new staff in all positions. These general recruitment campaigns involve the extensive and expansive use of social media, job fairs (both in-person and virtual), and industry associations. In FY 2021, these campaigns included focused efforts to hire a variety of positions, including corrections officers, nurses, teachers, clinical psychologists, drug abuse program coordinators, social workers, vocational training instructors, and others. In FY 2022, the BOP will continue to work with Accenture to recruit for BOP positions, including those dedicated to FSA implementation, correctional officers, and hard to fill positions as well as all positions in hard to fill locations. This campaign has been successful, resulting in the significant staffing increases described above.
- **Incentives:** The BOP has used recruitment incentives to hire good candidates, and retention incentives to encourage experienced staff to remain with the agency. For example, the BOP has offered a 10 percent recruitment incentive at thirty-one locations which are under 90 percent staffing in Correctional Services. By hiring and retaining correctional services staff, the BOP relies less upon augmentation by programs staff.

7. Retroactive Application of the FSA to Crack-Cocaine Offenders

The Department has worked to fulfill the FSA's promise of ameliorating the unjustified disparity in the treatment of crack and powder cocaine in federal sentencing.

a. Department's Position on the EQUAL Act

The Department supports enactment of the Eliminating a Quantifiably Unjust Application of the Law Act (EQUAL Act), S.79, which would eliminate the powder-to-crack sentencing disparity in 21 U.S.C. §§ 841 and 960. As set forth in the Department's June 22, 2021, testimony in support of the EQUAL Act, the Department believes it is long past time to end the disparity in federal sentencing between offenses involving crack cocaine and those involving powder cocaine. That disparity has led to over-long sentences and unwarranted racial disparities. As the Department

explained, while some forms of drug trafficking may correlate with higher rates of violence, weapon possession, or other aggravating factors, those differences are better addressed through statutes and guidelines that specifically target violence, weapons, and the like, rather than over-inclusive quantity-based penalties. The Department further supports applying the EQUAL Act's amendments to defendants currently serving sentences that reflect the current powder-to-crack sentencing disparity.

The Department has instructed federal prosecutors to inform district courts that the Department supports the elimination of the powder-to-crack sentencing disparity. District courts may consider, consistent with the law and Sentencing Guidelines, whether the powder-to-crack disparity is warranted when assessing the factors set forth in 18 U.S.C. § 3553(a) to determine a particular defendant's sentence. Absent further action by Congress, however, the existing statutory and guidelines provisions remain in effect.

b. Implementation of Section 404 of the FSA in 21 U.S.C. § 841(b)(1)(C) Cases

In the Fair Sentencing Act of 2010, Congress increased the threshold quantities of crack cocaine triggering enhanced statutory penalties for certain drug-trafficking offenses and eliminated mandatory penalties for simple possession of crack cocaine. In Section 404 of the FSA, Congress authorized district courts to reduce certain defendants' sentences as if those provisions of the Fair Sentencing Act had been in effect when the defendants committed their offenses. A court may reduce a defendant's sentence only if the defendant was convicted of a "covered offense," which Section 404(a) defines as "a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act . . . that was committed before August 3, 2010."

The Department has taken steps to ensure the full implementation of Section 404. For example, shortly after the FSA's enactment, a conflict arose in the courts of appeals as to whether a violation of 21 U.S.C. § 841(a) and (b)(1)(C) involving crack cocaine is a "covered offense." Following the change in Administration, the Department took the position that such an offense is indeed "covered," and that defendants convicted of that offense may be eligible for a sentence reduction. In light of that position, the Acting Solicitor General thereafter filed briefs in the Supreme Court defending that position. On June 14, 2021, however, the Supreme Court held that such violations are not "covered offense[s]" under Section 404. *Terry v. United States*, 141 S. Ct. 1858 (2021).

c. Guidance to Prosecutors on Multi-Drug Conspiracy Cases

More recently, in light of an emerging consensus in the courts of appeals, the Department took the position that a pre-Fair-Sentencing-Act conspiracy to traffic crack cocaine in violation of 21 U.S.C. § 841(b)(1)(A)(iii), 841(b)(1)(B)(iii), 960(b)(1)(C), or 960(b)(2)(C) is a covered offense under Section 404, even if another object of the conspiracy involving a controlled substance other than crack cocaine independently triggered the same or a greater statutory penalty range. Under the government's approach, defendants convicted of such a conspiracy may be eligible for a sentence reduction.

d. Guidance to Prosecutors on Section 841(b)(1)(C) Recidivist Penalties for “Felony Drug Offense”

In implementing the FSA, the Department also has taken steps to promote consistency in the application of Section 401’s amendments to the predicate convictions that trigger enhanced statutory minimum and maximum penalties for certain drug offenses.

21 U.S.C. §§ 841(b)(1) and 960(b) provide for mandatory life imprisonment in limited circumstances. As amended by the Act, Sections 841(b)(1)(A), 841(b)(1)(B), 960(b)(1), and 960(b)(2) now prescribe that penalty only if a defendant has previously been convicted for a “serious drug felony” or a “serious violent felony” and death or serious bodily injury results from the use of the substance involved in the defendant’s offense. By contrast, Sections 841(b)(1)(C) and 960(B)(3) prescribe that same penalty, if death or serious bodily injury results, if a defendant has previously been convicted of a “felony drug offense.” The statutory definition of “felony drug offense” is less restrictive than the definition of a “serious drug felony,” however, and therefore encompasses a broader set of state and federal predicate offenses. In addition, Sections 841(b)(1)(C) and 960(b)(3) apply to any quantity of a controlled substance listed in Schedule I or II. As a result, Sections 841(b)(1)(C) and 960(b)(3) prescribe a mandatory sentence of life imprisonment upon a lesser showing than that required under Sections 841(b)(1)(A), 841(b)(1)(B), 960(b)(1), and 960(b)(2).

In light of Section 401’s amendments, and to promote consistency in sentencing under Sections 841(b)(1) and 960(b), the Department has determined as a matter of policy not to seek a mandatory sentence of life imprisonment under Section 841(b)(1)(C) or 960(b)(3) unless a defendant’s prior conviction meets the statutory definition of a “serious drug felony” or “serious violent felony.”

8. Compassionate Release

The Department is committed to ensuring that compassionate release is available for those facing extraordinary medical, age-related, and family circumstances, particularly during the COVID-19 pandemic.

a. Legal Issues Arising from the FSA’s Compassionate Release Provision

Section 603(b) of the First Step Act amended 18 U.S.C. § 3582(c)(1)(A), commonly referred to as the “compassionate release” provision, which permits a district court to reduce a defendant’s sentence if, after considering any applicable factors under 18 U.S.C. § 3553(a), it finds that “extraordinary and compelling reasons warrant such a reduction” and that the reduction is “consistent with applicable policy statements issued by the Sentencing Commission.”

Previously, only the BOP could move for compassionate release on a defendant’s behalf. Section 603(b) of the First Step Act amended the provision to permit inmates to file motions in court seeking such relief after exhausting administrative rights to appeal a failure of the BOP to bring a motion or the lapse of 30 days from the warden’s receipt of a defendant’s request, whichever is earlier.

As noted, Section 3582(c)(1)(A) requires fidelity to “applicable policy statements issued by the Sentencing Commission,” and Congress elsewhere directed the Commission to “describe what

should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.” 28 U.S.C. § 994(t). The Commission did so in Sentencing Guidelines Policy Statement § 1B1.13, which defines “extraordinary and compelling reasons” as limited to the defendant’s medical condition, age, and family circumstances, or “[o]ther [r]easons” “[a]s determined by the Director of the Bureau of Prisons,” and which notes that, under 28 U.S.C. § 994(t), “rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason.” U.S.S.G. § 1B1.13 cmt. nn.1, 3.

The Commission currently is without a quorum, and Section 1B1.13 has not been revised since the FSA’s enactment. As a result, most courts of appeals have held that the existing version of Section 1B1.13 does not apply to the inmate-filed motions that the FSA now permits, although many of those courts have acknowledged that the section can guide a district court’s evaluation of what constitutes “extraordinary and compelling” reasons. *See, e.g., United States v. Ruvalcaba*, 26 F.4th 14, 21-23 (1st Cir. 2022) (citing cases).

In *United States v. Bryant*, 996 F.3d 1243 (11th Cir. 2021), however, a divided panel of the United States Court of Appeals for the Eleventh Circuit held that Section 1B1.13 still applies to inmate-filed compassionate release motions. After the defendant filed a petition for certiorari in the Supreme Court, the Department filed an opposition in October 2021, urging the Court to adhere to its typical practice of denying review of Sentencing Guidelines issues and affording the Sentencing Commission primary responsibility for reviewing and resolving circuit conflicts over the interpretation of the Sentencing Guidelines. The Commission, the Department noted, would be able to account for observed practices and incorporate input from various stakeholders when determining how to revise the policy statement in Section 1B1.13. On December 6, 2021, the Supreme Court denied the petition for certiorari.

b. Compassionate Release During the COVID-19 Pandemic

In light of the COVID-19 pandemic, and the particular danger that COVID-19 may present in correctional facilities, the Department has taken a broad view of the medical conditions that present an extraordinary and compelling reason for compassionate release under the statute and its applicable guideline policy statement. In particular, the Department has argued that unless an inmate is able to protect himself or herself by receiving a vaccine, medical conditions identified by the CDC as potentially increasing the likelihood of severe illness from COVID-19 qualify as “extraordinary and compelling” circumstances, such that courts may conduct an individualized assessment of whether a particular inmate warrants compassionate release.

Although the COVID-19 pandemic was not added to the BOP’s compassionate release criteria, the BOP began to consider whether an inmate requesting compassionate release suffered from medical conditions that the CDC recognized as a risk factor for COVID-19 complications, if the inmate were to contract COVID-19. While the BOP instructed staff that compassionate release requests based only on the generalized concern of infection with COVID-19 in a correctional facility should be denied for failure to meet criteria, the BOP also noted an inmate’s potential susceptibility to COVID-19 complications when, for example, referring a compassionate release matter to the Office of the Deputy Attorney General (ODAG) for further review.

In addition, the BOP continued to expedite terminal compassionate release requests and other compassionate release requests with medical components. The BOP also considered inmates for CARES Act home confinement pursuant to the Attorney General's guidance, considered inmates for home confinement under preexisting BOP policies, and did not prevent inmates from simultaneously pursuing both compassionate release and home confinement.

IV. The Rates of Recidivism Among Individuals Who Have Been Released from Federal Prisons

The FSA's report requirements include a request for information about recidivism in relation to persons released after the passage of the Act. 18 U.S.C. § 3634(3).

The BOP collects information on specific categories of inmates released from federal prison under the FSA. As of December 31, 2021, the five non-mutually exclusive categories of inmates released to U.S. communities under the FSA total 9,791 and include:

- a) Inmates released due to a reduced sentence under the Fair Sentencing Act;
- b) Inmates who receive a compassionate release, also known as a Reduction in Sentence, based on a diagnosis of a terminal illness or based on age and completion of a qualifying percentage of the sentence;
- c) Inmates who were released because of the expansion of GCT under the FSA as of July 19, 2019, when the BOP applied the new GCT calculation retroactively;
- d) Inmates transferred to community custody under the FSA's reauthorization of the Elderly Offender pilot program; and
- e) Inmates released to supervised release, without first being placed in prerelease custody, based on accrual of TC from successful participation in EBRR programs and/or PAs. The BOP is monitoring inmate time credit accruals and referring inmates to prerelease custody accordingly. As of January 15, 2022, the BOP began releasing inmates directly to supervised release based solely on time credit accrual. Any recidivism of such offenders will be monitored monthly using the National Law Enforcement Telecommunications System via a cooperative agreement with the International Public Safety and Justice Network. The FSA grants the Director of the BOP full discretion to place inmates either in prerelease custody or supervised release based the application of TC. See 18 U.S.C. § 3624(g)(3).

Recidivism is defined as either a return to BOP custody or an arrest by federal, state, or local authorities. Recidivism rates presented in this aspect of the Report are lower than average rates in the United States, though higher than the rates in last year's Report. This is likely because the post-FSA follow-up period is still shorter than those in many recidivism studies.

Traditionally, the observation period for BOP recidivism studies begins when the inmate has satisfied the sentence and is released from BOP custody. It is not unusual for inmates to be in community custody (RRCs or home confinement) when they have satisfied their sentences. Typically, if an inmate commits a crime while in community custody, the BOP does not treat the conduct as recidivism because the inmate has not yet fully satisfied the sentence or been released from BOP custody. The BOP does not believe this method of calculating recidivism impacts BOP's overall recidivism rates because (1) community custody placements are relatively brief for most inmates and (2) the inmate's release from the BOP is imminent. If authorities do pursue the criminal conduct that occurred during community custody, then the BOP records it as recidivism. While this approach has worked well for BOP in the past, individuals released via the Elderly Offender pilot program may remain in community custody for

many years before they satisfy their sentences. Therefore, for that group, the BOP uses the date they arrive in community custody as the release date for measuring recidivism.

Recidivism Data Tables

1. Recidivism by Primary Offense of Conviction for 9,790* FSA Inmates Released from BOP Custody

Primary Offense of Conviction	Percent Not Recidivating	Percent Recidivating	Inmates
Drugs	84.6%	15.4%	6,019
Weapons/Explosives	74.6%	25.4%	1,170
Homicide/Aggravated Assault	76.0%	24.0%	146
Burglary/Larceny	86.4%	13.6%	390
Counterfeit/Embezzlement	87.5%	12.5%	32
Court/Corrections	66.7%	33.3%	24
Immigration	80.0%	20.0%	60
Fraud/Bribery/Extortion	95.5%	4.5%	1,132
Sex Offenses	78.6%	21.4%	434
National Security	100%	0.0%	5
Robbery	76.6%	23.4%	290
Miscellaneous	88.2%	11.8%	51
Continuing Criminal Enterprise	97.3%	2.7%	37
Number of Inmates	8,233 (84.1%)	1,557 (15.9%)	9,790

* One non-recidivist among the 9,791 studied is missing an offense category.

2. Recidivism by Length of Sentence Imposed for 9,791 FSA Inmates Released from BOP Custody

Length of Sentence Imposed	Percent Not Recidivating	Percent Recidivating	Inmates
Up to 5 Years	82.0%	18.0%	2,372
6-10 Years	83.4%	16.6%	1,979
11-15 Years	80.9%	19.1%	2,331
More Than 15 Years	88.6%	11.4%	3,108
Number of Inmates	8,234 (84.1%)	1,557 (15.9%)	9,791

3. Recidivism by Length of Sentence Served for 9,790* FSA Inmates Released from BOP Custody

Length of Sentence Served	Percent Not Recidivating	Percent Recidivating	Inmates
Up to 5 Years	84.6%	15.4%	3,143
6-10 Years	83.4%	16.6%	2,165
11-15 Years	80.4%	19.6%	2,530
More Than 15 Years	88.8%	11.2%	1,952
Number of Inmates	8,233 (84.1%)	1,557 (15.9%)	9,790

* One non-recidivist is missing a length of sentence served.

4. Recidivism by BOP Facility for 9,769^a FSA Inmates Released from BOP Custody^b

Institution Classified Security Level	Percent Not Recidivating	Percent Recidivating	Inmates
Minimum	94.5%	5.5%	3,499
Low	85.4%	14.6%	3,208
Medium	72.7%	27.3%	2,545
High	61.5%	38.5%	517
Number of Inmates	8,215 (84.1%)	1,554 (15.9%)	9,769

^a 22 individuals do not have a classified security level because they served their federal sentences in state prisons.

^b The FSA requires recidivism data by the BOP per “facility or facilities in which the prisoner’s sentence was served.” 18 U.S.C. § 3634(3)(C). Because inmates often transfer between different BOP facilities, the BOP has not been able to establish facility-specific recidivism rates. The BOP has thus fulfilled this requirement with the above table presenting recidivism by the inmate’s security classification, predicting risk of violent and other serious misbehavior in prison.

5. Recidivism by EBRR Programs Completed for 9,791 FSA Inmates Released from BOP Custody

Number of Completed EBRR Programs	Percent Not Recidivating	Percent Recidivating	Inmates
0*	85.4%	14.6%	4,612
1	83.7%	16.3%	2,216
2	83.1%	16.9%	1,203
3	80.0%	20.0%	756
4	81.3%	18.7%	422
5-6	83.2%	16.8%	381
7-9	85.0%	15.0%	147
10+	94.4%	5.6%	54
Number of Inmates	8,234 (84.1%)	1,557 (15.9%)	9,791

* Note that many inmates with 0 completed programs were in fact inmates with very short-term sentences who were never designated to a BOP institution but rather served their sentence at a jail or pre-trial facility or were released due to time-served sentences. Thus, those inmates did not have the time or opportunity to participate in programs but were minimum security and low-risk offenders.

6. Recidivism by PATTERN Level for 4,994* FSA Inmates Released from BOP Custody

Most Recent PATTERN Assessment (before Release)	Percent Not Recidivating	Percent Recidivating	Inmates
Minimum	97.5%	2.5%	1,417
Low	95.5%	4.5%	1,513
Medium	91.8%	8.2%	979
High	83.1%	16.9%	1,085
Number of Inmates	4,627 (92.7%)	367 (7.3%)	4,994

* Many of these inmates were released before the development of PATTERN.

7. Recidivism by PAs Completed for 9,791 FSA Inmates Released from BOP Custody

Number of Completed PAs	Percent Not Recidivating	Percent Recidivating	Inmates
0	87.4%	12.6%	4,986
1	80.0%	20.0%	4,498
2	90.4%	9.6%	259
3+	93.8%	6.2%	48
Number of Inmates	8,234 (84.1%)	1,557 (15.9%)	9,791

V. The Status of Prison Work Programs at Facilities Operated by the Bureau of Prisons

Per BOP Program Statement 5251.06, *Inmate Work and Performance Pay*, each sentenced inmate who is physically and mentally able to work is assigned to an institutional, industrial, or commissary work program. In making work and/or program assignments, staff consider the inmate's learning capacity, interests, needs, eligibility, and availability of assignments. The specific assignment is made with consideration of the institution's security and operational needs. Each assignment must be consistent with the safekeeping of the inmate and protection of the public.

Exceptions from work assignments are made to allow for inmate participation in an education, vocational, or drug abuse treatment program, on either a full- or part-time basis, where this involvement is mandated by policy or statute. Where such participation is not required by either policy or statute, exceptions may be made to allow an inmate to participate in an education, vocational, or drug abuse treatment program, rather than to work full-time, upon the request of the inmate and approval of the Warden or designee.

Available job assignments vary from institution to institution based on the specific security and operational needs of each facility. As a result, no national listing of job assignments exists. However, many assignments are common to every institution to ensure that necessary day-to-day operations and services are completed. Examples of these types of job assignments include, but are not limited to, inmate orderlies and positions in food service, commissary, education, recreation, religious services, health services, safety and sanitation, and other services. Vocational training courses and apprenticeship opportunities are available at all BOP facilities and placement is based on needs assessments. Some of these programs may have specific eligibility requirements that must be met prior to an inmate's entry into the program.

Beyond assigned job assignments, the BOP has three levels of work or vocational programs (also known as Career Technical Education (CTE)): Apprenticeship Training, Certification Course Training, and Vocational Training. Apprenticeship Training prepares the inmate for employment in various fields through structured programs; under this program, inmates are overseen by journeymen and may be paid. Certification Course Training is a series of shorter course sessions (typically 99 hours or less) which lead to an industry-recognized certification. Examples of these certification courses include Forklift Certification, Serve Safe Certification, and OSHA 30 Certification. Vocational Training (VT) is a certification program that leads to, at a minimum, an entry-level position in a particular field. The training sessions are instructor-led and consist of both hands-on skill building training and live work projects to teach specific in-demand skills that prepare the inmate for an industry-recognized certification, credential, or degree. Examples of vocational training programs include welding, building trades, HVAC, and wind turbine technology.

The BOP also provides work programs designed to identify and address the needs of women inmates. BOP has observed that women inmates frequently participate in VT programming focused on culinary arts, cosmetology, and building trades. Among the programming

opportunities designed to assist women in the workplace are assertiveness training; balancing career, relationships, and family obligations; and meeting the challenges of the 21st century workforce for women.

Through an agreement with the DOL, the BOP offers 108 nationally standardized DOL Apprenticeships, 60 of which are supported by approximately 50 marketable programs operating in BOP institutions.

In addition to the above CTE programs, BOP provides job training and work experience through the FPI. The FPI provides a program of constructive work, at no cost to taxpayers, through which inmates can acquire job skills and good work habits, thereby reducing the likelihood of recidivism upon release. FPI employment helps encourage inmate activity by providing a diversified work program that improves prison safety and security. The FPI strives to attain the goal of 30 percent of the FPI inmate workforce consisting of inmates within 36 months of their release date.

In FY 2020, 16,478 inmates worked in 65 different FPI operations. From FY 2021 through FY 2023, the FPI projects that it will employ 19,255 inmates. FPI factories manufacture such items as furniture, clothing, electronics, and metal products, and provide such services as vehicle retrofit, printing, data processing, call centers, laundry, farming, and recycling. These diverse types of employment enable inmates to seek and obtain employment in relevant fields after their release into the community

While in the FPI program, inmate workers obtain certifications and skills in a variety of areas such as:

- garment construction, laundering, dry cleaning, and repair
- drafting and interpreting specifications
- carpentry
- upholstery
- metal working
- computer-aided design
- soldering
- electronics testing
- supply chain management
- warehousing and inventory operations
- forklift operations
- hazardous materials recognition
- truck driving
- welding
- vehicular upfit, repair, maintenance, bodywork, and painting
- telephonic customer service
- telephonic sales to include opening, lead generation, schedule adherence, and closing
- optical laboratory administration, operation, and maintenance

- SAP (Systems Applications and Products) certifications, materials tracking, production monitoring, and transactions monitoring
- recycling
- Lean Six Sigma certification
- Microsoft software
- ISO (International Organization for Standardization) and AQL (Acceptance Quality Limit)

Pursuant to the FSA, the Department is to conduct ongoing research and data analysis on products purchased by Federal agencies that are manufactured overseas and could be manufactured by prisoners participating in a prison work program without reducing job opportunities for other workers in the United States. The FPI has solicited for an external contractor to conduct the required research and the procurement is expected to be finalized by the end of June 2022.

VI. The Operational Policies and Guidance Issued

In order to implement the FSA successfully, the BOP has issued the following policies and guidance since the Act became law:

- Policy guidance regarding Compassionate Release (Reduction in Sentence). [PS 5050.50: Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g), published 1.17.2019]
- Policy guidance to enable BOP's employees to carry and store personal weapons under 18 U.S.C. § 4050. [PS 5575.01: *Staff Personal Weapons Storage*, published 1.18.2019]
- BOP and the U.S. Marshals Service (USMS) policies complying with the FSA's requirements that prohibit certain room confinement for juvenile offenders. (The BOP does not house juveniles in its facilities.) [BOP PS 5216.06, updated 4.26.2019 to reflect FSA language.]
- Guidance to Wardens about entering into partnerships with nonprofits and other private organizations, including faith-based, art, and community-based organizations; institutions of higher education; private vocational training entities; and industry-sponsored organizations. These partnerships enable the BOP to expand the opportunities for EBRR programs and PAs. [Issued 6.25.2019]
- Policy guidance regarding release preparation and assisting inmates with obtaining identification. [PS 5325.07: *Release Preparation Program*, published 8.15.2019]
- Guidance on inmate security designation documenting changes in the law with regard to placing offenders within 500 driving miles of their release residence, as well as processing nearer release transfers, where appropriate. [PS 5100.08: *Inmate Security Designation and Custody Classification*, published 9.4.2019]
- Procedures implementing the dyslexia-screening requirement, which will enable the BOP to identify those offenders within the BOP inmate population who have this learning disorder. The BOP also developed specific tracking codes for dyslexia to ensure that required reporting can occur. [PS 5200.06: *Management of Inmates with Disabilities*, published 11.22.2019]
- Policy guidance and contracting initiatives that provide sanitary products and ensure that they are available and accessible to female offenders. [OM 003-2019: *Provision of Feminine Hygiene Products*, published 7.29.2020]
- Policy guidance on Medication Assisted Treatment (MAT). [PS 1610.01: *Naloxone Procedures and Protocol for Reversal of Opioid Overdose*, published 12.17.2020]
- Policy guidance for the Elderly Offender Home Confinement Pilot. [OM 001-2019: *Home Confinement under the First Step Act*, published 5.3.2021]
- Policy guidance federal prison facilities housing female inmates regarding the Act's requirements prohibiting the use of restraints on pregnant inmates absent extreme circumstances. (The BOP has prohibited this conduct since August 2014.) In concert, the USMS issued similar updated procedures and forms for the USMS and its contracted private detention facilities. [PS 5200.07: *Female Offender Manual*, published 5.12.2021]
- Policy guidance regarding SPARC-13 Needs Assessment. [PS 5400.01: *First Step Act Needs Assessment*, published 6.25.2021]

- Policy guidance on First Step Act Program Incentives. [PS 5220.01: First Step Act Program Incentives, published 7.14.2021]

In addition,

- Specialized and comprehensive de-escalation training was provided to BOP employees and officers in accordance with Section 606 of the FSA (including mental health awareness training regarding inmates with psychiatric disorders), and more than 31,000 BOP employees have already received the updated training.

The following FSA-related policies and guidance have been negotiated with the Council of Prison Locals of the American Federal of Government Employees, the BOP employees' union, and are being prepared for promulgations as program statements:

- Parenting, Children, and Families
- Management of Inmate Veterans
- First Step Act Incentives Procedures Under the CARES Act Covered Period
- Management of Aging Offenders

The following FSA-related policies and guidance are awaiting negotiation with the Council of Prison Locals before they are promulgated as program statements:

- Female Integrated Treatment Program
- Secure Mental Health Units
- Release Orientation Program
- FSA Time Credits

It should be noted that while these program statements await finalization, the BOP's efforts to implement FSA programs and services have not been hampered or impeded, as the BOP has provided guidance on these issues through operations memos. Program statements, however, are the desired method of providing guidance because, unlike operations memos that typically expire in a year, program statements permanently memorialize guidance and directives for BOP staff, inmates, and stakeholders.

The following FSA-related policy and guidance is awaiting Rules action:

- Work Programs for Inmates, FPI (deferred compensation)

The following FSA-related policies and guidance are in the process of being reviewed and updated as part of the BOP's normal review process to ensure they are consistent with the FSA and receive any necessary minor edits to address and cross-reference FSA-related topics (which are noted in the parentheses below):

- Sentence Computation Manual (CCA of 1984) (GCT)
- Medication Assisted Treatment Program: Psychology Services
- Pharmacy Services (Medication Assisted Treatment)
- Community Based Programs, Utilization and Transfer Procedures (RRC placement, monitoring, home confinement)

- Inmate Work and Performance Pay (deferred compensation)
- Unit Management and Program Review (PATTERN)
- Suicide Prevention Program (restraint of pregnant and post-partum inmates)
- Prisoner Transportation Manual (restraint of pregnant and post-partum inmates)
- Escorted Trips (restraint of pregnant and post-partum inmates)
- Use of Force and Application of Restraints (restraint of pregnant and post-partum inmates)
- Policy pertaining to inmate risk for prison misconduct, Program Statement 5100.08, Inmate Security Designation and Custody Classification, which significantly informed the development of PATTERN. The BOP Inmate Classification Workgroup is currently reviewing an updated draft policy to replace PS 5100.08. The draft policy improves the predictive accuracy of the BOP's Risk And Verification Observation (BRAVO) tool for the assessment of the risk of serious misconduct and introduces FSA needs-based program participation measures into the serious prison misconduct risk assessment. Due to its complexity, a final policy is not expected for internal review until late 2022.

While these policies are being reviewed, the review is not hampering or impeding the BOP's efforts to implement FSA programs and services, as needed guidance is provided through the BOP's operational memos.

VII. An Assessment of Progress Made Towards Carrying Out the Purposes of the FSA, Including Any Savings

Since the passage of the FSA in December 2018, the BOP has worked to carry out the purposes of FSA. Progress made since the last Report includes the following:

- **Implementation and Improvement of the Needs Assessment System:** The BOP rapidly developed and implemented a needs assessment system under aggressive FSA timelines and continues to work on improving content and functionality. The FSA set a deadline for the system to be finalized by December 2021. By the end of January 2020, the BOP had developed both risk and needs assessment tools and had conducted such assessments for the full inmate population – and made appropriate referrals to programs based on the findings of the needs assessment reviews. Throughout 2020 and 2021, the Department conducted revalidation and quality improvement analyses for the risk and needs assessment tools, and in 2022, the BOP will be contracting with an external consultant to conduct an independent review of the currently used needs assessment system.
- **Increased delivery of FSA Programs across disciplines:** The BOP continues to deliver its approved, high-quality programs with fidelity and prioritizes these services. The BOP provided guidance to staff to continue programming when possible even during emergencies, such as the COVID-19 pandemic, to ensure continued progress toward implementing the goals and objectives of the FSA.
- **Utilization of needs assessments to determine programming:** To comply with FSA mandates, the BOP has continued to conduct inmate need assessments within 28 days of arrival. Inmate needs are reassessed periodically to ensure that they are being addressed and risks are being mitigated.
- **Development of a divisional research plan:** As part of a joint effort to facilitate FSA requirements, the BOP's RSD worked with the Information Policy and Public Affairs Division to develop a research plan to be utilized by all RSD branches for research purposes, including those research efforts being performed by the ORE.
- **Updating policy to reflect current practices and changes in legislation:** Upon the passage of the FSA, the BOP quickly began revising policies significantly impacted by the FSA (e.g., on compassionate release) and developed new policies requiring immediate action (e.g., on elderly offender home confinement, MAT, and provision of feminine hygiene products). The BOP is also taking steps to update existing policies for consistency with FSA provisions. The BOP has prioritized updates of policies impacted by the FSA.
- **Enhanced staffing for FSA initiatives and programs:** The BOP has prioritized filling authorized FSA positions to expand programming opportunities and FSA initiatives in all institutions.
- **FSA Reporting:** To comply with FSA mandates, the BOP provides quarterly updates and annual reports to the Attorney General and Congress.

- **Joint collaborations for FSA Initiatives:** To expand FSA program offerings, BOP divisions and branches worked collaboratively on FSA-funded projects since the last Report. The BOP also expanded its volunteer complement by implementing a new recruitment system and expanded its contractor complement by executing numerous engagements.

With respect to savings resulting from the FSA, as the Department stated in the last Report, it still is too soon to assess cost savings. The BOP began releasing inmates from BOP custody to supervised release as a result of the application of TC in January 2022. The BOP bears the costs for inmates who have moved from an institution to home confinement or an RRC, but at this time there is no cost savings data or information to report associated with such movement. The Department will address any changes to this item in the next Report.

VIII. An Assessment of Budgetary Savings

The FSA requires that the Department report annually after assessing budgetary savings resulting from the implementation of FSA, including: (a) savings resulting from the transfer of prisoners into prerelease custody including savings resulting from the avoidance or deferral of future construction, acquisition, or operations costs; (b) savings resulting from any decrease in recidivism that may be attributed to the implementation of the risk and needs assessment system or the increase in EBRR programs and PAs; (c) a strategy to reinvest the savings in law enforcement activities; and expansions of EBRR programs and PAs; and (d) how any reduced expenditures are currently being used and will be used for various law enforcement and crime reduction efforts. See 18 U.S.C. §§ 3634(6), (7).

As was the case in the last Report, it is too soon to assess cost savings resulting from the implementation of the FSA. The BOP began releasing inmates from BOP custody to supervised release as a result of the application of TC in January 2022. The BOP is responsible for the costs for inmates being moved from an institution to home confinement or an RRC, but at this time there is no cost savings data or information to report associated with such movement. Any budgetary savings that occur in future years will be addressed in subsequent Annual Reports.

IX. Statistics on Inmates with Dyslexia

As part of the needs assessment system, all inmates are required to complete screening for dyslexia. As of January 28, 2022, more than 115,129 inmates have been screened to determine if they need further assessment for the characteristics of dyslexia.

Based on the results of the screenings, nearly 2,700 inmates were referred to Special Education for further assessment, which includes the administration of standardized, norm-referenced assessments.

As of January 28, 2022, 506 inmates have been determined to display characteristics of dyslexia and referred for intensive, individualized instruction in a reading and spelling program.

Dyslexia Needs Assessment	Total Inmates	Male	Female	White	Black	Native American	Asian	Hispanic
Dyslexia Yes	757	694	63	404	316	35	2	217
Dyslexia No	108,118	100,877	7,241	61,372	42,514	2,771	1,461	29,794
Dyslexia Refused	6,254	6,124	130	3,521	2,409	236	88	2,025

Note: Inmates who refused either the screening or formal testing are designated as “Dyslexia Refused.”