



March 2023

FEDERAL PRISONS

Bureau of Prisons Should Improve Efforts to Implement its Risk and Needs Assessment System

Accessible Version

GAO Highlights

Highlights of [GAO-23-105139](#), a report to congressional committees

Why GAO Did This Study

Approximately 45 percent of people released from a federal prison are re-arrested or return within 3 years of their release. The First Step Act included certain requirements for DOJ and BOP aimed to reduce recidivism, including requiring the development of a system to assess the recidivism risk and needs of incarcerated people. It also required BOP to provide incarcerated people with programs and activities to address their needs and if eligible, earn time credits.

The First Step Act required GAO to assess the DOJ and BOP's implementation of certain requirements. This report addresses the extent to which DOJ and BOP implemented certain First Step Act requirements related to the (1) risk and needs assessment system, (2) identification and evaluation of programs and activities, and (3) application of time credits.

GAO reviewed legislation and DOJ and BOP documents; analyzed 2022 BOP data; and interviewed DOJ and BOP headquarters officials and BOP's employee union. GAO also conducted non-generalizable interviews with officials from four BOP regional offices facilities, selected to ensure a mix of different facility characteristics.

What GAO Recommends

GAO is making eight recommendations for BOP to improve its implementation of the First Step Act, including collecting data, ensuring its evaluation plan has goals and milestones, having monitoring mechanisms, and tracking unstructured productive activities. BOP concurred with six recommendations, but did not concur with two. GAO continues to believe these are valid.

View [GAO-23-105139](#). For more information, contact Gretta L. Goodwin at (202) 512-8777 or GoodwinG@gao.gov

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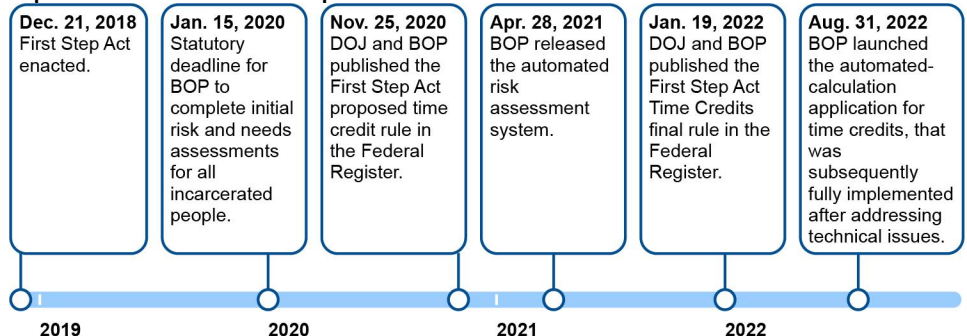
What GAO Found

Since the enactment of the First Step Act of 2018, the Department of Justice (DOJ) developed a risk assessment tool to measure an incarcerated person's risk of recidivism. In addition, the Bureau of Prisons (BOP) modified its existing needs assessment system to identify incarcerated people's needs, that if addressed may reduce their recidivism risk. However, BOP does not have readily-available, complete, and accurate data to determine if assessments were conducted within required First Step Act and internal timeframes. As of October 2022, BOP plans to implement monitoring efforts to assess First Step Act requirements, but has not determined if these efforts will measure whether assessments are completed on time. Without such data and monitoring, BOP is not in a position to determine if staff complete assessments on time, which are necessary for earning First Step Act time credits. These time credits may allow incarcerated people to reduce the amount of time they spend in a BOP facility.

BOP created a plan to evaluate its evidence-based programs, as required by the First Step Act. However, the plan did not include quantifiable goals that align with certain First Step Act requirements, or have clear milestone dates. By including such elements in its plan, BOP will be better positioned to ensure its evaluations are conducted in a timely manner, and align with the First Step Act. BOP has some data on who participates in its programs and activities, but does not have a mechanism to monitor if it offers a sufficient amount. Without such a mechanism, BOP cannot ensure it is meeting the incarcerated population's needs. Further, while BOP offers unstructured productive activities for which incarcerated people may earn time credits, BOP has not documented a complete list or monitored them. Without doing so, BOP cannot ensure it provides transparent information.

BOP's procedure for applying time credits has evolved over time (see figure). Initially, BOP did not have data necessary to track time credits and developed an interim approach in January 2022. Subsequently, BOP implemented an automated-calculation application for time credits that took into account factors the interim procedure did not. As a result, some incarcerated people may have had their time credits reduced. In November 2022, BOP issued its First Step Act Time Credits program statement, with new procedures.

Timeline of the Department of Justice (DOJ) and Federal Bureau of Prisons (BOP) Implementation of the First Step Act Time Credit Procedure



Source: GAO analysis of DOJ and BOP documentation. | [GAO-23-105139](#)

Text for Highlights page Timeline of the Department of Justice (DOJ) and Federal Bureau of Prisons (BOP) Implementation of the First Step Act Time Credit Procedure

Dec. 21, 2018, First Step Act enacted.

Jan. 15, 2020, Statutory deadline for BOP to complete initial risk and needs assessments for all incarcerated people.

Nov. 25, 2020, DOJ and BOP published the First Step Act proposed time credit rule in the Federal Register.

Apr. 28, 2021, BOP released the automated risk assessment system.

Jan. 19, 2022, DOJ and BOP published the First Step Act Time Credits final rule in the Federal Register.

Aug. 31, 2022, BOP launched the automated- calculation application for time credits, that was subsequently fully implemented after addressing technical issues.

Source: GAO analysis of DOJ and BOP documentation. | GAO-23-105139

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Abbreviations

BOP	Bureau of Prisons
DOJ	Department of Justice
GPRA	Government Performance and Results Act of 1993
PATTERN	Prisoner Assessment Tool Targeting Estimated Risk and Needs
SPARC-13	Standardized Prisoner Assessment for Reduction in Criminality

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March 20, 2023

Congressional Committees

In 2021, the Department of Justice (DOJ)'s Federal Bureau of Prisons (BOP) released over 35,000 people from federal prisons in the U.S. after serving their sentences.¹ Approximately 45 percent of people released from federal prison are re-arrested or return to a federal prison within 3 years of their release, according to BOP.² On December 21, 2018, the First Step Act of 2018 (First Step Act) was enacted and includes certain requirements for DOJ and BOP to help reduce recidivism among individuals incarcerated in federal prisons.³ Generally, the First Step Act required the Attorney General to develop a risk and needs assessment system to be used by BOP to assess the recidivism risk of all incarcerated people in federal prisons, and to place these individuals in programs and activities that may help reduce this risk, among other things.⁴ Additionally, under the First Step Act, eligible incarcerated people who successfully complete these programs or activities are to earn time credits for every 30 days of successful participation in the program or activity, which may allow a person to reduce the amount of time they spend in a BOP facility.⁵

We have previously reported on the challenges that formerly incarcerated people face upon reentering society after incarceration and on the federal

¹These numbers include people released from federal prisons in all 50 states, the District of Columbia, and U.S. territories. They do not include people who have been released to the custody of another jurisdiction, such as a release to a state to serve a sentence.

²Department of Justice, Federal Bureau of Prisons, *Recidivism Outcomes of Inmates Released from the Bureau of Prisons 2020 Report to Congress* (Washington, D.C.: Sept. 16, 2021). DOJ defines recidivism as (a) a new arrest in the U.S. by federal, state, or local authorities within 3 years of release or (b) a return to federal prison within 3 years of release. See, for example, Department of Justice, *The Attorney General's First Step Act Section 3634 Annual Report* (Washington D.C.: December 2020).

³Pub. L. No. 115-391, 132 Stat. 5194.

⁴Pub. L. No. 115-391, §§ 101, 102, 132 Stat. at 5194, 5195-208, 5208-13. For the purposes of our report, we use the terms "incarcerated person" and "incarcerated people" to generally refer to "prisoner" as defined in 18 U.S.C. § 3635(4).

⁵18 U.S.C. §§ 3632(d)(4), 3624(g). When we refer to "time credits," in this report, we are specifically referring to First Step Act time credits under 18 U.S.C. § 3632(d)(4).

grant programs designed to help reduce recidivism. The Related GAO Products section at the end of this report lists our prior work.

The First Step Act includes a provision for us to assess on an ongoing basis the extent to which DOJ and BOP have implemented certain First Step Act requirements.⁶ This report addresses the extent to which: (1) DOJ and BOP took steps to implement and validate the risk and needs assessment system; (2) DOJ and BOP identified, evaluated, and offered evidence-based recidivism reduction programs and productive activities; and (3) BOP calculated and applied First Step Act time credits.

To address our first objective, we reviewed relevant DOJ, BOP, and National Institute of Justice reports, policies, and training materials to gain an understanding of DOJ's progress to implement and validate the risk and needs assessment system.⁷ This included reviews of DOJ's annual reports on its First Step Act implementation, BOP reports and program statements on its needs assessment system, BOP's First Step Act training material for its employees, and National Institute of Justice reports on its validation of the risk assessment system. We assessed BOP's efforts to implement the risk and needs assessment system against Standards for Internal Control in the Federal Government, which states that management is to collect data that they can use to help ensure they achieve their objectives, and quality information should be accessible, complete, and accurate to help management make informed decisions.⁸ Furthermore, these standards state that management is to evaluate and document internal control issues and determine appropriate corrective actions for internal control deficiencies on a timely basis. According to these standards, corrective actions should include resolution of audit findings.

To address our second objective, we reviewed relevant legislation and BOP reports to gain an understanding of BOP's efforts to identify which of its existing programs are evidence-based recidivism reduction programs and productive activities, and the extent to which BOP has evaluated and offered them. This included reviews of relevant BOP documentation—

⁶Pub. L. No. 115-391, § 103, 132 Stat. at 5213-14.

⁷The National Institute of Justice is the research, development, and evaluation agency within DOJ that focuses on crime control and justice issues.

⁸GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

such as plans, contracts, and reports—to determine BOP’s process and plans for evaluations of their programs. We also reviewed reports from other entities such as the National Institute of Justice, as well as our relevant prior reports to understand BOP’s initial efforts to identify and evaluate programs and productive activities.⁹ In addition, we assessed BOP’s efforts to evaluate evidence-based recidivism reduction programs against criteria, including the GPRA Modernization Act of 2010 and the American Evaluation Association framework.¹⁰ We also assessed BOP’s efforts to monitor and offer evidence-based recidivism reduction programs and productive activities against the Standards for Internal Control in the Federal Government, which states that management should communicate quality information internally and externally, in order to achieve its goals.¹¹ In addition, management should establish and operate ongoing monitoring activities to evaluate the entity’s effectiveness.¹²

Further, to assess the extent to which evidence-based recidivism reduction programs and productive activities were offered, we analyzed aggregated BOP data on the number of incarcerated people who completed evidence-based recidivism reduction programs and productive activities from calendar years 2019 through 2021. We reviewed BOP documentation and conducted interviews with relevant BOP staff about the aggregated data. We also checked for missing data, outliers, and

⁹Department of Justice, National Institute of Justice. *First Step Act: Best Practices for Academic and Vocational Education for Offenders*. NCJ 253056. (June 2019). See, for example, GAO, *Federal Prison Industries: Actions Needed to Evaluate Program Effectiveness* [GAO-20-505](#) (Washington DC: July 29, 2020); GAO, *Bureau of Prisons: Improved Planning Would Help BOP Evaluate and Manage its Portfolio of Drug Education and Treatment Programs*; [GAO-20-423](#) (Washington DC: May 26, 2020).

¹⁰Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285 (1993), was updated by the GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011); 31 U.S.C. § 1115 (relating to agency performance plans and performance measurement). GPRA Modernization Act of 2010 provides that performance measurement is the ongoing monitoring and reporting of program accomplishments—particularly toward pre-established, objective, and quantifiable goals—and agencies are to establish clearly defined milestones to assess progress toward those goals. The American Evaluation Association framework to guide the development of program evaluations recommends that agencies implement evaluation plans to support future decision-making. American Evaluation Association, *An Evaluation Roadmap for a More Effective Government* (Washington, D.C.: October 2016).

¹¹[GAO-14-704G](#).

¹²[GAO-14-704G](#).

obvious errors as we analyzed the number of incarcerated people that BOP provided who had completed structured evidence-based recidivism reduction programs and productive activities. We determined that the data were sufficiently reliable for the purpose of reporting on the number of incarcerated people who completed structured evidence-based recidivism reduction programs and productive activities.

To address our third objective, we reviewed relevant legislation, regulations, DOJ and BOP reports, and memorandums, to gain an understanding of BOP's procedures to calculate and apply time credits as required by the First Step Act. This included reviews of DOJ's First Step Act Time Credit final rule and regulations, DOJ annual reports on its First Step Act implementation, BOP memorandums, and BOP program statement on its calculation and application of First Step Act time credits from January to November 2022.

For all of our objectives, we obtained and analyzed BOP data on all convicted and sentenced adults incarcerated who were in a designated status in a BOP-managed facility as of January 29, 2022.¹³ Data included information on incarcerated people's risk and needs assessments and First Step Act eligibility. We assessed the reliability of BOP's data by conducting electronic tests to identify missing data, anomalies, or potentially erroneous values; reviewing BOP documentation and data dictionaries; and conducting interviews with relevant BOP staff. We determined that these data were sufficiently reliable for the purposes of determining incarcerated people's risk levels, needs, and First Step Act eligibility at the time BOP extracted these data (January 29, 2022). However, as discussed later in this report, we found that these data were not sufficiently reliable to determine the frequency at which BOP conducted risk and needs assessments.

For all three objectives, we also interviewed agency officials from DOJ and BOP headquarters to discuss DOJ and BOP's efforts to implement the risk and needs assessment system, to identify, evaluate, and offer programs, and to calculate and apply First Step Act time credits. We spoke with National Institute of Justice headquarters officials and contractors to discuss efforts to validate the risk assessment system. We also interviewed BOP regional office and facility-level officials to discuss

¹³"Designated status" means incarcerated people are designated to a BOP facility and not, for example, in transit to a facility.

BOP's efforts to assess incarcerated peoples' risk and needs, to evaluate and monitor its evidence-based recidivism reduction programs and productive activities, and to apply First Step Act time credits. We selected a non-generalizable sample of four different BOP facilities and the facilities' four corresponding regional offices.¹⁴

At each of the four BOP facilities, we interviewed executive staff, unit managers, case managers, program staff, and union officials. Though the information provided by BOP facility and regional offices staff cannot be generalized across all such facilities or offices, the information gathered provides valuable insights into the DOJ, BOP, and National Institute of Justice efforts to implement and validate the risk and needs assessment system, to evaluate and offer evidence-based recidivism reduction programs and productive activities, and to calculate and apply First Step Act time credits. We also interviewed BOP national union officials in August 2021, June 2022, and November 2022 to understand its members' perspectives.

We conducted this performance audit from April 2021 to March 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The First Step Act of 2018

The First Step Act includes several requirements for DOJ and its components related to developing and implementing a risk and needs assessment system, providing evidence-based recidivism reduction programs and productive activities to incarcerated people, and applying time credits, as shown in table 1. For example, the First Step Act required

¹⁴We selected facilities to ensure we had a mix of facility characteristics, such as different security levels, geographic regions, and facility types. The BOP facilities we selected were Federal Correctional Institution La Tuna, U.S. Penitentiary Thomson, Federal Correctional Institution and Satellite Female Facility Aliceville and Hazelton. The regional offices we selected were the Mid-Atlantic, North Central, South Central, and South Eastern.

the National Institute of Justice to select a nonpartisan and nonprofit organization with expertise in risk and needs assessment tools to host an Independent Review Committee.¹⁵ Pursuant to the First Step Act, the Independent Review Committee is to assist the Attorney General in carrying out certain duties of the Attorney General under the First Step Act, including assisting in (1) conducting a review of the existing risk and needs assessment systems in operation on the date of enactment of the First Step Act; (2) developing recommendations regarding evidence-based recidivism reduction programs and productive activities; and (3) reviewing and validating the risk and needs assessment system, among other things.¹⁶

Table 1: Certain First Step Act of 2018 Deadlines and Requirements for the Department of Justice (DOJ) and its Components

Statutory Deadline	Requirement/ activities
December 21, 2018	First Step Act enacted ^a
Not later than 30 days after the date of enactment of the First Step Act (January 20, 2019)	The National Institute of Justice was required to select a nonpartisan and nonprofit organization with expertise in risk and needs assessment tools to host the Independent Review Committee. The Independent Review Committee was required to be established not later than 30 days after the date of enactment of this Act. ^b
Prior to releasing the risk and needs assessment system	The Attorney General, in consultation with the Independent Review Committee, was required to review the effectiveness of evidence-based recidivism reduction programs that existed as of the date of enactment of the First Step Act in prisons operated by BOP, among other things. ^c
Not later than 210 days after the date of enactment of the First Step Act (July 19, 2019)	The Attorney General, in consultation with the Independent Review Committee, was required to develop and release publically on DOJ’s website the risk and needs assessment system. ^d

¹⁵Pub. L. No. 115-391, § 107, 132 Stat. at 5215-16.

¹⁶18 U.S.C. § 3631 Note. According to the First Step Act, members of the Independent Review Committee were to have expertise in risk and needs assessment systems. The committee was to include two individuals who had published peer-reviewed scholarship about risk and needs assessments in both corrections and community settings and two corrections practitioners who had developed and implemented a risk assessment tool in a corrections system or in a community supervision setting, including one with prior experience working with BOP and one individual with expertise in assessing risk assessment implementation. As discussed later in this report, the Independent Review Committee contributed to the development of the risk and needs assessment system and conducted research on recidivism reduction programs, among other things. According to BOP, as of January 2022, the Independent Review Committee was no longer actively working with DOJ on the implementation of the First Step Act.

Letter

Statutory Deadline	Requirement/ activities
Not later than 180 days after the Attorney General completes and releases the risk and needs assessment system (January 15, 2020, as calculated from the public release on DOJ's website of the risk and needs assessment system)	The Director of BOP was required to: implement and complete the initial intake risk and needs assessment for each incarcerated person, regardless of the incarcerated person's length of imposed term of imprisonment, and begin to assign incarcerated people to appropriate evidence-based recidivism reduction programs based on that determination; begin to expand the effective evidence-based recidivism reduction programs and productive activities it offered and add any new evidence-based recidivism reduction programs and productive activities necessary to effectively implement the system; and, begin to implement other risk and needs assessment tools necessary to effectively implement the system over time, while incarcerated people are participating in and completing the effective evidence-based recidivism reduction programs and productive activities. ^e
Ongoing	Under the First Step Act, the Attorney General is required to conduct ongoing research and data analysis on: (A) evidence-based recidivism reduction programs relating to the use of risk and needs assessment tools; (B) the most effective and efficient uses of such programs; (C) which evidence-based recidivism reduction programs are the most effective at reducing recidivism, and the type, amount, and intensity of programming that most effectively reduces the risk of recidivism; and (D) products purchased by federal agencies that are manufactured overseas and could be manufactured by incarcerated people participating in a prison work program without reducing job opportunities for other workers in the U.S. ^f
December 20, 2020, and annually thereafter until 2025	The Attorney General is required to submit a report to certain committees of Congress that contains (1) a summary of the activities and accomplishments of the Attorney General in carrying out the First Step Act; (2) a summary and assessment of the types and effectiveness of evidence-based recidivism reduction programs and productive activities in prisons operated by BOP; (3) rates of recidivism among individuals who have been released from federal prison; and (4) other areas related to the implementation of the relevant portions of the First Step Act, among other things. ^g
Annual basis	The Attorney General is required, on an annual basis, to review, validate, and release publicly on DOJ's website the risk and needs assessment system, with the review including (1) any subsequent changes to the risk and needs assessment system made after the date of enactment of the First Step Act; (2) statistical validation of any tools that the risk and needs assessment system uses; (3) an evaluation of the rates of recidivism among similarly classified incarcerated people to identify any unwarranted disparities, including disparities among similarly classified incarcerated people of different demographic groups, in such rates; (4) and other information related to the risk and needs assessment system, among other things. ^h
Not later than 2 years after the date on which BOP implements and completes the initial intake risk and needs assessment for each incarcerated person (January 15, 2022, as calculated from the date of the initial risk and needs assessment date of January 15, 2020)	The First Step Act provided a phase-in period after the Attorney General completed and released the risk and needs assessment system. BOP is required to provide evidence-based recidivism reduction programs and productive activities for all incarcerated people before the date that is 2 years after the date on which BOP completes a risk and needs assessment for each incarcerated person for the initial intake risk and needs assessment. This is so that every incarcerated person has the opportunity to participate in and complete the type and amount of evidence-based recidivism reduction programs or productive activities they need, and be reassessed for recidivism risk as necessary to effectively implement the system. DOJ is required to develop and validate the risk and needs assessment tool to be used in the reassessments of risk of recidivism, while incarcerated people are participating in and completing evidence-based recidivism reduction programs and productive activities. ⁱ

Source: GAO analysis of Pub. L. No. 115-391. | GAO-23-105139

^eFirst Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194.

^fPub. L. No. 115-391, § 107, 132 Stat. at 5215-16. The First Step Act required the Independent Review Committee to assist the Attorney General in carrying out certain duties of the Attorney General under the First Step Act, including by assisting with the (1) conduct a review of the existing risk and needs assessment systems in operation on the date of enactment of the First Step Act; (2) develop recommendations regarding evidence-based recidivism reduction programs and productive

activities; (3) conduct research and data analysis on— (A) evidence-based recidivism reduction programs relating to the use of risk and needs assessment tools; (B) the most effective and efficient uses of such programs; and (C) which evidence-based recidivism reduction programs are the most effective at reducing recidivism, and the type, amount, and intensity of programming that most effectively reduces the risk of recidivism; and (4) review and validate the risk and needs assessment system. An evidence-based recidivism reduction program is a group or individual activity that has been shown by empirical evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism; and is designed to help incarcerated people succeed in their communities upon release from prison. A productive activity is a group or individual activity that is designed to allow incarcerated people determined as having a minimum or low risk of recidivating to remain productive. As discussed later in this report, the Independent Review Committee contributed to the development of the risk and needs assessment system and conducted research on recidivism reduction programs, among other things. According to BOP, as of January 2022, the Independent Review Committee was no longer actively working with DOJ on the implementation of the First Step Act.

^e18 U.S.C. § 3633(a)(1). The First Step Act required the Attorney General to carry out several activities related to the evaluation of BOP's programs and activities. Specifically, pursuant to 18 U.S.C. § 3633(a), prior to releasing its risk and needs assessment system, the Attorney General, in consultation with the Independent Review Committee, was required to (1) review the effectiveness of evidence-based recidivism reduction programs that exist as of the date of enactment in prisons operated by BOP; (2) review available information regarding the effectiveness of evidence-based recidivism reduction programs and productive activities that exist in state-operated prisons throughout the U.S.; (3) identify the most effective evidence-based recidivism reduction programs; (4) review the policies for entering into evidence-based recidivism reduction partnerships; (5) direct BOP regarding—(A) evidence-based recidivism reduction programs; (B) the ability for faith-based organizations to function as a provider of educational evidence-based programs outside of the religious classes and services provided through the Chaplaincy; and (C) the addition of any new effective evidence-based recidivism reduction programs that the Attorney General finds. In addition, under 18 U.S.C. § 3633(b), the Attorney General was to consider the prevalence and mitigation of dyslexia in prisons.

^d18 U.S.C. § 3632(a). DOJ announced its new risk and needs assessment in July 2019.

^e18 U.S.C. § 3621(h)(1).

^f18 U.S.C. § 3631(b)(3). BOP officials told us BOP is taking the lead on fulfilling the first three parts of this requirement (A-C in the table above). DOJ officials told us DOJ is taking the lead on fulfilling the last part of the requirement (D in the table above).

^g18 U.S.C. § 3634. DOJ issued its first report in December 2020 and its second report in April 2022. Department of Justice, The Attorney General's First Step Act Section 3634 Annual Report (Washington D.C.: December 2020) and Department of Justice, First Step Act Annual Report (Washington D.C.: April 2022).

^h18 U.S.C. § 3631(b)(4).

ⁱ18 U.S.C. § 3621(h)(2).

BOP was appropriated over \$7.7 billion for salaries and expenses in fiscal year 2021, over \$7.8 billion for salaries and expenses in fiscal year 2022, and nearly \$8.4 billion for salaries and expenses in fiscal year 2023. In each of these fiscal years of appropriations, not less than approximately

\$409 million was included for the programs and activities authorized by the First Step Act.¹⁷

BOP Roles and Responsibilities

BOP is responsible for the custody and care of people in BOP-managed facilities, which included nearly 145,000 people as of November 2022.¹⁸ Additionally, the First Step Act requires BOP to ensure all incarcerated people have a recidivism risk level assigned, assess the criminogenic needs of each person, provide evidence-based recidivism reduction programs and productive activities to address people’s needs, and apply First Step Act time credits to eligible incarcerated people’s sentences.¹⁹ Within BOP, different Central Office divisions, regional offices, the Designation and Sentence Computation Center, and facility level units have responsibilities for the risk and needs assessment system, programming, and time credits, according to BOP Central Office officials.²⁰ More specifically:

- At the Central Office level, BOP staff from various divisions are responsible for the oversight and guidance of the risk assessments and oversaw the development and implementation of BOP’s needs assessment system.²¹ The Central Office also oversees the designation of evidence-based recidivism reduction programs and

¹⁷Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459 (2022); Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 119-20 (2022); and Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, 1251-52 (2020).

¹⁸BOP also oversees approximately 16,000 additional people in Residential Reentry Centers and other contract facilities.

¹⁹First Step Act of 2018, Pub. L. No. 115-391, §§ 101, 102, 132 Stat. 5194, 5195-208, 5208-13. Criminogenic needs—or further referred to in this report as “needs”—are factors in a person’s life that, if addressed, could help reduce a person’s recidivism risk.

²⁰BOP’s Central Office provides oversight of BOP operations and program areas. BOP’s six regional offices oversee the operations of the federal facilities within their respective geographic regions of the country. These six regions cover the Mid-Atlantic, North Central, Northeast, South Central, Southeast, and Western regions of the U.S. BOP’s facilities are managed by a warden and other officials, including an associate warden and health services administrator, who provide overall direction and, in part, administer the facility’s planning and policies, including policies on health and safety.

²¹According to BOP officials, these actions are conducted in collaboration with subject matter experts.

productive activities and the application of First Step Act time credits. BOP's Designation and Sentence Computation Center is to screen incarcerated people, assign them to a BOP facility that addresses their security level and basic needs, and enter data into SENTRY that track each incarcerated person's security and custody level classification data.²²

- At the facility level, unit management staff—which includes a unit manager, case managers, and correctional counselors—are responsible for general oversight of the risk and needs assessment system. Specifically, case managers are to complete the risk assessment scoring and enter information into SENTRY. In addition to the unit management team, facility staff from the education and recreation services, health services, and psychology services departments are responsible for conducting needs assessments and entering data into SENTRY. These departments, plus other departments, are to provide evidence-based recidivism reduction programs.

First Step Act-Related Key Elements and Terms

Key elements associated with the First Step Act include the Risk and Needs Assessment System, evidence-based recidivism reduction programs and productive activities, and First Step Act time credits. For a glossary of key terms, see Appendix I.

Risk and Needs Assessment System

The risk and needs assessment system is to be used by BOP to assess both recidivism risk and the needs of incarcerated people.²³ BOP staff are

²²SENTRY is BOP's case management database for incarcerated people. The system is used to collect, maintain, and track information on incarcerated people, including their location, medical history, behavior history, and release data.

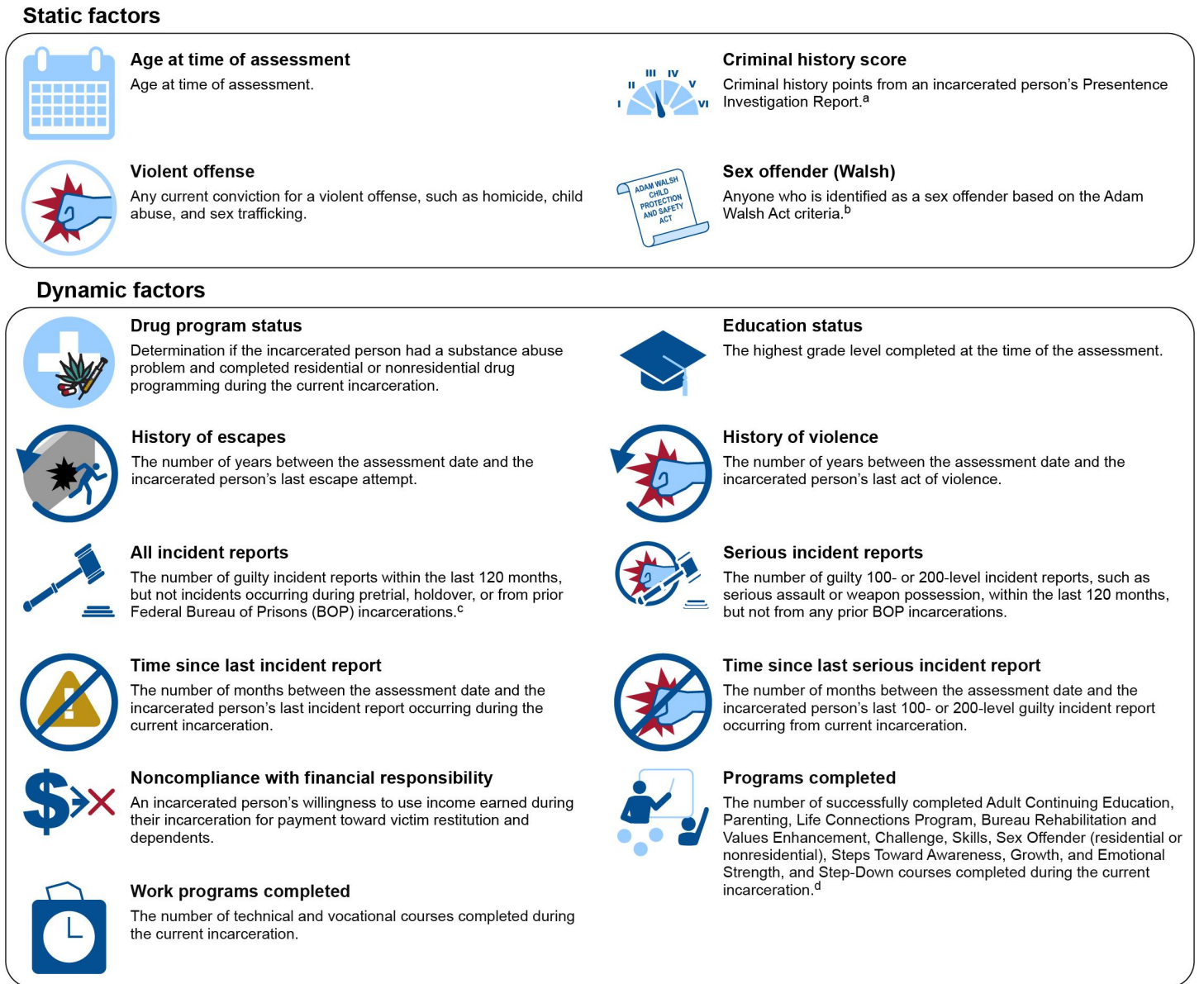
²³Under the First Step Act, the risk and needs assessment is to be used to determine the recidivism risk of each incarcerated person as part of the intake process, and classify each incarcerated person as having minimum, low, medium, or high risk for recidivism; assess and determine, to the extent practicable, the risk of violent or serious misconduct of each incarcerated person; determine the type and amount of evidence-based recidivism reduction programming that is appropriate for each incarcerated person and assign each incarcerated person to such programming accordingly, and based on the incarcerated person's specific criminogenic needs; and reassess the recidivism risk of each incarcerated person periodically, based on factors including indicators of progress, and regression, that are dynamic and that can reasonably be expected to change while in prison, among other things. 18 U.S.C. § 3632(a).

to use the risk and needs assessment system to determine the type and amount of programming appropriate for each incarcerated person and to assign recommended programming based on the incarcerated person's specific needs. DOJ's risk and needs assessment system is composed of two parts: the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN) and the Standardized Prisoner Assessment for Reduction in Criminality (SPARC-13).

PATTERN. PATTERN is DOJ's risk assessment system that BOP staff are to use to measure an incarcerated person's risk of recidivism. It includes factors an incarcerated person can change over time (dynamic factors) and factors an incarcerated person cannot change (static factors). Figure 1 provides a description of PATTERN's four static and 11 dynamic factors. It includes different predictive models and scales based on whether an incarcerated person is female or male because risk factors vary among males and females. Thus, PATTERN uses different "cut points" for each group to account for differences in their risks.²⁴

²⁴To address the requirement to "classify each prisoner as having minimum, low, medium, or high risk for recidivism," under 18 U.S.C. § 3632(a)(1), the National Institute of Justice consultants identified risk level categories via cut points, which are risk score thresholds that place individuals into the four categories: high, medium, low, or minimum. According to BOP, separating males and females into individual samples to produce prediction models improves both the context and accuracy of prediction.

Figure 1: The Department of Justice’s (DOJ) Prisoner Assessment Tool Targeting Estimated Risk and Needs (Version 1.3) and Its Static and Dynamic Factors



Source: GAO analysis of DOJ documentation. | GAO-23-105139

Text for Figure 1: The Department of Justice’s (DOJ) Prisoner Assessment Tool Targeting Estimated Risk and Needs (Version 1.3) and Its Static and Dynamic Factors

Static factors	<p>Age at time of assessment: Age at time of assessment.</p> <p>Violent offense: Any current conviction for a violent offense, such as homicide, child abuse, and sex trafficking.</p> <p>Criminal history score: Criminal history points from an incarcerated person’s Presentence Investigation Report.^a</p> <p>Sex offender (Walsh): Anyone who is identified as a sex offender based on the Adam Walsh Act criteria.^b</p>
Dynamic factors	<p>Drug program status: Determination if the incarcerated person had a substance abuse problem and completed residential or nonresidential drug programming during the current incarceration.</p> <p>History of escapes: The number of years between the assessment date and the incarcerated person’s last escape attempt.</p> <p>All incident reports: The number of guilty incident reports within the last 120 months, but not incidents occurring during pretrial, holdover, or from prior Federal Bureau of Prisons (BOP) incarcerations.^c</p> <p>Time since last incident report: The number of months between the assessment date and the incarcerated person’s last incident report occurring during the current incarceration.</p> <p>Noncompliance with financial responsibility: An incarcerated person’s willingness to use income earned during their incarceration for payment toward victim restitution and dependents.</p> <p>Work programs completed: The number of technical and vocational courses completed during the current incarceration.</p> <p>Education status: The highest grade level completed at the time of the assessment.</p> <p>History of violence: The number of years between the assessment date and the incarcerated person’s last act of violence.</p> <p>Serious incident reports: The number of guilty 100- or 200-level incident reports, such as serious assault or weapon possession, within the last 120 months, but not from any prior BOP incarcerations.</p> <p>Time since last serious incident report: The number of months between the assessment date and the incarcerated person’s last 100- or 200-level guilty incident report occurring from current incarceration.</p> <p>Programs completed: The number of successfully completed Adult Continuing Education, Parenting, Life Connections Program, Bureau Rehabilitation and Values Enhancement, Challenge, Skills, Sex Offender (residential or nonresidential), Steps Toward Awareness, Growth, and Emotional Strength, and Step-Down courses completed during the current incarceration.^d</p>

Source: GAO analysis of DOJ documentation. | GAO-23-105139

Note: Static factors are characteristics of incarcerated people that are historical and therefore unchangeable, such as an incarcerated person’s age at the time of assessment. By contrast, dynamic factors are variables that may change over time and may reflect more recent incarcerated person behavior, such as prison misconduct or completion of recidivism reduction programs while incarcerated.

^aPresentence Investigation Report is a structured report required pursuant to 18 U.S.C. § 3552 to be conducted by a U.S. Probation Officer prior to a defendant’s sentencing. A Presentence Investigation Report contains information from various sources, including criminal history records, educational systems, hospitals and counseling centers, family members, and associates.

^bThe Walsh criteria refers to whether the person is a sex offender as defined in the Sex Offender Registration and Notification Act, Title I of the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587.

^cBOP staff may issue an incident report to an incarcerated person when the official witnesses or reasonably believes the person committed a prohibited act as described in BOP regulations and policy. Department of Justice, Bureau of Prisons, Inmate Discipline Program, 5270.09 CN-1 (Washington, D.C.: Nov. 18, 2020).

^dPrograms completed does not include all of the evidence-based recidivism reduction drug programs and other drug-related productive activities currently available throughout BOP. These data were not available for the DOJ’s 2021 report. According to BOP documentation, assessing whether newly

available drug treatment programs reduce recidivism is impossible until the end of a 3-year period because DOJ defines recidivism as re-offending during a 3-year period. According to BOP officials, they will evaluate these programs when data regarding recidivism rates over a 3-year period can be obtained.

PATTERN classifies incarcerated people's level of risk of recidivism as minimum, low, medium, or high—based on their numerical risk score and applicable cut points. Risk level affects the amount of First Step Act time credits that an incarcerated person may earn during every 30-day time period,²⁵ and the process for determining whether First Step Act time credits are applied.²⁶ BOP is to use PATTERN to predict general recidivism (any arrest or return to BOP custody following release) and violent recidivism (arrests for an act of violence following release).²⁷

SPARC-13. SPARC-13 is BOP's needs assessment system that BOP staff are to use to identify incarcerated people's needs that, if addressed, may reduce their recidivism risk. BOP is to assess people's needs in 13 areas.²⁸ Different BOP units are responsible for assessing specific needs, some of which require the voluntary participation of the incarcerated person. Facility unit management staff are to reassess each of the needs through different mechanisms (see appendix II for more information on these mechanisms). Figure 2 provides information on the 13 need areas as well as the BOP facility department responsible for each need.

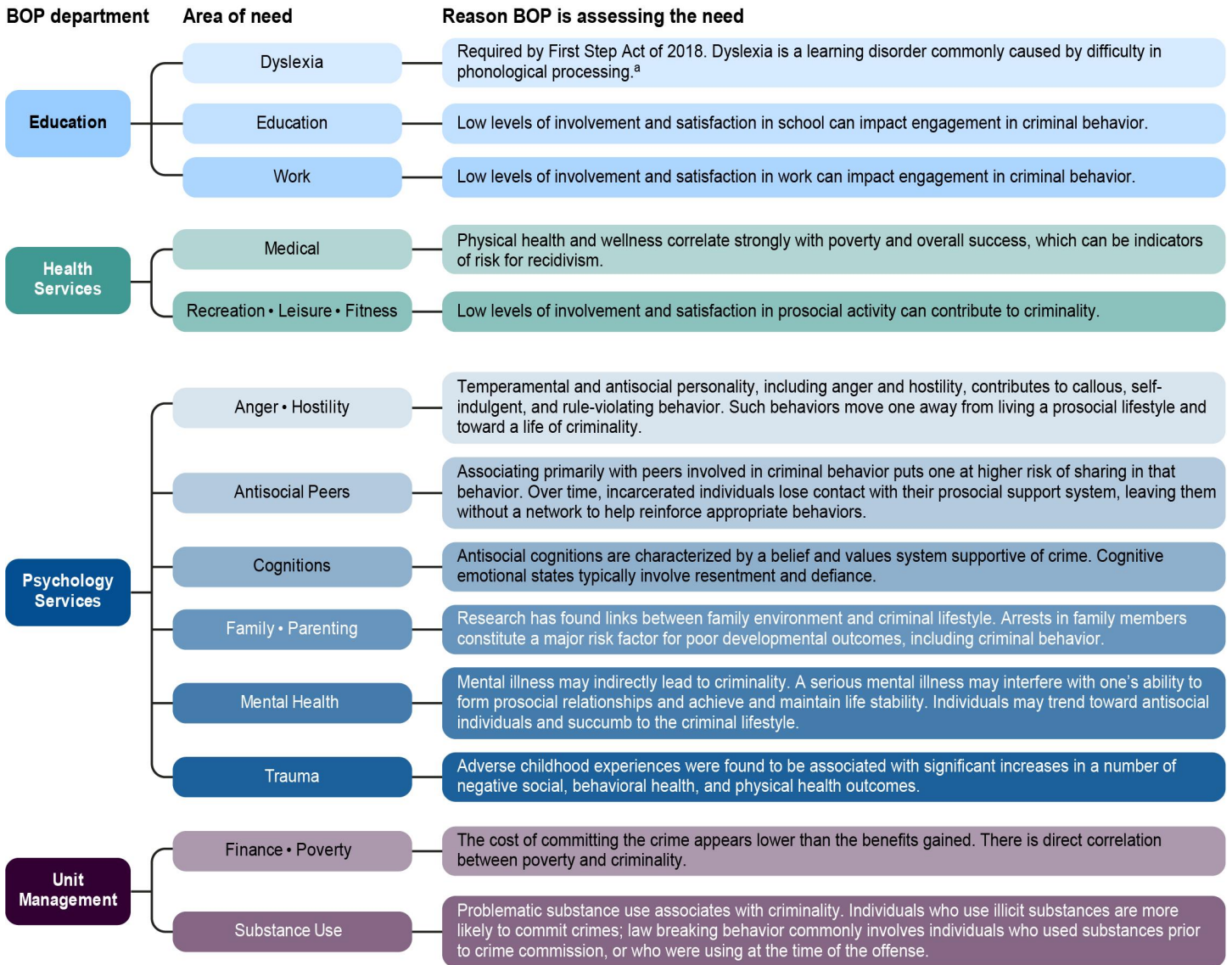
²⁵See 18 U.S.C. § 3632(d)(4)(A).

²⁶See 18 U.S.C. § 3624(g).

²⁷See 18 U.S.C. § 3632(a). DOJ defines general recidivism as a return to BOP custody or a rearrest within 3 years of release from BOP custody, excluding all traffic offenses except driving under the influence and driving while intoxicated. DOJ defines violent recidivism as a rearrest for a suspected act of violence within 3 years of release from BOP custody.

²⁸These 13 need areas include anger/hostility, antisocial peers, cognitions, dyslexia, education, family/parenting, finance/ poverty, medical, mental health, recreation/leisure/fitness, substance use, trauma, and work. Department of Justice, Bureau of Prisons, *First Step Act Needs Assessment*, 5400.01 (Washington, D.C.: June 25, 2021).

Figure 2: Areas of Need Assessed by the Federal Bureau of Prisons' (BOP), by Responsible Department



Source: GAO analysis of DOJ documentation. | GAO-23-105139

Text for Figure 2: Areas of Need Assessed by the Federal Bureau of Prisons' (BOP), by Responsible Department

BOP department	Area of need	Reason BOP is assessing the need
Education	Dyslexia	Required by First Step Act of 2018. Dyslexia is a learning disorder commonly caused by difficulty in phonological processing. ^a
	Education	Low levels of involvement and satisfaction in school can impact engagement in criminal behavior.

Letter

BOP department	Area of need	Reason BOP is assessing the need
	Work	Low levels of involvement and satisfaction in work can impact engagement in criminal behavior.
Health Services	Medical	Physical health and wellness correlate strongly with poverty and overall success, which can be indicators of risk for recidivism.
	Recreation • Leisure • Fitness	Low levels of involvement and satisfaction in prosocial activity can contribute to criminality.
Psychology Services	Anger • Hostility	Temperamental and antisocial personality, including anger and hostility, contributes to callous, self-indulgent, and rule-violating behavior. Such behaviors move one away from living a prosocial lifestyle and toward a life of criminality.
	Antisocial Peers	Associating primarily with peers involved in criminal behavior puts one at higher risk of sharing in that behavior. Over time, incarcerated individuals lose contact with their prosocial support system, leaving them without a network to help reinforce appropriate behaviors.
	Cognitions	Antisocial cognitions are characterized by a belief and values system supportive of crime. Cognitive emotional states typically involve resentment and defiance.
	Family • Parenting	Research has found links between family environment and criminal lifestyle. Arrests in family members constitute a major risk factor for poor developmental outcomes, including criminal behavior.
	Mental Health	Mental illness may indirectly lead to criminality. A serious mental illness may interfere with one's ability to form prosocial relationships and achieve and maintain life stability. Individuals may trend toward antisocial individuals and succumb to the criminal lifestyle.
	Trauma	Adverse childhood experiences were found to be associated with significant increases in a number of negative social, behavioral health, and physical health outcomes.
Unit Management	Finance • Poverty	The cost of committing the crime appears lower than the benefits gained. There is direct correlation between poverty and criminality.
	Substance Use	Problematic substance use associates with criminality. Individuals who use illicit substances are more likely to commit crimes; law breaking behavior commonly involves individuals who used substances prior to crime commission, or who were using at the time of the offense.

Source: GAO analysis of DOJ documentation. | GAO-23-105139

Note: BOP assesses these areas of need as part of its Standardized Prisoner Assessment for Reduction in Criminality.

^aPursuant to 18 U.S.C. § 3632(h)(1), the Attorney General is required to incorporate a dyslexia screening program into the system, including by screening for dyslexia during the intake process and each periodic risk reassessment of an incarcerated person.

Evidence-based Recidivism Reduction Programs and Productive Activities

BOP is to offer evidence-based recidivism reduction programs and productive activities to people incarcerated within BOP facilities to help people address needs identified through SPARC-13. The First Step Act defines an evidence-based recidivism reduction program as either a group or individual activity that has been shown by empirical evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism; and is designed to help people succeed

in their communities upon release from prison.²⁹ A productive activity is either a group or individual activity that is designed to allow incarcerated people determined as having a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating.³⁰

Each evidence-based recidivism reduction program and productive activity is to address one or more of the 13 areas of need. Appendix III provides a list of each structured evidence-based recidivism reduction program and productive activity and the needs they are to address.³¹ Incarcerated people may be eligible to earn First Step Act time credits for these programs and activities. According to BOP officials, incarcerated people without an identified need are still expected to successfully participate in programs and activities, such as recreation programs, to remain productive and earn First Step Act time credits.

First Step Act Time Credits

First Step Act time credits may reduce the amount of time an incarcerated person spends in federal prison.³² Incarcerated people can earn First Step Act time credits for the application toward early transfer to

²⁹18 U.S.C. § 3635(3)(A)-(B). Under 18 U.S.C. § 3635(3)(C), an evidence-based recidivism reduction program may include social learning and communication, interpersonal, anti-bullying, rejection response, and other life skills; family relationship building, structured parent-child interaction, and parenting skills; classes on morals or ethics; academic classes; cognitive behavioral treatment; mentoring; substance use treatment; vocational training; faith-based classes or services; civic engagement and reintegrative community services; a prison job, including through a prison work program; victim impact classes or other restorative justice programs; and trauma counseling and trauma-informed support programs.

³⁰Pursuant to 18 U.S.C. § 3635(5), “[t]he term ‘productive activity’ means either a group or individual activity that is designed to allow prisoners determined as having a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating, and may include the delivery of the programs described in paragraph (1) [sic] to other prisoners.” (So in original. Probably should be “paragraph (3)” in reference to evidence-based recidivism reduction program definition).

³¹According to BOP officials, they update the list of EBBR programs and productive activities at least biannually and make it available on BOP’s website.

³²First Step Act time credits are distinct from good conduct time credits. Incarcerated people can earn credits for good conduct time for good behavior, which is described in law as “exemplary compliance with institutional disciplinary regulations.” Good conduct time credits reduce certain incarcerated people’s time in BOP custody. See 18 U.S.C. § 3624(b).

prerelease custody (i.e., home confinement or Residential Reentry Centers) or to supervised release if they meet certain First Step Act eligibility requirements.³³

Specifically, under the First Step Act, eligible incarcerated people who successfully complete evidence-based recidivism reduction programming or productive activities are to earn 10 days of First Step Act time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.³⁴ An eligible incarcerated person determined by BOP to be at a minimum or low risk for recidivating, who, over two consecutive assessments has not increased their risk of recidivism, may earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programs or productive activities.³⁵ According to BOP, and in accordance with discretion given to the BOP Director under the First Step Act, time credits may first be applied towards eligible incarcerated people's projected release dates (up to a maximum of 365 days), then towards placement in prerelease custody. An eligible incarcerated person with a medium or high-risk level must petition the warden to have their earned First Step Act time credits applied toward prerelease custody.³⁶

First Step Act eligibility requirements. According to the First Step Act, incarcerated people are eligible to earn time credits for successfully participating in evidence-based recidivism reduction programs or productive activities. An incarcerated person is ineligible to receive First Step Act time credits if they are serving a sentence for a disqualifying conviction or a disqualifying prior conviction as specified in the First Step

³³18 U.S.C. §§ 3624(g) and 3632(d)(4)(A)-(C). BOP's home confinement program allows eligible incarcerated people in federal prison and nearing release to transfer to a home or residence to serve the remainder of their sentence. People placed in home confinement are required to remain at home when not working or participating in programming and other approved activities. BOP contracts with Residential Reentry Centers, also known as halfway houses, to provide assistance to people in the form of employment counseling, job placement, financial management assistance, and other services in a structured and supervised environment. Supervised release is an additional term of supervision imposed by a court for a person and begins when people complete their full custody sentence.

³⁴18 U.S.C. § 3632(d)(4)(A)(i).

³⁵18 U.S.C. § 3632(d)(4)(A)(ii).

³⁶18 U.S.C. § 3624(g)(1)(D)(i)(II).

Act.³⁷ In addition, an incarcerated person is ineligible to apply First Step Act time credits if the incarcerated person is the subject of a final order of removal under any provision of the immigration laws defined in 8 U.S.C. § 1101(a)(17).³⁸ Incarcerated people who are ineligible to receive or apply First Step Act time credits may still earn other rewards and incentives for successfully participating in evidence-based recidivism reduction programs and productive activities. For example, these individuals may earn increased phone and video conferencing privileges and additional time for visitation at the prison, as determined by the warden and per the BOP policy guiding the issuance of First Step Act incentives.³⁹ First Step Act time credits earned by eligible incarcerated people who successfully participate in evidence-based recidivism reduction programs or productive activities are to be applied toward time in prerelease custody or supervised release.⁴⁰

Under the First Step Act, in order to have their time credits applied, eligible incarcerated people generally must demonstrate low or minimum PATTERN risk level designations over the most recent two consecutive assessment, and must have accrued time credits in an amount that is equal to the remainder of the person's imposed term of imprisonment.⁴¹

BOP Took Steps to Implement and Validate Its Risk and Needs Assessment System, but Lacks Some Oversight

Since the enactment of the First Step Act in 2018, DOJ and BOP took various steps to implement a risk and needs assessment system. In addition, DOJ is taking actions to enhance its validation of the risk and

³⁷18 U.S.C. § 3632(d)(4)(D) (listing the disqualifying offenses and disqualifying prior offenses).

³⁸18 U.S.C. § 3632(d)(4)(E).

³⁹18 U.S.C. § 3632(d)(1)-(3). According to BOP's program statement on First Step Act incentives, rewards and incentives for an incarcerated person can include additional phone and visitation privileges or placement in a BOP facility closer to the person's residence. Department of Justice, Bureau of Prisons, *First Step Act Program Incentives*, 5220.01 (Washington, D.C.: July 14, 2021).

⁴⁰18 U.S.C. §§ 3632(d)(4)(C), 3624(g).

⁴¹18 U.S.C. § 3624(g)(1)(A)-(D)(i)(I).

needs assessment system.⁴² However, we found issues with BOP's ability to oversee whether risk and needs assessments are conducted on time. Specifically, BOP does not have readily-available, complete, and accurate data to determine if risk and needs assessments were conducted within the First Step Act required and BOP established timeframes. While BOP has plans to implement various mechanisms to monitor First Step Act requirements, BOP has not confirmed whether it will measure if assessments are conducted on time.

DOJ and BOP Developed and Implemented a Risk and Needs Assessment System

After DOJ developed and released publicly the risk and needs assessment system, BOP implemented the risk and needs assessment system. According to the agency, BOP officials completed the initial assessments using the risk and needs system for each incarcerated person by January 15, 2020—the date required by the First Step Act. In addition, BOP developed a procedure for how and when to conduct initial assessments and reassessments.

PATTERN development. DOJ developed and implemented PATTERN in consultation with various entities, addressing issues through several iterations of the system. For example, the National Institute of Justice hired contractors in April 2019 to develop PATTERN, and DOJ published its first version in July 2019. Following the release, DOJ conducted listening sessions with criminal justice stakeholders, advocates, and citizens in October 2019, and consulted with the Independent Review Committee in November 2019 to obtain different perspectives on PATTERN. According to BOP officials, in September 2019, BOP began to train staff on calculating risk scores, and field staff began to conduct risk assessments. Appendix IV provides additional information on BOP's employee training efforts on the First Step Act.

In response to issues identified by the Independent Review Committee and through the National Institute of Justice-facilitated stakeholder listening sessions, DOJ implemented PATTERN version 1.2 in January 2020, which BOP staff were to start using to assess incarcerated people's

⁴²According to DOJ's Bureau of Justice Assistance, the process of determining how well an assessment tool performs at predicting risk is called validation.

risk scores.⁴³ According to DOJ, PATTERN 1.2 increased the number of dynamic factors from the original version of PATTERN, so incarcerated people had more opportunities to improve their risk level during their time of incarceration. This version also removed two factors that DOJ believed to exacerbate racial disparities, including age at first arrest and voluntary surrender, according to DOJ officials.

In January 2021, National Institute of Justice consultants identified several coding, specification, and scoring discrepancies with PATTERN 1.2, which resulted in BOP assigning some incarcerated people with an inaccurate score and associated risk level. BOP adjusted PATTERN scores of those incarcerated people affected by the scoring errors in that same month, January 2021, and BOP rescored assessments for all incarcerated people by March 2021, according to DOJ documentation. In June 2021, DOJ implemented PATTERN 1.2-Revised to address the issues identified by the National Institute of Justice contractors.

According to DOJ's April 2022 First Step Act annual report, National Institute of Justice contractors proposed a refined version of the tool, PATTERN 1.3 in December 2021. In May 2022, DOJ implemented PATTERN 1.3—the most recent version.

SPARC-13 development. BOP launched SPARC-13 on January 15, 2020, and implemented its needs assessment policy on June 25, 2021.⁴⁴ BOP created SPARC-13 by enhancing its needs assessment system that existed prior to the enactment of the First Step Act. BOP field staff were assessing needs of its incarcerated population prior to the launch of SPARC-13 through different mechanisms that existed under its prior needs system.

To develop SPARC-13, BOP used feedback from a symposium in September 2019 with officials from DOJ, BOP, the Independent Review Committee, academic scholars, and correctional leaders. At this

⁴³For example, the National Institute of Justice contractors identified data coding errors such as giving an incarcerated person credit for participating in a program instead of completing the program and counting incident reports that occurred beyond the intended 120-month observation range. National Institute of Justice contractors also found scoring errors identified in three items and in the cut-points listed for the general male recidivism tool.

⁴⁴Department of Justice, Bureau of Prisons, *First Step Act Needs Assessment*, 5400.01 (Washington, D.C.: June 25, 2021).

symposium, participants identified 12 needs that should be included in the system, including anger/hostility, antisocial peers, cognitions, education, family/parenting, finance/poverty, medical, mental health, recreation/leisure/fitness, substance use, trauma, and work. BOP added a 13th need, dyslexia, to SPARC-13, as required by the First Step Act.⁴⁵

DOJ is Taking Actions to Enhance its Future Validations of its Risk and Needs Assessment System

PATTERN review and validation. In addition to its prior validation of earlier versions of PATTERN, DOJ reviewed and validated PATTERN 1.3 in December 2021 as required by the First Step Act.⁴⁶ Among other things, the December 2021 validation report assessed how risk scores varied across racial and ethnic groups, within gender groups, in similar circumstances.⁴⁷ DOJ's review of recidivism rates of similarly classified groups found that PATTERN over- or under-predicted the risk of recidivism for certain groups. For example, in regards to general recidivism, PATTERN tended to over-predict recidivism for Asian, Black, and Hispanic people and under-predict for Native American people,

⁴⁵18 U.S.C. § 3632(h).

⁴⁶Under 18 U.S.C. § 3631(b)(4), the Attorney General is required to—"on an annual basis, review, validate, and release publicly on the Department of Justice website the risk and needs assessment system, which review shall include— (A) any subsequent changes to the risk and needs assessment system made after the date of enactment of [the First Step Act]; (B) the recommendations developed under paragraph (2) [of 18 U.S.C. 3631], using the research conducted under paragraph (3); (C) an evaluation to ensure that the risk and needs assessment system bases the assessment of each prisoner's risk of recidivism on indicators of progress and of regression that are dynamic and that can reasonably be expected to change while in prison; (D) statistical validation of any tools that the risk and needs assessment system uses; and (E) an evaluation of the rates of recidivism among similarly classified prisoners to identify any unwarranted disparities, including disparities among similarly classified prisoners of different demographic groups."

⁴⁷For this validation, DOJ assessed recidivism data for fiscal years 2014 through 2017, the most recent recidivism data available at the time. Department of Justice, Office of Justice Programs, National Institute of Justice, *2021 Review and Revalidation of the First Step Act Risk Assessment Tool*, Washington, D.C.: December 2021).

compared to White people.⁴⁸ For violent recidivism, the model tended to under-predict recidivism for Black people, compared to White people.⁴⁹ In June 2022, National Institute of Justice officials and contractors stated that they have given top priority to eliminating the racial and ethnic disparities identified in the December 2021 validation.

In June 2022, National Institute of Justice officials and contractors also stated that the December 2021 validation report mirrored the approaches used by the developer. For example, the contractors told us they limited the scope to the PATTERN model inherited from the tool's development. They did this because National Institute of Justice officials, the Independent Review Committee, and participants in DOJ's listening sessions all reviewed it and provided feedback on the PATTERN 1.3 model. At that time, they did not consider additional models or validation methods for the December 2021 validation report, and established the report's scope to testing the predictive accuracy of the current PATTERN 1.3 model on a new sample of external data.

We identified several areas where DOJ could further enhance its future predictive models, consistent with accepted statistical practices that were beyond the scope of its December 2021 validation.⁵⁰ These issues relate to the (1) scope of validation, (2) goals and metrics for assessing predictive accuracy, (3) differential prediction by race and ethnicity, (4)

⁴⁸According to DOJ's 2021 validation, for the fiscal years 2016 and 2017 revalidation samples in the general recidivism tools, the differential prediction analysis demonstrated that there was a 2 to 3 percent over-prediction of recidivism for Black and Hispanic males, an 8 percent over-prediction for Asian males, and a 14 to 15 percent under-prediction of Native American males, relative to White males. There was also a 6 to 7 percent over-prediction for Black females, a 4 to 5 percent over-prediction for Hispanic females, and a 12 to 13 percent under-prediction for Native American females, relative to White females.

⁴⁹According to DOJ's 2021 validation, for the violent recidivism tools, most results were not statistically significant with the following exceptions: the risk of violent recidivism for Black males was under-predicted relative to White males by 4 to 5 percent in both revalidation samples, and risk for Black females was under-predicted relative to White females by 1 to 2 percent for the fiscal year 2016 revalidation sample. There were also statistically significant over-prediction 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 fiscal year 2017 sample."

⁵⁰Trevor Hastie, Jerome Tibshirani, and Jerome Friedman, *The Elements of Statistical Learning*, 2d ed. (New York: Springer, 2009). 214-245. Gareth James, et al., *An Introduction to Statistical Learning*. (New York: Springer, 2013). 147.

validation sampling method, and (5) use of points vs. risk of recidivism. DOJ officials stated that they plan to address issues in future model development and validation work—which the First Step Act requires annually.⁵¹ Appendix V provides additional details on areas where DOJ could further enhance each of these five areas. In addition, in June 2022, the National Institute of Justice contractors told us they were discussing how to improve modeling strategies with various experts, the National Institute of Justice and BOP for future model revisions and validations.

SPARC-13 review and validation. In regards to the needs assessment system—SPARC-13—BOP conducted an initial review in March 2022 and has a plan to complete the first validation in calendar year 2022. The initial review summarized BOP’s work to produce a needs assessment system, early outcome data, and a preview of the BOP’s next steps. In October 2022, BOP officials stated the needs assessment validation will be managed through a National Institute of Justice contract.

BOP Does Not Have Data to Determine if it Conducts Assessments on Time and the Effectiveness of its Monitoring Efforts Is Unclear

BOP Lacks Readily-Available, Complete, and Accurate Data

BOP does not have readily-available, complete, and accurate data to determine if risk and needs assessments were conducted within the First Step Act required and BOP established timeframes. Specifically, the First Step Act and BOP established procedures for initial assessments and reassessments.

- **Procedures for initial assessments.** The First Step Act required BOP to complete initial risk and needs assessments by January 15, 2020, for all people incarcerated in federal prison at that time. For incarcerated people who arrived at their designated BOP facility after January 15, 2020, BOP’s internal timeframes initially required BOP staff to conduct the initial risk and needs assessments for incarcerated people in conjunction with the initial classification

⁵¹18 U.S.C. § 3631(b)(4).

meeting.⁵² These meetings are to occur within 28 days of the incarcerated person's arrival at their designated BOP facility.⁵³ Subsequently, in November 2022, BOP issued a policy that clarified that while BOP staff are to complete risk assessments during an incarcerated person's initial classification meeting, the needs assessment should be completed within 30 days of the incarcerated person's arrival at the BOP facility.

When an incarcerated person arrives at a designated facility, the BOP staff are to use a variety of tools and information sources to complete initial risk and needs assessments. After the assessments are completed—some of which require the voluntary participation of incarcerated people—the unit team is to meet with the incarcerated person during the initial classification meeting and communicate the results of the risk and needs assessments.

- **Procedures for reassessments.** BOP staff are to reassess incarcerated people's risk and needs on an ongoing basis. Generally, the First Step Act required BOP to reassess each incarcerated person's risk level annually.⁵⁴

BOP internal timeframes require staff to complete risk and needs reassessments during program review meetings, which are to occur

⁵²According to BOP, the completion of the initial risk and needs assessments is to coincide with the initial classification meeting. According to BOP policy, BOP staff are to conduct an initial classification meeting with an incarcerated person within 28 calendar days of arrival at the designated facility for each newly committed incarcerated person following sentencing or return to custody as a violator. At the initial classification meeting, BOP is to develop a program plan for the person during incarceration, which generally includes work and programming activities that would allow successful reentry into the community, among other things. Department of Justice, Bureau of Prisons, *Inmate Classification and Program Review*, 5322.13 (Washington, D.C.: May 16, 2014).

⁵³According to BOP officials, while BOP staff are to complete the initial classification meeting within 28 days of the person's arrival, completing the PATTERN assessment requires an incarcerated person's sentence computation to be completed. If the sentence computation is incomplete, the initial classification should be delayed pending its completion, and the basis for delay should be documented.

⁵⁴Pursuant to 18 U.S.C. § 3632(d)(5), an incarcerated person who successfully participates in evidence-based recidivism reduction programming or productive activities is required to receive periodic risk reassessments not less often than annually, and an incarcerated person determined to be at a medium or high risk of recidivating and has less than 5 years until his or her projected release date is to receive more frequent risk reassessments.

more frequently than First Step Act requirements.⁵⁵ According to BOP policy, BOP staff are to conduct these meetings every 180 days or at least once every 90-calendar days when an incarcerated person is within 12 months of their projected release date, according to BOP policy.⁵⁶ In addition, BOP's program statement on needs assessments states that BOP staff are to reassess needs every 180 days.⁵⁷

BOP officials told us risk and needs assessments for incarcerated people designated to a BOP facility were completed at the First Step Act-required frequency, including completing the initial intake risk and needs assessments for each incarcerated person in BOP custody by January 15, 2020, and the subsequent risk reassessments annually.⁵⁸ BOP officials also told us assessments were conducted to also meet internal timeframes, including completing initial assessments within the first 28 or 30 days—depending on the assessment—of an incarcerated person's arrival at a BOP designated facility and reassessments every 180 days after the initial assessment.

We requested and analyzed BOP's data on First Step Act risk and needs assessments to confirm that assessments were completed as reported by BOP. Our preliminary results found that not all assessments were conducted as required by the First Step Act and BOP established timeframes. However, following our preliminary analysis, in October 2022, BOP officials stated that data they provided us would not allow us to conduct such an assessment for various reasons, as discussed below. Therefore, we determined these data were not sufficiently complete or

⁵⁵Program reviews are meetings with unit managers, case managers, correctional counselor, and the incarcerated person, among others, to discuss progress in recommended programs, and new programs recommended based upon skills the incarcerated person has gained during incarceration. Department of Justice, Bureau of Prisons, *Inmate Classification and Program Review*, 5322.13, (Washington, D.C.: May 16, 2014). Further, BOP's November 2022 policy clarified that BOP is to reassess each person's risk and needs at each regularly scheduled program review meeting. See Department of Justice, Bureau of Prisons, *First Step Act of 2018 – Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4)*, 5410.01 (Nov. 18, 2022). (Change Notice – Feb. 6, 2023).

⁵⁶Although BOP does not have an official program statement for risk, BOP is to conduct risk reassessments on the same basis as need reassessments to coincide with program reviews, according to DOJ.

⁵⁷Department of Justice, Bureau of Prisons, *First Step Act Needs Assessment*, 5400.01, (Washington, D.C.: June 25, 2021).

⁵⁸18 U.S.C. § 3621(h)(1)(A).

accurate for assessing the frequency at which assessments were conducted.⁵⁹

First, in October 2022, BOP officials stated that data we analyzed were not complete. Specifically, officials told us BOP did not have the technological capability to specifically track when risk and needs assessments were conducted prior to August 5, 2021—and as such, data they provided would not be complete.⁶⁰ In addition, BOP officials stated that some data they collected on needs assessments prior to adding First Step Act codes into their database had been excluded from the data file they provided to us for analysis in January 2022.

Second, BOP officials stated that the dates assigned to each assessment in the data file they provided us did not necessarily represent the accurate date the assessment was completed. For example, officials stated that the date recorded could represent the date that BOP's SENTRY database extracted data on needs assessments stored in other systems or the date the incarcerated person met with the case manager, and not the date the assessment was actually completed.⁶¹ In addition, officials stated that the date could represent when they conducted a system update or other system testing, and those recorded observations would not mean that an actual assessment was conducted on that date. As such, our preliminary analysis examining the extent to which BOP conducted assessments within First Step Act required and BOP's internal timeframes was not

⁵⁹Our preliminary analysis included data on convicted and sentenced people in a BOP designated facility by January 15, 2020, and still incarcerated as of January 29, 2022. We conducted numerous tests to confirm the reliability of these data. However, given the issues that BOP officials reported to us in October 2022, we found these data were not sufficiently complete or accurate for determining the frequency at which assessments were conducted.

⁶⁰For risk and needs reassessments prior to August 5, 2021, BOP's system did not always record the actual date of each reassessment if the incarcerated person's risk level or need did not change, according to BOP officials. For example, if an incarcerated person's risk level was rated medium in October 2020 and remained medium in March 2021, BOP staff may not have made a data entry change in SENTRY that would have resulted in the system recording a risk reassessment date.

⁶¹More specifically, for the needs that BOP assessed prior to the enactment of the First Step Act, BOP collected that data elsewhere for other purposes and later created new SENTRY codes to track the First Step Act-related risk and needs assessments to meet the requirements of the First Step Act. According to BOP officials, transferring assessment data from old codes to new First Step Act codes took several months. Therefore, any assessment dates were a reflection of when the SENTRY system transferred data from old to new First Step Act codes and not actual assessment dates.

based on data that accurately measured the date when the actual assessments occurred.

Lastly, BOP officials stated that any analyses examining the extent to which they conducted their assessments on time should be measured only against First Step Act requirements, and not BOP internal timeframes. While it is important that BOP conduct assessments within the frequency required by the First Step Act, BOP should also follow its own internal timeframes. This is particularly important because these internally established timeframes are what BOP is training its staff to follow. Given the limitations of data provided by BOP, we found that these data were not sufficiently reliable to report on the frequency in which BOP was conducting assessments.

Despite the data limitations, BOP officials told us they could confirm that risk and needs assessments took place on time, because reassessments are required to coincide with the initial classification meeting and program review meetings. For example, BOP officials stated that they could confirm that an incarcerated person's mental health was assessed within 28 days of their arrival into BOP custody because its policy on program reviews requires it. Documenting the dates when BOP is to hold an initial classification meeting and program review meetings with incarcerated people can help monitor those meetings, but is not the same as tracking and providing BOP with the actual date that assessments were completed.

Further, BOP officials have reported that not all assessments were completed in a timely manner. Specifically, according to a February 2021 memorandum, BOP was not conducting assessments at a sufficient rate to meet the standards of the First Step Act.⁶²

While BOP officials stated assessments were conducted on time, according to a BOP memorandum issued on February 2022, a significant portion of the incarcerated population had a missing needs assessment,

⁶²Department of Justice, Bureau of Prisons, Central Office, *Memorandum for All Chief Executive Officers, First Step Act Mandates*, (Washington, D.C.: Feb. 16, 2021).

including some that refused to participate in an assessment.⁶³ Furthermore, union officials told us BOP facility staff could not always conduct assessments within required timeframes due, in part, to insufficient staffing and training.⁶⁴ For example, BOP union officials told us in August 2021 there were not enough staff working at BOP facilities and BOP augmented staff up to two or three times a week, which took their time away from their normal duties, including conducting risk and needs assessments.⁶⁵ In November 2022, these union officials confirmed that staffing was still a challenge in implementing First Step Act requirements.

While BOP has taken some actions to improve its data systems, it does not currently have readily-available, complete, and accurate data to determine if it is conducting assessments at the frequency required by the First Step Act, and to meet its own internal timeframes. BOP officials stated that they have been modifying the BOP's evaluation systems and processes to adapt them to the terminology and requirements of the First Step Act, which is an ongoing process, as it required complex changes to BOP's information technology systems. For example, BOP officials told us in December 2019 they added new First Step Act codes into its case management database for incarcerated people—SENTRY—for tracking

⁶³As addressed later in this report, incarcerated people must have their risk and all of their 13 needs addressed to be able to earn First Step Act time credits under BOP's procedures. According to the BOP Director's testimony to the Senate Committee on the Judiciary in September 2022, approximately 60 percent of people in BOP custody have completed needs assessments. Additionally, DOJ reported in December 2022 that BOP had assessed a total of 142,871 persons in federal prison with PATTERN in 2021. Another 14,443 persons in BOP custody did not have a PATTERN risk level because they were in pretrial detention, had not been in BOP custody for a sufficient time to receive a PATTERN assessment, or had legal conditions in which PATTERN would not apply. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Federal Prisoner Statistics Collected under the First Step Act, 2022*. NCJ 304953. (Dec. 2022).

⁶⁴We have previously reported on staffing challenges within the BOP, and made seven recommendations to address them. For example, we recommended that BOP should develop and implement a reliable method, or amend existing methods, for calculating staffing levels at BOP institutions. BOP concurred with our recommendations. As of January 2023, BOP has taken steps to partially implement this recommendation and three other recommendations. In addition, BOP has taken steps to fully implement two recommendations we made in our report. GAO, Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs, [GAO-21-123](#) (Washington, D.C.: Feb. 24, 2021).

⁶⁵Augmentation is the assignment of a non-custody staff member, e.g., a person responsible for educational or vocational training, to a custody role, whereby the staff member's primary task becomes the custody and supervision of the incarcerated person.

risk and ten needs, and in April 2021 they added additional First Step Act codes for tracking the remaining three needs.⁶⁶

In addition, BOP officials told us on August 5, 2021, BOP implemented a mechanism so that staff can click a button in the system, which automatically reassess risk and needs based on data pulled from SENTRY. According to DOJ and BOP, the automated process improved scoring reliability by eliminating manual errors, reduced staff labor costs, and increased the speed and efficiency of the assessments. According to BOP officials, with the automation, SENTRY records reassessment dates every time that staff complete a reassessment, even when there is no change to a risk level. BOP Central Office and facility officials we interviewed stated that the automation of the risk and needs reassessments was beneficial and saves them time. This mechanism should help BOP ensure the dates are accurate for risk reassessment. However, the mechanism will not address initial assessments or other issues raised by BOP, such as system updates that create records of assessments when none were completed.

Although BOP has taken action to address some of the data limitations reported by BOP officials, it does not ensure that they have readily-available, quality data to ensure they are conducting risk and need assessments within the First Step Act required and internally established timeframes. Standards for Internal Control in the Federal Government state that management is to collect data that they can use to help ensure they achieve their objectives. Quality information should be accessible, complete, and accurate to help management make informed decisions.⁶⁷ Without collecting and maintaining complete and accurate assessment data that is readily available, BOP does not have data to determine if staff are completing assessments within the First Step Act required and internally established timeframes. The completion of these assessments is important because they affect the incarcerated person's ability to earn First Step Act time credits.

⁶⁶The ten needs with First Step Act codes as of December 2019 included anger/hostility, antisocial peers, cognitions, dyslexia, finance/ poverty, medical, mental health, recreation/ leisure/ fitness, trauma, and work. The remaining three needs with First Step Act codes as of April 2021 include education, family parenting, and substance abuse.

⁶⁷[GAO-14-704G](#).

BOP Has Not Confirmed Whether Monitoring Efforts Will Measure Timeliness of Assessments

Despite data limitations, BOP officials told us they have monitored First Step Act requirements, and have plans to implement additional monitoring efforts. However, BOP's efforts have not included whether it completed assessments according to First Step Act required and internal timeframes. Further, BOP has not confirmed if its planned efforts will measure whether assessments are completed on time. This is particularly important because, according to BOP documentation, incarcerated people who are eligible to earn First Step Act time credits must have a risk level and have completed all needs assessments prior to earning time credits.

Specifically, in July 2021, BOP Central Office officials explained that they relied on facility staff, specifically case managers, to monitor whether assessments were conducted on time. BOP Central Office officials also explained that they could run nation-wide rosters on the number of incarcerated people with a completed risk assessment. However, these rosters did not include data on whether staff conducted assessments on time.

In addition, BOP Central Office officials stated that they developed a First Step Act data dashboard in 2019 to track BOP's progress in implementing certain First Step Act requirements, such as the number of completed risk assessments. However, this dashboard did not track whether staff conducted initial risk assessments on time, and did not include data on whether staff conducted risk reassessments or any needs assessments. In November 2021, BOP started to revise the First Step Act data dashboard to include several performance measures suggested by the Independent Review Committee related to assessments.⁶⁸

In May 2022, BOP officials stated that they decided to work on building the capability to better gauge First Step Act performance, among other efforts.

- Specifically, in October 2022, officials stated that BOP procured a contract with a company to engage engineering resources to develop a data analytics platform. According to the task statement, BOP was

⁶⁸Independent Review Committee, *Report of the Independent Review Committee Report Pursuant to the Requirements of Title I Section 107(g) of the First Step Act of 2018* (P.L. 115-391) (Washington D.C.: Dec. 21, 2020), 6-7.

seeking technical and engineering assistance to establish the data analytics platform and identify the metrics and data that would be needed to track performance and implementation of the First Step Act. According to the task statement, funding for this effort beyond September 30, 2022 is contingent on the program funding in future funding years.

- Furthermore, in September 2022, BOP contracted with an entity to conduct a quality assurance audit to verify that BOP is conducting risk and needs assessments in accordance with BOP policy. According to the statement of work, the audit's initial focus will evaluate staff and incarcerated people's comprehension of the risk and needs assessment system.⁶⁹ The audit will also identify the metrics and performance indicators needed to implement continuous monitoring of the system.
- In addition, according to BOP guidance issued in October 2022, staff will be required to provide monthly reports to the regional office that are to show the number of incarcerated people with no risk and needs assessment data and whether the person has been at their designated facility for at least 28 days. However, the reports will not include data on the required risk reassessments. In addition, BOP did not provide any information on when it will begin to collect these reports, or how it will use them.⁷⁰

While BOP's various efforts are encouraging, BOP has not confirmed if any of the planned efforts will be designed to ensure that it conducts assessments in accordance with both First Step Act requirements and BOP internal timeframes. As such, BOP may not have any results from its monitoring efforts that it could utilize and document on whether it is conducting assessments on time and taking appropriate corrective action.

Standards for Internal Control in the Federal Government states that management should establish and operate ongoing monitoring activities

⁶⁹For example, according to the statement of work, the contractor will Interview at least 10 staff and 10 incarcerated people to gauge their understanding of aspects of the First Step Act.

⁷⁰Additionally, BOP officials told us on January 29, 2022, BOP instituted an internal control system to monitor missing and late needs assessment data, but did not provide any additional details or documentation, such as how the system functioned, or whether it assessed the timeliness of assessments conducted. As of November 2022, BOP has not provided any new information on this effort.

to evaluate the entity's effectiveness.⁷¹ In addition, these standards state that management is to evaluate and document internal control issues and determine appropriate corrective actions for internal control deficiencies on a timely basis. These corrective actions should include resolution of audit findings.⁷²

By ensuring that the ongoing monitoring efforts it is implementing examines whether risk and needs assessments are conducted on time, BOP will be better positioned to understand if it is meeting First Step Act required and internal timeframes. This is particularly important given that reassessments are needed to measure an incarcerated person's progress or lack of progress to address a need, and because assessments are necessary for First Step Act time credits. Further, by utilizing and documenting the results of its ongoing monitoring efforts, once established, BOP can better ensure it is conducting risk and needs assessments within First Step Act required and internally established timeframes, and take corrective action, as needed.

BOP's Evaluation Plan and Monitoring of Its Evidence-Based Programs Do Not Include Key Aspects

Since the enactment of the First Step Act in 2018, BOP took steps to respond to First Step Act requirements related to identifying, evaluating, and offering evidence-based recidivism reduction programs and productive activities. However, BOP's plan to evaluate its evidence-based recidivism reduction programs lacks pre-established goals and clear milestone dates, and BOP does not have a mechanism to ensure program availability is sufficient to meet the needs of its incarcerated population. In addition to evidence-based recidivism reduction programs and productive activities, BOP officials reported that they have other "unstructured productive activities" for which incarcerated people can earn First Step Act time credits, but BOP has not documented a complete list or tracked these activities.

⁷¹[GAO-14-704G](#).

⁷²[GAO-14-704G](#).

BOP Reported that it Identified Which of its Programs and Activities Were Evidence-Based

Generally, the First Step Act required the Attorney General to review the effectiveness of evidence-based recidivism reduction programs that existed as of the date of enactment of the First Step Act in prisons operated by BOP prior to releasing its risk and needs assessment system.⁷³ To meet this requirement, BOP officials reported that they conducted a literature review in 2020 to determine which of its programs that existed prior to the First Step Act's enactment had research supporting that the programs were shown to reduce recidivism. According to these officials, the scope of this literature review included steps such as identifying state programs with similar content as BOP's programs and reviewing [Crimesolutions.gov](https://www.crimesolutions.gov)—a DOJ website that shares evaluations of justice-related programs. BOP officials stated that they did not document this literature review, as they did not intend it to be a public product.

After BOP conducted its literature review, it categorized which of its programs and activities that existed prior to the First Step Act's enactment were evidence-based recidivism reduction programs or productive activities.⁷⁴ In 2020, BOP determined that of its existing programs, 29 were evidence-based recidivism reduction programs and 49 were productive activities. For example, BOP determined that its residential and non-residential drug abuse programs were evidence-based recidivism reduction programs and that its Alcoholics Anonymous support group was a productive activity. As of August 2022, the number of

⁷³18 U.S.C. § 3633(a). In addition, the Attorney General was to consider the prevalence and mitigation of dyslexia in prisons under 18 U.S.C. § 3633(b). BOP published its findings on dyslexia research and statistics in its 2020 First Step Act report. DOJ headquarters officials told us BOP took the lead on these First Step Act requirements.

⁷⁴As stated previously, evidence-based recidivism reduction programs are activities that have been shown by empirical evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism. Productive activities are activities that are designed to allow incarcerated people determined as having a minimum or low risk of recidivating to remain productive.

evidence-based recidivism reduction programs increased to 37 and productive activities increased to 51.⁷⁵

However, the Independent Review Committee and the National Institute of Justice conducted research on recidivism reduction programs, and both found challenges with using available research to conclude which BOP programs were evidence based. For example, in 2020, the Independent Review Committee reported that it conducted research on available evidence for programs that showed a reduction in recidivism—such as programs for education and substance abuse reduction—and found that much of the available research was too outdated to consider current programs as “evidence-based.”⁷⁶ In addition, the Independent Review Committee reported that the research it found did not include comparable programs to the programs administered by BOP. As such, the Independent Review Committee concluded that it could not verify all of BOP’s initial findings from its literature review.⁷⁷ In addition, in 2019—prior to BOP’s literature review—the National Institute of Justice reported challenges with available research on educational programs in prisons, including that prior evaluations drew conclusions based on evidence that lacked scientific rigor.⁷⁸ In addition, we have previously reported that little research exists on whether select BOP programs are effective in reducing

⁷⁵According to BOP officials, evidence-based recidivism reduction programs and productive activities were initially programs offered in BOP facilities prior to First Step Act. Programs subsequently added to the approved programs guide were developed by BOP subject matter experts during the implementation of First Step Act, or were recommended by outside stakeholders and adopted by BOP following a review from a contractor. BOP officials stated that they continue to modify and add evidence-based recidivism reduction programs or productive activities. For example, BOP documentation from October 2022 includes five additional evidence-based recidivism reduction programs, as detailed in Appendix III. Our analysis of BOP’s August evaluation plan is compared against BOP’s August 2022 approved programs guide—the most recent published guide as of December 2022—and does not include these five additional evidence-based recidivism reduction programs.

⁷⁶For example, a study of the Bureau’s Residential Drug Abuse Program conducted in 2000 examined a cohort of incarcerated people release from federal prison between 1992 and 1995.

⁷⁷Independent Review Committee, *Report of the Independent Review Committee Report Pursuant to the Requirements of Title I Section 107(g) of the First Step Act of 2018* (P.L. 115-391) (Washington DC: Dec. 21, 2020).

⁷⁸National Institute of Justice, *First Step Act: Best Practices for Academic and Vocational Education for Offenders*. NCJ 253056 (June 2019).

recidivism.⁷⁹ Given these findings, it is unclear if BOP's initial evaluation of its programs and activities was sufficient to conclude that the programs it identified as being evidence based are effective in reducing recidivism.

According to BOP officials, conducting the necessary research on BOP programs would have taken them longer than the timeframes set forth by the First Step Act. Therefore, in October 2022, BOP officials told us they were in the process of contracting for an independent literature review and a review of state programs to determine if there were additional programs that they should consider adding. While BOP cannot reproduce its initial effort that the First Step Act required prior to issuing its risk and needs assessment system, BOP's efforts to conduct required ongoing research to evaluate its evidence-based recidivism reduction programs—as discussed in the next section of this report—will be important to demonstrate they are evidence based.

BOP Has Ongoing Evaluation Efforts but Its Plan Lacks Quantifiable Goals and Clear Milestone Dates

BOP officials reported that they have ongoing efforts to address First Step Act requirements for identifying new programs that are evidence based, and ongoing evaluations of existing evidence-based recidivism reduction programs to ensure they are effective at reducing recidivism.⁸⁰ Specifically, the Attorney General is required to conduct ongoing research and data analysis on evidence-based recidivism reduction programs related to the use of the risk and needs assessment tool and the most effective and efficient uses of such programs, among other things.⁸¹

For example, BOP developed criteria to review external entities'—such as researchers—proposals to create new evidence-based recidivism

⁷⁹See, for example, GAO, *Federal Prison Industries: Actions Needed to Evaluate Program Effectiveness* [GAO-20-505](#) (Washington DC: July 29, 2020.); GAO, *Bureau of Prisons: Improved Planning Would Help BOP Evaluate and manage its Portfolio of Drug Education and Treatment Programs*; [GAO-20-423](#) (Washington DC: May 26, 2020.)

⁸⁰The First Step Act requires the Attorney General to conduct ongoing research and data analysis on which evidence-based recidivism reduction programs are the most effective at reducing recidivism, and the type, amount, and intensity of programming that most effectively reduces the risk of recidivism. 18 U.S.C. § 3631(b)(3)(C). DOJ officials told us BOP is taking lead on fulfilling this requirement.

⁸¹18 U.S.C. § 3631(b)(3).

reduction programs that could be offered at BOP facilities.⁸² BOP created these criteria to assess if the proposed programs managed by external entities are effective in reducing recidivism and meet other BOP criteria, such as determining if the programs are designed specifically for federally incarcerated people.

In addition, BOP developed a plan to conduct ongoing evaluations for its established evidence-based recidivism reduction programs, which details when it plans to conduct evaluations of each of its evidence-based recidivism reduction programs. According to the plan, the long-term outcomes will primarily be recidivism, but contractors—along with subject matter experts—are to develop short-term outcomes. These outcomes will vary by program and will be developed during the design phase of each evaluation. However, the evaluation plan does not include specific details on pre-established, quantifiable goals or clear milestone dates for the evaluation of most of its programs.

Quantifiable goals. BOP officials stated that the primary goal for all evidence-based recidivism reduction programs is to reduce recidivism. However, BOP did not include any other pre-established, quantifiable goals in the evaluation plan that align with the requirements in the First Step Act. Specifically, the Attorney General is required to conduct ongoing research on which evidence-based recidivism reduction programs are the most effective at reducing recidivism and the type, amount, and intensity of programming that most effectively reduces the risk of recidivism.⁸³ BOP officials stated that BOP does not establish specific program evaluation goals before the evaluations are initiated, because each evaluation is designed collaboratively between BOP subject matter experts, the Office of Research and Evaluation, and, typically, an outside contractor at the time the evaluation begins.⁸⁴

Clear milestones. BOP's evaluation plan also lacks clear milestones for when it will evaluate each of its programs, and how frequently it will do so.

⁸²BOP programs are either run through BOP directly such as by BOP program staff, or by external entities.

⁸³18 U.S.C. § 3631(b)(3)(C).

⁸⁴Furthermore, BOP officials stated that for some programs, the goal of recidivism reduction is a secondary outcome, though still an important goal of evidence-based recidivism reduction programs. As such, officials stated that some evidence-based recidivism reduction programs have goals other than recidivism reduction but they said the effect of achieving these goals is the reduction in recidivism.

Specifically, as of October 2022, BOP completed an evaluation for one of the 37 evidence-based recidivism reduction programs as part of its efforts to conduct ongoing evaluations.⁸⁵ In addition, BOP conducted one other evaluation prior to the First Step Act and as such, BOP officials stated that they did not include it in its evaluation plan.⁸⁶

For the remaining 35 evidence-based recidivism reduction programs, BOP initiated contracts to evaluate 14 of them.⁸⁷ However, as of August 2022, BOP's evaluation plan did not include clear milestone dates for the evaluations of most of the remaining 21 evidence-based recidivism reduction programs. More specifically, BOP's plan states that three programs are to be evaluated in 2023 and the rest will be evaluated "beyond 2023." In addition, the plan does not include information on how frequently BOP will conduct evaluations of its programs.

DOJ and BOP officials stated that conducting evaluations of BOP programs is a new and ambitious effort for BOP, and BOP has not finalized milestone dates because it needs to first learn to gauge its capacity. Further, BOP officials stated that programs that are new cannot be immediately studied for recidivism because an adequate number of

⁸⁵MITRE Technical Report. *Independent Evaluation of Federal Prison Industries*. (McLean, VA.: Sept. 29, 2021.) BOP did not agree with the results of the Federal Prison Industries evaluation and took steps to add recidivism reduction goals into the program in response. Specifically, BOP stated that the contractor did not properly analyze BOP's data, and BOP officials stated that they are taking steps to establish goals for further evaluations of the program. Separately, the First Step Act requires the Attorney General to conduct ongoing research and data analysis on products purchased by federal agencies that are manufactured overseas and could be manufactured by incarcerated people participating in a prison work program without reducing job opportunities for other workers in the U.S. 18 U.S.C. § 3631(b)(3)(D). To address this requirement, the Federal Prison Industries program is conducting a cost of labor analyses. The Federal Prison Industries has hired an external contractor for this analysis, but has passed the June 2022 date BOP reported it would be published. BOP officials told us the study is nearing completion as of October 2022.

⁸⁶The 2019 evaluation of Mental Health Step Down did not include measures to examine recidivism reduction.

⁸⁷BOP initiated four contracts in 2022 to have seven of its 37 evidence-based recidivism reduction programs evaluated, which are to be completed in the next 3 to 5 years. According to the evaluation plan, the three programs BOP reported it would evaluate in 2023 were the Challenge program, Basic Cognitive Skills, and Criminal Thinking. In addition, in July 2022, the National Institute of Justice awarded a contract to RTI International to evaluate seven reentry programs offered in BOP institutions.

incarcerated people need to complete the program and spend time in the community before recidivism can be examined.

Program evaluations can be complex and may take time to complete. However, this should not preclude BOP from establishing goals and milestones. The GPRA Modernization Act of 2010 provides that performance measurement is the ongoing monitoring and reporting of program accomplishments—particularly toward pre-established and quantifiable goals. Agencies are also to establish clearly defined milestones to assess progress toward those goals.⁸⁸ While the GPRA Modernization Act of 2010 is applicable to the department or agency level, in our prior work we have reported that clearly defined milestones and performance goals are important management tools at all levels of an agency, including the program, project, or activity level.⁸⁹ Such goals could include the type, amount, and intensity of programming needed to reduce recidivism, as required by the First Step Act. By including pre-established, quantifiable goals and clearly defined milestone dates in its evaluation plan, BOP will be better positioned to ensure its evaluations are conducted in a timely manner, and align with requirements in the First Step Act.

In addition, we have previously reported that BOP has not evaluated its programs, and missed the dates it previously set to conduct evaluations.⁹⁰ The American Evaluation Association framework to guide the development of program evaluations recommends that agencies implement evaluation plans to support future decision-making.⁹¹ Among other things, this framework specifies that programs should be evaluated

⁸⁸GPRA, Pub. L. No. 103-62, 107 Stat. 285 (1993), was updated by the GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011); 31 U.S.C. § 1115 (relating to agency performance plans and performance measurement).

⁸⁹For example, see GAO, *Federal Prison Industries: Actions Needed to Evaluate Program Effectiveness* [GAO-20-505](#) (Washington DC: July 29, 2020.); GAO, *Chemical Terrorism: A Strategy and Implementation Plan Would Help DHS Better Manage Fragmented Chemical Defense Programs and Activities*: [GAO-18-562](#) (Washington DC: Aug.22, 2018.)

⁹⁰In July 2020, we reported that BOP has not reviewed Federal Prison Industries' impact on recidivism in over 2 decades. We also reported that BOP made a plan to evaluate the program but the plan's timeline passed and BOP had not set a new one. We recommended that the Director of BOP update its program evaluation plan to set a new timeline for conducting an evaluation of FPI. BOP concurred with the recommendation. In July 2021, BOP provided us with documentation that it had contracted with an external firm to evaluate Federal Prison Industries' impact on recidivism. [GAO-20-505](#).

⁹¹American Evaluation Association, *An Evaluation Roadmap for a More Effective Government* (Washington, D.C.: September 2019).

throughout their life cycles for both program improvement and program effectiveness, and that an appropriate evaluation framework should be built into new programs to guide them throughout their life cycles. By evaluating BOP's programs according to the updated plan, once established, BOP can better ensure that it is offering the type, amount, and intensity of programs most effective in reducing recidivism.

BOP Does Not Have a Mechanism to Monitor if Facilities Offer Sufficient Programs to Meet the Needs of Incarcerated People

BOP officials told us they track the type and frequency of evidence-based recidivism reduction programs and productive activities offered at their facilities. We found that they do not have a mechanism to monitor, on an ongoing basis, if it is offering a sufficient amount of its programs to meet the needs of the population at each facility.⁹² As such, BOP is not able to ensure it is offering the appropriate number of its programs so that all incarcerated people who would benefit from such programs are able to participate.

Specifically, BOP officials told us each facility has the flexibility to decide which available evidence-based recidivism reduction programs and productive activities to offer at their facility, and that each of its facilities offers at least one program or activity to address each of the 13 needs discussed previously. According to BOP, some of its evidence-based recidivism reduction programs and productive activities are approved to be offered at all BOP facilities. In contrast, certain programs or activities may only be offered in select facilities because, according to BOP officials, some programs are developed for specific segments of the population. For example, just female-only facilities are able to offer the program, Understanding Your Feelings: Shame and Low Self-Esteem. Appendix VI provides more information on the number of facilities that are able to offer programs and the number of incarcerated people that completed them.

According to BOP officials, several factors have affected their ability to offer evidence-based recidivism reduction programs and productive activities since the enactment of the First Step Act. Specifically, BOP

⁹²Each evidence-based recidivism reduction program or productive activity is to address at least one of the 13 needs identified through SPARC-13.

officials stated that the COVID-19 pandemic significantly affected their ability to offer programs, due to their limited physical space when BOP was required to have people maintain 6 feet between one another.⁹³ BOP officials told us they suggested modifications to select programs—such as offering paper course work in addition to in person classes—in order to help meet needs during the pandemic. Nonetheless, according to a February 2021 BOP memorandum, BOP was not offering programs at a sufficient rate to meet the standards of the First Step Act.

In addition, according to staff at three of the four BOP facilities and BOP national union officials we interviewed, challenges with staffing levels have also affected their ability to offer evidence-based recidivism reduction programs and productive activities. According to BOP officials, BOP can use waitlists to stagger programs throughout incarcerated people's sentences to have the most impact. For example, officials stated that BOP would recommend one program at the beginning of an incarcerated person's sentence and another at the end. This could result in incarcerated people being on a waitlist until they near the end of their sentence.

As a result, according to BOP union officials, incarcerated people are not always able to access programs for their identified needs because BOP does not offer the programs, or they have long waitlists. Specifically, BOP facility staff and union officials told us incarcerated people could remain on waitlists for programs for years, and those with longer sentences would have a harder time getting into programs because priority is given to those closer to release. According to BOP Central Office officials, some people may be on a waitlist for a program because it is intended to be taken shortly before their release from prison—and not necessarily because space in the program is not available. BOP officials told us BOP is in the process of hiring more staff to be able to offer more programs to

⁹³In 2021, we made recommendations to BOP's response to COVID-19. BOP concurred with these recommendations and took action to implement some of them. For example, we recommended that BOP should develop and implement an approach for ensuring its facilities are applying, as appropriate, best practices and lessons learned related to COVID-19 and future public health emergency response efforts. BOP took steps to respond to this recommendation, and staff are now able to suggest procedures or practices to respond to COVID-19 that BOP can review, approve, and implement across BOP. See [GAO-21-502](#).

meet the needs of incarcerated people.⁹⁴ However, these challenges highlight the need for BOP to determine if it is offering a sufficient amount of its programs and activities it requires to address the needs of its incarcerated population.

BOP tracks some data on its evidence-based recidivism reduction programs and productive activities, but these data do not allow BOP to determine if it is offering a sufficient amount of evidence-based recidivism reduction programs and productive activities across all facilities to meet the needs BOP identified in its incarcerated population.⁹⁵ Specifically, BOP tracks data on incarcerated persons' participation and completion of evidence-based recidivism reduction programs and productive activities through monthly rosters. However, BOP's data on program participation and completion provide information on the person and their current facility, and not necessarily the facility in which they completed the program, as BOP may move incarcerated people between facilities. As such, these data do not enable BOP to monitor whether facilities are actually offering the programs or if they are offering a sufficient amount of its programs to meet the needs of the incarcerated population in each facility.

In addition, according to an October 2022 BOP document, BOP developed codes in SENTRY to track incarcerated people's participation status for evidence-based recidivism reduction programs and productive activities. For example, the codes include whether people have a need and are waiting to participate in a recommended evidence-based recidivism reduction program or productive activity, or if they completed it.⁹⁶ Such codes could provide BOP with useful data on the evidence-based recidivism reduction programs and productive activities incarcerated people are participating in, but are not linked to the needs of

⁹⁴According to an October 2022 BOP press release, BOP staffing levels are currently trending downward nationwide. As such, BOP announced that it is focusing on staffing all locations to their funded level through recruitment and external hiring. The press release details hiring events that BOP offered.

⁹⁵See Appendix VII for information on the needs of the incarcerated people.

⁹⁶Specifically, these codes identify if a person (1) has a need and interest and is waiting to take such a program or activity; (2) has a need, was offered an evidence-based recidivism reduction program or productive but declined it; (3) has a need and is participating; (4) the person was participating in the evidence-based recidivism reduction program or productive activity but failed to complete it; (5) the person completed the evidence-based recidivism reduction program or productive activity.

the population. Therefore, BOP could not use these codes, on their own, to determine if it is offering a sufficient amount of its evidence-based recidivism reduction programs and productive activities at each facility to meet its population's needs.

Also in October 2022, BOP officials told us the data analytics platform, for which BOP had procured a contract, will include information on the programs offered by each facility and the needs of incarcerated people within that facility. However, the task statement does not have any details related to monitoring the needs of the incarcerated population against the program availability at their respective facilities population.⁹⁷ BOP officials told us it is up to each facility to monitor the needs of its population and determine if they offer a sufficient amount of programs in their institutions to address the needs of the population. While facilities may know which programs or activities they offer, BOP does not have a mechanism to determine, on an ongoing basis, if it offers a sufficient amount of its programs and activities at each facility to address the identified needs of its population. Moreover, without such a mechanism, BOP cannot ensure that all incarcerated individuals that would benefit from such programs are able to participate in them.

Standards for Internal Control in the Federal Government states that management should establish and operate ongoing monitoring activities to evaluate the entity's effectiveness.⁹⁸ By developing a mechanism to monitor the availability of its programs in relationship to the needs of the population on an ongoing basis, BOP can better ensure its facilities are offering a sufficient amount of programs to meet the needs of its population.

⁹⁷As described above, according to the task statement, BOP was seeking technical and engineering assistance to establish the data analytics platform and identify the metrics and data that would be needed to track performance and implementation of the First Step Act. The initiative, in part, is intended to enable BOP executive Staff to have insight into agency-wide and facility-level compliance with First Step Act programming activities, as well as other First Step Act requirements; and enable officials at the regional and facility level to assess performance and adjust operations as necessary to achieve desired outcomes. According to the task statement, funding for this effort beyond September 30th, 2022 is contingent on the program funding in future funding years.

⁹⁸[GAO-14-704g](#).

BOP Has Not Documented or Tracked Participation in Unstructured Productive Activities that Allow People to Earn First Step Act Time Credits

In addition to the evidence-based recidivism reduction programs and productive activities, BOP offers unstructured productive activities to incarcerated people for which they may earn First Step Act time credits. However, BOP has not documented a complete list or tracked these activities. These unstructured productive activities can include work details, recreation, social visits, participation in religious services, teaching classes, and tutoring other incarcerated people. According to BOP, these activities should be reserved for incarcerated people with few or no identified needs.

BOP does not list these unstructured productive activities in its First Step Act Approved Programs Guide, and as of November 2022, BOP has not documented a complete list of unstructured productive activities available for First Step Act time credits. Instead, BOP provided examples of such unstructured productive activities in its program statement that it issued in November 2022. Standards for Internal Control in the Federal Government states that management should communicate quality information internally and externally, in order to achieve its goals.⁹⁹ By documenting a complete list of the unstructured productive activities, BOP can ensure it is able to provide transparent information to incarcerated people and BOP staff on which activities people can participate in that can earn First Step Act time credits.

BOP reports that it tracks structured evidence-based recidivism reduction programs and productive activities participation data, such as who completed the program, who declined to participate, and who is waiting to participate. However, BOP does not collect or monitor any such data on unstructured productive activities.¹⁰⁰ Standards for Internal Control in the Federal Government also states that management should use quality information to achieve its objectives and operate ongoing monitoring activities to evaluate the entity's effectiveness.¹⁰¹ By collecting and

⁹⁹[GAO-14-704g](#).

¹⁰⁰While DOJ's 2021 annual performance report states that BOPs monitors structured and unstructured activities, BOP does not have standard codes for tracking completion and participation in unstructured productive activities.

¹⁰¹[GAO-14-704g](#).

monitoring participation data for unstructured productive activities BOP will be better positioned to know the status of each person's participation in unstructured productive activities, and also if they are offering a sufficient amount for its incarcerated population. For example, BOP could collect and monitor unstructured productive activities similar to how it collects such data for structured evidence-based recidivism reduction programs and activities. In addition, such information will better position DOJ and BOP to respond to other requirements in the First Step Act, such as the report the Attorney General is required to submit containing a summary and assessment of the types and effectiveness of the evidence-based recidivism reduction programs and productive activities.¹⁰²

BOP Experienced Several Challenges Implementing First Step Act Time Credits

BOP Developed an Interim Approach to Applying Time Credits

BOP's efforts to develop and implement its First Step Act time credit procedure have evolved over time, including the development of an interim approach to apply time credits. The interim approach was used while BOP worked to develop the technological capabilities and procedures for applying time credits as stated in the First Step Act Time Credits final rule. BOP utilized this interim approach to calculate a one-time application of First Step Act time credits for eligible incarcerated individuals who were within 24 months from their projected release date, among other things.

According to BOP officials, in order to prepare for the implementation of First Step Act time credits, BOP began tracking data on program participation based on the November 2020 First Step Act Time Credit proposed rule. However, when DOJ and BOP published the First Step Act Time Credits final rule in January 2022,¹⁰³ the final rule made several changes to the proposed rule to address comments received from

¹⁰²18 U.S.C. § 3634(2).

¹⁰³First Step Act Time Credits, 87 Fed. Reg. at 2706-07, 2717-18 (Jan. 19, 2022) (codified in relevant part at 28 C.F.R. §§ 523.40-.44).

numerous entities.¹⁰⁴ Because of these changes, the data BOP collected was not consistent with the data it needed to implement the First Step Act Time Credits final rule.

Specifically, prior to the issuance of the First Step Act Time Credits final rule, BOP was collecting program data based on an incarcerated person's hours of program participation because, as indicated in the proposed rule, an 8-hour period of time was to count as one day of participation.¹⁰⁵ However, under the First Step Act Time Credits final rule, eligible incarcerated people are to earn time credits for every 30-day period that they successfully participate in evidence-based recidivism reduction programs or productive activities, regardless of the number of hours they participated.¹⁰⁶

In addition, the First Step Act Time Credits proposed rule stated that only eligible incarcerated people may earn time credits for participation in evidence-based recidivism reduction programs or productive activities that they successfully complete on or after January 15, 2020.¹⁰⁷ However, the First Step Act Time Credits final rule states that eligible incarcerated people are to earn time credits for programs and activities in which they

¹⁰⁴According to BOP officials, they experienced challenges in finalizing the rule, specifically noting that they received over 500 comments to the proposed rule and had to reopen the public comment period an additional 30 days to request additional comment on the applicability of the First Step Act Time Credits to D.C. Code Offenders. First Step Act Time Credits, 86 Fed. Reg. 57,612 (Oct. 18, 2021).

¹⁰⁵First Step Act Time Credits, 85 Fed. Reg. 75,268, 75,269 and 75,272 (proposed Nov. 25, 2020) (to be codified at 28 C.F.R. § 523.42). Under the First Step Act Time Credits proposed rule, “[f]or purposes of earning First Step Act Time Credits, a ‘day’ is defined as one 8-hour period of participation in an Evidence-Based Recidivism Reduction program or Productive Activity that an eligible inmate successfully completes.”

¹⁰⁶28 C.F.R. § 523.42(c). See First Step Act Time Credits, 87 Fed. Reg. 2705 (Jan. 19, 2022) (codified at 28 C.F.R. pts. 523 and 541) (addressing comments related to earning First Step Act time credits).

¹⁰⁷Specifically, the proposed rule stated that First Step Act time credits may only be earned by an eligible incarcerated person for an evidence-based recidivism reduction program or productive activity authorized by BOP, that is assigned to the particular eligible incarcerated person based on the person's risk and needs assessment, and which the eligible incarcerated person successfully completes on or after January 15, 2020. First Step Act Time Credits, 85 Fed. Reg. 75,268, 75,272 (proposed Nov. 25, 2020) (to be codified at 28 C.F.R. § 523.42).

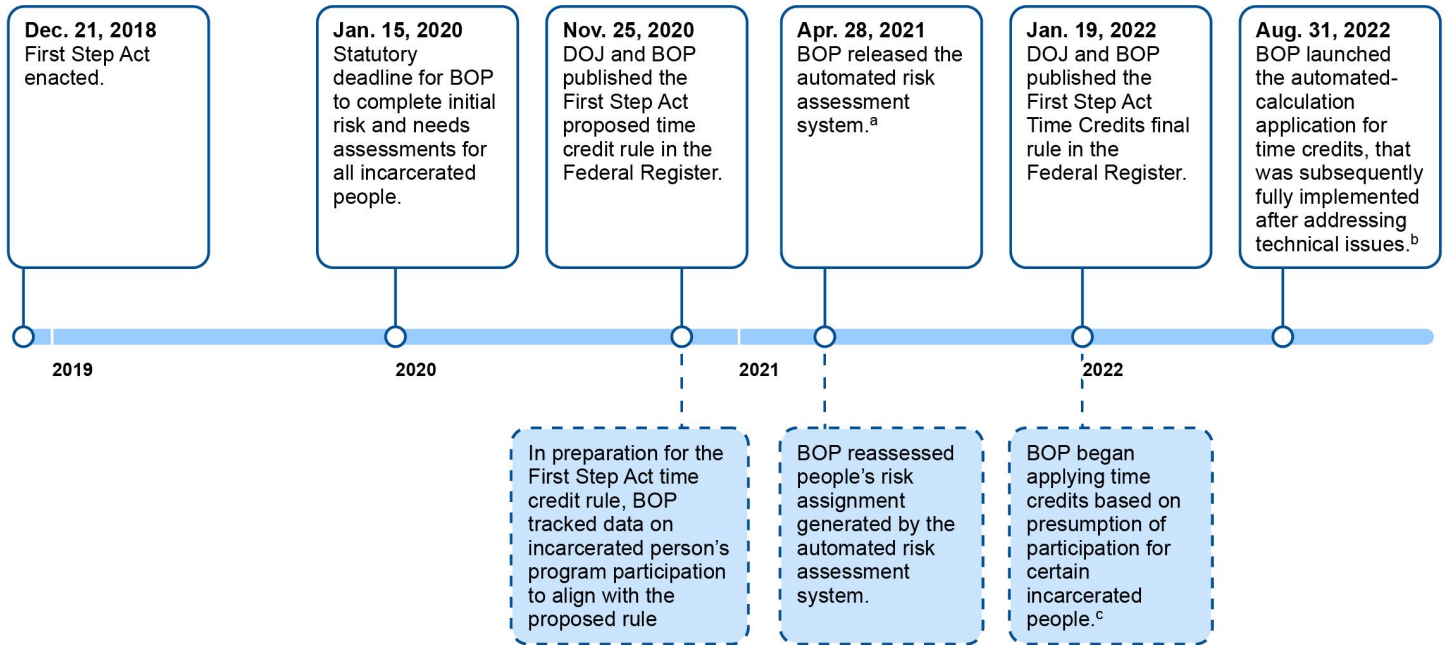
participated in from December 21, 2018.¹⁰⁸ Because BOP did not have data on program participation back to December 21, 2018, BOP was to award eligible incarcerated people First Step Act time credits based on a presumption of participation for the time that they were incarcerated from December 21, 2018, through January 14, 2020, as indicated in BOP's responses to comments in the First Step Act Time Credits final rule.¹⁰⁹

BOP developed an interim approach so it could immediately apply time credits for certain eligible incarcerated people once the First Step Act Time Credit final rule was published in January 2022. BOP did this while it worked to develop its First Step Act time credit procedure and make changes to its data collection to align with the final rule and codified regulations—which included an automated-calculation application of First Step Act time credits. See figure 3 for a timeline of these events.

¹⁰⁸28 C.F.R. § 523.42(b)(1)-(2). See First Step Act Time Credits, 87 Fed. Reg. 2705 (Jan. 19, 2022) (codified at 28 C.F.R. pts. 523 and 541) (addressing comments related to when eligible incarcerated people could begin earning First Step Act time credits).

¹⁰⁹First Step Act Time Credits, 87 Fed. Reg. 2705, 2708 (Jan. 19, 2022) (codified at 28 C.F.R. pts. 523 and 541).

Figure 3: Timeline of the Department of Justice (DOJ) and Federal Bureau of Prisons (BOP) Implementation of the First Step Act Time Credit Procedure



Source: GAO analysis of DOJ and BOP documentation. | GAO-23-105139

Text for Figure 3: Timeline of the Department of Justice (DOJ) and Federal Bureau of Prisons (BOP) Implementation of the First Step Act Time Credit Procedure

Timeline

- Dec. 21, 2018: First Step Act enacted.
- Jan. 15, 2020: Statutory deadline for BOP to complete initial risk and needs assessments for all incarcerated people.
- Nov. 25, 2020: DOJ and BOP published the First Step Act proposed time credit rule in the Federal Register.
 - In preparation for the First Step Act time credit rule, BOP tracked data on incarcerated person's program participation to align with the proposed rule
- Apr. 28, 2021: BOP released the automated risk assessment system.^a
 - BOP reassessed people's risk assignment generated by the automated risk assessment system.
- Jan. 19, 2022: DOJ and BOP published the First Step Act Time Credits final rule in the Federal Register.
 - BOP began applying time credits based on presumption of participation for certain incarcerated people.^c
- Aug. 31, 2022: BOP launched the automated- calculation application for time credits, that was subsequently fully implemented after addressing technical issues.^b

Source: GAO analysis of DOJ and BOP documentation. | GAO-23-105139

^aThe automation of the risk assessment system was significant because BOP established the date of April 28, 2021 to determine an incarcerated person's initial risk level and the rate in which an incarcerated person is to earn First Step Act time credits.

^bWhen we refer to "time credits," in this report, we are specifically referring to First Step Act time credits under 18 U.S.C. § 3632(d)(4).

⁹Specifically, BOP identified a cohort of eligible incarcerated people, on a monthly basis, to manually calculate their earned First Step Act time credits. The cohort included incarcerated people who (a) were First Step Act eligible, (b) did not have a detainer, (c) were within 24 months of their projected release date, and (d) had a minimum or low risk level.

Under BOP's interim approach, BOP identified a cohort of eligible incarcerated people, on a monthly basis, to manually calculate their earned time credits. The cohort included incarcerated people who (a) were First Step Act eligible, (b) did not have a detainer,¹¹⁰ (c) were within 24 months of their projected release date, and (d) had a minimum or low PATTERN risk level. In addition, eligible incarcerated people may only earn First Step Act time credits when they are designated to a BOP facility and not, for example, in transit to a facility. BOP used the risk level assigned to people as of April 2021, when BOP performed an automated reassessment of the risk scores of all people in BOP custody to determine First Step Act time credit eligibility.

BOP based the interim procedure on a presumption of participation, which is not based on actual program participation or an incarcerated person's needs. According to BOP officials, this aligned with the final rule that indicated that eligible incarcerated people were to be awarded a presumption of participation for time that they were incarcerated from December 21, 2018, through January 14, 2020.¹¹¹ BOP calculated First Step Act time credits for these cohorts based on the number of days that they were incarcerated at a designated BOP facility without being in restrictive housing for disciplinary reasons or in Financial Responsibility Program Refuse status.¹¹² BOP then applied a one-time application of First Step Act time credits. Under its interim procedure, BOP applied time credits towards eligible incarcerated people's projected release dates,

¹¹⁰Detainers are formal requests for custody from a federal, state, or local jurisdiction upon completion of a person's current term of imprisonment. Incarcerated people could have detainers for pending criminal or non-criminal charges against them, such as deportation orders, parole violations, or unresolved child support payments.

¹¹¹First Step Act Time Credits, 87 Fed. Reg. 2705 (Jan. 19, 2022) (codified at 28 C.F.R. pts. 523 and 541).

¹¹²Specifically, BOP calculated First Step Act time credits based on the number of days that people were incarcerated starting from the enactment of the First Step Act on December 21, 2018 or the date of their current sentence if it was after this date. BOP then subtracted the number of days the person was in restrictive housing for disciplinary reasons or in Financial Responsibility Program Refuse status. BOP then used the resulting number of days, divided it by 30, and multiplied by 15 if they are low or minimum risk. The Financial Responsibility Program helps people develop a financial plan to complete obligatory payments, such as court-ordered restitutions, fines, and court costs. Incarcerated people placed in restrictive housing for non-disciplinary reasons are still eligible to be in earning status.

then towards placement in pre-release custody (i.e. Residential Reentry Center or home confinement).

Within 10 days of the First Step Act Time Credits final rule being published (between January 19, 2022, and January 29, 2022), BOP applied the interim procedure and subsequently transferred 1,090 incarcerated people to supervised release and 117 incarcerated people to prerelease custody, according to BOP documentation. A senior BOP official stated in July 2022 that BOP applied First Step Act time credits to all eligible incarcerated people's sentences that met the criteria for the priority cohort. By October 2022, BOP released 10,239 eligible incarcerated people under the First Step Act, according to BOP's website.

BOP used the interim procedure for calculating First Step Act time credits earned from December 21, 2018, until BOP implemented its automated-calculation application (September 6, 2022). As such, eligible incarcerated people who had their First Step Act time credits applied under the interim procedure were awarded a presumption of participation from December 21, 2018, (or the date they were designated to a BOP facility if after this date) through the date in which BOP conducted the one-time application—which could be after January 14, 2020. Under the interim procedure, BOP did not recalculate the First Step Act time credits eligible incarcerated persons earned and had applied to their sentence until BOP fully implemented the automated-calculation application for First Step Act time credits.¹¹³ As explained below, after implementation of this application, First Step Act time credits awarded based on the presumption of participation was generally limited to the time period provided in the First Step Act Time Credits final rule (December 21, 2018, through January 14, 2020).¹¹⁴

¹¹³BOP designed the interim procedure to apply earned First Step Act time credits. BOP does not apply ongoing time credit earned and/or applied to the incarcerated person's release date. Unit management staff are provided with information regarding the time credits earned and accumulated after BOP applied the one-time manual calculation of First Step Act time credits to apply these credits towards incarcerated people's pre-release custody placement.

¹¹⁴28 C.F.R. § 523.42.

BOP's Finalized Procedure Awards First Step Act Time Credits Based on an Earning Status

BOP Developed Earning Status Criteria

Through an August 2022 memorandum, BOP implemented its First Step Act time credit procedure that allows eligible incarcerated people to earn time credits based upon their 'earning status,' regardless of the number of evidence-based recidivism reduction programs or productive activities that they participate in, or agree to participate in, each day.¹¹⁵ To be in earning status, an eligible incarcerated person must meet the following criteria.

- The incarcerated person must have a BOP-identified need. If BOP staff do not identify a need, the incarcerated person must remain productive by participating in productive activities.
- The incarcerated person must agree to participate in all of the evidence-based recidivism reduction programs and productive activities recommended by BOP based on the person's needs or to remain productive, and cannot opt out of a recommended evidence-based recidivism reduction program or productive activity.¹¹⁶ BOP reported that in September 2022, over 38 percent of incarcerated people had opted out of First Step Act programs or productive activities—which includes people who may have been eligible to earn First Step Act time credits.¹¹⁷

¹¹⁵BOP initially communicated its procedures through various memorandums but has since also clarified some of its procedures in its program statement on First Step Act time credit procedures, issued in November 2022. See Department of Justice, Bureau of Prisons, *First Step Act of 2018 – Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4)*, 5410.01 (Nov. 18, 2022). In February 2023, BOP issued a revised program statement in which individuals with a detainer were able to apply FSA time credits. (Change Notice – Feb. 6, 2023).

¹¹⁶According to BOP officials, if an incarcerated person agrees to participate in one recommended evidence-based recidivism reduction program but refuses to participate in another evidence-based recidivism reduction program that addresses an identified need, the incarcerated person will no longer be in earning status.

¹¹⁷The percent of incarcerated people opting out of First Step Act programs or productive activities varied by facility—ranging from 2 percent to 86 percent.

- The incarcerated person does not have a designation status outside a BOP facility (i.e. medical placement) or BOP has not placed the person in restricted housing for disciplinary reasons.¹¹⁸
- An incarcerated person must have a PATTERN risk score and must have all of the 13 areas of needs assessed.¹¹⁹

The First Step Act states an eligible incarcerated person who successfully completes evidence-based recidivism reduction programming or productive activities is to earn First Step Act time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.¹²⁰ BOP officials noted that they designed their earning status criteria to account for items in the First Step Act Time Credits final rule.¹²¹ For example, under BOP's procedure, and consistent with the First Step Act Time Credits final rule, facility interruptions and program unavailability do not affect an incarcerated person's ability to be in earning status.¹²² As such, eligible incarcerated people can be in earning status while on a waitlist for a recommended

¹¹⁸28 C.F.R. § 523.41(c)(4). BOP's November 2022 program statement on First Step Act time credit procedures further clarified some circumstances for which incarcerated people would not be in earning status include placement in restricted housing for disciplinary reasons, designation status outside the BOP facility (e.g., an outside medical trip or escorted trip, in-transit or at an in-transit facility, a furlough for the full day, etc.); placement in the custody of another jurisdiction (e.g., on state or federal writ, transfer to state custody for service of sentence, transfer to another federal agency, etc.); placement in mental health/psychiatric holds; detention as a material witness or for civil contempt; placement in civil commitment; or choosing not to participate in the evidence-based recidivism reduction programs or productive activities that BOP recommended based on the person's individualized risk and needs assessment. According to the program statement, an incarcerated person must be out of a BOP facility for an entire 24-hour period before the person reverts to non-earning status. Upon return to the institution, the incarcerated person's earning status will resume.

¹¹⁹BOP officials provided examples of how they communicated this information to incarcerated people and staff. Specifically, BOP included such information in its 2022 newsletters for incarcerated people.

¹²⁰18 U.S.C. § 3632(d)(4)(A).

¹²¹28 C.F.R. pts. 523 and 541.

¹²²According to BOP officials, they do not need to establish a timeline for temporary interruptions because time credits are not tied to programming.

program that they have agreed to participate in to address one of their needs.¹²³

Subsequently, in its November 2022 First Step Act time credits program statement, BOP clarified that incarcerated people will remain in earning status for no more than two needs assessment periods while on any waitlist for such programs or activities, as long as the incarcerated person has not refused or declined to participate.¹²⁴ According to the program statement, should a person refuse or decline to participate in the recommended evidence-based recidivism reduction program or productive activity for which the incarcerated person had been on a waitlist, any First Step Act time credits earned will be rescinded to reflect the incarcerated person's refusal.¹²⁵

In addition, an eligible incarcerated person who has a minimum or low risk level may not have identifiable needs, or their identified needs may have been addressed through recommended evidence-based recidivism reduction programs. According to BOP officials, the incarcerated person will continue to be in earning status by agreeing to remain productive, which can include participation in evidence-based recidivism reduction programs and productive activities, as well as unstructured productive activities not defined as either. As stated previously, these activities could

¹²³28 C.F.R. § 523.41(c)(3). According to BOP union officials in November 2022, BOP staff reported that some incarcerated people may opt to move from one waitlist to another. For example, a person may be on a waitlist for one vocational program and before participating in the program, the person may elect to move to another vocational program that may also have a waitlist. However, BOP officials stated that staff are to recommend which programs incarcerated people should participate in based on their professional judgment.

¹²⁴According to BOP's First Step Act Needs Assessment program statement, unit management is to reassess individual needs every 180 days. As such, two assessment periods would be no more than 1 year. According to the First Step Act Time Credit program statement, the Regional Director can grant exceptions to the two-assessment period upon request from the warden.

¹²⁵If incarcerated people refuse or decline to participate in the recommended evidence-based recidivism reduction program or productive activity for which they had been on a waitlist, BOP staff are to enter the applicable decline code in SENTRY, and will consider people declined, or opted out, for the entire waitlist period. When a person declines participation after being on a waitlist, the auto-calculation application will first identify any need areas associated with the declined program and then identify the oldest waitlist associated with the need area(s). Any credits earned since the oldest waitlist associated with the need area, without intervening participation, will be rescinded to reflect the incarcerated person's refusal.

include work details, recreation, social visits, participation in religious services, teaching classes, and tutoring other incarcerated people.

Final Procedures Resulted in Changes to Incarcerated People's Time Credits

As part of its procedures, BOP implemented an automated-calculation application that experienced technical issues. Additionally, the automated-calculation application resulted in some incarcerated people earning fewer First Step Act time credits than were previously awarded under the interim approach. Specifically, BOP launched its automated-calculation application to its data system on August 31, 2022. According to BOP officials, they fully implemented the application by September 6, 2022. The application is to automatically calculate First Step Act time credits if an eligible incarcerated person is in earning status.¹²⁶ In addition, the automated-calculation application applies a presumption of program participation for people incarcerated from December 21, 2018, to January 14, 2020. During this interim period and through April 28, 2021—the date of PATTERN automation—BOP based an incarcerated person's PATTERN risk level on what it calculated in April 2021, when BOP automated the calculation of risk levels.

According to its August 2022 memo on the launch of the automated-calculation application for First Step Act time credits, BOP has up until 60 days of the launch of the automated-calculation application to calculate every incarcerated person's First Step Act time credits. On October 18, 2022, BOP officials stated that they had not completed calculations of First Step Act time credits under the automated-calculation application due to technical issues. Therefore, BOP was unable to provide the total number of eligible incarcerated people transferred to supervised release or prerelease custody as a result of the automated-calculation application. However, one week later on October 24, 2022, BOP officials told us the technical issues had been resolved, and they were moving forward with applying First Step Act time credits and adjusting eligible incarcerated

¹²⁶According to its November 2022 program statement, BOP will initially estimate a First Step Act projected release date by calculating the maximum number of potential First Step Act time credits that an incarcerated person may earn during incarceration based on the person's risk level. The First Step Act projected release date is subject to change during the person's incarceration and will be adjusted if the person's risk level changes or if the person is not in earning status. Incarcerated people with medium and high risk levels may earn time credits, but will not receive an estimated First Step Act projected release date. In addition, the program statement details additional information for incarcerated people who participate in the Residential Drug Abuse Program.

people's projected release dates. In November 2022, BOP officials stated that all incarcerated people had their First Step Act time credits calculated.

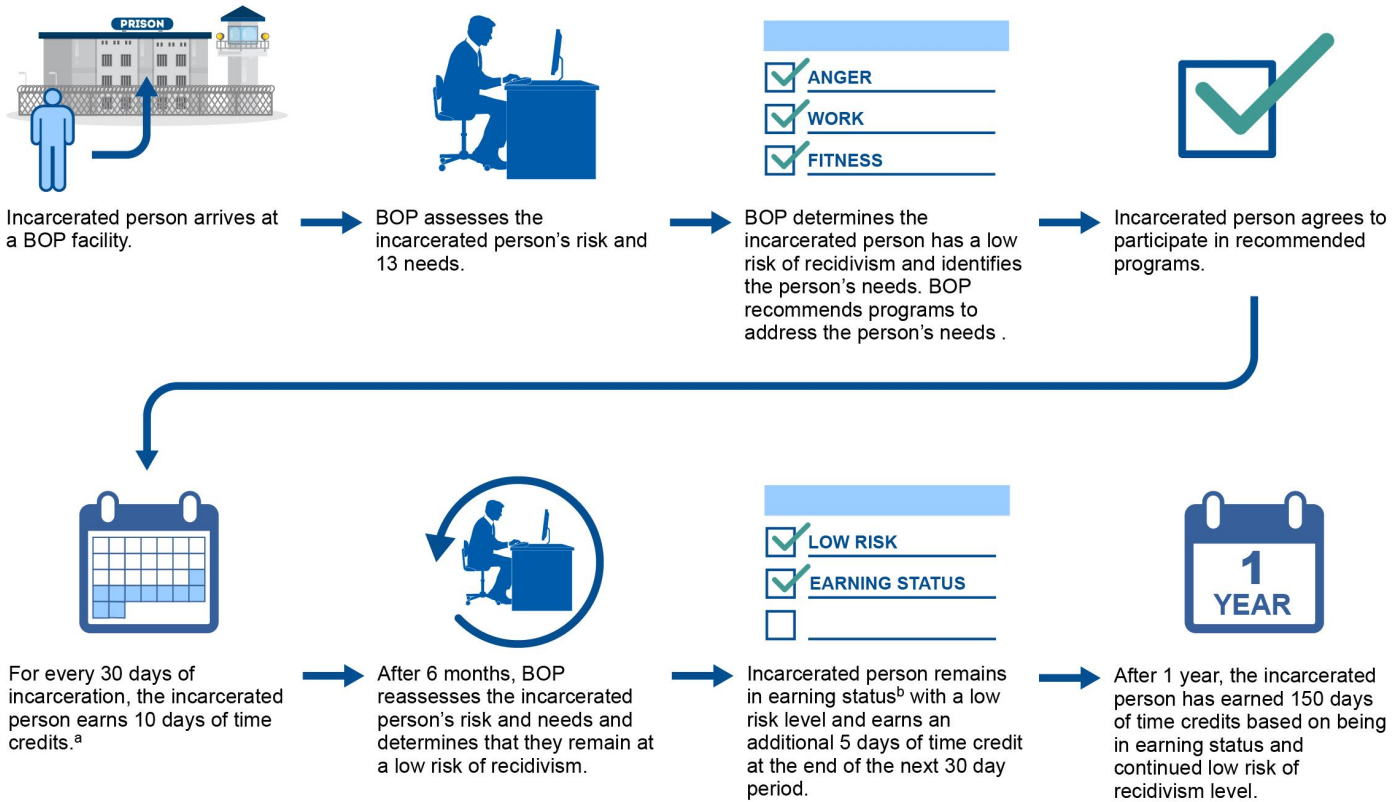
According to BOP officials, unlike the interim procedure, the automated-calculation application accounted for programs that incarcerated people refused or declined, as well as missing needs assessments. As a result, eligible incarcerated people may have had their First Step Act time credits reduced once BOP implemented the automated-calculation application. This includes incarcerated people who may not have had all 13 needs assessed, but were still able to earn First Step Act time credits under the interim procedure. Under BOP's August 2022 memorandum, incarcerated people who are eligible to earn First Step Act time credits must have a risk level and have completed all need assessments prior to earning time credits, beginning January 15, 2020. Subsequent to this, according to a November 2022 press release announcing the issuance of the First Step Act time credits program statement, BOP will accord a grace period to incarcerated people who have not completed all needs assessments or who have declined programs until December 31, 2022.¹²⁷ As such, a missing needs assessment would not result in a person being placed in non-earning status if they complete the assessment by December 31, 2022. Further, if incarcerated people declined a program prior to December 31, 2022, this will not result in them being placed in non-earning status.

According to the BOP officials, on October 24, 2022, the utilization of the automated-calculation application did not result in any individuals being eligible for immediate release. BOP officials stated that anyone BOP released under the interim procedure or who was within 2 months of their release would not have a change to their release date based under the auto-calculation application. As such, people already released from a prison would not have to return.

According to BOP, it will calculate eligible incarcerated people's First Step Act time credits on a monthly basis. Figure 4 shows an example of how an incarcerated person who maintains a low risk level may earn time credits in the course of one year.

¹²⁷In January 2023, BOP reported that First Step Act time credits will not be retroactively awarded for incarcerated people who complete their needs assessments after the grace period. For assessments completed after this, incarcerated people may be awarded First Step Act time credits 30 days after the date of the completed assessment.

Figure 4: Example of the First Step Act Time Credit Procedure for an Incarcerated Person that the Bureau of Prisons (BOP) Determined Has a Low Risk of Recidivism



Source: GAO analysis of DOJ and BOP documentation; artinspring/stock.adobe.com, Art Explosion. | GAO-23-105139

Text for Figure 4: Example of the First Step Act Time Credit Procedure for an Incarcerated Person that the Bureau of Prisons (BOP) Determined Has a Low Risk of Recidivism

Procedure

1. Incarcerated person arrives at a BOP facility.
2. BOP assesses the incarcerated person's risk and 13 needs.
3. BOP determines the incarcerated person has a low risk of recidivism and identifies the person's needs. BOP recommends programs to address the person's needs .
4. Incarcerated person agrees to participate in recommended programs.
5. For every 30 days of incarceration, the incarcerated person earns 10 days of time credits.^a
6. After 6 months, BOP reassesses the incarcerated person's risk and needs and determines that they remain at a low risk of recidivism.
7. Incarcerated person remains in earning status^b with a low risk level and earns an additional 5 days of time credit at the end of the next 30 day period.
8. After 1 year, the incarcerated person has earned 150 days of time credits based on being in earning status and continued low risk of recidivism level.

Source: GAO analysis of DOJ and BOP documentation; artinspring/stock.adobe.com, Art Explosion. | GAO-23-105139

Note: This figure provides an example of an incarcerated person that BOP has determined eligible to earn First Step Act time credits and a low risk of recidivism level. This process would differ for an eligible incarcerated person with a medium or high risk of recidivism level.

^aWhen we refer to “time credits,” in this report, we are specifically referring to First Step Act time credits under 18 U.S.C. § 3632(d)(4).

^bTo be in earning status, an incarcerated person must have a BOP identified need, agree to participate in all evidence-based recidivism reduction programs and productive activities recommended by BOP, and have a designation status within a BOP facility. If an incarcerated person does not have an identified need, they are to remain productive by participating in productive activities. Additionally, to be in earning status all 13 needs and risk level need to be assessed.

According to BOP, it will first apply earned First Step Act time credits towards eligible incarcerated people’s projected release dates, then towards placement in pre-release custody (i.e. Residential Reentry Center or home confinement). To earn credit toward early release, an incarcerated person must be otherwise eligible to participate in prerelease custody.¹²⁸ According to BOP, while people can continue to earn time credits, BOP will apply First Step Act time credits only if they have no unresolved pending charges or unresolved immigration status issues.¹²⁹ According to its August 2022 memorandum, eligible people will continue to earn time credits toward early release until they have accumulated 365 days or are within 18 months of their release date.¹³⁰ At that point, an incarcerated person’s release date becomes fixed, and BOP is to apply all additional time credits earned toward pre-release custody.

BOP Addressed the Application of Time Credits for Medium and High Risk Incarcerated People

BOP’s November 2022 program statement also addressed how incarcerated people with medium and high risk levels can petition to have their First Step Act time credits applied.¹³¹ Generally, under the First Step Act, an eligible incarcerated person with a medium or high risk of recidivism must satisfy certain First Step Act requirements and petition

¹²⁸28 C.F.R. § 523.44.

¹²⁹Previously, incarcerated people with a detainer were not able to apply FSA time credits. *First Step Act of 2018 – Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4)*, 5410.01 (Nov. 18, 2022). (Change Notice – Feb. 6, 2023).

¹³⁰BOP does not specifically address this issue in the November 2022 First Step Act Time Credit program statement. In addition, according to a press release announcing BOP’s November 2022 program statement on time credits, incarcerated people will be able to continue earning First Step Act time credit while in the community, so long as they continue to successfully comply with all the rules and procedures of pre-release custody. BOP does not detail this in the program statement.

¹³¹BOP did not previously address this in the August 2022 memorandum.

the warden to transfer to prerelease custody or supervised release and have the petition approved to apply earned First Step Act time credits.¹³²

Specifically, according to the November 2022 program statement, incarcerated people with a medium or high risk level are to initiate a request to have their First Step Act time credits applied by submitting an Inmate Request to Staff form during their regularly scheduled program review meetings. The unit managers are to then submit a request, along with the unit team's recommendation, to the warden for final decision. The warden is to consult with the Regional Director before approving the request, unless an exemption is granted by the Regional Director.

According to the First Step Act, BOP may apply time credits if the warden approves an incarcerated person's petition to transfer to prerelease custody or supervised release. Under the First Step Act, in order to approve this petition, a warden must determine that an incarcerated person (a) would not be a danger to society if transferred to prerelease custody or supervised release, (b) has made a good faith effort to lower their recidivism risk through participation in evidence-based recidivism reduction programs or productive activities, and (c) is unlikely to recidivate.¹³³ According to BOP's November 2022 program statement, incarcerated people with a medium or high level must demonstrate a good faith effort to lower their recidivism risk by demonstrating the following.

- Maintaining clear conduct for at least 3 years from the date of the request.
- Successfully completing at least one of the residential evidence-based recidivism reduction programs recommended based on an identified need area within the past 5 years, if BOP assigned any.
- Otherwise being compliant with all the other requirements of the program statement with regard to successful program participation.

Prior to the issuance of this November 2022 program statement, BOP officials stated that incarcerated people could use the Administrative Remedy Process—BOP's formal complaint process—to petition the warden to apply their earned First Step Act time credits towards their

¹³²18 U.S.C. § 3624(g).

¹³³18 U.S.C. § 3624(g)(1)(D)(i)(II).

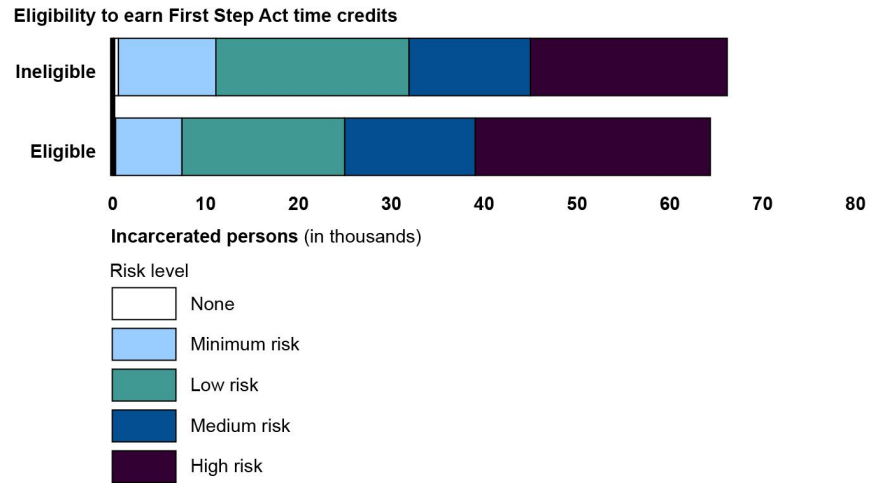
projected release date.¹³⁴ BOP officials stated that they communicated this process through national training for case management coordinators and routine trainings with legal staff throughout BOP. As of October 2022, BOP reported that no eligible incarcerated people with a medium or high risk level has had their First Step Act time credits applied towards their projected release date. In June and November 2022—prior to this issuance of the First Step Act time credit program statement, BOP union officials stated that such a program statement would be important because there had been confusion among BOP staff regarding the implementation of First Step Act time credits due to the lack of guidance and delay in the issuance of program statement. According to BOP officials, they first had to negotiate the policy with the union.

Our analysis of BOP data found that of the 131,831 incarcerated people in a BOP facility as of January 29, 2022, BOP completed the First Step Act eligibility assessment for 99 percent (130,537) of people.¹³⁵ Nearly 49 percent of people incarcerated (64,355 of 131,831) as of January 29, 2022 were eligible to earn First Step Act time credits. As shown in Figure 5, 39,394 incarcerated people who were eligible to earn First Step Act time credits as of January 29, 2022 were not able to have their First Step Act time credits applied because of their medium or high risk level status. These incarcerated people could have potentially petitioned for the application of their earned First Step Act time credits. It is too soon to tell whether the November 2022 program statement will result in incarcerated people with medium or high risk levels to petition the warden to have their earned First Step Act time credits applied towards their projected release date.

¹³⁴Incarcerated people can submit complaints at the facility level for resolution, with the option to appeal to BOP's regional offices and further appeal to the Central Office if the complaint is not resolved.

¹³⁵Our analysis included all convicted and sentenced adults in BOP custody.

Figure 5: Percent of Incarcerated People in the Federal Bureau of Prison’s (BOP) Custody as of January 29, 2022, by Time Credit Eligibility and Risk Level



Source: GAO analysis of BOP data. | GAO-23-105139

Data for Figure 5: Percent of Incarcerated People in the Federal Bureau of Prison’s (BOP) Custody as of January 29, 2022, by Time Credit Eligibility and Risk Level

Risk Level	Eligibility to earn First Step time credits: Ineligible	Eligibility to earn First Step time credits: Eligible
None	584	280
Minimum risk	10509	7159
Low risk	20802	17522
Medium risk	13086	14056
High risk	21201	25338

Source: GAO analysis of BOP data. | GAO-23-105139

Note: 1,294 incarcerated people did not have an eligibility assessment as of January 29, 2022. Of the incarcerated people who did not have an eligibility assessment, 934 did not have a risk assessment.

Conclusions

The ability of formerly incarcerated individuals to be productive members of society can be strengthened by their preparation to reenter the community. Given that approximately 45 percent of people released from federal prisons return to prison, ensuring that BOP effectively implements the First Step Act is important. While DOJ and BOP have taken steps to implement various aspects of the First Step Act, additional actions are needed to ensure the success of their efforts.

Specifically, BOP must assess an incarcerated person's risk and needs prior to recommending evidence-based recidivism reduction programs and productive activities for which the person can subsequently earn First Step Act time credits. As such, it is important that BOP be positioned to collect readily-available, complete, accurate data to determine if all assessments are conducted on time, and that it monitors such efforts and takes corrective actions, if needed. In addition, because evidence-based recidivism reduction programs are intended to lower an incarcerated person's risk of recidivism, it is critical that BOP have a plan to ensure programs' evaluations are conducted in a timely manner, and are achieving their intended results of reducing recidivism. BOP will also need to determine if it is offering a sufficient amount of evidence-based recidivism reduction programs and productive activities to meet the needs of its population. Lastly, it is important that BOP documents all available programming for which incarcerated people can earn First Step Act time credits, including unstructured productive programs, and that it is appropriately aware of who is participating in such programs. Taking such actions may help ensure that BOP's actions are consistent with the First Step Act's goal of reducing recidivism among federally incarcerated people.

Recommendations for Executive Action

We are making the following eight recommendations to BOP:

The Director of BOP should collect and maintain complete and accurate data in a readily-available format on First Step Act risk and needs assessments, including the actual dates when First Step Act risk and needs assessments and reassessments are conducted.

(Recommendation 1)

The Director of BOP should ensure that the monitoring efforts it implements can determine if BOP is conducting risk and needs assessments in accordance with First Step Act required and BOP internal timeframes. (Recommendation 2)

The Director of BOP should use and document the results of its ongoing monitoring of the frequency at which it conducts risk and needs assessments, and take appropriate corrective actions, as needed.

(Recommendation 3)

The Director of BOP should ensure its plan for evaluating evidence-based recidivism reduction programs has pre-established, quantifiable goals that align with the First Step Act, and includes clear milestone dates. (Recommendation 4)

The Director of BOP should evaluate its evidence-based recidivism reduction programs, according to the plan established. (Recommendation 5)

The Director of BOP should develop a mechanism to monitor, on an ongoing basis, if it is offering a sufficient amount of evidence-based recidivism reduction programs and productive activities to meet the needs of its incarcerated population. (Recommendation 6)

The Director of BOP should document a complete list of all the unstructured productive activities that incarcerated people are able to participate in and earn First Step Act time credits. (Recommendation 7)

The Director of BOP should collect and monitor participation data for unstructured productive activities that incarcerated people are able to participate in and earn First Step Act time credits. (Recommendation 8)

Agency Comments and Our Evaluation

We provided a draft of this report to DOJ for review and comment. BOP provided written comments. See appendix VIII for a reproduction of BOP's comments. DOJ also provided technical comments, which we have incorporated as appropriate.

In its written response, BOP stated that it concurred with recommendations 1 through 6.

In response to recommendation 1, BOP stated it will continue its ongoing efforts to ensure that its current technology collects and maintains complete and accurate data on risk and needs assessments, including dates these assessments are conducted, in a readily available format. In addition, BOP stated that it currently captures information on risk and needs assessments, including dates they were conducted. While BOP collects some data on these assessments, as acknowledged in our report, BOP officials reported that these data were not accurate or complete. Therefore, by implementing our recommendation, BOP will be

better positioned to ensure that it has complete and accurate data in a readily available format.

In response to recommendation 2, BOP stated it will continue its ongoing efforts to ensure that its current monitoring efforts can determine whether risk and needs assessments are conducted in accordance with the First Step Act and BOP internal timeframes. The actions BOP described, if implemented effectively, would address our recommendation.

In response to recommendation 3, BOP stated it will continue its ongoing efforts to use and document the results of monitoring the frequency of risk and needs assessments and take appropriate corrective actions as needed, to ensure these assessments are conducted within the statutorily required timeframes. In addition, BOP stated it is contracting for a quality assurance audit to verify if it is conducting risk and needs assessments within the First Step Act required timeframes.¹³⁶ If implemented effectively, these actions would better position BOP to ensure it is conducting assessments in accordance with the First Step Act requirements, and take corrective actions, as needed. However, as noted in our report, BOP's policy also requires that assessments take place on a more frequent basis. Furthermore, the frequency of such assessments may have a direct effect on the amount of time credits an incarcerated person may earn. Therefore, BOP would also need to ensure that it uses and documents the results of its ongoing monitoring to include both First Step Act and BOP internal timeframes.

In response to recommendations 4 and 5, BOP stated it has a plan to evaluate evidence-based recidivism reduction programs which includes pre-established, quantifiable goals. In addition, BOP stated its milestones will be finalized as BOP learns to gauge its capacity and 14 evaluations are currently underway. As noted in our report, we have previously reported that BOP has not evaluated its programs, and missed the dates it set to conduct evaluations. In addition, we noted that BOP did not include pre-established, quantifiable goals in the evaluation plan that align with the requirements in the First Step Act. Specifically, the Attorney General is required to conduct ongoing research on which evidence-based recidivism reduction programs are the most effective at reducing recidivism, and the type, amount, and intensity of programming that most effectively reduces the risk of recidivism.¹³⁷ Therefore, by implementing our recommendations, BOP will be better positioned to ensure its

¹³⁶18 U.S.C. § 3632(d)(5).

¹³⁷18 U.S.C. § 3631(b)(3)(C).

evaluations are conducted in a timely manner, and align with requirements in the First Step Act.

In response to recommendation 6 that BOP develop a mechanism to monitor if it is offering a sufficient amount of evidence-based recidivism reduction programs and productive activities on an ongoing basis, BOP stated it has contracted to make this information available in a dashboard format that is continually updated. Further, BOP stated the technology currently being developed will offer information on the programs offered by each facility and the needs of the incarcerated people within that facility, and such information could be used to identify unmet needs. The actions BOP described, if implemented effectively, would address our recommendation.

BOP did not concur with recommendations 7 and 8 which called for BOP to:

- document a complete list of all the unstructured productive activities that incarcerated people are able to participate in and earn First Step Act time credits; and
- collect and monitor participation data for unstructured productive activities that incarcerated people are able to participate in and earn First Step Act time credits.

In its response, BOP stated that it was not statutorily required nor would it be helpful to document a complete list of, or monitor, unstructured productive activities because they are naturally occurring activities that may not directly result from a risk and needs assessment recommendation. These unstructured productive activities include work details for those with no identified work need, recreation, social visits, participation in religious services, teaching classes, and tutoring. BOP noted that these unstructured productive activities are an expression of skills learned in evidence-based recidivism reduction programs, and may include such activities as writing age-appropriate letters to minor children, engaging in self-care, and managing anger appropriately.

Additionally, BOP stated that documenting a complete list of unstructured productive activities would be infeasible and may negatively affect incarcerated people. More specifically, BOP stated pro-social activities of daily living are unstructured. Therefore, BOP stated it would be infeasible to produce a comprehensive catalog. Additionally, BOP noted that cataloging such activities could negatively affect an incarcerated person's willingness to engage in pro-social behavior by creating apprehension

that "successful participation" status can only occur if an incarcerated person participates in activities on the list.

We acknowledge that the First Step Act and implementing regulations do not explicitly require BOP to document a complete list of evidence-based recidivism reduction programs and productive activities, including unstructured productive activities. However, the First Step Act and implementing regulations provide an opportunity for an eligible incarcerated person to earn First Step Act time credits if they successfully participate in programs or productive activities recommended based on their risk and needs assessment.¹³⁸ By regulation, "[s]uccessful participation' requires a determination by Bureau staff that an eligible inmate has participated in the [evidence-based recidivism reduction] programs or [productive activities] that the Bureau has recommended based on the inmate's individualized risk and needs assessment, and has complied with the requirements of each particular [evidence-based recidivism reduction p]rogram or [productive activity]."¹³⁹ Further, BOP's November 2022 time credit procedures and January 2023 First Step Act Approved Programs Guide establish that eligible incarcerated people who successfully participate in productive activities, including unstructured productive activities, may earn time credits. The intent of our recommendations is for BOP to be transparent in a process that BOP has already implemented and established in policy. Documenting such a list would not change how BOP currently approaches unstructured productive activities. Rather, this would help BOP to formalize the activities that BOP already accepts for earning time credits. The list also would not preclude BOP from adding additional activities in the future.

Without a complete list of unstructured productive activities, it is unclear what BOP considers unstructured productive activities consistent with the statutory definition of a productive activity.¹⁴⁰ It is also unclear which

¹³⁸18 U.S.C. § 3632(a)(5), (d)(4). 28 C.F.R. § 523.40(b). Department of Justice, Bureau of Prisons, *First Step Act of 2018 - Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4)*, 5410.01 (Washington, D.C.: Nov. 18, 2022)(Change Notice – Feb. 6, 2023).

¹³⁹28 C.F.R. § 523.41(c)(2).

¹⁴⁰Pursuant to 18 U.S.C. § 3635(5), "[t]he term 'productive activity' means either a group or individual activity that is designed to allow prisoners determined as having a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating, and may include the delivery of the programs described in paragraph (1) [sic] to other prisoners." (So in original. Probably should be "paragraph (3)" in reference to evidence-based recidivism reduction program definition.)

unstructured productive activities will provide eligible incarcerated people the opportunity to earn time credits, and whether BOP will be able to consistently apply time credits across incarcerated people. By documenting a complete list of the unstructured productive activities, BOP could help ensure it is able to provide transparent information to incarcerated people and BOP staff on which activities people can participate in that may earn time credits in accordance with the First Step Act, implementing regulations, and BOP guidance. Further, by collecting and monitoring participation in unstructured productive activities, BOP will be better positioned to know the status of each incarcerated person's successful participation for purposes of time credits. Such steps could also help to ensure consistent application of criteria across BOP and among eligible incarcerated people.

In addition, collecting and monitoring participation in unstructured productive activities will position DOJ and BOP to respond to other requirements in the First Step Act. Specifically, the Attorney General is to submit a report that contains a summary and assessment of the types and effectiveness of the evidence-based recidivism reduction programs and productive activities in prisons operated by the BOP, including—(A) evidence about which programs have been shown to reduce recidivism; (B) the capacity of each program and activity at each prison, including the number of incarcerated persons along with the recidivism risk of each incarcerated person enrolled in each program; and (C) identification of any gaps or shortages in capacity of such programs and activities.¹⁴¹ In addition, the Attorney General's report is to include the rates of recidivism among people released from federal prison based on a number of criteria, including the evidence-based recidivism reduction programming and productive activities that the incarcerated person successfully completed, if any.¹⁴² Accordingly, implementing our recommendations regarding unstructured activities will also help enable BOP and the Attorney General to fully meet these other First Step Act's requirements.

Pursuant to a provision of the First Step Act for us to assess the implementation of certain requirements of the First Step Act, we will continue to review BOP's administration of the risk and needs assessment system, including the use of unstructured productive activities and related requirements in statute, regulation, and BOP policy.

¹⁴¹18 U.S.C. § 3634(2).

¹⁴²18 U.S.C. § 3634(3)(D), (F).

We are sending copies of this report to the appropriate congressional committees and DOJ. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

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

A handwritten signature in black ink that reads "Gretta L. Goodwin". The signature is written in a cursive style with a large, stylized initial "G".

Gretta L. Goodwin
Director
Homeland Security and Justice

List of Committees

The Honorable Dick Durbin
Chair
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jeanne Shaheen
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Subcommittee on Commerce, Justice, Science, and Related Agencies
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House of Representatives

The Honorable Hal Rogers
Chair
The Honorable Matt Cartwright
Ranking Member
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
House of Representatives

Appendix I: Glossary of Key Terms Related to the First Step Act of 2018 on its Risk and Needs Assessment System

Table 2: Key Terms Related to the First Step Act of 2018 on its Risk and Needs Assessment System

lowness	Term	Description
Terms Related to Risk and Needs Assessments	Recidivism	The Department of Justice (DOJ) defines recidivism as (a) a new arrest within 3 years of release or (b) a return to federal prison within 3 years of release.
	Recidivism risk	The likelihood that a person may continue to engage in unlawful behavior once released from prison.
	Criminogenic needs	Factors in a person’s life that, if addressed, could help reduce a person’s recidivism risk.
	Risk and Needs Assessment System	The risk and needs assessment system is to be used by Bureau of Prisons (BOP) to assess both recidivism risk and the needs of incarcerated people. BOP staff are to use the risk and needs assessment system to determine the type and amount of programming appropriate for each incarcerated person and to assign recommended programming based on the incarcerated person’s specific needs. DOJ’s risk and needs assessment system is composed of two parts: the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN) and the Standardized Prisoner Assessment for Reduction in Criminality (SPARC-13).
	PATTERN	PATTERN is DOJ’s risk assessment system that BOP staff are to use to measure an incarcerated person’s risk of recidivism. PATTERN includes factors an incarcerated person can change over time (dynamic factor) and factors an incarcerated person cannot change (static factors). PATTERN includes different predictive models and scales based on whether an incarcerated person is female or male because risk factors vary among males and females. Thus, PATTERN uses different “cut points” for each group to account for gender differences in their risks. PATTERN classifies incarcerated people’s level of risk of recidivism as a minimum, low, medium, or high- based on their numerical risk score and applicable cut points. Risk level affects the amount of First Step Act time credits that an incarcerated person may earn during every 30-day period, and the process for determining whether First Step Act time credits are applied. BOP is to use PATTERN to predict general recidivism (any arrest or return to BOP custody following release) and violent recidivism (arrests for an act of violence following release).

**Appendix I: Glossary of Key Terms Related to
the First Step Act of 2018 on its Risk and
Needs Assessment System**

lowness	Term	Description
	SPARC-13	SPARC-13 is BOP's needs assessment system that BOP staff are to use to identify incarcerated people's needs that, if addressed, may reduce their recidivism risk. BOP is to assess people's needs in 13 areas, including anger/hostility, antisocial peers, cognitions, dyslexia, education, family/parenting, finance/poverty, medical, mental health, recreation/leisure/fitness, substance use, trauma, and work. Different BOP units are responsible for assessing specific needs, some of which require the voluntary participation of the incarcerated person. Facility unit management staff are to reassess each of the needs through different mechanisms
Terms Related to Programming	Evidence-Based Recidivism Reduction Programs	An evidence-based recidivism reduction program is either a group or individual activity that has been shown by empirical evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism; and is designed to help people succeed in their communities upon release from prison. ^a
	Productive activity	A productive activity is either a group or individual activity that is designed to allow incarcerated people determined as having a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating. ^b
Terms Related to Time Credits	First Step Act time credits	First Step Act time credits may reduce the amount of time an incarcerated person spends in federal prison. Incarcerated people can earn First Step Act time credits for the application toward early transfer to prerelease custody (i.e., home confinement or Residential Reentry Centers) or to supervised release if they meet certain First Step Act eligibility requirements. ^c Specifically, under the First Step Act, eligible incarcerated people who successfully complete evidence-based recidivism reduction programming or productive activities are to earn 10 days of First Step Act time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities. An eligible incarcerated person determined by BOP to be at a minimum or low risk for recidivating, who, over two consecutive assessments has not increased their risk of recidivism, may earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programs or productive activities. ^d According to BOP, and in accordance with discretion given to the BOP Director under the First Step Act, time credits may first be applied towards eligible incarcerated people's projected release date (up to a maximum of 365 days), then towards placement in prerelease custody. An eligible incarcerated person with a medium or high-risk level must petition the warden to have their earned First Step Act time credits applied toward prerelease custody.

**Appendix I: Glossary of Key Terms Related to
the First Step Act of 2018 on its Risk and
Needs Assessment System**

lowness	Term	Description
	First Step Act Eligibility	<p>According to the First Step Act, incarcerated people are to be eligible to earn time credits for successfully participating in evidence-based recidivism reduction programs or productive activities. An incarcerated person is ineligible to receive First Step Act time credits if they are serving a sentence for a disqualifying conviction or a disqualifying prior conviction as specified in the First Step Act.^e In addition, an incarcerated person is ineligible to apply First Step Act time credits if the incarcerated person is the subject of a final order of removal under any provision of the immigration laws defined in 8 U.S.C. § 1101(a)(17).^f Incarcerated people who are ineligible to receive or apply First Step Act time credits may still earn other rewards and incentives for successfully participating in evidence-based recidivism reduction programs and productive activities. For example, these individuals may earn increased phone and video conferencing privileges and additional time for visitation at the prison, as determined by the warden and per the policy guiding the issuance of First Step Act incentives.^g In order to have their time credits applied, eligible incarcerated people generally must demonstrate low or minimum PATTERN risk level designations over the most recent two consecutive assessment and must have accrued time credits in an amount that is equal to the remainder of the person's imposed term of imprisonment.^h</p>
	Earning status	<p>To be in earning status, an eligible incarcerated person must meet the following criteria.</p> <p>The incarcerated person must have a BOP-identified need. If BOP staff do not identify a need, the incarcerated person must remain productive by participating in productive activities.</p> <p>The incarcerated person must agree to participate in all of the evidence-based recidivism reduction programs and productive activities recommended by BOP based on their needs or to remain productive,ⁱ and cannot opt out of a recommended evidence-based recidivism reduction program or productive activity.^j</p> <p>The incarcerated person does not have a designation status outside a BOP facility (i.e. medical placement) or BOP has placed the person in restricted housing for disciplinary reasons.^k</p> <p>An incarcerated person must have a PATTERN risk score and must have all of the 13 areas of needs assessed.</p>
	Prerelease custody	<p>Prerelease custody is lower-security conditions of confinement that help prepare incarcerated person for eventual release. Types of prerelease custody include home confinement and Residential Reentry Centers.</p> <p>Home confinement allows eligible incarcerated people in federal prison and nearing release to transfer to a home or residence to serve the remainder of their sentence. People placed in home confinement are monitored by BOP and are required to remain at home when not working or participating in programming and other approved activities.</p> <p>Residential Reentry Centers, or halfway houses, are contracted by BOP to provide assistance to people in the form of employment counseling, job placement, financial management assistance, and other services in a structured and supervised environment.</p>

**Appendix I: Glossary of Key Terms Related to
the First Step Act of 2018 on its Risk and
Needs Assessment System**

lowness	Term	Description
	Supervised release	Supervised release is an additional term of supervision imposed by a court for an incarcerated person and begins when the incarcerated person completes their full custody sentence.

Source: GAO analysis of DOJ and BOP documentation. | GAO-23-105139

^a18 U.S.C. § 3635(3).

^b18 U.S.C. § 3635(5).

^c18 U.S.C. 3632(d)(4)(A)-(C). First Step Act time credits are distinct from good conduct time credits. Incarcerated people can earn credits for good conduct time for good behavior, which is described in law as “exemplary compliance with institutional disciplinary regulations.” Good conduct time credits reduce a person’s time in BOP custody. See 18 U.S.C. § 3624(b).

^d18 U.S.C. § 3632(d)(4)(A).

^e18 U.S.C. § 3632(d)(4)(D) (listing the disqualifying offenses).

^f18 U.S.C. § 3632(d)(4)(E).

^gDOJ, BOP, First Step Act Program Incentives 5220.01 (Washington, D.C.: July 14, 2021). 18 U.S.C. § 3632(d)(1)-(3).

^hSee 18 U.S.C. § 3624(g)(1)(A)-(D)(i)(I).

ⁱIf a person agrees to participate in one recommended evidence-based recidivism reduction program but refuses to participate in another evidence-based recidivism reduction program that addresses an identified need, the incarcerated person will no longer be in earning status.

^jThe percent of incarcerated people opting out of First Step Act programs or activities varied by facility—ranging from 2 percent to 86 percent.

^kEligible incarcerated people may only earn First Step Act time credits when they are in “designated status”—meaning they are designated to a BOP facility and not, for example, in transit to a facility.

Appendix II: Federal Bureau of Prisons (BOP) Mechanisms Used to Assess Incarcerated People's Needs

BOP staff utilize various mechanisms to make assessment determinations, such as standardized assessments to assess incarcerated people's needs. These mechanisms vary across the needs and between the initial assessment and reassessment of each need, as shown in table 3.

Initial assessment. For initial needs assessments, upon an incarcerated person's arrival at a designated facility, BOP facility staff are to use a variety of mechanisms to complete the initial needs assessments, such as interviews conducted by BOP officials, questionnaires completed by incarcerated people, or a review of a Presentence Investigation Report.¹ According to BOP documentation, BOP facility units are responsible for assessing certain needs. For example, during intake process, health services is responsible for assessing the Medical and Recreation/Leisure/Fitness needs, the education staff assesses Dyslexia, Education, and Work, and psychology services is responsible for Trauma and Mental Health. In addition, unit management staff are to assess Substance Use during initial intake and Finance/Poverty at the first team meeting. According to BOP officials, incarcerated people voluntarily complete assessments for Anger/Hostility, Antisocial Peers, Cognitions, and Family/Parenting on the BOP's computer system. BOP is to advise people of the assessments at Admission and Orientation, and BOP staff are to remind people of the assessments at intakes with various departments. Additionally, BOP's computer system has a bulletin that details the availability of the assessments.

¹Presentence Investigation Report is a structured report required by law to be conducted by a U.S. Probation Officer prior to a defendant's sentencing. A Presentence Investigation Report contains information from various sources, including criminal history records, educational systems, hospitals and counseling centers, family members, and associates.

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Reassessment. Needs reassessments are based on data that are automatically extracted from SENTRY, such as whether a person completed a recommended program or was sanctioned for a prohibited act since the last assessment.² BOP unit management staff are to provide the reassessment results to the incarcerated person during the program review team meeting.

According to BOP officials, there are several reasons why BOP's initial assessment and reassessment mechanisms differ. For example, BOP conducts reassessments to determine whether the need has changed throughout the individual's incarceration. Thus, factors used to perform a reassessment may differ from factors used for assessment, especially if the evaluation factors have been updated or are no longer applicable to that individual person. Additionally, BOP staff noted that assessment fatigue can set in and using the initial mechanisms every 6 months may decrease a person's willingness to do reassessments.

Table 3: The Federal Bureau of Prison's (BOP) Mechanisms Used to Assess Needs for Incarcerated People, by Area of Need and BOP Facility Unit

Area of need	BOP Facility Department	Mechanisms used to inform needs assessments: Initial Assessments	Mechanisms used to inform needs assessments: Reassessments
Anger/hostility	Psychology Services	Brief Anger Aggression Questionnaire (Maiuro, Vitaliano, & Cahn, 1987) is a questionnaire completed by incarcerated people to measure levels of overt anger and aggression.	Data pulled from SENTRY on whether the person: ^a (1) has been sanctioned for any of certain prohibited acts in the last six months, such as killing, setting fire, or rioting; and, (2) has a need based on the initial assessment and, if so, has completed an evidence-based recidivism reduction program or productive activity in the last six months that satisfies the need.
Antisocial peers	Psychology Services	Measures of Criminal Attitudes and Associates (MCAA) is a two-part self-report measure of criminal thinking style and antisocial associates completed by incarcerated people. Part A is a quantified self-report measure of antisocial associates. Part B contains four attitude scales: Violence, Entitlement, Antisocial Intent, and Associates.	Data pulled from SENTRY on whether the person: (1) has been sanctioned for any of certain prohibited acts in the last six months, such as rioting or encouraging refusal of work; and, (2) has a need based on the initial assessment and, if so, has completed an evidence-based recidivism reduction program or productive activity in the last six months that satisfies the need.

²SENTRY is BOP's case management database for incarcerated people.

**Appendix II: Federal Bureau of Prisons (BOP)
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Area of need	BOP Facility Department	Mechanisms used to inform needs assessments: Initial Assessments	Mechanisms used to inform needs assessments: Reassessments
Cognitions	Psychology Services	MCAA	Data pulled from SENTRY on whether the person: (1) has been sanctioned for any of certain prohibited acts in the last six months; and, (2) has a need based on the initial assessment and, if so, has completed an evidence-based recidivism reduction program or productive activity in the last six months that satisfies the need.
Dyslexia	Education	A two-phase screening process. First, people complete a screening instrument that examines symptoms across functional domains. People who reach the threshold are then administered the Woodcock Johnson IV, a psychometrically robust test capable of formal diagnosis.	BOP does not reassess this need.
Education	Education	Presence or absence of a high school equivalence. Measures used for assessing achievement on core content areas are the Test of Adult Basic Education (TABE) and Comprehensive Adult Student Assessments System (CASAS), which is used exclusively for English as a Second Language learners.	Data pulled from SENTRY on whether the person has a need based on the initial assessment (i.e. has a high school diploma or GED) and, if so, has completed an evidence-based recidivism reduction program or productive activity in the last six months that satisfies the need.
Family/parenting	Psychology Services	The Family Assessment Device is a questionnaire completed by incarcerated people related to a person's perception of their family's relationships.	Data pulled from SENTRY on whether the person has a need based on the initial assessment and, if so, has completed an evidence-based recidivism reduction program or productive activity in the last six months that satisfies the need.
Finance/poverty	Unit Management	A series of questions and information drawn from the Presentence Investigation Report. ^b	Data pulled from SENTRY on whether the person has a need based on the initial assessment and, if so, has completed an evidence-based recidivism reduction program or productive activity in the last six months that satisfies the need.
Medical	Health Services	The assessment is performed through a history and physical conducted 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.	Data on medical care.
Mental Health	Psychology Services	Psychology Services Inmate Questionnaire is a structured interview tool and functions as a self-report instrument delivered to incarcerated people upon arrival to an institution. People 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).	Data on mental health care.

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Area of need	BOP Facility Department	Mechanisms used to inform needs assessments: Initial Assessments	Mechanisms used to inform needs assessments: Reassessments
Recreation/ Leisure/ Fitness	Health Services	Chronic care clinics are an agency-wide categorization and standardization tool to ensure that people with ongoing medical needs can be tracked and seen by a health care provider.	Data pulled from SENTRY on whether the person has a need based on the initial assessment and, if so, has completed an evidence-based recidivism reduction program or productive activity in the last six months that satisfies the need.
Substance Use	Unit Management	The Presentence Investigation Report which includes an overview of an incarcerated person's recent and remote substance use history. Additional assessment occurs via interviews with drug treatment staff.	Data pulled from SENTRY on whether the person: (1) has been sanctioned for any of certain prohibited acts in the last six months, such as refusing to take a drug or alcohol test, or using or possessing drugs/ drug items/alcohol; and, (2) has a need based on the initial assessment and, if so, completed an evidence-based recidivism reduction program or productive activity in the last six months that satisfies the need.
Trauma	Psychology Services	Adverse Childhood Experiences Scale is a tool that measures childhood exposure to trauma: psychological, physical, or sexual abuse, neglect, mental illness, domestic violence, divorce, and having a parent in prison.	Data pulled from SENTRY on whether the person has a need based on the initial assessment and, if so, has completed an evidence-based recidivism reduction program or productive activity in the last six months that satisfies the need.
Work	Education	A series of questions and information drawn from the Presentence Investigation Report.	Data pulled from SENTRY on whether the person: (1) has been sanctioned for any of certain prohibited acts in the last six months, such as refusing work/program assignment, being absent from work assignment or failing to work as instructed; and, (2) has a need based on the initial assessment and, if so, completed an evidence-based recidivism reduction program or productive activity in the last six months that satisfies the need.

Source: GAO analysis of BOP documentation. | GAO 23 105139

Note: For the following areas of needs, incarcerated people have to complete assessments on the BOP's computer system in order to have this need assessed: the Anger/Hostility, Antisocial Peers, Cognitions, and Family/Parenting. If the person chooses not to complete one of assessment, they will not be able to earn time credits because all needs must be assessed before this can be done, according to BOP.

^aSENTRY is BOP's case management database for incarcerated people. The system collects, maintains, and tracks information on incarcerated people, including their location, medical history, behavior history, and release data.

^bA Presentence Investigation Report is a structured report required by law to be conducted by a U.S. Probation Officer prior to a defendant's sentencing. A Presentence Investigation Report contains information from various sources, including criminal history records, educational systems, hospitals and counseling centers, family members, and associates

Appendix III: Evidence-Based Recidivism Reduction Programs and Productive Activities and the Needs They Address

The Federal Bureau of Prison's (BOP) evidence-based recidivism reduction programs and productive activities are designed to help address incarcerated people's needs. BOP is to assess incarcerated people's need in 13 areas. These needs, if addressed, may reduce people's recidivism risk. Many of BOP's structured evidence-based recidivism reduction programs and productive activities are to help address multiple need areas, as shown in tables 4 and 5.¹

¹In addition to structured evidence-based recidivism reduction programs and activities, BOP offers unstructured productive activities to incarcerated people for which they may earn First Step Act time credits. These unstructured productive activities can include work details, recreation, social visits, participation in religious services, teaching classes, and tutoring other incarcerated people.

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Table 4: Federal Bureau of Prison’s (BOP) Evidence-Based Recidivism Reduction Programs and the Needs They Are to Address, as of October 2022

Evidence-based recidivism reduction programs^a:	Anger/ Hostility	Antisocial Peers	Cognition	Dyslexia	Education	Family/ Parenting	Finance/ Poverty	Medical	Mental Health	Recreation/ Leisure/Fitness	Substance Use	Trauma	Work^b
Anger Management	X		x										
Apprenticeship Training													x
Assert Yourself for Female Offenders			x			x							
The Barton Reading and Spelling Program				x									
Basic Cognitive Skills			x										
BRAVE		x	x										
Bureau Literacy Program					x								
Certification Course Training													x
Challenge Program	x	x	x						x		x		
Cognitive Processing Therapy			x						x			x	

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Evidence-based recidivism reduction programs^a:	Anger/ Hostility	Antisocial Peers	Cognitions	Dyslexia	Education	Family/ Parenting	Finance/ Poverty	Medical	Mental Health	Recreation/ Leisure/Fitness	Substance Use	Trauma	Work^b
Criminal Thinking		x	x										
Dialectical Behavior Therapy			x						x			x	
Emotional Self-Regulation			x						x				
English-as-a-Second Language ^c					x								x
Family Programming Series ^c			x			x							
Federal Prison Industries													x
Female Integrated Treatment		x	x						x		x	x	x
Foundation			x		x				x				x
Hooked on Phonics					x								
Illness Management and Recovery									x				
Life Connections Program						x							

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Evidence-based recidivism reduction programs^a:	Anger/ Hostility	Antisocial Peers	Cognition	Dyslexia	Education	Family/ Parenting	Finance/ Poverty	Medical	Mental Health	Recreation/ Leisure/Fitness	Substance Use	Trauma	Work^b
Mental Health Step Down Program		x	x						x				
Money Smart for Adults							x						
Money Smart for Older Adults							x						
National Parenting from Prison Program						x							
Non-Residential Drug Abuse Program		x	x								x		
Post-Secondary Education													x
Residential Drug Abuse Program (RDAP)		x	x								x		
Resolve Program			x						x			x	
Resource Tools for Reentry for Transgender Individuals ^c			x						x				

Appendix III: Evidence-Based Recidivism Reduction Programs and Productive Activities and the Needs They Address

Evidence-based recidivism reduction programs^a:	Anger/ Hostility	Antisocial Peers	Cognitions	Dyslexia	Education	Family/ Parenting	Finance/ Poverty	Medical	Mental Health	Recreation/ Leisure/Fitness	Substance Use	Trauma	Work^b
Seeking Safety & Seeking Strength		x	x						x		x	x	
Sex Offender Treatment Program Non-Residential			x										
Sex Offender Treatment Program Residential		x	x										
Skills Program		x	x						x				
Social Skills Training		x	x						x				
STAGES Program		x	x						x				x
Stronger Together, Emerging Proud ^c			x						x				x
Threshold Program						x							
Transition Acceptance Transgender Programming ^c			x						x				x
Vocational Training													x

Appendix III: Evidence-Based Recidivism Reduction Programs and Productive Activities and the Needs They Address

Evidence-based recidivism reduction programs^a:	Anger/ Hostility	Antisocial Peers	Cognitions	Dyslexia	Education	Family/ Parenting	Finance/ Poverty	Medical	Mental Health	Recreation/ Leisure/Fitness	Substance Use	Trauma	Work^b
Women's Basic Financial Literacy Program							x						
Women's Career Exploration Series													x

Source: GAO analysis of BOP documentation. | GAO-23-105139

Note: According to BOP officials, they update the list of EBBR programs and productive activities at least biannually and makes it available on BOP's website.

^aThe First Step Act defines an evidence-based recidivism reduction program as either a group or individual activity that has been shown by empirical evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism; and is designed to help people succeed in their communities upon release from prison. 18 U.S.C. § 3635(3)(A)-(B).

^bAccording to BOP officials, every incarcerated person is assigned work unless they are not medically cleared or are in special housing. However only those people with an identified need for work may be recommended for work programs rather than be assigned other work duties. In addition, work programs such as Federal Prison Industries or apprenticeship programs may require applications and these program will not accept everyone with a need.

^cThese programs were not included in BOP's August 2022 approved programs guide—the most recent published guide as of December 2022. English-as a-second Language was listed as a productive activity in the guide but not an evidence-based recidivism reduction program. According to BOP documentation from October 2022, these were added as evidence-based recidivism reduction programs.

Table 5: Federal Bureau of Prison's (BOP) Productive Activities and the Needs They Are to Address, as of October 2022

Productive activities^a:	Anger/ Hostility	Antisocial Peers	Cognitions	Dyslexia	Education	Family/ Parenting	Finance/ Poverty	Medical	Mental Health	Recreation/ Leisure/Fitness	Substance Use	Trauma	Work^b
A Healthier Me										x			
A Matter of Balance										x			

Appendix III: Evidence-Based Recidivism Reduction Programs and Productive Activities and the Needs They Address

Productive activities^a:	Anger/ Hostility	Antisocial Peers	Cognitions	Dyslexia	Education	Family/ Parenting	Finance/ Poverty	Medical	Mental Health	Recreation/ Leisure/Fitness	Substance Use	Trauma	Work^b
AARP Foundation Finances 50+							x						
Access			x						x			x	
Alcoholics Anonymous											x		
Aleph Institute		x	x		x								
Arthritis Foundation - Walk with Ease								x		x			
Beyond Violence	x		x										
Brain Health As You Age								x		x			
Brief Cognitive Behavioral Therapy for Suicidal Individuals									x				
Cognitive Behavioral Therapy for Eating Disorders									x				
Cognitive Behavioral Therapy for Insomnia									x				

Appendix III: Evidence-Based Recidivism Reduction Programs and Productive Activities and the Needs They Address

Productive activities^a:	Anger/ Hostility	Antisocial Peers	Cognitions	Dyslexia	Education	Family/ Parenting	Finance/ Poverty	Medical	Mental Health	Recreation/ Leisure/Fitness	Substance Use	Trauma	Work^b
Cognitive Behavioral Therapy for Prison Gambling		x	x										
Change Plan			x		x				x				x
Circle of Strength			x						x			x	
Disabilities Education Program		x	x					x					
Drug Education											x		
Embracing Interfaith Cooperation			x										
Federal Prison Industries Lean Basic Training													x
Franklin Covey 7 Habits on the Inside						x							
Getting to Know Your Aging Body								x		x			
Health and Wellness Through the Lifespan								x		x			
Healthy Steps for Older Adults								x		x			
Houses of Healing			x										

Appendix III: Evidence-Based Recidivism Reduction Programs and Productive Activities and the Needs They Address

Productive activities^a:	Anger/ Hostility	Antisocial Peers	Cognitions	Dyslexia	Education	Family/ Parenting	Finance/ Poverty	Medical	Mental Health	Recreation/ Leisure/Fitness	Substance Use	Trauma	Work^b
K2 Awareness Program											x		
Living a Healthy Life with Chronic Conditions								x		x			
Managing Your Diabetes								x					
Mindfulness-Based Cognitive Therapy									x				
Narcotics Anonymous											x		
National Diabetes Prevention Program								x		x			
PEER		x											
Pu'a Foundation Reentry Program						x							x
Resilience Support		x	x										
Service Fit										x			
Sexual Self-Regulation			x										
Soldier On		x											x
Square One							x		x	x			
START NOW	x		x										

Appendix III: Evidence-Based Recidivism Reduction Programs and Productive Activities and the Needs They Address

Productive activities^a:	Anger/ Hostility	Antisocial Peers	Cognitions	Dyslexia	Education	Family/ Parenting	Finance/ Poverty	Medical	Mental Health	Recreation/ Leisure/Fitness	Substance Use	Trauma	Work^b
Supported Employment					x				x				x
Talking with Your Doctor								x		x			
Trauma Education									x			x	
Ultra Key 6					x								x
Understanding Your Feelings			x						x			x	
Victim Impact			x										
Wellness Recovery Action Plan									x				
Women in the 21st Century Workplace					x								x
Women's Aging								x		x			
Women's Reflections Group		x	x										
Women's Relationships		x	x			x							
Women's Relationships II		x	x			x						x	

Source: GAO analysis of BOP documentation. | GAO-23-105139

^aA productive activity is either a group or individual activity that is designed to allow incarcerated people determined as having a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating. 18 U.S.C. § 3635(5).

^bAccording to BOP officials, every incarcerated person is assigned work unless they are not medically cleared or are in special housing. However only those people with an identified need for work may be recommended for work programs rather than be assigned other work duties. In addition, work programs such as Federal Prison Industries or apprenticeship programs may require applications and these programs will not accept everyone with a need.

Appendix IV: Federal Bureau of Prison's (BOP) Employee Training Related to the First Step Act of 2018

BOP provided its employees with a variety of different First Step Act trainings related to the risk and needs assessment system and the calculation and application of First Step Act time credits, according to our review of BOP documents from 2019 through 2022 and interviews with BOP officials. We found that BOP provided initial and recurring training on the First Step Act, the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN), and the Standardized Prisoner Assessment for Reduction in Criminality (SPARC-13) to BOP facility officials through various mechanisms beginning in the fall of 2019, including in-person training, webinars, and email updates, according to BOP documents.¹ At the national-level trainings, we found that BOP relied on knowledge assessments to measure the staff's understanding of the training materials. From October 2021 through February 2022 (prior to full implementation of the First Step Act time credit procedures), BOP officials we interviewed at the four facilities told us BOP's trainings on the First Step Act risk and needs assessment system were generally timely and sufficient.

However, BOP identified knowledge gaps related to the First Step Act and SPARC-13, according to a March 2022 Department of Justice (DOJ) report.² For this DOJ report, BOP interviewed staff and incarcerated people to gauge their level of understanding of the First Step Act. BOP found, for example, that some BOP facility staff reported a basic or moderate understanding of First Step Act programs directly related to

¹Pursuant to 18 U.S.C. § 3632(f), the Attorney General is required to “develop and implement training programs for Bureau of Prisons officers and employees responsible for administering the System, which shall include—(1) initial training to educate officers and employees on how to use the System in an appropriate and consistent manner, as well as the reasons for using the System; (2) continuing education; (3) periodic training updates; and (4) a requirement that such officers and employees demonstrate competence in administering the System, including interrater reliability, on a biannual basis.”

²Department of Justice, Bureau of Prisons, *First Step Act: Initial Review of the SPARC-13 Needs Assessment System*, Washington, D.C.: March 2022).

their positions, while other BOP staff reported not understanding how First Step Act worked outside their departments. Additionally, BOP also found incarcerated people across facilities reported being somewhat to moderately familiar with the First Step Act, while others reported general confusion on how needs are assessed. BOP reported that it established next steps to address these issues through training. For example, according to the March 2022 report, BOP planned to utilize a train-the-trainer model of developing skilled cadres of educators in each region who can provide intensive training when needed at individual prison sites covering First Step Act, needs, programs, and incentives. Additionally, BOP reported that it planned to provide open-house style virtual sessions for all facilities with First Step Act and needs assessment refresher information.

As of October 2022, BOP officials told us they had completed some of these steps and taken additional ones to improve understanding of First Step Act, and that they received positive feedback from various participants. For example, in May 2022, BOP convened approximately 30 administrators from regional and Central Offices for a 2-day training to discuss the implementation of the First Step Act, including an understanding of strategies in monitoring progress. In July 2022, BOP officials stated that they conducted virtual information meetings with staff from all regions and institutions in multiple disciplines. Additionally, during the August 2022 National Case Management Coordinators' Conference, BOP officials stated that they provided a First Step Act time credit training to all case management coordinators. BOP then incorporated the same information into required courses for the new case managers, new unit managers, and new case management coordinators, and correctional counselors.

Additionally, in August of 2022, BOP provided a 3-day training to one subject matter expert from each institution and included time for discussion on First Step Act time credits, use of incentives, and evidence-based recidivism reduction programs and productive activities. According to BOP officials, this 3-day training was very well received by staff and is being followed up quarterly to provide participants with updated information and the opportunity to ask questions. Lastly, BOP officials stated that they created an email inbox for all BOP staff to ask questions about and receive accurate information on First Step Act.

According to BOP's national union officials, BOP staff have raised concerns about the sufficiency of training, and in particular, inconsistent guidance. For example, in November 2022, BOP union officials told us

staff expressed frustration by the lack of training regarding the calculation and application of First Step Act time credits. Specifically, staff members stated that BOP provided information on First Step Act time credit calculation and application but this information did not include detailed explanations on exactly how and why the time credits were calculated and applied. As a result, they are unable to clearly understand or explain to an incarcerated person why and how their projected release date was changed. BOP union officials acknowledge that BOP closed its main training facility due to COVID-19 pandemic but that it recently re-opened which may allow BOP to conduct more in-person trainings in the future.

Additionally, BOP national union officials stated that some staff were frustrated by inconsistent First Step Act guidance they were provided from different sources within BOP, such as different guidance in emails from regional offices compared to facility staff. In addition, BOP union officials expressed concern about additional responsibilities being added to facility staff's workload given staffing challenges.

Given the concerns that were identified by BOP's interviews of staff reported in a March 2022 DOJ report and more recent concerns from BOP union officials, it will be important that BOP continue to roll out its planned training efforts. However, it is too soon to know the extent to which BOP's training efforts may address knowledge gaps and staff concerns.

Appendix V: Analysis of the Department of Justice's Risk Assessment System and Its Validation

We reviewed the Attorney General's December 2021 Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN) validation report and identified several areas where DOJ could enhance validation efforts in the future.¹ More specifically, we identified five areas consistent with accepted statistical practices where DOJ could further enhance its future predictive models, but these were beyond the scope its December 2021 validation.² These areas relate to the (1) scope of validation, (2) goals and metrics for assessing predictive accuracy, (3) differential prediction by race and ethnicity, (4) validation sampling method, and (5) use of points vs. risk of recidivism, and are described in more detail below. In June 2022, National Institute of Justice officials and contractors—those who were responsible for the validation—stated that the December 2021 PATTERN validation mirrored the approaches used by the PATTERN developer. DOJ officials stated that they plan to address these areas in future model development and validation work that the First Step Act of 2018 requires annually.³

Scope of validation. We found that the scope of DOJ's December 2021 validation report assessed how well PATTERN 1.3 predicted new individual cohorts' recidivism rates and used the predictive accuracy of the re-estimated model on the new data to make conclusions about the model's validity. In addition, the report re-estimated PATTERN 1.3 after making corrections to various input data, and then re-validated it using test samples collected in 2014, 2015, 2016, and 2017. The validation

¹According to DOJ's Bureau of Justice Assistance, the process of determining how well an assessment tool performs at predicting risk is called validation.

²Trevor Hastie, Jerome Tibshirani, and Jerome Friedman, *Elements of Statistical Learning*, 2d ed. (New York: Springer, 2009). 214-245. Gareth James, et al., *Introduction to Statistical Learning*. (New York: Springer, 2013). 147.

³18 U.S.C. § 3631(b)(4).

report left several elements of the original PATTERN model unchanged since its development, and, therefore, it did not assess their effects on predictive validity, such as assuming that recidivism changed by the same amount across the values of its ordinal predictor variables.

Accepted practices for developing and validating predictive statistical models call for analysts to choose the predictor variables and their scales and measurement to maximize the model's predictive accuracy.⁴ For example, assessing the original modeling decisions, such as DOJ's decision to determine age groups using pre-existing assumptions rather than predictive power, could help confirm that the current version of PATTERN predicts recidivism most accurately with the data available, compared to competing alternative models. In this scenario, some people's risk scores may be less accurate than they could be, which could affect programming and administration while in Federal Bureau of Prisons (BOP) custody.

Goals and metrics for assessing predictive accuracy. We found that the DOJ December 2021 validation report used common metrics for evaluating the predictive accuracy of statistical models. Using one of these overall metrics, the report concluded that PATTERN 1.3 was "highly predictive" and that the risk groups provided "meaningful distinctions of the likelihood of recidivism."⁵ These metrics included overall recidivism rates, Area Under the Receiver Operating Characteristic Curve, positive predictive value, negative predictive value, false positive rate, and false negative rate, evaluated separately by sex and violent vs. general crimes. The report characterized these values of 71 to 79 percent as "highly predictive."

In contrast with the overall performance metrics, the report found that predictive accuracy varied across more detailed scoring metrics and subpopulations, such as female and male incarcerated people. For example, 56 to 80 percent of females classified as minimum or low risk

⁴*Elements of Statistical Learning*, pp. 139-141, 305-310. For example, to maximize predictive accuracy, BOP could allow the data to determine age groups rather than use pre-existing theories or expectations. Similarly, data could determine the association between the predictor and recidivism, rather than assuming that, for example, recidivism changes by the same amount between each pair of age groups. The data could determine the functional form of the relationships, such as through Classification and Regression Tree methods. *Elements of Statistical Learning*, pp. 305-310

⁵Department of Justice, Office of Justice Programs, National Institute of Justice, *2021 Review and Revalidation of the First Step Act Risk Assessment Tool*, (Washington, D.C.: December 2021), pp. 24-27.

recidivated—the false-negative error metric—and 35 to 36 percent of males classified as medium or high risk did not recidivate—the false-positive error metric. False-negative rates ranged from 21 to 24 percent for males. False-positive rates ranged from 4 to 12 percent for females and from 44 to 73 percent for Black and Native American males.

The scope of the December 2021 validation report was focused on testing the current PATTERN 1.3 on new external data, not previously used to develop the model. As such, it did not define how the evaluation should weigh false-positive, false-negatives, or other metrics of accuracy when evaluating the current model and alternatives. It also did not discuss how the type and level of error would affect BOP programs. However, the report noted that the additional performance metrics provided “an intuitive way for the public and stakeholders to evaluate tool accuracy,” using different standards for evaluation, and addressed “accuracy limitations” with broader metrics used during model development.

For example, BOP may seek to minimize the number of people who would not recidivate but who are mistakenly classified as higher risk. In this case, the model evaluation would seek to limit or minimize the false positive rate and accept a higher false negative rate. Alternatively, if the goal were to minimize the number of people who ultimately recidivated, but who were classified as low risk, the model evaluation should limit or minimize the false negative rate and accept a higher false positive rate.

Standards for evaluating predictive statistical models emphasize that the acceptable type and amount of error depend on the application and subjective user preferences.⁶ Statistical methods cannot determine the costs of prediction error, which ultimately depend on model users’ knowledge of the application, tolerance for risk, and preferences between each type of error. However, statistical methods can identify models that perform better on the metrics that align with users’ preferences. For example, if BOP preferred to avoid wrongly classifying people as high-risk, it may want to choose the model with the highest overall accuracy among candidate models that have no more than a 5 percent false positive rate.

General measures of predictive accuracy may select models that are the most generally predictive, but that have false positive or false negative error rates that exceed what model users would prefer. Specifying these

⁶*An Introduction to Statistical Learning*, p.147.

preferences in advance help optimize performance in a particular application, and administrative and programming decisions made based on the model's risk predictions may target services accurately or efficiently. For example, high rates of incorrectly classifying people in the highest risk group (i.e., false-positives) may provide stronger interventions to people who do not need them. Alternatively, high rates of incorrectly classifying people in the lowest risk group (i.e., false-negatives) may fail to provide interventions that otherwise would have prevented recidivism.

Differential prediction by race and ethnicity. The December 2021 validation report found evidence that PATTERN 1.3 predicts risk differently, according to race and ethnicity.⁷ As a result, BOP programs that use PATTERN's predictions to target services and grant time credits will operate inconsistently across different groups.⁸ The report found evidence of differential prediction with PATTERN. For general crimes, the model tended to over-predict for Asian, Black, and Hispanic individuals and under-predict for Native American individuals, compared to White

⁷The First Step Act of 2018 requires DOJ to: 1) evaluate "the rates of recidivism among similarly classified prisoners to identify any unwarranted disparities, including disparities among similarly classified prisoners of different demographic groups, in such rates" and 2) "make any revisions or updates to the risk and needs assessment system that the Attorney General determines appropriate ... to ensure that any disparities ... are reduced to the greatest extent possible." 18 U.S.C. § 3631(b)(4)(E) and (b)(5).

⁸A "differential prediction" analysis examines the bias of a predictive statistical model or other measurement instrument, defined as differences across racial and ethnic groups in predicted measures of risk. For example, the report stated that it analyzed whether, "for a given risk score, a member of the given race or ethnic group [had] a statistically different probability of recidivism, on average, compared to a white person with the same score."

individuals.⁹ For violent crimes, the model tended to under-predict recidivism for Black individuals, compared to White individuals.¹⁰

The variation in recidivism rates across demographic groups with similar risk scores suggests that the model is not sufficiently well-calibrated. Unmeasured variables or model specification choices could explain this additional variation in recidivism. However, the report also found that PATTERN Version 1.3 did not exacerbate existing differential prediction issues from earlier PATTERN versions. In addition, differential prediction likely reflects model specification or measurement decisions that are associated with both the recidivism outcome and race and ethnicity.

Validation sampling method. We found that the December 2021 validation report performed “out of sample” validation, which means that it used new data to evaluate the model’s predictive accuracy. Specifically, the report used data from fiscal year 2009 through 2013 to specify and estimate the model and data from fiscal year 2014 through 2015, 2016, and 2017 to validate its predictions. The samples were similar on many variables but differed meaningfully on others. For example, compared to the fiscal year 2009 through 2013 training sample, incarcerated people in the validation sample were more likely to have a high school degree or GED, to have completed drug treatment, and to have one or more incident reports, among other differences.

The contractors stated that the developers of the PATTERN tool decided to partition the training and test sets by fiscal year, stating that there are many reasonable approaches to set training and testing samples. The

⁹According to DOJ’s 2021 validation, for the fiscal years 2016 and 2017 revalidation samples in the general recidivism tools, the differential prediction analysis demonstrated that there was a 2 to 3 percent over-prediction of recidivism for Black and Hispanic males, an 8 percent over-prediction for Asian males, and a 14 to 15 percent under-prediction of Native American males, relative to White males. There was also a 6 to 7 percent over-prediction for Black females, a 4 to 5 percent over-prediction for Hispanic females, and a 12 to 13 percent under-prediction for Native American females, relative to White females.

¹⁰According to DOJ’s 2021 validation, for the violent recidivism tools, most results were not statistically significant with the following exceptions: the risk of violent recidivism for Black males was under-predicted relative to White males by 4 to 5 percent in both revalidation samples, and risk for Black females was under-predicted relative to White females by 1 to 2 percent for the fiscal year 2016 revalidation sample. There were also statistically significant over-prediction 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 fiscal year 2017 sample.”

report's training and validation samples differed on several key variables, as described above. These measured differences, in addition to any unmeasured differences between periods, could have affected the model's ability to predict recidivism after its validation data ended in 2015. Prediction error when applying the model to the later time period could have reflected true error in approximating the recidivism process or changes between periods in the process itself.

An accepted practice for developing and validating predictive statistical models is to randomly divide data from a single overall sample from a target population into training and validation sub-samples—a process typically known as “validation” or “cross-validation” sampling. The approach replicates the process of using observed data to predict unobserved or future data when developing models, so that the models do not place excessive weight on features of the training data that reflect random variation in a single sample.¹¹ Assessing how the use of its current “pre-post” validation sampling method affects predictive accuracy, and comparing it to alternative methods that might pool data across time periods and cross-validate within the pooled sample can be helpful.

Points versus risk for recidivism. The model assigns “points” to measure recidivism risk, rather than using the model's raw output, the probability of recidivism. The process of assigning points is somewhat arbitrary and may increase prediction error, because statistical estimation methods choose the most predictive weights for each risk factor. Alternative point scaling and assignment processes could distort the underlying probabilities that best fit the data. The contractors reported that assigning points allows for a more transparent system for people and other stakeholders to understand how PATTERN assesses risk.

DOJ future efforts. In June 2022, the National Institute of Justice and the validation contractors acknowledged the validity and need for alternative performance metrics, and told us they intend to assess alternatives in future work. Additionally, the contractors acknowledged that they could re-assess the validation sampling approach used in the original development of PATTERN, along with the measurement of selected risk factors. Alternative validation sampling approaches may more closely match the intended use of the model, and alternative groupings of factors

¹¹*Elements of Statistical Learning*, pp. 214-245.

Appendix V: Analysis of the Department of Justice's Risk Assessment System and Its Validation

like current age and age at first offense might predict recidivism more accurately.

In addition, the December 2021 validation report stated that the contractors will continue to investigate potential solutions for differential prediction issues identified during their review, such as testing emerging debiasing techniques they identified from recent academic research and engaging with stakeholders to identify other approaches. In June 2022, the contractors said they were also discussing modeling strategies with various experts, selected based on prior academic research on racial disparities, the National Institute of Justice and BOP for PATTERN recommended candidates. In addition, National Institute of Justice officials and these contractors stated that they have given top priority to eliminating the racial and ethnic disparities identified in the December 2021 validation.

Appendix VI: Completion of Evidence-Based Recidivism Reduction Programs and Productive Activities

We analyzed Bureau of Prison (BOP) data to determine the total number of incarcerated people who completed evidence-based recidivism reduction programs and productive activities in BOP custody from calendar year 2019 through 2021. Our analysis of BOP data generally found that more incarcerated people completed programs and activities than the previous year for 2021, as shown in table 6.

Table 6: The Number of Incarcerated People Who Completed a Federal Bureau of Prisons (BOP) Program, by Calendar Year 2019 through 2021

	Completion Year 2019 Number of incarcerated people who completed the program	Completion Year 2020 Number of incarcerated people who completed the program	Completion Year 2021 Number of incarcerated people who completed the program	Number of BOP facilities approved to offer the program in 2021 ^b	
Evidence-Based Recidivism Reduction programs^a	Anger Management	34	901	3023	122
	Assert Yourself for Female Offenders	175	218	927	29
	Basic Cognitive Skills	137	560	1248	122
	BRAVE	96	31	80	2
	Bureau Literacy Program	3302	1455	1977	122
	Challenge Program	256	184	190	13
	Cognitive Process Therapy	0	23	11	122
	Criminal Thinking	18	334	876	122
	Dialectical Behavior Therapy	13	12	70	122
	Emotional Self-Regulation	2	58	279	122
	Federal Prison Industries	75	7183	5246	72
	Female Integrated Treatment	48	14	57	2
	Foundation	296	38	566	29

**Appendix VI: Completion of Evidence-Based
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	Completion Year 2019 Number of incarcerated people who completed the program	Completion Year 2020 Number of incarcerated people who completed the program	Completion Year 2021 Number of incarcerated people who completed the program	Number of BOP facilities approved to offer the program in 2021^b
Illness Management & Recovery	0	5	73	122
Life Connections Program	213	106	155	6
Mental Health Step Down Program	13	6	10	4
Money Smart For Adults ^c	0	868	3535	122
National Parenting From Prison Program	302	2623	5278	122
Non-Residential Drug Abuse Program	7571	3402	6186	122
Operational Education - Job Certification	57	891	3782	122
Operational Education - Technical Certification	6204	2188	1482	122
Operational Education - Vocational Apprenticeship	923	672	659	122
Operational Education-Vocational Program	4141	2029	1789	122
Post-Secondary Education	4	5	31	17
Residential Drug Abuse Program	6012	4311	3332	71
Resolve Program	0	79	51	27
Seeking Safety or Seeking Strength	16	19	136	122
Sex Offender Treatment Program Non-Residential	116	74	25	8
Sex Offender Treatment Program Residential	27	21	17	2
Skills Program	18	20	10	2
Social Skills Training	0	0	80	122
Stages Program	8	9	6	2
Threshold Program	2102	1104	1334	122
Productive activities A Healthier Me	137	936	1515	All female facilities
A Matter of Balance	1	18	72	122
AARP Foundation Finances 50+	0	1627	2101	122

**Appendix VI: Completion of Evidence-Based
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	Completion Year 2019 Number of incarcerated people who completed the program	Completion Year 2020 Number of incarcerated people who completed the program	Completion Year 2021 Number of incarcerated people who completed the program	Number of BOP facilities approved to offer the program in 2021^b
Access	0	0	28	All female facilities
Alcoholics Anonymous Support Group	1	39	129	122
Arthritis Foundation - Walk with Ease	0	1528	5873	122
Beyond Violence: Prevention Program for Criminal-Justice Involved Women	4	0	56	All female facilities
Brain Health As You Age	0	1607	7619	122
Brief Cognitive Behavioral Therapy for Suicidal People	0	1	1	122
Cognitive Behavioral Therapy for Insomnia	6	6	20	122
Cognitive Behavioral Therapy for Prison Gambling	0	194	576	122
Change Plan	0	0	260	All female facilities
Circle of Strength	24	28	410	All female facilities
Disabilities Education Program	0	0	18	122
Drug Education	17721	8550	17062	122
English-as-a-Second- Language	678	256	327	122
Embracing Interfaith Cooperation	0	10	470	122
Franklin Covey 7 Habits on the Inside	0	0	150	122
Federal Prison Industries Lean Basics Training	0	31	0	51
Getting to Know Your Aging Body	0	382	3249	122
Healthy Steps for Older Adults	0	153	686	122
Health and Wellness Throughout the Lifespan	1	1751	2990	122
Hooked on Phonics	0	2	37	122

**Appendix VI: Completion of Evidence-Based
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	Completion Year 2019 Number of incarcerated people who completed the program	Completion Year 2020 Number of incarcerated people who completed the program	Completion Year 2021 Number of incarcerated people who completed the program	Number of BOP facilities approved to offer the program in 2021^b
House of Healing: A Prisoner's Guide to Inner Power and Freedom	4	52	630	122
K2 Awareness Program	0	204	1608	122
Living a Healthy Life with Chronic Conditions	0	296	367	122
Managing Your Diabetes	1	390	1013	122
Mindfulness-Based Cognitive Therapy	0	38	31	122
Money Smart - Older Adults	0	1522	1765	122
Narcotics Anonymous	0	6	98	122
National Diabetes Prevention	0	38	496	122
PEER	0	0	75	122
Service Fit	0	3	367	122
Sexual Self-Regulation	0	4	0	122
Soldier On	0	21	126	122
Square One: Essentials for Women	64	20	387	All female facilities
START NOW	0	0	248	122
Supported Employment	0	34	102	122
Talking with Your Doctor	0	1049	5384	122
Trauma Education	1278	870	3926	122
Ultra Key 6: The Ultimate Keyboarding Tutor	0	132	667	122
Understanding Your Feelings: Shame and Low Self Esteem	40	69	657	All female facilities
Victim Impact: Listen and Learn	0	417	429	122
Wellness Recovery Action Plan	11	19	0	122
Women in the 21st Century Workplace	171	585	1401	All female facilities
Women's Aging: Aging Well	0	0	367	All female facilities
Women's Relationships	299	85	546	All female facilities

**Appendix VI: Completion of Evidence-Based
Recidivism Reduction Programs and
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	Completion Year 2019 Number of incarcerated people who completed the program	Completion Year 2020 Number of incarcerated people who completed the program	Completion Year 2021 Number of incarcerated people who completed the program	Number of BOP facilities approved to offer the program in 2021^b
Women's Relationships II	0	0	589	All female facilities

Source: GAO analysis of BOP data and documentation. | GAO-23-105139

Note: The data in this table represent the number of incarcerated people who completed a program. The number of incarcerated people who participated in these programs could be higher.

^aThese programs existed in BOP facilities in all these years, however, they were not defined as evidence-based recidivism reduction programs or productive activities until after January 2020. BOP officials stated that prior to the First Step Act, program data may have been tracked in different systems depending on which department offered the program. Further, officials stated that COVID-19 impacted their ability to provide programming.

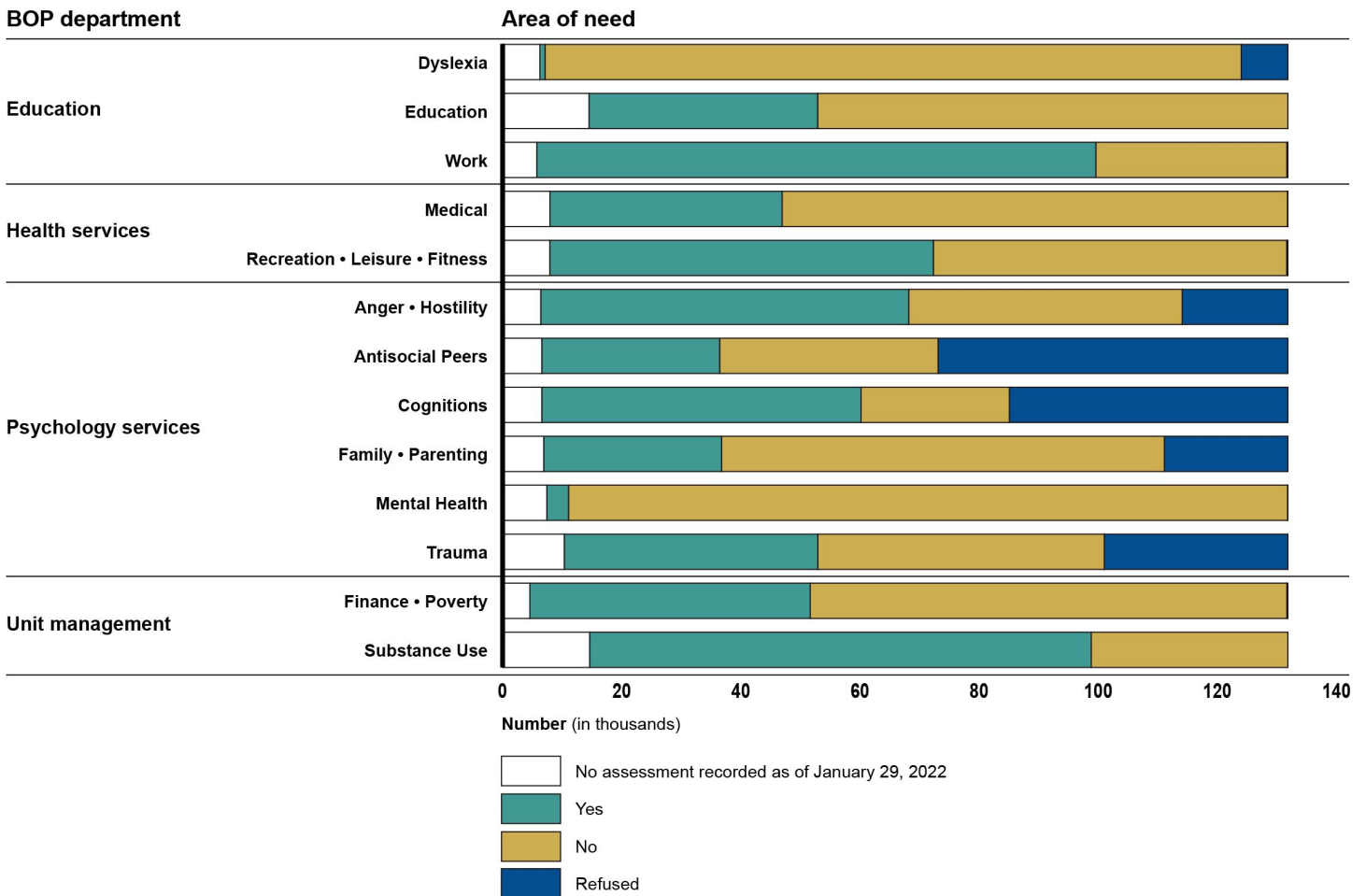
^bApproved facilities are from BOP's July 2021 First Step Act approved programs guide. In November 2022, BOP officials told us one of its New York facilities no longer incarcerates people and future data will include 121 facilities. As of November 2022, there are 27 facilities that house female incarcerated people on BOP's website.

^cSome programs designated as productive activities in 2020, such as Money Smart for Adults and Money Smart for Older Adults, were determined to be evidence-based recidivism reduction programs in 2021 and 2022.

Appendix VII: Needs of Incarcerated People

We analyzed the needs of all people incarcerated as of January 29, 2022. Needs are factors in a person’s life that, if addressed, could help reduce a person’s recidivism risk. We found that of the 13 need areas that the Federal Bureau of Prisons (BOP) assesses, the areas of need related to work and substance use were the most common, as seen in Figure 6.

Figure 6: Snapshot of the Needs of Incarcerated People in Bureau of Prisons (BOP) Custody Identified through the Standardized Prisoner Assessment for Reduction in Criminality (SPARC-13), as of January 29, 2022



Source: GAO analysis of BOP data. | GAO-23-105139

Appendix VII: Needs of Incarcerated People

Data for Figure 6: Snapshot of the Needs of Incarcerated People in Bureau of Prisons (BOP) Custody Identified through the Standardized Prisoner Assessment for Reduction in Criminality (SPARC-13), as of January 29, 2022

BOP department	Area of need	No assessment recorded as of January 29, 2022	Yes	No	Refused
Education	Dyslexia	6271	867	116865	7828
	Education	14525	38371	78935	0
	Work	5738	93855	32077	161
Health services	Medical	7939	38981	84847	64
	Recreation/Leisure/Fitness	7927	64401	59326	177
Psychology services	Anger/Hostility	6421	61776	45909	17725
	Antisocial Peers	6577	29866	36680	58708
	Cognitions	6577	53611	24893	46750
	Family/Parenting	6911	29847	74339	20734
	Mental Health	7436	3625	120736	34
	Trauma	10362	42557	48107	30805
Unit management	Finance/Poverty	4582	47088	79997	164
	Substance use	14606	84225	33000	0

Source: GAO analysis of BOP data. | GAO-23-150139

Note: Data include all adult, convicted, and sentenced people in a BOP designated facility as of January 29, 2022. In order to assess some needs, BOP needs the voluntary participation of incarcerated people. If a person refuses to participate in a needs assessment, BOP records this as a refusal. In addition, BOP requires staff to conduct all needs assessments included in SPARC-13 within 30 days of their arrival to their designated BOP facility. Some people with no assessment recorded as of January 29, 2022 may not have been at their designated BOP facility for at least 30 days.

Appendix VIII: Comments from the Department of Justice



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

February 10, 2023

Ms. Gretta L. Goodwin
Director
Homeland Security and Justice
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Goodwin,

The Bureau of Prisons (BOP) appreciates the opportunity to review and comment on the Government Accountability Office's (GAO's) draft report entitled "Bureau of Prisons Should Improve Efforts to Implement its Risk and Needs Assessment System" (GAO-23-105139). BOP offers the following comments regarding the recommendations.

Recommendation 1: The Director of BOP should collect and maintain complete and accurate data in a readily-available format on First Step Act¹ risk and needs assessments, including the actual dates when First Step Act risk and needs assessments and reassessments are conducted.

BOP Response: BOP concurs with this recommendation and will continue its ongoing efforts to ensure that its current technology collects and maintains complete and accurate data on First Step Act (FSA) risk and needs assessments, including dates these assessments are conducted, in a readily available format.

As noted in the draft report, BOP has developed systems, including SPARC-13, which encompass a variety of tools. These tools, which have been developed and improved since 2018, currently capture information on FSA risk and needs assessments, including dates these assessments are conducted.

Recommendation 2: The Director of BOP should ensure that the monitoring efforts it implements can determine if BOP is conducting risk and needs assessments in accordance with First Step Act required [sic- timeframes] and BOP internal timeframes.

¹ First Step Act of 2018 (Pub. L. No. 115-391 §§ 101 & 102, 132 Stat. 5194).

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BOP Response: BOP concurs with this recommendation and will continue its ongoing efforts to ensure that its current monitoring efforts can determine whether FSA risk and needs assessments are conducted in accordance with FSA and BOP internal timeframes. As noted in the draft report, BOP has developed systems, including SPARC-13, which encompass a variety of tools. These tools, which have been developed and improved since 2018, currently capture information on FSA risk and needs assessments, including dates these assessments are conducted.

However, BOP respectfully notes that there is no statutory mandate that risk and needs assessments or reassessments be completed within BOP internally-set timeframes, which predate the FSA and are based on its current program review system. There is no FSA requirement to complete risk and needs assessments within 28 days of an adult in custody's arrival in BOP custody, nor is there a requirement to conduct risk and needs assessments within 180 days, although BOP has done so due to pre-existing policy timeframes.

Section 103 of the FSA includes a requirement to analyze whether "inmates are being assessed under the risk and needs assessment system with the frequency required under section 3621 of title 18, United States Code" but does not require the analysis extend to ensuring such assessments are completed within BOP's pre-existing policy guidelines.

As noted by GAO, 18 U.S.C. § 3632(d)(5) indicates that periodic risk assessments should occur "not less often than annually" and, for adults in custody with a medium or high recidivism risk with less than five years until their projected release date, more frequently than annually. However, BOP has indicated that it conducts risk assessments in half the time allotted by the FSA (every 180 days), and every 90 days for adults in custody within 12 months of their projected release date, under policies that predate the FSA.

BOP therefore notes that the data submitted by the BOP reflect that the BOP is, in fact, assessing incarcerated people under the risk and needs assessment system *more frequently* than required by the FSA, and there is no statutory requirement to review whether such assessments are also conducted in accordance with BOP internal, self-imposed timeframes.

Recommendation 3: The Director of BOP should use and document the results of its ongoing monitoring of the frequency at which it conducts risk and needs assessments and take appropriate corrective actions, as needed.

BOP Response: BOP concurs with this recommendation and will continue its ongoing efforts to use and document the results of monitoring the frequency of risk and needs assessments and take appropriate corrective actions as needed, to ensure these assessments are conducted within the statutorily required timeframes.

As noted in the draft report, BOP has developed systems, including SPARC-13, which encompass a variety of tools. These tools, which have been developed and improved since 2018, currently capture information on FSA risk and needs assessments, including dates these assessments are conducted.

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In fact, as the draft report indicates, BOP implemented an automated-calculation application which improved scoring reliability by eliminating manual errors, reduced employee labor costs, and increased the speed and efficiency of the assessments. Further, as noted in the draft report, BOP is currently able to “run nation-wide rosters on the number of incarcerated people with a completed risk assessment.”²

Nonetheless, BOP continues its efforts to improve its technological capabilities to better gauge FSA performance. As noted in the report, BOP is currently contracting to conduct a quality assurance audit verifying timely risk and needs assessments within FSA-required timeframes and to develop a data analytics platform and identify the metrics and data necessary to track performance and implementation of the FSA. However, continuing this effort is contingent on future program funding.

Additionally, as noted in the draft report, BOP has issued guidance requiring employees to provide monthly reports to the regional office regarding completion of risk and needs assessments, which will then be used to target training and review efforts to ensure compliance with statutory timeframes.

Recommendation 4: The Director of BOP should ensure its plan for evaluating evidence-based recidivism reduction programs has pre-established, quantifiable goals that align with the First Step Act, and includes clear milestone dates.

BOP Response: BOP concurs with this recommendation and currently has a clear plan to evaluate evidence-based recidivism reduction programs (EBRRs) which includes pre-established, quantifiable goals. As BOP has stated previously, milestones will be finalized as BOP learns to gauge its capacity. However, BOP has already made an ambitious effort to evaluate its programs. Fourteen evaluations are currently underway and each has a strategy and timeline. Additionally, two more evaluations are planned for FY 2023 and specific goals will be developed collaboratively between BOP and the contractor conducting the evaluations.

Evaluations are and will continue to be designed to align seamlessly with DOJ’s Learning Agenda. Specifically, Question 28 in DOJ’s Learning agenda is, “What is the long-term impact of First Step Act programs on formerly incarcerated individuals returning to the community?” Evaluation of EBRRs and their impact on recidivism is central to this question. [Priority Questions Related to Strategic Goal 5: Administer Just Court and Correctional Systems | DOJ | Department of Justice](#)

Further, as BOP has previously noted, the list of EBRRs is evaluated and refined on an ongoing basis, and BOP continually reviews, develops, and implements new programs. However, all planned evaluations will examine program-specific goals and recidivism.

Recommendation 5: The Director of BOP should evaluate its evidence-based recidivism reduction programs, according to the plan established.

² See draft report, page 27.

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BOP Response: BOP concurs with this recommendation. As noted in response to the previous recommendation, BOP has already undertaken an ambitious effort to evaluate its programs. Fourteen evaluations are currently underway, and each has a strategy and timeline. Additionally, two more evaluations are planned for FY 2023 and specific goals will be developed collaboratively between BOP and the contractor conducting the evaluations.

Evaluations are and will continue to align seamlessly with DOJ's Learning Agenda. Specifically, Question 28 in DOJ's Learning agenda is, "What is the long-term impact of First Step Act programs on formerly incarcerated individuals returning to the community?" Evaluation of EBRRs and their impact on recidivism is central to this question. [Priority Questions Related to Strategic Goal 5: Administer Just Court and Correctional Systems | DOJ | Department of Justice](#)

Further, as BOP has previously noted, the list of EBRRs is evaluated and refined on an ongoing basis and BOP continually reviews, develops, and implements new programs. However, all planned evaluations will examine program-specific goals and recidivism.

Recommendation 6: The Director of BOP should develop a mechanism to monitor, on an ongoing basis, if it is offering a sufficient amount of evidence-based recidivism reduction programs and productive activities to meet the needs of its incarcerated person population.

BOP Response: BOP concurs with this recommendation and has already contracted to make this information available in a dashboard format that is continually updated. BOP is also in the process of expanding staffing under the FSA to ensure programs are sufficient to meet the needs of the incarcerated population.

As the draft report recognizes, BOP continues to address ongoing staffing challenges, as evidenced by its efforts to implement GAO recommendations in other engagements.³ However, the technology currently being developed will offer information on the programs offered by each facility and the needs of the adults in custody within that facility. By comparing the needs of the adults in custody to the programs offered, it will become apparent whether the needs of the population are being met.

Recommendation 7: The Director of BOP should document a complete list of all the unstructured activities⁴ that incarcerated people are able to participate in and earn First Step Act time credits.

³ GAO, Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs, GAO-21-123 (Washington, D.C.: Feb. 24, 2021).

⁴ GAO indicates that Recommendations 7 and 8 will be revised to clarify that what is being referred to is in fact "unstructured productive activities," not simply "unstructured activities." We appreciate this clarification. Our analysis and response to these recommendations remains unchanged, however, because participation in "unstructured productive activities" that are not recommended based upon a risk and needs assessment cannot be

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Recommendation 8: The Director of BOP should collect and monitor participation data for unstructured activities that incarcerated people are able to participate in and earn First Step Act time credits.

BOP Response to Recommendations 7 and 8: Respectfully, BOP does not concur with these recommendations in their current format because attempting to catalog and monitor unstructured activities would: (1) contradict the purpose of an intentionally open-ended and broad program; and (2) potentially limit available options to adults in custody.

FSA time credits may be earned by any eligible adult in custody “who successfully completes evidence-based recidivism reduction programming or productive activities.”⁵ The January 2022 final rule on FSA Time Credits, defines “successful participation” for the purposes of earning FSA time credits as requiring that “an eligible inmate has participated in the EBRR programs or PAs that the BOP has recommended based on the inmate’s individualized risk and needs assessment, and has complied with the requirements of each particular EBRR Program or PA.”⁶

Unstructured productive activities are the expression of skills learned in EBRRs (e.g., writing age-appropriate letters to minor children, engaging in self-care, and managing anger appropriately). They play an important role both in preparing those in our custody to be good neighbors and in fostering a positive BOP community. They are the activities of daily living (e.g., hygiene, exercise, accountability) that support healthy communal relationships and can include such efforts as maintaining clean living areas, being cordial to fellow residents, constructively engaging with loved ones in the community, and miscellaneous institution-based opportunities. If a person is in “successful participation status,” that person will also be routinely engaged in daily unstructured activities which reflect pro-social behavior.

BOP believes that each adult in our custody must be respected as an individual with a unique history, profile, and process for successfully interacting with his or her environment. Based on this and the fact that such pro-social activities of daily living are, by their very nature unstructured, BOP respectfully asserts it would be infeasible to produce a comprehensive catalog. Additionally, attempting to catalog such activities could have a chilling effect on an adult in custody’s willingness to engage in pro-social behavior by creating the misapprehension that maintenance of “successful participation” status can only occur if an adult in custody participates in the “unstructured productive activities” on the list.

Participation in these unstructured productive activities is a positive consequence of continued “successful participation status.” It is not statutorily required or helpful for BOP to document a complete list of such “unstructured activities,” because they are naturally occurring activities that may not directly result from a risk and needs assessment

catalogued and monitored due to their unstructured format. Also, because these activities are “unstructured,” there is no way to monitor whether an incarcerated person has successfully participated.

⁵ See Pub. L. No. 115-391, 132 Stat. 5194, and 18 U.S.C. §3632(d)(4)(A).

⁶ 28 C.F.R. § 523.41(c).

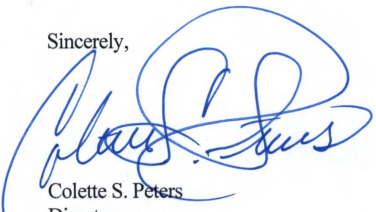
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of Justice**

recommendation (e.g., work details for those with no identified work need, recreation, social visits, participation in religious services, teaching classes, and tutoring).

BOP's policy on First Step Act Time Credits, issued in November 2022 (and re-issued in February 2023), explains that "productive activities" as defined by the FSA may include a variety of groups, programs, classes and individual activities which can be either structured or unstructured. These pro-social activities contribute to an adult in custody's overall positive institutional adjustment, encompass maintaining clear institution conduct, and include, but are not limited to: structured, curriculum-based group programs and classes; free-time activities (e.g., recreation, hobby crafts, or religious services); family interaction activities (e.g., social visiting); personal growth and development classes (e.g., adult continuing education classes); institution work programs; community service projects; and participation in the Inmate Financial Responsibility Program. BOP's policy further indicates that a list of BOP-approved, curriculum-based productive activities is available on BOP's public website and is updated on an ongoing basis as programs/activities are added.

Because participation in unstructured productive activities are a consequence of being in successful participation status, it is neither helpful nor possible to list or track the participation of an adult in custody in the myriad of routine, healthy activities that demonstrate a lack of EBRR program or PA violation or refusal.

Sincerely,



Colette S. Peters
Director

Text for Appendix VIII: Comments from the Department of Justice

U.S. Department of Justice
Federal Bureau of Prisons
Office of the Director
Washington, DC 20534

February 10, 2023

Ms. Gretta L. Goodwin
Director
Homeland Security and Justice
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Goodwin,

The Bureau of Prisons (BOP) appreciates the opportunity to review and comment on the Government Accountability Office's (GAO's) draft report entitled "Bureau of Prisons Should Improve Efforts to Implement its Risk and Needs Assessment System" (GAO-23-105139). BOP offers the following comments regarding the recommendations.

Recommendation 1: The Director of BOP should collect and maintain complete and accurate data in a readily-available format on First Step Act (*First Step Act of 2018 (Pub. L. No. 115-391 §§ 101 & 102, 132 Stat. 5194)*) risk and needs assessments, including the actual dates when First Step Act risk and needs assessments and reassessments are conducted.

BOP Response: BOP concurs with this recommendation and will continue its ongoing efforts to ensure that its current technology collects and maintains complete and accurate data on First Step Act (FSA) risk and needs assessments, including dates these assessments are conducted, in a readily available format.

As noted in the draft report, BOP has developed systems, including SPARC-13, which encompass a variety of tools. These tools, which have been developed and improved since 2018, currently capture information on FSA risk and needs assessments, including dates these assessments are conducted.

Recommendation 2: The Director of BOP should ensure that the monitoring efforts it implements can determine if BOP is conducting risk and needs assessments in accordance with First Step Act required [sic- timeframes] and BOP internal timeframes.

BOP Response: BOP concurs with this recommendation and will continue its ongoing efforts to ensure that its current monitoring efforts can determine whether FSA risk and needs assessments are conducted in accordance with FSA and BOP internal timeframes. As noted in the draft report, BOP has developed systems, including SPARC-13, which encompass a variety of tools. These tools, which have been developed and improved since 2018, currently capture information on FSA risk and needs assessments, including dates these assessments are conducted.

However, BOP respectfully notes that there is no statutory mandate that risk and needs assessments or reassessments be completed within BOP internally-set timeframes, which predate the FSA and are based on its current program review system. There is no FSA requirement to complete risk and needs assessments within 28 days of an adult in custody's arrival in BOP custody, nor is there a requirement to conduct risk and needs assessments within 180 days, although BOP has done so due to pre-existing policy timeframes.

Section 103 of the FSA includes a requirement to analyze whether "inmates are being assessed under the risk and needs assessment system with the frequency required under section 3621 of title 18, United States Code" but does not require the analysis extend to ensuring such assessments are completed within BOP's pre-existing policy guidelines.

As noted by GAO, 18 U.S.C. § 3632(d)(5) indicates that periodic risk assessments should occur "not less often than annually" and, for adults in custody with a medium or high recidivism risk with less than five years until their projected release date, more frequently than annually. However, BOP has indicated that it conducts risk assessments in half the time allotted by the FSA (every 180 days), and every 90 days for adults in custody within 12 months of their projected release date, under policies that predate the FSA.

BOP therefore notes that the data submitted by the BOP reflect that the BOP is, in fact, assessing incarcerated people under the risk and needs assessment system more frequently than required by the FSA, and there is no statutory requirement to review whether such assessments are also conducted in accordance with BOP internal, self-imposed timeframes.

Recommendation 3: The Director of BOP should use and document the results of its ongoing monitoring of the frequency at which it conducts risk and needs assessments and take appropriate corrective actions, as needed.

BOP Response: BOP concurs with this recommendation and will continue its ongoing efforts to use and document the results of monitoring the frequency of risk and needs assessments and take appropriate corrective actions as needed, to ensure these assessments are conducted within the statutorily required timeframes.

As noted in the draft report, BOP has developed systems, including SPARC-13, which encompass a variety of tools. These tools, which have been developed and improved since 2018, currently capture information on FSA risk and needs assessments, including dates these assessments are conducted.

In fact, as the draft report indicates, BOP implemented an automated-calculation application which improved scoring reliability by eliminating manual errors, reduced employee labor costs, and increased the speed and efficiency of the assessments. Further, as noted in the draft report, BOP is currently able to "run nation-wide rosters on the number of incarcerated people with a completed risk assessment." (*See draft report, page 27.*)

Nonetheless, BOP continues its efforts to improve its technological capabilities to better gauge FSA performance. As noted in the report, BOP is currently contracting to conduct a quality assurance audit verifying timely risk and needs assessments within FSA-required timeframes and to develop a data analytics platform and identify the metrics and data necessary to track performance and implementation of the FSA. However, continuing this effort is contingent on future program funding.

Additionally, as noted in the draft report, BOP has issued guidance requiring employees to provide monthly reports to the regional office regarding completion of risk and needs assessments, which will then be used to target training and review efforts to ensure compliance with statutory timeframes.

Recommendation 4: The Director of BOP should ensure its plan for evaluating evidence based recidivism reduction programs has pre-established, quantifiable goals that align with the First Step Act, and includes clear milestone dates.

BOP Response: BOP concurs with this recommendation and currently has a clear plan to evaluate evidence-based recidivism reduction programs (EBRRs) which includes preestablished, quantifiable goals. As BOP has stated previously, milestones will be finalized as BOP learns to gauge its capacity. However, BOP has already made an ambitious effort to evaluate its programs. Fourteen evaluations are

currently underway and each has a strategy and timeline. Additionally, two more evaluations are planned for FY 2023 and specific goals will be developed collaboratively between BOP and the contractor conducting the evaluations.

Evaluations are and will continue to be designed to align seamlessly with DOJ's Learning Agenda. Specifically, Question 28 in DOJ's Learning agenda is, "What is the long-term impact of First Step Act programs on formerly incarcerated individuals returning to the community?" Evaluation of EBRRs and their impact on recidivism is central to this question. [Priority Questions Related to Strategic Goal 5: Administer Just Court and Correctional Systems | DOJ | Department of Justice](#)

Further, as BOP has previously noted, the list of EBRRs is evaluated and refined on an ongoing basis, and BOP continually reviews, develops, and implements new programs. However, all planned evaluations will examine program-specific goals and recidivism.

Recommendation 5: The Director of BOP should evaluate its evidence-based recidivism reduction programs, according to the plan established.

BOP Response: BOP concurs with this recommendation. As noted in response to the previous recommendation, BOP has already undertaken an ambitious effort to evaluate its programs. Fourteen evaluations are currently underway, and each has a strategy and timeline. Additionally, two more evaluations are planned for FY 2023 and specific goals will be developed collaboratively between BOP and the contractor conducting the evaluations.

Evaluations are and will continue to align seamlessly with DOJ's Learning Agenda. Specifically, Question 28 in DOJ's Learning agenda is, "What is the long-term impact of First Step Act programs on formerly incarcerated individuals returning to the community?" Evaluation of EBRRs and their impact on recidivism is central to this question. [Priority Questions Related to Strategic Goal 5: Administer Just Court and Correctional Systems | DOJ | Department of Justice](#)

Further, as BOP has previously noted, the list of EBRRs is evaluated and refined on an ongoing basis and BOP continually reviews, develops, and implements new programs. However, all planned evaluations will examine program-specific goals and recidivism.

Recommendation 6: The Director of BOP should develop a mechanism to monitor, on an ongoing basis, if it is offering a sufficient amount of evidence-based recidivism reduction programs and productive activities to meet the needs of its incarcerated person population.

BOP Response: BOP concurs with this recommendation and has already contracted to make this information available in a dashboard format that is continually updated. BOP is also in the process of expanding staffing under the FSA to ensure programs are sufficient to meet the needs of the incarcerated population.

As the draft report recognizes, BOP continues to address ongoing staffing challenges, as evidenced by its efforts to implement GAO recommendations in other engagements. (*GAO, Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs, GA0-21-123 (Washington, D.C.: Feb. 24, 2021).*) However, the technology currently being developed will offer information on the programs offered by each facility and the needs of the adults in custody within that facility. By comparing the needs of the adults in custody to the programs offered, it will become apparent whether the needs of the population are being met.

Recommendation 7: *The Director of BOP should document a complete list of all the unstructured activities (GAO indicates that Recommendations 7 and 8 will be revised to clarify that what is being referred to is in fact "unstructured productive activities," not simply "unstructured activities." We appreciate this clarification. Our analysis and response to these recommendations remains unchanged, however, because participation in "unstructured productive activities" that are not recommended based upon a risk and needs assessment cannot be catalogued and monitored due to their unstructured format. Also, because these activities are "unstructured," there is no way to monitor whether an incarcerated person has successfully participated.) that incarcerated people are able to participate in and earn First Step Act time credits.*

Recommendation 8: *The Director of BOP should collect and monitor participation data for unstructured activities that incarcerated people are able to participate in and earn First Step Act time credits.*

BOP Response to Recommendations 7 and 8: Respectfully, BOP does not concur with these recommendations in their current format because attempting to catalog and monitor unstructured activities would: (1) contradict the purpose of an intentionally open-ended and broad program; and (2) potentially limit available options to adults in custody.

FSA time credits may be earned by any eligible adult in custody "who successfully completes evidence-based recidivism reduction programming or productive activities." (*See Pub. L. No. 115-391, 132 Stat. 5194, and 18 U.S.C. §3632(d)(4)(A).*) The January 2022 final rule on FSA Time Credits, defines "successful participation" for the purposes of earning FSA time credits as requiring that "an eligible inmate has

participated in the EBRR programs or PAs that the BOP has recommended based on the inmate's individualized risk and needs assessment, and has complied with the requirements of each particular EBRR Program or P A." (28 C.F.R. § 523.41(c).)

Unstructured productive activities are the expression of skills learned in EBRRs (e.g., writing age-appropriate letters to minor children, engaging in self-care, and managing anger appropriately). They play an important role both in preparing those in our custody to be good neighbors and in fostering a positive BOP community. They are the activities of daily living (e.g., hygiene, exercise, accountability) that support healthy communal relationships and can include such efforts as maintaining clean living areas, being cordial to fellow residents, constructively engaging with loved ones in the community, and miscellaneous institution-based opportunities. If a person is in "successful participation status," that person will also be routinely engaged in daily unstructured activities which reflect pro-social behavior.

BOP believes that each adult in our custody must be respected as an individual with a unique history, profile, and process for successfully interacting with his or her environment. Based on this and the fact that such pro-social activities of daily living are, by their very nature unstructured, BOP respectfully asserts it would be infeasible to produce a comprehensive catalog. Additionally, attempting to catalog such activities could have a chilling effect on an adult in custody's willingness to engage in pro-social behavior by creating the misapprehension that maintenance of "successful participation" status can only occur if an adult in custody participates in the "unstructured productive activities" on the list.

Participation in these unstructured productive activities is a positive consequence of continued "successful participation status." It is not statutorily required or helpful for BOP to document a complete list of such "unstructured activities," because they are naturally occurring activities that may not directly result from a risk and needs assessment recommendation (e.g., work details for those with no identified work need, recreation, social visits, participation in religious services, teaching classes, and tutoring).

BOP's policy on First Step Act Time Credits, issued in November 2022 (and re-issued in February 2023), explains that "productive activities" as defined by the FSA may include a variety of groups, programs, classes and individual activities which can be either structured or unstructured. These pro-social activities contribute to an adult in custody's overall positive institutional adjustment, encompass maintaining clear institution conduct, and include, but are not limited to: structured, curriculum-based group programs and classes; free-time activities (e.g., recreation, hobby crafts, or religious services); family interaction activities (e.g., social visiting); personal growth and development classes (e.g., adult continuing education classes); institution work programs; community service projects; and participation in the

Inmate Financial Responsibility Program. BOP's policy further indicates that a list of BOP-approved, curriculum-based productive activities is available on BOP's public website and is updated on an ongoing basis as programs/activities are added.

Because participation in unstructured productive activities are a consequence of being in successful participation status, it is neither helpful nor possible to list or track the participation of an adult in custody in the myriad of routine, healthy activities that demonstrate a lack of EBRR program or PA violation or refusal.

Sincerely,
Colette S. Peters
Director

Appendix IX: GAO Contacts and Staff Acknowledgments

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Gretta L. Goodwin, 202-512-8777 or goodwing@gao.gov

Staff Acknowledgments

In addition to the contact named above, Tracey Cross (Assistant Director), Wendy Dye (Analyst-in-Charge), Hiwotte Amare, Joy Booth, Danielle Blazek, Billy Commons, Elizabeth Dretsch, Eric Hauswirth, Baltazar Hernandez, Terell Lasane, Catherine Morrissey, Kaitlyn O’Hearne, Lauren Ostrander, Sam Portnow, Jeff Tessin, and Adam Vogt made key contributions to this report.

Related GAO Products

Bureau of Prisons: Opportunities Exist to Better Assist Incarcerated People with Obtaining ID Documents Prior to Release. [GAO-23-105302](#). Washington, D.C.: Dec. 8, 2022.

Second Chance Reentry Grants: DOJ Should Report Limitations When Publishing Performance Data. [GAO-22-104641](#). Washington, D.C.: April 6, 2022.

Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs. [GAO-21-123](#). Washington, D.C.: February 24, 2021.

Federal Prison Industries: Actions Needed to Evaluate Program Effectiveness. [GAO-20-505](#). Washington DC: July 29, 2020.

Bureau of Prisons: Improved Planning Would Help BOP Evaluate and Manage its Portfolio of Drug Education and Treatment Programs. [GAO-20-423](#). Washington DC: May 26, 2020.

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Nonviolent Drug Convictions: Stakeholders' Views on Potential Actions to Address Collateral Consequences. [GAO-17-691](#). Washington, D.C.: Sept. 7, 2017.

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