



September 24, 2026

Whittington C. Wiman, LCI/Rules Administrator
Office of General Counsel
Federal Bureau of Prisons
320 First Street NW
Washington, DC 20534

Re: FSA Time Credits rule

Mr. Wiman:

The National Association of Criminal Defense Lawyers (NACDL) writes today to share two observations regarding the Bureau of Prisons' (BOP) Interim Final Rule "First Step Act Time Credits-Revisions." Founded in 1958, NACDL is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crimes or misconduct. It has a membership of many thousands of direct members and approximately 40,000 affiliated members. The clients of NACDL's membership—defendants and those serving sentences in BOP facilities—are directly impacted by the First Step Act's (FSA) time credit system and have litigated aspects of the FSA's implementation, such as the point in time when someone begins earning time credits.

First, while the removal of the requirement that someone reach their designated BOP facility before earning time credits is encouraging insofar as it will no longer conflict with the clear statutory language of the FSA, it still makes the starting point of time credit earning reliant on BOP action. The Interim Final Rule states "this change does not mean that every eligible inmate will automatically begin earning Time Credits immediately after their sentence is imposed. In accordance with the FSA and its implementing regulations, to earn Time Credits, the inmate must still complete evidence-based recidivism reduction (EBRR) programming or productive activities assigned to them based on their assessed needs." In other words, under this Rule, if the BOP is delayed in providing a needs assessment to a prisoner, the prisoner will still be delayed in earning time credits through no fault of their own. NACDL is particularly concerned about those housed temporarily in non-BOP facilities who may not be moved to a BOP facility for some time after they are sentenced. Prompt provision of the BOP's initiating surveys must be a priority or this change will not make a meaningful difference.

Second, NACDL remains concerned that prisoners still cannot earn time credits throughout the entirety of their sentence—namely during time spent in prerelease custody—as the FSA requires. The FSA states that “the Director of the Bureau of Prisons shall provide all prisoners with the opportunity to actively participate in evidence-based recidivism reduction programs or productive activities, according to their specific criminogenic needs, *throughout their entire term of incarceration.*” 18 U.S.C. § 3621(h)(6) (emphasis added). Despite this, in 2022, the BOP’s proposed rule stated, “FSA Time Credits can only be earned while an inmate is in a Bureau Facility, and will not be earned if an inmate is in a Residential Reentry Center or on home confinement.” FSA Time Credits, 85 Fed. Reg. 75268-01, 75269 (Nov. 25, 2020). Multiple commenters, including Senators Sheldon Whitehouse and John Cornyn and Congressman Hakeem Jeffries, took issue with this restriction and wrote that individuals incarcerated in an RRC or on home confinement remain eligible for earn time credits. FSA Time Credits, 87 Fed. Reg. 2705-01, 2712 (Jan. 19, 2022). In response, the BOP reversed position in its Final Rule, stating that “[a]fter carefully considering the comments received, the Bureau agrees that inmates in prerelease custody—whether in RRC or on home confinement—are eligible to earn FSA Time Credits under 18 U.S.C § 3632(d)(4)(A), which they could presumably apply under 18 U.S.C. § 3632(d)(4)(C) toward transfer to supervised release.” FSA Time Credits, 87 Fed. Reg. 2705-01, 2712 (Jan 19, 2022). However, prisoners today do not earn time credits in prerelease custody and, even if they do, they are left unused and wasted. Fixing this earning period late in a prisoner’s sentence should remain a BOP priority just as fixing the start date of earning has been.

Respectfully,

Trevor Parkes

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