

EXPLAINER: FIRST STEP ACT TIME CREDITS

The First Step Act of 2018 is a federal law that Senator Chuck Grassley (R-IA) labeled “once-in-a-generation criminal justice reform.” On the day after it passed in the Senate, Grassley called it “a good day for representative government,” “[a] good day for the taxpayer,” “[a]nd a good day for safe streets and strong families.”

The most significant part of the First Step Act is its “Time Credits program.” Under the program, a narrow class of federal prisoners can earn incentives in exchange for their participation in evidence-based recidivism reduction programming and productive activities. The incentives can be lucrative, including up to 15 days off your sentence for every 30 days of participation.

For more than three years, the Bureau of Prisons has rendered the Time Credits program purposeless, assigning prisoners to programs and activities but refusing to apply the Time Credits they earned. But, on January 13, 2022, less than 48 hours before the law’s final deadline, we finally received guidance on how the Time Credits program will actually work.

Below, we attempt to answer the most common questions justice-impacted people, their loved ones, and advocates have about the First Step Act’s Time Credits program. Understand that the information below is our interpretation of the information available, as well as that we cannot answer questions about you or your loved one’s eligibility for First Step Act Time credits.

What is the First Step Act? What is the First Step Act’s Time Credits program?

The First Step Act is a federal law that was enacted on December 21, 2018, and is codified at 18 U.S.C. § 3632(d)(4). The most recent interpretation of the law’s Time Credits program is set forth in 28 C.F.R. § 523, a final rule recently announced by the Department of Justice that you can review, in full, [here](#). The DOJ and BOP must follow this recently announced rule.

In short, the Time Credits program allows federal prisoners to earn incentives, including time off their sentence, for their participation in evidence-based recidivism reduction programming and productive activities. Prisoners can earn up to 15 days of Time Credits for every 30 days of program and activity participation they complete in BOP custody.

What is evidence-based recidivism reduction programming? What are productive activities?

To earn Time Credits, prisoners must participate in “evidence-based recidivism reduction programming” and “productive activities.” The First Step Act specifically defines both terms in broad ways that should include many of the programs and activities available in BOP facilities.

18 U.S.C. § 3635(3)(A)-(B) defines “ ‘evidence-based recidivism reduction program’ ” as “either a group or individual activity that” “has been shown by empirical evidence to reduce recidivism or

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is based on research indicating that it is likely to be effective in reducing recidivism” and “is designed to help prisoners succeed in their communities upon release from prison.”

18 U.S.C. § 3635(3)(C) lists several examples of programs that “may” meet the definition of “evidence-based recidivism reduction program.” Examples include “academic classes,” “mentoring,” “substance abuse treatment,” “a prison job, including through a prison work program,” “victim impact classes or other restorative justice programs,” and more.

18 U.S.C. § 3635(5) defines “ ‘productive activity’ ” as “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 ... to other prisoners.”

Most people don’t want to have to argue with BOP officials over whether a certain program or activity counts for First Step Act Time Credits. While doing so may become necessary, it’s important to know that the BOP has published a “FIRST STEP ACT Approved Programs Guide” that lists the programs you know will count. You can review that [here](#).

The only other catch is that the BOP must recommend the programs and activities to you for them to count. If, for example, your PATTERN score indicates that you have an “anger” need and your BOP case manager recommends “anger management,” that program will count. But if you voluntarily take anger management, the BOP may refuse to apply your Time Credits.

Will programs and activities I’ve already completed count?

Maybe. Originally, the BOP only planned to count program and activity participation after January 15, 2020. But, under the new rule, the BOP is required to apply Time Credits for program and activity participation all the way back to December 21, 2018. For many people, the new rule made them immediately eligible for release because of this retroactive application.

But you need to remember that all of the same rules still apply for these already-completed programs. So, even if you successfully completed a program or activity after December 21, 2018, the BOP must still have assigned that program or activity, and that program or activity must also have been focused on one of your risks or needs according to PATTERN.

What if I start but don’t finish a program or activity?

Originally, the BOP required that prisoners finish a program or activity before it counted. Under this approach, you could spend months in a program but not receive any credit for it if you were transferred to another facility or moved to home confinement. But, under the new rule, that is

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no longer the case. Prisoners can now earn Time Credits on a rolling basis: You earn credits for every 30 days of participation no matter where you're at in the program or activity.

Who can earn First Step Act Time Credits?

People in BOP custody who are serving a sentence for a federal, nonviolent crime can earn First Step Act Time Credits. Examples of crimes that may disqualify you from eligibility include drug trafficking, kidnapping, sexual offenses, terrorism, drive-by shootings, torture, treason, atomic-weapons offenses, threatening or assassinating high-level government officials, and others.

The other significant requirement is that you successfully participate in evidence-based recidivism reduction programming and productive activities while maintaining a "minimum" or "low" risk assessment under PATTERN or obtain warden approval. And you must also earn the number of Time Credits that is equal to the remainder of your prison sentence.

How many First Step Act Time Credits can I earn?

You can earn 10 days of Time Credits for every 30 days you participate in evidence-based recidivism reduction programming and productive activities that the BOP recommends. Additionally, those with "minimum" or "low" PATTERN scores can earn an additional 5 days of Time Credits if they maintain their minimum or low risk over two assessments. But you should know that, like Good Time Credits, First Step Act Time Credits are capped at 12 months.

How does the BOP define a "day" for First Step Act Time Credits?

Incarcerated people can earn up to 15 "days" of Time Credits every 30 days. The law doesn't define the term "day," but the new BOP rule does. It states that a day means a calendar day on which someone participates in a program or activity no matter how many hours it lasts.

So, if you are assigned to and participate in a program that's offered every day, you can earn 15 days of Time Credits every 30 days even if the program only lasts an hour every day. This is much better than the BOP's original approach, which would have required eight hours of programming to complete a day and made it take months to earn even a week of Time Credits.

Can I always participate in First Step Act programs and activities?

No. The First Step Act prevents several groups of people from participating in programming and activities. Examples include those in the Special Housing Unit ("SHU"), those on a writ or temporary transfer to another agency, those on mental-health holds, and those outside of BOP custody for things like extended medical treatment, court appearances, or furlough.

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Can I lose First Step Act Time Credits after I earned them?

Yes. Under the First Step Act, the BOP can take away earned Time Credits for violating the rules and requirements of the evidence-based recidivism reduction programming and productive activities. The BOP's approach to this is similar to its approach to Good Time Credits in that it has created a table of forfeiture sanctions that you can review at the end of the new rule.

When will I know how many First Step Act Time Credits I've already earned?

The answer to this question depends on many factors. When the DOJ announced the new BOP rule on January 13, 2022, it stated that the BOP had already "begun transferring eligible inmates out of BOP facilities and into either a supervised release program or into Residential Reentry Centers (RRCs) or home confinement (HC)." You can read that press release [here](#).

But, as you'd expect, the BOP didn't apply everyone's Time Credits at once. It's fair to criticize the BOP for waiting so long to start applying Time Credits. But the DOJ's plan for doing so now makes sense. According to the press release, "[i]mplementation will occur on a rolling basis, beginning with immediate releases for inmates whose Time Credits earned exceed their days remaining to serve, are less than 12 months from release, and have a Supervised Release term."

We've already heard from people who have either been transferred to home confinement or who have had their ankle monitors removed since the January 13, 2022 announcement. For those who haven't, there doesn't appear to be any helpful information available as to when that time might come. Those at halfway houses are often told that they must wait until they receive an email from a BOP official telling them it's okay to remove the ankle monitor.

Can I file a lawsuit if the BOP doesn't apply my First Step Act Time Credits?

Yes. Hundreds of federal prisoners have filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in hopes of forcing the BOP to apply their First Step Act Time Credits immediately. Disappointingly, all but two of those cases have been unsuccessful. Nearly every federal court in the country has dismissed these petitions, telling prisoners they must wait until January 15, 2022, for the BOP to apply First Step Act time credits and to file a lawsuit if they don't.

Now that the January 15, 2022, has passed, we're hopeful that more than two federal courts will provide meaningful review of the BOP's calculation of First Step Act Time Credits. Unfortunately, even since that deadline passed, courts have remained reluctant to meaningfully review the BOP's Time Credits calculations or otherwise push back in First Step Act cases.