

First Step Act



On January 13, 2022, the BOP published a rule implementing the Earned Time Credits that were included in the First Step Act. There are a lot of questions about the rule, many of which this Explainer attempts to answer. There is still much to learn, however, and we will continue to update this Explainer as we learn more. Please understand that we cannot answer your questions about whether you or your loved one is eligible for credits toward pre-release custody or supervised release, among other things.

Here is what we know about the Earned Time Credits rule as of **July 14, 2022. Statutory Authority**

The First Step Act of 2018 was enacted into law on December 21, 2018, and codified at 18 U.S.C. sec. 3632(d)(4). The BOP created a rule to implement procedures for earning and awarding earned time credits. That rule is located at 28 CFR part 523 and part 541.

The Final Rule: https://prisonprofessors.com/wp-content/uploads/2022/07/bop_fsa_rule.pdf

The Approved Programs: https://prisonprofessors.com/wp-content/uploads/2022/07/fsa_program_guide_0622.pdf

1. Who is eligible to apply FSA Time Credits toward pre-release custody or supervised release?
 - » People in BOP custody (including those in a halfway house or on home confinement);
 - » who are serving a federal sentence;
 - » who have successfully participated in Evidence-Based Recidivism Reducing Programs (EBRR or Programs) or Productive Activities (PA);
 - » who have maintained a “minimum” or “low” risk status through their two most recent risk assessments, or
 - » who can obtain warden approval; and
 - » who have earned credits equal to the remainder of their prison term.
2. Who is barred from either earning FSA Time Credits or applying those credits toward pre-release custody?
 - » People serving sentences for convictions under state or District of Columbia law, or for a violation of the Uniform Code of Military Justice, or who have a final order of removal under immigration law, cannot **apply** credit toward pre-release custody or supervised release.
 - » People serving a sentence for a conviction the First Step Act identifies as disqualifying cannot **earn** credit. In limited circumstances, certain prior convictions may also prohibit one from earning credit.

3. What are the Evidence-Based Recidivism Reducing Programs (Programs) and Productive Activities?
 - » The BOP has published a list of all approved Programs and Productive Activities in the [First Step Act Approved Programs Guide](#). The list is long and will be updated annually, according to the BOP. It includes participation in UNICOR and RDAP, BOP-approved online correspondence college courses, and faith-based activities.
4. How can FSA Time Credits be earned?
 - » One can earn 10 days of credit for every 30-day-period during which they successfully participate in EBRR programs and/or Productive Activities that the BOP recommended they participate in.
 - » Those who are determined to be at minimum or low risk for recidivating can earn an additional five days of credit for every 30 day period during which they successfully participate in programs or activities if they have maintained the status of minimum or low risk of recidivism over the most recent two consecutive risk and needs assessments.
5. What is a “day” and how does it count toward successful participation?
 - » Under the final rule, a “day” does not mean the individual must participate in 8 hours of programming to get credit. Rather, a day means a calendar day on which the person is participating in whatever assigned programming takes place on that date. For example, if an individual is assigned to and attending three programs that take place only on Mondays, Wednesdays, and Fridays, as long as the person consistently attends on Mondays, Wednesdays, and Fridays for a 30-day period, they will receive credit.
6. Does a person have to complete a program to earn credit?
 - » No. One is not required to complete the program to earn credit.
7. Which Programs and Productive Activities qualify?
 - » The EBRR programs or Productive Activities must be recommended to the person by the BOP based on the person’s individualized risk and needs assessment. Programs that an individual participated in before the individualized risk and needs assessment (December 21, 2018 – January 14, 2020) can also qualify. (See Question 12 for more information on retroactive credits.)
8. What if a Program or Productive Activity is interrupted or unavailable for reasons beyond the participant’s control?
 - » This may not affect the ability to earn credits if authorized by the Bureau.
9. Are there times when a person cannot be considered to be successfully participating?
 - » Yes. People considered not successfully participating include those:
 - » in the SHU;
 - » on designated status outside the BOP facility (for example, extended medical placement, court appearances, furlough);
 - » on a writ or temporary transfer to custody of another federal or non- federal government agency;
 - » on a mental health hold; or
 - » who decline to participate in recommended EBRR programs or PAs.

10. What do earned FSA Time Credits do?
- » Eligible people who have earned FSA Time Credits may have them applied toward pre-release custody (halfway house or home confinement transfers) or early transfer to supervised release (essentially shortening the sentence).
 - » Transfer to supervised release is limited to one year, but people may be transferred to pre-release custody earlier.
11. When can one begin earning FSA Time Credits?
- » As soon as an eligible person begins their federal sentence, they are eligible to earn FSA Time Credits.
12. Can a person be credited for Programs and Productive Activities or other programs before the rule was adopted?
- » Yes. People are being awarded **retroactive FSA Time Credits** for participation in programs after the First Step Act was enacted on December 21, 2018.
 - » Eligible people who participated in programming and activities from **December 21, 2018, to January 14, 2020**, will be presumed to have participated in EBRR Programs and PAs and may earn FSA Time Credits using the same criteria applied as if they had participated in those Programs and PAs. This presumption applies because the risk and needs assessments were not completed until January 14, 2020, so there was no ability to connect individuals to recommended programming.
 - » **After January 15, 2020**, eligible people who successfully participated in EBRR programs or PAs recommended by the BOP may be able to earn FSA Time Credits.
13. How are retroactive Earned Time Credits impacting people's sentences?
- » The BOP is calculating and applying Earned Time Credits retroactively (from December 21, 2018) and transferring people to home confinement or halfway houses or to supervised release. Thousands of people started transferring out of prison to the community or ending their sentences and beginning supervised release starting on January 13, 2022.
14. How are the credits applied so people can leave prison?
- » A person is eligible for **"Pre-release custody,"** meaning transfer to a **halfway house or home confinement** but still serving their sentence under BOP jurisdiction, when they have:
 - » Earned credits that equal the time left on their sentence;
 - » Demonstrated a reduced risk of recidivism or maintained a low or minimum recidivism risk during their term of imprisonment;
 - » Had the remainder of their imposed term of imprisonment computed to account for Good Time and RDAP credits; and either
 - » Maintained their status as "low" or "minimum" risk of recidivism over the two most recent risk and needs assessments, **or**
 - » Are approved by the warden after the warden determines they:
 - » do not pose a danger to society;
 - » have made a good faith effort to lower their risk of recidivism; and
 - » are unlikely to recidivate.
 - » A person is eligible for transfer to **supervised release** when they have
 - » Met all the criteria above;

- » Have a term of supervised release included in their sentence;
- » Are within 12 months of the end of their sentence, and either
- » have maintained minimum or low recidivism risk through the most recent risk and needs assessment, **or**
- » are approved by the warden after the warden determines they
- » do not pose a danger to society;
- » have made a good faith effort to lower their risk of recidivism; and
- » are unlikely to recidivate.

15. Can a person lose FSA Time Credits they have earned?

- » Yes. A person can lose FSA Time Credits if they violate the requirements or the rules of the EBRR Program or PA. The BOP has created a table of forfeiture sanctions that resembles those used to remove Good Time Credits. The list and penalties can be found on the last page of the rule.
- » https://prisonprofessors.com/wp-content/uploads/2022/07/bop_fsa_rule.pdf