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September 30, 2026

Bureau of Prisons
320 First Street NW
Washington, D.C. 20534

Re: BOP-2026-1001—First Step Act Time Credits—Revisions

Thank you for the opportunity to respond to the request for comments on the interim final rule to clarify when an inmate can begin to earn time credits under the First Step Act (FSA), in order to bring the use of these time credits fully into line with the original intent of the law. My name is Sarah Anderson, and I am the associate director of criminal justice and civil liberties policy at the R Street Institute, a nonprofit, nonpartisan public policy research organization. We engage in policy analysis and outreach promoting free markets, and limited, effective government in a variety of policy areas, including criminal justice.

Our desire to see the First Step Act succeed is borne out of our vested interest in creating a criminal justice system that improves public safety while promoting the fair and efficient operation of the justice system. An essential piece of this is ensuring carefully-constructed policy changes are enacted truthfully to the intent and letter of the law. The changes to the timeline on which eligible inmates are able to begin accruing FSA time credits proposed in this rulemaking would accomplish that goal.

I have been ardently supportive of the First Step Act both professionally and personally, and was deeply involved in the negotiations and careful construction of legislative text to craft the final bill that was signed into law in 2018, dating back to well before its final passage. I have since answered requests for input on its implementation, as well as provided analysis on its impact and recommendations for next steps that will further the goals of the law spanning through to its more modern implications.¹

¹ Sarah Anderson, "Trump will go down in history for using the First Step Act to redefine what it means to be 'tough on crime,'" *The Washington Examiner*, December 27, 2018. <https://www.washingtonexaminer.com/opinion/150827/trump-will-go-down-in-history-for-using-the-first-step-act-to-redefine-what-it-means-to-be-tough-on-crime>; Sarah Anderson, "President Trump and the GOP commit to second chances," *Fox News*, April 13, 2019. <https://www.foxnews.com/opinion/sarah-anderson-president-trump-and-the-gop-commit-to-second-chances>; National Institute of Justice, "Stakeholder Statements Submitted to NIJ's September Listening Sessions: Comments on the Department of Justice's Report, The First Step Act of 2018: Risk and Needs Assessment System," September 2019. <https://www.ojp.gov/pdffiles1/nij/254142.pdf>; Sarah Anderson, "Statement to the Federal Bureau of Prisons Listening Session," *R Street Institute*, October 5, 2022. <https://www.rstreet.org/outreach/statement-to-the-federal-bureau-of-prisons-listening-session-with-director-colette-peters>;

Proposed Change Regarding Earn Time Credits

The Bureau of Prisons is taking the correct next step in reviewing and revising the way that time credits under the First Step Act are calculated to, as stated, “ensure [its] regulatory scheme is based on the best reading of the underlying statutory authority.”² Currently, as the policy stands, an “eligible inmate begins earning FSA Time Credits after the inmate’s term of imprisonment commences (the date the inmate arrives or voluntarily surrenders at the designated Bureau facility where the sentence will be served)”.³ This means that inmates held in custody anywhere other than the designated Bureau facility—most often a local jail—during the period of time following the date a sentence was imposed, but before that inmate is transferred to the designated Bureau facility, he or she is not able to begin accruing FSA time credits.

The analysis cited in the proposed rule found that the average length of time that inmates are held in custody awaiting transfer from one facility to their designated Bureau facility is 66.06 days—a period of time during which eligible inmates would otherwise be able to accrue 23.81 days of credits.⁴ Calculated out, the cost savings from this change would amount to an estimated \$54 million annually.⁵

As stated in the First Step Act, a “prisoner may not earn time credits...prior to the date of enactment of this subchapter, or during official detention prior to the date that the prisoner’s sentence commences.”⁶ A reading of this language clearly indicates that a prisoner whose date of sentence has commenced should be eligible to begin earning time credits, regardless of what physical facility they are being held in.

The proposed rule would clearly state this in the regulatory code and put it into practice, which, as stated in the rule, “aligns the regulatory text with the long-established rule that a sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or voluntarily arrives at, the official detention facility at which the sentence is to be served.”⁷

Conclusion

We strongly support the proposed rule, and we look forward to any future efforts the Bureau may take to continue supporting full implementation of the First Step Act. Thank you for the consideration of our comment. Please reach out to sanderson@rstreet.org with any further needed feedback, or as the Bureau

Sarah Anderson, “Why embracing criminal justice reform is a ‘First Step’ toward victory in 2024, *The Hill*, December 17, 2023.

<https://thehill.com/opinion/criminal-justice/4362884-why-embracing-criminal-justice-reform-is-a-first-step-toward-victory-in-2024>.

² Federal Bureau of Prisons, “First Step Act Time Credits—Revisions,” *Regulations.gov*, August 31, 2026. <https://www.regulations.gov/document/BOP-2026-0001-0001>.

³ 28 C.F.R. § 523.42 (2025). <https://www.law.cornell.edu/cfr/text/28/523.42>

⁴ Federal Bureau of Prisons, “First Step Act Time Credits—Revisions.

⁵ Ibid.

⁶ First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194.

<https://www.congress.gov/115/plaws/publ391/PLAW-115publ391.pdf>.

⁷ Federal Bureau of Prisons, “First Step Act Time Credits—Revisions.”

considers other ways to support our shared goals of safety, accountability, and rehabilitation throughout the federal criminal justice system.

Respectfully submitted,

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