

THE FIRST STEP ACT OF 2018: FSA Time Credits

Sentencing Resource Counsel for the Federal Public and Community Defenders (updated May 2024)

Earning FSA Time Credits

All eligible persons: earn **10 days** of credits for every 30 days of successful participation in evidence-based recidivism reduction (EBRR) programs or productive activities (PAs) that BOP has recommended based on risk & needs assessment.

Persons in min/low risk categories who “over 2 consecutive assessments” have not increased their risk category shall earn “an **additional 5 days** of credits for every 30 days of successful participation.”

Qualifying Participation: must be on or after FSA enactment (Dec. 21, 2018) & commencement of sentence.

Credits awarded for every 30-day period in “earning status,” *i.e.*, participating in or awaiting participation in EBRR programs and PAs recommended based on risk and needs assessment.

See 18 U.S.C. § 3632(d)(4); 28 C.F.R. §§ 523.41, 523.42; Prog. Stat. 5410.01

Successful Participation Does Not Include:

- Special Housing Unit (disciplinary segregation only)
- Designation status outside institution (*e.g.*, extended medical, furlough)
- Temporary transfer to other agency custody (including federal writs)
- Mental health/psychiatric holds
- Opted out of recommended EBRR/PAs; refused to complete needs assessments

See 28 C.F.R. 523.41(c)(4)(i)–(v); Prog. Stat. 5410.01

Assessments

Initial classification “ordinarily” completed within 28/30 days of arrival to designated facility.

Persons who “successfully participate” in programming shall receive reassessments “not less often than annually”; those in medium/high risk categories who are less than 5 years from release shall receive “more frequent” reassessments.

Persons in prerelease custody: [gobbledygook]

See 18 U.S.C. § 3632(d)(5); Prog. Stat. 5410.01

Using FSA Time Credits

Credits shall be applied when individual has: (A) earned credits equal to remainder of prison term and (B) has either maintained min/low risk or “demonstrated recidivism risk reduction” in reassessments.

For early transfer to **supervised release** (not to exceed 12 months):

- (1) Min/low risk for last reassessment; and
- (2) Has a term of supervised release as part of sentence.

For **prerelease custody** (home confinement or RRC):

- (1) Min/low risk for last 2 reassessments; or
- (2) With warden approval after determining (a) no danger to society; (b) good-faith effort to lower recidivism risk through programming; and (c) unlikely to recidivate. *For those with medium/high risk, BOP deems warden approval an “exception” and sets additional criteria in Prog. Stat. 5410.01.*

See 18 U.S.C. §§ 3624(g)(1)–(3), (10), 3632(d)(4)(C); 28 C.F.R. § 523.44; Prog. Stat. 5410.01

Ineligible for FSA Time Credits

Ineligible to receive FSA Time Credits if “serving a sentence for a conviction”* under any of the following:

- 18 U.S.C. §§ 32, 33
- 18 U.S.C. § 36
- 18 U.S.C. § 81
- 18 U.S.C. § 111(b)
- 18 U.S.C. § 113(a)(1), (7), (8)
- 18 U.S.C. § 115, except threats
- 18 U.S.C. § 116
- 18 U.S.C. § 117
- Ch. 10 (18 U.S.C. §§ 175, 178: biological weapons)
- Ch. 11B (18 U.S.C. §§ 229–229F: chemical weapons)
- 18 U.S.C. § 351
- 18 U.S.C. § 521
- 18 U.S.C. § 751
- 18 U.S.C. §§ 793, 794
- Ch. 39 (18 U.S.C. §§ 831–835: explosives), but not § 836
- 18 U.S.C. § 842(p) if weapon of mass destruction
- 18 U.S.C. § 844(f)(3), (h), (i)
- 18 U.S.C. §§ 871, 879
- 18 U.S.C. § 924(c)
- 18 U.S.C. § 1030(a)(1)
- 18 U.S.C. § 1091
- Ch. 51 (18 U.S.C. §§ 1111–1121: homicide), except §§ 1112, 1113, 1115, 1122
- Ch. 55 (18 U.S.C. §§ 1201–1204: kidnapping)
- Ch. 77 (18 U.S.C. §§ 1581–1597: peonage/slavery) except §§ 1593–1596
- 18 U.S.C. § 1751
- 18 U.S.C. § 1791
- 18 U.S.C. § 1792
- 18 U.S.C. § 1841(a)(2)(C)
- 18 U.S.C. § 1992
- 18 U.S.C. § 2113(e)
- 18 U.S.C. § 2118(c)
- 18 U.S.C. § 2119
- Ch. 105 (18 U.S.C. §§ 2151–2156: sabotage) except § 2152
- Ch. 109A (18 U.S.C. §§ 2241–2248: sex abuse)
- 18 U.S.C. § 2250
- 18 U.S.C. §§ 2251, 2251A
- 18 U.S.C. §§ 2252, 2252A
- 18 U.S.C. § 2260
- 18 U.S.C. § 2283
- 18 U.S.C. § 2284
- 18 U.S.C. § 2291 if substantial risk of death/SBI
- Ch. 113B (18 U.S.C. §§ 2331–2339D: terrorism)
- 18 U.S.C. § 2340A
- 18 U.S.C. § 2381
- 18 U.S.C. § 2442
- Offense that qualifies as serious violent felony under 18 U.S.C. § 3559(c)(2)(F) if > 1- year prison sentence and qualifying prior
- 42 U.S.C. §§ 2077(b), 2122, 2131, 2274, 2275, 2284
- 49 U.S.C. § 60123(b) if sub. risk of death/SBI
- 21 U.S.C. § 841(b)(1)(A–C) if death/SBI
- 8 U.S.C. § 1326(b)(1), (2)
- 8 U.S.C. § 1327
- 8 U.S.C. § 1328
- 50 U.S.C. § 4611 et seq.
- 50 U.S.C. § 1705
- 50 U.S.C. § 3121
- 21 U.S.C. §§ 841(b)(1)(A)(vi) or (B)(vi) or 960(b)(1)(F) or (2)(F) (**fentanyl/analogue**)

Ineligible to receive FSA Time Credits if “serving a sentence for a conviction”* + court-findings:

- 21 U.S.C. §§ 841(b)(1)(A)(i) or (B)(i) or 960(b)(1)(A) or (2)(A) (**heroin**) and court finds the individual was an organizer, leader, manager, or supervisor
- 21 U.S.C. §§ 841(b)(1)(A)(viii) or (B)(viii) or 960(b)(1)(H) or (2)(H) (**meth**) and court finds the individual was an organizer, leader, manager, or supervisor
- 21 U.S.C. §§ 841(b)(1)(A)-(B) or 960(b)(1)-(2) for **any drug** if court finds offense involved fentanyl/analogue and was an organizer, leader, manager, or supervisor

****BOP interpretation:** Ineligible to receive FSA Time Credits if any part of sentence is for a time-credit-ineligible offense (including a revocation of supervised release on such an offense)—even if some or most of aggregate prison sentence is for a time-credit-eligible offense.*

Deportable persons ineligible to apply time credits: only if subject to a final order of removal

See 18 U.S.C. § 3632(d)(4)(D), (E); Prog. Stat. 5410.01

PATTERN risk assessment scoring links: [Male](#), [Female](#), [Cut Points](#), [Violent Offense Codes](#)