



**U.S. Department of Justice**

Office of Legislative Affairs

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*Office of the Assistant Attorney General*

*Washington, DC 20530*

The Honorable Dick Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Durbin:

Please find enclosed responses to questions arising from the appearance of the U.S. Department of Justice Federal Bureau of Prisons' Director, Colette Peters, before the U.S. Senate Committee on the Judiciary on September 29, 2022, at a hearing titled "Oversight of the Federal Bureau of Prisons."

The Office of Management and Budget has advised us there is no objection to submission of this letter from the perspective of the Administration's program.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Slade Bond  
Deputy Assistant Attorney General

Enclosure

cc: The Honorable Lindsey Graham  
Ranking Member  
Committee on the Judiciary

**Senate Committee on the Judiciary**  
**Hearing on “Oversight of the Federal Bureau of Prisons”**  
**September 29, 2022**

**QUESTIONS FROM SENATOR BLUMENTHAL**

In February 2022, I sent a letter to your predecessor requesting information about current staffing levels at FCI Danbury. BOP responded on April 1, 2022, that as of March 12, 2022, FCI Danbury was staffed at 92-percent overall: 91-percent for correctional services and 100-percent for health services. However, while the 100% health staffing level seems positive, FCI Danbury’s Health Services Department consists of only one medical doctor, two advanced nurse practitioners, three registered nurses, four paramedics, one dentist, one dental hygienist, one health information technician, one infectious disease/improving organizational performance registered nurse, one health services administrator, one assistant health services administrator, and one health services assistant.

- a. Please provide the current staffing levels at FCI Danbury for correctional staff and non-correctional staff, including the staffing levels of the Health Services Department as of September 22, 2022 and the date on which responses to these Questions For the Record are submitted.

***Response:***

**As of Pay Period 15, date ending July 29, 2023:**

- Correctional Services      83.33 percent
- Health Services            98.56 percent
- Overall Staffing            88.00 percent

- i. In BOP’s April 1 response, BOP explained, “Staffing at Danbury is consistent with funding levels provided by Congress.” Does FCI Danbury have staffing needs not covered by “funding levels provided by Congress,” including, but not limited to, FCI Danbury’s Health Services Department? If so, please describe these additional staffing needs.

***Response:***

Staffing at FCI Danbury is consistent with current funding levels provided by Congress. FCI Danbury’s Health Services department is funded for 16 positions. An assessment of staffing needs and the ability to fill those needs is ongoing and the BOP will need to weigh this against other priorities. We will get back to you with additional information.

- b. Please provide the total number of overtime hours—both mandatory and voluntary—that correctional staff and non-correctional staff at FCI Danbury have worked each fiscal year for the last five fiscal years.

***Response:***

- FY2023 as of August 12th: 52,526 hours
- FY2022: 40,307.75 hours
- FY 2021: 35,276.50 hours
- FY 2020: 37,940.75 hours
- FY 2019: 26,633.75 hours
- FY 2018: 27,242.50 hours

- c. BOP’s recruitment and retention efforts are ongoing—but my office has heard that these continue to be core problems at FCI Danbury—which has exacerbated FCI Danbury’s use of augmentation and the need for mandatory overtime. In BOP’s April 1 response, BOP explained, “At times, it is necessary for the institution to utilize reassignments (i.e., augmentation) and/or voluntary/mandatory overtime to fill expected and unexpected posts.” Please describe—
- i. The specific steps BOP has taken and continues to take to improve recruitment and retention at FCI Danbury.

***Response:***

FCI Danbury has participated in several job fairs and recruitment events since April 1, 2022. Recruiters attended job fairs at the Danbury Fair Mall in June 2022, and October, 2022, at the Chamber of Commerce, a local community college in March 2023 and at the University of New Haven in April 2023. Additionally, FCI Danbury hosted local recruitment events at the institution’s training center during the months of July 2022 through January 2023. FCI Danbury has promoted several different avenues to retain qualified staff in various departments, to include retention incentives for positions traditionally not offering incentives, as well as, offering alternative work schedules. National hiring events (e.g., National Recruitment Day) have started as of November 5, 2022, and will continue every Saturday through September 2023.

- ii. The specific steps BOP has taken and continues to take to mitigate reliance on augmentation and mandatory overtime at FCI Danbury.

***Response:***

The Bureau continues to recruit for Correctional Services, Health Services, Psychology, and First Step Act positions in an effort to fully staff FCI Danbury. A fully staffed institution will reduce the need to use augmentation to cover essential posts and shifts. FCI Danbury executive team works to limit its reliance on augmentation and mandatory overtime by regularly reviewing daily rosters, overtime assignments, and excessive absences. The institution continually assesses its posts and positions to maintain the safety and security of the institution.

## QUESTIONS FROM SENATOR CRUZ

1. In January 2022, the Federal Bureau of Prisons released its new Transgender Offender Manual, which provides guidance to staff when working with transgender individuals. Prior to this change to the manual, the Trump Administration had put into place policies that would require the consideration of a prisoner's biological sex when determining their initial determination for designation or transfer.
  - a. Do agree with the Biden Administration that an inmate's biological sex is irrelevant in determining whether an inmate should be housed with men or housed with women?

***Response:***

In deciding whether to assign a transgender person to a facility for males or females, a case-by-case determination is made to ensure the placement enhances the health and safety of the person as well as the safety and security of BOP employees and other persons in custody. This determination includes consideration of the person's security level, criminal history record, behavioral/disciplinary history, current gender expression, programming needs, physical and mental health, and vulnerability to sexual victimization.

- b. In light of the high risk of sexual assault faced by federal inmates and the abuse of transgender identification by sexual predators to gain access to biological female inmate populations, can you explain the justification for the policy change to remove biological sex from the relevant factors for consideration in placing inmates?

***Response:***

Research consistently shows that transgender inmates are significantly more likely to be the victims of sexual assault than other populations. In June 2022, DOJ's Bureau of Justice Statistics (BJS) found that the rate of violent victimization against transgender persons was 2.5 times the rate among cisgender persons. Further, the National Inmate Survey conducted by BJS found 33% of transgender adults in state and Federal custody reported one or more incidents of sexual victimization involving another incarcerated individual as compared to 4% of the overall population. For as long as BOP has housed transgender inmates consistently with their gender identity, BOP has no evidence of any instances of sexual assault in a female facility by transgender individuals approved to transfer to a female facility consistent with their gender identity.

Placements for transgender persons are reviewed on a case-by-case basis to ensure that their wellbeing is not jeopardized, and placements do not jeopardize the safety and security of the placement institution. In making housing unit and

programming assignments, a transgender person's concerns with respect to their own safety are given serious consideration.

2. Additionally, according to the 2022 iteration of the "Transgender Offender Manual," which details services available for the transgender inmate population, "[h]ormone therapy or other medical treatment may be provided after an individualized assessment of the requested inmate by institution medical staff."

- a. How many inmates have undergone hormone treatment while serving time in BOP facilities?

***Response:***

As of November 2, 2023, since 2008 there have been 1425 transgender individuals who have received gender affirming hormone treatment while incarcerated within BOP facilities since 2008. For context, the average population from 2008 – 2023 was 159,649.

- b. How many have undergone gender reassignment surgery while serving time in BOP facilities?

***Response:***

As of October 2023, two individuals have undergone gender-affirming surgery while housed in a BOP institution.

- c. What is the total dollar amount of public funds that have been expended on hormone therapy and gender reassignment surgery for inmates under the care of the Federal Bureau of Prisons?

***Response:***

In FY22, there were no gender affirming surgeries; the total healthcare expenditures were approximately \$1.3 billion and, of that, only \$153,000 (0.0116%) was spent on hormone therapy.

3. In the United Kingdom, there has been ongoing controversy relating to whether biologically male inmates who identify as transwomen are more likely to be sex offenders. The findings in a January 2022 UK Parliamentary report<sup>1</sup> are striking. It found that the proportion of male-born transwomen in the UK prison system who are sex offenders is roughly 60%, significantly higher than the roughly 18% of the general population. Although BOP data does not reflect the number of inmates who are biologically male yet

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<sup>1</sup> United Kingdom, House of Commons, *Question for the Ministry of Justice, Prisoners: Gender Recognition*, UIN 98878 (tabled on January 6, 2022) <https://questions-statements.parliament.uk/written-questions/detail/2022-01-06/98878>.

identify as female, biologically female yet identify as male, or are transitioning genders, it is conceivable and perhaps likely that a similar phenomenon is occurring here in the U.S.

- a. How many biological men who identify as transgender women are currently held in female federal prisons?

***Response:***

As of October 4, 2023, there are 10 transgender women housed in BOP female facilities.

- b. How many of those inmates have previous convictions for sexual offenses?

***Response:***

All requests for gender-affirming placement are evaluated by a dedicated team within BOP that assesses requests placements by transgender inmates. Each request is assessed on a case by case basis to protect the safety of the individual being considered for transfer as well as the safety of others at the potential location of transfer. The assessment considers factors including, but not limited to, an inmate's security level, criminal and behavioral/disciplinary history, current gender expression, programming, medical, and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. This review therefore takes into account their prior convictions, including for sex offenses, when making a placement assessment. For as long as the BOP has been making these assessments, BOP is unaware of any instances of sexual assault in a female facility by transgender individuals approved to transfer to a female facility consistent with their gender identity.

- c. How many of those inmates have been disciplined or charged for sexual offenses during their time in the prison system?

***Response:***

All requests for gender-affirming placement are evaluated by the BOP's Transgender Executive Council (TEC). The TEC assesses each request on a case by case basis to protect the safety of the individual being considered for transfer as well as the safety of others at the potential location of transfer. The TEC will consider factors including, but not limited to, an inmate's security level, criminal and behavioral/disciplinary history, current gender expression, programming, medical, and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. This review therefore takes into account their prior convictions, including for sex offenses, when making a placement assessment. For as long as the TEC has been making these assessments, BOP is unaware of any instances of sexual assault in a female

facility by transgender individuals approved by the TEC to transfer to a female facility consistent with their gender identity.

4. One of President Biden’s first acts after taking office was to issue Executive Order 14006, mandating that contracts with privately operated detention facilities not be renewed. The order is intended to “decrease incarceration levels... [by] reduc[ing] profit-based incentives to incarcerate by phasing out the federal government’s reliance on privately operated criminal detention facilities.” This order has created many unintended consequences, including the closing of the Willacy County Regional Detention Facility in Raymondville, Texas. The decision has resulted in tremendous negative consequences with little-to-no apparent upside, forcing inmates to travel hundreds of miles round trip for court appearances, impacting the accessibility of legal counsel, and making family visits more difficult. It also has caused administration issues for the prison system and harmed the local economy by erasing those jobs. Every local stakeholder that has weighed in on this issue, including members of the federal judiciary, the Federal Public Defender, federal prosecutors, and the private defense bar—have uniformly declared their opposition to the policy and desire to see it rescinded.
  - a. How has EO 14006 impacted BOP’s ability to house inmates? Would you characterize the impact of the Executive Order as negative or positive?

***Response:***

During the first five decades of the BOP’s existence, the number and type of inmates BOP housed remained consistent. Beginning in the 1980s, however, Federal law enforcement efforts and new legislation dramatically altered sentencing in the Federal criminal justice system, bringing about a significant increase in the number and types of persons incarcerated for Federal offenses. Largely as a result, the BOP’s population doubled in the 1980s and doubled again in the 1990s. In the late 1990s, the BOP began absorbing the DC inmate population due to the National Capital Revitalization Act. The aftermath of September 11th also brought more inmates – individuals who presented very unique security concerns – as the Nation’s law enforcement efforts were targeted toward international terrorism. By 2013, the BOP’s population climbed to almost 220,000, its highest level ever with system-wide crowding at 36 percent. As of November 17, 2023, there were 158,463 individuals serving time in Federal prisons.

Presently, 2,800 low-security individuals, including 1,100 non-US citizens, reside in medium-security facilities due to limited low-security space. Additionally, around 900 medium-security individuals live in high-security facilities because of space constraints in medium-security institutions.

Executive Order (EO) 14006 mandated the Attorney General not renew contracts with privately operated detention facilities. Following this directive, FBOP has let contracts with private facilities expire without seeking renewals.

As of October 21, 2022, FBOP received approximately 19,200 individuals from private prisons. As of September 2023, around 1,100 (5.3%) individuals formerly in low-security contract facilities are housed in BOP medium-security facilities due to low security space. Additionally, around 900 medium-security individuals live in high-security facilities because of space constraints in medium-security institutions.

- b. Given the current challenge of short-handedness at BOP facilities, wouldn't it be beneficial to augment federal resources by contracting with private prisons – at the very least until staffing levels are commensurate with pre-COVID levels?

***Response:***

As the Department of Justice's Office of Inspector General found in 2016, privately-operated criminal detention facilities have not maintained the same levels of safety and security for people in the Federal criminal justice system or for correctional employees as Bureau-operated institutions. Further, privately operated criminal detention facilities have consistently underperformed Federal facilities with respect to correctional services, programs, and resources.

The Federal Government has a responsibility to ensure the safe and humane treatment of those in the Federal criminal justice system. Under the First Step Act, BOP has significantly increased its focus on rehabilitation, through treatment and programs. For example, all sentenced individuals are now assessed in regard to 13 needs related to recidivism. This information is used to recommend evidence-informed programs that address individuals' underlying needs and help to reduce their risk of recidivism, and, as such, participation is incentivized through a variety of evidence-informed measures, including earned time for those who are eligible. In order to provide this programming BOP has added hundreds of direct service positions in education, psychology services, health services, and reentry with the ultimate goal of preventing and reducing recidivism.

E.O. 14006 explains that we must ensure that our Nation's incarceration and correctional systems are prioritizing rehabilitation and redemption. Incarcerated individuals should be given a fair chance to fully reintegrate into their communities, including by participating in programming tailored to earning a good living, securing affordable housing, and participating in our democracy as our fellow citizens. The Bureau is committed to ensuring that, while they are in Bureau custody, individuals are prepared for the next chapter of their lives.



5. FCC Beaumont has earned an ignoble distinction of having an “open door policy,” insofar as prisoners housed at the facility’s camps are known to walk off the grounds. According to the AP, “[i]t has become routine at FCI Beaumont for cars to drop drugs, cellphones and other contraband in the woods, leaving them for inmates to break out of the prison at night and pick up the items before sneaking back inside.”<sup>2</sup> Groups of prisoners have walked off and went unnoticed for up to 12 hours. As recently as 2021, the camps at Beaumont did not even have a fence.
  - a. What can BOP do to reduce the embarrassing number of “walk-aways” who can escape the prison apparently at will?

***Response:***

The term “walk-away” is used when an individual housed in a minimum security camp escapes from custody. No escape from our custody, including from minimum security camps, is acceptable. Adults in custody who escape from our minimum security institutions, even temporarily, are held accountable to the fullest extent possible under law, including prosecution for new criminal charges. While individuals housed at camps are placed in those facilities because they pose minimal risk to the community, the Bureau strives for full accountability at all times.

When an individual escapes from a non-secure facility, they are subject to disciplinary action and reviewed for redesignation to a higher security level institution. Per BOP Program Statement 5553.08 (available publicly at bop.gov), the Federal Bureau of Investigation, the U.S. District Court sentencing judge, the U.S. Attorney for the sentencing jurisdiction, and the Chief U.S. Probation Officer for that district receive notification of an escape.

The BOP is taking decisive action to strengthen security and accountability at minimum security institutions. BOP's efforts seek to reduce "walkaway" incidents and involve a series of targeted actions. These efforts include ensuring all alarms on exterior building doors are functional and tamper-proof, verifying all existing video cameras at camps are operational, and making sure that BOP Control Officers can monitor video cameras on all exterior building doors. BOP is already diligently working to implement these recommendations across its camps.

**QUESTIONS FROM SENATOR JOHN N. KENNEDY**

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<sup>2</sup> Michael Balsamo and Michael Sisak, *Prison Break: 29 inmates escape federal lockups in 18 months*, Associated Press, (June 11, 2021) <https://apnews.com/article/government-and-politics-prisons-prison-breaks-business-c1979d6ad6e7b3531968dab0e61eb22d>.

1. Your predecessor, Director Carvajal, delayed for nearly 13 months before he decided to respond to Questions for the Record (QFRs) that I submitted after a Federal Bureau of Prisons (BOP) oversight hearing held on April 15, 2021. During this period of over a year, I submitted two letters to Director Carvajal regarding Louisiana’s federal prisons and his delayed response to my QFRs. My letters were met with total silence from the BOP. This is unacceptable. Director Peters, do you commit to responding to inquiries from members of the Senate Judiciary Committee in a timely manner?

***Response:***

The Bureau of Prisons works with the Department of Justice’s Office of Legislative Affairs to respond in as timely a manner as possible to Questions for the Record and congressional correspondence. I commit to continuing this practice. Most recently the Bureau has worked to expand the size of its Office of Legislative Affairs to further support timely responses to members of Congress.

2. You testified at a BOP oversight hearing held on September 29, 2022 that BOP has engaged with an outside consultant to study each BOP facility and generate an automatic staffing assessment that will provide a comprehensive and accurate view of the staffing needs of each facility. How will this new approach allow BOP to address the chronic staffing shortages that hamper federal prison facilities across the nation?

***Response:***

The automated staffing tool will enable the Bureau to better determine individual institution staffing needs. It will not address our staffing shortage as that requires both funding and identifying, hiring, and training qualified and suitable persons, but will enable us to have an ongoing sense of the positions needed at an institution based upon programmatic changes and other criteria. This will allow the Bureau to be better informed to ensure our institutions have sufficient positions.

3. In your response to questions from Senator Sasse during the September 2022 BOP oversight hearing, you stated the following:

In some of our rural facilities we’re not competing with anyone, we’re just having a hard time finding people in the community to even apply. In our locations where there is competition, we’re competing with fast food industry and other organizations that give 5,000 dollar signing bonuses. Louisiana is home to two Federal Correctional Complexes (FCCs)—FCC Oakdale and FCC Pollock—located in rural Louisiana. Both facilities have experienced chronic staffing shortages for the last several years, with difficulty recruiting new hires and problems retaining current staff.

How do you plan to address these chronic hiring and retention issues?

***Response:***

The Bureau continues to recruit potential applicants at in-person events and through social media outreach. In November, we started a nationwide Recruitment Day the first Saturday of each month, for at least three months, to build awareness of the Bureau, and provide a consistent day across the country for interested persons to come to a facility and obtain further information about a career in BOP.

To address staffing challenges at harder-to-fill institutions, we deploy a variety of recruitment and retention incentives. For example, in 2023 we initiated a targeted hiring campaign in March, including monthly recruitment events and a 25% recruitment incentive for all new Correctional Officers throughout 2023. Additionally, a \$1,000 recruitment referral bonus is in place for current employees who successfully refer a new hire. We also utilize numerous pay flexibilities, including special salary rates, student loan repayment, and annual leave credit. We leverage a variety of methods to attract and keep high-quality employees.

4. Do you believe that hiring bonuses and retention bonuses help federal prison facilities maintain adequate staffing levels?

***Response:***

Yes. Many of our prisons are in high cost of living areas or remote geographical areas that require employees to travel long distances on a daily basis or potentially relocate. These factors create ongoing recruitment challenges which impact our ability to fill positions and maintain staffing levels at some locations. In addition, some of our hiring and retention challenges relate to the salary limitations of the pay tables for federal employees. Providing recruitment and retention incentives can assist in alleviating some of the burden that these factors can impose.

5. On June 13, 2022, my office led a letter in support of FCC Oakdale's formal request for a 10% staff retention bonus and a 5% retention bonus for all retirement eligible employees. The BOP response provided very little relevant information. As of the date of these questions, FCC Oakdale has not received an answer regarding its retention bonus requests.

When can we expect the BOP to make a decision on FCC Oakdale's formal request for retention bonuses?

***Response:***

As of August 2023, FCC Oakdale's overall staffing level is 92.8%. Retention and recruitment incentives are generally reserved for institutions and positions that are staffed below 85%. However, we routinely monitor staffing levels to ensure that all available tools are being utilized to appropriately staff our institutions, including FCC Oakdale. In addition, a 5% retention incentive is offered to all eligible employees, regardless of institution, who became retirement eligible in 2019.

6. My office continues to support FCC Pollock’s effort to secure retention and hiring bonuses. FCC Pollock received a 10% retention bonus, and ultimately a 25% hiring bonus. However, FCC Pollock’s formal request for a 25% staff retention bonus has not yet been granted. FCC Pollock continues to lose staff through early retirement, transfer to another facility, or resignation. A 25% retention bonus would help FCC Pollock keep newly hired staff and current staff employed at FCC Pollock.

When can we expect the BOP—working closely with the Office of Personnel Management—to make a decision on FCC Pollock’s formal request for a 25% staff retention bonus?

***Response:***

The BOP has received the request from FCC Pollock to approve a 25% group retention incentive for Senior Officer Specialist and Lieutenants. We subsequently evaluated the request and submitted a formal request to the Department of Justice on June 27, 2023. The BOP was advised on September 21, 2023, that the request was submitted to the Office of Personnel Management.

**SENATOR and RANKING MEMBER CHARLES E. GRASSLEY**

- 1) The Government Accountability Office issued a report in 2021 that said the Bureau of Prisons (BOP) does not have any reliable way to measure staffing shortfalls. During the hearing, you stated that BOP has been working with consultants to “come up with an automated staffing assessment so that we are going to be able to tell you with a great amount of certainty what staff we need at each localized facility.”<sup>3</sup>
  - a. Which consultants has BOP been working with as referenced in your statement?

***Response:***

The Bureau has engaged Deloitte to improve its staffing assessments and strategies.

- b. Please provide the details and the most up to date information (at the time this question is answered and provided to this Committee) on the status of this automated staffing assessment program.

***Response:***

The BOP and contractor worked together to develop an automated staffing tool which will enable the agency to better determine individual institution staffing needs. The tool alone will not address our staffing shortage but will enable us to

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<sup>3</sup> *Senate Judiciary Committee Holds Hearing on Federal Bureau of Prisons Oversight*, CQ CONGRESSIONAL TRANSCRIPTS (Sept. 29, 2022), <http://www.cq.com/doc/congressionaltranscripts-7581441?6>.

have an ongoing sense of the positions needed at an institution based upon programmatic changes and other criteria to review.

As of June 2023, the BOP has deployed the staffing tool to evaluate staffing levels within correctional services departments throughout its facilities. The tool continues to be tested and evaluated as we prepare to move forward with additional disciplines/departments throughout the BOP.

- c. What checks and balances will be in place to ensure that if this automated program fails to adequately determine staffing needs, BOP will receive fast and accurate information about any failures?

***Response:***

BOP headquarters employees will continue to oversee the automated program. Any shortfalls can and will be identified by headquarters employees as well as institution and regional employees. Adjustments can be made manually to ensure each institution has the requisite positions to maintain the safe and orderly running of our institutions.

- 2) What role does BOP play in dealing with criminal activities by inmates?

***Response:***

Bureau of Prisons investigative employees within the Office of Internal Affairs (OIA) are authorized to perform administrative misconduct investigations of adults in custody. For criminal investigations, OIA refers acts of potential criminal activity to the appropriate investigative entity and will assist in gathering evidence and providing testimony and investigative support as needed.

- a. How do you assist criminal investigators and prosecutors?

***Response:***

Bureau investigators do not conduct criminal investigations and are considered liaison officers, which serve as official points of contact for law enforcement officials at Federal, state, and local levels. They assist in gathering evidence and providing testimony and investigative support as needed.

- b. Does BOP initiate cases, or does BOP refer cases to other law enforcement authorities?

***Response:***

Bureau investigators do not conduct criminal investigations and will refer potentially criminal matters to the appropriate Federal, state, or local investigative

entity. Bureau investigators do conduct administrative investigations that may result in discipline for the adult in custody under the inmate discipline program.

- c. What are any nationwide BOP policies regarding criminal investigations and prosecutions of current BOP inmates?

***Response:***

Information regarding criminal investigations and prosecutions of current BOP adults in custody can be found in the Bureau's Program Statement 1350.01, Criminal Matter Referrals, available on our public website at [https://www.bop.gov/policy/progstat/1350\\_001.pdf](https://www.bop.gov/policy/progstat/1350_001.pdf).

- 3) On January 31, 2022, seven members of the MS-13 gang murdered two members of the rival Sureños gang inside United States Penitentiary Beaumont, a high security federal correctional facility in Texas. The attack occurred at 11:30 a.m. in the A-A Housing Unit. Three of the seven attackers did not live in the unit and were not allowed access. After wrongfully entering, they passed out weapons. Rivas-Moreiera began the attack. He retrieved a knife from under a newspaper or magazine. Rivas-Moreiera approached Guillermo Riojas from behind and stabbed him twice in the chest. Riojas fell to the ground. The other attackers stabbed and kicked him. Then, they turned their attention to Andrew Pineda and stabbed him over 45 times.<sup>4</sup> This incident resulted in a nationwide lockdown by BOP.
  - a. What policy changes has BOP made to address this incident, and how will such incidents be prevented from happening again in the future?

***Response:***

The incident was caused by a deliberate violation by inmates of institutional rules and BOP policy. U.S. Penitentiaries are among the highest security facilities that house people convicted of the most serious and violent offenses. The BOP's intelligence collection unit at the national level strives to gather intelligence daily to proactively prevent and thwart attacks such as this.

- b. What failures of policy permitted this incident to occur in the first place?

***Response:***

The incident was caused by inmates' deliberate violation of institutional rules and BOP policy. Regardless, the Bureau conducts after action reviews following major incidents to examine the incident in its entirety. If employee misconduct or policy violations are identified, they will be reported to the Office of Internal Affairs for potential investigation and discipline.

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<sup>4</sup> *United States v. Rivas-Moreiera, et. al.*, 1:22cr00027, Dkt. No. 10 at 2-3 (E.D. Tex. Apr. 7, 2022).

- c. What steps has BOP taken to minimize the strength and influence of criminal gangs over individual facilities?

***Response:***

The National Gang Unit (NGU) is a Section of the BOP Intelligence & Counter Terrorism Branch. The NGU is staffed with BOP and other Federal Law Enforcement Agencies. The NGU focuses on prison and street gang-related intelligence occurring inside our prisons and out in the community. The Unit provides operational intelligence and direct investigative support to BOP field operations and various Federal, state, and local law enforcement agencies. The Intelligence Officers and Analysts assigned to the NGU provide detailed intelligence summaries and advisories pertaining to gang-related incidents, oversee the BOP Gang Disassociation program, monitor and analyze gang-related correspondence, verify AIC gang validations, and provide specialized gang training to BOP employees and outside law enforcement with gang-related intelligence. The NGU strives to ensure BOP prisons remain safe and secure for both employees and AICs. The NGU is comprised of National Gang Unit Intelligence Officers and National Gang Unit Analysts. Additionally, the National Gang Unit is a member of the Joint Task Force Vulcan (JTFV), which is an initiative launched in August 2019 aimed at disrupting, dismantling, and ultimately, destroying MS-13.

The Bureau of Prisons utilizes a model of balancing the influence of gangs at each facility to ensure no gang, group, or organization has influence or control over other adults in custody (AIC) at the facility. In addition, the Bureau enforces a gang management strategy by using current and past gang trends to manage AICs affiliated with gangs. This allows the agency to face ever-changing gang activity within the Bureau.

- 4) During the oversight hearing, I asked you whether there are mechanisms in place to ensure that you receive accurate information regarding the poor conditions, misconduct, and criminality prevailing in federal prisons. In response, you stated the following:

“[W]e have already put some things in place to improve that communication flow that you're referring to, up to and including the Director. It started with clear expectations of my executive team that there will be no surprises. We have to know, I have to know, headquarters needs to know when there are things that are not working, when there are allegations of misconduct. We have to be informed. We also have, just recently, gotten approved a new organizational restructure that actually is going to allow what I believe more accountability and our ability from headquarters to better hold folks accountable and be more informed.

In addition, we are reorganizing our Office of Internal Affairs. Those individuals responsible for conducting investigations in the field traditionally report it up to the warden. We're changing that so that they are reporting up to central office to

headquarters. Furthermore, we just approved 40 additional positions in the Office of Internal Affairs, both on the investigation side and on the employee labor side to hopefully get rid of the backlog of cases that we have right now, make them more streamlined, make them more efficient, and hold people accountable in a more swift and sure fashion.”<sup>5</sup>

- a. Who are the members of your executive team to whom these expectations have been communicated?

***Response:***

I have communicated these expectations to every member of my executive team (current Executive Team listed here: <https://www.bop.gov/about/agency/leadership.jsp>). Since that time, I have also been able to underscore this expectation during visits to institutions and during the Bureau’s national Warden’s Conference in Aurora, Colorado the week of April 24, 2023.

- b. Please provide details on the “organizational restructure” to which you referred.

***Response:***

Under the organizational restructure, our local Special Investigative Agents will now report to Office of Internal Affairs employees located at our headquarters, and not to our wardens at the facility-level, with the goal of providing greater autonomy and clear lines of communication for the investigative process.

- i. How many new positions were added, what are those positions, and how many of them have been filled?

***Response:***

50 positions were added – Special Investigative Agents, Supervisory Special Agents.

1. Where did the staff filling these positions come from, and if they have been moved internally from within BOP, have their previous positions been backfilled?

***Response:***

The Bureau is in the process of announcing and filling these positions internally.

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<sup>5</sup> *Senate Judiciary Committee Holds Hearing on Federal Bureau of Prisons Oversight*, CQ CONGRESSIONAL TRANSCRIPTS (Sept. 29, 2022), <http://www.cq.com/doc/congressionaltranscripts-7581441?6>.



2. What is the plan for addressing backfill-related gaps, if any exist?

***Response:***

Any vacancies that occur from the selections for these additional positions will be backfilled as possible up to our appropriated funding level.

- c. Will the individuals at Internal Affairs who are responsible for conducting investigations be independent of each prison facility?

***Response:***

Yes.

- i. Will they be answerable to any warden?

***Response:***

No.

- ii. Please provide full details about the organizational structure of the Office of Internal Affairs, including any graphical chart that is available.

***Response:***

The organizational chart is finalized as of September 2023; the institutional Special Investigative Agents have been moved under the supervision of the Office of Internal Affairs in Central Office. The current structure of the OIA includes the Chief position, 10 Supervisory Special Agents, 32 Special Agents, one Supervisory Management Analyst, 94 Special Investigative Agents, 3 Senior Investigative Support Specialists, and 5 Investigative Support Specialists, for a total of 146 positions.

- iii. What measures are in place to ensure that they do not have any improper relationships or connections with persons being investigated?

***Response:***

Consistent with current practice, agents will receive training on conflicts of interest, and any identified conflict will result in case reassignment to avoid the conflict.

- 5) It appears that BOP's budget has increased by nearly a billion dollars in the past 5 years, with most of it designated for staffing.

- a. Why is BOP unable to use these resources to fix its recruiting challenges?

***Response:***

Even before the pandemic, our workforce faced increasing demands and challenges, underscoring the need for support. The pandemic, combined with a robust labor market that affords multiple employment opportunities for applicants, and law enforcement attrition generally, have made these issues even more challenging. The outdated civil service pay structure in comparison to today's labor market demonstrates there are substantial differences amongst occupational groups in non-federal pay systems. Even with the increased funding, in many areas the salaries the Bureau can offer for certain positions are not alone sufficiently competitive to attract the kind of candidates needed to fill the role. The Bureau's recruitment and retention efforts are ongoing to fill funded positions. Additionally, many of our locations are in remote areas with limited pools of applicants and we are often competing for those limited applicant pools with other competitive jobs.

To address these challenges, we are pursuing strategies to modernize hiring across the agency and give us the flexibility and stability we need to carry out our mission successfully. The agency has utilized aggressive marketing strategies to attract applicants and make use of other flexibilities where appropriate and available, including recruitment incentives, retention incentives, direct hire authority, pay flexibilities for medical professionals, and accelerated promotions for Correctional Officers.

- b. How does BOP allocate its funding for staffing purposes?

***Response:***

BOP utilizes a formula that factors in Congressionally authorized positions, work year costs, periodic increases, and benefits percentages to develop its annual salary funding requirements.

- i. How does BOP determine how much funding to provide to each facility for staffing purposes?

***Response:***

We allocate funds to all institutions based on the appropriations allocated by Congress. BOP utilizes a formula that factors in congressionally authorized positions at each institution, work year costs, periodic salary increases, and benefits percentages to develop its annual salary funding requirements. The method utilized to calculate institution staffing levels considers numerous criteria, including but not limited to, institution security levels, physical layout, and adult in custody populations, among other things.

6) In the First Step Act Annual Report from April of 2022, the DOJ states: “The BOP has implemented protocols for internal and external review of the [Evidence-Based Recidivism Reduction (EBRR)] program and [Productive Activities (PA)] submissions using a third-party contractor.”<sup>6</sup> It also indicates that “BOP has awarded funds to credentialed researchers capable of studying a variety of both short- and long-term measures of program efficacy.”<sup>7</sup>

- a. Please provide a detailed list of researchers, firms, and contractors that have been contracted by BOP for any of the purposes listed above.

***Response:***

FedWriters is reviewing external FSA program submissions and studying current State programs to determine if they would be beneficial as FSA Approved programs. Additional contracts, listed below, have been awarded to complete program evaluations of existing EBRRs.

- i. Include details of which entities have been contracted to evaluate which programs as well as the total budget information on how much each entity has been or will be paid under these contracts.

***Response:***

FedWriters is reviewing external FSA program submissions and State programs to determine if they would be beneficial as FSA approved programs. This contract is for \$1,304,684.80.

Global Corrections Group LLC is determining the short- and long-term efficacy of current programs. The contract was awarded November 15, 2022 for \$826,205.60.

Texas Christian University (TCU) is completing a program evaluation of the Anger Management Program. The project is in its second year of a three-year contract. Thus far, contractors have submitted their institutional review board proposal, which was approved, and BOP has completed contractor background checks. Currently, the contractors are reviewing the data provided by the Bureau as part of a retrospective study. The completion date for the retrospective study is estimated to fall within the next 6 months to one year. A follow-up prospective study is planned upon completion of the retrospective study. (Total award: \$1,053,090.39)

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<sup>6</sup> U.S. DEP’T OF JUSTICE, OFFICE OF THE ATTORNEY GEN., *First Step Act Annual Report* (April 2022), <https://www.ojp.gov/first-step-act-annual-report-april-2022>, at p. 6.

<sup>7</sup> *Id.* at 35

TCU is conducting studies on BOP's suite of drug treatment programs, which consists of a residential unit-based program, a non-residential program, a psychoeducational program, and a medication-assisted treatment program. The project is in its second year of a five-year contract. Thus far, TCU has submitted their institutional review board proposal, which was approved, and the Bureau has completed contractor background checks. The Bureau is preparing to send TCU the data on the drug treatment programs as part of a retrospective study. The completion date for these studies is estimated to be Fall 2024. A follow-up prospective study is planned upon completion of the retrospective study. (Total award: \$10,107,992.03)

RSG CJ Analytics is studying the Bureau's BRAVE program, a residential unit-based program with a cognitive-behavioral orientation for younger, first-time federal adults in custody. The project is in its second year of a five-year contract. Thus far, contractors have submitted their institutional review board proposal, which was approved, and the Bureau has completed contractor background checks. Currently, the contractors are reviewing the data provided by BOP as part of a retrospective study. The completion date for the retrospective study is estimated to be Fall, 2023. A follow-up prospective study is planned upon completion of the retrospective study. (Total award: \$952,483.54)

The Bureau has a reimbursable agreement with the National Institute of Justice (NIJ), to complete program evaluation studies on seven additional programs. NIJ has hired sub-contractor (RTI) to complete these program evaluation studies. The programs that will be studied are: BOP's Threshold and Life Connections Programs, faith-based re-entry programs; BOP's Foundation Program, a strengths-based program for women to help them identify their needs as well as corresponding programs that will assist with re-entry goals; BOP's Skills Program, a cognitive-behavioral residential program for lower functioning offenders; BOP's STAGES Program, a cognitive-behavioral residential treatment program for offenders with a significant mental health and self-harm histories; BOP's Female Integrated Treatment (FIT) Program, a residential gender-responsive program designed to meet vocational, substance use treatment, and trauma related treatment needs; and BOP's Non-Residential Sex Offender Program, a cognitive-behavioral program for offenders with histories of sex offenses. The proposed technical approach has been submitted to BOP and reviewed. Currently, background investigations of contractors are in progress. The estimated completion date for these collective studies is Fall 2026. (Total award: \$11.5 million)

- b. Does the list provided by BOP at [https://www.bop.gov/inmates/fsa/docs/fsa\\_program\\_guide\\_2201.pdf](https://www.bop.gov/inmates/fsa/docs/fsa_program_guide_2201.pdf) constitute a complete list of current FSA programming?

- i. If not, please indicate which specific programs have been added or removed from this list.

***Response:***

The current version of the structured programming can be found here: [https://www.bop.gov/inmates/fsa/docs/fsa\\_guide\\_eng\\_2023.pdf](https://www.bop.gov/inmates/fsa/docs/fsa_guide_eng_2023.pdf) This is the most current guide from August 2023. The following EBRR and PAs were added:

- May 2022 – Barton Reading and Spelling added as EBRR; Hooked on Phonics moved from Productive Activity (PA) to Evidence-based Recidivism Reduction (EBRR); ALEPH was added as PA
- September 2022- English-as-a Second Language was moved from a PA to an EBRR; Family Programming Series was added as EBRR
- October 2022- Resource Tools for Reentry for Transgender Individuals was added EBRR; Stronger Together Emerging Proud added EBRR; Transition Acceptance added EBRR
- Since October 2022 the following programs have been added - BE-ACTIV, Cognitive Behavioral Therapy for Chronic Pain, Cognitive Behavioral Therapy for Late-life Depression, Functional Adaptation Skills Training (FAST), Waysafe, Women's Career Skills, Women's Life Skills, Women's Sexual Safety, Wellness Inside and Out, Bereavement Support Group, Complicated Grief Treatment, New Beginnings, Reach Out, Stay Strong, Essentials For Mothers Of Newborns (ROSE), Veteran's Career Exploration, Your Guide To Labor And Birth, Academic Success, Healthy Mind And Bodies.

- c. Please provide the complete list of FSA programs that have been evaluated and what those evaluation results are.

***Response:***

The Bureau has conducted an internal review of all EBRR programs (see list of EBRRs at [https://www.bop.gov/inmates/fsa/docs/fsa\\_guide\\_eng\\_2023.pdf](https://www.bop.gov/inmates/fsa/docs/fsa_guide_eng_2023.pdf)). To ensure they are well supported by research conducted in other settings, the Bureau is now in the process of having independent evaluations conducted with more than 15 existing EBRRs. Given the time and methodology needed to independently evaluate these EBRRs, the Bureau has an evaluation schedule to assess additional EBRR programs through FY 2026.

- d. Please provide the complete list of FSA programs that are in the process of being evaluated, indicating the degree of completion and expected completion date, and include any interim or preliminary evaluation results of those programs.

***Response:***

Please see responses to items a and c.

- e. Please provide the complete list of FSA programs whose evaluation has yet to be initiated, indicating why they have yet to be initiated and any plans regarding their evaluation.

***Response:***

BOP will evaluate all of its Evidence Based Recidivism Reduction programs. Below are BOP's EBRR programs, with brief descriptions, which will be evaluated in the future:

- Assert Yourself for Female Offenders - Strength-based intervention for women
- Barton Reading & Spelling System - Reading instruction for individuals with Dyslexia
- Cognitive Processing Therapy - an evidence-based intervention for treating PTSD
- Dialectical Behavior Therapy Skills Training - an evidence-based intervention for relationship problems and borderline personality
- Emotional Self-Regulation – an evidenced-based intervention based on the principles of cognitive behavioral treatment supporting mental health treatment
- Faith Based Conflict Management - Faith based strategies to manage anger and hostility.
- Family Programming Series - Strengthening family relationships
- Hooked on Phonics - Reading instruction for early readers
- Illness Management and Recovery - an outpatient group intervention program that provides intensive education for individuals living with serious mental illness. The program is based on a recovery model that encourages individuals to manage symptoms and strive to live full lives.
- Literacy - Inclusive of GED preparation services
- Mental Health Step Down - Residential mental health treatment programs
- Money Smarts for Adults & Older Adults - Financial planning, decision making, and preventing financial exploitation
- National Parenting from Prison Program - Series of programs for individuals with children
- Occupational Education Programs - A wide range of career technical education programs
- Post-Secondary Education - College level education
- Resource Tools for Reentry - Tools to support reentry for transgender individuals

- Sex Offender Treatment Programs – Residential - Residential interventions that use principles of cognitive behavioral health treatment of varying dosage to prevent additional victimization
- Social Skills Training - Social skills training for individuals diagnosed with schizophrenia
- Stronger Together - Support for transgender individuals
- Transition Acceptance - Programs for transgender individuals.
- Wellness Inside and Out - Wellness and health interventions
- Women’s Basic Financial Literacy - Targets strategies for incarcerated women to meet financial goals
- Women’s Career Exploration Series - Strategies for women to develop a career path and cope in the workplace

f. What are the short-term measures of program efficacy as described above?

***Response:***

Short-term program efficacy will be determined by assessing outcomes relating to a reduction in misconduct within the institution, a reduction in institution crisis contacts, and a reduction in mental health symptoms.

g. What are the long-term measures of program efficacy as described above?

***Response:***

Long-term measures of program efficacy will be determined by assessing outcomes relating to recidivism reduction following return to the community.

7) Would you agree with the conclusions of the Report of the Independent Review Committee regarding First Step Act implementation that there must be a “robust evidentiary basis” to determine “which programs BOP should continue to offer. . . , which should be designated as [earned-time credit]-qualifying [EBBRs] – and why . . . , which programs ‘work’ to address inmate criminogenic needs while in custody, and what longer-term recidivism-reduction effects these programs have on participating inmates after they have been released to the community”?<sup>8</sup>

***Response:***

Yes. The Bureau agrees that there must be a “robust evidentiary basis” to make programming decisions related to continuity and earned time credit application and to elucidate short- and long-term outcomes. While it is the case that many BOP programs are currently being evaluated and have not, prior to this, been the subject of program evaluation research, it is important to emphasize that the

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<sup>8</sup> James M. Byrne et al, *Report of the Independent Review Committee Report Pursuant to the Requirements of Title I Section 107(g) of the First Step Act (FSA) of 2018 (P.L. 115-391)* (December 21, 2020), <https://firststepact-irc.org/wp-content/uploads/2020/12/IRC-FSA-Title-I-Section-107g-Report-12-21-20.pdf>, at p. 5.

foundation of BOP's programs rest on a body of research which has found cognitive behavioral therapy to be effective to address cognitive distortions that contribute to psychological disorders and criminal thinking. Therefore, the programs, at their core, were developed using a base of research evidence. To be sure, these program evaluations will specifically help to determine program efficacy with BOP's specific population. BOP plans to utilize program evaluation study findings to dictate any necessary program improvements.

- 8) What are BOP's policies regarding the provision of dental care to inmates, how does the provision of dental services qualify as either "necessary" or "cosmetic," and how do you ensure that inmates are receiving adequate dental care?

***Response:***

Program statement 6400.03 "Dental Services" is BOP's policy regarding the Provision of dental care to Adults in Custody (AIC). This program statement is publicly available at [bop.gov](http://bop.gov). The policy discusses the regular dental care that individuals receive in our care.

Various oversight methods are established to ensure Adults in Custody (AIC) are receiving adequate dental care. Clinical peer reviews are performed by regional employees which look at clinical competency as well as program administration. The "Dental Routine Treatment List" is monitored via data display dashboard. Various approval processes allow the Regional Chief Dentist to perform chart audit and monitor the local dentist's clinical activity. These include requests for specialty care and prosthetics fabrication.

- a. How does the provision of dental services qualify as either "necessary" or "cosmetic?"

***Response:***

When an individual is added to the "Dental Routine Treatment List", based on their request and findings from an initial examination, they will have a Treatment Planning Examination. This examination enables the practitioner to assess risk, diagnose oral disease, and develop and document a treatment plan. It will determine the basis for dental treatment, continued dental maintenance, and frequency of future dental appointments, including continued recall hygiene appointments.

Accessory treatment is generally considered elective and extends beyond the scope of routine dental care in a public health setting. These procedures are identified in policy and include but are not limited to orthodontics, fixed crowns/bridges, implants, bleaching, veneers, etc.



If the Chief Dental Officer (CDO) believes such treatment is needed, the Regional Chief Dentist (RCD) is the ultimate approving authority for proposed procedures in this section, which are subject to Utilization Review (UR) approval before initiation.

- b. How do you ensure that inmates are receiving adequate dental care?

***Response:***

Various oversight methods are established to ensure Adults in Custody (AIC) are receiving adequate dental care. Clinical peer reviews are performed by regional employees which look at clinical competency as well as program administration. The “Dental Routine Treatment List” is monitored via data display dashboard. Various approval processes allow the Regional Chief Dentist to perform chart audits and monitor the local dentist’s clinical activity. These include requests for specialty care and prosthetics fabrication.

- 9) You noted in the hearing how central the First Step Act is to keeping communities safe: “One of the most important parts of our mission is providing and encouraging participation of incarcerated individuals in recidivism-reducing programs. From the moment a person enters our care, we must guide them toward their eventual return to our communities.”

- a. Please provide an estimated timeline for the full implementation of the First Step Act?

***Response:***

The FSA touches almost everything we do. The FSA is an important law, and it motivates those in our care to take part in programming, rehabilitate, and prepare themselves for reentry. While FSA has a lot of moving parts, we have worked hard to meet its requirements. We continue to meet all deadlines set by the law and look forward to continuing to see the benefits of the FSA impact individuals in our care, our employees, and the Bureau as a whole.

- i. What steps will BOP need to take for this implementation?

***Response:***

BOP will continue to work on longer term aspects of the law, such as completion of program evaluations, which will take years due to the nature of recidivism research.

- ii. What are the biggest challenges that BOP will face in this implementation?

***Response:***

Among the biggest challenges in fully implementing FSA time credits and programming is ensuring Bureau employees have adequate training and develop keen knowledge of the various aspects of FSA. Because of the complexities of the statute and the need for updates during the initial implementation phase (particularly regarding time credits), keeping employees fully informed is a challenge. However, Correctional Programs Division provides continual training, information sessions, and guidance to the field and will do so throughout the process.

- b. What kind of social benefits can incentive programs like the First Step Act produce, and how does it produce those benefits?

***Response:***

The FSA incentivizes programming aimed at reducing recidivism and reduces the time individuals spend in custody through the award of time credits. Ultimately, research will show whether the FSA reduces recidivism and incarceration within the federal justice system. Those in our custody cannot earn time credits while placed in Disciplinary Segregation. This may deter individuals from engaging in misconduct, as the ramifications will include the inability to earn time credits while in this status.

- 10) On August 1, I sent you a letter raising concerns about the fact that BOP commissaries are dependent on the money they make to fund employee salaries and benefits. Accordingly, there is little to no incentive to ensure that inmates use their prison bank accounts to satisfy their financial obligations such as victim restitution and child support.

In fact, recently The Washington Post reported:

In Justice Department discussions last month, senior prison officials argued that the agency should not dramatically increase the amount of prisoner money turned over to victims, according to people familiar with the internal deliberations, who spoke on the condition of anonymity to describe the conversations. Any sharp uptick, the people described officials saying, would cut into a vital income stream at a time when the agency is already understaffed.<sup>9</sup>

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<sup>9</sup> Devlin Barrett, *U.S. prison officials resist making inmates pay court-ordered victim fees*, THE WASHINGTON POST (August 4, 2022), <https://www.washingtonpost.com/national-security/2022/08/04/federal-prisons-money-victims/>.

a. As Director, do you agree with the point of view that the payment of victim restitution is a threat to the BOP budget? If not, how will you counteract this point of view that is apparently shared by some at BOP?

***Response:***

It is an essential part of our mission to prepare Adults in Custody (AIC) for re-entry to society. That includes ensuring that they make payments to restitution owed to the victims of their crimes, which the Bureau wants to encourage. The Bureau is diligently working toward changing rule language in the Inmate Financial Responsibility Program (IFRP) which is designed to make the program more effective and published a proposed rule in January 2023 which received significant public comment. In FY22, the BOP collected over \$6 million through the IFRP, which was applied to adults in custody (AIC) court-ordered financial obligations. The BOP has been working in tandem with U.S. Attorney's Offices and other government agencies in efforts to increase collection amounts. We also note that the Bureau does not make any interest off of funds held in trust for AICs and, as discussed in more detail below, funds spent on commissary items support the operation of the commissary operations and staff.

b. Please describe the "internal deliberations" described in The Washington Post, how often deliberations occur and the names and titles of the individuals who participate.

***Response:***

Internal deliberations by the BOP and the DOJ are ongoing. The BOP would be happy to provide a briefing on the outcome of these deliberations once they have been completed.

11) According to information obtained in a Freedom of Information Act request pertaining to BOP positions funded by the Commissary Trust Fund, "Last year, the Trust Fund paid \$82 million to fund 652 positions at the Bureau of Prisons — \$49.5 million in salaries and \$32.5 million in benefits, according to agency records."<sup>10</sup>

According to the Bureau of Prisons program statement, Commissary Trust Fund resources appear to be able to be utilized for many purposes, including "Salaries and benefits for Trust Fund employees," "Commissary resale merchandise," and Trust Fund Profits may "be used for the benefit or the opportunity to benefit all incarcerated individuals."<sup>11</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> U.S. DEP'T OF JUSTICE, FEDERAL BUREAU OF PRISONS, *Trust Fund/Deposit Fund Manual* (March 14, 2018), <https://www.bop.gov/policy/progstat/4500.12.pdf>.

a. Please describe how each position funded by the Commissary Trust Fund meets the stated criteria of funding “Trust Fund employees” or otherwise only performs trust fund work. How does the BOP monitor and enforce these requirements? Please explain.

***Response:***

Bureau positions funded by the Commissary Trust Fund, which include Trust Fund Supervisor, Trust Fund Specialist, Material Handler Supervisor, are centered around the program’s purpose of managing a system through which incarcerated individuals are provided the privilege of obtaining merchandise and services either not provided by the Bureau or of a different quality than that provided by the Bureau. The monitoring and enforcement of Trust Fund positions is included in the Bureau’s pay and position management including through the Time and Attendance system.

b. Are positions funded by the Commissary Trust Fund subject to “augmentation” by certain staff which are redirected to other assignments besides their primary role? If so, is this in line with BOP and DOJ policy as well as appropriations law? Please explain.

***Response:***

As federal law enforcement officers, Bureau employees in Trust Fund positions receive the same training as other correctional workers and are qualified to perform duties not related to the Trust Fund. In instances when the safety, security, and orderly operation of Bureau facilities are at risk, Trust Fund staff may assist to ensure orderly operations. When employees otherwise paid by the Trust Fund are assigned these other duties for more than eight hours per pay period, those employees are paid from the Bureau’s Salaries and Expense fund and not from the Trust Fund for the period performing those duties. The monitoring and enforcement of Trust Fund positions is included in the Bureau’s pay and position management including through the Time and Attendance system.

12) Over the past year, I have either joined or sent a series of letters to the BOP concerning financial accounts that are maintained by the BOP on behalf of federal prisoners. The amounts held in these accounts were estimated by The Washington Post to total more than \$100 million and that it increased because some prisoners received COVID relief payments.<sup>12</sup> Several news accounts reported that even high-profile prisoners such as Larry Nassar and the Boston Bomber were holding large sums of money in these

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<sup>12</sup> Devlin Barrett, *Federal prisoners hold \$100 million in government-run accounts, shielded from some criminal scrutiny and debt collection*, THE WASHINGTON POST (June 9, 2021), [https://www.washingtonpost.com/national-security/bureau-of-prisons-bank-system/2021/06/08/2aff9766-c3d1-11eb-8c18-fd53a628b992\\_story.html](https://www.washingtonpost.com/national-security/bureau-of-prisons-bank-system/2021/06/08/2aff9766-c3d1-11eb-8c18-fd53a628b992_story.html).

accounts while owing victim restitution.<sup>13</sup> At the hearing, in response to questions I asked regarding these accounts, you indicated that the BOP is working on a rule to modernize the Inmate Financial Responsibility Program (IFRP) to standardize and increase amounts of money paid to inmate financial obligations. However, I understand this program is voluntary and inmates may choose not to participate.

- a. What steps have been taken to write a new rule and what is your timeline for promulgating this rule? Please provide any drafts of the new rule to this Committee.

***Response:***

The BOP is diligently working toward changing rule language in the Inmate Financial Responsibility Program (IFRP) which is designed to make the program more effective. The proposed rules, published in January 2023, received significant public comment and based on the public comments, we continue to review the proposed rule. In FY22, the BOP collected over \$6 million through the IFRP, which was applied to adults in custody's court-ordered financial obligations. The BOP has been working in tandem with U.S. Attorney's Offices and other government agencies in efforts to increase collection amounts.

- b. Does the BOP plan to modernize or reform how it monitors balances, deposits, and withdrawals of prisoner accounts whether or not the inmate participates in the IFRP? If not, why not?

***Response:***

The BOP has been diligently working toward changing rule language in the Inmate Financial Responsibility Program (IFRP) which is designed to make the program more effective. In FY22, the BOP collected over \$6 million through the IFRP, which was applied to adults in custody's court-ordered financial obligations. The BOP has been working in tandem with U.S. Attorney's Offices and other government agencies in efforts to increase collection amounts.

- c. Does the BOP believe that inmates who decline to participate in the IFRP and have past-due debts should be able to count on the BOP to shield their money from those obligations?

***Response:***

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<sup>13</sup> Devlin Barrett, *Prosecutors seek money from Boston Marathon bomber's prison bank account*, THE WASHINGTON POST (January 5, 2022), [https://www.washingtonpost.com/national-security/boston-bomber-tsarnaev-prison-money/2022/01/05/f06963ee-166d-11ec-b976-f4a43b740aeb\\_story.html](https://www.washingtonpost.com/national-security/boston-bomber-tsarnaev-prison-money/2022/01/05/f06963ee-166d-11ec-b976-f4a43b740aeb_story.html).

The Bureau encourages each sentenced individual to meet his or her legitimate financial obligations. Bureau employees assist individuals in developing a financial plan for meeting those obligations, and at subsequent program reviews, employees shall consider the individual's efforts to fulfill those obligations as indicative of that individual's acceptance and demonstrated level of responsibility.

Although the program is voluntary, individuals who choose not to participate are subject to certain consequences for non-participation. These consequences are designed to encourage participation in the IFRP and include, but are not limited to, limitations on commissary spending, performance pay, and housing, programming, and work restrictions.

- d. Is it appropriate for the BOP to continue to hold large sums of money, or any money at all, for inmates who choose not to participate in the IFRP?

***Response:***

Not all adults in custody owe restitution and therefore are not subject to the IFRP. Additionally, large trust accounts are extraordinarily rare in the BOP. Over ninety percent of individuals in BOP Custody have less than \$2,500 in their accounts and only a fraction of those with accounts over \$2,500 owe restitution. The overwhelming majority of adults in custody have very little in their trust account. They rely on these nominal funds for basic necessities like commissary, phone/email access, and postage. Moreover, many of these individuals arrive in our care without outside bank accounts or any history of financial planning. Accordingly, our goals with this population are to strongly encourage sound financial management and regular restitution payments, while at the same time ensuring they can maintain sufficient funds to cover basic necessities and ultimately prepare for successful reentry into their communities.

Employees assist the individual in developing a financial plan for meeting obligations at initial classification and subsequent program review meetings. In developing a financial plan, employees consider the individual's total deposits during the past six months, prior payments made through the IFRP in the past six months, and make an allowance for an individual's use of the telephone system. Commissary expenditures are not currently considered when establishing a payment plan. Additionally, the BOP collects no interest on inmate trust accounts and does not profit from the existence of these large accounts.

- 13) Please provide a breakdown of inmates in the custody of the BOP and note the total amounts of financial obligations owed by inmates towards special assessments, victim restitution, fines and court costs, state or local court obligations, child support, and any other federal obligations. Please note which amounts are covered by participation in the IFRP.

***Response:***

As of May 1, 2023, Bureau wide obligation balance by those individuals currently in our care and custody is \$54,760,752,114.29.

14) The program statement for the Inmate Financial Responsibility Program reads in part:

In accordance with 18 U.S.C. § 3624(e), any inmate who has a term of supervised release and a fine relative to the offense under which he or she was committed, must agree to adhere to an installment schedule to pay any remaining balance on this fine while under release supervision. Any inmate who refuses to comply with 18 U.S.C. § 3624(e) must remain in Bureau custody.<sup>14</sup>

a. Has any inmate with a term of supervised release been returned to custody because they have not adhered to an installment schedule? Please provide relevant data.

***Response:***

Individuals on supervised release are no longer under the care and custody of the Bureau but rather the U.S. Probation office. As a result, the Bureau does not track this information.

b. How many inmates currently on supervised release are subject to an installment schedule as referenced in this section of the IFRP program document, and what is the total amount those inmates owe?

***Response:***

Individuals on supervised release are no longer under the care and custody of the Bureau but rather the U.S. Probation office. As a result, the Bureau does not have this information.

c. Are all of those inmates in compliance with the requirements of supervised release, as stated in the IFRP program document?

***Response:***

Individuals on supervised release are no longer under the care and custody of the Bureau but rather the U.S. Probation office. As a result, the Bureau does not have this information.

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<sup>14</sup> U.S. DEP'T OF JUSTICE, FEDERAL BUREAU OF PRISONS, *Program Statement, Financial Responsibility Program, Inmate*, [https://www.bop.gov/policy/progstat/5380\\_008.pdf](https://www.bop.gov/policy/progstat/5380_008.pdf) (accessed on 10/6/2022).

15) The BOP program document for the Inmate Financial Responsibility Program, by which the BOP encourages inmates to meet their financial obligations, notes “Ordinarily, the minimum payment for ... inmates will be \$25.00 per quarter.”<sup>15</sup>

In responding to a motion to turn over funds in his inmate account held by BOP, convicted child molester Larry Nassar wrote:

The fact is that Mr. Nassar is in full compliance with the IFRP, a program established and administered by the BOP. The government may not like the fact that Mr. Nassar is only paying the ‘minimum’ amount required, the fact still remains that Mr. Nassar is in full compliance with the program.<sup>16</sup>

a. Does the BOP believe an inmate paying \$25.00 a quarter towards their financial obligations is in compliance with the IFRP regardless of the resources held in the inmate’s account?

***Response:***

The IFRP is a voluntary program allowing adults in custody to make progress in satisfying their court-ordered financial obligations. Unit management employees assist individuals in developing a financial plan based on the resources of the individual. The proposed rules, published in January 2023, received significant public comment and based on the public comments, we continue to review the proposed rule.

b. Does the BOP agree with Mr. Nassar’s contention that he was in full compliance with the IFRP when he made the cited court filing?

***Response:***

Mr. Nassar was in compliance with the IFPR policy and was making payments as outlined in the current policy. While changes to the rule regulations are in draft form, Mr. Nassar adhered to the current policy.

c. Does the BOP make any effort to require inmates with the ability to pay more than \$25 a quarter to actually do so? Please explain.

***Response:***

Employees assist the individuals in developing a financial plan for meeting obligations at initial classification and subsequent program review

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<sup>15</sup> *Id.*

<sup>16</sup> *United States of America V. Lawrence G. Nassar*, Case No. 1:16-cr-00242-JTN, ECF No. 72-1.



meetings. In developing a financial plan, employees consider the individual's total deposits during the past six months, prior payments made through the IFRP in the past six months and make an allowance for an individual's use of the inmate telephone system. Commissary expenditures are not considered when establishing a payment plan.

16) The Treasury Offset Program (TOP) program, which is administered by the Bureau of the Fiscal Service at the Treasury Department, is used to collect past-due debts such as child support that are owed to state and federal agencies. Has BOP explored whether or not TOP could be applied to deposits to or withdrawals from prisoner accounts and do you think TOP should be utilized in this manner? If not, why not?

***Response:***

The Treasury Offset Program is not used for trust accounts at this time. But the Bureau is considering many options to strengthen oversight over accounts and to help ensure that individuals satisfy their financial obligations, to the extent these options are consistent with the Bureau's fiduciary obligations.

17. Does the BOP have a policy in place, either through the Inmate Financial Responsibility Program or otherwise, to encourage or require inmates in privately-contracted facilities, residential re-entry management facilities, or those in home confinement to meet their financial obligations? If not, why not?

***Response:***

The Bureau no longer utilizes privately contracted facilities. Federal, state, and local obligations are eligible for collection through the IFRP. These obligations are included on an individual's financial plan after documentation is received from the appropriate authorities. The Bureau expects each adult in custody to continue to meet his or her legitimate financial obligations once transferred to a residential reentry center (RRC) or home confinement. RRC contractors are required to establish a program to provide for the continuity of the Bureau's policy concerning the IFRP for individuals in RRCs. The program must include establishing a financial plan that addresses payment of financial obligations, effectively monitoring compliance, and ensuring there are appropriate consequences will be incurred by those individuals who refuse to participate in the program or fail to comply with their financial plan.

18. During the hearing I asked you how the BOP handles judgements for child support. Responding to written questions from this committee for the October 27, 2021 hearing "Oversight of the Department of Justice," Attorney General Garland wrote, in part, "The Bureau of Prisons advises that it recognizes all verifiable child support judgments." A resolution from the National Child Support Enforcement Association recommends, "Require the federal Bureau of Prisons to honor an income withholding order without the consent of the inmate. Many federal inmates earn income from prison employment that could be withheld for payment of

child support; however, the Bureau of Prisons has taken the position that current law does not allow them to do so.”<sup>17</sup> In responding to my questions during the hearing, you indicated that the BOP works with inmates through the voluntary IFRP, but otherwise needs a court order to withdraw funds from an inmate’s account.

- a. Does the BOP honor state and family court orders as well as federal court orders? If not, could the BOP make a policy change to recognize state and family court orders?

***Response:***

The Bureau’s current policy recognizes state and local court obligations, including child support orders, and obligates an individual to establish a payment plan to meet those state and local obligations. However, the policy only permits withdrawals of funds from an individual’s account, without consent of the person, pursuant to a federal court order. The Bureau is considering revisions to its policy to permit withdrawals pursuant to state court orders as well.

- b. If the BOP is aware that an inmate owes past-due child support but the inmate refuses to comply and the BOP needs a court order, does the BOP have a standardized process for contacting the appropriate law enforcement entity, U.S. Attorney or state or family court? Please explain and provide data as to how many times the process has been used, including the success rate.

***Response:***

The Bureau’s current policy only permits withdrawals of funds from an individual’s account, without consent of the person, pursuant to a federal court order. The Bureau is evaluating whether it could revise its policy to permit withdrawals pursuant to state court orders as well.

19. Director Peters, earlier this year I sent a letter with Chairman Durbin and other members of this Committee to the DOJ raising concerns about crimes committed by BOP staff where inmates were often the victims. We’ve received information on the numbers of staff-on-inmate and staff-on-staff sexual misconduct. At the request of the Department of Justice, this data was not put into the record at this hearing.

I’m concerned that the tables that are presented are preceded by a page and a half of “Legend and Limitations.” Among the stated limitations are instances where an allegation was sustained by Internal Affairs or the IG but the document notes that BOP is unaware whether a sexual misconduct finding was sustained.

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<sup>17</sup> NATIONAL CHILD SUPPORT ENFORCEMENT ASSOCIATION, *Resolution in Support of New Tools to Improve Child Support Collections* (2021), [https://www.ncsea.org/wp-content/uploads/2021/02/Resolution-in-Support-of-New-Tools-to-Improve-Child-Support-Collections\\_2021.pdf](https://www.ncsea.org/wp-content/uploads/2021/02/Resolution-in-Support-of-New-Tools-to-Improve-Child-Support-Collections_2021.pdf).

I am concerned that the BOP lacks the capability to effectively produce data necessary to monitor incidents of sexual misconduct or abuse by BOP employees, especially since incidents may be investigated by either the BOP Office of Internal Affairs, or the DOJ Office of the Inspector General.

In his testimony for this hearing, John Wetzel discussed the importance of data, noting “[w]hile the field of criminal justice writ large has been moving toward data-driven approaches, I fear the Bureau of Prisons has remained behind the times in this regard.”<sup>18</sup>

a. Do you agree with Mr. Wetzel’s concern that BOP is “behind the times” with respect to how it maintains data?

***Response:***

The BOP has one of the largest repositories of operational data that drives decision-making, not only within BOP but within other federal agencies with whom we share data. Many of the strategic decisions BOP makes are informed by a data-driven analysis by either the program area or by coordination with the BOP’s Office of Research and Evaluation. We use such data across a variety of contexts, including for example, for classification and designations, for programs and needs assessments, and for healthcare service delivery outcomes.

b. Do you have access to adequate data to even know and understand how prevalent instances of sexual misconduct or abuse are in BOP facilities? If not, how are you going to ensure you have access to better data that accurately captures what is happening in your prisons?

***Response:***

The BOP’s Office of Internal Affairs (OIA) tracks allegations and complaints referred to their office either directly by a complainant or via referral from the DOJ Office of Inspector General. OIA also has agents assigned to monitor complaints and cases opened at BOP institutions, which enables them to determine if sexual misconduct or abuse is occurring via multiple employees or by singular employees in multiple incidents. Note that the BOP has facilitated confidential reporting by BOP employees and adults in custody directly to the DOJ OIG. In such cases, absent referral by that office back to BOP, the BOP would not have insight into such allegations.

20) The Department of Justice Office of the Inspector General issued a Management Advisory Memorandum in September of 2022 that summarizes several Inspector General

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<sup>18</sup> John E. Wetzel, *Testimony, Oversight of the Federal Bureau of Prisons, U.S. Senate Committee on the Judiciary* (September 29, 2022), <https://www.judiciary.senate.gov/imo/media/doc/Testimony%20-%20Wetzel%20-%202022-09-29.pdf>.

audits and reviews that have repeatedly found deficiencies in how BOP manages contracts entered to provide medical care to inmates. “These deficiencies have led to inefficient management, suboptimal contractor performance, and ultimately, a waste of taxpayer dollars.”<sup>19</sup>

This memorandum is concerning not just because it shows more mismanagement happening at BOP, but it also is an indicator of substandard medical care being provided to inmates. In her testimony for this hearing, Cecilia Cardenas was very critical of the medical care available to her during her time as an inmate, noting in her written testimony, “I witnessed many women with medical issues that were unresolved and even led to death.”<sup>20</sup> When the BOP exercises poor oversight over contracts for medical services that results in substandard or a lack of medical care for those in BOP custody.

The IG memo notes that of 52 total recommendations made in this area the BOP has managed to close 29 of them, leaving 23 recommendations open. What is concerning is that the memo states that “we continue to find similar issues in subsequent reviews involving other contracts, demonstrating that BOP needs a strategic approach to address these recurring deficiencies system-wide.”<sup>21</sup> This suggests that BOP is not actually making changes and reforms in response to multiple IG reports. In the memo, the IG recommends BOP takes several actions, and notes that you have agreed to the IG recommendation. While this is progress, your follow through will determine if BOP is successful.

- a. What is your timeline for implementing the recommendations in the IG memo to create and implement a written strategy for the procurement and oversight of all medical service contracts? Please provide this written strategy to the Judiciary Committee.

***Response:***

BOP has completed development of a nationwide strategic plan for the procurement and oversight of medical services contracts that address each element of the IG's recommendation and is providing regular updates regarding its implementation efforts in accordance with established protocols outlined by DOJ Order 2900.6A.

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<sup>19</sup> U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, *Management Advisory Memorandum, 22-113, Notification of Concerns Resulting from Multiple Office of Inspector General Reviews Related to the Federal Bureau of Prisons Strategy for its Medical Services Contracts* (September 2022), <https://oig.justice.gov/reports/management-advisory-memorandum-notification-concerns-resulting-multiple-office-inspector>.

<sup>20</sup> Cecilia Cardenas, *Testimony, Oversight of the Federal Bureau of Prisons, U.S. Senate Committee on the Judiciary* (September 29, 2022), <https://www.judiciary.senate.gov/imo/media/doc/Testimony%20-%20Cardenas%20-%202022-09-29.pdf>.

<sup>21</sup> U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, *Management Advisory Memorandum, 22-113, Notification of Concerns Resulting from Multiple Office of Inspector General Reviews Related to the Federal Bureau of Prisons Strategy for its Medical Services Contracts* (September 2022), <https://oig.justice.gov/reports/management-advisory-memorandum-notification-concerns-resulting-multiple-office-inspector>.

b. What is your timeline for closing each of the 23 open recommendations from the IG’s multiple past reports and audits?

***Response:***

The Inspector General controls closure decisions for individual recommendations and given the complexity of those referenced, it is not possible to provide a specific timeline for closure. Since the issuance of the September 2022 Management Advisory Memo, OIG has closed 7 of the 23 recommendations. BOP continues to provide timely updates in accordance with established protocols outlined by DOJ Order 2900.6A regarding the remaining 16 recommendations.

c. Do you commit to providing regular updates to this Committee regarding your progress in meeting the 23 open IG recommendations, as well as the recommendations contained in the September 2022, Management Advisory Memorandum?

***Response:***

Yes.

21) As director of BOP you have been delegated authority to impose a Cost of Incarceration Fee (COIF) on inmates barring certain circumstances. According to the BOP program statement for this fee, “Each eligible inmate committed to Bureau custody, who is found to have sufficient assets and has not been assessed a fine by the court, will be assessed a fee to cover the cost of incarceration...”<sup>22</sup> Especially since it has been reported that federal prisoners are maintaining more than \$100 million in accounts held by the BOP, it appears that many inmates probably have sufficient assets to pay a COIF.

a. In each of the past five fiscal years, how many inmates have been assessed a COIF, and how much has been collected?

***Response:***

As of March 2023, 35 adults in custody are currently in Bureau custody with a COIF obligation sentenced on or after October 1, 2018. Of these, 31 still have outstanding balances. The total collected from these individuals is \$17,406.

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<sup>22</sup> U.S. DEP’T OF JUSTICE, FEDERAL BUREAU OF PRISONS, *Program Statement, Cost of Incarceration Fee (COIF)*, [https://www.bop.gov/policy/progstat/5380\\_006.pdf](https://www.bop.gov/policy/progstat/5380_006.pdf) (accessed on 10/6/2022).

b. When reviewing prisoner accounts for the Inmate Financial Responsibility Program, does the BOP consider whether an inmate is eligible to be assessed a COIF?

***Response:***

The BOP continues to consider COIF eligibility as the policy remains in effect.

c. Will the potential to be assessed a COIF be a factor in the new rule you have said BOP is working on relating to the Inmate Financial Responsibility Program? If not, why not?

***Response:***

There are no provisions in the proposed Inmate Financial Responsibility Program (IFRP) rule concerning COIF.

22) In responding to a question from Senator Padilla regarding augmentation, you indicated that BOP had hired a consulting firm to analyze BOP practices and provide recommendations.

a. Please list the name of the firm, describe the scope of the work undertaken by the firm and provide any reports or recommendations received by BOP to this Committee.

***Response:***

Deloitte has reviewed the risks of overtime and augmentation to address the GAO recommendation that “the Director of BOP should develop and implement a reliable method, or amend existing methods, for calculating staffing levels at BOP institutions.” Deloitte’s analysis resulted in three recommendations of which two specifically encompass overtime and augmentation: (1) create a risk and monitoring system tied to overtime and augmentation usage that proactively identifies institution safety risks, and (2) streamline the process of reporting augmentation, which could lead to more accurate augmentation data. The third recommendation is to develop performance metrics that link incentive usage to goals outlined in a holistic Human Capital Plan tied to a broader, comprehensive Strategic Plan.

23) You said that one of your proudest accomplishments in Oregon was to “reduce our use of restrictive housing by 46 percent”<sup>23</sup> and that it is among your top priorities to focus attention on BOP’s use of restrictive housing. What specific steps did your department take in Oregon to accomplish this reduction?

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<sup>23</sup> *Senate Judiciary Committee Holds Hearing on Federal Bureau of Prisons Oversight*, CQ CONGRESSIONAL TRANSCRIPTS (Sept. 29, 2022), <http://www.cq.com/doc/congressionaltranscripts-7581441?6>.

***Response:***

During my time as Oregon Department of Corrections Director, we did many things to reduce our use of restrictive housing. One of the most significant was that we commissioned an outside entity to look at our practices and provide recommendations (see <https://www.vera.org/downloads/publications/safe-alternatives-segregation-initiative-findings-recommendations-odoc.pdf>). We then implemented most of those recommendations. One of which, was to move Adults in Custody (AIC) off Death Row into other custody levels commensurate with their safety, security, and personal needs, which we accomplished. We also forged a partnership with Norway, who has been recognized world-wide for developing cutting edge corrections techniques and philosophies, which have led them to some of the lowest recidivism rates in the world. Through this partnership, Oregon was able to send its Correctional Officers to Norway to train in the techniques that made their system so successful. Upon returning home, many of Oregon's Correctional Officers implemented these techniques and philosophies with some of our most difficult AICs. These returned immediate results and soon became known as the "Oregon Way." A system that has not only reduced Oregon's use of Restrictive housing and improved employee wellness but has also been recognized by states throughout the United States as effective due to Oregon's low recidivism rates and reduced reliance on restrictive housing.

- a. To what extent are any of those steps applicable to BOP and which do you plan to implement?

***Response:***

BOP has already initiated a Task Force on reducing the use of restrictive housing and is working to implement recommendations from that effort. Examples of this work include: creating alternative housing units to divert Adults in Custody (AIC) from restrictive housing; ensuring AIC with mental illness are not sent to Special Management Unit (SMU) or Administrative Maximum (ADX) and alternate placements are identified; and removing AIC who develop mental health symptoms from SMU and ADX. Additionally, the BOP has developed many options for pipelines out of Special Housing Units (SHU) to decrease the amount of time AIC spend in SHUs. The BOP is also instituting the following measures to further reduce the pipeline of individuals into restrictive housing and increase opportunities for individuals to leave restrictive housing:

- Expansion of reintegration unit capacity;
- Increasing the number of BRAVE Programs from three to a total of five, with the addition of one more is planned for 2023; and

- Expanding the number of Challenge Programs to support pro-social attitudes and provide housing after an individual leaves a SHU.

On May 5, 2023 BOP and the National Institute of Justice announced that they have partnered on a priority initiative to examine all facets of the use of restrictive housing in federal facilities. The BOP will continue to work to ensure general population settings are as safe, humane, and as normal as possible so that people in our custody want to remain outside of restrictive housing. This is especially important in high security settings.

24) During the discussion on culture change and whistleblower protections, you stated that BOP is starting with the women’s facilities to improve the operating climate. What specific actions are being taken, and where?

- a. What is the long-range plan for culture change in light of the “cultural assessment” you referenced?

***Response:***

The Bureau of Prison (BOP) is committed to the safety and wellbeing of women in our custody. To ensure women are incarcerated in facilities that are gender responsive and trauma informed, the BOP developed the Women’s Institution Cultural Assessment (WIC). The Reentry Services Division and a multidisciplinary team visit facilities to conduct these reviews. All institutions housing women will undergo a WIC Assessment by the end of 2023. Corrective action for any identified areas is required, and themes across facilities will inform future BOP actions.

The BOP is currently implementing several initiatives which will assist with improving culture at women institutions. These initiatives include developing competencies specific for all employees applying for positions at women facilities, expanding mandatory training standards with a focus on gender responsive and trauma informed principles. The agency is standardizing the information provided to incarcerated women during the Admission and Orientation Program focusing on sexual safety, the administrative remedy process, gender responsive expectations, addressing trauma during incarceration and reporting procedures for employee misconduct.

In April 2023, the Department of Justice introduced Sexual Abuse Facility Evaluation & Review (SAFER) teams, composed of officials from various departments, to assess progress in implementing over 50 recommendations in response to sexual abuse concerns at the Bureau’s women’s facilities across six regions. The SAFER teams engage with BOP employees and incarcerated individuals to ensure a safe environment.



In June 2023, SAFER teams completed an initial round of visits to women’s facilities within the Bureau, assessing the implementation of recommendations from the Deputy Attorney General’s Sexual Misconduct Working Group that was convened in 2022. During these visits the teams saw meaningful signs of progress, but that more work is to be done. The Bureau is committed to implementing the recommendations from the Work Group to ensure the safety and security of female offenders.

b. How will BOP gauge cultural change once it has its baseline?

***Response:***

As noted in the last response, WIC Assessments will take place at all women’s facilities by the end of 2023. Results are already driving change, for example with work having begun on gender-responsive training for medical providers. Additionally, SAFER teams visits demonstrated meaningful progress in the implementation of the Deputy Attorney General’s Sexual Misconduct Workgroup.

25) There were a number of conversations about BOP’s lack of responsiveness to requests from Congress for information. What specific changes does BOP plan to take to track intake of Congressional requests—as well as those from GAO and the IG—and track the content and timeliness of BOP’s response?

***Response:***

BOP’s Program Review Division works closely with government oversight agencies for compliance with laws, regulations, and to ensure that programs are free from waste, fraud, and abuse by communicating requests for production of documents, interviews, and site visits and responding to the same within established time frames. BOP continues to successfully respond to OIG and GAO regarding pending recommendations within the time frames established by GAO and OIG protocols. Moreover, BOP tracks both the timeliness and content of its responses to recommendations through an internal database that is updated on a weekly basis. BOP has also recently enhanced its internal management and communication to ensure important information regarding priority audits are timely and effectively shared with senior management.

The Bureau’s Office of Legislative Affairs experienced great turnover in the past two years; however, the office is now being fully staffed to include a new Chief. Additional attorney positions have been announced and are pending selection.

a. Will you direct your staff to respond to Congressional requests submitted before you took the position? There are several from members of this Committee that are pending.

***Response:***

Yes.

26. There was some discussion about particular Residential Reentry Management Centers (RRCs) closing and not having sufficient interest in the community to respond to the RFP. What plans, if any, does BOP have to ensure adequate coverage of RRCs across the country?

***Response:***

The BOP continues to face challenges, such as Hawaii and Sacramento in contracting an RRC. Some of this difficulty can be attributed to local zoning ordinances which prohibit private contractors from opening an RRC. The BOP has attempted to find alternatives to RRCs in these areas by contracting day reporting centers, which allow individuals an opportunity to be confined at home while participating in programs. The BOP has and will continue to monitor population trends to ensure individuals have the option of community placement.

a. How does BOP even know what “adequate coverage” would be?

***Response:***

The BOP monitors and evaluates Residential Reentry Centers population trends using release rosters generated through SENTRY. The Bureau also monitors sentencing trends and communicates with local United States Probation Office officials on their need for public law placement.

27) How many juveniles, if any, are in BOP’s care, and under what circumstances?

***Response:***

The BOP currently has 23 juveniles who have committed an act of delinquency but have not attained their twenty-first birthday as defined by the Juvenile Justice and Delinquency Prevention Act of 2002 (18 U.S.C. §§ 5031 – 5042).

28. Please elaborate on what “Direct Hire Authority” means for the 6 facilities that you mentioned having it.

***Response:***

Direct-Hire Authority (DHA) is an appointing (hiring) authority that the Office of Personnel Management (OPM) can give to Federal agencies for filling vacancies when a critical hiring need or severe shortage of candidates exists. DHA enables

an agency to hire, after public notice is given, any qualified applicant without regard to 5 U.S.C. §§ 3309 – 3318, 5 C.F.R. part 211, or 5 CFR part 337, subpart A. DHA expedites hiring by eliminating competitive rating and ranking, veterans' preference, and "rule of three" procedures.

- a. Who provided authorization for this Direct Hire Authority and what advantages is it intended to lend?

***Response:***

The Office of Personnel Management provided us with Direct Hire Authority (DHA). The usage of DHA has allowed the BOP to expedite hiring of applicants at locations that have had difficulty hiring employees using the streamlined hiring process that DHA permits. Thus far, the two locations for which DHA was approved, Federal Correctional Institution (FCI) Herlong and FCI Mendota, have demonstrated success with DHA and are rapidly approaching their authorized number of correctional officer positions. BOP submitted a request to extend and hire beyond the authorized hiring number through the continued usage of DHA.

- b. Has BOP observed any advantages or detriments so far in these cases or in previous cases where Direct Hire Authority was provided?

***Response:***

The Office of Personnel Management authorized BOP's request to utilize Direct Hire Authority (DHA) for the position of Correctional Officer at seven facilities (approval attached). With DHA, the BOP is able to expedite and hire any qualified applicant and reduce the time to hire. However, the current DHA sets a limit on the number of applicants the BOP can hire (313) at these identified facilities, and only applies to the GS-0007/5/6/7 correctional officer position. DHA requires Human Resources (HR) employees trained in the rating and ranking of applicants, which is typically managed at the BOP's National Consolidated Staffing Unit of the Human Resource Service Center. To effectively manage the process, the BOP must have sufficient human resource personnel at field site locations to manage the hiring activity.

Since implementation of this DHA authority, some locations had experienced shortages of HR personnel to process the applicants. Recruiting and retaining sufficient and trained HR employees at the locations has been a challenge resulting in delays in the processing of DHA applicants.

**SENATOR MIKE LEE**

1. On January 26, 2021, President Biden signed an executive order to “Eliminate the use of Privately Operated Criminal Detention Facilities.” How many BOP facilities were under contract with private operators on the date of this executive order?

***Response:***

As of January 26, 2021, the Privatization Management Branch (PMB), managed eight facilities to include The Reeves County Detention Center, the Giles W Dalby Correctional Facility, Reeves County Detention 1&2, (two facilities), D. Ray James Correctional Facility, Great Plains Correctional Facility, Moshannon Valley Correctional Center and the Rivers Correctional Facility.

2. What percentage of the overall inmate population was housed in privately contracted facilities compared to the overall inmate population housed in BOP facilities?

***Response:***

As of January 28, 2021 the population comprised:

- a. 14,122 (9%) individuals housed in privately managed typical facilities.
  - b. 14,747 (10%) individuals housed in non-typical contract facilities.
  - c. 123,202 (81%) individuals housed in agency managed typical facilities.
3. The BOP relied heavily on private operators providing prisoner beds prior to the executive order. Reliance by the BOP on private facilities increased by 79% from 2000 to the date of the executive order. How many contracts with private contractors, if any, were terminated for contractual nonperformance between 2000 and the date of the executive order?

***Response:***

Two.

4. If any contract terminations occurred, where were the inmates in the privately operated facility transferred to?

***Response:***

In most cases, the adults in custody were transferred to a BOP facility. Some individuals who were nearing the end of their sentence were transferred to another contract facility. This allowed the BOP to maximize available bed space and utilize the beds at the remaining private facilities until the contracts expired.

5. Why did the BOP increase its reliance on private contractors during the period between 2000 and 2021, especially if contract terminations occurred?

***Response:***

To meet the needs of the increased prison population during that timeframe. Initially, the management of private facilities was mandated by Congress through the National Capital Revitalization and Self-Government Improvement Act of 1997.

6. Between 2000 and 2021, did the BOP identify actions by private contractors that resulted in extended sentences for the inmates that improperly resulted in increased payments to that contractor?

***Response:***

The BOP has not identified actions by private contractors that resulted in extended sentences for the individuals that improperly resulted in increased payments to that contractor.

7. Did the BOP receive any requests from private operators to change the policies on prisoner conduct that would give that operator authority to increase the length of the sentence of inmates under their control?

***Response:***

No.

8. Is the BOP aware of any complaints or reports of a private operator making any unjustified disciplinary decisions that resulted in extending an inmate's sentence? If so, how were such complaints adjudicated?

***Response:***

We are not aware of any complaints.

9. Between 2000 and 2021 were any requests made to the Department of Justice to ban contracting with private operators?

***Response:***

Yes.

10. How long does it take for a BOP facility to absorb prisoners from one of these newly closed private facilities?

***Response:***

Once the contract ends with a privately operated prison, the BOP develops a plan to transfer those individuals to appropriate BOP locations. Although there are many factors,

this process normally takes several months through a coordinated scheduling of outgoing buses and flights.

11. Has President Biden’s “Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities” impeded implementation of the First Step Act?

***Response:***

No.

12. The First Step Act contains significant recidivism reduction programs for inmates. What specific programs and initiatives established under the First Step Act have you implemented for prisoner development and rehabilitation?

***Response:***

As part of the First Step Act, the Bureau of Prisons offers over 100 structured Evidence-Based Recidivism Reduction programs and Productive Activities. These programs are detailed in the agency’s “First Step Act Approved Programs Guide” available on the public website.<sup>24</sup> In FY22, the Bureau received an additional 111 positions dedicated to First Step Act compliance and enhancing programmatic needs for inmates. Positions such as: residential reentry specialists, psychology interns, and vocational training instructors provide the needed additional support to increasing our programming. The BOP has made steady progress to fill the 440 dedicated FSA positions, and of August 2023, the BOP had filled 327.

Structured programming is designed to be gender-responsive and trauma-informed.

Specific examples of innovative programs that BOP has developed include a formalized peer support training program and accompanying apprenticeship; a Life Skills Laboratory where individuals learn hands-on life skills in a home-like environment that teaches life skills, such as grocery shopping, cooking, and laundry, among others. Other examples include standardized career and technical education programs; new transgender programming including support groups and reentry programs; and family programming targeted at individuals in custody and their family members to support reentry.

13. Adequate staffing is essential to providing the significant programming under the First Step Act and reducing recidivism. What are you doing to address chronic staffing shortages and the lack of staff training in federal prisons?

***Response:***

The Bureau is working diligently to fill vacancies throughout the country and continues to evaluate staffing levels by discipline at hard-to-fill locations to include FSA positions.

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<sup>24</sup> [https://www.bop.gov/inmates/fsa/docs/fsa\\_guide\\_0822.pdf](https://www.bop.gov/inmates/fsa/docs/fsa_guide_0822.pdf)

Individual and group recruitment, retention and relocation incentives continue to be utilized in conjunction with other human resource pay flexibilities (i.e., above the maximum rate requests, annual leave credit, and the student loan repayment program) where appropriate to attract and recruit candidates and retain employees for a variety of occupations. As of August 2023, the BOP has filled 327 (74%) of dedicated FSA positions. Tentative offers or entry on duty dates were given to an additional 38 individuals representing another 10 percent of the 440 funded FSA positions. The pandemic heavily impacted our ability to conduct in-person introductory correctional training for new employees, and as social distancing protocols have eased, the Bureau has worked to decrease the backlog of employees who have not received introductory training within their first year of employment. The backlog generated during the pandemic has been eliminated and the Staff Training Academy (STA) has resumed normal operations and class rotations. Between October 1, 2022 and June 30, 2023, more than 2,700 employees have completed introductory training at the STA

14. This past July NBC news released a report in which a federal corrections employee stated that “[implementation of the First Step Act] is not going at all. . . I’m the education department, and we’re never open, and if we are, it’s rarely.” What have you done since this report was released to remedy this problem and ensure that the First Step Act is being properly implemented?

***Response:***

The BOP has made great strides in the implementation of the First Step Act. Program opportunities are available for all individuals at every institution. However, over the past year, institutions have been subject to modified operational levels due to the COVID-19 pandemic. Under each level of modified operations, an infection prevention procedure or modification to operations, such as modifying the number of participants in a program or limiting program offerings, is made to mitigate the risk and spread of COVID-19 in accordance with BOP’s pandemic guidance. Despite having to modify program offerings from time to time, the BOP continues to increase program participation and completions each month. As of July 31, 2023, there were over 104,000 active enrollments in EBRR programs and PAs. This is an 18% increase in program enrollments since the end of FY 22. As of July 31, 2023, 40,797 offenders currently have release methods which include earned FTCs which has advanced their transfer date to Supervised Release. Additionally, to date (August 5, 2023), a total of 22,310 adults in custody have released to Supervised Release earlier under FSA. During the interim process, an average of 34.5 offenders released per day with Federal Time Credits. Since the implementation of the auto-calculation application, that average has increased to 39.4 offenders per day, an increase of just over 14%.

The auto calculation application reviews the entire population each month, calculates the credits earned for all eligible offenders based on the full criteria as outlined in policy and rules language and applies credit to all eligible offenders with Minimum or Low

Recidivism Risk Levels. The application also generates a monthly Time Credit Report which provides detailed information regarding earning status, credit earned, and credit applied.

In contrast the interim process consisted of BOP performing manual calculations of FTCs earned for each individual in a given "Batch". Batch data sets of individuals, who are within 24 months of their projected release data, are extracted monthly on the last Saturday of the last full week of the month and their time credits are calculated.

15. What are you doing to update federal prison infrastructure to expand access to vocational training, virtual programming for inmates, mental health treatment, or other recidivism-reducing programs?

***Response:***

FSA funds and dedicated employee positions have been used for a large expansion of mental health services including additional residential treatment programs, enhanced inpatient environments and services, and new outpatient programs. These treatment services have had a significant focus on individuals with the most serious forms of mental illness, those with trauma disorders, and those in high security settings. The BOP has utilized FSA funding to enhance vocational, occupational and apprenticeship program needs for related trade instruction materials, supplies/equipment and training certifications.

The BOP has been working with colleges and universities to expand the opportunity for adults in custody to earn college degrees at FCI Danbury, FCI Talladega, FCI Elkton, USP Atlanta, USP Leavenworth, FMC Lexington, FCI Texarkana, FCI Forrest City, and FCI Waseca. As a result, our in-person instructor led college programs has increased to 23 sites.

The BOP is working to add additional occupations to the Bureau of Prisons (BOP) / Department of Labor (DOL) Apprenticeship initiative. The BOP is meeting with DOL to revise the Standards of Apprenticeships agreement and add apprenticeship options in an effort to increase enrollments and completions. Recently, a new Barista Apprenticeship was submitted to DOL and we are currently awaiting a response.

The BOP is engaged with the DOL in an FSA grantee project. Through the collaboration of this project, reentry employment preparation services will begin being provided to individuals while in the BOP institution and continue as they transition to residential reentry centers (hallway houses) as an avenue to assist with securing employment.

16. The First Step Act also reauthorized the Elderly Home Confinement Program, which allows qualifying terminally ill or elderly inmates to be released to home confinement. How many inmates have qualified and been released to home confinement under this program since it was amended and reauthorized in 2018?



***Response:***

As of August 23, 2023, there have been 1,240 individuals approved for Elderly Offender Home Confinement.

17. It does not appear that BOP has released a study on the results of the Elderly Home Confinement program. Will you commit to either conduct a study on the results of the program (including the age of qualifying inmates, the length of their sentences, and the types of crimes for which they were/are serving time) or send a copy of an existing study to my staff?

***Response:***

The Attorney General’s First Step Act Annual Report includes a discussion of the recidivism rates of individuals impacted by the FSA, including those persons participating in the Elderly Offender Home Confinement Program.<sup>25</sup> As noted in that report, the overall rates of recidivism for FSA participants are very low. Of the total 29,946 FSA participants tracked, 3,722 (12.4%) recidivated. i.e. a return to or an arrest by Federal, state or local authorities. We are unable to provide specific statistics for individuals participating in the Elderly Offender Home Confinement Program.

18. In January of this year, the Bureau of Prisons released the “Transgender Offender Manual.” Section 2 of this manual is a list of definitions, including this definition of gender: “a construct used to classify a person as male, female, both, or neither. Gender encompasses aspects of social identity, psychological identity, and human behavior.” The manual also defines “gender identity as “a person’s sense of their own gender.” Is the Bureau housing inmates based on these definitions of gender and gender identity, instead of their biological sex?

***Response:***

The BOP makes housing decisions by considering an individual’s gender identity. Additional considerations include of security level, criminal and behavioral/disciplinary history, programming, medical, and mental health needs, vulnerability to sexual victimization, and likelihood of perpetrating abuse. Ultimately, a decision on where to house an individual is made based on the safety and security of those involved and in consultation with subject matter experts across multiple disciplines.

19. Section 6 of the Transgender Offender Manual, “Housing and Programming Assignments”, states “a transgender or intersex inmate’s own views with respect to his/her own safety must be given serious consideration.” Are the views of non-transgender inmates regarding their safety given equally serious consideration when potentially being housed with transgender inmates?

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<sup>25</sup> See <https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf>

***Response:***

It is the Bureau's job to ensure we are placing AICs in appropriate housing locations, and ones that protect the safety of all AICs, staff, and the public. Our employees are trained to look at the individual, consider the complexities surrounding their placement, and make an appropriate decision on where they will be housed. We are the correctional experts, and the ultimate obligation is on us to make sure we are placing AICs on units where they are safe and where those already on the unit will also be safe. While we may consider input from those in our custody, it is our final decision. A transgender person does have the ability under policy to provide input on their designation, including expressing concerns for their safety. That said, all AICs in our custody can speak with their unit team and make requests regarding their housing. Every day our employees respond to requests for transfer or other requests regarding AIC housing, including through our administrative remedy system.

**SENATOR BEN SASSE**

1. During your testimony, you stated that you have begun to implement reforms to BOP's leadership structure and Office of Internal Affairs to improve the Bureau's management, efficiency, and accountability.
  - a. Please describe the reforms that you have begun to implement.

***Response:***

The Attorney General approved our request to change our leadership structure, by adding an Associate Deputy Director to the Director's office, as well as aligning the Office of Public Affairs and the Office of Legislative Affairs under the Director's office. Regarding changes to the Office of Internal Affairs, our local Special Investigative Agents will now report Office of Internal Affairs employees, and not to the warden, with the goal of providing greater autonomy and clear lines of communication for the investigative process. Additional staff are being hired to increase the complement of investigators within OIA, which will assist in efficiently investigating allegations.

- b. Please explain how you expect these reforms to improve management, efficiency, and accountability.

***Response:***

Both organizational changes will ensure clearer lines of communication which will enhance efficiency in the Bureau. We are bolstering and reorganizing investigative employees to better equip the OIA team to conduct timely, thorough, and unbiased investigations. In addition to changing lines of command, we are adding more than 50 additional employees to handle and support employee

misconduct investigations. The overall goal is to improve timeliness of investigations, so misconduct is identified and addressed in an effective manner.

- c. Please specifically identify any measures that are designed to improve BOP's ability to interdict contraband and any measures to improve reporting and investigations of misconduct by inmates or BOP employees. When do you expect such measures to be fully implemented?

***Response:***

The Bureau has and continues to explore various contraband interdiction technologies to assess their capability to counter this threat. The Bureau is attacking the contraband threat on several fronts. We are:

- a. Deploying Managed Access Systems at three facilities in FY22; Anticipate completion in 2023.
  - b. Deploying Micro-Jamming Systems at five facilities in FY22; Pending NITA approval.
  - c. Deploying Mobile Cellular assessments at 25 sites with the highest number of seized contraband cell phones in FY23.
  - d. BOP worked with the DOJ and FAA to restrict airspace (drone flyover protection) for 109 of our 122 institutions. BOP is working with DOJ to designate facilities as high-risk locations and covered assets. BOP continues to deploy Counter Unmanned Aircraft Systems (C-UAS) detection systems in our facilities. Twelve C-UAS systems are operational, with 30 pending for FY23. BOP has also awarded a contract for a mobile integrated detection and mitigation C-UAS system - it will soon be deployed to BOP covered facilities and assets facing the greatest UAS threat.
  - e. The BOP has successfully completed piloted mail scanning at USP Canaan and FCI Beckley.
  - f. Reports of employee involvement in contraband introduction at some of our facilities is a very serious concern for the Bureau. All allegations of criminal conduct, including introduction of contraband are investigated. Matters of suspected employee criminal conduct are referred to the Department's Office of the Inspector General for investigation and possible criminal prosecution.
2. In your written testimony, you stated that the BOP "has solicited and awarded a contract to a consulting firm to assess institutional staffing levels, use of overtime and augmentation."
    - a. When do you expect BOP to receive the results of this study?

***Response:***

The study was conducted and completed by Deloitte in April 2022. The analysis of staffing was evaluated separately. In response to the overtime and augmentation study, the BOP is working to integrate augmentation data into our automated roster program. In response to the staffing analysis, the BOP is developing an automated staffing tool which will enable the agency to better determine institution staffing needs on an individual basis. It will not address our staffing shortage but will enable us to have an ongoing sense of the positions needed at an institution based upon programmatic changes and other criteria to review. As of June 2023, the BOP has deployed the tool for institution correctional services departments to be evaluated. The tool continues to be tested and evaluated as we prepare to move forward with additional disciplines/departments throughout the BOP.

- b. Do you commit to sharing the findings and recommendations from this analysis with the Committee?

***Response:***

Yes.

- c. Is BOP taking any other measures to identify staff shortfalls and to promote improved recruitment and retention? Please identify any such measures.

***Response:***

Headquarters employees, as well as regional employees, review the staffing levels at institutions each pay period to identify shortfalls. We offer recruitment and retention incentives at institutions throughout the country in an effort to address these shortfalls. Further, the Bureau is offering a retention incentive to all employees eligible to retire as of December 31, 2022, in hopes that employees will remain the Bureau.

3. Regarding augmentation, please provide to the Committee data and information demonstrating the current extent of this practice in BOP prisons, the number of non-custody staff that have been temporarily assigned to a custody role (and frequency of such assignment), and any steps BOP is taking to reduce over-reliance on use of non-custody staff in custody roles.

***Response:***

This information is reported to the appropriating committees of both the House and Senate on a quarterly basis.

4. In your testimony, you stated that six BOP prisons have direct hire authority.
  - a. Please identify those six prisons and explain how they were selected.

***Response:***

There are seven prisons for which Direct Hire Authority (DHA) was authorized: FCC Beaumont, FCI Berlin, FCC Florence, FCI Herlong, FCI Mendota, USP Thomson, and FCC Yazoo City. These institutions were selected based on being identified as chronically hard to fill locations with a large number of correctional officer vacancies.

- b. Are there any plans to expand the number of prisons that have direct hire authority? Why or why not?

***Response:***

The BOP currently utilizes the government-wide DHA for the following positions: Contract Specialist and Medical Occupations: Nurses and Physicians. A request has been submitted to DOJ seeking additional Office of Personnel Management approval to exceed the initial fill limit at the locations currently approved to utilize DHA.

5. In your testimony, you stated that BOP employees receive less training than employees in other federal law enforcement agencies. How do you plan to improve job training? What specific skill areas do you plan to prioritize?

***Response:***

The Bureau is looking at options to enhance and extend its introductory correctional training within budgetary parameters to ensure that new employees have a solid training foundation for a career in the Bureau of Prisons.

6. The BOP's Trust Fund/Deposit Fund program has been criticized for enabling federal inmates to avoid paying restitution and other court-ordered payments, including child support.
  - a. Does BOP rely, at least in part, on prison commissary purchases to help fund staff salaries and benefits?

***Response:***

Revenue generated by the sale of goods and services to adults in custody fund salaries and benefits for Trust Fund employees only and never to support other staff.

- b. What changes is BOP considering to its Inmate Financial Responsibility Program?

***Response:***

The BOP is diligently working toward changing rule language in the Inmate Financial Responsibility Program (IFRP) which is designed to make the program more effective. The proposed rule, published in January 2023, received significant public comment and based on the public comments, we continue to review the proposed rule. In FY22, the BOP collected over \$6 million through the IFRP, which was applied to court-ordered financial obligations. The BOP has been working in tandem with U.S. Attorney's Offices and other government agencies in efforts to increase collection amounts.

- c. How do you expect those changes to improve inmates' compliance with restitution and other court-ordered payments, such as child support?

***Response:***

The Bureau's current policy only permits withdrawals of funds from an individual's account, without consent of the person, pursuant to a federal court order. The Bureau is evaluating whether it could revise its policy to permit withdrawals pursuant to state court orders as well.

- d. Is BOP considering any other changes that would increase inmates' contributions to paying restitution and other court-ordered payments, including child support? If so, what are those changes? Please keep the Committee informed regarding these efforts and how the Committee can support further improvements in this area.

***Response:***

The BOP is diligently working toward changing rule language in the Inmate Financial Responsibility Program (IFRP) which is designed to make the program more effective. In FY22, the BOP collected over \$6 million through the IFRP, which was applied to court-ordered financial obligations. The BOP has been working in tandem with U.S. Attorney's Offices and other government agencies in efforts to increase collection amounts.

**SENATOR THOM TILLIS**

1. Recently, it has been brought to my attention that there are some serious structural issues at Federal Correctional Complex, Butner (FCC Butner) that are impacting working and living conditions. Specifically, I understand that prison leadership requested almost \$7.5 million to replace the roof at FCI 2 because of significant leaking and related damage. Some of the concerns highlighted include:
  - Water leaking in areas like the education hallway, administration building, and severe leaks in electrical rooms

- Alleged mold and lack of mold & air quality tests being done
- Unsatisfactory sanitation ratings in the kitchen, dining, and washing room

Have you been made aware of these issues that FCC Butner is having?

***Response:***

We are aware of several maintenance issues at FCC Butner and have identified facilities improvement projects that rise to the level of necessity to be prioritized for consideration. However, the BOP has a current backlog of over \$2 billion dollars in unfunded maintenance and repair projects which are prioritized for funding by category – such as life safety, infrastructure, fire protection – and that funding is distributed by necessity. This unfunded priority list continues to grow and evolve as age, climate, and institutional needs continue to develop.

2. Are you aware of any funding deficiencies that FCC Butner is dealing with?

***Response:***

The \$2 billion-dollar backlog of BOP unfunded projects is prioritized by categories such as life safety, infrastructure, fire protection, etc., and is distributed by necessity. There are several major projects at FCC Butner that rise to a level of priority and necessity to be given funding consideration.

3. What is the status of the \$7.5 million request to replace the roof at FCI 2?

***Response:***

Federal Correctional Institution II at the FCC Butner has received funding to replace roofs on 11 buildings (all building except the housing units, which do not have roofing concerns). This contract has been awarded for 4.7 million.

4. What is the status of the \$500,000 funding award to replace the Commissary Laundry Roof?

***Response:***

The project was modified to include Food Service’s roof, and it has been awarded for \$1.9 million with an anticipated completion date of first quarter FY 2024.

5. Can you provide a list of working and living issues that have been addressed?

***Response:***

The housing unit roofs were replaced under warranty. FCC Butner has implemented procedures to manage any water intrusions after hard rainstorms.

6. Can you provide a list of ongoing projects to address the problems and expected completion time?

***Response:***

The Food Service, Commissary, and Laundry roof project has been awarded and is anticipated to be completed in the first quarter FY 2024.

7. Are you committed to improving the living and working conditions, and meeting with FCC Butner's leaders to discuss these concerns?

***Response:***

We are committed to improving living and working conditions for employees and incarcerated individuals.

8. What is the BOP doing to address the exodus of staff?

***Response:***

The Bureau has identified two groups of employees who have higher rates of attrition: employees within their first year of employment and retirement-eligible employees. Probationary employees who left in 2021 identified a lack of training as a factor in their separation. The Bureau has resumed timely introductory correctional training as the social distancing protocols have eased. The Bureau is currently utilizing staggered retention incentives for all employees who were eligible to retire as of December 31, 2022 in an effort to stabilize staffing levels.

9. Do you believe that augmentation is also playing a factor in staff leaving BOP?

***Response:***

A review of exit survey information over the last three years at FCC Butner does not show any comments provided by separating staff suggesting that augmentation had any effect on their decision to leave the agency.

10. Do you believe that excessive overtime is causing burnout and leading to staff leaving BOP?

***Response:***

Yes, increased usage of overtime can cause burnout. The BOP acknowledges there has been an increased in the utilization of overtime for employees to fill vacant correctional



posts when necessary. And although overtime usage does occur, responses from employees who voluntarily completed an Exit Survey prior to departing the agency in calendar year 2022 do not cite burnout from overtime as a primary reason for leaving. The top three reasons cited were voluntary retirement, separation to move to a non-law enforcement agency and mandatory retirement.

11. Can you provide the number of vacancies at FCC Butner?

***Response:***

As of August 24, 2023, there are 241 vacancies at FCC Butner to include Public Health Services officers.

a. Is there an expected time on when the vacancies will be filled?

***Response:***

The Regional Office and institutional employees continue to actively recruit individuals and are working to fill these vacancies as expeditiously as possible.

12. What long-term strategy are you working on to address the staff shortages at FCC Butner?

***Response:***

BOP recently completed a review of the existing special rate pay tables for Nursing positions at FCC Butner. As a result of the review, a request to assign FCC Butner's Nurses to the Federal Medical Center (FMC) Rochester, MN which is a higher salary table (attached). Additionally, BOP is requesting to assign Physician's Assistants and Nurse Practitioners (Mid-level Practitioners) to FMC Rochester's Special Rate table. These two tables are the highest special rate tables we have for these occupations. If approved by OPM, Nurses will receive an estimated 18.5% increase in pay and Mid-level practitioners will receive an estimated 20% increase in pay.

FCC Butner continues to recruit for Correctional Officers through local recruitment events to include specialty law enforcement fairs and job fairs at military bases. FCC Butner offers a 25% recruitment incentive and a 10% retention incentive specifically for Correctional Officers.

Additionally, FCC Butner has participated in numerous recruitment events, offers recruitment incentives for Correctional Officers, Psychologists, and other hard to fill positions at the institution. Retention incentives are used for Nurses, Medical Technologists, Mid-Level Providers, Licensed Practical Nurse, Paramedics, Correctional Officers, Psychologists, and Cook Supervisors.

13. Is there any red tape that is impeding the hiring process for BOP?

***Response:***

The hiring process for federal employees generally presents challenges in the current labor market, as employers are competing for a similar pool of applicants in certain locations. Many employers can offer “on the spot” incentives as well as shortened time to hire, which can impact our ability to be attractive to an applicant with multiple employers seeking their employment.

14. On August 24, 2021, Deputy Assistant Attorney General Joe Gaeta responded by stating that the DOJ takes the concerns seriously and that the Deputy Attorney General instructed BOP to promptly implement reforms to address this matter.
  - a. Can you provide an update on what the trust fund reforms are?

***Response:***

The BOP has been diligently working toward changing rule language in the Inmate Financial Responsibility Program (IFRP) which is designed to make the program more effective. The proposed rules, published in January 2023, received significant public comment and based on the public comments, we continue to review the proposed rule. In FY22, the BOP collected over \$6 million through the IFRP, which was applied to court-ordered financial obligations. The BOP has been working in tandem with U.S. Attorney’s Offices and other government agencies in efforts to increase collection amounts.

- b. Have the trust fund reforms been implemented? If no, why not?

***Response:***

The BOP is diligently working toward changing rule language in the Inmate Financial Responsibility Program (IFRP) which is designed to make the program more effective. The proposed rules, published in January 2023, received significant public comment and based on the public comments, we continue to review the proposed rule.

15. What steps is BOP taking to screen inmate transactions for suspicious activity?

***Response:***

On August 19, 2020, the Assistant Director of the Correctional Programs Division issued a memorandum to all Chief Executive Officers detailing how each institution will screen and investigate suspicious financial transactions. Specifically, each institution is to generate a monthly report which details individuals who have received \$500 or more in one instance and individuals who have \$2,500 or more in their account at any given time. All institutions were instructed to investigate anyone who meets either of those two criteria and encumber said funds until the investigation is completed and the funds are

deemed to not be illicit. The memorandum also instructs investigative employees to make the Financial Responsibility Coordinator aware of all individuals meeting the two criteria.

16. Does the BOP refer settlements, payments, and other benefits deposited into inmate trust accounts to the Treasury Offset Program or any other program under the Treasury's Debt Management Services?

***Response:***

No.

17. What is the BOP doing to halt sexual misconduct and abuse throughout the federal prisons?

***Response:***

We are actively rooting out and addressing employee misconduct and we have worked diligently with our fellow law enforcement entities, and others to ensure meaningful investigatory and disciplinary processes. The Bureau strongly condemns all forms of sexual misconduct by our employees or those in our custody. We take seriously our duty to protect the individuals entrusted to our care as well as maintain the safety of correctional employees and the community.

The BOP's Office of Internal Affairs (OIA) tracks allegations and complaints referred to their office either directly by a complainant or via referral from the DOJ Office of Inspector General. OIA also has agents assigned to monitor complaints and cases opened at BOP institutions, which enables them to determine if sexual misconduct or abuse is occurring via multiple employees or by singular employee in multiple incidents. Note that the BOP has facilitated confidential reporting by BOP employees and adults in custody directly to the DOJ OIG. Additionally, the BOP works with the U.S. Attorney's Office and criminal investigators to ensure that they have what is needed to pursue criminal charges where appropriate.

A new Prison Rape Elimination Act Coordinator has been hired and is in place. The BOP's Women and Special Populations Branch has been proactively visiting all women's facilities. Additionally, the BOP is working with other components of the Department of Justice to determine the potential to develop and implement a national hotline for adults in custody, their families and representatives to report sexual abuse. This hotline would benefit adults in custody in federal, state, and local jurisdictions. The BOP has worked with the Department to create Sexual Assault Facility Evaluation and Review (SAFER) Teams to tour women's facilities as part of the effort to root out misconduct.

18. What assistance is provided to inmates who have become victims of sexual abuse?

***Response:***

All incarcerated individuals can access internal and external methods to report sexual abuse. Reporting options include verbal or written communication to employees, Administrative Remedy filing, and contacting the Department of Justice's Office of the Inspector General directly via mail or electronic mail. Sexual abuse may be reported via a third party on the Bureau's public webpage.

For the incarcerated individuals in SHU, he or she maintains access to institutional mail and are able to receive and send correspondence to people within the institution, to BOP employees in Regional and Central Office, and to people in the community. There is no limitation placed on mail.

The Urban Institute is working to research the potential of an external hotline to report instances of sexual abuse in federal and state prisons. This project has been approved by the Institution Review Board (IRB) and is ongoing. We are working with them to provide information on the federal system, but they are in charge of the study and time horizons. Urban Institute has informed us that they expect the summary report to be completed by spring 2024.

Emotional support services include delivery of psychotherapy, National Sexual Assault Hotline access, and community advocacy partnerships. Additionally, those in our care who have been victims of sexual abuse have mental health professionals available to them. We also offer an array of programs to our females in custody such as Women's Sexual Safety, Beyond Violence, and Resolve just to name a few.

Many institutions have the number of the Sexual Assault Hotline pre-programmed on the incarcerated individual's phone lists, so they are able to contact community advocates. In most institutions that do not have pre-programmed access to community support services, employees in Unit team or Psychology Services can facilitate a call to an advocate on a private phone line. Security matters take priority, but employees are aware that incarcerated individuals may use these services, where available, the PREA Compliance Managers at the institutions ensure access.

19. Has BOP fully implemented the Earned Time Credit rule from January 2022? Have all inmate records been reviewed, and all Earned Time Credits been issued to eligible inmates?

***Response:***

The BOP has fully implemented the Earned Time Credits rule. The auto-calculation application was launched on September 6, 2022, with a "phase-in" period that continued through 2022, ensuring all eligible adults in custody are earning and applying time credits consistent with the rule. On November 18, 2022, the agency published Program Statement 5410.01, First Step Act of 2018 – Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4). Changes between the interim procedures and the final policy expanded opportunities to earn more credits for longer periods of time. As the Bureau continued to educate adults in custody regarding their responsibilities as it

applies to earning time credits, the decision was made to extend the phase-in period through December 31, 2022. During this period of time, individuals were given additional opportunities complete required Needs Assessment self-surveys previously not completed and agree to participate in programming designed to address those need areas.

20. How many inmates have been released or placed in home confinement as a result of Earned Time Credits being applied?

***Response:***

As of August 5, 2023, approximately 22,310 individuals were released from BOP facilities as a result of the application of time credits.

21. How is the BOP utilizing digital technology to provide programming to inmates which will reduce recidivism and count towards their Earned Time Credits?

***Response:***

The BOP uses the computer system available to adults in custody to assist with Evidence Based Recidivism Reduction programming. It is currently used to administer the High School Equivalency (HSE) Exam, and various National Center for Construction and Education Research Certification Exams. Enhancements in development include a virtual learning environment that allows for customizable course management and improves student learning. This software will be particularly useful in delivering post-secondary education and will also have the traditional programs such as typing and resume building.

Another form of digital technology used by the BOP involves FSA EBRRs being paired with Bureau-specific content on Playaways. Playaways are listening devices with pre-loaded audio content to be used as supplemental therapeutic interventions. Evidenced Based Practices and Priority Practices materials were created/compiled for the Playaways and then provided to institutions to supplement in-person groups and provide enhanced access to individuals with disabilities.

The BOP has also implemented a virtual digital marketing campaign to recruit qualified volunteers to facilitate various EBRRs and/or PAs that count toward earning ETCs.