

United States Senate  
WASHINGTON, DC 20510-0908

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SMALL BUSINESS AND ENTREPRENEURSHIP  
SPECIAL COMMITTEE ON AGING

July 20, 2023

Ms. Colette S. Peters  
Director  
Federal Bureau of Prisons  
320 First Street, NW  
Washington, D.C. 20532

Dear Director Peters:

I write with regard to reports from the U.S. Government Accountability Office (GAO) detailing the Federal Bureau of Prisons' (BOP) failure to adequately implement and provide transparency regarding *First Step Act* (FSA) time credit programs.

As you know, the FSA requires the U.S. Attorney General to identify, evaluate, and offer "evidence-based recidivism reduction programs" and "productive activities" for federal inmates, with the goal of providing programs to lower recidivism rates. As part of this requirement, the BOP not only allows prisoners to accrue time credits for approved "structured productive activities," but also for approved "unstructured productive activities." To date, the BOP has refused to make a publicly available list of all "unstructured productive activities" that inmates are eligible to receive time credits for, despite being willing to publish a list of "structured productive activities." This decision ignores recommendations from the GAO that the agency publish such a list. In addition, the BOP has also actively chosen not to collect participation data for "unstructured productive activities," such as data on who completed the activity, despite again being willing to track this information for "structured productive activities" and recommendations from the GAO that this information be monitored and collected. The BOP's refusal to provide transparency for "unstructured productive activities" illustrates the agency's willingness to serve as an unaccountable actor overseeing the federal prison system. Further, the BOP's actions in concealing information about these programs illustrate that the agency would rather avoid public scrutiny than protect the public from federal inmates who violate the law shortly upon exiting BOP facilities.

The BOP's failings with regard to FSA time credits are not exclusive to "productive activities," as the agency has also failed on several fronts concerning "evidence-based recidivism reduction programs." Under the FSA, the U.S. Attorney General is required to assess the effectiveness of these programs. Thus, in 2020, the BOP conducted a "literature review" to determine which programs truly reduced recidivism. Unfortunately, this review was riddled with inadequacies. Both the Independent Review Committee (IRC) and the National Institute of Justice (NIJ) examined the review, and both found issues with the BOP's research justifying the claim that their programs were evidence-based. The IRC found that much of the BOP's evidence was too outdated to be considered "evidence-based," and the IRC stated that it "could not verify all of the BOP's initial findings from its literature review." These critiques are particularly

troubling, especially when considering that the NIJ has already stated that certain evidence relied on by BOP “lacked scientific rigor.” In light of IRC and NIJ’s critiques, the GAO has stated that it is “unclear if BOP’s initial evaluation of its programs and activities was sufficient to conclude that the programs it identified as being evidence-based are effective in reducing recidivism.” The troubling nature of these findings is further bolstered by the fact that BOP officials did not document the 2020 literature review, thus creating another missed opportunity for the BOP to provide the public with transparency pertaining to the time credit programs.

Given these concerns, I request answers to the following questions:

1. What are the standards and guidelines for defining “unstructured productive activities,” and does BOP plan to begin tracking data on these activities and making a publicly-available list of such activities?
  - a. If the BOP does not intend to track or make this information available to the public, why?
2. Given the poor quality of evidence the BOP used in identifying “evidence-based recidivism reduction programs,” how did the BOP conclude that such evidence was sufficient to conduct the literature review?
3. Since critiques of the 2020 literature review were published, BOP officials have indicated that they intend to conduct an independent literature review sometime in the future. Where in the process is the BOP in conducting this review, and will the BOP make this review publicly available?

Thank you for your attention to this important matter.

Sincerely,



Marco Rubio  
U.S. Senator