# THE FIRST STEP ACT OF 2018: Earned Time Credits

**Sentencing Resource Counsel for the Federal Public and Community Defenders (updated Feb. 2022)**

## Acquiring "Earned Time Credits" (ETCs)

All eligible persons: earn **10 days** of ETCs for every 30 days of successful participation in evidence-based recidivism reduction (EBRR) programming or productive activities (PAs) that BOP has *recommended* based on risk & needs assessment. Must comply with requirements of each EBRR or PA.

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

"Temporary operational or programmatic interruptions authorized by [BOP] that would prevent … participation" in EBRR or PAs "will not ordinarily affect an eligible inmate's 'successful participation' for the purposes of ETC eligibility."

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

Dates of Qualifying Programs: Only EBRR/PA participation *after* sentencing and *after* the enactment of the FSA qualifies.

*See* 18 U.S.C. § 3632(d)(4), (5); 87 Fed. Reg. 2705 (BOP FSA Time Credit Rule)

## Using "Earned Time Credits" (ETCs)

**In general, ETCs can be used when accumulated credits are equal to remainder of prison term & either (1) maintained min/low risk or (2) "demonstrated recidivism risk reduction" in reassessments, and**

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

(1) Min/Low risk for last 2 reassessments; or
(2) Warden approval after determining (a) no danger to society; (b) good-faith effort to lower recidivism risk through programming; and (c) unlikely to recidivate

For **supervised released** (not to exceed 12 months):

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

*See* 18 U.S.C. § 3624(g)

## Key Links

First Step Act Approved Programs Guide (1/22)

PATTERN 1.3 Scoring Sheet (see page 17)

FSA Needs Assessment, BOP Prog. Stat. 5400.01

Final ETC Rule, 87 Fed. Reg. 2705

## Not Successful Participation:

1) Opting out of recommended EBRR/PAs
2) Special Housing Unit
3) Designation status outside institution
4) Temporary transfer to custody of other agency
5) Mental Health/Psychiatric Holds

87 Fed. Reg. 2705, CFR § 523.41(4)(i)-(v)

## Ineligible for ETCs

**If "serving a sentence for a conviction" under any of the following:**

- 18 U.S.C. § 32
- 18 U.S.C. § 33
- 18 U.S.C. § 36
- 18 U.S.C. § 81
- 18 U.S.C. § 111(b)
- 18 U.S.C. § 113(a)(1), (7), (8)
- 18 U.S.C. § 115, except threats
- 18 U.S.C. § 116
- 18 U.S.C. § 117
- Ch. 10 (biological weapons)
- Ch. 11B (chemical weapons)
- 18 U.S.C. § 351
- 18 U.S.C. § 521
- 18 U.S.C. § 751
- 18 U.S.C. § 793
- 18 U.S.C. § 794
- Ch. 39 (explosives), except § 836
- 18 U.S.C. § 842(p) if weapon of mass destruction)
- 18 U.S.C. § 844(f)(3), (h), (i)
- 18 U.S.C. § 871
- 18 U.S.C. § 879
- 18 U.S.C. § 924(c)
- 18 U.S.C. § 1030(a)(1)
- 18 U.S.C. § 1091
- Ch. 51 (homicide) except §§ 1112, 1113 (att. manslt.), 1115, 1122
- Ch. 55 (kidnapping)
- Ch. 77 (slavery/peonage) except §§ 1593 – 1596
- 18 U.S.C. § 1751
- 18 U.S.C. § 1791
- 18 U.S.C. § 1792
- 18 U.S.C. § 1841(a)(2)(C)
- 18 U.S.C. § 1992
- 18 U.S.C. § 2113(e)
- 18 U.S.C. § 2118(c)
- 18 U.S.C. § 2119
- Ch. 105 (sabotage) except § 2152
- Ch. 109A (sex abuse)
- 18 U.S.C. § 2250
- 18 U.S.C. § 2251
- 18 U.S.C. § 2251A
- 18 U.S.C. § 2252
- 18 U.S.C. § 2252A
- 18 U.S.C. § 2260
- 18 U.S.C. § 2283
- 18 U.S.C. § 2284
- 18 U.S.C. § 2291 if sub. risk of death/SBI
- Ch. 113B (terrorism)
- 18 U.S.C. § 2340A
- 18 U.S.C. § 2381
- 18 U.S.C. § 2442
- 18 U.S.C. § 3559(c)(2)(F) if +1 year imprisonment and if certain prior convictions
- 42 U.S.C. § 2077(b)
- 42 U.S.C. § 2122
- 42 U.S.C. § 2131
- 42 U.S.C. § 2274
- 42 U.S.C. § 2275
- 42 U.S.C. § 2284
- 49 U.S.C. § 60123(b) if sub. risk of death/SBI
- 21 U.S.C. § 841(b)(1)(A-C) if death/SBI resulted
- 8 U.S.C. § 1326(b)(1), (2)
- 8 U.S.C. § 1327
- 8 U.S.C. § 1328
- 50 U.S.C. § 4611 et seq.
- 50 U.S.C. § 1705
- 50 U.S.C. § 3121
- 21 U.S.C. §§ 841(b)(1)(A)-(B) or 960(b)(1)-(2) if for **fentanyl**/analogue

**Court-found ineligibilities:**

- 21 U.S.C. §§ 841(b)(1)(A)-(B) or 960(b)(1)-(2) if **heroin** and court finds role enhancement
- 21 U.S.C. §§ 841(b)(1)(A)-(B) or 960(b)(1)-(2) if **meth** and court finds role enhancement
- 21 U.S.C. §§ 841(b)(1)(A)-(B) or 960(b)(1)-(2) for **any drug** if court finds offense involved fentanyl/analogue and role enhancement

**Deportable persons:** ineligible to apply time credits if subject to a final order of removal under any provision of the INA

*See* 18 U.S.C. § 3632(d)(4)(D)-(E)