



September 2014

BUREAU OF PRISONS

Information on Efforts and Potential Options to Save Costs

GAO Highlights

Highlights of [GAO-14-821](#), a report to congressional requesters

Why GAO Did This Study

BOP is responsible for the custody and care of 216,000 federal inmates—an almost 9-fold increase since 1980. At the same time, BOP appropriations increased more than 20-fold. DOJ states that the costs of the growing population are BOP's greatest challenge. BOP's population size is driven by several factors, such as law enforcement policies and sentencing laws.

GAO was asked to review BOP's opportunities to save costs. This report (1) describes BOP's major costs and actions to achieve savings, (2) assesses the extent to which BOP has mechanisms to identify additional efficiencies, and (3) describes potential changes within and outside of BOP's authority that might reduce costs.

GAO analyzed BOP financial data for fiscal years 2009 through 2013, reviewed but did not test its internal control system and processes for achieving efficiencies, and interviewed BOP officials. On the basis of sentencing reform options identified by experts and actions by the Attorney General, GAO developed a list of policy options that could reduce BOP's population. GAO gathered views on their potential effects from entities and 4 states selected for their criminal justice expertise. The views are not generalizable, but provide insights.

What GAO Recommends

GAO recommends that BOP establish a mechanism to consistently monitor if bureau-wide corrective actions address repeated deficiencies and findings. DOJ concurred.

View [GAO-14-821](#). For more information, contact David C. Maurer at (202) 512-9627 or maurerd@gao.gov.

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What GAO Found

Correctional services—which includes salaries and benefits for correctional officers—is the Department of Justice's (DOJ) Bureau of Prisons' (BOP) largest operational cost, and BOP has undertaken a number of initiatives to reduce costs. Specifically, on the basis of GAO's analysis of BOP's fiscal year 2013 obligations of approximately \$6.6 billion, BOP obligated the largest share—about \$3.9 billion, or 59 percent—for personnel compensation and benefits. Further, BOP has undertaken a number of initiatives, such as renegotiated contracts, to achieve cost savings of about \$61 million over the last 3 years.

BOP has designed internal processes to identify opportunities for additional cost efficiencies, but could improve the monitoring of corrective actions to achieve them. For example, BOP focuses on cost efficiency and innovation in its strategic plan and has developed mechanisms for staff to share information on best practices and cost savings efforts. BOP also employs an internal control system with processes, such as program reviews, that allows it to identify opportunities for cost efficiencies. However, when program reviews repeatedly cited frequent deficiencies or significant findings that could increase costs—such as insufficient contract monitoring—responsible BOP Central Office divisions did not provide specifics or documentation for how they always monitor the effectiveness of corrective actions to prevent the same deficiency or issue from reoccurring. Establishing a mechanism for relevant Central Office divisions to consistently monitor the progress of bureau-wide corrective actions in the presence of repeated frequent deficiencies or significant findings could help BOP better ensure that it is resolving such deficiencies or issues promptly and, ultimately, operating more efficiently.

BOP's current authorities to reduce inmate sentence length result in limited cost savings, but potential actions outside of its authority could have a greater impact on costs. GAO has reported previously on BOP authorities to reduce inmate sentences, and thus its costs, in detail, and found that inmate eligibility for certain programs and lack of capacity affect BOP's use of them. For example, greater use of programs such as Compassionate Release for terminally ill inmates could reduce sentences, but cost savings relative to BOP's budget would be small—about \$651,000 in 2013. Additional opportunities outside of BOP's authority, including those requiring legislative or executive action, such as options to reduce sentence length, could reduce BOP's population, and thus potentially significantly reduce its costs. For example, an option to reduce sentences of incarcerated drug offenders by an average of 44 percent could save about \$4.1 billion. Potential savings could be even higher if the changes sufficiently reduced the inmate population to allow BOP to reduce its staff or close facilities. Expert entities GAO consulted reported that all of the options GAO reviewed also have advantages and disadvantages unrelated to costs that should be taken into consideration, such as potential effects on public safety if released inmates reoffend. GAO is not taking a position on any of these options, but presents information on estimated cost savings and experts' views of advantages and disadvantages for such options to inform policymakers as they weigh whether and how to address rising costs at BOP.

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Abbreviations:

ABA	American Bar Association
BOP	Bureau of Prisons
DOJ	Department of Justice
FSA	Fair Sentencing Act
GCT	good conduct time
HHS	Department of Health and Human Services
HRMD	Human Resource Management Division
HSD	Health Services Division
IG	Inspector General
IPTP	International Prisoner Transfer Program
JRI	Justice Reinvestment Initiative
OMB	Office of Management and Budget
PRD	Program Review Division
RDAP	Residential Drug Abuse Treatment Program
RRC	residential reentry center
RRM	Residential Reentry Management
RRMB	Residential Reentry Management Branch
RSD	Reentry Services Division
USSC	U.S. Sentencing Commission

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September 30, 2014

Congressional Requesters:

The inmate population at the Department of Justice's (DOJ) Federal Bureau of Prisons (BOP)—the primary cost driver of BOP's budget—has increased almost 9-fold since the early 1980s—from about 25,000 in fiscal year 1980 to about 216,000 as of July 2014. Given these population increases, and inflation, BOP's appropriations have increased more than 20-fold during the same time period—from \$330 million in fiscal year 1980, about 14 percent of DOJ's total budget that year, to almost \$7 billion requested for fiscal year 2015, or about one-quarter of DOJ's requested fiscal year 2015 budget.¹ According to the DOJ Inspector General, the rising costs for BOP threaten the department's ability to fulfill its mission in other areas, including maintaining national security, enforcing criminal law, and defending civil rights. Moreover, DOJ projects that BOP costs will increase if the federal prison population grows through 2019 as forecast by DOJ in its Fiscal Year 2015 Performance Budget Congressional Submission for the Federal Prison System.²

¹BOP per capita annual cost per prisoner increased from about \$13,400 in fiscal year 1980 to about \$31,338 in fiscal year 2014 in nominal terms. However, after adjustment for inflation, BOP spending per capita for salaries and expenses in 2014 is about 6.1 percent less than in 1980. According to the chain-weighted gross domestic product price index, if BOP spending per capita had kept even with inflation since 1980, annual cost per prisoner would be about \$33,251 for fiscal year 2014 (about 6.1 percent higher than \$31,338). Annual per capita cost per prisoner for fiscal year 2014 was calculated by dividing BOP's enacted fiscal year 2014 budget for Salaries and Expenses of \$6.769 billion by total prisoner population of about 216,000 as of July 24, 2014. BOP excludes appropriations for Buildings and Facilities from its calculation of per capita costs because these may vary substantially year to year. These costs are also excluded from our calculation of fiscal year 2014 per capita costs. Prisoner population data are from BOP's inmate tracking database, the SENTRY Inmate Management System.

²The DOJ Fiscal Year 2015 Performance Budget Congressional Submission projects BOP's population to increase by 2,500 (about 1 percent) for 2015 over the fiscal year 2014 level—which is forecast to be the same as the fiscal year 2013 level—and by about 8.5 percent by fiscal year 2019 over the July 2014 level. As a result of these projected increases, system-wide overcrowding is estimated to increase from 36 percent in fiscal year 2013 to 41 percent by fiscal year 2019. We have previously reported on these issues in GAO, *Bureau of Prisons: Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure*, [GAO-12-743](#) (Washington, D.C.: Sept. 12, 2012).

BOP's mission is to confine federal offenders in safe and secure prisons and community-based facilities, and to provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. Additionally, one of BOP's strategic goals is to continually strive toward improvements in its effective use of resources and its efficient delivery of services. As of June 2014, BOP operates 120 prison institutions nationwide, as well as paying for and monitoring 14 prisons and, as of July 2014, 200 residential reentry centers (RRC) (halfway houses)—operated by private contractors. According to officials, BOP's biggest challenge is managing the increasing federal inmate population, and related responsibilities, within budgeted levels.

We have previously reported that the size of the federal prison population is a function of many factors, including the nation's crime levels, federal sentencing laws, and law enforcement policies, all of which are beyond the control of BOP.³ In addition, the Sentencing Reform Act of 1984 abolished parole for federal offenders, and subsequent legislation established mandatory minimum sentences for many federal offenses, facts that limit the authority BOP has to affect the size of the prison population or the length of prison sentences.⁴ BOP has discretionary authorities, or flexibilities, to reduce a federal prisoner's period of incarceration through programs such as the Residential Drug Abuse Treatment Program (RDAP).⁵ BOP also has statutory authority to award "good conduct time" credit toward reducing an inmate's sentence up to 54 days per year of sentence served, if the inmate has displayed exemplary

³See GAO, *Bureau of Prisons: Eligibility and Capacity Impact Use of Flexibilities to Reduce Inmates' Time in Prison*, [GAO-12-320](#) (Washington, D.C.: Feb. 7, 2012).

⁴Pub. L. No. 98-473, 98 Stat. 1987. The act was effective for convictions on or after November 1, 1987. Prior to the act, federal judges generally had broad discretion in sentencing. Most criminal statutes provided only broad maximum terms of imprisonment. Federal law outlined the maximum sentence, federal judges imposed a sentence within a statutory range, and the federal parole official eventually determined the actual duration of incarceration.

⁵18 U.S.C. § 3621(e). We have previously reported on BOP's use of these discretionary authorities. See [GAO-12-320](#).

compliance with institutional disciplinary regulations.⁶ To help alleviate costs associated with an increasing inmate population and inflation, as noted in its fiscal year 2015 Performance Budget Congressional submission, BOP continues to streamline operations and increase efficiency in order to operate as efficiently and effectively as possible.

Additionally, actions involving policy changes outside of BOP's authority could reduce BOP's inmate population and therefore its costs. These include potential legislative actions by Congress, executive orders by the President, policy changes implemented by the Attorney General, or changes in federal sentencing guidelines by the U.S. Sentencing Commission (USSC).⁷

The Attorney General's August 2013 Smart on Crime Initiative is an example of a policy change that will affect the size of the BOP population. The Attorney General issued a memorandum to the U.S. Attorneys and Assistant Attorneys for the Criminal Division instructing prosecutors to decline to charge the quantity necessary to trigger a mandatory minimum sentence for certain defendants in cases involving the applicability of drug law mandatory minimum sentences based on drug type and quantity.⁸

⁶Under 18 U.S.C. § 3624(b), a "prisoner who is serving a term of imprisonment of more than 1 year other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations."

⁷The USSC is an independent agency in the judicial branch of government. It was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976. The sentencing guidelines established by the commission are designed to incorporate the purposes of sentencing (i.e., just punishment, deterrence, incapacitation, and rehabilitation).

⁸According to the memorandum, a defendant must be someone (1) whose relevant conduct does not involve the use of violence, the credible threat of violence, the possession of a weapon, the trafficking of drugs to or with minors, or the death or serious bodily injury of any person; (2) who is not an organizer, leader, manager, or supervisor of others within a criminal organization; (3) who does not have significant ties to large-scale drug-trafficking organizations, gangs, or cartels; and (4) who does not have a significant criminal history. The potential impact of this directive on BOP's population is discussed later in this report.

Growth in the federal inmate population and its effects on BOP's budget are a matter of continuing congressional interest. You asked us to review the transparency of BOP's budget justification and opportunities for BOP to realize operational efficiencies. In December 2013 we reported that by providing additional funding data to Congress in its budget justification, BOP could clarify what it proposes to spend on specific categories and subcategories.⁹ We recommended that the Attorney General consult with congressional decision makers on providing additional BOP funding detail in future budget justifications, and in conjunction with BOP, take action as appropriate. DOJ concurred with this recommendation and is taking action to implement it. This report responds to the latter part of your request by further describing BOP's major costs and the actions it has taken to identify and implement cost efficiency opportunities and reduce costs. Specifically, this report addresses the following questions:

1. What are the major costs for BOP operations, and what actions has BOP taken to implement cost savings?
2. To what extent does BOP have mechanisms to identify opportunities for cost efficiencies and to take corrective actions that may improve cost efficiency?
3. What potential changes, both within and outside of BOP's authority, could lead to cost reductions or improved efficiencies in BOP operations, and what might be the potential impact of these changes?

To address the first question, we obtained historical obligation data from BOP's Financial Management Information System for fiscal years 2009-2013—a 5-year time frame to provide us with an adequate understanding of trends in BOP obligation levels—to identify the major costs incurred by BOP for its Salaries and Expenses account, which generally represents 98 percent of BOP's budget.¹⁰ We have assessed the reliability of these data and determined them to be reliable for the purposes of this report. This assessment included performing checks on the data received and interviewing officials responsible for compiling and maintaining these data. We also collected data (e.g., cost savings estimates prepared by

⁹GAO, *Bureau of Prisons: Opportunities Exist to Enhance the Transparency of Annual Budget Justifications*, [GAO-14-121](#) (Washington, D.C.: Dec. 6, 2013).

¹⁰BOP is appropriated funds through two accounts: Salaries and Expenses and Buildings and Facilities. We focused our review on the Salaries and Expenses account as it represents almost the entirety of BOP's budget.

BOP) and documentation, such as memos and concept papers approved by executive staff from fiscal years 2009 through 2013; through review of these data and documents and interviews with relevant agency officials, we determined that these data are also reliable for the purposes of this report. In addition, we interviewed Central Office-, regional-, and institutional-level officials to identify to the extent possible all existing cost efficiency and savings initiatives adopted by BOP and their impact on its overall budget.

To address the second question, we reviewed the processes and tools at BOP during the same time period (fiscal years 2009-2013) that are used to identify, implement, and promote cost-efficiency and savings initiatives throughout its institutions, such as executive staff meetings and a catalog compiling cost-savings initiatives. With respect to identifying additional opportunities to realize cost efficiencies or reduce costs, using our financial analysis as context, we analyzed elements of BOP's internal control system related to the control objective of achieving operational efficiencies and interviewed relevant officials to assess whether BOP has designed a management structure and processes to routinely assess its administrative and operational activities for possible corrective action. Specifically, we reviewed BOP's mechanisms and processes leading to its internal review of operational and administrative functions, including its process for taking corrective action related to high-cost areas, and compared these characteristics with those called for in *Standards for Internal Control in the Federal Government*.¹¹

To address the third question, on potential policy changes both within and outside BOP's authority that could lead to BOP cost savings, we collected and reviewed analysis and documentation from DOJ, BOP, the USSC, and entities that we selected for their expertise in criminal justice issues, and, in particular, potential changes to federal sentencing policies, and to ensure that a wide range of views on the advantages and disadvantages

¹¹GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00.21.3.1](#) (Washington, D.C.: Nov. 1, 1999). Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.

of these potential changes.¹² These entities may not be representative of the universe of expert entities in the criminal justice field and therefore may not represent all views on this topic; however, their views provide insights. We obtained data from BOP for 2013 and 2014 on the impact on BOP's population and costs resulting from changes within BOP's authority. We assessed the reliability of these data by reviewing documentation and interviewing knowledgeable officials, and determined the data to be sufficiently reliable for the purposes of this report.

Further, on the basis of our assessment of proposals put forward by several sources, including the Attorney General, expert entities, states with experience with criminal justice reform, and advocacy entities with a range of views on criminal justice reform, we identified eight options outside of BOP's authority that could reduce the size of the inmate population. GAO is not taking a position on any of these options, but presents information on estimated cost savings and experts' views of advantages and disadvantages for such options to inform policymakers as they weigh whether and how to address rising costs at BOP.

For each of these eight options, we asked the USSC to estimate the impact on the size of the BOP inmate population and, using the USSC estimates, we then calculated cost savings or cost avoidance that could

¹²The expert sources from which we requested or obtained analysis or information on sentencing issues were: the American Bar Association (ABA); the Association of State Correctional Administrators; the Brennan Center for Justice; the Council of State Governments/Justice Center; Families Against Mandatory Minimums; the Fraternal Order of Police; the Heritage Foundation; the National Association of Assistant U.S. Attorneys; the National Association of Former U.S. Attorneys; the Pew Charitable Trusts; "Right on Crime", a project of the Texas Public Policy Foundation in cooperation with the Justice Fellowship; the Sentencing Project; the Urban Institute; and the Vera Institute of Justice. We identified these expert entities through several means, including (1) asking officials at both the USSC and the Urban Institute who have previously worked on analyses and reports relevant to prison population data and criminal justice to identify entities they considered as expert in the field of sentencing reform and criminal justice, (2) conducting a literature search to identify publications issued by some of the entities on sentencing reform or corrections, and (3) identifying entities with known expertise and authoritativeness (e.g., the ABA) in the criminal justice field through literature searches.

result from implementing a given option.¹³ According to our audit objectives, we determined that based on the expertise of the USSC, the evidence obtained from the USSC provides a reasonable basis for our findings and conclusions.

In addition, we asked the 14 expert entities to comment on the options with regard to their view of the advantages or disadvantages of implementation of the eight options. We also asked 4 states to comment on the potential options for change. One of the 4 was Texas, which had the largest number of incarcerated offenders in the nation (as of 2012) and which was identified as a model for changes in state criminal justice systems by the Justice Reinvestment Initiative (JRI), a public-private partnership of DOJ and the Pew Charitable Trusts, to provide technical assistance and financial support for system-wide criminal justice reform efforts.¹⁴ The other states were chosen on the basis of having had at least 1 year's experience in implementing JRI programs; of these 8, we chose the 3 that had the largest annual corrections budgets as of the year in which JRI started in those states. We received acknowledgement of receipt from 17 of the 18 entities (the 14 expert entities and 4 states) to which we sent the letter.¹⁵

Further details on our scope and methodology are contained in appendix I. See appendix II for the letter sent to expert entities asking for their

¹³The USSC calculates the impact of sentencing changes in terms of bed year savings; 1 bed year is defined by the USSC as 12 months of prison time (e.g., one offender in prison for 1 year, or three offenders in prison for 4 months each, and so forth). Using the USSC estimates of saved bed years, we calculated savings that would result from sentence length reductions or from cost avoidance savings resulting from increases below what would otherwise occur if an option was not implemented, by multiplying bed years by the annual marginal cost for a prisoner. Marginal costs, calculated by BOP, cover such things as food, medical care, clothing, and utilities. For fiscal year 2014, the average annual marginal cost per offender is about \$11,000. For some options that could affect the sentences of about 78,000 or more offenders, equal to the BOP July 2014 level of system-wide overcrowding, we also calculated per capita savings, as such sentence reductions could allow BOP to reduce its staff or close facilities.

¹⁴Texas was identified as a model for criminal justice system reforms in a joint January 2014 DOJ-Urban Institute report assessing the JRI initiative. See: Urban Institute-Department of Justice Bureau of Justice Assistance, *Justice Reinvestment Initiative State Assessment Report* (Washington, D.C.: January 2014).

¹⁵Of the 17 entities that acknowledged receipt of our request for comments, 3 did not provide substantive comments. Of these 3, 1 referred us to multiple articles published on criminal justice issues.

assessment of options, which provides a list of the proposals that were used to develop the selected options.

We conducted this performance audit from July 2013 to September 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

BOP's Cost-Accounting Methods

BOP uses a network of cost centers—individual accounting units in which costs can be segregated—to obligate, account for, and manage various costs.¹⁶ Managers of each cost center are provided with information to control and manage costs within their area of responsibility. Cost centers can be structured along different dimensions, such as organizational units, operating processes, and activities.¹⁷ For example, BOP cost centers include Correctional Services, Inside Medical Services, and Food Services at each institution.

¹⁶An obligation is a definite commitment that creates a legal liability of an agency for the payment of goods or services received. An agency incurs an obligation, for example, when it places an order, signs a contract, awards a grant, purchases services, or takes other actions that require the government to make payments to the public or from one government account to another. See GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: September 2005). To report and monitor obligated funds throughout the bureau, BOP employs cost center accounting and designates managers for these cost centers. According to the Federal Accounting Standards Advisory Board, components of an organization must accumulate costs for each type of output they produce for various programs.

¹⁷Statement of Federal Financial Accounting Standards 4: *Managerial Cost Accounting Standards and Concepts*. *Federal Accounting Standards Advisory Board Handbook*, Version 12 (June 2013).

BOP also tracks its obligations and expenditures by budget object and subobject classification.¹⁸ Object classes are categories used in budget preparation to classify obligations by the items or services purchased by the federal government (e.g., personnel compensation, contractual services). Within these object classes, the Department of Justice has assigned subobject class codes that further define the nature of services or articles obligated and provide DOJ with a detail of expended funds. For example, under the personnel compensation object class, BOP has defined subobject class codes for items such as compensation for full-time, permanent appointment employees; overtime; and holiday pay. Object and subobject classes are used for direct tracking of specific items on which funds are being spent (e.g., salaries, supplies, pharmaceuticals, etc.) and are used across all cost centers.

BOP Organizational Structure

To carry out its responsibility for the custody and care of federal offenders, as of June 2014, BOP houses inmates across six geographic regions in 120 federal institutions, 14 privately operated secure contract facilities, home detention, and as of July 2014, 200 residential reentry centers.¹⁹ These federal institutions and other facilities are managed and overseen through the following offices:

- **Central Office.** The Central Office, which serves as BOP's headquarters, consists of nine divisions that provide oversight of major BOP program areas and operations, such as correctional programs and health services, as well as the National Institute of Corrections.²⁰ BOP's Program Review Division, which leads BOP's process for conducting internal reviews of each program or operation at each BOP institution, is among these nine divisions.

¹⁸In order to standardize the budgetary information received from federal agencies, the Office of Management and Budget (OMB) assigns object classifications according to the nature of the services or articles procured (e.g., Personnel Compensation; Supplies and Materials; Rent, Communications, and Utilities; etc.).

¹⁹According to BOP officials, privately operated secure contract facilities are low security and primarily house non-U.S. citizens convicted of crimes while in this country legally or illegally. Regarding the RRCs, BOP officials stated that they use an additional 49 RRCs through intergovernmental agreements for work release purposes. Home detention describes all circumstances under which an inmate is serving a portion of his or her sentence while residing in his or her home.

²⁰National Institute of Corrections, a component of BOP, provides training, technical assistance, information services, and policy/program development assistance to federal, state, and local corrections agencies.

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- **Grand Prairie Office Complex.** This complex, located in Grand Prairie, Texas, was created to consolidate various processes into one location. It consists of three components: human resource services, designation and sentence computation, and field acquisitions exceeding \$100,000.
 - **Regional offices.** BOP has six regional offices, each led by a regional director, covering the Mid-Atlantic, North Central, Northeast, South Central, Southeast, and Western regions of the United States. These offices provide oversight, technical assistance, and training to the BOP facilities located within each region.
 - **Residential Reentry Management field offices.** BOP has 25 field offices that administer contracts for community-based programs and serve as liaisons with various federal, state, and local groups within their judicial districts. Staff at these offices also monitor residential reentry centers (RRCs), which provide offenders with community-based services to assist with their reentry needs.

BOP generally houses sentenced inmates in its long-term institutions. Male long-term institutions include four security level designations—minimum, low, medium, and high—and female institutions include three security designations—minimum, low, and high. The security-level designation of a facility depends on the level of security and staff supervision that the institution is able to provide, such as the presence of security towers; perimeter barriers; the type of inmate housing, including dormitory, cubicle, or cell-type housing; and inmate-to-staff ratio. Additionally, BOP designates some of its institutions as administrative institutions, which house male and female inmates and specifically serve inmates awaiting trial, or those with intensive medical or mental health conditions, regardless of the level of supervision these inmates require.

The Sentencing Reform Act of 1984 and Federal Sentencing Guidelines

Prior to passage of the Sentencing Reform Act of 1984, federal judges generally had broad discretion in sentencing.²¹ Most criminal statutes provided only broad maximum terms of imprisonment. Federal law outlined the maximum sentence, federal judges imposed a sentence within a statutory range, and the federal parole official eventually determined the actual duration of incarceration. The Sentencing Reform

²¹Pub. L. No. 98-473, 98 Stat. 1987.

Act of 1984 changed the federal sentencing structure. The act was effective for offenses committed on or after November 1, 1987. The act abolished parole for federal offenders sentenced after its effective date, and subsequent legislation established mandatory minimum sentences for many federal offenses.

The Sentencing Reform Act of 1984 also established the independent USSC within the judicial branch and charged it with, among other things, developing federal sentencing guidelines.²² USSC establishes sentencing policies and practices for the federal criminal justice system that provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar criminal records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted.²³ To foster this goal, the guidelines specify sentencing guideline ranges—a range of time (in months) that offenders should serve given the nature of their offense and other factors—but also permit sentences to depart upward or downward from guideline ranges because of aggravating or mitigating circumstances. In 2005, the Supreme Court found the Sentencing Guidelines, which had previously been binding for federal judges to follow in sentencing criminal defendants, to be advisory in nature.²⁴ Regardless of the guidelines' advisory nature, judges are still required to calculate properly and consider the Sentencing Guidelines and other sentencing goals.²⁵

In applying the USSC's guidance, federal district judges are to determine the appropriate sentencing guideline range for an offender based on various factors related to (1) the offense and (2) the offender. The offense is assigned an offense level; drug offenses are based on several factors, such as the quantity and type of drug involved and whether the offense involved violence.

²²Pub. L. No. 98-473, § 217, 98 Stat. 1987, 2017.

²³28 U.S.C. § 991(b)(1)(B).

²⁴See *United States v. Booker*, 543 U.S. 220 (2005).

²⁵See 18 U.S.C. § 3553(a).

The offender is also assigned a criminal history category based on the number of criminal history points. USSC sentencing guidelines assign criminal history points based on a defendant's criminal record:

- A single point is assigned for every other federal or state prior sentence of conviction, subject to certain exceptions.²⁶
- Two or more points are assigned for every prior sentence of imprisonment or juvenile confinement of 60 days or more or for offenses committed while the defendant was in prison; was an escaped prisoner; or was on probation, parole, or supervised release;
- Three points are assigned if an offender has been previously sentenced or is being sentenced to a prison term of 13 months or more.

Taken in combination, the offense level and criminal history category correlate with a sentencing guideline range, expressed in months. For certain types of offenses, including certain drug and weapons offenses, statutorily specified mandatory minimum sentences supplant the lower end of the otherwise applicable guidelines range. While federal law generally requires a sentencing judge to impose a minimum sentence of imprisonment following conviction for any of a number of federal offenses, there are two statutorily provided exceptions. One—the substantial assistance exception—is available upon motion of the government, and allows the court to impose a sentence below the level established by statute as a minimum to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense.²⁷ The other, commonly referred to as the safety valve, was created by the Violent Crime Control and Law Enforcement Act of 1994

²⁶Some types of sentences are not counted in calculating criminal history points. These are: foreign sentences of imprisonment; sentences imposed by tribal courts; summary court martial sentences; sentences imposed for expunged, reversed, vacated, or invalidated convictions; sentences for certain petty offenses or minor misdemeanors. The Sentencing Guidelines list two classes of these minor misdemeanor or petty offenses that are not counted for criminal history purposes. One class consists of eight types of minor offenses—such as hunting and fishing violations or juvenile truancy—that are not counted regardless of the sentence imposed.

²⁷18 U.S.C. § 3553(e).

and is available for certain types of defendants for certain drug offenses that carry minimum sentences.²⁸

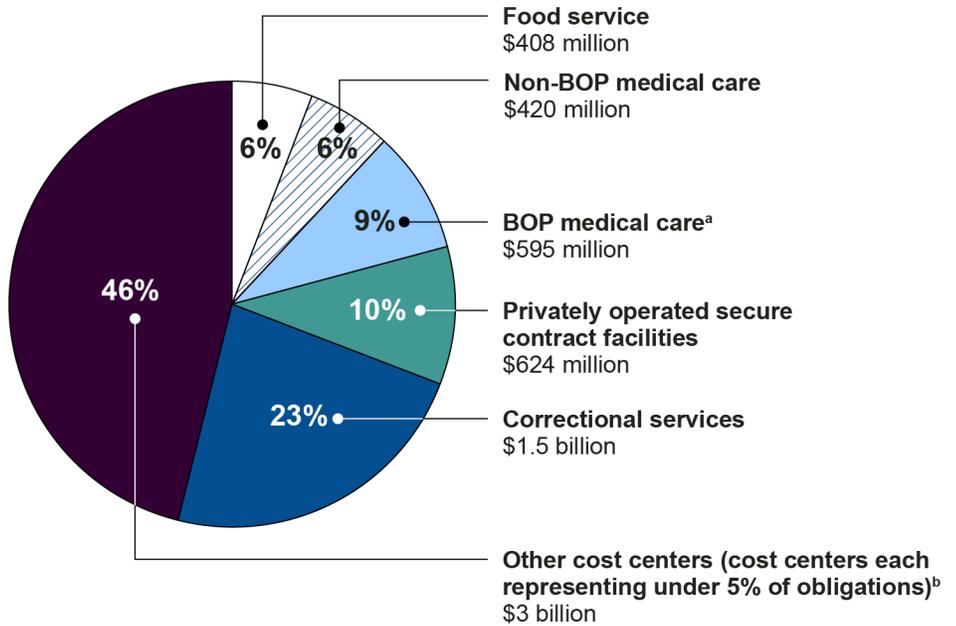
Correctional Services Is BOP's Largest Operational Cost, and BOP Has Initiated a Number of Efforts to Reduce Costs

BOP's Correctional Services, Private Prison Contracts, Medical Care, and Food Services Account for the Majority of Its Costs, with the Largest Share of Spending on Personnel

During fiscal year 2013, BOP obligated approximately \$6.6 billion for all its programs and operations. According to our analysis of BOP's fiscal year 2013 obligations by cost center, correctional services, privately operated secure contract facilities, medical care, and food services represent the majority (approximately \$3.56 billion, or 54 percent) of BOP's expenses, as illustrated in figure 1. See appendix III for a breakout of cost trends in these and other key cost centers over the last 5 fiscal years.

²⁸18 U.S.C. § 3553(f). For the safety valve exception, the court is to consider at sentencing (1) the defendant's criminal history; (2) whether the defendant used violence or credible threats of violence or possessed a firearm or other dangerous weapon in connection with the offense; (3) whether the offense resulted in death or serious bodily injury to any person; (4) whether the defendant was an organizer, leader, manager, or supervisor of others in the offense or was engaged in a continuing criminal enterprise; and (5) the defendant has truthfully provided to the government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.

Figure 1: Bureau of Prisons' (BOP) Fiscal Year 2013 Obligation Levels by Cost Center



Source: GAO analysis of BOP data. | GAO-14-821

Notes: The budget data for all cost centers include all staff salaries, operational supplies, contract services, equipment, and other items related to that department. BOP organizes its cost centers based on location within the organization; thus, there are cost centers at the institution level, regional level, national training level, national program level, Central Office level, and contract confinement level. Institution-level cost centers—which represent the majority of BOP obligations—are further broken down by security level (e.g., high, medium, low, etc.). For the purposes of our review, we combined the various institution security-level cost centers into common cost centers for all institutions. This allows us to present data on, for example, correctional services, BOP medical care, and so forth, for all institutions BOP-wide.

According to BOP, it considers some funds obligated within the “Other cost centers” category to be part of the larger cost centers displayed in figure 1. Including BOP’s estimates of these funds in the totals of the larger cost centers listed above would change totals approximately as follows:

- Correctional services: An additional \$100 million if special projects, urinalysis surveillance, clothing allowances, and other items were included.
- Medical services (both BOP and non-BOP): An additional \$47 million if referral labs, dialysis, emergency airlift, and other items were included.
- Food service: An additional \$10 million if farm and special projects were included.
- Private operated secure facilities: An additional \$11 million if BOP privatization staff salaries were included.
- Recategorizing these obligations would subsequently reduce the Other cost centers category to approximately \$2.8 billion, or 42% of totals for fiscal year 2013.

In addition, according to BOP, staff at institutions—regardless of the cost center functions that they primarily serve—are trained as correctional officers and thus may be called upon to assist in correctional services or other functions whenever necessary.

^aThe BOP medical care cost center also contains approximately \$103 million in funds transferred to pay salaries and other costs associated with Public Health Services staff. According to BOP, these are medical professionals employed by the Department of Health and Human Services (HHS) who

provide medical services to BOP institutions. While these Public Health Services staff are technically paid by HHS, BOP transfers the necessary funds to HHS to pay for their services.

^bThe “other cost centers” category contains a number of cost centers that together account for 46 percent of BOP’s total costs, as shown above; however, individually, each cost center included in the “other” category accounts for 5 percent or less of BOP’s total costs

Figure 2 provides further information on the key cost centers represented above.

Figure 2: Descriptions of Bureau of Prisons’ (BOP) Largest Cost Centers

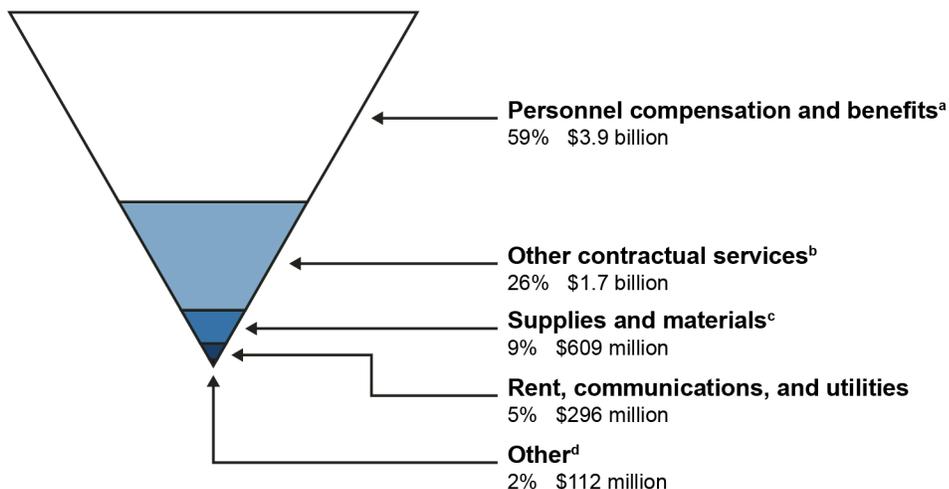


Source: BOP. | GAO-14-821

Within its cost centers, the majority of costs across the bureau are payment of staff salaries and benefits. Detailed data on these expenses are tracked using budget object and subobject classifications. These budget classifications are used consistently across all cost centers and represent items or services actually purchased by BOP. Figure 3 shows

the budget object classifications that accounted for BOP's total fiscal year 2013 obligations.

Figure 3: Bureau of Prisons' (BOP) Fiscal Year 2013 Obligation Levels by Object Classification



Source: GAO analysis of Bureau of Prisons data. | GAO-14-821

Notes: Totals do not add up to 100 percent because of rounding.

Included in these obligations are approximately \$103 million in funds transferred to pay salaries and other costs associated with Public Health Services staff. According to BOP, these are medical professionals employed by the Department of Health and Human Services (HHS) who provide medical services to BOP institutions as needed. While these Public Health Services staff are technically paid by HHS, BOP transfers the necessary funds to HHS to pay for their services.

^aPersonnel compensation and personnel benefits are actually two separate object classifications, but were combined for the purposes of this figure.

^b"Other contractual services" covers obligations for contractual services for advisory and assistance services (including contract staff), purchases of goods and services from government accounts; operation and maintenance of facilities and equipment; payments for medical care, research and development contracts; subsistence and support of persons; and other services not otherwise classified.

^c"Supplies and materials" covers obligations for commodities whether acquired by formal contract or other form of purchase that are: ordinarily consumed or expended within 1 year after they are put into use, converted in the process of construction or manufacture, or used to form a minor part of equipment or fixed property. Examples include food, pharmaceuticals, clothing, and office supplies.

^dOther object classifications include equipment, travel and transportation of persons, and other items.

As figure 3 shows, personnel compensation and benefits (retirement contributions, health insurance benefits, etc.) account for approximately 59 percent of BOP's overall obligations. Moreover, BOP's personnel costs are actually higher than 59 percent because compensation for other staff employed on a contractual basis is included in the "other contractual services" object class. This object class consists of privately operated

prison expenses, outside medical services, and other items—as well as contract staff—and accounts for nearly 26 percent of fiscal year 2013 obligations. See appendix IV for more detailed data on object and subobject class obligations from fiscal years 2009 through 2013.

BOP Has Identified and Implemented Various Cost Savings Efforts

BOP’s Director, in an April 2014 statement before Congress, highlighted BOP’s commitment to stewardship of financial resources by seeking cost avoidance and greater efficiencies throughout the bureau.²⁹ In accordance with this focus, BOP has embarked on a number of initiatives in recent years that have resulted in actual or projected cost savings. Key initiatives for which BOP has estimated cost savings over the last 3 fiscal years are listed in table 1.

Table 1: Examples of Cost-Savings Initiatives Adopted by the Bureau of Prisons (BOP)

Cost savings initiative	Description	Estimated cost savings^a
Renegotiated medical contracts	BOP’s institutions attempt to contract with medical service providers to set a fee structure for necessary services that BOP cannot provide in-house. These contracts typically establish a rate of payment for services at a certain premium over a benchmark, such as standard Medicare rates. Savings are generated by trying to reduce premiums paid over the Medicare rate for many BOP medical services contracts.	BOP reports that from April 2013 through April 2014, it has saved nearly \$33 million through renegotiated contracts.
Industries, Education, and Vocational Training efficiency efforts	Industries, Education, and Vocational Training Division recorded cost-saving items (most of which are related to Federal Prison Industry operations) completed during fiscal year 2013. These items represent cost savings efforts identified through the use of Lean Six Sigma methodologies, such as changes to warehouse lighting or materials processing. ^b BOP reports that it recently developed a process to validate the actual cost savings achieved through these efforts, and plans to validate cost savings for fiscal year 2014 efforts.	BOP reports estimated savings of about \$14 million in nonappropriated funds (i.e., the costs of operating Federal Prison Industry programs) during fiscal year 2013.

²⁹Statement of Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons, before the United States House Committee on Appropriations, Subcommittee on Commerce, Justice, Science and Related Agencies, April 10, 2014.

Cost savings initiative	Description	Estimated cost savings^a
Administrative efficiencies	During fiscal year 2013, BOP conducted a reorganization of its regional offices and administrative operations, which resulted in a reduction of 60 positions.	BOP reports salary savings of approximately \$7.2 million in fiscal year 2013, with additional operational savings.
National Paving Project	Minimum security inmates from one BOP institution have performed road-paving services at 30 BOP institutions over the last 2 1/2 years, in lieu of hiring contractors to perform such work.	BOP estimates that this project has saved a minimum of about \$2 million versus the cost of employing a contractor, and officials believe that actual savings have been higher when taking into account factors such as markup and overhead associated with the use of a contractor.
Information technology savings	BOP is involved with a Department of Justice (DOJ)-level working group to identify areas for savings by combining the purchasing power of DOJ components. For example, BOP is using DOJ's enterprise license agreements for Microsoft, Oracle, and Adobe products.	BOP reports that through use of another DOJ component's delivery order contract, it has saved about \$2.4 million in purchase and maintenance agreements. BOP does not track cost savings through the aforementioned enterprise license agreements.
Food digester	A machine that converts food waste into gray water, which is disposed of through the institution's sewer system, rather than at a landfill, saving BOP on landfill costs. BOP currently has 94 units in place at various institutions, with another 10 awaiting installation.	According to data provided by BOP, we calculate that these units may save approximately \$1.8 million annually across BOP.
Telemedicine	Use of videoconferencing to provide clinical and consultative services in psychiatry and dermatology. This enables BOP to have a physician on contract at any location to perform these services, rather than contracting to bring in specialists for on-site consultations. ^c BOP also contracts with a company to provide remote interpretations of inmate X-rays, rather than paying for the service on-site. This approach has been in place since 2004.	BOP estimates that it saved approximately \$448,000 in calendar year 2013 through videoconferencing for dermatology services. It also states that it can make more cost-effective decisions on medications and reduce referral and treatment times for inmates. BOP estimates that in fiscal year 2012 (the last year for which data are available), it was able to avoid approximately \$387,000 in costs at 86 institutions through this "teleradiology" approach.

Source: GAO analysis of BOP information. | GAO-14-821

^aAll cost estimates were provided by BOP. We assessed the reliability of these estimates and found them sufficiently reliable to present as estimated savings.

^bFederal Prison Industries is a federal government corporation overseen by BOP that, among other things, employs and provides job skills training to a number of federal inmates, and produces goods and services for sale to the federal government. Lean Six Sigma is a data-driven approach to process improvement based on the idea of eliminating defects and errors that contribute to losses of time, money, opportunities, or business.

^cBOP states that it has a total of 14 psychiatrists (filling 20 allotted positions) providing virtual psychiatric services to inmates at 90 BOP institutions. The dermatologist participating in this program conducted 501 consultations with clinicians at 50 institutions during calendar year 2013.

These efforts reflect a focus on the part of both BOP management and staff to identify and implement cost savings initiatives, on both a large and a small scale. BOP-developed estimates of savings from these efforts total about \$61 million, which is just under 1 percent of total obligations for fiscal year 2013. BOP officials stated that since such a large component of BOP's costs is related to paying salaries and benefits necessary to manage its inmate population, their ability to recognize cost savings beyond those efforts presented here is fairly limited.

In addition, BOP is in varying stages of taking additional actions such as converting inmate case files from paper to electronic records that may reduce costs—for which it has not determined or provided savings estimates—that can be found in appendix V. According to BOP officials, they may undertake such initiatives in order to operate more efficiently, and these initiatives may also result in immediate cost savings. However, the officials said that they do not always develop cost savings estimates for initiatives whose primary purpose is to improve efficiency, rather than achieve cost savings.

BOP Has Designed Internal Processes to Identify Opportunities for Additional Cost Efficiencies, but Could Improve the Monitoring of Corrective Actions

BOP Has Designed Mechanisms to Identify Opportunities for Cost Efficiencies

BOP has various mechanisms to identify opportunities for cost efficiencies, including the following:

- **Strategic Plan.** BOP's *Strategic Plan* helps guide its efforts in fulfilling its mission and achieving strategic goals. As one strategic goal, BOP states that it will manage its operations and resources in an effective manner that encourages innovation, and that it "continually strives

toward improvements in its effective use of resources and its efficient delivery of services.”³⁰ Further, BOP has developed a strategic objective focused on cost efficiency and innovation, stating that it will continue to focus on reducing costs using efficient and cost-effective methods to perform tasks. According to the *Strategic Plan*, it will accomplish this through, in part, “continued emphasis on financial planning, analyzing workload and staffing requirements, using consolidated and shared services, increasing the use of technology, and refining the processes of the BOP.” In support of this strategic objective, BOP requires that institutions and regions submit to Central Office established local best practices or cost savings measures that can be shared and replicated at other institutions.

- **Cost Efficiencies and Innovations Catalog.** This product is a compendium of institution-level efficiency efforts and innovations that serves as a reference for other institutions. The catalog is a result of efforts to identify cost efficiencies as stated in BOP’s *Strategic Plan*. To compile this catalog, BOP’s Central Office surveys institutions twice a year regarding new or ongoing efforts that they consider to be local best practices in achieving cost efficiencies. After compiling the catalog, BOP distributes it bureau-wide, including to program managers at all institutions. Some examples of cost-efficiency efforts identified and shared throughout BOP via this catalog include efforts in recycling material and food waste, water and energy conservation, use of video conferencing, and inmate training and education. Institutional officials we spoke with reported that they were aware of and reviewed this catalog. BOP institution-level staff estimated that the catalog issued in March 2013 contained items saving tens of millions of dollars in expenses.³¹
- **Best practices internal site.** In April 2007, BOP implemented an internal information-sharing site designed to facilitate bureau-wide communication of efforts that have resulted in cost efficiencies to bureau staff or inmates. This reference tool includes links to cost reduction initiatives, energy conservation efforts, and other items that have been reviewed and vetted by subject matter experts as having demonstrated their value to BOP. The website includes institution-led

³⁰BOP, *BOP Strategic Plan*, (Washington, D.C.: February 2014).

³¹The catalog contains specific dollar amounts for estimated savings by institution, but these figures are not verified by BOP’s Central Office or other officials.

efforts such as battery-recycling operations and improved efficiencies to water-heating systems.

- **General staff/program area meetings.** Officials at BOP's Central Office, regional offices, and selected institutions with whom we spoke all cited frequent communication between and among program officials and executive staff regarding items such as general operations, budget and cost levels, staffing levels and use of overtime, health care topics, and other items. These officials frequently cited the quarterly executive staff meeting, which includes assistant directors from Central Office and the six regional directors, as a key meeting for these discussions. At these meetings, among other things, officials present and discuss position papers that lay out information on initiatives that may have the potential for cost savings. For instance, at one meeting, the participants discussed a paper describing ongoing efforts to convert BOP's Inmate Case Files from a paper-based system to an electronic system, ultimately saving staff resources.
- **Internal control.** Internal control is an integral component of an organization's management that is to provide reasonable assurance that objectives are achieved, including the efficiency of operations. We focused our review on BOP's internal control objective related to achieving operational efficiencies. Given this, we reviewed the elements of BOP's internal control system that specifically provide BOP with opportunities to identify cost efficiencies, and found that BOP's internal control processes align with *Standards for Internal Control in the Federal Government*. Table 2 provides examples and descriptions of BOP's specific internal control processes, organized by internal control standard, that allow it to identify opportunities for cost efficiencies. We did not independently test BOP's internal controls to determine whether they mitigate all possible risks and are operating as intended.

Table 2: Bureau of Prisons' (BOP) Internal Control Processes That Provide Opportunities to Identify Cost Efficiencies by Internal Control Standard

Internal control standard	BOP process	BOP's use in identifying opportunities for cost efficiencies
<p>Environment</p> <p><i>Management and employees should establish and maintain an environment throughout the organization that sets a positive and supportive attitude toward internal control and conscientious management. It provides discipline and structure as well as the climate which influences the quality of internal control.</i></p>	<ul style="list-style-type: none"> Central Office oversight 	<p>BOP Central Office's Program Review Division oversees compliance with the Office of Management and Budget's (OMB) Circular A-123 and conducts the internal review of administrative and operational functions bureau-wide.^a</p> <p>As noted above, BOP's <i>Strategic Plan</i> also includes a strategic goal to continually strive toward improvements in effective use of resources and efficient delivery of services.</p> <p>As noted above, BOP's Director has stated BOP's commitment to stewardship of financial resources. For instance, in BOP's fiscal year 2015 Budget Request, the Director stated that the agency will continue to seek cost avoidance and find efficiencies throughout the agency.</p>
<p>Risk assessment</p> <p><i>Internal control should provide for an assessment of the risks the agency faces from both external and internal sources.</i></p>	<ul style="list-style-type: none"> Control Evaluation Template Management Assessment 	<p>The Control Evaluation Template is a documented list of controls, and the risk each control is intended to mitigate, in compliance with OMB Circular A-123. For example, one identified risk is an error in payment.</p> <p>BOP's Management Assessment process includes documenting risks within BOP's major program areas (e.g. Food Services). Assessing risk informs the development of internal control and, consequently, guides the internal control review process. For instance, one identified risk is the probability of not conducting inventory properly, which could affect the accuracy of data used when formulating and submitting a budget. For each risk assessment tool, BOP assesses the magnitude and likelihood of each risk.</p>
<p>Control activities</p> <p><i>Control activities help ensure that management's directives are carried out. The control activities should be effective and efficient in accomplishing the agency's control objectives, including achieving efficiencies.</i></p>	<ul style="list-style-type: none"> Control Evaluation Template Program statements (policy) Program review guidelines (Internal control testing plan) 	<p>The Control Evaluation Template documents internal controls, designed to mitigate identified risks. The template also includes control testing results, in compliance with OMB Circular A-123. For example, certain BOP management review and approval chains are designed to mitigate the risk of improper payment.</p> <p>Program statements are internal policy documents that outline program requirements, including key internal control activities. For instance, program statements note that staff are to monitor the performance of and payments to contractors.</p> <p>Program review guidelines serve as a guide to conducting internal reviews of program areas' operations and administrative activities, to ensure that key internal controls are strong and operated effectively (i.e., internal control testing). Program reviews document the results of this internal review process. For example, the guideline directs the reviewer to assess whether and how well staff conduct inventory and the program review documents the results of that assessment.</p>

Internal control standard	BOP process	BOP's use in identifying opportunities for cost efficiencies
<p>Information and communication</p> <p><i>Information should be recorded and communicated to management and others within the entity who need it and in a form and within a time frame that enables them to carry out their internal control and other responsibilities.</i></p>	<p>Program review results</p> <p>Quarterly program review summaries</p>	<p>BOP documents and shares internal review results with the organization that is reviewed, which are generally institutions.</p> <p>Quarterly program review summaries compile numerous internal review results and highlight frequent internal control deficiencies and other significant findings. BOP distributes these summaries bureau-wide. For example, if a significant finding related to an inventory process is identified at one institution, the summary would cite the issue anonymously for other institutions' awareness.</p> <p>As noted above, BOP also has two efforts—the <i>Cost Efficiencies and Innovations Catalog</i> and the best practices intranet site—to communicate efficiency and cost-saving efforts.</p>
<p>Monitoring</p> <p><i>Internal control monitoring should assess the quality of performance over time and ensure that the findings of audits and other reviews are promptly resolved.</i></p>	<p>Corrective action plan</p>	<p>Within BOP, the subject of an internal review is responsible for devising and completing a corrective action plan to resolve any internal control deficiency or other finding. For example, if an institution did not conduct a quarterly inventory of property in a certain program area, the institution is responsible for mitigating the risk of inaccurate agency records.</p> <p>BOP's Program Review Division monitors whether corrective action has been taken by the specific organization or program that is reviewed. A follow-up internal review eventually verifies whether the corrective action is adequate. The frequency with which a subsequent review occurs depends on the likelihood of risk as determined during the Management Assessment process. For example, BOP conducts internal reviews of certain institutions' operations, at a frequency ranging from once a year to once every 3 years.</p>

Source: GAO analysis of BOP information. | GAO-14-821

^aOffice of Management and Budget, Circular A-123, *Management's Responsibility for Internal Control*, defines management's responsibility for internal control in federal agencies. The circular states that federal employees must ensure that resources are used efficiently and effectively to achieve desired objectives. Internal controls are the tools (organization, policies, and procedures) to help managers achieve results, including operational efficiency.

BOP's Internal Control System Helps Identify Opportunities to Achieve Efficiencies, but Lacks a Mechanism to Consistently Monitor Bureau-wide Corrective Actions

We found that BOP's internal control system is designed to identify additional opportunities for cost efficiencies, but BOP did not provide specifics or documentation on a mechanism to consistently monitor bureau-wide corrective actions. Program reviews—which document the results of the Program Review Division's (PRD) internal reviews of programs and operations at each BOP institution—collectively cited repeated frequent control deficiencies and significant findings over multiple time periods that present inefficiencies or could increase costs.³² However, for these repeated issues, BOP did not provide specifics or documentation for how its corrective actions were always monitored consistently to ensure that the actions addressed the issues bureau-wide.³³ Specifically, we reviewed BOP's quarterly program review summaries—which compile each quarter's internal review results and highlight frequent deficiencies and significant findings—for the years 2009-2013 to identify significant findings as well as the most frequent internal control deficiencies reported with respect to opportunities to achieve cost efficiencies in the highest-cost areas identified above. According to our review of these 20 quarterly summaries, frequent deficiencies or significant findings were repeatedly reported in three high-cost areas—time and attendance (14 of 20 quarters), food services (8 of 20 quarters), and RRC contract administration (6 of 20 quarters).

BOP has processes to identify and share information about these frequent and significant deficiencies. In particular, PRD disseminates its quarterly program review summaries to all BOP institutions and the other Central Office divisions to make them aware of these deficiencies. For instance, we found that officials from the Central Office Divisions with oversight over the repeated frequent deficiencies and significant findings

³²BOP/PRD also reports frequent deficiencies and significant findings associated with operational effectiveness and compliance-related issues, such as correctional services and food safety. We determined these reported issues do not necessarily have a direct impact on operational efficiency and therefore were not included in the scope of our review.

³³A deficiency generally refers to an internal control deficiency (e.g., an internal control is missing, needs improvement, or is not operated as designed). BOP officials stated that a deficiency is considered "frequent" if it arises multiple times, within a quarterly time period, in program reviews conducted at multiple institutions. A finding is an issue identified during the course of a review. BOP officials stated that findings are considered significant if the reported issue is associated with a high-cost program activity or an invaluable subject area such as quality of care. A deficiency generally refers to the ineffectiveness of an internal control activity. If the same finding or deficiency is reported across multiple reporting periods, it is considered a repeat problem.

that we analyzed—the Human Resource Management Division (HRMD), Health Services Division (HSD), and Reentry Services Division (RSD)—were aware of them.

Moreover, one of the divisions, HRMD, formulated a corrective action plan and has systematically taken steps to address and monitor progress toward resolving reported deficiencies and findings related to time and attendance that were identified at multiple institutions across multiple time periods. For instance, BOP's program reviews identified control issues related to time and attendance in 14 of the 20 quarters from 2009 through 2013, such as inaccurate time and attendance records and the lack of appropriate documentation to support payment. These reported issues could lead to payment errors, such as incorrectly compensating staff for overtime. HRMD officials reported that, as a result of these issues, they implemented policy changes, such as developing mandatory training and requiring that each human resource office audit a representative sample of its time and attendance files annually. Further, BOP is currently transitioning to a web-based time and attendance reporting system, which includes information technology controls. Such information technology controls establish segregation of duties (e.g., the staff approving reported work hours is supervisory and different from the staff reporting the hours worked) and the retention of electronic records in compliance with rules and regulations, which officials report could help address the deficiencies. To consistently monitor progress toward resolving these issues bureau-wide, BOP's Central Office has conducted a number of audits of time and attendance records and reports that error rates in record accuracy have declined from about 5 percent in 2010 to less than 2 percent in 2014.

The other two Central Office divisions with oversight over the repeated frequent deficiencies and significant findings that we analyzed—HSD and RSD—have taken actions at the national level to attempt to address some of the deficiencies. However, they did not provide specifics or documentation for how the divisions would monitor progress toward correcting them. With respect to HSD, BOP's internal reviews identified findings related to the administration and management of resources in its Food Services Program (constituting \$408 million, or 6 percent, of BOP's obligations in fiscal year 2013) in 8 of the 20 quarters from 2009 through 2013, such as incomplete inventories; not properly reporting lost, damaged, or stolen property; or failures to adjust inventory records referenced when formulating and submitting an institution's budget. At the national level, BOP is providing training on the use of the Food Services Program's information system that includes a quarterly inventory control function, and has formed support teams to provide assistance to

institutions identified as having deficient programs. For the staff performing inventory control at the local level (e.g., warehouse staff), the division is requesting that they attend national training or a similar training program. However, HSD did not provide specifics or documentation for establishing a mechanism that would allow it to monitor whether the actions taken have produced needed improvements within Food Services comprehensively across institutions.

With respect to RSD, BOP's internal review identified findings related to RRC contract oversight and monitoring (RRC contracts constituting \$296 million, or 4 percent, of BOP's obligations in fiscal year 2013) in 6 of 20 quarters from 2009 through 2013, such as monitoring reports not being completed on a timely basis and inaccurate payments being made to contractors. These reported issues could result in failing to address contractor performance or overpayments. In July 2013, Residential Reentry Management (RRM) offices nationwide were consolidated under the direct management of the Residential Reentry Management Branch (RRMB). Previously, the RRM field offices were under the operational control of the six BOP regional offices. According to BOP, this reorganization has allowed BOP to implement and monitor consistent practices throughout the Residential Reentry offices. BOP also reported that, as a result of these findings, management teams within the Residential Reentry Management Branch provide guidance to individual field offices that require corrective actions. Additionally, they have scheduled a national-level training session in September 2014 to address repeated frequent deficiencies, share best practices in contract monitoring, and promote consistency and effective oversight of RRCs. Similar to Food Services, however, RSD did not provide specifics or documentation for establishing a mechanism that would allow it to monitor whether the actions taken have produced needed improvements with the Residential Reentry Program comprehensively across RRC contracts.

Internal control standards state that monitoring of internal controls should include policies and procedures for ensuring that the findings of audits and other reviews are promptly resolved. In particular, managers are to promptly evaluate findings from audits and other reviews, including those showing deficiencies and recommendations reported by auditors who evaluate agencies' operations; determine proper actions in response to findings and recommendations from audits and reviews; and complete, within established time frames, all actions that correct or otherwise resolve the matters brought to management's attention. According to the standards, the resolution is completed only after action that corrects

identified deficiencies, produces improvements, or demonstrates the findings and recommendations do not warrant management action.³⁴

For deficiencies and other findings associated with a particular institution, BOP has a mechanism to monitor corrective actions at the individual institution to help ensure that the deficiencies and findings do not reoccur at that specific location. Specifically, according to BOP, the responsible official of the entity reviewed (most often the warden of the institution) is responsible for developing and implementing the corrective action, and PRD monitors that specific institution's progress in implementing the corrective action. However, with respect to frequent deficiencies and significant findings across a number of institutions repeatedly reported over time, BOP did not provide specifics or documentation for establishing a mechanism to consistently monitor bureau-wide corrective actions to determine whether they are achieving desired results and helping to prevent similar deficiencies from occurring at different institutions over time. We found that in at least one instance in which deficiencies were repeatedly found across a number of institutions—HRMD's process for resolving deficiencies associated with time and attendance—a Central Office division did successfully take steps to consistently monitor the deficiencies bureau-wide. Specifically, for the repeated frequent deficiencies and significant findings associated with time and attendance, we found that HRMD's process for implementing and monitoring its corrective actions has resulted in fewer errors and stronger internal controls related to record retention and segregation of duties, which could reduce the risk of erroneous payments, thereby providing BOP with greater assurance that it is operating more efficiently with regard to its staff costs across its many institutions.

However, despite the repeated nature and recency of findings within the Food Services and Residential Reentry Programs, the relevant Central Office divisions did not provide specifics or documentation for how they have monitored their corrective actions to assess their progress toward addressing these findings across BOP institutions. As a result, BOP does not have reasonable assurance that actions taken are preventing certain frequent and significant findings from reoccurring at other institutions, thus hindering BOP's ability to achieve cost efficiencies in these two high-cost areas—accounting for spending of \$408 million and \$296.1 million in

³⁴[GAO/AIMD-00-21.3.1.](#)

fiscal year 2013, respectively. By establishing a mechanism for relevant Central Office divisions to consistently monitor bureau-wide corrective actions and assess their progress in the presence of repeated frequent deficiencies or significant findings reported across multiple institutions, BOP could be better assured that it is resolving such deficiencies promptly and, ultimately, operating more efficiently. Further, although repeated frequent deficiencies and significant findings related to operational effectiveness and compliance-related issues were outside the scope of our review, such a mechanism would also better position BOP to resolve repeated deficiencies and significant findings in these areas.

Authorities within BOP's Control to Reduce Costs Are Limited; Options outside of BOP's Authority Could Have a Larger Impact on Costs

BOP's Current Authority to Reduce Inmate Sentences Results in Limited Cost Savings Relative to Its Overall Budget

BOP has certain discretionary authorities that can affect the period for which an inmate is incarcerated or remains in BOP custody. We have previously reported on these in detail, and found that inmate eligibility for certain programs and lack of capacity affect BOP's use of them.³⁵ Among these discretionary authorities are those that permit BOP to

- determine the eligibility of a foreign national offender for transfer to the offender's home country to serve out his or her sentence;³⁶

³⁵GAO-12-320.

³⁶See 18 U.S.C. § 4102.

- reduce the length of the inmate’s sentence, based on inmate “good conduct time (GCT);”³⁷
- determine the eligibility of an offender for participation in a substance abuse program (which may result in a sentence reduction of up to 1 year);³⁸ and
- transfer an inmate out of prison to serve the remainder of his or her sentence in a residential reentry center or in home detention.³⁹

Table 3 describes key statutory provisions in which BOP has a role in reducing a federal prisoner’s period of incarceration in a BOP institution.

Table 3: Key Statutory Provisions Available to the Bureau of Prisons (BOP) to Reduce a Federal Prisoner’s Period of Incarceration or Time in BOP Custody

Discretionary flexibilities	Description
International Prisoner Transfer Program (IPTP), 18 U.S.C. § 4102.	The Department of Justice (DOJ) is authorized to transfer offenders under a sentence of imprisonment, on parole, or on probation to the foreign countries of which they are citizens or nationals, provided that there is a current treaty between the United States and the other country that provides for such transfer, that the offender has voluntarily requested the treaty transfer, and that the home country agrees to the transfer. BOP determines whether an inmate meets specific minimum eligibility requirements; if these are met, BOP forwards the request to DOJ’s Office of Enforcement Operations. DOJ is responsible for determining whether an inmate is approved or denied for treaty transfer.

³⁷See [GAO-12-320](#) for additional details on GCT. As authorized in statute, 18 U.S.C. § 3624(b), BOP may award “up to 54 days at the end of each year of the prisoner’s term of imprisonment,” or 54 days per year of sentence served. As applied by BOP, however, this actually results in 47 days earned per year of sentence imposed because inmates do not earn GCT credit for years they do not ultimately serve because of being released early. Calculation of the amount of time that BOP should award based on good conduct was contested in court. In *Barber v. Thomas*, 130 S. Ct. 2499 (2010), the Supreme Court upheld BOP’s methodology against a challenge brought by inmate petitioners. As a result, BOP officials state that any change in the method of calculating GCT credits would require a change to the law. Therefore, for our purposes in this report, GCT is both a discretionary authority and one that is an option that could produce potential costs savings, provided the calculation method is changed. We include GCT in the list of discretionary authorities and as one of the sentencing guideline change options.

³⁸18 U.S.C. § 3621(e).

³⁹18 U.S.C. § 3624(c).

Discretionary flexibilities	Description
Reduction in Sentence through Compassionate Release, 18 U.S.C. § 4205(g), 18 U.S.C. § 3582(c)(1)(A).	Upon motion of the Director of BOP, the court may reduce a term of imprisonment after considering certain factors if it finds that either (1) extraordinary and compelling reasons warrant such a reduction; or (2) the inmate is at least 70 years of age, has served at least 30 years in prison for the offense or offenses for which the inmate is imprisoned, and a determination has been made by the Director of BOP that the inmate is not a danger to the safety of any person or the community; and that such a reduction is consistent with applicable policy statements issued by the U.S. Sentencing Commission (USSC).
Good conduct time (GCT) 18 U.S.C. § 3624(b).	BOP is authorized to award credit toward the service of an inmate's sentence, beyond the time served, of up to 54 days per year of sentence served if the inmate has displayed exemplary compliance with institutional disciplinary regulations. To be eligible, the inmate must be serving a sentence of more than 1 year other than a term of imprisonment for life.
Residential Drug Abuse Treatment Program (RDAP), 18 U.S.C. § 3621(e).	BOP is required to provide substance abuse treatment for each inmate it determines has a treatable condition of substance abuse. BOP must, subject to the availability of appropriations, provide residential substance abuse treatment (and make arrangements for appropriate aftercare) for all eligible inmates, with priority provided based on proximity to release date. Through RDAP, BOP may reduce the sentence of an inmate convicted of a nonviolent offense who successfully completes the treatment program for a period of up to 1 year.
Residential Reentry Program 18 U.S.C. § 3624(c).	The Director of BOP must, to the extent practicable, ensure that an inmate spends a portion of the final months of that inmate's term (not to exceed 12 months), under conditions that will afford the inmate a reasonable opportunity to adjust to and prepare for reentry into the community. This may include a prisoner being placed in a residential reentry center (RRC, or halfway house). ^a As of April 2014, BOP supervised the operations of 200 RRCs nationwide; RRCs are operated by private contractors that have contracts with BOP. ^b

Source: GAO analysis of federal statutes and BOP information. See GAO-14-821.

^aHome detention is an option for a limited number of offenders, and BOP requires that specific criteria be met, both with regard to the offender's eligibility and with having an acceptable home environment for home detention. By statute, an eligible offender may be placed in home detention for the shorter of 10 percent of the term of imprisonment or 6 months.

^bBOP reported that it also has 49 intergovernmental agreements for "work release," which it includes under its count of RRCs (for a total of 249); of these agreements, 40 are with state and local governments, and 9 are with the U.S. Marshals Service.

Of these authorities, two—IPTP and Compassionate Release—are programs that can result in a direct reduction of BOP's population and thus cost savings. The number of inmates released through these two programs annually is small, however, as are the estimated savings. For example, the estimated 2013 cost savings from these programs were about \$2.6 million and \$651,000, respectively, or about 0.04 and about 0.01 percent of BOP's total fiscal year 2013 appropriations of \$6.44 billion.

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- **IPTP.** As of June 28, 2014, BOP had about 54,000 foreign nationals in its custody. However, eligibility criteria constrain the number who can be transferred. Specifically, inmates must voluntarily request a transfer to their home countries to serve out the remainder of their sentences, the United States must have a treaty with the home country permitting repatriation, eligibility for transfer must be confirmed by BOP, the transfer request must be approved by DOJ's Office of Enforcement Operations, and the home country must agree to receive the prisoner. Further, while the United States has treaties with 94 foreign countries to permit IPTP transfers, the DOJ Inspector General (IG) reported that, as of 2010, about 22 percent of the foreign nationals in BOP come from countries with which there is no transfer agreement. In addition, as of late June 2014, almost 37,400 (17.3 percent) of all BOP inmates were Mexican nationals (or about 70 percent of all BOP foreign nationals). However, since 2001, Mexico has restricted eligibility for transfer from the United States, according to a 2011 DOJ IG report.⁴⁰

In fiscal year 2013, DOJ approved 245 transfers out of BOP custody, representing less than 0.5 percent of BOP's foreign national population. Through these transfers, BOP estimates that it avoided costs of approximately \$2.6 million in fiscal year 2013, or about 0.04 percent of BOP's fiscal year 2013 \$6.44 billion appropriation.⁴¹

- **Compassionate Release.** We have previously reported on BOP's discretionary authority to request compassionate release for certain offenders—termed “reduction in sentence” by BOP—and found that

⁴⁰DOJ, Office of the Inspector General: *The Department of Justice's International Prisoner Transfer Program*, I-2012-002 (Washington, D.C.: December 2011). The DOJ IG reported that, in addition to eligibility criteria constraints on using the program, other factors within BOP control also affected its use, such as incorrect determinations of inmate eligibility, language barriers hindering inmate understanding of the program, or delays in processing applications. The IG estimated that, for fiscal years 2005-2010, BOP delays in processing applications resulted in about \$8 million in additional costs, or \$1.33 million annually, on average, for each of those 6 years. The IG report stated that since 2001, Mexico's “significant restrictions” had resulted in few Mexican inmates being accepted for treaty transfer consideration. Data on BOP inmates by nationality are from BOP's SENTRY data system. The IG made several recommendations for BOP to address these findings, including ensuring that all staff involved in IPTP determinations are properly trained. BOP concurred with the IG's recommendations and stated that actions are under way to address them.

⁴¹Estimated cost avoidance based on a fiscal year 2013 marginal cost of \$10,674 per offender.

BOP used this authority infrequently because of, among other things, BOP's eligibility criteria.⁴² Specifically, compassionate release of an inmate historically has been limited by BOP to terminally ill patients with an incurable disease and short life expectancy or to those who are elderly with a profoundly debilitating medical condition. In April 2013, the DOJ IG reported that the existing BOP compassionate release program had been poorly managed and implemented inconsistently, likely resulting in eligible inmates not being considered for release and in terminally ill inmates dying before their requests were decided.⁴³ No cost savings estimate could be provided for earlier releases because, according to the IG report, BOP did not maintain cost data associated with the custody of inmates eligible for consideration under the program, and BOP had not conducted any analysis of cost savings achieved by releasing such inmates.

DOJ issued a revised program statement with less restrictive criteria for compassionate release in August 2013. The revisions included making terminally ill inmates with a life expectancy of up to 18 months eligible for consideration instead of maintaining the previous 12-month limit.⁴⁴

According to BOP data, total releases under compassionate release increased from 29 inmates in calendar year 2011 to 39 in calendar year 2012, and to 61 in calendar year 2013 (including 11 released under the expanded criteria). An additional 2 had been released as of July 2014 under expanded nonmedical criteria. However, as a percentage of BOP's population and costs, the number of affected inmates and savings remains small given the numerous factors involved in determining

⁴²[GAO-12-320](#).

⁴³DOJ, Office of the Inspector General: *The Federal Bureau of Prisons' Compassionate Release Program*, I-2013-006 (Washington, D.C: April 2013). The IG made several recommendations for BOP to address these findings, including establishing time frames for processing requests at each step of the management review process. BOP generally concurred with the IG's recommendations and stated that actions are under way to address them.

⁴⁴According to the revised program statement for Compassionate Release/Reduction in Sentence, the following were added: criteria regarding requests based on medical circumstances, nonmedical circumstances for elderly inmates, nonmedical circumstances in which there has been the death or incapacitation of the family member caregiver of an inmate's child, nonmedical circumstances in which the spouse or registered partner of an inmate has become incapacitated, and a list of factors that should be considered for all requests.

eligibility. Inmates released under compassionate release in calendar year 2013 represented about 0.03 percent of the total BOP inmate population, and estimated savings from the releases amounted to about \$651,000, or about 0.01 percent of BOP's fiscal year 2013 \$6.44 billion appropriation.⁴⁵

Funding and eligibility constraints also limit BOP's use of RDAP and RRCs to affect costs related to the number of inmates in BOP custody. Some cost savings can result from inmates being able to reduce their sentences as a result of successfully completing the RDAP program; however, both RDAP and RRCs are types of rehabilitation programs intended to reduce recidivism rather than serving as cost-saving mechanisms.⁴⁶ Moreover, as RDAP and RRC are programs that require professional staff and resources, increasing the number of offender participants in either would require additional funding that could offset potential cost savings.⁴⁷

- **RDAP.** We have previously reported that, according to BOP, delays resulting from system-wide demand for this treatment program have prevented timely inmate entry into RDAP and thereby reduced the number of eligible inmates receiving the maximum allowable sentence reduction. This is because by the time some inmates complete RDAP, they have fewer months remaining on their sentences than the maximum allowable reduction of 12 months.⁴⁸ According to BOP, the

⁴⁵Data were provided by BOP for calendar year releases. Cost avoidance savings were calculated by multiplying the BOP fiscal year 2013 marginal cost per offender (\$10,674) by the number of releases. Costs as a percentage of BOP appropriations were calculated by dividing the cost savings by the cited BOP appropriations.

⁴⁶RDAP participation is limited to prisoners with a verifiable substance use disorder within the 12 months prior to their arrest. They must also voluntarily apply for participation and be approved by BOP for the program. RRCs are run by private contractors and cost more than minimum security institutions, and about the same as low- or medium-security BOP prisons on an annual basis per offender. We reported daily costs per prisoner previously in [GAO-12-320](#) as follows: \$70.79 for RRCs, \$57.55 for minimum security, \$69.53 for low security, and \$71.91 for medium security.

⁴⁷We did not include in cost savings the potential long-term savings that could result from reduced recidivism.

⁴⁸[GAO-12-320](#). For fiscal years 2009-2011, 15,302 RDAP participants completed the program and were eligible to receive a sentence reduction. However, of these participants, 19 percent received the maximum sentence reduction that corresponded to their sentence length.

average participant reduced his or her sentence by about 10 months in fiscal year 2013.

As we have also previously concluded, increasing RDAP participation would cost more than the potential savings from reducing sentences by relatively small amounts. For example, if every eligible RDAP participant who completed the program in fiscal year 2011 had received his or her maximum sentence reduction, BOP would have been responsible for 15,729 fewer months of inmate incarceration, yielding an estimated cost savings of about \$13.2 million. However, the fiscal year 2012 request for an additional \$15 million to permit more offenders to enter RDAP “on time” and thereby to increase their allowable sentence reductions would not have been enough to achieve the full 12-month potential reduction, meaning that expanding RDAP would have cost at least \$1.8 million more than it would have saved. Similarly, according to DOJ, BOP received an increase of \$15 million in RDAP funding in fiscal year 2014 and this funding will, by fiscal year 2016, increase the average sentence reduction for RDAP participants from 10 months in fiscal year 2013 to an estimated 11.5 months.⁴⁹ BOP reported that reaching the full potential 12-month sentence reduction for all participants in fiscal year 2013 would have resulted in about \$11 million in cost avoidance savings, but it did not provide a calculation of the cost of providing additional spaces and staff to permit the full sentence reduction for all participants.

These cost savings estimates do not take into account potential long-term savings to society from reducing substance abuse and recidivism among released inmates. While RDAP may contribute to achieving such savings, expanding it above current levels requires an up-front cost that exceeds its potential cost savings for BOP in the short term.

- **RRCs.** According to BOP, RRCs, or halfway houses, provide programs that are intended to help inmates rebuild their ties to the community and to thereby reduce the likelihood that they will recidivate. Run by private contractors, RRCs provide programs that help offenders find employment, and coordinate the provision of services to address substance abuse, medical, and mental health care with appropriate community providers. We have previously found

⁴⁹BOP did not provide an estimate of the savings from shortening the average sentence by 1.5 months. BOP stated that this funding level would mean that RDAP was operating at 100 percent of capacity; that is, all the available spaces would be taken.

that the use of RRCs is constrained by both eligibility criteria and funding.⁵⁰ For example, inmates with detainers (other crimes for which they were charged but were not yet sentenced), with sentences of 6 months or less, or who are in civil commitment status are all ineligible for RRC placement.⁵¹ In addition, BOP officials stated that objections from local communities to halfway houses in residential neighborhoods have hindered expanding the RRC program, even when funds were available.

We have previously found that not all inmates are eligible to be sent to an RRC prior to their release from prison, and that for those who are eligible, some spend only a portion of the full 12 months' allowable time in an RRC because of a lack of bed space and because of eligibility criteria.⁵² According to BOP, an increase in the number of offenders getting the full 12 months' allowable time would necessitate additional bed space, which would require both additional funding and additional RRC contracts. For example, in fiscal year 2013, BOP reported that it had 9,455 RRC beds available nationwide, but would have required about 30,000 beds to provide the maximum allowable 12 months in RRCs to all participants, or an addition of more than 20,500 beds above its current capacity. As noted above, and as we have previously reported, BOP officials explained that such an expansion could be challenged by local zoning restrictions and the unwillingness of many communities to accept nearby RRCs. Moreover, if such an expansion were to take place, BOP would need additional funding to pay for the new RRC bed space. For fiscal year 2013, BOP reports that the average daily cost per offender in an RRC was about \$73, or \$26,645 per year. This means that an increase of the more than 20,500 beds that would be required to achieve the allowable 12 months for all participants (at current program levels) would cost about

⁵⁰GAO-12-320. During an assessment for RRC placement, BOP policy requires prerelease RRC placement decisions be made on an individual basis and conducted in a manner consistent with certain statutory criteria. The criteria include (1) the resources of the facility contemplated, (2) the nature and circumstances of the offense, (3) the history and characteristics of the prisoner, (4) any statement by the court that imposed the sentence, and (5) any pertinent policy statement issued by the USSC. See 18 U.S.C. § 3621(b).

⁵¹A detainer is a document issued by a law enforcement entity, a jail, or correctional facility to seek custody of an individual for purposes of instituting legal proceedings.

⁵²GAO-12-320.

\$546 million annually.⁵³ Expanding RRCs might help reduce recidivism but would require a substantial funding increase, equal to almost 8 percent of BOP's entire \$6.9 billion fiscal year 2015 budget request.

Potential Actions outside of BOP's Authority Could Reduce Prison Populations and Costs, and Experts Say There Are Advantages and Disadvantages to These Options

We examined cost-saving options that are outside BOP's authority and that are widely discussed among criminal justice policy experts, the USSC, and DOJ, such as instructing federal prosecutors to decline to charge certain defendants in certain drug cases in such a manner as to trigger mandatory minimum prison sentences, reducing the lengths of sentences specified by federal guidelines for drug offenders, or applying the provisions of the Fair Sentencing Act of 2010 retroactively in order to provide sentences for cocaine base ("crack") offenders that are less disparate from those applied for possession of powder cocaine.⁵⁴ Toward this end, we reviewed selected reports and analyses from entities chosen for their expertise in criminal justice issues, and had discussions with officials from DOJ, BOP, and the USSC. See appendix VI for more information on the entities we selected. Through this review, we identified eight options outside BOP's authority that could reduce the size of the inmate population. These involve potential legislative actions by Congress, executive orders by the President, policy changes implemented by the Attorney General, or changes in sentencing

⁵³This cost estimate is based on BOP RRC fiscal year 2013 average RRC cost of \$26,645 per offender multiplied by the required 20,500 bed spaces.

⁵⁴Pub. L. No. 111-220, 124 Stat. 2372. The Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207, included the federal criminal law distinction between "cocaine base" and other forms of cocaine. The thresholds triggering a 10-year prison penalty—5 kilograms of powder cocaine and 50 grams of cocaine base—created a 100-to-1 quantity ratio.

guidelines that could be promulgated by the USSC.⁵⁵ For each of these options, we asked the USSC to calculate the estimated impact on the size of BOP's population and the potential savings that could result from implementation of each.⁵⁶ See appendix VII for the USSC analyses of these options. For the purposes of our analysis, we determined that the USSC is an authoritative source for conducting such analysis; it has conducted similar analyses in recent years and published one on its website on July 25, 2014.⁵⁷ For each option, the time frame (number of years) over which the option would take effect may vary, as well as the number and type of offenders who would be eligible for a changed sentence under the option. In general, the majority of the impact of most options was estimated by the USSC to occur within 5 or 6 years of implementation. However, the options are not all directly comparable; some would have a greater impact more quickly than would others, depending on the option and the number of potentially eligible offenders. For options that apply only prospectively (that is, only to future offenders)—such as the Attorney General's August 2013 memorandum to U.S. Attorneys—the potential impact is typically less than for options that would apply to larger numbers of currently incarcerated offenders.

⁵⁵Of these eight options, two related to the sentencing guidelines were approved by the USSC in April and July 2014; a third was directed by the Attorney General in August 2013. All three changes occurred during the course of this review. The two actions approved by the USSC would reduce lengths of prison terms for (1) most future federal drug offenders by amending the sentencing guidelines, and (2) currently incarcerated federal drug offenders by about 19 percent compared with current term lengths by amending a policy statement to give retroactive effect to the proposed amendment to the sentencing guidelines. However, under 28 U.S.C. § 994(p), Congress may modify or disapprove amendments to the sentencing guidelines. (The second action corresponds to the first and does not require separate congressional action.) The USSC retroactivity change would permit eligible offenders to ask courts to reduce their sentences beginning November 1, 2014. However, offenders whose requests are granted by the courts would be released no earlier than November 1, 2015. According to the USSC, sentences will be reduced retroactively only after consideration by a judge in each case. The third policy change went into effect in August 2013, when the Attorney General issued a memorandum to U.S. Attorneys informing prosecutors to decline to charge certain defendants in certain types of drug cases in such a manner as to trigger mandatory minimum sentences.

⁵⁶The USSC calculated the potential savings in bed years; 1 bed year is defined by the USSC as 12 months' prison time (e.g., one offender in prison for 1 year, or three offenders in prison for 4 months each, and so forth.)

⁵⁷USSC: *Analysis of the Impact of the 2014 Drug Guidelines Amendment If Made Retroactive* (Washington, D.C.: July 25, 2014). See this citation at <http://www.ussc.gov>.

On the basis of analyses the USSC conducted of the potential results from implementing each of the eight options, which provided estimates of bed year savings, we then calculated the potential cost savings.⁵⁸ Implementation of the options could range from about \$8.7 million to almost \$4.1 billion, with the potential savings varying based on the option implemented and the duration of the option. Cost savings or cost avoidance savings were calculated using BOP's fiscal year 2014 estimated average annual marginal cost of approximately \$11,000. Marginal costs covers such things as security, food, medical care, clothing, unit management, education, records, and maintenance associated with additional inmates entering existing BOP facilities. BOP officials stated that calculating cost savings using marginal cost was more appropriate than using per capita costs because BOP is about 36 percent overcrowded system-wide, and therefore BOP would have to reduce its existing population by that percentage (equal to about 78,000 offenders in July 2014) to eliminate overcrowding system-wide. Until that number is reached, BOP officials stated, they would not be closing existing prisons and therefore would expect savings only in marginal costs versus average per capita costs to be realized. However, the use of marginal cost in calculating savings does not take into account the possibility that reductions in BOP population could permit BOP to reduce the numbers of offenders sufficiently to reduce staff, close some existing facilities, or avoid opening additional ones that would otherwise have been required. If the options achieved population reductions resulting in reductions in fixed costs, such as reducing staff or closing existing prisons, calculating cost savings using average annual per capita costs—\$29,291 in fiscal year 2013, according to BOP—would be appropriate. Three of the options could result in an estimated 78,000 or more offenders being eligible for release or eligible for sentence reductions over five years, which could greatly reduce or eliminate current overcrowding based on BOP's estimate within the same 5 years.⁵⁹ Given the size of these potential

⁵⁸We calculated cost savings that would result from reductions in BOP population or from cost avoidance savings resulting from increases below what would otherwise occur if an option was not implemented, by multiplying USSC estimates of bed years saved by the annual marginal cost for a prisoner in BOP.

⁵⁹DOJ reports that as of February 2014 BOP prisons were 32 percent overcrowded but medium- and high-security prisons were more overcrowded than low- and minimum-security institutions. Reducing overcrowding and costs would depend on which offenders were released, from where, and in what number. Note that a reduction in bed years does not necessarily translate into an immediate reduction in prison population.

reductions in sentence lengths and the number of eligible offenders, we calculated per capita cost savings for three of these options, based on the USSC estimates for saved bed years. We did not calculate per capita savings for a fourth option—changing the way that BOP calculates the amount of “good conduct” time that offenders earn for each year served—because although the number of eligible inmates would be almost 180,000, the reduction in sentence for each inmate would be small in contrast to the other three options and would occur over 30 or more years. Therefore, this option may be less likely to allow BOP to reduce staffing levels or close facilities.⁶⁰

It is important to emphasize cost savings is one of many considerations. In particular, these options may have additional effects, such as on public safety. The expert entities we contacted identified potential advantages and disadvantages they believe could result from the implementation of each option, such as making sentences more commensurate with the crime or releasing inmates who may reoffend.

We are not taking a position on any of these options. We present the information we obtained from the USSC and the expert entities to inform policymakers as they weigh whether and how to address costs at BOP. Specifically, in table 4, we summarize each option we presented to the USSC, expert entities, and the four states selected because of their experience with criminal justice sentencing initiatives. For each option, we show the USSC estimate of the number of BOP offenders who would likely be eligible for release or for a reduced sentence (leading to release) as a result of implementation. The table also shows the USSC estimates, if available, of the bed year savings that would result from implementation of each option, and our calculation of the cost savings that would result.⁶¹ In addition, we summarize the comments from the responding states and the expert entities with regard to potential advantages and disadvantages that could result from implementing these options.

⁶⁰See option 6.

⁶¹We asked the USSC to estimate the number of offenders who would be eligible to be released or to have their sentence reduced (leading eventually to release), and to estimate the savings that would result from implementation of these eight options. Where estimates could be made by USSC, the savings were provided in bed years.

Table 4: Options for Changes to Sentencing Processes, Number of Eligible Inmates, Estimated Cost of Options, and Assessment of Potential Advantages and Disadvantages by Expert Entities and Four States with Sentencing Change Experience

Option 1: Reduce the length of mandatory minimum sentences for incarcerated drug offenders^a	
Description	Implementing this option would reduce the sentences of certain current incarcerated drug offenders convicted of an offense carrying a mandatory minimum sentence—for example, from 20 years to 10 years, 10 years to 5 years, and 5 years to 2 years—and would release incarcerated offenders if they had already completed their recalculated sentence (i.e., if the time served exceeded the new sentence length). Offenders with time remaining on their sentences would remain in prison until they met the new (shorter) sentence length requirement that applies to their cases. Implementing this option would mean an average reduction in sentence for eligible offenders of 57 months (44.2 percent).
Estimated number of inmates eligible for release or sentence reduction	This is estimated to be 78,102 inmates. Of these, 68,620 (88 percent) would be eligible for release during the first 5 years after implementation, and 9,482 in the sixth year and after.
Estimated bed year reduction and cost savings	It is estimated that 370,985 bed years would be saved, or \$4.1 billion. ^b Savings would roughly match the released numbers—about 88 percent (\$3.6 billion) in savings would occur in the first 5 years after implementation. Given the size of these potential reductions in offenders and required bed space, per capita savings could occur, which means savings could be as much as \$10.231 billion over the first 5 years and an additional \$1.395 billion in the sixth year after, or a total of \$11.626 billion. ^c
Expert-identified potential advantages	<ul style="list-style-type: none"> • This could make sentences more proportionate to the crime committed. • This could significantly reduce Bureau of Prisons (BOP) population, thereby reducing overcrowding and improving prison safety for prisoners and staff, as well as reducing wait lists for anti-recidivism programs.
Expert-identified potential disadvantages	<ul style="list-style-type: none"> • Released offenders may recidivate, which could increase crime. The financial and societal costs of increased crime could eclipse cost savings. • This could reduce prosecutorial leverage to get plea bargains in exchange for evidence against those in higher positions in a criminal organization. • This could shorten sentences too much below original intent or shorter sentences may be too lenient.

^aThe Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207, established the basic framework of statutory penalties currently applicable to federal drug-trafficking offenses. The act specified statutory penalty ranges for manufacturing, distributing, or dispensing the drug, or possessing the drug with intent to manufacture, distribute, or dispense the drug. For each of several drug types, the act specified separate statutory ranges for such offenses involving various quantities of the drug. See 21 U.S.C. § 841.

^bIn developing its analysis, the USSC made a number of assumptions, including that Congress would authorize the courts (or the President using clemency powers) to reduce the sentences of offenders incarcerated on or after a specific date in a manner consistent with the *Guidelines Manual* and bound only by any mandatory minimum penalties that might apply in current law or as modified through the

policy option. The bed year fiscal year 2014 average marginal cost of \$11,000 was not adjusted for future inflation.

^cEstimated per capita savings were calculated using BOP fiscal year 2014 average per capita costs of about \$31,338. BOP's fiscal year 2014 enacted Salaries and Expenses appropriation of \$6.769 billion was divided by the July 24, 2014 population of about 216,000. Future year savings were not adjusted for inflation.

Option 2: Retroactively apply the Fair Sentencing Act of 2010 reductions in drug mandatory minimum penalties to offenders currently incarcerated for crack cocaine-related offenses

Description	This option would retroactively apply to eligible incarcerated offenders the reductions in mandatory minimum penalties for crack cocaine-related offenses that are provisions of the Fair Sentencing Act (FSA) of 2010, which did not apply to offenders already sentenced under the original penalty guidelines. ^a The USSC amended the sentencing guidelines to implement these revisions effective November 1, 2011, and also voted to apply that amendment retroactively to those already sentenced under the guidelines that incorporated the original penalty structure. However, because Congress did not make the statutory changes to the mandatory minimum penalties retroactive, some offenders were unable to receive the full or, in some cases, any benefit from the commission's action. This option would have the effect of applying the new, lesser mandatory minimum penalties retroactively to currently incarcerated offenders.
Estimated number of inmates eligible for release or sentence reduction	An estimated 8,468 inmates would be eligible; 6685 (79 percent) would be eligible for release over a period of 5 years following implementation. ^b
Estimated bed year reduction and cost savings	It is estimated that 37,400 bed years would be saved, or about \$411 million. Of the total, about \$325 million would be saved over first 5 years; and about another \$86 million in the sixth year and after. ^c
Expert-identified potential advantages	<ul style="list-style-type: none"> • This could enhance fairness in federal sentencing by making the sentence more commensurate with the crime. By applying the same sentences for the same crime retroactively, it could increase prison safety by reducing potential inmate conflict. • This could reduce BOP population, thereby reducing overcrowding and improving prison safety; it could allow BOP to shift fund to other priorities. • This could release offenders deemed to be at low risk for reoffending and at high likelihood for successful reentry; it could increase the likelihood of successful reentry and therefore save money.
Expert-identified potential disadvantages	<ul style="list-style-type: none"> • Released offenders may recidivate, which could increase crime. • Reductions in sentence length after conviction and sentencing could reduce prosecutors' ability to negotiate a plea bargain in future cases

^aThe mandatory minimums revised by the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372, had been enacted in the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207, which included the federal criminal law distinction between "cocaine base" and other forms of cocaine. The thresholds triggering the 10-year penalty—5 kilograms of powder cocaine and 50 grams of cocaine base—created a 100-to-1 quantity ratio. The identical ratio was reflected in the 5-year

mandatory minimum thresholds as well: 500 grams of powder cocaine and five grams of cocaine base both triggered the 5-year penalty. Among other things, the Fair Sentencing Act of 2010 increased the quantities of crack cocaine that trigger the 5- and 10-year statutory mandatory minimum penalties—from 5 grams to 28 grams for 5-year mandatory minimums and from 50 to 280 grams for 10-year mandatory minimums—and eliminated the 5-year mandatory minimum for simple possession of crack cocaine.

^bUSSC data permitted calculation of bed year savings based on 8,468 cases

^cIn developing its analysis, the USSC made a number of assumptions, including that Congress would authorize the courts by statute to reduce the sentences of offenders in accordance with the *Guidelines Manual* in effect on a specific date and bound only by the mandatory minimum penalties as amended by the FSA. The bed year fiscal year 2014 average marginal cost of \$11,000 was not adjusted for future inflation.

Option 3: Avoid charging future low-level nonviolent drug offenders with a charge that results in a mandatory sentence

Description	This option has been implemented as part of the August 2013 direction issued by the Attorney General instructing prosecutors in cases involving the applicability of drug law mandatory minimum sentences based on drug type and quantity to decline to charge the quantity necessary to trigger a mandatory minimum sentence if the defendant meets particular criteria. ^a
Estimated number of inmates eligible for release or sentence reduction	The Attorney General's August 2013 direction applies only to future offenders (i.e., it is not retroactive). The USSC estimates that it would be applicable to about 620 offenders annually each year for each of the next 5 years (or a total of about 3,100 offenders).
Estimated bed year reduction and cost savings	This would result in an estimated savings of 788 bed years over 5 years, or about \$8.7 million. ^b
Expert-identified potential advantages	<ul style="list-style-type: none"> • This could help restore proportionality in federal drug sentences by ensuring that sentence length is more commensurate with offense severity. It also could serve to more often appropriately defer to local and state prosecution in many cases. • It could help reduce BOP overcrowding and thereby reduce costs. • It could allow for more judicial or prosecutorial discretion or alternative treatment opportunities. • It could allow more use of community punishments and treatment, which are more likely to reduce recidivism than the same programs in prison.
Expert-identified potential disadvantages	<ul style="list-style-type: none"> • Released offenders may recidivate, which could increase crime. • This could reduce prosecutorial leverage to get plea bargains in exchange for evidence against those higher up in a criminal organization. • A change in policy could be quickly reversed by a different administration or by Congress. • This could provide increased discretion to prosecutors, which could make it difficult to ensure consistency in application.

^aAccording to the USSC, this option is comparable to making certain changes in application of the safety valve.

^bBed year fiscal year 2014 average marginal cost of \$11,000 was not adjusted for future inflation. USSC estimates for this option are based on the USSC's understanding of the implementation of the

criteria established by DOJ in this policy; however, ultimate savings will depend on how DOJ personnel interpret and apply these criteria in practice.

Option 4: Amend USSC sentencing guidelines for future drug offenders, reducing them two levels below current guidelines^a

Description	This option would reduce the potential sentences for all future drug offenders by two levels below current guidelines, resulting in a roughly 18 percent reduction of sentence length below current lengths. ^b
Estimated number of inmates eligible for release or sentence reduction	An estimated 87,285 inmates would be eligible, based on 17,457 annually for each of the next 5 years.
Estimated bed year reduction and cost savings	Approximately 17,990 bed years would be saved over 5 years, or \$198 million. Given the size of these potential reductions in offenders' sentences and required bed space, per capita savings could occur; which means savings could be as much as \$564 million over the first 5 years. ^c
Expert-identified potential advantages	<ul style="list-style-type: none"> • This could significantly reduce average sentences, reducing BOP overcrowding and costs. • It could make sentences more proportionate to the crime. • It could result in sentences that are individualized to the risks and needs of the particular offender.
Expert-identified potential disadvantages	<ul style="list-style-type: none"> • Released offenders may recidivate, which could increase crime. • Overall reduction of guideline length does not address the specific offender risks and needs. Unilateral reduction in sentences could be a relatively blunt approach to reducing sentences for all types of drug offenders. • This may not address issues raised by statutory mandatory minimum sentences or differentiate among crimes committed by offenders receiving a reduced sentence.

^aThis option was approved by a vote of the USSC on April 10, 2014, and transmitted to Congress on April 30, 2014; the proposed amendment will go into effect on November 1, 2014, unless Congress acts to modify or disapprove the amendment to the sentencing guidelines.

^bAccording to the USSC, if this option was implemented, and if the courts were to grant the full reduction possible in each case, the projected new average sentence for the eligible offenders would be 51 months versus a current average of 62 months, or a reduction of about 18 percent.

^cPer capita savings were calculated using BOP fiscal year 2014 average per capita costs. BOP's fiscal year 2014 enacted Salaries and Expenses appropriation of \$6.769 billion was divided by the July 24, 2014, population of about 216,000. Future-year savings were not adjusted for inflation.

Option 5: Apply the amendments to sentencing guidelines in option 4 also to incarcerated drug offenders—that is, to both new drug offenders and retroactively to incarcerated drug offenders^a

Description	Under this option, the provisions of option 4 would apply both to new drug offenders and also retroactively to incarcerated drug offenders. This would reduce the sentences for all future and currently incarcerated drug offenders by two levels below current USSC guidelines, resulting in a roughly 19 percent reduction below current lengths. ^b
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Option 5: Apply the amendments to sentencing guidelines in option 4 also to incarcerated drug offenders—that is, to both new drug offenders and retroactively to incarcerated drug offenders^a

Estimated number of inmates eligible for release or sentence reduction An estimated 132,635 inmates would be eligible for sentence reductions (87,285 from option 4 and 45,350 from applying option 4 retroactively.)

Estimated bed year reduction and cost savings This is estimated to save 81,303 bed years over the first 5 years, saving about \$894.3 million. (17,990 bed years from future cost avoidance and 63,313 bed years saved from retroactively applying the reduction in sentence lengths). For retroactivity over a period of 6 or more years, an estimated additional 16,426 bed years would be saved, producing an additional \$181 million in savings.^c (Future-year cost avoidance savings beyond the first 5 years were not calculated.)

Given the size of these potential reductions in offenders and required bed space, per capita savings could occur; which means savings could be as much as \$2.548 billion over the first 5 years, and an additional \$515 million in the sixth year and after. This would mean a total savings of about \$3.1 billion.^d

Expert-identified potential advantages^e

- This could reduce BOP population, thereby reducing overcrowding and improving prison safety; it would increase the ability to shift (saved) funds to other priorities such as rehabilitation programs.
- It could enhance fairness and proportionality in sentencing by ensuring that those in BOP custody for the same crime have similar sentences.
- It could reduce BOP population and therefore save money.

Expert-identified potential disadvantages

- Released offenders may recidivate, which could increase crime.
- This could reduce prosecutorial leverage to get plea bargains in exchange for evidence against those higher up in a criminal organization.
- It could base release decisions solely upon guideline length reduction without a separate and current risk/needs assessment and without taking into consideration offender behavior and programming while incarcerated, which may result in increased recidivism.^f

^aApplying the sentencing guidelines in option 4 retroactively to eligible incarcerated offenders was approved by a vote of the USSC on July 18, 2014; the decision amended a policy statement related to the proposed amendment to the sentencing guidelines. As such, it corresponds to the April 30 USSC decision and does not require separate congressional action. Unless Congress acts to modify or disapprove the corresponding April 30 amendment, beginning November 1, 2014, eligible offenders can ask courts to reduce their sentences. Offenders whose requests are granted by the courts may not be released earlier than November 1, 2015. The Attorney General announced after the USSC vote that at his direction, BOP will begin notifying federal inmates of the opportunity to apply for a reduction in sentence immediately. BOP subsequently notified inmates about the USSC amendment.

^bAccording to the USSC, retroactive application of option 4 would result in an average sentence for those eligible of 108 months, a reduction of 25 months from the current average of 133 months (18.8 percent less). The USSC also noted that sentences will be reduced retroactively only after consideration by a judge in each case.

^cAccording to the USSC, 80 percent of the sentence reductions, and hence cost avoidance savings, would occur within the first 5 years of implementation. Fiscal year 2014 average marginal costs of \$11,000 are not adjusted for future inflation. The remainder of the savings would occur over nearly 25 years, because of the length of the sentences of some of those potentially eligible.

^dPer capita savings were calculated using BOP fiscal year 2014 average per capita costs. BOP's fiscal year 2014 enacted Salaries and Expenses appropriation of \$6.769 billion was divided by the July 24, 2014, population of about 216,000. Future-year savings were not adjusted for inflation.

^eExpert entities were asked to comment on this option before it was approved. The approved version delays implementation by 1 year (to November 2015). Since this did not affect the substance of the proposed change, we report the experts' comments as stated to us.

^fThe USSC notes that sentences will be reduced retroactively only after consideration by a judge in each case. The option reviewed by expert entities did not have this requirement as it was approved by the USSC after the list of options had been sent to the expert entities for review and comment.

Option 6: Increase good time credits for good conduct time (GCT)

Description	BOP has discretionary authority to award credit toward the service of an inmate's sentence, beyond the time served, of up to 54 days per year of sentence served if the inmate has displayed exemplary compliance with institutional disciplinary regulations. As applied by BOP, this actually results in 47 days earned per year of sentence imposed because inmates do not earn GCT credit for years they do not ultimately serve because of being released early. ^a Under this option, the GCT credit would be awarded to current offenders using a formula that would result in 54 days' credit per year of sentence, rather than the current BOP interpretation that limits the GCT credit to 47 days per sentence year. This would result in eligible inmates serving 85 percent of their sentence, rather than the higher 87 percent average resulting from BOP's current interpretation of 18 U.S.C. § 3624(b).
Estimated number of inmates eligible for release or sentence reduction	Approximately 179,265 inmates would be eligible.
Estimated bed year reduction and cost savings	This would save 34,359 bed years, saving \$378 million, of which \$246 million (65 percent) would occur during the first 5 years after implementation. The remaining \$132 million would be saved in the sixth year and after. (According to a DOJ 2012 analysis of this potential change in calculating the GCT credit, it would take more than 30 years for all eligible inmates to be affected, given the length of some sentences.)
Expert-identified potential advantages^b	<ul style="list-style-type: none"> • This could reduce BOP population/ overcrowding, which has positive consequences, such as decreasing wait lists for recidivism programs, increasing safety, or freeing up resources for other priorities. • It could incentivize participation in programming aimed at reducing recidivism, promoting successful reentry. • It could save money over the long term through reduced recidivism.
Expert-identified potential disadvantages	<ul style="list-style-type: none"> • It could require additional slots or spaces for inmates to participate in qualifying programming, thereby requiring more funding. • It could undermine "truth in sentencing," which was the goal of mandatory sentences and public confidence in the criminal justice system. • Released offenders may recidivate despite participation in programming, thus increasing crime. For instance, inmates could "game the system" to get admitted to antirecidivism programs in order to get a reduced sentence.

^aSee [GAO-12-320](#) for further discussion of these issues.

^bExpert entities were asked to comment on both good conduct time credits and credited time that might be earned through participation in anti-recidivism programs, including substance abuse programs. However, because such programs incur costs, rather than producing cost savings, and participation rates could not be specified, we asked the USSC to estimate the potential savings from a change in the way that GCT is credited by BOP for current federal inmates.

Option 7: Make the current “safety valve” available to any drug offender with no offenses that receive 3 points under the criminal history point system^a

Description	Under this option, the current statutory requirements for eligibility for “safety valve” relief in drug cases involving a mandatory minimum penalty would be expanded to cover incarcerated offenders with any number of criminal history points under USSC guidelines, provided that the offender does not have a conviction for which the sentence imposed was a 3-point offense under USSC sentencing guidelines. The courts would be authorized to resentence all federal offenders convicted of a drug offense in a manner consistent with the revised statute. ^b
Estimated number of inmates eligible for release or sentence reduction	Approximately 11,949 inmates would be eligible (applies only retroactively). Of these, 10,259 (86 percent) would be released within the first 5 years following implementation.
Estimated bed year reduction and cost savings	This would save 15,889 bed years, saving \$175 million. ^c Of this, about \$150.5 million (86 percent) would be saved within the first 5 years following implementation.
Expert-identified potential advantages	<ul style="list-style-type: none"> • It could reduce BOP population/overcrowding, which has positive consequences, such as decreasing wait lists for recidivism programs, increasing safety, or freeing up resources for other priorities. • It could increase judicial discretion, resulting in less severe and more proportionate and fair sentences. • It could help reduce BOP overcrowding and thereby reduce costs.
Expert-identified potential disadvantages	<ul style="list-style-type: none"> • Released offenders may recidivate, which could increase crime. • It could reduce prosecutorial leverage to get plea bargains in exchange for evidence against those higher up in a criminal organization. • It may not address issues raised by statutory mandatory minimum sentences or differentiate among crimes committed by offenders receiving a reduced sentence. For example, point systems are inflexible; change must recognize that three 1-point offenses are not the same as one 3-point offense.

Source^e | GAO-14-821

^aThe safety valve was created by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, which directed that certain defendants sentenced for certain drug offenses who meet specified criteria would not be subject to mandatory minimum penalties. Accordingly, only defendants sentenced after the guideline amendment’s November 1, 1987, effective date who satisfy the safety valve requirements would be eligible for the reduced term of imprisonment.

^bUSSC guidelines are used to determine prison sentences based primarily on two factors: (1) the conduct associated with the offense (the offense conduct, which produces the offense level) and (2) the defendant’s criminal history (the criminal history category). In general, criminal history points are calculated by adding 3 points for each prior sentence of imprisonment exceeding 1 year and 1 month; adding 2 points for each prior sentence of imprisonment of at least 60 days but not more than 13 months; adding 1 point for each prior sentence of less than 60 days, and so forth. This option would

make more drug offenders eligible for sentencing by judges who would not be required to solely follow mandatory sentencing guidelines.

^cThe bed year fiscal year 2014 average annual marginal cost of \$11,000 is not adjusted for future inflation.

Option 8: Expand the safety valve as described in option 7 to include both nonviolent drug offenders and any nonviolent offenders provided that they do not have a 3-point offense

Description	Under this option, the current statutory requirements for eligibility for “safety valve” relief in drug cases involving a mandatory minimum penalty would be expanded to cover both drug offenders and other nonviolent (nondrug) offenders. No offender could have a conviction for which the sentence imposed was a 3-point offense under USSC sentencing guidelines. The courts would be authorized to resentence all federal offenders convicted of a nonviolent offense in a manner consistent with the revised statute.
Estimated number of inmates eligible for release or sentence reduction	Approximately 38,930 inmates would be eligible.
Estimated bed year reduction and cost savings	This could save 40,552 bed years, saving about \$446 million. Of this, about \$397 million (89 percent) would be saved in the first 5 years following implementation. The remaining \$49 million would be saved in the sixth year and after.
Expert-identified potential advantages	<ul style="list-style-type: none"> • This could reduce BOP population/overcrowding and would thus have positive consequences, such as decreasing wait lists for recidivism programs, increasing safety, or freeing up resources for other priorities. • It could result in sentences that are less severe and fairer, reducing prison overcrowding and improving prison safety; cost savings could permit shifting funds to other priorities, such as rehabilitation programs. • It could allow more judicial discretion (judges can render sentences focused upon the individual offender), thereby potentially increasing the likelihood of a successful outcome while simultaneously reducing the prison population.
Expert-Identified Potential Disadvantages	<ul style="list-style-type: none"> • It could reduce prosecutorial leverage to get plea bargains in exchange for evidence against those higher up in a criminal organization. • It could lead to disparities in sentencing across multiple jurisdictions, which sentencing guidelines were intended to address. • It could shorten sentences too much below original intent.

Sources: USSC analysis, GAO analysis of USSC and BOP data, and GAO analysis of expert responses. | GAO-14-821

As the Attorney General has noted, without action to reduce the current size of BOP’s population, and projected future growth, BOP will continue to require an ever greater share of DOJ’s budget, having increased from about 14 percent of that budget in 1980 to nearly 25 percent in the fiscal year 2015 request. As table 4 shows, a number of options outside of BOP’s current authority exist by which the sentence lengths of

prospective and incarcerated offenders could be reduced (producing bed year savings), as well as the number of offenders to be incarcerated, such as under the Attorney General's August 2013 Smart on Crime direction (option 3). Hence, BOP's costs could be reduced, but the range of potential savings from these options is great. As illustrated in table 4, actual savings are greater for options that apply to current offenders compared with those that apply only prospectively. For example, retroactively reducing drug sentences by about 44 percent (option 1) would have the greatest estimated cost savings: \$4.1 billion using marginal cost savings, or \$11.626 billion if per capita savings were to occur. Other options would have a lesser impact, such as avoiding charging future low-level, nonviolent drug offenders with charges that result in mandatory minimum sentences, which could be a savings of \$8.7 million in marginal costs over 5 years (option 3). However, as discussed earlier, cost savings is one of many considerations in weighing which, if any, option could be adopted. Equally important is consideration of the advantages and disadvantages associated with each option.

Conclusions

According to BOP officials, BOP's biggest challenges are managing the continually increasing federal inmate population while providing for inmates' care and safety, as well as the safety of BOP staff and surrounding communities, within budgeted levels. BOP has made improvements in its effective use of resources a strategic goal. Toward that end, BOP has implemented mechanisms that allow it to identify opportunities for cost savings, such as an internal website through which BOP staff can view cost efficiency efforts being implemented across BOP, and undertaken cost-savings efforts, such as in energy conservation. However, establishing a mechanism for relevant Central Office divisions to consistently monitor bureau-wide corrective actions and assess their progress in the presence of repeated frequent or significant findings could help BOP better ensure that it is resolving such deficiencies promptly and, ultimately, operating more efficiently.

BOP's inmate population is its primary cost driver; however, BOP's ability to reduce its population, and thus its costs, are limited. Potential changes outside of BOP's authority could substantially reduce both BOP's population and its costs. Expert entities and states from which we obtained views reported that there are potential trade-offs to implementing these options. Some expert entities observed that release of offenders poses the risk of recidivism and that reductions in sentence length could reduce prosecutors' leverage in extracting information from low-level criminals that is used to prosecute higher-level ones. At the same time, other expert entities reported potential advantages to these

options, such as making sentence lengths more commensurate with the crime committed. These experts' analyses of the possible savings and the potential advantages and disadvantages, beyond cost savings, of these options may be useful for policymakers to consider as they weigh whether and how to address BOP's population and, ultimately, its costs.

Recommendation for Executive Action

To enable BOP to promptly address repeated frequent deficiencies and other significant findings it identifies through its program reviews in areas of high cost across multiple institutions, we recommend that the Director of the Bureau of Prisons establish a mechanism for relevant Central Office divisions to consistently monitor bureau-wide corrective actions.

Agency Comments and Our Evaluation

We requested comments on a draft of this report from DOJ. In an email received September 17, 2014, the DOJ liaison stated that DOJ concurred with our recommendation. The Department did not provide official written comments to include in our report, but did provide written technical comments, which we incorporated as appropriate. The U.S. Sentencing Commission also provided written technical comments, which we incorporated as appropriate.

We are sending copies of this report to selected congressional committees, the Attorney General, the Director of BOP, and other interested parties. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any further questions about this report, please contact me at (202) 512-9627 or MaurerD@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VIII.



David C. Maurer
Director, Homeland Security and Justice Issues

List of Requesters

The Honorable Tom Coburn, M.D.
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable John Cornyn
Ranking Member
Subcommittee on Immigration, Refugees and Border Security
Committee on the Judiciary
United States Senate

The Honorable Orrin G. Hatch
Ranking Member
Subcommittee on Oversight, Federal Rights and Agency Action
Committee on the Judiciary
United States Senate

The Honorable Michael S. Lee
Ranking Member
Subcommittee on Antitrust, Competition Policy and Consumer Rights
Committee on the Judiciary
United States Senate

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
House of Representatives

The Honorable F. James Sensenbrenner Jr.
Chairman
Subcommittee on Crime, Terrorism, Homeland Security, and
Investigations
Committee on the Judiciary
House of Representatives

The Honorable Jason Chaffetz
House of Representatives

Appendix I: Objectives, Scope, and Methodology

We addressed the following questions as part of this review:

- 1) What are the major costs for Bureau of Prisons (BOP) operations, and what actions has BOP taken to implement cost savings?
- 2) To what extent does BOP have mechanisms to identify opportunities for cost efficiencies and to take corrective actions that may improve cost efficiency?
- 3) What potential changes, both within and outside of BOP's authority, could lead to cost reductions or improved efficiencies in BOP operations, and what might be the potential impact of these changes?

To address the first question, we obtained historical obligation data from BOP's Financial Management Information System for fiscal years 2009-2013—a 5-year time frame to provide us with an adequate understanding of trends in BOP obligation levels—to identify the major costs incurred by BOP for its Salaries and Expenses account, which generally represents 98 percent of BOP's budget.¹ We have assessed the reliability of these data and determined them to be reliable for the purposes of this report. This assessment included performing checks on the data received and interviewing officials responsible for compiling and maintaining these data. We also collected data (e.g., cost savings estimates prepared by BOP) and documentation, such as memos and concept papers approved by executive staff from fiscal years 2009 through 2013; through review of these data and documents and interviews with relevant agency officials, we determined that these data are also reliable for the purposes of this report. In addition, we interviewed Central Office-, regional-, and institutional-level officials to identify to the extent possible all existing cost efficiency and savings initiatives adopted by BOP and their impact on its overall budget.

To address the second question, we reviewed the processes and tools at BOP during the same time period (fiscal years 2009-2013) that identify, implement, and promote cost-efficiency and savings initiatives throughout its institutions, such as executive staff meetings and a catalog compiling cost-savings initiatives. With respect to identifying additional opportunities to realize cost efficiencies or reduce costs, using our financial analysis as

¹BOP is appropriated funds through two accounts: Salaries and Expenses and Buildings and Facilities. We focused our review on the Salaries and Expenses account as it represents almost the entirety of BOP's budget.

context, we analyzed elements of BOP's internal control system related to the control objective of achieving operational efficiencies and interviewed relevant officials to assess whether BOP has a management structure and processes to routinely assess its administrative and operational activities for possible corrective action. Specifically, we reviewed BOP's mechanisms and processes leading to its internal review of operational and administrative functions, including its process for taking corrective action, related to high-cost areas and compared these characteristics with those called for in *Standards for Internal Control in the Federal Government*.²

To address the third question, on potential policy changes both within and outside BOP's authority that could lead to BOP cost savings, we collected analysis and documentation from the Department of Justice (DOJ), BOP, the U.S. Sentencing Commission (USSC), and entities selected for their expertise in criminal justice issues, and, in particular, potential changes to federal sentencing policies.³ We identified these expert entities through several means, including (1) asking officials at both the USSC and the Urban Institute who have previously worked on analyses and reports relevant to prison population data and criminal justice to identify entities they considered as expert in the field of sentencing reform and criminal justice, (2) conducting a literature search to identify publications issued by some of the entities on sentencing reform or corrections, and (3) identifying entities with known expertise and authoritativeness (e.g., the ABA) in the criminal justice field through literature searches. These entities may not be representative of the universe of expert entities in the criminal justice field and therefore may not represent all views on this topic; however, their views provide insights. We obtained data from

²GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00.21.3.1](#) (Washington, D.C.: Nov. 1, 1999). Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.

³The expert entities from which we requested or obtained analysis or information on sentencing issues were the American Bar Association (ABA); the Association of State Correctional Administrators; the Brennan Center for Justice; the Council of State Governments/Justice Center; Families Against Mandatory Minimums; the Fraternal Order of Police; the Heritage Foundation; the National Association of Assistant U.S. Attorneys; the National Association of Former U.S. Attorneys; the Pew Charitable Trusts; "Right on Crime," a project of the Texas Public Policy Foundation in cooperation with the Justice Fellowship; the Sentencing Project; the Urban Institute; and the Vera Institute of Justice.

calendar year 2011 through July 2014 from BOP on the impact on BOP's population and costs resulting from changes implemented by BOP to broaden the criteria for compassionate release of offenders, as well as analyses from the USSC on the estimated impact of the memorandum accompanying the Attorney General's August 2013 DOJ Smart on Crime initiative that instructed prosecutors to decline to charge certain defendants in certain types of drug cases in such a manner as to trigger mandatory minimum sentences. For data on efforts taken under BOP's authority, we assessed the reliability by reviewing documentation and interviewing knowledgeable officials; we determined the data to be sufficiently reliable for the purposes of this report. For data on the impact of policy changes outside BOP's authority, we obtained analyses from the USSC. According to our audit objectives, we determined based on its expertise that the evidence obtained from the USSC provides a reasonable basis for our findings and conclusions.

We reviewed sentencing reform options identified by the expert entities, as well as analyses of these options from these entities. We identified these entities on the basis of their demonstrated expertise as well as to ensure that a wide range of views on the advantages or disadvantages of potential changes to existing sentencing guidelines was covered. GAO is not taking a position on any of these options, but presents information on estimated cost savings and experts' views of advantages and disadvantages for such options to inform policymakers as they weigh whether and how to address rising costs at BOP.

On the basis of the options we identified, we compiled a list of seven sentencing guideline and related changes that were being widely considered and discussed among expert entities at the time we began our review and during the course of the review. We also included one change resulting from a memorandum issued by the Attorney General in August 2013 to U.S. Attorneys instructing them to decline to charge certain defendants in certain types of drug cases in such a manner as to trigger mandatory minimum sentences. These selected options were based on our assessment of proposals put forward by several sources, including the Attorney General, expert entities, states with experience with criminal justice reform, and advocacy entities with a range of views on criminal justice reform. See appendix II for the letter sent to expert entities asking for their assessment of options, which provides a list of the proposals that were used to develop the selected options. During the course of our review, two of these options were approved by the USSC, with the amendment to the sentencing guidelines forwarded to Congress. This amendment will become effective on November 1, 2014, unless Congress

acts to modify or disapprove the amendment. The two options approved are closely related—the first, approved by the USSC on April 10, 2014, reduces the sentences for future (federal) drug offenders, such that there would be an approximately 18 percent reduction in the average length of such sentences compared with sentences under current guidelines. The second was approved on July 18, 2014, by USSC, and applies the reduction retroactively—that is, to currently incarcerated drug offenders.⁴ After the USSC July 18 vote to make the drug sentence reductions retroactive (if eligibility criteria are met), the Attorney General issued a statement that, at his direction, BOP will begin notifying federal inmates of the opportunity to apply for a reduction in sentence immediately. Unless Congress modifies or disapproves the amendment to the sentencing guidelines submitted by the USSC, beginning November 1, 2014, eligible offenders can ask courts to reduce their sentences. Offenders whose requests are granted by the courts can be released no earlier than November 1, 2015, under the USSC provision. For the purposes of this report, we refer to these two changes by the USSC, and the Attorney General's August 2013 directive to U.S. Attorneys, and to the other options collectively as eight options.

For each of these eight options, we asked the USSC to estimate the impact on the size of the BOP inmate population. The USSC calculates such impact in bed years; 1 bed year is defined by the USSC as 12 months of prison time (e.g., one offender in prison for 1 year, or three offenders in prison for 4 months each, and so forth). Using the USSC bed years' savings estimates, we then calculated cost savings or cost avoidance that could result from implementing a given option.⁵ The USSC analyses of these eight options are reproduced in appendix VII.

⁴According to the USSC, the July 18, 2014, action amends a policy statement to provide for retroactive effect to the proposed amendment to the sentencing guidelines and as such, does not require submission to Congress.

⁵We calculated savings that would result from reductions in BOP population or cost avoidance savings resulting from increases below what would otherwise occur if an option was not implemented, by multiplying bed years saved by the annual marginal cost for a prisoner. BOP defines marginal costs as the cost of adding one offender for 1 year; these cover food, medical, clothing, and utilities. For fiscal year 2014, the average annual marginal cost per offender is about \$11,000. For some options that could result in reduced sentences and earlier releases of about 78,000 or more offenders, we also calculated per capita savings, as such population reductions that could allow BOP to reduce its staff or close facilities.

In addition, we asked the 14 expert entities to comment on the options with regard to their view of the advantages or disadvantages of implementation of the eight options. We also identified 4 states (Texas, Louisiana, Ohio, and North Carolina) that have had at least 1 year's experience in implementing state-level sentencing and criminal justice changes similar to the ones being discussed for federal offenders, and asked them to comment on the potential options for change.⁶ We selected Louisiana, Ohio, and North Carolina also because they are participants in the joint DOJ-Pew Charitable Trust Justice Reinvestment Initiative (JRI), which funds implementation of changes to state sentencing and criminal justice policies intended to reduce prison populations and recidivism, and these states were also the largest in terms of annual spending on corrections among the JRI states with at least 1 year's experience in implementing JRI-related initiatives.⁷ We selected Texas because, as of 2012, it had both the largest state prison population in the United States and was cited by the Urban Institute as an early leader in criminal justice reform initiatives that DOJ used as a model for the Justice Reinvestment Initiative program. We received responses from 17 of the 18 entities (the 14 expert entities and 4 states) to which we sent the letter.⁸

We conducted this performance audit from July 2013 to September 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our

⁶As of January 2014, there were 17 states that are or have been participants in DOJ's Justice Reinvestment Initiative (JRI) program. Of these 17, only 3—Louisiana, Ohio, and North Carolina—had had at least 1 year's experience implementing JRI-related programs. Texas is not a JRI participant but is cited as one of the models for JRI programs by DOJ.

⁷DOJ and the Urban Institute: *Justice Reinvestment Initiative State Assessment Report* (January 2014: Washington, D.C.) The DOJ Bureau of Justice Assistance funded the JRI, in a public-private partnership with the Pew Charitable Trusts, to provide technical assistance and financial support for system-wide criminal justice reform efforts. Under the JRI model, a bipartisan working group uses comprehensive data analyses to identify the drivers of the local corrections population and costs and foster support for a set of cost-effective policy options addressing those drivers.

⁸Of the 18 entities to which we sent a request for comments, 17 acknowledged receipt of our request. Of these 17, 3 did not provide substantive comments, leaving 14 that provided comments. Of the 3 that did not provide substantive comments, 1 referred us to multiple articles published on criminal justice issues.

findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Letter Sent to Select States and Expert Entities

March 24, 2014

The U.S. Government Accountability Office (GAO), the investigative arm of the U.S. Congress, is carrying out a research engagement (GAO job #441173) on ways in which the Federal Bureau of Prisons (BOP) can achieve cost efficiencies. As part of this work, we will be listing select options that would require action by entities other than BOP—such as changes enacted by Congress and the President that could affect the size of the BOP prison population, or changes in sentencing guidelines that could be promulgated by the U.S. Sentencing Commission (USSC) and possibly also applied retroactively. These options include proposals identified by a number of experts or included in pending legislation that would likely help reduce costs at BOP. We are writing you to ask for your comments or observations on these select options.

These options are based on an assessment of varying proposals put forward by several sources:

- Proposals and guidance from the U.S. Attorney General on sentencing reform, including changes to charging procedures ordered in August 2013 as part of the DOJ Smart on Crime Initiative to avoid incarceration of low-level, non-violent drug offenders.
- Potential cost-saving changes or concepts identified by expert entities, including the USSC; the Pew Charitable Trusts; the Urban Institute; the Heritage Foundation; the Vera Institute of Justice; the Council of State Governments/Justice Center; and the American Bar Association, some of which are also included in pending legislation.
- The experiences of various states in recent years with criminal justice reform, often intended to reduce prison populations and recidivism, including Texas and 17 states involved in the DOJ Justice Reinvestment Initiative (JRI) and as reported on in the January 2014 joint DOJ-Urban Institute report, *Justice Reinvestment Initiative State Assessment Report*.¹

¹DOJ and the Urban Institute: *Justice Reinvestment Initiative State Assessment Report* (January 2014: Washington, D.C.) The Bureau of Justice Assistance (BJA) funded the JRI, in a public-private partnership with the Pew Charitable Trusts, to provide technical assistance and financial support for system-wide criminal justice reform efforts. Under the JRI model, a bipartisan working group comprising key policymakers uses comprehensive data analyses to identify the drivers of the local corrections population and costs and foster support for a set of cost-effective policy options addressing those drivers.

- Comments and analyses by several expert/advocacy entities with a range of views on criminal justice reform including the National Association of Assistant United States Attorneys; the National Association of Former United States Attorneys; the Brennan Center for Justice at New York University School of Law; Families Against Mandatory Minimums; and Right on Crime: A project of the Texas Public Policy Foundation in cooperation with Justice Fellowship.

Based on common policy themes assessed or reported by the aforementioned sources, the options listed below are grouped into three broad categories (in most cases, there are several related proposals or concepts that have been put forth by various expert entities or experts):

- 1) Sentencing Reform—Proposals to Reduce Length of Mandatory Sentences;
- 2) Enhancement of “Good Conduct Time” reduction-in-sentence through good behavior by inmates and/or through participation in programs intended to reduce recidivism, enhance post-release employment chances, and/or reduce substance abuse; and
- 3) Proposals to expand the safety valve for offenders. A “safety valve” is a statutory exception to mandatory minimum sentencing laws that authorizes a judge to sentence a person below a mandatory minimum term if certain conditions are met. The current federal sentencing guidelines provide for a reduced sentence for persons who meet the current federal safety valve criteria (which apply only to drug trafficking cases) even in cases where a mandatory minimum penalty would not otherwise apply.

Instructions

For each option, we would like to ask you to briefly identify any potential “advantage” or “disadvantage”, based on your organization’s expertise or, for states, based on your experience in implementing some version of them (we recognize these vary considerably in detail). For example, an “advantage” for most of these proposals is sometimes stated to be to reduce overcrowding of prisons, or to reduce the waiting list for anti-recidivism educational or substance abuse programs. Alternatively, a “disadvantage” for some of these, as identified by some experts, is that a certain percentage of those released may commit crimes again and that, therefore, early release (v. serving the full sentence) may put someone back into society who may become a recidivist earlier than would otherwise have occurred.

GAO will generally present only the aggregate results of the responses to these questions in our report to Congress. Although in some cases individual responses may be discussed, the report will not include any information that could be used to identify individual respondents. Identifying information will not be released outside of GAO, unless compelled by law or pursuant to a Congressional request. See 31 U.S.C. §716.

Please start by saving the document as a Microsoft Word file to a hard drive before completing it, as your comments will otherwise not be saved. There are comment boxes below each of the options. Please type your responses in the space provided, which will expand automatically to accommodate your comments.

Group 1: Proposals to Reduce Length of Mandatory Sentences

Option A: Reduce the length of mandatory minimum sentences for drug-related offenses –for example, reduce the mandatory minimum sentences in drug trafficking cases from 20 years to 10 years; 10 years to 5 years; and 5 years to 2 years.

Your Comments

Advantage:

Disadvantage:

Additional:

Please check box if Not Applicable or Not Enough
Information to Comment

Option B: Make the amendments to drug mandatory minimum penalties of the Fair Sentencing Act of 2010 retroactive to those offenders currently incarcerated for crack cocaine-related offenses.

Your Comments

Advantage:

Disadvantage:

Additional:

Please check box if Not Applicable or Not Enough
Information to Comment

Option C: Avoid charging low-level non-violent drug offenders with a charge which results in a mandatory sentence.

Your Comments

Advantage:

Disadvantage:

Additional:

Please check box if Not Applicable or Not Enough
Information to Comment

Option D: Amend sentencing guidelines for all drug offenders—for example, reduce such sentences by a given percentage below current lengths (e.g., by 20 percent; by 10 percent).

Your Comments

Advantage:

Disadvantage:

Additional:

Please check box if Not Applicable or Not Enough
Information to Comment

Option E: Apply the amendments to sentencing guidelines in Option D to both new drug offenders and retroactively to incarcerated drug offenders.

Your Comments

Advantage:

Disadvantage:

Additional:

Please check box if Not Applicable or Not Enough
Information to Comment

Group 2: Proposals to Reduce Sentence Time Based on Good Conduct and/or Participation in Anti-Recidivism and Substance Abuse Programs

Option F: Increase good time credits for good conduct and/or participation in anti-recidivism programs, including substance abuse programs.

Your Comments

Advantage:

Disadvantage:

Additional:

Please check box if Not Applicable or Not Enough Information to Comment

Group 3: Proposals to Expand the Safety Valve for Drug and/or Other Offenders

Overview: The “safety valve” was created by the Violent Crime Control and Law Enforcement Act of 1994, which directed that lower-level defendants sentenced for certain drug offenses who meet specified criteria will not be subject to mandatory minimum penalties. Accordingly, only defendants sentenced after the guideline amendment’s November 1, 1995 effective date who satisfy the safety valve requirements are eligible for the reduced term of imprisonment.

Select Options:

Option G: Expand the current “safety valve” for drug offenders to make it available to offenders with more than one prior minor offense up to a certain limit (for instance, up to three criminal history points.)²

Your Comments

Advantage:

Disadvantage:

Additional:

Please check box if Not Applicable or Not Enough
Information to Comment

Option H: Expand the safety valve as described in Option G to include both drug offenders and other non-violent offenders (this would not apply to any sex offenders).

Your Comments

Advantage:

Disadvantage:

Additional:

Please check box if Not Applicable or Not Enough

²USSC guidelines are used to determine prison sentences based primarily on two factors: (1) the conduct associated with the offense (the offense conduct, which produces the offense level) and (2) the defendant’s criminal history (the criminal history category). In general, criminal history points are calculated by adding 3 points for each prior sentence of imprisonment exceeding one year and one month; adding 2 points for each prior sentence of imprisonment of at least sixty days but not more than 13 months; adding 1 point for each prior sentence of less than sixty days, and so forth. This option would make more drug offenders eligible for sentencing by judges who would not be required to solely follow mandatory sentencing guidelines.

Information to Comment

Additional Comments or Suggested Options

Finally, in the box below, please make any other comments or suggestions you may have, especially with regard to whether there are any other options for making cost effective changes to criminal justice rules or processes that you wish to bring to our attention.

Additional Comments or Observations: Other Options to Consider

This completes the requested assessment of potential options we are considering. Thank you for your time in providing your input on these options with regard to the federal criminal justice system.

Appendix III: Data on the Federal Bureau of Prisons' (BOP) Largest Cost Centers

Table 5 presents annual obligations data for fiscal years 2009 through 2013 for BOP's 20 largest cost centers during fiscal year 2013.

Table 5: Annual Obligations for Each of the Bureau of Prisons' (BOP) 20 Largest Cost Centers, Fiscal Years 2009 through 2013

Cost center	2009	2010	2011	2012	2013
Correctional Services	\$1,349,084,739	\$1,429,586,006	\$1,469,511,315	\$1,495,434,551	\$1,513,151,472
Privately Operated Secure Contract Facilities	\$486,680,887	\$544,310,237	\$556,674,258	\$625,636,747	\$624,456,406
BOP Medical Care ^a	\$493,979,657	\$518,183,641	\$545,304,468	\$565,568,091	\$595,492,696
Non-BOP Medical Care	\$319,585,026	\$351,572,156	\$362,448,629	\$385,865,248	\$419,927,987
Food Service	\$354,285,520	\$366,808,966	\$386,830,370	\$403,446,856	\$408,021,963
Unit Management	\$287,515,668	\$296,250,747	\$300,984,838	\$304,402,809	\$305,156,264
Contract Residential Reentry Centers	\$244,444,527	\$259,937,098	\$271,605,677	\$280,878,201	\$296,123,954
Construction and Mechanical Services	\$246,547,837	\$258,751,128	\$270,133,073	\$283,939,306	\$283,682,155
Purchased Utilities	\$231,373,396	\$238,163,022	\$239,485,407	\$285,387,855	\$250,421,579
Uncontrollables-Administrative	\$120,313,499	\$138,476,463	\$167,144,272	\$177,159,116	\$177,549,624
Education	\$108,573,667	\$115,174,065	\$120,343,124	\$125,397,895	\$125,822,670
Chief Executive Officer	\$103,826,162	\$108,540,721	\$109,648,711	\$108,185,902	\$110,346,853
Financial Management	\$97,038,156	\$101,538,642	\$103,963,681	\$103,675,217	\$107,468,147
Management and Administrative Support	\$90,888,006	\$96,183,777	\$99,626,401	\$101,044,832	\$103,648,380
Inmate Services	\$63,743,317	\$79,161,534	\$72,535,791	\$86,344,508	\$85,059,211
Leisure Time Activities	\$65,441,546	\$70,407,608	\$73,291,323	\$74,274,020	\$76,032,065
Drug Abuse Program	\$58,528,233	\$64,109,527	\$66,826,055	\$69,733,453	\$75,883,387
Psychology Services	\$44,748,555	\$47,206,056	\$49,624,556	\$51,534,118	\$52,438,931
Power Plant	\$45,741,334	\$48,326,306	\$49,020,235	\$49,020,897	\$50,507,908
Employee Services Department	\$39,935,664	\$41,446,038	\$43,837,987	\$44,717,642	\$44,002,882

Source: GAO analysis of BOP data. | GAO-14-821

Notes: All program areas above represent obligations incurred at the institutional level, except for the following:

Privately Operated Secure Contract Facilities (Contract Confinement Cost Centers, nationwide)

Contract Residential Reentry Centers (Contract Confinement Cost Centers, nationwide).

Uncontrollables-Administrative (National Programs). This cost center represents items that are tracked and funded out of the Central Office on behalf of the institutions, such as DOJ phone services, National Finance Center payroll processing, mail services, transit subsidies, and other items.

^aBOP Medical care includes costs of salaries and other costs associated with Public Health Services staff. According to BOP, these are medical professionals employed by the Department of Health and Human Services (HHS) who provide medical services to BOP institutions. While these Public Health Services staff are technically paid by HHS, BOP transfers the necessary funds over to HHS to pay for their services.

Appendix IV: Data on the Federal Bureau of Prisons' (BOP) Largest Subobject Class Expenses

Table 6 presents annual obligations data for fiscal years 2009 through 2013 for BOP's 20 largest subobject classes in fiscal year 2013. Compensation for full-time permanent staff has consistently been the greatest area of expense; personnel compensation and benefits account for most of the subobject classes listed below.

Table 6: Bureau of Prisons' (BOP) Obligations by Its 20 Largest Subobject Classes, Fiscal Years 2009 through 2013

Object/subobject class	2009	2010	2011	2012	2013
Personnel Compensation and Benefits^a					
Full Time-Permanent Appointment	\$1,843,183,744	\$1,935,330,619	\$1,982,819,749	\$1,984,097,551	\$2,012,540,824
Federal Employees' Retirement System Retirement, Law Enforcement Officers, and Firefighters	\$493,494,905	\$521,660,581	\$553,491,039	\$569,164,019	\$542,789,373
Federal Employees Health Benefits Act	\$213,563,268	\$232,974,957	\$258,500,221	\$272,741,587	\$269,165,149
Wage Board-Permanent Appointment	\$222,097,563	\$232,822,515	\$239,808,681	\$242,571,507	\$245,682,761
Federal Insurance Contributions Act	\$133,085,312	\$140,256,606	\$142,415,468	\$143,237,577	\$136,549,567
Overtime, Other than Wage Board	\$86,672,551	\$85,966,848	\$78,938,623	\$89,297,894	\$90,438,851
Contribution Accrual ^b	\$1,197	\$4,181			\$72,455,016
Thrift Savings Plan Matching Government Contribution	\$65,858,897	\$71,003,306	\$73,361,984	\$73,567,039	\$69,859,878
Employee Compensation (Injury or Death)	\$50,387,420	\$54,276,066	\$59,573,568	\$60,616,186	\$63,622,470
Holiday Pay	\$36,006,208	\$36,497,469	\$35,959,582	\$36,253,718	\$39,779,485
Other contractual services					
Contract Services ^c	\$640,758,937	\$751,876,304	\$781,896,029	\$861,571,108	\$936,791,945
Housing of Prisoners, Temporary Housing for Federally Assisted Witnesses ^d	\$309,231,120	\$290,455,682	\$307,978,195	\$282,334,113	\$250,236,250

Appendix IV: Data on the Federal Bureau of Prisons' (BOP) Largest Subobject Class Expenses

Medical Hospital Services	\$187,987,798	\$190,474,836	\$180,663,439	\$196,405,226	\$195,153,846
Other Services ^e	\$125,846,279	\$133,993,847	\$154,818,892	\$154,593,414	\$153,185,222
Supplies and materials					
Supplies/Purchase Card ^f	\$290,468,851	\$303,532,259	\$321,588,084	\$334,613,110	\$346,619,862
Food	\$92,074,252	\$90,759,178	\$101,156,094	\$104,630,698	\$108,460,308
Pharmaceutical, Other	\$62,758,400	\$62,558,146	\$63,259,284	\$71,464,265	\$75,396,816
Other Materials and Supplies ^g	\$35,919,356	\$48,650,402	\$34,869,912	\$44,093,428	\$42,889,721
Rent, communications, and utilities					
Electricity	\$99,700,242	\$103,055,828	\$106,759,993	\$103,184,518	\$105,136,797
Water	\$32,981,285	\$34,776,915	\$37,104,912	\$38,153,278	\$41,942,871

Source: GAO analysis of BOP data. | GAO-14-821

Notes: The obligations above do not include funds to pay salaries and other costs associated with Public Health Services staff. According to BOP, these are medical professionals employed by the Department of Health and Human Services (HHS) who provide medical services to BOP institutions. BOP tracks these obligations only by object classification and does not break them down by subobject class. For fiscal year 2013, the object class obligations were approximately as follows: Personnel Compensation, \$71 million; Personnel Benefits, \$31 million; Transportation of Things, \$437,000; Travel and Transportation of Persons, \$133,000; Other Contractual Services \$100,000.

^aItems under the Personnel Compensation and Personnel Benefits object classifications are combined in this table.

^bContribution Accrual—month-end accrual of DOJ contributions chargeable to other subobject classes, such as Federal Employees Health Benefits Act and Federal Insurance Contributions Act contributions. The accrual is reversed in the following month.

^cContract Services—contractual charges for consultants and other contractors, such as doctors, dentists, teachers, chaplains, legal advisors, architects, engineers, surveyors, appraisers, inmate commissary clerks, etc.

^dHousing of Prisoners, Temporary Housing for Federally Assisted Witnesses—charges for the housing of federal prisoners under the jurisdiction of the United States Marshals Service who are being held in nonfederal jail facilities. Charges for housing and moving expenses for witnesses under the Emergency Witness Assistance Program. Includes, but is not limited to, prisoners being held in state/local facilities, unsentenced prisoners, detained witnesses, the expense of 1 month's deposit on a rental property, moving expenses, truck rentals, etc., if such expenses are more cost-effective than hotel/motel stays; it may also include dependents and other family members, as appropriate.

^eOther Services—charges for services not otherwise classified. Includes premiums for surety bonds, money order fees, registration and license fees, charges for sanitation and towel service, charges for General Services Administration information centers and water cooler services.

^fSupplies/Purchase Card —purchases made with the government-issued credit card (nontravel) for supplies not to exceed \$3,000. BOP officials noted that some contracting officers can use the cards to make payments of up to \$30,000.

^gOther Materials and Supplies—charges for materials and supplies not otherwise classified.

Appendix V: Additional Federal Bureau of Prisons' (BOP) Efforts to Achieve Cost Savings and Efficiencies

In addition to efforts discussed earlier, BOP also reports pursuing the following initiatives that could provide current and future cost savings, shown in Table 7.

Table 7: Additional Cost-Savings Efforts Under Way or Being Pursued by the Bureau of Prisons (BOP)

Cost savings initiative	Description
Electronic Inmate Central File project	This is an ongoing effort in BOP to convert inmate paper records to electronic files. In 2010, BOP estimated that the logistics of moving, managing, and accounting for inmate paper files required approximately 1.2 million staff hours annually. BOP began this project to modernize bureau operations and repurpose the time spent managing these paper files back to focusing on the custody and care of inmates. BOP is currently testing an approach to integrate its data with that from the U.S. Marshals Service that it plans to complete by the end of August 2014. If successful, BOP officials state that they would then transfer documents from shared directories into the electronic files, which would be complete by the end of September 2014.
Program and administrative reductions	BOP's fiscal year 2015 Congressional Budget Justification contains \$157 million in program offsets through program and administrative reductions, which BOP officials reported will not be identified until 2015 funds are appropriated. According to BOP, these funds are necessary to pay for increases in costs, including pay raises, retirement contributions, and General Services Administration rent, among other things.
Medical Claims Adjudication	A contractor reviews the accuracy of payments for medical services provided through contractual agreements with health care providers, currently in place at 25 BOP facilities. BOP does not routinely track cost savings of these adjudications as they are considered more of an operational efficiency effort; however, officials stated that when this effort began at Federal Medical Center Butner, about \$1.3 million in savings was originally identified. As this effort has grown in scope, according to BOP officials, cost savings are difficult to quantify as service providers become more focused on accurate billings.
Medical Contracting Initiatives for Residential Reentry Center (RRC) Inmates	BOP is examining the feasibility of regional contracting options at specific locations for medical, dental, and mental health services for inmates at RRCs. Specifically, BOP acquisition staff are formulating a procurement strategy and engaged in informal discussions with vendors to identify an approach that will reduce medical costs while assisting RRC inmates' transition into their community. At this point, BOP has not established any time frames for this acquisition of services. In addition, BOP is hiring three Health Service Specialists to conduct medical bill adjudication for these services.
Mail order pharmacy	BOP is pursuing a Mail Order Pharmacy program to consolidate prescription drugs into one main inventory and buy the least expensive generic medications, as well as automate prescriptions, pending funding. However, this program has been on hold as BOP is working to identify potential new sites for this inventory, and funding for building renovation has been unavailable.
National contracts for medical resources	Through representation on the interagency Strategic Sourcing Leadership Council, BOP is pursuing use of a Department of Defense prime vendor contract to purchase medical and surgical supplies. ^a

Appendix V: Additional Federal Bureau of Prisons' (BOP) Efforts to Achieve Cost Savings and Efficiencies

Cost savings initiative	Description
Measuring cost effectiveness of health services	BOP's Health Services Division has tentatively identified nine metrics related to evaluating efficiency of health care services to report to its National Governing Board. These metrics will provide data on top diagnostic codes, top procedural codes, rate of rejected medical claims, drug expenditures, catastrophic care costs, outside medical trips, hospital readmission rates (catastrophic), annual health care expenditures, and average annual percentage growth in health care expenditures. BOP reports that all nine cannot be gathered in a systematic way, so the Health Services Division is researching alternative or proxy measures, with no current projected implementation date.
Purchase of garbage trucks	Over the last 3 years, BOP has purchased and provided 26 new garbage trucks, and estimates that about one-third of all institutions haul away garbage on their own, rather than paying contractors.

Source: GAO analysis of BOP information. | GAO-14-821

^aThe Strategic Sourcing Leadership Council was formed to lead governmental efforts in increasing the use of government-wide management and sourcing of goods and services in order to save money in contracting. This council is chaired by the Administrator for Federal Procurement Policy and contains representatives from a number of federal agencies.

Appendix VI: Expert Entities Providing Input on Prison Population Reduction Options

The expert sources that provided us with analysis or information on sentencing issues are listed in table 8.

Table 8: Expert Entities That GAO Consulted in Reviewing Selected Policy Options

Organization	Description
American Bar Association	A professional organization with nearly 400,000 voluntary members that supports the legal profession with resources for legal professionals while working to improve the administration of justice, accredit law schools, establish model ethical codes, and more.
Association of State Correctional Administrators	An organization consisting of state and Bureau of Prisons (BOP) officials focused on improving correctional practices. Among other things, the Association of State Correctional Administrators works to identify and promulgate correctional practices that are likely to reduce the number of offenders returning to prison after release.
Brennan Center for Justice, New York University School of Law	A nonpartisan law and policy institute that provides legal strategy and empirical research for legal and policy efforts in areas including mass incarceration.
Council of State Governments/Justice Center	A region-based forum that fosters the exchange of insights and ideas to help state officials shape public policy. The Council of State Governments' Justice Center is a national nonprofit organization that provides evidence-based strategies and advice to policymakers at the local, state, and federal government levels with the goal of increasing public safety—including work on reentry issues and reducing spending on corrections.
Families Against Mandatory Minimums	A nonprofit organization that advocates for federal and state prison sentencing reforms.
Fraternal Order of Police	With over 325,000 sworn law enforcement officers as members, this organization works to improve the working conditions of law enforcement officers and the safety of communities through education, information, community involvement, and employee representation.
Heritage Foundation	An independent, tax-exempt research and education institution that studies and advises policymakers on a variety of issues, such as federal spending and criminal law.
National Association of Assistant U.S. Attorneys	Formed to protect, promote, and advance the mission of Assistant U.S. Attorneys; their membership contains experts in a number of fields such as gang and narcotics prosecutions, among other things.
National Association of Former U.S. Attorneys	Established to promote the litigating authority and independence of the office of the U.S. Attorney, the association provides education and continuing professional relationships for former U.S. Attorneys.
Pew Charitable Trusts	An independent, nonprofit research and public policy organization focused on issues such as family financial security and various legal issues, among other things.
"Right on Crime," a project of the Texas Public Policy Foundation in cooperation with Justice Fellowship	The Texas Public Policy Foundation is a nonprofit, independent research institute focused on issues of personal responsibility and free enterprise. Right on Crime is an initiative focused on conservative ideas for criminal justice and prison reform in Texas and the nation.
The Sentencing Project	Conducts research and advocates for criminal sentencing reform.
Urban Institute	An organization that gathers data, conducts research, evaluates programs, offers technical assistance overseas, and educates the public on social and economic issues to foster public policy developments in areas such as justice, health care, and housing.
Vera Institute of Justice	An independent, nonpartisan organization that conducts data and policy analysis to provide assistance to government agencies on issues such as relations between police and immigrant communities and policy options to safely reduce prison and jail populations, among other things.

Source: GAO analysis of information from each entity listed above. | GAO-14-821

Appendix VII: Analyses of Options Provided by the U.S. Sentencing Commission (USSC)

This appendix reproduces the methodology and analyses prepared by the U.S. Sentencing Commission (USSC) in developing estimates of the impact on the Federal Bureau of Prisons (BOP) inmate population of eight options for cost saving that are outside BOP's authority and that are widely discussed among criminal justice policy experts and entities. GAO identified these eight options based on our assessment of proposals put forward by several sources, including the Attorney General, expert entities, states with experience with criminal justice reform, and advocacy entities with a range of views on criminal justice reform. GAO is not taking a position on any of these options, but presents information on them to inform policymakers as they weigh whether and how to address rising costs at BOP. The USSC estimates on the inmate population are reported in the full report.

For options 1, 2, 5, 6, 7 and 8, the USSC prepared a written analysis describing its estimate of the impact of changes specified by the option. For options 3 and 4, the USSC provided tables showing estimated impact. A description of the option analyzed by the USSC and further information relevant to specific analyses are included with each analysis or table below.

1. USSC analysis of option 1: Reduce the length of mandatory minimum sentences for incarcerated drug offenders.

Under this option, the sentences of certain incarcerated drug offenders convicted of an offense carrying a mandatory minimum sentence would be reduced by an average of about 44 percent—for example, from 10 years to 5 years and from 5 years to 2 years. Incarcerated offenders who have completed their recalculated sentence (i.e., if the time served exceeded the new sentence length) would be released.

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April 11, 2014

Jonathan R. Tumin
Senior Analyst
U.S. Government Accountability Office
441 G St., NW
Washington, DC 20548

Dear Mr. Tumin:

The Government Accountability Office has asked the U.S. Sentencing Commission to assist it in connection with its engagement (number 441173). We understand that through this engagement the GAO is examining ways in which the operating costs of the Federal Bureau of Prisons (BoP) can be reduced. As we have previously discussed with you and your colleagues, the Commission has agreed to analyze on GAO's behalf several policy options which could reduce the overall size of the prison population that the BoP administers. Specifically, our analyses of these policy options will consider the effect on the federal prison population if the policies were implemented in such a way that the options would apply to inmates currently incarcerated in the BoP system.

In this memorandum, we provide to you another of these estimates. Here we provide our estimate of the impact on the federal prison population if the current statutory mandatory minimum penalties for drug offenses of 5, 10 and 20 years were reduced to 2, 5, and 10 years, respectively, and the courts were authorized to resentence all federal offenders convicted of a drug offense carrying one of these mandatory minimum penalties under a sentencing framework that incorporated the new minimum penalties.

As we discuss more fully below, we estimate that 78,106 offenders who are incarcerated and would still be in prison as of October 1, 2014 would be eligible for a sentence reduction. The average reduction in sentence for these offenders would be 57 months (44.2 percent). The estimated total savings to the BoP from such a policy change applied retroactively would be 370,985 bed years.

I. The Policy Option We Considered

One of the policy options that we have agreed to examine on behalf of the GAO is the impact of a policy change in current law whereby the current statutory mandatory minimum penalties for drug offenses of 5, 10 and 20 years were reduced to 2, 5, and 10 years, respectively (the “Policy Option”).¹ As part of our analysis, we have assumed that the courts would be authorized (most likely by statute²) to resentence all federal offenders convicted of a drug offense carrying one of these mandatory minimum penalties under a sentencing framework that incorporated the new minimum penalties.

II. What We Found

Applying the Policy Option to offenders in the custody of the BoP, we estimate that there are 78,106 offenders who would be incarcerated on October 1, 2014 who would be eligible for a reduction in their current sentence if the Policy Option were to be retroactively applied. If the courts were to grant each of these offenders the full reduction in their sentence we estimate that the total savings to the BoP would be 370,985 bed years.³

Table 1 provides information on some of the demographic characteristic of the offenders eligible for a sentence reduction pursuant to the Policy Option. Table 2 provides an estimate of the number of offenders who would be released each year if the Policy Option was applied retroactively compared to the number of offenders who will be released each year pursuant to their current sentence. As can be seen on this table, if the Policy Option were fully retroactive on October 1, 2014, more than 24,600 offenders would be eligible for immediate release. Within the first year of the effective date of the Policy Option, another 8,221 offenders would be eligible for release above the number who will be released under their current sentence. Table 3 provides information on selected sentencing guideline characteristics and the criminal history category of these offenders.

For the 78,102 offenders who would be eligible to receive a sentence reduction under the Policy Option, the current average sentence is 129 months. If the courts (or the President) were to grant the full reduction possible in each case, the projected new average sentence for these offenders would be 72 months, a reduction of 57 months (or 44.2 percent). Based on this reduction, the estimated total savings to the BoP from the retroactive application of the Policy Option would be 37,400 bed years. This savings

¹ See, e.g., 21 U.S.C. §§ 841(b), 960(b) (2006) (establishing five-, ten-, and twenty-year minimum penalties in certain drug cases).

² Another approach would be for the President to reduce the sentence for all offenders eligible for such a change using his clemency powers. See U.S. CONST., art. II, § 2, cl. 2.

³ A “bed year” is the cost to the BoP of incarcerating one inmate for one year. For example, one inmate who serves five years of imprisonment accounts for five bed years.

would not be realized in any single year but is the cumulative savings realized over several years.

III. How We Conducted This Analysis

A. Methodology

The methodology for this analysis is based on the Commission's Prison Impact Model, which has been in use in some form since the guidelines were first developed. This model is used to estimate the impact of proposed statutory and guideline amendments on newly sentenced offenders and to project the future impact those amendments will have on bed space in the BoP. For this analysis, those offenders who appear to be eligible to receive a reduced sentence were hypothetically "resentenced" with the computer program as if the proposed policy change had been in effect in the year in which they were sentenced. A new release date for each offender also was calculated in order to determine when the offender would be eligible for release if he or she were provided the full reduction in sentence provided by the proposed policy change.

B. The Offender Population We Studied

The Bureau of Prisons provided the Commission with a datafile of inmates who were in the custody of the BoP on Jan 25, 2014. That file contained approximately 189,000 offenders. Approximately 184,000 of these offenders were sentenced between fiscal year 1992 and fiscal 2013.⁴ USSC staff was able to match 171,765 of these offenders to Commission records. Of these, 138,894 were estimated to remain incarcerated on October 1, 2014.

In order to approximate the group of offenders who will be sentenced in fiscal year 2014, the Commission used the FY2013 datafile and moved all sentence dates forward by one year. Staff then determined which of these offenders would be incarcerated on October 1, 2014. This process added another 40,178 offenders into the analysis. Between the two groups, the Commission's analysis included data on 179,072 offenders.

C. Our Assumptions

In performing our analysis, we have been required to make some assumptions (set forth below) concerning the decisions that Congress and the courts (or the President) would make in determining whether, and to what extent, to reduce the sentences of offenders eligible to receive a modification of sentence pursuant to the Policy Option discussed above. These assumptions may not hold in every case.

⁴ The analysis was limited to data from fiscal year 1992 through September 30, 2013 (fiscal years 1992 through 2013) because the Commission's data collection efforts prior to fiscal year 1992 were not as complete as in later years. For example, the Commission did not collect information on the type of drug involved in drug offenses prior to fiscal year 1992.

1. Procedural assumptions

Specifically, we have assumed that Congress would authorize the courts (or the President would issue an order) to reduce the sentences of offenders incarcerated on or after a specific date (discussed below) in a manner consistent with the *Guidelines Manual* and bound only by any mandatory minimum penalties that might apply in current law or as modified through the Policy Option being discussed. We also assumed that the Commission would make no further changes to the *Guidelines Manual* in light of the Policy Option, so that the provisions of the 2013 *Guidelines Manual* would apply in these cases. Finally, we assumed that the effective date of any such Policy Option would be October 1, 2014. Therefore, only offenders incarcerated as of that date would be eligible to seek a reduction in sentence pursuant to the Policy Option discussed in the memorandum.

2. Substantive assumptions

The policy we analyzed would have the effect of lowering the current statutory mandatory minimum penalties in drug cases from 5, 10, and 20 years to 2, 5, and 10 years, respectively. In fiscal year 2010, approximately 66 percent of all drug offenders were convicted of an offense carrying a mandatory minimum penalty.⁵ Of those, approximately 46 percent remain subject to the penalty at the time of sentencing.⁶ Some offenders receive relief from the effect of any such penalty by providing substantial assistance to the government in the investigation or prosecution of another offender.⁷ Others receive relief from such a penalty through the statutory “safety valve” provision which authorizes courts to sentence drug offenders without regard to any mandatory minimum penalty provided the offender meets several criteria designed to identify low-level, non-violent offenders with little or no prior criminal history.⁸ Some offenders are eligible for both provisions.

In our analysis, we provide a full reduction for all offenders who remained subject to a mandatory minimum penalty at the time of sentencing. That is, we reduce sentences by 60 percent for all offenders convicted of a 5-year mandatory minimum who remained subject to that mandatory minimum at sentencing. Similarly, we reduce sentences by 50 percent for all offenders convicted of a 10-year or a 20-year mandatory minimum penalty and who remained subject to that penalty at sentencing.

⁵ See U.S. SENTENCING COMMISSION, MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 154 (2011).

⁶ *Id.*

⁷ See 18 U.S.C. § 3553(e); USSG §5K1.1.

⁸ See 18 U.S.C. § 3553(f); USSG §5K3.1.

Drug offenders who receive relief from a mandatory minimum penalty by providing substantial assistance to the government have sentences that are, in general, 46 percent below the applicable guideline minimum sentence,⁹ which often is the mandatory minimum penalty.¹⁰ Drug offenders who receive relief from a mandatory minimum penalty through the statutory safety valve provision have sentences that are, in general, 39 percent below the applicable guideline minimum sentence.¹¹ The extent of these reductions fluctuates somewhat each year. Because these offenders benefitted from substantial reductions in their sentence at the time of the original sentence, we have assumed that any benefit to them from the Policy Option would not be as great as it would be for those offenders who remained subject to a mandatory minimum penalty at sentencing. Therefore, for this analysis, we made additional assumptions for these offenders, as follows:

-- offenders who were convicted of a drug offense carrying a 5-year mandatory minimum penalty, but who were not subject to any mandatory penalty at sentencing due to relief through substantial assistance or the safety valve would receive a further reduction of 30 percent under the Policy Option (i.e., 50% of the 60% reduction that offenders received if they remained subject to that mandatory minimum penalty at sentencing);

-- offenders who were convicted of a drug offense carrying a 10-year or 20-year mandatory minimum penalty, but who were not subject to any mandatory penalty at sentencing due to relief through substantial assistance or the safety valve would receive a further reduction of 25 percent under the Policy Option (i.e., 50% of the 50% reduction that offenders received if they remained subject to either of those mandatory minimum penalties at sentencing).

This analysis does not assume any change in sentence for offenders who were not convicted of a drug offense carrying a mandatory minimum penalty. It is possible, of course, that Congress (of the President) might authorize a reduction in sentence for drug offenders currently incarcerated but who were not convicted of an offense carrying a mandatory minimum penalty. Any such reduction would likely be tied to a change in the *Guidelines Manual* that incorporated the Policy Option. We are unable to model any change to the sentencing guidelines from a statutory enactment of the Policy Option, and so have excluded from this analysis any consideration of a change in sentence for drug offenders who were not convicted of an offense carrying a mandatory minimum penalty.

Additional assumptions we have made for this analysis are that the sentence for each offender would be reduced based on the maximum good conduct credit allowed by

⁹ See 2013 Sourcebook of Federal Sentencing Statistics, Table 30 (2014).

¹⁰ See USSG §5G1.1 (which provides that the minimum guideline sentence may not be lower than any mandatory minimum penalty).

¹¹ See 2013 Sourcebook of Federal Sentencing Statistics, Table 30A (2014).

the Bureau of Prisons, and offenders would serve the lesser of the newly calculated sentence or their life expectancies.

If you have any questions about our analysis, please do not hesitate to contact the Commission. We continue to work to analyze the other policy options that we discussed with you and your colleagues. We will provide our analyses of these options as they are completed.

Sincerely,



Noah D. Bookbinder
Director
Office of Legislative and Public Affairs



Glenn R. Schmitt
Director
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Attachments

Table 1

Demographic Characteristics of Drug Offenders
Convicted of a Drug Offense Carrying a 5, 10, or 20-Year Mandatory Minimum Penalty
Eligible for 2, 5, and 10-Year Mandatory Minimums

DEMOGRAPHICS

Race/Ethnicity

White	14,773	19.0%
Black	27,512	35.3%
Hispanic	34,096	43.7%
Other	1,590	2.0%
Total	77,971	100.0%

Citizenship

U.S. Citizen	57,783	74.1%
Non-Citizen	20,242	25.9%
Total	78,025	100.0%

Gender

Male	72,257	92.5%
Female	5,845	7.5%
Total	78,102	100.0%

Average Age

35
(as of October 1, 2014)

¹The analysis involves a total of 78,106 cases in which the offender was identified as eligible to seek a sentence reduction if the drug mandatory minimum changes were made retroactive. Cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to exactly 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13 and projected 2014 Datafile.

Table 2

**Estimated Projected Year of Release for Drug Offenders
Potentially Eligible for Mandatory Minimum Sentence Reduction**

Release Date	If Policy Option Applied Retroactively	CURRENT SENTENCE
	N	N
immediate	24,601	
within 1 yr	12,515	4,294
within 2 yr	12,191	9,223
within 3 yr	8,546	10,166
within 4 yr	6,404	9,256
within 5 yr	4,363	7,852
within 6 yr +	9,482	37,311

¹Of the 78,106 offenders who appear to be eligible for relief if the Policy Option was applied retroactively, Commission records contained sufficient information to perform perform this analysis for 78,102 offenders.

SOURCE: U.S. Sentencing Commission, 1992 - 2012 Datafiles, USSCFY92 - USSCFY13 and projects.

Table 3
Guideline Sentencing Characteristics and Criminal History of
Drug Offenders Potentially Eligible for Mandatory Minimum Sentence Reduction

CHARACTERISTICS		
Average Base Offense Level		32
Weapon Specific Offense Characteristic	14,729	18.9%
Firearms Mandatory Minimum Applied	7,433	9.5%
Safety Valve §5C1.2	14,042	18.1%
Aggravating Role §3B1.1	11,549	14.8%
Mitigating Role §3B1.2	6,675	8.6%
Obstruction Adjustment §3C1.1	3,660	4.7%
Career Offender Status §4B1.1	10,982	14.1%
<u>Criminal History Category</u>		
I	28,925	37.0%
II	9,652	12.4%
III	12,995	16.6%
IV	6,853	8.8%
V	4,079	5.2%
VI	15,602	20.0%
Total	78,106	100%

¹The analysis involves a total of 78,106 cases in which the offender was identified as eligible to seek a sentence reduction if the drug mandatory minimum changes were made retroactive. Cases missing information for any specific analysis are excluded from that analysis.

²The average base offense level was excluded from this analysis due to missing guideline relevant statutory information from the new sentence.

Total percentages may not add to exactly 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1992 - 2012 Datafiles, USSCFY92 - USSCFY13 and projected 2014 Datafile.

2. USSC analysis of option 2: Retroactively apply the Fair Sentencing Act (FSA) of 2010 reductions in drug mandatory minimum penalties to offenders currently incarcerated for crack cocaine-related offenses.

This option would retroactively apply to eligible incarcerated offenders the reductions in mandatory minimum penalties for crack cocaine-related offenses that are provisions of the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372, which did not apply to offenders already sentenced under the original penalty guidelines.

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February 20, 2014

Jonathan R. Tumin
Senior Analyst
U.S. Government Accountability Office
441 G St., NW
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Dear Mr. Tumin:

The Government Accountability Office has asked the U.S. Sentencing Commission to assist it in connection with its engagement (number 441173). We understand that through this engagement the GAO is examining ways in which the operating costs of the Federal Bureau of Prisons (BoP) can be reduced. As we have previously discussed with you and your colleagues, the Commission has agreed to provide to the GAO the results of our analyses of several policy options which could reduce the overall size of the prison population that the BoP administers. Specifically, our analyses of these policy options will consider the effect on the federal prison population if the policies were implemented in such a way that the options would apply to inmates currently incarcerated in the BoP system.

In this memorandum, we provide to you the first of these estimates. Here we provide our estimate of the impact on the federal prison population if the provisions of the Fair Sentencing Act of 2010¹ (the "FSA") were authorized to apply to persons currently incarcerated and sentenced before the enactment of that law. As we discuss more fully below, we estimate that 8,829 offenders who were incarcerated on January 1, 2014 would be eligible for a sentence reduction if the FSA were applied retroactively beginning on that date. If the courts were to reduce the sentence of each eligible offender in accordance with the FSA and the current *Guidelines Manual*, the average reduction in sentence for these offenders would be 53 months (28.8 percent). The estimated total savings to the BoP would be 37,400 bed years.

¹ Pub. L. No. 111-220, 124 Stat. 2372 (2010) [hereinafter FSA].

I. Statutory Changes in the FSA and the Conforming Guideline Amendment

A. Statutory Changes in the FSA

The FSA changed the quantities of crack cocaine that trigger the five- and ten-year statutory mandatory minimum penalties. As a consequence, first-time trafficking offenses involving less than 28 grams of crack cocaine are subject to a statutory penalty range of zero to 20 years of imprisonment. First-time trafficking offenses involving between 28 and 280 grams of crack cocaine are subject to a statutory penalty range of five to 40 years of imprisonment.² A first-time trafficking offense involving 280 or more grams of crack cocaine is subject to a statutory penalty range of 10 years to life imprisonment.³ The FSA did not make any of the statutory changes retroactive. Therefore, offenders sentenced before the effective date of the FSA⁴ continue to be subject to the mandatory minimum penalties in effect on the date of sentencing.⁵

B. Temporary and Permanent Amendments to the *Guidelines Manual* in Response to the FSA

On October 15, 2010, the Commission promulgated a temporary, emergency amendment to the guidelines that implemented the emergency directive in section 8 of the FSA.⁶ On April 6, 2011, the Commission re-promulgated the temporary amendment as a permanent multipart amendment, which became effective on November 1, 2011.⁷ (In this memorandum, the several modifications to the drug guidelines promulgated in response to the FSA are referred to collectively as the “FSA Guideline Amendment.”)

Part A of the FSA Guideline Amendment modified the base offense level for various quantities of crack cocaine assigned by the Drug Quantity Table.⁸ Part B of the

² The new five year mandatory minimum threshold quantity of 28 grams corresponds to approximately one ounce, which has been considered to be a threshold quantity for purposes of classifying the function of certain federal crack cocaine offenders. See UNITED STATES SENTENCING COMMISSION, REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY 18 (MAY 2007) [hereinafter 2007 Commission Report].

³ Because it now takes approximately 18 times more powder cocaine than crack cocaine to trigger the same statutory mandatory minimum penalties, some may refer to this penalty structure as an “18-to-1 drug quantity ratio.”

⁴ The FSA was enacted into law on August 3, 2010.

⁵ See *Dorsey v. United States*, 567 U.S. ___, 132 S. Ct. 2321 (2012) (FSA’s lower mandatory minimum penalties applied to offenders sentenced on and after August 3, 2010).

⁶ USSG, 2011 Supp. to App. C, Amendment 748 (effective Nov. 1, 2010).

⁷ USSG, 2011 Supp. to App. C, Amendment 750 (effective Nov. 1, 2011).

⁸ Offenses involving 28 grams of crack cocaine were assigned a base offense level of 26, and offenses involving 280 grams of crack cocaine were assigned a base offense level of 32. This approach is consistent with how the guidelines incorporate the statutory mandatory minimum penalties for all other drug offenses.

FSA Guideline Amendment added both new mitigating and aggravating provisions to USSG §2D1.1 for offenses involving drugs, regardless of drug type. Part C of the FSA Guideline Amendment eliminated a provision in the guidelines under which an offender who possessed more than 5 grams of crack cocaine was sentenced under the drug trafficking guideline.

C. Retroactive Application of the FSA Guideline Amendment

The Commission voted to authorize courts to retroactively apply Parts A and C of the FSA Guideline Amendment to offenders currently incarcerated.⁹ Pursuant to 18 U.S.C. § 3582(c)(2), courts were then authorized to reduce the sentences of those offenders consistent with the amended sentencing guidelines. To date, the courts have reduced the sentences of more than 7,500 offenders pursuant to retroactive application of the FSA Guideline Amendment.¹⁰ In more than 5,000 other cases, the courts have denied relief to offenders seeking a reduction in sentence under the FSA Guideline Amendment. The courts found that the offender was not eligible for any sentence reduction in more than 3,700 of those cases. For example, in 1,458 cases, the court found that the offender was ineligible because the applicable mandatory minimum penalty controlled the sentence and prevented the court from reducing the sentence.

In more than 1,045 other cases, the offender was found ineligible because the Career Offender guideline (USSG §4B1.1), and not the drug trafficking guideline (USSG §2D1.1), determined the guideline range at sentencing. As discussed above, the mandatory minimum penalties applicable to offenders sentenced prior to the FSA were unchanged by the act. The Career Offender guideline is linked to statutory maximum penalties which, in drug cases, are also linked to statutory mandatory minimum penalties. Because neither the FSA nor the FSA Guideline Amendments had the effect of lowering the Career Offender guideline, the provisions of 18 U.S.C. § 3582(c)(2) allowing courts to reduce the sentences of incarcerated offenders when their sentencing guideline is lowered do not apply to offenders whose guideline range is determined under that provision.

Finally, in some additional cases, the offender received only a partial reduction in sentence under the FSA Guideline Amendment. This was because a mandatory minimum penalty prevented the court from lowering the sentence to a point within the amended guideline range.

The base offense level for some quantities of crack cocaine in the Drug Quantity Table did not change as a result of the FSA Guideline Amendment. Also, offenses involving quantities of less than 500 mg of crack cocaine were unaffected by the amendment and remained assigned to BOL 12.

⁹ USSG, 2011 Supp. to App. C, Amendment 759 (effective Nov. 1, 2011).

¹⁰ *See generally* USSG, Preliminary Crack Retroactivity Data Report, Fair Sentencing Act (January 2014) (available at http://www.usc.gov/Research_and_Statistics/Federal_Sentencing_Statistics/FSA_Amendment/index.cfm)

II. Retroactive Application of the FSA

One of the policy options that we have agreed to examine on behalf of the GAO is the impact of applying the provisions of the FSA retroactively to offenders in the custody of the BoP. We estimate that there are 8,829 offenders incarcerated on January 1, 2014 who would be eligible for a reduction in their current sentence if the FSA were to be retroactively applied. If the courts were to grant each of these offenders the full reduction in their sentence in accord with the *Guideline Manual*, we estimate that the total savings to the BoP would be 37,400 bed years.¹¹

Table GAO-1 provides an estimate of the number of offenders who would be released each year if the FSA were fully retroactive compared to the number of offenders who will be released each year pursuant to their current sentence. As can be seen on this table, if the FSA were fully retroactive on January 1, 2014, more than 3,000 offenders would be released in 2014 in addition to those who would be released if the current sentences of these offenders remains unchanged.

Of the 8,829 offenders who appear eligible for retroactive application of the FSA, Commission records contained sufficient information to perform an analysis of the amount of reduction in sentence for 8,468 offenders. For those 8,468 offenders, the current average sentence is 184 months. If the courts were to grant the full reduction possible in each case in accordance with the *Guidelines Manual*, the projected new average sentence for these offenders would be 131 months, a reduction of 53 months (or 28.8 percent). Based on this reduction, the estimated total savings to the BoP from the retroactive application of the FSA would be 37,400 bed years. This savings would not be realized in any single year but is the cumulative savings realized over several years.

III. How We Conducted This Analysis

A. Methodology

The methodology for this analysis is based on the Commission's Prison Impact Model, which has been in use in some form since the guidelines were first developed. This model is used to estimate the impact of proposed statutory and guideline amendments on newly sentenced offenders and to project the future impact those amendments will have on bed space in the BoP. For this analysis, those offenders who appear to be eligible to receive a reduced sentence were hypothetically "resentenced" with the computer program as if the proposed policy change had been in effect in the year in which they were sentenced. A new release date for each offender also was calculated in order to determine when the offender would be eligible for release if he or she were provided the full reduction in sentence provided by the proposed policy change.

¹¹ A "bed year" is the cost to the BoP of incarcerating one inmate for one year. For example, one inmate who serves five years of imprisonment accounts for five bed years.

B. Our Assumptions

In performing our analysis, we have been required to make some assumptions (set forth below) concerning the decisions that Congress and the courts would make in determining whether, and to what extent, to reduce the sentences of offenders eligible to receive a modification of sentence pursuant to the FSA if it were retroactively applied. These assumptions may not hold in every case.

Specifically, we have assumed that Congress would authorize the courts by statute to reduce the sentences of offenders in accordance with the *Guidelines Manual* in effect on a specific date and bound only by the mandatory minimum penalties as they were amended by the FSA. We also assumed that the Commission would make no further changes to the *Guidelines Manual* regarding crack cocaine offenses in response to Congress' action, so that the provisions of the 2012 *Guidelines Manual* would apply in these cases.¹² Finally, we assumed that the effective date of any such statutory change would be no earlier than January 1, 2014.

Additional assumptions we have made for this analysis are as follows:

(1) offenders sentenced within the applicable guideline range when they were first sentenced would be sentenced at the same point in the range under the *Guidelines Manual* in effect on January 1, 2014;

(2) offenders sentenced outside the applicable guideline range when they were first sentenced would be sentenced to a new position outside the guideline range under the *Guidelines Manual* in effect on January 1, 2014 that is the same proportional distance above or below the amended guideline range as their original sentence was from the guideline range in effect at the original sentencing;

(3) offenders for whom the new estimated sentence is below the applicable mandatory minimum (all cases in this analysis have five grams triggering a five-year mandatory minimum or 50 grams triggering a 10-year mandatory minimum), and where no safety valve or substantial assistance reduction was applied when the offender was originally sentenced, would be sentenced at the new applicable mandatory minimum;

(4) offenders classified as Career Offenders would be sentenced pursuant to the Career Offender provision of the guidelines in accordance with the statutory maximums as amended by the FSA.

(5) the "mitigating role cap" on the base offense level of the guidelines would be applied, if appropriate, based upon the new base offense level;

(6) offenders originally receiving relief from a mandatory minimum penalty by operation of the safety valve provision would continue to receive relief but, if the

¹² While the 2012 *Guidelines Manual* was used for this analysis, the provisions of the 2013 Guidelines Manual that pertain to offenses under USSG §2D1.1 are unchanged.

applicable statutory minimum is at least five years, the offense level determined after applying Chapters Two (Offense Conduct) and Three (Adjustments) of the guidelines would not be less than level 17 (pursuant to USSG §5C1.2(b));

(7) for offenders with an original combined offense level (after application of Chapters Two and Three) of level 16 or greater but having a new combined offense level below level 16, the applicable reduction for Acceptance of Responsibility would be reduced from three levels to two levels in accordance with that guideline provision;

(8) the sentence for each offender would be reduced based on the maximum good conduct credit allowed by the Bureau of Prisons; and

(9) offenders would serve the lesser of the newly calculated sentence or their life expectancies.

C. Limitation as to Application of New Mitigating Provisions of the FSA

As discussed above, Part B of the FSA Guideline Amendment added both new mitigating and aggravating provisions to USSG §2D1.1 for offenses involving drugs, regardless of drug type. The Commission did not vote to allow those provisions to be applied retroactively. We are unable to assess the extent to which the courts might apply these new mitigating provisions were the FSA to be applied retroactively as those provisions involve the consideration of facts that are not readily available in the sentencing documents provided to the Commission in all cases. To the extent that the courts might consider these provisions in resentencing offenders when applying the FSA retroactively, the sentences for some offenders could be reduced below the point determined in our estimate, which would accelerate the release of those offenders from incarceration.

D. The Offender Population We Studied

In conducting this analysis, the Commission requested and received a datafile from the BoP which identified a total of 135,536 offenders in the BoP's custody at that time who the BoP estimated would still be incarcerated on January 1, 2014 (the proposed retroactivity date we used for this analysis.). These offenders were those sentenced between FY1992 and FY2012 and whose BoP record could be matched with USSC records.¹³ Of those, 19,154 offenders were identified as 1) having been sentenced under the drug trafficking guideline,¹⁴ 2) having crack cocaine as one of the drug types involved

¹³ The analysis was limited to data from fiscal year 1992 through September 30, 2010 (fiscal years 1992 through 2010) because the Commission did not collect information on the type of drug involved in drug offenses prior to fiscal year 1992.

¹⁴ For some of these offenders, the guideline range that applied at sentencing was derived from either the Career Offender (USSG §4B1.1) or Armed Career Criminal (USSG §4B1.4) provision. However, for the purpose of this analysis these offenders are considered to have been sentenced under the drug trafficking guideline as the court is required to calculate a guideline range for them under USSG §2D1.1 as well.

in the offense, and 3) having sufficient information for analysis by the Commission's prison and sentencing impact model.

The Commission's retroactivity analysis determined that of these 19,154 offenders, 10,325 would not experience a change in their sentence if the FSA were fully retroactive. These offenders were excluded from the analysis. The majority of the offenders (n = 9,741) were excluded because they would not experience the proposed statutory change – either because no statutory mandatory minimum penalty applied in their cases or the offender already was sentenced below the FSA mandatory minimum thresholds.¹⁵ Another 362 offenders were sentenced under the Career Offender provision and, despite a change to their drug statutory minimum penalty, their guideline range under the Career Offender provision did not change. In another 191 cases, the current sentence is greater than both the guideline minimum and the FSA statutory minimum, therefore no change in their sentence would result. A small number of offenders (n=30) were excluded because their guideline range was determined under the Armed Career Criminal provision, which would be unaffected by the retroactive application of the FSA. Lastly, one offender had a base offense level of 38, the top of the Drug Quantity Table, and the quantity of drugs involved in that case continued to place the offender at that level, so therefore no change in his or her guideline range would occur.

After these offenders were excluded, there remained 8,829 offenders who were projected to be incarcerated on January 1, 2014 and who appeared eligible to seek a reduced sentence if the provisions of the FSA were to be made retroactive as described above.

If you have any questions about our analysis please do not hesitate to contact the Commission. We continue to work to analyze the other policy options that we discussed with you and your colleagues. We will provide our analyses of these options as they are completed.

Sincerely,



Noah D. Bookbinder
Director
Office of Legislative and Public Affairs



Glenn R. Schmitt
Director
Office of Research and Data

Attachment

¹⁵ Because many of the offenders currently incarcerated in the BoP for crack offenses were sentenced after August 3, 2010, the mandatory minimum penalty provisions applied by the courts in most of those cases were the lower penalties provided by the FSA. Some courts did continue to apply the pre-FSA minimum penalties to offenders sentenced after August 3, 2010 but who committed their crime prior to that date. However, the Supreme Court's opinion in *Dorsey* clarified that this practice was in error.

Table GAO-1

**Estimated Projected Year of Release for Crack Cocaine Offenders
Potentially Eligible for FSA Retroactivity¹**

Release Date	IF FSA RETROACTIVITY GRANTED N	CURRENT SENTENCE N
within 1 yr	3,695	682
within 2 yr	999	847
within 3 yr	806	951
within 4 yr	682	996
within 5 yr	503	958
<u>within 6 yr +</u>	1,783	4,034

¹Of the 8,829 offenders who appear to be eligible for relief if the Fair Sentencing Act of 2010 were retroactive, Commission records contained sufficient information to perform this analysis for 8,468 offenders.

SOURCE: U.S. Sentencing Commission, 1992 - 2012 Datafiles, USSCFY92 - USSCFY12.

3. USSC table with data for impact of option 3: Instruct U.S. Attorneys to decline to charge certain defendants in certain types of drug cases in such a manner as to trigger mandatory minimum sentences.

This option has been implemented as part of the August 2013 direction issued by the Attorney General instructing prosecutors in cases involving the applicability of drug law mandatory minimum sentences based on drug type and quantity to decline to charge the quantity necessary to trigger a mandatory minimum sentence if the defendant meets particular criteria.

For option 3, the USSC provided a table composed of six subtables that show the USSC's analysis of the estimated impact of the changes discussed in option 3. According to the USSC, the total number of offenders estimated to be affected annually by option 3 can be found in line 1, column 2, of the first table (i.e., 620). For the first 5 years' estimated impact, we multiplied 620 by 5. According to the USSC, the bed years saved over the first 5 years of implementation can be found by adding the numbers shown in the first line of the third table, which total 788.

Comparison of Prison Impact Analysis – Safety Valve Expansion with Statutory Trumps FY2012 Cases

Change in Sentences Imposed

	Total Cases ¹	Number Affected ²	Percent Affected	Current Average Sentence for Affected Cases	New Average Sentence for Affected Cases	Number of Months Change	Percent Change
2 pts	841	620	73.7	46	37	-9	-19.6
2-3 pts	2,242	1,636	73.0	49	40	-9	-18.4

Change in Incarceration Levels

Change in total years of incarceration for offenders sentenced in one fiscal year³

	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year	10 th Year	15 th Year	Total ⁴
2 pts	-51	-46	-64	-47	-64	-6	-1	-372
2-3 pts	-115	-119	-167	-142	-181	-34	-3	-1,065

Change in Total BOP Population in Future Years⁵

	1 st Year After Effective Date	2 nd Year After Effective Date	3 rd Year After Effective Date	4 th Year After Effective Date	5 th Year After Effective Date
2 pts	-51	-97	-161	-208	-271
2-3 pts	-115	-234	-401	-543	-724

¹Total Cases are those with a particular sentencing factor being analyzed. ²Affected Cases are those in which the sentence is estimated to change as a result of the sentencing factor being analyzed. Not all cases will change as a result of the application of a particular sentencing factor being analyzed. ³This table represents the number of prison beds saved each year by a cohort of offenders sentenced in a single year. ⁴This is the total number of prison beds that will be saved when all offenders who were sentenced in the same year are ultimately released from prison. ⁵This is the annual number of prison beds saved as ongoing cohorts of offenders enter the Bureau of Prisons who have been sentenced under the changed guideline.

Comparison of Prison Impact Analysis – Safety Valve Expansion without Statutory Trumps FY2012 Cases

Change in Sentences Imposed

	Total Cases ¹	Number Affected ²	Percent Affected	Current Average Sentence for Affected Cases	New Average Sentence for Affected Cases	Number of Months Change	Percent Change
2 pts	841	787	93.6	53	42	-11	-20.8
2-3 pts	2,242	2,090	93.2	56	45	-11	-19.6

Change in Incarceration Levels

Change in total years of incarceration for offenders sentenced in one fiscal year³

	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year	10 th Year	15 th Year	Total ⁴
2 pts	-52	-49	-67	-163	-61	-8	-3	-617
2-3 pts	-116	-126	-173	-447	-170	-36	-12	-1,731

Change in Total BOP Population in Future Years⁵

	1 st Year After Effective Date	2 nd Year After Effective Date	3 rd Year After Effective Date	4 th Year After Effective Date	5 th Year After Effective Date
2 pts	-52	-101	-168	-330	-392
2-3 pts	-116	-242	-415	-862	-1,032

¹Total Cases are those with a particular sentencing factor being analyzed. ²Affected Cases are those in which the sentence is estimated to change as a result of the sentencing factor being analyzed. Not all cases will change as a result of the application of the sentencing factor being analyzed. ³This table represents the number of prison beds saved each year by a cohort of offenders sentenced in a single year. ⁴This is the total number of prison beds that will be saved when all offenders who were sentenced in the same year are ultimately released from prison. ⁵This is the annual number of prison beds saved as sentencing cohorts of offenders enter the Bureau of Prisons who have been sentenced under the changed guideline.

4. USSC table with data for impact of option 4: Amend USSC sentencing guidelines for future drug offenders, reducing them two levels below current guidelines.

This option reduces the potential sentences for all future drug offenders by two levels below current guidelines, resulting in a roughly 18 percent reduction of sentence length below current lengths. It was approved by the USSC and forwarded to Congress on April 30, 2014; it will apply to future eligible drug offenders effective November 1, 2014, in connection with option 5 (see next option) unless amended or rejected by Congress.

For option 4, the USSC provided a table composed of 2 subtables; the overall table is labeled “Table 5” by the USSC and shows the USSC estimate of the changes discussed in option 4. According to the USSC, the number of offenders estimated to be affected annually by the option (17,457) can be found in line 1 of the first table. Some other data in the two subtables were updated as a result of USSC actions that made option 4 retroactive (i.e., option 5), but which also delayed implementation of retroactivity until November 1, 2015, unless amended or rejected by Congress.

Table 5
Estimated Effect on Sentencing and Incarceration
of Decreasing the Drug Quantity Table by Two Levels
FY2012 Cases

Change in Sentences Imposed

Total Cases¹	Number Affected²	Percent Affected	Current Average Sentence for Affected Cases	New Average Sentence for Affected Cases	Number of Months Change	Percent Change
24,968	17,457	69.9	62	51	-11	-17.7

Change in Sentences Served

Change in years of incarceration served for offenders sentenced in a single fiscal year³

1st Year	2nd Year	3rd Year	4th Year	5th Year	10th Year	15th Year	Total⁴
-894	-1,083	-1,667	-1,281	-1,625	-634	-256	-13,938

Change in total BOP Population in Future Years⁵

1st Year After Effective Date	2nd Year After Effective Date	3rd Year After Effective Date	4th Year After Effective Date	5th Year After Effective Date
-894	-1,977	-3,644	-4,925	-6,550

¹Total Cases are those with a particular sentencing factor being analyzed.

²Affected Cases are those in which the sentence is estimated to change as a result of the sentencing factor being analyzed. Not all cases will change as a result of the application of the sentencing factor being analyzed.

³This table represents the number of prison beds saved each year by a cohort of offenders sentenced in a single year.

⁴This is the total number of prison beds that will be saved when all offenders who were sentenced in the same year are ultimately released from prison.

⁵This is the annual number of prison beds saved as ongoing cohorts of offenders enter the Bureau of Prisons who have been sentenced under the changed guideline.

5. USSC analysis of option 5: Apply the amendments to sentencing guidelines in option 4 also to incarcerated drug offenders—that is, to both new drug offenders and retroactively to incarcerated drug offenders.

Under this option, the provisions of option 4 apply to both new drug offenders and also retroactively to eligible incarcerated drug offenders. It reduces the sentences for all future and currently incarcerated drug offenders by two levels below current USSC guidelines, resulting in a roughly 19 percent reduction below current lengths. It was approved by the USSC in July 2014 as an amendment to option 4; as such, it corresponds to the April 2014 USSC decision and does not require separate congressional action. Unless Congress acts to modify or disapprove the corresponding April 30 amendment, beginning November 1, 2014, eligible incarcerated offenders can ask courts to reduce their sentences. Incarcerated offenders whose requests are granted by the courts may not be released earlier than November 1, 2015.

This analysis (which also includes information relevant to option 4, to which it is closely related) was posted to the USSC website on July 25, 2014. (<http://www.ussc.gov/research-and-publications/retroactivity-analyses-and-data-reports/retroactivity-analyses-and-data-reports>)

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July 25, 2014

MEMORANDUM

TO: Chair Saris
Commissioners
Kenneth Cohen

FROM: Office of Research and Data

SUBJECT: Summary of Key Data Regarding Retroactive Application of the
2014 Drug Guidelines Amendment

I. INTRODUCTION

On April 30, 2014, the United States Sentencing Commission submitted to Congress an amendment to the federal sentencing guidelines that would revise the guidelines applicable to drug trafficking offenses by changing how the base offense levels in the drug quantity tables in sections 2D1.1 and 2D1.11 of the *Guidelines Manual*¹ incorporate the statutory mandatory minimum penalties for drug trafficking offenses (Amendment 782).² Specifically, the amendment would reduce by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties, resulting in corresponding guideline ranges that include the mandatory minimum penalties, and make conforming changes to section 2D2.11. On July 18, the Commission voted to give retroactive effect to Amendment 782 beginning on the effective date of the amendment, which will be November 1, 2014, unless Congress acts to modify or disapprove the amendment.

¹ U.S. SENTENCING COMMISSION, GUIDELINES MANUAL §2D1.1 (Unlawful Manufacturing, Importing, Exporting or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) (2013) (hereinafter USSG); USSG §2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy).

² References in this memorandum to the “2014 drug guidelines amendment,” “the amendment,” or any similar references mean the amendment the Commission submitted to Congress on April 30, 2014, that would modify the drug quantity tables in USSG §§2D1.1 and 2D1.11.

As part of the Commission's decision to retroactively apply Amendment 782, it required that no offender may be released pursuant to the retroactive application of the amendment until November 1, 2015 or later. This memorandum provides information concerning the effect of this limitation.

II. FURTHER ANALYSES OF THE IMPACT OF RETROACTIVE APPLICATION OF THE 2014 DRUG GUIDELINES AMENDMENT

A. Summary of Data on the Eligible Offenders

ORD previously estimated that 51,141 offenders sentenced between October 1, 1991 and October 31, 2014,³ would be eligible to seek a reduction in their current sentence if the Commission were to make the 2014 drug guidelines amendment retroactive.⁴ Of this group, there are 46,376 offenders who would not be released under their current sentence until on or after November 1, 2015, and so could benefit from the Commission's decision to retroactively apply Amendment 782.

The current average sentence for the 46,376 offenders who could benefit under retroactive application of the amendment is 133 months. Applying the amendment retroactively to these offenders the new average sentence would be 108 months. This is a difference of 25 months, which represents an 18.8 percent reduction in the sentence. The number of bed years saved by this reduction is 79,740 bed years, which would be realized by the Bureau of Prisons over a period of years, of course.

The most common drug types involved in these cases are methamphetamine (28.8%), powder cocaine (27.8%), crack cocaine (19.3%), marijuana (11.6%), heroin (7.6%), and other drugs (5.0%). Attached to this memorandum is a summary of selected offender characteristics about these offenders as well as information about their criminal history.

B. Summary of Data on the Projected Release Dates of the Eligible Offenders

We estimate that on November 1, 2015 there would be 7,953 offenders eligible for immediate release. Another 8,550 offenders would be released during the year that begins on November 1, 2015 and ends on October 31, 2016. That is, a total of 16,503 offenders will be released during the first year in which offenders may be released pursuant to retroactive application of the amendment. If the Commission had not authorized the amendment to be applied retroactively, we estimate that 7,609 offenders would still have been released during that year, as their current terms of incarceration expired. Attached to this memorandum is a table that provides additional information concerning the release years of these offenders and the districts in which they were sentenced.

³ The analysis was limited to data from fiscal year 1992 and later because the Commission's data collection efforts prior to fiscal year 1992 were not as complete as in later years.

⁴ Memorandum from the Office of Research and Data and the Office of General Counsel to Chair Saris, Commissioners, and Kenneth Cohen (May 27, 2014), *available at* www.ussc.gov.

Selected Characteristics of Eligible Offenders
Retroactive Application of Amendment 782 With
Release On or After November 1, 2015
(FY1992 through FY2015)

<u>Race/Ethnicity</u>		
White	10,734	23.2%
Black	14,427	31.2%
Hispanic	19,958	43.1%
Other	1,171	2.5%
Total	46,290	100.0%

<u>Citizenship</u>		
U.S. Citizen	34,928	75.4%
Non-Citizen	11,411	24.6%
Total	46,339	100.0%

<u>Gender</u>		
Male	42,759	92.2%
Female	3,615	7.8%
Total	46,374	100.0%

<u>Criminal History Category</u>		
I	17,580	37.9%
II	6,320	13.6%
III	9,232	19.9%
IV	5,473	11.8%
V	3,417	7.4%
VI	4,354	9.4%
Total	46,376	100.0%

<u>Projected Year of Release</u>	<u>Retroactive*</u>	<u>If Not Retroactive</u>
November 1, 2015	7,953	--
within 1 yr	8,550	7,609
within 2 yr	6,938	7,461
within 3 yr	5,473	6,207
within 4 yr	4,177	5,291
within 5 yr	2,909	3,923
more than 5 yr	9,350	14,859
Total	45,350	45,350

The analysis involves a total of 46,376 cases, however, cases missing information for any specific analysis are excluded from that analysis. Total percentages may not add to exactly 100% due to rounding.

* A total of 16,503 offenders are estimated to be eligible for release during the first year in which offenders may be released under retroactive application of the amendment. This is 8,894 more than will be released upon expiration of their current sentence.

SOURCE: U.S. Sentencing Commission, 1992 - 2005 Datafiles, USSCFY92 - USSCFY13.

**Possible Release Timing for Retroactive Eligible Offenders by District
(FY1992 through FY2015)**

CIRCUIT District	Eligible for Immediate Release 11/01/15		Eligible for Release in Year One*		Eligible for Release in Year Two		Eligible for Release in Year Three		Eligible for Release in Year Four		Eligible for Release in Year Five		Eligible for Release in Six or More Years		TOTAL
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N
TOTAL	7,953	17.5	8,550	18.9	6,938	15.3	5,473	12.1	4,177	9.2	2,909	6.4	9,350	20.6	45,350
D.C. CIRCUIT	25	12.7	37	18.8	38	19.3	27	13.7	12	6.1	8	4.1	50	25.4	197
District of Columbia	25	12.7	37	18.8	38	19.3	27	13.7	12	6.1	8	4.1	50	25.4	197
FIRST CIRCUIT	231	10.8	412	19.3	387	18.1	342	16.0	256	12.0	147	6.9	364	17.0	2,139
Maine	30	18.1	45	27.1	31	18.7	22	13.3	19	11.4	7	4.2	12	7.2	166
Massachusetts	27	14.9	37	20.4	33	18.2	19	10.5	16	8.8	9	5.0	40	22.1	181
New Hampshire	11	17.7	21	33.9	14	22.6	5	8.1	1	1.6	3	4.8	7	11.3	62
Puerto Rico	149	9.1	295	17.9	290	17.6	280	17.0	214	13.0	122	7.4	294	17.9	1,644
Rhode Island	14	16.3	14	16.3	19	22.1	16	18.6	6	7.0	6	7.0	11	12.8	86
SECOND CIRCUIT	544	17.2	580	19.0	328	16.4	264	13.2	196	9.8	118	5.9	371	18.5	2,001
Connecticut	45	16.7	67	24.8	51	18.9	31	11.5	32	11.9	18	6.7	26	9.6	270
New York															
Eastern	51	17.4	49	16.7	66	22.5	43	14.7	21	7.2	14	4.8	49	16.7	293
Northern	48	17.9	58	21.6	53	19.8	39	14.6	29	10.8	10	3.7	31	11.6	268
Southern	136	18.0	132	17.4	104	13.7	101	13.3	65	8.6	48	6.3	171	22.6	757
Western	55	16.3	52	15.4	43	12.8	43	12.8	37	11.0	22	6.5	85	25.2	337
Vermont	9	11.8	22	28.9	11	14.5	7	9.2	12	15.8	6	7.9	9	11.8	76
THIRD CIRCUIT	207	15.8	267	20.4	198	15.1	160	12.2	120	9.2	74	5.6	284	21.7	1,310
Delaware	9	22.5	9	22.5	8	20.0	2	5.0	1	2.5	0	0.0	11	27.5	40
New Jersey	54	17.1	82	26.0	58	18.4	38	12.1	26	8.3	16	5.1	41	13.0	315
Pennsylvania															
Eastern	55	11.7	73	15.5	64	13.6	64	13.6	46	9.8	33	7.0	135	28.7	470
Middle	65	23.1	59	21.0	40	14.2	36	12.8	31	11.0	7	2.5	43	15.3	281
Western	19	11.1	38	22.2	23	13.5	15	8.8	12	7.0	15	8.8	49	28.7	171
Virgin Islands	5	15.2	6	18.2	5	15.2	5	15.2	4	12.1	3	9.1	5	15.2	33
FOURTH CIRCUIT	1,028	17.0	954	15.8	812	13.5	683	11.3	559	9.3	454	7.5	1,545	25.6	6,035
Maryland	85	15.3	102	18.3	102	18.3	80	14.4	49	8.8	37	6.6	102	18.3	557
North Carolina															
Eastern	140	12.6	147	13.2	143	12.8	122	10.9	112	10.0	111	10.0	340	30.5	1,115
Middle	86	20.1	89	20.8	50	11.7	44	10.3	36	8.4	29	6.8	95	21.8	427
Western	150	23.1	118	18.2	82	12.6	60	9.2	63	9.7	40	6.2	137	21.1	650
South Carolina	133	14.1	117	12.4	116	12.3	118	12.5	109	11.6	85	9.0	264	28.0	942
Virginia															
Eastern	170	14.9	127	11.1	145	12.7	121	10.6	98	8.6	85	7.4	396	34.7	1,142
Western	134	20.8	100	15.6	83	12.9	73	11.4	49	7.6	44	6.8	160	24.9	643
West Virginia															
Northern	88	26.4	87	26.1	51	15.3	37	11.1	29	8.7	13	3.9	28	8.4	333
Southern	42	18.6	67	29.6	40	17.7	28	12.4	14	6.2	10	4.4	25	11.1	226

* For example, in the District of Columbia, 62 offenders are eligible for release between November 1, 2015 and October 31, 2016.

**Possible Release Timing for Retroactive Eligible Offenders by District
(FY1992 through FY2015)**

CIRCUIT District	Eligible for Immediate Release 11/01/15		Eligible for Release in Year One		Eligible for Release in Year Two		Eligible for Release in Year Three		Eligible for Release in Year Four		Eligible for Release in Year Five		Eligible for Release in Six or More Years		TOTAL
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N
FIFTH CIRCUIT	1,853	18.3	2,023	20.0	1,562	15.4	1,180	11.6	901	8.9	608	6.0	2,013	19.9	10,140
Louisiana															
Eastern	46	14.8	56	18.0	46	14.8	38	12.2	31	10.0	28	9.0	66	21.2	311
Middle	22	19.3	24	21.1	20	17.5	12	10.5	8	7.0	6	5.3	22	19.3	114
Western	57	21.3	35	13.1	49	18.4	29	10.9	19	7.1	14	5.2	64	24.0	267
Mississippi															
Northern	34	21.4	33	20.8	23	14.5	22	13.8	14	8.8	7	4.4	26	16.4	159
Southern	46	13.8	52	15.6	52	15.6	44	13.2	24	7.2	24	7.2	92	27.5	334
Texas															
Eastern	210	14.8	209	14.8	203	14.3	183	12.9	142	10.0	101	7.1	367	25.9	1,415
Northern	220	16.1	179	13.1	183	13.4	150	11.0	124	9.1	109	8.0	403	29.5	1,368
Southern	559	19.5	680	23.7	462	16.1	334	11.6	255	8.9	145	5.1	432	15.1	2,867
Western	659	19.9	755	22.8	524	15.9	368	11.1	284	8.6	174	5.3	541	16.4	3,305
SIXTH CIRCUIT	739	17.9	913	22.1	709	17.1	514	12.4	362	8.7	265	6.4	637	15.4	4,139
Kentucky															
Eastern	92	16.8	123	22.5	116	21.2	64	11.7	48	8.8	30	5.5	73	13.4	546
Western	49	19.9	61	24.8	37	15.0	34	13.8	23	9.3	12	4.9	30	12.2	246
Michigan															
Eastern	73	19.3	77	20.3	52	13.7	57	15.0	32	8.4	16	4.2	72	19.0	379
Western	55	15.9	61	17.6	48	13.8	39	11.2	27	7.8	30	8.6	87	25.1	347
Ohio															
Northern	95	18.6	131	25.6	90	17.6	63	12.3	45	8.8	29	5.7	59	11.5	512
Southern	87	20.3	101	23.5	76	17.7	57	13.3	36	8.4	27	6.3	45	10.5	429
Tennessee															
Eastern	179	16.2	231	20.9	203	18.4	131	11.9	104	9.4	88	8.0	168	15.2	1,104
Middle	32	21.2	30	19.9	21	13.9	23	15.2	17	11.3	6	4.0	22	14.6	151
Western	77	18.1	98	23.1	66	15.5	46	10.8	30	7.1	27	6.4	81	19.1	425
SEVENTH CIRCUIT	455	16.7	437	16.0	389	14.3	292	10.7	252	9.3	210	7.7	689	25.3	2,724
Illinois															
Central	79	19.4	51	12.5	38	9.3	32	7.9	30	7.4	29	7.1	148	36.4	407
Northern	123	18.2	93	13.7	101	14.9	75	11.1	59	8.7	55	8.1	171	25.3	677
Southern	51	10.6	63	13.1	48	10.0	58	12.0	77	16.0	58	12.0	127	26.3	482
Indiana															
Northern	56	17.0	73	22.2	68	20.7	28	8.5	21	6.4	20	6.1	63	19.1	329
Southern	63	14.7	53	12.4	72	16.8	56	13.1	35	8.2	23	5.4	126	29.4	428
Wisconsin															
Eastern	45	17.9	76	30.2	48	19.0	30	11.9	10	4.0	16	6.3	27	10.7	252
Western	38	25.5	28	18.8	14	9.4	13	8.7	20	13.4	9	6.0	27	18.1	149

**Possible Release Timing for Retroactive Eligible Offenders by District
(FY1992 through FY2015)**

CIRCUIT District	Eligible for Immediate Release 11/01/15		Eligible for Release in Year One		Eligible for Release in Year Two		Eligible for Release in Year Three		Eligible for Release in Year Four		Eligible for Release in Year Five		Eligible for Release in Six or More Years		TOTAL
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N
EIGHTH CIRCUIT	742	17.5	739	17.5	628	14.8	501	11.8	401	9.5	285	6.7	933	22.1	4,229
Arkansas															
Eastern	51	15.5	75	22.7	45	15.6	45	15.6	42	12.7	21	6.4	51	15.5	330
Western	45	17.4	44	17.0	47	18.1	42	16.2	21	8.1	19	7.3	41	15.8	259
Iowa															
Northern	123	19.8	80	12.9	74	11.9	65	10.5	80	12.9	47	7.6	152	24.5	621
Southern	82	15.0	85	15.6	78	14.3	63	11.6	41	7.5	38	7.0	158	29.0	545
Minnesota	75	24.1	55	17.7	39	12.5	36	11.6	23	7.4	22	7.1	61	19.6	311
Missouri															
Eastern	130	23.4	123	22.1	96	17.3	53	9.5	42	7.6	24	4.3	88	15.8	556
Western	89	16.4	88	16.2	86	15.8	70	12.9	47	8.7	43	7.9	120	22.1	543
Nebraska	91	12.6	127	17.6	113	15.7	93	12.9	73	10.1	47	6.5	176	24.4	720
North Dakota	30	14.2	38	18.0	32	15.2	21	10.0	17	8.1	12	5.7	61	28.9	211
South Dakota	26	19.5	24	18.0	18	13.5	13	9.8	15	11.3	12	9.0	25	18.8	133
NINTH CIRCUIT	889	17.2	1,153	22.3	873	16.9	667	12.9	465	9.0	273	5.3	849	16.4	5,169
Alaska	36	19.9	34	18.8	27	14.9	24	13.3	19	10.5	11	6.1	30	16.6	181
Arizona	172	25.3	223	32.7	111	16.3	59	8.7	33	4.8	14	2.1	69	10.1	681
California															
Central	114	15.7	134	18.5	103	14.2	88	12.2	72	9.9	44	6.1	169	23.3	724
Eastern	92	13.4	132	19.2	124	18.1	98	14.3	82	12.0	44	6.4	114	16.6	686
Northern	58	20.1	52	18.0	49	17.0	37	12.8	28	9.7	20	6.9	45	15.6	289
Southern	77	11.2	176	25.7	135	19.7	128	18.7	68	9.9	33	4.8	69	10.1	686
Guam	6	16.2	9	24.3	5	13.5	5	13.5	1	2.7	1	2.7	10	27.0	37
Hawaii	55	19.7	54	19.4	37	13.3	29	10.4	28	10.0	15	5.4	61	21.9	279
Idaho	48	16.6	60	20.8	43	14.9	37	12.8	23	8.0	10	3.5	68	23.5	289
Montana	49	13.2	65	17.5	60	16.1	50	13.4	34	9.1	19	5.1	95	25.5	372
Nevada	55	18.9	56	19.2	59	20.3	36	12.4	17	5.8	18	6.2	50	17.2	291
Northern Mariana Islands	0	0.0	3	50.0	0	0.0	0	0.0	2	33.3	1	16.7	0	0.0	6
Oregon	40	18.9	50	23.6	43	20.3	28	13.2	13	6.1	14	6.6	24	11.3	212
Washington															
Eastern	39	19.1	41	20.1	35	17.2	23	11.3	24	11.8	17	8.3	25	12.3	204
Western	48	20.7	64	27.6	42	18.1	25	10.8	21	9.1	12	5.2	20	8.6	252

**Possible Release Timing for Retroactive Eligible Offenders by District
(FY1992 through FY2015)**

CIRCUIT District	Eligible for Immediate Release 11/01/15		Eligible for Release in Year One		Eligible for Release in Year Two		Eligible for Release in Year Three		Eligible for Release in Year Four		Eligible for Release in Year Five		Eligible for Release in Six or More Years		TOTAL
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N
TENTH CIRCUIT	419	18.5	428	18.9	322	14.2	263	11.6	186	8.2	151	6.7	492	21.8	2,261
Colorado	37	14.6	48	19.0	46	18.2	33	13.0	18	7.1	17	6.7	54	21.3	253
Kansas	84	13.7	104	17.0	81	13.2	76	12.4	64	10.4	46	7.5	158	25.8	613
New Mexico	89	23.3	92	24.1	61	16.0	39	10.2	21	5.5	23	6.0	57	14.9	382
Oklahoma															
Eastern	21	19.3	20	18.3	8	7.3	14	12.8	14	12.8	5	4.6	27	24.8	109
Northern	24	16.7	31	21.5	21	14.6	22	15.3	9	6.3	9	6.3	28	19.4	144
Western	51	22.3	40	17.5	29	12.7	23	10.0	15	6.6	16	7.0	55	24.0	229
Utah	72	23.3	64	20.7	53	17.2	39	12.6	23	7.4	16	5.2	42	13.6	309
Wyoming	41	18.5	29	13.1	23	10.4	17	7.7	22	9.9	19	8.6	71	32.0	222
ELEVENTH CIRCUIT	1,021	20.4	807	16.1	692	13.8	580	11.6	467	9.3	316	6.3	1,123	22.4	5,006
Alabama															
Middle	45	26.3	17	9.9	29	17.0	21	12.3	18	10.5	5	2.9	36	21.1	171
Northern	78	26.9	40	13.8	34	11.7	33	11.4	31	10.7	17	5.9	57	19.7	290
Southern	80	23.3	70	20.3	49	14.2	29	8.4	31	9.0	25	7.3	60	17.4	344
Florida															
Middle	235	17.6	207	15.5	196	14.7	155	11.6	128	9.6	115	8.6	298	22.3	1,334
Northern	97	21.5	48	10.6	43	9.5	45	10.0	37	8.2	28	6.2	153	33.9	451
Southern	249	19.4	234	18.2	198	15.4	152	11.8	115	9.0	69	5.4	266	20.7	1,283
Georgia															
Middle	31	13.1	57	24.2	45	19.1	37	15.7	21	8.9	9	3.8	36	15.3	236
Northern	100	19.3	61	11.8	49	9.5	67	13.0	55	10.6	32	6.2	153	29.6	517
Southern	106	27.9	73	19.2	49	12.9	41	10.8	31	8.2	16	4.2	64	16.8	380

Of the 46,376 offenders identified as eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 45,350 offenders.

Estimated release dates are determined using the Commission's prison and sentencing impact model which applies proposed guideline changes to affected offenders and re-sentences these offenders in a proportional manner. Under the model, affected offenders: 1) receive a new offense level; 2) have a new sentencing range determined (using the ranges from the Sentencing Tables); 3) are resentenced to the same relative position within (or outside) the original guideline range (e.g., an offender currently sentenced at the midpoint of the original guideline range then will be sentenced to the midpoint of the new guideline range); and 4) receive statutory and guideline trumps when applicable. Other assumptions incorporated into the model include: 1) offenders earn the maximum allowable good-time (currently 54 days per year served for imposed sentences greater than one year but not life imprisonment); and 2) offenders serve the lesser of A) the sentence imposed less the maximum allowable good conduct time, or B) their estimated remaining life expectancy, based upon an actuary table incorporating age, race, and sex.

SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13.

6. USSC analysis of option 6: Increase good time credits for good conduct time (GCT).

Under this option, a credit for GCT would be awarded to current offenders using a formula that would result in 54 days' credit per year of sentence, rather than the current BOP interpretation that limits the GCT credit to 47 days per served sentence year. This would result in eligible inmates serving 85 percent of their sentences, rather than the higher 87 percent average resulting from BOP's current interpretation of 18 U.S.C. § 3624(b).

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June 12, 2014

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Dear Mr. Tumin:

The Government Accountability Office has asked the U.S. Sentencing Commission to assist it in connection with its engagement (number 441173). We understand that through this engagement the GAO is examining ways in which the operating costs of the Federal Bureau of Prisons (BoP) can be reduced. As we have previously discussed with you and your colleagues, the Commission has agreed to analyze on GAO's behalf several policy options which could reduce the overall size of the prison population that the BoP administers. Specifically, our analyses of these policy options will consider the effect on the federal prison population if the policies were implemented in such a way that the options would apply to inmates currently incarcerated in the BoP system.

In this memorandum, we provide to you another of these estimates. Here we provide our estimate of the impact on the federal prison population if the current method of determining "good time credit" were to be changed so that offenders could earn up to 54 days per year for good conduct and the BoP would be authorized to apply that expanded credit to all offenders currently incarcerated.

As we discuss more fully below, we estimate that 179,265 offenders who are incarcerated and would still be in prison on October 1, 2014 would be eligible to receive additional good conduct credit under such a policy change. The average increase in good conduct credit for these offenders would be 2.3 months (2.2%). The estimated total savings to the BoP from such a policy change applied retroactively would be 34,359 bed years.

I. The Policy Option We Considered

Under current law,¹ a prisoner who is serving a term of imprisonment of more than one year may receive credit to the service of a sentence if they behave satisfactorily while incarcerated. Section 3624(b) of title 18 provides:

A prisoner may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term . . . [C]redit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.²

The goal of this provision is, in essence, that offenders serve at least 85 percent of the sentence imposed. The BoP currently uses a formula to determine good conduct credit that results in a maximum of 47 days of credit being given for each year of incarceration served. The difference between the BoP approach and the 54 days described in the statute occurs because of the BoP's interpretation of when the good conduct credit is accrued (following the service of each year) and how the credit is to be applied to the partial year remaining at the end of an offender's sentence.

An alternate method of calculating the good conduct credit could be to simply award 54 days of credit for each year of sentence imposed at the beginning of the sentence. Although the BoP's current interpretation of the statute has been upheld by the Supreme Court,³ the Department of Justice has proposed to Congress that it amend the governing statute so as to allow the BoP to award up to 54 days per year.⁴

You have asked us to consider a change to the statute whereby the calculation of the good conduct credit is changed to authorize 54 days per year to be awarded (the "Policy Option").

II. What We Found

Applying the Policy Option to offenders in the custody of the BoP, we estimate that there are 179,265 offenders who would be incarcerated on October 1, 2014 who would be eligible for a reduction in the time they have left to serve on the sentence

¹ 18 U.S.C. § 3624(b).

² *Id.*

³ *Barber v. Thomas*, 560 U.S. ____ (2010).

⁴ Lanny Brewer, Assistant Attorney General, Criminal Division, U.S. Department of Justice, Remarks at the National District Attorneys Association Summer Conference (July 23, 2012) *available at* <http://www.justice.gov/criminal/pr/speeches/2012/crm-speech-120723.html>.

imposed if the Policy Option were to be retroactively applied. If the BoP were to grant each of these offenders the full good time credit of the Policy Option we estimate that the total savings to the BoP would be 34,359 bed years.⁵

Table 1 provides information on some of the demographic characteristic of the offenders eligible for a sentence reduction pursuant to the Policy Option. Table 2 provides an estimate of the number of offenders who would be released each year if the Policy Option was applied retroactively compared to the number of offenders who will be released each year pursuant to their current sentence. As can be seen on this table, if the Policy Option were fully retroactive on October 1, 2014, there would be 819 offenders eligible for immediate release. Within the first year of the effective date of the Policy Option, another 25,918 offenders would be eligible for release. In total, the number of offenders eligible for release under the Policy Option in the first year is 2,878 more than the number who will be released under their current sentence. Table 3 provides information on selected sentencing guideline characteristics and the criminal history category of these offenders.

For the 179,265 offenders who would be eligible to receive additional good conduct credit under the Policy Option, the current average time served is 103.3 months. If the BoP were to award the maximum good time credit under the Policy Option, the projected average time served would be 101.0 months, a reduction of 2.3 months (or 2.2%). Based on this reduction, the estimated total savings to the BoP from the retroactive application of the Policy Option would be 34,359 bed years. This savings would not be realized in any single year but is the cumulative savings realized over several years.

III. How We Conducted This Analysis

A. Methodology

The methodology for this analysis is based on the Commission's Prison Impact Model, which has been in use in some form since the guidelines were first developed. This model is used to estimate the impact of proposed statutory and guideline amendments on newly sentenced offenders and to project the future impact those amendments will have on bed space in the BoP. For this analysis, those offenders who appear to be eligible to receive a reduced sentence were hypothetically "resentenced" with the computer program as if the proposed policy change had been in effect in the year in which they were sentenced. A new release date for each offender also was calculated in order to determine when the offender would be eligible for release if he or she were provided the full reduction in sentence provided by the proposed policy change.

⁵ A "bed year" is the cost to the BoP of incarcerating one inmate for one year. For example, one inmate who serves five years of imprisonment accounts for five bed years.

B. The Offender Population We Studied

The Bureau of Prisons provided the Commission with a datafile of inmates who were in the custody of the BoP on Jan 25, 2014. That file contained approximately 189,000 offenders. Approximately 184,000 of these offenders were sentenced between fiscal year 1992 and fiscal 2013.⁶ USSC staff was able to match 171,765 of these offenders to Commission records. Of these, 138,894 were estimated to remain incarcerated on October 1, 2014.

In order to approximate the group of offenders who will be sentenced in fiscal year 2014, the Commission used the FY2013 datafile and moved all sentence dates forward by one year. Staff then determined which of these offenders would be incarcerated on October 1, 2014. This process added another 40,178 offenders into the analysis. Between the two groups, the Commission's analysis included data on 179,072 offenders.

C. Our Assumptions

In performing our analysis, we have been required to make some assumptions (set forth below) concerning the decisions that Congress and the courts would make in determining whether, and to what extent, to reduce the sentences of offenders eligible to receive a modification of sentence pursuant to the Policy Option discussed above. These assumptions may not hold in every case.

1. Procedural assumptions

Specifically, we have assumed that Congress would amend the provisions of 18 U.S.C. § 3624(b) in such a way that the BoP would award a maximum of good conduct credit of 54 days per year of sentence imposed. We have also assumed that Congress would authorize the statutory change to be applied retroactively to offenders incarcerated in the BoP.

2. Substantive assumptions

We have assumed that the sentence for each offender would be reduced based on the maximum good conduct credit allowed under the Policy Option. This assumption may not hold for every offender, as some offenders lose a portion or all of their earned good conduct credit as a sanction for unacceptable behavior. As a result, our estimate of the impact of the Policy Options may be overbroad, but not to an extent we can determine. We have also assumed that offenders would serve the lesser of the newly calculated sentence or their life expectancies.

⁶ The analysis was limited to data from fiscal year 1992 through September 30, 2013 (fiscal years 1992 through 2013) because the Commission's data collection efforts prior to fiscal year 1992 were not as complete as in later years. For example, the Commission did not collect information on the type of drug involved in drug offenses prior to fiscal year 1992.

If you have any questions about this analysis, or any of our prior analyses that we have provided to the GAO, please do not hesitate to contact the Commission. This analysis completes the list of analyses we have agreed to provide to you. We hope that the information the Commission has provided has been useful to the GAO in its work.

Sincerely,



Noah D. Bookbinder
Director
Office of Legislative and Public Affairs



Glenn R. Schmitt
Director
Office of Research and Data

Attachments

Table 1
Demographic Characteristics of Eligible Offenders
(FY1992 through FY2014)

DEMOGRAPHICS

Race/Ethnicity

White	47,363	26.5%
Black	58,531	32.7%
Hispanic	67,051	37.5%
Other	6,045	3.4%
Total	178,990	100.0%

Citizenship

U.S. Citizen	133,096	74.3%
Non-Citizen	46,073	25.7%
Total	179,169	100.0%

Gender

Male	166,582	92.9%
Female	12,675	7.1%
Total	179,257	100.0%

Average Age

39	36
(as of November 1, 2014)	(at sentencing)

The analysis involves a total of 179,265 cases, however, cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to exactly 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13.

Table 2
Projected Year of Release for Retroactive Eligible Offenders
(FY1992 through FY2014)

Release Date	IF OPTION RETROACTIVE N	IF OPTION NOT RETROACTIVE N
Immediate Release	819	--
within 1 yr	25,918	23,859
within 2 yr	31,111	30,901
within 3 yr	24,980	24,972
within 4 yr	19,287	19,395
within 5 yr	14,841	15,063
within 6 yr +	62,309	65,075

Of the 179,265 offenders who appear to be eligible to benefit under the Policy Option, Commission records contained sufficient information to perform this analysis for 179,265 offenders.
 SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13.

Table 3
Guideline Sentencing Characteristics, Criminal History, and
Position Relative to the Guideline Range of Eligible Offenders
(FY1992 through FY2014)

<u>CHARACTERISTICS</u>		
Average Base Offense Level		--
Weapon Specific Offense Characteristic	23,888	13.3%
Firearms Mandatory Minimum Applied	21,962	12.3%
Safety Valve §5C1.2	15,970	16.3%
Aggravating Role §3B1.1	17,959	10.0%
Mitigating Role §3B1.2	8,705	4.9%
Obstruction Adjustment §3C1.1	8,416	4.7%
Career Offender Status §4B1.1	19,532	10.9%
<hr/>		
<u>Criminal History Category</u>		
I	58,109	32.4%
II	19,809	11.1%
III	28,548	15.9%
IV	19,857	11.1%
V	13,790	7.7%
VI	39,152	21.8%
Total	179,265	100%
<hr/>		
<u>Sentence Relative to the Guideline Range</u>		
Within Range	97,940	54.7%
Above Range	5,615	3.1%
Substantial Assistance §5K1.1	25,871	14.5%
Otherwise Below Range	49,478	27.7%
Total	178,904	100%

The analysis involves a total of 179,265 cases, however, cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to exactly 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13.

7. USSC analysis of option 7: Make the current “safety valve” available to any drug offender with no offenses that receive 3 points under the criminal history point system.

Federal law generally requires a sentencing judge to impose a minimum sentence of imprisonment following conviction for any number of federal offenses; however, there are two statutorily provided exceptions. One of these exceptions, commonly referred to as the “safety valve,” was created by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, and is available for certain types of defendants for certain offenses that carry minimum sentences. Under this option, the current statutory requirements for eligibility for safety valve relief in drug cases involving a mandatory minimum penalty would be expanded to cover incarcerated offenders with any number of criminal history points, provided that the offender does not have a conviction for which the sentence imposed was a 3-point offense under USSC sentencing guidelines. Under USSC sentencing guidelines, 3 criminal history points are assigned if an offender has been previously sentenced or is being sentenced to a prison term of 13 months or more.

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April 24, 2014

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Dear Mr. Tumin:

The Government Accountability Office has asked the U.S. Sentencing Commission to assist it in connection with its engagement (number 441173). We understand that through this engagement the GAO is examining ways in which the operating costs of the Federal Bureau of Prisons (BoP) can be reduced. As we have previously discussed with you and your colleagues, the Commission has agreed to analyze on GAO's behalf several policy options which could reduce the overall size of the prison population that the BoP administers. Specifically, our analyses of these policy options will consider the effect on the federal prison population if the policies were implemented in such a way that the options would apply to inmates currently incarcerated in the BoP system.

In this memorandum, we provide to you another of these estimates. Here we provide our estimate of the impact on the federal prison population if the current statutory requirements for eligibility for "safety valve" relief in drug cases involving a mandatory minimum penalty¹ were to be expanded. Specifically, you have asked us to consider a change to current law whereby offenders with any criminal history not involving a conviction for which the sentence imposed exceeded 13 months would be eligible for such relief and the courts would be authorized to resentence all federal offenders convicted of a drug offense in a manner consistent with the revised statute.

As we discuss more fully below, we estimate that 11,949 offenders who are incarcerated and would still be in prison as of October 1, 2014 would be eligible for a

¹ 18 U.S.C. § 3553(f); *see also* USSG §5C1.2.

sentence reduction. The average reduction in sentence for these offenders would be 18 months (19.1 percent). The estimated total savings to the BoP from such a policy change applied retroactively would be 15,889 bed years.

I. The Policy Option We Considered

One of the policy options that we have agreed to examine on behalf of the GAO is the impact of a policy change in current law whereby the current statutory requirements for eligibility for “safety valve” relief from the application of mandatory minimum penalties in drug cases would be expanded. That provision currently requires courts to sentence offenders who have been convicted of a drug offense carrying a mandatory minimum penalty without regard for that penalty when all of several criteria are met.² One of those criteria involves the criminal history score³ of the offender. Currently, offenders are eligible for safety valve relief only if they have been assessed no more than one criminal history point under the sentencing guidelines.⁴ You have asked us to consider a change to the statute whereby offenders would be eligible for safety valve relief regardless of their criminal history score provided that none of their criminal history involves a conviction for which the sentence imposed exceeded one year and one month,⁵ and further provided they meet the remaining safety valve criteria (the “Policy Option”).

II. What We Found

Applying the Policy Option to offenders in the custody of the BoP, we estimate that there are 11,949 offenders who would be incarcerated on October 1, 2014 who would be eligible for a reduction in their current sentence if the Policy Option were to be retroactively applied. If the courts were to grant each of these offenders the full reduction in their sentence we estimate that the total savings to the BoP would be 15,889 bed years.⁶

Table 1 provides information on some of the demographic characteristic of the offenders eligible for a sentence reduction pursuant to the Policy Option. Table 2

² *Id.*

³ *See* USSG Ch.4, Pt.A, for a discussion on how the criminal history score is determined.

⁴ Criminal history points are assessed by the court at the time of sentencing. *Id.*

⁵ Offenders convicted of an offense for which the sentence imposed exceeded one year and one month are assessed three points under the sentencing guidelines. *See* USSG §4A1.1(a). Therefore, this Policy Option would expand safety valve relief to any offender who did not have any conviction that was assigned three points under the criminal history provisions of the guidelines.

⁶ A “bed year” is the cost to the BoP of incarcerating one inmate for one year. For example, one inmate who serves five years of imprisonment accounts for five bed years.

provides an estimate of the number of offenders who would be released each year if the Policy Option was applied retroactively compared to the number of offenders who will be released each year pursuant to their current sentence. As can be seen on this table, if the Policy Option were fully retroactive on October 1, 2014, more than 1,123 offenders would be eligible for immediate release. Within the first year of the effective date of the Policy Option, another 865 offenders would be eligible for release above the number who will be released under their current sentence. Table 3 provides information on selected sentencing guideline characteristics and the criminal history category of these offenders.

For the 11,949 offenders who would be eligible to receive a sentence reduction under the Policy Option, the current average sentence is 94 months. If the courts were to grant the full reduction possible in each case, the projected new average sentence for these offenders would be 76 months, a reduction of 18 months (or 19.1 percent). Based on this reduction, the estimated total savings to the BoP from the retroactive application of the Policy Option would be 15,889 bed years. This savings would not be realized in any single year but is the cumulative savings realized over several years.

III. How We Conducted This Analysis

A. Methodology

The methodology for this analysis is based on the Commission's Prison Impact Model, which has been in use in some form since the guidelines were first developed. This model is used to estimate the impact of proposed statutory and guideline amendments on newly sentenced offenders and to project the future impact those amendments will have on bed space in the BoP. For this analysis, those offenders who appear to be eligible to receive a reduced sentence were hypothetically "resentenced" with the computer program as if the proposed policy change had been in effect in the year in which they were sentenced. A new release date for each offender also was calculated in order to determine when the offender would be eligible for release if he or she were provided the full reduction in sentence provided by the proposed policy change.

B. The Offender Population We Studied

The Bureau of Prisons provided the Commission with a datafile of inmates who were in the custody of the BoP on Jan 25, 2014. That file contained approximately 189,000 offenders. Approximately 184,000 of these offenders were sentenced between fiscal year 1992 and fiscal 2013.⁷ USSC staff was able to match 171,765 of these offenders to Commission records. Of these, 138,894 were estimated to remain incarcerated on October 1, 2014.

⁷ The analysis was limited to data from fiscal year 1992 through September 30, 2013 (fiscal years 1992 through 2013) because the Commission's data collection efforts prior to fiscal year 1992 were not as complete as in later years. For example, the Commission did not collect information on the type of drug involved in drug offenses prior to fiscal year 1992.

In order to approximate the group of offenders who will be sentenced in fiscal year 2014, the Commission used the FY2013 datafile and moved all sentence dates forward by one year. Staff then determined which of these offenders would be incarcerated on October 1, 2014. This process added another 40,178 offenders into the analysis. Between the two groups, the Commission’s analysis included data on 179,072 offenders.

C. Our Assumptions

In performing our analysis, we have been required to make some assumptions (set forth below) concerning the decisions that Congress and the courts would make in determining whether, and to what extent, to reduce the sentences of offenders eligible to receive a modification of sentence pursuant to the Policy Option discussed above. These assumptions may not hold in every case.

1. Procedural assumptions

Specifically, we have assumed that Congress would amend the provisions of 18 U.S.C. § 3553(f)(1) to the effect that “the defendant does not have a criminal history score, as determined under the sentencing guidelines, that includes points added for any conviction for which the sentence imposed exceeded one year and one month.” We have further assumed that the Commission would amend USSG §5C1.3 to conform it to the provisions of the amended statutory safety valve provision⁸ but make no further changes to the *Guidelines Manual*, so that the remaining provisions of the 2013 *Guidelines Manual* would apply in these cases. Further, we have assumed that Congress would authorize the statutory change to be applied retroactively to offenders incarcerated in the BoP and that the Commission would amend USSG §1B1.10 to authorize courts to apply the amendment to USSG §5C1.3 retroactively to those offenders on some specific date.⁹ We also assumed that the courts would resentence offenders in a manner that is consistent with the amended *Guidelines Manual*.¹⁰ Finally, we assumed that the effective date of any such Policy Option would be October 1, 2014. Therefore, only offenders incarcerated as of that date would be eligible to seek a reduction in sentence pursuant to the Policy Option discussed in this memorandum.

⁸ See 28 U.S.C. § 994(o), which requires the Commission to periodically review and revise the sentencing guidelines.

⁹ See 28 U.S.C. § 994(u), which requires that when the Commission “reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.” The Commission does this through amendments to USSG §1B1.10, which lists all of the amendments to the *Guidelines Manual* that may be retroactively applied.

¹⁰ See 18 U.S.C. 3582(c)(2), which authorizes the courts to resentence an incarcerated offender in light of the Commission’s decision under 28 U.S.C. §§ 994(o) and (u) to retroactively apply an amendment to the *Guidelines Manual* if the sentencing range that applied at the time the offender was sentenced would be lower under the amended guideline.

2. Substantive assumptions

In fiscal year 2010, approximately 66 percent of all drug offenders were convicted of an offense carrying a mandatory minimum penalty.¹¹ Of those, approximately 46 percent remain subject to the penalty at the time of sentencing.¹² Some offenders receive relief from the effect of any such penalty by providing substantial assistance to the government in the investigation or prosecution of another offender.¹³ Others receive relief from such a penalty through the statutory “safety valve” provision.¹⁴ Some offenders are eligible for both provisions.

Under the sentencing guidelines, drug offenders who meet the requirements of the statutory safety valve provision, which is incorporated into the guidelines at USSG 5C1.3, are entitled to a two-level reduction in offense level.¹⁵ This provision applies regardless of whether the offender was convicted of an offense carrying a mandatory minimum penalty. That is, for offenders who are convicted of an offense carrying a mandatory minimum penalty, eligibility for the safety valve provides two benefits: 1) statutory relief from application of the mandatory minimum penalty, and 2) a two-level reduction in the offense level calculated under the sentencing guidelines. For drug offenders who were not convicted of an offense carrying a mandatory minimum penalty, eligibility for safety valve relief also results in the two-level reduction in offense level. For the analysis described in this memorandum, we have assumed that this structure would be unchanged, so that all drug offenders could benefit from the Policy Option if they meet the revised safety valve criteria and regardless of whether a mandatory minimum penalty had ever applied in the case.

Additional assumptions we have made for this analysis are that the sentence for each offender would be reduced based on the maximum good conduct credit allowed by the Bureau of Prisons, and offenders would serve the lesser of the newly calculated sentence or their life expectancies.

¹¹ See U.S. SENTENCING COMMISSION, MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 154 (2011).

¹² *Id.*

¹³ See 18 U.S.C. § 3553(e); USSG §5K1.1.

¹⁴ See 18 U.S.C. § 3553(f); USSG §5K3.1.

¹⁵ USSG §2D1.1(b)(16).

If you have any questions about our analysis, please do not hesitate to contact the Commission. We continue to work to analyze the other policy options that we discussed with you and your colleagues. We will provide our analyses of these options as they are completed.

Sincerely,



Noah D. Bookbinder
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Attachments

Table 1
Demographic Characteristics of Drug Offenders
Potentially Eligible for Retroactive Expanded Safety Valve (No 3-Point Events)

DEMOGRAPHICS		
Race/Ethnicity	N	%
White	3,496	29.3%
Black	3,463	29.0%
Hispanic	4,667	39.1%
Other	309	2.6%
Total	11,935	100.0%
Citizenship		
U.S. Citizen	9,639	80.7%
Non-Citizen	2,308	19.3%
Total	11,947	100.0%
Gender		
Male	10,458	87.5%
Female	1,490	12.5%
Total	11,948	100.0%
Average Age	33	

¹The analysis involves a total of 11,949 cases in which the offender was identified as eligible to seek a sentence reduction if the drug mandatory minimum changes were made retroactive. Cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to exactly 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13 and projected 2014 Datafile.

Table 2
Estimated Projected Year of Release for Drug Offenders
Potentially Eligible for Retroactive Expansion of Safety Valve (No 3-Point Events)

Release Date	If Policy Option Applied Retroactively	Current Sentence
	N	N
immediate	1,123	
within 1 yr	2,108	1,243
within 2 yr	2,520	2,242
within 3 yr	2,118	2,009
within 4 yr	1,446	1,888
within 5 yr	912	1,327
<u>within 6 yr +</u>	1,690	3,208

¹Of the 11,949 offenders who appear to be eligible for relief if the Policy Option was applied retroactively, Commission records contained sufficient information to perform this analysis for 11,917 offenders.

SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13 and projected 2014 Datafile.

Table 3
Guideline Sentencing Characteristics and Criminal History of
Drug Offenders Potentially Eligible for Retroactive Expanded Safety Valve (No 3-Point Events)

CHARACTERISTICS	N	%
Average Base Offense Level	30	
Weapon Specific Offense Characteristic	0	0.0%
Firearms Mandatory Minimum Applied	0	0.0%
Safety Valve §5C1.2	0	0.0%
Aggravating Role §3B1.1	0	0.0%
Mitigating Role §3B1.2	1,339	11.2%
Obstruction Adjustment §3C1.1	0	0.0%
Career Offender Status §4B1.1	0	0.0%
<hr/>		
<u>Criminal History Category</u>		
I	0	0.0%
II	4,658	39.0%
III	4,936	41.3%
IV	1,452	12.2%
V	599	5.0%
VI	304	2.5%
Total	11,949	100%

¹The analysis involves a total of 11,949 cases in which the offender was identified as eligible to seek a sentence reduction if the expanded safety valve changes were made retroactive. Cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to exactly 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13 and projected 2014 Datafile.

8. USSC analysis of option 8: Expand the safety valve as described in option 7 to include both non-violent drug offenders and any nonviolent offenders provided that they do not have a 3-point offense.

Under this option, the current statutory requirements for eligibility for "safety valve" relief in drug cases involving a mandatory minimum penalty would be expanded to cover both drug offenders and other non-violent (non-drug) offenders. No offender could have a conviction for which the sentence imposed was a 3-point offense under USSC sentencing guidelines.

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June 11, 2014

Jonathan R. Tumin
Senior Analyst
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441 G St., NW
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Dear Mr. Tumin:

The Government Accountability Office has asked the U.S. Sentencing Commission to assist it in connection with its engagement (number 441173). We understand that through this engagement the GAO is examining ways in which the operating costs of the Federal Bureau of Prisons (BoP) can be reduced. As we have previously discussed with you and your colleagues, the Commission has agreed to analyze on GAO's behalf several policy options which could reduce the overall size of the prison population that the BoP administers. Specifically, our analyses of these policy options will consider the effect on the federal prison population if the policies were implemented in such a way that the options would apply to inmates currently incarcerated in the BoP system.

In this memorandum, we provide to you another of these estimates. Here we provide our estimate of the impact on the federal prison population if the current statutory requirements for eligibility for "safety valve" relief in drug cases involving a mandatory minimum penalty¹ were to be expanded to all offenders regardless of the type of offense committed, subject to some limitations. Specifically, you have asked us to consider a change to current law whereby any non-violent offender would be eligible for safety valve relief regardless of the offender's criminal history, provided that the offender had not been convicted of any offense for which the sentence imposed exceeded 13 months, and the courts would be authorized to resentence those offenders in a manner consistent with the revised statute.

As we discuss more fully below, we estimate that 38,930 offenders who are incarcerated and would still be in prison as of October 1, 2014 would be eligible for a

¹ 18 U.S.C. § 3553(f); *see also* USSG §5C1.2.

sentence reduction under such a policy change. The average reduction in sentence for these offenders would be 15 months (20.5%). The estimated total savings to the BoP from such a policy change applied retroactively would be 40,552 bed years.

I. The Policy Option We Considered

One of the policy options that we have agreed to examine on behalf of the GAO is the impact of a policy change in current law whereby the current statutory requirements for eligibility for “safety valve” relief from the application of mandatory minimum penalties in drug cases would be expanded. That provision currently requires courts to sentence offenders who have been convicted of a drug offense carrying a mandatory minimum penalty without regard for that penalty when all of several criteria are met.² One of those criteria involves the criminal history score³ of the offender. Currently, offenders are eligible for safety valve relief only if they have been assessed no more than one criminal history point under the sentencing guidelines.⁴

You have asked us to consider a change to the statute whereby the safety valve would be available to all offenders, not just those committing drug offenses, provided that they offender was not a violent offender. You also asked us to consider a further change to the statute so that any such non-violent offender would be eligible regardless of their criminal history score, provided that none of their criminal history involves a conviction for which the sentence imposed exceeded one year and one month,⁵ and further provided they meet the remaining safety valve criteria (the “Policy Option”).

II. What We Found

Applying the Policy Option to offenders in the custody of the BoP, we estimate that there are 38,930 offenders who would be incarcerated on October 1, 2014 who would be eligible for a reduction in their current sentence if the Policy Option were to be retroactively applied. If the courts were to grant each of these offenders the full reduction in their sentence we estimate that the total savings to the BoP would be 40,552 bed years.⁶

Table 1 provides information on some of the demographic characteristic of the offenders eligible for a sentence reduction pursuant to the Policy Option. Table 2

² *Id.*

³ *See* USSG Ch.4, Pt.A, for a discussion on how the criminal history score is determined.

⁴ Criminal history points are assessed by the court at the time of sentencing. *Id.*

⁵ Offenders convicted of an offense for which the sentence imposed exceeded one year and one month are assessed three points under the sentencing guidelines. *See* USSG §4A1.1(a). Therefore, this Policy Option would expand safety valve relief to any offender who did not have any conviction that was assigned three points under the criminal history provisions of the guidelines.

⁶ A “bed year” is the cost to the BoP of incarcerating one inmate for one year. For example, one inmate who serves five years of imprisonment accounts for five bed years.

provides an estimate of the number of offenders who would be released each year if the Policy Option was applied retroactively compared to the number of offenders who will be released each year pursuant to their current sentence. As can be seen on this table, if the Policy Option were fully retroactive on October 1, 2014, more than 5,623 offenders would be eligible for immediate release. Within the first year of the effective date of the Policy Option, another 12,067 offenders would be eligible for release. In total, the number of offenders eligible for release under the Policy Option in the first year is 6,321 more than the number who will be released under their current sentence. Table 3 provides information on selected sentencing guideline characteristics and the criminal history category of these offenders.

For the 38,931 offenders who would be eligible to receive a sentence reduction under the Policy Option, the current average sentence is 73 months. If the courts were to grant the full reduction possible in each case, the projected new average sentence for these offenders would be 58 months, a reduction of 15 months (or 20.5%). Based on this reduction, the estimated total savings to the BoP from the retroactive application of the Policy Option would be 40,552 bed years. This savings would not be realized in any single year but is the cumulative savings realized over several years.

III. How We Conducted This Analysis

A. Methodology

The methodology for this analysis is based on the Commission's Prison Impact Model, which has been in use in some form since the guidelines were first developed. This model is used to estimate the impact of proposed statutory and guideline amendments on newly sentenced offenders and to project the future impact those amendments will have on bed space in the BoP. For this analysis, those offenders who appear to be eligible to receive a reduced sentence were hypothetically "resentenced" with the computer program as if the proposed policy change had been in effect in the year in which they were sentenced. A new release date for each offender also was calculated in order to determine when the offender would be eligible for release if he or she were provided the full reduction in sentence provided by the proposed policy change.

B. The Offender Population We Studied

The Bureau of Prisons provided the Commission with a datafile of inmates who were in the custody of the BoP on Jan 25, 2014. That file contained approximately 189,000 offenders. Approximately 184,000 of these offenders were sentenced between fiscal year 1992 and fiscal 2013.⁷ USSC staff was able to match 171,765 of these offenders to Commission records. Of these, 138,894 were estimated to remain incarcerated on October 1, 2014.

⁷ The analysis was limited to data from fiscal year 1992 through September 30, 2013 (fiscal years 1992 through 2013) because the Commission's data collection efforts prior to fiscal year 1992 were not as complete as in later years. For example, the Commission did not collect information on the type of drug involved in drug offenses prior to fiscal year 1992.

In order to approximate the group of offenders who will be sentenced in fiscal year 2014, the Commission used the FY2013 datafile and moved all sentence dates forward by one year. Staff then determined which of these offenders would be incarcerated on October 1, 2014. This process added another 40,178 offenders into the analysis. Between the two groups, the Commission’s analysis included data on 179,072 offenders.

C. Our Assumptions

In performing our analysis, we have been required to make some assumptions (set forth below) concerning the decisions that Congress and the courts would make in determining whether, and to what extent, to reduce the sentences of offenders eligible to receive a modification of sentence pursuant to the Policy Option discussed above. These assumptions may not hold in every case.

1. Procedural assumptions

Specifically, we have assumed that Congress would amend the provisions of 18 U.S.C. § 3553(f) to provide that the subsection would apply at sentencing in any case in which the offender was not convicted of a violent offense and had not used violence in the commission of the offense. We have also assumed that Congress would amend 18 U.S.C. § 3553(f)(1) to expand eligibility under that section to any federal offender to the extent that: “the defendant does not have a criminal history score, as determined under the sentencing guidelines, that includes points added for any conviction for which the sentence imposed exceeded one year and one month.”

We have further assumed that the Commission would amend USSG §5C1.3 to conform it to the provisions of the amended statutory safety valve provision⁸ but make no further changes to the *Guidelines Manual*, so that the remaining provisions of the 2013 *Guidelines Manual* would apply in these cases. Further, we have assumed that Congress would authorize the statutory change to be applied retroactively to offenders incarcerated in the BoP and that the Commission would amend USSG §1B1.10 to authorize courts to apply the amendment to USSG §5C1.3 retroactively to those offenders on some specific date.⁹ We also assumed that the courts would resentence offenders in a manner that is consistent with the amended *Guidelines Manual*.¹⁰ Finally, we assumed that the effective

⁸ See 28 U.S.C. § 994(o), which requires the Commission to periodically review and revise the sentencing guidelines.

⁹ See 28 U.S.C. § 994(u), which requires that when the Commission “reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.” The Commission does this through amendments to USSG §1B1.10, which lists all of the amendments to the *Guidelines Manual* that may be retroactively applied.

¹⁰ See 18 U.S.C. § 3582(c)(2), which authorizes the courts to resentence an incarcerated offender in light of the Commission’s decision under 28 U.S.C. §§ 994(o) and (u) to retroactively apply an amendment to the

date of any such Policy Option would be October 1, 2014. Therefore, only offenders incarcerated as of that date would be eligible to seek a reduction in sentence pursuant to the Policy Option discussed in this memorandum.

2. Substantive assumptions

In fiscal year 2010, approximately 66 percent of all drug offenders were convicted of an offense carrying a mandatory minimum penalty.¹¹ Of those, approximately 46 percent remain subject to the penalty at the time of sentencing.¹² Some offenders receive relief from the effect of any such penalty by providing substantial assistance to the government in the investigation or prosecution of another offender.¹³ Others receive relief from such a penalty through the statutory “safety valve” provision.¹⁴ Some offenders are eligible for both provisions.

Under the sentencing guidelines, drug offenders who meet the requirements of the statutory safety valve provision, which is incorporated into the guidelines at USSG 5C1.3, are entitled to a two-level reduction in offense level.¹⁵ This provision applies regardless of whether the offender was convicted of an offense carrying a mandatory minimum penalty. That is, for offenders who are convicted of an offense carrying a mandatory minimum penalty, eligibility for the safety valve provides two benefits: 1) statutory relief from application of the mandatory minimum penalty, and 2) a two-level reduction in the offense level calculated under the sentencing guidelines. For drug offenders who were not convicted of an offense carrying a mandatory minimum penalty, eligibility for safety valve relief also results in the two-level reduction in offense level.

For the analysis described in this memorandum, we have assumed that this structure would be unchanged, but now would be applied in all cases (not just drug cases) in which the offender was not convicted of a violent offense and had not used violence in connection with the offense. As a result, all non-violent offenders could benefit from the Policy Option if they meet the revised safety valve criteria and regardless of whether a mandatory minimum penalty had ever applied in the case.

We made several assumptions in for the purpose of determining which offenders were violent offenders. Specifically, we considered any of the following to be a violent offense or an indication that violence had been used in connection with the offense:

Guidelines Manual if the sentencing range that applied at the time the offender was sentenced would be lower under the amended guideline.

¹¹ See U.S. SENTENCING COMMISSION, MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 154 (2011).

¹² *Id.*

¹³ See 18 U.S.C. § 3553(e); USSG §5K1.1.

¹⁴ See 18 U.S.C. § 3553(f); USSG §5K3.1.

¹⁵ USSG §2D1.1(b)(16).

the guideline applied in the case was from Part A of Chapter 2 of the Guidelines Manual (which involves crimes against the person);
the guideline applied was USSG §2B2.1 (burglary of a residence);
the guideline applied was USSG §2B3.1 (robbery);
the guideline applied was USSG §2B3.2 (extortion by force or threat of injury);
the guideline applied was USSG §2D1.9 (placing dangerous devices to protect drug production);
the guideline applied was from Subpart 1 of Part E of Chapter 2 (racketeering);
the guideline applied was from Subpart 1 of Part G of Chapter 2 (promoting commercial sex acts or other prohibited sexual conduct);
the guideline applied was from Subpart 2 of Part G of Chapter 2 and the conduct involved the production of child pornography;
the guideline applied was USSG §2H4.1 (peonage, slave trade);
the guideline applied was from Part K of Chapter 2 (firearms);
the guideline applied was from Subparts 1, 2, 3, 5, or 6 of Part M of Chapter 2 (treason, sabotage, espionage, and cases involving nuclear, biological and chemical weapons and materials);
the guideline applied was USSG §2N1.1 (tampering with consumer products with risk of death);
the guideline applied was USSG §2P1.3 (prison riot);
the guideline applied was USSG §2Q1.1 (knowing endangerment from HAZMATs);
the guideline applied was USSG §2Q1.4 (tampering with public water system); or
the guideline applied was USSG §2X6.1 (use of a minor in a crime of violence).

Additional assumptions we have made for this analysis are that the sentence for each offender would be reduced based on the maximum good conduct credit allowed by the Bureau of Prisons, and offenders would serve the lesser of the newly calculated sentence or their life expectancies.

If you have any questions about our analysis, please do not hesitate to contact the Commission. We continue to work to analyze the other policy options that we discussed with you and your colleagues. We will provide our analyses of these options as they are completed.

Sincerely,



Noah D. Bookbinder
Director
Office of Legislative and Public Affairs



Glenn R. Schmitt
Director
Office of Research and Data

Attachments

Table 1
Demographic Characteristics of Eligible Offenders
(FY1992 through FY2014)

DEMOGRAPHICS

Race/Ethnicity

White	13,640	35.2%
Black	6,540	16.9%
Hispanic	17,586	45.4%
Other	997	2.6%
Total	38,763	100.0%

Citizenship

U.S. Citizen	25,707	66.1%
Non-Citizen	13,211	33.9%
Total	38,918	100.0%

Gender

Male	34,574	88.8%
Female	4,341	11.2%
Total	38,915	100.0%

Average Age

38	37
(as of November 1, 2014)	(at sentencing)

The analysis involves a total of 38,931 cases, however, cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to exactly 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13.

Table 2
Projected Year of Release for Retroactive Eligible Offenders
(FY1992 through FY2014)

Release Date	IF AMENDMENT RETROACTIVE N	IF AMENDMENT NOT RETROACTIVE N
Immediate Release	5,623	--
within 1 yr	12,067	11,369
within 2 yr	7,113	7,605
within 3 yr	4,724	5,476
within 4 yr	3,168	4,115
within 5 yr	1,975	2,816
within 6 yr +	4,260	7,549

Of the 38,931 offenders who appear to be eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 38,930 offenders.

SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13.

Table 3
Guideline Sentencing Characteristics, Criminal History, and
Position Relative to the Guideline Range of Eligible Offenders
(FY1992 through FY2014)

CHARACTERISTICS		
Average Base Offense Level		--
Weapon Specific Offense Characteristic	0	0.0%
Firearms Mandatory Minimum Applied	0	0.0%
Safety Valve §5C1.2	0	0.0%
Aggravating Role §3B1.1	0	0.0%
Mitigating Role §3B1.2	2,108	5.4%
Obstruction Adjustment §3C1.1	0	0.0%
Career Offender Status §4B1.1	845	2.2%
<hr/>		
<u>Criminal History Category</u>		
I	17,290	44.4%
II	7,895	20.3%
III	8,492	21.8%
IV	2,848	7.3%
V	1,095	2.8%
VI	1,311	3.4%
Total	38,931	100%
<hr/>		
<u>Sentence Relative to the Guideline Range</u>		
Within Range	20,748	53.3%
Above Range	823	2.1%
Substantial Assistance §5K1.1	4,895	12.6%
Otherwise Below Range	12,438	32.0%
Total	38,904	100%

The analysis involves a total of 38,931 cases, however, cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to exactly 100% due to rounding.

SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13.

Appendix VIII: GAO Contact and Staff Acknowledgments

GAO Contact

David C. Maurer, (202) 512-9627 or MaurerD@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Jill Verret (Assistant Director), Pedro Almoguera, Billy Commons, Adam Couvillion, Michele Fejfar, Eric Hauswirth, Susan Hsu, Linda Miller, Michael Tropauer, and Jonathan R. Tumin made key contributions to this report.

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