

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
*	*	*	Low Moderate Sanctions, plus. 2. Forfeit earned SGT or non-vested GCT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (an EGT sanction may not be suspended).
*	*	*	Moderate Sanctions (A, C, E-N), plus. 2. Forfeit earned SGT or non-vested GCT up to 37½% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
*	*	*	High Sanctions (A, C, E-M), plus. 2. Forfeit earned SGT or non-vested GCT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
*	*	*	

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Max. amt. forf. GT	Max. amt W/hd SGT	Elig. restoration forf. SGT	Elig. restoration W/hd/SGT	Max. dis seg
*	*	*	*	*	*	*

Note: (1) In Table 6 headings, "GT" represents both good conduct and statutory good time and "SGT" represents statutory good time. Forfeited good conduct time is not eligible for restoration. Restoration of statutory good time will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When the Warden or his delegated representative denies restoration of forfeited or withheld statutory good time, the unit team shall notify the inmate of the reasons for denial. The unit team shall establish a new eligibility date, not to exceed six months from the date of denial.

(2) An inmate with an approaching parole effective date, or an approaching mandatory release or expiration date who has forfeited good time may be placed in a Community Treatment Center only if that inmate is otherwise eligible under Bureau policy, and if there exists a legitimate documented need for such placement. The length of stay at the Community Treatment Center is to be held to the time necessary to establish residence and employment.

3. In § 541.14, paragraph (a) is amended by revising the last sentence to read as follows:

**§ 541.14 Incident report and investigation.**

(a) *Incident report.* \* \* \* Only the DHO may make a final disposition on a prohibited act in the Greatest Severity Category or on a prohibited act in the High Category (when the High Category prohibited act has been committed by a VCCLEA inmate rated as violent or by a PLRA inmate).

\* \* \* \* \*

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**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 544**

[BOP-1036-I]

RIN 1120-AA33

**Literacy Program**

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

**SUMMARY:** In this document, the Bureau of Prisons is revising its regulations on the literacy program on an interim basis in order to include a definition of "satisfactory progress". This definition is one determinant which is statutorily required for the awarding and/or vesting of good conduct time for certain inmates. In implementing this change, the Bureau has further revised its

regulations on the literacy program for the sake of clarification or simplification.

**DATES:** Effective November 3, 1997; comments must be submitted by November 25, 1997.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is adopting interim regulations on its literacy program for inmates. A final rule on the literacy program was published in the **Federal Register** May 1, 1991 (56 FR 20089), and was corrected on March 17, 1992 (57 FR 9211).

The Bureau's literacy program, which uses the General Educational Development (GED) credential as the equivalence for a high school diploma, requires participation from inmates who are not able to demonstrate the achievement of a GED credential or a high school diploma, with certain stated exceptions. Section 20412 of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) requires, among other things, that credit toward an inmate's service of sentence shall not be vested unless the inmate has earned or is making satisfactory progress toward a high school diploma or an equivalent degree. Under the Comprehensive Crime Control Act, good conduct time vested annually. Section 809 of the Prison Litigation Reform Act of 1995 (PLRA) requires, among other things, that credit toward an inmate's service of sentence shall vest on the date the inmate is released from custody, and that in awarding credit, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. A separate rulemaking published elsewhere in today's **Federal Register** addresses the discretion of the Bureau in awarding good conduct time credit to an inmate subject to PLRA (i.e., an inmate whose offense was committed on or after April 26, 1996).

In this document the Bureau is amending its regulations on the literacy program in order to include a definition of what constitutes satisfactory progress toward earning a GED credential. As defined in newly revised § 544.73(b), an inmate subject to VCCLEA or PLRA shall be deemed to be making satisfactory progress toward earning a GED credential or high school diploma unless and until the inmate receives a progress assignment confirming that the inmate refuses to enroll in the literacy program, that the inmate has been found to have committed a prohibited act that occurred in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program, or that the inmate has withdrawn from the literacy program. When an inmate subject to VCCLEA or PLRA receives a progress assignment indicating that he or she is not making satisfactory progress, this assignment shall not be changed to indicate that the inmate is making satisfactory progress until the inmate is currently and continuously enrolled in a literacy program for a minimum of 240 instructional hours. Any further withdrawal or finding that the inmate

committed a prohibited act that occurred in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program shall result in a progress assignment indicating that the inmate is again not making satisfactory progress.

Further revisions to the Bureau's regulations on the literacy program made for the sake of clarification or simplification are described below.

Previously, regulations in § 544.70 had specified that the minimum time required for participation is 120 calendar days or until a GED credential is achieved, whichever occurs first. Based upon the results of past program experience, 120 calendar days has been shown to provide sufficient time for the average inmate to achieve a GED credential. As revised, the Bureau has chosen to restate the time frame for minimum required participation in terms of instructional hours (i.e., 240 instructional hours is the equivalent of 120 calendar days). As revised, the statement of purpose and scope includes reference to exceptions stated in new § 544.71. Redundant references in § 544.70 to incentives have been removed.

Section 544.71 has been revised as a more clear statement of exceptions to mandatory participation. Paragraph (a)(2) contains additional statutory reference for study and observation cases. The exception for "good cause" formerly contained in paragraph (a)(4) has been replaced with more specific provisions in new paragraphs (a)(4) and (b). New paragraph (a)(4) allows for staff to make exceptions on a temporary basis due to special circumstances. Special circumstances (including, but not limited to, medical reasons, transfer on writ, being on the waiting list for initial placement) may make it temporarily impracticable to participate in the literacy program. Once the special circumstances are no longer applicable, the inmate shall be required to participate in the literacy program. The exception in new paragraph (b) is based upon the existence of an emotional, mental, or physical impediment to learning which has been documented through formal diagnostic assessment.

The provisions in former §§ 544.72 and 544.74 on work promotions and assignments have been consolidated and revised in a new § 544.74 as noted below. New § 544.72 contains the provisions on incentives formerly contained in § 544.75.

The provisions in § 544.73 have been revised to include the definition of satisfactory progress as noted above.

New § 544.74 consolidates provisions on work promotion and assignments contained in former §§ 544.72 and 544.74. These provisions have been revised for the sake of clarity. The revised provisions clarify that covered assignments above grade 4 include commissary positions. The revised provisions no longer stipulate that withdrawal from the literacy program may be used as the basis to remove an inmate appointed to a grade 4 position pursuant to new § 544.74(a)(1).

Section 544.75 has been revised to remove specific reference to calendar days. As noted above, the regulations state this period, where necessary, in terms of instructional hours.

The Bureau is publishing this regulation as an interim rule in order to solicit comment on a working definition of "satisfactory progress" without unnecessary delay in applying the definition to procedures for vesting and awarding good conduct time. As noted above, other changes in the regulations affect clarity or organization. Members of the public may submit comments concerning this rule by writing to the previously cited address. Comments received before expiration of the deadline will be considered before the rule is finalized. Comments received after expiration of the deadline will be considered to the extent practicable.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget pursuant to E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

#### List of Subjects in 28 CFR Part 544

Prisoners.  
**Kathleen M. Hawk,**  
*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(p), part 544 in subchapter C of 28 CFR, chapter V is amended as set forth below.

**Subchapter C—Institutional Management****PART 544—EDUCATION**

1. The authority citation for 28 CFR part 544 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart H of part 544 is revised to read as follows:

**Subpart H—Literacy Program**

Sec.

544.70 Purpose and scope.

544.71 Exceptions to required literacy program participation.

544.72 Incentives.

544.73 Program participation.

544.74 Work assignment limitations.

544.75 Disciplinary action.

**Subpart H—Literacy Program****§ 544.70 Purpose and scope.**

Except as provided for in § 544.71, an inmate confined in a federal institution who does not have a verified General Educational Development (GED) credential or high school diploma is required to attend an adult literacy program for a minimum of 240 instructional hours or until a GED is achieved, whichever occurs first.

**§ 544.71 Exceptions to required literacy program participation.**

(a) The following inmates are not required to attend the literacy program:

(1) Pretrial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c), 4241(d), or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced deportable aliens;

(4) Inmates determined by staff to be temporarily unable to participate in the literacy program due to special circumstances beyond their control (e.g., due to a medical condition, transfer on writ, on a waiting list for initial placement). Such inmates, however, shall be required to participate when the special circumstances are no longer applicable.

(b) Inmates who have been determined (on the basis of formal diagnostic assessment) to have a documented emotional, mental, or physical individual impediment to learning shall not be required to complete the literacy program beyond those achievement levels indicated as realistic by the formal diagnostic assessment.

(c) Staff shall document in the inmate's education file the specific

reasons for not requiring the inmate to participate in, or to complete, the literacy program.

**§ 544.72 Incentives.**

The Warden shall establish a system of incentives to encourage an inmate to obtain a GED credential.

**§ 544.73 Program participation.**

(a) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's literacy program. Initially, staff shall meet with the inmate for the purpose of enrolling the inmate in the literacy program. Subsequently, staff shall formally interview each inmate involved in the literacy program when necessary for the purpose of determining a progress assignment. Staff shall place documentation of these interviews in the inmate's education file.

(b)(1) For the purposes of 18 U.S.C. 3624, an inmate subject to the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) or the Prison Litigation Reform Act of 1995 (PLRA) shall be deemed to be making satisfactory progress toward earning a GED credential or high school diploma unless and until the inmate receives a progress assignment confirming that:

(i) The inmate refuses to enroll in the literacy program;

(ii) The inmate has been found to have committed a prohibited act that occurred in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program; or

(iii) The inmate has withdrawn from the literacy program.

(2) When an inmate subject to VCCLEA or PLRA receives a progress assignment indicating that the inmate is not making satisfactory progress, the assignment shall be changed to indicate satisfactory progress only after the inmate is currently and continuously enrolled in a literacy program for a minimum of 240 instructional hours. Any further withdrawal or finding that the inmate has committed a prohibited act in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program shall result in a progress assignment indicating that the inmate is again not making satisfactory progress (see paragraphs (b)(1)(ii) and (iii) of this section).

(c) At the end of 240 instructional hours, excluding sick time, furloughs, or other absences from scheduled classes, the unit team during scheduled program review sessions shall meet with the inmate to encourage continued

participation in the literacy program until the inmate earns a GED credential or high school diploma. At these meetings, the inmate may elect not to continue in the literacy program, and no disciplinary action will be taken. The inmate may not discontinue this program when participation is mandated by statute.

**§ 544.74 Work assignment limitations.**

These limitations on work assignment appointment and promotion apply to all inmates, including those exempted from required participation in the literacy program by § 544.71.

(a) *Appointment.* (1) An inmate who does not meet the literacy requirement may be assigned to a grade 4 position contingent upon the inmate's continued enrollment in the literacy program.

(2) An inmate ordinarily must show prior attainment of a GED credential or high school diploma in order to be considered for a commissary work assignment above minimum pay level, an institution work assignment above grade 4 compensation, or an industrial work assignment above grade four or in a non-graded incentive pay position.

(3) If labor force needs require, an inmate who does not meet the literacy requirement may be assigned to an industrial non-graded incentive pay position if the inmate is simultaneously enrolled in a literacy or related program. Withdrawal from the literacy program shall result in termination of the assignment. Local Federal Prison Industry (FPI) management may elect to retain the reassigned inmate in an hourly rated grade 4 position.

(b) *Promotion.* An inmate ordinarily must show prior attainment of a GED credential or high school diploma to be promoted above the minimum pay level or grade in a commissary work assignment, an institutional work assignment, or an industrial work assignment. An inmate already in an assignment above the minimum pay grade who had met prior literacy requirements when approved for promotion is eligible for further promotion under the prior standard. Such inmate, however, must meet the current standard if, due to demotion based upon a poor performance appraisal, he or she needs to reapply for a promotion.

(c) *Exceptions.* The Warden may, for good cause, exempt inmates on a case-by-case basis, from the literacy requirements for work assignment appointment and promotion. Staff shall document such exemption in the inmate's education file and central file.

**§ 544.75 Disciplinary action.**

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate lacking a GED credential or high school diploma if that inmate refuses to enroll in, and to complete, the mandatory 240 instructional hours of the literacy program.

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