



**U.S. Department of Justice
Office of the Inspector General
Evaluation and Inspections Division**

The Federal Bureau of Prisons' Compassionate Release Program

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EXECUTIVE DIGEST

In the *Sentencing Reform Act of 1984*, Congress authorized the Director of the Federal Bureau of Prisons (BOP) to request that a federal judge reduce an inmate's sentence for "extraordinary and compelling" circumstances.¹ Under the statute, the request can be based on either medical or non-medical conditions that could not reasonably have been foreseen by the judge at the time of sentencing.² The BOP has issued regulations and a Program Statement entitled "compassionate release" to implement this authority.³ This review assessed the BOP's compassionate release program, including whether it provides cost savings or other benefits to the BOP.

RESULTS IN BRIEF

The Office of the Inspector General (OIG) found that an effectively managed compassionate release program would result in cost savings for the BOP, as well as assist the BOP in managing its continually growing inmate population and the significant capacity challenges it is facing. However, we found that the existing BOP compassionate release program has 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.

The BOP does not have clear standards on when compassionate release is warranted, resulting in ad hoc decision making. The BOP's regulations and Program Statement provide no criteria or standards to use in evaluating whether a medical or non-medical circumstance qualifies for consideration. As a result, we found that BOP staff had varied and inconsistent understandings of the

¹ For inmates whose offenses occurred on or after November 1, 1987, the applicable statute is 18 U.S.C. § 3582(c)(1)(A). For inmates whose offenses occurred before November 1, 1987, 18 U.S.C. § 4205(g) remains the controlling law, even though it was repealed as part of the restructuring of federal sentencing law under the *Sentencing Reform Act*.

² In response to a working draft of this report, the BOP cited to the legislative history of 18 U.S.C. § 3582(c), which referenced terminal illness as an extraordinary and compelling circumstance in which a motion under this provision would be warranted. The BOP stated that the legislative history helps to explain the approach the BOP has traditionally exercised in relation to compassionate release requests.

³ BOP officials and institution staff use "compassionate release" and "reduction in sentence" interchangeably to refer to this program. In this report, we refer to the program as compassionate release.

circumstances that warranted consideration for compassionate release. For example, at some institutions, only inmates with a life expectancy of 6 months or less were deemed eligible for consideration. At other institutions, inmates with a life expectancy of 12 months or less were considered eligible candidates. We further found that although the BOP's regulations and Program Statement permit non-medical circumstances to be considered as a basis for compassionate release, the BOP routinely rejects such requests and did not approve a single non-medical request during the 6-year period of our review.

ODAG and BOP officials told us that the BOP is currently revising its compassionate release regulations and, subsequently, the compassionate release Program Statement. In addition, the BOP is drafting a new guidance memorandum for medical institutions that will expand the compassionate release program by making inmates with a life expectancy of up to 18 months eligible for consideration and assist staff who review compassionate release requests in understanding what level of functioning is sufficiently "extraordinary and compelling" for inmates with debilitating medical conditions to be considered for release. However, the BOP did not provide the OIG with a copy of the memorandum under consideration and could not tell us when it would be finalized.

The BOP does not have formal timeliness standards for reviewing requests, and timeliness standards for inmate appeals do not consider the special circumstances of medical compassionate release requests. Although many inmates eligible for compassionate release have terminal illnesses and limited life expectancies, the Program Statement simply directs staff to "expedite" the review process. We found that not all institutions have timeliness standards, and for those institutions that do, the timeframe ranges from 5 to 65 days. In addition, the process available to inmates to appeal a Warden's or Regional Director's denial of a compassionate release request can take up to more than 5 months to complete.

The BOP does not have effective procedures to inform inmates about the program. The compassionate release program is not one of the BOP programs that staff is required to inform inmates about. As a result, we found that the means used to inform inmates about the program are informal and vary by institution. We also reviewed handbooks provided to inmates upon arriving at an institution and found that only 8 of the 111 handbooks had information regarding compassionate release.⁴

⁴ BOP institutions are not required to have handbooks, although we found that most institutions create their own handbooks.

The BOP does not have a system to track all requests, the timeliness of the review process, or whether decisions made by Wardens and Regional Directors are consistent with each other or with BOP policy. The BOP cannot account for all compassionate release requests processed at its institutions from 2006 through 2011 because it tracks requests only in two situations: first, when a request has been approved by both a Warden and a Regional Director and has been sent to the BOP Director for consideration, and second, when an inmate has appealed a Warden's or Regional Director's decision denying a request.

We also found that the BOP cannot determine if requests are processed in a timely manner because the BOP does not track the time it takes to approve or deny requests. As a result, the BOP cannot determine if delays in the process exist, take corrective actions where delays occur, or ensure that inmates who may be eligible for the program, particularly those with terminal illnesses, are considered for release in a timely manner. According to case files provided by the BOP, in 13 percent (28 of 208) of the cases where inmate requests had been approved by a Warden and Regional Director, the inmate died before a final decision was made by the BOP Director.

In addition, we found that the BOP does not conduct any systematic reviews of decisions made by Wardens or Regional Directors to ensure that they are consistent with each other and with the BOP's Program Statement and the underlying statutory authority. As a result, the BOP cannot ensure the appropriateness of denial decisions made by Wardens or Regional Directors.

The release of inmates through the compassionate release program provides cost savings for the BOP and assists the BOP with prison population management. We found that a properly managed compassionate release program inevitably provides cost savings to the BOP and provides assistance to the BOP in addressing its ever-increasing and significant capacity problems.⁵ However, we also found that the BOP does not maintain cost data associated with the custody of inmates eligible for consideration under the program, and we found that the BOP has conducted no analysis of cost savings achieved by releasing such inmates. As a result, neither the BOP nor the OIG can determine with any precision the costs associated with providing health care to inmates

⁵ We recognize that, depending upon the nature of the medical condition and the financial and health insurance circumstances of the inmate, in at least some situations the inmate's release may result in additional health care costs to other government programs, such as Medicare or Medicaid.

eligible for compassionate release or the cost savings achieved by releasing eligible inmates.

A small percentage of inmates were rearrested after being released under the compassionate release program. In considering the impact of the compassionate release program on public safety, we found a recidivism rate of 3.5 percent for inmates released through the program. By comparison, the general recidivism rate for federal prisoners has been estimated to be as high as 41 percent. The OIG recognizes that approving and releasing more eligible inmates through the compassionate release program could result in some increase in the number of inmates who are rearrested. But the recidivism data we found demonstrates that a carefully and effectively managed program can minimize that risk if careful consideration is given to an inmate's potential risk to the community as part of the assessment process.

RECOMMENDATIONS

In this report, we make 11 recommendations to improve the BOP's management of the compassionate release program and to ensure that eligible inmates are considered for release. These recommendations include considering appropriately expanding the use of the compassionate release program as authorized by Congress and as described in the BOP's regulations and Program Statement to cover both medical and non-medical conditions for inmates who do not present a threat to the community and who present a minimal risk of recidivism, updating written national policies to accurately reflect the BOP's criteria for determining eligible medical and non-medical requests, and establishing timeframes for processing requests at each step of the review process. We also recommend the BOP require that all inmates be informed about the compassionate release program and that the BOP track each compassionate release request, its status, and final disposition. We also recommend that the BOP collect and assess the costs for providing health services to inmates diagnosed with terminal medical conditions and a limited life expectancy, and severely debilitating medical conditions.

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BACKGROUND

Introduction

In the *Sentencing Reform Act of 1984*, Congress authorized a federal court to reduce an inmate's sentence of imprisonment, upon a motion by the Director of the Federal Bureau of Prisons (BOP), if the court finds "extraordinary and compelling" circumstances exist that warrant a reduction and that the reduction "is consistent with applicable policy statements" of the U.S. Sentencing Commission.⁶ However, absent a motion by the Director of the BOP, a federal judge has no authority to modify an inmate's sentence for "extraordinary and compelling" reasons.

In connection with this authority, the BOP has promulgated regulations and issued a Program Statement, both entitled "compassionate release," that outline procedures for an inmate to initiate a request seeking a reduction in sentence for "extraordinary and compelling" reasons and that outline the process by which the BOP will consider the request.⁷ However, the regulations and the Program Statement do not define "compassionate release" or what constitutes an "extraordinary and compelling" circumstances.

The BOP is responsible for the custody and care of approximately 218,000 federal offenders who are housed in 117 BOP-operated facilities and in 15 privately managed or community-based facilities under contract with the BOP.⁸ We found that, on average, only 24 inmates are released each year through the BOP's compassionate release program.⁹

⁶ 18 U.S.C. § 3582(c)(1)(A), which applies to inmates whose offense occurred on or after November 1, 1987. For inmates whose offense occurred before that date, 18 U.S.C. § 4205(g) contains a similar provision and remains applicable to those inmates even though the statute was repealed as part of the *Sentencing Reform Act of 1984*. BOP officials and institution staff use "compassionate release" and "reduction in sentence" interchangeably to refer to this program. In this report, we refer to the program as compassionate release.

⁷ The regulations are found at 28 C.F.R. § 571, subpart G, and apply to all inmates, regardless of the date of offense.

⁸ There are currently 119 BOP-operated facilities. Our review is based on the 117 BOP facilities that were operational during the course of fieldwork.

⁹ Average based on the number of inmates approved and released during the scope of our review, 2006 through 2011.

The Office of the Inspector General (OIG) examined the BOP's implementation of the authority given to it by Congress and its process to approve or deny inmate requests for "extraordinary and compelling" reasons. Specifically, we examined the information the BOP provided about the program to inmates and the policies and procedures the BOP used to evaluate inmate requests, including any guidance or criteria the BOP used to determine which circumstances qualified as "extraordinary and compelling." We also reviewed the timeliness with which the BOP processed requests, as well as the costs associated with the custody of inmates who might be eligible for release due to "extraordinary and compelling" circumstances. Lastly, we assessed the recidivism rates of those inmates who had been approved and released through the compassionate release program.

In this background section, we discuss the Department components involved in the compassionate release program, the process by which they consider inmate requests for release, and the federal laws and regulations and Department policies governing the compassionate release process.

Department Components Involved in the Compassionate Release Program and the Review Process

The compassionate release program involves three Department components: the BOP, U.S. Attorneys' Offices (USAO), and the Office of the Deputy Attorney General (ODAG). This section briefly describes each component's role in the program and the compassionate release review process.

The Federal Bureau of Prisons

The BOP administers the compassionate release program in accordance with 18 U.S.C. § 4205(g) (repealed 1987) or § 3582(c)(1)(A) and 28 C.F.R. § 571.60-.64. Under these authorities, the BOP Director may request a reduction in an inmate's sentence based on "extraordinary and compelling" circumstances that were not known at the time of an inmate's sentencing. However, the BOP generally has exercised its authority only with inmates who are suffering from a life-threatening or terminal medical condition, or who are severely and permanently mentally or physically disabled.

U.S. Attorneys' Offices

The USAOs have two roles in the compassionate release review process. First, when the BOP is considering whether an inmate is

eligible for compassionate release, the BOP seeks an opinion from the Assistant U.S. Attorney (AUSA) who prosecuted the inmate's case on the circumstances underlying the inmate's request. An AUSA may support or oppose the inmate's request when responding to the BOP. Second, if the BOP Director approves a compassionate release request, the BOP will contact the USAO in the district in which the inmate was sentenced to request that the USAO make a motion to the federal sentencing court on behalf of the BOP to reduce the term of the inmate's sentence.

The Office of the Deputy Attorney General

The ODAG reviews two types of inmate requests for compassionate release that have been approved by the BOP Director: those made for non-medical reasons and those from inmates who are severely and permanently mentally or physically debilitated but whose life expectancy is indeterminate or unknown. In those circumstances, if the BOP Director approves the request, the request is forwarded to the ODAG for its review and the ODAG can object or raise concerns with the BOP Director before the request receives final approval.

The Compassionate Release Program's Review Process

According to the BOP's Program Statement and 28 C.F.R. § 571.61-.63, the compassionate release program's review process begins when an inmate submits a request to the Warden. A request must include the extraordinary and compelling circumstances that the inmate believes merit consideration; a plan for where the inmate will reside if released; and how he or she will support him- or herself if released. If the basis for the inmate's request is due to the inmate's health, information about where the inmate will receive medical care and how it will be paid for must also be included.

The Warden reviews the request and, if denying it, informs the inmate, in writing, of the reasons for the denial. The inmate may file an appeal through the BOP's administrative remedy procedures.¹⁰ If the Warden determines that the request warrants approval, the Warden refers the matter in writing with an approval recommendation to the Regional Director.

Upon receiving a request that a Warden has recommended for approval, the Regional Director conducts a review to determine if the

¹⁰ BOP Program Statement 1330.16, Administrative Remedy Program, establishes formal procedures for an inmate to seek review of any issue related to their incarceration.

request warrants approval.¹¹ If the Regional Director denies the request, the Regional Director informs the inmate of the reasons for denial, and the inmate may file an appeal through the BOP's administrative remedy procedures. If the Regional Director approves the request, the request with a written approval recommendation is referred to the BOP Office of General Counsel at the BOP's Central Office.¹²

Upon receiving the approved request from the Regional Director, the General Counsel solicits the opinion of either the BOP Medical Director, for medically based requests, or the BOP Assistant Director, Correctional Programs Division, for non-medical requests, as well as the opinion of the prosecuting AUSA.¹³ The General Counsel then forwards the inmate's request with these opinions and the recommendation from the Warden and the Regional Director to the BOP Director for final decision. While both the BOP's regulations and Program Statement give the General Counsel the authority to make a final determination to deny the inmate's request, we were told by BOP Central Office staff and officials that the General Counsel does not make any final decisions regarding inmate requests for compassionate release.¹⁴

We learned if the inmate's request is based on non-medical reasons or upon a severely debilitating medical condition and the inmate has an indeterminate life expectancy, the BOP Director solicits the opinion of the ODAG before rendering a final decision. No provision in either the BOP regulations or Program Statement provides for or requires such a consultation.

¹¹ On February 28, 2013, the BOP published an interim rule that expedited the compassionate release process by removing the Regional Director level of review, effective April 1, 2013. See Compassionate Release; Technical Changes, Interim Rule, 78 Fed. Reg. 40,13478 (Feb. 28, 2013).

¹² The BOP's Central Office is located in Washington, D.C. The following Central Office officials and their staff have roles in the compassionate release review process: the Director of BOP; Medical Director and Assistant Director of the Health Services Division; General Counsel and Assistant Director of the Office of General Counsel; and the Assistant Director of the Correctional Programs Division.

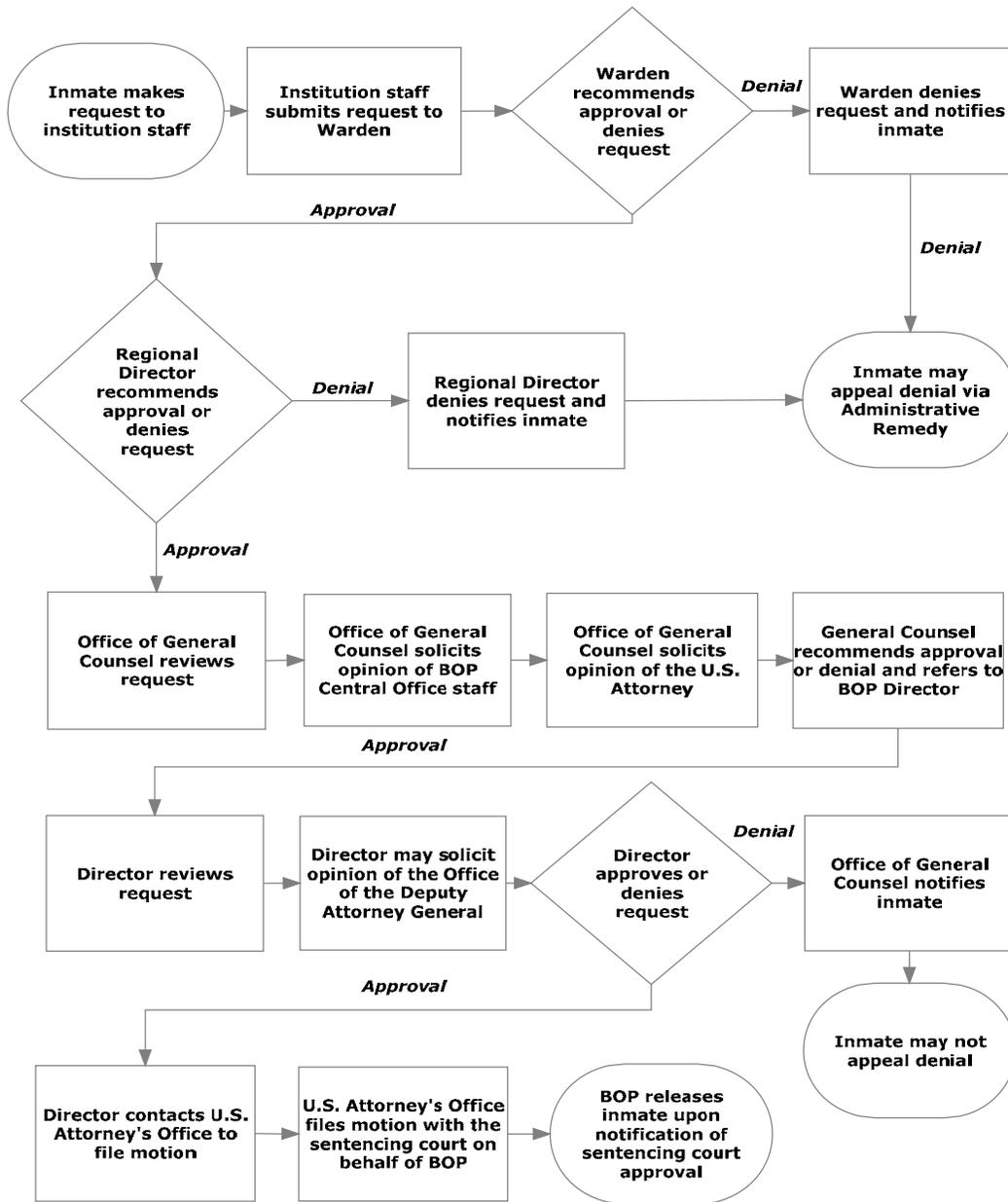
¹³ The BOP's General Counsel told us that she reviews requests to determine if they are medically appropriate. If the appropriateness of a medical request is questionable, she meets with the Director to discuss the medical circumstances of the request.

¹⁴ We were told that, while a denial letter may be signed by the General Counsel, all denials are in consultation and concurrence with the BOP Director.

If the BOP Director denies the inmate's request, the inmate must be informed of the reasons for the denial within 20 working days of the Warden receiving the denial from the General Counsel, and the denial constitutes a final administrative action that the inmate cannot appeal. If the BOP Director grants the request, the BOP Director requests that the USAO in the district in which the inmate was sentenced petition the sentencing court to reduce the inmate's term of imprisonment.¹⁵ Figure 1 presents a flow chart illustrating the process.

¹⁵ If the original sentence included a term of supervised release to follow the initially imposed term of imprisonment, the Warden must have included in the referral to the BOP Director confirmation that release plans were approved by the appropriate U.S. Probation Office. If the inmate will be released to an area outside the sentencing district, the U.S. Probation Office assuming supervision must be contacted. The role of the U.S. Probation Office was not part of this review because it is not a Department component.

Figure 1: Compassionate Release Request and Review Process



Source: BOP.

Federal Laws, Regulations, and Guidelines, and Department Policies Related to Compassionate Release

Below is a summary of federal laws and regulations regarding compassionate release. Appendix I provides more descriptive information about the laws and regulations relevant to the compassionate release program.

Federal Statutes, Regulations, and Guidelines

Sentencing Reform Act of 1984 (Pub. L. No. 98-473, 18 U.S.C. §§ 3551-3556)

The *Sentencing Reform Act of 1984*, Title II of the *Comprehensive Crime Control Act of 1984*, was passed by Congress and signed into law by the President on October 12, 1984. The legislation permits an inmate to request that the BOP Director make a motion to the federal sentencing judge for a reduction in the inmate's sentence for "extraordinary and compelling" reasons.

Under 18 U.S.C. § 3582(c)(1)(A), a sentencing court, on motion of the BOP Director, may reduce the term of imprisonment of an inmate sentenced under the *Comprehensive Crime Control Act of 1984*. The BOP oversees this program in accordance with 18 U.S.C. § 3582(c)(1)(A) and the procedures set forth in 28 C.F.R. § 571.60-.64.

For those defendants who were sentenced for offenses that occurred prior to November 1, 1987, the BOP's compassionate release program is governed by 18 U.S.C. § 4205(g). Although that statute was repealed on November 1, 1987, it still applies to inmates whose offenses occurred prior to that date. The repealed law states that under 18 U.S.C. § 4205(g), a sentencing court, on motion of the BOP, may make an inmate with a minimum term sentence immediately eligible for parole by reducing the minimum term of the sentence to time served.

28 C.F.R. § 571.60-.64 (Subpart G)

Title 28 of the Code of Federal Regulations, § 571.60-.64, subpart G, establishes the regulations and process for inmates and BOP staff to initiate and process a request. The C.F.R. reiterates that a request for compassionate release may be initiated only in the event of "extraordinary and compelling" circumstances, but does not provide any more definition than the U.S. Code as to what circumstances might apply.

U.S. Sentencing Commission Guidelines

The U.S. Sentencing Commission (USSC) is an independent federal agency within the judicial branch that develops sentencing policies and guidelines for use by judges in the federal courts. Pursuant to a congressional directive, the USSC developed a policy statement to clarify what constitutes “extraordinary and compelling” circumstances under 18 U.S.C. § 3582(c)(1)(A).¹⁶ The USSC’s policy statement provides four examples of circumstances that would constitute “extraordinary and compelling reasons,” provided that the defendant is not a danger to the safety of any other person or to the community. According to the USSC guidelines, extraordinary and compelling reasons exist when:

1. The defendant is suffering from a terminal illness.
2. The defendant is suffering from a permanent physical or medical condition, or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care and for which conventional treatment promises no substantial improvement.
3. The death or incapacitation of the defendant’s only family member capable of caring for the defendant’s minor child or minor children.
4. Any other circumstance which the Director of the Bureau of Prisons finds to be an extraordinary and compelling reason.¹⁷

Department Policy

BOP Director Memorandum

On July 22, 1994, the BOP Director issued a memorandum to BOP executive staff regarding compassionate release requests. The memorandum indicated that the BOP had recently expanded its “general

¹⁶ In 28 U.S.C. § 994(t), Congress directed the U.S. Sentencing Commission to promulgate general policy statements regarding the sentencing modification provisions in 18 U.S.C. § 3582(c)(1)(A) and to describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

¹⁷ U.S. Sentencing Guidelines, § 1B1.13: Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons (Policy Statement). U.S. Sentencing Guidelines, § 1B1.13, was enacted in 2006, with definitions i-iv provided in 2007.

guideline” in compassionate release cases to allow inmates with life expectancies of no more than 1 year to be eligible for consideration. According to the memorandum, prior to this revision, the BOP’s “general guideline” required that an inmate have a life expectancy of no more than 6 months to be eligible for compassionate release. The memorandum further indicated that, contrary to prior BOP practice, inmates with extremely serious or debilitating medical conditions also were eligible to be considered for compassionate release. The memorandum outlined certain factors for BOP staff to consider in evaluating a request for release, including the nature and circumstances of the inmate’s offense, the age of the inmate, and the danger the inmate may pose to the public if released.

BOP Program Statement 5050.46

The BOP’s Program Statement, “Compassionate Release, Procedures for Implementation of 18 U.S.C. § 3582(c)(1)(A) and § 4205(g),” was last revised by the BOP on May 19, 1998. It establishes policies and procedures for submitting and reviewing compassionate release requests, and includes processes for considering both medical and non-medical requests. The Program Statement outlines the objectives of the program, including that:

- a motion for a modification of a sentence will be made to the sentencing court only in particularly extraordinary or compelling circumstances that could not reasonably have been foreseen by the court at the time of sentencing,
- the public will be protected from undue risk by careful review of each compassionate release request, and
- compassionate release motions will be filed with the sentencing judge in accordance with the statutory requirements of 18 U.S.C. § 3582(c)(1)(A).

The Program Statement also includes procedures for initiating a request, approval of a request, and denial of a request. In addition, it describes which offenders are ineligible for compassionate release. The procedures contained in the Program Statement are the same as those established in 28 C.F.R. § 571.61-.64.

PURPOSE, SCOPE, AND METHODOLOGY OF THE OIG REVIEW

Purpose

Our review examined the BOP's implementation of its authority to seek from a federal judge a reduction in sentence for inmates for "extraordinary and compelling" reasons and the BOP's process for approving or denying inmate requests pursuant to this authority. Specifically, we examined:

- the BOP's explanation of the program to inmates;
- the policies and procedures to grant compassionate release, including guidance or criteria used to approve or deny requests based on "extraordinary and compelling" circumstances;
- the timeliness of processing requests;
- the costs associated with the custody of compassionate release inmates; and
- the recidivism rates of those inmates approved and released.

Scope and Methodology

Our review encompassed the BOP's process and handling of requests for compassionate release from calendar years 2006 through 2011. While our review focused on the BOP's process, we also reviewed the roles of the USAOs and ODAG in the compassionate release review process. Our review focused on federal offenders, and therefore we did not address state prisoners in BOP custody, military offenders, or D.C. Code offenders.¹⁸

Our fieldwork, conducted from March 2012 through September 2012, included interviews, data collection and analyses, and document reviews. We interviewed BOP Regional Directors and Central Office staff and officials, and ODAG officials. We also interviewed BOP institution staff and staff at USAOs, and collected information from 100 Wardens through a questionnaire. A detailed description of the methodology of our review is in Appendix II.

¹⁸ A D.C. Code offender is a prisoner incarcerated in a BOP institution who was sentenced by the U.S. District Court for the District of Columbia or by the District of Columbia Superior Court after conviction for a D.C. Code offense.

RESULTS OF THE REVIEW

The BOP does not properly manage the compassionate release program, resulting in inmates who may be eligible candidates for release not being considered. Problems with the program's management are concentrated in four areas.

- **First, the BOP has failed to provide adequate guidance to staff regarding the medical and non-medical criteria for compassionate release consideration.**
- **Second, the BOP has no timeliness standards for reviewing compassionate release requests, and timeliness standards for inmate appeals do not consider the special circumstances of medical compassionate release requests.**
- **Third, the BOP does not have formal procedures to inform inmates about the compassionate release program.**
- **Fourth, the BOP does not have a system to track compassionate release requests, the timeliness of the review process, or whether decisions made by institution and Regional Office staff are consistent with each other or with BOP policy.**

As a result of these multiple failures, we concluded that the implementation of the program is inconsistent and results in ad hoc decision making by the BOP in response to inmate requests. We further found that approximately 13 percent (28 of 208) of the inmates whose release requests had been approved by a Warden and Regional Director died before their requests were decided by the BOP Director. We also found that the compassionate release program could both provide cost savings to the BOP and help it in managing the growing federal prison population. In considering the impact of the program on public safety, we found that a small percentage of inmates were rearrested within 3 years of their release under the compassionate release program.

The BOP has not established adequate medical or non-medical guidance for compassionate release consideration.

Based on our interviews of BOP institution staff and Central Office officials, our review of case files for all compassionate release requests received by the BOP's Central Office from 2006 through 2011, and our analysis of Warden responses to our questionnaire, we found that the BOP failed to provide institution staff with adequate guidance regarding what an appropriate request for compassionate release is. Neither the BOP's regulations nor its Program Statement define what an "extraordinary and compelling" circumstance is, and neither establishes any criteria for evaluating medical or non-medical requests. We found that this lack of adequate guidance resulted in BOP staff interpreting the Program Statement differently.

Of the 20 institution staff we interviewed, 11 (55 percent) said there was no guidance other than the Program Statement, 5 (25 percent) referred to their institution's supplement to the Program Statement as providing additional guidance, 2 (10 percent) referred to the BOP's publication entitled "Clinical Guidelines: Compassionate Release" (Clinical Guidelines) as providing additional guidance, 1 staff member (5 percent) referred to both the Program Statement and the institution's supplement to the Program Statement as providing guidance, and a doctor (5 percent) from one institution referred to medical data on survival rates of individuals with specific types of cancer as guidance in evaluating inmate requests for compassionate release.

Additionally, although the BOP regulations and Program Statement provide no standards for evaluating a medical request for compassionate release, a 1994 BOP Director memorandum (Memorandum) to BOP executive staff established a 1-year life expectancy as "a general guideline, not a requirement," when considering medical requests for compassionate release (see Appendix III). The Memorandum stated there may be other "extremely serious and debilitating" cases that "fall within the medical arena, but may not be terminal or lend themselves to a precise prediction of life expectancy." The Memorandum further established factors to consider for possible recommendation for release, including: the nature and circumstances of the offense, the age of the inmate, and the danger the inmate may pose to the public if released. The Memorandum specified that these factors were not criteria, but guidelines to be evaluated. Staff was directed to rely on their correctional judgment in making recommendations for compassionate release consideration. However, the Memorandum provided no guidelines to BOP staff for considering non-medical requests.

We found that knowledge of the Memorandum and its use when considering requests was limited. Only the BOP Director and General Counsel referred to the Memorandum when asked if guidance other than the Program Statement is utilized when considering compassionate release requests. The BOP Director said the Memorandum provided “clarity.” The General Counsel said there was no guidance other than the Program Statement, but said the Memorandum included “things to look for” when considering compassionate release requests. No other Central Office officials or institution staff who review compassionate release requests referenced the Memorandum as guidance that was being used to consider compassionate release requests.

In the sections below, we discuss our analysis of the BOP Program Statement and the guidance provided by the Program Statement supplements created by BOP institutions, and the BOP Clinical Guidelines. We also discuss Sentencing Guidelines developed by the U.S. Sentencing Commission regarding “extraordinary and compelling” circumstances, as well as the BOP’s efforts to revise its regulations and the ODAG’s role in reviewing requests for compassionate release.

Neither BOP regulations nor the Program Statement defines what an “extraordinary and compelling” circumstance is.

The BOP regulations and Program Statement provide no criteria for BOP staff to consider in determining whether an “extraordinary and compelling” circumstance exists. The regulations and Program Statement provide no definitions, and neither provides any examples of circumstances that qualify as “extraordinary and compelling.” As a result, the BOP staff we interviewed provided us with differing views about the meaning of “extraordinary and compelling.”

We found that BOP Central Office staff considered “extraordinary and compelling” circumstances to be either terminally ill medical conditions with a life expectancy of 1 year or less or those who are incapacitated and unable to perform their daily activities – criteria that are found nowhere in the relevant statute, the BOP’s regulations, or the BOP’s Program Statement. Other Central Office staff said that the BOP also would consider non-medical requests if the inmate was the sole surviving parent or caretaker of a minor child, as provided for in the USSC Sentencing Guidelines (see pages 21 to 22 for more information on the USSC Sentencing Guidelines).

However, staff members at the three institutions where we conducted interviews provided us with varied understandings of those “extraordinary and compelling” circumstances that warrant

consideration for compassionate release. For example, a Medical Officer at one institution said, “You can go anywhere with extraordinary and compelling.” The Warden at a medical institution told us that determining what is an “extraordinary and compelling” circumstance is a “judgment call” and that he was not sure if there was an existing BOP policy that explained it. An Associate Warden at another medical institution said that he did not know what would constitute “extraordinary and compelling” circumstances.

A Senior Counsel to the Deputy Attorney General, who reviews non-terminal medical cases and non-medical cases for the ODAG, told us that requests are reviewed according to the statute, the BOP's regulations, and the BOP's Program Statement.¹⁹ However, as we discuss above, these provide no criteria, definitions, or examples of circumstances that qualify as "extraordinary and compelling." The Senior Counsel also told us that when reviewing requests she weighs factors consistent with those considered by the BOP to determine whether a particular case involves extraordinary and compelling circumstances that warrant submission of a compassionate release motion to a sentencing judge. For each medical request, the BOP provides memoranda to ODAG which describe whether the inmate is severely debilitated, among other information relating to a number of factors including any proposed release plan and any public safety risk posed by the inmate's release.

Institution Program Statement Supplements

BOP policy permits Wardens to issue supplements for their institutions in implementing BOP directives, including Program Statements, program manuals, and operational manuals. An institution supplement may not detract from or replace the BOP directive it implements. The BOP's Deputy General Counsel said that national policy is “a broad brush approach” and that institution supplements have more specific steps for the institution. We found that the BOP's Central Office does not approve or review institution supplements. Rather, each Warden appoints a Directives Manager who ensures that institution supplements are in compliance with national policy.

All three institutions where we conducted interviews had supplements to the BOP's compassionate release Program Statement. We reviewed these supplements and found that they were inconsistent

¹⁹ We also interviewed a second ODAG official who started in the ODAG in 2012. At the time of our fieldwork, this official had reviewed only one compassionate release request, in May 2012, which was outside the scope of our review.

with one another in providing guidance on what circumstances were “extraordinary and compelling.” For example, one of the three institution supplements defined compassionate release as “release from incarceration because of a terminal illness with a life expectancy of less than one year, or when extraordinary or compelling circumstances warrant release.” The second institution’s supplement defined compassionate release as “. . . release due to extraordinary circumstances or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing (i.e., terminal illness).”²⁰ The supplement for the third institution stated that “when inmates are suitable candidates for reduction in sentence (compassionate release) due to a medical reason and appropriate arrangements can be made, the institution should expedite processing of the release action.” None of the three institution supplements provided guidance on what debilitating medical conditions or non-medical requests would be eligible for consideration under the program.²¹

The BOP Program Statement does not adequately describe what medical conditions are appropriate for compassionate release consideration.

The Program Statement establishes a process for reviewing medical requests, but does not provide any guidance on what medical conditions are appropriate for consideration.²² For example, the BOP’s Medical Director, who is responsible for providing recommendations to the BOP Director for requests that already have been approved by a Warden and Regional Director, said he believes terminally ill inmates include those

²⁰ This institution’s program supplement defines a terminal illness as “an illness which is progressive and will inevitably result in the patient’s death regardless of treatment” and life expectancy as “a clinical attempt to quantify the time that a terminally ill patient has remaining to live.”

²¹ One institution’s supplement contained “Procedures for Non-Medical Request for Reduction in Sentence” and stated that “Unit Management will determine if the request merits further recommendation,” but did not provide the circumstances or criteria by which Unit Management should evaluate a non-medical request.

²² In response to a working draft of this report, the BOP’s Deputy General Counsel said that even with a consistent policy for evaluating compassionate release requests, there will still be some subjective determinations by the doctors. For example, a doctor could look at an inmate’s medical history, response to treatment, or other factors and suggest a 1-year life expectancy, whereas another doctor could suggest a 2- or 3-year life expectancy. He added that doctors’ opinions and patient conditions may vary from case to case. While the OIG recognizes that doctors’ opinions and patient conditions vary and that accurately predicting life expectancy is difficult, we do not believe, as discussed below, that such difficulty justifies failing to provide BOP staff with any criteria for evaluating these requests.

with a life expectancy of 6 to 12 months. The Medical Director further stated that predicting life expectancy is not an exact science and that there is no hard data that accurately predicts life expectancy.²³ Life expectancy is not specified in the BOP's Program Statement and is not even cited as a factor that the BOP considers. The BOP's Medical Director also said there has been an increased focus on incapacitated inmates, including those with debilitating medical conditions. Again, there are no medical criteria in the BOP's Program Statement regarding inmates that are medically incapacitated. The Medical Director added that when he reviews requests from inmates who are medically incapacitated he considers the inmates' ability to conduct their own daily living activities, as well as the inmates' mental status. Neither of these factors is mentioned in the Program Statement.

Given that the opinion of the BOP Medical Director is solicited only after an inmate's request has been recommended for approval by the Warden and the Regional Director, Wardens and Regional Directors are deciding inmate requests for compassionate release without the benefit of any guidance from the Medical Director. Furthermore, if a medical request is denied by the Warden or Regional Director for reasons that are inconsistent with the Medical Director's views, absent an inmate appeal, the Medical Director will likely never be made aware of the inmate's request because the request is not sent to the BOP's Central Office and the decisions of Wardens and Regional Directors are not subjected to any systematic reviews.

Based on our interviews with Central Office officials and staff, as well as our review of "talking points" prepared for presentations by the BOP's General Counsel to Wardens and other BOP staff (see Appendix IV), we found that the medical criteria that BOP Central Office officials and staff applied when considering compassionate release requests were whether:

- inmates had a "[t]erminal illness," which was defined as having a life expectancy of 1 year or less, or

²³ In response to a working draft of this report, the BOP also stated that establishing adequate release plans is a challenging task because of the level of medical care often needed for these seriously ill and often terminal inmates. The BOP is unable to recommend a compassionate release request if an adequate release plan is not in place. Therefore, subjective determinations and factors critical to whether an inmate should be released will likely limit the number of inmates who may otherwise be eligible for compassionate release.

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- inmates were “[s]everely physically or cognitively debilitated which significantly impairs physical and/or mental function and will not improve with treatment seriously limits daily activities.”

The BOP also provided the OIG with two sets of training materials prepared by the BOP Office of General Counsel – one for legal staff and one for medical staff, social workers, and new Wardens in Federal Medical Centers. The training materials for legal staff included the medical criteria described above. The training materials for medical staff, social workers, and new Wardens in Federal Medical Centers included the medical criteria described above, as well as specific examples of medical conditions and factors establishing debilitating conditions. However, based on our interviews with staff at three institutions, we concluded that these training materials were not provided to all institution staff that review inmate requests.

Furthermore, not all of the staff members we interviewed at the three institutions were aware of the medical criteria described above. At one medical institution, we were provided with three different criteria for evaluating medical requests. Specifically, the chief of a group of staff doctors at that medical institution who reviewed compassionate release requests from inmates with cancer said he approves requests only where the inmate has a life expectancy of 6 months or less. He added that if the medical group at the institution does not approve a request, the request does not move forward to the institution’s multi-disciplinary committee for a vote on the request.²⁴ By contrast, the chair of the institution’s committee said that to receive approval for compassionate release an inmate’s life expectancy must be 1 year or less, but also indicated that this criterion is not written in policy. The Associate Warden at the institution had yet another view, telling us that “terminally ill” is not an officially defined term at the institution.

Similarly, at another medical institution where we conducted interviews, the Director of Nursing, who is a voting member of the institution’s committee that determines whether to approve compassionate release requests, explained that the “threshold” necessary for approval of a medical request is a life expectancy of 6 months or less. By contrast, a Unit Manager at the same medical institution, who also is a voting member of the institution’s review committee, said there was no specific definition of “terminally ill.”

²⁴ For those inmates requesting compassionate release for medical conditions other than cancer, the multi-disciplinary committee considers the opinion of the inmate’s primary doctor.

Finally, we were told by a Case Management Coordinator at a non-medical institution, who reviews requests for compliance with BOP policy, that the BOP does not define terminal illness. As noted above, that is indeed what we found in our review of the BOP's regulations and Program Statement.

Clinical Guidelines

As stated earlier, two institution staff we interviewed said they refer to the BOP's Clinical Guidelines to determine whether an inmate who requests compassionate release is eligible for consideration. We found that these Clinical Guidelines include definitions of terminal illness, life expectancy, and compassionate release; program objectives; and other factors to be considered by staff involved in the assessment of a request. For example, the Clinical Guidelines define life expectancy as "a clinical attempt to quantify the time that a terminally ill patient has remaining. This estimate is made by the attending physician, and is based on the progression of the illness as determined through collective medical experience and literature." Other factors to be considered include: (1) the nature and circumstances of the offense; (2) the criminal and personal history, and characteristics of the inmate; (3) the likelihood that the inmate will participate in criminal activities if released; (4) the inmate's current age and his or her age at the time of sentencing; (5) the danger, if any, the inmate poses to the public or himself or herself if released; (6) the length of sentence imposed and the amount of time left to serve on the sentence; (7) appropriateness of the release plan; and (8) whether the inmate's condition can be remedied by an organ transplant.

The Clinical Guidelines also contain medical criteria for "an appropriate request [that] would encompass extraordinary and compelling circumstances entailing the inmate's medical conditioning which the court was not aware of or foreseen during the time of sentencing." The medical criteria include:

- a terminal illness, with a life expectancy of 1 year or less;
- a progressive debilitating medical condition that seriously limits an individual's daily activities and that cannot be stabilized by either medication or other medical procedures;
- a severe, permanent cognitive condition that significantly impairs physical or mental function and will not improve with treatment; and
- advanced physically limiting factors.

However, the Clinical Guidelines do not provide any examples of debilitating medical conditions, such as those provided in the training material discussed above, and do not address non-medical requests for compassionate release. In addition, only 2 of 20 (10 percent) institution staff we interviewed referred to the Clinical Guidelines as “guidance” for reviewing compassionate release requests. Also, when we asked Wardens in our questionnaire to describe the available resources for considering medical requests for compassionate release, only 3 of the 100 (3 percent) who responded referenced the BOP’s Clinical Guidelines.²⁵ Furthermore, when we requested the Clinical Guidelines from the BOP’s Central Office, we were told that the BOP does not have Clinical Guidelines for compassionate release. Subsequently, we requested and received the Clinical Guidelines from the institution staff who had told us that they used the Clinical Guidelines to review compassionate release requests.

Given the response from the BOP’s Central Office that the Clinical Guidelines did not exist, even though they did, and the limited number of staff that told us they used the Guidelines as a resource, we concluded that the Clinical Guidelines likely are not used by the vast majority of BOP institution staff when considering compassionate release requests for medical reasons and that institution staff are generally unaware of them.

The BOP’s Program Statement does not establish what non-medical circumstances are appropriate for compassionate release consideration.

Although the BOP’s regulations and Program Statement do not limit compassionate release requests to medical requests, the BOP has stated that it routinely denies non-medical requests. As described below, our review confirmed that the BOP did not approve, from 2006 to 2011, any non-medical requests for compassionate release despite its legal authority to do so.

In December 2006, the BOP sought to formalize this practice by amending its regulations. It published a proposed rule that would have changed the title of its compassionate release regulation from “Compassionate Release” to “Reduction in Sentence for Medical Reasons” and restricted its authority under 18 U.S.C. §§ 3582(c)(1)(A)(i) and

²⁵ In response to our questionnaire, 99 of the 100 Wardens referenced multiple resources that they used when evaluating medical requests for compassionate release. Aside from the three Wardens who referenced the Clinical Guidelines, the Wardens reported using resources such as the Program Statement; input from institution, Regional Office, and Central Office staff; outside sources, such as the USAOs and U.S. Probation Offices; and inmate records, including medical records and court documents.

4205(g) to two classes of medical cases: (1) where a prisoner is terminally ill with a life expectancy of less than a year and (2) where a prisoner has a “profoundly debilitating medical condition” that “eliminates or severely limits the inmate’s ability to attend to fundamental bodily functions and personal care needs.” Thus, under the proposed rule, a non-medical condition no longer would qualify as an “extraordinary and compelling” reason for seeking a reduction in sentence. At the time, the BOP explained that the purpose of the proposed revision was to “more accurately reflect our authority under these statutes and our current policy.” The BOP further stated in its proposed rulemaking that the BOP “has received letters and Administrative Remedy appeals from inmates who mistakenly believe that we will consider circumstances other than the inmate’s medical condition for reducing a sentence. Such is not the Bureau’s practice. We believe this title more accurately describes our criteria and procedures.” Although the comment period for the proposed revised regulation ended in February 2007, it appears that the rule remains pending without any action having been taken on it by the BOP or the Department.

Consistent with the BOP’s statement in 2006, we were told by BOP staff, and our review of BOP training materials confirmed, that the BOP’s practice was to reject non-medical requests for compassionate release, despite the fact that Congress did not limit “extraordinary and compelling” circumstances to only medical conditions and that both the BOP’s current regulations and its Program Statement provide for consideration of non-medical compassionate release requests. We found that the BOP did not approve a single non-medical compassionate release request from 2006 through 2011, although two non-medical requests were forwarded to the BOP’s Central Office and denied by the BOP Director.

We were unable to determine how many non-medical requests were made during this period by inmates but rejected prior to reaching the BOP Director because, as discussed below, BOP records were not maintained in a manner that enabled such a review. However, institution staff we interviewed reported receiving non-medical requests from inmates, and they provided us with examples of the circumstances involved. For example, the Chief Social Worker at one institution said the institution received one to two non-medical requests each year. She said that a request may involve an inmate who had a child with a medical condition and who wanted to be able to care for the child. The Health Services Administrator at the same institution explained that a non-medical request may include an inmate whose family member was caring for the inmate’s child but the family member was unable to continue caring for the child and the inmate was the only other person available, or an inmate

who had diminished mental status and did not even know he or she was being punished and was not at risk of re-offending.

USSC Sentencing Guidelines

When we asked the BOP's General Counsel under what circumstances the BOP would consider a non-medical request, she cited the circumstances listed in the USSC Sentencing Guidelines. The BOP Director also told us that BOP staff should be using the USSC Sentencing Guidelines when considering a request. However, institution staff we interviewed were either unaware of the Sentencing Guidelines or did not know that they are authorized to consider inmate requests that were consistent with the Sentencing Guidelines. For example, we spoke with an Associate Warden at a medical institution, who was also a voting member of the institution's committee that determines if an inmate request is appropriate for compassionate release. While the Associate Warden was aware of the Sentencing Guidelines, the Associate Warden did not follow them in considering requests and instead followed the BOP's Program Statement.

We reviewed the regulations and Program Statement and found they do not mention the Sentencing Guidelines. We also reviewed the General Counsel's "talking points" for presentations to Wardens and other BOP staff as well as training materials provided by the BOP, both of which are discussed above, and found that each referenced the Sentencing Guidelines. However, we believe that the references to the Sentencing Guidelines in these materials were confusing and did not clearly state whether BOP personnel were authorized to consider the circumstances established in the Sentencing Guidelines when evaluating inmate compassionate release requests, particularly in non-medical circumstances.

For example, the "talking points" state, "Do not summarily deny cases that fall within these [sentencing] guideline parameters but outside BOP criteria. Denials of these requests should address these issues but stay within BOP medical criteria." In addition, training materials for legal staff stated that the examples cited in the Sentencing Guidelines "are broader than criteria historically used by the BOP in deciding whether to make such motions" and that the BOP's practice was to consider only the medical condition of the inmate. Similarly, the training materials for medical staff, social workers, and new Wardens in Federal Medical Centers included the Sentencing Guidelines as "non-medical issues to ponder," but under the heading "extraordinary and compelling" stated that "the BOP has always narrowly interpreted the statute" and listed the following as extraordinary and compelling circumstances:

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- Condition not reasonably foreseen at sentencing, [and]
 - Medical condition terminal within one year, or
 - Medical condition with indeterminate life expectancy but,
 - severely debilitating [and] irreversible cognitive or physical medical condition,
 - limited or unable to attend to ADLs (activities of daily living).

While these training materials were created for medical staff, social workers, and new Wardens in Federal Medical Centers, none of the three Wardens at the institutions where we conducted interviews, including two medical institutions, were aware of the possible relationship between considering “extraordinary and compelling” circumstances and the Sentencing Guidelines. Additionally, a social worker we interviewed who chairs the institution’s multi-disciplinary committee that votes to approve or deny compassionate release requests said she was not that familiar with the relevant policy statement in the Sentencing Guidelines.

As stated earlier, we found only two non-medical inmate requests that were received and reviewed by the BOP Director from 2006 through 2011. In each case, the inmate cited the Sentencing Guidelines as the basis for the request. In the first case, an inmate requested compassionate release because the family caregiver of the inmate’s minor children had died of cancer. The inmate’s request was denied by the BOP Director because of concerns about whether the inmate would be “able to sustain the stresses of sole parenting and employment while remaining crime-free.” In the second case, the inmate requested compassionate release because of his wife’s deteriorating health and the medical condition of one of his adult daughters. The inmate’s request was denied by the BOP Director because the BOP Director found that the judge was aware at the time of sentencing of the medical conditions of the inmate’s wife and daughter, that other family members were available to assist with the care of the wife and daughter, and that the inmate would be eligible for home confinement in 9 months from the date of denial of the request.

ODAG Review of Compassionate Release Requests

The regulations and Program Statement establish the roles for BOP and USAO officials when reviewing compassionate release requests. However, we found that the ODAG reviews non-medical requests for compassionate release as well as medical requests from inmates who are severely and permanently mentally or physically debilitated but whose life expectancy is indeterminate or unknown (non-terminal).

The BOP's General Counsel explained that the ODAG review of compassionate release requests stems from a verbal agreement between the BOP and ODAG that originated during the Department's consideration of the BOP's 2006 draft regulations (discussed above and below). During our case file review, we found a document entitled, "ODAG Notification Requirement in BOP Policy." The document states that the BOP is required to notify the ODAG of all non-terminal compassionate release requests that have been approved by the BOP Director: "Once approved by the Director . . . materials must be immediately forwarded to the ODAG . . . Further processing in non-terminal cases will occur two business days after submission to the ODAG, absent objections or concerns raised by that office to the Director" The document also requires the BOP to provide a quarterly report to the ODAG on all non-terminal compassionate release requests that were approved.

The document further states that the requirement that the BOP notify the ODAG "will be in policy and not in the federal regulation as it is a high-level, purely internal, execute [sic] branch operating procedure." The document further states that placing the ODAG notification "in the regulations could unnecessarily subject ODAG to judicial requests, congressional inquiries/demands, and civil liability." When we attempted to determine the origin of the document and the processes that it implemented, we found that no BOP or ODAG official was aware of the document, including how it originated or who wrote it and approved the requirements established in the document.

Based on our case file review, we found that 26 requests for compassionate release since 2006 that were forwarded to the BOP's Central Office for consideration by the BOP Director fell into the two categories requiring ODAG review, with 24 involving non-terminal medical requests and 2 involving non-medical requests. For the 24 non-terminal medical requests, 15 case files contained documentation, such as an e-mail from ODAG staff or handwritten notes from BOP staff verifying that the ODAG reviewed the request and had "approved," or did "not oppose," the BOP's recommendation to approve a request. We found no information in the remaining nine case files to indicate whether the ODAG had reviewed the requests, which were ultimately approved by the BOP Director. For the two non-medical requests forwarded to the BOP Central office, we found documentation in one of them that the case was forwarded to the ODAG for review, but we did not find a response. The

other file had no information as to whether the ODAG had reviewed the request, and we found that the BOP Director had denied the request.²⁶

A Senior Counsel to the Deputy Attorney General said that since she began reviewing requests in 2011, the ODAG has not objected to any BOP recommendations. However, the Senior Counsel also said that there is no protocol for those circumstances where there is a disagreement between the ODAG and the BOP. The BOP's General Counsel said there has been only one disagreement between the ODAG and the BOP and that case involved a request in 2006 on behalf of an inmate who had suffered a stroke and was in a vegetative state. We reviewed the case file for this inmate and found that the BOP Director had approved the request, that the ODAG had opposed the request, and that the request was ultimately denied (see textbox).

Efforts by the BOP to revise its regulations governing compassionate release have been unsuccessful.

The BOP's Program Statement, which contains the same procedures for reviewing compassionate release requests as those

²⁶ In response to a working draft of this report, the BOP stated that it withdrew the first case from ODAG review after further consideration and that the second case was not forwarded to the ODAG because the BOP did not support the compassionate release request.

Denial of Compassionate Release for Inmate in Vegetative State

In 2006, the BOP received a medical request for compassionate release on behalf of an inmate who had suffered a "massive stroke." The inmate was in a near vegetative state but his medical condition was not considered terminal. BOP records state that staff fed and provided medication to the inmate through a feeding tube, turned and repositioned the inmate every 2 hours, administered toileting, and bathed the inmate two to three times a week and as needed.

The inmate was serving a life sentence for distributing cocaine and conspiring to distribute cocaine and heroin. The inmate had prior convictions for theft and failure to appear, possession with intent to distribute cocaine, and common law assault.

The BOP Director recommended approval of the request "due to [the inmate's] totally debilitated medical condition and near-vegetative condition with no hope of recovery." Because the inmate's life expectancy was indeterminate, the request was referred to the ODAG for review. The ODAG subsequently responded, "Please be advised that ODAG does not concur with the proposed release of [the inmate] at this time." The inmate is still incarcerated at a BOP medical institution and, according to the BOP, while he is no longer in a near-vegetative state, the right side of his body remains paralyzed (the medical center's clinical director has concluded that the inmate has no hope of recovering any function to the right side of his body), he cannot speak, and he needs total assistance with his activities of daily living.

Source: BOP.

established in the regulations, was last revised in 1998. As noted above, on December 21, 2006, the BOP published proposed revisions to its regulations regarding compassionate release. The proposed revisions would have excluded non-medical conditions from being considered as a basis for compassionate release and would have limited medical conditions that were an appropriate basis for compassionate relief to situations where:

- the inmate suffers from a terminal illness with a life expectancy of 1 year or less, or
- the inmate has a profoundly debilitating medical condition that may be physical or cognitive in nature, is irreversible and cannot be remedied through medication or other measures, and has eliminated or severely limited the inmate's ability to attend to fundamental bodily functions and personal care needs without substantial assistance from others (including personal hygiene and toilet functions, basic nutrition, medical care, and maintaining physical safety).

Following the public comment period, however, the Department never issued final regulations and the proposed regulations remain pending. A current Senior Counsel in the ODAG who reviews both non-terminal and non-medical compassionate release requests told us that the 2006 proposed rule was developed through a process involving the ODAG, BOP, Criminal Division, and Office of Legal Policy (OLP). In 2008, the BOP sent a proposed final rule to OLP that differed significantly from the proposed rule published in 2006. The BOP's proposed final rule broadened, rather than restricted, the circumstances for seeking reductions in sentences. We were told that OLP had various concerns about the BOP's proposed final rule, including:

1. while the 2006 proposed rule limited BOP consideration of compassionate release requests to those based on medical circumstances, the 2008 proposed final rule would have permitted the BOP to seek reductions of sentence on both medical and non-medical grounds;
2. the 2008 proposed final rule's description of medical criteria for a compassionate release request based on non-terminal medical circumstances would have allowed reductions in sentences more broadly than the profound debilitation standard reflected in the 2006 proposed rule; and
3. the 2008 proposed final rule no longer required USAO concurrence with the BOP General Counsel's decision to pursue a compassionate release case and refer the case to the Director.

In light of OLP's concerns, the BOP advised OLP in 2011 that it had decided not to pursue these revisions. A BOP Assistant General Counsel stated that the Department in 2008 did not like the BOP's proposed revisions because it thought the BOP was dramatically expanding its criteria for compassionate release, even though the BOP believed it was simply clarifying its medical criteria. We also were told by the BOP's Deputy General Counsel that in 2008 the Department expressed concerns about a perceived expansion of the medical conditions that might result in a dramatic increase in the number of inmate requests and releases pursuant to the statutory authority.

The BOP's General Counsel told us that the BOP is currently attempting to revise its compassionate release regulations once again. The General Counsel also said that after the new regulations are adopted, the BOP would revise the Program Statement, a process that would take about 2 years once new regulations are in place due to the requirement that the BOP negotiate changes to the Program Statement with its union.²⁷ Several officials from the BOP Central Office and the ODAG told us that the BOP is separately drafting a new guidance memorandum for medical institutions that will expand the compassionate release program by making inmates with a life expectancy of up to 18 months eligible for consideration. The new memorandum is also intended to assist staff who review compassionate release requests in understanding what level of functioning is sufficiently "extraordinary and compelling" for inmates with debilitating medical conditions to be considered for release. The BOP did not provide the OIG with a copy of the memorandum under consideration and could not tell us when it would be finalized.

We believe that revised regulations, and subsequently a revised Program Statement, would benefit the BOP's management of its compassionate release program. Specifically, regulations and a Program Statement that accurately reflect the BOP's criteria for determining eligible medical and non-medical requests would provide all BOP staff clear and comprehensive standards for understanding what "extraordinary and compelling" circumstances warrant consideration for compassionate release. In addition, while the BOP did not provide the OIG with a copy of this new guidance under consideration, and did not know when the changes would be finalized, we believe that the new guidance described to us would result in cost savings for the BOP, as well as alleviate its population management difficulties by enabling more

²⁷ We are concerned about such a lengthy potential delay in issuing a revised Program Statement given the lack of guidance in the existing Program Statement.

inmates to be eligible for compassionate release consideration. We discuss potential cost savings and population management in more detail later in the report.

Conclusion

The BOP does not provide the staff of its institutions with adequate guidance regarding what the appropriate basis is for evaluating a compassionate release request. As a consequence, we found that institutions were applying different and inconsistent standards. We further found that not all institution staff knew the circumstances under which a request for compassionate release is appropriate because the BOP's Program Statement, most commonly used by staff to consider a request for compassionate release, does not establish appropriate medical or non-medical circumstances for consideration. In addition, supplements created by institution staff do not adequately describe the circumstances that would warrant favorable consideration for compassionate release. Because BOP staff primarily use an inadequate Program Statement that was last revised in 1998 as their only policy guidance to determine appropriate candidates for the program, we concluded that requests from potentially eligible inmates may not be considered favorably at the institution and regional levels and may never be considered by the BOP Director. The BOP needs to update its regulations and Program Statement to accurately reflect what would make both medical and non-medical requests appropriate for consideration, as well as to include all aspects of the review process, including that of the ODAG.

The BOP has no timeliness standards for reviewing compassionate release requests, and timeliness standards for inmate appeals do not consider the special circumstances of medical compassionate release requests.

The BOP's compassionate release regulations provide that a request for release based on an inmate's medical condition "shall [be] expedite[d] . . . at all levels." The BOP's Program Statement directs institutions to review requests "promptly" and, in the case of medical requests, indicates that staff should "expedite" such requests. The Program Statement, however, does not specify a timeframe for reviewing requests, which we found resulted in BOP staff members interpreting the Program Statement's direction regarding timeliness differently.²⁸ In addition, the process inmates can use to appeal a Warden's or Regional

²⁸ On pages 40 to 41, we discuss the BOP's efforts to track the length of time to process requests.

Director's denial of a compassionate release request can take more than 5 months to complete.

The BOP's Program Statement does not establish timeliness standards for reviewing requests.

The BOP's Program Statement states, "The Warden shall promptly review a request for consideration," and, "in the event the basis of the request is the medical condition of the inmate, staff shall expedite the request at all levels." A BOP Assistant General Counsel told us that institutions are asked to expedite all requests, but case-by-case factors affect timeliness and deadlines are difficult to impose because of the numerous factors involved in evaluating requests. A BOP Senior Counsel stated that there are no timeframes because of the unexpected and individualized nature of each request.

Because the BOP does not provide a timeframe, we found various BOP staff members interpret the Program Statement's direction regarding timeliness differently. For example, a Warden stated that the general expectation at his institution was to process requests in 5 days. An Associate Warden at another institution stated that her institution had expectations to process requests in less than 30 days. In response to our questionnaire, only 33 out of 100 Wardens (33 percent) reported having a designated timeframe for reviewing requests at their institution. For those institutions that reported having a timeframe, the timeframe ranged from 5 to 65 days.

The BOP's timeliness standards for inmate appeals do not consider the special circumstances of medical compassionate release requests.

The BOP's administrative remedy program allows an inmate to seek formal review by higher level BOP officials of an issue relating to any aspect of his or her incarceration. Procedures, including timeliness standards, for an inmate to seek an appeal are established in the administrative remedy Program Statement.²⁹ However, we found that the procedures and timeliness standards do not reference the compassionate release program or acknowledge the special circumstances of an inmate requesting compassionate release (particularly those with terminal medical conditions and limited life expectancies).

Before an inmate can submit an appeal under the administrative remedy program, the inmate must first discuss the concern informally

²⁹ BOP Program Statement 1330.16, Administrative Remedy Program, effective August 6, 2002.

with institution staff and institution staff must attempt to informally resolve the inmate's concern. Although Wardens must establish procedures for informal resolution of inmate concerns and ensure that informal resolution is made in an orderly and timely manner, the Program Statement for the administrative remedy program does not specify timeliness standards for this informal resolution process.³⁰

If informal resolution does not resolve an inmate's concern, an inmate may submit a formal written administrative remedy request to the Warden. Once a request is filed, the Warden must respond within 20 calendar days. An inmate that is not satisfied with the Warden's response may appeal to the appropriate Regional Director. The Regional Director must respond within 30 calendar days. Finally, an inmate not satisfied with the Regional Director's response may appeal to the BOP's General Counsel, which is the final avenue for an administrative appeal. The General Counsel must respond within 40 calendar days of the date of the inmate's appeal.

As a result, an inmate could wait up to 90 days (not including the time for the informal resolution process to be concluded and for the inmate to prepare the submission for each appeal) if the inmate seeks an appeal at all levels of the review process. However, the administrative remedy Program Statement allows officials at all levels of the appeal process to extend their response time if they believe the established timeliness standards do not provide sufficient time to respond. Thus, a Warden's response time may be extended from 20 to 40 days, a Regional Director's response time may be extended from 30 to 60 days, and the General Counsel's response time may be extended from 40 to 60 days. As a result, an inmate could wait up to 160 days (or over 5 months) for completion of the appeal process if the officials at each level of review extended their time to respond.³¹ For inmates with terminal medical conditions and life expectancies of less than 1 year, which we found are generally the only inmates whose compassionate release requests are given serious consideration by the BOP, these timeliness standards likely provide little to no meaningful opportunity to pursue an appeal.

We found that, in connection with an appeal of a compassionate release denial, there is little reason for the BOP to mandate an informal

³⁰ The Program Statement permits a Warden or an Institution's Administrative Remedy Coordinator to waive the requirement of the informal resolution process "when the inmate demonstrates an acceptable reason for bypassing informal resolution."

³¹ See pages 40 to 41 for our analysis of BOP administrative remedy data for inmate appeals to compassionate release decisions.

resolution process at the institution level or to require that the Warden review an inmate's appeal, given that the Warden has previously either denied the compassionate release request or approved it (in which case denial was by the Regional Director because inmates cannot appeal the BOP Director's final decision). While the administrative remedy Program Statement waives the requirement that the initial appeal be considered at the institution level in four limited circumstances, a compassionate release appeal is not listed as one of those circumstances. Additionally, we found that, in those circumstances where the Regional Director denied the inmate's request following approval by the Warden, there is little reason to provide the Regional Director with a lengthy period of time to consider the appeal.

Conclusion

The BOP's compassionate release Program Statement does not specify a timeframe for reviewing requests, resulting in BOP staff members interpreting the Program Statement's direction regarding timeliness differently. While the OIG recognizes the complexity and importance of the compassionate release review process, given the time-sensitive nature of these requests, particularly for inmates with terminal medical conditions and limited life expectancies, we concluded that the BOP must establish timeliness standards for each step in the review process. We also concluded that the timeframes established in the administrative remedy Program Statement do not take into account the special circumstances of compassionate release requests, particularly for inmates who are terminally ill and have a life expectancy of less than 1 year. We found that the usual timeframes for handling appeals, including those for denials of inmate requests for compassionate release are at least in some circumstances, unnecessarily lengthy.

The BOP does not have formal procedures to inform inmates about the compassionate release program.

The BOP does not require institution staff to inform inmates about the compassionate release program. Additionally, we found that few BOP institutions include information about the compassionate release program in their institution handbooks.³² We also found that, in the absence of policy or procedures, methods used to inform inmates about the compassionate release program vary. We concluded that potentially appropriate inmates may not know about the compassionate release

³² BOP institutions are not required to have handbooks. However, most institutions create handbooks for their inmates and the contents vary, including whether and what information is included about the compassionate release program.

program and, as a result, inmates who may be strong candidates for compassionate release never request consideration.

Staff is not required to inform inmates about the program.

Neither the federal regulations establishing the compassionate release program nor the BOP's compassionate release Program Statement specify how inmates are to be informed about the program.³³ BOP institutions conduct admission and orientation (A&O) programs for new inmates to provide them with general information regarding institution-wide regulations, operations, and program opportunities.³⁴ The BOP's A&O Program Statement requires that specific program information be discussed with inmates. We found, however, that the compassionate release program was not one of the programs that is required to be discussed during an A&O program.

Institutions have the discretion to supplement required elements of the A&O program with local procedures and program information. Staff members we interviewed at three institutions generally were not aware of whether the compassionate release program was discussed during their institutions' A&O programs. A Medical Officer at one institution said, "It might be glossed over as it so rarely comes up." We reviewed the agenda of the A&O programs at two of the three institutions and found that the compassionate release program was not included. The third institution did not provide us with an A&O program agenda. Rather, the institution provided us with an A&O handbook. We reviewed this A&O handbook and found that the compassionate release program was briefly mentioned, but only as a program for early inmate release in the event of extraordinary and compelling circumstances that could not have been foreseen by the court at the time of sentencing. It provided no clarification as to what circumstances would be appropriate to make a compassionate release request or how to initiate a request. We discuss institution handbooks further below.

³³ 28 C.F.R. § 571.60-.64.

³⁴ BOP Program Statement 5290.14, Admission and Orientation (A&O) Program. The Program Statement requires that the A&O program at all BOP institutions include, at a minimum, all areas identified on the Institution Admission and Orientation Program Checklist. However, the compassionate release program is not on the checklist.

Only a few BOP institution handbooks contain information about the program.

While not required to do so, most BOP institutions provide a handbook when an inmate arrives at a designated institution. The purpose of the handbooks is to provide inmates with general information regarding the BOP, its programs, and institution rules and regulations they will encounter while incarcerated. Handbooks are not a specific guide to the detailed policies of the BOP, nor do they include all procedures in effect at each BOP institution.

We found that few institution handbooks included information about the compassionate release program. We reviewed 111 of 117 handbooks used by BOP institutions and found only 8 (7 percent) included information regarding compassionate release.³⁵ The handbooks that included information about the compassionate release program varied in the amount of information provided. Only two of the eight handbooks discussed “terminal illness,” and both of those defined a terminal illness as a life expectancy of 1 year or less. Four of the eight handbooks said that inmates had to explain their “extraordinary and compelling circumstances” in making a request. The remaining two handbooks described compassionate release only as a means to request “an unscheduled review,” that is, a review in addition to the scheduled program reviews inmates receive from institution staff who discuss the inmate’s progress in recommended programs and recommend new programs.³⁶

In response to our questionnaire, 12 of 89 Wardens said that their institutions’ handbooks were the most common method for making inmates aware of the compassionate release program.³⁷ However, only 4 of the handbooks from those 12 institutions contained information on the program.³⁸

³⁵ We reviewed handbooks that were available on the BOP’s website. Six institutions’ handbooks were not available on the website.

³⁶ BOP Program Statement 5322.12, Inmate Classification and Program Review.

³⁷ We received 100 responses to our questionnaire from institution Wardens. However, in 11 of the 100 responses, Wardens did not rank the most common method used to inform inmates about the compassionate release program as requested by the OIG. Therefore, we did not include these 11 responses in our analysis of this question.

³⁸ We requested, and the BOP provided, the most current handbook for these institutions to verify that we reviewed the most current version.

In the absence of policy or procedures, methods used to inform inmates about the program vary.

In our questionnaire, we asked Wardens to rank the most common method used to inform inmates about the compassionate release program from among the following options: (1) institution handbook, (2) institution A&O program, (3) program review, and (4) other. The most common response by the Wardens who replied was “other” (see Table 1).

Table 1: Most Common Method Used to Inform Inmates about the Compassionate Release Program

Method	Percentage
“Other” Method	43
Program Review	24
Institution A&O Program	20
Institution Handbook	13

Source: Analysis of OIG questionnaire responses.

The most common “other” methods identified by the Wardens included inmates reading the BOP Program Statement in institution law libraries; discussions with institution staff if an inmate requests information; word of mouth among the inmates, family members, or attorneys; information posted on institution bulletin boards; and information provided on the BOP’s public website. One Warden stated, “As far as I can tell, we do not advertise this and inmates have to find out about it on their own.”

Institution staff we interviewed said that methods to inform inmates about the program varied and included receiving information through the medical staff, reading the BOP Program Statement, and inmate word of mouth. For example, one Case Manager said inmates are informed by reading the Program Statement in library services, by hearing about it from other inmates, and by asking the unit team. The Director of Nursing at a medical facility said a physician at the institution usually was the person who informed inmates about the program, but that when inmates approached staff about the program, the inmates’ understanding of the program was sometimes wrong. At another medical facility, a Case Manager told us that a doctor or social worker may approach an inmate initially to explain the compassionate release program. However, a doctor at this same medical facility said a social worker would inform the inmate about the program, while a social worker said the medical team would inform the inmate about the program.

Conclusion

The BOP does not have formal or standardized procedures to inform inmates about the compassionate release program. Staff is not required to inform inmates about the program. We found that the methods used to inform inmates about the program are informal and vary by institution. As a result, potentially eligible inmates may not know about the compassionate release program.

The BOP does not have a system to track all compassionate release requests, the timeliness of the review process, or whether decisions made by institution and Regional Office staff are consistent with each other or with BOP policy.

The BOP does not require its institutions to track the number of compassionate release requests. The BOP's Central Office informally tracks only those inmate requests that have been forwarded to the Central Office for review by the BOP Director after they have been approved by both a Warden and a Regional Director. Therefore, the BOP does not know the total number of inmate requests for compassionate release. Also, the BOP does not track the timeliness of institutions or Regional Offices in reviewing requests. As a result, the BOP cannot determine how long the review process takes and where, if any, delays occur in the process. In addition, the BOP cannot determine whether decisions made by institution and Regional Office staff are consistent with each other or with BOP policy.

The BOP does not have a system to track all compassionate release requests.

From 2006 through 2011, the BOP Director considered 211 compassionate release requests that had been approved by a Warden and a Regional Director.³⁹ Of the 208 requests we reviewed, we found that 206 requests were for medical reasons and 2 requests were for non-medical reasons. The BOP Director approved 142 (68 percent) of the requests and denied 38 (18 percent). See Appendix V for the reasons the BOP Director approved or denied these requests. In 28 cases

³⁹ The BOP provided the OIG with 212 case files requesting compassionate release that the BOP's Office of General Counsel received from 2006 through 2011. However, one was a duplicate case file for an inmate's approved request. We reviewed 208 of those case files. We did not review the case files for three inmates because they had not received a decision from the BOP Director. In one of those cases, the inmate had her sentence vacated by the court, one withdrew his request, and one had his case referred for a "criminal matter."

(13 percent), the inmates died before a decision was made by the BOP Director.

However, the 211 requests do not represent all compassionate release requests made by inmates during this period. Inmate requests are tracked by the BOP only after a request is approved by both the Warden and the Regional Director, and is received by the BOP's Central Office. Also, we found that institutions do not consistently track inmate requests for compassionate release. As a result, the number of compassionate release requests made by inmates during this period cannot be determined.

Inmate requests are tracked at the BOP's Central Office only after the Warden and Regional Director have approved a request.

We found that the BOP does not know the total number of requests inmates make because the BOP does not track requests denied by Wardens or Regional Directors and does not maintain a centralized system to track all requests. The only requests that the BOP can account for are those that are approved by the Warden and Regional Director and forwarded to the BOP's Central Office for review by the General Counsel and the BOP Director. Requests received by the BOP's Central Office are tracked by the BOP's Office of General Counsel. An Assistant General Counsel told us that there is no way for the Office of General Counsel to capture data at the Warden or Regional Director level because these requests are not tracked at those levels. The BOP's Deputy General Counsel said the only data on the number of denials by Wardens or Regional Directors comes from the BOP's administrative remedy procedure, which reflects only denials that are appealed.

The BOP's compassionate release Program Statement does not require institution or Central Office staff to track compassionate release requests made by inmates. Nevertheless, we found that some institutions do track inmate requests. In our questionnaire to Wardens, we asked whether inmate requests for compassionate release were tracked. Forty-seven of the 98 Wardens who responded (48 percent) said requests were tracked.⁴⁰ The Wardens who indicated that their institutions tracked requests stated that it was done through different methods, for example: (1) through a logbook, (2) through a local electronic recording system, or (3) in the inmate's central file.

⁴⁰ Two Wardens did not respond to this question.

At two of the three institutions where we conducted interviews the staff members who oversaw compassionate release requests tracked and documented the request process for each inmate and where they were in the review process. The third institution did not have a method in place to track compassionate release requests. In addition, only two of the six Regional Directors' offices tracked inmate requests that they received from institutions. One Regional Director provided the OIG with a spreadsheet indicating the number of compassionate release requests his office received from institutions from 2006 through 2011, as well as the number of requests that were approved by the Regional Director and forwarded to the BOP's Central Office for review. A second Regional Director also provided the OIG with a spreadsheet of requests received from institutions in 2011. However, we found that data tracked by the two Regional Offices varied in consistency and was not complete. For example, while one Regional Office tracked the final disposition of each request, the other Regional Office did not. In addition, dates indicating movement of the request through the review process were not complete.

We were told that while the BOP case management system, SENTRY, has a code specifically for compassionate release, it is not used to account for or track requests but just to identify inmates who are actually released on that basis.⁴¹ We reviewed a report generated from the SENTRY database that the BOP's Office of General Counsel told us identified inmates who had been released through the compassionate release program. The report identified 27 inmates as having been released from BOP custody between 2006 through 2011 under the compassionate release program. However, as stated above, our case file review found that the BOP Director approved 142 inmates during that period for compassionate release. In addition, only 15 of the 27 inmates identified in the SENTRY report were among the 142 inmates that we determined had received compassionate release.⁴² Moreover, institution staff members we interviewed were not aware of the SENTRY tracking code or its purpose. The BOP reported that it had not taken any action to direct the use of the SENTRY code for compassionate release, but had

⁴¹ SENTRY is the BOP's primary mission support database. The system collects, maintains, and tracks critical inmate information, including inmate location, medical history, behavior history, and release data. Inmate deaths are also entered into SENTRY, but there is no code to determine if deceased inmates were awaiting compassionate release consideration.

⁴² We confirmed that the remaining 12 inmates were not released pursuant to compassionate release.

alerted staff at the BOP's Designation and Sentence Computation Center to the issue.⁴³

The number of requests denied by Wardens and Regional Directors may be considerable.

Given the absence of a system to track inmate requests for compassionate release, neither the BOP nor the OIG can determine how many inmates submitted requests during the period covered by our review. An Assistant General Counsel told us that the BOP Central Office could determine the total number of requests by asking the institutions how many they received, but the Central Office has never done so. The questionnaire we distributed to Wardens asked them to approximate the number of compassionate release requests that inmates submitted in 2010 and 2011. In addition, we reviewed administrative remedy data to determine how many inmates appealed Warden or Regional Director decisions denying compassionate release requests.⁴⁴ Based on this analysis, we found the number of requests that were denied by the Warden or Regional Director, and therefore were never considered by the BOP Director, may be considerable.

Institution Estimates. In an effort to learn the approximate number of requests for compassionate release each institution has processed, the OIG asked Wardens in a questionnaire to estimate the number of requests their institution received in 2010 and 2011. In response, the Wardens reported roughly 618 requests in 2010 and 2011, including 33 requests for non-medical reasons. Our review of compassionate release case files found that only 64 requests were considered by the BOP Director in 2010 and 2011, including 2 non-medical requests in 2011.⁴⁵ While the Wardens' responses to the OIG

⁴³ On March 15, 2012, the BOP's Chief of Sentence Computation sent an e-mail to the Designation and Sentence Computation Center staff reminding them that when they receive a sentence reduction that was completed based upon the BOP's authority under 18 U.S.C. § 3582(c)(1)(A), the "Basis for Change Code," "81-3582 BOP MOTION, or 82-3582 LOWERED SENTENCE RANGE - BUREAU OF PRISONS" should be used.

⁴⁴ The administrative remedy program allows an inmate to seek formal review of an issue relating to any aspect of his or her confinement.

⁴⁵ One non-medical request was denied by the Warden and Regional Director, as well as the National Inmate Appeals Administrator (Office of General Counsel) through the BOP's administrative remedy program. After the inmate filed a lawsuit against the BOP questioning the BOP's discretion to consider compassionate release requests, the Director agreed to consider the inmate's request. The second non-medical request was approved by the Warden, but the Regional Director did not provide a

(Cont'd.)

were rough estimates, the difference between the estimated number of inmate requests reviewed by Wardens and the actual number of requests reviewed by the BOP Director is likely due to many of the requests being rejected by either the Warden or the Regional Director and never considered by the BOP Central Office.

Administrative Remedy. We reviewed the BOP's administrative remedy data to determine how many inmates appealed Warden or Regional Director decisions to deny compassionate release requests.⁴⁶ Based on our analysis, from 2006 through 2011, 273 inmates appealed Warden or Regional Director decisions denying a compassionate release request. Since not all inmates appeal a decision by the Warden or Regional Director to deny a request, the number of denied requests would have been higher.

The BOP does not track the length of time taken to process requests.

The BOP does not track the length of time it takes to approve or deny requests for compassionate release, in part, because the BOP has not established a formal method for initiating the review process. As a result, neither the OIG nor the BOP can assess the timeliness of the review process. We learned that 28 of the 208 (13 percent) inmates whose requests were approved by both a Warden and Regional Director during the period of our review died before the BOP Director made a decision on the request.⁴⁷

In our review of case files, we were unable to determine a consistent point at which the process even began. An Assistant General Counsel said that start dates are hard to define because a case may have been under discussion weeks before anything is written about it. Another Assistant General Counsel stated that the request process is informal and there is no prescribed form to initiate the process. She also

recommendation to approve or deny. Rather, the Regional Director forwarded the request to the BOP's Central Office for consideration. The BOP Director denied both requests.

⁴⁶ We reviewed appeals filed by inmates under the BOP's administrative remedy program using a BP-10 form (for those requests denied by the Warden) or a BP-11 form (for those requests denied by the Regional Director) for 2006 through 2011. We did not request data on the BP-9 form (appeals to the Warden) because, in the case of compassionate release, procedures require that the Warden review the inmate's original request for compassionate release.

⁴⁷ We also found that one inmate died during consideration of the inmate's request by a Regional Director.

stated that the request can come from an inmate, a family member, or BOP staff. Staff at the three institutions where we conducted interviews also told us that there is no formal method at their institutions for initiating the request process and that inmates may make a request verbally or in writing through an “Inmate Request to Staff Member” form and that requests also may come from a family member or a treating physician.⁴⁸

In our review of case files for inmates whose requests had been forwarded to the BOP Director for consideration, we were able to determine an initiation date in only 40 of the 208 cases (19 percent), and those initiation dates were not consistently supported by a written request by the inmate or other documentation. We found initiation dates on Central Office tracking sheets, letters from an inmate’s attorney and, in one case, in a letter from the court to an inmate who requested compassionate release directly from the court.⁴⁹ Without formal and consistent initiation dates, the OIG was unable to assess the timeliness of the review process for all cases forwarded to the BOP’s Central Office from 2006 through 2011. However, of the 40 requests for which we found an initiation date, 29 were approved and averaged 116 days from the initiation date at the institution to the date of the BOP Director’s approval. The 11 requests that were denied averaged 109 days.⁵⁰

BOP Central Office and institution staff told us that a number of factors can delay the processing of a compassionate release request, including notifying victims; contacting family members; consulting external medical specialists regarding an inmate’s medical condition; removing detainees; finding placement for an inmate if released, such as

⁴⁸ An “Inmate Request to Staff Member” is a formal BOP document used by inmates to address written questions, requests, or concerns from any BOP employee. BOP staff commonly refers to this document as a “Cop-Out.”

⁴⁹ The letter from the court stated that the court had received the inmate’s request for compassionate release consideration and that the court had communicated with the several individuals at the BOP regarding the request. The BOP informed the court of the date the process of determining whether the inmate qualified for compassionate release would begin. The court wrote that the BOP “informed the court that the process involves multiple determinations and reviews, and therefore generally takes three to four months.”

⁵⁰ The average time to process these requests does not include time taken for appeals through the BOP’s administrative remedy program. As previously discussed, an inmate could wait up to 90 days for all levels of review to respond to an appeal prior to a final administrative decision, with additional time consumed by extensions to officials’ deadlines for responses and by the inmate’s efforts to prepare the submission for each level of the process.

a nursing home or extended care facility; verifying information in the inmate's release plan through the U.S. Probation Office; gathering additional information from investigative agencies regarding the inmate's offense; or waiting for the opinions of USAOs or the ODAG on the possible release of the inmate. We found documentation in some case files to suggest that these factors may have delayed requests, but we were unable to measure the amount of time attributable to these delays because dates were not consistently noted in all compassionate release case files.

Staff at the three institutions where we conducted interviews were unable to provide us with estimates of the time it took to process a compassionate release request at their institutions. For example, one doctor said he was not sure of a particular timeline for review. Other institution staff members provided guesses on the timeliness of processing a request at their institution, ranging from 2 weeks to "pretty fast."

Moreover, at each level of the process, we found BOP staff had concerns regarding the timeliness of processing a request. For example, a social worker who serves as the review committee chairperson at her institution said once a request leaves the institution with a recommendation of approval it may be as long as 4 months before a final decision is reached. She added that some inmates do not have 4 months left to live and many of them have died waiting for approval by the BOP Director. A Warden at one institution where we conducted interviews said removing a step in the review process, such as the Regional Director's review of a request, may result in shortening the review process by 1 week, which the Warden indicated could be considerable given the nature of compassionate release requests. A Regional Director told us that some inmates who request compassionate release die while still in custody and in some cases that could be due to delays in processing a request or because the inmate's illness progressed faster than anticipated. An Assistant General Counsel said reviewing an inmate's request is a long process and that some inmates "go downhill" very quickly. We also found indications in the case files of concerns regarding delays in the review process. For example, correspondence between two Central Office officials about an inmate who died during consideration said, "Too long. Wonder why so many delays."

Timeliness of the BOP's responses to inmate appeals of compassionate release decisions

As previously discussed, the BOP's administrative remedy program allows an inmate to seek formal review (appeal) by high-level BOP officials of an issue relating to any aspect of his or her incarceration,

including any aspect of a compassionate release request. We reviewed BOP administrative remedy data from 2006 through 2011 and found that 273 inmates filed a total of 636 appeals regarding issues related to a request for compassionate release, including 366 appeals to Regional Directors and 270 appeals to the BOP's General Counsel.⁵¹

Administrative remedy procedures require that a Regional Director respond to an inmate's appeal within 30 calendar days. Based on our review of BOP administrative remedy data, Regional Directors responded in 19 days, on average. Specifically, we found that Regional Directors responded to an inmate's appeal within 30 calendar days in 306 of 366 (84 percent) cases. However, administrative remedy procedures allow Regional Directors to extend their response to an inmate's appeal by 30 days, thereby providing a Regional Director up to 60 days to respond. We found that a Regional Director exceeded this 60-day response time for 24 of 366 (6 percent) appeals, including 7 appeals that took a Regional Director over 100 days to respond. In one case, a Regional Director took 302 calendar days to respond to an inmate's appeal, according to BOP data.

Furthermore, administrative remedy procedures allow an inmate not satisfied with a Regional Director's response to appeal to the BOP's General Counsel. The General Counsel must respond within 40 calendar days of the date of the inmate's appeal. Based on our review of BOP administrative remedy data, we found that the General Counsel provided a response in 40 days, on average. Specifically, we found that the General Counsel responded within 40 calendar days in 164 of 270 (61 percent) appeals. However, the General Counsel may extend the response to an inmate's appeal by 20 days, thereby providing the General Counsel 60 days to respond. We found that the General Counsel exceeded the 60-day response time for 64 of 270 (24 percent) appeals, including 22 appeals that took the General Counsel over 100 days to respond. In one case, the General Counsel took 303 calendar days to respond to an inmate's appeal, according to BOP data.

⁵¹ Of the 273 inmates who appealed an issue relating to his or her compassionate release request, 163 (60 percent) filed multiple appeals. For example, one inmate filed 12 appeals from 2010 through 2011 to both a Regional Director (6) and the General Counsel (6). All of this inmate's appeals were "Closed" or "Rejected" for a number of reasons, including that the inmate's appeal: (1) was not timely, (2) was repetitive of a previous filing, (3) did not include required paperwork, and (4) was submitted to the wrong level of review.

The BOP cannot determine whether decisions made by institution and Regional Office staff are consistent with each other or with BOP policy.

The BOP does not review whether decisions made by Wardens or Regional Directors regarding compassionate release requests are consistent with each other or with the BOP's Program Statement and the underlying statutory authority. While the BOP Director must give the final approval for a compassionate release request, the regulations provide that the BOP Director reviews a request only after it has been approved by the Warden and a Regional Director. Thus, if the request is denied by the Warden of the inmate's institution or a Regional Director, the request and the denials are never reviewed by anyone at the BOP's headquarters. The BOP Central Office staff told us that the Central Office became aware of compassionate release denials made by a Warden or Regional Director only when the inmate appealed the denial through the BOP's administrative remedy procedure.

All BOP Central Office staff we interviewed confirmed that there is no mechanism in place to review denials by Wardens or Regional Directors of inmate compassionate release requests to ensure they are consistent with each other and with BOP policy. Although the BOP's Central Office conducts program compliance reviews of the institutions' correctional programs, these reviews do not assess the compassionate release program. The reviews seek to, among other things, ensure that institution staff evaluates the programming needs of inmates and manages the inmates' program participation through coordinated communication, documentation, and accessibility. However, the BOP guidelines for conducting institution program compliance reviews do not include the compassionate release program.⁵² The BOP Central Office staff said that the BOP relies on training (discussed previously) to ensure that Wardens make appropriate decisions on compassionate release requests.

Conclusion

While we found limited efforts by institutions and regional offices to track inmate requests, as well as a mechanism within the BOP's case management system to identify inmates released through the compassionate release program, the BOP does not have a system in place to track all compassionate release requests from the outset of the review process to its conclusion. As a result, neither the BOP nor the OIG could

⁵² Program Review Guidelines, Correctional Programs, Number G5000I.07 (June 3, 2011).

determine the total number of compassionate release requests made by inmates between 2006 and 2011. In the absence of a system to track all requests, including the disposition of decisions made on requests at the institution and regional level, the BOP cannot effectively manage the compassionate release program.

In addition, the BOP does not track the time it takes to approve or deny requests for compassionate release, has not established a formal method for initiating the review process, and has failed to put in place timeliness standards for any stage of the review process. As a result, neither the OIG nor the BOP can assess the timeliness of the review process. Moreover, we found that inmates have died while awaiting decisions on their requests. We believe that the BOP must formalize the initiation of the review process and record an initiation date for each case. Establishing a formal initiation method will enable the BOP to analyze the timeliness of each step of the review process to identify delays and the reasons for them, and to provide a basis for taking corrective action.

Finally, we found that the BOP cannot evaluate whether the decisions by Wardens or Regional Directors to deny requests are appropriate because the BOP conducts no tracking or oversight of those decisions. The BOP cannot effectively manage the compassionate release program if it cannot ensure decisions made by the Wardens or Regional Directors are appropriate.

Release of inmates through the compassionate release program provides cost savings for the BOP and helps the BOP with its growing prison population and significant capacity issues.

Although BOP officials and institution staff consistently cited cost savings as a benefit of the compassionate release program, the BOP does not track cost savings associated with the release of inmates under the program. As a result, the BOP is unable to support the potential cost savings from expanding the compassionate release program that it reported to Congress in its FY 2013 budget submission. Nevertheless, it is self-evident that the release from BOP custody of an inmate with a serious or terminal medical condition results in cost savings for the BOP.⁵³ Perhaps even more significantly, the release of such an inmate provides the BOP with an additional bed space which, given the serious

⁵³ We recognize that, depending upon the nature of the medical condition and the financial and health insurance circumstances of the inmate, in at least some situations the inmate's release may result in additional health care costs to other government programs, such as Medicare or Medicaid.

population management challenges facing the BOP, is an important non-monetary benefit. We concluded that the BOP could realize additional cost savings, as well as receive assistance in addressing its population management difficulties, from appropriately expanding the use of the compassionate release program. In the sections below, we discuss the limitations of BOP cost data and the potential for documenting cost savings if those limitations are addressed.

The BOP does not track costs that could be or are saved through the program.

The BOP does not track marginal daily costs for incarcerated inmates who are receiving medical care, nor does it track costs related to the care and confinement of inmates diagnosed with a terminal illness or inmates with severely debilitating medical conditions. We also found during this review that the BOP does not track cost data for either the treatment of specific medical conditions or the continuing custody of inmates who may be eligible for compassionate release.

The OIG requested the direct medical care costs incurred by the BOP to house an inmate, including the cost of feeding, clothing, and providing medical care for an inmate. The BOP was unable to provide the information because it does not maintain that data and instead provided the OIG with what is referred to as the “daily medical per capita” costs for all inmates.⁵⁴

Because the BOP does not track costs related to the specific care and confinement of inmates diagnosed with terminal illnesses, or inmates with severely debilitating medical conditions, or other circumstances that would warrant consideration for compassionate release, the OIG was unable to calculate costs associated with housing inmates who may be candidates for compassionate release with an acceptable degree of accuracy. In addition, we believe the “daily medical per capita” costs understate the cost of maintaining the inmates that could be potentially considered for this program because the per capita costs include the cost of treating inmates who are receiving basic medical care, such as preventive care, as well as those who are receiving extensive medical treatments.

⁵⁴ The BOP’s daily medical per capita rate is derived by taking total BOP Medical Obligations (all expenses charged to the Medical Program Area, including salaries and operational costs) incurred over a fiscal year divided by the average inmate population.

We also found that the BOP had not analyzed potential cost savings from the release of inmates under the compassionate release program. Under the BOP's management of the program, inmates who have been considered for compassionate release are special circumstance inmates with a terminal illness or severely debilitated condition. The care for these inmates is unique and likely very expensive, and must be identified individually to understand the per inmate cost. The BOP's Medical Director said that determining cost savings resulting from the compassionate release program would require sophisticated analysis and would be difficult to answer accurately. The BOP's General Counsel said there had been no analysis of how much the program has saved through the release of inmates. She added that determining cost savings was difficult because each inmate's circumstances vary.

The BOP would accrue cost savings if it expanded the criteria for compassionate release.

What data the BOP does track indicates that the costs of incarcerating inmates at its medical centers are higher than at its other institutions, and that these costs are rising. For example, the FY 2011 annual cost for incarcerating an inmate at all levels of incarceration averaged \$28,893, while the annual cost for incarcerating an inmate at a BOP medical center was \$57,962. In addition, the average costs for the BOP's medical centers increased by 38 percent from FY 2006 to FY 2011.

As previously stated, BOP Central Office officials told the OIG that the BOP is drafting new guidance for medical institutions that would seek to expand the use of the compassionate release program by expressly allowing inmates with a life expectancy of up to 18 months to be considered for release rather than the 12-month limit that many institutions are currently applying informally. The BOP's General Counsel said the new guidance also would assist institution staff in evaluating inmates with debilitating medical conditions so that staff understood what level of functioning is appropriate for compassionate release consideration.

While the BOP did not provide the OIG with a copy of the new guidance under consideration, and did not know when the changes would be finalized, we believe that the new guidance that was described to us would result in cost savings for the BOP by enabling more inmates to be eligible for release. For example, if clarifying and expanding the medical criteria for compassionate release consideration resulted in releasing 100 inmates with serious medical conditions from the medical

referral centers each year, the BOP could potentially realize cost savings of at least \$5.8 million annually.⁵⁵ As previously stated, only 24 inmates are, on average, released each year through the compassionate release program.⁵⁶ Cost savings to the BOP can be determined with greater accuracy only if the BOP improves its collection and analysis of costs associated with incarcerating and providing medical care to those inmates appropriate for compassionate release.

The BOP does not have the data to support the potential savings from expanding the compassionate release program that it reported to Congress.

The Department's FY 2013 budget request identified \$3.2 million in savings to be achieved by expanding the BOP's compassionate release program. Further, the Department's FY 2013 Performance Budget Congressional Submission stated that "by amending current administratively established policies, the BOP could release more inmates in FY 2013" by expanding the BOP's compassionate release program.⁵⁷

In response to the working draft of this report, the BOP stated that the basis for the estimated cost savings of \$3.2 million proposed in the FY 2013 President's Budget was a scenario the BOP developed when contemplating expanding the compassionate release program to inmates in medical centers who had served at least 67 percent of their sentences, were convicted of non-violent and non-sex offenses, and had no violence within the past 5 years. The BOP stated that it estimated that expanding its use of compassionate release in this way could result in \$3.2 million in cost savings, based on an average marginal cost for the number of inmates that met those criteria.

⁵⁵ The cost savings calculations are based on "Average Daily/Annual Per Capita Rates (with support costs)" provided by the BOP for FY 2007 through FY 2011; specifically, the annual cost of \$57,962 for incarcerating an inmate at a BOP medical referral center in FY 2011.

⁵⁶ According to data from the Bureau of Justice Statistics (BJS), an average of 322 inmates died per year in BOP custody from 2001 to 2009 from an illness. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Prison and Jail Deaths in Custody, 2000-2009 - Statistical Tables*, NCJ236219 (December 2011). According to the BJS, with the exception of AIDS-related deaths, the BOP does not distinguish illness deaths by a specific cause of death, such as cancer or other diseases.

⁵⁷ U.S. Department of Justice, Federal Prison System, FY 2013 Performance Budget Congressional Submission, Salaries and Expenses.

We requested the BOP provide us with all documents related to its plan to expand the compassionate release program and the data and documentation supporting its FY 2013 Performance Budget Submission.⁵⁸ The BOP was unable to provide any documents related to its plan to expand the compassionate release program. Further, the BOP told the OIG that the criteria used for calculating potential cost savings was the same for all BOP programs and there was not one specifically developed for the compassionate release program. A Central Office official said she was not aware of any efforts to expand the compassionate release program. She added, “The program is the same as it’s always been.”

Releasing eligible inmates through the compassionate release program assists the BOP with managing its growing inmate population and significant capacity issues.

We found that the compassionate release program can help the BOP in managing its growing prison population and its significant capacity issues. In FY 2006, there were 192,584 inmates in BOP custody. As of October 2012, the BOP reported 218,936 inmates in its custody, an increase of nearly 14 percent.⁵⁹ The Department has identified the BOP’s increasingly severe prison capacity issues as a programmatic material weakness in every Performance and Accountability Report it has issued since 2006. Despite having identified prison capacity as a programmatic material weakness for 7 consecutive years, according to the Government Accountability Office, the BOP’s prisons have gone from being 36 percent over rated capacity in FY 2006

⁵⁸ On March 6, 2012, as part of an initial data and information request, the OIG requested all documents related to the BOP’s plan to expand the compassionate release program and the data and documentation supporting its FY 2013 Performance Budget Submission. During the course of our fieldwork, the BOP was unable to provide any documents related to its plan to expand the compassionate release program. On April 18, 2013, in response to our draft report and after the OIG had completed its review, the BOP provided one-page summaries of possible scenarios to expand the compassionate release program; pages from charts examining cost-savings options, including pages that describe possible expansion of the compassionate release program; and other working drafts of documents. While these documents provided more specific data, as well as additional context into possible scenarios to expand the compassionate release program, we found no documentation that supports that any scenario was actually implemented.

⁵⁹ U.S. Department of Justice, Office of the Inspector General, “Top Management and Performance Challenges in the Department of Justice – 2012,” November 7, 2012.

to being 39 percent over rated capacity in FY 2011. Moreover, the BOP projects a 15-percent increase in its inmate population by 2020.⁶⁰

While the number of inmates who are appropriate for compassionate release is small in comparison to the BOP's overall prison population, we believe that the serious capacity challenges facing the BOP require its leadership to effectively manage each and every one of its programs that can assist in prison population management, particularly in this instance with a program that Congress has expressly authorized. This opinion was shared by officials and institution staff we interviewed who cited population control as a benefit of the compassionate release program. For example, the BOP Director said the release of even one more inmate would be beneficial in managing the BOP's population.

The OIG could not determine how many inmates might have been appropriate candidates for compassionate release because the BOP does not track the total number of inmates who request compassionate release or the conditions of those whose requests were rejected at the institutional and regional levels. However, at a minimum, inmates with a viable release plan who have been diagnosed with a terminal illness or a severely debilitating medical condition and who do not have a history of violence and are not threats to recidivate would appear to be such candidates. Those inmates are usually housed in the BOP's medical centers, which as of December 2012 housed 7,464 inmates.⁶¹ In interviews with BOP staff, we heard anecdotally that the BOP's medical referral centers also are facing capacity issues. For example, the Health Services Administrator at one medical institution told us that his institution has had inadequate bed space and has had to have sick inmates wait 1 to 2 weeks for a bed. He added that he understood wait times at other medical institutions were even longer. In addition, our review of a case file for one inmate who died during consideration found comments from a medical institution staff member that the inmate was not transferred to the medical institution because there was no bed space and that several inmates were on a list ahead of the inmate.

⁶⁰ U.S. Government Accountability Office, *Bureau of Prisons: Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure*, GAO-12-743 (September 2012).

⁶¹ The BOP's Federal Medical Centers provide a range of medical and mental health services to inmates. The BOP does not track inmates with terminal illnesses or severely debilitating medical conditions. Therefore, neither the BOP nor the OIG can determine how many inmates incarcerated in BOP medical centers would be candidates for compassionate release consideration.

Conclusion

We found that effectively managing the compassionate release program would result in cost savings for the BOP. However, we also found that the BOP does not track marginal daily costs for incarcerating medical inmates, nor does it track costs related to the care and confinement of inmates diagnosed with terminal illnesses or inmates with severely debilitating medical conditions. Therefore, neither the BOP nor the OIG is able to determine the amount spent per inmate for the treatment and care of inmates with terminal illnesses or serious medical conditions. Having such information would allow the BOP to accurately determine the amount spent for such inmates in its medical facilities, the cost of certain medical services for seriously ill and terminal patients, and the cost savings achieved by releasing inmates through the compassionate release program. Finally, we found that effectively managing the compassionate release program also provides the BOP with a significant non-monetary benefit, namely assistance in managing the growing inmate population that has resulted in significant capacity issues for the BOP.

A small percentage of inmates released under the program were rearrested.

According to the BOP's Program Statement, it seeks to operate the compassionate release program in a manner that protects the public from undue risk. We attempted to determine recidivism rates within the compassionate release program by asking the Federal Bureau of Investigation (FBI) for arrest data for the 142 inmates who had been approved and released through the compassionate release program from 2006 through 2011.⁶² We then calculated the recidivism rate by searching for dates of re-arrest within 3 years of the dates of release under the program. Based on these parameters, we found that of the 142 inmates approved and released during our 6-year review period, 5 (3.5 percent) were rearrested within a 3-year period.⁶³ By comparison,

⁶² We provided the FBI information on all 142 inmates released from 2006 through 2011. In 2011, one inmate was approved for release but died before actually being released. This inmate was not included in our recidivism analysis.

⁶³ One inmate was rearrested on three separate occasions after the compassionate release date. The first two arrests were within 3 years of the inmate's release date. The inmate's third arrest was just over 3 years after the release date.

the general recidivism rate for federal offenders has been estimated to be 41 percent within 3 years after release.⁶⁴

According to the data obtained through the FBI for these five released inmates, the offenses for which they were rearrested included probation violations, theft, and drug offenses. Below are summaries on the five inmates who were rearrested, including the circumstances that led to the inmates' release and the offenses for which they were rearrested after release.

- Inmate A had been incarcerated after pleading guilty to possession with intent to distribute marijuana and being sentenced to 60 months of imprisonment, to be followed by 3 years of supervised release. The inmate thereafter was diagnosed with metastatic squamous cell cancer of the lung. His condition was determined to be terminal with a life expectancy of less than 6 months at the time of his release. One year after his release the inmate violated the conditions of his supervised release when he was rearrested for using, administering, and possessing illegally obtained prescription medication and methamphetamine. The inmate admitted that he was abusing methamphetamine and illegally obtained prescription medication on a daily basis. The inmate was returned to the BOP's custody for an additional 12-month sentence.
- Inmate B had been incarcerated following convictions for attempted distribution of PCP and distribution of heroin and having been sentenced to 54 months of imprisonment, to be followed by 5 years on supervised release. The inmate thereafter was diagnosed with advanced idiopathic restrictive cardiomyopathy with congestive heart failure. His condition was determined to be terminal with a life expectancy of less than 6 months at the time of release. The inmate was rearrested 2 years after his release for theft (involving less than \$100). The FBI data indicates that the charge was thereafter voluntarily dismissed by the prosecutor.
- Inmate C had been incarcerated after pleading guilty to conspiracy to distribute cocaine and cocaine base and being sentenced to 121 months of imprisonment, to be followed by

⁶⁴ The Federal Bureau of Prisons, *Recidivism Among Federal Prisoners Released in 1987*, August 4, 1994.

5 years on supervised release. The inmate thereafter was diagnosed with end-stage HIV/AIDS, insulin-dependent diabetes mellitus, retinopathy, peripheral neuropathy, chronic renal insufficiency with nephrotic syndrome, and dyslipidemia, with an elevation of plasma cholesterol. The inmate's medical condition was considered "grave," with a "limited life expectancy" at the time of release. Twenty months after his release, he was arrested for possession of cocaine with intent to sell, manufacture, or deliver, and operation of a vehicle with unsafe or improper equipment. Forty-one months after his release, the inmate was again arrested for trafficking in cocaine over 28 grams/less than 150 kilograms, disobeying a stop or yield sign, and possession of drug paraphernalia.

- Inmate D had been incarcerated after pleading guilty to unlawful use of a controlled substance while in possession of a firearm and being sentenced to 33 months of imprisonment, to be followed by 2 years on supervised release. The inmate thereafter was diagnosed with stage IV Hodgkin's lymphoma. The inmate's condition was considered extremely poor with a life expectancy of several months at the time of release. The inmate was rearrested 2 months after release for resisting arrest.
- Inmate E was incarcerated after pleading guilty to possession of cocaine base and being sentenced to 108 months of imprisonment, to be followed by 2 years on supervised release.⁶⁵ The inmate thereafter was diagnosed with metastatic infiltrating ductal carcinoma of the breast. The inmate's life expectancy at the time of release was less than 6 months. The inmate was rearrested 6 months after release for malicious destruction of property (valued at less than \$500).

Conclusion

When considering the impact of the compassionate release program on public safety, we found the rate of recidivism for inmates approved and released through compassionate release to be low compared with the overall rate of recidivism for federal inmates. The OIG recognizes that releasing inmates through the compassionate release program could result in some increase in the number of inmates who are

⁶⁵ The inmate's sentence was later modified to 84 months of imprisonment, according to FBI data.

rearrested after release, particularly if the numbers and types of inmates released under compassionate release authority are expanded. However, recidivism data suggests that, given these prisoners' serious medical conditions, a well-managed compassionate release program can significantly minimize the risk to the public from an inmate's early release from prison.

CONCLUSION AND RECOMMENDATIONS

We concluded that an effectively managed compassionate release program would result in cost savings for the BOP, as well as assist the BOP in managing its continually growing inmate population and the resulting capacity challenges it is facing. We further found that such a program would likely have a relatively low rate of recidivism. However, we found that the existing BOP compassionate release program is poorly managed and that its inconsistent and ad hoc implementation has likely resulted in potentially eligible inmates not being considered for release. It has also likely resulted in terminally ill inmates dying before their requests for compassionate release were decided. Problems with the program's management are concentrated in four areas.

First, the BOP's regulations and Program Statement do not establish appropriate medical and non-medical criteria for compassionate release consideration and do not adequately define "extraordinary and compelling" circumstances that might warrant release. We found institution staff had varying understandings of what extraordinary and compelling circumstances warrant consideration for compassionate release. For example, while we were told that the BOP Central Office will consider compassionate release for an inmate with a life expectancy of 12 months or less, some institution staff we interviewed said they will consider an inmate only if the inmate has a life expectancy of 6 months or less. Further, while the BOP's regulations and Program Statement allow for compassionate release based upon non-medical circumstances, neither provides any guidance for such situations. Moreover, the BOP recently stated that its practice is to deny non-medical compassionate release requests, and indeed we found that the BOP did not approve a single non-medical compassionate release request during the 6-year period covered by our review. While the BOP proposed revisions to its compassionate release regulations to clarify the conditions that qualify for consideration, a final regulation was never adopted. Consequently, BOP staff continues to decide compassionate release requests without clear or comprehensive standards.

Second, the BOP has failed to put in place timeliness standards at each step of the review process. Instead, Wardens are told simply to promptly review requests and to expedite reviews of requests for medical reasons. Not surprisingly, we found that institutions interpret these general directions differently. Not all institutions have a designated timeframe for reviewing requests and, for those that do, the timeframes range from 5 to 65 days.

Third, the BOP does not have procedures to inform inmates about the compassionate release program. Unlike with many other BOP programs, institution staff is not required to inform inmates about the compassionate release program and the methods used by staff that does inform inmates about the program vary by institution. As a result, potentially eligible inmates may not know about the compassionate release program. By making inmates fully aware of the compassionate release program, whether through institution handbooks or during required discussions between inmates and staff, the BOP will be able to increase inmates' knowledge of the program and provide full and fair opportunities for those who may be appropriate for consideration.

Fourth, the BOP does not have a system to track all compassionate release requests, the timeliness of the review process, or whether decisions made by institution and regional office staff are consistent with each other or with BOP policy. As a result, the BOP could not tell us how many requests for compassionate release were made from 2006 through 2011, how many requests were denied by Wardens and how many were denied by Regional Directors, or what the reasons were for those denials. The BOP tracks only inmate requests that have been approved by both the Warden and Regional Director, and that have been sent to the Central Office for review by the BOP Director. We found that some, but not all, institutions and Regional Offices do have their own systems for tracking inmate requests, but that the methods vary. We further found that the BOP Central Office makes no effort to ensure that denial and approval decisions by Wardens and Regional Directors are consistent across institutions and regions, and with BOP policy. We believe that the BOP cannot effectively manage the compassionate release program if it cannot account for the overall number of inmate requests and how they were resolved.

The BOP also does not track the time it takes to process requests and has no formal or standard means of determining the date the review process begins. Consequently, the BOP cannot monitor its process effectively. This is especially problematic for inmates with terminal medical conditions, and we found that 13 percent of inmates whose requests had been approved for compassionate release by a Warden and Regional Director died before a decision was made by the BOP Director. Given the lack of tracking data, we could not assess the timeliness of the review process. While the OIG recognizes the importance of a careful review process, given the time-sensitive nature of compassionate release requests, we believe the BOP should assess the length of time the process takes and establish timeliness standards for each phase of the review process. Clear timeliness standards and a formal mechanism for dating the initiation of the review process will help the BOP determine if

delays in the process exist and where to take corrective actions so that the review process may progress as quickly as possible.

Further, the BOP does not maintain cost data associated with the custody and treatment of inmates who may be eligible for compassionate release. Despite this lack of data, the BOP reported to Congress that it could save \$3.2 million by expanding the compassionate release program. While appropriately expanding the compassionate release program would inevitably result in medical cost savings, we found that no analysis has been conducted by the BOP. As a result, neither the BOP nor the OIG can determine with any precision the costs associated with providing health care to inmates eligible for compassionate release or the cost savings that could be achieved by releasing such inmates under the program.

Finally, we found the rate of recidivism for inmates approved and released through the existing compassionate release program to be low compared with the overall rate for federal inmates released into the community. While the OIG recognizes that increasing the number of inmates eligible for compassionate release could result in some increase in the number of inmates who are rearrested after release, the recidivism data to date shows that a program that carefully evaluates the risk of releasing an inmate can substantially reduce the likelihood of re-arrest.

Below are our recommendations for improving the compassionate release program.

Recommendations

To ensure that the BOP is effectively and efficiently managing its budget and addressing the growing and significant capacity issues at its institutions:

1. Consider appropriately expanding the use of the compassionate release program as authorized by Congress and as described in the BOP's regulations and Program Statement to cover both medical and non-medical conditions for inmates who do not present a threat to the community and who present a minimal risk of recidivism.

To ensure policies used to consider requests are complete and accurate, we recommend that the BOP:

2. Update written national policies, including its compassionate release regulations and Program Statement, to accurately reflect the BOP's criteria for determining eligible medical and non-medical requests.

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3. Provide training for BOP staff responsible for reviewing inmate requests and applying the criteria for evaluating medical and non-medical requests.

To ensure that requests are processed in a timely manner, we recommend that the BOP:

4. Establish timeframes for processing requests at each step of the review process, including Warden, Central Office, and external agency input and review.
5. Establish timeframes for handling inmate appeals that take into account the time sensitivity of compassionate release requests.

To ensure inmates are made aware of the compassionate release program, we recommend that the BOP:

6. Require that all inmates be informed about the compassionate release program, including how to initiate a request and circumstances that may qualify as “extraordinary and compelling.”

To ensure the BOP can account for all requests for compassionate release, minimize potential delays in the review process, and ensure denial decisions made by Wardens are appropriate, we recommend that the BOP:

7. Track each compassionate release request, its status, and final disposition.
8. Establish a procedure to formally document the initiation, including the initiation date, for each compassionate release request.
9. Require that Wardens document the specific reasons for denying an inmate’s request for compassionate release.
10. Include as part of BOP program compliance reviews an element for reviewing compassionate release determinations made by Wardens.

To accurately determine the costs associated with providing health services to inmates who may be otherwise eligible for compassionate release and identify potential cost savings, we recommend that the BOP:

11. Collect and assess the costs for providing health services to inmates diagnosed with terminal medical conditions and a limited life expectancy, and severely debilitating medical conditions.

APPENDIX I: LEGISLATIVE HISTORY

Sentencing Reform Act of 1984 (Pub. L. No. 98-473, 18 U.S.C. §§ 3551-3556)

The *Sentencing Reform Act of 1984*, Title II of the *Comprehensive Crime Control Act of 1984*, was passed by Congress and signed into law by the President on October 12, 1984. The legislation permits an inmate to petition for a sentence reduction for extraordinary and compelling reasons. According to the *Sentencing Reform Act of 1984*, a court can reduce a prisoner's imprisonment term if the BOP files a motion based on "extraordinary and compelling" reasons.

Under 18 U.S.C. § 3582(c)(1)(A), a sentencing court, on motion of the BOP Director, may reduce the term of imprisonment of an inmate sentenced under the *Comprehensive Crime Control Act of 1984*. The BOP oversees this program in accordance with 18 U.S.C. § 3582(c)(1)(A) and the procedures set forth in 28 C.F.R. § 571.60-.64.

Under 18 U.S.C. § 4205(g), a sentencing court, on motion of the BOP, may make an inmate with a minimum term sentence immediately eligible for parole by reducing the minimum term of the sentence to time served. Effective November 1, 1987, 18 U.S.C. § 4205(g) was repealed, but it remains the controlling law for inmates whose offenses occurred prior to that date. For inmates whose offenses occurred on or after November 1, 1987, the applicable statute is 18 U.S.C. § 3582(c)(1)(A). Procedures for compassionate release of an inmate under either provision are contained in 28 C.F.R. part 571, subpart G.

28 C.F.R. § 571.60-.64

Subsections 571.60-.64 of Title 28 of the C.F.R. establish the purpose and scope, initiation of request, approval of request, denial of request, and ineligible offenders for compassionate release (procedures for the implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g)):

- § 571.60 (Purpose and scope): Under 18 U.S.C. § 4205(g), a sentencing court, on motion of the BOP, may make an inmate with a minimum term sentence immediately eligible for parole by reducing the minimum term of the sentence to time served. Under 18 U.S.C. § 3582(c)(1)(A), a sentencing court, on motion of the BOP Director, may reduce the term of imprisonment of an inmate sentenced under the *Comprehensive Crime Control Act of 1984*. The BOP uses 18 U.S.C. §§ 4205(g) and 3582(c)(1)(A) in

particularly extraordinary or compelling circumstances that could not reasonably have been foreseen by the court at the time of sentencing.

- § 571.61 (Initiation of request – extraordinary or compelling circumstances): A request for a motion under 18 U.S.C. § 4205(g) or § 3582(c)(1)(A) shall be submitted to the Warden. Ordinarily, the request shall be in writing and submitted by the inmate. An inmate may initiate a request for consideration under 18 U.S.C. § 4205(g) or § 3582(c)(1)(A) only when there are particularly extraordinary or compelling circumstances that could not reasonably have been foreseen by the court at the time of sentencing. The inmate’s request shall at a minimum contain the following information:
 1. The extraordinary or compelling circumstances that the inmate believes warrant consideration.
 2. Proposed release plans, including where the inmate will reside, how the inmate will support him- or herself, and, if the basis for the request involves the inmate’s health, information on where the inmate will receive medical treatment and how the inmate will pay for such treatment.

The BOP processes a request made by another person on behalf of an inmate in the same manner as an inmate’s request. Staff shall refer a request received at the Central Office or at a Regional Office to the Warden of the institution where the inmate is confined.

- § 571.62 (Approval of request): The BOP makes a motion under 18 U.S.C. § 4205(g) or § 3582(c)(1)(A) only after the request has been reviewed by the Warden, the Regional Director, the General Counsel, and either the Medical Director for medical referrals or the Assistant Director, Correctional Programs Division, for non-medical referrals, and with the approval of the BOP Director. The Warden shall promptly review a request for consideration under 18 U.S.C. § 4205(g) or § 3582(c)(1)(A). If the Warden, upon an investigation of the request determines that the request warrants approval, the Warden shall refer the matter in writing with a recommendation to the Regional Director. If the Regional Director determines that the request warrants approval, the Regional Director shall prepare a written recommendation and refer the matter to the Office of General Counsel. If the General Counsel determines that the request warrants approval, the General

Counsel shall solicit the opinion of either the Medical Director or the Assistant Director, Correctional Programs Division, depending upon the nature of the basis of the request. With this opinion, the General Counsel shall forward the entire matter to the BOP Director for final decision. If the BOP Director grants a request under 18 U.S.C. § 4205(g), the Director will contact the U.S. Attorney in the district in which the inmate was sentenced regarding filing a motion in the sentencing court on behalf of the BOP to reduce the minimum term of the inmate's sentence to time served. If the BOP Director grants a request under 18 U.S.C. § 3582(c)(1)(A), the Director will contact the U.S. Attorney in the district in which the inmate was sentenced regarding filing a motion in the sentencing court on behalf of the BOP Director to reduce the inmate's term of imprisonment to time served. Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. § 4205(g), the Warden of the institution where the inmate is confined shall schedule the inmate for hearing on the earliest Parole Commission docket. Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. § 3582(c)(1)(A), the Warden of the institution where the inmate is confined shall release the inmate forthwith. In the event the basis of the request is the medical condition of the inmate, staff shall expedite the request at all levels.

- § 571.63 (Denial of request): When an inmate's request is denied by the Warden or Regional Director, the official shall provide the inmate with a written notice and statement of reasons for the denial. The inmate may appeal the denial through the administrative remedy procedure (28 C.F.R. part 542, subpart B). When an inmate's request for consideration under 18 U.S.C. § 4205(g) or § 3582(c)(1)(A) is denied by the Director or the General Counsel, the General Counsel shall provide the inmate with a written notice and statement of reasons for the denial. This denial constitutes a final administrative decision, and an inmate may not appeal the denial through the administrative remedy procedure.
- § 571.64 (Ineligible offenders): The BOP has no authority to initiate a request under 18 U.S.C. § 4205(g) or § 3582(c)(1)(A) on behalf of state prisoners housed in BOP facilities or D.C. Code offenders confined in federal institutions. The BOP cannot initiate such a motion on behalf of federal offenders who committed their offenses prior to November 1, 1987, and received non-parolable sentences.

U.S. Sentencing Commission Guidelines

Effective November 1, 2007, and pursuant to 28 U.S.C. § 994(p), the U.S. Sentencing Commission (USSC) amended the sentencing guidelines to describe what should be considered extraordinary and compelling reasons for sentence reduction (compassionate release), including criteria to be applied. The USSC guidelines provide four examples of circumstances that, provided the defendant is not a danger to the safety of any other person or to the community, would constitute “extraordinary and compelling reasons” for purposes of 18 U.S.C. § 3582(c)(1)(A). According to the USSC guidelines, extraordinary and compelling reasons exist when:

1. The defendant is suffering from a terminal illness.
2. The defendant is suffering from a permanent physical or medical condition, or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care and for which conventional treatment promises no substantial improvement.
3. The death or incapacitation of the defendant’s only family member capable of caring for the defendant’s minor child or minor children.
4. Any other circumstance that the Director of the Bureau of Prisons finds to be an extraordinary and compelling reason.

Department Component Policy

BOP Director Memorandum

On July 22, 1994, the BOP Director issued a memorandum to BOP executive staff regarding compassionate release requests. The memorandum indicated that the BOP took a conservative approach to filing motions for compassionate release, and that the BOP had been considering for release only those inmates with a terminal illness and a life expectancy of 6 months or less. The memorandum noted that the BOP had recently extended this time limit to include those inmates with a life expectancy of up to 1 year and stated that the time limit was a general guideline, not a requirement. The memorandum also stated that there may be cases where an inmate may not have a terminal condition or limited life expectancy, but has a serious or debilitating medical condition, and that those circumstances may merit consideration. In

addition, the memorandum stated that each case must be judged on an individual basis, and provided factors for staff to consider when evaluating cases. Those factors included:

- the nature and circumstances of the offense;
- the age of the inmate,
- the danger, if any, the inmate poses to the public if released,
- appropriate release plans, including family or outside resources,
- the nature and severity of the inmate's illness, including whether outside medical care will be necessary, and
- the length of the inmate's sentence and the amount of time left to serve.

The memorandum stated that the factors listed above were not criteria that an inmate must meet to be considered for compassionate release. Rather, the factors were guidelines to be evaluated before staff made a final decision on an inmate's request.

BOP Program Statement 5050.46

The BOP's Program Statement, Compassionate Release, Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), last revised on May 19, 1998, establishes policies and procedures for submitting and reviewing compassionate release requests, and includes processes for considering both medical and non-medical requests. The Program Statement includes the purpose and scope of the statutes establishing compassionate release, as well as the objectives of the program. The program's objectives include:

- a motion for a modification of a sentence will be made to the sentencing court only in particularly extraordinary or compelling circumstances that could not reasonably have been foreseen by the court at the time of sentencing,
- the public will be protected from undue risk by careful review of each compassionate release request, and
- compassionate release motions will be filed with the sentencing judge in accordance with the statutory requirements of 18 U.S.C. § 3582(c)(1)(A).

The Program Statement also includes procedures for initiating a request. Specifically, a request for a motion for compassionate release shall be submitted by the inmate to the Warden, ordinarily in writing, only when there are particularly extraordinary and compelling circumstances that the inmate believes could not reasonably have been foreseen by the court at the time of sentencing. An inmate must also provide a proposed release plan when submitting a request. The BOP processes a request made by a person on behalf of the inmate in the same manner as an inmate's request.

Also, the Program Statement establishes the process for approving requests. The Program Statement states that the BOP makes a motion for compassionate release only after review of the request by the Warden, the Regional Director, the General Counsel, and either the Medical Director (for medical requests), or the Assistant Director of the Correctional Programs Division (for non-medical requests). Requests must be approved by the BOP Director.

In addition, the Program Statement states that if a request is denied by the Warden, Regional Director, or General Counsel, the disapproving official must provide the inmate with written notice and a statement of reasons for the denial. The inmate may appeal a denial made by the Warden or Regional Director through the BOP's administrative remedy procedure. However, the inmate may not appeal a denial by the General Counsel as the denial constitutes a final administrative decision. If the Director denies the inmate's request, the inmate is provided a written notice and a statement of reasons for the denial within 20 workdays after receipt of the referral from the BOP's Office of General Counsel. A denial by the Director also constitutes a final administrative decision and cannot be appealed by the inmate.

Finally, the Program Statement clarifies offenders who are ineligible for compassionate release. The procedures contained in the Program Statement are the same as those established in 28 C.F.R. § 571.61-.64.

APPENDIX II: METHODOLOGY OF THE OIG REVIEW

We reviewed the BOP's process to approve or deny inmate requests for compassionate release. We reviewed federal laws and regulations; BOP Program Statements; BOP and USAO policies and procedures; and written correspondence of recommendations between BOP, USAO, and the Department and component officials. We conducted case file reviews of all inmates whose requests for compassionate release were approved or denied by the BOP's Director, or who died during the BOP's consideration of their requests. We also sent a questionnaire to all BOP Wardens to evaluate the processes and procedures institutions use to consider inmate requests for compassionate release. In addition, we interviewed Department officials with the BOP, EOUSA, ODAG, and USAOs, as well as staff at three BOP institutions. Finally, we conducted videoconference site visits with three BOP institutions. The following sections provide additional information on the methodology of our review.

Data Analysis

Case File Review

We conducted case file reviews of all inmates, from 2006 through 2011, whose request for compassionate release was approved or denied by the BOP Director, or who died during the BOP's consideration of their requests. The BOP provided the OIG with 212 case files for inmates whose requests were received by the BOP's Office of General Counsel after approval by the Wardens and Regional Directors. We reviewed 208 case files in which a decision to approve or deny was made, or the inmate died before a decision. We received one duplicate case file for an inmate. In addition, we did not review the case files for three inmates who did not receive a decision, including one inmate whose sentence was vacated by the court, one inmate who withdrew the request, and one inmate whose case was referred for a criminal matter.

The purpose of our case file review was multi-faceted. First, we obtained inmate demographic information. Second, we reviewed the steps of the review process, including which institutions initiated requests, and attempted to obtain dates for the initiation of a request and completion of steps throughout the consideration process. These include the date a request was initiated, dates institution staff received feedback from outside agencies, and the date the Warden approved the request. Third, we analyzed documents and BOP correspondence with institution and Central Office staff, USAOs, and law enforcement

agencies. Finally, we reviewed documents to determine why an inmate's request was approved or denied by the BOP Director.

Questionnaire

We e-mailed a questionnaire to all BOP Wardens. The purpose of our questionnaire was to evaluate the procedures institutions use to consider inmate requests for compassionate release.

Our questionnaire included 10 questions. Specifically, we asked Wardens about how inmates were made aware of the program; the most common method inmates use to submit requests; who reviews requests for compassionate release; the approximate number of requests their institution received over the past 2 calendar years, including the number of requests for non-medical reasons; the number of non-medical requests approved by their institution; and what factors the Wardens consider during their reviews of requests to make a determination. Further, we asked Wardens if their institutions had designated timeframes for reviewing requests, and if so, to specify those timeframes; and whether their institutions tracks requests. Finally, we asked Wardens to describe the process they and their staff use to review requests, resources available to consider requests for medical reasons, and if they had recommendations to improve the process for considering requests.

We received 100 responses from institution Wardens. Ten of the Wardens responded on behalf of multiple institutions within a Federal Correctional Complex (FCC). An FCC contains multiple institutions with different missions and security levels located in close proximity to one another. Because in 10 cases a singular response from a Warden represented multiple institutions within a FCC, the 100 responses we received represented 110 of the 117 (94 percent) BOP institutions.

Document Analysis

We reviewed the laws, regulations, and legislative history of the compassionate release program. We also reviewed BOP Program Statements, training materials, correspondence between the BOP's Central Office and institutions, and USAO documents. In addition, we examined BOP internal memoranda, evaluative guidelines, and criteria for medical requests.

Interviews

Organization/Division	Position
Office of the Deputy Attorney General	
	Associate Deputy Attorney General
	Senior Counsel to the Deputy Attorney General
Federal Bureau of Prisons	
BOP Headquarters	Director
	Regional Directors (x6)
	Assistant Director, Correctional Programs Division
	Assistant Director and General Counsel
	Assistant Director and Medical Director
	Senior Deputy General Counsel
	Administrator, Correctional Programs Division
	Senior Counsel (x2)
	Senior Deputy Assistant Director, Administration Division
	Assistant General Counsel (x3)
	Chief, Office of Legislative Affairs (x2)
Social Science Research Analyst	
FPC Alderson	Warden
	Associate Warden
	Case Management Coordinator
	Unit Manager
	Medical Officer
FMC Butner	Case Manager
	Warden
	Associate Warden
	Social Worker and Chairperson of the Reduction in Sentence (Compassionate Release) Review Committee
	Oncologist and Tumor Board Chairperson
	Social Worker
FMC Carswell	Case Manager
	Warden
	Associate Warden
	Health Services Administrator
	Social Worker and Chairperson of Compassionate Release Review Committee
	Director of Nursing
	Chief Social Worker
	Unit Manager
Case Manager	
Executive Office for the United States Attorneys	
	Counsel for Legal Initiatives
United States Attorneys' Offices	
	Criminal Chief, Southern District of Florida
	Criminal Chief, Southern District of Texas
	Criminal Chief, Eastern District of Michigan
	Criminal Chief, Southern District of Iowa
	Criminal Chief, Eastern District of Oklahoma

Organization/Division	Position
	Criminal Chief, Eastern District of Kentucky
	Assistant United States Attorney, Western District of Texas
	Assistant United States Attorney, Southern District of Indiana

Video Teleconferences

All interviews with BOP institution staff were conducted through video teleconferencing (VTC). The team conducted VTCs with three institutions: Federal Prison Camp (FPC) Alderson, Federal Medical Center (FMC) Butner, and FMC Carswell. We chose FMC Butner and FMC Carswell because they received the highest number of compassionate release requests, based on our case file review. FPC Alderson was randomly selected from 103 institutions that, based on our case file review, received no requests in 2011.

APPENDIX III: FORMER BOP DIRECTOR MEMORANDUM



U.S. Department of Justice
Federal Bureau of Prisons

Office of the Director

Washington, DC 20334

July 22, 1994

MEMORANDUM FOR EXECUTIVE STAFF

FROM:

Kathleen M. Hawk
Kathleen M. Hawk, Director
Federal Bureau of Prisons

SUBJECT: Compassionate Release Requests

The Bureau of Prisons has historically taken a conservative approach to filing a motion with the courts for the compassionate release of an inmate under 18 U.S.C. § 4205(g) or § 3582(c)(1)(A). Until recently, our general guideline was to recommend release of an inmate only in cases of terminal illness when life expectancy was six months or less. Not many months ago, we extended the time limit to a one year life expectancy as long as medical staff felt comfortable with the accuracy of their prediction of life expectancy. Of course, this is a general guideline, not a requirement.

As we have further reviewed this issue, it has come to our attention that there may be other cases that merit consideration for release. These cases still fall within the medical arena, but may not be terminal or lend themselves to a precise prediction of life expectancy. Nevertheless, such cases may be extremely serious and debilitating.

While each case must be judged on an individual basis, with consideration of a number of factors, we are willing to consider other cases for possible recommendation for release. In evaluating individual cases that you may wish to submit, you and your staff should consider and balance the following factors, in addition to others that may bear on your recommendation:

- the nature and circumstances of the offense (e.g., was violence or a weapon used);

- the criminal and personal history and characteristics of the inmate, including an assessment of whether the inmate is likely to participate in criminal activities if released (Does the inmate have other criminal convictions?);
 - the age of the inmate (both current age and age at time of sentencing);
 - the danger, if any, the inmate poses to the public if released (Does the inmate have a history of violence? Could the inmate still commit his/her prior offense even in his/her present condition?);
 - appropriate release plans, including family or outside resources (Does the inmate have insurance or the ability to pay for necessary medical care? If released, would the cost of care be borne by taxpayers?);
 - the nature and severity of the inmate's illness, including consideration of whether outside medical care will be necessary; for example:
 - an inmate with severe debilitating heart or kidney disease that clearly limits his or her daily activity and in which conventional treatment such as medication, dialysis, or other measures are not sufficient to stabilize the disease or illness;
 - an inmate with a terminal illness, but no definitive life expectancy can be determined.
- Cases which could be remedied with transplantation will be considered, but other factors such as time remaining on the inmate's sentence will be weighed heavily to determine if a release motion is appropriate;
- the length of the inmate's sentence and the amount of time left to serve.

These factors are not criteria which the inmate must meet to qualify for consideration; rather, they are guidelines which should be evaluated before staff make a final decision. Staff should not recommend compassionate release merely because the inmate has met a majority of the above factors. Instead, staff should rely on their correctional judgment, available documentation, and verifiable information in making recommendations.

f: OGC - LCI
File - Exec Staff, OGC

**APPENDIX IV: TALKING POINTS PREPARED FOR PRESENTATIONS
BY THE BOP'S GENERAL COUNSEL TO WARDENS AND
OTHER BOP STAFF**

The following was provided by the BOP and presented verbatim by the OIG.

I. Legal Authority and Procedures

- A. 18 U.S.C. § 3582(c)(1)(A)(i), gives the BOP Director the statutory authority and discretion to motion the sentencing court to reduce an inmate's term of imprisonment in extraordinary or compelling circumstances.
- B. The BOP only exercises this authority when the "extraordinary and compelling circumstances" involve an inmate who is suffering from a life-threatening or terminal medical condition, or who is severely and permanently mentally or physically debilitated.
- C. Procedurally, in accordance with BOP policy and 28 C.F.R. § 571.60 et seq.:
- An inmate or an inmate's family or representative may initiate a RIS request at the institution level.
 - If the Warden determines that a RIS is warranted, the Warden will forward a written recommendation together with the RIS package to the Regional Director.
 - If the Regional Director agrees that a RIS is warranted, the Regional Director will forward a written recommendation together with the RIS package to the Office of General Counsel.
 - If the General Counsel, after obtaining a medical recommendation from the Medical Director, agrees that a RIS is warranted, legal staff prepare a draft Motion and Order, and a letter for the Director's signature requesting that the U.S. Attorney in the sentencing jurisdiction submit the Motion for a RIS to the sentencing court.
 - If the Director agrees that the RIS is warranted, she will sign the letter and forward it, together with the draft Motion, and Order to the US Attorney's Office.
 - The inmate may appeal the Warden's or Regional Director's denial through the administrative remedy process.

II. Expanded Medical Criteria for Reduction in Sentence

- A. Terminal illness (with a life expectancy of one year or less); or
- B. Severely physically or cognitively debilitated which significantly impairs physical and/or mental function and will not improve with treatment seriously limits daily activities.

III. Guidelines for Inmate Eligibility for a Reduction in Sentence (RIS)

- A. If an inmate meets the medical criteria for RIS consideration, staff should rely on all available documents, correctional judgment, and verifiable information when making a recommendation for RIS. Staff should consider:
 - the nature and circumstances of the offense. E.g., Was violence or a weapon involved in the offense?
 - the criminal and personal history, and characteristics of the inmate. E.g., Are there other criminal convictions that are serious or share similar characteristics?
 - the likelihood the inmate will participate in criminal activities if released.
 - the inmate's current age, age at the time of sentencing, and whether the inmate could still commit his/her offense in his/her current medical condition.
 - whether the court likely knew or foresaw, based on the inmate's age and medical history or condition at the time of sentencing, that the inmate would probably die before completing his/her sentence.
 - the danger, if any, the inmate poses to the public or himself/herself if released. Does the inmate have a history of violence?
 - the length of the sentence and the amount of time left to serve on the sentence.
 - appropriateness of the release plan. E.g., Does the inmate have an adequate support system including family, financial, and medical resources?

IV. Sentencing Commission Guidelines Amendment 1B1.13

- A. Effective November 1, 2007, for these amendments.
 - Extraordinary and Compelling Reasons.
 - The defendant is suffering from a terminal illness.

-
- The defendant is suffering from a permanent physical or medical condition, or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and for which conventional treatment promises no substantial improvement.
 - The death or incapacitation of the defendant's only family member capable of caring for the defendant's minor child or minor children.
 - As determined by the Director of the BOP, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (i), (ii), and (iii).
-
- Do not summarily deny cases that fall within these guideline parameters but outside BOP criteria. Denials of these requests should address these issues but stay within BOP medical criteria.
 - Contact legal counsel in the CLC, Regional Office, or Central Office for assistance.

APPENDIX V: REQUEST DECISIONS

From 2006 through 2011, Wardens and Regional Directors approved and forwarded 211 inmate requests to the BOP's Central Office for review.⁶⁶ The BOP Director considered those requests and approved 142 (68 percent) and denied 38 (18 percent). We also found that in 28 (13 percent) cases, the inmates died while their requests were being considered by the BOP's Central Office and before a decision was made by the BOP Director. Table 2 shows the number of requests forwarded to the BOP's Central Office by Wardens and Regional Directors from 2006 through 2011, and the number of those requests that were approved and denied by the BOP Director, as well as the number of inmates who died while their requests were being considered by the BOP's Central Office.

Table 2: Requests Approved and Denied by the BOP's Central Office and Inmates who Died Before a Decision, 2006 through 2011

Year	Approved	Denied	Died Before Decision
2006	28	10	5
2007	16	10	4
2008	27	3	7
2009	17	5	3
2010	25	6	7
2011	29	4	2
Total	142	38	28

Source: BOP.

Of the requests received by the BOP's Central Office that we reviewed, we found that 206 requests (99 percent) were for medical reasons and 2 requests (1 percent) were for non-medical reasons. Of the 142 requests approved by the BOP Director, 118 requests (83 percent) were because the inmates had terminal medical conditions and limited life expectancy, and 24 requests (17 percent) were for severely debilitating medical conditions. Table 3 shows the reasons requests were approved by the BOP Director from 2006 through 2011.

⁶⁶ The BOP provided the OIG with 212 cases files that the BOP OGC received from 2006 through 2011. We reviewed 208 case files where a decision to approve or deny was made, or the inmate died before a decision. We did not include one duplicate case file for an approved inmate. In addition, we did not review the case files for three inmates who did not receive a decision, including one inmate whose sentence was vacated by the court, one inmate who withdrew the request, and one inmate whose case was referred for a criminal matter.

Table 3: Reasons Requests Were Approved, 2006 through 2011

Year	Requests	Terminal Illness and Limited Life Expectancy	Debilitating Conditions
2006	28	24	4
2007	16	14	2
2008	27	23	4
2009	17	14	3
2010	25	21	4
2011	29	22	7
Total	142	118	24

Source: BOP.

Of the 38 requests denied by the BOP's Director, 22 (58 percent) were due to the seriousness of the inmate's offense or criminal history, 8 (21 percent) were because the inmate's circumstances did not meet the BOP's medical criteria, 1 (3 percent) was because the court knew about the inmate's circumstances at the time of sentencing, and 7 (18 percent) were a combination of these factors. Table 4 shows the reasons requests were denied by the BOP's Director from 2006 through 2011.

Table 4: Reasons Requests Were Denied, 2006 through 2011

Year	Requests	Seriousness of Offense or Criminal History	Did Not Meet Medical Criteria	Court Aware of Condition During Sentencing	Combination
2006	10	7	1	0	2
2007	10	8	2	0	0
2008	3	2	0	0	1
2009	5	2	2	0	1
2010	6	2	2	0	2
2011	4	1	1	1	1
Totals	38	22	8	1	7

Source: BOP.

**APPENDIX VI: FEDERAL BUREAU OF PRISONS' RESPONSE TO
DRAFT REPORT**



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

April 17, 2013

MEMORANDUM FOR SARAH E. BATIPPS
DIRECTOR, EVALUATION AND INSPECTIONS
OFFICE OF INSPECTOR GENERAL

Thomas R. Kane
THRU: Thomas R. Kane
Deputy Director
Federal Bureau of Prisons

Charles E. Samuels, Jr.
FROM: Charles E. Samuels, Jr.
Director
Federal Bureau of Prisons

SUBJECT: Response to the Office of Inspector General's Draft
Report - The Federal Bureau of Prisons'
Compassionate Release Program

The Bureau of Prisons (BOP or Bureau) appreciates the opportunity to comment upon the Office of the Inspector General (OIG) above-referenced draft report as well as to respond to the recommendations directed at the BOP. Please find below the recommendations directed at the Bureau and the Bureau's response to each recommendation. For the reasons set forth below, we respectfully request that Recommendations 5 and 11 be closed at this time.

OIG Recommendation #1: Consider appropriately expanding the use of the compassionate release program as authorized by Congress and as

described in the BOP's regulations and Program Statement to cover both medical and non-medical conditions for inmates who do not present a threat to the community and who present a minimal risk of recidivism.

BOP Response: As the BOP has advised OIG, the Bureau is already in the process of reviewing and modifying aspects of the compassionate release program. The BOP plans to issue new guidance on medical criteria to consider in determining whether a request based on underlying medical circumstances is "extraordinary and compelling" to warrant a compassionate release motion to a sentencing judge. Additionally, the BOP has already started a process to consider the subject of non-medical compassionate release.

OIG Recommendation #2: Update written national policies, including its compassionate release regulations and Program Statement, to accurately reflect the BOP's criteria for determining eligible medical and non-medical requests.

BOP Response: The BOP concurs with this recommendation. As noted above, the BOP plans to issue a guidance memorandum that will clarify criteria to be considered in reviewing medical requests until the revised compassionate release regulations and Program Statement are finalized. Additionally, as your report notes, the BOP is already in the process of revising its regulations and Program Statement. Changes to policy in the Program Statement will need to be negotiated with the union. Changes to the regulations will need to go through formal notice and comment procedures.

OIG Recommendation #3: Provide training for BOP staff responsible for reviewing inmate requests and applying the criteria for evaluating medical and non-medical requests.

BOP Response: The BOP concurs with this recommendation. Training will be provided to staff. However, given budget limitations, training may be provided in an on-line and/or video conference format.

OIG Recommendation #4: Establish timeframes for processing requests at each step of the review process, including Warden, Central Office, and external agency input and review.

BOP Response: The BOP concurs in part with this recommendation. BOP agrees that general guidelines for reviewing a request should be established. However, any time frame will need to be flexible

so that the specific circumstances of each case can be thoroughly assessed and considered (e.g., if additional time is needed to establish an appropriate release plan for an inmate).

OIG Recommendation #5: Establish timeframes for handling inmate appeals that take into account the time sensitivity of compassionate release requests.

BOP Response: The BOP requests this recommendation be closed. We concur that inmate appeals should be expedited. However, current regulations concerning administrative remedies already provide for expedited processing in certain circumstances. 28 C.F.R. §542.18 states in pertinent part, ". . . [i]f the Request is determined to be of an emergency nature which threatens the inmate's immediate health or welfare, the Warden shall respond not later than the third calendar day after filing. . . ." Accordingly, BOP will now advise staff to use this provision for time sensitive compassionate release requests based on underlying terminal medical conditions. Instruction to staff to utilize this provision in these circumstances will be provided during staff training sessions noted in our response to OIG Recommendation #3.

OIG Recommendation #6: Require that all inmates be informed about the compassionate release program, including how to initiate a request and circumstances that may qualify as "extraordinary and compelling."

BOP Response: The BOP concurs with this recommendation. The Bureau already provides information about the compassionate release program to inmates through the electronic law library. In addition, the BOP plans to provide information relating to its new medical guidance on the Inmate Electronic Bulletin Board. The BOP is already developing a standardized Admissions and Orientation Handbook (A&O Handbook) to be used at all of the Bureau's institutions. BOP plans to include information about compassionate release in the new A&O Handbook.

OIG Recommendation #7: Track each compassionate release request, its status, and final disposition.

BOP Response: The BOP concurs with this recommendation. The BOP is currently working to develop an electronic tracking system to address this recommendation. The BOP anticipates that the electronic tracking system will go live by September 30, 2013.

OIG Recommendation #8: Establish a procedure to formally document the initiation, including the initiation date, for each compassionate release request.

BOP Response: The BOP concurs with this recommendation. As noted in response to OIG Recommendation #7, the BOP is currently working to develop an electronic tracking system to track data related to all compassionate release requests. The BOP will also provide training to staff on procedures to use when inputting information to the electronic tracking system. The BOP plans to incorporate these procedures into its revised Program Statement.

OIG Recommendation #9: Require that Wardens document the specific reasons for denying an inmate's request for compassionate release.

BOP Response: The BOP concurs with this recommendation. The new electronic tracking system procedures will require Wardens to provide the reason for denying an inmate's compassionate release request.

OIG Recommendation #10: Include as part of BOP program compliance reviews an element for reviewing compassionate release determinations made by Wardens.

BOP Response: The BOP concurs with this recommendation. Compliance reviews involving compassionate release will affect several disciplines at the institution level (e.g., Unit Management, Correctional Services, Health Services, etc.). The BOP will review its program review policies to ensure guideline steps, by discipline, are incorporated into existing Program Review Guidelines.

OIG Recommendation #11: Collect and assess the costs for providing health services to inmates diagnosed with terminal medical conditions and a limited life expectancy, and severely debilitating medical conditions.

BOP Response: The BOP concurs in part with this recommendation. The BOP believes it would be time and labor intensive to attempt to calculate medical costs for all inmates who have been diagnosed with terminal medical conditions and a limited life expectancy, and non-terminal medical conditions. Further, these costs will likely vary in each individual case depending on the intensity of medical and custodial care needed over time, the unpredictable nature of an inmate's medical condition and costs of medical treatment over the course of care, and the area of the country the care is being provided,

among other factors. Any calculations would have to be based on estimates and average costs. Despite these limitations, BOP concurs that tracking an estimated cost savings for inmates for whom the BOP submitted a compassionate release motion to the sentencing judge and the judge granted early release could be useful. Therefore, the BOP will use the current Actual Annual Cost of Incarceration Rate for each BOP Medical Referral Center and calculate the estimated cost avoidance related to each BOP approved compassionate release case for which the inmate is ultimately released. Accordingly, we request this recommendation be closed.

If you have any questions regarding this response, please contact Sara M. Revell, Assistant Director, Program Review Division, at (202) 353-2302.

APPENDIX VII: OIG ANALYSIS OF FEDERAL BUREAU OF PRISONS' RESPONSE

The Office of the Inspector General provided a draft of this report to the Federal Bureau of Prisons for its comment. The BOP's response is included in Appendix VI to this report. The OIG's analysis of the BOP's response and the actions necessary to close the recommendations are discussed below. Please provide requested information and documentation by July 31, 2013.

Recommendation 1: Consider appropriately expanding the use of the compassionate release program as authorized by Congress and as described in the BOP's regulations and Program Statement to cover both medical and non-medical conditions for inmates who do not present a threat to the community and who present a minimal risk of recidivism.

Status: Resolved.

BOP Response: The BOP concurred with this recommendation, stating that it is in the process of reviewing and modifying aspects of the compassionate release program and plans to issue new guidance on medical criteria to consider in determining whether a request based on underlying medical circumstances is "extraordinary and compelling" to warrant a compassionate release motion to a sentencing judge. The BOP stated it had already started a process to consider the subject of non-medical compassionate release.

OIG Analysis: The BOP's actions are responsive to this recommendation. As discussed throughout the report, the BOP verbally told the OIG, but did not provide copies, of the new guidance memorandum for medical institutions that will expand the compassionate release program by making inmates with a life expectancy of up to 18 months eligible for consideration. The BOP told the OIG that the new memorandum is also intended to assist staff who review compassionate release requests in understanding what level of functioning is sufficiently "extraordinary and compelling" for inmates with debilitating medical conditions to be considered for release. Please provide the OIG with a copy of the new approved guidance on medical criteria for medical institutions, a description of how the BOP plans to further modify other aspects of the compassionate release program, and actions taken to consider non-medical requests for compassionate release.

Recommendation 2: Update written national policies, including its compassionate release regulations and Program Statement, to accurately reflect the BOP's criteria for determining eligible medical and non-medical requests.

Status: Resolved.

BOP Response: The BOP concurred with this recommendation, stating that the BOP plans to issue a guidance memorandum that will clarify criteria to be considered in reviewing medical requests until the revised compassionate release regulations and Program Statement are finalized. The BOP stated that it has already started the process of revising its regulations and Program Statement. Changes to policy in the Program Statement will need to be negotiated with the union, and changes to the regulations will need to go through formal notice and comment procedures.

OIG Analysis: The BOP's actions are responsive to this recommendation. However, as discussed on page 26 of this report, the BOP's General Counsel explained that the process to revise the Program Statement could take about 2 years after new regulations are adopted due to the requirement that the BOP negotiate changes to the Program Statement with its union. We are concerned about such a lengthy potential delay in issuing a revised Program Statement given the lack of guidance in the existing Program Statement. While we believe the new guidance the BOP verbally discussed with the OIG will benefit staff at the BOP's medical institutions when considering medical requests for compassionate release, staff and inmates at all BOP institutions should be provided with the most current guidance regarding the compassionate release program. Given the time-sensitive nature of these requests, efforts must be made to expedite the process to finalize and issue revised regulations and the Program Statement. Please provide the OIG with copies of the revised regulations and Program Statement, as well as a timeline for finalizing and issuing the revised regulations and Program Statement.

Recommendation 3: Provide training for BOP staff responsible for reviewing inmate requests and applying the criteria for evaluating medical and non-medical requests.

Status: Resolved.

BOP Response: The BOP concurred with this recommendation, stating that it will provide training to staff, but that due to budget

limitations, training may be provided in an online or video conference format.

OIG Analysis: The BOP's planned action is responsive to this recommendation. However, given the lack of guidance in the existing Program Statement, we believe any training provided to staff must reflect the most current guidance, including any guidance provided in the new memorandum discussed throughout this report. In addition, training must be revised to reflect any changes resulting from ongoing revisions to the BOP's regulations and Program Statement regarding compassionate release. Please provide the OIG a copy of training provided to staff.

Recommendation 4: Establish timeframes for processing requests at each step of the review process, including Warden, Central Office, and external agency input and review.

Status: Resolved.

BOP Response: The BOP partially concurred with this recommendation, stating that it agreed that general guidelines for reviewing a request should be established, but that any timeframe will need to be flexible so that the specific circumstances of each case can be thoroughly assessed and considered, such as if additional time is needed to establish an appropriate release plan for an inmate.

OIG Analysis: The BOP's response is partially responsive to this recommendation in that the BOP agrees to establish general guidelines for reviewing requests. As stated in the report, the OIG recognizes the complexity and importance of the compassionate release review process. However, given the time-sensitive nature of these requests, particularly for inmates with terminal medical conditions and limited life expectancies, establishing timeframes and assessing the length of time the process takes for each phase of the review process will enable the BOP to determine if delays in the process exist and where to take corrective actions so that the review process may progress as quickly as possible. Please provide the OIG with the general guidelines the BOP plans to implement at each step of the review process that take into account the time-sensitive nature of compassionate release requests.

Recommendation 5: Establish timeframes for handling inmate appeals that take into account the time sensitivity of compassionate release requests.

Status: Resolved.

BOP Response: The BOP concurred with this recommendation, stating that inmate appeals should be expedited. However, the BOP stated that current regulations concerning administrative remedies already provide for expedited processing in certain circumstances. The BOP referenced 28 C.F.R. § 542.18, which states, “. . . [i]f the Request is determined to be of an emergency nature which threatens the inmate’s immediate health or welfare, the Warden shall respond not later than the third calendar day after filing” The BOP stated that staff will be advised to use this provision for time-sensitive compassionate release requests based on underlying terminal medical conditions and that instruction to staff to use this provision in these circumstances will be provided during staff training sessions noted in its response to Recommendation 3. The BOP requested that this recommendation be closed.

OIG Analysis: The BOP’s planned action is partially responsive to this recommendation in that it agrees inmate appeals should be expedited. While the OIG agrees that training to advise staff to use the provision established in 28 C.F.R. § 542.18 for compassionate release requests based on underlying terminal medical conditions will be helpful, the BOP’s response did not acknowledge the role of a Regional Director or General Counsel in the inmate appeals process. As noted on page 4 of this report, the BOP published an interim rule that expedited the compassionate release process by removing the Regional Director level of review. However, the BOP’s administrative remedy program still requires review by the Regional Director and the General Counsel for an inmate to seek formal review (appeal) by high-level BOP officials of an issue relating to any aspect of his or her incarceration, including any aspect of a compassionate release request. As discussed on page 41, we found that in some cases a Regional Director and the General Counsel took over 100 days to respond to inmate appeals regarding compassionate release. Please provide the OIG a status update that includes the roles of a Regional Director and General Counsel when establishing timeframes for handling inmate appeals that take into account the time sensitivity of compassionate release requests.

Recommendation 6: Require that all inmates be informed about the compassionate release program, including how to initiate a request and circumstances that may qualify as “extraordinary and compelling.”

Status: Resolved.

BOP Response: The BOP concurred with this recommendation, stating that the BOP plans to provide information relating to its new medical guidance on the Inmate Electronic Bulletin Board. The BOP also

said it is developing a standardized Admissions and Orientation Handbook (A&O Handbook) to be used at all BOP institutions and that the BOP plans to include information about compassionate release in the new A&O Handbook.

OIG Analysis: The BOP's planned actions are responsive to this recommendation. Please provide the OIG with a screenshot of the new medical guidance provided on the Inmate Electronic Bulletin Board, as well as a copy of the new standardized A&O Handbook with the information about compassionate release.

Recommendation 7: Track each compassionate release request, its status, and final disposition.

Status: Resolved.

BOP Response: The BOP concurred with this recommendation, stating that it is developing an electronic tracking system. The BOP stated that it anticipates the electronic tracking system will go live by September 30, 2013.

OIG Analysis: The BOP's planned action is responsive to this recommendation. Please provide the OIG with a screenshot of the electronic tracking system and a description of data to be collected.

Recommendation 8: Establish a procedure to formally document the initiation, including the initiation date, for each compassionate release request.

Status: Resolved.

BOP Response: The BOP concurred with this recommendation, stating that it will provide training to staff on procedures to input information into the electronic tracking system discussed in response to Recommendation 7. The BOP also stated that it plans to incorporate these procedures into its revised Program Statement.

OIG Analysis: The BOP's planned actions are responsive to this recommendation. Please provide the OIG with a screenshot of the electronic tracking system that indicates how the initiation of a compassionate release request will be formally documented and a description of the procedures for formally documenting the initiation of each request that the BOP plans to use in staff training and to incorporate into the revised Program Statement.

Recommendation 9: Require that Wardens document the specific reasons for denying an inmate's request for compassionate release.

Status: Resolved.

BOP Response: The BOP concurred with this recommendation, stating that the new electronic tracking system procedures will require Wardens to provide the reason for denying an inmate's compassionate release request.

OIG Analysis: The BOP's planned action is responsive to this recommendation. Please provide the OIG with a screenshot of the electronic tracking system that indicates how a Warden will document the specific reasons for denying an inmate's request for compassionate release.

Recommendation 10: Include as part of BOP program compliance reviews an element for reviewing compassionate release determinations made by Wardens.

Status: Resolved.

BOP Response: The BOP concurred with this recommendation, stating that compliance reviews involving compassionate release will affect several disciplines at the institution level and that it will review its program review policies to ensure guideline steps, by discipline, are incorporated into existing Program Review Guidelines.

OIG Analysis: The BOP's planned action is responsive to this recommendation. Please provide the OIG with copies of the revised Program Review Guidelines that ensure guideline steps, by discipline, involving compassionate release are included in institution compliance reviews.

Recommendation 11: Collect and assess the costs for providing health services to inmates diagnosed with terminal medical conditions and a limited life expectancy, and severely debilitating medical conditions.

Status: Resolved.

BOP Response: The BOP partially concurred with this recommendation, stating that it could be useful to track an estimated cost savings for inmates for whom the BOP submitted compassionate release motions to the sentencing judges and the judges granted early release. However, the BOP stated that it would be time and labor

intensive to attempt to calculate medical costs for all inmates who have been diagnosed with terminal medical conditions and a limited life expectancy and non-terminal medical conditions. The BOP stated that these costs will likely vary in each individual case depending on the intensity of medical and custodial care needed over time, the unpredictable nature of an inmate's medical condition and costs of medical treatment over the course of care, and the area of the country in which the care is being provided, among other factors. The BOP also stated that any calculations would have to be based on estimates and average costs. Therefore, the BOP will use the current Actual Annual Cost of Incarceration Rate for each BOP Medical Referral Center and calculate the estimated cost avoidance related to each BOP-approved compassionate release case in which the inmate is ultimately released. The BOP requested that this recommendation be closed.

OIG Analysis: The BOP's planned action is partially responsive to this recommendation. The OIG agrees that it would be useful to track the estimated cost savings for inmates for whom the BOP submitted compassionate release motions to the sentencing judges and the judges granted early release. The OIG also agrees that costs will vary for each individual. However, the OIG believes the BOP is capable of identifying individual costs for inmates typically associated with compassionate release, including those inmates diagnosed with a terminal illness or severely debilitated condition. For example, the Health Services Administrator at one Medical Referral Center explained to the OIG that the institution-verified costs vary from patient to patient because the institution, using a spreadsheet, tracks the specific costs for each inmate, including inmates diagnosed with a specific medical condition, such as cancer.

The OIG believes the care for inmates associated with compassionate release is unique and must be identified individually to fully understand the per-inmate cost, as well as the savings realized by the release of these inmates. Therefore, the OIG encourages the BOP to coordinate with its Medical Referral Centers to better understand all efforts made to identify individual costs per inmate and how those efforts could be applied to the compassionate release program. Please provide the OIG with estimated cost savings using the current Actual Annual Cost of Incarceration Rate for each BOP Medical Referral Center for inmates approved and released for compassionate release for calendar years 2006 through 2011. In addition, please provide the OIG with a description of any efforts made by the BOP to coordinate with its Medical Referral Centers to better understand all efforts made to identify individual costs per inmate and how those efforts could be applied to the compassionate release program.