



# Evaluation of the Federal Bureau of Prisons' Policy Development Process



EVALUATION AND INSPECTIONS DIVISION

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The report was revised in August 2024 with the following changes:

- Page ii, column 2, "82 percent of the program statements" updated to "81 percent of the program statements"
- Page 26, "about 82 percent of the program statements" updated to "about 81 percent of the program statements"
- Page 29, "only 18 percent (36 out of 205) of the program statements" updated to "only 19 percent (38 out of 205) of the program statements"

The revision corrects two immaterial figures that do not affect the report's findings and conclusions.



# EXECUTIVE SUMMARY

## Evaluation of the Federal Bureau of Prisons' Policy Development Process

### Introduction

The Federal Bureau of Prisons' (BOP) mission is to confine offenders in safe, humane, cost-efficient, and appropriately secure facilities and ensure their successful return to the community. To accomplish its mission, the BOP issues national policies (program statements) governing the actions, conduct, and conditions of employment for its over 35,000 staff. When policy changes affect the employment conditions of its over 30,000 bargaining unit staff, the BOP must negotiate these changes with its employees' national union to comply with Title VII of the Civil Service Reform Act of 1978. Delays in the BOP's ability to implement policy development create undue risks to both staff and inmates and can compromise public safety.

Through our work over the past 2 decades, the Office of the Inspector General (OIG) has observed recurring challenges in the BOP's ability to timely update its national policies. As of May 2022, the BOP had 94 program statements that have not been updated in at least 20 years and 24 OIG recommendations that as of August 2022 have remained open for an average of nearly 4 years due to policy development challenges, stalling needed corrective actions to address a range of important issues. Those issues include stronger measures to prevent introduction of contraband into BOP institutions, protocols for safer use of single-cell confinement in restrictive housing, better protection of inmates who use electronic medical devices, and improved inmate release preparation programs. The OIG undertook this evaluation to assess the effectiveness of the BOP's policy development process, including its efforts to engage its national union proactively in policy negotiations.

### Recommendations

We make five recommendations to improve the efficiency and effectiveness of the BOP's policy development process, including negotiations with its national union.

### Results of the Evaluation

While the BOP has taken recent steps to improve its policy negotiation efforts, it should take additional action to improve the efficiency and effectiveness of its policy development process. First, we found that the BOP's National Policy Negotiation (NPN) process—which entails formal, in-person negotiations with BOP management and up to 10 national union representatives 3 days per month—is not sufficient, by itself, to meet the agency's need to timely implement new and revised policies. Over 300 program statements currently govern BOP programs and operations, yet, during the NPN process over the 11-year period between fiscal years (FY) 2010 and 2021, the BOP issued only 22 new or revised program statements, with the average policy taking over 3 years to be issued. Second, the BOP has not adopted effective policy negotiation practices through its NPN process, which can prolong negotiations and produces significant costs to the agency and taxpayers. Finally, the BOP does not collect and track sufficient data necessary to evaluate its policy development and negotiation performance and determine whether it is applying best practices.

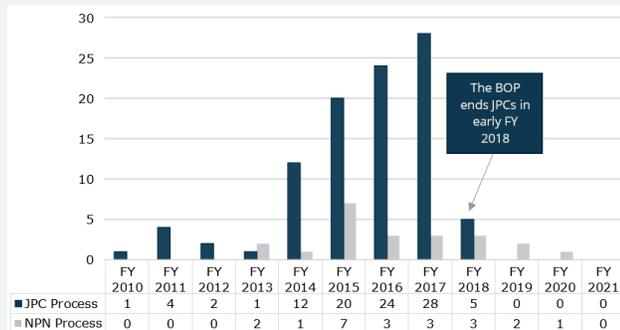
### **The BOP Cannot Rely Only on Its NPN Process to Timely Implement New and Revised Policies That Address Urgent and Emerging Correctional Issues**

At the time of our evaluation, the BOP utilized primarily the NPN process to negotiate policies with its national union. We found, however, that, when the BOP relied almost exclusively on this approach, its policy negotiations yielded little output, producing only 10 new or revised program statements between FYs 2010 and 2013. By April 2013, a backlog of 40 policies were awaiting national union negotiations, as policy updates stalled for years and indefinitely delayed needed correctional changes. Later that year, to supplement the NPN process, the BOP began to regularly use Joint Policy Committees (JPC). JPCs are composed of BOP managers and union representatives who seek to agree to policy changes less formally than

through the NPN process. The BOP's policy development productivity increased by nearly 900 percent between FYs 2014 and 2017, as the BOP issued 98 new or revised program statements largely via the JPC process through as many as 10 JPCs (see Figure 1).

**Figure 1**

**BOP Program Statements Issued through the JPC and NPN Processes, FYs 2010–2021**



Source: OIG analysis of BOP data

During our scope, the JPC process significantly reduced the average time required to develop policies by nearly 2 years (from 39 months under the NPN to 15 months under the JPC process). However, in 2017, the BOP discontinued JPCs in response to Executive Order 13812, which required agencies to discontinue using labor-management forums and engaging union representatives in pre-decisional involvement in workplace matters. Subsequently, the number of policies the BOP developed declined sharply, from 31 new or changed policies in FY 2017 to 2 in FY 2019.

The slowed progress of policy development was exacerbated during the coronavirus disease 2019 pandemic. The BOP suspended formal, in-person policy negotiations with its national union from March 2020 through December 2021, as required by its contract with its union, and the union declined to negotiate policies virtually. Accordingly, during this 21-month period, the BOP had no formal process for negotiating policy development with the union and made little progress in revising or implementing new policies.<sup>1</sup> In FY 2022, the BOP resumed formal

negotiations, revived JPCs, and conducted informal policy discussions with its national union.

**The BOP's Labor Contracts Limit Negotiation Practices, Which Can Prolong Policy Negotiations and Incurs Significant Costs to the Agency**

Under BOP labor contracts, the BOP is required to conduct 3-day, in-person policy negotiations with up to 10 national union officials at alternating sites across the country and pays for all travel and per diem expenses for all parties, thereby incurring significant costs. During FY 2019 alone, the BOP spent over \$230,000 to negotiate just three policies. In contrast, other U.S. Department of Justice labor officials told us that their components use remote technologies and other cost-effective means to facilitate policy negotiations and deliberations with their unions. While the BOP must honor the provisions in its current labor contracts, unless such provisions are renegotiated or it expands the use of JPCs or other alternatives to the NPN process, we estimate that policy negotiations could cost the BOP more than \$2.3 million over the next decade.

**The BOP Does Not Collect and Track Sufficient Data to Evaluate Its Policy Development and Negotiation Performance and Determine Best Practices**

We found that the BOP cannot adequately evaluate the effectiveness of its policy development process because it does not capture or assess all of the information needed to fully measure the outcomes and cost benefits of its efforts. For example, while the BOP strives to timely develop clear program statements for staff that accurately reflect the objectives and procedures intended by leadership, BOP policy staff we interviewed indicated that the BOP lacked performance metrics to track its progress in meeting these outcomes. Also, the BOP does not collect all of the information required to identify policy development best practices to determine the efficiency and cost-effectiveness of its policy development initiatives. The BOP's tracking system lacks sufficient data due primarily to limited policy tracking requirements. For example, 81 percent of the program statements we examined had important data missing. As a result, the BOP cannot use only its policy data to accurately assess its policy development process.

<sup>1</sup> See DOJ OIG, [Management Advisory Memorandum: The Impact of the Failure to Conduct Formal Policy Negotiations on the Federal Bureau of Prisons' Implementation of the FIRST STEP Act and Closure of Office of the Inspector General](#)

[Recommendations](#), Evaluation and Inspections Report 22-007 (November 2021), [oig.justice.gov/reports/management-advisory-memorandum-impact-failure-conduct-formal-policy-negotiations-federal](https://oig.justice.gov/reports/management-advisory-memorandum-impact-failure-conduct-formal-policy-negotiations-federal).

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# Introduction

## Background

The Federal Bureau of Prisons' (BOP) mission is to confine offenders in safe, humane, cost-efficient, and appropriately secure facilities and ensure their successful return to the community. To accomplish its mission, the BOP must periodically issue program statements, or policies, governing the actions, conduct, and conditions of employment for its workforce of more than 35,000 staff.<sup>2</sup> Because of the unique characteristics of the federal prison system as a workplace (BOP staff work in a more restrictive manner than other, less secure environments), the BOP's policy development process is complex and lengthy. When such policies affect conditions of employment for BOP bargaining unit staff, the BOP must comply with statutory collective bargaining obligations and negotiate policy changes with its employees' labor union.<sup>3</sup> The BOP's Council of Prison Locals, CPL-33 (hereinafter referred to as the national union), exclusively represents about 85 percent of all BOP staff nationwide and directly negotiates policy with BOP management.<sup>4</sup> The BOP labor union is the largest in the U.S. Department of Justice (Department, DOJ), comprising approximately 94 percent of all DOJ labor union members.<sup>5</sup>

Over the past 2 decades, the Office of the Inspector General (OIG) has observed recurring challenges in the BOP's ability to update its national policies in a timely manner, with some policies taking over a decade to publish. This issue has worsened in recent years, as the BOP has shown an increasing inability to timely publish national policies in order to carry out its mission safely and effectively. In 2019, numerous BOP officials expressed concerns to the OIG regarding excessive delays with the BOP's policy development process. Further, the National Academy of Public Administration released an October 2019 study concluding that the BOP's policy process is lengthy and uncertain, making it difficult for BOP divisions to issue and revise policies in a timely manner.<sup>6</sup> In addition, the OIG has found a growing number of BOP

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<sup>2</sup> The BOP refers to its program statements as "policies." The BOP's Directives Management Manual defines program statements as policies and procedures issued without predetermined cancellation dates and signed by the Director or acting Director. BOP Program Statement 1221.66, Directives Management Manual, July 21, 1998, Ch. 1, p. 2.

<sup>3</sup> Title VII of the Civil Service Reform Act of 1978, commonly referred to as the Federal Service Labor-Management Relations Statute (FSLMRS), provides most federal employees, including BOP staff members, the right to engage in collective bargaining with respect to conditions of their employment. The FSLMRS also defines "conditions of employment" as personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, that affect employees' working conditions. For more information, see 5 U.S.C. § 71 et seq.

<sup>4</sup> National union leadership consists of 14 council members, including the National Council President, National Vice President for Women and Fair Practices, National Secretary-Treasurer, National Legislative Coordinator, National Worker Compensation Coordinator, 6 Regional Vice Presidents, 2 National Representatives, and 1 Military Liaison.

<sup>5</sup> The following 12 DOJ components also have an employee labor union: (1) Antitrust Division, (2) Civil Division, (3) Civil Rights Division, (4) Environment and Natural Resources Division, (5) Executive Office for Immigration Review, (6) Justice Management Division, (7) Office of Justice Programs, (8) Office of the Solicitor General, (9) Office on Violence Against Women, (10) Tax Division, (11) U.S. Marshals Service, and (12) U.S. Parole Commission.

<sup>6</sup> Specifically, the report noted that the BOP's Health Services Division has not been able to update a number of its policies since 2005. National Academy of Public Administration, [Assessment of the Bureau of Prisons' Organizational Alignment with Healthcare Mission](#) (October 2019), 36–37, [oldnapa.primedev.build/uploads/Academy\\_Studies/BOP\\_NAPA\\_Deliverable\\_1\\_Final.pdf](#) (accessed April 5, 2022).

corrective actions stymied since 2016 as the BOP has been unable to update several national policies to address significant correctional concerns found during seven separate OIG evaluations and audits.

The OIG undertook this evaluation to evaluate the effectiveness of the BOP's policy development process, including its efforts to engage its national union proactively in policy negotiations. We examined BOP policies and guidance, labor union contracts, Federal Labor Relations Authority (FLRA) decisions on BOP matters, and presidential Executive Orders (E.O.) affecting labor relations. We also analyzed data and supplemental information on BOP policies published from fiscal year (FY) 2010 through FY 2021.

Below, we describe the reports and correctional effects associated with open OIG recommendations as of August 2022. In addition, we discuss the legal and policy frameworks and presidential actions that can shape the BOP's policy development process and we highlight some significant events that have affected BOP labor relations. Finally, we describe the roles of various BOP policy stakeholders and the BOP's policy development process at the time of our evaluation.

### **OIG Reports with Open BOP Recommendations Requiring Union Negotiations**

As part of our oversight of the Department, the OIG evaluates BOP programs and operations and issues reports with recommendations to improve the BOP's efficiency, effectiveness, safety, and security. Some of our recommendations require the BOP to update existing policies or create new policies to advance its mission to ensure the safety and security of inmates, staff, and visitors. Despite the importance of reconciling these issues in a timely manner, when we initiated this evaluation in November 2019 the OIG had 15 open recommendations to the BOP that the BOP had determined it could not implement prior to concluding negotiations with its union. This issue worsened during the coronavirus disease 2019 (COVID-19) pandemic as the BOP suspended in-person National Policy Negotiations (NPN) with its national union beginning in March 2020, which over the next 21 months stalled the development of more than 30 BOP policies, about half of which were created or revised in response to the FIRST STEP Act of 2018 (FSA).<sup>7</sup>

Given this development, in November 2021 the OIG released to BOP leadership a Management Advisory Memorandum (MAM) that detailed the operational impacts stemming from this decision and, among other things, recommended that the BOP develop and implement a plan to immediately resume in-person policy negotiations with its national union.<sup>8</sup> As we discuss later in this report, the BOP subsequently revived Joint Policy Committees (JPC) and resumed in-person NPNs with the national union in December 2021. Despite these efforts, the OIG had 24 recommendations to the BOP that on average had remained open for nearly 4 years, as of August 2022, which the BOP determined it could not implement prior to concluding negotiations with its union (see Table 1 below).

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<sup>7</sup> The FIRST STEP Act seeks to reform the U.S. federal prison system by reducing recidivism, incentivizing good time credit, and changing how inmates are sentenced and confined. Pub. L. No. 115-391.

<sup>8</sup> DOJ OIG, [\*Management Advisory Memorandum: The Impact of the Failure to Conduct Formal Policy Negotiations on the Federal Bureau of Prisons' Implementation of the FIRST STEP Act and Closure of Office of the Inspector General Recommendations\*](#), Evaluation and Inspections (E&I) Report 22-007 (November 2021), [oig.justice.gov/reports/management-advisory-memorandum-impact-failure-conduct-formal-policy-negotiations-federal](https://oig.justice.gov/reports/management-advisory-memorandum-impact-failure-conduct-formal-policy-negotiations-federal).

**Table 1****Open OIG Recommendations Requiring Union Negotiations as of August 17, 2022**

OIG Report	No. of Open Recs	No. of Months Open
<i>The Impact of an Aging Inmate Population on the Federal Bureau of Prisons</i> (May 2015)	1	87
<i>The Federal Bureau of Prisons' Contraband Interdiction Efforts</i> (June 2016)	4	74
<i>The Federal Bureau of Prisons' Release Preparation Program</i> (August 2016)	2	72
<i>The Federal Bureau of Prisons' Use of Restrictive Housing for Inmates with Mental Illness</i> (July 2017)	4	61
<i>Metropolitan Detention Center Brooklyn Facilities Issues and Related Impacts on Inmates</i> (September 2019)	4	35
<i>The Federal Bureau of Prisons' Monitoring of Inmate Communications to Prevent Radicalization</i> (March 2020)	3	29
<i>The Federal Bureau of Prisons' Perimeter Security Strategy and Efforts Related to the Contract Awarded to DeTekion Security Systems, Incorporated, to Update the Lethal/Non-Lethal Fence at Nine United States Penitentiaries</i> (September 2020)	6	23
<b>Total Open Recommendations Awaiting BOP Policy Finalization</b>	<b>24</b>	<b>47 (avg.)</b>

Note: This table reflects the duration that OIG recommendations requiring union negotiations have remained open since issuance of the respective reports. BOP policies responsive to these recommendations are in various stages of development, and the BOP has been providing the OIG timely status updates on its progress for each report.

Source: OIG analysis of BOP status reports on open recommendations

While the BOP's policy challenges worsened during a significant portion of the pandemic, this issue has been emerging over the past 2 decades. A September 2010 DOJ OIG audit reported a backlog of 50 policies awaiting national union negotiations and resulting in an "inordinate amount of time" for the BOP to implement policy changes requiring negotiations.<sup>9</sup> As an example, that report noted that, while the BOP drafted revisions to its furlough policy in 2003, the policy was still awaiting negotiations with its national union in 2010, over 7 years later. We recommended at the time that the BOP develop a more effective mechanism for coordinating with its national union on required policy changes. In this report, we discuss policy initiatives that the BOP implemented after we issued the 2010 report.

### ***Unresolved Correctional Issues Endangering the Safety of Staff and Inmates***

One of the more prominent examples of how implementation of OIG recommendations to improve the safety and security of BOP institutions has been impeded by BOP policy development issues involves the

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<sup>9</sup> DOJ OIG, [Audit of the Federal Bureau of Prisons' Furlough Program](https://oig.justice.gov/reports/audit-federal-bureau-prisons-furlough-program), Audit Report 10-44 (September 2010), oig.justice.gov/reports/audit-federal-bureau-prisons-furlough-program.

introduction of contraband into BOP institutions.<sup>10</sup> Contraband poses grave dangers to the approximately 141,000 federal inmates, as well as staff, visitors, and the public. For over 2 decades, the OIG's oversight work has highlighted the ongoing significant threat posed by contraband introduction by BOP personnel, a chronic security issue that the BOP has failed to mitigate through much needed policy updates.<sup>11</sup> Each year, OIG investigations result in the prosecution and conviction of numerous BOP employees for smuggling contraband into BOP institutions. Examples include: (1) the 2019 conviction of the prison chaplain for the Federal Correctional Institution in Berlin, New Hampshire, for smuggling drugs, cell phones, tobacco, and other contraband into the facility for inmates; (2) the 2021 conviction of a BOP Correctional Officer for conspiring with others to distribute methamphetamine, heroin, marijuana, and other controlled substances in U.S. Penitentiary Big Sandy in Kentucky; and (3) the 2022 conviction of a BOP Correctional Officer for smuggling methamphetamine to an inmate at Federal Correctional Institution Three Rivers in Texas.

### **The BOP Failed to Implement an Effective Staff Search Policy Following a 2015 FLRA Ruling**

On April 30, 2015, the FLRA ruled that the BOP violated the Federal Service Labor-Management Relations Statute (FSLMRS) when it implemented the 2013 staff search policy prior to completing negotiations with its national union. Specifically, the FLRA found that the BOP failed to negotiate five distinct national union proposals despite the BOP's contention that the proposals addressed policy matters that met the FSLMRS's non-negotiable criteria (further explained below). As a result of the FLRA's ruling, the BOP rescinded the 2013 staff search policy and reinstated a 2007 agreement between the BOP and the national union. The BOP reinstated the 2013 staff search policy in 2016 but has not yet implemented a new policy despite the security weaknesses that we identified in our June 2016 report.

Source: Evaluations and Inspections Report 16-05 (June 2016)

The OIG first addressed the smuggling of contraband into BOP institutions through a January 2003 report that recommended that the BOP revise its staff search policy to require searches of staff and their property upon entering BOP institutions.<sup>12</sup> In 2006, this very issue led to the killing of OIG Special Agent William "Buddy" Sentner, who was shot to death inside the Federal Correctional Institution in Tallahassee, Florida, by a corrupt BOP Correctional Officer who was involved in a contraband-for-sex conspiracy and had smuggled a firearm into prison. Ten years after the OIG's 2003 report, the BOP implemented a new staff search policy. However, in June 2015, the BOP ceased policy implementation following a national union challenge to it and a subsequent ruling from the FLRA.<sup>13</sup> In June 2016, the OIG released a report evaluating the BOP's contraband interdiction efforts and recommended that the BOP develop uniform criteria for random staff pat searches and define quantities of permitted personal items inside an institution's secure perimeter (see

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<sup>10</sup> Federal statute and regulations define contraband as "material prohibited by law, or by regulation, or material which can reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the institution." 28 C.F.R. § 500.1(h).

<sup>11</sup> In response to a draft of this report, the BOP stated that it has taken other measures to combat the introduction of contraband into prisons, such as efforts to mitigate the threat posed by drones.

<sup>12</sup> DOJ OIG, [The Federal Bureau of Prisons' Drug Interdiction Activities](https://oig.justice.gov/reports/federal-bureau-prisons-drug-interdiction-activities), E&I Report I-2003-002 (January 2003), [oig.justice.gov/reports/federal-bureau-prisons-drug-interdiction-activities](https://oig.justice.gov/reports/federal-bureau-prisons-drug-interdiction-activities).

<sup>13</sup> The FLRA is an independent administrative federal agency created by the FSLMRS, organized into multiple statutory components that can affect the BOP's policy development process. Its most powerful component is the Authority, a quasi-judicial body with three full-time members that adjudicates violations of the FSLMRS and resolves questions concerning the negotiability of bargaining proposals. The Federal Service Impasses Panel assists federal agencies and employee unions that have not reached voluntary agreement despite bargaining and mediation assistance.

the text box above).<sup>14</sup> However, the BOP still has not implemented revisions to its 2013 staff search policy despite the urgent policy actions that this longstanding issue demands.<sup>15</sup> In the [Results of the Evaluation](#) section below, we discuss inmate safety issues related to two other delayed correctional policies that address the placement of inmates in single-cell confinement.

## Legal and Policy Framework Governing the BOP's Policy Development Process

The BOP's policy development process is governed by the following laws, labor contracts, and policies:

- The **Federal Service Labor-Management Relations Statute (FSLMRS)** (1978) recognizes BOP employees' right to engage in collective bargaining with respect to conditions of their employment, defines the rights of employees and labor organizations, and identifies several management rights that are generally not negotiable.<sup>16</sup>
- The **Directives Management Manual** (1998) generally describes the BOP's policy development process, requirements, and the types of directives the BOP issues to provide operational direction for field, regional, and Central Office activities.

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<sup>14</sup> The OIG made four recommendations to the BOP to improve its ability to interdict contraband introductions and to ensure the safety and security of staff, visitors, and inmates, including (1) develop uniform guidelines and criteria for conducting random staff pat searches across all institutions that require a minimum frequency and duration for search events to ensure that appropriate numbers of staff on each shift are searched with appropriate frequency; (2) define what quantities, if any, of tobacco and related tobacco products should be authorized for staff to bring into institutions for personal use; (3) restrict the size and content of personal property that staff may bring into BOP institutions; and (4) establish procedures whereby all post-declaration items discovered during staff screening procedures are documented, along with the identity of the staff member involved, as well as more explicit guidelines for when the items should be confiscated and when such instances or a series of them should be referred for investigation and corrective action. DOJ OIG, [Review of the Federal Bureau of Prisons' Contraband Interdiction Efforts](#), E&I Report 16-05 (June 2016), [oig.justice.gov/reports/review-federal-bureau-prisons-contraband-interdiction-efforts](http://oig.justice.gov/reports/review-federal-bureau-prisons-contraband-interdiction-efforts).

<sup>15</sup> In our March 2022 memorandum to the BOP on the status of the revised staff search policy, we stated: "Notwithstanding the unpredictable duration of policy negotiations, we are concerned that the protracted delay in implementing the Staff Entrance and Search Procedure policy revisions—now nearly 6 years after we issued the subject report—have weakened the BOP's ability to deter contraband introductions by staff." In light of the BOP's previous status update that the national union had raised issue with the BOP's proposed policy changes and there was no decision on whether to enter into formal negotiations, we requested that the BOP provide a plan to prioritize the resolution of national union issues and its decision on whether to enter into formal negotiations. In its April 2022 response to the OIG, the BOP reported that it would use JPCs to negotiate the staff search policy and that it had added the policy to its queue in advance of a scheduled July 2022 JPC meeting. However, the BOP's June 2022 response reported that the policy was not put in priority placement for negotiations and therefore would not be discussed at the July 2022 JPC meeting.

<sup>16</sup> Section 7106(a) of the FSLMRS identifies several areas that fall within the purview of management's rights and are not subject to negotiation, including (1) the agency's mission, budget, organization, number of employees, and internal security practices; (2) management's authority to hire, assign, direct, lay off, and retain employees in the agency or to suspend, remove, reduce in grade or pay or take other disciplinary action against such employees; (3) management's authority to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted; and (4) management's authority to take whatever actions may be necessary to carry out the agency's mission during an emergency.

- The **Ground Rules for National Policy Negotiations** (2013, hereinafter NPN Ground Rules) specify detailed criteria to which the BOP and its national union must adhere during NPNs. For example, the NPN Ground Rules require the national union to submit policy proposals to the BOP no later than 15 days before the start of negotiations and permit up to 10 union representatives to attend monthly negotiation sessions.
- The **Master Agreement** (2014) directs the BOP's relations with its national union representatives and bargaining unit employees and establishes regulations governing policy negotiations. In July 2021, the BOP extended this agreement for another 5 years.

## Presidential Actions Affecting the Policy Development Process

In addition to policy and legal frameworks, presidential directives have influenced the BOP's policy process. For example, on December 14, 2009, President Barack Obama issued E.O. 13522, whose stated goal was "to establish a cooperative and productive form of labor-management relations throughout the executive branch."<sup>17</sup> We were told by BOP officials that, in response to E.O. 13522, the BOP established partnership meetings between management and the national union in October 2010 and engaged national union representatives in pre-decisional involvement (PDI) concerning all workplace matters to the fullest extent practicable.<sup>18</sup> Further, BOP officials told us that in 2013 the BOP started regularly using JPCs "to reinvigorate the policy development process" and began jointly revising numerous policies with national union representatives simultaneously as one of its initial policy development steps. This approach differs from the NPN process, which involves the BOP negotiating one policy at a time with the national union (just 3 days a month) as one of its final steps. In March 2016, the BOP announced on its website that, since establishing the JPCs, it had published its one hundredth policy, which exceeded the number of policies it published during the previous 10 years combined.<sup>19</sup>

On September 29, 2017, President Donald J. Trump issued E.O. 13812, which rescinded any orders, rules, regulations, guidelines, programs, or policies implemented under E.O. 13522.<sup>20</sup> The U.S. Office of Personnel Management (OPM) issued supplemental E.O. guidance advising that "agencies should utilize [PDI] only to the extent that the cost of doing so brings tangible benefits to the agency." OPM directed agencies to "[abolish] the requirements previously imposed on agencies to form labor-management forums and engage

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<sup>17</sup> E.O. 13522 on [Creating Labor-Management Forums to Improve Delivery of Government Services](https://www.obamawhitehouse.archives.gov/the-press-office/2009/12/14/eo-13522), December 9, 2009, [obamawhitehouse.archives.gov/the-press-office/2009/12/14/eo-13522](https://www.obamawhitehouse.archives.gov/the-press-office/2009/12/14/eo-13522) (accessed April 4, 2022).

<sup>18</sup> According to BOP officials, partnership meetings were held three times a year and consisted of BOP Executive Staff meeting with union representatives to reach a collaborative decision concerning a broad spectrum of BOP matters.

The FLRA defines PDI as a voluntary model of collaboration and engagement for labor and management to deal, outside of the traditional collective bargaining process, with decisions and issues concerning the workplace.

<sup>19</sup> Although the BOP's announcement used the word "policy," we note that not all these policies were program statements and thus may not represent permanent national policies. BOP, "[Partnership in Policy Reaches Milestone](https://www.bop.gov/resources/news/20160311_partnership_in_policy.jsp)," March 11, 2016, [www.bop.gov/resources/news/20160311\\_partnership\\_in\\_policy.jsp](https://www.bop.gov/resources/news/20160311_partnership_in_policy.jsp) (accessed July 25, 2022).

<sup>20</sup> E.O. 13812 on [Revocation of Executive Order Creating Labor-Management Forums](https://www.federalregister.gov/documents/2017/10/04/2017-21559/revocation-of-executive-order-creating-labor-management-forums), September 29, 2017, [www.federalregister.gov/documents/2017/10/04/2017-21559/revocation-of-executive-order-creating-labor-management-forums](https://www.federalregister.gov/documents/2017/10/04/2017-21559/revocation-of-executive-order-creating-labor-management-forums) (accessed April 5, 2022).

in [PDI] in all workplace matters with employees and their union representatives.”<sup>21</sup> Following the issuance of E.O. 13812 and OPM’s subsequent guidance, the BOP discontinued JPCs and was primarily limited to the NPN process (discussed below). [Appendix 2](#) contains a timeline of these and other significant events affecting the way the BOP has interacted with the national union over the last 60 years.

### *Informal Policy Discussions*

Along with discontinuing JPCs following the issuance of E.O. 13812, the BOP also discontinued engaging the national union in informal policy discussions, with few exceptions. Informal policy discussions include any type of policy discussions that are not governed by BOP labor contracts. Typically, these discussions include email exchanges or telephone conversations between BOP officials and national union representatives. While neither the BOP nor the national union is obligated to participate in informal policy discussions and may decline to participate without recourse by the other party, informal policy discussions can be an effective way for the BOP to negotiate policies or resolve less complex and divisive policy matters with the national union; historically, they have served as a supplement to the NPN and JPC processes.

### **BOP Policy Stakeholders**

The BOP’s policy development process is a collaborative approach between a policy’s Office of Primary Interest (OPI), other offices within the BOP’s Central Office, national union representatives, and external stakeholders.<sup>22</sup> Below, we discuss the roles of these stakeholders.

**Office of National Policy Management.** In 1990, the BOP established the Office of National Policy Management within its Information, Policy, and Public Affairs (IPPA) Division to review and facilitate policy development across the BOP’s Central Office and the BOP’s institutions.<sup>23</sup> According to its mission, this office aims to (1) increase the visibility and priority of policy-related activities, (2) increase the policy development skills of Central Office staff, (3) improve the continuity of policy-related activities in the Central Office, (4) improve the BOP’s policy administration system, and (5) ensure consistency and high quality of BOP policies by consulting with staff and reviewing and editing documents.<sup>24</sup> To accomplish these goals, policy staff perform a variety of consulting, coordinating, reviewing, writing, training, data tracking, and evaluating responsibilities and work closely with the OPI during policy development.

**Labor Relations Office (LRO).** The LRO, located within the Human Resource Management Division, is the BOP’s authoritative body for all labor relations matters. The LRO negotiates national policies and labor

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<sup>21</sup> Kathleen M. McGettigan, Acting Director, Office of Personnel Management, memorandum for Heads of Executive Departments and Agencies, [Guidance for Implementation of E.O. 13812](#), December 13, 2017, [www.chcoc.gov/content/guidance-implementation-executive-order-13812](http://www.chcoc.gov/content/guidance-implementation-executive-order-13812) (accessed April 4, 2022).

<sup>22</sup> The OPI is the Central Office entity with primary responsibility for issuing, revising, and rescinding a particular policy. The term may refer to the division; to a component under the division (branch, section, or office); or to both.

<sup>23</sup> The IPPA Division oversees the BOP’s legislative affairs, records management, research, communications, archives, public affairs, technology, and policy development efforts.

<sup>24</sup> BOP Program Statement 1221.66, Ch. 1, p. 5.

contracts on behalf of the BOP and provides labor relations advice, guidance, and training to institutional management.

**BOP National Union.** As described above, BOP employees comprise the Department's largest block of unionized personnel. Approximately 85 percent of the BOP's 35,000 employees are bargaining unit personnel, representing about 94 percent (about 30,000 out of 32,000) of all DOJ unionized employees.

**Non-BOP Stakeholders.** There are also several stakeholders external to the BOP that influence the BOP's policy development efforts. Most notably, Congress may enact legislation, such as the FSA, which was signed into law in December 2018, that directly affects the BOP's priorities and establishes in law deadlines for criminal justice reforms. In addition, as noted above, the President may issue Executive Orders affecting the way federal agencies approach revision of policies that reflect administration principles. Department leadership may also direct BOP policy changes to ensure compliance with DOJ policy and priorities, or the Department's Justice Management Division (JMD) may provide labor relations guidance to all DOJ components through DOJ-wide policy mandates. Lastly, updates to correctional standards by the American Correctional Association, which occur every 2 years, may signal the need for the BOP to revise its policies.

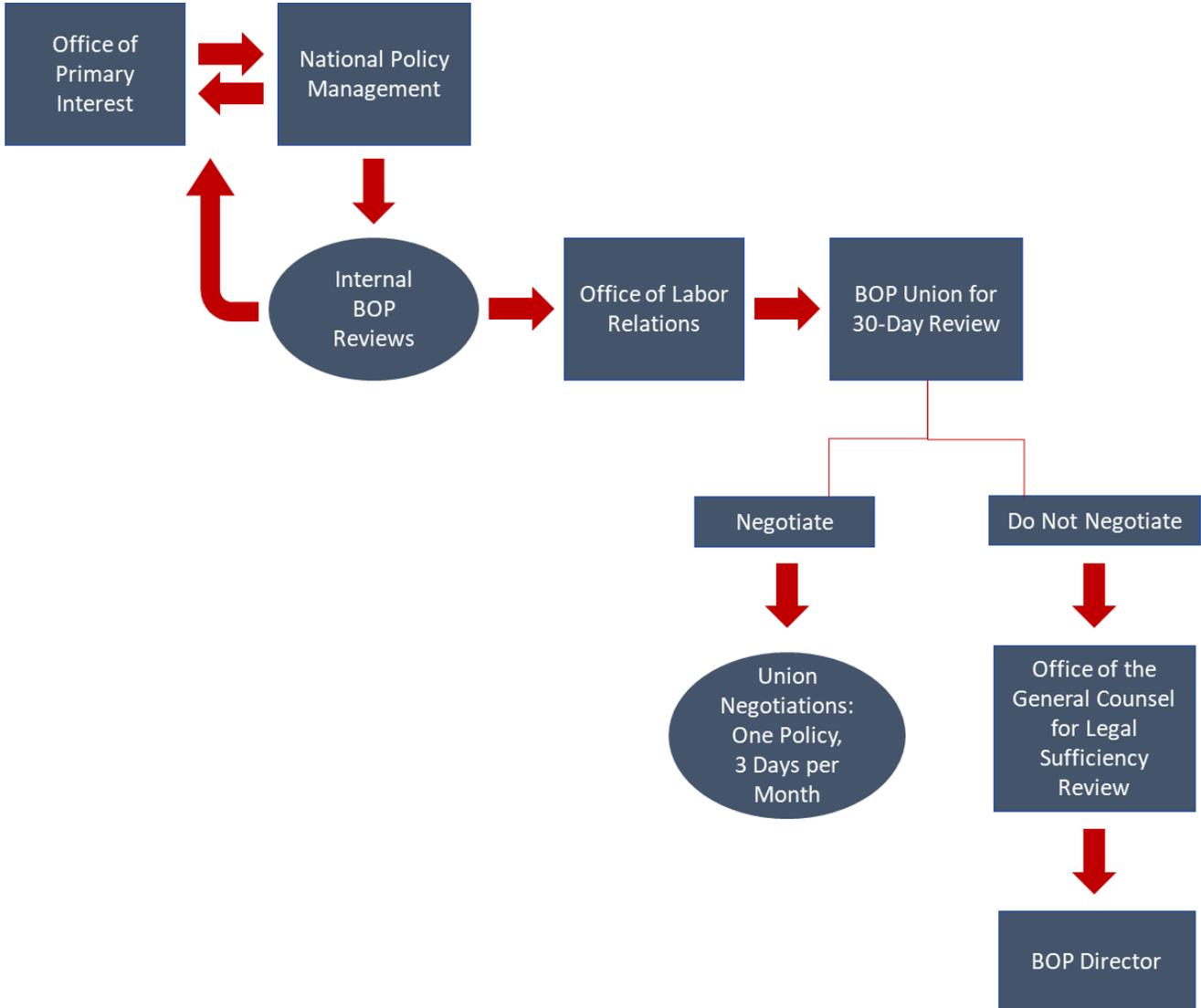
## The BOP Policy Development Process

At the time of our evaluation, the BOP was utilizing the centralized NPN process for policy development, which is composed of two primary phases, described below and in Figure 2 below:

1. **Initial Policy Development.** The Office of National Policy Management vets proposed policy revisions from the OPI and subsequently distributes a policy draft to BOP Central Office and institution management for review. After what is typically a 30-day comment period, the Office of National Policy Management provides feedback to the OPI for consideration and, upon completion, submits the draft policy to the LRO.
2. **Labor Relations.** The LRO submits the policy to the national union. The national union has 30 days to circulate the policy across all of its representatives to determine whether it will invoke its right to negotiate. If the national union invokes negotiations, the BOP will place the policy in the "queue" while it is awaiting national union negotiations. The national union will also provide the BOP with counterproposals at least 15 days prior to the start of policy negotiations.

Figure 2

The National Policy Negotiation Process



Note: BOP internal reviews include a 30-day review period and a 10-day management review period.

Sources: OIG policy review and interviews

Scope and Methodology of the OIG's Evaluation

The OIG initiated this evaluation to examine the effectiveness of the BOP's policy development process from FY 2010 through FY 2021, including the number of resulting policies published during that period and the BOP's efforts to engage its national union in policy negotiations. We examined BOP policies and procedures related to policy development, federal laws, regulations, and labor contracts between the BOP and its national union. Our fieldwork included data collection and analysis, document assessment, and interviews with BOP and national union officials. We also interviewed officials across six other DOJ components

concerning their policy development practices. We conducted our fieldwork from November 2019 through March 2022. However, during 2020, the OIG shifted resources from this evaluation and other ongoing work to conduct extensive pandemic-related oversight, thereby delaying issuance of this report. Nonetheless, as noted above, based on information learned during this evaluation, the OIG issued a MAM to BOP and DOJ leadership in November 2021 describing the impact of the BOP's position on labor negotiations during the pandemic and, among other things, recommending that the BOP develop and implement a plan to immediately resume in-person policy negotiations with its national union. [Appendix 1](#) contains a more detailed description of our methodology for this evaluation.

## Results of the Evaluation

We found that, while the BOP has recently revived Joint Policy Committees (JPC) and National Policy Negotiations (NPN) to enhance its policy development capabilities, the BOP must take further action to address significant challenges affecting its efforts. First, we found that the BOP is ill equipped to timely update its national policies when relying on the NPN process alone, which risks noncompliance with new laws and correctional standards and prolongs safety and security risks to staff, inmates, and visitors. Although over 300 program statements govern BOP programs and operations, the BOP issued just 22 new or revised program statements through the NPN process between FYs 2010 and 2021, with the average policy taking more than 3 years to be issued. As of May 2022, the BOP had 94 program statements that have not been updated in at least 20 years and 24 OIG recommendations that as of August 2022 have remained open for an average of nearly 4 years due to policy development issues. Second, we found that the BOP does not have an effective NPN process, in part because its labor contracts include provisions that limit its bargaining practices and produce a significant cost to the agency and taxpayers. Finally, we found that the BOP does not capture or assess all of the information needed to evaluate the effectiveness of its policy development process. In the following sections, we discuss these issues in greater detail and make recommendations to the BOP to improve the efficiency and effectiveness of its policy development efforts.

### **The BOP Cannot Rely Only on Its NPN Process to Timely Implement New and Revised Policies That Address Urgent and Emerging Correctional Issues**

We found that the BOP's policy development process yielded little production before FY 2014, as the BOP published only 10 policies during the first 4 years of our evaluation scope, resulting in a backlog of 40 policies awaiting national union negotiations by April 2013. However, with the implementation of JPCs in late 2013, the productivity of the BOP's policy development process increased by nearly 900 percent (from 10 to 98 program statements) compared to previous years, allowing the BOP to finalize stalled policies on important issues ranging from the BOP's use of Special Housing Units to the BOP's treatment of inmates with mental illness. Additionally, our analysis of BOP data indicates that the JPC process significantly reduced the average length of the BOP's policy development process by about 2 years during our scope. The BOP discontinued JPCs in response to Executive Order (E.O.) 13812, and in turn the number of policies that the BOP developed, despite identifying a management or legal need for new or updated policies in multiple operational areas, declined by more than 90 percent within the next 2 years.<sup>25</sup>

### **The NPN Process Is Less Productive and Takes Significantly Longer than the JPC Process**

We found that prior to 2014 the BOP's policy development process was largely ineffective, as the BOP published only 10 program statements needing substantive negotiations during the first 4 years of our evaluation scope. This is despite at least monthly negotiations with the national union during this period to address identified operational needs. By April 2013, BOP records indicated a backlog of 40 policies awaiting national union negotiations, as policy updates had been stalled for years and necessary correctional changes were being delayed indefinitely. However, in May 2013, some BOP officials attended a

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<sup>25</sup> E.O. 13812 on [Revocation of Executive Order Creating Labor-Management Forums](https://www.federalregister.gov/documents/2017/10/04/2017-21559/revocation-of-executive-order-creating-labor-management-forums), September 29, 2017, [www.federalregister.gov/documents/2017/10/04/2017-21559/revocation-of-executive-order-creating-labor-management-forums](https://www.federalregister.gov/documents/2017/10/04/2017-21559/revocation-of-executive-order-creating-labor-management-forums) (accessed April 5, 2022).

“Relationships by Objectives Training” with national union officials and shortly thereafter began regularly using JPCs to reinvigorate its policy development process.

Under the JPC process, the BOP started jointly revising policies with national union representatives as one of its initial policy development steps and streamlined other policy development practices. For instance, the BOP’s 30-day review period ran concurrently with the national union’s 30-day review, as opposed to separate 30-day review periods under the NPN process. More specifically, in 2019 the national union’s then policy chairperson told us that the union would simultaneously circulate a copy of the policy to local union officials for their feedback during the BOP’s 30-day review period. In contrast, during the NPN process the union would not circulate the policy to local union officials until after the Office of Labor Relations provided a copy of the policy to them in accordance with Article 3 of the Master Agreement. Also, the then acting Senior Deputy Assistant Director for the Information, Policy, and Public Affairs (IPPA) Division told us that the 30-day review could be bypassed under the JPC process if both the national union and BOP chairpersons of a particular JPC agreed to do so, which occurred for some policies.

In addition, the BOP discontinued 10-day management reviews for most policies under the JPC process.<sup>26</sup> In January 2020, the then acting Senior Deputy Assistant Director for the IPPA Division told us that national union officials advocated for discontinuing the 10-day management reviews because they believed that the reviews were unnecessary considering that JPCs already included the involvement of BOP Executive Staff.<sup>27</sup> Under the JPC process, the national union could still invoke formal bargaining once the Office of Labor Relations provided the union with a policy as authorized by the Master Agreement (see Figure 2 above), but a BOP official told us that this rarely occurred as policies had already reflected national union input through the JPCs.

Following the implementation of JPCs, the BOP’s policy development output significantly improved as the BOP began to work through its large policy backlog. Indeed, JPCs increased the output of the BOP’s policy development process by nearly 900 percent between FYs 2010 and 2013 (10 program statements issued) and FYs 2014 and 2017 (98 program statements issued). As Figure 3 (below) shows, the BOP published more policies through the JPC process in FY 2017 alone (28 program statements) than it had completed through the NPN process during the 11-year period from FY 2010 through FY 2021 (22 program statements).<sup>28</sup> Our analysis of BOP data also indicates that the JPC process significantly reduced the average

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<sup>26</sup> Under the NPN process, the 10-day management review generally occurs after the 30-day comment period concludes and the Office of Primary Interest (OPI) incorporates new changes to the revised program statement. According to the BOP, the 10-day management review involves a policy assessment by BOP Executive Management, including an initial legal sufficiency review by the Office of General Counsel.

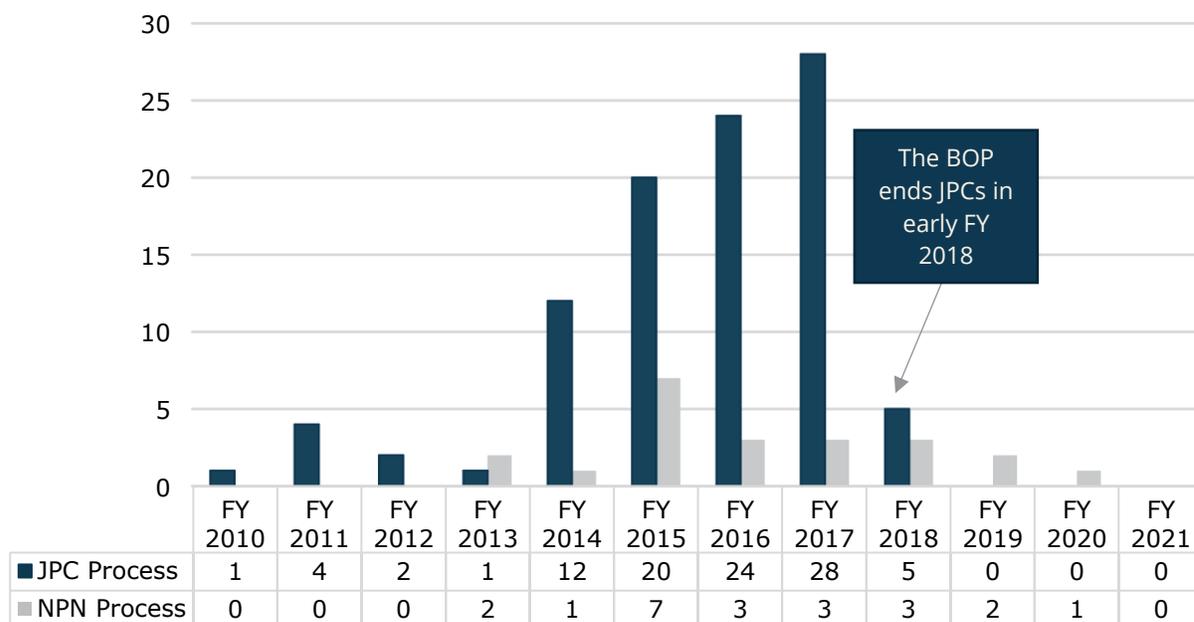
<sup>27</sup> In response to a draft of this report, the BOP stated that it did not discontinue 10-day management reviews for policies issued through the JPC process. However, we note that this contradicts information we learned from the BOP’s Office of National Policy Management in January 2020 and our analysis of BOP policy data, which has data evincing 10-day management reviews for only 27 percent (26 out of 97) of policies attributed to JPCs. In comparison, nearly 80 percent (77 out of 97) of policies attributed to JPCs had a date provided under the 30-day review phase during our scope.

<sup>28</sup> During the pandemic the BOP developed COVID-19 related directives, which are not accounted for in our analysis because these directives either were not program statements or were not developed through the NPN or JPC processes; the Federal Service Labor-Management Relations Statute (FSLMRS) authorizes management officials to take whatever actions may be necessary to carry out their agency’s mission during emergencies. As a result, the BOP could implement COVID-19 related directives that affected the conditions of employment for bargaining unit staff before negotiating

duration of the BOP's policy development process, from about 39 months under the NPN process to about 15 months under the JPC process.<sup>29</sup>

**Figure 3**

**BOP Program Statements Issued through the JPC and NPN Processes, FYs 2010–2021**



Notes: The eight program statements credited to the JPC process prior to FY 2014 can be attributed to Joint Policy Workgroups, which the BOP had used sparingly since the mid-2000s (see the timeline in [Appendix 2](#)). The lack of program statements issued in FYs 2020 and 2021 can be attributed to the BOP's suspension of in-person negotiations through its NPN process between March 2020 and December 2021.

Source: OIG analysis of BOP data

Due to this significant improvement, the BOP used JPCs to timely address important correctional matters that promoted the safety and security of inmates and staff. For example, in August 2016 the BOP published important changes to its Special Management Units (SMU) policy, which took just under 5 months. Among

these directives with the national union. However, this approach cannot be used for non-COVID-19 related directives and deviates from processes that the BOP must use to develop national policies under normal conditions.

<sup>29</sup> The JPC Ground Rules govern policy negotiations in JPCs between the BOP and the national union. Because the JPC Ground Rules we received during our review indicated that JPCs were not approved for use until FY 2010, we excluded from our JPC timeliness analysis program statements that were referred to the Office of National Policy Management before FY 2010. As we note in the [Introduction](#), JPCs were not regularly used by the BOP until late 2013. Also, the BOP did not record when JPCs first engaged in policy discussions, which could have predated the BOP's data and could skew our timeliness results for some JPC policies. According to a BOP official we interviewed, the union's then National President preferred for BOP offices to submit draft policies to the Office of National Policy Management for review before introducing them into JPC negotiations but not all JPCs followed this approach. Therefore, some policies were negotiated in JPCs prior to when the Office of National Policy Management had received a draft copy.

other things, this policy limited the maximum amount of time that inmates could spend in the SMU program.<sup>30</sup> The 2016 SMU policy also required BOP staff to conduct a greater review of inmates' mental health records prior to placement in the SMU to ensure that their mental health needs did not preclude them from completing the program. Additionally, in 2016, in about 8 months, the BOP updated its Special Housing Units (SHU) policy, which addressed mental health concerns regarding inmates' placement in restrictive housing and defined circumstances under which pregnant inmates may be placed in a SHU.<sup>31</sup> In August 2019, the union's then National Council President told the OIG that JPCs built trust and fostered a non-adversarial environment between BOP and union representatives, which resulted in the issuance of correctional policies that promoted the safety and security of BOP staff and inmates.

However, we found that following the discontinuation of JPCs in early FY 2018 the productivity of the BOP's policy development efforts through these two processes declined by more than 90 percent within the next 2 years (from 31 program statements in FY 2017 to 2 program statements in FY 2019). As we discussed in the [Introduction](#), along with terminating the JPCs, the BOP also discontinued informal policy discussions with the national union, which had previously helped to expedite policy development by resolving matters outside of the NPN and JPC processes. Notably, the BOP used informal policy discussions with the national union to advance as many as 99 program statements between FYs 2010 and 2021, including 39 program statements issued between FY 2014 and FY 2017.<sup>32</sup> However, once the BOP's policy development efforts were primarily limited to the NPN process, the BOP's policy backlog steadily increased as the BOP once again experienced significant challenges in updating its policies through the NPN process to resolve critical correctional issues.

### ***Delays Issuing Revised Restrictive Housing Unit Policies Create Single-Cell Confinement Risks***

As we discuss in the [Introduction](#) of this report, regarding delays issuing a revised staff search policy, the BOP's inability to timely update correctional policies can increase the inherent risks and dangers posed to inmates and staff. In another example, we issued a 2017 report detailing significant concerns with the BOP's use of restrictive housing and recommended that the BOP establish in policy circumstances that warrant the placement of inmates, including those with mental illness, in single-cell confinement.<sup>33</sup> Despite previous success in updating national restrictive housing unit policies through the JPC process in 2016, as

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<sup>30</sup> BOP Program Statement 5217.02, Special Management Units, August 9, 2016, 9.

<sup>31</sup> BOP Program Statement 5270.11, Special Housing Units, November 23, 2016, 3, 9, 15–16.

<sup>32</sup> During our evaluation, we found that the BOP primarily used the NPN and JPC processes to handle substantive policy matters with the national union. Because the BOP's historical policy challenges require resolving substantive policy matters with the national union, we focused our evaluation on these two processes. As we learned from the Office of National Policy Management, program statement changes issued through informal policy discussions are generally minor in nature, ranging from a de minimis change (e.g., tweak or policy reformatting) that does not need national union approval to less divisive policy matters that may need union approval but not extensive discussion. According to BOP data, many program statements issued through informal policy discussions do not appear to include several routine BOP policy review steps that we discuss in this report (e.g., 30-day reviews, management reviews) because the changes appear to be minor. We also note that there are policies attributed to informal policy discussions during which the BOP had no duty to bargain with the national union at all, which is generally in stark contrast to policies entered into JPCs and NPNs.

<sup>33</sup> We made several recommendations to the BOP to improve its use of restrictive housing for all inmates. For more information, see DOJ OIG, [Review of the Federal Bureau of Prisons' Use of Restrictive Housing for Inmates with Mental Illness](#), E&I Report 17-05 (July 2017), [oig.justice.gov/reports/review-federal-bureau-prisons-use-restrictive-housing-inmates-mental-illness](http://oig.justice.gov/reports/review-federal-bureau-prisons-use-restrictive-housing-inmates-mental-illness).

described above, our recommendations to strengthen those same policies have remained open since July 2017. In February 2021, when the BOP was quarantining inmates due to COVID-19, the BOP reported that a high number of inmate suicides had occurred during inmates' placement in single-cell confinement.

The inmate suicide problem is illustrative of the type of inmate safety issues perpetuated by the BOP's inability to readily change policy.<sup>34</sup> Specifically, on March 13, 2020, the Reentry Services Division's (RSD) Assistant Director issued a memorandum to all Wardens stating that "if inmates are confined to their cells, single celling should be limited to the greatest extent possible" and that "Psychology Services staff should be consulted regarding any inmates proposed for single celling to ensure they are not particularly vulnerable individuals and/or to make recommendations."<sup>35</sup> However, 11 months later, the RSD issued another memorandum to institution Wardens concerning an "alarming number of inmate suicides" that had occurred during early FY 2021. At the time of the memorandum, there had already been 15 inmate deaths by suicide, 12 of which occurred while inmates were placed in single-cell confinement.<sup>36</sup> According to this memorandum, "single celling must stop, particularly in restrictive housing and quarantine, except when approved by the Warden on a case-by-case basis," and "Psychology Services clinical staff must be assigned to clinical duties to maximize prevention, assessment, and treatment work." The memorandum stated that "inmate idleness and isolation in restrictive housing must be reduced through staff interactions and adequate out-of-cell time."

While these guidance memoranda convey important suicide prevention information and appear to communicate these requirements to staff, they do not carry the same authority as BOP program statements and are not memorialized in the same manner. In fact, the BOP's Directives Management Manual states that such guidance should not be relied upon when communicating such critical information. According to the Directives Management Manual:

[BOP memoranda] are not enforceable as policy and may not be cited, relied upon, or otherwise used to carry out any Bureau policy or procedure unless an exception is made by the Director in writing.

Generally, it is preferable that Bureau-wide instructions and requirements be communicated by formal directives rather than by such means as memoranda or electronic mail messages, since these less formal documents are not authenticated, numbered, annually reviewed, or historically traced. Through its formal directives system, Bureau staff, and other interested parties, can determine what policies were in effect in the past.

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<sup>34</sup> In response to a draft of this report, the BOP stated that the Suicide Prevention Program Statement is ready to be negotiated with the national union.

<sup>35</sup> Assistant Director of Reentry Services Division, BOP, memorandum for All Chief Executive Officers, Necessary Inmate Treatment and Services During Modified Operations, March 13, 2020, 1.

<sup>36</sup> Assistant Director of Reentry Services Division, BOP, memorandum for Chief Executive Officers, Suicide Prevention, February 1, 2021, 1.

It is vital that staff, including those who have authority to issue formal directives, not attempt to use less formal communications [e.g., BOP memoranda] to change or replace a formal directive.

The manual acknowledges program statements, including program manuals (some lengthy program statements are written as manuals), as the BOP's only permanent national policy directives that must be approved and signed by the BOP Director prior to issuance. Therefore, inmate death by suicide likely represents just one example that underscores the importance of the BOP implementing a process that enables it to timely develop national policies governing critical correctional practices rather than relying on guidance memoranda to address this policy need.

### ***Delays Issuing Corrections Policies Create Risks to Inmate Safety***

Other examples of risks to inmate safety created by the BOP's inability to timely update correctional policies include the effective delivery of inmate release preparation programs and the protection of inmates who use electronic medical devices. A 2016 OIG report on the BOP's implementation of release preparation programs found that the absence of a nationwide education curriculum led to each BOP institution determining its own curriculum, thus creating inconsistent content and quality in release preparation courses offered to inmates.<sup>37</sup> The report detailed that the BOP had released many inmates who had not completed the release preparation program and that there were no repercussions for nonparticipation. To improve the effect of these programs, the OIG recommended that the BOP establish a standardized list of courses, covering at least the program's core categories, and explore the use of incentives and other methods to increase inmate participation and completion rates for institution release preparation programs. However, these corrective actions have not occurred as negotiations concerning a release preparation policy have yet to begin 6 years later.

In addition, a September 2019 OIG report on facilities issues and related impacts on inmates at Metropolitan Detention Center Brooklyn found that staff were not aware of and did not ensure that inmates who used continuous positive airway pressure machines, which provide breathing assistance while sleeping, were able to do so during the first 6 days of a weeklong power outage.<sup>38</sup> The report also noted that two inmates had previously alerted staff about this issue during winter 2018, when their in-cell electrical outlets were temporarily nonoperational. We recommended that the BOP require all institutions to maintain a list of inmates who use continuous positive airway pressure machines, or other electronic medical devices, in their cells so that institution staff can make every effort to accommodate those inmates in the event of a power outage. However, as of August 2022, negotiations on the policy that would mandate such precautions have not occurred, leaving another inmate safety issue unresolved, this one for almost 3 years.

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<sup>37</sup> DOJ OIG, [Review of the Federal Bureau of Prisons' Release Preparation Program](#), E&I Report 16-07 (August 2016), [oig.justice.gov/reports/review-federal-bureau-prisons-release-preparation-program](https://oig.justice.gov/reports/review-federal-bureau-prisons-release-preparation-program).

<sup>38</sup> DOJ OIG, [Review and Inspection of Metropolitan Detention Center Brooklyn Facilities Issues and Related Impacts on Inmates](#), E&I Report 19-04 (September 2019), [oig.justice.gov/reports/review-and-inspection-metropolitan-detention-center-brooklyn-facilities-issues-and-related](https://oig.justice.gov/reports/review-and-inspection-metropolitan-detention-center-brooklyn-facilities-issues-and-related).

### *BOP Policy Issues May Compromise Public Safety*

In addition to specific risks to inmate safety from delayed corrections policies, the absence of an updated corrections policy reflecting current practices can create public safety risks. Below, we discuss two such risks stemming from the lack of updated policies to prevent inmate escapes and dangerous activities by terrorists and other high-risk inmates.

When inmates are nearing their release, the BOP uses community corrections centers, also known as Residential Reentry Centers (RRC) or halfway houses, to help inmates gradually rebuild their ties to the community and supervise their activities during this readjustment phase. According to the BOP, RRCs provide inmates with programming that reduces the likelihood that they will recidivate and policy is critical to ensuring that staff are operating these centers effectively. Despite the importance of community corrections, a RSD official told us in April 2021 that the Residential Reentry Management Branch had seven policies that were “severely outdated.” The official indicated that the policies have not been updated because such updates would require union negotiations and the BOP prioritizes policies that govern institutional operations over policies that govern the placement of inmates into the community. For instance, the Community Based Programs Utilization and Transport Procedures Program Statement, which provides guidelines to staff regarding the effective use of community corrections centers, has not been updated in nearly 25 years despite the official’s assertion that the division has tried to update this policy since 2005. Further, the Community Corrections Mission and Responsibilities Program Statement, which outlines the duties, responsibilities, and job controls of community corrections staff, has not been updated in over 17 years.<sup>39</sup> The prevalence of outdated policies does not appear to be limited to community corrections, as we identified at least 94 BOP policies that have not been updated for a minimum of 20 years.

Rather than updating policy, the BOP RSD official stated that staff manage the Residential Reentry Management Branch through guidance memoranda. Alternatively, the official indicated that there is ad hoc reliance on individuals with historical knowledge of current practices to communicate these duties to other RRC staff and facilities and to assist them in performing their duties. However, as discussed above, reliance on guidance memoranda is problematic because such memoranda do not hold the same authority as BOP program statements. This official’s testimony highlights this concern, as the official described two instances in which outdated policy undercut the BOP’s ability to hold staff accountable for not adhering to current practices, which resulted in serious public safety concerns. Within the past few years, this official stated that community corrections staff failed to report on two occasions an inmate who had escaped into the community. In one case, the inmate became the subject of a homicide while he was not in custody and the escape had not been reported by staff. Because the BOP did not have an official policy that memorialized its escape procedures, the BOP could not take disciplinary actions against these staff members as the written directions in place did not match current practices, according to the BOP official. This example highlights yet another correctional concern—inability to hold BOP staff accountable for violations that impact public safety—that stems from a failure by the BOP to administer a policy process that enables it to update national policies in a timely manner.

**Policy Development Issues Delay Corrective Actions to Prevent Inmate Escapes.** In addition to the policy development issues that have negatively affected the BOP’s response to inmate escapes from community

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<sup>39</sup> In response to a draft of this report, the BOP’s policy and labor offices stated that the RSD has not submitted this policy for further revision and review.

confinement, the OIG has also identified policy gaps that may have contributed to an inmate escape from a BOP institution. In September 2020, the OIG released a report that identified several weaknesses in the BOP's perimeter security strategy and efforts concerning the use of lethal and nonlethal fences across its high-security penitentiaries.<sup>40</sup> Specifically, the audit found that the BOP lacked national policies addressing various elements of its perimeter security strategy and did not take adequate action to ensure that perimeter security deficiencies identified and addressed at one BOP institution did not also exist at other similarly situated institutions. According to the report, these deficiencies aided the successful escape of an inmate from U.S. Penitentiary Atwater in May 2017. While the OIG made six policy related recommendations to the BOP to improve its perimeter security strategy practices following alarming security breaches, the BOP has yet to negotiate any policies with its national union in response to the OIG's recommendations in the September 2020 report.

**Policy Enhancement Delays Corrective Action to Address Potential National Security Vulnerability.** One of the BOP's strategic goals is to "provide for public safety and national security by focusing on prevention, disruption, and response to terrorist activities via secure institutions and proactive management practices which mitigate terrorist threats." To address this strategic goal, the BOP's policy is to monitor all social communications of high-risk inmates, including inmates with a known nexus to international and domestic terrorism (terrorist inmates). In March 2020, the OIG released a report that identified significant deficiencies in the BOP's identification of terrorist inmates and its monitoring of terrorist, other high-risk, and general population inmate communications.<sup>41</sup> The audit found that the BOP had not monitored, or had only partially monitored, thousands of social communications, including emails and telephone calls made by terrorist inmates and that the BOP did not consistently discipline inmates for misuse of its communication systems, adequately vet inmate email or telephone contacts, or adequately address inmates' misuse and circumvention of controls built into the communications systems. The OIG recommended that the BOP review cellblock conversation monitoring policy, procedures, and capabilities to determine whether and how improvements can be made to achieve security goals, including improvement of audio monitoring systems. However, this recommendation has remained open since March 2020, unnecessarily prolonging corrective actions to address these critical security risks.

#### *The BOP's Policy Development Process Takes Longer than Those of Other DOJ Components with Unions*

The average time for development of a policy through the BOP's NPN process is over 3 years. In contrast, DOJ officials we interviewed from two other components with bargaining unit employees told us that their policy development efforts generally take less than 10 months.<sup>42</sup> While the policy timelines for other DOJ components

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<sup>40</sup> DOJ OIG, [Audit of the Federal Bureau of Prisons' Perimeter Security Strategy and Efforts Related to the Contract Awarded to DeTekion Security Systems, Incorporated, to Update the Lethal/Non-Lethal Fence at Nine United States Penitentiaries](#), Audit Report 20-115 (September 2020), [oig.justice.gov/reports/audit-federal-bureau-prisons-perimeter-security-strategy-and-efforts-related-contract](https://oig.justice.gov/reports/audit-federal-bureau-prisons-perimeter-security-strategy-and-efforts-related-contract).

<sup>41</sup> DOJ OIG, [Audit of the Federal Bureau of Prisons' Monitoring of Inmate Communications to Prevent Radicalization](#), Audit Report 20-042 (March 2020), [oig.justice.gov/reports/audit-federal-bureau-prisons-monitoring-inmate-communications-prevent-radicalization](https://oig.justice.gov/reports/audit-federal-bureau-prisons-monitoring-inmate-communications-prevent-radicalization).

<sup>42</sup> To identify policy development best practices, we spoke to officials from six DOJ agencies, including the (1) Drug Enforcement Administration, (2) Executive Office for Immigration Review, (3) Federal Bureau of Investigation (FBI), (4) Justice Management Division, (5) Office of Justice Programs, and (6) U.S. Marshals Service. While the FBI and Drug Enforcement Administration do not have employee unions, we spoke to officials from these agencies because, like the

are significantly shorter than the BOP's, we recognize that the BOP has unique policy challenges that other DOJ components do not have. For example, the BOP must simultaneously negotiate policy changes with as many as 10 union officials who represent approximately 650 BOP union representatives located throughout the country, a practice that can impede timely negotiations. In contrast, the U.S. Marshals Service (USMS), for example, generally limits policy negotiations to three USMS union officials who, at the time of our fieldwork, represented a union comprising seven representatives.

Nevertheless, the experiences of other DOJ components could help improve the timeliness of the BOP's policy development process. For example, in January 2020, an Assistant Director with the Executive Office for Immigration Review (EOIR), which at the time of our interview had four distinct labor organizations, told us that EOIR generally can update its policies within 1 to 10 weeks. Similarly, an Assistant Chief with the USMS stated in December 2019 that the USMS's policy review process takes, on average, 8 months to complete.<sup>43</sup> To help keep policies moving, a USMS labor official told us that the agency has policy subject matter experts who provide briefings to the union shortly after notifying them of changes to a policy. This official stated that the briefing helps to inform the union of the reasons behind the policy changes and affords them the opportunity to ask questions or discuss concerns with management, which at times has resulted in the union subsequently waiving its right to formally negotiate policy changes. The BOP's experience with JPCs suggests that adoption of a strategy similar to that used by the USMS could be beneficial for the BOP in helping to expedite policy negotiations between the BOP and its national union. We discuss policy negotiations in greater detail later in this report.

### **The BOP Is Ill Equipped to Update Its National Policies in a Timely Manner, Risking Noncompliance with Laws and Correctional Standards**

At the time of our evaluation, we found that the BOP's policy development process could not meet its evolving policy needs in a timely manner or address emerging correctional issues and that these concerns are exacerbated by the complex and continually changing nature of the correctional system. Each Office of Primary Interest (OPI) is mandated by policy to annually review its program statements to ensure that they accurately reflect Executive Staff decisions, technology advances, procedural changes, and legal requirements and conform to Program Review Guidelines and American Correctional Association (ACA) standards. However, the NPN process takes an average of more than 3 years to complete. Accordingly, the BOP cannot use only the NPN process to meet its policy demands as more than 300 program statements govern BOP programs and operations, about 30 percent (94 program statements) of which have not been updated in at least 20 years. Moreover, the BOP's then Correctional Services Branch Administrator told the

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BOP, these agencies must develop policies that govern the actions of thousands of law enforcement staff under dangerous working conditions. See [Appendix 1](#) for more information.

<sup>43</sup> This official told us that the USMS's policy review process begins after the USMS division responsible for the policy submits it to the USMS's Office of Policy for an initial review to ensure that the policy is ready to proceed through the USMS's review process, which could include union negotiations. This official told us that the USMS tracks policies using a spreadsheet that can be viewed by all USMS staff, which provides transparency into the process as anyone can see where a draft policy is in its development. The BOP's policy tracking system is accessible only by the BOP's Office of National Policy Management, and we have found that some Office of Primary Interest (OPI) officials are not always informed of where their policies are in the policy development process. In response to a draft of this report, the BOP's Office of National Policy Management stated that division officials involved in the development of policies interact regularly with them and BOP officials know how to obtain updates if there is uncertainty about the status of a policy. We discuss additional issues concerning the BOP's tracking of its policies later in this report.

OIG in 2019 that, because the ACA regularly updates correctional standards, the BOP needs to timely update its policies to reflect new standards or it could compromise the BOP's accreditation.<sup>44</sup>

In addition, the then acting Senior Deputy Assistant Director for the IPPA Division told the OIG in January 2020 that, to comply with FIRST STEP Act (FSA) deadlines, the BOP initiated informal policy discussions with the national union concerning the FSA because the BOP had statutory deadlines and the NPN process was too slow. Under the FSA, among other things, the Department was required to utilize the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN) system to complete an initial risk and needs assessment for each federal inmate by January 15, 2020.<sup>45</sup> According to this official, after some initial discussions, the national union wanted future policy discussions on the First Step Act of 2018–Recidivism Risk Assessment policy to occur in formal negotiations and informal policy discussions subsequently ceased.<sup>46</sup> Since the BOP did not complete negotiations on this policy with the national union concerning how bargaining unit staff would conduct these assessments when it implemented PATTERN in January 2020, another IPPA Division staff member told us that the BOP assigned these responsibilities to management staff (who are not unionized) so the agency would not commit an unfair labor practice (ULP).<sup>47</sup> In April 2021, national union officials told the OIG that the BOP failed to bargain the implementation of PATTERN and that bargaining unit staff were either directly or indirectly involved in conducting these assessments. However, they also stated that the national union did not file a ULP charge with the Federal Labor Relations Authority (FLRA) concerning this issue because it did not receive any formal complaints from bargaining unit staff.<sup>48</sup> Notwithstanding the BOP's competing policy obligations, we believe that the BOP must increase its policy

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<sup>44</sup> In policy, the BOP recognizes that its institutions are accredited through meeting correctional standards established by the ACA's Commission on Accreditation for Corrections. Accordingly, many ACA standards require "written policy and procedures" for various areas of correctional management and practice. Although the BOP lists relevant ACA standards on its program statements to ensure that institution practices comply with them, the ACA revises its standards every 2 years, which can further compound the BOP's policy challenges. For more information, see BOP Program Statement 1221.66, Directives Management Manual, July 21, 1998, Ch. 2, pp. 2–3, and Ch. 10, p. 1.

<sup>45</sup> For more information concerning the Department's development and implementation of this system, see Office of the Attorney General, [The First Step Act of 2018: Risk and Needs Assessment](https://www.bop.gov/inmates/fsa/docs/the-first-step-act-of-2018-risk-and-needs-assessment-system.pdf) (July 2019), [www.bop.gov/inmates/fsa/docs/the-first-step-act-of-2018-risk-and-needs-assessment-system.pdf](https://www.bop.gov/inmates/fsa/docs/the-first-step-act-of-2018-risk-and-needs-assessment-system.pdf), and [The First Step Act of 2018: Risk and Needs Assessment System–UPDATE](https://www.bop.gov/inmates/fsa/docs/the-first-step-act-of-2018-risk-and-needs-assessment-system-updated.pdf) (January 2020), [www.bop.gov/inmates/fsa/docs/the-first-step-act-of-2018-risk-and-needs-assessment-system-updated.pdf](https://www.bop.gov/inmates/fsa/docs/the-first-step-act-of-2018-risk-and-needs-assessment-system-updated.pdf) (both accessed November 10, 2021).

<sup>46</sup> As we note in the [Introduction](#), neither the BOP nor the national union is obligated to participate in informal policy discussions and may decline to participate in them without recourse by the other party.

<sup>47</sup> According to the Federal Labor Relations Authority (FLRA), a ULP is conduct by an agency or union that violates rights that the FSLMRS protects or the rules that it establishes. The FLRA may order "make-whole" remedies (such as reinstatement and backpay for discharged employees); rescission of the action at issue; or informational remedies, such as the posting (including electronic posting) of a notice in which the charged party promises not to violate the law. However, the FLRA may not assess penalties. See FLRA, ["ULP Frequently Asked Questions,"](https://www.flra.gov/resources-training/resources/information-case-type/ulp-resources/ulp-frequently-asked-questions-faqs) [www.flra.gov/resources-training/resources/information-case-type/ulp-resources/ulp-frequently-asked-questions-faqs](https://www.flra.gov/resources-training/resources/information-case-type/ulp-resources/ulp-frequently-asked-questions-faqs) (accessed May 3, 2022). Further, under § 8(a)(5) of the National Labor Relations Act of 1935, an employer commits a ULP when it "refuse[s] to bargain collectively with the representatives of its employees." See National Labor Relations Board, ["National Labor Relations Act,"](https://www.nlr.gov/guidance/key-reference-materials/national-labor-relations-act) [www.nlr.gov/guidance/key-reference-materials/national-labor-relations-act](https://www.nlr.gov/guidance/key-reference-materials/national-labor-relations-act) (accessed April 4, 2022).

<sup>48</sup> In August 2021, the BOP stated that it completed a system for automating recidivism risk assessments and the BOP determined that the First Step Act of 2018–Recidivism Risk Assessment policy was no longer needed. Rather, the Office of National Policy Management stated that the Unit Management Manual and Inmate Program Review policies, which will incorporate PATTERN guidance, would be sufficient.

development capacities so it does not need to potentially violate the Federal Service Labor-Management Relations Statute (FSLMRS) to remain compliant with laws or updated correctional standards.<sup>49</sup>

## The BOP Is Now Making Efforts to Improve Its Policy Development Efforts Outside of the NPN Process

In February 2020, we interviewed then BOP Director Kathleen Hawk Sawyer and then Deputy Director Thomas Kane to learn of any new initiatives that BOP leadership was implementing, or planning to implement, to improve the agency's policy development efforts, which had yielded little production since the discontinuation of JPCs and informal policy discussions 2 years earlier. During these interviews, we learned that Deputy Director Kane was reviewing the BOP's policy development process to determine the improvements that could be implemented. Based on his initial observations, Kane told the OIG that the NPN process is beneficial when the BOP must incorporate new policy language in a particularly precise manner while leveraging the negotiation expertise of labor-relations officials who are best suited to protect the rights of management.<sup>50</sup> However, he acknowledged that negotiations for a single policy can last several months and that the BOP needed to increase its policy negotiation capabilities beyond that single forum.

Shortly after our interview, Deputy Director Kane spoke with the union's National Council President to discuss implementing policy initiatives, such as reviving JPCs. However, in March 2020, the union's National Council President informed the OIG that the national union did not have the "bandwidth" to reinstitute JPCs for the foreseeable future. As a result, the BOP did not adopt any new initiatives to improve its policy development process in early 2020 and, following the onset of the COVID-19 pandemic, suspended in-person negotiations through its NPN process for a period that lasted 21 months.

As we discussed in the [Introduction](#), the OIG issued a Management Advisory Memorandum (MAM) in November 2021 advising BOP leadership of an extensive period during which the BOP and national union had not conducted any negotiations through its NPN process. In response to our MAM, the BOP and the national union immediately resumed in-person policy negotiations through the NPN process and revived JPCs for the first time since 2017. The BOP has provided timely updates to the OIG on its continuous efforts to negotiate policies since the issuance of our MAM. For instance, in February 2022 the BOP informed the OIG that it had successfully completed initial negotiations on seven policies, including four policies related to the FSA, signaling considerable policy development improvements. In May 2022, the BOP again reported that several additional policies had been successfully negotiated and had either been published or placed into post-negotiation review status. While the OIG is encouraged by this recent progress, we also note that the BOP has a significant backlog of policies requiring national union negotiations, including national

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<sup>49</sup> In May 2022, the BOP reported that its need to maintain compliance with updated ACA standards does not trump its obligations under the FSLMRS. As we discussed above, the statute gives federal agencies the right to "take whatever actions may be necessary to carry out the agency mission during emergencies." Under the FSLMRS, agencies have the right to (1) independently assess whether an emergency exists and (2) decide what actions are needed to address the emergency. However, an agency is not "free to label any particular set of circumstances an emergency" and, at a minimum, must support its claim that a given action constitutes the exercise of such a right. For instance, the BOP declared an emergency in January 2022 when it issued a national lockdown following the deaths of two inmates at Federal Correctional Complex Beaumont, which sparked nationwide security concerns.

<sup>50</sup> As noted in the [Introduction](#), § 7106(a) of the FSLMRS identifies several areas that fall within the purview of management's rights and are not subject to negotiation.

policies associated with 24 OIG recommendations that as of August 2022 have remained open for an average of nearly 4 years.

## Conclusion

Given the significant effect that JPCs have had on the productivity of the BOP's policy development process—both on the number of program statements issued and the average time to produce them—we believe that the BOP should thoroughly review its policy development process to assess the steps that could be streamlined or augmented to improve timeliness and efficiencies. Just as the BOP determined that 10-day management reviews for most policies under the JPC process were unnecessary following the JPC revival in late 2013, an evaluation of the current process, including but not limited to national union negotiations, may yield opportunities to streamline other policy development steps or practices.

## Recommendation

To improve the efficiency of its policy development process, we recommend that the BOP:

1. Evaluate each policy development phase to improve timeliness and efficiencies.

## **The BOP's Labor Contracts Limit Negotiation Practices, Which Can Prolong Policy Negotiations and Incurs Significant Costs to the Agency**

We found that the BOP does not have an effective NPN process, in part because its labor contracts include provisions that limit its bargaining practices and result in inefficiencies. More specifically, under BOP labor contracts, the BOP (1) is generally limited to negotiating with the union 3 days per negotiation session (which occurs monthly) unless the parties agree otherwise, (2) is required to conduct negotiations in person unless the parties agree otherwise, and (3) must negotiate policies with as many as 10 union officials at alternating sites across the country. Further, the BOP is required to pay the travel and per diem expenses for all parties, incurring significant costs. During FY 2019 alone, the BOP spent over \$230,000 to negotiate just three policies. In contrast, other DOJ labor officials we interviewed told us that their agencies use cost-effective means to facilitate policy deliberations. For example, a USMS official reported that the USMS did not incur any negotiation expenses in FY 2019, despite publishing 25 new policies, by using teleconferencing and video teleconferencing (VTC) technologies. While we understand that the BOP cannot unilaterally change the labor contracts to which it previously agreed, considering the historical evidence of the limited productivity of in-person NPN negotiations, the cost of those in-person meetings, and the recent substantial advancement in remote video meeting capabilities, the BOP should make efforts to renegotiate bargaining provisions to reduce negotiation costs and inefficiencies.<sup>51</sup>

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<sup>51</sup> In 2019, an interagency working group established by the U.S. Office of Personnel Management (OPM) developed model collective bargaining agreement provisions that agencies were encouraged to adopt in their respective master agreements. Among other areas, these model provisions: (1) promoted the use of teleconference or videoconferencing technology for negotiations whenever feasible, (2) restricted agency and union negotiation representation to no more than five team members each, (3) called for each party to directly pay the costs of its own negotiating team members' travel expenses, and (4) limited the length of each party's caucus to 30 minutes. While the BOP was preparing to renegotiate its Master Agreement in early 2020, the COVID-19 pandemic resulted in an immediate suspension of those

## The BOP's Labor Contracts Contain Bargaining Provisions That Are Inefficient

We found that the BOP's labor contracts authorize bargaining practices that are inefficient and result in significant costs. The BOP's NPN Ground Rules stipulate in-person negotiations only (unless mutually agreed to otherwise), and the BOP's Master Agreement requires the BOP to pay for all expenses related to policy negotiations (see the text box). While these provisions help facilitate formalized in-person bargaining, they incur significant costs to the BOP and have not generally resulted in a significant number of negotiated policies.<sup>52</sup> While our interviews with BOP and DOJ officials indicate that the BOP's labor contracts could be improved to better serve the agency, the BOP union's National Council President indicated that its labor contracts "equally incentiviz[e]" both parties to develop the "best policies for the agency, as efficiently and cost effectively as possible." Further, the national union stated that other government agencies also pay for their unions' travel-related expenses.<sup>53</sup> Due to the BOP's contractual obligations, our analysis of BOP cost

data reveals that the BOP spent approximately \$367,519 in travel-related expenses to negotiate seven policies between July 2018 and March 2020, including nearly \$232,000 in FY 2019 to negotiate three policies (see Table 2 below). Although significant, these costs do not reflect all of the policy negotiation expenses absorbed by the BOP because BOP participants' salaries and any overtime-related expenses are not included. When these costs are scaled over a 10-year period, we estimate that the BOP could assume approximately \$2.3

### **BOP-National Union Bargaining Provisions**

#### **BOP, Master Agreement, July 2014, Section E of Article 3**

- Negotiations "will take place at a location that is mutually agreeable to the parties, and the Agency will pay all expenses related to the negotiations."

#### **BOP, NPN Ground Rules, December 2013**

- "No policies will be negotiated over the telephone, on conference calls, or even over speakerphones, unless mutually agreed."
- "The union will be permitted a maximum of 10 individuals" for each negotiation session.
- "Policy negotiations will take place at alternating locations between the BOP's Central Office and the home institution of all [BOP Union] Officers."
- "Each individual negotiating session will be no more than 3 working days, unless mutually agreed otherwise."

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efforts. Following the change in administrations in January 2021 and subsequent presidential directives rescinding previous administration orders, the BOP discontinued its efforts to renegotiate the Master Agreement and instead extended it through July 2026. Despite this 5-year extension, the BOP and national union may still renegotiate the NPN Ground Rules and JPC Ground Rules at any time.

<sup>52</sup> On December 9, 2009, President Barack Obama issued E.O. 13522, which directed agencies to create labor-management forums so that managers and employees could collaborate on agency matters. See E.O. 13522 on [Creating Labor-Management Forums to Improve Delivery of Government Services](https://obamawhitehouse.archives.gov/the-press-office/2009/12/09/creating-labor-management-forums-improve-delivery-government-servic), December 9, 2009, [obamawhitehouse.archives.gov/the-press-office/2009/12/09/creating-labor-management-forums-improve-delivery-government-servic](https://obamawhitehouse.archives.gov/the-press-office/2009/12/09/creating-labor-management-forums-improve-delivery-government-servic) (accessed April 4, 2022). In response, the BOP instituted partnership meetings with union representatives from FY 2010 through FY 2017. According to BOP officials, these meetings, which occurred three times a year, consisted of BOP Executive Staff meeting with national union representatives to reach a collaborative decision concerning a broad spectrum of BOP matters. While the payee of these meetings is not detailed in BOP labor contracts, BOP records indicate that these 22 in-person meetings cost the agency \$363,486 over 8 years.

<sup>53</sup> Like the BOP, the USMS labor contract details that the agency will pay for the travel-related expenses of up to three USMS union officials for policy negotiations. However, unlike the BOP, the USMS regularly uses remote technologies for policy negotiations and did not incur any travel-related expenses during FY 2019. In addition, we found that the EOIR labor contract requires the union to pay for its own travel-related expenses. We discuss this information below.

million, without adjusting for inflation, in solely travel-related (including transportation and per diem) policy negotiation expenses.

**Table 2**

**NPN Travel-Related Expenses, July 2018–March 2020**

Program Statement (Policy)	Start Date	End Date	Negotiation Location(s)	Cost
FIRST STEP Act of 2018– Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4)	3/2/2020	<i>To Be Continued<sup>a</sup></i>	Memphis, TN	\$14,863
Special Management Units (SMU)	11/19/2019	2/03/2020	Terre Haute, IN Washington, DC Victorville, CA	\$60,275
Management of Inmates with Disabilities	10/08/2019	10/24/2019	Washington, DC Texarkana, TX	\$24,691
Special Housing Units (SHU)	4/23/2019	8/08/2019	Washington, DC Philadelphia, PA Lexington, KY	\$108,111
Home Confinement Under the FIRST STEP Act	3/27/2019	3/28/2019	Seattle, WA	\$22,601
Treaty Transfer of Offenders to Foreign Countries	8/29/2018	3/26/2019	Washington, DC Houston, TX Miami, FL Chicago, IL Seattle, WA	\$120,353
Juvenile Delinquents	7/17/2018	8/28/2018	Washington, DC	\$16,625
<b>Total Costs for Seven Policies</b>				<b>\$367,519</b>

<sup>a</sup> The BOP did not complete negotiations on the time credits policy before the March 2020 suspension of in-person negotiations, which resumed in late 2021. In May 2022, the BOP reported to the OIG that the National Council President and the BOP Deputy Director had agreed that the time credits policy would be the number one priority for both parties to negotiate. In response to a draft of this report, the BOP reported that it had completed negotiations with the national union on the time credits policy in early August 2022. As of August 17, 2022, the time credits policy had not been issued.

Notes: In 2020, BOP officials stated that the SHU and SMU policies would reenter national negotiations after additional BOP edits triggered renegotiations. In May 2022, the BOP reported that it had completed initial JPC negotiations on the SMU policy but that the union had not yet approved the SHU policy due to nationwide correctional staffing concerns. As of August 17, 2022, neither the revised SHU policy nor the SMU policy had been issued.

Source: OIG analysis of BOP cost data

In April 2020, the BOP union's National Council President told the OIG that he was unwilling to use virtual technologies during policy negotiations over concerns that the BOP could allow parties to participate in such negotiations without the national union's knowledge or consent. We spoke with several labor officials from other DOJ components with unions and found that none of these officials expressed reservations regarding the use of VTC or other teleconferencing technologies. DOJ labor officials we interviewed told us that they use cost-effective means to reduce or eliminate negotiation expenses altogether. For example, the USMS's Human Resources Division-Employee Labor Relations Chief told us that teleconferencing has not impeded the USMS's union from caucusing and the USMS did not incur any negotiation costs during FY 2019 while publishing 25 new policies. Similarly, EOIR's Chief of Employee Labor Relations told us that EOIR uses VTC almost exclusively during policy negotiations because it is cost-effective, adding that EOIR's union has not experienced issues caucusing over VTC. Further, we also recognize that the use of VTC or other teleconferencing platforms could mitigate issues that may arise during in-person negotiation sessions, such as what transpired during one 3-day negotiation session in California during 2020 (see the text box).

#### **BOP SMU Policy Negotiations in California**

In January 2020, a then BOP labor relations official told the OIG that during a 3-day policy negotiation session in Victorville, California, national union representatives, believing that the designated negotiation conference room was too cold, relocated to a separate room for the remainder of the trip and negotiated policies with BOP officials over email. A national union representative told the OIG that, although the negotiation room was in fact "freezing," the primary reason for the disruption in negotiations was that the BOP did not bring Psychology Services staff and other subject matter experts on the trip to negotiate the SMU policy. According to the union representative, this resulted in a "wasted week" of negotiations, which BOP data indicates cost the agency nearly \$15,000 in travel-related expenses.

Source: OIG interviews

In addition, BOP labor relations officials acknowledged that neither the Master Agreement nor the NPN Ground Rules have any specific language restricting the amount of time that either party may spend in caucus when considering a policy proposal.<sup>54</sup> Considering that neither the FSLMRS nor the NPN Ground Rules limit the number of proposals that either party may submit, the amount of time that both parties spend in separate rooms during caucusing as opposed to at the negotiation table together can be substantial. We analyzed BOP policy negotiation data from July 2018 through January 2020 and found that the national union initiated 216 caucuses amounting to 191.5 hours, which represents approximately 51 percent of total national negotiation time during that period. By comparison, according to its records the BOP initiated 107 caucuses amounting to 72 hours, which represented about 19 percent of total national negotiation time. Thus, approximately 30 percent of national negotiations involved BOP and union officials physically in the same room and engaging in in-person policy discussions as described in the bargaining provisions. The union's National Council President told us that he would support developing a reasonable plan that would place restrictions on the amount of caucusing that each party can hold. However, such restrictions have yet to be implemented.

Finally, the NPN Ground Rules also contain provisions permitting a substantial number of participants in the NPN meetings. Specifically, as noted above, this BOP union contract provides that up to 10 union representatives and any number of BOP representatives can participate in negotiations. According to the BOP's then Deputy Chief of Labor Relations, reducing the number of negotiation participants during formal

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<sup>54</sup> Item 17 of the NPN Ground Rules states that "either party may call a caucus. The parties agree that the caucuses will be for a reasonable period of time." BOP, Ground Rules for National Policy Negotiations, December 5, 2013.

negotiations would make it easier and less time-consuming to reach a consensus, which in turn would improve the productivity of these sessions. However, the then union National Policy Chair told us that she disagreed that the number of participants currently involved in negotiations was a hindrance. Further, the union's National Council President told us that the national union's policy negotiation team is composed of six Regional Vice Presidents (who each represent a distinct geographic region), a Chief Negotiator, and three representatives for the three national officers. He asserted that the construction of this team is critical to ensuring that all BOP bargaining unit staff are well-represented throughout the country, particularly on policy matters that are unique to certain geographic areas. While we recognize the concerns of national union leadership, we note that national union officials previously involved in JPCs did not express these reservations; they championed using JPCs for policy discussions, which included fewer BOP and national union participants.

## Conclusion

Given the historical lack of productivity of the BOP's formal policy negotiations and resulting costs, the BOP must assess its position regarding the NPN and JPC Ground Rules to consider seeking more efficient and cost-effective policy development approaches. Doing so could yield more pragmatic and sustainable approaches to policy negotiations.

## Recommendation

To improve the efficiency and effectiveness of the BOP's policy negotiation practices, we recommend that the BOP:

2. Continue to explore ways to enhance policy negotiation capabilities under current labor contracts.

## **The BOP Does Not Collect and Track Sufficient Data to Evaluate Its Policy Development and Negotiation Performance and Determine Best Practices**

We found that the BOP cannot adequately evaluate the effectiveness of its policy development process because it does not capture or assess all the information needed to fully measure the outcomes and cost benefits of its efforts. Specifically, the BOP has not developed comprehensive performance metrics to gauge how its policy efforts align with its policy objectives. Also, the BOP does not collect all of the information required to identify policy development best practices and, as a result, cannot determine the efficiency and cost-effectiveness of its policy initiatives. Additionally, the BOP's policy tracking system lacks sufficient data due primarily to limited tracking requirements and about 81 percent of the program statements we examined had important data missing.<sup>55</sup> As a result, the BOP cannot use its policy data alone to accurately assess its policy development process as key data is incomplete, may be misleading, or cannot be easily analyzed in aggregate form.

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<sup>55</sup> In response to a draft of this report, the BOP stated that many of these data elements are not required for staff to enter because they are not necessary for operational purposes and the BOP's policy tracking system was not designed for analysis. During our evaluation, we learned that the BOP's Office of National Policy Management required staff to track four data fields, including (1) Policy Type, (2) Document Stage, (3) Title, and (4) OPI. We further discuss our concerns with the BOP's tracking of policy data later in this report.

## The BOP Has Not Established Adequate Performance Metrics to Assess the Effectiveness of Its Policy Development Process

Although the BOP recognizes in policy that performance metrics help gauge the overall effectiveness of a program, we found that the BOP has not implemented sufficient performance metrics to assess the effectiveness of its policy development process.<sup>56</sup> According to its Directives Management Manual, the BOP strives to timely develop for BOP staff clear program statements that accurately reflect the objectives and procedures intended by leadership.<sup>57</sup> Despite these objectives, each of the BOP policy staff we interviewed indicated that the BOP lacked performance metrics to track its progress in meeting these outcomes.

The then acting Senior Deputy Assistant Director for the IPPA Division told the OIG in March 2020 that the BOP has not developed comprehensive performance metrics to assess the effectiveness of its policy development process.<sup>58</sup> Rather, the official stated, she believes that the BOP's policy development process is effective when the BOP can provide clear guidance to staff. However, as we discuss in greater detail below, we learned that the BOP was not capturing the qualitative data necessary to assess this performance measure. Further, while the official reported that she provides quarterly updates to BOP Executive Staff regarding recently issued policies and those awaiting national union negotiations, she also acknowledged that the BOP does not measure timeliness between various policy development stages. She elaborated that, because the BOP's process is not standardized for every policy, it is difficult to measure timeliness as each policy has its own backstory.

While we recognize the variation in the BOP's policy development efforts, we question why the BOP has not adopted outcome-oriented performance metrics that closely align with the objectives of its policy development process. In contrast, we learned that other DOJ agencies regularly review performance metrics to manage their policy processes more effectively. For example, Federal Bureau of Investigation (FBI) Internal Policy Office (IPO) officials told us that they assess the productivity and timeliness of their policy process on a monthly basis to identify any systemic or isolated policy issues.<sup>59</sup> In doing so, an FBI Unit Chief stated, if it identifies a policy that has been untimely the IPO may remove it from the policy development process as a way to incentivize progress.<sup>60</sup> In addition, an Assistant Chief with the USMS Office

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<sup>56</sup> According to BOP policy, management indicators (i.e., performance metrics) are used to continuously monitor program efficiency, respond proactively to potential "hot spots" or program weaknesses, measure program outcomes, and help gauge the program's overall performance. BOP Program Statement 1221.66, Ch. 8, p. 7.

<sup>57</sup> BOP Program Statement 1221.66, Program Objectives, p. 1.

<sup>58</sup> During our scope, this official also served as the Chief of the Policy and Information Management Branch, which oversees the Office of National Policy Management.

<sup>59</sup> According to an FBI Policy Team Supervisor, the FBI IPO monitors several factors, including the number of FBI policies published, superseded, and archived each month and the number of days it takes for a policy to progress through each policy development stage.

<sup>60</sup> The Unit Chief also told us that the IPO provides annual policy-writing training and biannual policy briefings to divisional policy officers, who can use these forums to provide feedback on how the IPO can improve its policy process. Also, the IPO administers an email inbox for FBI staff and officials to provide feedback on how the IPO can further improve its policy process. Due to significant staffing declines in the Policy and Information Management Branch during our scope, the BOP discontinued policy training to staff several years ago and does not administer a comparable tool to facilitate feedback from BOP officials and staff. In response to a draft of this report, the BOP stated that the Office of National Policy Management now has two policy analysts and has resumed some policy training for BOP staff.

of Policy reported that her office monitors timeliness as a performance measure and submits reminders to policy reviewers as a means to prevent unnecessary policy development delays. Similar metrics could help the BOP improve the timeliness and effectiveness of its policy development efforts.

## **The BOP Does Not Collect All of the Information It Needs to Sufficiently Assess the Performance of Its Policy Development Process**

The BOP cannot effectively manage its policy development process because it does not capture all of the information required to identify best practices and it lacks sufficient data tracking requirements and controls to ensure accurate and complete data entry. Together, these issues compromise the reliability of the BOP's policy data and its utility for evaluating the policy development process. We discuss these issues in further detail below.

### ***The BOP Does Not Capture Information Needed to Identify Policy Development Best Practices***

We found that the BOP does not collect all of the information needed to sufficiently assess the performance of its policy development process, including the process for new policy initiatives. For instance, although JPCs were about six times more productive than the NPN process between FYs 2014 and 2017 in terms of the number of policies issued through each process, the BOP cannot determine whether the JPCs were more efficient or cost-effective because it did not capture any JPC-specific performance or cost information.<sup>61</sup> The BOP also did not track the frequency, duration, location, or outcomes of JPC meetings; the amount of time that BOP Central Office officials devoted to JPCs; or individual and collective JPC costs. According to the BOP, its Labor Relations Office (LRO) was not notified of JPCs and "due to the numerous offices engaging in these type of meetings...tracking was not possible."

We found this surprising considering that on March 26, 2014, then BOP Deputy Director Thomas Kane issued to all Assistant Directors a guidance memorandum stating that each OPI is responsible for the costs of JPCs and advising that an LRO member should be on the JPC team in a supporting role. Yet, contrary to this guidance, the LRO Chief told us that labor relations officials were ultimately excluded from JPCs, leaving the BOP with an absence of labor relations expertise during policy negotiations.<sup>62</sup> In addition, an LRO Deputy Chief told us that the BOP issued national policies through the JPCs without any review by the LRO. Considering that the BOP revived JPCs in November 2021, designating one office to oversee the BOP's policy development efforts, to include monitoring and tracking of JPCs, will help ensure that all relevant BOP

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<sup>61</sup> The BOP was unable to provide precise information concerning its implementation of JPCs during the partnership era of the Obama administration. However, according to publicly available information provided on the national union's website, the BOP established at least 10 JPCs, including those for the following disciplines: (1) Human Resources Manual; (2) Reentry; (3) Health Services Division; (4) Correctional Programs Division; (5) Trust Fund; (6) Psychology; (7) Battle Buddy (i.e., Program Review Division); (8) Health and Safety; (9) Prison Rape Elimination Act; and (10) Education (i.e., Federal Prison Industries).

The JPC Ground Rules state that "the agency will incur the cost associated with the JPCs to include all travel, per diem, lodging, rental vehicle and parking fees." Additionally, the JPC Ground Rules detail that meetings will "take place at alternating locations chosen by the Chair of each party in alternating meetings outside of Central Office, Washington, D.C. unless mutually agreed to by the Chairs of both parties involved." BOP, Joint Policy Workgroups (Committees), April 2, 2010.

<sup>62</sup> In February 2020, Kane told the OIG that he was surprised to learn that BOP divisions did not specifically track JPC costs and that, contrary to his guidance, the LRO was excluded from JPC participation.

officials have an appropriate policy development role and that the BOP collects all of the information needed to sufficiently assess the performance of all policy development initiatives.

In addition, although the BOP used informal policy discussions with national union leadership to advance the issuance of as many as 99 program statements between FYs 2010 and 2021, the BOP did not always capture the policy matters discussed (e.g., minor revisions or substantive changes affecting bargaining unit staff members' working conditions) or the forum (e.g., in-person meetings, telephone, email, etc.) used to resolve them. As a result, the BOP is limited in its ability to assess the extent to which informal discussions can augment its policy development efforts. While we acknowledge the BOP's efforts to adopt initiatives that advance its policy needs, the BOP should capture all of the information it needs to fully evaluate the outcomes and cost benefits of these initiatives.

In response to a draft of this report, the BOP stated that policy changes are listed in the relevant program statement. While we recognize that program statements generally provide a summary of changes, it is not always clear (1) whether those changes affected bargaining unit staff and required national union approval or (2) whether those changes were protected by the FSLMRS as management rights and did not require union negotiations. Also, as we discuss below, the BOP did not distinguish when policies went in and out of different types of negotiations, which further complicates determining the extent to which informal policy discussions resolved substantive matters. Improved tracking of this kind of information would help the BOP determine the effect that informal policy discussions may have on resolving substantive matters with the national union as opposed to matters that do not require union discussions under the FSLMRS.

### ***The BOP Needs to Ensure Accurate and Complete Data Tracking for All National Policies***

In addition to the shortfall in tracking important JPC information, we also found that the BOP's policy tracking system lacks sufficient data due primarily to limited tracking requirements. We examined 205 BOP program statements published from FY 2010 through FY 2019, including 118 issued through the NPN and JPC processes and 87 deliberated through informal policy discussions.<sup>63</sup> We found that only 19 percent (38 out of 205) of the program statements published during that 9-year period included dates in all important policy development data fields provided to us.<sup>64</sup> We were unable to assess timeliness for about 17 percent (35 out of 205) of the program statements we examined because the Office of National Policy

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<sup>63</sup> The BOP issued 11 additional program statements during this period that are not included in these counts because the program statements were either negotiated through another forum (e.g., settlement agreement) or did not specify a type of negotiation or the OIG did not have the necessary policy data needed for further analysis.

<sup>64</sup> For the purposes of our analysis, we considered the following data as representing particularly important milestones: (1) the date the draft policy was first received by the Office of National Policy Management; (2) the date the 30-day review period began; (3) the date the 10-day review period began; (4) the date the draft policy was submitted to the LRO; and (5) the date the national union invoked negotiations. Our analysis also considered process differences when determining the sufficiency of the data. See [Appendix 1](#).

In January 2020, the then acting Senior Deputy Assistant Director for the IPPA Division stated that data gaps may exist in the dataset because policies may skip policy development steps. However, the BOP does not use a data variable to indicate that a particular policy step was skipped and, consequently, the BOP cannot easily identify which data gaps are due to staff failure to input policy data.

Management did not always record in the policy tracking system a date for when it started reviewing a policy.<sup>65</sup>

In response to our observations, the then acting Senior Deputy Assistant Director for the IPPA Division acknowledged that BOP policy staff may not always enter data into its policy tracking system; based on our interviews with policy staff, the system lacks sufficient data controls and cannot flag inaccurate or incomplete data. However, she also stated that the BOP has not established an “authoritative source” for policy data and does not mandate any policy data tracking requirements as her office’s policy tracking system is intended for its internal purposes only. Yet, we identified that BOP policy does require the Office of National Policy Management to review and track national policies through various stages of development, although it does not specify how.<sup>66</sup>

In addition to these issues and as noted above, the BOP did not record when JPCs engaged in policy discussions, which could have predated the first date provided in the BOP’s data and thus could skew timeliness results for some JPC policies. The BOP also did not distinguish when policies went in and out of different types of negotiations, which further complicates timeliness comparisons between the NPN and JPC processes. Finally, the BOP does not track some key aspects of policy development, such as its policy goals or the significance of policy changes, which would enable the BOP to better measure outcomes and distinguish policies with major changes and effects from those with minor changes.<sup>67</sup> As a result, the BOP cannot use its policy data alone to accurately assess its policy process as key data is incomplete, may be misleading, or cannot be easily analyzed in aggregate form.

## Conclusion

The BOP can improve the management of its policy development efforts in several ways, including by designating one office to oversee the entire process and ensure that the BOP’s enterprise-wide interests are advanced through various policy development approaches. The BOP can also make efforts to develop performance metrics and enhance its policy tracking requirements to consistently capture comprehensive information for all policies. Collectively, these changes will enable the BOP to adequately evaluate the effectiveness of its policy development process using all of the information needed to fully measure the outcomes and cost benefits of its policy efforts and determine how its efforts align with its policy objectives. The BOP may then be able to implement policy initiatives that can endure administration changes by

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<sup>65</sup> We used dates entered into the “New Draft Received by [the Office of National Policy Management]” data field as the start date for our analysis. See [Appendix 1](#) for more information.

<sup>66</sup> According to the Directives Management Manual, to accomplish its goals policy staff have a variety of consulting, coordinating, reviewing, writing/editing, training, data-tracking, and evaluating responsibilities. Specifically, policy staff review and track program statements through various stages of development, including formulation, pre-clearance, clearance, and publication. In addition, the Office of National Policy Management must maintain databases of current and canceled directives, including data on each directive’s OPI. BOP Program Statement 1221.66, Ch. 1, pp. 5–6.

<sup>67</sup> According to the then acting Senior Deputy Assistant Director for the IPPA Division, minor policy changes can include stylistic edits to a program statement that have a de minimis impact on the policy’s content and can be published without extensive BOP or union review.

demonstrating how such efforts “[bring] tangible benefits to the agency,” as previously directed by U.S. Office of Personnel Management (OPM) labor-management guidance.<sup>68</sup>

## Recommendations

To improve the management of its policy development process, we recommend that the BOP:

3. Establish comprehensive performance metrics to assess the effectiveness of its policy development and negotiation processes.
4. Designate one office to oversee the complete policy development and negotiation processes to ensure that the BOP’s interests are monitored and synchronized across the agency.
5. Enhance policy tracking requirements to consistently capture information for all policies, including BOP official time and costs associated with different policy development initiatives.

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<sup>68</sup> OPM issued guidance in December 2017 directing agencies to “[abolish] the requirements previously imposed on agencies to form labor-management forums and engage in [pre-decisional involvement (PDI)] in all workplace matters with employees and their union representatives.” Although OPM guidance also advised that “agencies should utilize [PDI] only to the extent that the cost of doing so brings tangible benefits to the agency,” the BOP discontinued JPCs and reverted to using only the NPN process.

# Conclusion and Recommendations

## Conclusion

The BOP has made recent efforts to improve its policy development capabilities by reviving Joint Policy Committees (JPC) alongside National Policy Negotiations (NPN); but it must take additional steps to improve the efficiency and effectiveness of its policy development processes. First, we found that the BOP's reliance on negotiations through the NPN process between BOP management and the national union yielded little output during our 11-year scope. The BOP can address this problem by diversifying its negotiation methods with the national union, to include maximizing the use of informal policy discussions and JPCs. When the BOP regularly used JPCs from FY 2014 through FY 2017, the output of policies issued through the NPN and JPC processes increased by nearly 900 percent.

Second, we found that the NPN process is ineffective because the BOP's labor contracts include provisions that enable inefficient and costly bargaining practices. Notably, these contracts call for the BOP to conduct 3-day in-person policy negotiations with up to 10 union officials at alternating sites across the country while absorbing the travel-related costs for all parties. While we understand that the BOP cannot unilaterally change the contractual provisions to which it previously agreed, the BOP should make efforts with the national union to renegotiate terms and reduce costs and inefficiencies, particularly in light of the recent advancements in remote video meeting capabilities.

Finally, we found that the BOP does not capture or assess all of the information needed to evaluate the effectiveness of its policy development process. For instance, although the JPCs were about six times more productive than the NPN process between FYs 2014 and 2017, the BOP cannot determine whether the JPCs were more efficient or cost-effective because it did not capture any JPC-specific performance or cost information. By establishing performance metrics and enhanced policy tracking requirements, the BOP can measure outcomes and identify best practices across different policy development approaches.

## Recommendations

To improve the efficiency and effectiveness of its policy development efforts, we recommend that the BOP:

1. Evaluate each policy development phase to improve timeliness and efficiencies.
2. Continue to explore ways to enhance policy negotiation capabilities under current labor contracts.
3. Establish comprehensive performance metrics to assess the effectiveness of its policy development and negotiation processes.
4. Designate one office to oversee the complete policy development and negotiation processes to ensure that the BOP's interests are monitored and synchronized across the agency.
5. Enhance policy tracking requirements to consistently capture information for all policies, including BOP official time and costs associated with different policy development initiatives.

# Appendix 1: Purpose, Scope, and Methodology

## Standards

The OIG conducted this evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (December 2020).

## Purpose and Scope

The OIG conducted this evaluation to examine the effectiveness of the BOP's policy development process from FY 2010 through FY 2021, including the number of resulting policies published during the same period. We analyzed the BOP's policy development data, as well as relevant program statements, memoranda, federal laws, regulations, and labor contracts between the BOP and its employees' national union. We focused our analysis on how much time and money the BOP spent in developing policies during this scope, including policy negotiations with the BOP's national union. Additionally, we also focused on how the BOP's challenges in developing the policies affected its ability to resolve critical correctional issues.

## Methodology

Our fieldwork, conducted from November 2019 through March 2022, included data collection and analysis, interviews, and policy and document review. This period includes a portion of 2020, after which the OIG shifted resources from this evaluation and other work to conduct extensive pandemic-related oversight, and a portion of 2021, during which we issued the Management Advisory Memorandum (MAM).

## Data Collection and Analysis

To understand trends in the BOP's policy development process, we analyzed policy development data that the BOP's Office of National Policy Management collected from FY 2010 through FY 2021.

In August 2019, the BOP provided the OIG with data records corresponding to 276 directives; many of these data records did not represent published program statements. To ensure the accuracy of our analysis, we cross-referenced the BOP's August 2019 data submission with BOP-generated reports detailing all 232 BOP program statements issued between FYs 2010 and 2021. After this data verification, we excluded from our analysis all directives that were not program statements. In addition, we excluded from our analysis three program statements that were attributed to informal policy discussions because on three separate occasions the BOP published the same policy twice on the same day. Finally, we excluded 11 other program statements from our analysis because they were not attributed to either (1) National Policy Negotiations (NPN), (2) Joint Policy Committees (JPC), or (3) informal policy discussions in the BOP's policy dataset. Consequently, our analysis reflects up to 218 program statements that BOP data or documentation indicates were published during our scope through these three policy development approaches. However, as we discuss in this report, we were limited in our ability to consistently evaluate the progress of every BOP policy within our scope due to insufficient data tracking requirements.

To determine the cost, duration, and location of national policy negotiations, we analyzed available policy negotiation data from the BOP's Labor Relations Office (LRO), which was limited to July 2018 through March 2020. Further, we also analyzed LRO negotiation data concerning caucusing between July 2018 and January

2020. However, we were unable to analyze BOP negotiation data over most of our scope because the BOP did not regularly capture or document this information.

Finally, we also analyzed Federal Labor Relations Authority cases from FY 2010 through FY 2020 to identify instances wherein the BOP's national union filed a case against the BOP for implementing policy prior to completing formal negotiations with the national union.

## **Interviews**

We conducted 53 interviews with BOP officials, national union leadership, and DOJ officials during our evaluation. Sixteen of these interviews were conducted to obtain additional information concerning the suspension of formal policy negotiations that we used to develop the MAM that the OIG released in November 2021.

At the BOP's Central Office, we interviewed BOP leadership and Executive Staff across several offices and divisions. We interviewed the then BOP Director, a former acting BOP Director, and the then BOP Deputy Director. At the Information, Policy, and Public Affairs Division, we interviewed the then acting Senior Deputy Assistant Director, the Directives Manager, and the Forms Manager. At the Human Resource Management Division, we interviewed the Assistant Director, the Chief of Labor Relations, and the then Deputy Chief of Labor Relations. At the Correctional Programs Division, we interviewed the then Correctional Services Administrator and two former Correctional Services officials. At the Office of the General Counsel, we interviewed the Chief of the Employment Law Branch.

To understand policy development and labor relations from the BOP national union's perspective, we interviewed seven current and former officials from the national union, including the current National Council President and National Council Secretary-Treasurer, and the former National Council President, two former National Council Vice Presidents, and two former Regional Vice Presidents.

Finally, to gain additional perspective on challenges and best practices concerning policy development and labor relations practices, we interviewed officials across six other DOJ components. At the Justice Management Division, we interviewed a Senior Attorney. At the Federal Bureau of Investigation's Internal Policy Office, we interviewed the Unit Chief and the Policy Team Supervisor. At the Drug Enforcement Administration's Office of Compliance, we interviewed the Chief Compliance Officer and an attorney for the Policy Administration Section. At the U.S. Marshals Service, we interviewed the Human Resources Division-Employee Labor Relations Chief and the Assistant Chief of Policy. At the Executive Office for Immigration Review, we interviewed the Assistant Director of Policy and the Chief of Employee Labor Relations. At the Office of Justice Programs, we interviewed the Deputy Director of Administration, the Deputy Director of Support Services, and a Labor Management Specialist.

## **Policy and Document Review**

We reviewed policies, procedures, and guidance related to the BOP's policy development process. To understand the legal and policy framework that governs the BOP's policy development process, we reviewed the Federal Service Labor-Management Relations Statute, the 1998 BOP Directives Management Manual, the 2010 JPC Ground Rules, the 2013 NPN Ground Rules, and the 2014 Master Agreement between the BOP and its national union.

Additionally, we reviewed presidential directives that influenced the BOP's policy development process. Notably, we reviewed Executive Order (E.O.) 13522, which President Barack Obama signed in 2009 and which ushered in a new era of partnership with the union, and E.O. 13812, which President Donald J. Trump signed in 2017 to effectively end partnership. We also reviewed Office of Personnel Management guidance that provided additional direction on how federal agencies were to implement E.O. 13812.

## Appendix 2: Significant BOP Labor Relations Events

Below, we provide a timeline of significant events affecting BOP-union relations over the last 60 years:<sup>69</sup>

<b>January 1962</b>	President John F. Kennedy issues <a href="#">Executive Order (E.O.) 10988</a> , which provides federal employees with the right to engage in collective bargaining through labor organizations. <sup>70</sup>
<b>January 1968</b>	The BOP certifies the Council of Prison Lodges (now known as the Council of Prison Locals 33) as the exclusive labor organization representing BOP prison staff.
<b>October 1978</b>	The <a href="#">Federal Service Labor-Management Relations Statute</a> (FSLMRS) defines the rights of employees, labor organizations, and federal agencies. Under the FSLMRS, the BOP national union has the authority to meet and confer with BOP management for the purpose of entering into negotiated agreements concerning matters that affect the conditions of employment of bargaining unit employees. <sup>71</sup>
<b>October 1993</b>	President William J. Clinton issues <a href="#">E.O. 12871</a> and establishes the BOP's first labor-management "partnership" era. <sup>72</sup>
<b>Late 1990s</b>	The BOP uses Labor Management Relations meetings to negotiate policies and address employee-related issues.
<b>March 1998</b>	The BOP and its national union sign a new Master Agreement governing all labor relations matters, including policy negotiations, for the next 16 years.
<b>February 2000</b>	The BOP establishes policy negotiations with its national union through the new National Policy Negotiation (NPN) process.
<b>February 2001</b>	President George W. Bush rescinds E.O. 12871, discontinuing the BOP's first era of partnership.
<b>Early to Mid-2000s</b>	The BOP initiates use of Joint Policy Workgroups (i.e., Joint Policy Committees, or JPCs) on a limited basis to negotiate policies.

<sup>69</sup> Other than the linked citations, the information for the timeline is derived from OIG analysis and interviews.

<sup>70</sup> E.O. 10988 on [Employee-Management Cooperation in the Federal Service](#), [www.flra.gov/system/files/webfm/FLRA%20Agency-wide/50th%20Anniversary%20EO%2010988/Executive%20Order%2010988.pdf](http://www.flra.gov/system/files/webfm/FLRA%20Agency-wide/50th%20Anniversary%20EO%2010988/Executive%20Order%2010988.pdf) (accessed July 25, 2022).

<sup>71</sup> Title VII, 5 U.S.C. § 71, as amended, and 5 U.S.C. § 5596, as amended, [The Federal Service Labor-Management Relations Statute](#), [www.flra.gov/system/files/webfm/FLRA%20Agency-wide/Statute%20and%20Guide/Pocket%20Statute%20\(optimized\).pdf](http://www.flra.gov/system/files/webfm/FLRA%20Agency-wide/Statute%20and%20Guide/Pocket%20Statute%20(optimized).pdf) (accessed July 25, 2022).

<sup>72</sup> E.O. 12871 on [Labor-Management Partnerships](#), [govinfo.library.unt.edu/npr/library/direct/orders/24ea.html](http://govinfo.library.unt.edu/npr/library/direct/orders/24ea.html) (accessed July 25, 2022).

<b>Mid to Late 2000s</b>	BOP budget deficits lead to pervasive understaffing as BOP-union relations deteriorate.
<b>December 2009 to October 2010</b>	President Barack Obama issues <a href="#">E.O. 13522</a> and reinstates the BOP's labor-management partnership. In response, the BOP establishes partnership meetings. <sup>73</sup>
<b>March 2010</b>	The BOP finalizes JPC Ground Rules, but JPCs are not regularly used as BOP-union relations remain contentious.
<b>September 2010</b>	An OIG Audit <a href="#">report</a> finds a 50-policy backlog and recommends that the BOP develop a more-effective mechanism for coordinating with the national union on required policy changes. <sup>74</sup>
<b>April 2013</b>	BOP records show a backlog of 40 BOP policies awaiting national union negotiations.
<b>May 2013</b>	The BOP and the national union jointly attend a "Relationships by Objectives Training" to improve relations. Following this training, the BOP begins reinvigorating JPCs.
<b>July 2014</b>	The BOP and the national union sign a new <a href="#">Master Agreement</a> after approximately 13 years of negotiation. <sup>75</sup>
<b>March 2016</b>	The BOP <a href="#">announces</a> that, since reviving JPCs in 2013, it has issued over 100 new policies (not all of them program statements), more than it issued in the previous 10 years combined. <sup>76</sup>
<b>September 2017</b>	President Donald J. Trump issues <a href="#">E.O. 13812</a> , which ends the BOP's second era of partnership; the BOP discontinues JPCs shortly thereafter. <sup>77</sup>
<b>October 2017 to September 2019</b>	The BOP issues 25 new program statements, only 5 of which have been negotiated through the NPN process.

<sup>73</sup> E.O. 13522 on [Creating Labor-Management Forums to Improve Delivery of Government Services](#), [obamawhitehouse.archives.gov/the-press-office/executive-order-creating-labor-management-forums-improve-delivery-government-servic](#) (accessed July 25, 2022).

<sup>74</sup> DOJ OIG, [Audit of the Federal Bureau of Prisons' Furlough Program](#), Audit Report 10-44 (October 2010), [oig.justice.gov/reports/audit-federal-bureau-prisons-furlough-program](#).

<sup>75</sup> BOP and Council of Prison Locals, American Federation of Government Employees, [Master Agreement, July 21, 2014–July 20, 2017](#), [www.afge.org/globalassets/documents/cbas/bop-2014\\_new\\_master\\_agreement-with\\_revisions\\_06-23-2014.pdf](#) (accessed July 25, 2022).

<sup>76</sup> BOP, ["Partnership in Policy Reaches Milestone: 100 Policies Issued in Under Three Years,"](#) updated March 11, 2016, [www.bop.gov/resources/news/20160311\\_partnership\\_in\\_policy.jsp](#) (accessed July 25, 2022).

<sup>77</sup> E.O. 13812 on [Revocation of Executive Order Creating Labor-Management Forums](#), [www.govinfo.gov/content/pkg/DCPD-201700703/pdf/DCPD-201700703.pdf](#) (accessed July 25, 2022).

<b>March 2020</b>	The BOP suspends in-person policy negotiations with its national union in response to the COVID-19 pandemic and proposes virtual negotiations, which the national union declines, resulting in what becomes a 21-month suspension of negotiations through the NPN process.
<b>January 2021</b>	President Joseph R. Biden, Jr., issues <a href="#">E.O. 14003</a> , which rescinds Trump-era executive orders governing federal agencies' labor relations efforts. <sup>78</sup>
<b>July 2021</b>	The BOP and the national union extend their Master Agreement for another 5 years.
<b>November 2021</b>	The BOP revives JPCs and holds its first JPC meeting with the national union since 2017.
<b>December 2021</b>	The BOP and the national union resume policy negotiations through the NPN process for the first time in 21 months.

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<sup>78</sup> E.O. 14003 on [Protecting the Federal Workforce](#), [www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01924.pdf](http://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01924.pdf) (accessed July 25, 2022).

## Appendix 3: The BOP's Response to the Draft Report



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

September 19, 2022

MEMORANDUM FOR RENE L. ROCQUE  
ASSISTANT INSPECTOR GENERAL FOR THE EVALUATIONS  
AND INSPECTIONS (E&I) DIVISION

FROM:  Corlette S. Peters, Director

SUBJECT: Response to the Office of Inspector General's (OIG) Formal Draft Report: Evaluation of the Federal Bureau of Prisons' Policy Development Process.

The Bureau of Prisons (BOP) appreciates the opportunity to respond to the open recommendations from the Formal Draft Report entitled Evaluation of the Federal Bureau of Prisons Policy Development Process ("Draft Report").

BOP is currently in the midst of updating and negotiating a third of its policies, and continuously strives to improve its policy development effort, as OIG recognizes in the introduction section of the Draft Report, noting that "policy development productivity increased by nearly 900 percent between FYs 2014 and 2017." BOP routinely develops policy through both National Policy Negotiations (NPN) and through informal negotiation processes, such as Joint Policy Committees (JPC).

However, in several places, the Draft Report provides inaccurate or misleading numbers when referencing policies completed within a given timeframe. The Draft Report does not, for example, account for policy vehicles other than BOP Program Statements, such as Operations Memoranda. Additionally, it does not appear the Draft Report accurately reflects the number of policies completed through informal negotiation practices, which include, but are not limited to, JPCs.

Further, BOP does not currently rely solely on the NPN process. In fact, BOP restarted the use of JPS in 2021. Most recently, since May 2022, BOP has successfully used JPCs to develop six policies, four of which have already been issued.

It is important to bear in mind BOP policies are not developed only through the two methods described in the Draft Report (NPN and JPC), but are developed through either process, a

combination of the two, or other combinations of formal and informal negotiations. The road to policy development is not necessarily a straight line but instead may include many detours and obstacles, including challenges unique to BOP, as OIG acknowledged. However, BOP has and will continue to overcome these challenges.

The Formal Report contains five recommendations to improve the efficiency and effectiveness of BOP policy development process, including negotiations with its national union. BOP's response to the recommendations from the Formal Draft Report are as follows:

**Recommendation 1:** Evaluate each policy development phase to improve timeliness and efficiencies.

In making this recommendation, OIG urges BOP to “thoroughly review its policy development process to assess the steps that could be streamlined or augmented to improve timeliness and efficiencies,” as resulted in BOP's determination in 2013 that led to the creation of the Joint Policy Committee process (page 24).

**BOP's Response:** BOP agrees with this recommendation. BOP has and will continue to evaluate its policy development and improve timeliness and efficiency in the policy development phase.

BOP notes, however, that OIG's statements on pages i, 11, and again on page 22 are misleading. OIG indicates although “300 programs statements govern BOP programs and operations... BOP issued just 22 new or revised program statements through the NPN process between 2010 and 2021.” This statement incorrectly implies that all 300 of BOP's then-existing program statements required revision. Likewise, OIG's statement that as of “May 2022, BOP had 94 program statements that have not been updated in at least 20 years” also presumes that all 94 of these BOP policies required revision.

Additionally, OIG's count of completed BOP policies appears misleading elsewhere in the Report. For example, Table 1 on page 3 implies that the policy related to OIG's Report on “The Impact of Aging Inmate Population on the Federal Bureau of Prisons” from May 2015 has not yet been issued, when in fact, the policy was issued on April 14, 2022. (See P.S. 5241.01, Management of Aging Offenders, issued April 14, 2022.)

Further, on page 7, the Report mistakenly indicates after E.O. 13182 was issued, on September 29, 2017, BOP discontinued the use of informal negotiation strategies, such as JPCs, and returned to the NPN process. OIG also notes, in footnote 34 on page 16, that informal negotiation is done for policies that are “generally minor in nature.” However, both statements are incorrect. In 2022, for example, BOP used informal negotiation strategies to complete several major policy initiatives related to the First Step Act of 2018 (FSA).

**Recommendation 2:** Explore ways to enhance policy negotiation capabilities under current labor contracts.

**BOP's Response:** AS OIG recognized, BOP faces “unique policy challenges that other DOJ components do not have” (page 21) and yet suggests the BOP may benefit from the experiences and tactics of other DOJ components, such as:

- Limiting policy negotiations to three union officials (USMS) (page 21); and
- Appointing an agency policy subject matter expert to provide briefings to the Union regarding policy changes (USMS) (page 22) or use of other informal negotiation strategies similar to BOP's use of Joint Policy Committees.

While BOP appreciates OIG's acknowledgement on page 25 that “BOP cannot unilaterally change the labor contracts to which it previously agreed,” OIG then incongruously recommends the BOP negotiate bargaining provisions to reduce negotiation costs and inefficiencies, suggesting the BOP follow model collective bargaining agreement provisions developed by the Office of Personnel Management (OPM) in 2019, which promote use of teleconference or videoconferencing technology for negotiations; restrict agency and union negotiation representation to no more than five team members each, (3) call for each party to directly pay the costs of its own negotiating team members' travel expenses, and (4) limit the length of each party's caucus to 30 minutes.

OIG's footnote 16 on page 5 indicates § 7106(a) of the FSLMRS identifies areas that fall within the purview of management rights and are therefore not subject to negotiation. However, management rights are still subject to § 7106(b), and to procedures and appropriate arrangements for negotiation by the Union. Although BOP will explore ways the enhance policy negotiation capabilities under our current labor contract, we are limited by the requirements of the statute.

BOP also appreciates OIG's acknowledgement, in April 2020, the BOP union's National Council expressed unwillingness to use virtual technologies to facilitate policy negotiations, in contrast to labor officials from other DOJ components with unions, none of whom expressed reservations regarding the use of technological conferencing for policy negotiations.

However, BOP continued to issue policies despite numerous mitigating circumstances, including the following:

- BOP's innovation, the Joint Policy Committees (JPCs) were halted by Executive Order;
- The COVID-19 pandemic, a Presidentially-declared national emergency, crippled government-wide operations, curtailing staff travel and telework; and
- The Union's National Council resisted, and continues to resist, the re-institution and use of Joint Policy Committees (JPCs) use of technology to conduct policy negotiations.

It is important not to discount NPN's viability and its role in ensuring policies are appropriately negotiated, since NPN includes BOP's labor relations office.

As a side issue, the Draft Report refers in several places to “BOP labor contracts,” however, of the four documents described as the “Legal and Policy Framework Governing the BOP's Policy

Development Process” on pages 5—6 of the Draft Report, only the 2014 Master Agreement constitutes a BOP labor contract.

**Recommendation 3:** Establish comprehensive performance metrics to assess the effectiveness of its policy development and negotiation processes.

**BOP’s Response:** BOP agrees with this recommendation and will strive to establish appropriate performance metrics to assess the effectiveness of its policy development and negotiation process to the extent the identified challenges are within the Bureau’s authority to control, as discussed in our response to Recommendation 5, below.

**Recommendation 4:** Designate one office to oversee the complete policy development and negotiation processes to ensure that BOP’s interests are monitored and synchronized across the agency.

**BPO’s Response:** BOP agrees with this recommendation.

**Recommendation 5:** Enhance policy tracking requirements to consistently capture information for all policies, including BOP official time and costs associated with different policy development initiatives.

**BOP’s Response:** BOP agrees with this recommendation and intends to conduct a review of its policy tracking requirements to evaluate what enhancements would be beneficial.

However, it is important to note every policy development process is unique and may be accomplished through NPN, JPC, or other informal negotiation methods. The policy development process is inherently complex and is not always easily measurable, nor does it always adhere to an easily trackable linear progression. Measuring time taken and costs incurred would not provide insight into extenuating factors, such as Executive Orders curtailing new and innovative policy practices, worldwide pandemics, or coordination with the Department of Justice on new regulations and rules to reflect new statutory requirements. The suggested “performance metrics” also fail to account for the human element that is involved in the negotiation process itself. Therefore, they may not always capture useful information or a complete picture that would inform improvements in the policy development process.

If you have any questions regarding this response, please contact Louis Milusnic, Assistant Director, Program Review Division, at (202) 307-1076.

## Appendix 4: OIG Analysis of the BOP's Response

The OIG provided a draft of this report to the BOP for its comment. The BOP's response is included in [Appendix 3](#) to this report.

We acknowledge the BOP's work to improve its policy development efforts and recognize that it is currently updating and negotiating a third of its policies. We also understand that the BOP faces unique policy development challenges and that it is currently utilizing a combination of National Policy Negotiations (NPN), Joint Policy Committees (JPC), and informal policy discussions to develop its policies.

The BOP response noted that informal negotiation practices have resulted in policy development. As we state in this report, we found that the BOP primarily used the NPN process and JPCs—not informal negotiation practices—to handle substantive policy matters with the national union during the 11-year scope of our evaluation. Because the BOP's historical policy challenges require resolving substantive policy matters with the national union, we focused our evaluation on these two processes. As stated in [footnote 32](#) of this report, program statements issued through informal policy discussions generally reflect minor changes, ranging from a de minimis change (e.g., tweak or policy reformatting) that does not need national union approval to less divisive policy matters that may need union approval but not extensive discussion. The report notes that, while the BOP could use informal policy discussions and the NPN process during the earliest years in our scope, we found that the BOP had a backlog of 40 policies in April 2013 that were awaiting national union negotiations as policy updates stalled for years and indefinitely delayed needed correctional changes. We determined that the BOP's regular use of JPCs starting in late 2013 was the catalyst for reducing this policy backlog over the next several years.

The BOP also questioned the accuracy of our reporting on the number of policies completed through informal negotiation practices. Our report states that the BOP used informal policy discussions with the national union to advance as many as 99 program statements between FYs 2010 and 2021, including 39 program statements issued between FY 2014 and FY 2017. We report in [Appendix 1](#) that the BOP published 232 program statements during our scope, which we confirmed with the BOP in August 2022. Of this total, we excluded 14 policies from our analysis, including 3 program statements that were attributed to informal policy discussions because on three separate occasions the BOP published the same policy twice on the same day, and 11 other program statements because they were not attributed to NPN, JPC, or informal policy discussions in the BOP's dataset. Consequently, our analysis reflects up to 218 program statements that BOP data or documentation indicates were published during our scope through these three policy development approaches. However, as we discuss in this report, our ability to consistently evaluate the timeliness and progress of every BOP policy within our scope was limited due to the BOP's insufficient data tracking requirements.

The BOP further asserted that the report does not accurately reflect the number of policies completed, regardless of negotiation process, because it does not account for policy vehicles other than BOP program statements such as operations memoranda. While the BOP does, on occasion, use operations memoranda to communicate policy, for several reasons our report focuses on the process by which the BOP develops program statements. First, the BOP uses program statements much more often than it uses operations memoranda to communicate policy. Of the policies on the BOP's website as of September 2022, there are just 2 operations memoranda in effect compared to over 300 program statements. Second, while operations memoranda are temporary guidance, program statements do not expire. As we describe on

pages 1 and 16 of this report, the BOP's Directives Management Manual defines program statements as "policies and procedures issued without predetermined cancellation dates and signed by the Director or acting Director." In contrast, the manual defines operations memoranda as "temporary or one-time directives issued with predetermined expiration dates" that cannot exceed 1 year and are ordinarily signed by an Assistant Director. Third, the scope of program statements is much broader than that of operations memoranda. Whereas program statements cover a range of national correctional policies, the manual limits operations memoranda to specific purposes (e.g., to announce an upcoming event that may require some action).

The BOP further asserted that it is misleading for the report to state that, while over 300 program statements govern BOP programs and operations, about 30 percent of its national policies (94 program statements) have not been updated in at least 20 years because it implies that all such policies require revision. While we agree that not all national policies need revision, the report describes the universe of program statements and the number that have been revised in specific timeframes to provide context for the BOP's current policy development processes and its ability to maintain a large volume of policies. As noted above, the BOP's response that it is currently updating and negotiating a third of its policies suggests that it has determined that many of its policies do need revision.

The BOP also asserted that the report's count of open OIG recommendations requiring union negotiations presented in Table 1 of this report appears misleading because it implies that the BOP has not published a policy designed to address a recommendation the OIG made in its 2015 report on the *Impact of an Aging Inmate Population on the Federal Bureau of Prisons* (Aging Inmates report). While the BOP did recently publish a program statement (Management of Aging Offenders, April 14, 2022) addressing Aging Inmates report recommendations that the OIG has since closed, a separate program statement on the Release Orientation Program is needed to close an open recommendation; as of August 2022, that policy was pending negotiations with the national union.

Finally, on page 2 of its response, the BOP contested the OIG's characterization that it primarily relied on the NPN process after E.O. 13812 was issued in September 2017. However, on page 3 of its response, the BOP stated that "BOP's innovation, the [JPCs] were halted by Executive Order." Also, during our evaluation the Office of National Policy Management told us repeatedly, including when it provided written comments in response to a draft of this report, that informal policy discussions with the national union were discontinued after the issuance of E.O. 13812, with exceptions made for the negotiation of some FIRST STEP Act related policies while E.O. 13812 remained in effect.

The OIG's analysis of the BOP's response and the actions necessary to close the recommendations are discussed below.

## **Recommendation 1**

Evaluate each policy development phase to improve timeliness and efficiencies.

**Status:** Resolved.

**BOP Response:** The BOP concurred with the recommendation and stated that it will continue to evaluate its policy development process to improve timeliness and efficiency in the policy development phase.

**OIG Analysis:** The BOP's planned actions are responsive to the recommendation. By January 6, 2023, please describe the BOP's efforts to evaluate each policy development phase to improve timeliness and efficiencies and provide supporting documentation evidencing these efforts.

## Recommendation 2

Continue to explore ways to enhance policy negotiation capabilities under current labor contracts.

**Status:** Resolved.

**BOP Response:** The BOP stated that it will explore ways to enhance policy negotiation capabilities, under the Master Agreement, but acknowledged that it is limited by the requirements of the Federal Service Labor-Management Relations Statute (FSLMRS).

**OIG Analysis:** The BOP's planned actions are responsive to the recommendation. We recognize that the BOP is limited by the requirements of the FSLMRS. By January 6, 2023, please describe how the BOP has explored ways to enhance policy negotiation capabilities with the national union under its current labor contracts, such as the NPN Ground Rules and JPC Ground Rules.

## Recommendation 3

Establish comprehensive performance metrics to assess the effectiveness of its policy development and negotiation processes.

**Status:** Resolved.

**BOP Response:** The BOP concurred with the recommendation and stated that it will strive to establish appropriate performance metrics to assess the effectiveness of its policy development and negotiation processes to the extent the identified challenges are within the BOP's authority to control.

**OIG Analysis:** The BOP's planned actions are responsive to the recommendation. By January 6, 2023, please provide the OIG with comprehensive performance metrics that assess the effectiveness of the BOP's policy development and negotiation processes and describe how the BOP determined the appropriateness of these metrics.

## Recommendation 4

Designate one office to oversee the complete policy development and negotiation processes to ensure that the BOP's interests are monitored and synchronized across the agency.

**Status:** Resolved.

**BOP Response:** The BOP concurred with the recommendation.

**OIG Analysis:** The BOP did not provide any planned actions in response to this recommendation. By January 6, 2023, please provide the OIG with information and documentation evidencing that the BOP has begun taking action to designate one office to oversee the complete policy development and negotiation processes. Also, please provide information describing how this office will ensure that the BOP's interests are monitored and synchronized across the agency.

### **Recommendation 5**

Enhance policy tracking requirements to consistently capture information for all policies, including BOP official time and costs associated with different policy development initiatives.

**Status:** Resolved.

**BOP Response:** The BOP concurred with the recommendation and stated that it will conduct a review of its policy tracking requirements to evaluate the enhancements that would be beneficial.

**OIG Analysis:** The BOP's planned actions are responsive to the recommendation. By January 6, 2023, please provide information describing the BOP's review of its policy tracking requirements and its efforts to enhance policy tracking requirements, including BOP official time and costs associated with different policy development initiatives.