



# Governors' PREA Certification & Assurance Submissions

*PREA Management Office  
Bureau of Justice Assistance  
Office of Justice Programs  
U.S. Department of Justice*

September 2017

# Certifications and Assurances

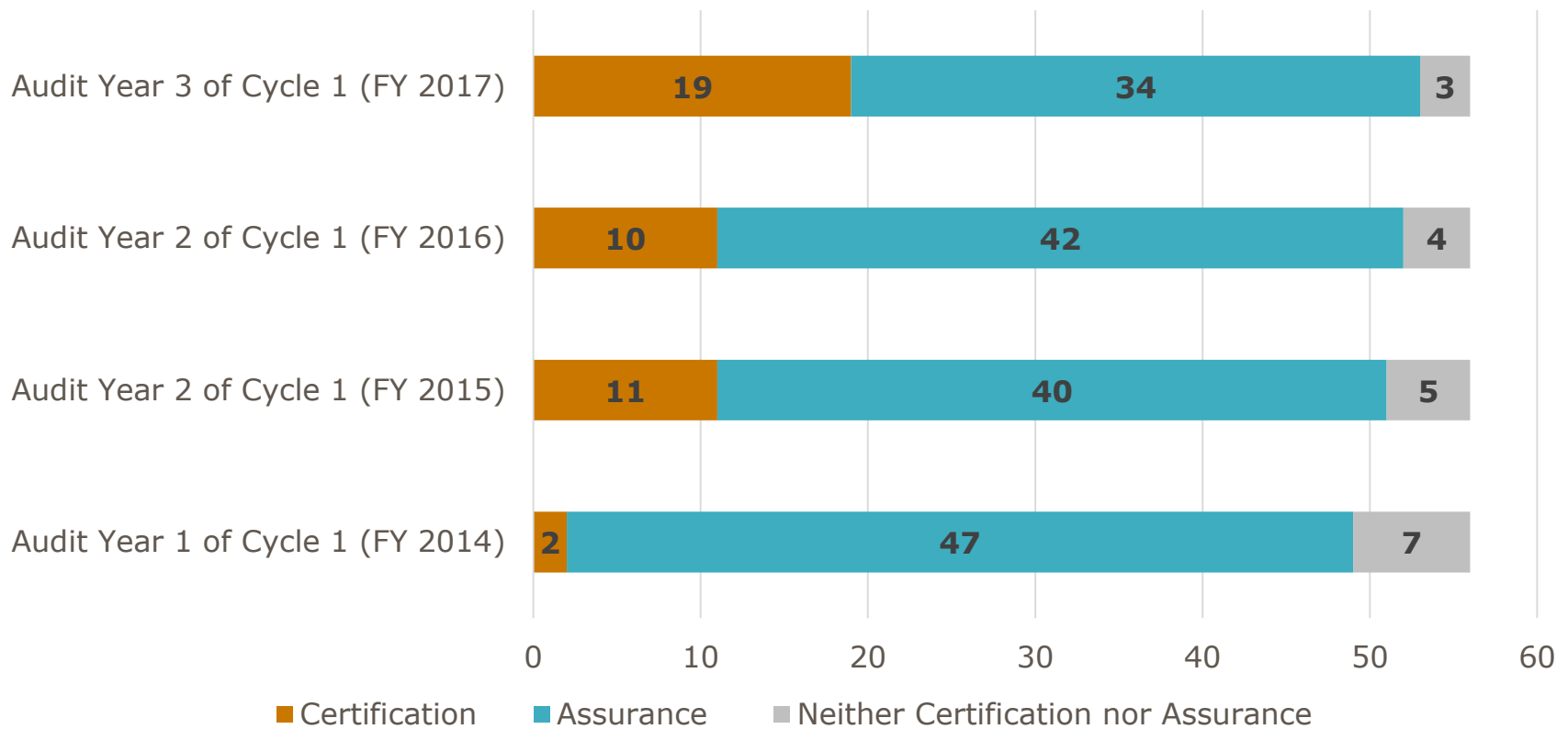
## What are the Governor's Options?

Per the PREA statute, each year Governors have the option to:

- 1) Submit a certification that all confinement facilities under his/her operational control (not just those audited in the most recent audit year) are in full compliance with the PREA Standards
- 2) Submit an assurance, which gives the Governor the option to:
  - a) Use not less than five percent of impacted DOJ funds to work towards and achieve full compliance with the PREA standards in the future; or
  - b) Request that the Attorney General hold these grant funds in abeyance (*New option as of FY 2017*)
- 3) Submit neither, and accept a five percent reduction in such grants

# Certification and Assurance Submissions

## State of the PREA Nation



# PREA Amendment in the Justice for All Reauthorization Act (JFARA) of 2016

## **Signed into law on December 16, 2016, the PREA Amendment under the JFARA:**

- Impacts DOJ grant programs
- Requires Governors to provide certain compliance information with their annual certification or assurance submission to DOJ
- Provides an abeyance option
- Sunsets the assurance option

# PREA Amendment in JFARA (Cont.)

## Grants Reallocated or Reduced

Beginning in FY2017:

### Office of Justice Programs

1. BJA's Edward Byrne Memorial Justice Assistance Grant (JAG) Formula Program
2. Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Justice and Delinquency Prevention Act Formula Grant Program

# PREA Amendment in JFARA (Cont.)

## Reporting Requirements

Governor who is submitting a Certification:

- List of facilities under the operational control of the executive branch
- List of those facilities that were audited during this audit year
- All final audit reports completed during the most recent audit year
- Proposed schedule of audits for the following three audit years

Governor who is submitting an Assurance:

- The same four requirements listed above for governors submitting a certification, and
- An explanation of any barriers that the state faces to completing the required audits
- An explanation of the state's current degree of PREA implementation

# PREA Amendment in JFARA (Cont.)

## New Abeyance Option

- Provides states submitting an assurance with two options:
  - 1) Use not less than 5% of impacted DOJ grant funds to work towards and achieve full compliance with the PREA Standards in future years or
  - 2) Request that the Attorney General hold these funds in abeyance.
- States able to submit a certification within three years following enactment of the law will be able to reclaim the balance of funds held in abeyance to be used for the original purpose of the grant(s).
- States unable to submit a certification in the 3-year period following enactment of the law that have audited at least 2/3 of facilities under the operational control of the executive branch will receive the funds held in abeyance to be used solely for PREA compliance purposes.
- States unable to certify full compliance or audit at least 2/3 of applicable facilities in the 3-year period following enactment of the law will relinquish the balance held in abeyance for redistribution to other states to be used for the original purpose of the grant(s).



# PREA Amendment in JFARA (Cont.)

## Sunset of the Abeyance and Assurance Options

- The abeyance option will sunset three years following the date of enactment of the JFARA, on December 16, 2019. Therefore, governors who submit an assurance will have two more opportunities to use the abeyance option: FY 2018, and FY 2019.
- The PREA Amendment sunsets the assurance option six years following the date of enactment.
- For two years following the assurance sunset, Governors who have audited at least 90% of facilities covered by the certification/assurance may request an emergency assurance from the Attorney General.



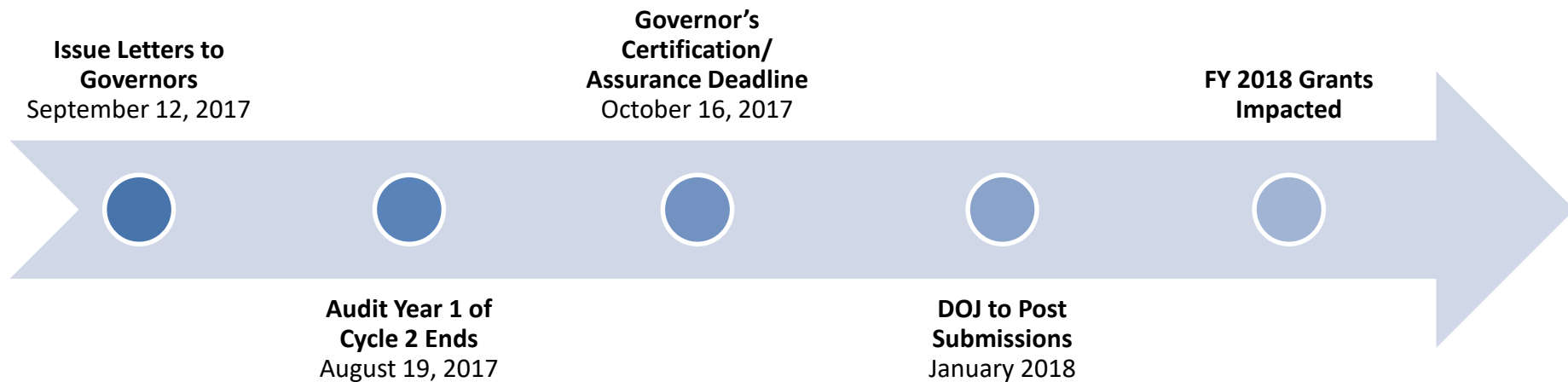
# PREA Amendment in JFARA (Cont.)

## Additional Key Provisions in the PREA Amendment

- Requires the Attorney General to post all final audit reports for facilities considered to be under the operational control of the executive branch to an appropriate website and update annually.
- Upon request by the Attorney General, PREA auditor candidates and certified auditors seeking recertification are required to submit their fingerprints to the FBI for a criminal history records check.
- Additional information can be found on the PREA page of the BJA website: [https://www.bja.gov/publications/JFARA-Fact-Sheet\\_Updated-2017.03.01.pdf](https://www.bja.gov/publications/JFARA-Fact-Sheet_Updated-2017.03.01.pdf)

# Certification/Assurance Timeline – FY'18 Grants

## Governor's Certification/Assurance for Audit Year 1 of Cycle 2 Impacting FY 2018 Grant Funds



# Submit to U.S. Department of Justice

## Submission by October 16, 2017:

Certification	Assurance
Signed Certification Form	Signed Assurance Form
Completed Facility Audit Activity Table listing all facilities under the operational control of the executive branch of the state, including a list of those facilities that were audited during Audit Year 1 of Cycle 2	Completed Facility Audit Activity Table listing all facilities under the operational control of the executive branch of the state, including a list of those facilities that were audited during Audit Year 1 of Cycle 2
Final audit reports for facilities under the operational control of the executive branch that were audited during Audit Year 1 of Cycle 2	Final audit reports for facilities under the operational control of the executive branch that were audited during Audit Year 1 of Cycle 2
Proposed schedule for completing an audit of all facilities under operational control of executive branch during following 3 audit years	Proposed schedule for completing an audit of all facilities under operational control of executive branch during following 3 audit years
PREA Compliance of External State Investigative Agencies	Explanation of any barriers the state faces to completing required audits
Determination of PREA Compliance for facilities not yet audited	Explanation of state's current degree of implementation of the Standards

# Review of Certifications by BJA/PMO

## Three-Stage Review Process

- 1) Review of compliance information from other DOJ components;
- 2) Analysis of audit activity; and
- 3) Review of compliance information collected from states and territories, including:
  - Determination of PREA compliance for facilities not yet audited (applicable in Audit Year 1-2 only)
  - PREA compliance of external state investigative agencies

# Certification and Assurance Frequently Asked Questions (FAQs)

## 1. Assurances and certifications must be submitted to DOJ by October 15<sup>th</sup>\* each year. To what date does the certification apply?

Certifications of full compliance with the PREA standards submitted by the October 15<sup>th</sup> deadline apply to the last day of the relevant audit year, which is **August 19<sup>th</sup>**.

The certification form that is due on October 15<sup>th</sup> states: "As of August 19, [Year], the state/jurisdiction named below had adopted, and was in full compliance with, the National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. Part 115."

\*The certification/assurance submission deadline for Audit Year 1 of Cycle 2 is October 16, 2017, which falls on a Monday.

# Certification and Assurance FAQs (Cont.)

## 2. To what facilities do certifications of full compliance with the PREA standards apply?

A certification of full compliance with the PREA standards applies to **all** facilities under the operational control of a state's/jurisdiction's executive branch of government.

A governor should only submit a certification to DOJ if **100 percent** of the facilities under his or her operational control are in **full compliance** with the PREA standards as of August 19<sup>th</sup> of the relevant audit year.

# Certification and Assurance FAQs (Cont.)

## **3. In determining whether to certify that my State is in “full compliance” with the National PREA Standards, how do I determine which facilities are “under the operational control of the State’s executive branch”?**

A: The National PREA Standards state that, “The Governor’s certification [of full compliance with the PREA standards] shall apply to all facilities in the State under the operational control of the State’s executive branch, including facilities operated by private entities on behalf of the State’s executive branch.” 28 C.F.R. § 115.501(b).

The Governor’s certification does not encompass those facilities outside the operational control of the Governor; namely, those facilities that are under the operational control of counties, cities, or other municipalities, or privately-operated facilities not operated on behalf of the State’s executive branch.

# Certification and Assurance FAQs (Cont.)

A (cont.): The term “operational control” is not defined in the National PREA Standards. The determination of whether a facility is under the operational control of the executive branch is left to a Governor’s discretion, subject to the following guidance.

Generally, there are several factors that may be taken into consideration in determining whether a facility is under the “operational control” of the executive branch:

- Does the executive branch have the ability to mandate PREA compliance without judicial intervention?
- Is the State a unified correctional system?
- Does the State agency contract with a facility to confine inmates/residents on behalf of the State agency, other than inmates being temporarily held for transfer to, or release from, a State facility?



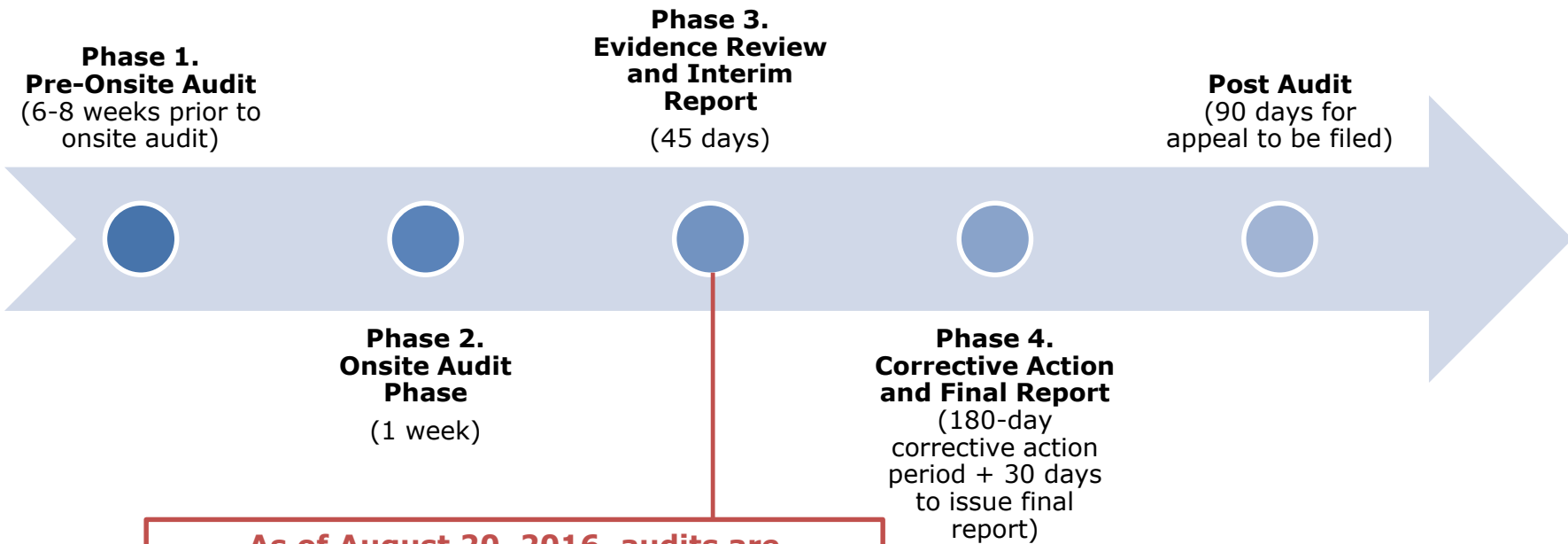
# Certification and Assurance FAQs (Cont.)

## **4. Can a PREA audit ever be considered complete on the last day of the Onsite Phase of the PREA audit?**

**No.** Once a PREA auditor completes his or her onsite visit to the facility, this initiates the post-onsite phases of the audit. Pursuant to DOJ PREA Working Group guidance issued on August 15, 2016, auditors are required to submit an interim report, or final report if there is no corrective action, to the audited facility within 45 days of completion of the onsite audit.

For the purposes of meeting the requirements in the PREA auditing standards, a PREA audit is considered complete upon issuance of the initial audit report or 45 days after the conclusion of the auditor's onsite visit to the facility, whichever one comes first.

# Four Phases of the PREA Audit



**As of August 20, 2016, audits are considered complete upon issuance of the interim report, or final report if there is no corrective action, or 45 days after the conclusion of the auditor's onsite visit to the facility, whichever one comes first.**

-DOJ PREA Working Group FAQ issued August 2016

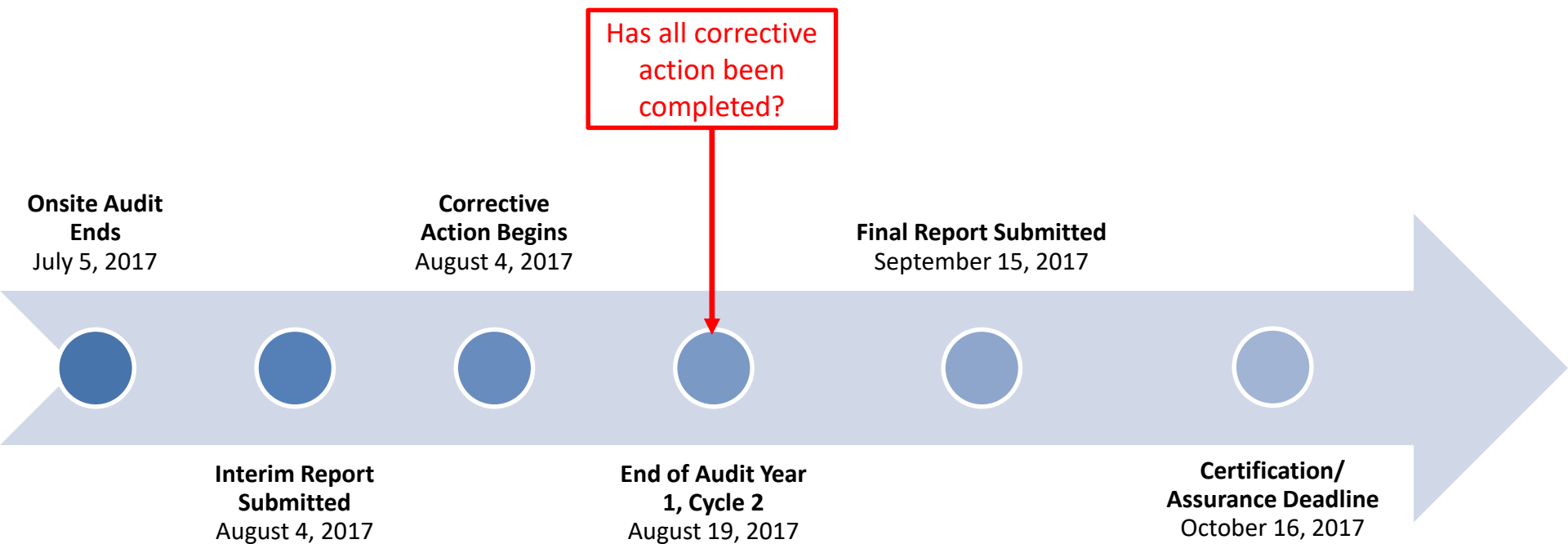
# Certification and Assurance FAQs (Cont.)

**5. There are facilities under the operational control of the governor in my state/jurisdiction that were undergoing corrective action that spanned beyond the end of the audit year on August 19<sup>th</sup>. Can the governor still submit a certification of full compliance for that audit year?**

If a governor submits a certification of full compliance on October 15<sup>th</sup>, and one or more facilities under his or her operational control were undergoing corrective action that continued after August 19<sup>th</sup>, DOJ expects the governor to submit a thorough written explanation of how the facilities were fully compliant with the PREA Standards as of August 19<sup>th</sup>.

# Example

## Corrective action spanning two audit years



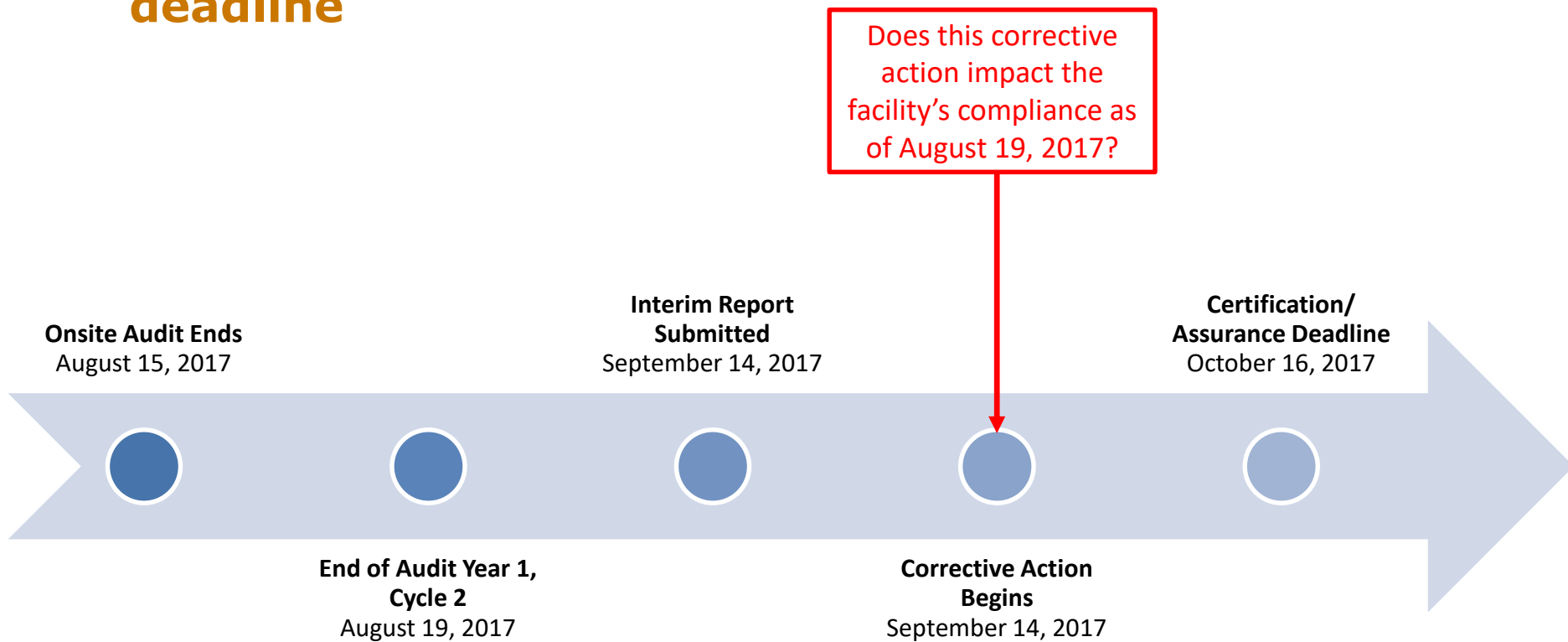
# Certification and Assurance FAQs (Cont.)

**5. Between August 20<sup>th</sup> and October 15<sup>th</sup>, there were facilities under the operational control of the governor in my state/jurisdiction that went into corrective action. Can the governor still submit a certification of full compliance on October 15<sup>th</sup> which affirms that, as of August 19<sup>th</sup> my state/jurisdiction was in full compliance with the PREA Standards?**

Corrective action periods that are initiated between August 20<sup>th</sup> and October 15<sup>th</sup> will raise questions on the part of DOJ about full compliance with the PREA Standards for the previous audit year ending on August 19<sup>th</sup>. In such cases, the governor is encouraged to provide a thorough written explanation that clarifies how the facility or facilities where corrective action is occurring were, in fact, in full compliance with the PREA Standards on August 19<sup>th</sup>.

# Example

## Corrective action initiated after the audit year ends but before the certification/assurance deadline



# For More Information

Contact the PREA Management Office at BJA:

- [PREACompliance@usdoj.gov](mailto:PREACompliance@usdoj.gov)

Visit the BJA PREA page:

- [https://www.bja.gov/ProgramDetails.aspx?Program\\_ID=76](https://www.bja.gov/ProgramDetails.aspx?Program_ID=76)

Visit the National PREA Resource Center:

- [www.prearesourcecenter.org](http://www.prearesourcecenter.org)