

NATIONAL
PREA
RESOURCE
CENTER

IMPACT JUSTICE

A national innovation and research center

PREA Implementation Challenges
American Jail Association Conference
Sacramento, California
April 2018



Introductions

- Agenda
- Logistics
- Reminder of other workshops:
 - ✓ Risk Screening/Housing
 - ✓ Investigations
 - ✓ Developing Risk Screening Tool
 - ✓ Coordinating with local SATC
- Facilitators
- Participants

The PREA Resource Center - Mission

The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community corrections and tribal facilities in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, monitoring, responses to incidents and services to victims and their families.



A Few Words about PREA.....

PREA is about PRACTICE, not (just) policy. Very few standards actually require a policy, although in most cases policy is simply good correctional practice and a good place to start. PREA is all about the daily practices in your facility.

Many jail practitioners are familiar with ACA, CALEA, NCCHC and other accreditation audits. PREA Audits are different from those audits. PREA audits are not about accreditation, and strongly focus on the observation and verification of daily practices over a period of time.

Passing (or not) a PREA compliance audit only tells a facility how they are doing at the time of the audit. An audit does not in and of itself insulate from liability. The ***daily practices*** in a facility are what will help protect us and assure that we are meeting our obligations to protect those in our care, custody and control.



Latest Audit Numbers

Completed Audits Total: 3223*
(as of January 2018)

By Facility Type:

- Adult Prisons: 1,157
- Adult Jails: 393
- Lockups: 24
- Community Confinement: 706
- Juvenile Confinement: 943

*from the PRC & PREA Management Office



Auditor Certification Process

Successful completion of all of the following:

- Pre-test
- Completion of pre-work (before training)
- 40 hour training
- Post-test
- Background check
- Signed agreement
- Field Training Audit
- Probationary Status
- Recertification required every 3 years



Field Training Audit

- Requires a significant time commitment from auditor trainees.
 - At least 40 hours of preparation
 - Full week on site
 - 40-60 hours to produce the report
- Will be certified at the completion of the Field Training Audit as *Probationary Auditor*.
- May conduct audits as any other auditor would but will not leave *probationary status* until successfully completing two interim audit reports and the editing process with the PRC.



Field Training Program (FTP)

- Purpose of FTP: provide auditor candidates with opportunity to transfer knowledge and skills attained in classroom setting to the field-auditing experience in a supervised and supportive setting.
- Facilities volunteer to host auditor trainees and faculty for a complete and thorough “practice” PREA audit.
- Facility has the benefit of a thorough “practice” audit to help with compliance and future audit, with access to national PREA experts during this process.
- Includes 20 hours of technical assistance post-audit to the host facility.



Field Training Program (FTP)

- Auditor trainees who have successfully completed the certification steps through the training and exam participate in one or more FTP audit(s).
- Team of auditor trainees, experienced certified PREA auditors, DOJ and PRC staff complete all portions of the audit.
- Auditor trainees are mentored and evaluated.



Audit Quality Integrity

Team of PRC staff:

- Support auditors to ensure they are able to achieve and maintain certification.
- Work with auditor trainees in the probationary phase of certification.
- Manage peer reviews of audit reports.
- Conduct reviews of completed audits.
- Manage feedback concerning auditors.

Finding Resources – www.prearesourcecenter.org

[PREA Essentials](#)

[PREA Standards in Focus](#)

[Curricula](#)

[PREA in Action](#)

[Upcoming Webinars](#)

[Archived Webinars](#)

[BJA Demonstration Sites](#)

[Request for Assistance](#)

[Competitive Funding Opportunities](#)

Request for Assistance

Please fill out the form below in order to request PREA-related training and/or technical assistance for your jurisdiction or agency. The more detail provided in your request will improve the PRC's ability to meet your needs. For jurisdictions less familiar on PREA, the PRC would encourage you browse the resources in the "[PREA Essentials](#)" page first. If your jurisdiction has general questions or comments for the PRC you can communicate those through our "[Contact Us](#)" page.

To submit information on complaints or concerns about the conduct of a DOJ Certified PREA Auditor, please refer to the "[Auditor Feedback Form](#)".

The PRC has recently upgraded its Request for Assistance form and is now requesting more information in order to better route and respond to inquiries. While all fields are not required, please fill out as much information as possible so that we may better assist you.

Request Training and Technical Assistance

Requesting Jurisdiction/Agency/Organization *

Please use official organization name, without abbreviations

Organization Type *

Search the PREA Library for Articles and Resources:

SEARCH

Sign Up for Updates

The PREA Resource Center will provide information on upcoming events, new resources to our library, and PREA-related issues in the news. Sign up to receive our communications via email.

SIGN UP ▶

Finding Resources – www.prearesourcecenter.org

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Through a cooperative agreement between [BJA](#) and [Impact Justice](#)

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Search the PREA Library for Articles and Resources:

The PRC Library serves as a central repository for PREA-related resources and contains more than 700 entries. You can search for an entry by title, author, or keywords in the search bar above. Search results are also pre-sorted into categories below to help locate relevant documents. The PRC does not evaluate nor endorse the resources provided.

For preliminary guidance, PRC suggests you visit [PREA Essentials](#) for an introduction to critical documents. For assistance finding specific articles or reports, contact us.

RECENT ADDITIONS TO THE LIBRARY:

[Courthouse Problems](#)

[Lawsuit: Juvenile Detention Center Protected Sexual Abusers](#)

[Commissioners Should Approve \\$20M In Jail Renovation Costs Thursday](#)

Finding Resources, Cont'd

www.nicic.gov

(e-learning courses, documents, etc.)

www.aja.org

(use the i-connect forum – monitored weekly and the PRC consultant will give input on PREA issues)

Implementation Challenges

Specific Standards

Adequate Staffing Plans (see §115.13, 115.313, 115.213 [differences], 115.113 [differences])

Screening for Risk of Victimization and Abusiveness (see §115.41, 115.341, 115.241 [differences], 115.141 [differences])

Use of Screening Information (see §115.42, 115.342, 115.242 [differences])

Protective Custody (see §115.43)

Searches of Transgender Inmates (see Limits to Cross-gender Viewing and Searches §115.15)

Specializes Training: Investigators (see §115.34, 115.334, 115.234, 115.134)

Adequate Supervision in Facilities

Adequate supervision is one of the most critical factors for preventing sexual abuse in confinement facilities.

§115.13 – Adequate Staffing Plan

The agency ensures that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:

(next slides contain the list of items)

§115.13 – Adequate Staffing Plan, Cont'd

- (1) Generally accepted detention and correctional practices;
- (2) Any judicial findings of inadequacy;
- (3) Any findings of inadequacy from Federal investigative agencies;
- (4) Any findings of inadequacy from internal or external oversight bodies;
- (5) All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated);

§115.13 – Adequate Staffing Plan, Cont'd

- (6) The composition of the inmate population;
- (7) The number and placement of supervisory staff;
- (8) Institution programs occurring on a particular shift;
- (9) Any applicable State or local laws, regulations, or standards;
- (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
- (11) Any other relevant factors.

§115.13, Cont'd

In circumstances where the staffing plan is not complied with, the facility documents and justifies all deviations from the plan.

Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.11, the agency shall assess, determine, and document whether adjustments are needed to:

- (1) The staffing plan established pursuant to paragraph (a) of this section;
- (2) The facility's deployment of video monitoring systems and other monitoring technologies; and
- (3) The resources the facility has available to commit to ensure adherence to the staffing plan.

What Does an Adequate Staffing Plan Require?

- Must be specific to each facility (not an agency wide plan), and each facility must have one.
- Must be a written document.
- Includes:
 - meeting date
 - which personnel were involved in the development
 - a narrative that describes how the plan was developed
 - a narrative of *how* each item was considered, and *how* the information impacted the plan

What Is Included in a Staffing Plan?

- Post orders, duties of each post, hours and days of each post
- Staff shift schedules, list of positions and assignments
- How absenteeism is addressed (planned leave, vacations, military leave, FMLA, administrative leave, unplanned absences)

What Is Included in a Staffing Plan?, Cont'd

- Facility diagrams – not specifically required in the standards, but auditors can request this as a best practice
- Physical plant assessment – blind spots, adjacencies, inmate movement paths, etc.

What Is Included in a Staffing Plan?, Cont'd

- Use of monitoring technology – camera placement, video retention, cross-gender viewing considerations; auditors cannot assess the use of monitoring technology without knowing the locations, observing the locations, and knowing how video is retained and used.
- Inmate population characteristics – gender, risk level, program needs, medical/mental health needs, special populations, special housing, etc.
- Other standards will impact the development and assessment of staffing plan.

A Staffing Plan is NOT Just:

- Your daily post orders
- Staff or shift schedules
- The number of budgeted positions
- A roster of your employees

What Will Auditors Look For?

- Meeting minutes, list of participants, how each person was involved
- Written documentation of *how* each of the required factors was assessed and considered and how they impacted that staffing plan and sexual safety (not sufficient to just say “this was considered”)
- Monitoring technology is not required by the standards. If monitoring technology is deployed must take into account how it impacts sexual safety and how this was considered in camera placement.
- If no monitoring technology is uses, the staffing plan should address how sexual safety is adequately provided otherwise.



What Will Auditors Look For?, Cont'd

- Written documentation, justifications, and how facility addressed all deviations from the plan.
- How staff were assigned based on the plan.
- Written documentation that agency assessed and modified (if necessary) the plan on an annual basis.
- Observation of actual practices to assure that practice aligns with the staffing plan.

Resources!

- Developing and Implementing a PREA – Compliant Staffing Plan
- NIC Jail Staffing Analysis 2nd & 3rd Editions
- NIC Prison Staffing Analysis: A Training Manual with Staffing Considerations for Special Populations
- Standards in Focus [115.13](#)
- www.prearesourcecenter.org
- www.nicic.gov

Juvenile Facilities

- The required ratio is NOT an aggregate, and NOT building-wide.
- Ratios are specific to each housing unit or area where children are in school or programming or otherwise congregated or moving through the facility.
- For every 8 residents in an area together, there must be one staff person directly supervising them, and at night, for every 16 residents sleeping in an area, there must always be at least one staff person directly supervising them.
- A rover does not count when s/he is not in the same room with the residents.
- Absence of “best efforts” language in juvenile standards.

Juvenile Facilities, Cont'd

FAQ

Who counts as "security staff" for purposes of the minimum staffing ratio Standard for secure juvenile facilities?

The Standards provide, inter alia, that [e]ach secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discreet exigent circumstances..." 28 C.F.R. § 115.313(c). Only security staff shall be included in these ratios. Id.

Juvenile Facilities, Cont'd

What about staff in control rooms? Do they count in the ratio?

Consider the definition of “direct staff supervision”:

- Are staff in the control room in the same room with and within reasonable hearing distance of the residents in a specific area?
- Does a control room staff person have other duties that might distract them from directly viewing and hearing the residents in a specific area at all times?
- Does the control room staff person observe or have responsibility for more than one area?

Juvenile Facilities, FAQ Cont'd

The Standards define “security staff” as employees primarily responsible for the supervision and control of... residents in housing units, recreational areas, dining areas, and other program areas of the facility. 28 C.F.R. § 115.5. This definition is intended to approximate the manner in which the term “direct-care staff” is typically used by many juvenile facilities.

Typically, only direct-care staff will count in the minimum mandatory ratios. Direct-care staff supervisors may generally be counted within the minimum ratios to the extent they are presently assigned to primarily or exclusively supervise residents.

Juvenile Facilities, FAQ Cont'd

Other persons whose duties involve supervision and control of residents for a portion of the day may count towards these ratios while they are actively supervising and controlling residents, assuming that they have received appropriate training.

Appropriate training generally includes training on the supervision and control of delinquent youth including, among other things, verbal de-escalation techniques, age-appropriate defensive tactics, and crisis intervention.

For example, a teacher who has received appropriate training may be included in the ratio during the time in which he or she is leading a class, as opposed to preparing a lesson plan. Similarly, a warden or other facility management official will count toward the ratio during the periods of the day when he or she is supervising residents rather than engaging in administrative activities.

Juvenile Facilities, FAQ Cont'd

Social workers, case managers, clinical staff, and administrative support staff will generally not count toward the minimum staffing ratios, except in circumstances in which they are supervising or controlling a group of residents, and only then if they have received appropriate training.

Contractors and volunteers (who have received a criminal records background check) may count to the extent that their responsibilities and training otherwise qualify.

Screening for Risk of Victimization and Abusiveness §115.41

- All inmates must be screened at intake and upon transfer to another facility
- Screening must take place within 72 hours of arrival
- Use an objective screening instrument
- Consider at a MINIMUM, the items listed in the standard
- You will have to actually ASK certain questions
- Do not discipline if inmate refuses to answer

Screening for Risk of Victimization and Abusiveness §115.41, Cont'd

Within 72 hours, screen for

- Physical, mental, developmental disability
- Age
- Physical build
- Previous incarcerations
- Criminal history (nonviolent only?)
- Prior sex offenses
- LGBTI status, or perceived to be
- Prior sexual victimization
- Perception of vulnerability
- Civil immigration hold only?
- Acts of sexual abuse, prior convictions for violent offenses and history of prior institutional violence or sexual abusiveness, to determine risk being sexually abusive



Screening for Risk of Victimization and Abusiveness §115.41, Cont'd

- Within 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.
- The reassessment must be an active process that includes review of any new information, and face-to-face with inmate to ask if they want to share anything they did not share at intake.

Screening for Risk of Victimization and Abusiveness §115.41, Cont'd

- Reassess when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.
- Implement controls to ensure sensitive information is not used to exploit inmate by staff or other inmates.

Use of Screening Information §115.42

- To inform assignments (housing, bed, work, program) only – not to discipline
- To make individualized determinations to assure safety of each inmate

Use of Screening Information §115.42, Cont'd

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

Use of Screening Information §115.42, FAQ

Does a policy that houses transgender or intersex inmates based exclusively on external genital anatomy violate Standard 115.42(c) & (e)?

Yes.

Standard 115.42(c) states:

In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

Use of Screening Information §115.42, FAQ, Cont'd

In addition, Standard 115.42(e) states:

A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

Being transgender is a known risk factor for being sexually victimized in confinement settings. The standard, therefore, requires that facility, housing, and programming assignments be made “on a case-by-case basis.” Any written policy or actual practice that assigns transgender or intersex inmates to gender-specific facilities, housing units, or programs based solely on their external genital anatomy violates the standard.

Use of Screening Information §115.42, FAQ, Cont'd

A PREA-compliant policy must require an individualized assessment. A policy must give “serious consideration” to transgender or intersex inmates’ own views with respect to safety. The assessment, therefore, must consider the transgender or intersex inmate’s gender identity – that is, if the inmate self-identifies as either male or female.

A policy may also consider an inmate’s security threat level, criminal and disciplinary history, current gender expression, medical and mental health information, vulnerability to sexual victimization, and likelihood of perpetrating abuse.

The policy will likely consider facility-specific factors as well, including inmate populations, staffing patterns, and physical layouts. The policy must allow for housing by gender identity when appropriate.

Use of Screening Information §115.42, FAQ, Cont'd

A PREA auditor must examine a facility or agency's actual practices in addition to reviewing official policy. A PREA audit that reveals that all transgender or intersex inmates in a facility are, in practice, housed according to their external genital status raises the possibility of non-compliance. The auditor should then closely examine the facility's actual assessments to determine whether the facility is conducting truly individualized, case-by-case assessments for each transgender or intersex inmate. The auditor will likely need to conduct a comprehensive review of the facility's risk screening and classification processes, specific inmate records, and documentation regarding placement decisions.

The Department recognizes that the decision as to the most appropriate housing determination for a transgender or intersex inmate is complicated.

Use of Screening Information §115.42, FAQ, Cont'd

Facilities may consider several methods to make these assessments. Best practices include informing decisions on appropriate housing through consultation by facility administration, classification and security staff, and medical and mental health professionals. However, a facility should not make a determination about housing for a transgender or intersex inmate based primarily on the complaints of other inmates or staff when those complaints are based on gender identity.

Importantly, the facility shall not place transgender inmates in involuntary segregated housing without adhering to the safeguards in Standard 115.43.

Compliance, LGBTI Inmates/Residents/Detainees/Staff, Screening 115.42, 115.43

Definition Activity – Matching Terms

1. Sexual Orientation
 2. Gender Identity
 3. Gender Expression
 4. Gender Conforming
 5. Gender Nonconforming
- A. how a person understands their own gender (man, woman, other)
 - B. how a person expresses their gender identity through their manner of dress, speech, behavior and/or other physical expressions of themselves (masculine, feminine, androgynous, other).
 - C. a person whose appearance or manner does not conform to traditional societal gender expectations.
 - D. to whom you are emotionally, sexually or romantically attracted to, whether you are lesbian, gay, bisexual, straight
 - E. a person whose appearance or manner conforms to traditional societal gender expectations.

Definitions

- Transgender means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth. Most transgender people will identify as the gender they transitioned to and not use the "trans-" prefix.

Definitions, Cont'd

- Intersex means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

For more information, please visit Advocates for Informed Choice: <http://aiclegal.org/>; Intersex Society of North America: <http://www.isna.org/>.

Use of Screening Information §115.42, Cont'd

Many facilities/agencies use a special “team” to make decisions about housing transgender or other special needs inmates.

These teams generally include:

- Classification staff
- PREA Coordinator
- Medical staff
- Mental health staff
- Security staff

The process includes a private conversation with the inmate to discuss their perception of safety, previous experiences of harassment, abuse, or “bullying” that the inmate may have experienced, and to express to the inmate the facility’s security and safety issues.

Use of Protective Custody (§115.43)

Involuntary segregation/Housing in Special Units:

Isolation is only to be used as a “last resort” after a full assessment of all available alternatives has been made, and there are no “available alternatives” for protecting LGBTI inmates and residents?

[Inmate: §115.43(a); Resident: §115.342(b)]. Are LGBTI inmates or residents placed in special housing units (that are prohibited) solely based on their LGBTI identity? [Inmates: §115.42(g); Resident: §115.342(c)].

Use of Protective Custody §115.43

Involuntary Segregated Housing:

- **Only** if NO other **alternatives** (*must assess within 24 hours of placement*)
- **Access** to programs, work, education
- Not to exceed **30 days**
- **Extension only** if no alternative available
- **Reassess** risk and need
- **DOCUMENT** reasons why no alternative

Note: In Juvenile Standards (see §115.342) these requirements are more stringent than in adult facilities.

LGBTI Points to Remember

Pay close attention to any language (verbal AND in the screening instrument itself) or staff behavior that may indicate that LGBTI residents are stereotyped as being sexually *abusive because of their LGBTI identity*.

"§115. 42: Placement of residents in housing, bed, program, education, and work assignments. (c) Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, nor shall agencies consider lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of likelihood of being sexually abusive."

LGBTI Points to Remember, Cont'd

Confidentiality:

Very important to remember that some LGBTI inmates/residents may be “out” to counselors or others in the facility but may not be “out” to parents, attorneys, child welfare workers, courts, etc.

Caution should be exercised in revealing information about inmates/residents identities to other people, including family members, when sexual abuse allegations are reported.

Searches of Transgender Inmates §115.15

(e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

Searches of Transgender Inmates - FAQ

“Operationally, four options are in current practice for searches of transgender or intersex inmates/residents/detainees:

- 1) Searches conducted only by medical staff [a part of a broader medical exam, and not just to determine genital status];
- 2) Pat searches of adult inmates conducted by female staff only, especially given there is no prohibition on the pat searches female staff can perform (except in juvenile facilities);
- 3) Asking inmates/residents/detainees to identify the gender of staff with whom they would feel most comfortable conducting the search;
- 4) Searches conducted in accordance with the inmate’s gender identity.”

Investigations



- One of the most critical requirements for achieving sexual safety in facilities is the conduct of competent, thorough, prompt and objective investigations.
- Not everyone is qualified or appropriate to conduct such investigations.

Specialized Training: Investigators (§115.34)

PREA standards require the following topical training for investigators who investigate sexual abuse of inmates in a confinement setting:

- General training for all employees
- Conducting investigations in confinement setting
- Interview sexual abuse victims
- Miranda & Garrity – use and application
- Evidence collection – techniques, protocols
- Criteria & evidence required to substantiate administrative and/or criminal

Investigators

Those who investigate sexual abuse and/or sexual harassment should:

- Be experienced in conducting investigations.
- Have training in basic investigative skills.
- Have significant experience with the use of both Miranda and Garrity.
- Understand the rules of evidence in both criminal and administrative investigations.
- Have training/experience in the proper techniques in the collection of evidence.
- Have specialized training in interviewing victims of sexual abuse and sexual harassment.
- Understand and apply the criteria and evidentiary requirements to sustain an administrative finding and a criminal finding.

Investigative Interviewers

Competent, quality interviewers:

- Have experience conducting investigative interviews.
- Are committed to their role.
- Are flexible.
- Know their limitations.
- Know what makes them uncomfortable.
- Are ALWAYS respectful, even-tempered, patient and professional.
- Know their personal biases and how to manage them to eliminate subjectivity.
- PREPARE, PREPARE, PREPARE.

PREA Audits

The Purpose of PREA Audits

- To provide a facility with an independent and thorough assessment of compliance.
- To assist facilities with overcoming challenges to compliance.

PREA Audits – what they are NOT

- Like accreditation audits (ACA, CALEA, state accreditation)
- A guarantee of being insulated or protected from liability.
- Certification of continued compliance.
- A reason for any new course of legal action against a facility.

Assuring a Successful Audit

- Preparation and open-mindedness are key
- Conduct a self-audit – takes time, so plan ahead
- Delegate some of the self-audit tasks
- Team approach
- Expect some surprises
- Use available resources and tools
 - audit instrument components
 - auditor handbook

Your Second Audit

- Safe to expect that the second audit will be different than the first. Audits only assess compliance for the period assessed at the prior audit.
- Starts from scratch – not from where you were at the previous audit.
- Technology has been improved – audit components (Pre-Audit Questionnaire, Auditor Compliance Tool) are fully automated.

Your Second Audit

- New guidance and improvements in the training, monitoring and certification process of auditors since previous audit may impact how compliance is assessed now.
- Different auditors may have different recommendations.
- Auditors consider at least the past 12 months (may go back further if necessary).

Q & A

