

April 4, 2023

Daniel J. Crooks III, Assistant General Counsel
Legislative & Correctional Issues Branch
Office of General Counsel
Bureau of Prisons
320 First Street NW
Washington, DC 20534
dcrooks@bop.gov

Re: Request to Re-Open Public Comment on 88 FR 1331 and Submit Information for the Public Record.

Dear Mr. Crooks:

We, the undersigned organizations, request that the Department of Justice and Bureau of Prisons reopen the public comment period regarding 88 FR 1331 – a proposal to amend the Inmate Financial Responsibility Program under 28 CFR 545 – and that this letter be included in the public record. While we understand that the original public comment period closed on March 13, 2023, there is significant public interest in this proposal, as demonstrated by the more than 1,100 comments that were submitted prior to the deadline. Moreover, we have grave concerns that the public record lacks sufficient transparency regarding data and information necessary to effectively evaluate the proposed amendment’s impact and wisdom.

We ask for the public record to reflect that the undersigned organizations believe DOJ, BOP, and the public record lack sufficient data to understand the full impact of the proposed rule amendment and that to move forward without such data would be arbitrary and capricious. Each of the undersigned organizations opposes implementation of the amended rule on numerous grounds, including but not limited to, the harm it will do to incarcerated people and their loved ones, the fact that DOJ has other means at its disposal to address perceived nonpayment of financial obligations, that it contradicts President Biden’s avowed policies of racial equity in agency operations and the administration’s support of successful reentry programming, and our belief that DOJ and BOP lack the legal authority to make the proposed changes.

The Washington Lawyers’ Committee recently filed a Freedom of Information Act (FOIA) request for detailed and significant data, documentation, and information relevant to assessing the impact of the proposed rule change. A copy of that request is appended to this letter. We believe this data and information is critical to the decision-making process and the public’s understanding regarding this proposed amendment.

We request that DOJ and BOP refrain from moving forward with this proposed rule unless or until the data from that FOIA request is produced, disseminated, and analyzed and the public is once again provided an opportunity to weigh in with a full understanding of the facts.

Respectfully Submitted,

Lisa Foster, Co-Executive Director
Fines and Fees Justice Center

David Ayala, Executive Director
FICPFM

Galen Baughman, Founder
Just Future Project

Thea Sebastian, Director of Policy
Civil Rights Corps

JustLeadershipUSA

National Consumer Law Center
(on behalf of its low-income clients)

Southern Poverty Law Center

Washington Lawyers' Committee for Civil Rights and Urban Affairs

Worth Rises

Cc: Lisa Monaco, Deputy Attorney General
Colette Peters, Director of the Federal Bureau of Prisons
Vanessa Chen, Special Assistant to the President for Criminal Justice and Guns Policy

March 31, 2023

Submitted via E-mail at bop-ogc-efoia-s@bop.gov

Freedom of Information Act/Privacy Act Section

Office of General Counsel, Room 841

Federal Bureau of Prisons

320 First Street, N.W.

Washington, DC 20534

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we request the records listed below. Under 5 U.S.C. § 552(a)(6)(E) I certify that the information contained in this FOIA request is true and correct and ask that this request be processed on the **expedited track**. The information sought is urgently needed to inform the public concerning actual or alleged federal government activity and it is being made by organizations primarily engaged in disseminating information to the public. This request is submitted in response to the federal Bureau of Prison's (BOP) proposed regulation changes to the "[Inmate Financial Responsibility Program: Procedures](#) (IFRP)" (see Federal Register, Vol. 88, No. 6 (Tuesday, January 10, 2023)). While the changes proposed by the BOP would have a profound negative impact on individuals incarcerated in the BOP and on those that provide financial support to someone imprisoned in the BOP, no data was provided to explain why the changes are needed and why the changes proposed are the appropriate remedy. The data sought is urgently needed to allow the public to adequately understand and evaluate the need to change the current regulations and the BOP's proposed solution. Any attempt to implement the proposed rule change without prior disclosure and the opportunity for public comment on the information requested below is likely to be considered arbitrary and capricious and therefore unlawful.

DEFINITIONS

A. *Document*. The term "Document" and/or "Documents" is intended to have the broadest permissible meaning under applicable law and shall include any and all written, recorded, or graphic matter or material of any kind, type, nature, or description (whether in tangible, hard copy, printed, or electronic form) that is or has been in Your possession, custody, or control, including all hard copy documents, communications, correspondence, memoranda, tapes, stenographic, or handwritten notes, forms of any kind, charts, blueprints, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, telegrams, photographs, minutes, contracts, agreements, electronic mail, instant messages, text messages, calendars, appointment books, computer files, computer printouts, data compilations of any kind, facsimiles, invoices, order forms, checks, drafts, statements, credit memos, reports, position reports, summaries, surveys, indices, books, ledgers, notebooks, schedules, transparencies, recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, CDs, computer disks or diskettes, brochures, pamphlets, or any written or recorded materials of any other kind, however stored, recorded, produced, reproduced (whether in tangible, hard

copy, printed, or electronic form), and also including drafts or copies of any of the foregoing that contain any notes, comments, or markings of any kind not found on the original documents or that are otherwise not identical to the original documents.

B. *Records*. The term “Record” and/or “Records” means any documents or electronically stored information of any kind—including writings, emails, social media posts, drawings, graphs, charts, photographs, video recordings, sound recordings, images, declarations, notes, memorandum, statements, policies, manuals or binders, books, handbooks, business records, ledgers, notices, warnings, affidavits, reports, calendars, databases, and other data or data compilations—whether handwritten, printed, typed, mechanically or electronically recorded or produced, or otherwise stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.

INSTRUCTIONS

A. The below requests do not seek or require information outside that created by or on behalf of the BOP and not a part of the Public Record referenced at 88 Fed. Reg. 1331.

B. We are not requesting any personal identifying information for specific people in custody. We are only seeking numbers, percentages, sums, ranges, or other nonidentifiable quantitative information based on individuals within BOP custody.

C. If any information requested is withheld based on a claim of privilege or other protection, we ask that claim be made expressly in a writing describing the nature of the document(s), information, communications, or things not produced or disclosed, in a manner that will enable an assessment of the applicability of the claimed privilege or protection. With regard to each claim of privilege or protection, we request the following information in the response:

- 1) The nature of the claimed privilege or protection and the legal justification the BOP is relying upon for its refusal to produce the requested information; and
- 2) If applicable, the litigation or trial of which the document was created in anticipation.

D. If any requested Document has been lost, discarded, or destroyed, identify that Document(s) as completely as possible, including as to each such Document: its date, general nature (e.g., letter, memorandum, email, telegram, telex, photograph, computer printout, etc.), subject matter, each author and/or originator, each person indicated as an addressee or copy recipient, and its former custodian(s). In addition, provide the following information for each lost, discarded or destroyed document:

- 1) Date of disposal, loss, or destruction;
- 2) Manner of disposal, loss, or destruction;
- 3) Reason for disposal or destruction, or any explanation of loss;

- 4) Persons authorizing the disposal or destruction;
- 5) Persons having knowledge of the disposal, destruction, or loss; and
- 6) Persons who destroyed, lost, or disposed of the Document or thing

SPECIFIC REQUESTS

A. Pursuant to 5 U.S.C. § 552(3)(A) please provide documents and records containing or sufficient to obtain the following data and/or information:

1. Total number of inmate trust accounts in operation at the end of FY 2021 and FY 2022, respectively;
2. Total number and percentage of individuals participating in the IFRP at the end of FY 2021 and FY 2022, respectively;
3. Total number and percentage of inmate trust accounts across BOP with a balance of \$500 or less at the end of FY 2021 and FY 2022, respectively;
4. Total number and percentage of inmate trust accounts across BOP with a balance of between \$501 and \$1000 for FY 2021 and FY 2022, respectively;
5. Total number and percentage of inmate trust accounts across BOP with a balance of between \$1001 and \$2500 for FY2021 and FY2022, respectively;
6. Total number and percentage of inmate trust accounts across BOP with a balance greater than \$10,000 at the end of FY 2021 and FY 2022, respectively;
7. Total number and percentage of individual deposits of \$100 or less to any inmate trust account from outside sources for FY 2021 and FY 2022, respectively;
8. Total number and percentage of individual deposits of \$999 or less to any inmate trust account from outside sources for FY 2021 and FY 2022, respectively;
9. Total number and percentage of individual deposits of \$1,000 or more to any inmate trust account from outside sources for FY 2021 and FY 2022, respectively;
10. The total number and percentage of people in the BOP's custody who owed legal financial obligations— disaggregated by fines, fees, and restitution—at the end of FY 2021 and FY 2022, respectively;
11. The total dollar amount of legal financial obligations— disaggregated by fines, fees, and restitution—assessed against individuals across the BOP at the end of FY 2021 and FY 2022, respectively;
12. The total dollar amount deducted from inmate trust accounts and/or commissary accounts across BOP to satisfy legal financial obligations— disaggregated by fines, fees, and restitution—at the end of FY 2021 and FY 2022, respectively;
13. Total number and percentage of individuals who were assessed the \$100 felony assessment provided for pursuant to 18 USC §3012 during FY 2021 and FY 2022, respectively;
14. Total number and percentage of individuals who were assessed the \$400 felony assessment provided for pursuant to 18 USC §3012 during FY 2021 and FY 2022, respectively;

15. Total number and percentage of individuals who were assessed a misdemeanor assessment of any amount provided for pursuant to 18 USC §3012 during FY 2021 and FY 2022, respectively;
16. Total dollar amount of “costs of incarceration” assessed against individuals during FY 2021 and FY 2022, pursuant to 18 U.S.C. 4001;
17. Total dollar amount of “costs of incarceration” collected from individuals during FY 2021 and FY 2022, regardless of the years those costs were assessed pursuant to 18 U.S.C. 4001;
18. Total number and percentage of individuals who had less than \$500 in their trust account upon release during FY 2021 and FY 2022, respectively;
19. Total number and percentage of individuals who had between \$501 and \$1000 in their trust account upon release during FY 2021 and FY 2022, respectively;
20. Copies of the BOP’s random audits for IFRP participation and inmate trust accounts for FY 2021 and FY 2022;
21. Total number of requests for a free phone call granted by BOP wardens during FY 2018 and FY 2019, respectively;
22. Total number of requests for a free phone call denied by BOP wardens during FY 2018 and FY 2019, respectively;
23. Total amount of money retained by the BOP, the Department, or any other agency or branch of the U.S. Government, resulting from interest earned on inmate trust accounts during FY 2021 and FY 2022; and
24. The expected or estimated administrative cost to implement the Proposed Rule across BOP in the first year after it would become effective.
25. Any data pulls disseminated to Congressional staff that are related to the development of this proposed rule or any of the twenty-two points listed above.

B. Pursuant to 5 U.S.C. § 552 (2)(B), any statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register:

1. regrading garnishments or deductions from inmate trust accounts or commissary accounts;
2. authorizing, justifying, or acknowledging that the BOP or Department may retain any interest earned on an inmate’s trust accounts;
3. authorizing, justifying, interpreting, or regarding commissary mark ups at BOP facilities housing individuals; and
4. authorizing, justifying, interpreting, or regarding charging individuals a co-payment for any medical services provided.

C. Pursuant to 5 U.S.C. § 552 (2)(C):

1. any current manuals and/or instructions for managing IFRPs across BOP and
2. any current manuals and/or instructions regarding garnishments or deductions from inmate trust accounts or commissary accounts.

COSTS AND TIMELINES

The organizations submitting this request are non-profit 501(c)(3) organizations providing pro bono services. Pursuant to 5 U.S.C. § 552 (4)(A)(i) of FOIA, we request that the searching and copying fees associated with this request be waived because it would be in the public interest. If you anticipate any costs associated with production of the requested documents, please contact Stacey Litner at the Washington Lawyers' Committee for Civil Rights and Urban Affairs before producing the documents with an estimated cost. She can be reached by email at Stacey_litner@washlaw.org or by telephone at (202) 319-1038.

Again, based on the information provided above we ask that this request be placed on the **expedited track**. We ask that a determination regarding this request be made promptly, but no later than ten (10) days after receipt, as provided by law. Please send the requested materials to Stacey Litner via email at stacey_litner@washlaw.org. If you have any questions, please feel free to contact Stacey Litner using the contact information provided above.

Sincerely yours,



Stacey Litner
Washington Lawyers' Committee for
Civil Rights and Urban Affairs 700 14th
Street, NW, Suite 400
Washington, DC 20005

Fines and Fees Justice Center
Formerly Incarcerated Convicted People and Families
Movement
National Consumer Law Center
Worth Rises

Cc: Lisa Monaco, Deputy Attorney General
Colette Peters, Director of the Federal Bureau of Prisons
Vanessa Chen, Special Assistant to the President for Criminal Justice and Guns Police