



March 13, 2023

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530

Re: Proposed Rule, Inmate Financial Responsibility Program: Procedures, BOP Docket (BOP-2023-0001)

Dear Attorney General Garland:

The Sentencing Project, The Leadership Conference on Civil and Human Rights, and the CAN-DO Foundation strongly urge the Bureau of Prisons to reconsider its recent Proposed Rule regarding the Inmate Financial Responsibility Program (IFRP). The vast majority of individuals in federal prisons are indigent and rely on limited resources provided by loved ones and/or their meager wages earned from prison jobs to acquire basic necessities for daily living. The proposed rule would impose a heavy financial burden on incarcerated individuals and their families, worsening inhumane conditions within Bureau of Prison (BOP) facilities, endangering the health and safety of incarcerated individuals, and undermining Congress's intent when it passed the First Step Act.

Existing laws empower the Department of Justice to seek enforcement of monetary judgements already. As such, we urge the BOP to retract this proposed rule, and pursue restitution through existing means.

### Background

The overwhelming majority of people prosecuted for federal crimes are indigent at the time of trial and entitled to a public defender.<sup>1</sup> An extremely small percentage of incarcerated individuals retain some wealth, reflected in high inmate trust fund balances – in 2021, for example, 20 of 152,000 people incarcerated in the BOP had more than \$100,000 in their inmate trust fund accounts.<sup>2</sup> In 2021, the failure of some of these wealthy individuals to make adequate restitution

---

<sup>1</sup> See [Defender Services](#), United States Courts (“Federal defender organizations, together with the more than 12,000 private “panel attorneys” who accept CJA assignments annually, represent the vast majority of individuals who are prosecuted in our nation's federal courts.”); see also Rabuy, B. & Kopf, D. (2015), [Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned](#), Prison Policy Initiative.

<sup>2</sup> Barrett D. (Jan. 5, 2022), [Prosecutors Seek Money From Boston Marathon Bomber's Prison Bank Account](#), The Washington Post; Barrett, D. (Sept. 9, 2022), [Judge Orders R. Kelly's Prison-Account Money be Turned Over to Court](#), The Washington Post.

payments while amassing wealth in their accounts spurred the Deputy Attorney General Lisa Monaco to issue a directive to the BOP to “take appropriate steps to prevent inmates from using [inmate trust fund accounts] to engage in unlawful activity or to avoid obligations like paying court-ordered restitution to victims.”<sup>3</sup>

In turn, the BOP issued a proposed rule on January 9, 2023, pursuant to which BOP would garnish 75 percent of all money coming in from the community to be allotted toward the IFRP process, regardless of an individual’s financial status. The rule also mandates that at least 50 percent of monthly pay from a UNICOR job, and 25 percent from a non-UNICOR job be allocated to the IFRP program. The program is voluntary in name only: incarcerated individuals who decline to enroll face harsh sanctions ranging from commissary spending restrictions (limited to \$25 per month), preclusion of certain pay benefits and increases, loss of release gratuity, loss of incentives (such as early release and participation in a residential drug treatment program), and – most critically – ineligibility to earn or apply First Step Act Time Credits.<sup>4</sup>

### The Proposed Rule will Endanger the Health and Safety of Incarcerated Individuals

Federal prisons are already in crisis. Federal prisons are plagued by inadequate medical care, overcrowding, staff shortages, unsanitary conditions, violence, and abuse. These conditions are well-documented in media coverage,<sup>5</sup> Office of Inspector General<sup>6</sup> and BOP reports,<sup>7</sup> and congressional testimony.<sup>8</sup>

For the vast majority of people incarcerated in federal prisons, the money deposited by their loved ones in their trust fund accounts simply pays for daily necessities. One individual incarcerated at FCI Waseca writes:

“The fallacy behind the claim that the IFRP is voluntary is the myth that the BOP provides its prisoners with everything needed to live. As anyone who has been in federal prison can attest, this is not the case. Hygiene items, over-the-counter medications, medical co-pays (\$2.00 each sick-call), work boots (\$99.45), all leisure clothing (tennis shoes \$82.95; shorts \$11.70; sweatshirt \$18.85; sweatpants \$22.10), food (3 oz. coffee \$4.70; 18 oz. mayonnaise \$3.40; 4.23 oz tuna \$2.30), stamps, and – when the National Emergency (COVID) Act expires – phone calls (15 min. \$3.15), and video visits (30 min.

---

<sup>3</sup> U.S. Department of Justice, Memorandum from The Deputy Att’y General to the Dir. of the Bureau of Prisons, re: Inmate Financial Accounts (Aug. 16, 2021).

<sup>4</sup> Bureau of Prisons (2023), [Inmate Financial Responsibility Program: Procedures Proposed Rule](#), 88 FR 1331.

<sup>5</sup> C. Willson (Feb. 11, 2022), [Inmates at Oregon’s only federal prison report dire medical care](#), OPD; A. Lacey (July 26, 2022), [Federal Prison Officials Knew of Misconduct, Corruption, and Abuse, Senate Investigation Finds](#), The Intercept; C. Thompson (May 31, 2022), [How the newest federal prison became one of the deadliest](#), NPR.

<sup>6</sup> Office of the Inspector General (Nov. 16, 2021), [Management Advisory Memorandum: 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](#).

<sup>7</sup> Federal Bureau of Prisons (2019), [After Action Report: Partial Electrical and Reported Heating Outage Civil Disturbance](#).

<sup>8</sup> Homeland Security and Governmental Affairs Permanent Subcommittee On Investigations (July 26, 2022), [Witness Opening Statements in PSI Hearing Investigating Corruption, Abuse, & Misconduct at U.S. Penitentiary Atlanta](#).

\$6.95) all must be purchased by the inmate. Commissary is a necessity as dining hall servings get smaller.”<sup>9</sup>

By depriving individuals of much needed necessities, the proposed rule will worsen already inhumane conditions. Limiting access to medication, sick calls, hygiene supplies, and warm clothing will threaten the health of incarcerated individuals. Desperation for necessities will make individuals more vulnerable to exploitation and sexual violence. And these harms will disproportionately be borne by poor Black and Brown people.<sup>10</sup>

### The Proposed Rule will Drain Resources from the Most Vulnerable Communities

Incarcerated people who work in prisons make just pennies per hour. According to the BOP, prisoners working for the Federal Prison Industries (operating under the trade name UNICOR), earn between \$.23/hour to \$1.15/hour. The numbers are significantly lower for non-UNICOR workers, who earn between \$.12/hour to \$.40/hour, depending on grade.<sup>11</sup> Full time employment therefore does not guarantee an individual will earn enough to meet basic needs – especially given rising commissary costs due to inflation. For example, in FCI Fairton, one of the cheapest toothbrushes available in commissary, “Colgate toothbrush medium,” is \$0.95, and the cheapest toothpaste available, “Aim toothpaste,” is \$1.60, for a combined total of \$2.55 for both items.<sup>12</sup> An incarcerated person working in a non-UNICOR assignment at \$.12/hour would have to work over *21 hours* just to be able to make enough to purchase these two items. Yet most people need much more than a toothbrush and toothpaste to survive.

Loved ones in the community in turn contribute those funds necessary for survival. Those family members are disproportionately Black and Brown<sup>13</sup> and low-income.<sup>14</sup> The proposed rule is a regressive tax that will fall heaviest on the most vulnerable communities, deepening cycles of poverty and harm – ultimately threatening public safety.

### The Proposed Rule Runs Counter to the Purpose and Text of the First Step Act

The proposed rule is counter to the purpose of the First Step Act, as well as the BOP’s own objective of reducing recidivism. The First Step Act incentivizes participation in evidence-based recidivism reduction programs and productive activities by allowing individuals to earn good time credits.<sup>15</sup> The Department contends that participation in the IFRP is a “productive activity.” Productive activities are defined by statute as “either a group or individual activity that is designed to allow prisoners determined as having a minimum or low risk of recidivating to

---

<sup>9</sup> Communication on file with the CAN-DO Foundation.

<sup>10</sup> Bureau of Prisons (Mar. 4, 2023), [Inmate Race](#).

<sup>11</sup> Bureau of Prisons (2023), [Inmate Financial Responsibility Program: Procedures Proposed Rule](#), 88 FR 1331.

<sup>12</sup> Bureau of Prisons, [FCI Fairton Commissary Ordering Form](#).

<sup>13</sup> Bureau of Prisons (Mar. 4, 2023), [Inmate Race](#).

<sup>14</sup> See FWD.us (2018), [Every Second: The Impact of the Incarceration Crisis on American Families](#); Lewis, N. (2018), [Mass Incarceration](#), People’s Policy Project.

<sup>15</sup> See Bureau of Prisons, [An Overview of the First Step Act](#); see also [Justice Department Announces New Rule Implementing Federal Time Credits Program Established by the First Step Act](#), U.S. Department of Justice.

remain productive and thereby maintain a minimum or low risk of recidivating, and may include the delivery of the programs....to other prisoners.”<sup>16</sup>

The BOP has provided no evidence that the proposed IFRP rule makes people less likely to recidivate, nor does it apply to solely minimum or low risk individuals. Indeed, it is not even an “activity” for incarcerated individuals – rather it is a financial burden primarily imposed on their families. There are also myriad circumstances, unrelated to an individual’s likelihood of recidivism, where an individual faced with the choice between IFRP participation or being able to afford basic necessities for survival, may validly choose the latter. To the contrary, the proposed rule may increase recidivism. The relationship between community connection and recidivism is one that is extensively documented.<sup>17</sup> This connection is threatened when individuals cannot, for example, afford phone calls and postage.

Additionally, Congress also intended that the First Step Act would apply equally to all individuals in federal prisons regardless of wealth. The BOP, in its explanation of the proposed rule, recognizes the inequality of the rule.<sup>18</sup> In turn, the rule invites a disproportionate application of the First Step Act itself. Finally, it intrudes on the First Step Act’s purpose of reducing lengthy sentences by conditioning relief on participation in a program which has no bearing on recidivism and which may not be financially accessible to all.

### The Proposed Rule is Unnecessary

The Department already has effective means of enforcement restitution requirements: for example, in response to news reports regarding R. Kelly’s high account balance and his non-payment of restitution, the Department successfully secured a court order confiscating nearly \$30,000 from Kelly’s account.<sup>19</sup>

Furthermore, if an individual is wealthy at the time of sentencing, then the government can also ask the court to make a portion of the criminal monetary judgment restitution due and payable immediately pursuant to 18 U.S.C. § 3664(f)(2) (“[T]he court shall . . . specify in the restitution order the manner in which, *and the schedule according to which*, the restitution is to be paid....”).

Additionally, if an individual receives an infusion of money onto their books, then the government can seek to seize that money using 18 U.S.C. § 3664(n), which provides that “[i]f a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.”

---

<sup>16</sup> 18 U.S. Code § 3635.

<sup>17</sup> See National Institute of Justice (2021), [Desistance From Crime: Implications for Research, Policy, and Practice](#); Forrest, W. (2007), [Adult Family Relationships and Desistance from Crime](#).

<sup>18</sup> Bureau of Prisons (2023), [Inmate Financial Responsibility Program: Procedures Proposed Rule](#), 88 FR 1331.

<sup>19</sup> Price, J. (2022), [Judge Orders R. Kelly’s \\$28,000 in Prison Inmate Account to Be Seized](#), Complex.

The Department has viable means of obtaining restitution from wealthy individuals – it should use them, rather than adopting a rule which imposes an undue burden on most incarcerated people.

Conclusion

We appreciate this opportunity to provide feedback. We urge the BOP to make policy decisions that do not exacerbate cycles of poverty and incarceration, respect the dignity of people in federal prisons, and more clearly align with its goal of reducing recidivism.

Sincerely,

CAN-DO Foundation  
The Leadership Conference on Civil and Human Rights  
The Sentencing Project