

March 13, 2023

Legislative & Correctional Issues Branch
Office of General Counsel, Bureau of Prisons
320 First Street NW
Washington, DC 20534

Re: Opposition to Proposed Rule Amendments to 28 CFR 545

Dear Assistant Director of the Office of General Counsel and Bureau of Prisons' General Counsel James Willis,

We, the undersigned non-profit advocacy organizations, are writing to oppose the Federal Bureau of Prisons (BOP) proposed amendment to 28 CFR 545 regarding the Inmate Financial Responsibility Program (IFRP) in the strongest possible terms.

We understand that the BOP would like to ensure that victims receive the restitution they are owed. However, this proposed rule change was inspired by a small number of cases in which someone incarcerated in the federal prison system held large sums of money in their prison account despite not paying victim restitution.¹ The circumstances of these few do not represent the circumstances of the majority of those held in federal prisons and should not be the basis of a system-wide rule change that will disproportionately harm those with the least. The system has tools at its disposal to ensure wealthy people pay the victim restitution they owe, making a rule change of this magnitude unnecessary.² Further, the BOP should reflect on the way that its own policies are undermining victim restitution.

While the BOP asserts that participation in the IFRP is voluntary, the punishments for not participating make it clear that it is not. These punishments include: notification to the Parole Commission, preclusion of furlough eligibility, preclusion of certain pay benefits or increases, preclusion of eligibility for premium work opportunities and/or removal from a UNICOR work assignment, commissary spending restrictions, loss of release gratuity, and loss of early release and financial awards otherwise available to people who participate in residential drug treatment programs.³ In other words, incarcerated people in the BOP's custody could have their pay cut,

¹ Barrett, Devlin. "Federal Inmates Would Pay More to Victims Under New Justice Dept. Rule." *The Washington Post*, January 9, 2023,

<https://www.washingtonpost.com/national-security/2023/01/09/prisoner-accounts-new-rules-victims/>.

² Barrett, Devlin. "Judge Orders R. Kelly's Prison-Account Money Be Turned Over to Court." *The Washington Post*, September 9, 2022, <https://www.washingtonpost.com/national-security/2022/09/09/r-kelly-prison-account/>.

³ "Inmate Financial Responsibility Program: Procedures." Federal Register, National Archives, January 10, 2023, <https://www.federalregister.gov/documents/2023/01/10/2023-00244/inmate-financial-responsibility-program-procedures>.

lose their jobs, and even have their time extended for not participating in the IFRP. Under these circumstances, the program is by no means voluntary.

The overwhelming majority of incarcerated people lack financial resources,⁴ and contrary to popular belief, prisons and jails often fail to meet the basic needs of incarcerated people entrusted to their care. The BOP is no different. People incarcerated in the BOP's facilities often go without their basic nutritional, hygiene, clothing, and communications needs met. Many go hungry, lack soap and deodorant, wear worn down or soiled clothing, and go months without a call with a loved one. They use the little they earn, often just pennies an hour, and what their loved ones are able to send them to try to meet these needs, mitigate these harms, and retain their dignity behind bars.

Their families, who are disproportionately low-income, struggle financially to support their loved ones in prison.⁵ They are forced to make impossible decisions between paying for a phone call with their incarcerated loved one and paying for rent, gas, utilities, medication, and even food. One in three families goes into debt over the simple cost of calls and visits, layer on the cost of commissary and that number just grows.⁶ Importantly, these costs disproportionately impact Black and Brown communities, who are arrested and incarcerated at disproportionate rates thanks to racist policing and sentencing, and women, who are often left bearing the financial and emotional burden of supporting incarcerated family members.

The support that families provide their incarcerated loved ones can change a facility. It increases hope, reduces desperation, and encourages participation in rehabilitative programming. It also reduces tension and violence, improving work conditions for corrections officers. And people who have support from their loved ones during their incarceration have a better chance at securing housing and employment before release and ultimately at reentering successfully,⁷ which translates into increased public safety and lower future carceral costs.

The proposed amendments, which seek to tap the last resources incarcerated people and their loved ones have, undermine these social benefits. And they are far from necessary to solve a problem presented by just a handful of people who have wealth.⁸ The reality is that the majority of people in the BOP's custody go without every single day. It is unconscionable for the BOP to extract every last dime that incarcerated people have to provide for themselves or that their

⁴ Rabuy, Bernadette, and Daniel Kopf. "Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned." Prison Policy Initiative, July 9, 2015, <https://www.prisonpolicy.org/reports/income.html>.

⁵ "Half of Americans Have Family Members Who Have Been Incarcerated." Equal Justice Initiative, June 3, 2022, <https://eji.org/news/half-of-americans-have-family-members-who-have-been-incarcerated/>.

⁶ "Key Findings." Who Pays?, September 2015. <https://www.whopaysreport.org/>.

⁷ "The Effects of Prison Visitation on Offender Recidivism." Minnesota Department of Corrections, November 2011, https://mn.gov/doc/assets/11-11MNPrisonVisitationStudy_tcm1089-272781.pdf.

⁸ Barrett, Devlin. "U.S. Prison Officials Resist Making Inmates Pay Court-Ordered Victim Fees." *The Washington Post*, August 4, 2022, <https://www.washingtonpost.com/national-security/2022/08/04/federal-prisons-money-victims/>.

families scrounge up to support them, especially as it fails to meet their basic mandate to provide for them. The BOP's audacity is reprehensible.

More specifically, we strongly oppose the following proposed amendments:

1. Terminating the \$75 long-standing safeguard for phone calls in IFRP payment calculations,
2. Replacing the IFRP minimum payment of \$25 with a minimum payment of 25% of earned income for individuals assigned to UNICOR grade 5 or non-UNICOR work assignments, and
3. Requiring that 75% of non-institution (community) deposits in an individual's account be allotted to IFRP payments.

First, the BOP proposes terminating a longstanding safeguard for access to phone calls, making it harder for incarcerated people and their families to stay connected. Since 1993, the BOP has allowed incarcerated people to preserve a small amount, now \$75 per month, for phone calls. Terminating this protected reserve will cut off contact between incarcerated people and their loved ones. The BOP asserts that the amendment will not reduce phone access because it must provide one call per month to indigent people. This claim is offensive in that it suggests one call per month is enough. With calls running between \$0.06 and \$0.14 per minute,⁹ \$75 per month can fund a lot more than one call. Moreover, very few people are even eligible for the free call since only people with less than \$6 in their account are considered indigent,¹⁰ a threshold that is far too low. Importantly, Congress determined that one call is not enough when it increased the monthly allowance for calls to 500 minutes per month and made all calls in federal prisons free during the pandemic through the CARES Act. With emergency relief in the CARES Act expiring in May 2023, this amendment comes at the most difficult time, exactly when incarcerated people need to pay for calls again.

Second, the BOP proposes replacing the current quarterly IFRP minimum payment of \$25 with a minimum payment of 25% of earned income for incarcerated people assigned to UNICOR grade 5 or non-UNICOR work assignments. The proposed amendment is aimed at taking even more from incarcerated people with the lowest paying work assignments. The hourly wage for these jobs starts at just \$0.19¹¹ and has barely changed in decades despite inflation-related increases in commissary prices. Still, the BOP is proposing to increase garnishments on these meager wages, which incarcerated people are already forced to stretch to meet their basic needs and often fall short.

⁹ "Long Distance Phone Rates Reduced." Bureau of Prisons, https://www.bop.gov/resources/news/20140212_reduced_phone_rate.jsp. "FCC Lowers Interstate and International Phone Rates to Help Families Stay Connected." FCC, <https://docs.fcc.gov/public/attachments/DOC-372625A1.pdf>.

¹⁰ "Institution Supplement Legal Activities, Inmate." Bureau of Prisons, https://www.bop.gov/locations/institutions/otv/OTV_legal_activities.pdf

¹¹ "Work Programs." Bureau of Prisons, https://www.bop.gov/inmates/custody_and_care/work_programs.jsp.

Third, the BOP proposes confiscating 75% of outside contributions to a person's account. With wages that max out at \$1.15,¹² incarcerated people often reluctantly rely on loved ones outside to help meet their basic needs. Families struggle deeply to help provide for their loved ones inside, making impossible decisions between their loved ones' needs and their own. These struggles can lead to tension that tears families apart. The BOP's current proposal would multiply their struggles and these tensions. With \$0.75 of every dollar confiscated, families would need to quadruple their contributions to provide their incarcerated loved ones the same support. Most will not be able to, and more importantly, they should not have to.

All of the proposed amendments have a disproportionate impact on low-income people and families, and the BOP acknowledges it. In the current proposal, the BOP explains that it would be more equitable to support a progressive scheme that levies marginally increasing garnishments against wealthier accounts,¹³ but that it abandoned this scheme due to technological and administrative hurdles. This is an unacceptable compromise that most incarcerated people and their families simply cannot afford.

Further, the BOP has a duty to honor President Biden's Executive Order 13985, which directs federal agencies to evaluate whether their policies produce racially inequitable results and requires agencies to ensure that underserved communities are properly supported.¹⁴ The proposed amendments, have a disproportionate impact on Black and Brown families that are disproportionately represented in the carceral population. To ignore this is to ignore the President's executive order.

If the BOP was really serious about getting victim's their restitution, they would not be looking for thousands of dollars in penny wages. Given what incarcerated people make, it is rare that they can pay restitution during their incarceration even if they abide by every recommendation of the IFRP. The reality is that when BOP steals wages from incarcerated people, they do not just steal financial stability from them and their families, but also restitution from their victims. So, to start, the BOP might consider paying incarcerated workers real wages as recent legislation has proposed.¹⁵

¹² "UNICOR Program Details." Bureau of Prisons, https://www.bop.gov/inmates/custody_and_care/unicor_about.jsp.

¹³ "Inmate Financial Responsibility Program: Procedures." Federal Register, National Archives, January 10, 2023, <https://www.federalregister.gov/documents/2023/01/10/2023-00244/inmate-financial-responsibility-program-procedures>.

¹⁴ "Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." The White House, January 20, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹⁵ "Booker Introduces Package of Bills to End Unfair and Abusive Labor Practices in U.S. Correctional Facilities." Cory Booker United States Senator for New Jersey, February 17, 2023,

The bottom line is that the proposed amendments will do little for victims, take from low-income families, and undermine public safety. The BOP's proposed amendments will not meaningfully increase payments to victims because there is just so little to pull from. They will increase the frequency that families will need to choose between sending money to their incarcerated loved ones for calls, toiletries, and food staples and purchasing those very same necessities for themselves, pushing many further in financial despair. And they will decrease the frequency that incarcerated people can speak with their families and prepare for reentry, undermining all the associated public safety benefits. The BOP must abandon these proposed amendments to 28 CFR 545.

Sincerely,

Worth Rises

Formerly Incarcerated, Convicted People and Families Movement (FICPFM)

Fines & Fees Justice Center

Color Of Change

Washington Lawyers' Committee for Civil Rights and Urban Affairs

Alabama Justice Initiative

All of Us or None - Riverside, CA

All of Us or None - Sacramento, CA

All of Us or None - Texas

All of Us or None - Wisconsin

Amani Way

Amnesty International USA - Group #213

Aspiring Texas Latinos Achieving Success Together (ATLAST)

Aubin Pictures

Benevolence Farm

Black & Brown Revolutionary Rootz Agricultural Arts Political Party (#BBRRAAPP)

Black Abortion Defense League

Black Church Action Fund

Boston Immigrant Justice Accompaniment Network

Catholic Worker

Center for Death Penalty Litigation (CDPL)

Church World Service

Communities United for Restorative Youth Justice (CURYJ)

Community Civil Activist

CURE (Citizens United for Rehabilitation of Errants)

<https://www.booker.senate.gov/news/press/booker-introduces-package-of-bills-to-end-unfair-and-abusive-labor-practices-in-us-correctional-facilities>.

CURE-DC
Daughters Beyond Incarceration
Direct Action for Rights & Equality (DARE)
Emancipate NC
Families and Friends of the Wrongfully Convicted (FFWC)
Fenced In: Fighting For Freedom Advocacy
Filling the Gap
Fr. Charlie Mulholland Catholic Worker House
FREE
FirstFollowers
Forward Justice
Georgetown University Prisons and Justice Initiative
Grassroots Leadership
Greater Boston Legal Services
Helping Hands Outreach Services Mississippi
How Our Lives Link Altogether! (H.O.L.L.A!)
Illinois Coalition to End Permanent Punishments (ICEPP)
Institute of Indigenous Americas Legacy
International CURE
Just Future Project
Justice Served North Carolina
JustLeadership USA
Legal Aid Justice Center
Legal Services for Prisoners with Children
Life Coach Each One Teach One Reentry Fellowship
Life Comes From It
Live Free USA
Lived Experience Voices (LEX V)
Loughney Art
Michigan CURE
Michigan Justice Advocacy
NAMI - Huntington
National Employment Law Project
NETWORK Lobby for Catholic Social Justice
Nibblins Services
North Carolina Coalition for Alternatives to the Death Penalty
North Carolina Second Chance Alliance
North Carolina Stop Torture Now
Now We Rise!
Ohio Justice & Policy Center

Operation Restoration
Partners for Justice
Prison Communities International
Public Defender Service for the District of Columbia
RAHAM
Reaching and Educating for Community Hope (RECH) Foundation
Real Cost of Prisons Project
RENFORCE
Rep GA Institute
Represent Justice
RestoreHER US.America
Road To Change
Santa Cruz Barrios Unidos
SWOP Behind Bars
Teaching Ourselves New Examples Uplifting People (T.O.N.E U.P.)
The Community
The National Council for Incarcerated and Formerly Incarcerated Women and Girls
The P.A.P. Network
The People's Canvass
United Church of Christ Media Justice Ministry
Voice of the Experienced
We Are One (WAO)
WE GOT US NOW
WIN Recovery
Witness to Mass Incarceration
Women on the Rise
Zealous