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RE Inmate Financial Responsibility Program: Procedures

The Fines and Fees Justice Center (FFJC) writes to offer comments on the Bureau of Prisons' proposed amendment to 28 CFR 545 regarding the Inmate Financial Responsibility Program (IFRP).¹ We oppose the proposal in the strongest possible terms.

The proposed amendment seeks to confiscate a whopping 75 percent of outside contributions to a person's commissary account to pay off court-ordered fines, fees, and restitution. If implemented, it will financially devastate thousands of low-income people incarcerated by the Bureau of Prison (BOP) and undermine their ultimate reentry to their communities; it will exacerbate poverty for their families, forcing them to forgo food, rent or other necessities in order to provide for an incarcerated loved one; and, because it is admittedly and unjustifiably inequitable and particularly harms low-income, Black, and Latino people, it will directly contravene President Biden's explicit policies and directives.

FFJC is the only national organization focused exclusively on the unjust and harmful imposition and enforcement of fines and fees in the criminal legal system. We are working to create a justice system that treats individuals fairly, ensures public safety, and is funded equitably. FFJC works together with affected communities and legal system stakeholders to eliminate fees in the justice system, ensure that fines are equitably imposed and enforced, and end abusive collection practices.

Stripping incarcerated people of their commissary funds, and thereby their access to basic necessities, perpetuates inequities for low-income people and families of color.

The financial circumstances of individuals incarcerated under the BOP are often dire and can have far-reaching effects on their daily lives as well as the lives of their families. The vast majority of people who enter the federal prison system are poor. Research has shown that the median

¹ 88 FR 1331.

annual income for incarcerated people aged 27 to 42 before incarceration was \$19,185 – 41 percent lower than their non-incarcerated peers.² Once in BOP custody, people can earn only between 12 cents and 40 cents per hour for their work,³ meaning that many depend on their families to supplement their income in order to purchase essentials BOP does not provide, such as food, hygiene products, underwear, socks, toiletries, laundry detergent, over-the-counter medications, medical visits, and phone calls.

Families of incarcerated individuals also face their own financial struggles. According to a survey of formerly incarcerated people and their families, 63 percent of respondents reported that family members were primarily responsible for covering conviction-related costs.⁴ The same survey also shows that nearly half of working families could not afford these costs of incarceration but made sacrifices to aid their loved ones.

The likelihood of having a family member incarcerated is 61 percent higher for adults from households earning less than \$25,000 per year than those earning over \$100,000 per year.⁵ Those who financially support people incarcerated are primarily low-income individuals. Low-income Black women distinctively carry a higher burden of supporting loved ones in prison than any other demographic.⁶ Helping a family member in BOP custody can result in a significant financial burden for these families, who are often already struggling to make ends meet. Many families report being forced to take out loans to cover the costs.⁷

This proposal to take 75 percent of outside contributions to an individual's commissary account penalizes family members and friends in the community who are trying to help their loved ones survive incarceration. One of the reasons those who support imposing court costs on incarcerated individuals often tout as justification for enforcing these costs is the claim that financial penalties hold people accountable on some level. Yet, this proposal would take the money from contributions made by loved ones who have not committed any crimes. Families will bear the burden of that financial penalty. Under the new proposed amendment, a mother who wants to ensure her imprisoned son is able to meet his daily needs, would need to come up with

² Bernadette Rabuy & Daniel Kopf, "Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned," Prison Policy Initiative, July 2015, available at <https://www.prisonpolicy.org/reports/income.html>.

³ Federal Bureau of Prisons, "Work Programs" webpage, available at: https://www.bop.gov/inmates/custody_and_care/work_programs.jsp.

⁴ Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi, *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, Forward Together, Research Action Design, 9 (September 2015), www.whopaysreport.org [hereinafter "deVuono-powell et. al, *Who Pays?*"]

⁵ Equal Justice Initiative, "Half of Americans Have Family Members Who Have Been Incarcerated," December 2018, available at: <https://eji.org/news/half-of-americans-have-family-members-who-have-been-incarcerated/>.

⁶ deVuono-powell et. al, *Who Pays?* 9; Alabama Appleseed et al., *Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama's racial wealth divide*, 23 (2018), <https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf>.

⁷ deVuono-powell et. al, *Who Pays?* 13-14.

\$400 in order to see that her son gets just \$100 in his commissary account. By extracting this money out of low-income communities, the Bureau of Prisons is actively perpetuating the cycles of poverty that so many families struggle to escape.

The proposed amendment will not fix the problem the Department is seeking to address.

Recent news reports of high-profile, wealthy federal prisoners amassing significant amounts of money in their prison accounts and failing to pay court-ordered restitution to victims, sparked a Department of Justice Review of the IFRP.⁸ BOP's proposed amendment uses a hatchet instead of a scalpel. Firstly, instead of devising a proposal that takes the amount of court-ordered restitution from the handful of notorious and wealthy people with the resources to pay, the amendment extracts money from the largely poor and vulnerable majority and their families. Secondly, the money that would be taken under BOP's proposal is not limited to restitution. It also includes court fines, fees, and other costs that generate revenue for the courts and the federal government. These are simply taxes on those who have been convicted of an offense, and more often on their families, and do not help victims of crime.

Additionally, many of the high-profile wealthy individuals won't be affected by this amendment. Only those who participate in the IFRP are subject to having money from their loved ones confiscated in this way. While there are penalties for not participating in the IFRP – such as poor reports to the parole board and loss of good-time credits – it is not mandatory, and those penalties have no significant effect on people who have little expectation of release.⁹ The typical person in BOP custody who is not amassing wealth will have to participate in the IFRP and have their commissary money confiscated under this proposal.

Finally, this class of millionaires are far from reflective of the incarcerated population. According to the *Washington Post*, roughly 20 of the over 100,000 people incarcerated in BOP facilities had \$100,000 or more in their accounts.¹⁰ That is one-tenth of one percent of the BOP population. Public policy should never be made based on exceptions, without regard to the impact of the overwhelming majority. Moreover, the federal government has other ways of forcing people with resources to pay restitution to their victims. Indeed, the BOP generated almost \$2 million from FY19 to FY21 from the interest off Inmate Trust Fund accounts – which it keeps for itself.¹¹ If the Department of Justice is truly interested in seeing money from these accounts go to victims of

⁸ Delvin Barrett, “Judge orders R. Kelly’s prison-account money be turned over to court,” *Washington Post*, Sept. 9, 2022, available at:

<https://www.washingtonpost.com/national-security/2022/09/09/r-kelly-prison-account/>.

⁹ Devlin Barrett. “Federal inmates would pay more to victims under new Justice Dept. rule,” *Washington Post*, Jan. 9, 2023, available at:

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

¹⁰ Id.

¹¹ Department of Justice letter to Jason Wojdylo responding to a Freedom of Information Act request regarding the Bureau of Prisons' Trust Fund, July 18, 2022, available at:

<https://www.documentcloud.org/documents/22126952-2022-04342-wojdylo-response>.

crime, the BOP could allocate that interest income to an incarcerated person's restitution payment, rather than pocketing those proceeds itself. The Department of Justice also retains the option to ask federal courts to force larger restitution distributions from individual high-figure inmate accounts, and it has successfully done so.¹²

The Department of Justice explicitly acknowledged that its proposal to sweep commissary funds is inequitable and unjust.

In the proposal itself, the BOP admits that it is possible to implement “a system similar to progressive taxation, which would apply a lower marginal rate to amounts below a certain threshold and higher marginal rate to amounts above that threshold.”¹³ The BOP explicitly recognizes that such an approach is “more equitable.” But it then rejects that option because it would cause some “technological and administrative challenges for the Bureau.”¹⁴ In other words, the Department of Justice is explicitly saying that equity is not worth its time or effort.

The proposed seizure of funds is in direct conflict with the Biden Administration's policies for racial and economic equality as well as its commitment for rehabilitation of incarcerated individuals.

The Bureau of Prisons' proposed amendment to the IFRP is in direct conflict with President Biden's Executive Order 13985 – Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. The order directs federal agencies to evaluate whether their policies produce racially inequitable results when implemented and to make the necessary changes to ensure underserved communities are properly supported.¹⁵ The BOP is considering implementing policies that would worsen racial inequities. The executive order requires agencies to embed “fairness in the decision-making process” and “work to redress inequalities in their policies and programs.”¹⁶ The BOP fails to do that with this proposal, which would have a disproportional impact on people of color and their families. Black and Latino adults are more likely to have an immediate family member incarcerated and for extended periods than white adults.¹⁷ The proposed amendment would disparately impact Black and Latino families that support their loved ones while incarcerated.

¹² Nina Pullano, “R. Kelly ordered to pay sex abuse victims \$309K,” *Courthouse News Service*, (Sept. 28, 2022) available at: <https://www.courthousenews.com/r-kelly-ordered-to-pay-sex-abuse-victims-309k/>.

¹³ 88 FR 1331.

¹⁴ Id.

¹⁵ Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, January 20, 2021, available at: <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/>

¹⁶ Id.

¹⁷ Elderbroom et al., *Every Second: The Impact of the Incarceration Crisis on America's Families*, FWD.us, December 2018, available at <https://everysecond.fwd.us/downloads/everysecond.fwd.us.pdf>

The White House is so adamant about advancing equity that the administration recently released a second executive order to address systemic racism in policies and programs.¹⁸ This order, which builds on Executive Order 13985, stresses the importance of building community wealth. Families often bear the financial burden of a loved one's court debt, depleting economic resources from the greater community. With this proposal, loved ones would need to send even more money to sustain their incarcerated loved ones, thus removing even more money from their own households and communities. Keeping money in their communities is needed to stabilize families and create healthier, more economically prosperous communities.

The Biden Administration has also emphasized second chance programs and policies to aid formerly incarcerated people with the opportunity to reintegrate into their community successfully.¹⁹ Although the Bureau recognizes the importance of "planning for reentry, including the availability of financial resources,"²⁰ this proposed amendment would make it increasingly difficult for incarcerated people to save in preparation for reentry.

For all of these reasons, FFJC strongly opposes the proposed amendment and urges the Bureau of Prisons to withdraw it.

If you would like to discuss this comment further, please feel free to contact me at tcurry@fineandfeesjusticecenter.org.

Sincerely,

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¹⁸ Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government, February 16, 2023, available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

¹⁹ Fact Sheet: Biden-Harris Administration Expands Second Chance Opportunities for Formerly Incarcerated Persons, The White House, April 26, 2022, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/26/fact-sheet-biden-harris-administration-expands-second-chance-opportunities-for-formerly-incarcerated-persons/>

²⁰ 88 FR 1331.