

RICHARD J. DURBIN, ILLINOIS, CHAIR

DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA
PETER WELCH, VERMONT

LINDSEY O. GRAHAM, SOUTH CAROLINA
CHARLES E. GRASSLEY, IOWA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
JOSH HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KENNEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 13, 2023

The Honorable Merrick B. Garland
Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Colette Peters
Director
Federal Bureau of Prisons
320 First Street NW
Washington, D.C. 20534

Dear Attorney General Garland and Director Peters:

We write in response to your request for comment on the Department of Justice (DOJ) and Bureau of Prisons' (BOP) proposed rule on the Inmate Financial Responsibility Program: Procedures. We applaud DOJ and BOP for taking action to address troubling reports about inmate accounts held by certain high-profile individuals; however, we have serious concerns that the proposed rule would further marginalize the vast majority of incarcerated individuals who are indigent and would create additional barriers to successful reentry.

Beginning in June 2021, the *Washington Post* published a series of articles reporting how notorious criminals, including disgraced USA Gymnastics doctor Larry Nassar, singer R. Kelly, and Boston Marathon Bomber Dzhokhar Tsarnaev, held thousands of dollars in their inmate trust accounts while paying little to nothing to their victims.¹ The reports made clear that BOP was failing in its duty to effectively manage the Inmate Trust/Deposit Fund Program (Trust Fund Program) with respect to these individuals' accounts and that the program was in serious need of reform. In response to the *Post*'s reporting, the Judiciary Committee called for BOP to provide information on its management and oversight of the Trust Fund Program to the Senate Judiciary Committee.²

Shortly after our letters, Deputy Attorney General Lisa Monaco issued a directive to the BOP Director to undertake reforms to the Trust Fund Program that would "strengthen appropriate monitoring and reporting, consistent with applicable law."³ In response, BOP issued

¹ Devlin Barrett, "[Federal Prisoners hold \\$100 million in government-run accounts, shielded from some criminal scrutiny and debt collection](#)," The Washington Post (Jun. 9, 2021); Devlin Barrett, "[Prison officials allowed convicted sex abuser Larry Nassar to pay little to victims while spending thousands on himself](#)," The Washington Post (Jul. 28, 2021); Devlin Barrett, "[Prosecutors seek money from Boston Marathon bomber's prison bank account](#)," The Washington Post (Jan. 5, 2022); Devlin Barrett, "[U.S. prison officials resist making inmates pay court-ordered victim fees](#)," The Washington Post (Aug. 4, 2022).

² [Durbin, Grassley, Judiciary Committee Members Press BOP For Answers on Inmate Trust Accounts](#), Press Release, (Jun. 29, 2021); [Durbin, Grassley Press BOP on Restitution for Victims of Larry Nassar](#), Press Release, (Aug. 4, 2021)

³ Letter from Department of Justice Deputy Attorney General Lisa Monaco to Senator Richard J. Durbin, (Aug. 20, 2021)

guidance on monitoring inmate accounts, improving coordination with law enforcement partners on investigating and taking appropriate action against suspicious activity, identifying funds that should be encumbered to meet financial obligations, partnering with other Department components and federal agencies to ensure that such funds are used to help meet those obligations, and taking all other appropriate steps to reduce opportunities for abuse.⁴

These were reasoned and measured steps to bringing greater accountability to inmate financial accounts, and addressing the specific issue of individuals with unusually large account balances failing to meet financial obligations. Unfortunately, the proposed rule lacks similar reason and measure. Further, many of the proposed changes have a substantial likelihood of impeding successful reentry.

First, the Department's proposed rule eliminates a minimum threshold for an incarcerated person's account balance before subjecting the account to assessments.⁵ Prior to the proposed rule, the Inmate Financial Responsibility Program (IFRP) allowed individuals to retain at least \$75 per month for telephone calls.⁶ The Department justifies this change by arguing that incarcerated people are entitled to "one collect call per month" and that the government may pay for an individual's telephone use under "compelling circumstances."⁷ These justifications are not persuasive.

Without adequate safeguards, the risk is too high that incarcerated people may retain insufficient funds to meaningfully communicate with their families. BOP itself acknowledges that "studies show that when inmates maintain relationships with friends and family, *it greatly reduces the risk they will recidivate* (emphasis added)."⁸ The vast majority of people incarcerated in federal prisons will eventually return to the community. Maintaining family ties while incarcerated will, to again quote BOP, "improve the likelihood of a successful reentry into the community."⁹ Given this important interest, the elimination of a minimum reserve in an inmate account is unwise. Moreover, taking an indigent person's last \$75 to meet financial obligations does nothing to address the primary issue raised by the *Post*: a small number of wealthy prisoners neglecting financial obligations they could easily afford to pay.

BOP also proposes that incarcerated people who participate in the productive activity of working while incarcerated will be required to allot between 25 percent and 50 percent of their pay to IFRP payments. The proposal further mandates that 75 percent of funds from community resources be diverted towards IFRP. These proposals alone are concerning, but coupled with the elimination of a reserve, are even more alarming.

According to the Justice Department, research shows that incarcerated people who work in prison industries were 24 percent less likely to recidivate and 14 percent more likely to be gainfully employed after release from custody than other inmates.¹⁰ The typical hourly pay for

⁴ *Id.*

⁵ Proposed Rules, 28 CFR Part 545, [Inmate Financial Responsibility Program: Procedures](#), 88 Fed. Reg. 6 1331, 1332 (Jan. 10, 2023)

⁶ *Id.*

⁷ *Id.*

⁸ <https://www.bop.gov/inmates/communications.jsp>

⁹ <https://www.bop.gov/inmates/communications.jsp>

¹⁰ <https://www.justice.gov/archives/prison-reform>

jobs in UNICOR or Federal Prison Industries is between 23 cents and \$1.15 per hour, a pay rate that is generally higher than non-UNICOR assignments, which typically range from 12 cents to 40 cents per hour.¹¹ BOP's new proposal requires incarcerated adults employed in lower-paying non-UNICOR assignments to pay 25 percent of their earnings toward IFRP.¹² Effectively reducing prison pay by an automatic 25 percent will disincentivize participation in prison work programs designed to assist incarcerated people in acquiring marketable job skills.

Moreover, a standard 75 percent assessment on all community funds provided to incarcerated people will impose an excessive burden. Incarcerated individuals rely on their trust fund accounts to purchase commissary items, including soap, sweatpants, shirts, laundry detergent, deodorant, ibuprofen, allergy medicine, stamps, and dietary supplements. These items are essential to maintaining a minimal quality of life in prison and are provided in limited quantity, if at all, by BOP.¹³

It is important for incarcerated people to pay their debts, but a standard 75 percent assessment does not appropriately balance this interest with those of adults in custody. While the *Post* reporting focuses on notorious criminals sheltering thousands of dollars in their trust accounts, funds that are often received from outside business income, those individuals are outliers. The vast majority of incarcerated people are low income, and the community funds deposited into their accounts come from family members and other loved ones who send what little they can afford.¹⁴ A 75 percent assessment would amount to a 75 percent "tax" on such deposits, disincentivizing this vital form of community support and resulting, in practice, in family members paying fines and restitution for offenses which they had no role in committing.

BOP raised concerns about the inherent inequity in a standard 75 percent assessment of community deposits, recognizing that "an inmate with an account balance of \$100 and minimal incoming deposits is differently situated than one with an account balance of \$10,000 or one with numerous deposits."¹⁵ The proposed rule details how BOP explored other possible approaches. These approaches include increasing payment percentages as account balances increase and creating a system, similar to progressive taxation, which employs certain thresholds, thereby allowing the Bureau to target large account balances while preserving a minimum amount of funds for an incarcerated person to use. Such approaches are promising alternatives to the proposed rule, as they would allow for substantial contributions toward victim restitution and court-ordered financial obligations while protecting the poorest people in prison. The Bureau concluded, however, that there were technological, administrative, and other disadvantages to employing a particularized or progressive assessment approach.¹⁶ Technological and

¹¹ https://www.bop.gov/inmates/custody_and_care/unicor_about.jsp; Proposed Rules, 28 CFR Part 545, [Inmate Financial Responsibility Program: Procedures](#), 88 Fed. Reg. 6 1331, 1333 (Jan. 10, 2023)

¹² Proposed Rules, 28 CFR Part 545, [Inmate Financial Responsibility Program: Procedures](#), 88 Fed. Reg. 6 1331, 1333 (Jan. 10, 2023)

¹³ Tiana Herring, "[For the poorest people in prison, it's a struggle to access even basic necessities](#)," Prison Policy Initiative (Nov. 18, 2021)

¹⁴ Adam Looney and Nicholas Turner, "[Work and opportunity before and after incarceration](#)," The Brookings Institution, (Mar. 2018)

¹⁵ Proposed Rules, 28 CFR Part 545, [Inmate Financial Responsibility Program: Procedures](#), 88 Fed. Reg. 6 1331, 1334 (Jan. 10, 2023)

¹⁶ *Id.*


administrative challenges to an equitable system are not a sufficient justification to choose an unfair system; we stand ready to work with you to address any impediments to implementing a more just process.

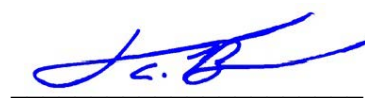
Finally, as sponsors of the First Step Act of 2018 (FSA), we strongly object to the inclusion in the proposed rule of language regarding inmate ineligibility to earn or apply FSA Earned Time Credits (ETC) as an effect of nonparticipation in IFRP.¹⁷ Providing time credits to those who participate in recidivism-reduction programming and productive activities is necessary to meet the FSA's goal of reducing recidivism and making our communities safer. Unfortunately, the Bureau's implementation of the FSA's ETC provisions has been plagued with issues, which this rule would only compound. To take just one example, BOP's ETC auto-calculator continues to assign and retract credits without adequate explanation or opportunities for review and appeal.


An individual may have a number of justifiable reasons for not participating in the IFRP which, as currently proposed, leaves no room for consideration of individual financial circumstances. The choice between earning credits for participating in recidivism reduction programming and retaining enough money in an inmate account to purchase basic necessities is not a choice that any incarcerated person should have to make. BOP should refrain from making participation in the IFRP a disqualifier for Earned Time Credits.

We recommend that the Justice Department review its proposed rule and revise it to appropriately balance the interests of incarcerated people's rehabilitation and basic needs with the interest of addressing outstanding financial obligations.

Sincerely,


Richard J. Durbin
Chair


Cory A. Booker
United States Senator


Sheldon Whitehouse
United States Senator


Christopher A. Coons
United States Senator

¹⁷ Proposed Rules, 28 CFR Part 545, [Inmate Financial Responsibility Program: Procedures](#), 88 Fed. Reg. 6 1331, 1335 (Jan. 10, 2023)