To: Merrick B. Garland, Attorney General  
Colette S. Peters, Director, Federal Bureau of Prisons  
James Wills, General Counsel, Federal Bureau of Prisons  
Daniel J. Crooks III, Assistant General Counsel, Federal Bureau of Prisons


Date: March 13, 2023

Arnold Ventures writes to offer comment on the Bureau of Prisons’ proposed changes to 28 CFR 545 regarding the Inmate Financial Responsibility Program (IFRP). We oppose the proposed amendment related to non-institution (community) resources which seeks to confiscate 75 percent of outside contributions to a person’s commissary account to pay off court-ordered fines, fees, and restitution. We urge the BOP to withdraw the proposed rule change and instead consider approaches that are calibrated to each individual’s financial circumstances. As the BOP acknowledges in its proposal, such an approach would offer a more equitable means to serve the stated purposes of the IFRP.

Arnold Ventures is a philanthropy dedicated to maximizing opportunity and minimizing injustice by investing in evidence-based policy to tackle some of the most pressing problems in the United States. Since 2015, Arnold Ventures has supported researchers, advocates, and reformers, both inside and outside of government, to reform fines and fees with the aim of advancing the values of fairness, effectiveness, and racial justice. Our approach is grounded in the U.S. Constitution’s protection against excessive fines and the guarantees of due process and equal protection. We are also guided by the notion that public safety is a public good, and that government, especially the justice system, should operate fairly and for the benefit of all. And finally, we believe that any monetary sanctions should not function to punish poverty or compound racial disparities. From these premises, we firmly embrace the positions that monetary sanctions should not undermine a person’s financial stability; that fees, surcharges, and costs imposed in connection with law violations should be eliminated; and that inability to pay court fines, fees, and restitution should not result in further isolation or marginalization of those in poverty. Given these positions, Arnold Ventures urges the BOP not to adopt the proposed amendment.

Our opposition to the proposed amendment is also motivated by our commitment to advancing the well-being of individuals inside prison and supporting their successful reentry to American communities. Through philanthropic investment, we support approaches to prison culture and management that center human dignity and potential, increase access to effective interventions and treatment, support family relationships, and reduce recidivism. Given the detrimental impact that the proposed rule change would have on individuals’ well-being in prison, preparation for reentry, and connection with loved ones in the community during incarceration, we oppose the proposed amendment.

A close look at the context of the BOP’s proposed amendment to IFRP suggests that, if implemented, the rule changes will deprive low-income people incarcerated by the BOP of basic necessities; punish
families of the incarcerated while disrupting critical community ties; and cause particular harm to Black, Latino, and low-income families and communities. These harms are especially troubling when considered alongside rigorous causal research that indicates monetary sanctions fail to improve public safety while prolonging court involvement for low-income people.\(^1\)

The vast majority of people entering the federal prison system have extremely limited economic resources and non-institution (community) resources provide a critical lifeline for individuals in prison. According to data collected by the Bureau of Justice Statistics, the median 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 earn between $0.12 and $1.15 per hour for their work, leading many to depend on their families to supplement their income. Money is needed in prison to access medical visits, make phone calls, and purchase essentials such as food, hygiene products, underwear, socks, toiletries, laundry detergent, and over-the-counter medications. The only avenue for families and friends to support incarcerated loved ones financially is by placing money on the individual’s commissary account. Under the BOP’s proposed amendments, 75 percent of those resources would be redirected to pay court fees, fines, and restitution. Undoubtedly, many low-income people imprisoned at BOP facilities would go without basic necessities and even needed medical care if the rule change is adopted.

As families are the primary source of non-institution resources, families will bear the costs of the proposed amendment to the IFRP. Imprisonment already weakens family bonds, depriving people of meaningful family contact and imposing financial and emotional strain on loved ones.\(^3\) Restrictive visitation policies, the location of most prisons far from population centers and inaccessible by public transportation, and the high cost of telephone and computer use inside prisons limit the capacity of families to support their loved ones.\(^4\) Families of the incarcerated go without the income of a family member during their prison sentence and then carry the additional financial burden of providing financial resources to help loved ones access basic needs while in custody. Under the proposed amendment, families’ resources will be confiscated to pay court fees, fines and restitution—all arising from crimes they themselves did not commit.

Families of the incarcerated are disproportionately low-income, Black, and Latino, and thus the burden of the proposed amendment will fall disproportionately on the same communities. Households earning less than $25,000 a year are 61 percent more likely to have a family member incarcerated than those earning over $100,000 per year.\(^5\) One study found that close to two in three families with an incarcerated family

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member cannot afford their households’ basic needs, such as food and housing.\textsuperscript{6} And Black and Latino adults are respectively 50 and 71 percent more likely than White adults to have a family member incarcerated, with Black adults three times more likely than White people to have a family member incarcerated for more than a year.\textsuperscript{7} These are the communities that will be disproportionately impacted by the proposed amendments.

At Arnold Ventures, we aim to correct systemic failures through evidence-based solutions. We oppose financial sanctions that fail to account for a person’s financial circumstances, because they inevitably result in a “two-tiered” system of justice: those with means are able to pay their bill and avoid further consequences, but those without bear an economic hardship often out of proportion to the seriousness of their offense. We believe the proposed amendment as written perpetuates that two-tiered system of justice. Individuals in BOP custody are already serving a severe punishment: the deprivation of their liberty. By adopting the proposed rule, the BOP would exact further and disproportionate harm on individuals and families with limited economic resources. For this reason, we respectfully urge the BOP withdraw the proposed amendment and to instead establish a rule that is calibrated to financial circumstance.

Sincerely,

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Juliene James
Vice President of Criminal Justice
Arnold Ventures

\textsuperscript{7} FWD.us. (2018).