



February 14, 2025

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

Re: Proposed Rule on the Inmate Financial Responsibility Program

Office of General Counsel:

The National Association of Criminal Defense Lawyers (NACDL) submits this comment in response to the Bureau of Prisons' Proposed rule that would change the regulations regarding the Inmate Financial Responsibility Program (IFRP).¹ We regard the Supplemental Notice of Proposed Rulemaking published on December 17, 2024, as a significant improvement on the proposed rulemaking published on January 10, 2023. We thank the Bureau for taking seriously the comments made regarding this initial proposal. Nevertheless, we are concerned that the new rule regarding the IFRP does not comply with the requirements or goals of the First Step Act, signed into law by President Trump in 2018.

NACDL is the preeminent organization in the United States advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for individuals accused of crimes. Founded as a professional bar association in 1958, NACDL has over 10,000 direct members in 28 countries—and 90 state, provincial and local affiliate organizations totaling approximately 40,000 attorneys. Our members include private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors, and judges committed to preserving fairness within America's criminal legal system.

NACDL supports the new proposal of a \$250 floor on a prisoner's commissary account balance that is not subject to deduction under their IFRP. We agree with the Bureau that this will help to ensure that people have some money available to help meet their basic needs while incarcerated. We also acknowledge that the change in the amount taken from outside deposits according to the graduated thresholds proposed is an improvement on the prior proposed rulemaking.

¹ 28 C.F.R. § 545.

Despite the positive changes reflected in the updated proposal, the proposed IFRP continues to conflict with the requirements of the First Step Act (“FSA”).² Although participation in the IFRP is voluntary, refusal to participate will result in ineligibility to earn or apply the FSA’s Earned Time Credits (“FTC”).³ As explained in our previous comment, this penalty remains improper because the IFRP (1) fails to meet the individualized needs of federal prisoners as required by the FSA and (2) does not meet the definition of Productive Activity.

The BOP’s claim that the IFRP is an “Unstructured Productive Activity”⁴ under the FSA’s FTC program remains unchanged.⁵ But to qualify for the FTC program, the FSA requires the BOP to assess the prisoner in thirteen needs areas and then assign programming to reduce the individual’s risk of recidivating.⁶ In other words, each incarcerated person should receive an individualized determination of needs and an individualized determination of programming. The BOP’s own FTC rule also makes clear that successful participation in a Productive Activity “requires a determination by Bureau staff that an eligible inmate has participated in . . . PAs that the Bureau has recommended based on the inmate’s *individualized risk and needs assessment*.”⁷ The proposed IFRP, however, is not individualized. It applies across the board based simply on the value of a prisoner’s commissary account regardless of the prisoner’s actual needs. In fact, the BOP could determine that a person in prison has a Finance/Poverty need yet still require him to participate in the IFRP to earn time credits, allowing the BOP to potentially take a percentage of their funds, effectively rendering this “need” meaningless.⁸

² First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194 (2018), *available at* <https://www.congress.gov/115/plaws/publ391/PLAW-115publ391.pdf>.

³ *See* Inmate Financial Responsibility Program: Procedures, 88 Fed. Reg. 1331, 1335 (proposed Jan. 10, 2023); Inmate Financial Responsibility Program: Procedures, 89 Fed. Reg. 102023, 102029 (proposed Dec. 17, 2024) (“The Bureau has taken very seriously the comments it received in response to the January 2023 NPRM that expressed concerns that conditioning FSA Time Credits on IFRP participation may take away from the FSA’s spirit and intent to encourage individuals in custody to prepare for reentry. However, the Bureau maintains that participation in IFRP demonstrates acceptance of responsibility and is an important step in preparing for reentry.”).

⁴ Inmate Financial Responsibility Program: Procedures, 88 Fed. Reg. 1331, 1335 (proposed Jan. 10, 2023).

⁵ The FSA created two different categories of programs: Evidence-Based Recidivism Reduction (“EBRR”) Programs and Productive Activities (“PAs”). *See* First Step Act of 2018, § 101 (codified at 18 U.S.C. § 3635(5)).

⁶ Federal Bureau of Prisons Program Statement 5410.01, 8, *available at* https://www.bop.gov/policy/progstat/5410.01_cn2.pdf.

⁷ 28 C.F.R. § 523.41(c)(2) (emphasis added).

⁸ The Finance/Poverty need requires the BOP to determine whether the incarcerated person has: any history of bankruptcy; no bank account; no assets or liabilities noted in PSR; debts noted in credit report or other source; tax liabilities/back taxes; unpaid alimony/child support; other indication of lack of financial management skills. Federal Bureau of Prisons, *First Step Act: Initial Review of the SPARC-13 Needs Assessment System*, U.S. Department of Justice, 2022, 7, 27, *available at* https://www.bop.gov/inmates/fsa/docs/bop_fsa_needs_validation_report_2021.pdf.

Moreover, the IFRP does not meet the definition of Productive Activity. The term “Productive Activity means either a group or individual activity that is designed to allow prisoners . . . to remain productive and thereby maintain a minimum or low risk of recidivating.”⁹ Instead of an activity for the incarcerated person to participate in, the proposed IFRP merely takes funds from the individual’s account. The IFRP certainly does not correspond with any Productive Activities listed in the BOP’s Programs Guide, which includes Trauma Education, Cognitive Behavioral Therapy, and Narcotics Anonymous.¹⁰ These programs engage the individual and provide them with new skills to ensure their success when they are released. The IFRP does not do that; simply taking a percentage of funds from a prisoner does not teach any amount of financial planning skills, as the BOP contends.¹¹ In fact, it is entirely unclear how the IFRP would make individuals less likely to recidivate.¹² The BOP has provided no evidence that the IFRP does, in fact, reduce recidivism, which is an underlying principle of the FTC program.¹³

Respectfully submitted,

National Association of Criminal Defense Lawyers

If the answer to any of these questions is yes, “the inmate has a finance/poverty need” and qualifies for EBBRs and Pas to address that need. *Id.*

⁹ See First Step Act of 2018, § 101 (codified at 18 U.S.C. §3635(5)).

¹⁰ Federal Bureau of Prisons, *First Step Act Approved Programs Guide*, 58-72 (Sept. 2023), available at https://www.bop.gov/inmates/fsa/docs/fsa_guide_eng_2023.pdf.

¹¹ See 88 Fed. Reg. 1331.

¹² Federal Bureau of Prisons, *First Step Act: Initial Review of SPARC-13 Needs Assessment System*, U.S. Department of Justice, 27, available at

https://www.bop.gov/inmates/fsa/docs/bop_fsa_needs_validation_report_2021.pdf (noting that “[t]here is a direct correlation between poverty and criminality”).

¹³ Ames C. Grawert & Patricia L. Richman, *The First Step Act’s Prison Reforms*, Brennan Center for Justice at 2 (Sept. 23, 2022), available at <https://www.brennancenter.org/our-work/research-reports/first-step-acts-prison-reforms> (“The [First Step Act] aimed to create a system that would encourage people in prison to participate in programming designed to reduce recidivism—that is, the risk that they would come in contact with the criminal justice system, through arrest or otherwise, after release.”).