

March 13, 2023

North Carolina Fines and Fees Coalition

*Submitted online via regulations.gov*

**RE: Statement against proposed amendment of the Inmate Financial Responsibility Program**

The North Carolina Fines and Fees Coalition (NCFFC) is a coalition of people impacted by criminal justice debt, community members, advocates, attorneys, and researchers across North Carolina organizations working to abolish all fees, fines, and costs inherent to North Carolina courts; thereby ending criminal justice debt and the exploitation inherent in the criminalization of poverty.<sup>1</sup> We believe that criminal justice debt imposed by any level of government - local, state or federal - is punitive, inefficient, and contrary to the goals of rehabilitation. Our coalition submits the following comments on the Bureau of Prisons' (BOP) proposed amendment to 28 CFR 545 regarding the Inmate Financial Responsibility Program (IFRP). We strongly **oppose** the proposal.

NCFFC is especially concerned about the BOP's plan to claim 75% of community contributions made to incarcerated individuals' commissary accounts to cover fines, fees and restitution. The entirety of commissary funds should go directly to the account holders without any deductions for fees or other costs. This change undermines the stated goals of the IFRP. It will not "encourage federal inmates in Bureau facilities to pay financial obligations." Rather, the BOP will lean more heavily on incarcerated individuals' friends and family, who are often struggling to get by themselves, to pay those debts. Nor does the amendment "support federal inmates in developing financial planning skills"—unless calculating the scant amount that remains to them can be considered an aspect of financial planning.<sup>2</sup>

Instead, this proposed amendment would financially devastate people and communities already grappling with numerous disadvantages. These fines and fees target people who are uniquely vulnerable and politically voiceless. They drain wealth from struggling communities. They perpetuate race- and income-based inequality and discrimination.<sup>3</sup> By targeting money sent by

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<sup>1</sup> North Carolina Fines and Fees Coalition, <https://www.endcriminaljusticedebtnc.org/>.

<sup>2</sup> 88 FR 1331.

<sup>3</sup> The research on the harms of court costs is extensive. See for example, Cortney Sanders and Michael Leachman, "Step One to an Antiracist State Revenue Policy: Eliminate Criminal Justice Fees and Reform Fines," Center on Budget and Policy Priorities, <https://www.cbpp.org/research/state-budget-and-tax/step-one-to-an-antiracist-state-revenue-policy-eliminate-criminal>; Matthew Menendez, Lauren-Brooke Eisen, Noah Atchison and Michael Crowley, *The Steep Costs of Criminal Justice Fees and Fines*, Brennan Center for Justice, <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>; Urban Institute, "Fines, Fees, and Forfeitures," <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/fines-and-forfeitures>; Carolina Cohn et al., *The High Cost of a Fresh Start: A State-by-State Analysis*

friends and family, the BOP will deprive, dehumanize and alienate incarcerated individuals, penalize low-income families, and extract resources from the very communities that incarcerated individuals will return to upon release from prison. NCCFFC objects to the proposed amendment to IFRP because it will intensify the harms already inflicted by criminal justice debt in the following ways, including (1) stripping incarcerated individuals of basic necessities; (2) shifting the financial burden of criminal justice debt from the individual to their families; (3) creating a flawed mechanism to achieve victim compensation; and (4) contravening the Biden Administration's Executive Order on Racial Equity.

First, the proposed amendment strips incarcerated individuals of basic necessities. Toiletries, medicine, clothing, small comforts and other items sold by the commissary come at a steep price. As one formerly incarcerated person we spoke to stated, **"Every penny is like gold in there. You've got to pay for everything: washing powder, soap, shampoo, shorts, a radio. You need every penny you can get."**

Incarcerated individuals earn very little working in prison jobs, a fact the BOP notes in its proposed amendment.<sup>4</sup> **"What they pay,"** observed one formerly incarcerated man we spoke with, **"isn't enough money to take care of a grown man for a month."** Nor do incarcerated individuals generally have savings—an overwhelming share of people entering prison are indigent. Almost all are poor enough to qualify for a court-appointed lawyer. Many are coping with additional barriers that put decent-paying jobs out of reach. In North Carolina, 28% of people in prison have a ninth-grade education at most and 72% need long-term substance abuse treatment.<sup>5</sup> As a result, people in prison rely on family and friends to help them purchase the many essentials that BOP does not provide.

BOP's proposed rule is nothing short of financial exploitation. The formerly incarcerated people we spoke with were quick to point out that people in prison will be more likely to refuse outside money and will instead fall back on the behaviors that landed them in prison in the first place. As one gentleman who had been in prison almost 23 years said,

**"People are already struggling with debt. If you know you're not going to get the money, you're going to turn it down because you know it's going to the government. Rather than have your family sacrifice, and then only receive a small part of it, you're going to turn it down. If you're taking all my money, I know I got to get it some other way, rather than see my family bust their butts."**

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*of Court Debt as a Bar to Record Clearing*, National Consumer Law Center, <https://www.nclc.org/wp-content/uploads/2022/08/Report-High-Cost-of-Fresh-Start.pdf>.

<sup>4</sup> 88 FR 1333.

<sup>5</sup> NC Department of Public Safety, *Substance Use Disorder Treatment Programs Annual Report*, March 1, 2019, [https://files.nc.gov/ncdps/FY2017-2018\\_ACDP\\_Annual\\_Legislative\\_Report.pdf](https://files.nc.gov/ncdps/FY2017-2018_ACDP_Annual_Legislative_Report.pdf); NC Department of Adult Correction, Automated System Query, <https://webapps.doc.state.nc.us/apps/asqExt/ASQ> (prison population as of 1/31/2023).

Another said, **“If you don’t get family support, you resort to doing what you have to do to survive. It doesn’t free you of that mindset, it keeps you in that mindset of you got to do what you need to do.”** Ultimately, he noted, **“It compromises the safety of the prison.”** He also pointed out that this proposed change works against successful re-entry, diminishing the amount available to incarcerated individuals upon release.

Second, family or community members should not be on the hook for the incarcerated person’s fines and fees. They make extraordinary sacrifices to provide solace for their loved ones in prison. To snatch money meant as a comfort is a cruel and regressive poverty penalty imposed on financially vulnerable families. When added to the costly burden friends and family shoulder in terms of paying for phone calls, prison visits and the like, the additional claim defies basic notions of justice and decency.

As research has documented, families are commonly responsible for paying court-related costs associated with conviction. These are not affluent families: 65% are unable to meet their own basic needs such as food and shelter.<sup>6</sup> In fact, the person in prison may have contributed to household income. In their absence, families can be destabilized or pushed over the brink financially.<sup>7</sup>

The Federal Reserve, in its gold standard annual report on the economic wellbeing of households in the United States, found that low-income families are three times more likely to have current, unpaid court debt than higher-income families. The Federal Reserve additionally found that families that are carrying legal debt frequently have other heavy debt loads and are more likely to be denied credit than households without such debt. Most (52%) don’t have an account with a mainstream bank. Cumulatively, these measures reveal deep financial precarity along multiple fronts.<sup>8</sup> If the BOP implements the proposed amendment, it will join other predatory entities in the exploitation of poor people, who are disproportionately Black and Brown.<sup>9</sup> As one formerly incarcerated person put it,

**“Taking a larger share of family support is extortion, it’s extorting my family. They can’t be expected to uphold our burden. It’s rough out there for them too. They want that money to be for me.”**

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<sup>6</sup> Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi, *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, Forward Together and Research Action Design, 2015, <https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-FINAL.pdf>.

<sup>7</sup> Brian Elderbroom, Laura Bennett, et al., *Every Second: The Impact of the Incarceration Crisis on America’s Families*, fwd.us, December 2018, <https://everysecond.fwd.us/downloads/everysecond.fwd.us.pdf>.

<sup>8</sup> Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of US Households in 2019, Featuring Supplemental Data from April 2020, May 2020*, <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf>.

<sup>9</sup> The Federal Reserve noted that Black families of any income level were twice as likely as White families to report that they had unpaid court debt. Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of US Households in 2019*.

Third, if the BOP is concerned that a few, anomalous individuals have withheld money from victims despite amassing large sums, the IFRP is a flawed mechanism to address this problem. The IFRP is already riddled with inconsistencies, inaccuracies and unexpected fluctuations. It holds lower-income individuals hostage, while those with money—ostensibly the people the BOP is targeting—escape meaningful sanction. One formerly incarcerated person told us, **“They will take that money regardless of your situation. It’s just more punishment and more frustration. It needs to be redirected to people who can pay those fines.”**

To use this program to extract payment of all court costs—not from the person who was sentenced but from caring friends and family—is offensive, demoralizing and counterproductive to people in prison. As one formerly incarcerated person told us, **“By grabbing that money,”** the BOP, **“is saying F me, we’re taking that support from your family.”**

The proposed amendment is also poorly defined and overbroad. It is not limited to restitution but collects payment for all court costs. The great majority of individuals who will be affected by the proposed increase simply don’t have large sums of money stashed away. Implementing a policy that will injure 99.9% of incarcerated individuals in order to reach a wealthy, white collar .1% is the definition of abysmal rulemaking.<sup>10</sup> It’s also largely futile. Asked one formerly incarcerated individual we talked to, **“What are you trying to make money from us for?”**

Fourth, this proposal directly contravenes the Biden administration’s executive orders advancing racial equity.<sup>11</sup> As researchers have noted, fines and fees are rooted in a racist criminal justice history and are themselves a driver of economic and racial inequity. With this proposed change, the BOP commits itself further to a fines and fees scheme that disproportionately harms marginalized communities. Incarceration rates are concentrated in poor communities. Black, Latino and American Indian communities experience higher incarceration rates than Whites and are incarcerated for longer periods.<sup>12</sup> Families of color are less able to pay the costs associated with the criminal justice system because of accumulated economic disadvantage. Instead of working to minimize the prison system’s role in perpetuating inequality, the BOP is exacerbating it.

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<sup>10</sup> The Washington Post reported that about 20 inmate accounts contain over \$100,000 out of roughly 129,000 inmates. This is the equivalent of about .015% of inmates. Devlin Barrett, “Federal Prisoners Hold \$100 million in Government-Run Accounts, Shielded from Some Criminal Scrutiny and Debt Collection,” Washington Post, June 9, 2021, [https://www.washingtonpost.com/national-security/bureau-of-prisons-bank-system/2021/06/08/2aff9766-c3d1-11eb-8c18-fd53a628b992\\_story.html](https://www.washingtonpost.com/national-security/bureau-of-prisons-bank-system/2021/06/08/2aff9766-c3d1-11eb-8c18-fd53a628b992_story.html).

<sup>11</sup> Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 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/>; Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government, February 16, 2023, <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/>.

<sup>12</sup> Brian Elderbroom, Laura Bennett, et al., *Every Second*.

The BOP itself recognizes that it could have devised other, fairer approaches but concludes that this would have involved “significant technological, administrative, and other disadvantages.”<sup>13</sup> Doing the right thing is often hard. However, that’s not a good reason to avoid it.

For these reasons, the North Carolina Fines and Fees Coalition strongly opposes the proposed amendment and urges the Bureau of Prisons to withdraw it.

If you would like to discuss this comment further, please contact Whitley Carpenter at [wcarpenter@forwardjustice.org](mailto:wcarpenter@forwardjustice.org).

Sincerely,

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Forward Justice

On behalf of the NC Fines and Fees Coalition

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<sup>13</sup> 88 FR 1334.