

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Parts 506 and 540**

[BOP Docket No. 1091-F]

RIN 1120-AA86

Inmate Commissary Account Deposit Procedures**AGENCY:** Bureau of Prisons, Justice.**ACTION:** Final Rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) amends its regulations on how an inmate may receive funds from family, friends, and other sources. Under previous regulation, funds intended for any inmate's use were included in correspondence sent to the inmate or left with staff as part of visiting. Staff at the institution arranged for the deposit of these funds into the inmate's account. Under the new regulations, funds from family, friends, or other sources will no longer be sent to the inmate but will instead be sent directly to a centralized inmate commissary account in the form of a money order for receipt and posting. Under the new rule, we will not accept funds sent by family or friends to the inmate's location. Instead, we will return them to the sender, provided there is an adequate return address. We intend this amendment to provide for the more efficient processing of inmate funds.

DATES: This rule is effective August 2, 2004.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION: The Bureau adds new regulations (28 CFR Part 506) pertaining to inmate deposits and makes conforming amendments to the regulation on inmate correspondence (28 CFR 540.23). We published the proposed rule on this subject on April 23, 1999 (64 FR 20125). We published the previous provisions in § 540.23 in the *Federal Register* on October 1, 1985 (50 FR 40109).

What Does the New Rule Do?

This new rule establishes a centralized inmate funds collection process commonly referred to as "LockBox". The funds will be processed at the central location and then

electronically transferred to the inmate's Commissary account at the location where the inmate is housed via an existing Trust Fund Wide Area Network. There is no additional cost for this transfer. The LockBox services are provided to the Bureau through an Interagency Agreement with the U.S. Treasury. Independent banks are not affected as all Commissary funds are required to be maintained in the U.S. Treasury. The inmate Trust Fund will pay for the LockBox services, depending on the volume of transactions, but no taxpayer money is involved.

Previous provisions on general correspondence allow an inmate, upon completing the appropriate form, to receive funds through the mail from family or friends or, on approval of the Warden, from other persons for crediting to the inmate's trust fund account. Previous provisions on visiting provide that the Warden may allow a visitor to leave money with a designated staff member for deposit in the inmate's commissary account. Institution staff were responsible for processing these funds.

Under the new rule, all inmate funds from family and friends must be sent directly to a centralized inmate commissary account. The deposit must be in the form of a money order and the envelope must not contain any enclosures intended for delivery to the inmate as any enclosure is subject to disposal.

We must receive deposits in the form of a money order. We will not accept personal checks, but will return them provided the check has adequate return address information. However, if we receive funds from other sources, such as tax refunds, dividends from stocks, or state benefits, we will forward them for deposit into the centralized inmate commissary account. Tax refunds, dividends from stocks, and state benefits are recognized as Treasury checks, and Bureau experience has shown that they have a much lower risk of cancellation (e.g., "bouncing") than personal checks. Also, unlike personal checks, Treasury checks do not have a 15 day hold, so the inmates receive their funds immediately upon processing.

We previously managed our inmate accounting functions in a completely de-centralized fashion. Each institution operated separately and distinctly from one another, although each performed virtually identical functions, such as posting mail room collections to inmate accounts, making daily trips to the bank to deposit collections, establishing inmate accounts each time an inmate arrives at their current location, and transferring funds between institutions.

We believe that having a centralized inmate commissary account will benefit inmates by allowing them immediate access to their funds.

Also, the centralized inmate commissary account will eliminate redundant work efforts, allow institutions complete access to detailed inmate account history, remove personal liability from institution staff related to handling of inmate funds, and enhance Bureau security by allowing centralized reporting and comparisons of sources of incoming funds and destination of outgoing funds across all institutions. The tremendous growth of the number of Bureau facilities coupled with new computer networking technology have made the current method of managing inmate funds outdated, inefficient, and costly.

Comments

One commenter asks if it is possible to have some type of savings account and transfer money from an inmate account to that bank savings account or a mutual fund. This commenter also asks how much money inmates are allowed to have in their inmate account.

Under current Bureau policy, (Program Statement 2000.02, Accounting Management Manual) we encourage inmates to participate in a continuous savings program. The savings may be in the form of a passbook savings account, certificate of deposit, any money market accounts, or U.S. Savings Bonds. Inmates are not limited in the amount that may be maintained in their inmate account.

Another commenter makes the following recommendations:

1. Clarify in the rule language what type of money order is permissible (postal Money Order, American Express Money Order, etc).

Our Response: Because we need the flexibility to quickly add different types of money orders to a list of permissible money orders, we choose not to set forth the list in rule language. However, the types of money orders processed will include U.S. postal money orders; domestic money orders (e.g., American Express Money Order); postal money orders issued by Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, British Virgin Islands, Cornado, Dominica, Grenada, Montserrat, St. Christopher, Nevis, St. Lucia, and St. Vincent and the Grenadines; and Canadian postal money orders—if they are addressed to a payee within the United States and the amount is expressed in United States currency.

2. The centralized location for the inmate accounts should be Bureau headquarters.

Our Response: We do not have the capability at Bureau headquarters to properly process inmate funds. We will select an organization for collection and distribution of inmate funds that is capable of immediately processing incoming money orders and electronically dispersing the funds to the appropriate inmate deposit fund accounts.

3. Money orders should include inmate name and number.

Our Response: Section 506.2(a)(2) of the rules change specifies that the money order must be made out to the inmate's full name and complete register number.

4. Any funds received by institutions from other sources should be sent by registered mail on a daily basis from each institution and be accompanied by a list with the inmate name, number, and amount of the check.

Our Response: Bureau policy will address the process by which funds received at an institution will be forwarded or returned. Because information on this issue constitutes Bureau guidance to its staff at the institutions, this is more appropriately addressed in Bureau policy.

Another commenter had the following concerns:

1. The changes to the rule would cause confusion among families, friends and businesses regarding the proper procedures for sending money. The central receiving location may also lose money/money orders sent in for inmates.

Our Response: Actually, the rule would allow inmates quicker access to money orders. Money orders sent to the centralized collection location under the proper procedures will be electronically deposited into the inmate's account, allowing the inmate to have quicker access to those funds than current operational procedures permit.

2. The rule does not set forth a process for accepting checks from businesses that may be refunding money for items the inmate ordered but were not available.

Our Response: We will address refunds from businesses in corresponding Bureau policy.

3. The rule does not address how or when we will notify the inmate that we have received or rejected funds designated for their account.

Our Response: Because such details regarding notification constitute Bureau guidance to its staff at the institutions, this is more appropriately addressed in Bureau policy.

Another commenter stated that, since inmates receive money from families as gifts and often such mail contains cards,

letters, and magazines, etc., the rule would have a chilling effect on familial contact and a reduction in familial monies to assist the inmates. This commenter is concerned that this reduction would decrease the ability of inmates to pay their COIF, fines and restitution which could impact state, local and tribal governments.

Currently, staff removes money from incoming mail and credits the inmate's account as appropriate. The new process described in the rules is different only in that money orders will go to a location other than where the inmate is physically incarcerated. It will still be credited to the inmate's account as appropriate, and inmates will actually be able to access newly-arrived funds more quickly because of the electronic depositing system.

Also, the Bureau's responsibility to its inmates requires that inmates have quick and easy access to deposited funds. We do not believe that this rule will have a "chilling effect" on familial communications because it will not hamper families' abilities to send cards to inmates or continue any other previously existing form of personal communication. Families may communicate with inmates using the same procedures as existed before this rule. This rule merely addresses how money may be sent so that inmates may receive it more quickly.

Another commenter is concerned that the Bureau will only allow funds from family and friends in the form of a money order. The commenter states that preventing personal checks would create a hardship for relatives or friends who may be elderly or infirm or who have busy schedules. The time and hassle of waiting in line at the post office (or bank) is too much for some people because of time constraints or physical limitations.

The primary focus of this rule is on the efficient management of inmate funds. Relatives and friends may easily, without "time and hassle," get money orders from the U.S. Postal Service, banks, and convenience stores or supermarkets. Money orders will be more convenient for the inmate, since electronic depositing will allow funds to be available immediately. By contrast, domestic personal checks, once received, have a 15-day hold before an inmate may access those funds and non-domestic and foreign negotiable instruments have a 30-60-day hold before an inmate may access those funds.

There are several other reasons for our decision not to accept personal checks. Accepting personal domestic and foreign checks increases the risk of

accepting insufficient funds, processing canceled checks and forged checks, etc. Approximately three percent of all negotiable instruments we received for deposit into inmate accounts are domestic checks. Of those, approximately 600 per year are determined to have insufficient funds. Up to 60 hours of staff time/resources is expended for each check we accept that must later be returned for insufficient funds.

Under the previous system, unless otherwise notified of insufficient funds by the U.S. Treasury, funds are automatically posted to the inmate's Commissary account after the holding period has elapsed. The inmate may then spend the funds. However, if a check posted to an inmate account is later returned by the U.S. Treasury on a debit voucher for insufficient funds (found to be a "bad check"), the amount of the returned check is immediately removed from the inmate account. This can occur even after the funds have been in the inmate's account for 30 days or more.

If the inmate has insufficient funds when we seek to remove money placed there as a result of a bad check, all of the inmate's available funds are withdrawn and the inmate's account may reflect a negative balance for the uncollected amount. Furthermore, any future funds the inmate receives will be applied toward the negative balance resulting from the bad check until full reimbursement has been collected.

A total of 97% of debit vouchers received are received after the funds have been posted. It was found that an inmate's accounts may have a negative balance from two to 24 months. When the inmate carries a negative balance, staff must ensure that all funds posted to his account are removed as partial payment for the bad check, and staff must generate several accounting entries to the Standard General Ledger (SGL). This process may prove to be extremely time consuming. Although the total time period to process a debit voucher should be no greater than .75 hours, staff resources to collect and process partial payments on one lengthy case may easily exceed 48 hours.

If the inmate is released from custody with a negative balance, or if a debit voucher is received from the U.S. Treasury after the inmate's release, we must initiate debt collection procedures under the Debt Collection Act. Collection procedures include immediate contact with the former inmate, notifying them of the debt owed, with subsequent follow-up letters requesting reimbursement of the cancelled negotiable instrument. This

initial process may take from 30 to 90 days to complete, once more consuming staff resources. As the time for the letters written, routed, and phone calls made, are accounted for, this process may use eight hours of resources.

If all attempts to collect the debt are unsuccessful, staff must contact the appropriate Regional Office, which must make a determination to immediately refer the case to the Central Office Debt Management Officer, or initiate correspondence to the debtor from the Deputy Regional Director. If debt collection is still unsuccessful, then the case will be referred to the Debt Management Officer located in the Central Office. Approximately four hours of resources are used in this process.

The Central Office Debt Management Officer will then recommend final disposition of the debt, either referring the debt to the IRS Offset Program or recommending a write-off of the debt.

Collection of debts from former inmates can be extremely time consuming and unsuccessful. Under the new rule, by not accepting domestic checks, we will greatly reduce the loss of money, staff time and resources from unsuccessful collection attempts.

Executive Order 12866

The Director certifies that this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866 and therefore was reviewed by the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by *804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Parts 506 and 540

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we add a new part 506 to 28 CFR, chapter V, subchapter A, and amend 28 CFR part 540 as follows.

Subchapter A—General Management and Administration

■ 1. Add a new Part 506 to read as follows:

PART 506—INMATE COMMISSARY ACCOUNT

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 31 U.S.C. 1321.

§ 506.1 What is the purpose of individual inmate commissary accounts?

The purpose of individual inmate commissary accounts is to allow the Bureau to maintain inmates' monies while they are incarcerated. Family, friends, or other sources may deposit funds into these accounts.

§ 506.2 How may family, friends, or other sources deposit funds into an inmate commissary account?

(a) *Family and friends* must mail deposits to the centralized inmate

commissary account at the address we provide.

(1) The deposit envelope must not contain any enclosures intended for delivery to the inmate. We may dispose of any enclosure.

(2) The deposit must be in the form of a money order made out to the inmate's full name and complete register number. We will return checks to the sender provided the check contains an adequate return address.

(b) *Other sources*, (such as tax refunds, dividends from stocks, or state benefits) must be forwarded for deposit to the centralized inmate commissary account.

Subchapter C—Institutional Management

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

■ 1. Revise the authority citation for 28 CFR part 540 to read as follows:

Authority: 5 U.S.C. 301, 551, 552A, 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509.

■ 2. Revise § 540.23 to read as follows:

§ 540.23 Inmate funds received through the mails.

Except as provided for in part 506 of this chapter, funds enclosed in inmate correspondence are to be rejected. Deposits intended for the inmate's commissary account must be mailed directly to the centralized commissary account (see 28 CFR part 506).

■ 3. Revise § 540.51(h)(3) to read as follows:

§ 540.51 Procedures.

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(h) * * *

(3) The visiting room officer may not accept articles or gifts of any kind for an inmate, except packages which have had prior approval by the Warden or a designated staff member.

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 352

Offering of United States Savings Bonds, Series HH

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.