

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

[BOP–1178]

RIN 1120–AB78

Inmate Financial Responsibility Program: Procedures

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update and streamline regulations regarding the Inmate Financial Responsibility Program (IFRP).

DATES: Electronic comments must be submitted, and written comments must be postmarked, no later than 11:59 p.m. on March 13, 2023.

ADDRESSES: Please submit electronic comments through the *regulations.gov* website, or mail written comments to the Legislative & Correctional Issues Branch, Office of General Counsel, Bureau of Prisons, 320 First Street NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Daniel J. Crooks III, Assistant General Counsel, Federal Bureau of Prisons, at the address above or at (202) 353–4885.

SUPPLEMENTARY INFORMATION: Regulations for the Inmate Financial Responsibility Program (IFRP) are located in 28 CFR part 545. This proposed rule amends paragraphs (b), (c), and (d) in 28 CFR 545.11.

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov*. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the

first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted *www.regulations.gov*.

Personal identifying information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency’s public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

I. Background

The purpose of the Inmate Financial Responsibility Program (Program or IFRP), operated by the Bureau of Prisons (Bureau) since 1987, is twofold: to encourage federal inmates in Bureau facilities to pay financial obligations; and to support federal inmates in developing financial planning skills.

Inmate participation in the IFRP is voluntary. Subject to certain exemptions listed in 28 CFR 545.10, all sentenced federal inmates are eligible to participate. During an inmate’s initial classification, current Bureau policy requires staff to review the inmate’s financial obligations—by consulting the inmate’s presentence investigation report, judgment and commitment order(s) and other court documents, and any other available information—and encourage inmates to satisfy any court-ordered obligations either at the time of this initial review or throughout the inmate’s term of imprisonment. The Bureau strongly recommends that all inmates with financial obligations participate in the IFRP, along with other programs and activities designed to reduce recidivism, such as work, education, and drug rehabilitation programs. Additionally, in recognition of the importance of planning for re-

entry, including the availability of financial resources, the Bureau is separately exploring methods to encourage inmates to set aside and/or maintain a limited amount of funds specifically for re-entry assistance, which would be encumbered until re-entry and treated differently for purposes of the IFRP. These efforts include implementing section 605(c) of the First Step Act of 2018 (Pub. L. 115–391), which amended 18 U.S.C. 4126(c)(4) to indicate that inmates who work for Federal Prison Industries (FPI, operating under the trade name UNICOR)¹ will have 15 percent of their compensation set aside and made available to assist them with costs associated with release from prison.

If an inmate chooses to participate in the IFRP, Bureau staff will work with the inmate to develop a financial plan, which is documented and signed by the inmate and includes financial obligations paid in the following order of priority:

1. Special assessments imposed by the court under 18 U.S.C. 3013;
2. Court-ordered restitution, including assessments related to bodily injury to victims occurring as a result of the offense, loss or destruction of victim property, or other assessments as indicated by the court;
3. Fines and court costs;
4. State or local court obligations (such as child support or alimony, as documented by a court order or letter from the relevant state authority);
5. Other federal government obligations (including fees imposed under 18 U.S.C. 4001 for Cost of Incarceration, other judgments in favor of the United States, student loans, Veterans Administration claims, tax liabilities, and Freedom of Information or Privacy Act fees).

Given the importance of satisfying outstanding financial obligations and reducing the amount of debt upon release, there are consequences to choosing not to participate. Documented refusal by inmates to participate in the IFRP, or to comply with the provisions of their agreed-upon financial plan, results in the specific consequences currently listed in 28 CFR 545.11(d),

¹ “UNICOR” is the trade name for Federal Prison Industries (FPI), which “sells market-priced services and quality goods made by inmates.” See https://www.bop.gov/inmates/custody_and_care/unicor.jsp.

including notification to the Parole Commission, preclusion of furlough eligibility (other than emergency or medical furlough), preclusion of certain pay benefits or increases, preclusion of eligibility for premium work opportunities and/or removal from a UNICOR work assignment, commissary spending restrictions, loss of release gratuity (unless approved by the warden), and loss of incentives (such as early release and financial awards) otherwise available to an inmate who participates in residential drug treatment programs.

As the IFRP is currently operated, Bureau staff review and reassess each inmate's financial plan and IFRP payments every 180 days; this interval becomes 90 days when the inmate is within 12 months of release. As part of that review, Bureau staff first review the total funds deposited into the inmate's commissary account over the previous six-month period from any source. As stated in 28 CFR 506.1, individual inmate commissary accounts allow the Bureau to maintain inmate monies while the inmate is incarcerated. Funds in inmate accounts can come from a number of sources: the inmate may earn pay from work assignments (including compensation earned through UNICOR); family members or friends may send funds to the inmate; the inmate may receive tax refunds or other government-related issuances; or the inmate may receive other types of income (such as stock dividends, state benefits, litigation settlements, and inheritance). All money earned by the inmate from the Bureau is automatically deposited into the inmate's commissary account.

Next, to determine whether future payments under the IFRP plan should be adjusted based on the inmate's financial activity over the previous six-month period under review, staff subtract the total amount of any payments an inmate has made during the previous six-month period under the IFRP plan (payments made toward the inmate's financial obligations) from the amount deposited into the account over that same time period. Under current regulations in section 545.11(b), when performing this calculation to determine the amount an inmate has available for payment of financial obligations, staff must also subtract a \$75 per month allowance for telephone communication (a total of \$450 for each six-month period). That amount is not included in the calculation of the total amount an inmate has available for payments under the IFRP.

Then, based on the foregoing information, staff estimate the amount the inmate is likely to have remaining

at the end of that six-month period. Based on that amount, staff determine whether to adjust the inmate's financial plan and IFRP payments. Under the current regulation, the minimum payment for inmates who do not have a UNICOR work assignment, or who have a UNICOR grade 5 work assignment, is ordinarily \$25 per quarter. For inmates assigned a UNICOR work assignment with a grade between 1 and 4, the minimum payment is ordinarily expected to be 50 percent of the inmate's pay.

Proposed Rule

The Bureau last engaged in rulemaking relating to the IFRP in 1994. This proposed rule makes changes to update, streamline, and clarify IFRP regulations in paragraphs (b), (c), and (d) in section 545.11, as follows:

Proposed changes to paragraph (b):

1. *Introductory paragraph.* The Bureau first proposes to delete and streamline language in the introductory paragraph of 545.11(b) that was intended as guidance for Bureau staff. Currently, paragraph (b) states that, as described above, when computing the amount of funds an inmate has available to pay financial obligations, Bureau staff must: (1) subtract the inmate's minimum payment schedule as determined by the financial plan made during initial classification; and (2) subtract \$75 per month to allow the inmate to retain funds for telephonic communication. The amount left after these subtractions, and a review of any deposits that have occurred in the interim between reviews, is considered when determining whether the inmate's IFRP payments should be adjusted.

The purpose of the provision requiring \$75 to be subtracted from the amount considered potentially available to pay an inmate's financial obligations was to ensure that inmates could maintain telephonic communication with their families. When that provision was first put in place, there were no other safeguards designed to ensure that inmates had sufficient access to telephone calls to maintain contact with family members. There was, therefore, a concern that all funds deposited into inmate accounts would be used to pay financial obligations, leaving inmates with no funds to pay for telephone calls. However, there have been several developments since the initial creation of this provision that have rendered it unnecessary and obsolete.

The provision originates from a 1993 proposed rule limiting telephone calls for inmates who refuse to participate in the IFRP. (See 58 FR 39096, July 21, 1993). When the rule was finalized on

April 4, 1994 (59 FR 15812), amended language directed that \$50 be set aside monthly for each IFRP inmate-participant's use for telephone calls to family, to address commenters' concerns that inmates lacked control over funds sent to them from outside sources (specifically, funds sent from family for the particular purpose of maintaining telephonic contact). See 59 FR 15812 at *15818–9. A commenter was concerned that all funds sent in would be automatically applied toward an inmate's financial obligations, thereby leaving nothing in the inmate's account for the inmate to use for telephone calls to family. The amended language directing that \$50 be "held back" from the amount to be used to satisfy financial obligations, so that it would be "saved" in an inmate's account for telephone calls, resolved this issue.

However, as became apparent, reserving an amount in inmate accounts for telephone calls would only become necessary for inmates who had limited funds available. Inmates with adequate funds were able to pay their financial obligations and still have funds available in their accounts for telephone calls without intervention. Therefore, only indigent inmates needed a "reservation" provision.

In the 1994 final rule, the Bureau also assured commenters that inmates without funds would have access to the telephone system, referring to amendments to 28 CFR 540.105, Expenses of inmate telephone use. Paragraph (b) of that regulation currently provides that the warden must permit one collect call per month for inmates without funds and has the discretion to increase that number. Paragraph (d) indicates that the government may bear the expense of inmate telephone use under compelling circumstances. The concern that inmates without funds will be blocked from telephone use is remedied by these amendments.

On January 2, 1996, the Bureau increased the reserved amount from \$50 to \$75 in an interim rule with a request for comments. (See 61 FR 90). This amendment was the direct result of the terms of a settlement approved by the district court in a nationwide federal prisoner class action, *Washington v. Reno*, Nos. 93–217, 93–290 (E.D. Ky. Nov. 3, 1995). The 1996 interim rule was finalized on December 28, 1999 (64 FR 72798). However, the settlement agreement, according to its terms, expired in 2002, four years after the installation of the Bureau's second nationwide inmate telephone system. Within the first few years of the

implementation of the Bureau's telephone system, inmates were able to acclimate to the need to adjust IFRP payments and funds in their account in a way that allowed them to retain sufficient funds to use for telephone calls and other needs while incarcerated. Retaining sufficient funds to cover basic inmate needs during incarceration remains a priority when developing and updating an inmate's IFRP payment plan.

One purpose of the IFRP is to promote inmate financial understanding and self-regulation. To meet that goal, staff work with inmates to structure a reasonable payment plan that is attainable for the inmate, in light of any funds coming into the account (whether from inmate work assignment pay or through outside sources) and any reasonable expenditures required by the inmate. Therefore, because of the safeguards that currently exist in 28 CFR part 540 to allow inmates without funds access to telephone calls to maintain family contact, the proposed amendments would delete provisions in 28 CFR part 545 requiring that inmate funds be specifically reserved for this purpose.

2. *Addition of language regarding implementation of payment plans contained in court orders.*

The Bureau proposes to include language in the regulation that clarifies how the Bureau will treat payment plans for financial obligations that are set out in an inmate's Judgment & Commitment order (J&C) or other court order. Current guidance for Bureau staff provides that if the inmate's J&C has a specific payment plan outlined, payments are to be collected according to the direction provided in the J&C. The Bureau proposes to make this provision part of the rule itself, in order to minimize confusion for inmates and staff and make clear that such court-ordered payment plans, rather than plans developed under the IFRP rule, will be implemented as the inmate's financial plan.

Since the Bureau last engaged in rulemaking on this topic, a significant body of case law has developed around restitution imposed under the Mandatory Victim Restitution Act (MVRA), 18 U.S.C. 3663A and 3664. The MVRA directs that a sentencing court "shall . . . specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid." 18 U.S.C. 3664(f)(2). The federal courts of appeals have uniformly held that payment plans for MVRA obligations are the province of the district courts, and expressly prohibit delegation of that authority to another entity. *See, e.g., United States v.*

Gunning, 339 F.3d 948 (9th Cir. 2003); *United States v. Prouty*, 303 F.3d 1249, 1254–1255 (11th Cir. 2002). In accordance with this case law, and in the interest of establishing a uniform standard for all financial obligations across all Bureau facilities and respecting the orders of federal courts, the Bureau proposes to make explicit in the IFRP rule that a court-ordered payment plan should be implemented as an inmate's financial plan.

3. *Addition of language regarding one-time payment.* The Bureau proposes to add language to the rule that clarifies that, following the initial classification and review of the inmate's financial obligations, the inmate should be encouraged to make a one-time payment from available funds in the inmate's commissary account to satisfy any identified financial obligations. Currently, guidance to Bureau staff notes that in certain circumstances, including when an inmate's total financial obligation is \$100 or less, the inmate should be encouraged to make a one-time payment to satisfy that obligation. The purpose of this revision is to make clear that all inmates, regardless of the size of the financial obligation, should be encouraged to make this one-time payment. In addition, the Bureau proposes to include language noting that if the inmate has funds in the inmate's commissary account sufficient to satisfy a fine or restitution, but refuses to make a single payment to do so during this initial review, the United States Attorney's Office in the inmate's district of prosecution should be notified. The intent of this provision is to allow the United States Attorney's Office to proceed with any judicial process necessary to have those funds turned over in satisfaction of the inmate's fine or restitution obligation.

4. *Revision of language regarding development of payment plans.* The Bureau also proposes to modify language indicating that the minimum payment for inmates who do not work in UNICOR positions and those who work in UNICOR positions at the grade 5 level will be \$25 per quarter, and that inmates assigned to UNICOR grades 1 through 4 work assignments will be expected to allot 50% of their monthly pay to IFRP payments. The regulation categorizes inmates as such because, as described in 28 CFR 345.51, inmate workers in UNICOR receive pay at five levels, ranging from grade 5 pay (lowest currently \$.23/hour) to grade 1 pay (highest currently \$1.15/hour). Generally, non-UNICOR assignments are less desirable to inmates because the

pay is lower, ranging from \$.12/hour to \$.40/hour depending on grade.

In recognition of the differences in pay, the IFRP regulations have traditionally allowed for a lower overall minimum payment for inmates in non-UNICOR assignments and those at the lowest UNICOR pay level (grade 5). UNICOR pay rates have consistently been three to four times that of non-UNICOR pay rates. However, instead of a percentage requirement, as exists for inmates who have UNICOR work assignments and are paid at the higher UNICOR pay levels, the current regulation indicates that the minimum payment of financial obligations for these non-UNICOR and UNICOR grade 5 inmates will ordinarily be \$25 per quarter, but may exceed \$25 when factors such as the inmate's specific obligations, institution resources, and community resources are taken into consideration.

Because of the use of the word "may," the current regulation proved to be unclear regarding whether and how community resources (such as funds from friends and family) should be taken into consideration. The language described above was meant not to be permissive but instead to indicate that community resources must be taken into account when calculating IFRP payments for these inmates. In practice, inmates and staff read the regulation as indicating that the default position was that these inmates could maintain minimum payments of \$25 per quarter. Therefore, many inmates employed in non-UNICOR assignments or a UNICOR grade 5 assignment maintained a minimum payment of \$25 per quarter of their obligations, and community resources were not taken into account. As a result, many inmates currently pay only \$25 per quarter toward their financial obligations, despite having the financial means to increase those payments.

The Bureau therefore proposes to change the regulation as follows:

- The regulation would indicate that, in the absence of some other court-ordered payment plan, inmates assigned to UNICOR work assignments in grades 1 through 4 will be expected to allot not less than 50% of their pay to IFRP payments, and that those assigned to UNICOR grade 5 or non-UNICOR work assignments will be expected to allot not less than 25% of their pay to IFRP payments.

- The regulation would also clarify that all inmates, in the absence of some other court-ordered payment plan, whether assigned to UNICOR or non-UNICOR work assignments, will be expected to allot not less than 75% of

funds from non-institution (community) resources to the IFRP payment process.

- Further, the regulation would explain that exceptions to the stated allotments must be approved by the inmate's unit manager in consultation with the associate warden of the inmate's institution, and documented in writing.

This change is consistent with the intent of the Bureau when the regulations were first published as a proposed rule on November 21, 1986 (51 FR 42167) and finalized on April 1, 1987 (52 FR 10528). The 1987 version of current 28 CFR 545.11(b) indicated that payments required by an inmate's financial responsibility plan were to be made from both the "earnings of the inmate within the institution and/or from outside resources."

When the regulations were amended in 1989, language was added to the regulation specifying that the minimum payment for non-UNICOR and UNICOR grade 5 inmates would be \$25 per quarter. (See proposed rule published on March 17, 1989, at 54 FR 11332; and final rule published on December 1, 1989, at 54 FR 49944.) The regulations were again amended on May 21, 1991 (56 FR 23476), and were clarified to explain that the minimum payment may exceed \$25, taking into consideration the inmate's specific obligations, institution resources, and community resources.

However, since 1991, it has proved impractical to have a specified dollar amount (\$25) required in the regulation for the purpose of fulfilling inmate financial obligations. As stated, the initial 1989 regulations attempted to specify a \$25 minimum payment but, when it proved untenable, the regulations were amended in 1989 to allow for a "minimum payment" exceeding the specified amount, indicating that the individual circumstances of each inmate—namely, "factors such as the inmate's specific obligations, institution resources, and community resources"—must be taken into consideration.

Therefore, the Bureau now proposes to clarify this provision by removing the specified dollar amount altogether, and replacing it with a percentage system, which will more equitably account for each inmate's specific obligations and resources while leaving the inmate with some funds to spend within the institution and/or save for re-entry purposes. As indicated above, pay rates for UNICOR work assignments are between three and four times higher than pay rates for non-UNICOR work assignments. To adjust for this disparity in pay rates, the Bureau proposes to

require inmates with UNICOR work assignments to allot 50% of pay to IFRP payments, and those with non-UNICOR work assignments to allot 25% of pay to IFRP payments. In addition, in recognition of the importance of satisfying financial obligations, including restitution owed to victims of criminal conduct, inmates will also be expected to allot 75% of the deposits received into their commissary accounts from sources outside the institution to the IFRP payment process. As indicated, however, these percentage allotments may be altered on a case-by-case basis, as approved by the unit manager in consultation with the associate warden of the inmate's institution.

In developing this proposed rule, the Bureau explored the possibility of creating a system wherein the percentage of institution (community) deposits an inmate would pay toward IFRP increased as the inmate's commissary account balance or total amount of deposits increased. The Bureau also considered a system similar to progressive taxation, which would apply a lower marginal rate to amounts below a certain threshold, and higher marginal rate to amounts above that threshold. These proposals offer several benefits. It would allow the Bureau to target large account balances while still preserving a minimum amount of funds for an inmate's daily and future use. It is also more equitable, 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.

However, the Bureau also determined that there were significant technological, administrative, and other disadvantages associated with these alternative approaches when compared to applying a single, flat percentage to all deposits. First, there is the risk that inmates might maintain deliberately small account balances through unlawful or illegitimate means (including having money held by other inmates), or otherwise engage in "structuring" of deposits and other transactions, to avoid paying a higher percentage toward IFRP. In addition, a system that set cut points based on the balance in an inmate's account presented the risk of unfairness by treating inmates with similar balances differently. For example, an inmate whose account balances totaled \$499 might be expected to pay 25 percent of future deposits towards IFRP, while an inmate whose account balances totaled \$500.01 might be expected to pay 50 percent of community deposits towards IFRP.

A "progressive" system tied to deposit amounts could mitigate this latter concern. For instance, such a system might set a marginal rate of 25% for the first \$500 in community deposits during a time period, with a rate of 75% for any deposits over \$500 during the same span. In that scenario, an inmate who deposited \$500 in a 365-day period would pay \$125 (25% of the \$500). An inmate who deposited \$501 in a 365-day period would pay \$125.50 (25% of the first \$500, and 75% of the amount—\$1—over \$500).

This solution, however, brings technological and administrative challenges for the Bureau. The Bureau lacks a fully automated process to "freeze" funds or make IFRP withdrawals from an inmate's account, which prevents the Bureau from automatically adjusting IFRP payments as the amount in the account increases or decreases, or an individual deposit is above or below a certain point. An individual inmate's IFRP financial plan is first manually entered by unit team staff and payments are manually withdrawn and paid to the correct payee by a Trust Fund staff member pursuant to the terms of the financial plan the inmate has agreed to. In developing the financial plan, unit team staff look at the prior 180 days of financial activity in the inmate's account to determine how much the inmate will be expected to pay; the inmate then signs the financial plan and agrees to abide by that plan until the next review. Because deposits can fluctuate significantly from one six-month period to the next (for example, if an inmate receives a tax refund or other one-time payment), basing an inmate's future payment obligations on past deposits is administratively difficult.

As a result of the concerns addressed above, the Bureau ultimately concluded in this proposed rule that it would treat all community deposits equally for IFRP purposes. Under this proposed rule, inmates will know with certainty what they will be expected to pay. Staff will be able to develop intelligible financial plans that are easily understood by inmates and appropriately implemented by BOP staff members. At the same time, the Bureau understands the concerns with this system and will consider input in finalizing the rule as to this proposed structure, as well as suggestions for how to make a "progressive" system more practicable notwithstanding the challenges described above.

Proposed changes to paragraph (c):

Paragraph (c) of 28 CFR 545.11 explains that an inmate's participation and progress in meeting the inmate's

IFRP obligations will be assessed each time staff assess the inmate's demonstrated level of responsible behavior. What this has meant in practice is that an inmate's IFRP participation and financial plan are reviewed during the inmate's program review meeting with unit team staff, which ordinarily occurs every 180 days. See 28 CFR 524.11(a)(2).

The Bureau intends to revise this rule to explain that the inmate's financial plan will be reviewed at a minimum during the inmate's program review meeting. This revision would make explicit what has been Bureau practice and would align this regulatory text with the terminology used in 28 CFR 524.11. Furthermore, by specifying that this review would take place "at a minimum" during program review, the Bureau intends to provide staff with flexibility to adjust an inmate's financial plan during the interim period between program review meetings in the event the inmate's circumstances change (for example, a change in institution work assignment).

Proposed changes to paragraph (d):

Paragraph (d) of 28 CFR 545.11 lists the effects of non-participation in the IFRP. The Bureau is proposing to revise paragraph (d) to remove some listed consequences, as they are no longer in use, and to add one new consequence. The Bureau proposes to make three substantive changes.

1. *Deletion of language requiring quartering in lowest housing status as an effect of non-participation in IFRP.* First, the Bureau proposes to delete current paragraph (d)(7), which requires that if an inmate refuses to participate in or comply with the provisions of the IFRP, the inmate be quartered in the lowest housing status available (dormitory or double-bunking, for example). Based on the physical layout of many institutions, as well as the mission of each facility, implementing this "effect of non-participation" is not always feasible. Assignments to housing are based on a variety of factors, including administrative, staffing, population, building layout, environmental, and other factors; therefore, implementing this provision has proved impractical at various facilities, over time, and even within the same facility among different units.

2. *Deletion of language prohibiting placement in community-based programs as an effect of non-participation in IFRP.* Second, the Bureau proposes to delete current paragraph (d)(8), which states that if an inmate refuses to participate in or comply with the provisions of the IFRP, the inmate will not be placed in a

community-based program. An inmate's refusal to participate in the IFRP should not be the sole determining factor in an inmate's eligibility for placement in a community-based program, though it will continue to be a factor when considering an inmate's level of responsibility. In fact, the Bureau reviews all inmates for placement in community-based programs in accordance with the Second Chance Act of 2007, Public Law 110-199, 122 Stat. 657, April 9, 2008 (see also the Second Chance Reauthorization Act of 2018, Pub. L. 115-391, 132 Stat. 5194, December 21, 2018).

3. *Addition of language regarding inmate ineligibility to earn or apply First Step Act Time Credits as an effect of non-participation in IFRP.* Pursuant to the First Step Act (FSA) of 2018 (Pub. L. 115-391, codified in pertinent part at 18 U.S.C. 3632), the Bureau is required to assess the recidivism risk and criminogenic needs of all federal inmates, and to place inmates in recidivism reducing programs and productive activities to address their needs and reduce this risk. The FSA and its implementing regulations (28 CFR 523.40 through 523.44) provide that eligible inmates can earn FSA Time Credits, which shall be applied toward prerelease custody or early transfer to supervised release, for successfully participating in approved Evidence-Based Recidivism Reduction (EBRR) Programs or Productive Activities (PAs). EBRRs and PAs are assigned to each inmate based on the inmate's risk and needs assessment. 18 U.S.C. 3632(d)(4) and 3624(g); 28 CFR 523.40-44.

Productive Activities are "group or individual activit[ies] that allow[] an inmate to remain productive and thereby maintain or work toward achieving a minimum or low risk of recidivating." 28 CFR 523.41(b). PAs include a variety of groups, programs, classes, and individual activities which can be either structured (*i.e.*, a curriculum-based program led by staff, contractors, or volunteers) or unstructured (*e.g.*, maintaining family connections, fitness, and clear institutional conduct; obtaining identification). Inmates who "opt out" of recommended EBRR Programs or PAs are ineligible to earn or apply FSA Time Credits. 28 CFR 523.41(c)(4)(v)(iii) and (d); 523.44(a) (inmate must be eligible to earn FSA Time Credits in order to apply FSA Time Credits).

The Bureau considers the IFRP to be an unstructured Productive Activity, and it therefore proposes to add a paragraph, (d)(9), to this rule, to clarify that inmates who refuse to participate in (opt out of) the IFRP will not be eligible

to earn or apply FSA Time Credits. During an inmate's initial classification, Bureau policy requires staff to review the inmate's financial obligations. The Bureau recommends that all inmates with financial obligations participate in the IFRP as a means of addressing this need, as an inmate's efforts to fulfill their financial obligations through IFRP demonstrate acceptance of responsibility and a good faith effort to lower their recidivism risk. Because an inmate with financial obligations who "opts out" of IFRP participation will fail to successfully participate in a recommended Productive Activity, such an inmate will remain ineligible to earn or apply FSA Time Credits until such time as the inmate chooses to participate in the IFRP. See 28 CFR 523.41(c)(4)(v)(iii) and 523.44.

4. *Conforming amendments.* Finally, the Bureau proposes to delete current paragraph (d)(10), which is currently listed as "reserved," and to make amendments to redesignate the numbered list in this regulation to conform to the changes described in this proposed rule.

Regulatory Analyses

Executive Orders 12866 and 13563. This proposed rule does not fall within a category of actions that the Office of Management and Budget (OMB) has determined constitutes a "significant regulatory action" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. The economic impact of this proposed rule is limited to an existing BOP program that applies to sentenced inmates in the custody of the Federal Bureau of Prisons, and does not apply to inmates in study/observation; pretrial detainees; or inmates in holdover status pending designation.

Executive Order 13132. This proposed rule will not have substantial direct effect 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. Therefore, under Executive Order 13132, the Bureau determines that this rule does not have sufficient federalism implications to warrant the preparation of 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 proposed rule and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This proposed rule pertains to 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 and funds held in individual inmate accounts.

Unfunded Mandates Reform Act of 1995. This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act. This proposed rule is a not major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

List of Subjects in 28 CFR Part 545

Prisoners.

Colette S. Peters,

Director, Federal Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, the Bureau proposes to amend 28 CFR part 545 as follows:

Subchapter C—Institutional Management

PART 545—WORK AND COMPENSATION

■ 1. The authority citation for part 545 is amended to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3632, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. In § 545.11, revise paragraphs (b), (c), (d) introductory text, and (d)(7) through (9) to read as follows:

§ 545.11 Procedures.

* * * * *

(b) *Payment of financial obligations.* The inmate is responsible for making satisfactory progress in meeting the inmate's financial responsibility plan and for providing documentation of these payments to unit team staff. A plan for payment of financial obligations set out in the inmate's Judgment & Commitment order (J&C) or other court order should be implemented as the inmate's financial plan. In the event the J&C or other court order does not prescribe a payment plan or schedule, the following will apply.

(1) *Initial classification.* During the initial classification and review of the inmate's financial obligations, unit team staff will review the inmate's individual commissary account balance and encourage the inmate to make a one-time single payment to satisfy any financial obligations. If the inmate has funds sufficient to satisfy a fine or restitution, but refuses to make a single payment to do so, the United States Attorney's Office in the inmate's district of prosecution should be notified.

(2) *Financial plans.* For an inmate who is unwilling or unable to make a single payment to satisfy the inmate's financial obligation(s) at the time of the initial classification and review, Bureau staff will establish a financial plan for the inmate. These financial plans shall be structured as follows:

(i) *Allotment of institution resources.* (A) An inmate with a UNICOR work assignment in grades 1 through 4 will be expected to allot not less than 50% of the inmate's monthly pay to the IFRP payment process.

(B) An inmate with a non-UNICOR work assignment or UNICOR grade 5 work assignment will be expected to allot not less than 25% of the inmate's monthly pay to the IFRP payment process.

(ii) *Allotment of non-institution (community) resources.* An inmate will be expected to allot 75% of deposits placed in the inmate's commissary account by non-institution (community) sources to the IFRP payment process.

(3) *Exceptions to allotment amounts.* Any allotment which differs from those described in paragraph (b)(2) of this section must be approved by the unit manager, after consultation with the associate warden, and documented in writing.

(c) *Monitoring.* Participation and/or progress in the IFRP will be reviewed, at a minimum, during an inmate's program review meeting.

(d) *Effects of non-participation.* Refusal by an inmate to participate in the financial responsibility program or to comply with the provisions of the inmate's financial plan shall result in the following:

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(7) The inmate will not receive a release gratuity unless approved by the warden;

(8) The inmate will not receive an incentive for participation in residential drug treatment programs; and

(9) The inmate will not be eligible to earn or apply First Step Act Time Credits, as described in 18 U.S.C. 3624

and 3632(d)(4), and 28 CFR 523.40–523.44.

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

[FISCAL–2022–0003]

RIN 1530–AA27

Management of Federal Agency Disbursements

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Department of the Treasury's (Treasury) Bureau of the Fiscal Service ("Fiscal Service" or "we"), is proposing to amend its regulation that implements a statutory mandate requiring the Federal Government to deliver non-tax payments by electronic funds transfer (EFT) unless a waiver is available. Among other things, this Notice of Proposed Rulemaking (NPRM) would strengthen the EFT requirement by narrowing the scope of existing waivers from the EFT mandate or requiring agencies to obtain Fiscal Service's approval to invoke certain existing waivers; provide that Treasury has the right to nullify an agency's use of a waiver if Treasury determines that application of a waiver would lead to an agency initiating an unusually large number or proportion of payments by means other than EFT; and clarify that when an agency fails to make a payment by EFT as prescribed by part 208, Treasury has authority to assess a charge to an agency. The proposed changes reflect the reality that the use of electronic payments has expanded significantly since the waivers from the EFT mandate were first published in 1998 and also seek to take advantage of Treasury's growing profile of electronic payment options, which are faster, less expensive, and safer than paper checks. Strengthening the EFT requirements as proposed in the NPRM is also consistent with Treasury's commitment to reducing check payments.

DATES: To be considered, comments on the proposed rule must be received by March 13, 2023.

ADDRESSES: Commenters are encouraged to submit comments on the proposed rule, identified by Docket No. FISCAL–