

Association of Federal Defense Attorneys (AFDA)
<http://www.afda.org>
Online Presentation: BOP's IFRP Program (October 2004)

BOP Chat, Monday, October 4

Good morning. Greg Nicolaysen here. I thank you for taking the time to attend our monthly BOP Chat.

I have prepared an informal presentation on the BOP's Inmate Financial Responsibility Program (IFRP). I will post information and documents about the program, and after I am done, everyone is welcome to chat online by writing in the box at the bottom of your screen, then clicking the POST MESSAGE command in the lower right-hand corner of your screen. All your comments will come to me as the moderator, and I will post them to the public viewing screen topic by topic so we maintain a thread of discussion on a particular subject before moving to the next subject.

**Inmate Financial Responsibility Program
(PS 5380.07)**

Initiated by BOP in 1985

Purpose: to collect court-ordered financial obligations

Statutory Framework:

- * Victim and Witness Protection Act of 1982**
- * Victims of Crime Act of 1984**
- * Comprehensive Crime Control Act of 1984**
- * Federal Debt Collection Procedures Act of 1990**

All these statutes require diligent effort by law enforcement to collect court-ordered financial obligations

**Inmate Financial Responsibility Program
(PS 5380.07)**

All BOP inmates are expected to meet their court-ordered and other legitimate financial obligations

BOP unit team reviews PSR and Judgment / Commitment Order

Payment Priorities:

- 1. Special Assessments per 18 U.S.C. §3013**
- 2. Court-ordered restitution**
- 3. Fines and court costs**
- 4. State or local court obligations**
- 5. Other federal government obligations**

**Inmate Financial Responsibility Program
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Consequences for failure / refusal to participate:

- loss of furloughs (except emergency / medical)
- loss of performance pay above maintenance pay level
- * loss of bonus pay**
- loss of work assignments outside perimeter of facility
- loss of eligibility for UNICOR / removal from UNICOR job
- subject to stricter monthly commissary spending limit (\$25, excluding stamps and phone)
- placement in lowest housing status**
- loss of eligibility for community-based program**
- loss of eligibility for release gratuity unless approved by Warden
- loss of any incentive to participate in RDAP**

**Inmate Financial Responsibility Program
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An inmate's "refuse" status and the consequences can be implemented immediately upon a verbal refusal to participate in the program.

HOW PAYMENTS ARE MADE:

***electronically through inmate's trust fund accounts**

***include earnings from prison work assignments**

PAYMENT PLAN

Each inmate with financial obligation, regardless of extent of resources, develops financial payment plan with unit classification team.

MONITORING COMPLIANCE

Through online information system, staff can access inmate's financial obligations and monitor compliance.

Obligation To Pay vs. Obligation To Disclose

Inmates not obligated to report / disclose income or assets to BOP

TACTICAL QUESTIONS:

1. **Should client disclose assets to PO re: PSR?**

**Risk of fine: based on capacity to pay
Restitution unaffected: mandatory**

Possible Rule 35 flexibility re: perjury

2. **No disclosure required to BOP**

No sanction re: refusal to disclose for PSR

3. ***But watch out for Supervised Release:***

disclosure is condition of SR

Hypothetical re: Financial Disclosure

Client facing \$10 million in restitution at sentencing.

Net worth is approximately \$10 million.

Assets largely off-shore / hidden / beyond government's reach

Gov is interested in client's post-sentencing cooperation

TACTICAL QUESTIONS:

- (1) how do you advise client re: disclosing assets re: PSR?**
- (2) how do you advise client re: IFRP**
- (3) how do you advise client re: Supervised Release?**
- (4) how can the disclosure decision impact possible Rule 35 options later on?**

Sentencing Strategies re: IFRP

1. **Ask sentencing judge to defer IFRP payments:**

Restitution / fine payments commence when Supervised Release begins

2. **If judge wants restitution payments to be made in custody,**

Specify source of IFRP contribution
(eg, all prison wages go to IFRP)

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**Financial Disclosure To Probation Office
At Pre-Sentence Stage re: PSR**

Purpose:

Assess imposition of a fine

*** 18 U.S.C. 3571**

*** focus: capacity to pay**

U.S.S.G. 5E1.2: routinely waived if defendant is indigent

Restitution mandatory re: fraud/theft

*** 18 U.S.C. 3663A**

*** U.S.S.G. 5E1.1**

*** imposed even if defendant indigent**

[End of online presentation. The online discussion with the defense bar that followed the presentation has been omitted.]