

PS 5380.06 COST OF INCARCERATION FEE (COIF)



Program Statement

OPI: CPD
NUMBER: 5380.06
DATE: 8/11/99
SUBJECT: Cost of Incarceration
Fee (COIF)

RULES EFFECTIVE: 8/11/99

1. [PURPOSE AND SCOPE § 505.1. This part establishes procedures for the assessment and collection of a fee to cover the cost of incarceration. The Director of the Bureau of Prisons has been delegated the authority of the Attorney General (see 28 CFR 0.96c) to assess and collect a fee imposed by the Bureau in the event the court neither imposes nor waives a fine pursuant to the Sentencing Guidelines 5E1.2(d). For purposes of this part, revocation of parole or supervised release is to be treated as a separate period of incarceration for which a fee may be imposed.]

"This part" refers to the rules text (28 CFR § 505.1 through 505.9) contained in this Program Statement. In 1992, Congress enacted Public Law 102-395, requiring the Bureau to establish policy and procedures to collect fees for incarceration costs (see 18 U.S.C. §4001, note). This policy applies to inmates who are:

- # convicted in U.S. District Courts,
- # committed to Bureau custody, and
- # serving a period of incarceration which began on or after January 1, 1995.

Unless exempted, the Cost of Incarceration Fee (COIF) is a financial obligation that sentenced inmates are required to satisfy at the earliest possible time. Fees generated shall be used to benefit the inmate population through program funding. Collection of the COIF should be viewed within the larger context of the Inmate Financial Responsibility Program (IFRP).

2. **SUMMARY OF CHANGES.** This revision modifies Rules language in order to remove redundant provisions and make organizational/editorial changes. Rules language and implementing text have

[Bracketed Bold - Rules]

Regular Type - Implementing Information

also been revised to incorporate changes commensurate with the most recent U.S. Sentencing Guidelines and to define clearly the difference between the court-imposed COIF (Fine) and the Bureau-imposed COIF (Fee). The requirement for an Institution Supplement has been removed based on the decision of Correctional Programs Administrators.

Lastly, this reissuance reflects the most current poverty guideline figures as established by the Department of Health and Human Services, and the most recent Bureau per capita imprisonment figure.

3. **PROGRAM OBJECTIVE.** The expected result of this program is:

Each eligible inmate committed to Bureau custody, who is found to have sufficient assets and has not been assessed a fine by the court, will be assessed a fee to cover the cost of incarceration as mandated by 18 U.S.C. §4001.

Note: The Bureau's Cost of Incarceration **FEE** (COIF-BOP) is **separate and distinct** from the Cost of Incarceration **FINE** imposed by the Court (COIF-Court). The Court has judicial authority to impose a fine which is punitive in nature and part of the individual's sentence. Funds collected in this category (COIF-Court) are transmitted by the Business Office to the U.S. Treasury Department.

However, when the Court has not considered a Cost of Incarceration **FINE**, the Bureau is responsible for evaluating the inmate's financial resources by completing the Cost of Incarceration Fee Worksheet (BP-546). Those inmates determined to have the financial resources available are to be assessed the Bureau's Cost of Incarceration **FEE**. This is a one-time-only fee, not to exceed the yearly cost of housing an inmate. Monies collected in this category remain in a special fund at the local institution (see Attachment B for clarification).

At no time will both a Court COIF and a Bureau COIF be imposed on the same inmate.

4. **DIRECTIVES AFFECTED**

a. **Directive Rescinded**

PS 5380.03 Cost of Incarceration Fee (6/2/95)

b. Directives Referenced

PS 1330.13 Administrative Remedy Program (12/22/95)
PS 2011.07 Cost of Incarceration Fee, Accounting for
(9/2/97)
PS 2013.01 Financial Management - Debt Management
(3/3/94)
PS 5251.04 Work and Performance Pay Program, Inmate
(1/11/96)
PS 5322.10 Classification and Program Review of Inmates
(9/4/96)
PS 5380.05 Financial Responsibility Program, Inmate
(12/22/95)
PS 7310.03 Community Corrections Center (CCC)
Utilization and Transfer Procedure (3/25/96)

18 U.S.C. §4001

Department of Health and Human Services - 1998 Poverty
Guidelines

c. Rules cited in this Program Statement are contained in 28
CFR § 505.1 through 505.7.

d. Rules referenced in this Program Statement are contained in
28 CFR § 0.96c.

5. **STANDARDS REFERENCED.** None.

6. **PRETRIAL/HOLDOVER/DETAINEE PROCEDURES.** Procedures specified
in this Program Statement apply only to inmates sentenced in
U.S. District Court. They do not apply to inmates sentenced in
any state or the D.C. Superior Court.

7. **[ANNUAL DETERMINATION OF AVERAGE COST OF INCARCERATION
§ 505.2. Pursuant to 28 CFR 0.96c, the Bureau of Prisons staff
is responsible for calculating the annual average cost of
incarceration. This calculation is reviewed annually and the
revised figure is published as a notice in the *Federal Register*.]**

The Bureau's average cost to incarcerate an inmate shall be
updated consistent with the fiscal planning cycle, if possible.
Once the Department of Health and Human Services (DHHS) Poverty
Guidelines are issued and the average cost of incarceration has
been determined, these figures will be disseminated via an
Operations Memorandum by the Correctional Programs Division,
Central Office.

8. **[INMATES EXEMPTED FROM FEE ASSESSMENT § 505.3. Inmates who**

began service of sentence before January 1, 1995, or who have had a fine either imposed or expressly waived by the United States District Court, pursuant to Section 5E1.2 (e) of the United States Sentencing Guidelines, or any successor provisions, are exempt from fee assessment otherwise required by this part.]

Section 5E1.2(d) of the U.S. Sentencing Guidelines (USSG) requires judges to consider the expected costs to the government of any term of imprisonment, **except** in cases when the judge determines pursuant to Section 5E1.2(e) of the USSG that the defendant is unable to pay a fine. If the judge has waived a fine, the Bureau may not impose a COIF.

a. The Bureau of Prisons **may not impose** a COIF in the following circumstances:

- < Judge waives the fine
- < Judge imposes a fine which includes an additional amount to cover costs of incarceration
- < Fine amount and/or cost of incarceration amount is entered as zero on the Judgment and Commitment (J&C)
- < Judge imposes a fine but determines that the defendant does not possess sufficient funds to pay, and therefore, waives the fine
- < Inmate was sentenced on or after November 1, 1997, and a fine has been imposed (including zero amount)

Fines imposed on or after November 1, 1997, have already taken into consideration costs to the government, including terms of imprisonment. Therefore, the **Bureau is not in a position to further assess a COIF.**

b. Situations in which the Bureau **may impose** a COIF include the following:

- < Judge neither imposed nor waived a fine; there is no indication on the J&C that a fine and/or cost of incarceration had been considered during sentencing

OR

- < The inmate entered Bureau custody on or after January 1, 1995, **and** was sentenced prior to November 1, 1997, **and** the Judge has imposed a fine; **however**, the J&C does not indicate that the fine amount includes the cost of incarceration, (nor has an additional amount been specified to cover cost of incarceration)

Under these circumstances, staff shall complete the Cost of Incarceration Fee Worksheet (BP-546) to determine whether the inmate is required to contribute to the COIF fund. If the inmate is not eligible, no further review is needed. The completed BP-546 is to be filed in section one of the Inmate Central File.

9. **[CALCULATION OF ASSESSMENT BY UNIT STAFF § 505.4. Bureau of Prisons Unit Team staff are responsible for computing the amount of the fee to be paid by each inmate who has not been exempted from fee assessment. The inmate will only be assessed an amount once for the cost of incarceration for each separate period of incarceration.**

a. **Unit Team staff are to rely exclusively on the information contained in the Presentence Investigation Report and findings and orders of the sentencing court in order to determine the extent of an inmate's assets, liabilities and dependents.]**

Unit staff shall contact the appropriate U.S. Probation Office in the inmate's sentencing district if a Presentence Investigation Report (PSI) was not received. Since existing Federal statutes and sentencing guidelines allow for a defendant's sentence to include a fine, each PSI should contain an assessment and recommendation as to the defendant's financial status and resources. Specifically, federal statutes and the sentencing guidelines make it clear that a defendant's fine will depend upon income, financial resources, and dependents.

Likewise, if a PSI was not prepared, unit staff shall contact the appropriate U.S. Probation Office and request the financial information necessary to calculate the COIF.

At the time of sentencing, each defendant has an opportunity to dispute financial information contained in the PSI and to provide his or her own evidence. The unit team should not conduct individual fact-finding, but rather shall make an objective calculation based upon financial information the court provided. An inmate may appeal the unit team's decision through the Bureau's Administrative Remedy Program.

When an inmate has been returned to custody as a violator, staff are to review the new J&C or Notice of Action for reference to COIF. Procedures are the same as for new commitments in determining whether a fee is to be assessed. When no new PSI has been prepared, staff are to rely on information contained in the PSI accompanying the original sentence in assessing COIF. Should the inmate dispute the financial information, he or she may appeal through the Administrative Remedy Program.

[b. The fee is assessed in accordance with the following formula: If an inmate's assets are equal to or less than the poverty level, as established by the United States Department of Health and Human Services and published annually in the *Federal Register*, no fee is to be imposed. If an inmate's assets are above the poverty level, Unit Team staff are to impose a fee equal to the inmate's assets above the poverty level up to the average cost to the Bureau of Prisons of confining an inmate for one year.]

Based upon financial information contained in the PSI, unit staff shall review each inmate's net assets measured against the DHHS Poverty Guidelines established for that year.

- < This review requires the unit team to consider the inmate's state of legal residence and number of dependents.
- < For an inmate who is not a U.S. resident, unit staff shall apply the same DHHS Poverty Guidelines used for "residents of all states and the District of Columbia."
- < The number of dependents (**excluding the inmate**) referenced in the PSI shall constitute the size of the "family unit" for purposes of the DHHS Poverty Guidelines. An inmate with no dependents has no living expenses which need to be offset for the purposes of COIF.

The DHHS provides an annual update of poverty guidelines to account for increases as measured by the Consumer Price Index. This information will be included in Operations Memoranda distributed by the Correctional Programs Division, Central Office.

[c. If the amount of time that the inmate is in custody is less than 334 days (including pretrial custody time), the maximum fee to be imposed shall be computed by prorating the fee on a monthly basis.]

An inmate sentenced to 12 months, 1 day, spends approximately 334 days incarcerated. Therefore, when an inmate spends 334 days or less in custody, Financial Management staff, upon the request of Unit Management staff, shall compute prorated fee assessments once the inmate is received at his or her initially designated facility. This prorated assessment should be communicated to the inmate's unit team as expeditiously as possible.

10. [WAIVER OF FEE BY WARDEN § 505.5. The Warden may reduce or waive the fee if the person under confinement establishes that:

a. He or she is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fee, or

b. Imposition of a fee would unduly burden the defendant's dependents.]

This section is intended to apply where the inmate's financial situation has changed subsequent to the PSI's preparation. The burden is on the inmate to demonstrate to the Warden's satisfaction that it is unlikely that he or she would be able to pay such fee, or that it would unduly burden his or her dependents. Some examples of circumstances that may involve an undue burden on an inmate's dependents include:

(1) non-elective medical expenses for a dependent's mental or physical health;

(2) accidents or random events (automobile, natural disasters, etc.) that involve serious personal harm or damage to an inmate's family or property and result in a major financial burden impacting the dependent(s); or

(3) the dependent(s) would otherwise be deprived of basic subsistence requirements (food, transportation to school, etc.).

11. INMATE NOTIFICATION. When it has been determined that a COIF obligation is to be imposed, the inmate is to be notified at initial classification through the Program Review Report form. A copy of the BP-546 should also be provided to the inmate at such time. This notification is necessary, even when the inmate has other higher priority financial obligations under the IFRP. When notification cannot be made at initial classification, the inmate is to be notified as soon as possible. Documentation supporting a delay in notification to the inmate should be recorded on the activity log.

12. [PROCEDURES FOR PAYMENT § 505.6. Fees imposed pursuant to

this part are due and payable after notice of the Unit Team actions. When the inmate participates in the financial responsibility program, fees are to be included in the category "other federal government obligations" and shall be paid before other financial obligations in that same category. Fees may be subject to interest charges.]

All COIF payments are to be paid through and recorded at the appropriate Financial Management Office. Payments by money order or check should be made payable to the Federal Bureau of Prisons. The check or money order must reference the inmate's:

- # name,
- # register number, and
- # reason for payment (COIF).

For internal payments, designated IFRP forms shall be used as a vehicle to collect COIF payments. For either internal or external payments, the appropriate Financial Management Office shall provide the inmate a receipt of payment for all monies paid toward the assessed fee, and upon request, a statement of any unpaid balance, if appropriate. For outside payments, the inmate must provide a copy of the receipt to the Unit Team so that they may adjust the inmate's SENTRY obligation balance.

An inmate does not begin payment of a fee under this part until he or she has completed payment on any other financial obligations which are a higher priority under IFRP. After such payments have been completed, or no higher priority obligations exist, the inmate ordinarily must pay the COIF either in one lump sum or using a multiple payment installment plan, not to exceed 12 months.

An inmate may be granted a multiple payment **installment plan in excess of 12 months** only if the Warden determines that extraordinary or compelling circumstances exist to warrant an extension. Such circumstances ordinarily refer to a period of time to allow an inmate the opportunity to sell his or her assets in order to pay the COIF. In order to grant an extension, the Warden must request and receive **approval from the Assistant Director, Administration Division, Central Office** (Attachment C).

Ordinarily, interest charges will not be levied against an inmate for non-payment or partial payment of an assessed fee. Any exception to this procedure must be authorized by the Assistant Director, Administration Division, Central Office.

Progress toward satisfaction of the assessed COIF shall be formally reviewed at each regularly scheduled program review.

Pursuant to the provisions of the IFRP, any inmate who refuses to satisfy his or her assessed fee may be subject to a loss of privileges (see the Program Statement on the Inmate Financial Responsibility Program).

13. [PROCEDURES FOR FINAL DISPOSITION § 505.7. Before the inmate completes his or her sentence, Unit Team staff must review the status of the inmate's fee. Any unpaid amount will be referred for collection in accordance with Federal Claims Collection Standards (4 CFR Chapter II).]

If an inmate is being released directly to the community with an unpaid COIF balance, Unit Management staff shall prepare a Claims Collection Litigation Report (CCLR) and submit it to the Office of Financial Management (OFM) with the Release and Gratuity Information form (BP-S189.051) prior to the inmate's release date. Unit Management shall follow procedures outlined in the Program Statement on Accounting for the Cost of Incarceration Fee.

14. INSTITUTION/CCC TRANSFERS. The SENTRY contract will stop upon an inmate's transfer to another institution or Community Corrections Center (CCC). The SENTRY obligation balance will transfer in SENTRY with the inmate. The Unit Management staff at the receiving institution shall retrieve outstanding obligation data from SENTRY and generate a new contract. The contract shall be provided to the OFM to establish an account receivable for the remaining balance.

For inmates transferring to CCCs, institution staff shall forward account receivable information to the appropriate Regional Correctional Programs staff. This information is to be forwarded no later than two weeks prior to transfer. Regional Correctional Programs staff must notify the Regional Comptroller and the appropriate CCM of the remaining COIF balance immediately.

15. FEDERAL INMATES IN COMMUNITY CORRECTIONS CENTERS. Community Corrections Managers (CCMs) are responsible for compliance with this Program Statement for all federal inmates serving their sentences in CCCs. The CCM is considered to be the Warden for purposes of this Program Statement. CCMs shall ensure that this Program Statement is posted in all CCCs.

a. **Direct Court Commitments.** The CCM shall compute the amount of the fee each inmate designated directly to a CCC is to pay. Procedures outlined in Section 9 shall be used to determine the amount of the fee to be paid.

For inmates determined to have a Bureau-assessed COIF, the CCM shall notify the inmate, in writing, of the amount of:

- # the obligation,
- # the deadline of making said payment, and
- # the address of the pay station to which the payment shall be made.

If the inmate requests a payment schedule, the CCM shall adhere to the criteria outlined in Section 13 of this Program Statement. Payment schedules shall not exceed the length of sentence. In this correspondence the inmate shall also be instructed to send the payment to the CCM's pay station via certified check or money order.

If the Direct Court commitment has been assessed a COIF, subsistence shall be waived.

b. **Institution Transfers to CCC.** A pre-release inmate who is transferred to a CCC and has a COIF obligation may have a previously approved installment schedule. The CCM shall notify the inmate, in writing, that he or she is to continue the payment schedule with payments submitted to the CCM's official pay station via certified/cashiers check or money order. The notification letter is to give the address of the pay station to which the payment is to be mailed.

The payment schedule and amounts shall be the same as those previously established at the transferring institution. The SENTRY obligation balance will transfer in SENTRY with the inmate. CCM staff shall retrieve outstanding obligation data from SENTRY and generate a new contract. It is imperative to maintain accurate SENTRY records as this information is monitored by Central Office and submitted quarterly to the Director.

The CCM shall monitor COIF payments regularly and follow-up with a letter to any inmate if it is determined that payments are in arrears. If the inmate is not making timely COIF payments after being identified and notified of his or her obligation, disciplinary action, which could result in removal from the CCC, may be initiated.

c. **COIF Payments.** All COIF payments are to be paid through and recorded at the Regional Office of Financial Management in the region where the inmate is currently housed. The Office of Financial Management shall provide the inmate with a receipt for all monies paid toward the assessed fee. A copy of the receipt shall also be forwarded to the appropriate Community Corrections office in order to ensure proper credit in the SENTRY program.

d. **Release from Contract Facility.** If the inmate is released from a contract facility with a COIF balance, the CCM shall prepare the CCLR form and forward it to the appropriate Regional Comptroller, who shall complete the bill number and current amount on the CCLR and process it according to procedures detailed in the Program Statement on Accounting for the Cost of Incarceration Fee.

e. **COIF and Subsistence.** If the pre-release inmate's COIF payment schedule equals or exceeds the calculated subsistence collection amount, subsistence should be waived until the COIF obligation has been satisfied. If the inmate's payment schedule is substantially less than the calculated subsistence payment, the difference should be collected as subsistence.

/s/
Kathleen Hawk Sawyer
Director

PS 5380.06
8/11/99
Attachment A

BP-S546.053 COST OF INCARCERATION FEE WORKSHEET
is available on BOPDOCS

COST OF INCARCERATION FEE

Program Statement 5380.XX, Cost of Incarceration Fee (COIF), applies only to the calculation and imposition of the Bureau-imposed fee. This is separate and distinct from the Court-imposed fine. Fines merely collected by the Bureau are processed differently than Fees imposed by the Bureau. The chart below has been developed to help clarify the differences which exist between the two.

COIF CLARIFICATION		
	Court-Imposed FINE (COIF - COURT)	Bureau-Imposed FEE (COIF - BOP)
When Imposed:	1. J&C indicates a specific dollar amount is to be paid toward the Cost of Incarceration	1. The Judge has neither waived nor imposed a fine and the COIF Worksheet indicates that the inmate is financially able to pay the fee 2. The inmate entered Bureau custody on or after January 1, 1995, and was sentenced prior to November 1, 1997; and , the J&C does not include any reference to a Cost of Incarceration Fine; and , the COIF Worksheet indicates that the inmate is financially able to pay the fee [note: if the inmate was sentenced on or after 11-01-1997, and the Judge either imposed or waived a fine, the Bureau may not impose the fee]
Obligation Type	Code 14 COIF COURT COURT (USDC) IMPOSED COIF (FINE) USDC	Code 39 COIF BOP BUREAU ASSESSED COIF (FEE) BOP FED AGENCY
SENTRY Transaction	Update U.S. District Court Financial Doc. Use AUSA address and date on J/C	Update Non-U.S. District Court Financial Doc. Use institution address & date worksheet completed in Date Imposed category
Maximum Amount	Specified amount on J&C dedicated to COIF	Current year COIF figure (note: this is a one-time obligation)
Payment Period	TBD - as agreed upon by Unit Staff and inmate	One lump sum (negotiable to 12 months)
Funds Disbursement	U.S. Treasury Department	Held at local institution (currently in suspense)
Purpose/Intent	Punitive in nature as part of an inmate's overall sentence	Fee imposed by the Bureau - as mandated by 18 U.S.C. §4001, note - to recoup the administrative costs of confinement and to improve institutional programs

MEMORANDUM FOR _____, ASSISTANT DIRECTOR
ADMINISTRATION DIVISION

FROM: (Warden)
(Institution)

SUBJECT: (Inmate Name)
(Register Number)

This is to request your approval to grant (Inmate Name, Reg. No.) an extension to the Cost of Incarceration Fee payment plan beyond the 12-month installment plan allowed in policy.

Program Statement 5380.xx, Cost of Incarceration Fee (COIF), indicates that inmates will be granted an extension when extraordinary or compelling circumstances exist. (Mr./Ms. Inmate) indicates that (he/she) is unable to complete payment of the COIF within a 12-month period due to the following reason(s):

Thank you for taking the time to review this request. Please indicate your decision by checking the appropriate category below and signing in the corresponding signature block.

_____ Approve extended payment plan by _____
(# months)

Assistant Director, Administration Division

_____ Disapprove extended payment plan

Assistant Director, Administration Division

cc: Regional Director
Regional Correctional Programs Administrator
Regional Comptroller

NOTIFICATION TO INMATE IN CCC REGARDING COIF PAYMENT

Inmate Name: _____

Register Number: _____

Date: _____

This is to advise you that you have been assessed a Cost of Incarceration Fee (COIF) in the amount of \$ _____. You have a remaining balance of \$ _____. This amount is due and payable by (date).

If you have transferred from an institution, you are to continue with the same payment schedule.

Payments are to be submitted in the form of certified check or money order to the address below:

Office of Financial Management
(Region)
(Address)

Once processed, the Office of Financial Management shall provide you with a receipt (BP-114) of payment.

Prepared by: (CCM)
(Address/phone)

enclosure: Cost of Incarceration Fee Worksheet