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The Honorable William J. Hughes
Chairman
The Honorable Carlos J. Moorhead
Ranking Minority Member
Subcommittee on Intellectual
Property and Judicial Administration
Committee on the Judiciary
House of Representatives

This letter responds to your November 8, 1993, request for information on two Bureau of Prisons (BOP) trust funds--Funds of Federal Prisoners (inmate deposit fund) and Commissary Funds, Federal Prisons (commissary trust fund). Information responding to each of your questions about the (1) purpose of, controls over, and costs of the trust funds; (2) current rules, regulations, and directives; (3) amount of funds in inmate accounts; (4) inmate rights and responsibilities; and (5) markup on items and services sold to inmates is provided in the enclosure.

To develop the information requested, we studied the trust funds' operating procedures, examined BOP's internal program review reports and inspector general reports, obtained interpretations of written procedures from BOP officials responsible for managing the trust funds, and reviewed BOP financial reports on the trust funds. We also reviewed court documents on an inmate lawsuit filed against BOP's installation of the direct-dial telephone system. In addition, we spoke with officials from the National Association of Convenience Stores to obtain information on merchandise price markup and profit margins.

To obtain information on the two trust funds, we visited the federal correctional institution in Milan, MI. We chose Milan because of its proximity to our Detroit office and, according to BOP officials, it typified BOP trust fund operations. At Milan, we spoke with officials responsible for managing trust funds and reviewed the (1) processing of and recordkeeping for inmate funds, (2) operation of the commissary, and (3) operation of the direct-dial telephone system.

On June 13, 1994, we discussed the results of our work with the Chief of BOP's Trust Fund Branch and BOP's Deputy Associate General Counsel. They confirmed the accuracy of the information we obtained and provided technical clarifications, which we have incorporated where appropriate.

If you have any additional questions, please contact me at (202) 512-8644.



Weldon McPhail
Assistant Director, Administration
of Justice Issues

Enclosure

SUBCOMMITTEE'S QUESTIONS AND GAO'S RESPONSES1. WHAT IS THE PURPOSE OF EACH TRUST FUND AND WHAT OPERATIONAL AND FINANCIAL CONTROLS EXIST?

The purpose of the commissary trust fund is to provide BOP's inmates the opportunity to obtain merchandise not provided by BOP. To provide this merchandise, the commissary trust fund operates convenience-type stores, vending and laundry machines, and a direct-dial telephone system. The commissary trust fund is self-supporting and does not use BOP appropriated funds. Revenues support commissary operations, including buying and replacing equipment and inventory, leasing telephone equipment, and paying salaries of trust fund employees. Profits are to be used to buy items that can serve the general welfare of inmates (e.g., recreational equipment and cable television premium channels).

The inmate deposit fund maintains inmates' funds in personal accounts. Inmates may receive funds from family and friends and may earn money for work in the prison industries or for work in the institution. Inmates can use the funds to pay for court-ordered restitution or family support and to buy commissary items and services, including telephone calls and special-order items such as specific types of clothing, educational materials, or hobby supplies.

In July 1991, BOP established a trust fund branch to oversee expanding commissary sales and computer operations and to implement and oversee a new direct-dial telephone system. To ensure the financial integrity of commissary trust fund operations, the trust fund office is required to maintain financial records and approve expenditures. In addition, each institution's controller is responsible for oversight of the operational and financial controls of both trust funds, and commissary purchases are to be reviewed by BOP regional officials.

2. WHAT ARE THE RULES, REGULATIONS, DIRECTIVES, OR MANUALS UNDER WHICH THE TRUST FUNDS ARE CURRENTLY OPERATED? HOW OFTEN HAVE THESE BEEN REVIEWED OR ALTERED? ARE CHANGES TO THE TRUST FUND OPERATION PUBLISHED IN THE FEDERAL REGISTER?

The Department of Justice set up both trust funds in 1930 and revised them in 1932. Congress approved both trust funds in the fiscal year 1933 Department of Justice appropriations, and they have been classified as trust funds by federal law (see 31 U.S.C. 1321(a)(21)(22)). Currently, BOP's April 1989 Trust Fund Management Manual (revised in 1992) covers the operation of the commissary trust fund, and BOP's April 1989 Accounting Management

Manual (revised in 1993) covers the operation of the inmate deposit fund, including setting up accounts, deposits of funds, and withdrawals.

BOP's Trust Fund Management Manual has undergone five revisions, most recently in January 1992, and is currently being revised. BOP's Accounting Management Manual has been revised four times, most recently in February 1993. The manuals and the changes to the manuals have not been published in the Federal Register. However, BOP has published changes to the trust fund operations in the Federal Register on two occasions. In October 1985, BOP published rules covering inmate funds received through the mail. In April 1994, BOP published rules on the operation of the direct-dial telephone system.

3. IS IT POSSIBLE TO DETERMINE AT ANY GIVEN TIME THE SPECIFIC INMATES WHO HAVE FUNDS IN TRUST AND THE AMOUNT OF THOSE FUNDS? HOW OFTEN ARE INMATES PROVIDED AN ACCOUNTING OF THESE FUNDS?

Each institution is required to maintain deposit and withdrawal records for each inmate account. Our analysis of Milan's accounts showed that on February 1, 1994, individual balances ranged from \$0 to about \$5,000 for the 1,553 inmates. However, the median balance for accounts at Milan was about \$7,¹ and only 20 percent of the inmates had balances greater than \$100.

Inmates can retrieve their account balances at the commissary either by formal inquiry or from receipts they receive when purchasing commissary items. Inmates are to be given a receipt when money is deposited in their accounts from outside sources. Also, monthly statements are to be given to inmates when deposits are made to their accounts for work done in the prison's industry.

4. IS IT POSSIBLE TO IDENTIFY THE INMATES WHO HAVE FUNDS DEPOSITED TO THEIR ACCOUNTS BY OUTSIDE SOURCES SUCH AS FAMILY MEMBERS? WHAT RECORD IS MADE OF INDIVIDUAL OUTSIDE SOURCE DEPOSITS AND CAN THE SPECIFIC AMOUNT OF ALL OUTSIDE SOURCE FUNDS BE DETERMINED?

Each institution is required to maintain individual inmate financial records, and the amount of funds from outside sources can be determined from them. For example, Milan's controller told us that his analysis of the institution's financial records for September 1993 through February 1994 showed the inmate

¹The median balance is the amount at which 50 percent of inmates have smaller balances and 50 percent have larger balances.

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population received about \$991,000 from outside sources. This amount was 88 percent of the total funds deposited in the inmates' accounts.

5. WHAT INFORMATION IS PROVIDED TO EACH INMATE CONCERNING THE OPERATION OF THESE TWO TRUST FUNDS AND THEIR RIGHTS AND RESPONSIBILITIES?

BOP officials said that all inmates are informed of trust fund operations at their institutions. For example, Milan officials told us they provide inmates a formal orientation and a booklet explaining the deposit fund, commissary operations, and the direct-dial telephone system. Milan officials gave us a booklet, and we confirmed that the inmates' rights and responsibilities were explained in it.

6. ARE ANY FUNDS WITHDRAWN FROM THE TRUST ACCOUNT, "FUNDS OF FEDERAL PRISONERS," WITHOUT AN INMATE'S CONSENT? IF SO, ARE THE WITHDRAWALS PURSUANT TO A COURT ORDER OR A BUREAU OF PRISONS' REGULATION?

According to BOP, the only funds that can be withdrawn from an inmate's trust account without permission are those taken by the Internal Revenue Service to pay tax liens. All other funds withdrawn from an inmate's account, including those made pursuant to court order and commissary purchases, require the inmate's signature for approval.

7. HAVE COMPLETE AUDITS OF THESE TRUST FUNDS BEEN CONDUCTED AND ARE THERE COPIES OF THESE AUDITS?

In fiscal year 1991, the Department of Justice's Inspector General contracted for annual independent audits of BOP's commissary and inmate deposit trust funds. We reviewed audit reports for fiscal years 1991 and 1992, which noted no significant findings. The fiscal year 1993 audit report had not been completed at the time of our review.

BOP policy requires that program reviews be done at each institution at least every 2 years. Program reviews are to encompass all the operations of the institution, including the trust funds. A typical program review team consists of about 10 BOP staff from headquarters and/or other BOP institutions and lasts about 1 week. We examined the most recent program review report for each institution and found the reviews were generally done within 2 years of the previous reviews and that BOP did not consider most findings significant (e.g., incorrect computation of vending machine commissions and failure to clear checks daily).

Likewise, BOP requires each institution to do its own internal audits, typically within 1 year after a program review. These audits follow detailed guidelines and result in written reports that are reviewed at BOP headquarters.

8. WHAT ARE THE OPERATIONAL COSTS OF THE TWO TRUST ACCOUNTS?

Because the operational costs of the inmate deposit fund are not kept separately from the institutions' other operating costs, the cost of operating the inmate deposit fund cannot be determined. Commissary trust fund costs are maintained separately. Table I.1 shows the revenues, expenses, and profits for fiscal years 1991 through 1993.

Table I.1: Revenues, Expenses, and Profits of the Commissary Trust Fund

Dollars in millions

Fiscal year	Revenues	Expenses	Profits
1991	\$65.0	\$63.3	\$1.7
1992	74.4	73.1	1.3
1993	97.6	92.7	4.9

Source: BOP.

9. DETERMINE WHAT ITEMS ARE AVAILABLE TO INMATES AT THE COMMISSARY. EXAMINE THE MARKUP OF COMMISSARY ITEMS COMPARED TO COMPARABLE ITEMS OUTSIDE PRISON. DETERMINE THE PURCHASES MADE WITH COMMISSARY FUNDS BY THE BUREAU OF PRISONS. EXAMINE THE MARKUP ON LONG-DISTANCE SERVICE, A COMMISSARY ITEM.

BOP has established general guidelines for items to be sold in commissaries, but wardens at the individual institutions decide on the specific products and brands. At Milan, commissary items included tobacco products, candy, soda, juices, coffee, personal grooming items, prepackaged foods, fresh fruit, vitamins, clothing, small radios, and athletic supplies.

According to BOP officials, institutions buy commissary items from wholesalers and distributors. BOP requires commissaries to sell most items at 25 percent above the institution's cost, rounded up to the next nickel.

We did not compare product pricing of specific BOP commissary items to similar items sold outside of prison. However, we did compare BOP's gross profit² to that of convenience stores. An official at the National Association of Convenience Stores told us that the average gross profit for convenience stores was 32 percent of sales for 1992. For fiscal year 1992, the gross profit for BOP commissaries, including vending machines and the direct-dial telephone system, was 17.6 percent of sales, or 45 percent less than the average for convenience stores nationwide.

Because commissaries are self supporting, revenues support their operations. According to BOP officials, commissary profits are used to purchase items, such as recreation equipment and premium cable television channels, that serve the general welfare of the inmates. At Milan, for example, a running track was installed with the profits.

Direct-Dial Telephone System

In 1991, BOP began converting from a collect-call system to a direct-dial capability for inmates. With the direct-dial system, calls are automatically terminated at 15 minutes and inmates prepay for them from their deposit funds. On the collect-call system, calls may or may not be terminated at 15 minutes because the telephone policy varies among BOP institutions. BOP had installed the direct-dial system in about half of its institutions when inmates at one institution filed a lawsuit against installation of the direct-dial system.³

Because the direct-dial system was being litigated during our review, BOP officials would not discuss how the markup on the direct-dial system is determined. They would tell us only that inmates were charged a per minute rate based on the distance of the call. However, the gross margin on the direct-dial system for fiscal year 1993 was 53.4 percent. BOP studies done at two institutions (where inmates questioned direct dialing rates) showed that a 15-minute direct dial call was cheaper than a collect call at evening rates.⁴

²"Gross profit" is defined as sales minus the cost of those goods to the retailer. It does not include operating costs.

³Washington v. Reno, No. 93-6414 (6th Cir., oral argument on preliminary injunction May 12, 1994).

⁴Cost comparisons differ depending on the rate schedule (day, evening, or night) used for collect calls.

10. EXAMINE AND DETERMINE THE BREAKDOWN OF ALL COSTS AND EXPENSES, INCLUDING PERSONNEL, CHARGED BY THE BUREAU OF PRISONS TO THE TRUST ACCOUNT, "COMMISSARY FUNDS, FEDERAL PRISONS."

In fiscal year 1993, the commissary trust fund's total costs and expenses were \$92.7 million, nearly 95 percent of all commissary revenues. Table I.3 breaks out the costs and expenses charged to the commissary trust fund for fiscal years 1991 through 1993.

Table I.2: BOP Charges to the Commissary Trust Fund, Fiscal Years 1991-1993

Dollars in millions

Charge	1993	1992	1991
Cost of goods sold	\$72.8	\$59.9	\$52.5
Salaries and benefits	13.0	8.4	6.7
Other operating expenses	3.9	2.1	2.5
Central office overhead	3.0	2.1	1.6
Total	\$92.7	\$73.1 ^a	\$63.3

^aIncludes \$0.7 million due to a change in accounting policy. Total does not add due to rounding.

Source: BOP data.

As shown in table I.2, salaries and benefits nearly doubled from 1991 to 1993. According to BOP officials, staff levels were increased to fill positions needed to open commissaries at new institutions and run the direct-dial telephone system.

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