



## AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

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January 21, 2023

TO: Legislative & Media Contacts

TO: FCI Danbury Department Heads & Executive Staff

FROM: Shaun Boylan, Executive Vice President

SUBJECT: FY23 Appropriations Bill and Language

On December 29, 2022 Public Law 117-328 otherwise known as the Fiscal Year 23 Combined Appropriation was signed into law by President Joe Biden. Like most federal laws, this act became law the very instance the bill was signed.

Competent staff at FCI Danbury directed all to adhere to the new law and there was no further issue. On January 12, 2023 in closed meeting the union was notified that directive from the Northeast Regional Director was to stay "Status Quo". We were provided with this email. Later that day an email was sent locally from local executive staff re-enforcing this directive to the extent that the law itself is written in said email.

This is a clear violation of federal law. No, you likely won't end up in jail, but we all took an oath to follow the law and defend our Constitution. This oath and the laws/policies/core values you accepted tell you to report wrongdoing. For those of you who are continuing to support this unlawful directive, it will be reported to OIG, FBI, and/or any other appropriate source.

I ask each of you to review the included packet titled "Principals of Federal Appropriations Law" Fourth Edition. Specifically, Chapter 2, "The Legal Framework" which states:

*"E. General Provisions: When Construed as Permanent Legislation*

*Appropriation acts, in addition to making appropriations, frequently contain a variety of provisions either restricting the availability of the appropriations or making them available for some particular use. Such provisions come in two forms: (a) "provisos" attached directly to the appropriating language and (b) general provisions. A general provision may apply solely to the act in which it is contained ("No part of any appropriation contained in this Act shall be used . . ."), or it may have general applicability ("No part of any appropriation contained in this or any other Act shall be used . . .").<sup>73</sup> General provisions may be phrased in the form of restrictions or positive authority. Provisions of this type are no less effective merely because they are contained in appropriation acts. Congress may repeal, amend, or suspend a statute by means of an appropriation bill, so long as its intention to do so is clear. *Robertson v. Seattle Audubon Society*,*

*503 U.S. 429, 440 (1992); *McHugh v. Rubin*, 220 F.3d 53, 57 (2d Cir. 2000); see also *United States v. Dickerson*, 310 U.S. 554 (1940); *Cella v. United States*, 208 F.2d 783, 790 (7th Cir. 1953), cert. denied, 347 U.S. 1016 (1954); *NLRB v. Thompson Products, Inc.*, 141 F.2d 794, 797 (9th Cir. 1944); B-300009, July 1, 2003; 41 Op. Att'y Gen. 274, 276 (1956).*

*Congress likewise can enact general or permanent legislation in appropriation acts, but again its intent to do so must be clear:*

*"While appropriations are 'Acts of Congress' which can substantively change existing law, there is a very strong presumption that they do not . . . and that when they do, the change is only intended for one fiscal year."*

*Building & Construction Trades Department, AFL-CIO v. Martin*, 961 F.2d 269, 273 (D.C. Cir.), cert. denied, 506 U.S. 915 (1992). As another court put it:

*"Congress may create permanent, substantive law through an appropriations bill only if it is clear about its intentions. Put another way, Congress cannot rebut the presumption against permanence by sounding an uncertain trumpet."*

This set of principals has case law to support it and was issued by the Government Accountability Office (GAO) and the Office of General Counsel. The U.S. Government sees fiscal appropriation language as law. Your employer claims this verbiage to be law.

***YOU HAVE A DUTY AND THE RIGHT TO REPORT & REFUSE UNLAWFUL ORDERS!***

We have asked for this information to be retracted and guidance put forth on Sallyport to ensure consistent and clear communication. Threats and intimidation can erase your credibility and suspend integrity. None of us at FCI Danbury are above the law. We already have word that department heads and other supervisors are using intimidation to force peers to comply with this insane directive.

On the next page, you will see some bullets from the fiscal year 22 and 23 appropriations that the union is pushing and embracing but have not been implemented as of today.

### **FY22 and Prior Appropriations:**

- \$194,607,000.00 to increase BOP hiring efforts
  - Only slightly used for “new” hires. Diverted to GS-7 to GS-8 promotions and retention incentives for correctional staff.
- FSA Act Implementation (Public Law 115-391) of Officer to Inmate Ratios, Vacancies.
  - The BOP has not communicated any effort to ensure staff/inmate ratios are met and fair.
- Augmentation – Directive to hire and reduce the utilization of
  - Plain and Simple.... It gets abused more year after year
- Camera Upgrades
  - In Process- Camp is in dire need of surveillance to reduce weaponized PREA complaints against staff and sustain valid reports.
- Facility Repairs
  - It was a great show and we got heat. The BOP has denied several requests (i.e. The FCI roof) but approved a new rooftop AC to cool the Admin Building. Nobody wants a sweaty warden.
- FY19 Appropriations Bill Directive to return staffing levels by department/facility to the pre-2016 levels.
  - As of today, we have less “able to work” officers than last year.

### **FY23 Appropriation:**

- \$180,460,000.00 to increase BOP hiring Efforts
- \$25,560,000.00 Radio/Camera Upgrades
- Augmentation- Limited to 10% of the work “week” (avg. 4hrs)
- Pay- Review and Adjust Pay Scales to become comparable to other DOJ Law Enforcement Agencies
- FSA (Public Law 117-103, 115-391) repeated adherence
- Extreme Weather Plans

From: Petrucci, James (BOP) <jpetrucci@bop.gov>  
Sent: Thursday, January 12, 2023, 10:26 AM  
To:  
Subject: Augmentation Hours Identified in Appropriations Language

Ensure you are not changing/negotiating/fe-negotiating augmentation at your facilities based on the appropriations language of no more than 4 hours (10%) per individual, per week - REMAIN STATUS QUO. I will further discuss during our call this coming Tuesday. Please save any questions until after the call. Thanks and enjoy your weekend.

Mr. Petrucci, Regional Director  
Northeast Region  
(715) 971-7200

From: Nash, Jeremy (BOP) <jnash@bop.gov>  
Sent: Thursday, January 12, 2023 2:20 PM  
To: DAN-ExecStaff (BOP) <DAN-ExecStaff@bop.gov>; DAN-LocalUnionPresident-5 (BOP) <DAN-LocalUnionPresident-5@bop.gov>; DAN-HumanResources-5 (BOP) <DAN-HumanResources-5@bop.gov>; DAN-LTS (BOP) <DAN-LTS@bop.gov>; DAN-CentHeads (BOP) <DAN-DeptHeads@bop.gov>  
Subject: Augmentation Process

Please see attached.

As we currently have no guidance on the implementation of Public Law 117-103 regarding augmentation, effective immediately, the attached previously agreed upon augmentation process will be reinstated.

We are expecting more information as soon as next week and will remain status quo until receiving further guidance from the Northeast Regional Office or Central Office.

Thank you,



Jeremy Nash  
Associate Warden (O)  
FCI Danbury, CT  
E-mail: jnash@bop.gov  
Office: 203-312-5209  
Cell: 267-784-6736



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# PRINCIPLES OF FEDERAL APPROPRIATIONS LAW

## Chapter 2 The Legal Framework

### Fourth Edition 2016 Revision

This document, in conjunction with GAO, *Principles of Federal Appropriations Law*, 4<sup>th</sup> ed., 2016 rev., ch. 1, GAO-16-463SP (Washington, D.C.: Mar. 2016), supersedes chapters 1, 2, and 3 of GAO, *Principles of Federal Appropriations Law*, 3<sup>rd</sup> ed., GAO-04-261SP (Washington, D.C.: Jan. 2004). Chapters 4 through 15 of the third edition of *Principles of Federal Appropriations Law*, in conjunction with GAO, *Principles of Federal Appropriations Law: Annual Update to the Third Edition*, GAO-15-303SP (Washington, D.C.: Mar. 2015), remain the most currently available material on the topics discussed therein. Both *Principles* and the *Annual Update to the Third Edition* are available at [www.gao.gov/legal/redbook/redbook.html](http://www.gao.gov/legal/redbook/redbook.html).

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## E. General Provisions: When Construed as Permanent Legislation

Appropriation acts, in addition to making appropriations, frequently contain a variety of provisions either restricting the availability of the appropriations or making them available for some particular use. Such provisions come in two forms: (a) “provisos” attached directly to the appropriating language and (b) general provisions. A general provision may apply solely to the act in which it is contained (“No part of any appropriation contained in this Act shall be used . . .”), or it may have general applicability (“No part of any appropriation contained in this or any other Act shall be used . . .”).<sup>73</sup> General provisions may be phrased in the form of restrictions or positive authority.

Provisions of this type are no less effective merely because they are contained in appropriation acts. Congress may repeal, amend, or suspend a statute by means of an appropriation bill, so long as its intention to do so is clear. *Robertson v. Seattle Audubon Society*, 503 U.S. 429, 440 (1992); *McHugh v. Rubin*, 220 F.3d 53, 57 (2d Cir. 2000); see also *United States v. Dickerson*, 310 U.S. 554 (1940); *Cella v. United States*, 208 F.2d 783, 790 (7th Cir. 1953), *cert. denied*, 347 U.S. 1016 (1954); *NLRB v. Thompson Products, Inc.*, 141 F.2d 794, 797 (9th Cir. 1944); B-300009, July 1, 2003; 41 Op. Att’y Gen. 274, 276 (1956).

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“While appropriations are ‘Acts of Congress’ which can substantively change existing law, there is a very strong presumption that they do not . . . and that when they do, the change is only intended for one fiscal year.”

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“Congress may create permanent, substantive law through an appropriations bill only if it is clear about its intentions. Put another way, Congress cannot rebut the presumption against permanence by sounding an uncertain trumpet.”

<sup>73</sup> In recent decades, general provisions of governmentwide applicability—the “this or any other act” provisions—have often been consolidated in the annual Treasury and General Government appropriation acts. *E.g.*, Pub. L. No. 108-7, div. J, title I, § 104, 117 Stat. 11, 437 (Feb. 20, 2003) (fiscal year 2003). In recent years, these provisions appear in the Financial Services and General Government Appropriations Act. See, *e.g.*, Financial Services and General Government Appropriations Act, 2015, Pub. L. No. 113-235, div. E, title VII, 128 Stat. 2130, 2332, 2379 (Dec. 16, 2014).



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*Atlantic Fish Spotters Ass'n v. Evans*, 321 F.3d 220, 224 (1st Cir. 2003).

As discussed earlier in this chapter, rules of both the Senate and the House of Representatives prohibit the inclusion of general legislation in appropriation acts. Senate Rule XVI; House Rule XXI. However, this merely subjects the provision to a point of order and does not affect the validity of the legislation if the point of order is not raised, or is raised and not sustained. Thus, once a given provision has been enacted into law, the question of whether it is “general legislation” or merely a restriction on the use of an appropriation, that is, whether it might have been subject to a point of order, is academic.

This section deals with the question of when provisos or general provisions appearing in appropriation acts can be construed as permanent legislation.

Since an appropriation act is made for a particular fiscal year, the starting presumption is that everything contained in the act is effective only for the fiscal year covered. Thus, the rule is: A provision contained in an annual appropriation act is not to be construed to be permanent legislation unless the language used therein or the nature of the provision makes it clear that Congress intended it to be permanent. The presumption can be overcome if the provision uses language indicating futurity or if the provision is of a general character bearing no relation to the object of the appropriation. B-319414, June 9, 2010; 65 Comp. Gen. 588 (1986); 62 Comp. Gen. 54 (1982); 36 Comp. Gen. 434 (1956); 32 Comp. Gen. 11 (1952); 24 Comp. Gen. 436 (1944); 10 Comp. Gen. 120 (1930); 5 Comp. Gen. 810 (1926); 7 Comp. Dec. 838 (1901).

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## 1. Words of Futurity

In analyzing a particular provision, the starting point in ascertaining Congress’s intent is, as it must be, the language of the statute. The question to ask is whether the provision uses “words of futurity.” The most common word of futurity is “hereafter” and provisions using this term have often been construed as permanent. For specific examples, see *Cella v. United States*, 208 F.2d at 790; 70 Comp. Gen. 351 (1991); 26 Comp. Gen. 354, 357 (1946); 2 Comp. Gen. 535 (1923); 11 Comp. Dec. 800 (1905); B-108245, Mar. 19, 1952; B-100983, Feb. 8, 1951; B-76782, June 10, 1948. However, use of the word “hereafter” may not guarantee that an appropriation act provision will be found to constitute permanent law. Thus, in *Auburn Housing Authority v. Martinez*, 277 F.3d 138 (2nd Cir. 2002), the court declined to give permanent effect to a provision that included the word “hereafter”. The court acknowledged that

“hereafter” generally denoted futurity, but held that this was not sufficient to establish permanence in the circumstances of that case. To read “hereafter” as giving permanence to one provision would have resulted in repealing another provision enacted in the same act.<sup>74</sup> The court concluded that this result was not what Congress had intended.

As *Auburn Housing Authority* indicates, mere use of the word “hereafter” may not be adequate as an indication of future effect to establish permanence. Other facts such as the precise location of the word “hereafter” and the sense in which it is used are also important. Moreover, the use of the word “hereafter” may not be sufficient, for example, if it appears only in an exception clause and not in the operative portion of the provision, B-228838, Sept. 16, 1987, or if it is used in a way that does not necessarily connote futurity beyond the end of the fiscal year. *Williams v. United States*, 240 F.3d 1019, 1063 (Fed. Cir. 2001).

Words of futurity other than “hereafter” have also been deemed sufficient. Thus, there is no significant difference in meaning between “hereafter” and “after the date of approval of this act.” 65 Comp. Gen. at 589; 36 Comp. Gen. at 436; B-209583, Jan. 18, 1983. Similarly, an appropriations provision requiring an agency action “not later than one year” after enactment of the appropriations act, which would occur after the end of the fiscal year, is permanent because that prospective language indicates an intention that the provision survive past the end of the fiscal year. B-319414, June 9, 2010. Using a specific date rather than a general reference to the date of enactment produces the same result. B-287488, June 19, 2001; B-57539, May 3, 1946. “Henceforth” may also do the job. B-209583. So may specific references to future fiscal years. B-208354, Aug. 10, 1982. On the other hand, the word “hereinafter” was not considered synonymous with hereafter by the First Circuit Court of Appeals and was not deemed to establish a permanent provision. *Atlantic Fish Spotters Ass’n*, 321 F.3d 220. Rather, the court held that hereinafter is universally understood to refer only to what follows in the same writing (i.e., statute). *Id.* at 225–26.

<sup>74</sup> The appropriation provision in *Auburn Housing Authority* was aimed at countering another provision in the very same act. Thus, the court reasoned that the presumption against repeal by implication was particularly strong in this case. *Id.* at 146. The court also contrasted the hereafter provision with another provision in the same act that was more explicit as to permanence. The latter provision read in part: “[T]his subsection shall apply to fiscal year 1999 and each fiscal year thereafter.” *Id.* at 146–47.

One decision concluded that the words “at any time” were words of futurity in a provision which authorized reduced transportation rates to military personnel who were “given furloughs at any time.” 24 Comp. Gen. 436, Dec. 7, 1944. In that decision, however, the conclusion of permanence was further supported by the fact that Congress appropriated funds to carry out the provision in the following year as well and did not repeat the provision but merely referred to it.

The words “or any other act” in a provision addressing funds appropriated in or made available by “this or any other act” are not words of futurity. They merely refer to any other appropriation act for the same fiscal year. *Williams v. United States*, 240 F.3d at 1063; 65 Comp. Gen. 588; B-230110, Apr. 11, 1988; B-228838, Sept. 16, 1987; B-145492, Sept. 21, 1976.<sup>75</sup> See also A-88073, Aug. 19, 1937 (“this or any other appropriation”). Similarly, the words “notwithstanding any other provision of law” are not words of futurity and, standing alone, offer no indication as to the duration of the provision. B-271412, June 13, 1996; B-208705, Sept. 14, 1982.

The words “this or any other act” may be used in conjunction with other language that makes the result, one way or the other, indisputable. The provision is clearly not permanent if the phrase “during the current fiscal year” is added. *Norcross v. United States*, 142 Ct. Cl. 763 (1958). Addition of the phrase “with respect to any fiscal year” would indicate, all other potential considerations aside, that Congress intended the provision to be permanent. B-230110, Apr. 11, 1988. For example, in the 2006 Department of Justice Appropriations Act, as part of the language of ATF’s Salaries and Expenses appropriation, Congress included a proviso stating that “no funds appropriated under this or any other Act with respect to any fiscal year may be used to disclose part or all of the contents of the Firearms Trace System database” to anyone other than a law enforcement agency or a prosecutor in connection with a criminal investigation or prosecution. GAO determined that the proviso constituted permanent legislation because the forward-looking effect of the phrase “this or any other Act” coupled with the phrase “with respect to any fiscal year” indicates Congress’s intention that the provision be permanent. B-309704, Aug. 28, 2007; see also B-316510, July 15, 2008

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<sup>75</sup> One early case found the words “or any other act” sufficient words of futurity. 26 Comp. Gen. 1066 (1920). A later decision, B-37032, Oct. 5, 1943, regarded their effect as inconclusive. Both of these cases must be regarded as implicitly modified by the consistent position expressed in the more recent decisions.

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(a similar proviso in ATF's 2008 appropriation, using the phrase "beginning in fiscal year 2008 and thereafter," is also permanent law).

If words of futurity indicate permanence, it follows that a proviso or general provision that does not contain words of futurity will generally not be construed as permanent. 65 Comp. Gen. 588; 32 Comp. Gen. 11; 20 Comp. Gen. 322 (1940); 10 Comp. Gen. 120; 5 Comp. Gen. 810; 3 Comp. Gen. 319 (1923); B-209583, Jan. 18, 1983; B-208705, Sept. 14, 1982; B-66513, May 26, 1947; A-18614, May 25, 1927. The courts have applied the same analysis. See *United States v. Vulte*, 233 U.S. 509, 514 (1914); *Minis v. United States*, 40 U.S. (15 Pet.) 423 (1841); *Bristol-Myers Squibb Company v. Royce Laboratories, Inc.*, 69 F.3d 1130, 1136 (Fed. Cir. 1995); *United States v. International Business Machines Corp.*, 892 F.2d 1006, 1009 (Fed. Cir. 1989); *National Labor Relations Board v. Thompson Products, Inc.*, 141 F.2d 794 (9<sup>th</sup> Cir. 1944); *City of Hialeah v. United States Housing Authority*, 340 F. Supp. 885 (S.D. Fla. 1971).

In particular, the absence of the word "hereafter" is viewed as telling evidence that Congress did not intend a provision to be permanent. E.g., *Building & Construction Trades Department*, 961 F.2d at 273; *International Business Machines Corp.*, 892 F.2d at 1009; Department of Justice, Office of Legal Counsel, *Memorandum for James S. Gilliland, General Counsel, Department of Agriculture, Severability and Duration of Appropriations Rider Concerning Frozen Poultry Regulations*, June 4, 1996. For example, the court in *Building & Construction Trades Department* concluded that the absence of the word hereafter in an appropriation provision was more significant than the inclusion of other language that might have indicated permanence.

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## 2. Other Indicia of Permanence

As the preceding paragraphs indicate, the language of the statute is the crucial determinant of whether a provision is permanent. However, other factors may also be taken into consideration. Thus, the repeated inclusion of a provision in annual appropriation acts indicates that it is not considered or intended by Congress to be permanent. 32 Comp. Gen. 11; 10 Comp. Gen. 120; B-270723, Apr. 15, 1996; A-89279, Oct. 26, 1937; 41 Op. Att'y Gen. at 279-80. However, where adequate words of futurity exist, the repetition of a provision in the following year's appropriation act has been viewed simply as an "excess of caution." 36 Comp. Gen. at 436. This factor is of limited usefulness, since the failure to repeat in subsequent appropriation acts a provision that does not contain words of futurity can also be viewed as an indication that Congress did not consider it to be permanent and simply did not want it to continue. See 18 Comp. Gen. 37 (1938); A-88073, Aug. 19, 1937. Thus,

if the provision does not contain words of futurity, then repetition or non-repetition lead to the same result—that the provision is not permanent. If the provision does contain words of futurity, then non-repetition indicates permanence but repetition, although it suggests non-permanence, is inconclusive.

The inclusion of a provision in the United States Code is relevant as an indication of permanence but is not controlling. B-319414, June 9, 2010; 36 Comp. Gen. 434; 24 Comp. Gen. 436. Failure to include a provision in the Code would appear to be of no significance. A reference by the codifiers to the failure to reenact a provision suggests non-permanence. 41 Op. Att’y Gen. at 280–81.

Legislative history is also relevant, but has been used for the most part to support a conclusion based on the presence or absence of words of futurity. See *Cella v. United States*, 208 F.2d at 790 n.1; *NLRB v. Thompson Products*, 141 F.2d at 798; 65 Comp. Gen. 588; B-277719, Aug. 20, 1997; B-209583, Jan. 18, 1983; B-208705, Sept. 14, 1982; B-108245, Mar. 19, 1952; B-57539, May 3, 1946. In one case, a general provision requiring the submission of a report “annually to the Congress” was held not permanent in view of conflicting expressions of congressional intent. B-192973, Oct. 11, 1978. Legislative history by itself has not been used to find futurity where it is missing in the statutory language. See *Building & Construction Trades Department*, 961 F.2d at 274.

The degree of relationship between a given provision and the object of the appropriation act in which it appears or the appropriating language to which it is appended is a factor to be considered. If the provision bears no direct relationship to the appropriation act in which it appears, this is an indication of permanence. For example, a provision prohibiting the retroactive application of an energy tax credit provision in the Internal Revenue Code was found sufficiently unrelated to the rest of the act in which it appeared, a supplemental appropriations act, to support a conclusion of permanence. B-214058, Feb. 1, 1984. See also B-319414, June 9, 2010; 62 Comp. Gen. at 56; 32 Comp. Gen. 11; 26 Comp. Gen. at 357; B-37032, Oct. 5, 1943; A-88073, Aug. 19, 1937. The closer the relationship, the less likely it is that the provision will be viewed as permanent. A determination under rules of the Senate that a proviso is germane to the subject matter of the appropriation bill will negate an argument that the proviso is sufficiently unrelated as to suggest permanence. B-208705, Sept. 14, 1982.

The phrasing of a provision as positive authorization rather than a restriction on the use of an appropriation is an indication of permanence, but usually has been considered in conjunction with a finding of adequate words of futurity. B-319414, June 9, 2010; 36 Comp. Gen. 434; 24 Comp. Gen. 436.<sup>76</sup>

Finally, a provision may be construed as permanent if construing it as temporary would render the provision meaningless or produce an absurd result. 65 Comp. Gen. 352 (1986); 62 Comp. Gen. 54; B-200923, Oct. 1, 1982. These decisions dealt with a general provision designed to prohibit cost-of-living pay increases for federal judges "except as may be specifically authorized by Act of Congress hereafter enacted." Pub. L. No. 97-92, § 140, 95 Stat. 1183, 1200 (Dec. 15, 1981). The provision appeared in a fiscal year 1982 continuing resolution, which expired on September 30, 1982. The next applicable pay increase would have been effective October 1, 1982. Thus, if the provision were not construed as permanent, it would have been meaningless "since it would have been enacted to prevent increases during a period when no increases were authorized to be made." 62 Comp. Gen. at 56-57.<sup>77</sup> Similarly, GAO concluded that a provision with no words of futurity was permanent, because it was to become effective on the last day of the fiscal year. 9 Comp. Gen. 248 (1929). An alternative construction would have rendered the provision effective for only 1 day, which was clearly inconsistent with legislative intent. See also B-319414, June 9, 2010; B-270723, Apr. 15, 1996; 65 Comp. Gen. at 590; B-214058, Feb. 1, 1984.

In sum, the six additional factors mentioned above are all relevant indicia of whether a given provision should be construed as permanent.

<sup>76</sup> An early decision held a proviso to be permanent based solely on the fact that it was not phrased as a restriction on the use of the appropriation to which it was attached. 17 Comp. Dec. 146 (1910). This decision seems inconsistent with the weight of authority and certainly with the Supreme Court's decision in *Minis v. United States*, cited above.

<sup>77</sup> In *Williams v. United States*, 240 F.3d at 1026, the Court of Appeals for the Federal Circuit held that the provision addressed in these decisions was not permanent, referring to the "unmistakable language of Public Law 97-92 . . . terminating the effect of Section 140 in 1982." The court did not address the consequence, if any, of Congress's use of the word hereafter. The court did concede, however, that "even if Section 140 did not expire as of September 30, 1982, the 1989 Act falls well within the specific exception in that statute for an 'Act of Congress hereafter enacted.'" *Id.* at 1027. The 1989 Act the court referred to is the Ethics Reform Act, Pub. L. No. 101-194, 103 Stat. 1716 (Nov. 30, 1989), which entitled federal judges to cost-of-living pay increases whenever federal employees received a cost-of-living increase. The 1989 Act was enacted after the series of GAO decisions was issued that addressed the fiscal year 1982 law.

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However, the presence or absence of words of futurity remains the crucial factor, and the additional factors have been used for the most part to support a conclusion based primarily on this presence or absence. Four of the factors—occurrence or nonoccurrence in subsequent appropriation acts, inclusion in United States Code, legislative history, and phrasing as positive authorization—have never been used as the sole basis for finding permanence in a provision without words of futurity. The two remaining factors—relationship to rest of statute and meaningless or absurd result—can be used to find permanence in the absence of words of futurity, but the conclusion is almost invariably supported by at least one of the other factors, such as legislative history.

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by corporations for relief from Federal firearms disabilities under section 925(c) of title 18, United States Code: *Provided further*, That no funds made available by this or any other Act may be used to transfer the functions, missions, or activities of the Bureau of Alcohol, Tobacco, Firearms and Explosives to other agencies or Departments.

### FEDERAL PRISON SYSTEM

#### SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Federal Prison System for the administration, operation, and maintenance of Federal penal and correctional institutions, and for the provision of technical assistance and advice on corrections related issues to foreign governments, \$7,865,000,000: *Provided*, That not less than \$409,483,000 shall be for the programs and activities authorized by the First Step Act of 2018 (Public Law 115-391): *Provided further*, That the Attorney General may transfer to the Department of Health and Human Services such amounts as may be necessary for direct expenditures by that Department for medical relief for inmates of Federal penal and correctional institutions: *Provided further*, That the Director of the Federal Prison System, where necessary, may enter into contracts with a fiscal agent or fiscal intermediary claims processor to determine the amounts payable to persons who, on behalf of the Federal Prison System, furnish health services to individuals committed to the custody of the Federal Prison System: *Provided further*, That not to exceed \$5,400 shall be available for official reception and representation expenses: *Provided further*, That not to exceed \$50,000,000 shall remain available until expended for necessary operations: *Provided further*, That of the amounts provided for contract confinement, not to exceed \$20,000,000 shall remain available until expended to make payments in advance for grants, contracts and reimbursable agreements, and other expenses: *Provided further*, That the Director of the Federal Prison System may accept donated property and services relating to the operation of the prison card program from a not-for-profit entity which has operated such program in the past, notwithstanding the fact that such not-for-profit entity furnishes services under contracts to the Federal Prison System relating to the operation of pre-release services, halfway houses, or other custodial facilities.

42 USC 250a.

Contracts.  
Determination.

Donations.

#### BUILDINGS AND FACILITIES

For planning, acquisition of sites, and construction of new facilities; purchase and acquisition of facilities and remodeling, and equipping of such facilities for penal and correctional use, including all necessary expenses incident thereto, by contract or force account; and constructing, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions, including all necessary expenses incident thereto, by contract or force account, \$235,000,000, to remain available until expended, of which \$176,000,000 shall be available only for costs related to construction of new facilities: *Provided*, That labor of United

States prisoners may be used for work performed under this appropriation.

**FEDERAL PRISON INDUSTRIES, INCORPORATED**

Contracts.

The Federal Prison Industries, Incorporated, is hereby authorized to make such expenditures within the limits of funds and borrowing authority available, and in accord with the law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 9104 of title 31, United States Code, as may be necessary in carrying out the program set forth in the budget for the current fiscal year for such corporation.

**LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON INDUSTRIES, INCORPORATED**

Not to exceed \$2,700,000 of the funds of the Federal Prison Industries, Incorporated, shall be available for its administrative expenses, and for services as authorized by section 3109 of title 5, United States Code, to be computed on an accrual basis to be determined in accordance with the corporation's current prescribed accounting system, and such amounts shall be exclusive of depreciation, payment of claims, and expenditures which such accounting system requires to be capitalized or charged to cost of commodities acquired or produced, including selling and shipping expenses, and expenses in connection with acquisition, construction, operation, maintenance, improvement, protection, or disposition of facilities and other property belonging to the corporation or in which it has an interest.

**STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES**

**OFFICE ON VIOLENCE AGAINST WOMEN**

**VIOLENCE AGAINST WOMEN PREVENTION AND PROSECUTION PROGRAMS**

**(INCLUDING TRANSFER OF FUNDS)**

For grants, contracts, cooperative agreements, and other assistance for the prevention and prosecution of violence against women, as authorized by the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10101 et seq.) ("the 1968 Act"); the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322) ("the 1994 Act"); the Victims of Child Abuse Act of 1990 (Public Law 101-647) ("the 1990 Act"); the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Public Law 108-21); the Juvenile Justice and Delinquency Prevention Act of 1974 (34 U.S.C. 11101 et seq.) ("the 1974 Act"); the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386) ("the 2000 Act"); the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109-162) ("the 2005 Act"); the Violence Against Women Reauthorization Act of 2013 (Public Law 113-4) ("the 2013 Act"); the Justice for Victims of Trafficking Act of 2015 (Public Law 114-22) ("the 2015 Act"); and the Abolish Human Trafficking Act (Public Law 115-392); and for related victims services,

justice training programs, ATF is encouraged to promote NIBIN as a critical forensic science tool and to identify opportunities to build partnerships with criminal justice training programs.

*Tobacco Enforcement.*—ATF is directed to submit a report, within 60 days of the enactment of this Act, assessing investments in tobacco initiatives in each fiscal year since 2017 and identifying the amounts proposed to be invested in such programs in fiscal year 2022. ATF is urged to increase tobacco-related investigations and cases and to increase its focus on tobacco-related training and staff retention at every level.

*ATF Laboratories.*—ATF is directed to submit a report, within 30 days of the enactment of this Act, assessing ATF's existing laboratory infrastructure, to include staffing and operating costs, and the merit of aligning ATF laboratory facilities in areas that can accommodate strong forensics and ballistics partnerships with institutions of higher education.

House report language under “Firearms Trafficking Report” and “Privately Made Firearms” is not adopted.

## FEDERAL PRISON SYSTEM

### SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

The agreement includes \$7,865,000,000 for the salaries and expenses of the Federal Prison System. The agreement fully funds the requested \$409,483,000 for programs and activities authorized by the First Step Act of 2018 (FSA), including medication-assisted treatment, FSA programming staff, and Special Education instructors at each Bureau of Prisons (BOP) facility. The agreement provides \$194,607,000 above the request to sustain and increase BOP hiring efforts.

For fiscal year 2022, BOP is directed to continue following the directives in the joint explanatory statement accompanying Public Law 116-260 on the following topics: “First Step Act (FSA) Implementation,” “Additional Requirements of the FSA,” “Residential Reentry Centers,” “Hiring, Staffing, and Inmate-to-Officer Ratios,” “Vacancies,” “Medication Assisted

Treatment (MAT),” “Home Confinement,” and “Inmate Mental Health and Restrictive Housing”. BOP shall submit updated reports consistent with the directives. DOJ and BOP are reminded of the requirement to submit all reports to the Committees on time, including those required quarterly.

*Augmentation.*—BOP is expected to hire additional full-time correctional officers in order to reduce the overreliance on augmentation and improve staffing beyond mission-critical levels in custodial and all other departments, including medical, counseling, and educational positions. BOP shall provide quarterly reports to the Committees on the use of augmentation broken out by region, institution, and security level for each time such practice is employed. The reports shall also include the number of hours, and associated additional cost, of overtime recorded at each institution.

In addition, BOP shall include with its fiscal year 2023 budget submission, and each year thereafter, a detailed report for each Federal correctional facility at which two or more Federal inmates have died in one calendar year, describing each incident and the role augmentation may have played in exacerbating the inherent dangers present at those locations.

*Correctional Officer Pay.*—BOP, in consultation with the DOJ Justice Management Division, is directed to review current pay scales for its correctional officers in comparison to comparable employees in DOJ law enforcement components and State and local agencies, to include assessing the potential opportunity to raise the pay band and any associated resource requirements. The results of the review shall be shared with the Committees not later than 180 days after the date of enactment of this Act.

*Overtime Pay Rate.*—BOP shall report to the Committees not later than 90 days after the date of enactment of this Act on its application of the Fair Labor Standards Act (FLSA) in determining the rate of overtime pay for BOP employees. The report should break out how many employees, on an annual basis, are paid at a non-FLSA rate; the rationale for making such distinctions; and the potential, along with any cost implications, of compensating all employee overtime at a full FLSA overtime rate.

*Faith-based Recidivism Reduction Programming.*—The First Step Act directs the Attorney General to “develop policies for the warden of each prison of the Bureau of Prisons to enter into partnerships,” including partnerships with “nonprofit and other private organizations, including faith-based, art, and community-based organizations that will deliver recidivism reduction programming on a paid or volunteer basis.” Further, “the Attorney General shall direct the Bureau of Prisons regarding the ability for faith-based organizations to function as a provider of educational evidence-based programs outside of the religious classes and services provided through the Chaplaincy.” BOP is directed to immediately take steps to ensure compliance with FSA requirements, and to ensure that all those incarcerated in BOP facilities have access to robust programming opportunities, including third-party faith-based programs. BOP is further directed to submit a report, within 30 days of the enactment of this Act, on such efforts.

*Open GAO Recommendations.*—BOP is directed to submit to the Committees, within 180 days of the date of enactment of this Act, a report identifying all BOP-related recommendations issued by GAO over the last decade that remain open. This report shall further describe the steps BOP is taking to implement all recommended actions and close-out each open recommendation.

*Medical Services.*—BOP is directed to submit a report to the Committees not later than 120 days after the date of enactment of this Act on its cost estimate and a strategic savings plan if BOP were to set a standard reimbursement rate for medical care of inmates at the Medicare benchmark rate.

*Contraband Cell Phones in BOP Facilities.*—BOP is directed to report to the Committees, not later than 90 days after the date of enactment of this Act, on the deployment of micro-jamming and managed access technology systems at BOP facilities. The report should describe the number of contraband devices confiscated through each type of technology at each facility; the comparative efficacy and cost effectiveness of such technologies in detecting and capturing devices and mitigating illicit communications; and, for those technologies found to be effective, the resources that would be required to expand or further deploy such technologies.

*Camera and Radio Systems in BOP Facilities.*—BOP is directed to submit to the Committees, not later than 90 days after the date of enactment of this Act, a three-year plan to upgrade its security camera, land mobile radio (LMR) communications, and public address (PA) systems at all BOP correctional facilities. The plan shall address current system deficiencies, including lack of functioning systems, blind spots, or radios lacking a “man down” function; the need for and cost of planned system maintenance and upgrades, to include analog to digital system conversion; upgrades to ensure storage, logging, preservation, and accessibility of records for investigators or courts; and any other enterprise-wide considerations for such technology and systems. The plan must incorporate a cost projection and prioritization of facilities for security camera, LMR, and PA system upgrades. Following submission of the initial plan, annual updates shall be provided, beginning one year from the date of enactment of this Act, with a final report in three years detailing the status of BOP progress in upgrading these systems.

#### BUILDINGS AND FACILITIES

The agreement includes \$235,000,000 for the construction, acquisition, modernization, maintenance, and repair of prison and detention facilities housing Federal inmates. BOP shall proceed with ongoing planned and associated new construction efforts to meet projected capacity requirements, as identified in its monthly status of construction reports to the Committees. BOP is directed to continue to provide such reports monthly, along with notifications and explanations of any deviation from construction and activation schedules, and any planned adjustments or corrective actions.

*Modernization and Repair (M&R) of Existing Facilities.*—In lieu of direction in the House report, BOP is expected to apply the funding to reduce its longstanding M&R backlog and is directed to prioritize funding for repairs that protect life and safety. BOP shall continue to provide monthly status of construction reports and notify the Committees of any changes reflected in those reports.

**LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON INDUSTRIES, INCORPORATED**

The agreement includes a limitation on administrative expenses of \$2,700,000 for Federal Prison Industries, Incorporated.

1 pended: *Provided*, That none of the funds appropriated  
2 herein shall be available to investigate or act upon applica-  
3 tions for relief from Federal firearms disabilities under  
4 section 925(c) of title 18, United States Code: *Provided*  
5 *further*, That such funds shall be available to investigate  
6 and act upon applications filed by corporations for relief  
7 from Federal firearms disabilities under section 925(c) of  
8 title 18, United States Code: *Provided further*, That no  
9 funds made available by this or any other Act may be used  
10 to transfer the functions, missions, or activities of the Bu-  
11 reau of Alcohol, Tobacco, Firearms and Explosives to  
12 other agencies or Departments.

13 FEDERAL PRISON SYSTEM

14 SALARIES AND EXPENSES

15 (INCLUDING TRANSFER OF FUNDS)

16 For necessary expenses of the Federal Prison System  
17 for the administration, operation, and maintenance of  
18 Federal penal and correctional institutions, and for the  
19 provision of technical assistance and advice on corrections  
20 related issues to foreign governments, \$7,865,000,000:  
21 *Provided*, That not less than \$409,483,000 shall be for  
22 the programs and activities authorized by the First Step  
23 Act of 2018 (Public Law 115-391): *Provided further*, That  
24 the Attorney General may transfer to the Department of  
25 Health and Human Services such amounts as may be nec-



1 essary for direct expenditures by that Department for  
2 medical relief for inmates of Federal penal and correc-  
3 tional institutions: *Provided further*, That the Director of  
4 the Federal Prison System, where necessary, may enter  
5 into contracts with a fiscal agent or fiscal intermediary  
6 claims processor to determine the amounts payable to per-  
7 sons who, on behalf of the Federal Prison System, furnish  
8 health services to individuals committed to the custody of  
9 the Federal Prison System: *Provided further*, That not to  
10 exceed \$5,400 shall be available for official reception and  
11 representation expenses: *Provided further*, That not to ex-  
12 ceed \$50,000,000 shall remain available until expended for  
13 necessary operations: *Provided further*, That, of the  
14 amounts provided for contract confinement, not to exceed  
15 \$20,000,000 shall remain available until expended to  
16 make payments in advance for grants, contracts and reim-  
17 bursable agreements, and other expenses: *Provided fur-*  
18 *ther*, That the Director of the Federal Prison System may  
19 accept donated property and services relating to the oper-  
20 ation of the prison card program from a not-for-profit en-  
21 tity which has operated such program in the past, notwith-  
22 standing the fact that such not-for-profit entity furnishes  
23 services under contracts to the Federal Prison System re-  
24 lating to the operation of pre-release services, halfway  
25 houses, or other custodial facilities.

## 1 BUILDINGS AND FACILITIES

2 For planning, acquisition of sites, and construction  
3 of new facilities; purchase and acquisition of facilities and  
4 remodeling, and equipping of such facilities for penal and  
5 correctional use, including all necessary expenses incident  
6 thereto, by contract or force account; and constructing,  
7 remodeling, and equipping necessary buildings and facili-  
8 ties at existing penal and correctional institutions, includ-  
9 ing all necessary expenses incident thereto, by contract or  
10 force account, \$235,000,000, to remain available until ex-  
11 pended, of which \$176,000,000 shall be available only for  
12 costs related to construction of new facilities: *Provided,*  
13 That labor of United States prisoners may be used for  
14 work performed under this appropriation.

## 15 FEDERAL PRISON INDUSTRIES, INCORPORATED

16 The Federal Prison Industries, Incorporated, is here-  
17 by authorized to make such expenditures within the limits  
18 of funds and borrowing authority available, and in accord  
19 with the law, and to make such contracts and commit-  
20 ments without regard to fiscal year limitations as provided  
21 by section 9104 of title 31, United States Code, as may  
22 be necessary in carrying out the program set forth in the  
23 budget for the current fiscal year for such corporation.

1     LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL  
2             PRISON INDUSTRIES, INCORPORATED

3             Not to exceed \$2,700,000 of the funds of the Federal  
4 Prison Industries, Incorporated, shall be available for its  
5 administrative expenses, and for services as authorized by  
6 section 3109 of title 5, United States Code, to be com-  
7 puted on an accrual basis to be determined in accordance  
8 with the corporation's current prescribed accounting sys-  
9 tem, and such amounts shall be exclusive of depreciation,  
10 payment of claims, and expenditures which such account-  
11 ing system requires to be capitalized or charged to cost  
12 of commodities acquired or produced, including selling and  
13 shipping expenses, and expenses in connection with acqui-  
14 sition, construction, operation, maintenance, improvement,  
15 protection, or disposition of facilities and other property  
16 belonging to the corporation or in which it has an interest.

17     STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

18             OFFICE ON VIOLENCE AGAINST WOMEN

19             VIOLENCE AGAINST WOMEN PREVENTION AND

20             PROSECUTION PROGRAMS

21             (INCLUDING TRANSFER OF FUNDS)

22             For grants, contracts, cooperative agreements, and  
23 other assistance for the prevention and prosecution of vio-  
24 lence against women, as authorized by the Omnibus Crime  
25 Control and Safe Streets Act of 1968 (34 U.S.C. 10101

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owned buildings; and preliminary planning and design of projects; \$75,000,000, to remain available until expended.

### FEDERAL PRISON SYSTEM

#### SALARIES AND EXPENSES

##### (INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Federal Prison System for the administration, operation, and maintenance of Federal penal and correctional institutions, and for the provision of technical assistance and advice on corrections related issues to foreign governments, \$8,392,588,000: *Provided*, That not less than \$409,483,000 shall be for the programs and activities authorized by the First Step Act of 2018 (Public Law 115-391), of which not less than 2 percent shall be transferred to and merged with the appropriation for "Office of Justice Programs—Research, Evaluation and Statistics" for the National Institute of Justice to carry out evaluations of programs and activities related to the First Step Act of 2018: *Provided further*, That the Attorney General may transfer to the Department of Health and Human Services such amounts as may be necessary for direct expenditures by that Department for medical relief for inmates of Federal penal and correctional institutions: *Provided further*, That the Director of the Federal Prison System, where necessary, may enter into contracts with a fiscal agent or fiscal intermediary claims processor to determine the amounts payable to persons who, on behalf of the Federal Prison System, furnish health services to individuals committed to the custody of the Federal Prison System: *Provided further*, That not to exceed \$5,400 shall be available for official reception and representation expenses: *Provided further*, That not to exceed \$50,000,000 shall remain available until expended for necessary operations: *Provided further*, That, of the amounts provided for contract confinement, not to exceed \$20,000,000 shall remain available until expended to make payments in advance for grants, contracts and reimbursable agreements, and other expenses: *Provided further*, That the Director of the Federal Prison System may accept donated property and services relating to the operation of the prison card program from a not-for-profit entity which has operated such program in the past, notwithstanding the fact that such not-for-profit entity furnishes services under contracts to the Federal Prison System relating to the operation of pre-release services, halfway houses, or other custodial facilities.

#### BUILDINGS AND FACILITIES

For planning, acquisition of sites, and construction of new facilities; purchase and acquisition of facilities and remodeling, and equipping of such facilities for penal and correctional use, including all necessary expenses incident thereto, by contract or force account; and constructing, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions, including all necessary expenses incident thereto, by contract or force account, \$108,000,000, to remain available until expended: *Provided*, That labor of United States prisoners may be used for work performed under this appropriation.

## FEDERAL PRISON INDUSTRIES, INCORPORATED

The Federal Prison Industries, Incorporated, is hereby authorized to make such expenditures within the limits of funds and borrowing authority available, and in accord with the law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 9104 of title 31, United States Code, as may be necessary in carrying out the program set forth in the budget for the current fiscal year for such corporation.

## LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON INDUSTRIES, INCORPORATED

Not to exceed \$2,700,000 of the funds of the Federal Prison Industries, Incorporated, shall be available for its administrative expenses, and for services as authorized by section 3109 of title 5, United States Code, to be computed on an accrual basis to be determined in accordance with the corporation's current prescribed accounting system, and such amounts shall be exclusive of depreciation, payment of claims, and expenditures which such accounting system requires to be capitalized or charged to cost of commodities acquired or produced, including selling and shipping expenses, and expenses in connection with acquisition, construction, operation, maintenance, improvement, protection, or disposition of facilities and other property belonging to the corporation or in which it has an interest.

## STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES

## OFFICE ON VIOLENCE AGAINST WOMEN

## VIOLENCE AGAINST WOMEN PREVENTION AND PROSECUTION PROGRAMS

## (INCLUDING TRANSFER OF FUNDS)

For grants, contracts, cooperative agreements, and other assistance for the prevention and prosecution of violence against women, as authorized by the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10101 et seq.) ("the 1968 Act"); title II of the Civil Rights Act of 1968 (commonly known as the "Indian Civil Rights Act of 1968") (Public Law 90-284) ("the Indian Civil Rights Act"); the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322) ("the 1994 Act"); the Victims of Child Abuse Act of 1990 (Public Law 101-647) ("the 1990 Act"); the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Public Law 108-21); the Juvenile Justice and Delinquency Prevention Act of 1974 (34 U.S.C. 11101 et seq.) ("the 1974 Act"); the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386) ("the 2000 Act"); the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109-162) ("the 2005 Act"); the Violence Against Women Reauthorization Act of 2013 (Public Law 113-4) ("the 2013 Act"); the Justice for Victims of Trafficking Act of 2015 (Public Law 114-22) ("the 2015 Act"); and the Abolish Human Trafficking Act (Public Law 115-392); and the Violence Against Women Act Reauthorization Act of 2022 (division W of

submit a report, within 90 days of the date of enactment of this act, on how ATF assesses agency records for release under FOIA.

**Bomb Arson Tracking System (BATS).**—The ATF is directed to proceed with a fully integrated solution for BATS upgrades as the platform is nearing its end cycle. Within the funds provided, the agreement expects ATF to prioritize funding for this project; however, should funds not be sufficient to cover the upgrade, the ATF is directed to submit a reprogramming notification and encourages ATF to include it as part of the fiscal year 2023 spend plan submission.

#### CONSTRUCTION

The agreement includes \$75,000,000 for the construction of an ATF forensics laboratory, at the location cited in the ATF report to the Committees entitled "ATF Laboratory Facilities Assessment and Alignment with Partnerships," which provides a mutually beneficial academic setting in which knowledge and skills related to forensic science and ATF's crime gun intelligence programs are passed on to students and faculty.

#### FEDERAL PRISON SYSTEM

##### SALARIES AND EXPENSES

##### (INCLUDING TRANSFER OF FUNDS)

The agreement includes \$8,392,588,000 for the salaries and expenses of the Federal Prison System. The agreement fully funds the requested \$409,483,000 for programs and activities authorized by the First Step Act of 2018 (FSA), including medication-assisted treatment, FSA programming staff, and Special Education instructors at each Bureau of Prisons (BOP) facility. The agreement includes \$180,460,000 above the request to sustain and increase BOP hiring efforts, and \$25,560,000 for BOP's Land Mobile Radio and Video Security upgrades. The agreement also includes new language providing that not less than two percent of the FSA funding may be transferred to the National Institute of Justice to carry out required evaluations of FSA programs and activities. Within the funding provided for FSA, the agreement supports up to \$1,200,000 for an initiative to satisfy the FSA requirement for an evidence-based dyslexia screener, and BOP is directed to report not later than 90 days after the date of enactment of this act on its implementation of this initiative.

For fiscal year 2023, BOP is directed to continue following the directives in the joint explanatory statement accompanying Public Law 117-103 on the following topics: "Overtime Pay Rate," "Correctional Officer Pay," "First Step Act (FSA) Implementation," "Additional Requirements of the FSA," "Residential Reentry Centers," "Home Confinement," and "Inmate Mental Health and Restrictive Housing." BOP shall submit updated reports consistent with the directives. DOJ and BOP are reminded of the requirement to submit all reports to the Committees on time, including those required quarterly.

**Augmentation.**—BOP is directed to continue following the directives and reporting requirements in the joint explanatory statement accompanying Public Law 117-103 on the topic "Augmentation." In addition, BOP is directed to ensure that non-custody correctional employees must spend 90 percent of their work week in their primary positions.

**Hiring, Staffing and Vacancies.**—BOP shall provide a report to the Committees not later than 120 days after the date of enactment of this act on the status of its efforts to recruit and retain employees, including its outreach and its use of retention and recruitment incentives, as well as the rate at which these incentives have maintained parity with other Federal agencies and inflation. BOP shall continue to follow the directives in the

joint explanatory statement accompanying Public Law 117-103 under the headings "Hiring, Staffing, and Inmate-to-Officer Ratios" and "Vacancies," and to update all associated reports consistent with those directives.

**Correctional Officer Pay.**—BOP, in consultation with the DOJ Justice Management Division, is directed to review current pay scales for its correctional officers in comparison to comparable employees in DOJ law enforcement components and State and local agencies, to include assessing the potential opportunity to raise the pay band and any associated resource requirements. The results of the review shall be shared with the Committees not later than 180 days after the date of enactment of this act.

**First Step Act Implementation and Additional Requirements of the FSA.**—BOP shall continue to follow directives under these headings in the joint explanatory statement accompanying Public Law 117-103.

In addition, with regard to FSA Evidence-Based Recidivism Reduction (EBRR) and Productive Activities (PA) requirements BOP shall report not later than 90 days after the date of enactment of this act on: (1) whether each approved EBRR and PA is internal, BOP-contracted, or an external third-party program; (2) any difference in the criteria and evaluation process for suitability of such programs; (3) the number of external faith-based programs that sought to qualify as an EBRR and PAs under FSA, including the number denied, number of requests pending, names of accepted applicants and faith affiliation, if any; (4) BOP actions to promote submissions of external programs for consideration as EBRRs and PAs; and (5) list of "faith-based recidivism-reduction partnerships" reported in the Bureau of Justice Statistics reporting on FSA implementation. The report shall describe efforts to fill vacant programming and other dedicated FSA positions, improve EBRR credit calculation transparency, EBRR programming available, the hours of EBRR credit participants earn for participation in such programs, and the need for and availability of medication-assisted treatment at each BOP facility.

**Reentry Guidance for Prison Education Programs.**—DOJ is encouraged to collaborate with the Department of Education in developing and providing technical assistance to the BOP, State departments of corrections, and other entities responsible for preparing individuals to leave prison, enter their communities, continue education, or seek employment. BOP shall provide guidance on best practices for integrating reentry planning for participants in prison education programs, which should address evidence-based strategies to ensure successful entry.

**BOP Facilities and Residential Reentry Centers (RRCs) Study.**—BOP is directed to conduct a study on the need for and feasibility of establishing a BOP facility in Alaska, to include potential cost, size, and location, as well as on the feasibility of expanding RRC capacity in Alaska and Hawaii to help those released from incarceration reenter their community per FSA requirements. BOP shall submit this study within 180 days of the date of the enactment of this act.

**Roadmap to Reentry.**—BOP is directed to reestablish and begin implementing the principles identified in the Justice Department's "Roadmap to Reentry," including: (1) individualized reentry plans for individuals; (2) access to education, employment training, life skills, substance abuse, mental health, and other programs; (3) resources and opportunities to build and maintain family relationships; (4) individualized continuity of care; and (5) comprehensive reentry-related information and access to resources.

**Extreme Weather Plans.**—BOP shall issue clear and consistent policies and guidance

across all BOP facilities regarding preparations for and responses to extreme weather events, including by establishing temperature thresholds for health and safety at BOP facilities.

**Disaster Damage.**—BOP shall report not later than 180 days after the date of enactment of this act to the Committees on Appropriations, the Judiciary, and Homeland Security and Governmental Affairs of the House of Representatives and the Senate on the scope of physical damage during fiscal years 2015-2022 from storm damage at BOP-owned or managed facilities, and other impacts, to include: (1) injury and loss of life; (2) impact on provision of healthcare, dietary services, water, personal protective equipment, and personal hygiene products; (3) handling of early release or home confinement requests; (4) access to cost-free, uninterrupted access to legal counsel and visitors; (5) access to appropriate accommodations for inmates with disabilities; (6) access to educational and work programs; (7) assessment of the cost of facility damage and estimates for repairs; (8) the impact on staffing, equipment, and financial resources; and (9) other factors affecting health, safety, and civil rights of the correctional population. This report shall include any corrective actions BOP has undertaken or plans to undertake to improve and modernize emergency preparedness plans, as they relate to natural disasters, extreme weather, and public health emergencies and a timeline to implement any corrective action plans. This report shall also include agency corrective actions that BOP has undertaken or plans to undertake to improve and modernize emergency preparedness plans, as they relate to natural disasters, extreme weather, and public health emergencies and a timeline to implement any corrective action plans.

**Swift-Certain-Fair (SCF) Model in the Federal Prison System.**—The SCF model has proven to be an effective deterrent for incarcerated populations in State and local corrections settings. BOP is directed to study the feasibility of establishing SCF pilot programs in BOP housing units based upon best practices developed by other applicable corrections agencies.

#### BUILDINGS AND FACILITIES

The agreement includes \$290,000,000 for the construction, acquisition, modernization, maintenance, and repair of prison and detention facilities housing Federal inmates, of which \$182,000,000 is included under this heading in division N. BOP shall proceed with ongoing planned and associated new construction efforts to meet projected capacity requirements, as identified in its monthly status of construction reports to the Committees. BOP is directed to continue to provide such reports monthly, along with notifications and explanations of any deviation from construction and activation schedules, and any planned adjustments or corrective actions.

**Modernization and Repair (M&R) of Existing Facilities.**—BOP is expected to apply the funding to reduce its longstanding M&R backlog and is directed to prioritize funding for repairs that protect life and safety. BOP shall continue to provide monthly status of construction reports and notify the Committees of any changes reflected in those reports. House language regarding facilities with geological or seismological deficiencies is not adopted.

#### LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON INDUSTRIES, INCORPORATED

The agreement includes a limitation on administrative expenses of \$2,700,000 for Federal Prison Industries, Incorporated.

The Department's Project Safe Neighborhoods initiative supplements this program by providing funding to raise public awareness of the criminality involved in purchasing a firearm for a prohibited person. Within the funds provided, the Committee encourages ATF to contribute additional resources to further enhance both ongoing and future public awareness initiatives with its partner organizations supporting these activities.

*Violent Gun Crime Reduction.*—In July 2021, the Department launched five cross-jurisdictional firearms trafficking strike forces to help reduce violent crime by addressing illegal gun trafficking in significant firearms trafficking corridors across the country, as part of the Department's broader Violent Crime Reduction Initiative, announced on May 26, 2021, which supports local communities in preventing, investigating, and prosecuting gun violence and other violent crime. The Committee recognizes that ATF is utilizing every available resource, including NIBIN and firearms tracing, to identify, investigate, and produce evidence to prosecute violent offenders. The Committee encourages ATF, within the funds provided, to improve its geospatial collaboration and information sharing with State, local, and Federal partners, in compliance with section 759 of the Geospatial Data Act of 2018 (Public Law 115-254), and to include resource requirements in future year budget requests on both technology and personnel to more fully develop this type of investment.

#### FEDERAL PRISON SYSTEM

#### SALARIES AND EXPENSES

#### (INCLUDING TRANSFER OF FUNDS)

The Committee recommends \$8,415,550,000 for salaries and expenses of the Bureau of Prisons (BOP), which is \$550,550,000 above fiscal year 2022 and \$409,599,000 above the request. The Committee recommendation includes the requested funding of not less than \$409,483,000 to sustain implementation of Public Law 115-391, the First Step Act of 2018 (FSA), to continue to expand and develop opportunities for incarcerated individuals to participate in evidence-based, recidivism-reducing programming and productive activities. The recommendation sustains BOP operations at no less than the fiscal year 2022 level of operations, and provides an additional amount of \$203,422,000 for BOP to increase hiring efforts to reduce the use of staff augmentation and understaffing at high-security institutions.

The Committee has provided separate funding recommendations by decision unit as follows:

Inmate Care and Programs .....	\$3,127,516,000
Management Security and Administration .....	\$4,449,209,000
Contract Confinement .....	\$838,825,000
<b>Total, Salaries and Expenses .....</b>	<b>\$8,415,550,000</b>

*Augmentation, Reassignment and Staffing.*—Overcrowding at BOP medium- and high-security institutions continues to threaten Correctional Officer and inmate safety, notwithstanding the BOP practice of augmentation or reassignment, whereby a non-custody correctional employee is assigned custody responsibilities, rather



than limiting such practice to rare or exceptional circumstances. The Committee has provided \$203,422,000 above the request to enable BOP to continue to hire more full-time Correctional Officers until such augmentation or reassignment is no longer needed, as well as to improve staffing beyond mission-critical levels in custody and all other departments. The Committee expects BOP to increase staffing, as directed in the explanatory statement accompanying the fiscal year 2022 Appropriations Act, and to eliminate staffing shortfalls that the Committee understands have grown and in cases led to significant overtime costs. In filling staff vacancies, the Committee expects BOP to ensure that comparable institutions, including those with changing missions, should have comparable staffing levels. BOP shall continue to follow directions in Public Law 117-103, the fiscal year 2022 Appropriations Act, on (1) reporting on its use of augmentation and reduction of such use; (2) reporting on its inmate-to-correctional officer ratio and progress in ensuring each high-security institution housing unit has at least two correctional officers on duty for each shift; and (3) reducing vacancy rates.

*Staffing.*—Under the First Step Act at the end of 2018, ensuring BOP has adequate programming staff has become essential. However, because BOP eliminated over 5,000 positions during its hiring freeze in 2017–2019, programming areas became severely understaffed. Most Federal Prisons are short staffed, either due to the elimination of key positions or because such staff are being augmented/reassigned to cover for a shortage of Correctional Officers. With the increase provided, the Committee expects BOP to hire additional Correctional Officers and eliminate or significantly decrease augmentation or reassignment of programming staff.

Another key component of the First Step Act is a mandatory screening of all inmates in the Federal Prison System for Dyslexia. The Committee directs BOP to take action to ensure it has Special Education Teachers in all its facilities, and a Special Populations Manager at each BOP institution to ensure that First Step Act Programming can be delivered.

*BOP Retention Bonuses.*—The Committee recognizes that agencies have the authority to approve a retention incentive without Office of Personnel Management (OPM) approval for payments of up to 10 percent for a group or category of employees. OPM approval is required when an agency would like to exceed these limits, based on critical agency need. Under an OPM retention incentive waiver, an agency could approve a retention incentive of up to 50 percent of basic pay. The Committee continues to encourage BOP to work with OPM to provide retention incentives for groups and categories of employees at BOP facilities in which 10 percent or more of the total available positions are vacant, prioritizing facilities with the largest number of vacancies, and to include funding for such incentives in future budget requests. BOP is also encouraged to initiate a retention program for nonsupervisory staff who have reached retirement eligibility.

*Direct hire authority.*—The Committee is aware that BOP has requested the Office of Personnel and Management (OPM) to delegate direct hire authority to BOP facilities. To ensure the safety of staff and inmates, the Committee once again encourages BOP to continue to work with OPM to provide direct hire authority for

BOP facilities in which ten percent or more of the total available positions are vacant, prioritizing facilities with the largest number of vacancies.

*Correctional Officer Compensation Pay Bands.*—BOP, in consultation with the DOJ Justice Management Division, is encouraged to consider increasing the pay bands for the position of Correctional Officer. The current pay band of GL 5/6/7 with a competitive GL-8 is far behind other Federal Law Enforcement Agencies and other jobs within the private sector, making BOP less competitive with other Federal Law Enforcement Agencies. The Committee encourages BOP to consider raising the Correctional Officer pay to the pay band of GL 7/8/9. Although this level is still below that of some other agencies, it will reduce the compensation gap and help BOP address its current staffing crisis.

*Medically Assisted Treatment.*—The Committee encourages the Bureau of Prisons to make abstinence-based relapse prevention treatment options available to inmates with a history of opioid dependence.

*Employee firearms.*—The Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act of 2018 (Section 202 of the First Step Act (Public Law 115-391)) requires that each Federal penal or correctional institution provide a secure storage area located outside of the secure perimeter of the institution for employees to store firearms or allow employees to store firearms in a vehicle lockbox. The Committee directs the BOP Director to continue to report to the Committee on progress in implementing the Act, as specified in House Report 116-455.

*Private Sector Partnerships.*—The Committee notes that Section 102 of the First Step Act (Public Law 115-391) directs the Attorney General to develop policies for the warden of each BOP institution to enter into partnerships with private entities that employ prisoners or assist prisoners in prerelease custody or supervised release in finding employment. The Committee recognizes the barriers to entering the labor market for formerly incarcerated individuals and the role stable employment plays in reducing recidivism. The Committee directs the BOP to build formal partnerships with private sector businesses and local BOP facilities to promote the development of job pipelines for individuals leaving incarceration. The BOP should also prepare prisoners to assume job responsibilities immediately upon release by providing job-specific and soft-skills trainings inside BOP facilities. The BOP is further directed to submit a report, within 90 days of the date of enactment of this Act, on such efforts, including steps the BOP plans to take to build these partnerships.

*Improving Methods for Reducing Recidivism.*—The Committee encourages DOJ to explore programs that reduce offender recidivism and end repeated cycles of violence and abuse by teaching skills for reducing stress, processing past trauma, and providing practical knowledge of how to cope with negative emotions. The Committee further encourages the DOJ to explore rehabilitation methods such as mindfulness and meditation that encourage incarcerated individuals to live to each one's highest potential and contribute to society.

*Voting rights.*—Several jurisdictions authorize BOP to provide voting access and education in Federal prisons. The Committee di-

rects the Director of the Bureau of Prisons to prioritize enabling all eligible persons in BOP custody to access the ballot and ensure that all those in custody have the information and resources needed to exercise their fundamental right to vote.

*Government Identification.*—Section 604 of the First Step Act (Public Law 115-391) directs BOP to establish procedures to help prisoners obtain identification, including a social security card, driver's license or other official photo identification, and a birth certificate; prior to release from a sentence to a term of imprisonment in a Federal prison or if the individual was not sentenced to a term of imprisonment in a Federal prison, prior to release from a sentence to a term of community confinement, subject to any limitations in law. The Committee recognizes that without a government identification, returning citizens are often unable to access life-sustaining essentials, including housing, employment, and public benefits. BOP is directed to immediately take steps to ensure compliance with FSA requirements, and ensure that all facilities have procedures in place to help prisoners obtain identification prior to release. The BOP is further directed to report, within 180 days of the enactment of this Act, on such efforts, including the number of inmates currently sentenced to a term in community confinement, as defined in Section 604(a)(2) of the First Step Act, and how many of these inmates currently have a valid form of government identification, disaggregated by facility or contractor. The report should also include the number of inmates sentenced to a term of imprisonment in a Federal prison who were released without being transferred to a community confinement facility, and how many of these inmates had a valid form of government identification on date of release, disaggregated by federal facility. The report should also identify what steps the BOP plans to take to ensure that prisoners have a government ID before release.

*Land Mobile Radio and Video Security Upgrades.*—The Committee considers Land Mobile Radio (LMR) communications and video security equipment used by BOP critical to officer and inmate safety and security. In an environment where other alternative forms of communication and security measures cannot be employed, LMR and video security continue to be the only safe and secure methods for BOP facilities and personnel. The Committee therefore includes \$25,560,000, \$10,000,000 above the request, for needed upgrades to help address issues with aging systems, blind spots, inoperable cameras, or limited functionality. The Committee urges BOP to apply this funding to the highest priority radio and video security upgrades, to develop a technology refresh plan for its LMR radios and video security systems, and identify such costs as part of its annual budget process, to ensure communications infrastructure and equipment support, rather than compromise, officer safety.

*Contract Detention.*—The Committee directs the Bureau of Prisons to submit a report to the Committee on its implementation of the GAO and the IG's recommendations on how to increase reporting and oversight of government-funded, privately operated contract prisons.

*Studying population fluctuation.*—The Committee recognizes that the BOP prison population is at a 20 year low and understands from recent BOP reporting that the Federal prison population is

expected to fluctuate due to a variety of factors, to include the impact of legislation (such as the Fair Sentencing Act and First Step Act), increased use of home confinement and compassionate release programs, and the increased number of cases since the reopening of courts after Covid-19 pandemic closures. The recommendation provides no less than \$1,570,000 for the Department of Justice to conduct a study for the purposes of monitoring the anticipated fluctuation in prison population that may necessitate movement of incarcerated persons and Federal prison occupancy. The Committee directs the DOJ to monitor and conduct a study, and report its progress by April 1, 2023, with a final report due not later than September 30, 2023. The study is to include but should not be limited to the following: identifying which facilities may need to be closed based on factors including facility disrepair, history of corruption, and utilization, including appropriate cost-benefit analysis; the ability of the BOP to provide adequate healthcare for special needs populations; estimating the cost and complexity of transferring incarcerated individuals; identifying how closures and transfers may impact proximity to primary residence and family support systems; understanding how closures and transfers may impact overcrowding concerns, new staffing needs, programming access and space; developing public health mitigation strategies; evaluating the opportunity to place people into home confinement; estimating the impact closures may have on local economies; and identifying potential job training and placement initiatives needed for BOP employees impacted by closure.

#### BUILDINGS AND FACILITIES

The Committee recommends \$300,000,000 for the construction, acquisition, modernization, maintenance, and repair of prison and detention facilities housing Federal inmates. This amount is \$65,000,000 above fiscal year 2022, and \$120,700,000 above the request. The Committee directs BOP to utilize not less than \$298,000,000 of this funding to address its significant and long-standing backlog of maintenance, repair and modernization projects, which the Committee understands may approach \$1,800,000,000. This investment in BOP infrastructure is an essential part of the effort to mitigate crowding at its high and medium security facilities. The Bureau directs BOP to prioritize its funding for repairs that address life and safety issues, to include those due to geological or seismological factors, and directs BOP to obligate not less than \$40,000,000 for facilities with geological or seismological deficiencies. BOP shall continue to provide monthly status of construction reports and notify the Committee of any changes reflected in those reports, to include for facilities with geological and seismic deficiencies.

#### LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON INDUSTRIES, INCORPORATED

The Committee recommends a limitation on administrative expenses of \$2,700,000 for Federal Prison Industries, Incorporated, which is the same as fiscal year 2022.

# jiggery-pokery<sup>1</sup>

**NOUN**

jig·gery-pok·ery 'ji-gər-ē-'pō-kər-ē

: underhanded manipulation or dealings : TRICKERY

<sup>1</sup> <https://www.merriam-webster.com/dictionary/jiggery-pokery>

THE ONLY PERSON RAISING HER HAND IS  
ALLOWING THE BUREAU OF PRISONS  
TO DISREGARD CONGRESS AND PUT  
**LIVES AT RISK.**

The Constitution's separation of powers requires federal agencies to implement  
the laws passed by Congress by following the laws' text. When agencies can  
ignore this principle and redefine a statute's meaning case-by-case, it enables  
**executive jiggery-pokery**

CALL YOUR CONGRESS PERSON AND  
DEMAND THAT THE BUREAU OF PRISONS

**STOP  
AUGMENTATION  
AT THE BOP!**

**& HIRE CORRECTIONAL OFFICERS!**

REMINDE THEM THE BOP ALREADY HAD  
ONE REGIONAL DIRECTOR "RETIRE"  
ONE DAY AFTER HE WAS EXPOSED  
FOR HIS **REFUSAL** TO COMPLY  
WITH THE LANGUAGE OF THE LAW.

**CAPITAL SWITCHBOARD  
202-224-3121**

