



Attention:

James Wills, Assistant Director
Office of the General Counsel
Federal Bureau of Prisons
320 First St., NW
Washington, DC 20534

December 13, 2023

Dear Mr. Wills,

We write to follow up on previous correspondence regarding the continued potential for voter disenfranchisement of residents incarcerated in Bureau of Prisons (“BOP”) facilities and efforts to address it. Specifically, we write to request again that the BOP promulgate a routine use exception to the Privacy Act, to the extent that such an exception is required for sharing the necessary data between the BOP and elections offices. Such an exception would be a simple, low-cost fix that both satisfies the legal requirements of the Privacy Act and addresses the ongoing challenge of getting ballots to incarcerated voters.

Over the last two years, we have consistently and regularly advocated for BOP to promulgate a routine use exception to allow the BOP to share information from the Inmate Central Records System with election offices for the purposes of supporting election administration. We have yet to receive a substantive, written response on this issue, and thus submit this additional request for your consideration.

In March of 2021, we sent a [letter](#) to the Department of Justice (“DOJ”) recommending a routine use exception, attached here. In its June 2021 [response](#), also attached here, the BOP informed us that it was “investigating the feasibility of a routine use exception” for this purpose in consultation with DOJ.

In October 2021, the DOJ and BOP hosted a listening session in which CLC recommended the adoption of a routine use exception, and in April of 2022, CLC inquired via email whether the DOJ and BOP had any update as to this topic. On May 2, 2022, DOJ’s Office of Privacy and Civil Liberties responded via email to say that “the BOP has not promulgated a routine use exception to the Privacy Act to allow state, local, tribal, and territorial officials and community groups to access the information stored in the BOP’s Inmate Central Records System for the purpose of facilitating registration and voting for incarcerated voters.”

In this same email, the DOJ noted concerns about sharing this information with community groups, citing “significant correctional and information security risks.” It should be noted that state and

local jails routinely share lists of incarcerated individuals with community groups for the purpose of voter engagement. Moreover, these concerns do not and should not apply to sharing this information with elections agencies. Based on DOJ’s own explanation of the purpose of routine use exceptions—i.e., sharing “with authorized governmental entities for specific legal purposes”¹—it is entirely appropriate to promulgate a routine use exception to allow state and local elections agencies to access the information needed to fulfil their statutory mandates and ensure eligible, incarcerated individuals can access their fundamental right to vote.

In January of 2023, CLC, the League of Women Voters of the U.S., and the League of Women Voters DC met with the BOP General Counsel’s office to specifically discuss the routine use exception, among other issues. When we followed up in April 2023, we were told via email that the BOP was still working to “determine whether [establishing a routine use exception is] feasible.” Additionally, DC-based advocates fighting for the rights of incarcerated voters established quarterly meetings with BOP staff throughout 2023 to discuss myriad opportunities for improving ballot access for incarcerated people, but have yet to hear any updates on whether the agency is considering a routine use exception. In November 2023, the Washington Lawyers’ Committee inquired about the status of the routine use exception and was instructed that another formal written correspondence should be directed to the Office of the General Counsel. We do so now here.

Ensuring that eligible incarcerated voters can register to vote and cast a ballot is a democratic imperative. Our democracy demands our continued attention to the ongoing disenfranchisement of eligible voters living in federal prisons. While the BOP has taken noteworthy and impactful steps toward ensuring eligible incarcerated voters can access voter information and education, this significant progress is curtailed if such individuals cannot reliably access ballots in order to vote. As we approach the three-year anniversary of EO 14019, and as many voters and elections offices alike prepare for the 2024 Presidential Elections, the need for the routine use exception is more urgent than ever.

We appreciate your consideration of this important issue and look forward to continuing to work with the DOJ and BOP so that all citizens can participate in our democracy, including those who have been impacted by the criminal legal system. If you have any questions or concerns, please do not hesitate to reach out to Kate Uyeda at kuyeda@campaignlegalcenter.org for more information.

¹ Response email from DOJ Office of Privacy and Civil Liberties dated 5/2/2022.

Sincerely,

Campaign Legal Center
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Washington DC, 20010

League of Women Voters of Washington DC
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Washington DC 20005

League of Women Voters of the United States
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Washington Lawyers' Committee for Civil Rights and Urban Affairs
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Disability Rights DC
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Washington, D.C. 20002

The Sentencing Project
1705 DeSales St, NW., 8th Floor.
Washington, DC 20036



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

March 30, 2021

Hon. Merrick Garland, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Routine Usage Exception to Allow for Implementation of Universal Enfranchisement and Abolition of Prison Gerrymandering

Dear Attorney General Garland,

We write to urge you to adopt a new routine use exception under the Privacy Act that would enable the Federal Bureau of Prisons (BOP) to share the data necessary to allow states and localities to implement two pro-democracy reforms: enacting universal enfranchisement and abolishing prison gerrymandering. These crucial efforts seek to safeguard the fundamental rights of people incarcerated within the BOP by providing them with representation and the right to vote.

The Department of Justice (DOJ) should act swiftly to enable the BOP to share this data with state, local, tribal, and territorial governments and community groups before the 2021 redistricting cycle. Currently, the BOP has interpreted the Privacy Act to bar it from sharing population data with jurisdictions seeking to abolish prison gerrymandering or adopt universal enfranchisement, including for those serving prison sentences within the BOP. This has seriously hindered jurisdictions' efforts to implement these crucial reforms. As this letter explains, there is a simple, low-cost fix that would remedy this problem: DOJ can adopt a new routine use exception under the Privacy Act to allow the BOP to share this data.

DOJ must act quickly to enable the BOP to facilitate, rather than impede, these state and local reforms for the 2021 redistricting cycle. As organizations deeply committed to democracy reform—and particularly equity in democracy access for historically disenfranchised justice-involved populations—we urge you to take action now.

I. Background

Jurisdictions that have embraced universal enfranchisement or abolished prison gerrymandering require data on the BOP's incarcerated population in order to fully implement their reforms. For example, Washington D.C.'s universal enfranchisement law requires its Board

of Elections to send ballots automatically to all D.C. voters housed in the BOP;¹ because the BOP has denied D.C. access to population data showing who within the BOP is a D.C. resident and where those residents are located within the BOP, D.C. cannot execute any targeted outreach, voter registration, or voting assistance efforts to voters in the BOP facilities. The same is true for Maine and Vermont, both states that do not disenfranchise citizens for felony convictions.

Jurisdictions that have abolished prison gerrymandering also require data from the BOP in order to fully carry out their laws. The nine states and more than 200 jurisdictions that seek to count incarcerated people at their pre-incarceration residences for the purposes of redistricting need population data about the BOP prisoners if they are to include these individuals in their adjusted apportionment data. However, the BOP has historically refused to provide this data—despite repeated efforts from Maryland, one of the first states to end the practice of prison gerrymandering.²

The information these jurisdictions need to fully implement universal enfranchisement and end prison gerrymandering is currently stored in the Inmate Central Records System, JUSTICE/BOP—005, 84 Fed. Reg. 19808, and can only be shared pursuant to a “routine use” exception noticed in the Federal Register. 5 U.S.C. § 552a (b)(3). The BOP has indicated that it does not believe any of the existing routine usage exceptions apply here. 84 Fed. Reg. 19808.

II. DOJ Can Address this Problem by Creating a New Election Administration Routine Use for the BOP’s Inmate Central Records System.

DOJ can address this problem by creating a new routine use exception to allow state, local, tribal, and territorial officials and community groups to access the information stored in the BOP’s Inmate Central Records System for the purpose of facilitating voting, registering voters, administering elections, or otherwise implementing election laws.

Under the Privacy Act, “‘routine use’ means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.” 5 U.S.C. § 552a(7). The purpose of the BOP’s Inmate Central Records System is to “assist[] the Attorney General and the Bureau of Prisons in meeting statutory responsibilities for the safekeeping, care, and custody of incarcerated persons” and to “serve[] as the primary record system on these individuals[.]” 84 Fed. Reg. 19808. Those statutory responsibilities include “provid[ing] for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise,” 18 U.S.C. § 4042(a)(2), and

¹ 67 D.C. Reg. 13867 (requiring a process to mail all necessary election materials to DC residents in Bureau of Prison facilities).

² Prison Policy Initiative, *Prison Gerrymandering Project: Progress Towards Ending Prison Gerrymandering* (2021), <https://www.prisonersofthecensus.org> (tracking the number of jurisdictions that have ended the practice of prison gerrymandering); Erika Wood, *Implementing Reform: How Maryland and New York Ended Prison Gerrymandering*, Demos (2014), <https://www.demos.org/policy-briefs/implementing-reform-how-maryland-new-york-ended-prison-gerrymandering> (noting that, although Maryland requested population data from the BOP, “BOP would not release the information, citing the Privacy Act of 1974” even after two appeals by the state).

“provid[ing] technical assistance to State, tribal, and local governments in the improvement of their correctional systems,” *id.* § 4042(a)(4).³

The BOP has interpreted this purpose broadly to encompass numerous routine use exceptions for providing data to state and local authorities in order to benefit confined individuals, including to determine “eligibility of these [individuals] for unemployment compensation” and “eligibility of an individual for a license, permit, or similar authorization.” 84 Fed. Reg. 19810.

A routine use exception that enables states and localities to collaborate with the BOP and DOJ to enfranchise and protect the democratic rights of the BOP prisoners is compatible with the purpose of the BOP’s Inmate Central Records System. Specifically, allowing for such collaboration will assist the BOP and the Attorney General in “provid[ing] for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise.” 18 U.S.C. § 4042(a)(2). When the State deprives a person of their liberty, it creates a “special relationship” that imposes a duty of care on the State.⁴ As part of that obligation, the government is obliged to safeguard those who are incarcerated from “deprivations of liberty which are not among those generally authorized by his confinement,” including deprivations of fundamental rights.⁵ Thus, enabling access to the right to vote—a fundamental constitutional right—is certainly consistent with the BOP and Attorney General’s obligation to provide for the care of the BOP’s population. Likewise, ensuring the right to representation for the BOP’s population by enabling representation at their home addresses also fits well within the BOP’s mandate.

Additionally, sharing data with states and localities is in line with the Attorney General and the BOP’s statutory duty to “provide technical assistance to State, tribal, and local governments in the improvement of their correctional systems.” 18 U.S.C. § 4042(a)(4). States and localities that have decided to end prison gerrymandering for correctional systems in their jurisdiction require the BOP’s assistance to count incarcerated individuals at their home addresses. Likewise, jurisdictions that have embraced universal enfranchisement require the BOP’s assistance to determine who within the BOP is a resident of the jurisdiction and where those residents are located within the BOP, in order to implement voter assistance programs. Thus, creating a routine use exception that enables the BOP and DOJ to assist states and localities in implementing these pro-democracy reforms related to correctional systems in their jurisdictions is in line with the purpose of BOP’s Inmate Central Records System.

Further, allowing data sharing with states, localities, and community groups will assist the Attorney General and the BOP in living up to their new mandates—imposed by Executive Order 14019—to ensure eligible incarcerated voters within the BOP and leaving the BOP are able to register to vote and cast ballots. Exec. Order No.14,019, 86 Fed. Reg. 13623 (Mar. 7, 2021).

³ See 84 Fed. Reg. 19809 (citing 18 U.S.C. § 4042, *inter alia*, as the legal source of authority for maintenance of the system).

⁴ *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 197 (1989); see also *id.* at 199-200 (“[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility [for his care].”).

⁵ *Id.* at 200 n.8; Dana Paikowsky, *Jails As Polling Places: Living Up to the Obligation to Enfranchise the Voters We Jail*, 54 HARV. C.R.-C.L. L. REV. 829, 869 (2019) (describing the substantive due process obligations that require the state to provide ballot access to incarcerated voters).

Finally, the Attorney General and the BOP have a statutory mandate to provide education and community resources as reentry support. 18 U.S.C. § 4042(a)(7). Studies show that disenfranchisement *undermines* rehabilitation and hinders re-entry,⁶ while restoring the right to vote *improves* individuals' connection to and engagement with their communities while incarcerated, as well as their transition back into society post-release.⁷

This routine usage exception would also be similar in-kind to many that are already listed in the Federal Register, as noted above. Existing routing usage exceptions allow the BOP to share information from the Inmate Central Records System with, for example:

(d) . . . [To] federal, state, and local licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license, permit, or similar authorization; . . .

(g) To state agencies and authorities, [] to review eligibility of these inmates for unemployment compensation; . . .

(h) To the Social Security Administration (SSA), [] for the purpose of matching the data against SSA records to enable the SSA to determine the eligibility of Bureau inmates to receive benefits under the Social Security Act . . .

(i) To the United States Department of Veterans Affairs (VA), for the purpose of matching the records against VA records to determine the eligibility or potential eligibility of Bureau inmates to receive veterans' benefits and/or services; . . .

(j) To the Federal Aviation Administration (FAA), [] for the purpose of matching the data against FAA records to determine the eligibility of Bureau inmates to hold and obtain airmen certification and qualification; . . .

(t) To federal, state or community health care agencies and professionals, including physicians, psychiatrists, psychologists, and state and federal medical facility personnel, who are providing treatment for a pre-existing condition to former federal inmates, and to federal, state, or local health care agencies and professionals for the purpose of securing medical or mental health after-care for current federal inmates; . . .

(x) To the Department of Treasury for the purpose of matching federal records on behalf of federal agencies, to determine the eligibility of or validate the entitlement of Bureau inmates to receive federal benefits pursuant to applicable federal law.

⁶ See, e.g., Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKELEY LA RAZA L.J. 407 (2012); Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 205 (2004).

⁷ See, e.g., Civic Nebraska, *Recidivism & Voting Rights, Case Study: Florida* (Jan. 30, 2019), <https://www.civicnebraska.org/wp-content/uploads/2019/02/2019-Florida-recidivism-case-study.pdf>; Victoria Shineman, *Restoring Rights, Restoring Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government* (Oct. 25, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3272694.

84 Fed. Reg. 19808. An election administration routine use exception would similarly allow the BOP to enlist the help of state and local allies to deliver crucial services to incarcerated people and ensure they are included in our democracy.

Establishing an election administration routine use would also be straightforward. In order to create a routine use for information stored in a given system of records, the relevant agency must publish notice of “each routine use of the records contained in the system, including the categories of users and the purpose of such use.” 5 U.S.C. § 552a(e)(4)(D). Agencies may modify routine uses by, “at least 30 days prior to publication . . . publish[ing] in the Federal Register notice of any new use or intended use of the information in the system, and provid[ing] an opportunity for interested persons to submit written data, views, or arguments to the agency.” 5 U.S.C. § 552a(11).

Given the increasing public support for repealing or reforming felony disenfranchisement laws⁸ and ending prison gerrymandering,⁹ we believe a reform that would allow the federal government to cooperate with states enacting these measures would receive significant popular support.

III. DOJ Should Act on this Opportunity Now, Before the 2021 Redistricting Cycle.

The time to make this change is now. In 2021, many states and the federal government will enact structural changes that will directly impact the democratic rights of people incarcerated in the BOP for years to come. At least nine states and more than 200 jurisdictions will move forward with their redistricting processes without being able to count federally incarcerated citizens as residents of their home communities, locking in these malapportioned districts for at least a decade. Washington D.C.’s universal enfranchisement measure, which grants the right to vote to 3,200 District of Columbia citizens incarcerated in the BOP, will take permanent legal effect for the first

⁸ See Will Wilder, *Progress on Restoring Voting Rights*, Brennan Center for Justice (Feb. 25, 2021) (discussing the “growing national momentum on voting rights restoration”) <https://www.brennancenter.org/our-work/analysis-opinion/progress-restoring-voting-rights>. Also, in a 2018 poll conducted by HuffPost/YouGov, for example, 63% of adults reported that they support restoring the vote to individuals with felony convictions who have completed their sentences, while only 20% were opposed. Restoration of Voting Rights, HuffPost & YouGov (Mar. 16-18, 2018), <http://big.assets.huffingtonpost.com/tabsHPRestorationofvotingrights20180316.pdf>.

⁹ See Prison Policy Initiative, *Prison Gerrymandering Project: Progress Towards Ending Prison Gerrymandering* (2021), <https://www.prisonersofthecensus.org>. Since 2010, Maryland, California, Colorado, Delaware, Nevada, New Jersey, New York, Virginia, and Washington State have adopted laws that eliminate prison gerrymandering. *Id.* Other states, such as Michigan and Tennessee, now prohibit or discourage local governments from engaging in prison gerrymandering. *Id.* And hundreds of county and municipal governments across the country have also rejected prison gerrymandering. *Local Governments that Avoid Prison-Based Gerrymandering*, Prison Policy Initiative (Jan. 7, 2019), <https://www.prisonersofthecensus.org/local/>. Recently, over 99% of the comments from the public on the 2020 Census (77,863 out of 77,887) also supported counting prisoners at their last known residence. Final 2020 Census Residence Criteria and Residence Situations, 85 Fed. Reg. 5,526 (Feb. 8, 2018), <https://www.federalregister.gov/documents/2018/02/08/2018-02370/final-2020-census-residence-criteria-and-residence-situations>.

time. And, finally, in the next 200 days, the BOP will begin to assess the ways in which it can better promote voter registration, voter education, and voting access for incarcerated citizens and those being released, and establish policies and procedures that will govern how voting and elections are facilitated in the BOP moving forward. Exec. Order No.14,019, 86 Fed. Reg. 13623 (Mar. 7, 2021).

Allowing BOP to share its population data with election officials and others will, thus, not only ensure that state and local jurisdictions will be able to fully implement their own pro-democracy reforms; it will also equip the BOP with the information it needs to guide its own internal reform efforts. By working with jurisdictions that are already engaging in their own independent voter outreach efforts, the BOP may learn it can work with states and localities to expand enfranchisement as Executive Order 14019 directs—perhaps by improving the BOP’s database, collecting new information, or storing its data in a more accessible way. But, without the possibility of data sharing, this kind of productive collaboration will remain out of reach.

We appreciate your consideration of this important issue and look forward to continuing to work with DOJ and the administration to continue to push for the inclusion of justice-involved citizens in our democracy. If you have any questions or concerns, please do not hesitate to reach out to Dana Paikowsky at dpaikowsky@campaignlegalcenter.org or 480-648-7705 for more information.

Sincerely,

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700 14th Street, NW, Suite 400
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Cc: Pamela Karlan, Principal Deputy Assistant Attorney General
U.S. Department of Justice, Civil Rights Division
Michael Carvajal, Director, Federal Bureau of Prisons
Ken Hyle, General Counsel, Federal Bureau of Prisons
Chiraag Bains, Special Assistant to the President for Criminal Justice
Domestic Policy Council



U.S. Department of Justice
Federal Bureau of Prisons

Office of the General Counsel

Washington, DC 20534

JUN 30 2021

Campaign Legal Center
1101 14th Street, N.W.
Washington, D.C. 20005

Re: Inmate Voter Registration

Dear Campaign Legal Center:

I write in response to your June 16, 2021, letter asking the Federal Bureau of Prisons (BOP) to consider implementing policies and procedures that would facilitate inmate voter registration and voting within BOP facilities.

The BOP recognizes that voter registration education and the facilitation of voter registration is a valuable exercise of American democracy and an important facet of successful reentry into the community. To that end, the BOP has implemented a series of actions to assist eligible residents with their voter registration. While these efforts have recently involved D.C. residents, the BOP is endeavoring to expand this assistance to residents of Maine and Vermont.

In order to protect individual privacy, and in accordance with Title 28 of the Code of Federal Regulations (CFR), section 513.34, the BOP does not release an inmate's personal identifying information without the inmate's explicit consent. Therefore, in this recent implementation, the BOP disseminated general D.C. voter registration information electronically to all inmates in BOP custody. The BOP also provided voter information and registration materials at the institution level through the Reentry Affairs Coordinator (RAC). As early as August 2020, the BOP sent the first of three electronic messages to all BOP inmates regarding D.C. resident voter registration through the Trust Fund Limited Inmate Computer System

(TRULINCS). These messages, captioned with a banner reading "D.C. Residents," specifically notified D.C. inmates convicted of felony offenses of their eligibility to register to vote in the upcoming election. These emails contained informational material detailing the criteria for registration eligibility, registration instructions, and printable voter registration forms in both English and Spanish. Additionally, the BOP electronically disseminated informational material provided by the League of Women Voters. The BOP also directed the D.C. Board of Elections (BOE) to mail voter registration forms and prepaid, self-addressed envelopes to all institutions and contract facilities for inmate use. These steps ensured D.C. inmates had access to voter registration material electronically through the inmate email system and physically through each institution's resource center. To facilitate registration, the BOP provided the BOE with the contact information of the RAC at each institution. In addition, at the request of Disability Rights DC at University Legal Services, voter information and registration materials were made available in order to provide an enhanced level of support to inmates who require assistance with registration. Similarly, 14 visually-impaired inmates received hand-delivered voter registration materials to be completed with assistance.

In addition to facilitating the registration of inmate voters, the BOP implemented procedures to protect and return ballots. Generally, and in accordance with BOP policy, outgoing inmate mail is delivered to institution mailrooms unsealed for possible examination and inspection. Voter ballots, however, were permitted to be delivered sealed to the mailroom to protect voter privacy and allow for faster processing.

According to the BOE, the BOP's efforts resulted in the successful registration of approximately 500 D.C. residents for the November 2020 election. The BOP continues to work in conjunction with the BOE to obtain paper and electronic voter registration informational material and voter registration forms to be made available to all D.C. resident inmates.

The BOP is actively assessing additional procedures to continue existing registration supports and expand the dissemination of voter registration information. In particular, the BOP is evaluating the viability of:

- Fostering connections with election officials in Maine and Vermont to obtain multilingual voter registration information to be disseminated to the inmate population;
- Including instructions as to where and when voter registration information and registration materials can be physically and electronically located in inmate Admissions and Orientation materials;
- Disseminating, on a monthly basis, electronic notices containing multilingual voter registration information, instructions, and registration materials from D.C., Maine, and Vermont;
- Posting multilingual voter registration information and instructions in each housing unit;
- Evaluating the need for and execution of additional resources and assistance for disabled inmates to obtain voter registration information and complete forms;
- Investigating the feasibility of a routine use exception through the Department of Justice to allow for the release of voter information directly to state/local election officials to facilitate the direct mailing of physical voter registration information to eligible resident inmates;
- Developing policies and procedures for the BOP's Reentry Services Division to provide educational materials notifying individuals leaving federal custody of the restrictions, if any, on their ability to vote under the laws of the state where the individual resides and, if any such restrictions exist, the point at which the individual's rights will be restored under applicable state law pursuant to 18 U.S.C. § 4042(a)(7) as explained in section 9(a) of Executive Order No. 14019, 86 Fed. Reg. 13623 (March 7, 2021); and
- Disseminating multilingual voter information and registration materials from D.C., Maine, and Vermont to all residents in BOP Residential Reentry Centers and incorporating voter registration assistance, including securing means of identification, as part of transitional services provided to all residents during their designation.

I trust this is responsive to your inquiry.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a long, sweeping horizontal line that tapers to the right.

Ken Hyle
Assistant Director/General Counsel