

Banking and Finance Law Daily Wrap Up, TOP STORY—CFPB report highlights ‘shoddy’ consumer financial products, services entwined with criminal justice processes, (Feb. 1, 2022)

Banking and Finance Law Daily Wrap Up

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Women, specifically Black women, sometimes spend up to a third of their income on the court-related debt of their family members, foregoing even necessities for themselves in the process.

The Consumer Financial Protection Bureau (CFPB) has [released](#) a report, “Justice-Involved Individuals and the Consumer Financial Marketplace,” which calls attention to a labyrinth of consumer financial issues related to the criminal justice process. From arrest and incarceration to reentry, the January 2022 report by the CFPB [highlights](#) fees, especially “tack on” additional fines and fees, which can, apart from any underlying offense, lead to incarceration if not paid. The report likewise calls attention to what the CFPB contends is a lack of *bona fide* competition in the marketplace for consumer financial services that have a nexus to the criminal justice system. For example, money transfers to prison accounts often involve a single private provider that charges steep processing fees and little choice as to how to receive funds on release.

The report noted that one in three adults has a criminal record, about 77 million people, but even this large number does not even account for affected family members and friends. The CFPB identified how private entities, including profit-seeking companies, “are embedded throughout the system” and how government and private actors have shifted costs that used to be free to the incarcerated. Another major theme the CFPB says it identified is a lack of choice among the service providers. A third theme is that the consequences for failing to pay fines and fees can be severe and lead to further incarceration, a dynamic that the CFPB said only strengthens the bargaining power of the private service providers.

In the pretrial phase, the report noted that defendants and their families are often “under duress to accept any commercial bond agreement, regardless of terms or overall costs.” Language barriers can be an additional problem in assessing the terms. Courts and bond agents often impose costly conditions, like electronic monitoring, that are run by profit-seeking private companies. Co-signors often find themselves burdened by bond debt and embroiled in disputes about financing errors later. The report contended that bail bond agents “are often delegated quasi-governmental powers, beyond those of other debt collectors.” According to the CFPB, this can include activities that might otherwise be heavily regulated if not prohibited, such as contacting third-party employers or friends, or even, citing to a specific National Consumer Law Center publication, “entering private residences at any time.”

The CFPB says that the inability to afford bail has a dramatic long term cascading effect once a defendant is in jail even for a short period of time. Even diversion programs can involve fees ranging up to \$5,000 for a single offense. Such fees can lead to the paradox of diversion being an unaffordable alternative to incarceration. According to the CFPB, which in turn cited to various articles published by *The Boston Globe* and the *Los Angeles Times*, various abuses are said to have even included “prosecutors allowing private companies to use the prosecutor’s letterhead to threaten people accused of writing bad checks with criminal charges unless they enter the private company’s diversion program—and pay the associated fees.”

In the incarceration phase, detainees and their families are often required to use high-cost money transfer services with little or no choice among service providers. The associated complications and burdens obviously lead to debt and various credit problems which can lead to housing and employment problems later. According to the CFPB, the

average nominal daily wage paid to the incarcerated fell from \$0.93 in 2001 to \$0.86 in 2017. The report noted that family members on the outside often end up having to pay for hygiene items, food, and phone and email access, and other fees for various care and custodial expenses. The report noted that the financial impact on Black women is especially acute, inasmuch as nearly two in five are related to someone who is incarcerated, compared to a similarly alarming population-wide average of one in four. “This puts the financial burden on women, often women of color, to pay for necessary services or items that prisons used to provide for free to incarcerated people.” The CFPB also observed that service providers often refuse to correct mistakes, which causes additional needless friction and alienation.

On reentry, prepaid debit cards issued to refund jail account balances often impose various fees for both use and inactivity. Errors on criminal background reports make reentry more difficult than would otherwise be the case. Again, availability of credit becomes even more difficult. Unpaid criminal justice debt can lead to driver’s license suspensions, hampering access to banking. The report noted that although more banks are offering “second chance” checking accounts, which can help reintegration with the banking system, these often come with more fees and requirements than standard checking accounts.

The CFPB says it is and will be taking action based on these and similar findings. The CFPB emphasized that it took action in October 2021 against the prison financial services company JPay “for taking advantage of people transitioning out of the corrections system by charging them fees to access their own money on prepaid debit cards they were forced to use and requiring consumers to sign up for a JPay debit card as a condition of receiving government benefits” (see [Banking and Finance Law Daily](#), Oct. 20, 2021).

In 2021, the CFPB [released](#) a related free printable and downloadable guide, “Focus on Reentry: Criminal Justice,” as part of the CFPB’s “Your Money, Your Goals” financial empowerment resources. The guide is designed mostly to help nonprofit and social workers to help the formerly incarcerated reenter society.

The CFPB is also inviting people and families who have been in contact with the criminal justice system to use the Bureau’s “Tell Your Story” tool to provide information to the Bureau about the experiences they have had with justice-related financial products and services.

Companies: JPay; National Consumer Law Center

MainStory: TopStory CFPB ChecksElectronicTransfers CommunityDevelopment ConsumerCredit
CreditDebitGiftCards CrimesOffenses DebtCollection EnforcementActions GCNNews

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