July 12, 2021

Department of Financial Protection and Innovation
Attention: Sandra Sandoval
300 S. Spring Street, Suite 15513
Los Angeles, California 90013

Submitted via email to: regulations@dfpi.ca.gov

Encore Capital Group's Comments to Proposed Modified Regulations Under the Debt Collection Licensing Act

On behalf of Encore Capital Group, Inc. and its subsidiaries, including Midland Credit Management, Inc. ("MCM") (collectively, "Encore" or the "Company"), we appreciate the opportunity to submit comments to the Department of Financial Protection and Innovation (the "DFPI") on its proposed regulations under the Debt Collection Licensing Act. We support the modifications DFPI has proposed, but we still have concerns regarding several aspects of the proposal that we had outlined in our comment letter submitted last month. **The two most critical modifications we continue to urge the DFPI to adopt are:**

(1) There should be no separate registration or filing requirements for branch offices or affiliates, as this is the equivalent of requiring branch affiliate licensing, and

(2) The DPFI Commissioner should not function as an agent for service of process.

We address each of these items below, as well as additional items of concern we had previously commented on.

For Branch Offices, There Should Be No Separate Registration Requirement

Separate branch office licensing and affiliate licensing is duplicative and burdensome to licensees. For licensees that have multiple branch locations or affiliates, separate registration is onerous and difficult to comply with from an administrative and cost perspective. To avoid unnecessary burden to licensees, licensing should be done for the main entity as a whole, not for individual branch offices or affiliates.

Notably, separate branch licensing is not required under the legislation granting the DFPI the authority to license debt collectors. Senate Bill 908 as enacted explicitly

states that "[a] separate license is not required for each individual branch office."[1] However, Section 1850.7(a)(16) in the DFPI's proposed rules provides that "An applicant shall register its branch offices by filing with the NMLS [Nationwide Multistate Licensing System & Registry] a Form MU3 for each branch office."

Similarly, affiliated companies are not required to have separate licenses under the law. Senate Bill 908 states "The commissioner shall administer this division and may adopt rules and regulations, and issue orders, consistent with that authority…To allow affiliated companies to be under a single license. The commissioner shall adopt regulations specifying what constitutes an affiliated company for these purposes."[2] However, Section 1850.7(a) in the DFPI's proposed rules provides that "[f]or affiliates seeking to be licensed under a single license, each affiliate must file a Form MU1 and comply with all licensing requirements."

Requiring Forms MU1 and MU3 to be filed for each branch office or affiliate would effectively require separate branch office licensing and separate affiliate licensing. This is in clear contradiction to SB 908's provisions cited above, which clearly state that a separate license is ***not*** required for each individual branch office nor affiliate.

The DFPI has publicly agreed that separate licenses for branch offices are not required ("Please note that a separate license is not required for each individual branch office").[3] To require "registration" for branch offices and separate filings for each affiliate, however, creates a licensing requirement by another name, and is inconsistent with SB 908. For the reasons addressed above, it is imperative that the MU3 and MU1 requirements for branch licenses and affiliate licenses be eliminated.

The DPFI Commissioner Should Not Function As An Agent for Service of Process

Proposed section 1850.8 would place the DFPI in a massive administrative role and subject the agency to liability for no reason. In short, the Commissioner would be in the cumbersome position of receiving all lawsuits against licensees brought under the Debt Collection Licensing Act, and the Commissioner would then be responsible for delivering the lawsuits to licensees. This provision makes little practical sense to us, and to our knowledge, no other state requires anything remotely similar. Moreover, we do not understand what appointing the Commissioner as agent for service of process would accomplish. Other regulators, including the Consumer Financial Protection Bureau (CFPB), use third-party vendors to track litigation against companies the CFPB supervises; we urge the DFPI to do the same.

[1] CA Senate Bill 908 (2019-2020), Article 2, Section 100001(a).
[2] CA Senate Bill 908 (2019-2020), Article 2, Section 100003(a)(3).
[3] https://dfpi.ca.gov/debt-collectors-faq/.

Additionally, the legislative intent of Senate Bill 908 shows that this language, while it appeared in the initial version of the bill introduced on February 3, 2020, was appropriately deleted from all subsequent versions of the bill, including the final version that passed into law. It would be inappropriate and unfair to add back in language that was removed during the legislative process.

Additional Items of Concern

In addition to the two key items addressed above, we reiterate our request for clarification and modification to the items delineated below.

Section 1850 - Definitions

We ask that the definition under subsection (c) for "Branch office" be clarified to exclude employees working from home. Numerous states allow for collectors to work from home, and this has become more pervasive during the pandemic in order to protect the health and safety of our industry's employees, while maintaining the highest standards of quality, compliance and customer service. It is critical that "Branch office" excludes the locations of employees working from home. Requiring us to list employee home locations would be a huge administrative burden to companies like ours with thousands of employees, and it would also create privacy concerns for our employees who may not want their private residential addresses disclosed in the licensing process.

Section 1850.6 – Electronic Filings

Under Section 1850.7(b)(2), there is language that a document is considered filed with the Commissioner when all fees are received "and the filing is transmitted by NMLS to the Commissioner." We ask that this language be modified to acknowledge that a document is considered filed when it is submitted on NMLS. We do not know how long it might take for NMLS to transmit a document to the Commissioner, and licensees' filing status should not be delayed due to delay on the part of NMLS to transmit a document to the Commissioner, when the licensee already submitted the document on NMLS.

Section 1850.7 – License Application for a Debt Collector

Under Section 1850.7, there is a proposed requirement that we identify "[i]ndividuals responsible for the conduct of the applicant's debt collection activities in this state." While the other categories of people we identify, including applicants, principal officers, general partners, and trustees are clear and discrete, the category of "individuals responsible for the conduct of the applicant's debt collection activities in this state" is extremely vague. For our company, we have larger call center locations in Arizona, Michigan, Minnesota, Virginia, Costa Rica and India, with additional smaller offices located throughout the U.S. Our collection professionals from all of these locations communicate with California consumers. "Individuals responsible for the conduct of the applicant's debt collection activities" in California could include hundreds of collections managers, senior managers, directors, senior directors, vice presidents and executives at our company, including our entire compliance and quality assurance teams (which consist of dozens of employees). Given how vague and potentially broad this language is, we would ask that the category of "[i]ndividuals responsible for the conduct of the applicant's debt collection activities in this state" be removed. The information about applicants, principal officers, general partners, trustees, and directors is also comprehensive enough and would provide the DFPI with thorough information about the people responsible for running our company and our debt collection activities.

§ 1850.10. Information Regarding Individuals who are not Residents of the United States.

In subsection (b)(6) of Section 1850.10, the language seeking "Regulatory history, particularly in connection with debt collection activities" may not be available. We would ask that this language either be removed or clarified that it is required only if available.

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Thank you for your efforts to solicit feedback on these important proposed modifications to the DFPI's regulations under the Debt Collection Licensing Act. Should you have any questions about our comments, please don't hesitate to contact me at tamar.yudenfreund@mcmcg.com.

Respectfully submitted,

/s/ Tamar Yudenfreund
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