



August 29, 2022

Submitted via email to: [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov), copy to [REDACTED]

Department of Financial Protection and Innovation, Legal Division  
Attn: Sandra Sandoval, Legal Assistant  
2101 Arena Blvd.  
Sacramento, CA 95834

**Re: Invitation for Comments on the Debt Collection Licensing Act (PRO 05-21)**

Dear Ms. Gallagher:

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 California Department of Financial Protection and Innovation (“DFPI”) on the above-referenced Invitation for Comments on the Debt Collection Licensing Act. We support the DFPI’s important efforts to ensure robust standards for our industry and create strong consumer protections. In the DFPI’s proposed rule, our main concern lies with setting the retention period for call recordings and documents at seven years from the later of the account being settled, returned to the creditor, sold or closed. This is a significant departure from the federal standard for call recording retention, and from the standard in all other states regarding the retention of account documents, and we respectfully ask the DFPI to reconsider its seven-year proposal. In addition to this concern, in our comments below, we raise one concern with the proposed annual reporting and several requests for clarification on definitions in the proposed rule.

**The Proposed Seven-Year Document Retention Standard is Longer Than The Standard in Any Other State, or on the Federal Level**

The DFPI’s proposal to create a seven-year retention policy for all documents and call recordings would create a very costly burden for our industry, with little corresponding consumer benefit, that deviates from the retention standards in the rest of the nation. Across the country, other states’ document retention standards vary from one to six years, and we are unaware of any state that has adopted a seven-year standard.

It is important to note that, while the DFPI’s proposal would require a seven-year retention period from the later of the account being settled, returned to the creditor, sold or closed, other states’ own retention periods vary as to when they begin to accrue. For



example, Nebraska requires debt collection licensees to maintain a record of payments for two years following the date payment was received (Neb. Rev. Stat. Ann. §45-607), Washington State requires licensees to keep a record of collections and payments for a period of four years “from the date of the last entry” (Wash. Rev. Code Ann. § 19.16.230), and other states such as Florida require documents to be retained “from the date the consumer satisfied the debt being collected or the registrant has ceased collection efforts” (Fla. Admin. Code 69V-180).

Below is an overview of the state standards for debt purchaser and debt collector document retention across the nation. In the overview, we do not specify for each state when the retention period begins to accrue. However, even if we generalize that many states’ retention periods begin at the point that DFPI is proposing (*i.e.*, the later of the account being settled, returned to the creditor, sold or closed), it is evident that no other state has a seven-year retention period as the DFPI has proposed.

#### **States With One-Year Document Retention Period**

- Illinois (Admin. Code tit. 68 § 1210.140)

#### **States With Two-Year Document Retention Period**

- Colorado (4 Colo. Code Regs. § 903-1, Rules 2.07 & 3.03)
- Connecticut (Conn. Agencies Regs. § 36a-809-7)
- Idaho (Idaho Code Ann. § 28-46-304)
- Iowa (Iowa Code § 536.11)
- Louisiana (LA Consumer Credit Law, Records Retention Schedule, Policy No. LL-01-04)
- Maine (Me. Rev. Stat. Ann. Tit. 32, §11036)
- Maryland (Md. Code Ann. Fin. Inst. §11-213)
- Massachusetts (Mass. Regs. Code tit 209 §18.10)
- Montana (Mont. Code Ann. §32-5-307)
- Nebraska (433 Neb. Admin. Code §2)
- Oklahoma (Okla. Stat. tit. 14A §3-506)
- Pennsylvania (12 Pa. Cons. Stat. Ann. § 6204)
- South Carolina (S.C. Code Ann. §37-3-505)
- Texas (7 Tex. Admin Code §83.5004)
- Wyoming (Wyo. Stat. Ann. §40-14-636)

#### **States With Three-Year Document Retention Period**

- Florida (Fla. Stat. Ann § 559.5556, Fla Admin Code 69V-180.90)
- Georgia (Ga. Code Ann. § 10-11-2)
- Kansas (Kan. Admin. Regs. § 75-6-38)



- Michigan (Mich. Comp. Laws. Ann. §399.910)
- New Hampshire (N.H. Rev. Stat. Ann. §337-A:2)
- New Jersey (N.J. Stat. Ann. §17:11C-19)
- North Carolina (N.C. Gen. Stat. §58-70-25)
- South Dakota (S.D. Admin. R. 20:07:20:03)
- Tennessee (Tenn. Code Ann. §62-20-114)

#### **States With Four-Year Document Retention Period**

- Oregon (Or. Admin. R. 441-820-0150)
- Washington State (Wash. Rev. Code Ann. § 19.16.230)

#### **States With Five-Year Document Retention Period**

- Minnesota (Minn. Stat. §332.42)
- Rhode Island (230 RICR 40-25-1)

#### **States With Six-Year Document Retention Period**

- Alaska (Alaska Stat § 08.24.280)
- Arizona (ARC R20-4-1504)
- Hawaii (Haw. Rev. Stat. Ann 443B-8(a), Haw. Admin. R. § 16-11)
- Nevada (Nev. Rev. Stat. §649.355)
- North Dakota (N.D. Cent. Code §13-05-07)
- West Virginia (W.Va. Code §47-16-4)
- Wisconsin (Wis. Stat. Ann. §218.04)

As mentioned above, we are unaware of any state document retention period higher than six years long. Creating a new seven-year standard for California would create a significant burden for our industry and deviate from the maximum standard set in other states. We can identify no strong consumer protection need for an additional one-year retention period only for California consumers. We urge the DFPI to consider adopting a six-year document retention standard, which would still be longer than the large majority of states.

Further, we view the retention period for call recordings as meriting separate consideration from a document retention period. Most states do contemplate call recording storage as part of document retention storage, and the federal CFPB recently created a national three-year retention period for call recordings as part of its comprehensive rulemaking for the debt collection industry. *See* 12 CFR Part 1006.100 (Regulation F) (“If a debt collector records telephone calls made in connection with the collection of a debt, the debt collector must retain the recording of each such telephone call for three years after the date of the call.”)



Given the national three-year call recording retention standard in place, the proposed seven-year retention standard for call recordings is our greatest concern with the DFPI's proposed rule. Space to store hundreds of thousands or even millions of calls is extremely costly, and requiring call recordings to be stored for an additional four years creates significant cost and logistical issues for debt collectors operating in the state. *We ask that while all account documents – which reflect all calls made and received – be maintained under a six-year standard, the DFPI maintain a three-year retention standard for call recordings, consistent with the CFPB's rule.*

### **One Data Point in the Annual Reports Requests Trade Secret, Proprietary Information**

In the proposed annual reporting rule, the DFPI is in one section asking that debt collectors provide confidential, proprietary and non-public business information. More specifically, in Section 4, Subsection (d)(2), the DFPI is asking for the annual report to include “[t]he total number of California debtor accounts collected that settled for less than the full amount of the debt.” This is information that is trade secret, proprietary and not public, and could serve as sensitive pricing information to competitors bidding on the same portfolios of debt we purchase. Together with other information provided pursuant to the other subsections in Section 4, this information can expose the business's proprietary structure of operation without serving the DFPI's purpose of assessing the trend of the industry and how consumers are affected. It is highly unusual for a state licensing regulatory body to require such sensitive information; in fact, after a review of all other state debt collector licensing regimes, we are unaware of any other state regulator that requests data about the total number of accounts collected that settled for less than the full amount of the debt. We respectfully ask that this subsection to be removed.

In addition, we ask that the DFPI ensure that annual reports and the information in them will not be shared publicly. This is particularly important for companies like Encore that are publicly-traded. Indeed, the public disclosure of material information about our California accounts could result in sensitive information in the hands of competitors that could impact the pricing and purchasing landscape of debt in California.

### **Clarification Request on Definitions**

- **Section 4, Subsection (h)** – the DFPI is asking for the “dollar amount of California debtor accounts for which collection was attempted during the preceding year.” This language is ambiguous and we respectfully ask the DFPI to provide clarification. For example, at which point in time is the DFPI looking for



the dollar amount, as it can change throughout the course of the preceding year. Also, if a consumer made a payment during the preceding year, but we had no outbound collection attempts, would that account be included? Other state licensing regulators typically ask for the dollar amount of the outstanding balance of active state debtor accounts as of a specific date, and we ask the DFPI to clarify that it is asking for the dollar amount of the outstanding balance of accounts as of December 31 of the preceding year.

- **“All employee records.”** We ask for clarity on what “all employee records” under Section 5, Subsection (c)(1) means. Would “all employee records” include, for example, medical and other personal information about employees? Or is the DFPI only referring to records about employees relating to disciplinary action, compliance training, and other items relevant to how California accounts are handled?
- **“Net proceeds generated by California debtor accounts.”** We ask for clarification of this language in Section 1. As defined, “net proceeds generated by California debtor accounts” shall mean the revenues less cost of goods sold or “gross income” generated by California debtor accounts. We understand that the DFPI is seeking this information to calculate the licensee’s assessment for the year of licensing pursuant to California Financial Code section 100020, subdivision (a). However, “cost of goods sold” is not a term of art in our industry. We ask for clarification that “net proceeds” means net income, or revenue minus expenses. That is a figure we include in our balance sheet, in accordance with GAAP.

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Thank you for your efforts to solicit feedback on these important issues. Again, we urge the DFPI to create robust standards for debt collectors that are in line with what other states and the CFPB require, so as not to create a hodgepodge of state rules that create substantial burdens to the collections industry without corresponding benefit to



consumers. Should you have any questions about our comments, please don't hesitate to contact me at [REDACTED]

Respectfully submitted,

/s/ Tamar Yudenfreund

Tamar Yudenfreund  
Senior Director, Public Policy