



Memorandum in Opposition

April 14, 2015

House Paper 753

On behalf of Encore Capital Group, Inc., and its wholly-owned subsidiaries, including Midland Credit Management and Midland Funding (collectively, “Encore”), I submit this memo in opposition to House Paper 753. Encore supports consumer protections that ensure responsible debt collection but, as drafted, House Paper 753 is not reasonable. This legislation has very significant problems, and would have many unintended consequences that hurt both businesses and the very consumers it is intended to protect.

By way of background, Encore is a publicly traded company that, together with its debt purchaser and debt collector subsidiaries, has provided over 60 years of service to consumers. Purchasing primarily charged-off credit card receivables, we currently own an account for over 91,000 Maine consumers, and partner with them by offering discounted payment plans, flexible repayment terms, and charging no interest or fees on new accounts. In 2013, we forgave over \$2.03 million in debt to Maine residents. Unfortunately, this bill would significantly reduce the discounts Encore could provide to Maine consumers, as it would hamper our ability to collect on valid debt obligations.

Encore Supports Positive Change in the Industry

Encore supports efforts to improve our industry and the quality of interactions with consumers. In 2011, we proudly published an industry-leading *Consumer Bill of Rights* (a copy of which is enclosed), codifying our commitment to conduct business ethically, engage in respectful and constructive dialogue with consumers, and play a positive role in consumers’ financial recovery.

The Federal Consumer Financial Protection Bureau (CFPB) has noted the importance of the debt collection industry in ensuring that credit remains accessible to consumers, a critical factor in improving the economy:

Consumer debt collection plays an important role in the functioning of the consumer credit market. By collecting delinquent debt, collectors reduce creditors’ losses from non-repayment and thereby may help to keep consumer credit available and more affordable to consumers. In some instances, by purchasing debt at discounted rates, debt buyers may be able to offer consumers settlements and payment plans that original creditors would be unlikely to offer, making it easier for consumers to pay off their debts. Available and affordable credit is vital to millions of consumers because it makes it possible for them



to purchase goods and services that they could not afford if they had to pay the entire cost at the time of purchase.¹

Further acknowledging the need to balance consumer protection with the important role this industry plays, the Federal Trade Commission (FTC) has repeatedly stated that positive change should not “unduly burden . . . legitimate debt collection.”² Unfortunately, as currently drafted, House Bill 753 would impose undue restrictions on the legitimate collection of valid debt.

House Paper 753 Would Require Documents and Data That Do Not Exist

As introduced, HP 753 would require documents and data that simply do not exist. Both the CFPB and FTC have publicly recognized that pre-charge-off account itemization is typically not provided to debt purchasers. Similarly, a copy of the original contract is often unavailable. This is largely because banks that originate credit card debt are, under federal law, not required to maintain this information longer than 24 months.³ Beyond the federal document retention requirements, in many cases a contract may have never existed in the first place. Indeed, for an increasing number of credit card accounts opened by phone or online today, there is never a contract that the consumer signs.

Instead of requiring documents that may have never existed in the first place, Encore believes that a copy of the federally regulated charge-off statement, the statement provided to the consumer by the banks after 180 days of delinquency, is the best evidence of the existence of the account and the final account balance. Whether the issue is pre-charge-off itemization or a copy of a non-existent contract, any provision requiring debt purchasers to have information that simply does not exist should be eliminated from this bill. As drafted, the legislation’s impossible requirements would in no uncertain terms eliminate the ability of the entire debt collection industry to do business in Maine.

The Legislation Would Expand the Statute of Limitations Beyond What It Was Intended To Do

The legislation would expand the statute of limitations beyond what it was intended to do – ensure that lawsuits are not filed on time-barred debt. In 47 states, the statute of limitations relates to when a legal action may be brought, but this legislation would expand the statute of limitations beyond what Maine and 46 other states do. By applying the statute of limitations to collection activity unrelated to litigation, the legislation would have the exact opposite effect of

¹ *Fair Debt Collection Practices Act CFPB Annual Report*. Consumer Financial Protection Bureau, March 20, 2013, page 9. Available at http://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf.

² *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*. Federal Trade Commission, July 2010, pages vi and 71. Available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.

³ Truth in Lending Act, Regulation Z. 12 C.F.R. § 226.25.



what is intended: it would incentivize debt purchasers to sue more so as to avoid losing the ability to collect once the statute of limitations runs. Current statute provides that debt purchasers have 6 years to bring an action for collection in Maine. House Paper 753 would bar any collections attempts on debts older than 3 years. The only way debt purchasers could preserve their legal rights would be to file more actions to collect on valid, delinquent debt before the now shortened limitations period expires. This means more litigation filed and less time for consumers and debt purchasers to work out a negotiated payment solution.

Instead of such a perverse incentive, the legislation should seek to promote dialogue and communication between debt purchasers and consumers of delinquent debt, rather than create incentives for more litigation. Additionally, the legislation would prohibit debt purchasers from communicating with consumers regarding a time-barred debt, even if the consumer was seeking to resolve the debt because it appeared on their credit report. Indeed, by banning all collection activity after the statute of limitations, many consumers would be left unaware that they could regain their financial footing by working with a company like Encore, which offers deep discounts, charges no interest or fees, and partners with consumers to reach workable payment solutions. While well-intended, this legislation would close the doors of communication and incentivize more litigation against consumers, as debt purchasers would have 50% less time to negotiate a payment plan with consumers before they would be forced to litigate to preserve their legal rights.

This Legislation Would Require Disclosures in the Initial Validation Letter That Would Only Serve to Confuse and Scare Consumers

Under federal law, debt collectors must send consumers an initial validation letter providing basic information about the account, as well as key validation notice language advising consumers of their rights to seek verification or dispute the account.⁴ The validation letter is typically sent as the first step in the collections process, well before litigation is being filed or even contemplated. While well-intended, HP 753 would require collectors to disclose in the initial validation letter the types of income that are exempt from being taken to satisfy a court judgment. That type of notice language, while appropriate in a litigation matter, doesn't make sense for inclusion in a validation letter. Such language would likely serve to confuse and scare consumers into thinking that they are being sued or, at the very least, that litigation is being contemplated. Further, there is a significant concern that such language would serve to overshadow the very important validation notice language contain in the validation letter.⁵ Overshadowing the validation notice and the associated disclosures regarding the consumer's rights could serve to confuse consumers and potentially violate the FDCPA.

⁴ Federal Fair Debt Collection Practices Act, 15 U.S. Code § 1692g(a).

⁵ *Id.* at § 1692g(b) ("Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.")



House Paper 753 Would Have a Retroactive Application

As drafted, the legislation would apply retroactively to accounts purchased prior to the effective date. Debt purchasers like Encore that have bought many thousands of Maine consumer accounts would face significant difficulty obtaining documents required by this legislation (to the extent the documents even exist – as explained above, in many cases they do not). Documents are negotiated into our purchase of accounts, and we secure access to documents that are required by the current state law at the time of purchase. We ask that any legislation adopt prospective language that applies to accounts first purchased on or after the effective date so that the additional documentation requirements can be included in our contracts and so that debt purchasers can comply with any new data requirements from the point in time when the account is first sold.

Significant Reform Impacting the Debt Collection Industry Should Wait for the CFPB to Issue its Comprehensive Rulemaking This Year

The Consumer Financial Protection Bureau (CFPB) is currently engaged in a broad rulemaking of debt collection that will likely cover almost every aspect of the industry. The CFPB has indicated it intends to issue its Notice of Proposed Rules this year. Based on the almost 500 questions (including sub-parts) that the CFPB has asked in the rulemaking thus far, we expect that many of the rules will impact literally every aspect of debt collection addressed in this legislation – including the notices and disclosures collectors must provide, and document and data requirements to collect and file litigation against consumers. As such, we would ask that the Legislature wait to make significant changes to how collectors engage with consumers until the CFPB has issued its rules. This will ensure that Maine's debt collection standards do not conflict with the federal rules, and are still needed given the sea change to the industry expected over the coming year.

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Thank you for your attention on this important matter. Please feel free to contact me directly at (858) 309-6923 for any further information.

Sincerely,

Sonia Gibson
Encore Capital Group Government Affairs

CONSUMER BILL OF RIGHTS

In all that we do, we strive to treat consumers with respect and integrity. We are committed to engaging in dialogue that is respectful and constructive, creating solutions for our consumers that resolve their debt, and ensuring that those who work on our behalf adhere to these same standards. We operate in compliance with the laws that regulate our industry, and we hope to play an important and productive role in people's lives.

Article 1: Contacting Consumers in a Timely and Effective Manner

- a. At the outset of collection activity, we will send a debt validation notice informing the consumer that their account has been purchased, identifying the creditor that held the debt at default, clearly stating the balance owed, and giving the consumer an opportunity to both request further information and resolve the debt.
- b. Before sending the debt validation notice, we will use reasonable efforts to verify the consumer's current address.
- c. If any debt validation notice to a consumer is returned, we will disable that address, use reasonable efforts to verify the consumer's current address, and, if found, send another validation letter to the new address.
- d. All collection letters we mail to a consumer will identify the creditor that held the debt at default, the creditor's account number, and the current balance owed, along with other identifying information, as appropriate.

Article 2: Resolving Accounts Quickly and Honestly

- a. Our employees who interact with consumers will be trained on, and expected to comply with, applicable federal, state and local laws and regulations concerning fair and ethical collection practices. Employees' conduct in this regard will be monitored for compliance.
- b. When interacting with consumers, our employees will listen and work hard to understand their consumers' needs.
- c. Our employees will strive to develop and present innovative payment options that allow for the effective repayment of the obligation and accommodate the consumer's financial situation. Payment options will be discussed with the consumer in plain and simple language.

- d. Any payment arrangement agreed to between a consumer and our company over the telephone will be confirmed in a letter and promptly mailed to the consumer's address.
- e. If we make a mistake, we will devote time, attention, and effort to resolve it promptly and appropriately. We will work hard to learn from our mistakes, and to use what we've learned to improve our consumers' overall experience when interacting with us.

Article 3: Forgiveness and Hardship Guidelines

- a. We will cease collection activities when a consumer's account is proven to be the result of identity theft, and will instruct credit reporting agencies to delete any references we have reported for the account from the consumer's credit reports.
- b. We will cease collection activities when we receive documentation indicating that the consumer's only source of income is from exempt sources, such as Social Security or Supplemental Security Income benefits, and that the consumer has access to no other assets.
- c. We will suspend collection activities when a consumer demonstrates that he or she is experiencing significant financial hardship due to medical issues.
- d. We will suspend collection activities when a consumer is a direct victim of a natural or other catastrophic disaster.
- e. We will strive to offer consumers who have entered into a settlement agreement with us a reasonable grace period when they encounter unforeseen circumstances, such as job loss.

Article 4: Collection Practices that Promote Settlement and Preserve Dignity

- a. When interacting with consumers, our employees will engage in dialogue that is respectful, honorable and constructive.
- b. We will offer discounts and payment plans to consumers in an effort to establish a mutually beneficial resolution that the consumer can afford.
- c. To protect the privacy of the consumer, we will not systematically leave unsolicited messages on a consumer's voice mail.
- d. To help facilitate the repayment of an account, we will not assess fees or interest to a consumer's balance throughout the period of active repayment unless third-party firms handle the account. Missed payments will invalidate this policy.
- e. When we receive official confirmation of a bankruptcy proceeding for a particular account, we will stop collection efforts unless the case is dismissed.

Article 5: Safeguarding Consumer Information

- a. When reporting to credit reporting agencies, we will provide timely and accurate updates and will conduct a reasonable investigation of any disputes based on the information provided. When information is found to be incorrect or outdated, we will instruct the agencies to correct or delete the information.
- b. In accordance with applicable law, we will employ safeguards to ensure that the existence or amount of a consumer's debt and any confidential consumer information, including Social Security Numbers, are not disclosed in any contact with third parties unless the consumer has previously provided permission.
- c. We will take all reasonable steps necessary to protect the security and confidentiality of consumer information, defend against anticipated threats, and prevent unauthorized use of that information.
- d. We will maintain all necessary permits, licenses or other authorizations required to purchase and service consumer receivables and will make efforts to ensure that third parties acting on our behalf also have appropriate authorizations.
- e. We will maintain records documenting the collection activities undertaken on our accounts and will maintain those records for a reasonable period of time.
- f. We will maintain a training program for newly hired collection representatives that covers state and federal laws and interpersonal skills. The training program will require collection representatives to pass a comprehensive examination that includes information on the federal Fair Debt Collection Practices Act before they are assigned to permanent duties and an annual re-examination to ensure continued mastery of important concepts.
- g. We will conduct background checks on all prospective employees.
- h. We will maintain a dedicated quality control effort under the supervision of our legal counsel, compliance officer, or other senior manager responsible for compliance oversight. Our quality control effort will include measures such as peer reviews, in-person monitoring, observation of collection system entries, and call monitoring and recording, both to ensure proper monitoring of collection practices and procedures and to identify deficiencies.
- i. We will not resell accounts to third parties in the ordinary course of our business. In the future, if we have an occasional instance when we do resell accounts, we will only do so when we can provide the purchaser with documentation evidencing the amount owed on the account and clear title of ownership.

Article 6: The Fair and Reasonable Use of Litigation to Resolve an Outstanding Obligation

- a. Prior to pursuing a collection strategy that may include litigation, we will attempt to contact the consumer to let them know that the next step in the collection process will be their referral to a law firm.
- b. We will engage law firms that litigate in good faith and treat consumers with respect.
- c. Prior to signing affidavits, our authorized representatives will read, understand, and fully verify document contents as appropriate to ensure accuracy. All notarized documents will be signed in the presence of a certified notary who is acknowledging the signature.
- d. Prior to pursuing litigation, our attorneys and law firms will confirm that the applicable statute of limitations on the debt has not expired.
- e. We will not pursue litigation or otherwise collect on accounts where we are not the rightful owner, and we will require our attorneys and law firms to provide proof of such ownership when requested by a court.
- f. We will instruct our law firms to engage process servers who are reputable, licensed, in good standing with applicable regulatory agencies and trade associations, and who both conform to all legal requirements concerning the service of process, and employ systematic checks to validate effective service (e.g., the appropriate use of technology, digital pictures, compliance audits, etc.).
- g. We will instruct our law firms to include, where permitted by court rules, the name of the creditor that held the debt at default, reference to the creditor's account number, and other information to help the consumer identify the origin of the debt.
- h. We will instruct our law firms to never ask courts to issue bench warrants or other forms of body attachment which compel a defendant's appearance in court, except in those rare instances when the defendant fails to respond to a direct order from the court after we obtain a judgment.
- i. Unless required by contract or law, we will not unilaterally initiate an arbitration hearing on a consumer's account.

The use of the words "we," "us," or "our" is meant to apply to Encore Capital Group, Inc., Midland Credit Management, Inc., our affiliated corporate entities, and their employees, as required by the context. We will also strive to ensure that our third party service providers, agents, and attorneys adhere to these, or similar, principles when representing us. Please understand that Midland Credit Management is a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose.