



February 11, 2020

The Honorable Dereck E. Davis, Chairman
231 House Office Building
Committee on House Economic Matters
Annapolis, MD 21401

RE: MD House Bill 365 (Dumais)—OPPOSE

Dear Chairman Davis and Members of the Committee,

Encore Capital Group, Inc. and its wholly-owned subsidiaries (collectively, “Encore”) submit this letter in **opposition** to House Bill 365. While well-intended, this legislation would render courts’ valid judgments virtually meaningless, and would have a severely negative impact on the availability of affordable credit to Maryland consumers. Simply put, the bill’s drastic overhaul of creditors’ ability to collect on court judgments would have many negative unintended consequences for the 671,000 Maryland consumers we serve.

By way of background, Encore is a publicly-traded company and a leading provider of debt recovery solutions for consumers, with more than 60 years of experience helping consumers toward a better life. Through its subsidiaries, our company purchases portfolios of credit card receivables from major banks and partners with individuals as they repay their obligations and work toward financial recovery. We take a consumer-centric approach to helping consumers resolve their obligations, and each of our 8,500 employees takes great pride in this. We voluntarily cease or suspend collections where consumers demonstrate a hardship.¹ Additionally, last year we forgave over \$5 million in debt to consumers in Maryland.

Still, even with our consumer-centric approach, we sometimes have to utilize litigation as a last resort. A key priority for us is to try to communicate with our consumers to resolve their debt obligations, and we typically offer flexible payment plans and deep discounts on the account balances of our consumers. In addition, we charge no fees or pre-judgment interest on the debt we purchase. Still, for a small segment of consumers who we believe have the ability, but not the willingness, to repay their obligations, litigation is a path we sometimes take after years of attempting to work with the consumer outside of the legal process. The attached timeline shows a typical path to wage garnishment, where we have attempted to work with the consumer or notify them of their options 17 times prior to a wage garnishment.

When we do proceed to the last resort of litigation and a court awards a judgment for a valid debt obligation, we believe that judgment should be enforced, and the debt obligation should be repaid. When we obtain a judgment issued by a Maryland court of law, wage garnishment is the primary way we are

¹ See Encore’s Consumer Bill of Rights, Article 2 (attached).



able to collect on the judgment. If the garnishment law has no teeth, courts' judgments will be rendered meaningless.

Garnishment Is a Valid Method to Collect on Court-Ordered Judgments

Garnishment is a well-established, court-supervised, formal procedure that allows us and other judgment creditors to seek repayment by collecting a small fraction of a non-paying judgment debtors' wages. Obtaining a garnishment order requires creditors such as retailers, banks and credit unions, financial services companies, professional service firms, and a variety of small businesses to go through a lengthy, costly and rigorous legal process.

By Drastically Increasing Exemptions from Garnishment, HB 365 Would Render Courts' Valid Judgments Virtually Meaningless

As introduced, HB 365 exempts from garnishment any disposable earnings equaling 50 times the *state* minimum wage – up from the current law's 30 times the *federal* minimum wage. Using the state minimum wage of \$15 an hour in 2025, Maryland consumers earning up to approximately \$50,000 gross salary would be entirely exempt from repaying their debt obligations (estimating a 22% difference between gross salary and disposable wages²). As such, a consumer would have to earn over \$50,000 to even start to be subject to wage garnishment and even then, the greater of 75% of disposable wages or \$750 per week in take home wages would be protected from garnishment.

While Encore believes that protections should be provided for consumer who are in financially difficult situations or are undergoing hardships, we cannot support the proposal's blanket, no-questions-asked exemption for *all consumers*. It makes sense to consider individual life circumstances when determining who needs financial protection and who does not. For example, a single mother earning \$50,000 annually and supporting several children may need an exemption from wage garnishment in order to afford the necessities of life. In contrast, a married wage-earner from a dual-income household, raising no dependents and earning \$50,000 annually needs fewer protections. Applying the same automatic garnishment exemptions to all wage-earners does a disservice to consumers by reducing creditors' ability to collect and therefore reducing affordable credit.

Maryland law already provides a robust exemption for consumers from judgement creditors in the form of a \$6,000 bank account or personal property exemption. This exemption is guaranteed once the consumer files a simple document with the court, making it one of the most consumer-friendly exemptions in the country.

The changes to the law proposed in HB 365 combined with the existing protections for consumers in the state, would mean that the courts' valid judgments would be unenforceable for the vast majority of consumers who have incurred a debt obligation but are unwilling to pay it back.

² The term "disposable wages" are the amount of earnings left after legally required deductions e.g., federal, state taxes, Social Security, unemployment insurance and medical insurance.



The Availability of Credit for All Maryland Consumers Would Decline

This inequity doesn't just impact creditors and the consumers who failed to repay their valid debt obligations. The inequity will harm a far greater segment of society -- Maryland consumers who seek credit to get a mortgage, car loan, or credit card, the majority of which *do* repay their valid debt obligations. Simply put, the availability of credit at reasonable prices will go down. Numerous research studies in recent years have shown just this – that placing more restrictions on the collection of validly owed debt causes the availability of credit to decrease.³ As Professor Todd Zywicki of the Mercatus Center at George Mason University found in his comprehensive research, greater restraints on creditors' remedies will reduce the supply of lending and raise prices, at the expense of other consumers who may end up paying more or obtaining less access to credit.⁴ Another recent study noted that cumbersome regulation has “restricted the availability of financial products and credit, particularly for low-income borrowers, young people, and minorities.”⁵ Finally, a recent study from the Harvard Kennedy School of Government noted that a 250% surge in credit card related restrictions by regulators since 2007 has contributed to a 50% drop in annual credit card originations to lower-risk-score Americans.⁶

It is critical to maintain a reasonable level of wage garnishment so that Maryland continues to be a state where creditors who have extended money and have not been repaid are able to recoup the outstanding debt owed to them. Without the ability to recoup valid debt obligations, creditors will have little incentive to lend money to Maryland consumers in the first place. We ask you to consider these unintended consequences and urge the Committee to issue an unfavorable report on HB 365.

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

Sincerely,

Sonia Gibson
National Government Affairs

Enclosure

³ *Debt Collection Agencies and the Supply of Consumer Credit*, Philadelphia Federal Reserve Working Paper 15-23 (June 2015). See also Fonseca, Julia, *Access to Credit and Financial Health: Evaluating the Impact of Debt Collection* (Staff Report No. 814). Federal Reserve Bank of New York, May 2017.

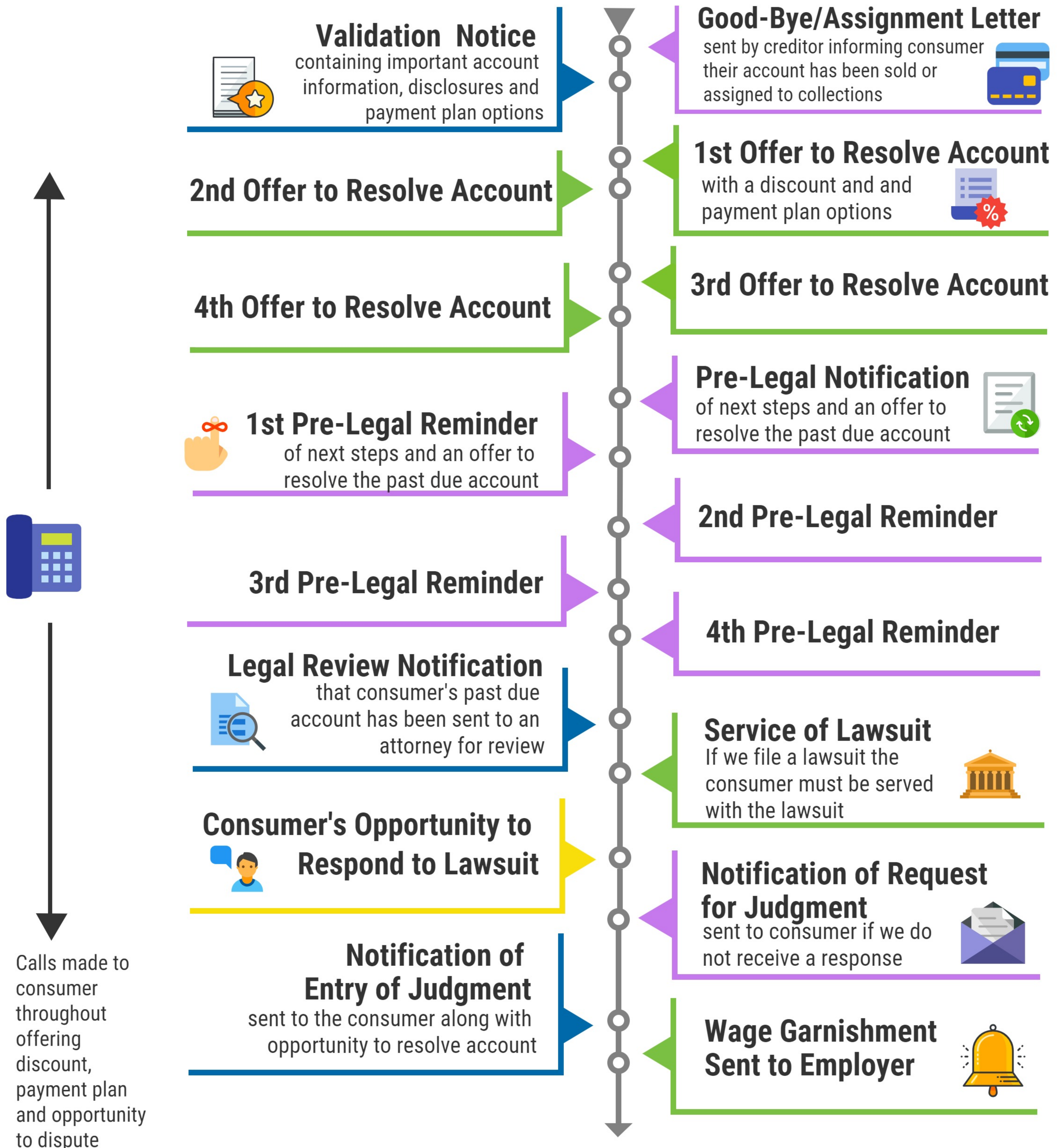
⁴ Todd J. Zywicki, *The Law and Economics of Consumer Debt Collection and its Regulation*. Mercatus Center at George Mason University (September 2015).

⁵ *Dodd-Frank At 5: Higher Costs, Uncertain Benefits*, American Action Forum (July 2015).

⁶ Marshall Lux and Robert Green, *Out of Reach: Regressive Trends in Credit Card Access*, Harvard Kennedy School of Government (April 2016).

Wage Garnishment is the Last Resort After a Lengthy Process and Many Attempts to Work with the Consumer

Creditors give consumers many opportunities to resolve their past due account or submit a dispute. Timing varies from consumer to consumer, however, it may take years for a creditor to exhaust all options before resorting to wage garnishment.



CONSUMER BILL OF RIGHTS

2016 Update

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 obligations, 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: Consumer Treatment

We Treat Consumers With Dignity and Respect, in a Manner that Promotes Resolution and Seeks to Maximize Consumer Comprehension of their Account Rights and Responsibilities

Communications

- In our written correspondence with consumers, we provide clear communications, straightforward disclosures, and robust account information to maximize consumer comprehension and recognition of their account.

Our Employees

- Our employees who interact with consumers are 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 is monitored for compliance.
- When interacting with consumers, our employees listen and work hard to understand the consumers' needs.
- If we make a mistake, we devote time, attention, and effort to resolve it promptly and appropriately. We work hard to learn from our mistakes, and to use what we've learned to improve our consumers' overall experience when interacting with us.
- When interacting with consumers, our employees engage in dialogue that is respectful, honorable and constructive.

Payments

- We offer discounts and payment plans to consumers in an effort to establish a mutually beneficial resolution that the consumer can afford.

- Our employees 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 are discussed with the consumer in plain and simple language.
- Any payment arrangement agreed to between a consumer and our company over the telephone is confirmed in a letter and promptly mailed to the consumer's address.

Article 2: Hardship

Consumers Who Are Servicemembers, Victims of Natural Disasters, or Who Are Experiencing Medical Issues, Job Loss, or Other Hardships

- We actively seek to identify active duty servicemembers and stop collections from those servicemembers.
- We suspend collection activities when a consumer demonstrates that he or she is experiencing significant financial hardship due to medical issues.
- We suspend collection activities when a consumer is a direct victim of a natural or other catastrophic disaster.
- We 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. We work with and are sensitive to consumers who encounter unforeseen circumstances, such as job loss.

Article 3: Complaints and Disputes

We Work Hard to Investigate and Respond to Consumers in a Timely and Accurate Manner

- When reporting to credit reporting agencies, we provide timely and accurate updates and conduct a reasonable investigation of any disputes based on the information provided. When information is found to be incorrect or outdated, we instruct the agencies to correct or delete the information.
- We provide our consumers with more time than the federal legal requirement to obtain validation of their obligation.
- We cease collection activities when a consumer's account is proven to be the result of identity theft, and instruct credit reporting agencies to delete any references we have reported for the account from the consumer's credit reports.

Article 4: Collection Practices

We Commit to Collect from our Consumers in a Fair and Transparent Manner

- We will only collect on accounts for which we are the legitimate, rightful owner.
- We provide our consumers with a grace period before commencing credit reporting of debt. We continue to refrain from credit reporting with payment activity.

- We provide disclosures to consumers if their debt is time-barred that we will not sue them for it.
- We maintain a training program for newly hired collection representatives that includes passing a comprehensive examination, as well as ongoing training and recertification each year that covers state and federal laws and interpersonal skills.
- When we receive official confirmation of a bankruptcy proceeding for a particular account, we stop collection efforts unless allowed by Federal bankruptcy law or the case is dismissed.
- We maintain all necessary permits, licenses or other authorizations required to purchase and service consumer receivables and make efforts to ensure that third parties acting on our behalf also have appropriate authorizations.

How We Communicate

- At the outset of collection activity, we 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.
- Before sending the debt validation notice, we use reasonable efforts to verify the consumer's current address.
- All collection letters we mail to a consumer identify the creditor that held the debt at default, the last four digits of the creditor's account number, and the current balance owed, along with other identifying information, as appropriate.
- If any debt validation notice to a consumer is returned, we disable that address, use reasonable efforts to verify the consumer's current address, and, if found, send another validation letter to the new address.
- To protect the privacy of the consumer, we do not systematically leave unsolicited messages on a consumer's voice mail.

Litigation

- Prior to pursuing a collection strategy that may include litigation, we 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.
- We engage law firms that litigate in good faith and treat consumers with respect.
- Prior to signing affidavits, our authorized representatives read, understand, and fully verify document contents as appropriate to ensure accuracy. All notarized documents are signed in the presence of a certified notary who is acknowledging the signature.
- Prior to pursuing litigation, our attorneys and law firms confirm that the applicable statute of limitations on the debt has not expired.
- We do not pursue litigation or otherwise collect on accounts where we are not the rightful owner, and we require our attorneys and law firms to provide proof of such ownership when requested by a court.
- We 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.).

- We 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 last four digits of the creditor's account number, and other information to help the consumer identify the origin of the debt.
- We instruct our law firms to never ask courts to issue bench warrants or other forms of body attachment that forcibly compel a consumer's appearance in court, except in those rare instances when the court independently determines to enforce its direct order after we obtain a judgment.

Article 5: Privacy and Security

We Employ Robust Processes to Protect the Security and Confidentiality of our Consumers' Information

- We take all reasonable steps necessary to protect the security of confidential consumer information, including Social Security Numbers, defend against anticipated threats, and prevent unauthorized use of or disclosure to third parties of that information.
- We maintain records documenting the collection activities undertaken on our accounts and maintain those records for a reasonable period of time.
- We conduct background checks as part of our hiring process.
- We maintain a dedicated quality control effort under the oversight of our Board of Directors' Consumer Experience and Compliance Committee. Our quality control effort includes 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.
- We do not resell accounts to third parties so as to foster long-term, trusting relationships with our consumers.

The use of the words "we," "us," or "our" is meant to apply to Encore Capital Group, Inc. and its wholly owned subsidiaries that are involved in the collection of U.S. defaulted receivables, 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.