2018 Annual Governmentwide Federal Receivables Management Symposium

Back to Basics: Living the Legacy of the Debt Collection Improvement Act (DCIA)

May 23 & 24, 2018

Understanding Certification:

The Purpose and Evolution of Agreements to Certify Federal Nontax Debts

2018 Annual Governmentwide Federal Receivables Management Symposium
May 24, 2018

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What is a Certification Agreement?

- The certification agreement for federal nontax debts is a document signed annually, usually by an agency's CFO or someone with delegated authority to sign on behalf of the creditor agency.

- The certification agreement outlines an agency's responsibilities related to participation in Cross-Servicing and TOP, and ongoing obligations associated with debts referred to DMS.

- Requires that an agency acknowledge future obligations associated with debts referred to DMS:

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What is Certification?

☐ When an agency refers a debt either to the Treasury Offset Program (TOP) or Cross-Servicing, it must certify, among other things, that:

- ☐ the debt is valid and legally enforceable;

- ☐ the debt is delinquent;

- ☐ there are no bars to collection;

- ☐ requisite due process has been completed; and

- ☐ the agency has made reasonable efforts to obtain payment.

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When is a Debt Certified?

- Upon referral of the debt to DMS.

    - **Not** when the certification agreement is signed.

- The agency employee who causes the debt to be referred to DMS is **certifying**, *under penalty of perjury*, that to the best of his/her knowledge, the debt has met all of the conditions set forth in the certification agreement.

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Why is Certification Important?

□ Ensures that DMS takes collection action against only those debtors that owe enforceable debts.

□ Clarifies the creditor agency's responsibilities.

□ Assists in defending litigation.

□ Fulfills legal requirements.

Page 6

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Evolution of Certification – Where We Are Now

- ☐ Partial Matches and Other Updates to Debt Records
  - ☐ <u>2012</u>: Added language authorizing DMS to update debt records with alias names.
  - ☐ <u>2018</u>: Expanded language authorizing DMS to update debt records in other circumstances (e.g., updates to debtor's addresses).

- ☐ Combined Agreement
  - ☐ <u>2012</u>: Implemented system in which agencies sign a single certification agreement for referrals to both TOP and Cross-Servicing. The provisions of the agreement that apply to a particular debt depend on how the debt is referred.

- ☐ CFO Signature
  - ☐ DMS generally requires that the certification agreements be signed at the CFO level. This ensures that one agreement covers an entire agency.
  - ☐ Ensures that this important topic receives high-level attention within an agency.

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Evolution of Certification – Where We Are Now

☐ HIPAA Compliance

 ☐ <u>2016</u>: Added language to certification requiring each agency to confirm that if it anticipates submitting any "protected health information" to DMS, it has determined that disclosure of that information is legally authorized and it will inform DMS of any limits on re-disclosure.

☐ Debt Recertification (2018)

 ☐ Applies to debts submitted prior to the execution of the current Certification Agreement that remain subject to collection through TOP.

 ☐ Requires an agency to re-certify, *under penalty of perjury*, that each previously submitted debt complied with all prerequisites for collection.

 ☐ Confirms that the agency notified DMS of any change to the debt's balance resulting from collections outside of TOP.

 ☐ Fulfills legal requirement to update certification on no less than an annual basis.

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Evolution of Certification – Looking Ahead

☐ DMS has adopted a policy on actions DMS will take when an agency fails to return the certification agreement.

☐ We continue to modify the certification process to ensure integrity of the debt and protection of the debtor.

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Failure to Sign a Certification Agreement

☐ Could result in failure to comply with applicable law.

☐ Possible audit findings.

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Questions?

- Do you understand the certification process?

- What are your challenges with the certification process?

- Is there anything about the certification process you would like to see change?

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