

AF #2980

**U.S. DEPARTMENT OF THE TREASURY
BUREAU OF THE FISCAL SERVICE**

Cross-Servicing Program and Treasury Offset Program

CY2016 Agreement to Certify Federal Nontax Debts

This Agreement to Certify Federal Nontax Debts (Certification Agreement) is submitted by:
Federal Election Commission (FEC) (Creditor Agency).

Section I: Background

- A. The U.S. Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service), provides debt collection services to Federal agencies that are owed delinquent debt.
- B. Federal agencies are generally required to refer delinquent nontax debts to the Fiscal Service for debt collection purposes. See 31 U.S.C. §§ 3711(g), 3716(c), and 3720A(a).
- C. Upon submitting debts to Fiscal Service for debt collection services, Federal agencies are required to certify to Fiscal Service, among other things, that the debts are valid, legally enforceable, there are no bars to collection, and all requisite due process has been completed, as set forth in this Certification Agreement.
- D. The definitions of terms used in this Certification Agreement are in Attachment A, Certification Terminology.

Section II: General Provisions

The Creditor Agency understands and agrees to the following:

- A. **Scope.** The provisions of this Certification Agreement apply to all Debts submitted by Electronic Transmission on or after the date of the Certification Agreement by the Creditor Agency to Fiscal Service for collection through the Cross-Servicing Program and/or the Treasury Offset Program.
- B. **Certification Authority.** Only an individual with delegated authority to certify a Debt on behalf of the Creditor Agency will submit a Debt to Fiscal Service via an Add Record or Update Record. The Creditor Agency will provide a copy of this Certification Agreement to any such individual.
- C. **Changes to Debt Information.**
 - 1. The Creditor Agency understands its obligation to notify Fiscal Service: (a) of any change in the amount, validity, or legal enforceability of the Debt; and (b) if the Debt becomes subject to circumstances that legally preclude or bar collection.

2. The Creditor Agency authorizes Fiscal Service to Update Records on its behalf, in accordance with criteria established by Fiscal Service, for the purpose of adding alias Debtor name information for a Debt certified by the Creditor Agency. Creditor Agency will notify Fiscal Service as soon as it learns that any such updates are incorrect.

Section III: Debt Certification

The Creditor Agency understands that by submitting a Debt to Fiscal Service via an Add Record or Update Record, the individual submitting the Debt is certifying to Fiscal Service, in writing, under penalty of perjury, that, to the best of his or her knowledge and belief, the following is true and correct:

A. General Prerequisites for Collection.

1. ***Valid Debts.*** The Creditor Agency has made a final determination that the Debt is valid and legally enforceable in the amount stated, and that the Debt is not subject to any circumstances that legally preclude or bar collection.
2. ***Delinquent Debts.*** The Debt is delinquent, and the Debtor is not paying the Debt in accordance with any repayment agreement entered into with the Creditor Agency.
3. ***Interest, Penalties, and Administrative Costs.*** The Creditor Agency has complied with all of the provisions of 31 U.S.C. § 3717 and 31 CFR § 901.9, as well as other statutes, regulations, and policies applicable to Creditor Agency's assessment of interest, penalties, and administrative costs on the Debt. The Creditor Agency has provided a written notice to the Debtor explaining the Creditor Agency's requirements concerning the assessment of interest, penalties, and administrative costs.
4. ***Debtor Disputes.*** The Creditor Agency has considered any and all evidence presented by the Debtor disputing the Creditor Agency's determination about the Debt, and there are no pending appeals of such determination that would preclude collection of the Debt.
5. ***Collection Efforts.*** The Creditor Agency has made reasonable efforts to obtain payment of the Debt, including, at a minimum, by demanding payment of the Debt.
6. ***Creditor Agency Profile Form.*** The Creditor Agency Profile Form has been completed by the Creditor Agency and is accurate and up-to-date.
7. ***Protected Health Information.*** If the creditor agency anticipates submitting any protected health information (as defined under the Health Insurance Portability and Accountability Act of 1996 and associated regulations) to Fiscal Service for debt collection purposes, it has determined that such disclosure is authorized under relevant law and has informed Fiscal Service of any limitations on re-disclosure.

B. General Prerequisites for Collection by Administrative and Tax Refund Offset. If,

in the Creditor Agency Profile Form, the Creditor Agency has authorized Fiscal Service to collect the Debt by offsetting Federal and State tax and nontax payments:

1. ***Compliance with Offset Laws.*** The Creditor Agency has complied with all of the provisions of 31 U.S.C. §§ 3716 and 3720A, 31 CFR Part 285, and the Federal Claims Collection Standards (31 CFR Parts 900-904), as well as other statutes, regulations and policies applicable to the collection of the Debt by offset.
2. ***Due Process Prerequisites.*** At least 60 days prior to the Certification Date, the Creditor Agency has provided, or made a reasonable attempt to provide, in accordance with applicable offset regulations, each Debtor with:
 - a. a written notification, at the Debtor's most current known address, of the nature and the amount of the Debt, the intention of the Creditor Agency to collect the Debt through offset, including offset of Federal and State payments, and an explanation of the rights of the Debtor;
 - b. an opportunity to inspect and copy the records of the Creditor Agency with respect to the Debt;
 - c. an opportunity for review of the Creditor Agency's determination with respect to the Debt, including an opportunity to present evidence that all or part of the Debt is not delinquent or legally enforceable; and
 - d. an opportunity to enter into a written repayment agreement with the Creditor Agency.
3. ***Due Process Prerequisites for Certain Older Debts.*** For a Debt outstanding more than ten years on or before December 28, 2009, the Creditor Agency sent the notice described in Section III.B.2.a to the last known address of the Debtor after the Debt was outstanding for more than ten years, and afforded the Debtor the opportunities described in Sections III.B.2.b. - II.B.2.d. at that time. This requirement does not apply to any Debt that could be collected by offset without regard to any time limitation prior to December 28, 2009.

C. **Prerequisites for Collection by Federal Salary Offset.** If, through a Salary Offset Instruction, the Creditor Agency has authorized Fiscal Service to collect the Debt by offsetting Federal salary payments:

1. ***Compliance with Federal Salary Offset Laws.*** The Creditor Agency has complied with all of the provisions of 5 U.S.C. § 5514, 5 CFR §§ 550.1101-1110, and 31 CFR § 285.7, as may be amended, as well as other statutes, regulations and policies applicable to collection by salary offset; and
2. ***Due Process Prerequisites.*** At least 60 days prior to the Certification Date, the Creditor Agency has provided, or made a reasonable attempt to provide, in accordance with applicable offset regulations, each Debtor with the notification and opportunities required by Sections III.B.2. and III.B.3., and any other notices, opportunities, or considerations required for Federal salary offset.

D. **Consumer Reporting Agencies.** If, in the Creditor Agency Profile Form, the Creditor Agency has authorized Fiscal Service to disclose Debts to consumer reporting agencies:

1. **Compliance with Consumer Reporting Agency Requirements.** The Creditor Agency has complied with all of the provisions of 31 U.S.C. § 3711(e) and the Federal Claims Collection Standards, as well as other statutes, regulations, and policies applicable to the reporting of a delinquent Debt to consumer reporting agencies.
2. **Notice Prerequisites.** At least 60 days prior to the Certification Date, the Creditor Agency provided the Debtor with:
 - a. notification that the Debt is overdue and the Creditor Agency intends to disclose that the Debtor is responsible for the Debt to a consumer reporting agency;
 - b. the specific information to be disclosed to the consumer reporting agency; and
 - c. the Debtor's rights to an explanation of the claim, dispute the information in the Creditor Agency's records about the claim, and an administrative repeal or review of the claim; and
3. **Review Prerequisites.** Upon the request of a Debtor, the Creditor Agency has provided for a review of the Debtor's claim(s), including an opportunity for reconsideration of the initial decision on the Debt.

Section IV: Certification

By signing below, I certify that I have delegated authority to execute this Certification Agreement on behalf of the head of Creditor Agency and understand this agreement applies to all debts submitted by Electronic Transmission on or after the date of the Certification Agreement to Fiscal Service for collection through the Cross-Servicing Program and/or the Treasury Offset Program.


Signature

Judy Berning

Print Name

Acting, Chief Finance Officer

Title

11/24/15
Date

ATTACHMENT A

Cross-Servicing Program and Treasury Offset Program

Certification Terminology

For the purposes of this Certification Agreement:

1. Add Records. "Add Records" means the addition of new Debts, by Electronic Transmission, to the Cross-Servicing Program or TOP, by the Creditor Agency with an instruction by the Creditor Agency directing the Bureau of the Fiscal Service (Fiscal Service) to take collection action on the Debt, in accordance with the specification in the Fiscal Service Technical Guidance. "Add Records" occurs when the Creditor Agency submits a Debt to Fiscal Service unless the Creditor Agency explicitly instructs Fiscal Service not to take collection action (in accordance with the specifications of the Fiscal Service Technical Guidance). As further specified in the Fiscal Service Technical Guidance, "Add Records" can be accomplished either through a batch or manual process.
2. Certification Date. "Certification Date" means the date of the Electronic Transmission of the Debt.
3. Creditor Agency Profile Form. "Creditor Agency Profile Form" means the document(s) the Creditor Agency completes to provide information to Fiscal Service, including, among other things, what tools Fiscal Service is authorized to use to collect Debts on behalf of the Creditor Agency, and contact information for the Creditor Agency's personnel who are available to assist Fiscal Service with questions related to the transferred Debt. The Creditor Agency Profile Form is a Fiscal Service document that Fiscal Service sends to agencies for completion.
4. Cross-Servicing Program. "Cross-Servicing Program" means Fiscal Service's debt collection program in which Fiscal Service uses a variety of debt collection tools, including TOP, to collect delinquent nontax debts on behalf of Federal agencies.
5. Debt. "Debt" means any federal nontax debt, any information about such a debt, any information about the Debtor associated with the debt, and any update, change, or modification to such information.
6. Debtor. "Debtor" means a person who owes a Debt.
7. Debt Debtor Information Screen. "Debt Debtor Information Screen" means the screen in the TOP Web Client (as defined in Fiscal Service Technical Guidance) on which a Debt can be entered.
8. Electronic Transmission. "Electronic Transmission" means any transmission of information to Fiscal Service from the Creditor Agency via any form of electronic media including, but not limited to, tapes, diskettes, and on-line access through an Add Records, an Update Records, or a Salary Offset Instruction.

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9. Fiscal Service Technical Guidance. "Fiscal Service Technical Guidance" means the technical guidance issued by Fiscal Service that, among other things, instructs agencies how to Add Records and Update Records. "Fiscal Service Technical Guidance" includes:

a. *Direct Referrals to TOP*. For direct referrals to TOP, "Fiscal Service Technical Guidance" includes:

- i. "Treasury Offset Program Agency Guide: The Official Federal Agency Guide to the Treasury Offset Program," version 2013.0, as updated from time-to-time;
- ii. "Treasury Offset Program: Enhanced Record Layouts Version 3.8.1 with Definitions, Error Codes and Layout Mapping," as updated from time-to-time;
- iii. "Integrated Agency Interface File Formats," version 3.30t, as updated from time-to-time;
- iv. "Treasury Offset Program: The Online Client Agency User Guide," Web Version Release 3.0, as updated from time-to-time; and
- v. Any other guidance issued by Fiscal Service providing technical specifications for how to refer Debts directly to TOP.

b. *Referrals to the Cross-Servicing Program*. For referrals to the Cross-Servicing Program, "Fiscal Service Technical Guidance" includes:

- i. "Integrated Agency Interface File Format For Cross-Servicing," version 3.30.1c, as updated from time-to-time;
- ii. "XDC FedDebt Referral File Format: Electronic Case Entry for Cross-Servicing," as updated from time-to-time;
- iii. "FedDebt Online Functionality: Creating a Case Online," revised 03/2015, as updated from time-to-time;
- iv. Any other guidance issued by Fiscal Service providing technical specifications for how to refer Debts to the Cross-Servicing Program.

10. Record Type 6. "Record Type 6" means the record layout used for sending data to TOP, and includes information regarding what payments should be excluded from offset.

11. Salary Offset Instruction. "Salary Offset Instruction" means the salary by-pass indicator used by the Creditor Agency to indicate to TOP whether or not a Debt should be collected through the offset of Federal salary payments. As further specified in the Fiscal Service Technical Guidance:

a. *No Offset of Federal Salary Payments*. To direct that Fiscal Service not collect a Debt through the offset of Federal salary payments, the Creditor Agency must:

- i. Transmit the file with a Record Type 6 containing an A in the Action Field and SAL in the Payment Bypass Indicator Field;
- ii. Indicate in the Creditor Agency's Agency Profile (i.e., the default settings established by the Creditor Agency) that Federal salary payments should not be offset;
- iii. Manually check the "salary by-pass" column online through the Debt Debtor Information Screen; or

- iv. Follow other relevant guidance in the Fiscal Service Technical Guidance regarding how to bypass salary payments.

b. ***Offset Federal Salary Payments.*** The Creditor Agency directs Fiscal Service to collect a Debt through the offset of Federal salary payments as follows:

- i. If the Creditor Agency submits a Debt to Fiscal Service without a specific indication that the Debt should not be collected through the offset of Federal salary payments (see paragraph 11.a. of this Attachment A, above), the Creditor Agency has indicated that the Debt should be collected through the offset of Federal salary payments;
- ii. If the Creditor Agency has previously indicated that Federal salary payments not be offset, to indicate that Federal salary payments be offset, the Creditor Agency must:
 - (a) Send a Record Type 6 with a D in the Action Field and SAL in the Payment Bypass Indicator Field;
 - (b) Send a Record Type 6 with a U in the Action Field and SAL in the Payment Bypass Indicator Field; or
 - (c) Indicate in the Creditor Agency's Agency Profile (i.e., the default settings established by the Creditor Agency) that Federal salary payments should be offset; or
- iii. The Creditor Agency must follow other relevant guidance in the Fiscal Service Technical Guidance regarding how to offset Federal salary payments.

12. **Treasury Offset Program or TOP.** "Treasury Offset Program" or "TOP" means the Fiscal Service's debt matching and payment offset program that uses payment and debt data received from Federal agencies and States to collect delinquent debt from payments disbursed by Fiscal Service and other Federal and State disbursing agencies.

13. **Update Records.** "Update Records" means any update, change or modification of information about a Debt previously transmitted by the Creditor Agency. Specifically, "Update Records" includes any update, change or modification of information about such a Debt that is submitted to Fiscal Service, by Electronic Transmission, through either a batch or manual process, as further specified by the Fiscal Service Technical Guidance.