

**Case No. 12-M-0476 et al.**  
**EDI Business/Technical Working Groups**  
**Workpaper – 814D - Termination Fees at Account Closure – 7/14/2017**

**Commercially Available Products**  
**Public Service Commission's Uniform Business Practices**

Background:

In the *Notice Seeking Comments on Revisions to the Uniform Business Practices*, issued March 8, 2017, in Case 12-M-0476 (the "Notice"), Staff proposed to change the definition of "Termination Fee" to include: "[i]n the event the customer is deceased before the end of such contract term, no fee for termination or early cancellation shall be assessed."

Disclaimer:

This workpaper provides information on two tools available to ESCOs that could provide compliance assistance for the proposed UBP change. The EDI Working Group does not specifically endorse either product – this workpaper is simply information for further discussion. There are likely other products/services available to the market.

7/7/2017

NTIS: Death Master File Download



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List of Persons Certified  
to Receive the Limited  
Access Death Master File

## Death Master File Download

You must be certified to receive access to the Limited Access Death Master File. Instructions for obtaining certification are available at <https://classic.ntis.gov/products/ssa-dmf/>.

### Prevent Identity Fraud

The SSA Death Master File is used by leading financial and credit firms as well as government agencies to match records and prevent identity fraud. To assist in this effort, NTIS and SSA are working together to offer the SSA Death Master File more frequently and with fewer delays. By methodically running financial, credit, and other applications against the Death Master File, the financial community, insurance companies, security firms and state and local governments are better able to identify and prevent identity fraud. Both the weekly and monthly updates are now offered electronically via https, reducing handling and production time. Visit <http://classic.ntis.gov/products/ssa-dmf/#> for further information.

The Death Master File (DMF) from the Social Security Administration (SSA) contains over 83 million records of deaths that have been reported to SSA. This file includes the following information on each decedent, if the data are available to the SSA: social security number, name, date of birth, and date of death. The SSA does not have a death record for all persons; therefore, SSA does not guarantee the veracity of the file. Thus, the absence of a particular person is not proof this person is alive.

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White Paper

## Deceased Case Management

# Effective strategies for Deceased Case Management

February 2015

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## Research provided by:

LexisNexis® Risk Solutions

DCM Services

## Methodology:

This white paper is a compilation of materials taken from a webinar entitled *Deceased Case Management* presented jointly by LexisNexis Risk Solutions and DCM Services. In addition to the webinar content, over 50 questions were submitted during a live chat session. LexisNexis and DCM Services responses to those questions are also reflected in this white paper.

## Deceased Case Management

With increased attention on the credit and collections industry, it's more important than ever to not only know the status of your consumers, but to have a plan on how to service accounts as they move into different statuses. One account status that should not be overlooked is that of the deceased consumer.

Knowing when your consumers become deceased AND **having a plan in place for how your company will handle these accounts** will go a long way towards ensuring this delicate situation is handled with extra care. The first step in dealing with deceased consumers is the identification that one of your account holders has passed away.

This whitepaper discusses the various databases available to identify deceased account holders and what to do once you have identified an account holder is deceased. Although most organizations have processes in place to handle the situation when a creditor is notified the customer is now deceased (reactive notification), it is important to first and foremost have a process set up for proactive identification of deceased consumers. Whether an online search, a batch scrub, or ongoing batch monitoring process, you will need a notification process in place in order to protect your organization.

### Definitions or Commonly used terms in the deceased recovery space:

- **Probate (filing probate):** The legal process of validating a person's will, administering the estate of a decedent, resolving all claims and distributing the decedent's property under a will.
- **Estate:** Assets minus liabilities of the decedent
- **Personal Representative/Executor/Administrator:** These terms are used interchangeably; some states/probate courts have a preference over another. This is considered to be the person designated to administer the estate.
- **Death Master File (DMF):** A file of deceased individuals created by the Social Security Administration (SSA) and available to "certified" persons or companies via the National Technical Information Service (NTIS).
- **Will:** A legal document in which a person states who should receive his or her possessions after he or she dies.
- **Probate Court/Surrogate Court:** The court having jurisdiction over the probate process, also known as Orphans Court
- **Trust:** A trust is a way for people to put money - or other assets - aside for the benefit of a third party.

Understanding the unique make up of a creditor's portfolio has and will always be important, and today more than ever we are learning how important it is to understand when a customer has passed away. The statistics speak for themselves, however, because of the aging Baby Boomer generation, deaths will continue to be on the rise for years to

### Statistics:

- 2014 U.S. Population: 319,000,000
- Approximate % of population that die each year: 0.8%
- Estimated deaths in 2014: 2,552,000
- Approximate % of deaths of those who have a probate filed: 25%
- Approximate number of probates filed in the U.S. in 2014: 638,000
- Average household credit card debt in 2014: \$15,611
- U.S. consumer credit card debt as of October 2014: \$882B
- % of U.S. households with credit card debt: 46%

### Sources:

<http://www.census.gov>

<http://www.nerdwallet.com/blog/credit-card-data/average-credit-card-debt-household>

come. This generation specifically is far more credit savvy, and will expect there to be disciplined processes around this inevitable event. Some of the reasons creditors should be aware of the death of a customer include:

### 1. Deterring Fraud

Creditors can prevent identity thieves from opening new accounts if they obtain credit reports showing the real consumer has died. According to the American Association of Retired Persons (AARP), identity thieves use the social security number (SSN) or identity of deceased people to open 2.5 million credit card accounts or loans annually to obtain cell phones and other services.\*

- Businesses that ship goods on a regular basis can prevent shipments after death if they receive death notification regarding their accounts.
- Utilities and other service providers may initiate shutoff procedures or obtain the name of a new customer.
- Banks would be able to prevent continuation of recurring charges to an account after death of the accountholder.
- Unauthorized use of an account can be thwarted. Generally, a person's authorization does not survive their death. And, charges by previously-authorized users of the card after death may not be collectible from the estate.

### 2. Promoting sensitive communications with consumers and protecting your brand name

Creditors avoid sending collection letters or sending accounts to traditional debt collection agencies if the reason for non-payment is the account holder's death. If your account holder paid on-time regularly, his or her family may be offended receiving letters implying the decedent had anything other than a stellar credit record.

Creditors can have specially-trained representatives to deal with survivors. Account representatives handling normal day-to-day customer service or collection discussions may lack the necessary empathy and understanding needed to handle the sensitive nature of these types of calls. Specifically if the representative lacks understanding related to probate laws and procedures the estate representatives may find such calls frustrating which could have a negative impact on the call.

### 3. Collecting amounts owed

Probate laws provide for windows of opportunity for presenting claims to the estate of a decedent. Some require claims to be presented to estates less than six months after the death of the decedent – even if the creditor was never given notice of the death or the opening of a probate matter.

### 4. Keeping track and taking proper steps when property liens and/or secured assets are involved

Servicers of mortgage loans have particular responsibilities in dealing with survivors in interest after the death of the borrower. Knowing when borrowers have died will increase their compliance with these obligations.

Auto lenders need to identify deceased owners of property with loans in arrears to prevent loss of secured assets, properly repossess if necessary, and carefully handle collection efforts (in addition to presenting timely probate claims.)

### 5. Ensuring proper distribution of insurance claims

Insurance companies/servicers use databases with death information to ensure beneficiaries of life insurance policies of decedents are paid promptly.

Insurers may also use this information to confirm deceased status for claims purposes prior to distribution of funds.

\*Source: <http://www.aarp.org/money/scams-fraud/info-03-2013/protecting-the-dead-from-identity-theft>.

## Verification of Deceased Status

Proper verification of deceased status is necessary as a starting point to your deceased account recovery. It is important to verify through a reputable source, to ensure that the accounts are resolved and proceed through a disciplined process in an efficient manner.

### 1. Letter Verification

Many creditors or collection agencies will send a letter to “the estate of” the account holder. However, sending a letter to an account holder’s family or estate offering condolences and asking for payment arrangements when the account holder is not actually deceased may cause as much trauma and damage to brand reputation as the reverse situation. Once you have built a robust notification and verification process, risk of these “false positives” become greatly minimized.

### 2. Database Verification

There is no one comprehensive listing or database of all people who die in the U.S., so it’s difficult utilizing only a database as verification of deceased status. However, engaging a vendor who maintains a deceased consumer database is a good way to begin.

### 3. Internet Verification

Many companies will perform searches for obituaries or tribute websites. While this can sometimes result in verification of death, this search option can be very time consuming. . Additionally, since the passing of the Death Master File (DMF) legislation in December 2013 (see section on deceased data), data on individuals with a date of death beginning March 26, 2014 forward which reside in the DMF cannot be accessed via a publically available internet site for three years from date of death.

### 4. Family Verification

Confirming with a family member and obtaining a copy of the death certificate is a viable option as well. This may be done by writing to the family/estate of the account holder or calling a relative to verify the death asking for a copy of the death certificate. However, care must be taken any time the family of a deceased account holder is contacted. This form of verification should only be completed by someone with proper training in deceased account handling as these conversations often require a great amount of sensitivity and at times, lead to discussions about specific account details, such as probate administration.

## Deceased Data

Although there is no one comprehensive listing or database of all people who die in the U.S., it’s important to know that there are excellent sources available to obtain deceased data. If you choose to use a data vendor to search for deceased consumers, it is important to know what information your data vendor’s deceased database contains.

Death Master File :

- Produced by the Social Security Administration (SSA) and distributed by the National Technical Information Service (NTIS), it contains over 86 million records of deaths, reported to the SSA, from 1936 to present.
- In 2013, there were approximately 1.5 million deceased individuals reported through the DMF.
- SSA receives death records from a number of sources, including but not limited to: state agencies, family members, funeral homes, hospitals, federal agencies, postal authorities, and financial institutions. The NTIS, as a government agency, disseminates DMF data on behalf of the SSA. The DMF does not contain a death record for all persons; the absence of a person’s name from the DMF should not be considered proof that the person is alive.
- Restrictions were applied in November 2011 to remove state reported data (approximately 43% of the data file).

- Further restrictions occurred on March 26, 2014 by a change in legislation. Section 203 of the Bipartisan Budget Act of 2013 was passed on December 26, 2013 and went into effect March, 2014. Access to information contained in the Social Security Administration's DMF is limited\*\* to a three year period beginning on the date of an individual's death.
- Individuals with date of death prior to March 26, 2014 remain in the full access file and are not impacted by the legislation change – companies holding an existing version of the DMF prior to the legislation change are able to retain that version.

Other sources of deceased data:

- As of 2014, 15 states sell deceased data in some form (data may be aged or current), and may require an approval process to obtain the data.
- There are some online sources of deceased data – tribute and obituary sites.
- Probate scrubs provided by vendors that specialize in gathering probated estate information across the U.S.

\*\*Access to updated information in the file as of March 26, 2014, is limited to authorized users and recipients who qualify for certification

## Options for Deceased Account Recovery

As a deceased account proceeds through identification and verification, the next area of focus is to determine what the options are for recovery on such accounts. While there may be more than those listed below, we will discuss four options for dealing with an account, once you have discovered the account holder is deceased.

- 1) Do nothing
- 2) Do it yourself
- 3) Sell to a debt buyer
- 4) Outsource to a specialty collection agency/law firm

### Do nothing

It is always an option to close an account once you have learned the account holder is deceased; however this option is rare in today's business world. We find it rare because 1) surviving family members often require resolution on the account, 2) creditors have rights via the probate process, and 3) if the debt is secured by an auto or real estate property, handling the secured asset is a must.

### Do it yourself

Setting up your internal deceased account recovery process will take time and resources to do properly, but below is a list of considerations to ponder if you are setting up your own internal collection process for accounts of deceased consumers.

#### 1. Call Center and Representative Education

- Understanding the difference between traditional "live account" recovery and deceased account recovery is very important. Remember, if there is no co-borrower on the account or a spousal responsibility in community property states, it is only the decedent's estate that may be held responsible for the debt. This is important to keep in mind throughout the collection process.

- The talk-off should be different than a regular collections talk-off. Your representatives should be specifically trained in dealing with the probate process and the relatives of the decedent
- Talking with survivors of the decedent takes a soft-touch. Many times calls end up more like a counseling session and require sensitivity and empathy. Or there are times when they just need to talk about what happened and what the situation is. Your representatives need to be able to listen, but also know how to gently re-direct the conversation when needed.
- Knowing who to talk to and how to find them. Relatives, roommates, attorneys, and neighbors may all play a part in determining if probate has been filed, and if not, may be aware of who is taking care of estate matters. Your representatives need to know how to identify the proper estate representative. They must be careful not to disclose account holder information to unauthorized persons. They must also take care to follow state laws governing contacts with third parties.
- Understanding the terminology of deceased collections is key– there are certain terms used in probate collections not considered common in regular collection calls.
- Understanding the probate process is critical when speaking with the personal representative or attorney for the estate. You need to know what questions to ask and what your rights are as well as the rights of the estate.
- The Fair Debt Collection Practices Act (FDCPA) and other laws do not fit well and you may find yourself in uncharted territory. It's a good idea to consult with a probate collection specialist or hire a probate collection specialist to run your probate collection department.
- Your representatives must be knowledgeable in locating and presenting probated estate claims and the challenges involved:
  - o Probate law is a matter of state law
  - o Probate procedures are dictated at the county court level
  - o Searching, matching, and filing is different in each court
  - o There is a limited time window that varies by jurisdiction
  - o Affidavit and signature requirements vary by jurisdiction

## 2. Probate Processing

### Finding a probated estate

- There are over 3,400 probate court locations in the U.S.
- There is no single comprehensive list of all probated estates filed in the U.S.
- Each state has different probate laws, and within each state, counties/courts may have different processes, forms, procedures and preferences. It's important to create a database that contains information for each court including: their specific contact information, process, claim form, filing process, etc. You should check this information regularly to ensure it is up to date.
- There are various ways probate courts allow requests for probate searches. Part of your database of courts should include their preferred search method:
  - o Calls
  - o Mail –letters only
  - o Mail – letters with checks (ranges from \$1 to \$50 per search. Most times, if no probate found, your money is NOT returned)
  - o Online searches



- o In person requests

#### Presenting a probate claim

- Be aware of each jurisdiction's timeline: timelines can start running from:
  - o the date of death
  - o the date the probate is opened (petition date)
  - o the date the estate representative is given authorization by the probate court
  - o the date that notice of the probate is published or
  - o the date a creditor is given direct notification of the probate
- Once the timeline to present the claim has expired, do not expect payment of the claim and you will be out of the running for any distribution of the estate proceeds.
- Know what forms are required for each jurisdiction. The form content, color, number of copies and sometimes even font-type vary between courts – even within the same state.
- Know who to send the claims form to, and who must receive a copy.
- Filing fees may be necessary and vary based on court.

#### Risks associated with not understanding the process or improperly executing on the process:

- Elevated complaint levels
- Unsatisfactory results
- Reputational risk
- Increase in disallowed claims

#### Sell

Selling your deceased debt may be a way to recoup some costs without a large time or resource investment. There are many things to consider when evaluating your decision on whether to sell deceased consumer accounts, such as brand risk, identifying the right price for your type of portfolio, and most importantly, will you be able to influence or control the treatment and service level work efforts on the accounts after the purchase?

After researching your organization's appetite for selling deceased accounts, it is important to vet the purchasing agency. Does the purchasing company specialize in deceased account recovery? It is important to feel confident your deceased consumer accounts are receiving the appropriate treatment. Keep in mind this important step because most customers that pass away have long-standing relationships with your organization and historically have maintained a good paying history, so selling to a non-specialized agency can put your organization's reputation at risk.

#### Outsource

There are a few well respected specialty collection agencies and law firms that are dedicated to deceased account solutions. It is important to make sure the vendor you outsource for deceased recovery has, at a minimum, the following:

- Experience in deceased collections
- Brand protection focus
- A high level of account resolution

- Personnel who can talk to survivors in a caring, empathic manner
- Methodology for searching for probate matters across the country; preferably a vendor that possesses probate technology that will expedite the identification of probate and filing the probate claim as well as a technology and process that ensure proper controls are adhered to throughout the probate process.
- A thorough understanding of the probate procedures of all relevant probate courts.
- Processes and procedures in place that can comply with the service provider requirements of the Consumer Financial Protection Bureau (CFPB).

As with any outsourced collection account, vetting your service provider is a must.

## Collecting on debt of Deceased Consumers – What Regulators have to say

### The CFPB

On the “Ask the CFPB” portion of their website, the Consumer Financial Protection Bureau has over 20 questions and answers specific to the collection of debt from a deceased consumer. A few of these are listed below. While we have not yet seen rulemaking related specifically to the collection of debt of deceased consumers by the CFPB, it is suggested close tabs be kept on the Notice of Proposed Rulemaking for the Collections Industry as we anticipate it will be released by the CFPB in early 2015.

If someone dies owing a debt, does the debt go away?

<http://www.consumerfinance.gov/askcfpb/1463/if-someone-dies-owing-debt-does-debt-go-away-when-they-die.html>

Am I responsible to pay off the debts of my deceased spouse?

<http://www.consumerfinance.gov/askcfpb/1467/am-i-responsible-pay-debts-my-deceased-spouse.html>

If I don't pay my deceased spouse's debts using my own funds, will it affect my credit?

<http://www.consumerfinance.gov/askcfpb/1479/if-i-dont-pay-my-deceased-spouses-debts-using-my-own-funds-will-it-affect-my-credit.html>

I have a joint account with someone who has died... What happens now?

<http://www.consumerfinance.gov/askcfpb/1101/i-have-joint-account-someone-who-died-what-happens-now.html>

I am the executor/administrator of my deceased relative's estate. Can a debt collector contact me about my deceased relative's debts?

<http://www.consumerfinance.gov/askcfpb/1469/i-am-executoradministrator-my-deceased-relatives-estate-can-debt--contact-me-about-my-deceased-relatives-debts.html>

### The FTC

In July 2011, the Federal Trade Commission (FTC) issued a policy statement on collecting debts of deceased individuals. The policy statement clarifies that the agency will not take enforcement action under the Fair Debt Collection Practices Act (FDCPA) or the FTC Act against companies attempting to collect the debts of deceased consumers, if the companies communicate with someone authorized to pay debts from the estate of the deceased. The policy statement also emphasizes debt collectors may not mislead relatives in believing they are personally liable for a deceased consumer's debts, or use other deceptive or abusive tactics.

The final policy statement also:

- Describes how debt collectors may communicate with family members and others to locate someone

authorized to pay the deceased person's debts from the estate and specifies collectors may not mislead individuals into believing that they have the authority to pay the decedent's debts when they do not.

- Specifies that, in seeking to locate someone authorized to pay the deceased person's debts from the estate, collectors may not reveal or refer to the debts; however, may refer to the deceased person's bills.
- States in keeping with the FDCPA's prohibition on unfair, deceptive, or abusive collection practices, debt collectors may not contact family members or others at unusual or inconvenient times or locations.
- Emphasizes that, in communicating with someone authorized to pay the debts from assets of the deceased person's estate, collectors must avoid creating the misleading impression that the individual is personally liable or could be required to pay using their own assets, or assets held jointly with the decedent.

The full policy statement may be found here:

<http://www.ftc.gov/news-events/press-releases/2011/07/ftc-issues-final-policy-statement-collecting-debts-deceased>

Additionally, the FTC offers a question and answer type of a layout on their website regarding debt of deceased persons. Many of the same topics are also covered on the CFPB's "Ask the CFPB" page. The FTC page can be found here: <https://www.consumer.ftc.gov/articles/0081-debts-and-deceased-relatives>

## The OCC

In early 2014, the Office of the Comptroller of the Currency (OCC) published Bulletin 2014-37. This bulletin provides guidance from the OCC to national banks and federal savings associations on consumer protection requirements and safe and sound banking practices to consumer debt-sale arrangements with third parties that intend to pursue collection of the underlying obligations.

The OCC Bulletin suggests certain types of debt are not appropriate for resale, and the debt of deceased account holders is mentioned. However, many within the credit and collections industry disagree with the OCC and their statement about deceased debt, and argue companies that specialize in the collection of deceased debt are very well equipped to handle this type of collection.

The full OCC Bulletin 2014-37 can be found here: <http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-37.html>

## Common questions from collectors relating to deceased collections:

**Q: What if there is not an "official" executor of the estate?**

A: If there is a probated estate opened with the courts, there will either be an executor or an attorney in charge of the estate. If there is a will, there is generally a personal representative named. If there is no probate and no will, generally the spouse or next of kin will handle the estate's matters.

**Q: How do I find someone who buys deceased debt?**

A: The Debt Buyers Association is a good resource. ([www.dbainternational.org](http://www.dbainternational.org)). Additional resources would be those agencies that specialize in the recovery of deceased accounts.

**Q: How do I find a company that specializes in deceased debt collection?**

A: There are few agencies or law firms that do a significant amount of business collecting estate debts. While state regulators can define which collectors are licensed in the states you have debt and ACA International (the Association of Credit and Collection professionals) can tell you what agencies belong to that professional organization, it is unlikely they will be able to determine which ones have the relevant expertise.

**Q: What happens when a decedent does not have an estate or a probate filed. If we call and the spouse advises there is no estate but is willing to talk with us and set up payment arrangements. Can we do this?**

A: This is where your specialized deceased collections team comes in. You should consider immediately transfer these calls to someone well versed in deceased collections.

**Q: What happens when a deceased customer didn't have a will or legal document assigning a personal representative or executor?**

A: In these cases, ask for the person who has authority to answer questions about the decedent's bills. Again, this person should be handled by a specialty collector with experience in dealing with relatives of deceased account holders.

**Q: Some jurisdictions require 30 day notices to creditors in the paper. Can you force an opening if there is evidence of assets?**

A: If there is no estate opened within the time period allotted in that state, you can petition the court to have a probate opened.

**Q: Who do we contact if we are unaware of next of kin and have looked at our local courts probate records and still can't find anyone handling the affairs of the deceased parties?**

A: If there is a probate filed, there will be a personal representative, executor or attorney listed who is handling the case. If you do not see one listed, contact the clerk of court and ask for assistance in locating the responsible person.

**Q: What Resources are available (free or paid) to identify deceased individuals?**

A: Free resources include online searches of the historical Death Master File, but no current information (date of death 3/26/14 and forward) is available online for free from the DMF. Many companies perform a general internet search for obituaries or tribute sites to locate deceased information. Paid resources include database companies such as LexisNexis who offer individual online searches via a secure website, batch scrubs and batch monitoring services to identify deceased account holders.

**Q: Which is the best methodology for finding probate case information, for those counties/courts that do not allow public access online?**

A: There are many different methods of searching for a probate case; phone, letter, letter with payment, in-person and online. Some courts allow searching in various ways, others require just one way to search. With over 3,400 probate courts in the U.S., there is a need to identify which states/courts you will be generally searching and call to ask them their preferred method, and if there is a cost involved.

The LexisNexis deceased database is comprised of data from various sources which complement the Social Security Administration's Death Master File. These records are not subject to the SSA's Limited Access Death Master File limitations that were imposed starting March 26, 2014. LexisNexis has approximately 129 Million records in its deceased-record database.

This data includes but is not limited to:

- Full historical DMF with updates since 3/26/14
- 15 States' data
- Various online sources
- Other proprietary sources

LexisNexis is actively looking for other ways to supplement our deceased database to minimize the impact to our clients. Data obtained directly from the States and our other non-SSA DMF sources provides approximately 43 Million additional death records for our deceased-records database. We are in contact with all states regularly to inquire about obtaining data we do not currently have in our database.

If at any time you have questions, please contact Customer Service at 866-277-8407.



DCM Services leads the estate account recovery industry by offering brand protection, innovation and compliance-driven results. We maximize the value of probate and non-probate estate portfolios by offering a full range of proprietary technology services from automated probate tools accessible from the desktop to a suite of full-service outsourced solutions.

Our EstateWise™ Recovery Solutions provides clients access to DCM Services patented probate technology, Probate Finder®, which has revolutionized the industry since 1998. Using a consultative approach, we service the financial services and healthcare industries by providing a compliant, customer-centric approach to all we do, maintaining an unmatched spectrum of innovative solutions and an exceptional customer experience.

Please contact our Business Development team at 612-243-8620 or you may visit [www.dcmservices.com](http://www.dcmservices.com) and [www.probatefinder.com](http://www.probatefinder.com) to learn more.



## For More Information

Call 866.528.0780 or visit

[www.lexisnexis.com/risk/receivables-management](http://www.lexisnexis.com/risk/receivables-management)

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Our receivables management solutions assist debt recovery professionals with increasing workflow efficiencies, gaining greater insight into debt portfolios, collecting more in less time and achieving greater profitability.

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