PURPOSE: This policy incorporates into the Oregon Accounting Manual (OAM) guidelines established by the Department of Justice for the write-off of uncollectible accounts. These guidelines are provided as a matter of convenience for users of the OAM. Included in these guidelines is a form agencies may use to certify for internal purposes that they have taken appropriate efforts before the write-off of uncollectible accounts.

AUTHORITY: ORS 291.015
ORS 293.231
ORS 293.240

APPLICABILITY: This policy applies to all state agencies included in the State’s annual financial statements, except for those agencies specifically exempted by OAM 01.05.00.

GUIDELINES FOR WRITING OFF UNCOLLECTIBLE DEBT UNDER ORS 293.240

A. Introduction

ORS 293.240 stipulates the circumstances under which a state agency may write off uncollectible debts that are due the agency. Under ORS 293.240, if an agency has made all reasonable efforts to collect the money owed to it, including money owed on a liquidated and delinquent account that has been relinquished by a private collection agency under 293.231, and has determined that the money and any interest and penalties on the money are uncollectible, the agency may write off the debt on its accounts. Before determining that money is uncollectible, a state agency must adopt criteria for determining when money is uncollectible. The criteria must include the right of offset and must be approved by the Attorney General. This policy explains the procedure to write off a debt and provides criteria for determining when a debt is uncollectible. For purposes of this policy, “debt” means a fixed and certain obligation to pay money, either now or in the future.

ORS 293.240 does not apply to debts owed to a state agency for which a procedure for compromise, release, discharge, waiver, cancellation or other form of settlement for reasons other than collectibility is by law made specifically applicable to the agency. In such instances, the state agency must follow the procedure for settlement that is specifically applicable to the agency.
ORS 293.240 also does not apply to debts that legally have been finally canceled or discharged, as for example, by an order of a bankruptcy court. Such debts are not “uncollectible;” rather, such debts are nonexistent.

The procedure for writing off uncollectible debts should not be confused with that provided by ORS 293.250, which authorizes the Department of Revenue to render assistance to state agencies in the collection of delinquent accounts. The Department of Revenue renders such assistance pursuant to the statute and subject to rules promulgated by the Department of Administrative Services (ORS 293.250 (3)). Under ORS 293.250, the referral to Department of Revenue is for collection only. Making such a referral does not authorize a state agency to write off the debt from the agency’s accounts.

Similarly, ORS 293.231, which requires state agencies to “offer for assignment” most liquidated and delinquent accounts to private collection firms, does not authorize state agencies to write off those debts. Furthermore, a state agency may not write off an account that is subject to assignment under ORS 293.231. The Department of Administrative Services has promulgated rules governing the procedures and grounds for exempting certain liquidated and delinquent accounts from assignment (OAM 35.40.10). If the private collection firm subsequently returns the account to the state agency because it has been unable to collect the account, then ORS 293.240 applies, and the state agency may evaluate the account to determine if it is collectible. The fact that a private collection firm has relinquished an account back to the state agency does not, standing alone, establish that the debt is “uncollectible” within the meaning of ORS 293.240. The state agency must evaluate collectibility under the criteria set out in Section D or other criteria that has been previously submitted to and approved by the Attorney General.

B. State Agency Direct Write Off Authority

Each state agency has the authority to write off debts if the agency has written evidence in its files to show that the agency made all reasonable efforts to collect the debt, and that the debt is uncollectible in accordance with criteria for uncollectibility adopted by the agency and approved by the Attorney General.

C. Procedures for Write Off

1. Make All Reasonable Efforts to Collect a Debt

   Each state agency has a statutory duty to make all reasonable efforts to collect the full amount of moneys owing to it, or otherwise charged to it for collection. Whether to consider a state agency’s collection efforts reasonable is determined by the circumstances. “All reasonable efforts to collect” means the employment of all available, legal, and cost-effective means that are appropriate to the circumstances of the collection effort. A means of collection may be considered cost-effective when it is reasonable to expect the costs of collection to be less than the debt. If the anticipated recovery would be only marginally in excess of the cost of collection, it may be reasonable to exert little or no effort to collect the debt.

2. Adopt Criteria to Determine When Money is Uncollectible

   For the purpose of writing off a debt on its accounts, a state agency must adopt criteria for determining when money is uncollectible.
- The criteria must include the right of offset.
- The criteria must be approved by the Attorney General. An agency does not need to submit its write-off criteria to the Department of Justice (DOJ) for approval if it adopts the write-off criteria that DOJ has previously approved (see section D below).

3. **Document efforts made, actions taken and write-off**

The agency should include written evidence in its files to show that they have made all reasonable efforts to collect the debt, and that the debt is uncollectible in accordance with criteria for uncollectibility adopted by the agency and approved by the Attorney General.

A sample document that agencies may use to certify, for internal purposes, that they have made appropriate efforts to collect the debt is at the end of this policy. The document, if used, should supplement other documentation in the file.

D. **Criteria for Uncollectibility**

Except where the Attorney General has advised a particular agency otherwise, the following criteria for uncollectibility are approved for adoption and use by all state agencies.

Any debt, including interest and/or penalties, or any portion of the debt, may be considered uncollectible when the debtor has no money or other thing of value owing or held by any state agency that has not been credited to the debt, and it is reasonable to conclude, after all reasonable efforts to collect the debt have been made, that one or more of the following is true:

1. The debtor does not and will not for the foreseeable future own or have the right to own assets from which the state agency could collect the debt.

2. It is reasonably estimated that the cost of collecting the debt would equal or exceed the amount of the debt.

3. The debtor is deceased, and there are no assets in the debtor’s estate from which the state agency could collect the debt.

4. The debtor is a corporation or a limited liability company that is not and for the foreseeable future will not be engaged in any income-producing activity, and there are no assets from which the agency could collect the debt.

5. The debt has previously been discharged in bankruptcy.

6. The debtor’s estate is subject to a pending bankruptcy proceeding in which it is reasonable to conclude that the debt will be discharged and that the state agency will receive none or an insubstantial share of the assets of the bankruptcy estate.

7. The agency is and will be for the foreseeable future unable to collect from the debtor or from anyone owing the debtor money or holding assets of or from the debtor.

8. The state agency is unable to locate the debtor despite having made reasonable efforts to do so.

9. The debt has been liquidated by reduction to a court judgment, administrative order, or distraint warrant, which has subsequently expired.
Sample Format to Certify Write Off of Uncollectible Debt under ORS 293.240

DATE:

I, ______________________________, hereby certify that:

- This agency has made all reasonable efforts to collect the debts listed herewith;*
- This agency has determined that such debts are uncollectible in accordance with [ ] criteria previously adopted by the agency and approved by the Attorney General or [ ] as defined in the “Guidelines for Writing Off Uncollectible Debt Under ORS 293.240;”
- There is no procedure provided by law specifically applicable to this agency for compromise, release, discharge, waiver, cancellation, or other form of settlement;
- The agency has complied with ORS 293.231; and
- The agency has made all appropriate inquiry, to the best of its ability, to ascertain that the debtor has no money or other thing of value owing or held by any other state agency which has not been credited to the debtor’s obligation to the State of Oregon.

BY: ______________________________________________
   (signature & title)

*At a minimum, the list must include the debtor’s name, amount of the uncollectible debt, and the reason it was determined to be uncollectible.