


OREGON ACCOUNTING MANUAL

 STATEWIDE POLICY	NUMBER	SUPERSEDES
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Division Chief Financial Office	REFERENCE/AUTHORITY	
Policy Owner Statewide Accounting and Reporting Services	ORS 293.240 ORS 293.252 ORS 293.590	
SUBJECT Accounts Receivable Management- Account Activity: Offers in Compromise	APPROVED SIGNATURE <i>George Naughton, Chief Financial Officer</i> <i>Signature on file</i>	

PURPOSE

This policy adds guidelines established by the Department of Administrative Services (DAS) and compromise criteria approved by the Attorney General (AG) for agencies to use when adopting criteria for determining when offers in compromise may be proposed or accepted by state agencies.

APPLICABILITY

This policy applies to all state agencies included in the State's annual financial statements, except for those specifically exempted by [OAM 01.05.00](#).

FORMS/EXHIBITS/INSTRUCTIONS

None.

DEFINITIONS

Claim: A demand for payment, reimbursement, or compensation for injury or damage under law or contract, including but not limited to, a demand for payment due for delivery of goods or services.

Debt: A certain sum due and owing an agency which has accrued as a result of the delivery of goods or services or through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for that sum.

Offer in Compromise, as used below, refers to: (1) a person who is indebted to a state agency and offers to make a partial payment in full satisfaction of a **debt** or (2) when a state agency that is owed a **debt**, offers to accept a partial payment in full satisfaction of a **debt**.

Reasonable effort: The use of 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**.

Click here for other [definitions](#).

EXCLUSIONS AND SPECIAL SITUATIONS

The criteria referenced in this policy do 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 the **debt** for reasons other than uncollectibility is by law made specially applicable to the state agency. Additionally, an **offer in compromise** may not be offered or accepted for a criminal money judgment that requires a defendant to pay restitution or a compensatory fine.

POLICY

101. Agency management must ensure that agency personnel employ appropriate and lawful practices in the management and collection of accounts receivable.
102. Except as otherwise provided below, DAS and the AG have approved the following criteria for determining when an **offer in compromise** may be proposed or accepted by state agencies.

CRITERIA FOR DETERMINING WHETHER TO PROPOSE OR ACCEPT AN **OFFER IN COMPROMISE** OF STATE **DEBT**

A state agency, as defined in **ORS 293.235**, may propose or accept an offer in compromise for settlement of a **debt** owed to the agency, if it has made **reasonable efforts** to collect the **debt** and one or more of the following is true:

1. The **debt** has not been liquidated through a judicial or administrative process and it is reasonably estimated that the cost of doing so is likely to exceed the amount of the **debt**.
2. The **debt** has not been liquidated through a judicial or administrative process and the state agency reasonably determines that the debtor may be able to successfully assert factual or legal defenses to its liability for the **debt**.
3. The debtor has a potentially valid **claim** against the state agency arising out of the same transaction or occurrence that gave rise to the debt, and the debtor agrees to release this **claim** as part of the **offer in compromise**.
4. The state agency makes reasonable efforts to identify assets belonging to the debtor and determines that 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 fully collect the **debt**.
5. The debtor submits a financial statement, or other documentation, which demonstrates to the state agency's satisfaction that the debtor's liabilities exceed assets and future earnings potential to such an extent that collection of the entire **debt** is unlikely.
6. It is reasonably estimated that the cost of collecting the **debt** would equal or exceed the amount of the **debt**.

7. The debtor is deceased, and there are insufficient assets in the debtor's estate from which the state agency could fully collect the **debt**.
8. 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 insufficient assets from which the agency could fully collect the **debt**.
9. The Oregon Department of Revenue Other Agency Accounts (DOR-OAA) or a private collection firm (PCF) has unsuccessfully attempted to collect the **debt** pursuant to **ORS 293.231**.
10. The **debt** has been liquidated with a judgment, administrative order or distraint warrant that has expired or is no longer enforceable.
11. The debtor's assets are exempt from execution or garnishment.
103. For the purpose of proposing or accepting an **offer in compromise**, agency management must adopt criteria for determining when **offers in compromise** may be made per **ORS 293.240**. The criteria must be approved by DAS and the AG. An agency does not need to submit its compromise criteria to DAS or the AG for approval if it adopts the approved criteria referenced in paragraph 102; however, the agency shall document the adoption of such criteria within their policies and procedures.
104. Agencies that desire criteria other than those referenced in paragraph 102 shall submit such criteria to DAS for approval. DAS will coordinate with the AG to determine if the submitted criteria is sufficient and will notify the agency of the outcome.
105. Agencies shall make **reasonable efforts** to fully collect the debt before an **offer in compromise** is proposed or accepted.
106. The state agency to which a debt is owed retains the sole discretion to determine whether to propose or accept an **offer in compromise** in each particular case. An accepted **offer in compromise** should generally correspond to the debtor's ability to pay the debt or the agency's ability to collect the debt. Agencies may require the debtor to provide such information as deemed necessary for the agency to determine the debtor's ability to pay. Such information may include, but is not limited to: household information including listing of residents; employment verification such as pay stubs or tax returns; listing of debtor's expenses; or proof of eligibility for a state benefit assistance program.
107. If DOR-OAA, or a PCF, is collecting a **debt** owed to a state agency, it may only accept an **offer in compromise** for settlement of that **debt**:
 - a. In accordance with the criteria adopted by the state agency to which the **debt** is owed; and
 - b. With the authorization of the state agency to which the **debt** is owed.
108. Agencies shall document the specific criteria by which the account is determined to qualify for the compromise using the Offer in Compromise Approval form ([75.35.14.FO](#)), or other format established by the agency. The documentation shall be kept with the account or documented in the agencies system of record to be used for future reference or audit support.

109. Any approved **offer in compromise** shall be subject to the debtor's completed payment of the agreed upon balance. If the debtor does not make the required payment(s), then the compromise agreement shall be nullified.
110. Agencies approving an **offer in compromise** may provide the debtor with a compromise letter (sample provided in paragraph 113) that includes, at a minimum, the following information:
- a. Debtor name
 - b. Description of the **debt**
 - c. Current balance
 - d. Amount compromised by agency
 - e. Balance owed by debtor
 - f. Deadline for payment of balance or any special terms or conditions of the compromise
 - g. Statement that failure to abide by the terms or deadlines will result in agreement being nullified and the full amount of the **debt** remaining due and owing
111. Agencies shall document the terms of the **offer in compromise** using a written agreement (sample provided in paragraph 114) signed by both parties that includes the terms as stated in the letter referenced in paragraph 110. The compromise agreement must include notification of the actions the agency will take if the debtor does not fulfill the requirements of the agreement, such as: the accrual of interest, the assignment of the account to DOR-OAA and the addition of collection fees if assigned.
112. Agencies may choose to allow the debtor to establish a payment plan for the balance remaining in accordance with [OAM 35.30.60](#); however, agencies should consider whether a payment plan is appropriate if the debtor previously agreed to a payment plan and did not submit payments per the terms of the payment plan.

PROCEDURES

113. **Sample Debt Compromise Letter:** Below is a sample of a letter that agencies may use to clarify agency expectations in regards to a **debt** compromise.

{date}

{debtor name}

{address}

{city, state, zip}

RE: Debt compromise for {liabilities}

Dear {debtor name}:

The {agency name} has reviewed the circumstances regarding your debt for {description of the debt—include agency or court case number if applicable } in the amount of {original balance}. Per our conversation on {date}, {agency name} hereby agrees to compromise your debt in the amount of {amount compromised by agency}, subject to the terms below.

This payment of $\$(\text{balance owed by debtor})$ is to be paid by $\{\text{deadline for payment or special terms}\}$. WE MUST RECEIVE YOUR PAYMENT ON, OR BEFORE, $\{\text{THE DUE DATE}\}$. THERE IS NO GRACE PERIOD. Any failure to meet the payment terms will result in this agreement being nullified and you shall be required to pay the entire amount of the debt, together with interest and any applicable fees. If you fail to meet the payment terms, $\{\text{agency name}\}$ shall collect the full balance of your debt and may immediately assign your debt to the Oregon Department of Revenue for collection without further notice to you or right to a hearing. If your debt is assigned for collection you may also be responsible for collection fees of up to $\{x\}\%$.

Enclosed are two copies of the Compromise Agreement. Please sign the original and return to $\{\text{agency name}\}$ by $\{\text{date}\}$, the second copy is for your records. Failure to return the original with your signature by the deadline shall nullify this agreement.

Please note that this debt compromise only applies to the specific debt referenced above. It does not apply to any other debts that you may owe to this agency, or to any other agency, department, commission, board or instrumentality of the State of Oregon. You shall remain fully liable for any such other debts.

If you have any questions, please call me at $\{\text{phone number}\}$.

$\{\text{signature block}\}$
Enclosures

114. **Sample Debt Compromise Agreement:** Below is a sample of an agreement that agencies may use to document the **debt** compromise including the signatures of both the agency and the debtor.

$\{\text{Agency name}\}$, referred to as CREDITOR and $\{\text{debtor name}\}$, referred to as DEBTOR, agree to compromise the indebtedness between them arising from $\{\text{description of the debt—include agency or court case number if applicable}\}$ in the amount of $\{\text{original balance}\}$.

CREDITOR, hereby agrees to compromise the indebtedness due from the DEBTOR on the following terms and conditions:

The CREDITOR and the DEBTOR agree that the current balance due is $\$(\text{current balance})$. **The parties agree that the DEBTOR shall pay and the CREDITOR shall accept the sum of $\$(\text{balance owed by DEBTOR})$ as full payment on the debt.** This results in a compromised amount of $\{\text{amount of compromise}\}$. The acceptance of the payment will serve as a complete discharge of all monies due to CREDITOR for this debt. The payment shall be made in $\{\text{note the form of payment}\}$. This compromise is expressly conditioned upon DEBTOR signing this agreement and returning to CREDITOR with the payment of $\$(\text{balance owed by DEBTOR})$ being received by $\{\text{payment due date}\}$.

Any failure to meet the payment terms will result in this agreement being nullified and $\{\text{agency name}\}$ shall collect the full balance of your debt and may result in immediate submission of your account to the Oregon Department of Revenue for collection without

further notice to you or right to a hearing. If your account is assigned for collection you may also be responsible for collection fees of up to {x}%.

If the DEBTOR fails to pay the agreed upon sum by {payment due date}, the DEBTOR acknowledges that the original debt amount owed by the DEBTOR will be reinstated in full, and immediately due; at which time, the DEBTOR shall be responsible for interest at the rate of {X}% per ORS {XXX.XXX} and any additional collection fees of up to {X}% per ORS 293.231. In addition, the CREDITOR may assign the debt to the Department of Revenue for further collection action.

This agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

This agreement only applies to the debt referenced above. It does not apply to any other debts that you may owe to this agency, or to any other agency, department, commission, board or instrumentality of the State of Oregon. Debtor remains fully liable for any such other debts.

Debtor

Creditor

Signature _____

Printed Name _____

Title _____
(Owner/Partner/Officer)

Date _____
