

Offers in Compromise

Department of Administrative Services
Statewide Accounts Receivable Management
August 2018



Agenda

- What is an offer in compromise?
- Authority to compromise
- Why use offers in compromise?
- Before accepting an offer in compromise
 - Adopt criteria
 - Oregon Accounting Manual (OAM) 35.30.80
 - Agency procedures
 - Evaluating accounts
- After the compromise
 - LFO Reporting
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Applicability

- This training is intended for any agency subject to ORS 293.240
- “state agency” means any state officer, board, commission, corporation, institution, department or other state organization having power to collect state funds.

What is an offer in compromise?

- An **Offer in Compromise**, otherwise known as a settlement, refers to situations where:
 - A person who is indebted to a state agency and offers to make a partial payment in full satisfaction of a debt, **OR**
 - When a state agency that is owed a debt, offers to accept a partial payment in full satisfaction of a debt.
- When an offer in compromise is agreed to **AND** all the terms have been met (payment and any other stipulations) then the amount compromised by the state can no longer legally be collected.

**Does my agency have
authority to compromise
an accounts receivable?**

Authority to compromise

- ORS 293.240(3)(a) provides that a state agency, the Department of Revenue (DOR) or a private collection agency collecting on an account **may** propose and accept offers of compromise for settlement of a debt owed to a state agency.

Authority to compromise

- State agencies must adopt criteria for determining when offers of compromise may be made. The criteria must be approved by:
 - The Attorney General (AG) in the case of the Secretary of State and State Treasurer;
 - The Chief Justice in the case of all state courts and all commissions, departments and divisions in the judicial branch of state government; or
 - The Oregon Department of Administrative Services (DAS) and the Attorney General in the case of other state agencies.
- *DOJ has recommended that agencies should adopt compromise criteria in administrative rule.*

Authority to compromise

- ORS 293.240 does not:
 - Allow the compromise of a criminal money judgment that requires a defendant to pay restitution or a compensatory fine.
 - Apply to debts where the agency has a specific statutory authority that allows for the reduction of a debt for reasons other than uncollectibility.

**Why should my agency
use offers in
compromise when
collecting an accounts
receivable?**

Why use offers in compromise

- While the state's policy is to collect all receivables due to state agencies (OAM 35.05.00 (102)), sometimes in the process of collecting debts it is prudent to consider a compromise.
- There are a number of reasons why compromise may be the best option for either or both parties involved. Some examples are:
 - To settle a dispute
 - To avoid possible claims against the state
 - Debtor hardship
 - Doubt as to collectability
 - Cost to collect would equal or exceed the amount of the debt

**What does my agency
need to do before
making or accepting an
offer in compromise?**

Before making or accepting an offer in compromise

- Adopt criteria for determining when an offer in compromise may be made, this is required in ORS 293.240 (3)(a).
 - The criteria must be approved by the AG, the Chief Justice or DAS and the AG depending on your agency
- Review OAM 35.30.80 for guidance
- Establish agency procedures for handling offers in compromise

OAM 35.30.80

- Provides guidance for agencies on the process for proposing or accepting an offer in compromise including:
 - A list of approved criteria for agencies to use when determining whether to propose or accept an offer in compromise.
 - Requires agencies to document the terms of the compromise as well as the criteria that qualified the account for compromise.
- Applies to all state agencies included in the State's annual financial statements, except for those specifically exempted by **OAM 01.05.00.**
- Does NOT apply to debts owed to a state agency with specific statutory authority or procedure for compromise, release, discharge, waiver, cancellation or other form of settlement for the debt for reasons other than uncollectibility.

OAM 35.30.80- Criteria Adoption and Approval

- Agencies must adopt criteria for determining when an offer in compromise may be made or accepted and the criteria must be approved.
- OAM 35.30.80 identifies 11 criteria approved by the Department of Administrative Services and the Attorney General (AG) for agencies to use when determining whether to propose or accept an offer in compromise.

OAM 35.30.80- Reasonable Effort

- Before an account can be eligible for compromise reasonable effort must have been made to collect the debt.
- Reasonable effort is defined as:

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.

OAM 35.30.80- Criteria

After making reasonable effort to collect, one or more of the following criteria must apply to the debt or debtor (or an agency submitted and approved criteria)

OAM 35.30.80- Criteria

- 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.

OAM 35.30.80- Criteria

- 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.
 - (refer to OAM 35.30.70- Skip Tracing/Asset Location for more information on identification of assets)
- 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.

OAM 35.30.80- Criteria

- 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.

OAM 35.30.80- Criteria

- 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.

OAM 35.30.80- Criteria Documentation

- Agencies must document the specific criteria by which the account is determined to qualify for compromise.
- OAM 75.35.14 provides template for agencies to use if the agency maintains written records.
- Agencies may retain records in other formats established by the agency (such as an electronic record) but the format shall contain the specific criteria and supporting information such as the person who approved the compromise.

OAM 35.30.80- Criteria Documentation Form 75.35.14

Offer in Compromise Approval

Date: Original debt amount: \$
Debtor's Name: Amount compromised: \$
Agency Account No.: Balance remaining: \$

I, () , hereby certify that:

- This account qualifies for compromise of a debt owed to this agency in accordance with (check all that apply):
 - ☐ Criteria previously adopted by the agency and approved by the Department of Administrative Services (DAS) and the Attorney General (AG)
 - ☐ As defined in Oregon Accounting Manual 35.30.80
- There is no procedure provided by law specifically applicable to this agency for compromise, release, discharge, waiver, cancellation, or other form of settlement; and
- The debt is not a criminal money judgment that requires a defendant to pay restitution or a compensatory fine.

This debt is eligible for compromise because (check all that apply):

- ☐ 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.
- ☐ 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.
- ☐ 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.
- ☐ 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 collect the entire debt.
- ☐ 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.
- ☐ It is reasonably estimated that the cost of collecting the entire debt would equal or exceed the amount of the debt.
- ☐ The debtor is deceased, and there are insufficient assets in the debtor's estate from which the state agency could fully collect the debt.
- ☐ 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.
- ☐ The Oregon Department of Revenue Other Agency Accounts or a private collection firm has unsuccessfully attempted to collect the debt pursuant to ORS 293.231.
- ☐ The debt has been liquidated with a judgment, administrative order or distraint warrant that has expired or is no longer enforceable
- ☐ The debtor's assets are exempt from execution or garnishment.
- ☐ The debt meets agency specific criteria approved by DAS and the AG:

Signature: _____

OAM 35.30.80- Compromise Terms Documentation

- Agencies must document the terms of the compromise in a written agreement that is signed by both parties.
- The written agreement must include the actions the agency will take if the terms are not followed.

OAM 35.30.80- Compromise conditions

- Any offer in compromise shall be subject to the completed payment of the agreed upon balance.
- If the debtor does not make the payment(s) the compromise shall be nullified.
- An agency may choose to allow the debtor to make payments for the amount agreed. (such terms should be part of the agreement).
 - Agencies should consider whether the debtor has had a broken payment plan before agreeing to accept payments again.

OAM 35.30.80- DOR/PCF compromise

- In accordance with ORS 293.240 (3)(a), DOR or a PCF may only accept an offer in compromise; in accordance with the criteria adopted by the assigning agency and only with authorization from the assigning agency.

Agency Procedures

- State agencies retain the sole discretion of whether to propose or accept an offer in compromise.
- Agencies are encouraged to establish procedures for when an offer in compromise would be accepted or offered.
- ***Note: an offer in compromise should not be made or accepted if the debtor has an open (active) bankruptcy proceeding without approval from the bankruptcy trustee. Agencies should follow the automatic stay instructions of the bankruptcy court.***

Agency Procedures

- Agency procedures should address items such as:
 - Approval authority for offers in compromise.
 - Collection actions that must be taken before an account meets reasonable effort.
 - Supporting documentation that will be required from the debtor.
 - Specific terms that the agency will require for a compromise (timeline to receive payment, other program requirements such as compliance with rules).
 - Specific forms or templates to be used for approved offers in compromise.
 - Agency documentation requirements and procedure for tracking completed compromise agreements for reporting purposes.

Agency Procedures

- When establishing agency procedures, it is recommended that agencies consider establishing pre-approved conditions (approval authority) for staff to use when evaluating an account for an offer in compromise. Examples include but are not limited to:
 - balance owed (debts less than a specific amount)
 - debtors ability to pay (debtors income and expenses supported by documentation from the debtor)
 - maximum amounts or percentages allowed to be compromised (the amount compromised is less than X% of the current balance)
- Staff could propose or accept an offer in compromise for accounts that meet those specific conditions
- Account that doesn't meet the pre-approved conditions would require agency management approval.

Agency Procedures- DOR/PCF

- DOR or a PCF can only accept offers in compromise in accordance with the criteria adopted by and with the approval of the assigning agency.
- When DOR or a PCF receive an offer in compromise, DOR/PCF will place a temporary hold on the account and refer the account to the assigning agency for processing and approval.

Agency Procedures- DOR/PCF

- The agency must follow internal procedures for evaluating the account and documenting the criteria and terms of the agreement.
 - When determining the terms of the agreement, agencies should consider that collection fees are still owed on any amount collected. The terms of the agreement should clearly identify the balance the debtor is to pay.
 - The agency is responsible to notify DOR/PCF via email of the decision including final terms of the compromise agreement.

Agency Procedures- DOR/PCF

- Once an account is paid according to the terms of the agreement, DOR will email the agency at the point the payment is received (including the form of payment) and close/return the account balance using a return code that identifies the account was compromised.
- For accounts assigned directly to a PCF, the agency must provide instructions regarding processing (return/cancellation) of compromised accounts.
- Once all terms have been met, the assigning agency is responsible to release any applicable liens, suspensions or other actions which were taken as a result of the outstanding debt.

Evaluating accounts

- When evaluating accounts for compromise the decision should be based on factors including but not limited to:
 - the the debtor's ability to pay
 - the amount of effort already performed to collect the debt
 - the amount of effort required to collect the full debt
 - whether there is any disputes or possible claims against the state.

Evaluating accounts- Example #1

- A \$2,000 debt has been assigned to DOR and a PCF, and has been returned. The account is now almost three years old with no payments. Prior to write-off the agency attempts to make contact with the debtor and is successful. The debtor provides documentation of their limited income (social security payments) and increased rent that leaves very little disposable income to pay the debt. The debtor asks if they can pay \$800 to satisfy the debt.
 - Debtor is able to provide documentation showing income and expenses that support their statements
 - It has already been three years without a payment, there could be doubt as to whether the agency would be able to collect more than the \$800 through traditional collection and it could take several more years.

Evaluating accounts- Example #2

- A state vehicle was involved in a motor vehicle accident causing \$3,000 in damage. After sending a bill to the insurance company, the state receives notice that the other insurance believes that the accident was partially the fault of the state employee. The insurance company offers to pay \$1,000 if the state will agree to not pursue the balance and the insurance company agrees to not pursue recovery of their clients damages.
 - The debtor could have a potential valid claim against the state and has agreed to release the claim as part of the offer in compromise
 - The cost of pursuing litigation for the full balance could exceed the additional \$2,000 that might be collected.

**What does my agency
need to do after
accepting an offer in
compromise?**

After the compromise

- Legislative Fiscal Office (LFO) reporting (ORS 293.229)
- Certification to DAS (ORS 293.234 and OAM 35.60.10)

LFO Reporting- Section II

- Agencies are required to report to LFO information regarding liquidated and delinquent accounts.
- Included in Section II, agencies must report the amount of payments received in the fiscal year, including those payments that were received for accounts associated with an offer in compromise.
- Entries made to remove the amount compromised by the agency should be reported as an adjustment (not a write-off). This entry should only be made once all the terms of the compromise have been met including any special terms of the compromise agreement.

Create Fund Report

Fund Report for GF General Fund - Fiscal Year 2018

Save

Section II *(Refer to instructions for section II)*

Note: Use Whole Dollars. Do not use Dollar signs, commas or periods between the numbers(eg. \$1,234 should be entered as 1234)

Liquidated and Delinquent Accounts	[A] Number Of Accounts	[B] Dollar Value(\$)
Beginning Balance 07/01/2017	0	0
Additions:	0	0
Collections: 		(0)
Accounts Closed:	(0)	
Write-Off's:	(0)	(0)
Adjustments: 		0
Reversals:	(0)	(0)
Ending Balance 6/30/2018	0	0
Unassigned Accounts/Doubtful Accounts	[A] Number Of Accounts	[B] Dollar Value(\$)

LFO

Reporting- Section IIIc

- In addition, ***when the balance of the compromised account is paid in full*** agencies are required to report:
 - the original balance of the debt (# and \$)
 - the amount of any additional penalties and interest added to the debt
 - the amount of any collection fees paid by the agency
 - any other fees, charges, adjustments or payments received prior to the compromise agreement
 - *The system will calculate the sum of the entries which should equal the balance of the debt at the time of the agreement.*
 - Agencies then report the net settlement amount received (total payments required under the compromise).
 - The system will then calculate the “variance” or the amount compromised by the State.

Section IIIc – Accepted Offers of Compromise

In this section, report the total number and dollar value of accounts that were paid in full during the reporting fiscal year in which an offer in compromise was accepted for the settlement of the debt owed.

Section III c. *(Refer to instructions for section III)*

Accepted Offers of Compromise for the Settlement of Debts	[A] Number Of Accounts	[B] Dollar Value(\$)
Original Debt	0	0
Penalties and Interest		0
Collection Fees		0
Other Fees/Charges/Adjustments/Prior Payments		0
Total Debt	0	0
Net Settlement Received		(0)
Variance	0	0

DAS Certification

- ORS 293.234 requires agencies to certify to DAS that debts written off, abated or canceled during the previous fiscal year were in accordance with applicable statutes and rules.
- OAM 35.60.10 (104) requires agencies to complete the certification by October 1 and to use OAM 75.35.15.FO

DAS Certification- OAM 75.35.15.FO

DAS DEPARTMENT OF ADMINISTRATIVE SERVICES CHIEF FINANCIAL OFFICE Statewide Accounts Receivable Management Email: SWARM@oregon.gov	Statewide Accounts Receivable Management	
Agency Certification: Write-off, Abated, and Canceled Debt		
To: Statewide Accounts Receivable Management (SWARM)		
From: Agency number	Agency Name	
For: Fiscal Year Ended June 30,		
The following data is reported as required by Oregon Revised Statute (ORS) 293.234:		
Liquidated and delinquent debts:		
Written off under ORS 293.240		
Abated (i.e. waived, settled, or determined not to be owed)		
Canceled by the Department of Revenue under ORS 305.155		
Agency Certification of Accuracy, Completeness, and Compliance		
I certify that to the best of my knowledge the above information accurately and completely reflects the agency's liquidated and delinquent account activity for the fiscal year noted above, and that this information agrees with the respective account balances reported to the Legislative Fiscal Office.		
In addition, I certify that to the best of my knowledge the liquidated and delinquent account activity is accurately and completely reflected in the agency's annual report to the Legislative Fiscal Office and that the value of liquidated and delinquent debts that were written off, abated or canceled, as reported above, were done so in accordance with applicable statutes and rules. Any <i>differences</i> between the balances reported above and the values reported to the Legislative Fiscal Office have been communicated in writing to the agency's SWARM analyst.		
A/R Accountant Signature	Printed Name	Date
Chief Fiscal Officer or Director Signature	Printed Name	Date

Summary

- Agencies must adopt compromise criteria in accordance with ORS 293.240 (OAM and/or approved agency specific criteria)
- Agencies are encouraged to establish procedures for the processing of offers in compromise
- Agencies subject to the OAM must:
 - Ensure agency procedures for collecting debts meet the definition of reasonable effort
 - Ensure agency procedures meet the requirements of OAM 35.30.80 regarding the documentation of the criteria the debt was eligible for compromise and that agreements with the debtor are in writing
- Maintain account records in a manner to meet the reporting requirements to LFO and DAS as required in ORS 293.229 and 293.234

Resource Links

- OAM 35.30.80- Offers in Compromise
www.oregon.gov/das/Financial/Acctng/Documents/35.30.80.pdf
- Offer in compromise approval form (OAM 75.35.14.FO)-
www.oregon.gov/das/financial/acctng/documents/75.35.14.fo.pdf
- LFO reporting manual-
www.oregon.gov/das/Financial/Acctng/Documents/2018%20Reporting%20Manual.pdf
- OAM 35.60.10- Reporting Liquidated and Delinquent accounts-
www.oregon.gov/das/Financial/Acctng/Documents/35.60.10.pdf
- Annual Certification: Write-off, Abated and Canceled Debt (OAM 75.35.14.FO)-
www.oregon.gov/das/Financial/Acctng/Documents/75.35.15.fo.pdf

Questions?

- Contact your agency SWARM coordinator:
www.oregon.gov/das/Financial/Acctng/Documents/A_R%20Contacts.pdf