



Dave Yost • Auditor of State

OHIO COMPLIANCE SUPPLEMENT

Preface

This is the latest revision to the Ohio Compliance Supplement, superseding the September 2010 version. This revision incorporates significant new or revised legal and regulatory requirements as well as comments we have received from auditors and our clients. The following page, titled Implementation Instructions, explains how you can identify updates.

In accordance with *Government Auditing Standards*, financial statement audits include reporting on compliance with provisions of laws, regulations, contracts, and grant agreements that have a material effect on the financial statements (*Government Auditing Standards*, 2.07).

Management of the audited entity is responsible for . . . complying with applicable laws and regulations (including identifying the requirements with which the entity and the official are responsible for compliance). (*Government Auditing Standards* Appendix I, A1.08(b)).

Ohio law requires audits of each public office. These audits help determine whether the government's financial statements are fairly presented and whether management has complied with significant laws and regulations.

The Ohio Compliance Supplement contains certain laws and regulations which are of considerable public interest, or are of the type auditors generally consider direct and material. Though the Ohio Compliance Supplement is not a comprehensive listing of applicable laws and regulations, it is designed to help auditors and public offices identify and familiarize themselves with certain laws and regulations which generally apply to a variety of local governments and colleges and universities.

In order to reduce costs, the Ohio Compliance Supplement is available only in electronic format via the Auditor of State's website at www.auditor.state.oh.us. However, if you are unable to access the website or have difficulty accessing these files, please contact the Center for Audit Excellence at 1-800-282-0370.

As in the past, we plan to regularly update the Ohio Compliance Supplement. Comments we receive from our staff and others are an important source of revisions and improvements. We appreciate your input as we continue to improve the Ohio Compliance Supplement.

Dave Yost
Auditor of State

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Implementation Instructions

This **September 2012 Ohio Compliance Supplement** (OCS) replaces the September 2010 version. The OCS is available at www.ohioauditor.gov, under *Publications*, in both Word and Portable Document Format. (Auditor of State staff can also use the 2012 OCS procedures built into TeamMate.) Due to the wide availability of internet access, we no longer provide the OCS in paper or disc formats.

The seven chapters and appendices D, G, and H are available in MS Word format so auditors can document work or cross reference to other audit documentation in those seven documents. The Introduction and other appendices are only available in Portable Document Format, since we do not expect that auditors would document their work in these sections.

The Table of Contents follows these Implementation Instructions. A table for each chapter is also located in the front of each chapter. The table of contents identifies legislative requirements. The table identifies new or revised requirements via shading. The table also identifies superseded legal requirements using strikeout font. We have not deleted these sections since they may still apply to portions of incomplete audits. For example, Step 2-13 testing was removed and it appears in the table of contents as follows:

~~2-13 ORC 3318: School Building Assistance Limited Fund for the Big 8 school districts~~

In addition, we have included a box at the top left hand corner within each modified step indicating if the section is a revised or new legislative requirement. In both cases, the effective date also appears to enable you to easily determine if the revision applies to the audit period. Below is an example appearing in the OCS:

<p><u>Revised: HB 153, 129th GA</u> <u>Effective: 9/29/11</u></p>
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In addition to the box described above, the OCS uses double underlining to indicate new or revised legislative requirements.

The OCS uses waved underlining to highlight:

- Pre-existing laws we have now determined auditors should test (i.e. requirements not appearing in former OCS editions).
- New or amended guidance. Most of these changes represent information we believe will enhance understanding compliance auditing or reporting.

The OCS uses ~~strike-out~~ font to indicate replaced or omitted legislative requirements. We have not deleted these sections since they may still apply to part of an audit period. Also, retaining this information will help users better understand the changes.

Auditors with engagements in process prior to the issuance of the 2012 Supplement need not discard work performed using the 2010 OCS. However, they must compare the 2012 changes to their work from the 2010 OCS and assure they have tested the legal provisions applicable to their audit period. More than one legal requirement could apply if a legislative change was effective during the audit period.

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LEGAL COMPLIANCE AUDITING IN OHIO

Introduction

Citizens and public officials want and need to know whether governments are handling their funds properly and complying with laws and regulations. Public officials entrusted with public resources are responsible for complying with those laws and regulations.

Ohio Administrative Code Section 117-2-05(A) requires independent auditors of Ohio public to follow the Comptroller General of the United States' generally accepted *Government Auditing Standards* (GAGAS).

~~“Under both the AICPA standards and GAGAS, auditors should design the audit to provide reasonable assurance of detecting material misstatements resulting from illegal acts¹ that could have a direct and material effect on the financial statements. If specific information comes to the auditors' attention that provides evidence concerning the existence of possible illegal acts that could have a material indirect effect on the financial statements, the auditors should apply audit procedures specifically directed to ascertaining whether an illegal act has occurred. When an illegal act has or is likely to have occurred, auditors should determine the effect on the financial statements as well as the implications for other aspects of the audit.”~~

2011 GAGAS 4.06 requires auditors to follow the AICPA's standards regarding fraud and noncompliance with laws and regulations. 4.06 extends the AICPA's requirements to apply to contracts and grant agreements.

This *Supplement* provides auditors with Ohio laws and regulations (and some laws and regulations from other sources) the Auditor of State has identified as potentially significant in an Ohio government audit. As such, it is designed to help auditors fulfill their responsibility. However, auditors should not consider this as a comprehensive list of compliance requirements for all governments.

The *Ohio Compliance Supplement's* first six chapters include laws and regulations the AOS normally considers “direct and material.” However, ***it is the auditor's responsibility to determine which, if any, compliance requirements are material to the government.***²

¹ A footnote to GAGAS 4.28 states, “Illegal acts are violations of laws or government regulations that have a direct and material effect on the determination of financial statement amounts. For example, applicable laws and regulations may affect the amount of revenue accrued under government contracts. However, the auditor considers such laws or regulations from the perspective of their known relation to audit objectives derived from financial statement assertions rather than from the perspective of legality per se.”

² Some Ohio Administrative Code Sections, such as OAC 117-2-02, include requirements for governments to establish internal controls and report financial information properly. However, we would not automatically deem a few accounting errors as reportable noncompliance under these OAC Sections. While these items may represent a significant deficiency, they may not rise to the level of material noncompliance. Conversely for example, the lack of a cash journal might be noncompliance with OAC 117-2-02(D)(1) as well as a control deficiency. This is a matter of professional auditor's judgment. We should consider the pervasiveness of the noncompliance matter in relation

In addition to the laws and regulations the OCS includes, auditors must also consider other laws and regulations applicable to the government, such as charters, ordinances, resolutions, contracts, grant agreements, debt covenants and leases. If any of these requirements could directly and materially affect the determination of financial statement amounts, the auditor should design tests for them. Regarding laws and regulations this *Supplement* does not include, auditing standards recognize management's year-round involvement with operations should provide them with knowledge of these requirements. It is therefore reasonable to expect management to identify and convey these requirements to their auditor. The AICPA's Audit and Accounting Guide, *State and Local Governments*, 4.82 states:

“An entity's management is responsible for ensuring compliance with the laws, regulations, and provisions of grants and contracts applicable to its activities. That ***responsibility encompasses identifying applicable compliance requirements*** and establishing internal control designed to provide reasonable assurance that the entity complies with them.”³

To the extent that a public office does not fall within the classes of public offices the *Ohio Compliance Supplement* includes, and also in part to (1) corroborate the completeness of the compliance requirements management identifies, and (2) to identify their potential material effect, 4.86 of the AICPA's *State and Local Governments* Guide suggests:

The auditor may consider performing the following procedures to assess management's identification of compliance requirements that could have a direct and material effect on the determination of financial statement amounts:

- Consider knowledge about compliance requirements obtained during prior-period audits.
- Interview the entity's chief financial officer, legal counsel, or grant administrators about compliance requirements.
- Identify sources of revenue, review any related agreements (for example, loan, grant, and contribution agreements), and ask about legal provisions that relate to using and accounting for the revenue.
- Obtain and review federal and state publications pertaining to compliance requirements, such as Department of the Treasury and Internal Revenue Service regulations (concerning the calculation and reporting of arbitrage rebates and refunds and employment taxes) and OMB's cost principles and administrative requirements circulars and *OMB Circular A-133 Compliance Supplement*, the *Catalog of Federal Domestic Assistance*,⁴ and similar state program publications (concerning grants and appropriations).
- Obtain and review sections of the state constitution, statutes, and regulations that pertain to the entity, in particular the sections that concern financial reporting, investment, debt, taxation, budget, appropriation, and procurement matters.

to the compliance requirement and the effect or potential effect on financial statements and financial reporting process as a whole.

³ 2011 Government Auditing Standards Appendix I, A1.08(b) has a similar requirement.

⁴ Auditors can also use the Federal Award Compliance Control Records (FACCR's) included on the AOS website as a reference.

- Review the minutes of meetings of the entity's governing board for the enactment of relevant laws and regulations and information about relevant contracts and grant agreements.
- Ask federal, state, or local auditors or other appropriate audit oversight organizations about applicable compliance requirements, including statutes and uniform reporting requirements.
- Ask the audit, finance, or program administrators of other entities from which the entity receives grants, contributions, and appropriations about the restrictions, limitations, terms, and conditions under which the amounts were provided.
- Review the discussions of compliance requirements applicable to specific industries, as found in this guide and other relevant AICPA Audit and Accounting Guides.
- Review accounting and auditing materials available from other professional organizations, such as state societies of certified public accountants and governmental associations.
- Obtain written management representation regarding the completeness of management's identification of compliance requirements.

The procedures listed in the “direct and material” chapters of the *Supplement* generally: assess the compliance control environment, document applicable compliance controls, test and evaluate the controls (if applicable), and substantively test compliance.

The auditor should apply the above for “direct and material” laws, regulations, and provisions of contracts or grant agreements, etc. annually for the assertions relevant to these compliance requirements. The auditor should, at a minimum, document controls and determine whether they have been implemented (placed in operation). If controls are not likely to be effective, or if the auditor deems it more efficient not to test controls’ operating effectiveness, then the auditor should document those considerations and apply more extensive substantive compliance tests.

If a compliance requirement listed in Chapters One through Six applies but the auditor deems it not direct and material to the entity, then the auditor generally should use the less-extensive documentation and testing procedures Chapter Seven describes. Similarly, if the auditor deems an item in Chapter Seven to be direct and material to the entity, she or he generally should use the more extensive procedures similar to those Chapters One through Six describe. For direct and material compliance requirements not included in the *Supplement* at all (for example, municipal income tax provisions), then the auditor should document and test it similar to procedures found in Chapters One through Six.

Appendix F lists the applicability of certain requirements included in the *Ohio Compliance Supplement* to certain additional classes of public offices.

Direct and Material Laws and Regulations

The AICPA Audit and Accounting Guide *State and Local Governments*, sections 4.82 through 4.87, discusses legal requirements which might directly and materially affect determining financial statement amounts for a governmental entity. These include:

- *GAAP Requirements.* Governments often are subject to legal or contractual provisions that require them to prepare their financial statements in conformity with GAAP.
- *Federal and State Taxes.* Governments are subject to various federal tax requirements, including those relating to employment taxes, employee benefits, and tax-exempt debt (such as arbitrage rebate requirements). State-level tax requirements also may apply.
- *Legal Authority for Transactions.* Governments often should have legal authority to execute transactions. That is, governments, especially local governments, often cannot exercise powers or conduct activities unless authorized by law. For example, a local government may not be able to levy property taxes unless specifically authorized to do so under state law and taxes levied without proper authority may be subject to refund.
- *Establishment of Funds.* Legal and contractual provisions may require governments to establish individual funds to account for and report on particular activities. (For example, Ohio Rev. Code Section 5705.09 establishes the basic funds required for political subdivisions in the State of Ohio, and Ohio Rev. Code Section 5705.10 establishes basic legal requirements for allocating receipts to funds. Failure to comply with these statutory requirements may materially affect financial statement presentation.)
- *Time and Other Eligibility Requirements and Purpose Restrictions on Nonexchange Transactions.* Time and other eligibility requirements and purpose restrictions affect the recognition and reporting of nonexchange transactions. A government's failure to comply with a provider's eligibility requirements and purpose restrictions may cause the provider to withdraw the intended support or request a refund of amounts previously paid. For example, certain costs are not allowable costs for federal programs under OMB Circular No. A-87⁵, *Cost Principles for State and Local Governments*, but they may have been inappropriately charged to those programs. Similarly, legal provisions may restrict a government's use of its tax revenues (such as a constitutional requirement that the proceeds of a state gasoline tax be expended only for the maintenance of highways).
- *Other Legal- and Contract-Based Compliance Requirements.* Besides the eligibility requirements and purpose restrictions that affect the recognition and reporting of nonexchange transactions, providers of such resources may impose other compliance requirements on recipients. For example, federal financial assistance programs often require recipients to adhere to specific procurement and cash management policies. There also may be contractual compliance requirements relating to exchange transactions, such as those discussed below for debt issuances.

⁵ The Federal government codified OMB Circular A-87 as 2 CFR Subtitle A, Chapter II Part 225.

- *Budgets.* Budgets often establish the particular funds that can finance particular costs and the nature and amount of interfund activity.
- *Tax and Debt Limitations.* Governments often are subject to legal provisions that limit taxing authority, impose ceilings and other issuance requirements on debt, or limit the use of debt proceeds to particular purposes. For example, state law may impose a millage cap on property taxes or require tax refunds if an entity's annual revenue growth exceeds a set percentage or amount. Also, debt often is issued subject to contractual provisions that require certain reserve fund and revenue coverage amounts.
- *Cash and Investments.* Governments often have legally-limited choices for depositing and investing available cash resources. For example, investments in derivative instruments, hedge funds, and debt instruments with long maturities might be prohibited.
- *Expenditure and Contracting Limitations.* Governments might be prohibited from purchasing certain products or services without open competitive bidding or following other purchasing procedures established by laws and regulations.

SLG 4.87 and GASB Cod. 2300.106(h) requires **financial statement note disclosure** of significant violations of “finance-related legal or contractual provisions” **and actions taken to address such violations**. The GASB Codification does not define “finance-related legal or contractual provisions.” However, the sources below identify the following requirements as being finance-related legal or contractual provisions:

<p>a. The accounting system must include all funds required by law or regulation to help assure restrictions on expenditures are met.</p>	<p>NCGA 1, par. 8 Cod. 1200.106</p>
<p>b. 1. Any excesses of expenditures over appropriations in the general or major special revenue funds included in RSI budgetary schedules. (Disclose in footnotes to RSI if presented as RSI.)</p> <p>2. Disclose significant excesses of expenditure over appropriations for other funds.</p>	<p>GASB 37, par. 19, Cod 2200.180</p> <p>GASB Comprehensive Implementation Guide 7.93.1</p>
<p>c. Violations of debt covenants or contracts.</p>	<p>Cod 2300.903, Illustrations 4, 5, 6</p>
<p>d. Significant violations during the period of legal or contractual provisions for deposits and investments</p>	<p>GASB Cod. I 50.125</p>
<p>e. <i>Governmental Accounting, Auditing and Financial Reporting</i> (GAAFR) suggests the following constitute “finance-related legal and contractual requirements:”</p> <ul style="list-style-type: none"> a. Budgetary b. Grant requirements c. Bond covenants d. Deposits and investments 	<p>GAAFR 224</p>

Immaterial Laws and Regulations

The Auditor of State has audited public offices’ compliance with legal requirements since 1902. Audits of Ohio public offices have been subject to Ohio Rev. Code Chapter 117, or its predecessor, since that time. Section 117.11 (A) states in part that when auditing Ohio public offices:

. . . [i]nquiry shall . . . be made into . . . whether the laws, ordinances, and orders pertaining to the office have been observed, and whether the requirements and rules of the auditor of state have been complied with.

Although a literal interpretation of Ohio Rev. Code Section 117.11 (A) would require testing all applicable legal requirements during an audit, the Auditor of State has determined that it is appropriate to limit the compliance requirements included in an audit of a given public office to:

- Compliance requirements for which noncompliance may materially affect the financial statements of the entity (i.e. the *GAGAS* requirement); and
- Compliance requirements which, although possibly not material to the financial statements, the Auditor of State deems to be of significant public concern regarding public policy, public stewardship, or public accountability. Chapter Seven generally includes these requirements.

Since Chapter Seven contains laws and regulations that are probably not, in most circumstances, “direct and material,” the auditor should inquire of management and perform certain other limited substantive tests. If existing controls or substantive compliance tests already satisfy these objectives, the auditor should cross-reference such work to these sections.

The beginning of Chapter Seven includes more guidance and an example of appropriate testing related to Chapter Seven.

Compliance Risk and Controls

Generally accepted auditing standards indicate that the auditor is responsible for planning and auditing to reasonably assure whether the financial statements are free of material misstatement, whether caused by error or fraud. For direct and material *illegal acts*, the auditor’s detection responsibility for these misstatements is the same as that for errors.

Taking a control’s reliance approach to a compliance audit of Ohio laws and regulations involves documenting each of the five components of internal controls -- the control environment, risk assessment, control activities, information and communication, and monitoring -- that the auditor considers relevant to preventing or detecting noncompliance with such laws and regulations, and assessing control risk that noncompliance could occur and not be detected timely.

Factors to consider in relying on compliance controls are similar to the judgments we use for financial statement accounts. *For example*, a compliance controls approach is often more efficient and effective if the volume of transactions subject to the compliance requirement is large or the compliance requirement is complex. Conversely:

- Relying on investment purchasing controls is normally inefficient for small entities with few investment purchases / sales during the year
 - They might not need / have formal controls anyway – the CFO’s use of an up-to-date ORC 135.13-.14 listing of allowable investments may be sufficient basis for a “control” for small entities.
- Relying on controls over the legality of interfund transfers may be inappropriate because the complexity of the transfer requirements is not easily subject to a “routine” set of controls.

- That is, even if the entity has controls to help assure interfund transfers are legal, the complexity of the statutes likely still requires auditors to “re-perform” the control, which is really a substantive test / evaluation of the transfer’s legality.

In assessing the compliance control environment, the auditor might consider:

- Management's attitudes toward compliance with laws and regulations;
- Legal actions brought against the government, and/or its elected and appointed officials;
- Involvement of the governing authority and management in the control structure to assure compliance.

Appendix D to the Ohio compliance Supplement lists control environment areas for assessment and related points of focus. Auditors should complete the Supplement as part of each audit. (AOS staff should document these control environment factors in the AOS’ ACE.)

Note: We intend the following as general guidance / suggestions for auditors when considering and documenting the five internal control components; while you must document each internal control component, we do not intend that auditors must address each of the matters below in every audit. For example, the list of risks are useful examples auditors should address if they become aware of them. However, we do not expect auditors to design steps to obtain evidence to support the existence or nonexistence of each of these risks for every audit.

In addition to a suitable control environment, an effective internal control structure should also monitor compliance and determine whether controls related to compliance are operating effectively. Therefore, the control structure should also include *a monitoring system, and the auditor should consider whether responsibility for compliance is assigned to appropriate individual(s). For example, auditors should consider (given the size and complexity of the government’s operations) whether responsibility is assigned for the following compliance issues:*

- Bond (i.e. debt) compliance
- Budgetary compliance
- Contract compliance
- Grant compliance (including those over federal awards subject to OMB Circular A-133)
- Procurement compliance
- Investment purchases
- Tax reporting (i.e., state & federal requirements)
- Legal authority for transactions
- Taxing and debt limitations
- Establishing funds
- Restriction on disbursements
- Lease compliance

As part of this assessment, auditors should also consider and document the existence of the following risk factors related to internal control over compliance:

- Policies and procedures that are incomplete, inadequate, or outdated for the activities subject to a type of compliance requirement.
- A history of material noncompliance with a particular compliance requirement as evidenced by Schedules of Findings from previous audit reports.
- Changes in the nature or type activity subject to compliance requirements, or changes in the management personnel responsible for monitoring the compliance requirement, since the prior audit. For example, a Village that invested only in certificates of deposit and STAR Ohio in the prior audit that is also investing in government-backed securities or that had a new Village Fiscal Officer in place during the current audit period has a greater risk of noncompliance with investing requirements.
- Inadequate segregation of duties over a type of compliance requirement. For example, a school district with a separate EMIS Coordinator that tracks and enters average daily membership (ADM) information into the EMIS system is a stronger control than a school district where the Treasurer is solely responsible for tracking, entering, and monitoring EMIS data.
- Controls over complex compliance requirements. Depending upon the nature of the local government's activity, OCS Chapters 3, 5, and 6 contain some complex types of compliance requirements related to debt issuance, investments, and other specialized areas.
- IT controls relating to the activity subject to the type of compliance requirement. For example, courts with automated software vendors that update fine and fee schedules due to legislative changes in statutory amounts may be more likely to update fines/fees in a timely manner and therefore be more likely to charge the appropriate fines and fees than courts with manual systems.
 - Paragraph 4.30 in the AICPA's *Government Auditing Standards and Circular A-133 Audits* requires auditors to report noncompliance findings that also relate to control deficiencies in both (1) the internal control and (2) the compliance sections of the GAGAS report. Several Revised Code sections mandate governments to implement internal controls, such as budgeting (Chapter 5705), purchasing / contracting controls (see Ohio Compliance Supplement Chapter 2) and investing policies (Ohio Rev. Code 135.14). **However**, unless noncompliance with these mandated controls contributes to misstatements or potential misstatements, auditors should not report them under SAS 115. For additional guidance, see Section three in AOS Advisory Memo 2007-07 and also AOS Advisory Memo 2010-02.

The following are often at least significant deficiencies. However, as described immediately above, the deficiency must relate to financial misstatements before an auditor would report it under SAS 115:

- Lack of operating policies and procedures for the activities subject to a type of compliance requirement
 - i. However, the auditor should consider that some Ohio Rev. Code sections often are a *policy*, and the need for written *procedures* varies directly with the complexity of the law, the decentralization of agencies within the auditee subject to the law, and perhaps other factors.

- Ineffective oversight of a direct and material compliance requirement by management or those charged with governance. For example, the lack of adequate review of budget versus actual reports.
- Identification by the auditor of material noncompliance for the period under audit that was not initially identified by the entity's internal control.
- Identification of fraud of any magnitude on the part of senior management or those charged with governance. For purposes of evaluating and communicating deficiencies in internal control, the auditor should evaluate fraud of any magnitude—including fraud resulting in immaterial noncompliance—on the part of senior management or those charged with governance, of which he or she is aware.
- Failure by management or those charged with governance to assess the effect of material noncompliance, a significant deficiency, or material weakness related to a direct and material compliance requirement previously communicated to them and either correct it or conclude that it will not be corrected.
- An ineffective control environment. Control deficiencies in various other components of internal control could lead the auditor to conclude that a significant deficiency or material weakness exists in the control environment over compliance with direct and material compliance requirements.

If adequate control procedures exist to reduce the risk that direct and material noncompliance could occur and not be detected on a timely basis, the auditor may be able to test the operating effectiveness of those controls and **significantly reduce substantive testing** of those compliance items. However, auditing standards require some level of substantive evidence. To use a controls reliance approach (an assessment that control risk is less than maximum or low), the auditor must:

1. Identify controls relevant to preventing or detecting material or significant non-compliance with the identified laws and regulations;
2. Test controls to obtain sufficient evidence of the controls' operating effectiveness throughout the audit period;
3. Document the tests of controls.
4. The Auditor of State permits relying on evidence from prior audits' tests of compliance controls' operating effectiveness (i.e. "rotating controls") similar to the guidance in ~~AU 318.40~~ 45 AU-C 330.14(b) and 330.A40 -- .42. When controls are effective, this rotation can enhance efficiency. However, when using this approach, auditors must carefully consider the guidance in ~~AU 318.40~~ 45 AU-C 330.14(b) and 330.A40 -- .42. Since some level of substantive evidence is required, rotating control tests without any substantive tests is insufficient. However, auditors can assess risk of noncompliance and test accordingly. For example, if we recomputed interest allocation the year before and found no misstatement, we might limit current year testing to comparison of amounts per fund to the prior year amounts (*assuming there were no significant changes such as new funds that required an interest allocation*). Among other requirements, auditors should:

- a. Obtain evidence about changes to controls since the prior tests of operating effectiveness.
 - b. Obtain evidence that controls were still implemented during the current audit period.
 - c. Test operating effectiveness at least every third year (not every third two-year audit).
5. While the auditor's assessment of inherent and control risk *may* substantially reduce the required nature and / or extent of substantive compliance testing, **some** substantive evidence / testing is necessary for compliance requirements directly and materially affecting the determination of financial statement amounts (similar to AU ~~318.51~~ AU-C 330.18 and 330 A45 --- .50) such as those compliance requirements included in OCS Chapters 1 through 6.

Organization of The Ohio Compliance Supplement

The *Ohio Compliance Supplement* includes, for each compliance requirement:

- A reference to the underlying legal authority, including statutory provisions, administrative rules, court decisions, and opinions of the Attorney General;
- A summary of the requirement; and
- For potentially **direct and material** laws and regulations, “points of (control) focus” and recommended audit procedures; or,
- For **other** laws and regulations, suggested questions for management.

In addition, for both types of law or regulation, there are sections provided to document persons interviewed, tests performed (including, if appropriate, cross-references to audit documentation supporting tests of controls and substantive tests of legal compliance) and conclusions and tentative recommendations.

While the auditor may exercise professional judgment in determining specific compliance requirements to test in a given audit, the AOS requires:

- Testing compliance requirements material to the financial statement in each audit (generally Chapters One through Six);
- Testing compliance requirements not material to the financial statements listed in *Ohio Compliance Supplement* Chapter Seven every other audit, as follows:
 - Auditors generally can limit testing these items to every other audit, such as once every two years if we audit the government annually, or once every four years if we audit the government biennially.

Auditors should divide the steps subject to cycling approximately in half, and budget a

similar amount for cyclic tests each audit to avoid audit cost fluctuations every other audit.

Auditors should test new (i.e., “double underlined” requirements) Chapter 7 requirements in the first audit to which they apply.

Although the *Ohio Compliance Supplement* sets forth recommended audit procedures for each compliance requirement, ***determining the specific audit procedures to be applied, both as to material and non-material compliance requirements, requires professional judgment.***

Home Rule Powers

Definition

Villages and cities are municipal corporations. They are defined and regulated in Article XVIII of the Ohio Constitution and in Ohio Rev. Code Title 7.

Classification

Municipal corporations with a population of less than 5,000 are villages. The village may be incorporated by the procedures set forth in Ohio Rev. Code Chapter 707, requiring a petition to the county commissioners (Ohio Rev. Code §703.01 and Chapter 707).

Plans of Government

Article XVIII of the Ohio Constitution provides for the formation of municipal corporations. Section 3 confers upon the municipal corporations all powers of local self-government and Section 7 authorizes the municipal corporations to adopt charters setting up their own plans of government. Those ~~villages~~ municipalities which do not have charters may adopt one of the plans of government set forth by the legislature in Ohio Rev. Code Chapter 705 or may operate under the general provisions of Ohio Rev. Code Title 7.

Home Rule

“Home Rule” is a term used to describe those powers granted to municipal corporations under Article XVIII, Section 3 of the Ohio Constitution, which provides, “municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations as are not in conflict with general laws”. These powers were granted in an effort to provide more local control over certain governmental activities, but not to allow complete independence from State government. Because this grant of power is derived from the Ohio Constitution, it is superior to laws enacted by the legislature, except where a constitutional limitation is provided allowing the legislature to regulate municipalities.

Charter vs. Non-Charter

All municipal corporations have Home Rule powers, but the extent of these powers differ depending upon whether a charter has been adopted. By adopting a charter, the municipal corporation may set up a system of government which differs from the statutory plans. It may provide for the officers and procedures for all governmental functions. Non-charter municipal corporations must comply with all State laws concerning matters of procedural local self-

government. Matters of substantive local self-government are not controlled by State laws, regardless of whether or not the municipal corporation has adopted a charter.

Local Self-Government Powers vs. Police Regulations

As previously mentioned, charter governments are basically free from regulation by the legislature in matters of local self-government, but the exercise of police powers cannot conflict with general laws enacted by the legislature.

Local Self-Government Powers

Procedural Local Self-Government Powers are powers which concern the organization of municipal government as well as the procedures under which the municipal corporation must function. Charter governments may deviate from State laws regulating matters of procedural local self-government only by adopting a charter. Examples of these powers are as follows:

1. Structure of government - This pertains to the officers and their functions. Without a charter, municipalities and villages must comply with State laws regulating them;
2. Competitive bidding requirements - State laws determine when competitive bidding is necessary and what procedures must be followed. Only charter governments may set up their own bidding requirements;
3. Initiative and referendum;
4. Appointment and duties of police officers;
5. Election procedures; and
6. Annexation proceedings.

Substantive Local Self-Government Powers

Substantive Local Self-Government Powers are powers which concern the decision making authority of the municipal corporation as well as regulate the conduct of individuals within the municipal corporation. With a few constitutional exceptions, these powers cannot be superseded by State laws. Examples of these powers are as follows:

1. Power to contract - The State cannot, by law, restrict the government's general power to contract;
2. Taxation - There are explicit constitutional limitations provided in Article XVIII, Section 13 and Article XIII, Section 6 of the Ohio Constitution, as it is necessary to provide for coordination of State and local taxation. Otherwise, State laws cannot restrict the government's power to tax;
3. Assessments - This power is limited by Article XIII, Section 6 of the Ohio Constitution;
4. Incurring debt - Laws may be passed by the General Assembly limiting this power; (Article XVIII, Section 13 of the Ohio Constitution);
5. Power to purchase, appropriate, or dispose of property - The decision to purchase, appropriate, or dispose of property is a power of substantive local self-government. However, the procedures used to purchase, appropriate, or dispose of property are matters of procedural local self-government and are regulated by State laws, unless the municipal corporation has adopted a charter;
6. Compensation of employees and officers - This area is purely a matter of substantive local self-government. Statutes regulating many matters of compensation can be overridden by local ordinance;
7. Power to establish, locate, and vacate streets; and
8. Power to restrict the weight of vehicles using the charter government's streets.

Police Regulations

Police regulations are laws enacted to protect the health, safety, and welfare of persons and property. They are aimed at matters of private conduct rather than matters of government. Unlike matters of local self-government, police regulations can never conflict with general laws.

Public Utilities

The power to operate public utilities has a separate and distinct source from the general home rule powers of Article XVIII, Section 3. Article XVIII, Sections 4 and 5 of the Ohio Constitution state that municipal corporations may provide public utility service for their residents directly or by contracting with others within specified limits.

Compliance Testing

Auditors must consider whether municipal governments have home rule powers enacted under the statutes above. If so, auditors will need to tailor compliance testing accordingly to reflect the applicable home rules and powers afforded those governments. Auditors should review charter legislation, resolutions, and ordinances for charter municipal corporations and tailor their testing procedures accordingly.

Reporting

~~2007 2011~~ Government Auditing Standards (GAGAS) describes the auditor's compliance reporting obligations:

~~5.15~~ Under AICPA standards and GAGAS, auditors have responsibilities for detecting fraud and illegal acts that have a material effect on the financial statements and determining whether those charged with governance are adequately informed about fraud and illegal acts. GAGAS include additional reporting standards. When auditors conclude, based on sufficient, appropriate evidence, that any of the following either has occurred or is likely to have occurred, they should include in their audit report [i.e. GAGAS report on compliance] the relevant information about:

- ~~a.~~ fraud and illegal acts that have an effect on the financial statements that is more than inconsequential,
- ~~b.~~ violations of provisions of contracts or grant agreements that have a material effect on the determination of financial statement amounts or other financial data significant to the audit, and
- ~~c.~~ abuse that is material, either quantitatively or qualitatively. (See GAGAS paragraphs 4.12 and 4.13 for a discussion of abuse.)

~~5.16~~ When auditors detect violations of provisions of contracts or grant agreements or abuse that has an effect on the financial statements that is less than material but more than inconsequential, they should communicate those findings in writing to officials of the audited entity. Determining whether and how to communicate to officials of the audited entity fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse that is inconsequential is a matter of professional judgment. Auditors should document such communications.

4.25 When performing a GAGAS financial audit, and auditors conclude, based on sufficient, appropriate evidence, that any of the following either has occurred or is likely to have occurred, they should include in their report on internal control and compliance the relevant information about:

- a. fraud and noncompliance with provisions of laws or regulations that have a material effect on the financial statements or other financial data significant to the audit objectives and any other instances that warrant the attention of those charged with governance;
- b. noncompliance with provisions of contracts or grant agreements that has a material effect on the determination of financial statement amounts or other financial data significant to the audit objectives; or
- c. abuse that is material, either quantitatively or qualitatively.

4.26 When auditors detect instances of noncompliance with provisions of contracts or grant agreements or abuse that have an effect on the financial statements or other financial data significant to the audit objectives that are less than material but warrant the attention of those charged with governance, they should communicate those findings in writing to audited entity officials. When auditors detect any instances of fraud, noncompliance with provisions of laws, regulations, contracts or grant agreements, or abuse that do not warrant the attention of those charged with governance, the auditors' determination of whether and how to communicate such instances to audited entity officials is a matter of professional judgment.

GAGAS 5.09 ~~4.26~~ requires auditors to communicate immaterial violations of lesser significance ~~warranting management's attention in writing (such as via a management letter).~~ 2011 GAGAS ~~allows auditors to judge whether and how to communicate matters of lesser importance.~~ ~~When the auditor reports these matters in a management letter, GAGAS 5.09 still requires the GAGAS report to refer to the management letter. However, per 5.16 above, written communication other than a management letter is also acceptable. Auditor of State staff should report such items in a management letter (unless they are inconsequential).~~

The auditor should refer to the AICPA's accounting and auditing guide, *Government Auditing Standards and Circular A-133 Audits*, for reporting examples. (AOS staff can access these examples in the Audit Briefcase.)

Audit Findings

An audit *finding* is a conclusion of fact an auditor *finds* as part of the audit process. Findings of legal noncompliance in Ohio fall into three categories⁶:

- Noncompliance citations,
- Findings for adjustment, and
- Findings for recovery.

Noncompliance Citations

Noncompliance citations should cite the appropriate legal authority (i.e. the *criteria* GAGAS 4.11~~5~~ requires in written noncompliance findings). Legal authorities auditors can cite include the Federal and State constitutions, the United States Code and rules, the Ohio Revised Code and rules, local ordinances, Federal and State court decisions, Federal and State regulations, and opinions of the Ohio Ethics Commission. Auditors may refer to opinions of the Attorney General, AOS Technical Bulletins, and other advisory materials within the text of a finding as additional guidance, but AG opinions, AOS Technical Bulletins, and advisory materials are not legally binding *criteria*.⁷

⁶ *Questioned costs* normally apply only when opining on compliance under SAS 117, such as A-133 audits of Federal programs. This discussion does not pertain directly to questioned costs.

⁷ Ohio Rev. Code § 117.20(C) states that the Auditor of State may prepare and disseminate to public offices and other interested parties advisory bulletins, directives and instructions relating to accounting and financial reporting

For example, AOS Bulletin 2002-004 states the AOS' position that local governments should record and budget Ohio Public Works Commission infrastructure project (Issue II money) receipts and disbursements even when the local government does not directly receive or disburse this money. When a government fails to record or budget this money, the citation would be to the sections within Ohio Rev. Code Chapter 5705 requiring budgeting and recording this money, not Bulletin 2002-004. However, it is desirable for the finding to *suggest* the local government officials to review and follow the accounting and budgeting guidance from AOS Bulletin 2002-004.

Also, as described in *Government Auditing Standards*, auditors should report material noncompliance with provisions of contracts or grant agreements.

Appendix A to the *Ohio Compliance Supplement* sets forth guidelines for the appropriate form for citing legal authority.

GAGAS defines the elements of a finding to include:

4.115 Criteria: The laws, regulations, contracts, grant agreements, standards, measures, expected performance, defined business practices, and benchmarks against which performance is compared or evaluated. Criteria identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding the findings.

4.126 Condition: Condition is a situation that exists. The condition is determined and documented during the audit.

4.137 Cause: The cause identifies the reason or explanation for the condition or the factor or factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective actions. Common factors include poorly designed policies, procedures, or criteria; inconsistent, incomplete, or incorrect implementation; or factors beyond the control of program management. Auditors may assess whether the evidence provides a reasonable and convincing argument for why the stated cause is the key factor or factors contributing to the difference between the condition and the criteria.

4.148 Effect or potential effect: The effect is a clear, logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria). The effect or potential effect identifies the outcomes or consequences of the condition. When the audit objectives include identifying the actual or potential consequences of a condition that varies (either positively or negatively) from the criteria identified in the audit, "effect" is a measure of those consequences. Effect or potential effect may be used to demonstrate the need for corrective action in response to identified problems or relevant risks.

systems, budgeting procedures, fiscal controls and constructions by the Auditor of constitutional and statutory provisions, court decisions and opinions of the Attorney General. These bulletins, directives and instructions are of an advisory nature.

~~5.21~~ 4.28. . . If auditors sufficiently develop the elements of a finding, they may provide recommendations for corrective action.

Auditee Responses to Findings

GAGAS ~~5.32—5.38~~ 4.33 – 4.39 establish requirements for obtaining and reporting the auditee’s responses to findings. GAGAS ~~5.32~~4.33 states, “. . . auditors should obtain and report the views of responsible officials of the audited entity concerning the findings, conclusions, and recommendations, as well as any planned corrective actions.” GAGAS 4.35 states, “When auditors receive written comments from the responsible officials, they should include in their report a copy of the officials’ written comments, or a summary of the comments received.”

Therefore, if an auditee responds to a finding, we should refer to their response in the applicable report (i.e., GAGAS or A-133 report).

If an auditee responds verbally to a finding (for example, at the post audit conference) we should ask if they wish to include their response in the report.

We should recognize that the tone of these responses will vary. Some officials will prepare thoughtful responses, perhaps even acknowledging responsibility for the error. Conversely, other officials will feel we have been unfair, that we do not understand the *criteria* (e.g. laws) we are citing or draft a response impugning our abilities or motives. Regardless, we should carefully consider these responses. If there is significant disagreement regarding a finding, we should attempt to resolve the disagreement, if practical. For example, if there is disagreement regarding a grant requirement, we might contact the grantor and obtain the grantor’s interpretation of the requirement.

GAGAS ~~5.37~~4.38 states that ~~when we believe the responses lack validity or when planned corrective action does not adequately address the issue, we should state our reasons for disagreeing with the client’s response or corrective action~~the audited entity’s comments are inconsistent or in conflict with the findings, conclusions, or recommendations in the draft report, or when planned corrective actions do not adequately address the auditors’ recommendations, the auditors should evaluate the validity of the audited entity’s comments. If the auditors disagree with the comments, they should explain in the report their reasons for disagreement. However, we should always attempt to resolve disagreements before issuing the final report. If we can resolve the differences, the report should not include the client’s original response. (We can include an updated response.) The report would not refer to a disagreement, since the disagreement no longer exists.

If we cannot agree with the client, we should summarize the client’s substantive reasons for disagreeing and our reasons, per GAGAS ~~5.37~~4.38. Responses indicating significant disagreement require review by the Center for Audit Excellence Group. (This review requirement does not apply to IPA audits.)

Important: In some instances, we should include most of the text of the client’s response, if the issue is complex or if there is substantial disagreement. However, often we need not include the complete text of the client’s response in our reports. For brevity, we prefer a summary within the body of the finding in question, indicating their general agreement or disagreement and

planned corrective action. Deciding whether to summarize versus including the complete text requires auditor judgment. When we summarize the response, we must allow the client to read the draft finding, our summary of their response, and our rebuttal to their response if we disagree with it. We should include their signature on a draft of the finding in the audit documentation indicating they have read the final draft, including their response (and our rebuttal, if there is one).

Findings for Adjustment

Audit procedure results may determine an audited entity has posted receipts to a fund having no authority to receive them, or has disbursed amounts not authorized from one fund but permissible from another.

In these instances, it may be appropriate to make a *finding for adjustment*, that is, a reallocation of receipts or disbursements to the proper funds. Whether the auditor recommends an adjustment, and the manner in which the auditor reports it depends on: (1) the nature of the adjustment, i.e., whether it is material, ~~inconsequential~~⁸trivial, or immaterial; (2) whether the auditee agrees with the adjustment; and (3) whether the misallocation of funds also constitutes a violation of law warranting a noncompliance citation.

Potential *findings for adjustment* fall into one of the following categories:

- 1 Material adjustments with which the auditee agrees, which have been posted to the accounting records and which are reflected in the audited financial statements;
- 2 Material adjustments with which the auditee disagrees and which are neither posted to the accounting records nor reflected in the financial statements;
- 3 Immaterial adjustments which are more than ~~inconsequential~~trivial. See discussion in the following section.
- 4 InconsequentialTrivial

Note: Auditors base materiality on opinion units when forming their opinion.

However, when assessing whether a finding for adjustment is a material noncompliance finding, we believe auditors should normally consider materiality in relation to both affected funds rather than the opinion unit. Considerations include:

- Judging whether measuring materiality against receipts, disbursements or fund cash balance is the most appropriate.
- Auditors may detect a *finding for adjustment* affecting two funds reported in the same opinion unit. This adjustment would have no effect on the financial statements (and the auditor's opinion thereon), but may still represent reportable noncompliance if it is material to either of the two funds.

Treatment of Findings for Adjustment in Audit Reports

Adjustments in the first category above based on a violation of legal authority will result in a noncompliance citation reported in the GAGAS report. The auditor should neither label the noncompliance as a *Finding for Adjustment* nor use a “finding for adjustment statement” (i.e. “In accordance with the foregoing facts, we hereby issue a finding for adjustment . . .”) but the

⁸ Trivial as described in AU 314.42 footnote 71, explains matters that are “trivial” are amounts designated by the auditor below which misstatements need not be accumulated. This amount is set so that any such misstatements, either individually or when aggregated with other such misstatements, would not be material to the financial statements, after the possibility of further undetected misstatements is considered.

finding should cite the legal criterion and briefly state the client has agreed to and posted adjustments which are also reflected in the financial statements. No qualification of the auditor’s financial statement opinion is necessary because the adjustment corrected the material misstatement.

Adjustments in the second category and which are based on a violation of legal authority will result both in a noncompliance citation and normally a qualification paragraph in the auditor’s financial statement opinion. The noncompliance citation will also include a finding for adjustment statement (i.e. “In accordance with the foregoing facts, we hereby issue a finding for adjustment. . .”).

Adjustments in the third category (quantitatively immaterial but more than ~~inconsequential~~trivial) should be reported in the management letter if the misallocation of funds also constitutes a violation of law which warrants a noncompliance citation. However, auditors should report these adjustments in the GAGAS letter whenever qualitative considerations of materiality outweigh the quantitative materiality amounts.

- If the auditee agrees with the adjustment and has posted it, cite the law violated, but do not use the term *finding for adjustment*; do not include a *finding for adjustment statement*.
- If the auditee disagrees with the adjustment or has not posted it, cite the law violated, label the finding as a *finding for adjustment*, and include a *finding for adjustment statement*.

~~Inconsequential~~ Trivial noncompliance adjustments will simply be noted in the audit working papers.

Summary of Finding For Adjustment Reporting Treatment

	<i>Material adjustments with which the auditee agrees, which have been posted to the accounting records and which are reflected in the audited financial statements:</i>	<i>Material adjustments with which the auditee disagrees and which are neither posted to the accounting records nor reflected in the financial statements:</i>	<i>Quantitatively Immaterial adjustments which are more than inconsequentialtrivial</i>	<i>Adjustments which are inconsequentialtrivial</i>
GAGAS Report	If based on a violation of legal authority, report a noncompliance citation in the GAGAS report. Do not classify as a <i>finding for</i>	If based on a violation of legal authority, report a noncompliance citation in the GAGAS report. AOS staff <u>should</u> include a <i>finding for adjustment</i> statement. (IPAs	If based on a violation of legal authority, report a noncompliance citation in the management letter. However, if the matter is qualitatively material, report a noncompliance	Not reported in the GAGAS report.

	<i>Material adjustments with which the auditee agrees, which have been posted to the accounting records and which are reflected in the audited financial statements:</i>	<i>Material adjustments with which the auditee disagrees and which are neither posted to the accounting records nor reflected in the financial statements:</i>	<i>Quantitatively Immaterial adjustments which are more than inconsequentialtrivial</i>	<i>Adjustments which are inconsequentialtrivial</i>
	<i>adjustment.</i>	should not include a finding for adjustment statement.)	citation in the GAGAS report.	
Auditor’s report (opinion) on the financial statements	No qualification of the auditor’s opinion.	Adjustments which are based on a violation of legal authority will result in a qualified (or adverse) opinion on the financial statements.	Adjustments which are qualitatively material and are based on a violation of legal authority <i>may</i> result in a qualified (or adverse) opinion on the financial statements. This requires judgment.	No effect.
Management letter	Not applicable	Not applicable	If the misallocation of funds also constitutes a violation of law which warrants a noncompliance citation, a citation will be reflected in the management letter if the matter is quantitatively and qualitatively immaterial. AOS staff should include a <i>finding for adjustment</i> statement if the auditee does not agree to or post the adjustment. (IPAs should not include a finding for adjustment statement. Reporting the noncompliance citation alone is sufficient.)	Not reported in the management letter. Document in the working papers only.

Financial Statement Opinion Qualification Paragraph

During 20XX, Any Local School District expended \$584,000 from the Bond Retirement Fund to pay employees' salaries. Section 5705.10 of the Revised Code restricts the use of the Bond Retirement Fund to debt retirement. Had this amount been properly expended from the General Fund, the effect would have been to decrease disbursements of the Bond Retirement Fund by \$584,000 and increase the fund cash balance to \$631,675 and to increase disbursements of the General Fund by \$584,000 and decrease the fund cash balance to a deficit of \$347,000 as of and for the year ended December 31, 20XX.

In our opinion, except for the matter referred to in the preceding paragraph, the financial statements present fairly . . .

We would only include this paragraph if the effect was material to one or more opinion units (in this case, assume the effect was material to the general and bond retirement fund and that both are major funds). The result will be either a qualified ("except for") or adverse opinion. A government can avoid a qualified or adverse opinion only if they adjust their accounting records. A mere commitment by the public office to adjust is insufficient. That is, the auditee has not agreed to the adjustment until she or he has posted it to the accounting system.

Finally, AU 312.52(c) requires auditors to consider the effect of uncorrected prior audit adjustments on the current audit. Therefore, auditors should consider whether uncorrected prior findings for adjustment affect the current audit's financial statements.

Findings for Adjustment Procedures for Independent Public Accountants (IPA)

IPAs should follow the preceding guidance regarding *Findings for Adjustment* with the following modifications.

IPAs should report a noncompliance finding in their GAGAS report for the matters requiring it as listed above. However, IPAs should not label these as *findings for adjustment* and should not include the "finding for adjustment statement" (i.e. "In accordance with the foregoing facts, we hereby issue a finding for adjustment . . .")⁹. When the IPA believes a finding for adjustment condition exists and the client does not agree with and does not make the adjustment, the following procedures apply.

- As soon as the IPA has an indication there could be Findings for Adjustment, the IPA should contact the regional chief auditor.
- The IPA should provide the regional chief auditor with all relevant supporting documentation for the Finding.
- After notifying the Chief Auditor of the Center for Audit Excellence that a finding for adjustment may be issued, the regional chief auditor or his designee will prepare a preliminary Finding, and submit it to the Auditor of State Legal Division for review. Included will be any needed supporting documentation.

⁹ This is to comply with RC 117.12 which states, "IPAs have no authority to make formal findings of illegality, malfeasance, or gross neglect under this division or section 117.23 of the Revised Code."

- The Legal Division will review the proposed Finding and may ask the chief auditor or the IPA for any needed additional information.
- After the Legal Division has approved the Finding, the chief auditor or his designee will send the proposed Finding for Adjustment to all applicable parties. These parties normally have five days to respond. If there is a response, the chief auditor evaluates the response and decides whether the Finding should be withdrawn or modified.
- The regional chief auditor must send a copy of the approved finding to the Chief Auditor, Center for Audit Excellence or his designee for inclusion with the Acceptance Letter. The Chief Auditor, Center for Audit Excellence or his designee certifies the report with the Clerk of the Bureau.
- The Auditor of State will describe material, unadjusted Findings for Adjustment in the Acceptance Letter we include in the front of each report.

Findings for Recovery

Ohio Rev. Code Section 117.28 authorizes the Auditor of State to report a *finding for recovery* in audit reports when legal action may be appropriate to recover public money or property. It is the policy of the Auditor of State to only issue a finding for recovery in whole dollars. Therefore, all finding for recovery amounts will be rounded down to the nearest whole dollar.

Ohio Rev. Code Section 117.01 (C) defines *public money* as "any money received, collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of a public office."

Under Ohio Rev. Code Sections 9.24(H)(3) and 117.28, a finding for recovery may exist when:

- Public money has been illegally expended;
- Public money that has been collected has not been accounted for;
- Public money that is due has not been collected; or when
- Public property has been converted or misappropriated.

Each of these is discussed below.

1. Illegal Expenditure

A finding for recovery for an illegal expenditure may be made only where the auditor (after consultation and advice from the Legal Division) has concluded that the public office does not possess the legal authority for the expenditure in question. This generally may occur where the government either has no statutory authority (or the government exceeded the authority statute provides) for the expenditure or there is no *proper public purpose* for the expenditure.

Governmental units other than charter municipal corporations generally possess only the authority expressly granted by statute or necessarily implied to carry out an express statutory function. Thus, a governmental entity such as a school district or township may act only where a statutory grant of authority exists and, if any doubt as to the authority exists, it must be resolved against the expenditure of public monies. If the basis for a finding for recovery is that the governing body exceeded its statutory authority, a citation to a court decision containing a general description of the limited authority of the governmental unit is sufficient.

Proper Public Purpose

Governmental entities, without regard to their specific nature, may not expend public monies unless they are for a proper (i.e. valid) public purpose.

State ex rel. McClure v. Hagerman, 155 Ohio St. 320, provides that governmental expenditures should serve a public purpose. In McClure, the Ohio Supreme Court offered the following guidelines to determine a public purpose:

1. Whether the expenditure is for or promotes the public health, safety, morals or general welfare;
2. Whether the primary objective is to promote a public purpose, although it may incidentally advance a private interest;
3. If there has been a prospective legislative determination of a proper public purpose.

See AOS Bulletins 2003-005 and 2004-002 for further guidance regarding *proper public purpose*.

The courts will not substitute their judgment for that of the authorities unless the latter's exercise of judgment or discretion is shown to have been unquestionably abused.

In general, if the principal benefit is for the public, an expenditure is not invalid merely because a private party derives an incidental benefit. A public officer's determination that a contemplated expenditure serves a valid public purpose is generally not subject to question unless this determination is "palpably and manifestly arbitrary and incorrect." (However, disbursing public money for alcohol will result in a finding for recovery, per Bulletin 2003-05.¹⁰)

Before the discretionary determination of the governing body that a given expenditure serves a public purpose may be overruled, the auditor must consult with the Legal Division and cite a specific prohibition against the class of expenditure in question or must have facts to support a conclusion that the local determination was "palpably and manifestly arbitrary and incorrect."

While auditing expenditures, the auditor should scan or perform other analytical procedures looking for unusual or nonrecurring items and determine the reasonableness of designations of public purpose. Any questionable items can be discussed with the appropriate regional chief auditor, who should consult with the Legal Division.

2. Collected but Unaccounted For

A finding for recovery for public money collected but unaccounted for, should be made where the auditor, after consultation with and advice from the Legal Division, concludes that public money, as defined in Ohio Rev. Code Section 117.01, has been received by the public office, but cannot be adequately accounted for by authorized disbursements of public moneys.

A mere unidentified shortage of public moneys is a sufficient basis for a finding for recovery, as public officials are *strictly liable*¹¹ without fault to account for public funds entrusted to their care.

However, the Auditor of State's office recognizes that even the most honest employees make errors in recording cash. Therefore, the Auditor of State will not issue FFRs for insignificant cash shortages a cashier reports to management as part of their reconciliation process, if the government's management monitors overages and shortages and suitably follows up on patterns

¹⁰ Note the prohibition on spending public money for alcohol is consistent with the Federal government's prohibition stated in 2 CFR Part 225 (OMB Circular A-87), Appendix B.3.

¹¹ See the discussion of *strict liability* later in this introduction.

of shortages. Conversely, we may report shortages as FFRs if a government's controls are not in place or are inadequate.¹²

3. Due but Not Collected

Public money that is due a public office but which has not yet been collected may also be subject to a finding for recovery. Money may become due the public office by operation of statute, by contract, or by court order. The decision as to whether a particular obligation is sufficiently overdue to justify the issuance of a finding for recovery requires judgment based upon the facts of an individual audit. Auditors should consult with and seek advice from the Legal Division and the Center for Audit Excellence prior to pursuing/working on the finding for recovery. In general, amounts are to be considered overdue and a proper subject for a finding for recovery if they have been outstanding in excess of one year and are not the subject of either a statutory collection process or ongoing collection efforts by the client.

Findings for recovery for public money due but not collected are normally identified in the audit of the public office to which the moneys are due. In some circumstances, however, the information necessary to identify the obligation is available only in the records of the obligor. Where such circumstances exist, a finding for recovery is issued in the audit report of the obligor and in favor of the obligee. For example, if a village is not collecting statutory fees for remittance to the State, a finding for recovery for the amounts in question may be issued against the village and in favor of the State in the village's audit report.

The citation justifying the findings for recovery for public money due but not collected should include not only statutes or regulations, but also the document evidencing the underlying obligation.

4. Public Property Converted or Misappropriated

A finding for recovery for public property converted or misappropriated should be issued only if the auditor has substantial evidence that a theft has occurred. This would include the ability to identify the individual responsible for the loss. Before any finding for recovery of this type can be issued, it is essential that the advice of legal counsel be obtained. If such circumstances arise during an audit, direct the matter to the AOS Legal Division for resolution.

In most instances, the auditor can only demonstrate that certain property was acquired by the client, and at the time of the audit it cannot be located. Under such circumstances, a finding for recovery may not be appropriate. A noncompliance citation should be issued instead, citing Ohio Rev. Code Section 117.28, stating the relevant facts, and indicating that the property may have been converted or misappropriated.

NOTE: Generally, no contract (including an acquisition subject to Ohio Revised Code competitive bidding requirements) may be awarded to a person or entity against whom a finding for recovery has been made if this finding is unresolved (per Ohio Rev. Code Section 9.24 (A)). Ohio Rev. Code Section 9.24 (D) requires the Auditor of State to maintain a database, accessible

¹² See *Best Practices in Cash Handling* in the AOS' Fall, 2007 *Best Practice* publication. You can view this article under the Publications link at www.ohioauditor.gov

to the public, listing persons against whom an unresolved finding for recovery has been issued, and the amount of the money identified in the unresolved finding for recovery. The Auditor of State currently has this database operational and updates the database periodically in accordance with Ohio Rev. Code Section 9.24 (D). AOS Bulletins 2003-009 and 2004-006 provide further guidance regarding this law.

Issuing Findings for Recovery Before and/or After the Audit Period

Audit engagements are for specified time periods as reflected in the auditor's letter of engagement. The great majority of findings for recovery are therefore based on transactions that have occurred within the period that is currently under audit. Extenuating circumstances may arise which lead auditors to test before and / or after the audit period; however, this is not standard practice.

Determining whether to review transactions and/or issue findings for recovery for transactions that occurred prior to or subsequent to the current audit period requires judgment based on factors such as:

- Suspected or known fraud
- Significant fraud risk factors that are associated with the current finding for recovery
- The magnitude of the finding for recovery
- Judgment as to whether the finding for recovery was an error or deliberate
- Appropriate client requests – careful consideration needs to be given on the type of request, the timing of the request, the purpose of the request, and the documentation given to substantiate the request
- If requested by the AOS Special Audit Task Force to review issues that arise outside the audit period
- The governing authority's involvement in the circumstances surrounding the issue, and its ability to correct the issue on its own
- The impact of information that has come to the auditor's attention involving transactions subsequent to the audit period on the entity's financial condition and whether prudence dictates review of the transactions prior to the next audit.

Since there are numerous variables affecting this determination that will be unique to each finding for recovery, the regional Chief Auditor should consult with the Chief Deputy Auditor or his designee *prior to testing outside of the audit period* to pursue a finding for recovery.

Additional Policies for Findings for Recovery for Auditor of State Audits

If the auditor preliminarily determines to issue a finding for recovery, the auditor should draft the proposed finding and send it, along with all factual information pertinent to the proposed finding, to the Legal Division for review. The Legal Division reviews the proposed finding in the Legal Consultation program folder of the applicable TeamMate project. The Legal Division will approve the Proposed Finding as is, approve with modifications, disapprove, or request more information be submitted by the auditor to evaluate the proposed finding. Once approved by the Deputy Chief Legal Counsel in the Legal Division, the auditor should send draft GAGAS findings to the Center for Audit Excellence for review. The Center for Audit Excellence will also approve the finding's conformance with GAGAS reporting requirements.

If the Legal Division and the Center for Audit Excellence approve the proposed finding, the auditor should immediately prepare and send a *Notice of Proposed Finding for Recovery* to the Legal Division for review (a sample is provided on the second following page). This notice provides the person against whom the finding is contemplated an opportunity to rebut the allegations. The notice must include the language of the finding for recovery from the report and must be factually specific and detailed enough to allow the persons to understand the allegations made against them.

The notice also must state that the individual has five business days in which to respond in writing to the proposed finding. That five-day period may be extended in rare circumstances, but only upon approval of the Auditor of State, the Chief Deputy Auditor, the chief auditor (or equivalent), or the Legal Division. The notice should be sent to the individual sufficiently in advance of any post-audit or exit conference so that he or she has time to respond and so that the Auditor of State's Office has time to withdraw or modify the finding before that conference, if necessary.

If the person against whom the finding is contemplated responds within the time allowed with something other than a general denial of responsibility, the auditor should evaluate the response. If the auditor believes the response has merit, the auditor should submit it to the Legal Division for consideration. If after the evaluation, the decision is made to delete the proposed finding from the draft report, the person should be notified of that decision. If the decision is made to retain the finding, the individual should be notified of the opportunity to attend the exit conference or to schedule a separate meeting to discuss the finding.

Post-Audit Conference Procedures

After the individual's response to the notice is evaluated and a decision is made to delete it, retain or modify the finding, the post-audit conference may be held. Under Ohio Rev. Code § 121.22(D), conferences between auditors and the audited public office are an exception to the "Sunshine Law" requiring meetings of public officials to be in public. In addition, under Ohio Rev. Code § 117.26, reports this Office prepares are not public records until certified copies of them are served upon certain officials of the public office. To comply with those two confidentiality provisions, this Office has traditionally held that the auditors conducting the post-audit conference have some discretion as to who may attend it. For example, auditors would

have discretion not to conduct a post-audit conference if one of the public officials present invited the media to the conference.

If the person against whom the finding is contemplated is a public official or employee who would normally attend a post-audit conference (for example, the public office's chief financial officer, the chief executive officer, or the governing board or commission), the proposed finding may be discussed during the conference. If the person is an official or employee who would not ordinarily be present at a post-audit conference or the person is not an official or an employee of the public body, a separate meeting may be scheduled to discuss the proposed finding. In either situation, the person against whom the finding is contemplated may have legal counsel present. If so, the auditor may request that a lawyer from the Legal Division attend as well. In this meeting, the person against whom the finding is contemplated and/or his legal counsel may inspect (but not copy) the audit documentation related to the finding at issue.

The letter scheduling the post-audit conference should state the public body will have five business days after the conclusion of the conference to respond to the draft report presented. This period may also be extended upon approval of the Auditor of State, the Chief Deputy Auditor, the chief auditor (or equivalent), or the Auditor of State's Legal Division. If the public body's response after the post-audit conference contains any information questioning the validity or the amount of the proposed finding for recovery, the auditor, in consultation with the Legal Division, should evaluate the response and determine whether the finding should be maintained, deleted, or modified.

Notice of Finding for Recovery

Note: Do not send a final *Notice of Finding* if the Finding for Recovery has been repaid; however, a *Notice of Proposed Finding* should still be sent to the appropriate individual(s).

When the Clerk of the Bureau certifies an audit report for release, unless the finding has been repaid, the regional office shall send separate copies of the approved *Notice of Finding* (a sample is provided on the second following page) to each individual named in the Finding for Recovery¹³ and the bonding company(ies). In addition, a copy of the *Letter on Findings for Recovery* should be sent to the entity's statutory legal counsel. If the statutory legal counsel is not the county prosecutor, then the *Letter on Findings for Recovery* should also be sent to the county prosecutor.

An example of the *Notice of Finding* and the *Notice of Proposed Finding* follow. Note they are the same, except the title and the language changes to reflect whether the Finding for Recovery is proposed or issued. Also, an example of the *Letter on Findings for Recovery* follows the *Notice of Finding letter*.

¹³ IPAs follow different procedures. See the *Finding for Recovery Procedures for Independent Public Accountants (IPA)* discussion later in the Introduction.

Sample NOTICE OF (PROPOSED)¹⁴ FINDING

DATE

To: NAME
STREET ADDRESS
CITY, Etc.

The Auditor of State [**is auditing**] [has audited] Washington Township, Sandusky County for the period January 1, 200X through December 31, 200X +1.

Ohio Rev. Code 117.28 requires the Auditor of State to issue a finding for recovery when “an audit report sets forth that any public money collected has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected, or that any public property has been converted or misappropriated...”

A “Finding for Recovery” [**may be**] [**has been**] issued against you. Issuance of a Finding for Recovery constitutes a preliminary determination by the Auditor of State, in accordance with Ohio Revised Code Section 117.28, that you may be liable to a public office for SELECT ONLY THE APPLICABLE CATEGORIES>>> public monies illegally expended; collected but unaccounted for; due but not collected; for public property which has been converted or misappropriated. It does not constitute a final determination that such legal liability exists and is not an accusation of criminal misconduct. The [**proposed**] Finding for Recovery **would** / **will** be issued against you INSERT ANY OTHER RESPONSIBLE PARTIES, SUCH AS>>> [and your bonding company and/or NAME OF OTHER RESPONSIBLE PERSON, jointly and severally,] and **would** / **will** be in the amount of \$XXX, and in favor of _____.

We are **proposing** / **issuing** this Finding for Recovery for the following reason:

The Township Trustees approved NAME’s salary at \$XX.XX beginning [DATE] (\$XX.XX [PREVIOUS SALARY AND EFFECTIVE DATE]). Overtime pay at time and a half would be \$XX.XX for 200X (\$XX.XX for hours worked during the first pay of 200X at the 200X-1 rate). For the payroll checks issued 1/13/0X, 1/28/0X, 2/11/0X, 2/25/0X, 3/10/0X, 3/25/0X, and 5/27/0X Mr. NAME was paid \$XX.XX for overtime wages. Review of time sheets and payroll records indicated XX hours of overtime worked in 200X (XX hours in 200X-1). As a result, an overpayment of \$XX.XX occurred.

<u>Description</u>		<u>Rate</u>		<u>Total</u>
XX hours of overtime	x	\$X.XX per hour	=	\$ XX.XX
XX hours of overtime	x	\$X.XX per hour	=	XX.XX
				\$XX.XX
XX total hours of overtime paid	x	\$X.XX per hour	=	\$XX.XX
Overpayment				\$ X.XXX

¹⁴ This example is both for proposed and approved findings for recovery. The **bold** red font language applies to **proposed** notices of findings. However, do not use red font in the letter you issue!

Notice of Proposed Findings
July 14, 2009
Page 2

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public monies illegally expended **may be / is** hereby issued against NAME in the amount of \$XXX.XX, and in favor of NAME OF GOVERNMENT NAME OF Fund, in the amount of \$XXX.XX.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.* (1929), 120 Ohio St. 47; 1980 Op. Att’y Gen. No. 80-074; Ohio Rev. Code Section 9.39; *State, ex. Rel. Village of Linndale v. Masten* (1985), 18 Ohio St.3d 228. Public officials controlling public funds or property are liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen to the extent that recovery or restitution is not obtained from the persons who unlawfully obtained such funds or property, 1980 Op. Att’y Gen. No. 80-074.

Township Officers signed the warrants resulting in improper payments. Township Trustees NAME, NAME, NAME, and Fiscal Officer NAME, and their bonding company, NAME, will be jointly and severally liable in the amount of \$XXX and in favor of the NAME OF FUND to the extent that recovery is not obtained from NAME.

[If a Finding for Recovery were to be issued, the] [The] Auditor of State **[would be]** [is] required, under Ohio Revised Code section 117.28, to forward a copy of the audit report containing this Finding For Recovery to the statutorily designated legal counsel for the public office, who then has the discretionary authority to institute legal proceedings to collect the amount alleged to be due the public office. Under certain circumstances such action might also be instituted by the Attorney General of the State of Ohio. If legal counsel does not pursue legal proceedings, the Finding For Recovery will be considered to be a debt owed to a public office and will be certified to the Attorney General of the State of Ohio for collection.

In the event the Finding For Recovery is certified to the Ohio Attorney General for collection, collection costs, statutory interest and fees may be assessed and added to the total amount of the finding in accordance with Ohio Revised Code section 131.02. Once certified, the Ohio Attorney General will assign the matter for collection and may hire special counsel to collect the debt as authorized by Ohio Revised Code section 109.08. Prior to certification, you may pay the debt directly to the public office, and it is requested that you provide copies of such payment to the Auditor of State, Legal Department, 88 East Broad Street, Columbus, Ohio 43215, or to denise.carr@aos.state.oh.us. After certification, payments must be sent to the Ohio Attorney General.

DELETE THIS PARAGRAPH FROM NOTICES SENT TO BONDING COMPANIES>>> In addition, pursuant to Ohio Revised Code section 9.24, a person against whom an unresolved finding for recovery has been issued by the Auditor of State is precluded from receiving, from a state agency or political subdivision, a contract for goods, services, or construction, paid for in whole or in part with state funds. (This preclusion does not apply to employment contracts.)

This “Notice of Proposed Finding for Recovery” has been prepared to permit you to submit any relevant information to this office for consideration. Please submit such information, as well as any questions concerning this Proposed Finding for Recovery, within five business days of receiving this Notice, to the Auditor of State at the following address:

**GOOD GUY, CPA
Senior Audit Manager**

AOS OFFICE ADDRESS

If you wish to review the working papers on which the Proposed Finding is based, please contact me immediately to schedule an appointment. Reviewing the working papers, however, will not result in an extension of the time in which to respond.

Sincerely,

Dave Yost
Auditor of State

Draft Letter on Findings for Recovery

[Date]

[Name of legal counsel to public office]

[Title]

[Agency/Company Name]

[Street Address, PO Box]

[City, State Zip]

Re: **Audit of [Name of Entity]**
Released on [Date]

Dear [Name]:

Enclosed please find a certified copy of the audit report in the above captioned matter. During our audit, we found expenditures of public money that are subject to recovery under Ohio Rev. Code Section 117.28, which states, in part:

Where an audit report sets forth that any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected, or that any public property has been converted or misappropriated, the officer receiving the certified copy of the report...may, within one hundred twenty days after receiving the report, institute civil action in the proper court in the name of the public office to which the public money is due or the public property belongs for the recovery of the money or property and prosecute the action to final determination.

Although this statute references a 120 day period for your office to notify the Ohio Attorney General in writing of any legal action taken, if you intend to pursue such action, you must notify the Auditor of State within 30 days after the date of this letter. Within that period, please contact Denise Carr, Office Manager, Legal Division, at (614) 728-7116 or by e-mail at DLcarr@ohioauditor.gov. If we do not receive notice from your office within 30 days, the Finding For Recovery will be certified to the Attorney General for collection. Upon

certification, collection costs, statutory interest and fees may be assessed and added to the total amount of the finding in accordance with Ohio Revised Code section 131.02. Once certified, the Ohio Attorney General will assign the matter for collection and may hire special counsel to collect the debt as authorized by Ohio Revised Code section 109.08.

In the event that you are pursuing a payment plan with the debtor, please contact the Auditor of State. Upon receipt of an acceptable payment plan that includes appropriate terms and conditions, the Auditor of State will not certify the Finding For Recovery to the Ohio Attorney General. This will avoid the collection process and associated costs.

The enclosed audit includes the following findings for recovery:

[Details of who, what, amount, any other relevant information and total amount to be recovered]

Pursuant to Ohio Revised Code Section 9.39, public officials are liable for all public money received or collected by them or by their subordinates under color of office. (See, e.g., AOS Bulletin 2008-006). Even if a referral does not include a finding for recovery against the office holder or other persons employed by the public office acting in a supervisory capacity, please be advised the Ohio Attorney General or appointed legal counsel is not precluded from naming those persons in an action for recovery. The policy reasons behind making public officials accountable for the funds that they receive include the need to prevent frauds against the public, to protect public funds, and to place final responsibility for public funds on the shoulders of the officials charged with the collection and care of such funds. *Village of Linndale v. Maston* (1985) 18 Ohio St.3d 228.

Thank you for your attention to this matter.

Sincerely,

Dave Yost
Auditor of State

[name]
Chief Auditor
[region] Region

cc: _____ Legal Division, Attention: Denise Carr
_____ County Prosecutor

Additional Considerations

- Where a proposed finding for recovery has been paid in whole ~~or in part~~ prior to the completion of the audit, the audit report finding should disclose the repayment as a “Finding for Recovery Repaid Under Audit.”
- The Auditor of State does not generally issue Findings for Recovery where the amount in question aggregates¹⁵ ~~\$100~~ \$500 or less. However, auditors should consult on all potential findings for recovery, regardless of the amount, the matter in the management letter with the legal department and the Center for Audit Excellence (prior to pursuing) because in some cases, findings for recovery will be issued for amounts less than \$500. (Example: disbursing public money for alcohol will always result in a finding for recovery per Bulletin 2003-05). ~~Amounts aggregating more than \$100~~ All findings for recovery are to be reported in the GAGAS report due to their qualitative significance. (Exception: disbursing public money for alcohol will always result in a finding for recovery and be reported in the GAGAS report per Bulletin 2003-05.) Additionally, all findings for recovery are subject to the documentation requirements listed in AOS Audit Division Advisory Memo 2012-01. ~~–Potential findings for recovery that are not deemed findings for recovery during the consultation process due to falling below the amount threshold, will be reported in the Management Letter as non-compliance citations (not findings for recovery).~~
- If a government identifies a finding for recovery *before* the auditors do and the entity or individual repays the money before the audit report is issued, the auditor should not report the matter as a Finding for Recovery. However, the auditor should evaluate the issue for other possible matters of audit interest, such as the possibility of fraud or reportable internal control weaknesses. Also, the matter might be a citation for an illegal expenditure of money or other violation of law. Conversely, the entity’s identification and resolution of the matter may indicate the internal control structure is properly detecting and correcting errors, in which case the auditor might determine not to report the matter.
- The auditor should determine the amount of a finding for recovery during audit field work. The method used to calculate the amount must be clearly set forth in the working papers. Any partial payment or reimbursement made prior to completing the audit should be noted in the audit report with appropriate credit given when calculating the amount.
- If a finding for recovery is issued because public property has been converted or misappropriated, the amount of the finding should reflect the fair market value of the property at the time that it was discovered to be missing. The basis for determining this amount must be disclosed in the working papers.
- Where the amount of the finding for recovery may change prior to or after the release of the audit report, the auditor should date the amount. Example: "As of December 31, 20XX, this amount is \$X,XXX." In these instances, the method of calculating the amount should be stated in the audit report so that the amount can be calculated on the day of repayment.

¹⁵ For example, if five employees were all overpaid (for the same cycle-payroll for example) and they were each overpaid by \$100, then we would issue a finding for recovery because the payroll cycle had an aggregate of \$500 in findings for recovery (5 X \$100).

Finding for Recovery Procedures for Independent Public Accountants (IPA)

Ohio Rev. Code 117.12 prohibits IPAs from issuing Findings for Recovery. IPAs should report these matters exceeding ~~\$100~~500 (and any alcohol purchase and other findings for recovery determined by the Auditor of State, ~~even if less than \$100 regardless of amount~~) as noncompliance findings, but they should not label them as *finding for recovery* and the finding should not state: “In accordance with the forgoing facts, and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public money collected but not accounted for (or illegally expended, etc.) is hereby issued against . . .”¹⁶

The following procedures apply to IPAs in instances where they determine a finding for recovery may be necessary.

- An IPA should NOT inform anyone other than the Auditor of State of possible Findings for Recovery either orally or in writing.
- As soon as the IPA has an indication there could be any Findings for Recovery, regardless of the amount, the IPA should contact the regional chief auditor.
- The IPA should provide the regional chief auditor with all relevant supporting audit documentation for the Finding.
- ~~After notifying the Chief Auditor of the Center for Audit Excellence that a finding for recovery may be issued, the regional chief auditor or his designee will prepare a preliminary Finding, and submit it to the Auditor of State Legal Division for review. Once the regional chief becomes aware of the potential Finding for Recovery, the regional chief should follow Advisory Memo 2012-01 which requires all potential Findings for Recovery, regardless of amount, to be reviewed by Legal and the Center for Audit Excellence. When submitting potential Findings for Recovery related to an IPA Report to the Center, please submit the information to your assigned regional Center consultant. When the Center consultant responds to the Region on a potential Finding that is related to an IPA audit, the assigned Center consultant will carbon copy the IPAREport mailbox (ipareport@ohioauditor.gov) with the resulting action. This will allow the matter to be identified for follow up during the review of the IPA audit report.~~
- The Legal Division and the Center will review the potential Finding and if it is determined that a Finding will be issued, the regional chief will submit all needed supporting documentation and the Notice of Proposed Findings letters to the Legal Division.
- The Legal Division will review the proposed Finding and may ask the regional chief auditor or the IPA for additional information.

¹⁶ This is to comply with RC Section 117.12 which states, “IPAs have no authority to make formal findings of illegality, malfeasance, or gross neglect under this division or section 117.23 of the Revised Code.”

- After the Legal Division has approved the Finding, the regional chief auditor or his/her designee will obtain the limited waiver from the IPA¹⁷ and send the *Notice of Proposed Finding* to all applicable parties. The applicable parties are normally given five days to respond. If they respond, the chief auditor evaluates the response along with the Legal Division and decides whether to withdraw or modify the Finding.
- The regional chief auditor will send a copy of the approved finding to the Chief Auditor, Center for Audit Excellence or his designee for inclusion with the Acceptance Letter and send the *Notice of Finding* to the applicable parties upon releasing the report.

IPAs should refer any matters involving possible criminal activities to the regional chief auditor and to the Chief of the Auditor of State's Special Investigations Unit, who is a law enforcement officer.

In addition, independent public accountants are to make an immediate, written report of all illegal acts or indication of illegal acts which may result in findings for recovery of which they become aware to the regional chief auditor.

Example Findings for Recovery

An example *finding for recovery* is included below:

Receipts issued for impounding fees by the County Dog Pound and Dog Warden totaled \$1,234 more than deposits made to the County Auditor. Ohio Rev Code Section 9.39 states all "public officials are liable for all public money received or collected by them or by their subordinates under color of office."

In accordance with the forgoing facts, and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public money collected but not accounted for is hereby issued against John Doe, County Dog Warden, and the Ace Insurance Company, his bonding company, jointly and severally, for \$1,234 and in favor of the County Dog and Kennel Fund.

(Note: Per the preceding discussion, IPAs would modify this finding by deleting the second paragraph and instead stating, for example, "We have referred this matter to the Auditor of State for resolution.")

Responsibility for Paying Findings for Recovery: Strict Liability Laws

Public officials are strictly liable to account for public funds entrusted to their care. "Strict liability" means a person may be found liable for the loss even though he or she may not have been personally at fault. Also, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure is made is strictly liable for the amount of such expenditure. Mere unidentified shortages of public

¹⁷ NOTE: ORC 4701.19 provides that an IPA's audit documentation remains the property of the IPA, even in the possession of the Auditor of State's office, and states that these materials are not public records available for public disclosure. However, we will request a limited waiver of this statutory provision after the AOS Legal Department has approved the proposed finding for recovery. This limited waiver will request the IPA to make audit documentation supporting the proposed finding for recovery available for inspection by the person named in the finding and legal counsel. This waiver will include only documentation directly related to the finding for recovery. Documents subject to the waiver will also become subject to public records disclosure.

moneys, or such an illegal expenditure, are sufficient reasons for a Finding for Recovery against such a public official.

Thus, public officials (including fiscal officers) must be aware of their role in approving expenditures and safeguarding amounts collected, and take steps to prevent mistakes, errors or omissions resulting in the loss of public funds. In the context of an AOS audit, both the supervising/approving officer or employee and the fiscal officer may be liable for such losses, and may therefore be included as a party liable for repaying a *finding for recovery*, even if they did not personally account for the transaction. The Auditor of State issued Bulletin 2010-01 clarifying this policy for county officials. However, general concepts included in the Bulletin apply to all public offices.

When a public official (including fiscal officers) is named in a finding for recovery based on the strict liability laws, auditors should modify the wording of the Finding accordingly. An example follows:

Joe's Service Business, Inc. improperly submitted invoices for, and had expenditures paid on its behalf, of \$125,000 in excess of the amounts City's Council authorized.

In accordance with the forgoing facts, and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public money illegally expended is hereby issued against Joe's Service Business, Inc. and in favor of the City of Anyplace, in the amount of \$125,000.

Fifteen thousand dollars of the net expenditures of \$125,000 illegally paid to, or on behalf of, Joe's Service Business occurred when Jim Smith was the City Finance Director, and \$110,000 of these net illegal expenditures occurred when Bill Wilson was the City Finance Director.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure is made is strictly liable for the amount of the expenditure. Seward v. National Surety Corp., 120 Ohio St. 47 (1929); 1980 Op. Atty Gen. No. 80-074; Ohio Rev. Code Section 9.39; State, ex.rel. Village of Linndale v. Masten, 18 Ohio St. 3d 228 (1985). Public officials controlling public funds or property are liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen to the extent that recovery or restitution is not obtained from the persons who unlawfully obtained such funds or property, 1980 Op. Atty Gen. No. 80-074.

Jim Smith and Bill Wilson and their bonding company Ace Insurance Corp. will be jointly and severally liable in the amount of \$15,000 and \$110,000, respectively, and in favor of the City of Anyplace ~~to the extent that recovery is not obtained from Joe's Service Business, Inc.~~

Note: The Strikeout above results from AOS Bulletin 2010-01.

Referring Audit Reports

When an audit report includes a noncompliance citation which falls under the jurisdiction of a particular state agency, it often is desirable to refer a copy of the released audit report to the agency. Reports may also be referred to the Attorney General under the authority of Ohio Rev. Code Section 117.42, which empowers the Attorney General, at the request of the Auditor of State, to undertake appropriate action to secure compliance with the laws by a public office.

Ohio Rev. Code Section 117.27 also requires the Auditor of State to provide a certified copy of the audit report to any officer required by state law, municipal or county charter, or municipal ordinance to act as legal counsel to the officers of the public office. If no officer is required by state law, municipal or county charter, or municipal ordinance to act as legal counsel, a copy shall be filed with the prosecuting attorney of the county within which the fiscal office of the public office is located. Field auditors who prepare reports containing Findings for Recovery and forward it together with a copy of the certified audit report to the appropriate statutory legal counsel or the local prosecutor's office.

Referring Findings for Recovery to the Attorney General

Ohio Rev. Code Section 117.28 requires the Auditor of State to notify the Attorney General of Findings for Recovery, whether or not repaid before the audit report's release. ~~Letters are automatically sent by the Auditor of State's office when Findings for Recovery are reported during report submission. Findings for Recovery identified by IPAs are included in the AOS certification instead of the IPA's report since IPAs do not have the authority to issue Findings for Recovery. Field auditors who prepare reports containing Findings for Recovery and Quality Assurance staff who certify IPA reports containing Findings for Recovery, should prepare a letter, substantially in the following form, for the Auditor of State to sign upon release of the reports:~~

~~[Date]
The Honorable [Name of Attorney General]
Attorney General of the State of Ohio
30 E. Broad St.
Columbus, OH, 43266-0410~~

~~Re: Findings for Recovery in an Audit Report~~

~~Dear Attorney General [last name]:~~

~~Attached is a copy of the audit report of [entity] for the year ended [date]. The Auditor of State filed certified copies of this audit report with the public officials listed in Ohio Revised Code Section 117.26. Pursuant to Ohio Revised Code Section 117.28, **we electronically distributed certified copies of this audit report to you [use if audit report is sent electronically] or** we are providing you a copy of this audit report **[use if hard copy of the audit report is sent]** because it includes a Finding for Recovery. In addition, we sent a certified copy of the report to [entity]'s legal counsel as required by Ohio Revised Code sections 117.27 and 117.28.~~

~~If you have any questions, or if you need further information, please contact the Auditor of State's Legal Division at 614-752-8683.~~

Very truly yours,

Mary Taylor, CPA
Auditor of State

~~Referrals to the Attorney General, involving matters other than Findings for Recovery, will be limited to situations involving gross malfeasance, repeated serious material budgetary violations, or any unusual noncompliance items that warrant legal action, and may only be done by the Legal Division.~~

Referrals to the Ethics Commission, Other State Agencies, and the IRS

Ethics Commission Referrals

All potential “~~consequential~~” ethics law violations are to be submitted to the Auditor of State Legal Division. After review, the Auditor of State Legal Division will make appropriate referrals. The Audit Division should consult with the Legal Division in determining how or if to report this matter.

IRS, Ohio Department of Taxation, and OPERS Comments

The Internal Revenue Service, the Ohio Department of Taxation, and the Ohio Public Employees Retirement System have requested that we notify them when AOS issues reports (in the case of the IRS and Taxation, also management letters) containing comments or findings pertaining to their respective agencies. The Auditor of State has agreed to these requests. Auditors and the Center for Audit Excellence should send a copy of the released report or management letter, including the number of the finding related to the referral to Referrals@auditor.state.oh.us. The Center for Audit Excellence division will notify these agencies via email based upon being informed by either Auditor of State regional auditors or the Center for Audit Excellence division that such reports (or management letters) exist.

Referrals to Other Agencies

When referring an audit report to any other State or Federal agency, the regional audit office will prepare and send the referral. The Regional office will also notify the Auditor of State’s Legal Division of the referral prior to sending the referral. The regional office should retain a copy of the cover letter. Currently, there is no requirement to send referral to School Employees Retirement System, School Teachers Retirement System and Ohio Police & Fire. We should also not send a referral letter when (1) the audit report already describes the problem and (2) we are certain the person we are sending the letter to is on the audit report distribution list. For example, OMB Circular A-133 already requires sending a copy of the audit report to cognizant or oversight agencies.

Questions and Comments

The Auditor of State welcomes comments and suggestions on the *Ohio Compliance Supplement*. Please submit them through:

<http://www.ohioauditor.gov/Contact/Default.htm>

CHAPTER 1

BUDGETARY AND CERTAIN RELATED REQUIREMENTS

The Ohio Constitution provides certain local governments the power to tax. The budgetary process is a plan to coordinate expenditures and resources. The State Legislature has adopted laws to control expenditures using tax budgets and appropriations.

The Auditor of State believes budgeting, properly used, provides the most important monitoring control a government has. *It is impossible to incur a cash deficit if a government complies with the budgetary law!* Additionally, the budget is an instrument of public policy: A governing board expresses its desires for using a government's limited resources through its appropriations.

Appendix C to the *Ohio Compliance Supplement* includes Ohio Rev. Code 5705 (i.e., the budget law) definitions of "subdivision," "taxing authority," and "taxing unit." You should refer to these definitions from Ohio Rev. Code Section 5705.01, to determine the applicability of Chapter 1 requirements to the entity you are auditing. Appendix F includes matrices showing the applicability of this chapter's requirements to various governmental types.

Interim¹ testing of budgetary compliance is no longer required. Auditors need only test for compliance such as (1) over expenditure of appropriation or (2) appropriating more than estimated resources as of the fiscal year end.

When testing compliance related to funds, such as whether appropriations exceeded estimated resources or budgetary expenditures exceeded appropriations, etc. consider the following:

- Material misstatements do not result directly from noncompliance. (Noncompliance normally requires disclosure as finance-related noncompliance, but does not require adjusting the budgetary financial presentation.)
 - Therefore, there is no need to obtain high assurance from this test (i.e. no requirement to test all or even most funds).
- We suggest you test the general and other major / large funds and perhaps rotate a few smaller funds each audit.
 - However, normally scanning the fund-accounting records and listing noncompliance as of year end is not time consuming. This should be a reliable test if evidence suggests the auditee accurately records all budgetary amendments into its accounting system, and if the system reports negative variances.
 - Also consider including funds for which we reported noncompliance in the prior audit.
- There is rarely a need to "recreate" the budget for all funds in the working papers. That is, we do not require a spreadsheet listing all funds' estimated resources, appropriations (and amendments thereto), receipts, disbursements, and encumbrances.

¹ "Interim" in this context means tests of selected calendar dates from within the audited year. It does not relate to whether the auditor performs the testing prior to the balance sheet date.

Legal Level of Budgetary Control

Government Accounting, Auditing, and Financial Reporting defines the “legal level of budgetary control” as “the level at which spending in excess of budgeted amounts would be a violation of law.” In Ohio, the legal level of control is the level at which the local government’s legislative authority passes the appropriation measure.

Ohio Rev. Code 5705.38(C) requires the following minimum level of budgetary control for “subdivisions” other than schools: “Appropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, division, and, within each, the amount appropriated for personal services.”

Ohio Administrative Code 117-6-02 requires schools to appropriate at least at the fund level. Governments may adopt more stringent legal levels of budgetary control if they wish.

Because Ohio Admin. Code 117-2-02(C)(1) permits governments to adopt more stringent legal levels of control than the aforementioned laws require, it is possible for the level to vary from entity to entity, or even from fund to fund within an entity. However, once established by the local government, the legal level of control should be the same throughout the fiscal year. As such, this is the level auditors should use to test compliance.

Governments following generally accepted accounting principles or an Other Comprehensive Basis of Accounting (OCBOA) must comply with the following budgetary presentation requirements from GASB Codification 2400.103 -- .105:

.103 Governments may present the budgetary comparison schedule using the same format, terminology, and classifications as the budget document, or using the format, terminology, and classifications in a statement of revenues, expenditures, and changes in fund balances. Regardless of the format used, the schedule should be accompanied by information (either in a separate schedule or in notes to RSI) that reconciles budgetary information to GAAP information, as discussed in this section and in Section 1700. Notes to RSI should disclose the budgetary basis of accounting and excesses of expenditures over appropriations in individual funds presented in the budgetary comparison, as discussed in Section 2300, "Notes to Financial Statements," paragraph .106.5 [NCGAI 6, ¶5; GASBS 34, ¶131; GASBS 37, ¶19]

.104 Where financial statements prepared in conformity with GAAP do not demonstrate finance-related legal and contractual compliance, the governmental unit should present such additional schedules and narrative explanations in the comprehensive annual financial report as may be necessary to report its legal compliance responsibilities and accountabilities. In extreme cases, preparation of a separate legal-basis special report may be necessary. [NCGAS 1, ¶12]
Comprehensive Annual Financial Reports

.105 The comprehensive annual financial report (CAFR) should include budgetary comparison schedules for individual nonmajor special revenue funds and other governmental funds of the primary government (including its blended component units). [NCGAS 1, ¶139 and ¶155, as amended by GASBS 14 and GASBS 34, ¶130]

There is no prescribed minimum for reporting budget-versus-actual information for governments using the Auditor of State’s cash-basis financial reports. These reports routinely present this

information at an aggregated level (i.e. combined fund type) as footnote disclosures. However, auditors should still test legal compliance at the legal level of budgetary control.

Other sources of Guidance: In addition to this OCS Chapter, Section D.IV of the AOS' *Ohio Township Handbook* and Chapter 3 of the AOS' *Village Officer's Handbook* include many questions and answers related to RC 5705 requirements. You can access these publications at www.ohioauditor.gov then click on *Publications*.

Also note: Virtually all Chapter 5705 requirements applicable to *subdivisions* apply to municipalities that have adopted a charter under Article XVIII, § 7 of the Ohio Constitution. (See 5705.01(A) & (B).)

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Section A: General Budgetary Requirements

1-1 Compliance Requirement: Ohio Rev. Code Section 5705.34 Certifying tax levies.

Summary of Requirement: Each taxing authority is to pass an ordinance or resolution to authorize the necessary tax levies. Each such authority is to certify the levies to the county auditor before October 1st (April 1 for school districts), unless a later date is approved by the tax commissioner.

If the government is a Township Board of Park Commissioners that is appointed by the Board of Township Trustees and oversees a Township Park District that contains only unincorporated territory, see Division (C) of Ohio Rev. Code Section 511.27.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Read the minutes to determine if the taxing authority has authorized the necessary rates and certified them to the county auditor on or before the required date.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

1-2 Compliance Requirement: Ohio Rev. Code Section 5705.36 Certification of available revenue.

Summary of Requirement: On or about the first day of each fiscal year, the fiscal officers of subdivisions and other taxing units are to certify to the county auditor the total amount from all sources available for expenditures from each fund in the tax budget along with any unencumbered balances existing at the end of the preceding year.

Except, a taxing authority shall *exclude* the following from unencumbered fund balances:

- Budget stabilization reserves [§ 5705.13, 5705.29(G)]
- Nonexpendable trust principal balances and any additions to principal not from the fund’s reinvested earnings [§ 5705.131]
- The balance in a township reserve balance account established under section 5705.132 of the Ohio Rev. Code.

The certification for a school district must separately show the amount of any notes and unpaid outstanding expenses that were due prior to June 30 which are to be paid from advancements of property tax settlement money.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Accounting system capable of recording estimates and comparing them to actual results • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files • Legislative and Management Monitoring • Comparisons or Reconciliations of Certified Amounts with Government's Books/Records • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Inspect the copy of the certificate retained by the subdivision showing the total amount from all sources which is available for expenditures and the balances existing at the end of the preceding year.

Through inquiry, knowledge of the client, and review of documents (such as the record of minutes and accounting ledgers), determine whether the client has established any of the reserve balance accounts, or nonexpendable trust funds described.

If reserve balance accounts or nonexpendable trust funds have been established, calculate or inspect the client's or budget commission's calculations that the certification excludes balances in those accounts/funds. (That is, these amounts are not available for appropriation.)

For school districts, calculate or inspect the client's or budget commission's calculations that the certification includes any spending reserve available for appropriation during the current fiscal year.

For school districts receiving an advance on the August property tax settlement, determine through inquiry, inspection of ledgers, vouching, or other such means, whether significant payments were made on notes or outstanding expenses which were due prior to June 30 (since some school districts routinely request advances to take advantage of short-term investment opportunities, you should consider whether these payments could have been made in the absence of the advance, without placing undue distress on the school district).

If such notes or outstanding expenses have been identified, compare the amounts to the amounts separately identified on the school district's copy of the certificate.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

1-3 Compliance Requirement: Ohio Rev. Code Section 5705.36—Amended Certificates

Summary of Requirements: 5705.36(A)(3) states that upon a determination by the fiscal officer of a subdivision that the revenue to be collected by the subdivision will be greater than the amount included in an official certificate and the legislative authority intends to appropriate and expend the excess revenue, the fiscal officer shall certify the amount of the excess to the commission, and if the commission determines that the fiscal officer’s certification is reasonable, the commission shall certify an amended official certificate reflecting the excess.

5705.36(A)(4) states that upon a determination by the fiscal officer of a subdivision that the revenue to be collected by the subdivision will be less than the amount included in an official certificate and that the amount of the deficiency will reduce available resources below the level of current appropriations, the fiscal officer shall certify the amount of the deficiency to the commission, and the commission shall certify an amended certificate reflecting the deficiency.

5705.36(A)(5) states that the total appropriations made during a fiscal year from any fund must not exceed the amount contained in the certificate of estimated resources or the amended certificate of estimated resources which was certified prior to making the appropriation or supplemental appropriation.

Ohio Rev. Code § 5705.36 does not require that municipal fiscal officers, school district treasurers and county auditors certify changes to the budget commission so as to obtain an amended certificate of estimated resources which matches actual resources for the year to the penny (a “zero variance”). Noncompliance citations with this provision should not be issued on the basis of a variance between amounts in the most recent amended certificate of estimated resources and the amount of actual resources, unless it appears that the fiscal officer knowingly disregarded a significant variance and that, had a “reduction” certificate been obtained, the effect would have been to prevent the making of expenditures or the incurrence of obligations in excess of actual resources.

Note: Approval by the budget commission is required for amended certificates; however, because of delays in the process, financial statements generally present amounts from the last certificate for which approval was requested prior to year end. In light of this, and consistent with guidance provided in AOS Bulletin 97-10, the Auditor of State’s Office will use the amounts listed on the last amended certificate of estimated resources requested during the fiscal year for determining compliance, and to support budgeted revenue in budgetary statements. That is, we will not consider amended certificates requested / approved after fiscal year end to be valid budgetary actions. Be aware, however, that noncompliance issues may be hidden by presenting the last requested certificate rather than the one in effect at the time the final appropriations were passed. Therefore, auditors may use the numbers on the report prepared by the government unless the final amended certificate was used to eliminate material violations.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Accounting system capable of recording estimates and comparing them to actual results • Reconciliations of amended certified amounts with amounts recorded in the 		

<p>accounting system</p> <ul style="list-style-type: none">• Policies and Procedures Manuals• Knowledge and Training of personnel• Tickler Files• Legislative and Management Monitoring• Management's identification of changes in laws and regulations• Management's communication of changes in laws and regulations to employees		
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Suggested Audit Procedures – Compliance (Substantive) Tests:

For selected funds, compare actual resources (i.e. beginning unencumbered fund balance + actual receipts) to appropriations as of the fiscal year end. If actual resources are less than appropriations, cite 5705.36 for not requesting a reduced certificate if it can be determined that the fiscal officer knew of the deficiency and it is material.

Inspect amended certificates of estimated resources for budget commission approval.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

1-3 Compliance Requirement: Ohio Rev. Code Section 5705.38 Annual appropriation measure.

Summary of Requirements:

5705.38(A) requires that on or about the first day of each fiscal year, an appropriation measure is to be passed. If the taxing authority wants to postpone the passage of the annual appropriation measure until an amended certificate is received from the county budget commission based upon the actual year end balances, it may pass a temporary appropriation measure for meeting the ordinary expenses until no later than April 1. This does not apply to school district appropriations.

5705.38(B) provides that a board of education shall pass its annual appropriation measure by the first day of October. If a school district's annual appropriation measure is delayed as permitted by law (see below), the board may pass a temporary measure for meeting the ordinary expense of the school district until it passes an annual appropriation measure.

As discussed in Auditor of State Bulletin 98-012 there are two circumstances when school district certificates/certifications would be issued after October 1:

- A certificate/certification would be issued after October 1 when a school district has borrowed against its spending reserve. This certificate/certification would not be issued until second half personal property taxes are settled.
- A certificate/certification would be issued after October 1 when the delivery of a tax duplicate is delayed under Ohio Rev. Code §323.17 because a subdivision in the county has placed a levy on the November ballot which, if approved, will go on the current tax list and duplicate.

If a school district is in either of these two situations, passage of the annual appropriation measure should be delayed until the necessary certificates/certifications are received.

Legal Level of Control: Minimum Requirements²

1. Ohio Admin. Code 117-2-02(C)(1) states in part: "The legal level of control is the level (e.g. fund, program or function, department, object) at which spending in excess of budgeted amounts would be a violation of law. This is established by the level at which the legislative body appropriates. For all local public offices subject to the provisions of Chapter 5705 of the Ohio Rev. Code, except school districts and public libraries, the minimum legal level of control is described in Section 5705.38 of the Ohio Rev. Code (**see 2 below**). For school districts, the minimum legal level of control is prescribed in Rule 117-6-02 of the Administrative Code (**See 3 below**). For public libraries, the minimum legal level of control is prescribed in Rule 117-8-02 of the Administrative

² **We should not recommend that governments adopt the highest level of control the statutes allows.** Appropriating at lower levels than the minimums the ORC or OAC require provides the legislative authority with more control over disbursements. However, appropriating at very low levels can significantly increase the volume of appropriation amendments requiring legislative approval as well as possibly requiring additional disbursement codes (more function, object codes, etc.). Conversely, appropriating at higher levels may simplify appropriation measures, but in doing so, the legislative authority effectively delegates more spending decisions to the fiscal officer. The legislative authority should choose the level of control it believes meets its needs to control expenditures. Also, the legislative authority may choose differing levels of control for different funds, *as long as they meet at least the minimum statutory requirements.*

- Code (**See 4 below**). The legal level of control is a discretionary decision to be made by the legislative authority, *unless otherwise prescribed by statute.*”
2. Ohio Rev. Code 5705.38(C) requires the following minimum level of budgetary control for “subdivisions” other than schools: “Appropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services.”³
 3. Ohio Admin. Code 117-6-02 prescribes the following for school districts’ legal level of control: At a minimum, appropriation measures shall be classified to set forth separately the amounts appropriated by fund. The appropriation measure as passed by the school board shall be the legal level of control. This is the level at which compliance with statutory budgetary requirements will be determined. **The AOS recommends that boards of education pass appropriations at a more detailed level. This is, however, a discretionary decision for the board of education based on the degree of control the board of education wishes to maintain over the financial activity of the school district.**
 4. Ohio Admin. Code 117-8-02 The library's legislative body shall adopt appropriation measures. These measures establish the legal level of control.
 5. Ohio Admin. Code 117-2-02(C)(1) also states in part: all local public offices should integrate the budgetary accounts, at the legal level of control or lower, into the financial accounting system. This means designing an accounting system to provide ongoing and timely information on unrealized budgetary receipts and remaining uncommitted appropriation balances.

Amounts / Funds Not Subject to Budgeting:

³ Staff should exercise judgment in determining whether to cite these governments. The following provides some guidance in determining this:

- Because OAC 117-6-02 permits school districts to use the fund as their level of budgetary control, we presume noncompliance will not be an issue for school districts.
- Working papers or management letters should have documented that we communicated the requirement. If management insists we did not previously communicate the requirement and we have no documentation supporting this communication, you can defer citing this deficiency for another year. However, please assure the current audit working papers and management letter document this communication.

Because other facts and circumstances may arise regarding this matter, or if you are unsure whether citing a taxing district for this matter is fair, please consult with your regional chief auditor. If the regional chief is unsure, they can present the facts and circumstances to their Accounting & Auditing Support representative.

- The nonexpendable principal of nonexpendable trust funds.⁴ Appropriating nonexpendable principal would authorize the fiscal officer to spend the principal in violation of the trust agreement. [5705.36(A)]
- Budget stabilization reserves [§ 5705.13, 5705.29(G)]
- The balance in a township reserve balance account established under section 5705.132 of the Ohio Rev. Code.
- For some time, AOS policy has been that agency funds do not require budgeting. Agency funds account for money a government holds in an agency capacity on behalf of another person or entity. Therefore, a government has minimal discretion in spending this money. Accordingly, the legislative body need not authorize a purpose for spending the money.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Accounting system capable of recording appropriations and comparing them to actual results • Reconciling appropriation totals to totals recorded in the accounting system. • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Read the minutes and determine if an annual appropriation measure has been passed by the required date.

If a school district has delayed adoption of an annual appropriation measure, discuss the reasons for the delay and trace to supporting documentation.

⁴ The ORC still refers to *nonexpendable trust funds*. Previously, GASB 34 ~~revised~~ required the fund types, ~~and now requires~~ classifying *nonexpendable trust funds* as either *private purpose trust* or *permanent funds*. See AOS Bulletin 2005-05. GASB 54 amended GASB 34 and now requires classifying amounts legally or contractually required to be maintained (e.g., the principal of a Permanent Fund) as Non-expendable Fund Balances (and Restricted Net Assets in entity-wide statements). See AOS Bulletin 2011-04. Private-Purpose Trust Funds, on the other hand, are not subject to GASB 54 fund balance classifications. GASB 34 and 54 do not affect this ORC requirement. That is, these ORC requirements ~~now~~ still apply to private purpose trust and permanent funds.

Scan appropriation measures to determine whether they meet at least the minimum legal level of control 5705.38(C) prescribes.

Determine if the accounting system “integrates” budgetary data at the legal level of control. This means the accounting system should report appropriations, encumbrances, unencumbered cash balances, and estimated receipts, and should compare budgetary data to actual results.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

1-4 Compliance Requirement: Ohio Rev. Code Section 5705.36 – Amended Certificates; 5705.39 - Appropriations limited by estimated resources.

Note: Auditors should not cite entities in Fiscal Emergency for violating ORC 5705.10, 5705.36, 5705.39 or ORC 5705.41 (A), (B) or (C) for funds that were already in a deficit at the time a Fiscal Emergency was declared.

Auditors should continue to cite entities for healthy funds (those with positive cash balances at the time of declaration) that experience a deficit after declaration⁵. Therefore, auditors should compare fund deficits during the audit period to the funds that were in deficit at the point when the Fiscal Emergency was originally declared to determine whether any new funds have incurred a deficit balance.

IMPORTANT: In order to determine which funds were in a deficit at the time of the declaration auditors should review the declaration of Fiscal Emergency available on the Auditor of State website audit search. The Financial Supervisor (LGS) can assist auditors determining which funds were originally part of the Fiscal Emergency deficit declaration, if needed.

Summary of Requirements: Ohio Revised Code Section 5705.39 provides in part that total appropriations from each fund shall not exceed the total estimated resources. No appropriation measure is effective until the county auditor files a certificate that the total appropriations from each fund do not exceed the total official estimate or amended official estimate.

Note: If a government fails to receive the county auditor's certifications that appropriations do not exceed estimated resources, governments may present the appropriations passed by the legislative authority on the financial statements. A noncompliance citation is still appropriate if the violation is material. However, no citation should be made if the government requested the county auditor's certificate and the county auditor failed to respond.

As discussed in Auditor of State Bulletin 97- 012, if a local government is participating in a grant or loan program whereby proceeds will be received after the expenditures are incurred, it is possible that if properly budgeted, appropriations for one fiscal year will exceed the available amount on the certificate of estimated resources. As discussed in OCS section 1-5, Ohio Rev. Code §5705.42 makes formal legislative appropriation for certain grants and loans unnecessary. As such, we believe it is equally unnecessary to require a subdivision to seek certification of the amended appropriation measure for purposes of Ohio Rev. Code §5705.39. However, the fiscal officer should record the appropriation amount in the accounting system and include the appropriated amounts on the (amended) certificate to properly monitor budget versus actual activity. An advance should be used to prevent a negative fund balance. (*School districts are permitted to incur deficit fund balances in their special funds under certain circumstances. Refer to OCS section 1-16 for additional guidance.*)

Project-Length Budgeting (*Refer to OCS step 1-8 for more information*)

As described in AOS Bulletin 97-12, once a grant is awarded or a loan is approved by the Federal or State government, the fiscal officer must obtain an Official Certificate of Estimated Resources or an Amended Certificate of Estimated Resources for all or part of the grant or loan, based on

⁵ In rare instances, complying with the recovery plan can cause violations of the 5705. In these instances, auditors should not cite violations of 5705 if they were necessary in order to comply with the recovery plan.

what is to be received in the fiscal year. Any money expected to be received in the next year should be reflected on the next year's certificate. However, if the local government, with the exception of a school district, has budgeted on a project-length basis pursuant to Ohio Rev. Code § 9.34(B), the fiscal officer must obtain an Official Certificate of Estimated Resources for the entire project-length fiscal period.

The fiscal officer shall record the appropriations in accordance with the terms and conditions of the grant or loan agreement. In addition, prior to recording the appropriations, the legislative authority must pass a resolution amending its appropriation measure (Ohio Rev. Code § 5705.40). If the grant or loan will be expended over a period longer than the current fiscal year, only the amount estimated to be obligated during the current fiscal year should be recorded as appropriated. The remainder of the project should be appropriated in the subsequent year(s).

In situations where the grant or loan proceeds will be received after the expenditures are incurred (i.e., on a reimbursement basis), it is possible that the local government will have appropriated an amount for one fiscal year that is in excess of the amount reflected as available on the Amended Certificate of Estimated Resources. This situation will NOT constitute a noncompliance citation during an audit.

As discussed in bulletin 1997-010, Ohio Rev. Code § 5705.36 provides, in part, that upon the determination by a municipal fiscal officer, school district treasurer or by a county auditor that the revenue to be collected by the municipality, school district or county, respectively, will be greater or less than the amount included in the current official certificate, the fiscal officer shall

[In the case of a school district] certify the amount of the deficiency or excess to the commission, and the commission shall certify an amended official certificate reflecting the deficiency or excess.

[In the case of a county or municipal corporation] certify the amount of the deficiency or excess to the [budget] commission, and if the commission determines that the [fiscal officer's] certification is reasonable, the commission shall certify an amended official certificate reflecting the deficiency or excess.

The total appropriations made during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources, or any amendment thereof, certified prior to the making of the appropriation or supplemental appropriation.

The intent of this statutory requirement is to require the fiscal officer to obtain such a "reduction" certificate when it appears that budgetary resources will fall short of earlier estimates, reducing the possibility that deficit spending will occur.

Ohio Rev. Code § 5705.36 *does not* require that municipal fiscal officers, school district treasurers and county auditors certify changes to the budget commission so as to obtain an amended certificate of estimated resources which matches actual resources for the year to the penny (a "zero variance"). Citations for noncompliance with this provision will not be issued by the Auditor of State's Office for circumstances outlined in Appendix C. Additionally, citations for noncompliance with this provision will not be issued by the Auditor of State's Office unless other budgetary violations are present under Ohio Rev. Code § 5705.39 or Ohio Rev. Code § 5705.41(B) (See OCS section 1-5).

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Accounting system reports deficit budgetary balances if appropriations exceed estimated resources • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files • Comparisons of Proposed Appropriations with Certified Estimated Revenues • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Compare the appropriation measures for selected funds and determine that the appropriations do not exceed the official or amended estimate of resources (estimated revenues plus unencumbered fund balances) as of the fiscal year end. You should base the extent of this testing on your evaluation of controls and the control environment. Audit documentation should describe your reasons for the extent of this test.

Except: if the government is in fiscal emergency, and you are testing a fund with a beginning unencumbered deficit, compare appropriations to estimated receipts instead of to estimated resources.

If the government is not in fiscal emergency, for funds in violation of 5705.39, compare actual resources (i.e. beginning unencumbered fund balance + actual receipts) to appropriations as of the fiscal year end. If actual resources are less than appropriations and do not meet any of the exceptions listed in Appendix C, also cite 5705.36 for not requesting a reduced certificate.

For grants or loans awarded by the Federal or State government, determine whether the entity implemented project-length budgeting pursuant to Ohio Rev. Code § 9.34(B). If so, determine whether the fiscal officer obtained an Official Certificate of Estimated Resources for the entire project-length fiscal period ~~or~~ and that only the amount estimated to be obligated during the current fiscal year was recorded as appropriated for advance-funded grants and loans. If the local government appropriated amounts beyond fiscal year end, determine whether the exception above was met (i.e. reimbursable grants or loans). (This step can be tested in conjunction with OCS step 1-8.)

Determine whether the county auditor sent a “does not exceed” certificate to the government. A noncompliance citation is appropriate if the violation is material; however, the government may present the appropriations passed by the legislative authority in the budgetary financial statements.

Auditors should not cite the government if a certificate was requested and the county auditor failed to respond.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

1-5 Compliance Requirements: Ohio Rev. Code Sections 5705.36; 5705.38; 5705.41 (A), (B), (C), and (D); and 5705.42 Restrictions on appropriating and expending money.

Note: Auditors should not cite entities in Fiscal Emergency for violating ORC 5705.10, 5705.36, 5705.39 or ORC 5705.41 (A), (B) or (C) for funds that were already in a deficit at the time a Fiscal Emergency was declared.

Auditors should continue to cite entities for healthy funds (those with positive cash balances at the time of declaration) that experience a deficit after declaration⁶. Therefore, auditors should compare fund deficits during the audit period to the funds that were in deficit at the point when the Fiscal Emergency was originally declared to determine whether any new funds have incurred a deficit balance.

IMPORTANT: In order to determine which funds were in a deficit at the time of the declaration auditors should review the declaration of Fiscal Emergency available on the Auditor of State website audit search. The Financial Supervisor (LGS) can assist auditors determining which funds were originally part of the Fiscal Emergency deficit declaration, if needed.

Summary of Requirements:

The authorization of a bond issue is *deemed an appropriation*⁷ of the proceeds of the bond issue for the purpose for which such bonds were issued. No expenditure shall be made from any bond fund until first authorized by the taxing authority. [Section 5705.41(A)].

Similarly, Federal and State grants or loans are “*deemed appropriated*” for such purpose by the taxing authority” as provided by law and shall be recorded as such by the fiscal officer of the subdivision, and is deemed in process of collection [5705.42].

No subdivision or taxing unit is to expend money unless it has been appropriated. [Section 5705.41(B)].

⁶ In rare instances, complying with the recovery plan can cause violations of the 5705. In these instances, auditors should not cite violations of 5705 if they were necessary in order to comply with the recovery plan.

⁷ “Deemed an appropriation” under this section means the Federal or State government has already appropriated and established the purpose(s) for which a government can spend monies received from Federal or State grants and loans. The taxing authority cannot deviate from this purpose; the taxing authority can only resolve to spend the money for a purpose already prescribed in a contract, grant agreement, loan agreement, etc. Therefore, Federal and State grants and loans received under Ohio Rev. Code Section 5705.42 *do not* require formal appropriation by the legislative body. In other words, Ohio Rev. Code Section 5705.42 effectively eliminates an unnecessary appropriation action by the taxing authority. However, Ohio Rev. Code Section 5705.42 directs the fiscal officer to *record* the appropriation amount in the accounting system. The fiscal officer should also include the appropriated amounts on the (amended) certificate to properly monitor budget versus actual activity. Note: Amounts “deemed appropriated” are subject to inclusion in GAAP budgetary presentations (GASB Cod. 2400.102). The government has no legal authority to spend these resources unless they were either appropriated by the legislative authority or deemed appropriated by the Federal or State government. (GASB Comprehensive Implementation Guide Q&A 7.91.14.).

No subdivision is to expend money except by a proper warrant drawn against an appropriate fund. [Section 5705.41(C)].

No orders or contracts involving the expenditure of money are to be made unless there is a certificate of the fiscal officer that the amount required for the order or contract has been lawfully appropriated and is in the treasury **or in the process of collection**⁸ to the credit of an appropriate fund free from any previous encumbrances. [Section 5705.41(D)].^{9 10}

Per 5705.41(D)(3), “Contract” as used in this section excludes current payrolls of regular employees and officers.

Note: See Appendix B following this chapter for examples of direct charges that do not require a certificate under 5705.41(D).

The statute provides the following exceptions to this basic requirement:

Then and Now Certificate: This exception provides that, if the fiscal officer can certify that both at the time that the contract¹¹ or order was made and at the time that he is completing his certification, sufficient funds were available or in the process of collection, to the credit of a proper fund, properly appropriated and free from any previous encumbrance, the taxing authority can authorize the drawing of a warrant. The taxing authority has 30 days from the receipt of such certificate to approve payment by resolution or ordinance. If approval is not made within 30 days, there is no legal liability on the part of the subdivision or taxing district.

Amounts of less than \$100 for counties, or less than \$3,000 for other political subdivisions, may be paid by the fiscal officer without such affirmation of the taxing authority upon completion of the "then and now" certificate, provided that the expenditure is otherwise lawful. This does not eliminate any otherwise applicable requirement for approval of expenditures by the taxing authority. [Section 5705.41(D)].

⁸ It is permissible to certify a purchase without sufficient cash “in the bank” if a government is reasonably certain cash will be on hand in time to pay the invoice when due (i.e. is “**in the process of collection**”). For example, the Ohio EMA disburses Homeland Security grants only when the local government certifies to OEMA they have an invoice on hand requiring payment. Since the government will receive OEMA’s cash in time to pay the vendor, the CFO can certify the acquisition even if there is no cash in the fund at the time of the certification. (This assumes there is sufficient appropriation for the payment).

⁹ Under ORC Sections 9.10, 9.11 and OAG Opinion 90-082, the fiscal officer need not manually sign each certification. Electronic or mechanical signatures are permissible. However, ORC Section 9.10 expressly prohibits using rubber stamp signatures. (We likely would not deem using a rubber stamp to be material noncompliance.)

¹⁰ ORC 3315.20 permits schools to incur a fund cash deficit in certain circumstances. See OCS step 1-18.

¹¹ Ohio Attorney General Opinion 87-069 concluded that when a government uses *Then and Now* certificates, they should charge the cost to the appropriation in effect at the time they incurred the obligation. For example, if a calendar-year government orders an item in December 2010, the government should charge the cost to 2010 appropriations, even if the fiscal officer signs a *Then and Now* Certificate in January 2011.

Continuing Contracts to be Performed in Whole or in Part in an Ensuing Fiscal Year: Where a continuing contract is to be performed in whole or in part in an ensuing fiscal year, only the amount required to meet those amounts in the fiscal year in which the contract is made needs to be certified. (1987 Op. Atty. Gen. 87-069).

Per Unit Contracts: Where contracts are entered into on a per unit basis, only the amount estimated to become due in the current fiscal year need be certified. (1987 Op. Atty. Gen. 87-069).

Contract or Lease Running Beyond the Termination of the Fiscal Year Made: Pursuant to Section 5705.44, Ohio Rev. Code, where a contract or lease runs beyond the termination of the fiscal year in which it is made, only the amount of the obligation maturing in the current fiscal year need be certified. The remaining amount is a fixed charge required to be provided for in the subsequent fiscal year's appropriations.

Payments made from the earnings of a public utility are exempted from the certification (and encumbering) requirements of Ohio Rev. Code section 5705.41(D). [Ohio Rev. Code section 5705.44 and 1987 OAG Opinion 421]. However, these payments are still subject to the requirements of Ohio Rev. Code section 5705.41(B).

The Attorney General, in 1987 Op. Atty. Gen. No. 87 069, has clarified the application of the exceptions set forth above. In summary, he has indicated that:

If a government subject to Ohio Rev. Code Section 5705.41 (D) enters into a continuing contract under which no goods or services will be delivered during the current fiscal year and payment will not be due until delivery, no amount need be certified as available during the current fiscal year. Pursuant to Ohio Rev. Code Section 5705.44, the amount remaining unpaid at the end of a fiscal year to become due in the next fiscal year must be included in the annual appropriation measure for the next fiscal year as a fixed charge.

If under a continuing contract it cannot be determined whether delivery of goods or services and the obligation to make payment will take place in the current or an ensuing fiscal year, the total amount due under the contract must be certified as available during the current year.

If under a continuing contract delivery of goods or services is to occur in the current fiscal year with the obligation to make payment deferred until an ensuing fiscal year, the amount required to meet the obligation for goods or services delivered during the current fiscal year must be certified as available in that fiscal year.

If a government subject to Ohio Rev. Code Section 5705.41 (D), enters into a contract that is not a continuing contract, the total amount due under the contract must be certified as available in the fiscal year in which the contract is made, regardless of when delivery of goods or services will be made or when payment will become due.

County Commissioner Authorization: A board of county commissioners, by resolution, may exempt purchases of \$1,000 or less from the prior certification requirement. The resolution must specify the dollar limit applicable to such purchases and whether it applies to all purchases, is limited to certain classes of purchases, or is limited to specific purchases. The board must notify the county auditor in writing of its intention to adopt such a resolution and the scope of the resolution. The county auditor has 15 days to comment on the resolution before it may be adopted by the board. Where such a resolution has been adopted, any person authorized to make

purchases, within 3 business days (or other time limit the commissioners resolve) of making a purchase exempted under the resolution, must file with the county auditor a written or electronic document stating the purpose, amount, appropriation line item and date of the purchase, and the name of the vendor.

As discussed in bulletin 1997-010, Ohio Rev. Code § 5705.36 provides, in part, that upon the determination by a municipal fiscal officer, school district treasurer or by a county auditor that the revenue to be collected by the municipality, school district or county, respectively, will be greater or less than the amount included in the current official certificate, the fiscal officer shall

[In the case of a school district] certify the amount of the deficiency or excess to the commission, and the commission shall certify an amended official certificate reflecting the deficiency or excess.

[In the case of a county or municipal corporation] certify the amount of the deficiency or excess to the [budget] commission, and if the commission determines that the [fiscal officer's] certification is reasonable, the commission shall certify an amended official certificate reflecting the deficiency or excess.

The total appropriations made during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources, or any amendment thereof, certified prior to the making of the appropriation or supplemental appropriation.

The intent of this statutory requirement is to require the fiscal officer to obtain such a “reduction” certificate when it appears that budgetary resources will fall short of earlier estimates, reducing the possibility that deficit spending will occur.

Ohio Rev. Code § 5705.36 *does not* require that municipal fiscal officers, school district treasurers and county auditors certify changes to the budget commission so as to obtain an amended certificate of estimated resources which matches actual resources for the year to the penny (a “zero variance”). Citations for noncompliance with this provision will not be issued by the Auditor of State’s Office for circumstances outlined in Appendix C. Additionally, citations for noncompliance with this provision will not be issued by the Auditor of State’s Office unless other budgetary violations are present under Ohio Rev. Code § 5705.39 (See OCS Section 1-4) or Ohio Rev. Code § 5705.41(B).

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Review/Comparison/Recomputations of Purchase Documents • Budgetary/Purchasing Accounting/Monitoring System 		

<ul style="list-style-type: none"> • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees – Policies and Procedures Manuals 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

For selected funds compare total expenditures plus contract commitments (including outstanding encumbrances) from each fund versus appropriations and determine if the expenditures and commitments are within the appropriations for the tested funds.

For selected “line items,” compare total expenditures and contract commitments (including outstanding encumbrances) at the legal level of control within selected funds with appropriations. Determine if the expenditures and commitments are within selected appropriated funds at the legal level of control.

Search for material unrecorded liabilities and/or encumbrances at year end. Refer to minutes and records immediately following the fiscal year cutoff date.

Compare the date of the fiscal certificates with invoice dates, noting whether or not the certificate date precedes the invoice/obligation date.

Note:

- The obligation date may precede the invoice date. If separately identified, use the obligation date when determining compliance.
- As interpreted by AOS Bulletin 97-012, if the government does not expect to complete the project in the current year, the remainder of the project must be appropriated immediately in the subsequent year(s).

For funds in violation of 5705.41(B), compare actual resources (i.e. beginning unencumbered fund balance + actual receipts) to appropriations as of the fiscal year end. If actual resources are less than appropriations and do not meet any of the exceptions listed in Appendix C, also cite 5705.36 for not requesting a reduced certificate. This may be performed in conjunction with OCS step 1-4 above.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

1-6 Compliance Requirement: Ohio Rev. Code Section 5705.40 Amending or supplementing appropriations, contingencies.

Summary of Requirements: Any appropriation measure may be amended or supplemented if the entity complies with the same laws used in making the original appropriation. However, no appropriation may be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations against them. “Transfers” * may be made by resolution or ordinance from one appropriation item to another. Subject to certain limitations, the annual appropriation measure may contain an appropriation for contingencies.

Rulings filed in the case of *C. B. Transportation, Inc. v. Butler County Board of Mental Retardations*, 60 Ohio Misc. 71, 397 N.E.2d 781 (C.P. 1979), as well as *Burkholder v. Lauber*, 6 Ohio Misc. 152 (1965), held that a board or officer whose judgment and discretion is required, was chosen because they were deemed fit and competent to exercise that judgment and discretion and unless power to substitute another in their place has been given, such board or officer cannot delegate these duties to another. Following such reasoning, a local government’s governing board would be prohibited from delegating duties statutorily assigned to it, such as the ability to amend appropriations as provided for in Ohio Rev. Code section 5705.40.

Per AOS Bulletin 97-010, budgeted expenditures coincide with either the final appropriations the legislative body passed prior to fiscal year-end or the sum of those final appropriations plus encumbrances carried forward from the prior year. *That is, the AOS does not recognize appropriation amendments retroactive to the prior year.* The statutory budget process codifies what are or should be good management practices. These processes provide a framework that helps management and legislators reasonably control spending.

* “Transfers” in this context mean reallocations of appropriations within a fund. These do not refer to transfers of cash between funds.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Accounting system capable of recording appropriations and comparing them to actual results. • Reconciling appropriation totals to totals recorded in the accounting system. • Policies and Procedures Manuals • Knowledge and Training of personnel • Comparison of Outstanding Encumbrances and Balances to Proposed Amendments • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to 		

employees		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Inquire (or determine from reading the minutes) if amended or supplemental appropriation measures have been passed. If so, inspect the amended certificate executed by the county budget commission.

Inspect the government’s records to determine if selected appropriation amendments were accurately and timely posted into an accounting system that integrates budget and actual receipts and disbursements. Base the extent of this testing on the control environment, especially the CFO’s competence and dedication to complying with ORC requirements, past errors noted, etc.

Match appropriations amendments, supplements and intrafund appropriation “transfers” recorded in the accounting system with resolutions or ordinances.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

1-7 Compliance Requirement: Ohio Rev. Code Section 5705.41 (D) "Blanket" fiscal officer certificates.

Summary of Requirements: Fiscal officers may prepare so-called "blanket" certificates for a sum not exceeding an amount established by resolution or ordinance¹² adopted by the members of the legislative authority against any specific line item account over a period not extending¹³ beyond the end of the current fiscal year. The blanket certificates may, but need not, be limited to a specific vendor. Only one blanket certificate may be outstanding at one particular time for any one particular line item¹⁴ appropriation.

In addition to regular blanket certificates, a subdivision’s fiscal officer may also issue so-called “super blanket” certificates for any amount for expenditures and contracts from a specific line-item appropriation account in a specified fund for most professional services, fuel, oil, food items and any other specific recurring and reasonably predictable operating expense. This certification is not to extend beyond the fiscal year or, in the case of counties, beyond the quarterly spending plan established by the county commissioners. More than one super blanket certificate may be outstanding at one particular time for a particular line-item appropriation account.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Periodic Inspection/Monitoring of Blanket Purchase Orders • Use of a log to record blanket certificates issued, track the period outstanding, and monitor the number of regular blanket certificates outstanding per account • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to 		

¹² The governing authority is only required to adopt one ordinance or resolution establishing the dollar limits for blanket certificates. A separate ordinance or resolution approving *each* individual blanket certificate is not necessary.

¹³ We interpret the word “*extends*” in this context as the authority to certify commitments against a regular blanket certificate or super blanket certificate that expires at year end. However, the authority to pay against previously certified commitments continues until all outstanding commitments are paid. (In other words, the government should consider these unpaid year-end commitments similar to other outstanding commitments/encumbrances, and reduce next year’s opening unencumbered balances for these amounts.)

¹⁴ There is no additional legal explanation for what “*line item appropriation*” means in this context; therefore, AOS interprets “line item” to mean accounting line item, which is not necessarily the “legal level of control.”

employees		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Inspect a representative number of “regular blanket” certificates and determine that:

- The amount is established by an ordinance or resolution passed by a majority of the legislative body. (If the legislative authority passed this in the prior years, agree to permanent file documentation.)
- They are not dated after the fiscal year end.
- They do not exceed the amount the legislative body established.
- Only one certificate is outstanding per line item appropriation.

For subdivisions using “super blanket” certificates, inspect the certification of the fiscal officer and determine whether:

- The certificates were for professional services, fuel, oil, food items or any other specific recurring and reasonably predictable operating expense and,
- They do not run beyond the fiscal year (or quarterly spending plan, if a county adopted a plan).

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

1-8 Compliance Requirement: Ohio Rev. Code Section 9.34 - Establishing different fiscal years for one or more funds for subdivisions other than school districts or county school financing districts. (You need not repeat this procedure every year if permanent files include documentation supporting this approval.)

Summary of Requirements: Ohio Rev. Code 9.34 prescribes fiscal years for certain government units. It states that the fiscal year of the state and every school district shall begin on July 1 and end on June 30. It also states that the fiscal year of every school library district and all political subdivisions or taxing districts¹⁵ except for school districts shall begin on January 1 and end on December 31.

All laws that relate to levying of taxes, the collection, appropriation and expenditure of revenues or the making of financial reports refer and apply to the appropriate fiscal year as defined in this section.

However, ORC 9.34(B) also allows a political subdivision, other than a school district or a county school financing district, to use a different fiscal year or other fiscal period for one or more of its funds, including a fiscal year based upon the fiscal year of an entity providing money for the fund (i.e., a grantor agency) or the fiscal period of a capital project.¹⁶ Use of a different fiscal year or period shall be consistent with Generally Accepted Accounting Principles and must be approved by the fiscal officer and the auditor of state.

Project-Length Budgeting

As described in AOS Bulletin 97-12, once a grant is awarded or a loan is approved by the Federal or State government, the fiscal officer must obtain an Official Certificate of Estimated Resources or an Amended Certificate of Estimated Resources for all or part of the grant or loan, based on what is to be received in the fiscal year. Any money expected to be received in the next year should be reflected on the next year's certificate. However, if the local government, with the exception of a school district, has budgeted on a project-length basis pursuant to Ohio Rev. Code § 9.34(B), the fiscal officer must obtain an Official Certificate of Estimated Resources for the entire project-length fiscal period.

The fiscal officer shall record the appropriations in accordance with the terms and conditions of the grant or loan agreement. In addition, prior to recording the appropriations, the legislative authority must pass a resolution amending its appropriation measure (Ohio Rev. Code § 5705.40). If the grant or loan will be expended over a period longer than the current fiscal year, only the amount estimated to be obligated during the current fiscal year should be recorded as appropriated. The remainder of the project should be appropriated in the subsequent year(s).

In situations where the grant or loan proceeds will be received after the expenditures are incurred (i.e., on a reimbursement basis), it is possible that the local government will have appropriated an amount for one fiscal year that is in excess of the amount reflected as available on the Amended

¹⁵ As used in this section, school library district, subdivision and taxing district have the same meaning assigned in Section 5705.01 of the Ohio Rev. Code. See the OCS 5705.01 Appendix. Therefore, this requirement does not apply to some entities, such as agricultural societies, community improvement corporations, etc.

¹⁶ GASB requires CAFR's to include individual nonmajor special revenue and other governmental fund budgetary comparison schedules with detailed account classifications for governmental funds with annual "appropriated budgets."

Certificate of Estimated Resources. This situation will NOT constitute a noncompliance citation during an audit.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Presence of an Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

You should consider all laws affected by fiscal year considerations in designing controls tests and legal compliance tests for affected material funds. For example, many budgetary laws require certifications from the county auditor before a government can appropriate and spend money; these laws should be applied to the fiscal year or other period the fund uses.

If an entity uses a different fiscal year end for anything except a grant fund or a capital projects fund, inspect the approval letter from the Auditor of State permitting this practice. (You need not repeat this procedure every year if permanent files include documentation supporting this approval.)

For grants or loans awarded by the Federal or State government, determine whether the entity implemented project-length budgeting pursuant to Ohio Rev. Code § 9.34(B). If so, determine whether the fiscal officer obtained an Official Certificate of Estimated Resources for the entire project-length fiscal period ~~or~~ and that only the amount estimated to be obligated during the current fiscal year was recorded as appropriated for advance-funded grants and loans. If the local government appropriated amounts beyond fiscal year end, determine whether the exception above was met (i.e. reimbursable grants or loans).

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

1-9 Compliance Requirement: ~~Ohio Rev. Code Sections 118.021—118.023, 118.03, 118.05—.06, 118.10, 118.12—.13, and 118.15 fiscal watch and fiscal emergency for a municipal corporation, county or township.~~

Note: ~~Auditors should not cite Fiscal Emergency entities under ORC 5705.10 or ORC 5705.41 for operating fund deficits. Rather, auditors should cite entities under ORC 118 (See section 1-10) when they do not adhere to their recovery plan. Please note this exception applies only to funds other than the general fund that are in a deficit, not to healthy funds¹⁷ of the entity. Therefore, auditors should still test the healthy funds of Fiscal Emergency entities for compliance with step 1-10.~~

Summary of Requirements:

~~In accordance with Ohio Rev. Code Section 118.021, a municipal corporation, county or township may undergo a fiscal watch review to determine whether it is approaching a state of fiscal emergency. The review will be initiated by a written request to the Auditor of State.~~

~~Pursuant to 118.022, any one or more of the following conditions are grounds for a **fiscal watch**:~~

~~(1)(a) All accounts that were due and payable from the general fund of a municipal corporation, county, or township at the end of the preceding fiscal year that had been due and payable for at least thirty days at the end of the fiscal year or to which a penalty was added for failure to pay by the end of the fiscal year, less the year end balance in the general fund, exceeded one twelfth of the general fund budget for that year, or~~

~~(b) All accounts that were due and payable at the end of the preceding fiscal year from all funds of the municipal corporation, county, or township and that had been due and payable for at for at least thirty days at the end of the fiscal year or to which a penalty was added for failure to pay by the end of the fiscal year, less the year end balance in the general fund and in the respective special funds available to pay those accounts, exceeded one twelfth of the available revenues during the preceding fiscal year, excluding nonrecurring receipts, of the general fund and of all special funds from which those accounts are payable.~~

~~—————~~ **OR**

~~(2) The aggregate of deficit amounts of all deficit funds at the end of the preceding fiscal year, less the total of any year end balance in the general fund and in any special fund that may be transferred as provided in Ohio Rev. Code § 5705.14 to meet that deficit, exceeded one twelfth of the total of the general fund budget for that year and the receipts to those deficit funds during that year other than transfers from the general fund.~~

~~—————~~ **OR**

¹⁷ We interpret “healthy funds” to mean funds with positive cash balances.

- ~~(3) — At the end of the preceding fiscal year, moneys and marketable investments in or held for the unsegregated treasury of the municipal corporation, county, or township, minus outstanding checks and warrants, were less in amount than the aggregate of the positive balances of the general fund and those special funds, the purposes of which the unsegregated treasury is held to meet, and that deficiency exceeded one twelfth of the total amount received into the unsegregated treasury during the preceding fiscal year.~~

~~—————~~ **OR**

- ~~(4) — Based on the AOS' examination of the financial projection approved by the legislative authority of a municipal corporation, county, or township, the AOS certifies that the general fund deficit at the end of the current fiscal year will exceed one twelfth of the general fund revenue from the preceding fiscal year.~~

~~Pursuant to 118.023, upon a determination that any of the above listed conditions are present, the Auditor of State shall issue a written declaration of a fiscal watch.~~

~~Pursuant to 118.03, any one or more of the following are conditions of a **fiscal emergency**:~~

- ~~(1) — The existence, at the time of the determination by the AOS under Ohio Rev. Code § 118.04 of a default on any debt obligation for more than thirty days.~~

~~—————~~ **OR**

- ~~(2) — The existence, at the time of the determination by the AOS under Ohio Rev. Code § 118.04 of a failure for lack of cash in the funds to make payment of all payroll to the employees of a municipal corporation, county, or township in the amounts and at the times required by law, ordinances, resolutions, or agreements, which failure of payment has continued:~~

~~—(a) For more than thirty days after such time for payment, or~~

~~—(b) Beyond a period of extension, or beyond the expiration of ninety days from the original time for payment, whichever occurs first, if the time for payment has been extended for more than thirty days by the written consent of at least two-thirds of the employees affected by such failure to pay, acting individually or by their duly authorized representatives. The failure of one county office, board, or commission to meet payroll does not in itself constitute a fiscal emergency.~~

~~—————~~ **OR**

- ~~(3) — An increase, by action of the county budget commission pursuant to Ohio Rev. Code §5705.31(D) in the minimum levy of the municipal corporation, county, or township for the current or next fiscal year which results in a reduction in the minimum levies for one or more other subdivisions or taxing districts.~~

~~—————~~ **OR**

- ~~(4) — The existence of a condition in which all accounts that, at the end of its preceding fiscal year, were due and payable from the general fund and that either had been due and payable for at least thirty days at the end of the fiscal year or to which a penalty has been~~

~~added for failure to pay by the end of the fiscal year, including, but not limited to, final judgments, fringe benefit payments due and payable, and amounts due and payable to persons and other governmental entities and including any interest and penalties thereon, less the year end balance in the general fund, exceeded one sixth of the general fund budget for that year, or in which all accounts that, at the end of its preceding fiscal year, were due and payable from all funds of the municipal corporation, county, or township and that either had been due and payable for at least thirty days at the end of that fiscal year or to which a penalty has been added for failure to pay by the end of the fiscal year, less the year end balance in the general fund and in the respective special funds lawfully available to pay such accounts, exceeded one sixth of the available revenues during the preceding fiscal year, excluding nonrecurring receipts, of the general fund and of all special funds from which such accounts lawfully are payable. Accounts due and payable shall not include any account, or portion thereof, that is being contested in good faith.~~

~~OR~~

~~(5) The existence of a condition in which the aggregate of deficit amounts of all deficit funds at the end of its preceding fiscal year, less the total of any year end balance in the general fund and in any special fund that may be transferred as provided in Ohio Rev. Code § 5705.14 to meet such deficit, exceeded one sixth of the total of the general fund budget for that year and the receipts to those deficit funds during that year other than from transfers from the general fund.~~

~~OR~~

~~(6) The existence of a condition in which, at the end of the preceding fiscal year, moneys and marketable investments in or held for the unsegregated treasury of the municipal corporation, county or township, minus outstanding checks and warrants, were less in amount than the aggregate of the positive balances of the general fund and those special funds the purposes of which the unsegregated treasury is held to meet, and such deficiency exceeded one sixth of the total amount received into the unsegregated treasury during the preceding fiscal year.~~

~~Pursuant to 118.04, the Auditor of State shall determine the existence of fiscal emergency conditions. The existence of any such condition constitutes a fiscal emergency.~~

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management's identification of changes in laws and regulations • Management's communication of changes in laws and regulations to 		

employees	
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Suggested Audit Procedures – Compliance (Substantive) Tests:

~~If the municipal corporation, county or township is currently in fiscal watch, review the entity’s progress and determine whether any of the fiscal watch conditions currently exist. If during audit work and based on the evaluation of the fiscal watch conditions, the auditor notes an improvement (i.e., fiscal watch conditions no longer exist) or a deterioration (i.e., fiscal emergency conditions now exist), the auditor should contact the engagement chief auditor. If after evaluation the chief auditor concludes the entity should be removed from fiscal watch or should be placed in fiscal emergency, the chief auditor should contact the Chief Deputy Auditor or his designee.~~

~~If the municipal corporation, county or township is currently in fiscal emergency review the entity’s detailed financial plan and recovery plan. An effective recovery plan should identify the steps necessary for the entity to fully recover from fiscal watch or fiscal emergency and identify target dates to achieve each component of the recovery plan. The recovery plan should be periodically updated for any changes in circumstances affecting the entity. Determine whether the entity has violated any statutory requirements to follow the plan.~~

~~Determine whether the entity has established a financial planning and supervision commission. [Ohio Rev. Code § 118.05]~~

~~Determine whether the mayor, county commissioners or township trustees have submitted (within 120 days) a detailed financial plan outlining the actions to be taken to eliminate all fiscal emergency conditions; satisfy any judgments, past due accounts payable and all past due and payable payroll and fringe benefits; eliminate deficits in all deficit funds; balance the budgets and avoid future deficits in any funds; maintain current payments for payroll, fringe benefits and accounts; restore the ability of the entity to market long term general obligation bonds under provisions of law applicable to the entity; and other requirements of Ohio Rev. Code § 118.06.~~

~~Determine whether the entity has developed an effective financial accounting and reporting system to comply with Ohio Rev. Code Chapter 117. [Ohio Rev. Code § 118.10]~~

~~Determine whether selected expenditures made are in accordance with the approved financial plan subject to the requirements of Ohio Rev. Code § 118.12.~~

~~Determine whether the appropriations measures and tax budget are consistent with the financial plan. [Ohio Rev. Code § 118.13]~~

~~Determine whether the debt obligations have been approved by the commission and the ordinances authorizing the issuance contain all required elements. [Ohio Rev. Code § 118.15—118.99. [Ohio Rev. Code § 118.15]~~

~~If after evaluation the chief auditor concludes the entity should be removed from fiscal emergency, the chief auditor should contact the Chief Deputy Auditor or his designee.~~

~~If such information comes to the attention of an IPA while conducting an audit, the IPA should contact the regional chief auditor.———~~

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

1-9 Compliance Requirements: Ohio Rev. Code Sections 5705.28(B)(2), 5705.36, 5705.40, 5705.41(B), 5705.41(D) Budget requirements for taxing districts that choose not to levy taxes (OCS Appendix C and Ohio Rev. Code 5705.01 defines taxing districts.)

The taxing authority of a taxing unit that does not levy a tax must still follow the budgetary requirements listed below. The applicable limited requirements are outlined in the table below; however, auditors should still refer to the Legal Matrices in Appendix F of the Ohio Compliance Supplement for guidance in determining the applicability of these requirements to various types of entities:

5705.28(B)(2)Requirements	Applicable ORC Section¹⁸	Applicable OCS Section
Prepare certificate of estimated resources (but does not require budget commission approval).	5705.36	1-2
Must amend estimated resources under the circumstances described in the OCS (also see ADAM 97-05).	5705.36	1-4 and 1-5
Appropriate at the minimum level of control prescribed by 5705.38(C) (or a lower level). No budget commission approval required.	5705.38	1-3
Cannot appropriate more than estimated resources	5705.28(B)(2)(c)	Comparable to 1-4
Must amend appropriations if they intend to spend more than the original appropriation.	5705.40	1-6
Cannot disburse more than appropriated.	5705.41(B)	1-5
Must certify the availability of funds.	5705.41(D)	1-5
May issue blanket or super blanket purchase orders.	5705.41(D)	1-7

If an entity levies taxes, the sections above apply. However, some entities with taxing authority do not levy taxes. When they do not levy taxes, Ohio Rev. Code §5705.28 (B)(2) permits a comparable, but somewhat streamlined budget process. Ohio Rev. Code §5705.28(B)(2) requires entities to follow §5705.36, .38, .40, .41, .43, .44, and .45. Documents prepared in accordance with these sections need not be filed with the county auditor or county budget commission. While Ohio Rev. Code §5705.39 does not apply, §5705.28(B)(2)(c) prohibits appropriations from exceeding estimated revenue (i.e. receipts + beginning unencumbered cash).

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.

¹⁸ For conservancy districts, auditors should additionally review the requirements of Ohio Rev. Code §6101.44 and tailor their compliance testing procedures accordingly, if necessary. For conservancy districts that levy taxes, we should cite to the budgetary requirements contained in Ohio Rev. Code § 6101.44 where they are similar to requirements contained in Ohio Rev. Code Chapter 5705. The more specific requirements contained in Ohio Rev. Code Chapter 6101 trump those contained in Chapter 5705. Auditors should apply the provisions of Ohio Rev. Code Chapter 5705 when Chapter 6101 does not address budgetary restrictions applicable to conservancy districts.

<ul style="list-style-type: none">• Policies and Procedures Manuals• Knowledge and Training of personnel• Tickler Files/Checklists• Legislative and Management Monitoring• Management’s identification of changes in laws and regulations• Management’s communication of changes in laws and regulations to employees		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Design and perform tests to include the applicable OCS sections referenced above.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section B: Additional School Requirements

1-10 Compliance Requirement: Ohio Rev. Code Section 5705.391 and Ohio Admin. Code Section 3301-92-04: School districts (and community schools per ORC Section 3314.03(A)(11)(d)) must prepare 5 year projections.

Summary of requirements for public school districts and community schools:

Ohio Rev. Code section 5705.391(A)

School boards must prepare 5 year projections of revenues and expenditures. Most of the guidance on how to prepare these projections is found in Ohio Admin. Code § 3301-92-04. The plan must be approved by resolution and submitted to the Department of Education upon the adoption of an annual appropriation measure, but no later than October 31 of any fiscal year.

A board of education must update its five year projection between April 1 and May 31 of each fiscal year and submit it to the department of education. (Ohio Admin. Code Section 3301-92-04(F)). In addition, a board of education notified under division (A) of section 5705.391 of the Ohio Rev. Code shall submit a school district approved written plan in a timely manner as required to the department of education to eliminate any current deficits and avoid the projected future deficits. [Ohio Admin. Code 3301-92-04(E)]

The board of education of a school district that is in fiscal watch status, or the financial planning and supervision commission for a school district in fiscal emergency status, must revise the school district's five year projection of revenues and expenditures so that the projection is consistent with the financial plan or financial recovery plan upon the approval of the respective plan by the Superintendent of Public Instruction. (R.C. 3316.043)

The rules allow the Auditor of State and the Ohio Department of Education to prescribe the format and content of the five year projection. These guidelines are fairly complex (see Auditor of State Bulletin 98-015 for more information). The Auditor of State and the Ohio Department of Education generally are responsible for reviewing these projections (and related assumptions) for conformity with the requirements. The independent auditor is expected to evaluate whether the data in the projections for the current period are reasonably supported by the client's documentation.

Summary of requirements for community schools:

To meet this requirement, community schools must submit the document available at:

<http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEPrimary.aspx?Page=2&TopicID=11&TopicRelationID=1437>

NOTE: Community school five-year projections are only available for the most recent fiscal year. For prior periods, auditors should contact Ohio Department of Education (community.schools@ode.state.oh.us) to confirm a forecast was filed only if the school district cannot provide proof of submission.

You can view the projection a public school district submitted at:

<http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEPrimary.aspx?Page=2&TopicID=11&TopicRelationID=1437>

The School’s board should approve this plan.

NOTE: The new spending plan under HB 1 does not replace the Five Year Forecast. Effective 7/17/09, HB 1 requires all school districts to eventually submit a spending plan describing how the Evidence Based Model funding components will be deployed. These requirements will be phased in over time and are not effective for FY 2010 school district audits.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: In assessing the risk of noncompliance, auditors should consider whether the school district has factored in recent changes in Ohio School Funding and Taxation laws into their projections, such as the phase out in fiscal year 2012 of most Federal programs funded under the American Recovery and Reinvestment Act (e.g., State Fiscal Stabilization Fund) and the Education Jobs Fund (a temporary, two-year program created under the Education Jobs Bill).

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Determine that the five year projection under Ohio Rev. Code Section 5705.391(A) was filed with the Department of Education by viewing the web link described above. (For prior periods, auditors should contact Ohio Department of Education to confirm a forecast was filed only if the school district cannot provide proof of submission.)

Compare actual revenues and expenditures to projections. Inspect documentation that the board updated its projections between April 1 and May 31.

If contracts, etc., subject to §5705.412 were entered into during the period, inspect documentation indicating the related five year projections were updated. (This step will be sufficiently covered by reading the assumptions and performing the steps below.)

If in fiscal watch or fiscal emergency status, determine whether the school district updated its five year projection consistent with the terms outlined in the financial plan or financial recovery plan.

Read the client's assumptions. Perform analytical procedures and evaluate whether the assumptions are reasonable and the resulting projections are in accordance with those assumptions.

Consider if the projections indicate any possible "going concern" conditions [AU § 341] or fiscal distress conditions [~~OCS Section 1-14~~].

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

Revised: HB 153, 129th GA

Effective: 9/29/11

1-11 Compliance Requirement: Ohio Rev. Code Section 5705.412 Restriction upon **school district expenditures** and certifying adequate revenues. Application: City, local, exempted village and joint vocational school districts.

Summary of Requirements: Ohio Rev. Code Section 5705.412 requires the **treasurer, superintendent and president of the board of education** to certify that adequate revenues will be available to maintain all personnel and programs for the current fiscal year and for a number of days in the succeeding fiscal years equal to the number of days instruction was held or is scheduled for the current fiscal year. For a school district in fiscal emergency under Ohio Rev. Code chapter 3316, the certificate shall be signed by a member of the school district's financial planning and supervision commission (Ohio Rev. Code Section 5705.412 (B) (1) & (2)).

Term of certificate:

- The certificate attached to an appropriation measure covers only the fiscal year in which the appropriation measure is effective.
- The certification must be attached to all appropriation measures *except* for temporary measures when the temporary measure (1) does not appropriate more than 25 percent of the total resources available last year for any fund, (2) the measure will not be in effect for more than thirty days after the earliest date the school district could pass an annual appropriation measure, and (3) an amended certificate of available revenues has not been certified to the school district under Ohio Rev. Code §5705.36.
- The certificate attached to a **qualifying contract** covers the term of the contract.
- The certificate attached to a wage or salary schedule covers the term of the schedule.
- A “*qualifying contract*” is “. . . any agreement for the expenditure of money under which aggregate payments from the funds included in the school district's five-year projection under section 5705.391 of the revised code [see OCS Section 1-10] will exceed the lesser of the following amounts . . .”:
 - \$500,000;
 - 1% of the general fund's total estimated revenues as certified in the school district's most recent certificate of estimated resources under Ohio Rev. Code § 5705.36 [see OCS Sections 1-2 ~~and 1-3~~]

Tax levies: The certification of an appropriation measure may not anticipate the renewal or replacement of an existing property tax levy nor the approval to extend an existing income tax levy beyond its current expiration. All other certifications may anticipate the renewal or replacement of existing property tax levies and the approval to extend an existing income tax levy beyond its current expiration (OAC 3301-92-05).

A school district must include the additional certification under Section 5705.412 along with the certification required under Section 5705.41 *except* under the following circumstances:

- for current payrolls of, or contracts of employment with, any employees or officers of the school district.¹⁹
- when increasing the wages or salaries enabling the school board to comply with division (B) of Ohio Rev. Code Section 3317.13, which addresses the minimum salary schedule for teachers.

Section 5705.412 certificates *should* be executed for:

- appropriation measures (except certain temporary measures; see above)²⁰;
- increased salary or wage schedules²¹ and
- any other “qualifying contracts”, including, but not limited to: 1) negotiated agreements (e.g. professional association [“union”] contracts) and, 2) contracts for benefits (e.g., major health insurance contracts)

~~Obligations~~ Qualifying contracts or wage or salary schedules that have not been certified as required are considered void²². No payments may be made on void obligations.

Penalties: Anyone who knowingly does any of the following, is liable for the full amount paid on the obligation, up to \$10,000:

- executing an obligation contrary to §5705.412,
- expending or authorizing the expenditure of public funds contrary to §5705.412, or
- authorizing or making payment of public funds on a void obligation

¹⁹ For example, contracts with individual teachers do not require a “412” certificate, though the negotiated agreement and/or teaching staff salary schedule generally would. Similarly, an employment contract with an individual administrator, who is not covered by a board adopted salary schedule would not require “412” certification.

²⁰ The Auditor of State’s Office interprets this requirement to mean any and all appropriation measures for any and all funds of the school district. Ohio Rev. Code § 5705.412 requires that no district shall adopt “any appropriation measure ... unless there is attached thereto a certificate, signed as required by this section, that the school district has in effect the authorization to levy taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to provide the operating revenues necessary to enable the district to maintain all personnel and programs” (emphasis added). Likewise, the Ohio School Law Guide also states that “[c]learly all appropriation measures must be certified pursuant to Ohio Rev. Code § 5705.412”.

²¹ Increased salary schedules that are part of a contract previously lawfully certified under section 5705.412 need not be re-certified before they take effect. However, the school district may have to adjust revenues and expenditures, in the section 5705.391 (A) five-year projection, in the year the increased salary or wage schedule takes effect in order to properly certify its annual appropriation measure.

²² Occasionally, school districts amend appropriations during the year without properly obtaining 412 certifications. AOS will not consider ~~obligations~~ these appropriations to be “void”. ~~where a reduction in appropriations is made without 412 certification.~~ However, auditors should still cite school districts under ORC 5705.412 when a school does not prepare these certificates. ~~Uncertified obligations will be considered void and, if material, should be removed from budgetary presentations.~~

The Auditor of State is required to refer ~~contractual or wage schedule instances of noncompliance with any qualifying contract or wage or salary schedule~~ to the school district’s statutory legal counsel.(ORC 5705.412(E))

School districts should maintain a continuing record of contracts which have been certified and adequate documentation to substantiate the certifications (OAC 3301-92-05(E)).

The rules for 5705.412 (Ohio Admin Code section 3301-92-05 (B) - (D)) provide guidance on projecting revenues to future periods for purposes of the certifications.

5705.412 (B)(2) authorizes a school district to enter into certain multi-year contracts without attaching the certificate of adequate resources otherwise required by law, if an “alternative” certificate authorized by the act is attached certifying the following:

(a) The contract is a multi-year contract for materials, equipment, or non-payroll services "essential to the education program of the district"; and

(b) The multi-year contract demonstrates savings over the duration of the contract as compared to costs that otherwise would have been demonstrated in a single year contract and the terms will allow the district to reduce the deficit it is currently facing in future years as demonstrated in its five-year forecast.

The alternative certificate must be signed by the treasurer and president of the board of education and the school district's superintendent; or, if the district is in a state of fiscal emergency, the alternative certificate instead must be signed by a member of the district's Financial Planning and Supervision Commission designated by the Commission.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Preparation and review of 5 year projections under § 5705.391 (A) • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Scan minutes, contracts files, etc., to identify appropriation measures (except certain temporary measures), increased salary or wage schedules, and qualifying contracts.

Select a few appropriation measures, increased salary or wage schedules, and a few qualifying contracts for which “412” or “alternative” certificates were not executed during the fiscal year.

If a qualifying contract, etc., should have been certified and the auditor cannot obtain documentation that it was, the auditor must issue a noncompliance citation. Also, the noncompliance matter must be referred to the prosecuting attorney for the county, or the city law director in the case of a city school district, or other chief law officer of the school district (Including the statutory legal counsel on the audit report recipient spreadsheet satisfies this requirement).²³

Select a few qualifying contracts, etc., entered into during the fiscal year(s) under audit. Inspect the “412” or “alternative” certificates and the supporting documentation, including the five year projections that were available to school district officials at the time of the execution of the qualifying contracts, etc. Evaluate for reasonableness and conformity with the rules.

Compare qualifying contract, etc., dates with related certification dates and note any differences.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

²³ In the past, the Auditor of State has issued a Notice of Potential Ohio Rev. Code §5705.412 Violation to the governing board of the school district. The Notice gave the school district 30 days to retroactively comply with the provisions of Ohio Rev. Code §5705.412. However, it has come to our attention that retroactive correction by the governing authority does not absolve the school district of noncompliance actions (i.e., referral to the prosecuting attorney, etc.) under the statute. Therefore, the Auditor of State will no longer send 30-day Notices for Ohio Rev. Code §5705.412 violations.

Revised: HB 30, 129th GA

Effective: 7/1/11

1-12 Compliance Requirements: Ohio Rev. Code Sections ~~3315.17 and .171 (textbooks)~~²⁴; 3315.18 and .181 (capital); 3317.012 (adjusts base cost); 3317.02 (defines formula amount); ~~(textbooks), .02 (capital)~~

Important:

You can test these requirements every other year if both these conditions apply:

- The set aside amount is less than tolerable error.
- The prior year audit did not detect any instances of noncompliance.

Summary of Requirements: These laws and regulations require every city, local, exempted village and joint vocational school district, to establish ~~two reserves~~ a capital (acquisition) and maintenance reserve. House Bill 30 of the 129th General Assembly repealed the textbook reserve requirement, effective July 1, 2011.²⁵

- ~~1) Textbooks and instructional materials reserve and~~
- ~~2) Capital (acquisition) and maintenance reserve~~

The reserves ~~are~~ is to be accounted for in the school district's general fund using any reasonable accounting method.

~~The capital acquisition and textbooks reserves have several of the same characteristics:~~

- ~~The reserves must be calculated and set-aside annually.~~
- ~~If the set-aside amount is not spent in one year it is carried forward to the next year.~~
- ~~The reserve must be represented by (restricted) cash at year-end.~~
- ~~The reserve is calculated by multiplying the base amount by a percentage.~~
- ~~The base represents three percent of the State base-cost formula amount for the preceding year multiplied by the school district's student population or the sum of certain specific prior fiscal year receipts. (Ohio Rev. Code §§ ~~3315.17(A), 3315.18(A)~~)~~
- ~~The base and annual set aside formula are the same for both set asides.~~

²⁴ HB 30 repealed the textbook and instructional materials reserve in ORC 3315.17 effective 7/1/2011 (FY2012). The school district board is allowed to transfer any unencumbered money remaining in the district's textbook and instructional materials fund on that date, to the district's general fund to be used for any general fund purpose.

²⁵ Based on the July 1, 2011 effective date for HB 30, school districts should still report the Textbook Reserve, where applicable, in their June 30, 2011 financial statements. Balances remaining in the Textbook Reserve may be transferred to the General Fund as of July 1, 2011 or later.

- The amount of the required reserve may be reduced (offset²⁶) by resources received during the fiscal year whose use is restricted to the purpose of one of the reserves.
- School districts must be able to provide a list of qualified expenditures for audit purposes.
- School districts must be able to document calculation of fiscal year-end reserve balances.
- Each school district's annual report must include a schedule showing the balance of the set-aside carried forward from the previous year, the current year set-aside, contributions in excess of the current year set aside²⁷, qualifying expenditures²⁸, any reductions (offsets) to the required amount from receipts similarly restricted, any reductions from certain debt proceeds, and the fiscal year-end balance of the set aside, the amount to be reserved, and the balance that may be carried forward to the next fiscal year.

Annual Set-Aside Calculation:

- The annual set asides ~~are~~ is calculated by multiplying a percentage of the “**formula amount**”²⁹ by the school district’s “**student population**”³⁰. The **preceding year’s**

²⁶ “Offsets” are certain revenues recorded to other funds as defined in Rev. Code Sections 3315.171 and 3315.181. The revenue in excess of the set aside and qualified expenditures does not accumulate or carry forward to the next fiscal year. Real (homestead and rollbacks) and personal property tax replacement payments received by school districts should be considered part of the levy proceeds when calculating allowable offsets for ~~textbooks and~~ capital reserves. Additionally, revenue from the State Fiscal Stabilization Fund (SFSF) (fund 532) should not be used as an “offset” since resources cannot be set aside for “future” expenditures. ~~However, specific allowable SFSF expenditures may be used as “qualifying expenditures” for the textbook set aside.~~ See below for additional guidance.

²⁷ A board may withdraw cash contributions exceeding statutory minimums from these reserves by resolution. Excess contributions may be deducted from future years’ required set aside amount. Report any excess contributions in external financial reports as *committed, assigned, or restricted* governmental fund balance as appropriate under the circumstances described in GASB 54 [GASBS 54, ¶ 13 --- 16].

²⁸ “Qualifying expenditures” are expenditures from the general fund and a capital projects fund created under Ohio Rev. Code Section 5705.13(C) that meet the definitions in the Ohio Admin. Code 3301-92-01 and 3301-92-02. Additionally, Q15 of the Ohio Department of Education State Fiscal Stabilization Funds (SFSF) Frequently Asked Questions, dated 4/5/2010 available at <http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEDetail.aspx?page=555> indicates use of the SFSF for the reservation of fund balance required for the set aside would not constitute an obligation of the funds. School districts must actually obligate the funds for specific allowable activities during the period of fund availability. ~~See ODE SFSF FAQ Q17 for further guidance on textbook obligations. Thus, expenditures for the textbooks from the SFSF fund are qualifying expenditures for the set aside.~~ However, Pursuant to Q 16 of ODE SFSF FAQ SFSF monies may not be used for *maintenance* expenditures or set asides. Monies being transferred from a capital projects fund created under Ohio Rev. Code Section 5705.13(C) to the General Fund cannot be included as offsets. The payment of a salary for a maintenance worker such as an electrician or maintenance supervisors are not automatically qualifying expenditures for the capital and maintenance set aside. However, the portion of the salaries paid to a maintenance worker, electrician, or a supervisor paid from the general fund that is directly related to preventative maintenance, periodic repairs and replacement of parts, structural components and other activities needed to maintain an asset is a qualifying expenditure provided it is substantiated through a work order [Ohio Admin. Code § 3301-92-02 and R.C. § 5705.13(C)].

²⁹ “Formula amount” is the base cost per pupil as determined by Ohio Rev. Code Sections 3317.02(B) and .012. ~~For FY 2008, the amount is \$5,565; and For FY 2009 through FY 2011, the amount is \$5,732; and for FY 2012 through FY 2013 the amount is \$5,653.~~

³⁰ “Student population” is a defined term. The Ohio Department of Education is responsible for calculating the student population based on information the school district submits (3315.17(F)).

“formula amount” and “student population” are used for the calculation. The percentage is set at 3% by statute, though the Auditor of State has been given some discretion to establish alternative percentages³¹. The formula is:

$$[(\% \times \text{Formula Amount}) \times \text{Student Population}]$$

- A school district may annually elect under Rev. Code Section 3315.19 to follow the former provisions of law existing prior to July 1, 2001 for ~~the textbook and~~ capital set-aside. In lieu of following the amended requirements, the board of education *annually* may elect (by resolution) to follow the ~~textbook and/or~~ capital set-aside requirements (from the ORC provisions) as they existed prior to July 1, 2001. (Audit programs D and E follow this OCS Section, and describe both options.) This election must be made within 90 days after the beginning of the fiscal year for which the election is to apply.
- ~~Fiscal year expenditures exceeding the current year set aside requirement plus the carryover balance may be carried forward to offset a future year's annual textbook and instructional materials set aside requirement. (AOS Bulletin 2001-006). Excess expenditures in the capital and maintenance set aside do not carry forward. In accordance with Rev. Code Section 3315.17(B)(1), any amount deposited into the textbook and instructional materials set aside that exceeds the annual set requirement³² may be used to reduce future contributions or can be withdrawn by the school district board by a resolution.~~
- Excess offsets (annual revenue from specific sources) do not carry forward.

Other Uses of the Textbook and Instructional Material Set Aside:

~~Ohio Rev. Code Section 3315.18(D) allows a school district to spend the textbook reserve for things other than textbooks if both of the following occur during that fiscal year:~~

- ~~1. All of the following certify to the school district board in writing that the school district has sufficient textbooks, instructional software, and instructional materials, supplies, and equipment to ensure a thorough and efficient education within the school district:

 - a. The school district superintendent;
 - b. In school districts required to have a business advisory council, a person designated by vote of the business advisory council;
 - c. If the school district teachers are represented by an exclusive bargaining representative for purposes of Rev. Code Chapter 4117, the president of that organization or the president's designee.~~
- ~~2. The school district board adopts, by unanimous vote of all members of the board, a resolution stating that the school district has sufficient textbooks, instructional software, and instructional materials, supplies, and equipment to ensure a thorough and efficient education within the school district.~~

³¹ No alternative percentages have been established as of the date of this document.

³² Report these balances as “designations” in governmental fund financial statements [GASB 1800.144.]

Waivers of the Annual Set Aside Requirements:

School districts in fiscal emergency may deposit an amount less than the required annual set aside, or make no deposit into the school district ~~textbook and instructional materials and the~~ capital and maintenance funds. As good practice, while not specifically included in statute, the school district board of education should document this decision annually in a separate resolution. A board of education's approval of a five-year projection including the waiver of the set aside~~(s)~~ is not considered approval of the set aside waiver.

School districts in fiscal watch or caution may apply to the superintendent of public instruction for a waiver³³ from the annual set aside requirement. The waiver may permit the school district to deposit an amount less than the annual set aside requirement or make no deposit into the school district ~~textbook and instructional materials fund and/or the~~ capital and maintenance funds for that year. The superintendent may grant a waiver ~~under division (B)(3) of Section 3315.17, Rev. Code,~~ if the school district demonstrates to the satisfaction of the superintendent of public instruction that compliance with the annual set aside requirement for that year will create an undue financial hardship on the school district.

School districts, not more often than one fiscal year in every three consecutive fiscal years, may apply to the superintendent of public instruction for a waiver from the annual set aside requirements of Sections ~~3315.17 and~~ 3315.18, Rev. Code. The waiver would permit a school district to deposit an amount less than the annual set aside requirement or make no deposit into the school district ~~textbook and instructional materials fund or the~~ capital and maintenance fund for that year. The superintendent of public instruction may grant a waiver ~~(Section 3315.17(B)(4))~~ if the school district demonstrates to the satisfaction of the superintendent that compliance with the annual set aside requirement for that fiscal year will necessitate the reduction or elimination of a program currently offered by the school district that is critical to the academic success of students of the school district and that no reasonable alternatives exist for spending reductions in other areas of operation within the school district that negate the necessity of the reduction or elimination of that program.

A waiver is granted for only the requirement to set aside current year revenue for ~~textbooks and instructional materials and/or for~~ capital and maintenance. A waiver does not eliminate the set aside reserve or any accumulated/existing balance carried over from prior years. The annual set asides waived need not be made up in future years.

Other capital and maintenance provisions established July 1, 2001:

- Within the capital and maintenance set-aside, the board of education *may* establish a separate account solely for depositing funds³⁴ transferred from the budget stabilization reserve (discussed in Ohio Compliance Supplement Section 1-12) which was required by Ohio Rev. Code Section 5705.29 (H) and (I) prior to April 10, 2001. The budget reserve

³³ In any year a waiver is granted, it is assumed the resources that would have been otherwise set aside will be used to support existing education programs. Therefore, resources expended in excess of a carryover set aside balance are considered discretionary and are not to accumulate or be used to reduce future annual set aside requirements. It is the Department of Education's intent to not approve a waiver in excess of the annual set aside less any offsets. A waiver in excess of the current year set aside less offsets does not carry forward.

³⁴ These funds and interest deposited into the capital and maintenance reserve may be treated as deposits to reduce the annual capital and maintenance contribution otherwise required (AOS Bulletin 2001-006).

may also be transferred to the Classroom Facilities (010) Fund (See AOS Bulletin 2001-006).

- Funds deposited into the separate account and interest on those funds may only be used for the school district’s share of basic project costs for any project undertaken in accordance with Ohio Rev. Code Chapter 3318 (School Facilities Commission projects). (See OCS Chapter 2 for a discussion of certain ORC Chapter 3318 programs.)

Sample Note Disclosure Table

AOS Bulletin No. 99-017 includes a recommended format for the disclosure of the set aside; however, the bulletin format pre-dates certain changes and implementation issues that have since arisen. Below is a current sample table for the set aside disclosure and the order in which items should be presented:

	Capital Improvements
Set Aside Reserve Balance June 30, 20X1	\$0
Current Year Set Aside Requirement	500,000
Contributions in Excess of the Current Fiscal Year Set Aside Requirement	0
Current Year Qualifying Expenditures	(50,000)
Excess Qualified Expenditures from Prior Years	0
Current Year Offsets	(100,000)
Waiver Granted by the Department of Education	
Prior Year Offset from Bond Proceeds	(350,000)
Total	\$0
Balance Carried Forward to Fiscal Year 20X2	0
Set Aside Reserve Balance June 30, 20X2	\$0

Excess qualified expenditures for capital improvements do not carry forward.

The amount presented for Prior Year Offset from Bond Proceeds is limited to an amount needed to reduce the reserve for capital improvements to \$0. The school district is responsible for tracking the amount of the bond proceeds that may be used as an offset in future periods.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel 		

<ul style="list-style-type: none"> • Tickler Files/Checklists • Presence of an effective accounting system • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Special programs for auditing these reserves immediately follow. If the school district has not elected to follow the pre-July 1, 2001 base calculation, use **Audit Programs A and B**. If the school district has elected to follow the pre-July 1, 2001 base calculation, use **Audit Programs D and E**.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

~~1-13 (A) Compliance Requirements: Ohio Rev. Code Section 5705.29 (F) (budget stabilization); Ohio Rev. Code Section 3315.18 (C) (capital & maintenance fund).~~

~~Summary of Requirements: Effective April 10, 2001, S.B. No. 345 eliminated the requirement that school districts establish and maintain a budget stabilization reserve. Ohio Rev. Code § 3315.18(C) provides requirements for the disposition of any budget reserve balance that may have existed at April 10, 2001.~~

~~Any balance (this includes the amount representing required Bureau of Workers' Compensation (BWC) deposits and the amount representing other required deposits) remaining in the previously required budget reserve at April 10, 2001, may, at the board's discretion, be returned to the general fund³⁵, or left in the reserve account and used by the board to offset any budget deficit the school district may experience in future years.³⁶~~

Use of BWC Portion:

~~Senate Bill 345, Section 4, (123rd General Assembly), places restrictions on the use of budget reserves consisting of BWC refunds. These restrictions are:~~

- ~~➤ to offset a budget deficit;~~
- ~~➤ for school facility construction, renovation, or repair³⁷ (may transfer to a separate account in the capital and maintenance set aside as discussed above³⁵);~~
- ~~➤ for textbooks or instructional materials, including science equipment for laboratories;~~
- ~~➤ for purchase of school buses; or~~
- ~~➤ for professional development of teachers~~

~~Per AOS Bulletin 2001-006, the balance of the budget reserve not representing BWC rebates ("other" budget reserve monies) may be used as follows: (1) left where it currently resides and used to offset any future budget deficit; (2) transferred in total or in part to a special cost center within Fund 010, Classroom Facilities; or (3) returned (transferred out of the special cost center) to the general fund and used at the discretion of the school district board.~~

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists 		

³⁵ ~~The school district must maintain documentation to support the use of any BWC balance for permitted purposes (see Use of BWC Portion).~~

³⁶ ~~To exercise this option, the Board must adopt a resolution and comply with the budget reserve provisions in Ohio Rev. Code § 5705.13(A) (OCS Section 1-22).~~

³⁷ ~~AOS Bulletin 2001-006 allows for the transfer in of the BWC portion in total or in part to a special cost center within Fund 010, Classroom Facilities. The deposit in a separate capital and maintenance set aside account counts toward meeting the required capital and maintenance set aside deposit. Deposits in excess of the required deposit should be reported as committed, assigned, or restricted fund balance as appropriate under the circumstances described in GASB 54 for external financial reporting purposes.~~

<ul style="list-style-type: none"> ● Presence of an effective accounting system ● Legislative and Management Monitoring ● Management's identification of changes in laws and regulations ● Management's communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures – Compliance (Substantive) Tests:

~~The disposition of the budget reserve should have been audited in 2001. Refer to the permanent file if the school district still maintains a reserve, and test for adherence to the school district's chosen plan of disposition. Compare what the school district has done with the reserve assets during the period of the current audit with the school district's disposition plan.~~

~~Vouch to determine whether any BWC balance spent during the current audit period was used in accordance with the board's resolution and solely:~~

- ~~▪ to offset a budget deficit (must establish an ORC 5705.13 (A) budget reserve with the balance subject to the 5% limitation);~~
- ~~▪ for school facility construction, renovation, or repair;~~
- ~~▪ for textbook or instructional materials, including science lab equipment;~~
- ~~▪ for purchase of school buses; or~~
- ~~▪ for professional development of teachers~~

~~For BWC balances not retained in an ORC 5705.13(A) budget reserve and not deposited into the capital or textbook set asides, determine whether the school district has established procedures to demonstrate that BWC balances are used for permitted purposes (e.g. use of a special cost center within the general fund)~~

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Audit Program – A
AUDITING THE TEXTBOOKS AND INSTRUCTIONAL MATERIAL RESERVE

If a school district elected to apply the pre-July 1, 2001 base calculation, use Audit Program D.

Step No.	Procedure for Consideration	Done By or N/A	Date Comp	X-Ref.
1.	Testing note accuracy:			
a.	Obtain the school district's draft set aside note and supporting documentation.			
b.	Foot and crossfoot the note.			
c.	Foot and crossfoot the client's underlying calculations (if any).			
2.	Trace beginning of the year balance to prior audited financial statements or working papers.			
3.	Test the annual reserve calculation by multiplying the percentage ³⁸ by the "formula amount" ³⁹ and multiplying the result by the school district's "student population" ⁴⁰ . The preceding year's "formula amount" and "student population" should be used for this calculation: $[(\% \times \text{Formula Amount}) \times \text{Student Population}]$			
a.	This information is available for each school district and joint vocational school district on the Ohio Department of Education's website: http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEPrimary.aspx?Page=2&TopicID=990&TopicRelationID=1353			
4.	Vouch selected qualifying ³⁸ expenditures charged to the Reserve during the year for compliance with Ohio Admin Code § 3301-92-01 (G):			
a.	Allowable: textbooks, instructional materials, instructional supplies, instructional software, equipment directly associated with student instruction.			
b.	Unallowable: uses not directly associated with student instruction, such as, employee labor cost, purchased services (except computer maintenance), facilities maintenance, and administrative items.			
5.	Trace "offsets" ²⁶ to appropriate documentation supporting the client's calculations and assertions and to and from the current year working papers:			

³⁸ The percentage is set at 3% by statute, though the Auditor of State has been given some discretion to establish alternate percentages. As of the date of this document no alternative percentage has been established.

³⁹ *Formula amount* is the base cost per pupil as determined by Ohio Rev. Code Sections 3317.02 and .012. For FY 2008, the amount is \$5,565; and for FY 2009 through FY 2011, the amount is \$5,732.

⁴⁰ *Student population* is a defined term. The Ohio Department of Education is responsible for calculating the student population based on information submitted by the school district (3315.17(F)).

Audit Program - A
AUDITING THE TEXTBOOKS AND INSTRUCTIONAL MATERIAL RESERVE

Step No.	Procedure for Consideration	Done By or N/A	Date Comp	X-Ref.
a.	Permanent improvement levy authorized by Ohio Rev. Code § 5705.21 to the extent the proceeds are restricted by the school district Board to expenditure for textbooks, instructional software, and instructional materials, supplies and equipment			
b.	Proceeds of securities whose use is restricted to expenditures for textbooks, instructional software, and instructional materials, supplies and equipment.			
c.	Proceeds of school district income tax levied under Ohio Rev. Code Chapter 5748 for permanent improvements, to the extent the proceeds are restricted to expenditures for textbooks, instructional materials, supplies and equipment.			
d.	Other revenue sources identified by the Auditor of State, in consultation with the Department of Education, in rules adopted by the Auditor of State. ⁴¹			
e.	Expenditures in excess of the current year set aside requirements and the carry over balance in the textbooks and instructional materials set aside may be carried forward to reduce future years' textbooks and instructional materials set aside requirements. Contributions in excess of required set asides may also be carried forward to offset future year(s) textbook and instructional materials set aside requirements.			
6.	Read any other information included in the report (e.g., the introductory and statistical sections of a CAFR), and determine whether it is consistent with the note. If the information is materially inconsistent or misstated, consult with Accounting & Auditing Support if the client refuses to make necessary changes.			
7.	Prepare a brief narrative for the working papers that describes the nature, timing, and extent of our tests of the reserve.			

⁴¹ As of the date of this audit program, the AOS has identified no such revenues.

Audit Program – A
AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE

**If the school district elected to apply the pre-July 1, 2001 base calculation,
 use Audit Program B.**

Step No.	Procedure for Consideration	Done By or N/A	Date Comp	X-Ref
1.	Testing note accuracy.			
a.	Obtain the school district’s draft set aside note and supporting documentation.			
b.	Foot and crossfoot the note			
c.	Foot and crossfoot the client’s underlying calculations (if any).			
2.	Trace beginning of the year balance to prior audited financial statements or working papers.			
3.	Test the annual reserve calculation by multiplying the percentage ⁴² by the “ formula amount ²⁹ ” and multiplying the result by the school district’s “ student population ³⁰ ”. The preceding year’s “formula amount” and “student population” should be used for this calculation: [(% x Formula Amount) x Student Population]			
a.	This information is available for each school district and joint vocational school district on the Ohio Department of Education’s website: http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEPrimary.aspx?Page=2&TopicID=990&TopicRelationID=1353			
4.	Vouch selected qualifying ²⁸ expenditures charged to the Reserve during the year for compliance with Ohio Admin Code § 3301-92-02 (G):			
a.	Allowable: acquisition price; direct materials; labor and overhead for a qualifying project; project professional fees; site prep; demolition\removal of existing assets; freight and handling; capital lease principal.			
b.	Unallowable: expenditures not for acquisition, replacement, enhancement, maintenance and repair of permanent improvements (property, asset, or improvements with a useful life of 5 years or more).			
5.	Trace “offsets” ²⁶ to appropriate documentation supporting the client’s calculations and assertions and to and from the current year’s working papers (excess offsets do not carry forward):			

⁴² The percentage is set at 3% by statute, though the Auditor of State has been given some discretion to establish alternate percentages. As of the date of this document, no alternative percentage has been established.

Audit Program – A
AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE

a.	Permanent improvement levy authorized by Ohio Rev. Code §5705.21 to the extent the proceeds are restricted by the school district Board to expenditure for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements ⁴³ .			
b.	Proceeds of securities whose use is restricted to expenditures for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements. ⁴⁴			
c.	Insurance proceeds received as a result of the damage to or theft or destruction of a permanent improvement to the extent a Board of Education places the proceeds in a separate fund for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements.			
d.	Proceeds received from the sale of a permanent improvement to the extent the proceeds are paid into a separate fund for the construction or acquisition of permanent improvements.			
e.	Proceeds received from a tax levy authorized by Ohio Rev. Code §3318.06 to the extent the proceeds are available to be used for the maintenance of capital facilities. (Classroom facilities fund 034) ⁴⁵ .			
f.	Proceeds of certificates of participation issued as a part of a lease-purchase agreement entered into under Ohio Rev. Code Section 3313.375.			
g.	Proceeds received from the sale of a permanent improvement to the extent the proceeds are paid into a separate fund for the construction or acquisition of permanent improvements.			

⁴³ Revenues from the Ohio School Facilities Commission (OSFC), and the related expenditure of said revenues, cannot be used as offsets or qualifying expenditures. However, proceeds from the sale of securities (tax anticipation notes) issued in anticipation of a permanent improvement levy are an offset in the year of sale. The excess proceeds may be used in future years as an offset up to the amount of the levy proceeds received in that year for repayment (see AOS Bulletin 98-014, Question 15). If the school district uses bond proceeds or bond expenditures to reduce the reserve requirement, the bond proceeds or expenditures should be identified separately from offsets and qualified expenditures in the set aside footnote presentation. For example, a school district might use the captions “Unused Bond Proceeds for Classroom Facilities” or “Expenditure of Bond Proceeds for Classroom Facilities.” Additionally, the amount presented for unused bond proceeds or expenditure of bond proceeds in the footnote calculation should be limited to the amount needed to bring the reserve to a zero balance after qualified expenditures and offsets have been applied. School districts using bond proceeds as offsets must maintain a schedule tracking the amount of the debt proceeds used each year as an offset until it adds up the amount of the original bond issue. School districts using bond levy revenues as offsets will not need to maintain a separate schedule so long as the bond levy offset is equal to the amount of principal retired on the bond issue each year.

⁴⁴ Actual capital expenditures from bond or note proceeds - OR - the proceeds from the related permanent improvement levy or other levy to pay the debt - may be carried forward to offset future years’ capital improvements and maintenance reserve set-aside requirements (negative carry forwards are not allowable). Do not count both the expenditures and the debt or levy proceeds. Capital expenditures from grant proceeds are excluded from qualifying expenditures for purposes of calculating the reserve.

⁴⁵ The annual tax levy proceeds of the annual set aside requirements do not accumulate and/or carryover as an offset in future years.

h.	Proceeds of any school district income tax levied under Ohio Rev. Code Chapter 5748 to the extent the proceeds are available for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements.			
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Audit Program – A
AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE

i.	Money transferred from the general fund (USAS 001) to the permanent improvement fund (USAS 003) is an offset for the current year. If the amount transferred is returned to the general fund, the set aside reserve should be recalculated, taking into account the amount of the transfers returned to the general fund. The amounts transferred required a court order. This should be reported as a change in the set aside for the current year and not a restatement.			
j.	Other revenue sources identified by the Auditor of State, in consultation with the Department of Education, in rules adopted by the Auditor of State ⁴⁶ .			
6.	Read any other information included in the report (e.g., the introductory and statistical sections of a CAFR), and determine whether it is consistent with the note. If the information is materially inconsistent or misstated, consult with Accounting & Auditing Support if the client refuses to make necessary changes.			
7.	Prepare a brief narrative for the working papers that describes the nature, timing, and extent of our tests of the note.			

⁴⁶ As of the date of this audit program, the AOS has identified no such revenues.

Audit Program - D⁴⁷
AUDITING THE TEXTBOOKS AND INSTRUCTIONAL MATERIAL RESERVE

Use this audit program if the school district has elected to apply the pre-July 1, 2001 base calculation as discussed in Ohio Compliance Supplement section 1-14

Step No.	Procedure for Consideration	Done By or N/A	Date Comp	X-Ref
1.	Testing note accuracy:			
a.	Obtain the school district's draft of the set aside note and supporting documentation.			
b.	Foot and crossfoot the note.			
c.	Foot and crossfoot the client's underlying calculations, including the current year required set aside percentage (3%) times the base.			
2.	Trace beginning of the year balance to prior audited financial statements or working papers.			
3.	Trace cash-basis property tax revenue (Ohio Rev. Code Chapter 5705 amounts) to the client's calculations and to and from the prior year working papers (determine that all audit adjustments and reclassification entries which the auditee agreed to post are properly reflected in the papers) or to other acceptable documentation, such as County Auditor Tax Settlement Sheets:			
a.	General fund property tax amounts			
b.	Emergency levy fund property tax amounts			
c.	Operating revenue from a multi-purpose property tax levy			
d.	Inside millage allocated to a capital projects fund			
e.	Property tax receipts allocated to a debt service fund for general fund tax and revenue anticipation debt			
f.	Payments received in lieu of property taxes			
g.	Proceeds from the sale of delinquent tax liens			
4.	Trace cash-basis income tax revenue (Ohio Rev. Code Chapter 5748 amounts) to the client's calculations and to and from the prior year working papers or other acceptable documentation, such as remittance advices from the State:			
a.	General fund income tax amounts			
b.	Income tax receipts allocated to a debt service fund for general fund tax and revenue anticipation debt			
c.	School district's share of city income tax based upon a development agreement			
5.	Trace cash-basis formula aid (school foundation) revenue (Ohio Rev. Code §3317.022(A) [non vocational schools] or §3317.06 [vocational schools]) to the client's calculations and to and from the prior year working papers or other acceptable documentation: —			

⁴⁷ Audit Program C was *Auditing the Budget Reserve*. Most of this no longer applies. The steps that still apply were moved to other programs.

Audit Program – D⁴⁷
AUDITING THE TEXTBOOKS AND INSTRUCTIONAL MATERIAL RESERVE

Step No.	Procedure for Consideration	Done By or N/A	Date Comp	X-Ref
a.	This information is available for each school district and joint vocational school district on the Ohio Department of Education’s website: http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEPrimary.aspx?page=2&TopicRelationID=990%20			
b.	For “guarantee” school districts, use the amount from line 19 on the fiscal year 6/30/05 Form SF3 (formerly SF 12) ⁴⁸			
6.	Vouch selected expenditures charged to the Reserve during the year for compliance with Ohio Admin Code § 3301-92-01 (G):			
a.	Allowable: textbooks, instructional materials, instructional supplies, instructional software, equipment directly associated with student instruction.			
b.	Unallowable: uses not directly associated with student instruction, such as, employee labor cost, purchased services (except computer maintenance), facilities maintenance, administrative items. _____			
7.	Trace “offsets” to appropriate documentation supporting the client’s calculations and assertions and to and from the current year working papers:			
a.	Permanent improvement levy authorized by Ohio Rev. Code § 5705.21 to the extent the proceeds are restricted by the school district Board to expenditure for textbooks, instructional software, and instructional materials, supplies and equipment			
b.	Proceeds of securities whose use is restricted to expenditures for textbooks, instructional software, and instructional materials, supplies and equipment.			
c.	Proceeds of school district income tax levied under Ohio Rev. Code Chapter 5748 for permanent improvements, to the extent the proceeds are restricted to expenditures for textbooks, instructional materials, supplies and equipment.			
d.	Other revenue sources identified by the Auditor of State, in consultation with the Department of Education, in rules adopted by the Auditor of State ⁴⁹ .			

⁴⁸ This amount is included in a separate column on ODE’s web site.

⁴⁹ As of the date of this audit program, no such revenues have been identified.

Audit Program - D⁴⁷
AUDITING THE TEXTBOOKS AND INSTRUCTIONAL MATERIAL RESERVE

Step No.	Procedure for Consideration	Done By or N/A	Date Comp	X-Ref
e.	Expenditures in excess of the current year set aside requirements and the carryover balance in the textbook and instructional materials set aside may be carried forward to reduce future years' textbook and instructional materials set aside requirements. Contributions in excess of required set asides may also be carried forward to offset future year(s) textbook and instructional materials set aside requirements.			
8.	Read any other information included in the report (e.g., the introductory and statistical sections of a CAFR), and determine whether it is consistent with the note. If the information is materially inconsistent or misstated, consult with Accounting & Auditing support if the client refuses to make necessary changes.			
9.	Prepare a brief narrative for the working papers that describes the nature, timing, and extent of our tests of the reserve.			

Audit Program – B
AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE

Use this audit program if the school district has elected to apply the pre-July 1, 2001 base calculation as discussed in Ohio Compliance Supplement section 1-12

Step No.	Procedure for Consideration	Done By or N/A	Date Comp	X-Ref
1.	Testing note accuracy.			
a.	Obtain set school district’s draft aside note and supporting documentation.			
b.	Foot and crossfoot the note.			
c.	Foot and crossfoot the client’s underlying calculations, including the current year required set-aside percentage (3%) times the base.			
2.	Trace beginning of the year balance to prior audited financial statements or working papers.			
3.	Trace cash-basis property tax revenue (Ohio Rev. Code Chapter 5705 amounts) to the client’s calculations and to and from the prior year’s working papers (determine that all audit adjustments and reclassification entries which the auditee agreed to post are properly reflected in the papers) or other acceptable documentation, such as County Auditor Tax Settlement sheets:			
a.	General fund property tax amounts			
b.	Emergency levy fund property tax amounts			
c.	Operating revenue from a multi-purpose property tax levy			
d.	Inside millage allocated to a capital projects fund			
e.	Property tax receipts allocated to a debt service fund for general fund tax and revenue anticipation debt			
f.	Payments received in lieu of property taxes			
g.	Proceeds from the sale of delinquent property tax liens			
4.	Trace cash-basis income tax revenue (Ohio Rev. Code Chapter 5748 amounts) to the client’s calculations and to and from the prior year’s working papers or other acceptable documentation, such as State remittance advices:			
a.	General fund income tax amounts			
b.	Income tax receipts allocated to a debt service fund for general fund tax and revenue anticipation debt			
c.	School district’s share of city income tax based upon a development agreement			
5.	Trace cash-basis formula aid (school foundation) revenue (Ohio Rev. Code § 3317.022(A) [non-vocational schools] or §3317.06 [vocational schools]) to the client’s calculations and to and from the prior year’s working papers or other acceptable documentation:			

Audit Program – B
AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE

a.	This information is available for each school district and joint vocational school district on the Ohio Department of Education’s website: http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEPrimary.aspx?page=2&TopicRelationID=990%20			
b.	For “guarantee” school districts, use the amount from line 19 on the fiscal year 6/30/05 Form SF3 (formerly SF-12) ⁵⁰ .			
6.	Vouch selected expenditures charged to the Reserve during the year for compliance with Ohio Admin Code § 3301-92-02 (G):			
a.	Allowable: acquisition price; direct materials; labor and overhead for a qualifying project; project professional fees; site prep; demolition\removal of existing assets; freight and handling; capital lease principal.			
b.	Unallowable: expenditures not for acquisition, replacement, enhancement, maintenance and repair of permanent improvements (property, asset, or improvements with a useful life of 5 years or more).			
7.	Trace “offsets” ²⁶ to appropriate documentation supporting the client’s calculations and assertions and to and from the current year’s working papers:			
a.	Permanent improvement levy authorized by Ohio Rev. Code §5705.21 to the extent the proceeds are restricted by the school district Board to expenditure for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements. ⁴⁴			
b.	Proceeds of securities whose use is restricted to expenditures for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements. ⁴⁴			
c.	Insurance proceeds received as a result of the damage to or theft or destruction of a permanent improvement to the extent a Board of Education places the proceeds in a separate fund for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements			
d.	Proceeds received from the sale of a permanent improvement to the extent the proceeds are paid into a separate fund for the construction or acquisition of permanent improvements			
e.	Proceeds received from a tax levy authorized by Ohio Rev. Code §3318.06 to the extent the proceeds are available to be used for the maintenance of capital facilities. (Classroom facilities)			
f.	Proceeds of certificates of participation issued as a part of a lease-purchase agreement entered into under Ohio Rev. Code Section 3313.375.			

⁵⁰ This amount is included in a separate column on ODE’s web site.

Audit Program – B
AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE

g.	Proceeds received from the sale of a permanent improvement to the extent the proceeds are paid into a separate fund for the construction or acquisition of permanent improvements.			
h.	Proceeds of any school district income tax levied under Ohio Rev. Code Chapter 5748 to the extent the proceeds are available for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements.			
i.	Money transferred from the general fund (USAS 001) to the permanent improvement fund (USAS 003) is an offset for the current year. If the amount transferred is returned to the general fund, the set aside reserve should be recalculated, taking into account the amount of the transfers returned to the general fund. The amounts transferred required a court order. This should be reported as a change in the set aside for the current year and not a restatement.			
j.	Other revenue source identified by the Auditor of State, in consultation with the Department of Education, in rules adopted by the Auditor of State. ⁵¹			
8.	Read any other information included in the report (e.g., the introductory and statistical sections of a CAFR), and determine whether it is consistent with the note. If the information is materially inconsistent or misstated, consult with the Center for Audit Excellence if the client refuses to make necessary changes.			
9.	Prepare a brief narrative for the working papers that describes the nature, timing, and extent of our tests of the note.			

⁵¹ As of the date of this issuance, the AOS has identified no such revenues.

~~**1-14 Compliance Requirements:** Ohio Rev. Code Sections 3316.03, and 3316.031— School fiscal caution, fiscal watch and fiscal emergency.~~

Summary of Requirements:

~~A **fiscal watch** *shall* be declared if any of the following conditions are met:~~

- ~~(1)(a) — An operating deficit has been certified for the current fiscal year by the Auditor of State and the deficit exceeds 8% of the school district's general fund revenue for the preceding fiscal year (such a certification would be prompted by a resolution of the board of education or by a request from the state superintendent of public instruction [Ohio Rev. Code 3313.483]; and~~
- ~~— (b) — The voters have not approved a levy that would raise sufficient revenue in the next succeeding fiscal year such that (a) above would no longer apply.~~

~~———— **OR**~~

- ~~(2) — The school district has outstanding debt securities [issued under Ohio Rev. Code § 3316.06(A)(4)] and the financial planning and supervision commission has been canceled [under Ohio Rev. Code 3316.16] (this situation deals with a down grade to fiscal watch from fiscal emergency).~~

~~———— **OR**~~

- ~~(3) — The superintendent of public instruction has declared the school district to be under fiscal caution [under Ohio Rev. Code § 3316.031], has found that the school district has not acted reasonably to eliminate or correct practices or conditions that prompted the declaration, and determined the declaration of a state of fiscal watch necessary to prevent further fiscal decline; and~~

~~———— The Auditor of State determines that the decision of the superintendent is reasonable.~~

~~A **fiscal watch** *may* be declared if all of the following conditions are met:~~

- ~~(1) — An operating deficit has been certified for the current fiscal year by the Auditor of State and the deficit exceeds 2%, but does not exceed 8%, of the school district's general fund revenue for the preceding fiscal year; and~~
- ~~(2) — The voters have not approved a levy that would raise sufficient revenue in the next succeeding fiscal year such that (1) above would no longer apply, and;~~
- ~~(3) — The Auditor of State determines there is no reasonable cause for the deficit or that the declaration of fiscal watch is necessary to prevent further fiscal decline.~~

~~A **fiscal emergency** *shall* be declared if any of the following conditions are met:~~

- ~~(1)(a) — A certified operating deficit exceeds 15% of the general fund revenue for the preceding fiscal year (such a certification would be prompted by a resolution of the board of education or by a request from the state superintendent of public instruction [Ohio Rev. Code § 3313.483]; and~~

~~(b) The voters have not approved a levy that would raise sufficient revenue in the next succeeding fiscal year such that (a) above would no longer apply.~~

~~OR~~

~~(2) The school district board fails to submit a plan acceptable to the state superintendent of public instruction within 120 days of being declared in a state of fiscal watch.~~

~~OR~~

~~(3) The superintendent of public instruction has reported that the school district is not materially complying with the provisions of an original or updated financial plan (related to a fiscal watch declaration) and the state superintendent has determined the declaration of a state of fiscal emergency necessary to prevent further fiscal decline.; and~~

~~The Auditor of State determines that the decision of the superintendent is reasonable.~~

~~OR~~

~~(4) A declaration of fiscal emergency is required by division (D) of section 3316.04 of the Ohio Rev. Code (that is, if the school district is currently in a declared Fiscal Watch and refinances or restructures certain debt).~~

A **fiscal emergency** *may* be declared if all of the following conditions are met:

~~(1) An operating deficit has been certified for the current fiscal year by the Auditor of State and the deficit exceeds 10%, but does not exceed 15%, of the school district's general fund revenue for the preceding fiscal year; and,~~

~~(2) The voters have not approved a levy that would raise sufficient revenue in the next succeeding fiscal year such that (1) above would no longer apply.~~

~~(3) The auditor of state determines that a declaration of fiscal emergency is necessary to correct the school district's financial problems and to prevent further fiscal decline.~~

~~In addition to fiscal watch and fiscal emergency, Ohio Rev. Code § 3316.031 establishes a third category of fiscal distress called "**fiscal caution**". In accordance with rules established under this category, the Auditor of State is responsible for referring certain deficiencies to the Ohio Department of Education. The following is ODE's fiscal caution criteria:~~

~~Failure to correct any of the following situations could eventually lead to the Auditor of State declaring a school district to be in a state of Fiscal Watch or Fiscal Emergency.~~

~~1. When a school district fails to submit or update a five-year projection as required by section 5705.391 of the Ohio Rev. Code or by Administrative Rule 3301-92-04.~~

~~2. When there is a potential current year deficit with no acceptable plan in place to avoid the projected deficit.~~

3. ~~When a school district notified under division (A) of section 5705.391 of the Ohio Rev. Code fails to submit an acceptable plan to address a **potential future year deficit** within the timeframe allowed.~~
4. ~~Whenever the Department discovers any other “fiscal practices or conditions” that could lead to a declaration of Fiscal Watch or Emergency through the examination of a school district’s five year projection required under division (B) of section 5705.301 of the Ohio Rev. Code.~~
5. ~~When the Auditor of State certifies a deficit between 2% and 8% of prior year general fund revenue and elects not to place the school district in Fiscal Watch, the school district must be placed in Fiscal Caution as required by section 3316.031(B)(3) of the Ohio Rev. Code.~~
6. ~~When the Auditor of State declares that a school district’s financial records are unauditabile.~~
7. ~~When the Auditor of State reports that a school district has not complied with section 5705.412 of the Ohio Rev. Code by attaching a signed certificate to an appropriation measure, qualifying contract or salary schedule.~~
8. ~~When the Auditor of State identifies material weaknesses, significant deficiencies, direct and material legal noncompliance or management letter comments which, in the opinion of the Auditor, the aggregate effect of all such reported issues has an significant effect on the financial condition of the school district.~~

Financial Recovery Plan

School districts in fiscal watch and fiscal emergency are required to prepare a financial recovery plan and submit it to the Superintendent of Public Instruction at the Ohio Department of Education. These plans must be updated annually. (Ohio Rev. Code Sections 3316.04(C) and 3316.06(A))

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

If the school district is currently in fiscal watch or fiscal emergency, review the school district’s recovery plan. An effective recovery plan should identify the steps necessary for the school

~~district to take to fully recover from fiscal watch or fiscal emergency and identify target dates to achieve each component of the recovery plan.~~

~~Through inquiry and examination of accounting records, determine whether the district is generally complying with key statutory requirements to follow the plan are not being violated by the school district.~~

~~Determine whether the school district's plan was updated annually.~~

~~While performing audit work, be alert to information relative to the current fiscal year which may suggest the school district will be unable to open, or remain open, for instruction on all days set forth in its adopted school calendar, pay all obligated expenses (current year operating deficit is reasonably possible), or otherwise suggests one of the fiscal distress conditions may exist. Such information might come to the auditor's attention while:~~

- ~~➤—Reviewing minutes~~
- ~~➤—Making audit inquiries~~
- ~~➤—Reviewing audit period and current year interim financial reports~~
- ~~➤—Reviewing correspondence with legal counsel—~~
- ~~➤—Reviewing the matters for attention form and draft audit report~~
- ~~➤—Performing other such audit procedures~~

~~If during audit work and based on knowledge of the school district, such information does come to the auditor's attention, the engagement chief auditor should be contacted. If after evaluation the Chief Auditor concludes there are or may be significant financial problems, the chief auditor should contact the Chief Deputy Auditor or his designee.~~

~~Auditor of State Audit Memo 2001-09 provides additional guidance regarding fiscal caution. (Note that ODE has changed some of the criteria ADAM 2001-09 listed for determining a fiscal caution. The amended fiscal caution criteria appear above. Otherwise, ADAM 2001-09 still applies.)~~

~~If such information comes to the attention of an IPA during an audit, contact the regional chief auditor.~~

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>
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Section C: Additional Public Library Requirements

1-13 Compliance Requirements: Ohio Rev. Code Section 5705.23 - Special levy for library purposes; submission to electors.

Summary of Requirements: The board of library trustees of any county, municipal corporation, school district, or township public library by a vote of two-thirds of all its members may pass a resolution indicating a desire to raise taxes outside the ten-mill limitation. The resolution declares it necessary to levy a tax for either current expenses of the library or for the construction of any specific permanent improvement or class of improvement which the board of library trustees is authorized to make or acquire and which could be included in a single bond issue.

The question of this additional tax levy is to be submitted by the taxing authority of the political subdivision to whose jurisdiction the board is subject, to the electors of the subdivision or, if the resolution so states, to the electors residing within the boundaries of the library district.

The tax levy may be in effect for any specified number of years or for a continuing period of time, as set forth in the resolution.

The library may borrow up to 50% of the total estimated proceeds of a current expense levy to be collected during the first year of the levy.

The Library may issue Anticipation Notes in an amount not to exceed 50% of the total estimated proceeds of the levy for permanent improvements to be collected in each year over the period of ten years after the issuance of such notes.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Effectiveness of Oversight Government’s Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Trace resolutions to the minutes, noting that they were passed by at least two-thirds of all board members.

Obtain a copy of the taxing authority's resolution(s) and agree it to the resolution(s) certified to it by the library trustees.

Vouch a representative selection of expenditures made with tax levy proceeds and determine that the proceeds were being used for the purpose(s) stated in the resolution(s).

If the library issued anticipation notes, compare the proceeds from the notes to the total anticipated proceeds of the levy. The note proceeds should not exceed 50% of the levy.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section D: Generic Requirements for Revenues, Funds, and Transfers

1-14 Compliance Requirements: Ohio Rev. Code Sections 5705.02, 5705.07 and 5705.18 and Article XII, Section 2 of the Constitution of the State of Ohio - Ten mill limitation. (These tests apply only to years in which inside or outside millage increases. That is, you need not test this requirement for years in which there have been no new levies as long as there is documentation in the permanent file of voter approval for all outside millage.)

Summary of Requirements: Generally, the aggregate amount of taxes that may be levied on any taxable property in any one year is not to exceed ten mills on each dollar of tax valuation. (Charter governments may use a different limit authorized in their charter.) This limitation is known as the *ten mill limitation*, or *inside millage*. The ten mill limitation may only be exceeded (a) by a vote of the people, or (b) by a charter that provides for a higher limitation which may be levied without a vote of the people.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: In assessing the risk of noncompliance, auditors should consider whether the government has obtained bond counsel for recent debt issuances. Typically, bond counsel will evaluate (and possibly opine) on a government’s compliance with the ten-mill limitation laws. A recent opinion or evaluation by bond counsel (especially during or near the current audit period) may lower the risk of noncompliance.

However, governments that can issue general obligation bonds without a vote of the people may be at a greater risk for noncompliance if they are already nearing the ten-mill limitation. For example, assume a subdivision within a county is at 90% of the ten-mill limitation and the county auditor subsequently reappraises and lowers property values within the subdivision by 11%. The reappraisal would cause the subdivision to exceed the ten-mill limitation.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Effectiveness of County Budget Commission's/County Auditor's Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Inspect the tax budget for the year and determine if the ten mill limitation was exceeded.

If the ten mill limitation was exceeded, inspect the document entitled *Resolution Accepting Amounts and Rates as Determined by the Budget Commission and Authorizing the Necessary Tax Levies and Certifying Them to the County Auditor*, indicating outside millage was authorized by a vote of the people or was authorized by appropriate charter provisions. Secure copies for the permanent files, if appropriate. (These tests apply only to years in which inside or outside millage increases. That is, you need not test this requirement for years in which there have been no new levies as long as there is documentation in the permanent file of voter approval for all outside millage.)

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

1-15 Compliance Requirement: Ohio Rev. Code Section 5705.09 Establishing funds.

Summary of Requirements: Each subdivision must establish the following funds:

- General fund;
- Sinking fund whenever the subdivision has outstanding bonds other than serial bonds;
- Bond retirement fund, for the retirement of serial bonds, notes, or certificates of indebtedness;
- A special fund for each special levy;
- A special bond fund for each bond issue;
- A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose;
- A special fund for each public utility operated by a subdivision;
- A trust fund for any amount received by a subdivision in trust.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Presence of Effective Accounting System • Ticker Files/Checklists • Legislative and Management Monitoring • Periodic Reviews of Fund Ledgers • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Compare funds on the subdivision’s chart of accounts with funds that existed in the prior audit period. For any new funds, apply the following steps:

- Inspect authority (e.g., board resolution) to establish the fund.
 - *Note: The legislative body of a local government may always specify, for management purposes, how they want specific resources spent. Absent any statutory restrictions on such resources, an internal purpose restriction does not*

justify the creation of a separate fund. New funds must be created based on the guidelines in AOS Bulletin 1999-006.

- If a fund is not authorized under Ohio Rev. Code Section 5705.09 or another Ohio Rev. Code section and the entity did not receive Auditor of State approval to establish the fund, propose the necessary findings for adjustment to remove the unauthorized fund(s) and place the activity in the General Fund or other appropriate fund. *(We will not apply this retroactively to funds existing from prior audit periods.)*

Note: Establishing funds required in this ORC Section does **not** require AOS approval.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

1-16 Compliance Requirement: Ohio Rev. Code Sections 5705.05-.06, 5705.10, 5705.14(E), 5731.48, and 3315.20(A). Distributing revenue derived from tax levies, proceeds from sale of bond issue, proceeds from sale of permanent improvement, and depositing estate taxes into the general fund

Summary of Requirements:

- All revenue derived from the following must be paid into the general fund [R.C. § 5705.10, unless otherwise indicated below]:
 - the general levy for current expense within the ten mill limitation,
 - any general levy for current expense authorized by vote in excess of the ten mill limitation, and from
 - ~~HB 458 precludes~~ Counties are precluded from using general levy revenue for current expenses for the construction, reconstruction, resurfacing, and repair of roads and bridges. [ORC 5705.05 & .06]. ~~Effective for fiscal year 2009,~~ Other entities (except counties) may transfer general levy revenue for current expenses to Road and Bridge Funds via a resolution passed by a simple majority of the governing authority [ORC 5705.14(E)] or may pay for these expenses directly from the General Fund [ORC 5705.05 & .06].⁵⁷
 - sources other than the general property tax, unless its use for a particular purpose is prescribed by law (see the circumstances requiring a separate fund in the preceding OCS Step)
 - Estate taxes received by a township or municipal corporation under R.C. § 5731.48
 - **Exceptions:**
 - Villages: (A)(2) To the general revenue fund of a village or to the board of education of a village, for school purposes, as the village council by resolution may approve;
 - Townships: (A)(3) To the general revenue fund or to the board of education of the school district of which the township is a part, for school purposes, as the board of township trustees by resolution may approve, in the case of a township.
 - Municipal Corporations: (D) If a municipal corporation is in default with respect to the principal or interest of any outstanding notes or bonds, one half of the [estate] taxes distributed under this section shall be credited to the sinking or bond retirement fund of the municipal corporation, and the residue shall be credited to the general revenue fund.
- All revenue derived from general or special levies for debt charges which is levied for the debt charges on serial bonds, notes, or certificates of indebtedness having a life less than five years, must be paid into the bond retirement fund. All such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness is to be paid into the sinking fund [R.C. § 5705.10(B)].
- All revenue derived from a special levy is to be credited to a special fund for the purpose for which the levy was made [R.C. § 5705.10(C)].⁵²

⁵² ~~HB 530 permits~~ Townships receiving distributions from the Gasoline Excise Tax Fund in the state treasury are permitted to use that money to pay debt service on State Infrastructure Bank obligations. (R.C. 5531.10 and 5735.27)

- All revenue derived from a source other than the general property tax and which the law prescribes, shall be used for a particular purpose is to be paid into a special fund (see step 1-15 for a listing of possible “special” funds) for such purpose [R.C. § 5705.10].
- All proceeds from the sale of public obligations or fractionalized interests in public obligations as defined in Ohio Rev. Code Section 133.01, *except premium and accrued interest*, are to be paid into a special fund for the purpose of such issue. Any interest earned on money in the special fund may be used for the purposes for which the indebtedness was authorized, or may be credited and used for an authorized fund or account. [R.C. § 5705.10]
- The *premium and accrued interest* received from the sale of public obligations or fractionalized interests in public obligations as defined in Ohio Rev. Code section 133.01 is to be paid into the subdivision's sinking fund or the bond retirement fund [R.C. § 5705.10(E)].

Note: We wish to emphasize to governments and to their auditors the importance of complying with this. We have seen recent instances where investors desire interest payments exceeding market rates. They are willing to exchange the necessary up-front payment (*premium*) to obtain these returns in the future. When this occurs, debt proceeds will include the premium, which may be a substantial amount. If the debt is restricted for a capital project (for example), governments should *not* deposit the premium into a capital project fund. Instead, RC 5705.10(E) prudently requires governments to deposit the premium in a sinking / bond retirement / debt service fund, to set aside amounts for the above-market interest payable over the debt's duration.

Depositing premiums (or accrued interest) into a fund other than the sinking / bond retirement would violate the requirements above, and be subject to a finding for adjustment.

- If a permanent improvement of the subdivision is sold, the amount received from it shall be paid into the sinking fund, the bond retirement fund, or into a special fund for the construction or acquisition of permanent improvements [R.C. § 5705.10(F)].⁵³ However, after a county home has been closed as provided by section 5155.31 of the Revised Code, the board of county commissioners may sell or lease any part of the county home farm, and all receipts from such sales or leases shall be paid to the county treasurer and credited to the general county fund, and shall be subject to appropriation for such purposes as the board decides [R.C. § 5155.33].

⁵³ ~~HB385~~, in Ohio Rev. Code Sections 5705.10(F) & (G), ~~created~~ include an exception for certain townships, with a population greater than 15,000, having used township tax increment financing (TIF) for real property in the township according to the most recent federal decennial census. These townships may pay proceeds from the sale of a permanent improvement of the township into its general fund if both of the following conditions are satisfied:

- The Township fiscal officer determines that all foreseeable “public infrastructure improvements” to be made in the township in the 10 years immediately following the date the permanent improvement is sold will have been financed through township TIF on or before the date of the sale. Written certification of this determination must be made part of the township’s records.
- The permanent improvement being sold was financed entirely from moneys in the township’s general fund.

- Proceeds from the sale of a public utility are to be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility [R.C. § 5705.10(F)].
- Proceeds from the sale of property other than a permanent improvement are to be paid into the fund from which such property was acquired or is maintained, or if there is no such fund, into the general fund [R.C. § 5705.10(F)].

Money paid into a fund must be used only for the purposes for which such fund has been established. As a result, a negative fund cash balance⁵⁴ indicates that money from one fund was used to cover the expenses of another fund [R.C. § 5705.10(H)]. However, Ohio Rev. Code section 3315.20 provides an allowable exception for school districts. A school district may have a deficit in any special fund (see step 1-15 for a listing of possible “special” funds) of the school district, but only if all of the following conditions are satisfied:

- The school district has a request for payment pending with the state sufficient to cover the amount of the deficit [R.C. § 3315.20(A)]
- There is a reasonable likelihood that the payment will be made [R.C. § 3315.20(A)]
- The unspent and unencumbered balance in the school district’s general fund is greater than the aggregate of deficit amounts in all of the school district’s special funds. [R.C. § 3315.20(B)]

Although the ARRA - State Fiscal Stabilization Fund – Education Stabilization Fund (SFSF) is advanced to LEA’s through the foundation program, and the Education Jobs Fund (Ed Jobs) is allocated based on the foundation program, they are Federal funds requiring a special fund. Therefore, we believe the allowable exceptions for fund deficits provided under Ohio Rev. Code section 3315.20 also apply to SFSF and Ed Jobs. Additionally, AOS believes it is illogical to cite 5705.36 when a school district’s actual available resources fall below annual appropriations if all exceptions from ORC 3315.20 above are met.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Presence of Effective Accounting System • Periodic Reviews/Comparisons of Budgeted and Actual Revenues • Independent Inspection/Comparison of Revenues to Source Documents • Tickler Files/Checklists 		

⁵⁴ There is no legal authority addressing whether encumbrances are to be included when analyzing fund balances. R.C. 5705.10 does not explicitly prohibit an entity from having a negative fund balance. Instead, we cite to R.C. 5705.10 because restricted funds were used for other purposes. Therefore, do not include encumbrances when analyzing compliance with R.C. 5705.10.

<ul style="list-style-type: none"> • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Trace a representative number of receipts from tax levies, bond issues, and sales of permanent improvements, to the funds. Note: Because recording receipts to an incorrect opinion unit is a misstatement, auditors should test these transactions to the extent required to reasonably assure there was no material misstatement. Also, auditors should consider reporting noncompliance for misposting to incorrect funds (rather than opinion units) as described in the *Finding for Adjustment* guidance in the *Ohio Compliance Supplement Introduction*.

Trace selected estate tax proceeds to the credit of the municipality’s or township’s general fund. If in default on bonds or notes, municipalities should apportion 50% of the net proceeds each to the debt service and general funds.

Trace significant interest earned on bond proceeds to the credit of (1) a fund used for purposes for which the debt was authorized, or (2) the general fund. [Section 5705.10(E)] (Note: Proceeds exclude accrued interest and premiums, which the entity must credit to the sinking or bond retirement fund.) Also note that this interest may be subject to Federal arbitrage regulations—AOS staff should refer to the arbitrage procedures in the specimen debt audit program.

Inspect accounting ledgers or month end reports as of fiscal year end and for selected periods during the year. Determine whether significant negative fund balances existed.

Note: When a fund ends the year with negative cash, it is inappropriate to present an “advance” on the budgetary statement to eliminate the negative cash fund balance. Even though, in substance, the government has made an advance, it is not acceptable to “hide” noncompliance by creating an advance not properly authorized by the government. However, a government should post an interfund receivable and payable to eliminate the negative cash balance on the GAAP financial statements. The government should select the fund to report the receivable.

If negative fund balances are identified for a school district, determine whether the school district met the allowable exception conditions above by:

- *Inspecting* the school district’s Project Cash Request (PCR) forms. In most cases, these forms will be available for viewing online in ODE’s Comprehensive Continuous Improvement Plan (CCIP) application at <https://ccip.ode.state.oh.us/default.aspx?ccipSessionKey=634588550645675891>.
- Computing the unspent and unencumbered balance in the school district’s general fund and vouching whether it is greater than the aggregate of deficit amounts in all of the school district’s special funds.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects)</p>

of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

1-17 Compliance Requirement: Ohio Rev. Code Section 5705.12 Permission to establish funds.

Summary of Requirement: Taxing authorities should establish the funds described in Ohio Rev. Code Sections 5705.09, 5705.121, 5705.13, 5705.131, 5709.43, 5709.75, and 5709.80 when applicable. Establishing these funds (or other funds statutes mandate) does *not* require Auditor of State authorization.

However, should a taxing authority desire to establish other funds not authorized in the ORC, they must obtain *approval of the Auditor of State*. The subdivision may provide by ordinance or resolution that money derived from special sources other than the general property tax shall be paid directly into such funds.

It is necessary to request the Auditor of State’s permission to establish any fund not specifically authorized by statute or when the purpose of the fund is not identified in the Ohio Rev. Code, such as (but not limited to) §5705.09 (A) - (H). Situations requiring Auditor of State approval include:

- When management wishes to create a new fund in order to capture additional financial information about a specific source of revenue or a specific activity;
- When the fund will account for restricted gifts or bequests that will not be held in trust; and
- When management wants to impose internal restrictions on the use of otherwise unrestricted resources.

In some circumstances, the AOS deems the use of additional funds unnecessary and will not approve the request. See AOS Bulletin 99-006 for additional information.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Presence of Effective Accounting System • Periodic Reviews of Fund Ledgers • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

If there is evidence new funds were established during the audit period, trace funds' establishments to the minutes. Determine code section under which established.

If not established under State statute, inspect Auditor of State approval letters for funds created during the current audit period.

(As noted in step 1-17, if a fund is not authorized under Ohio Rev. Code Section 5705.09 or another Ohio Rev. Code section and the entity did not receive Auditor of State approval to establish the fund, propose the necessary findings for adjustment to remove the unauthorized fund(s) and place the activity in the General Fund or other appropriate fund. *(We will not apply this retroactively to funds existing from prior audit periods.)*)

Read ordinances and resolutions regarding how monies derived from special sources are to be used. Trace a representative number of receipts into the funds or accounts required by the ordinances or resolutions.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Revised: HB 153, 129th GA
Effective: 9/29/11

1-18 Compliance Requirements: Ohio Rev. Code Sections 5705.05-.06, 5705.14, 5705.15, and 5705.16 Transfer of funds (*Refer to Appendix A to Chapter 1 for a more detailed discussion on what constitutes a “transfer” under Ohio Rev. Code Sections 5705.14 - .16.*)

Summary of Requirements: No transfer can be made from one fund of a subdivision to any other fund, except as follows:⁵⁵

- The unexpended balance in a bond fund [i.e. a capital project fund financed with bond proceeds] that is no longer needed for the purpose for which such fund was created shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable. [R.C. § 5705.14(A)]
- The unexpended balance in any specific permanent improvement fund, other than a bond fund, after the payment of all obligations incurred in the acquisition of such improvement, shall be transferred to the sinking fund or bond retirement fund of the subdivision. However, if such money is not required to meet the obligations payable from such funds, it may be transferred to a special fund for the acquisition of permanent improvements, or, with the approval of the court of common pleas of the county in which such subdivision is located, to the general fund of the subdivision. [R.C. § 5705.14(B)]
- Except as provided below, the unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest, and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred, in the case of the sinking fund, to the bond retirement fund, and in the case of the bond retirement fund, to the sinking fund. However, if the transfer is impossible by reason of the nonexistence of the fund to receive the transfer, the unexpended balance may be transferred to any other fund of the subdivision with the approval of the court of common pleas of the county in which such division is located. [R.C. § 5705.14(C)(1)]
 - Money in a bond fund or bond retirement fund of a city, local, exempted village, cooperative education, or joint vocational school district may be transferred to a specific permanent improvement fund provided that the county budget commission of the county in which the school district is located approves the transfer upon its determination that the money transferred will not be required to meet the obligations payable from the bond fund or bond retirement fund. In arriving at such a determination, the county budget commission shall consider the balance of the bond fund or bond retirement fund, the outstanding obligations payable from the fund, and the sources and timing of the fund's revenue. [R.C. § 5705.14(C)(2)]
- The unexpended balance in any special fund, other than an improvement fund, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service, or other undertaking for which such special fund existed,

⁵⁵ GASB 2300.120 (and therefore OCBOA presentations) requires certain disclosures regarding the amounts and purposes of transfers in the notes to the financial statements.

but only after the payment of all obligations incurred and payable from such special fund. [R.C. § 5705.14(D)]

- Money may be transferred from the general fund to any other fund of the subdivision [R.C. § 5705.14(E)]. Note: OAG Opinion 89-075 requires a governing board resolution passed by a simple majority of the board members to transfer funds.⁵⁶
 - However, revenue derived from a general levy for current expenses should not be used to pay debt charges [ORC 5705.05, 1981 Op. Atty Gen. No. 81-035]. Therefore, auditors should be alert for transfers from the General Fund to a Debt Service Fund, or other fund, to retire debt. Governments must be able to support that such transfers were made without the use of revenue derived from inside millage. Generally, revenues derived from all other sources in the General Fund may be used to retire debt.
 - ~~HB 458 precludes~~ Counties are precluded from transferring general levy revenue for current expenses to other county funds for the construction, reconstruction, resurfacing, and repair of roads and bridges. [ORC 5705.05 & .06]. ~~Effective for fiscal year 2009,~~ Other entities (except counties) may transfer general levy revenue for current expenses to Road and Bridge Funds via a resolution passed by a simple majority of the governing authority [ORC 5705.14(E)].⁵⁷
- Moneys retained by a county in accordance with Ohio Rev. Code Section 4501.04 (auto registration distribution fund), or in accordance with Ohio Rev. Code Section 5735.27 (gasoline excise tax fund), may be transferred from the fund into which they were deposited to the sinking fund or bond retirement fund from which any principal, interest, or charges for which such moneys may be used is payable. [R.C. § 5705.14(F)]
- Moneys retained or received by a municipal corporation under Ohio Rev. Code Section 4501.04 (motor vehicle license tax), or division (A) (1) or (2) of Ohio Rev. Code Section 5735.27 (motor vehicle fuel excise taxes), may be transferred from the fund into which they were deposited to the sinking fund or bond retirement fund from which any principal, interest, or charges for which such moneys may be used is payable. [R.C. § 5705.14(G)]
- After payment of the expenses of conducting and managing the water works, any surplus of a municipal corporation's water fund may be applied to the repairs, enlargement, or extension of the works or of the reservoirs, the payment of the interest of any loan made for their construction, or for the creation of a sinking fund for the liquidation of the debt. In those municipal corporations in which water works and sewerage systems are conducted as a single unit, under one operating management, a sum not to exceed ten per cent of the gross revenue of the water works for the preceding year may be taken from any surplus remaining after all of the preceding purposes have been cared for and may be used for the payment of the cost of

⁵⁶ AOS interprets this requirement to mean that a governing board may approve interfund transfers from the general fund to other funds of the subdivision within its annual appropriation measure provided that the measure was passed by a simple majority of the board members.

⁵⁷ ~~For entities other than counties, transfers from the General Fund to the Road and Bridge Fund or direct payments from the General Fund for construction, reconstruction, resurfacing, and repair of roads and bridges during fiscal years 2007 or 2008 will be subject to a potential *Finding for Adjustment*. Such expenditures were clearly prohibited under the statute during these periods.~~

maintenance, operation, and repair of the sewerage system and sewage pumping, treatment, and disposal works and for the enlargement or replacement thereof. Each year a sum equal to five per cent of the gross revenue of the preceding year shall be first retained from paid surplus as a reserve for waterworks purposes. The amount authorized to be levied and assessed for waterworks purposes shall be applied by the legislative authority to the creation of the sinking fund for payment of any indebtedness incurred for the construction and extension of water works and for no other purposes; provided, where such municipal corporation does not operate or maintain a water works or a sewage pumping, treatment, and disposal works, any or all such surplus may be transferred to the general fund of the municipal corporation in the manner provided for in sections 5705.15 and 5705.16 of the Revised Code⁵⁸. [RC § 743.05]

- Money may be transferred from the County Developmental Disabilities general fund to the County Developmental Disabilities capital fund established under Ohio Rev. Code Section 5705.091, or to any other fund created for purposes of the County Board of Developmental Disabilities so long as it is spent for the particular purpose of the transfer. An unexpended balance in an account may be transferred back to the County Developmental Disabilities general fund. Transfers shall be done by resolution of the Board of County Commissioners. [R.C. §5705.14(H)]
- Money may be transferred from the public assistance fund established under section 5101.161 of the Revised Code to either of the following funds, so long as the money to be transferred from the public assistance fund may be spent for the purposes for which money in the receiving fund may be used [R.C. §5705.14(I)]:

(1) The children services fund established under section 5101.144 of the Revised Code;

(2) The child support enforcement administrative fund established, as authorized under rules adopted by the director of job and family services, in the county treasury for use by any county family services agency.

- Money may be transferred among various funds and accounts from which a loss was directly attributable to allocate insurance and self insurance program costs, including deductibles, under Ohio Rev. Code sections 2744.08 and 2744.082. If a subdivision makes such an allocation or requires the payment of deductibles from specific funds or accounts, the subdivision's fiscal officer, pursuant to an ordinance or resolution of the subdivision's legislative authority, must transfer amounts equal to those costs or deductibles from the funds or accounts to the subdivision's general fund if both of the following apply:
 - (1) the subdivision requests payment from the employee responsible for the funds or accounts for those costs or deductibles [R.C. § 2744.082(A)(1), and
 - (2) the employee receiving the request fails to remit payment within 45 days after the date the request is received [R.C. § 2744.082(A)(2)].

⁵⁸ In other words, if there is an excess in the water works fund and the municipality has its own water works operation, the excess can only be used for expenses related to the operation, maintenance, or expansion of the waterworks. Not all municipalities have their own waterworks system. Therefore, some municipalities may provide water to their residents by obtaining the water from another source. Where this is the case, if (after satisfying expenses related to furnishing water) there is an excess, the municipality may transfer the excess to its general fund.

- Except in the case of transfers from the general fund, transfers can be made only by resolution of the taxing authority passed with the affirmative vote of two thirds of the members. Transfers from the general fund require a resolution passed by a simple majority of the board members (i.e., a two thirds vote is not required for general fund transfers though a resolution passed by a simple majority is required. A simple majority constitutes a quorum of greater than 50% of the members.) [RC 5705.14 & .16]

Per 5705.15 & .16: In addition to the transfers listed above, which Ohio Rev. Code Section 5705.14 authorizes, the taxing authority of any political subdivision, with the approval of the Court of Common Pleas⁵⁹, may transfer from one fund to another any public funds under its supervision, *except* the proceeds or balances of:

- loans,
- bond issues,
- special levies for the payment of loans or bond issues,
- the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, and
- the proceeds or balances of any license fees imposed by law for a specified purpose.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Periodic Reviews/Comparisons of Budgeted and Actual Transfers • Independent Inspection/Comparison of Transfers to Source Documents • Knowledge and Training of personnel • Presence of Effective Accounting System • Ticker Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Note: Except for “prior approval by the governing authority”, transfers fail the “existence” assertion unless they satisfy the aforementioned legal requirements. Therefore, noncompliant transfers (e.g., material transfers from the self insurance fund that are unsupported or transfers that permit spending the transferred amount in violation of its restricted purpose) represent misstatements and may require findings for adjustment. See Appendix A to Chapter 1 of the Ohio Compliance Supplement for more information on determining allowability for Transfers

⁵⁹ Under R.C. 5705.16, approval of the Tax Commissioner is also required in certain circumstances.

and Advances. Auditors should also refer to the finding for adjustment guidance in the Ohio Compliance Supplement Introduction.

Inspect documents authorizing transfers during the audit period and determine that transfers involving balances described below met the requirements above:

- Unexpended bond balance;
- Permanent improvement balance;
- Bond retirement;
- Special fund;
- Auto registration;
- Resolution;
- Municipal corporation;
- Public assistance;
- Developmental disabilities.

Determine if any material transfers were made from the proceeds or balances of:

- loans,
- bond issues,
- special levies for the payment of loans or bond issues,
- the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, or
- the proceeds or balances of any license fees imposed by law for a specified purpose.

Determine if selected transfers were authorized by vote of the governing board as described above.

If applicable, determine if selected transfers were authorized by the County Budget Commission, Court of Common Pleas, or Tax Commissioner as described above.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):
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1-19 Compliance Requirements: Though no statutory provisions directly address inter-fund *advances*, the following requirements are in part derived from Ohio Rev. Code Sections: 5705.10 (restriction on the purpose for which funds may be used); 5705.14, 5705.15, and 5705.16 (transfer of funds); 5705.39 (appropriations limited to estimated resources); 5705.41 (restriction on appropriation/ expenditure of money); and 5705.36 (certification of available revenue). Auditor of State Bulletin 97-003 sets forth the requirements for inter-fund advances and provides additional guidance for recording such transactions.

Note: This section ~~does not apply~~ applies when a subdivision purchases its own debt with its debt service fund cash, etc. pursuant to Ohio Rev. Code 133.29 and accounts for it as *advances and interfund activity in its financial statements*. However, refer to OCS step 3-6 if the subdivision accounts for a purchase of its own debt as an *investment and debt*. See AOS Bulletin 97-01, Ohio Rev. Code 133.03 and 133.29, and Appendix A of the OCS for additional guidance on legal and accounting requirements applicable to intra-entity borrowing. Ohio Compliance Supplement Chapter 3, step 6 describes the legal compliance requirements for the issuance and retirement of manuscript debt.

Summary of Requirements: Inter-fund cash advances may be a desirable method of resolving cash flow problems without the necessity of incurring additional interest expense for short-term loans and to provide the necessary "seed" for grants that are allocated on a reimbursement basis. The intent for cash advances is to require repayment within the current or succeeding year. Inter-fund cash advances are subject to the following requirements:

- Any advance must be clearly labeled as such, and must be distinguished from a transfer. Transfers are intended to reallocate money permanently from one fund to another and may be made only as authorized in Sections 5705.14 to 5705.16 of the Ohio Rev. Code. Advances, on the other hand, *temporarily* reallocate cash from one fund to another and involve an expectation of repayment;
- In order to advance cash from one fund to another, there must be statutory authority to use the money in the fund advancing the cash (the "creditor" fund) for the same purpose for which the fund receiving the cash (the "debtor" fund) was established;
- The debtor fund may repay advances from the creditor fund. That is, the AOS would not deem repaying advances to violate restrictions on use of the debtor's fund resources; and
- Advances must be approved by a formal resolution of the taxing authority of the subdivision which must include:
 - A specific statement that the transaction is an advance of cash, and
 - An indication of the money (fund) from which it is expected that repayment will be made.
- When a fund ends the year with negative cash, it is not appropriate to present an *advance* on the budgetary statement to eliminate the negative cash fund balance. Even though, in substance, the government has made an advance, it is not acceptable to "hide" noncompliance by creating an advance not properly authorized by the government. However, the government should post an interfund receivable and payable to eliminate the negative cash balance on the GAAP financial statements. The government should select the fund to report the receivable.

Other Budgetary Considerations

The advances-out (initial loan and repayment) in the creditor (loaning) and debtor (borrowing) funds do not require appropriation as advances represent temporary allocations of resources. However, an amended official certificate of estimated resources should be obtained to reflect the reduced fund balance in the creditor fund and the increased fund balance in the debtor fund. Creditor fund appropriations must be evaluated based on the reduced estimated resources, and appropriation reductions may be required. Prior to obligation of advanced funds, the debtor fund must have sufficient appropriations to cover the anticipated expenditures.

Additionally, when a cash advance is outstanding at the beginning of a fiscal year in which repayment is expected, an adjustment is required to the total resources available for expenditure in the creditor and debtor funds. The unencumbered cash balance of the creditor fund must be increased by the amount of repayment expected during the fiscal year to produce the “carryover balance available for appropriation.” Similarly, the unencumbered cash balance in the debtor fund must be reduced by the amount of repayment expected during the fiscal year to produce “carryover balance available for appropriation.” This adjustment is made on the “certificate of the total amount from all sources available for expenditures, and balances” filed with the County Budget Commission pursuant to Section 5705.36 of the Ohio Rev. Code.

Conversion to a Transfer

If, after an advance is made, the taxing authority determines that the transaction should, in fact, be treated as a transfer (repayment is no longer expected) the following procedures should be followed retroactively:

- The necessary formal procedures for approval of the transfer should be completed including, if necessary, approval of the commissioner of tax equalization and of the court of common pleas (see ORC 5705.14, 5705.15 and 5705.16);
- The transfer should be formally recorded on the records of the subdivision; and
- The entries recording the cash advance should be reversed.

Accounting for Manuscript Debt as an Advance and Interfund Activity

Before a taxing authority sells any securities of the subdivision to others, the taxing authority may offer the securities at their purchase price and accrued interest to the officer or officers who have charge of the bond retirement fund of the subdivision, or in the case of a municipal corporation, to the treasury investment board for investment under §731.56 of the Ohio Rev. Code, or an officer or similar treasury investment board having the authority under a charter. (Ohio Rev. Code §133.29(A)). This type of debt is often referred to as “manuscript debt”.

Governments purchasing their own securities should record them as “investments” in their accounting records. These investments are a form of interfund borrowing. Refer to OCS step 3-6 for accounting treatment when reporting manuscript debt as an investment / debt. While the *investment method* of accounting for manuscript debt is preferred, we will accept the *advance / interfund activity method* with adequate footnote disclosure (i.e., no audit adjustments are required if a government opts to use the advance method of accounting in lieu of reporting manuscript debt as an investment / debt).

If using the *advance / interfund activity method* of accounting for manuscript debt, governments should record an advance-in in the debtor (borrowing) fund and a corresponding advance-out of the creditor (loaning) fund. Also, governments reporting under GAAP should record an interfund asset and offsetting interfund liability for both modified and full accrual bases. If the borrowing is between a governmental activity and a business type activity, the entity wide statements should also report this as an internal balance (GASB Cod. 1300.120 and 1800.102(a)). Cash or OCBOA governments should disclose the fund liabilities, including interest rates and repayment schedules, in their notes.

Advances reported in the financial statements that are related to manuscript debt should follow the legal compliance requirements this section describes above in addition to those OCS step 3-6 describes.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Presence of Effective Accounting System • Independent Inspection/Comparisons of Advances and Source Documentation • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

If advance transactions occurred, review authorizing legislation and accounting records. Determine whether the advance transactions were in amounts and between accounting funds approved in the authorizing legislation.

Based on knowledge of the entity’s operations and review of levy legislation or other appropriate documents, determine whether the creditor fund’s purpose was reasonably consistent with the debtor fund’s purpose.

Determine whether prior period advances are outstanding. If advances have not been repaid within a reasonable period or within the period specified (if any) in the authorizing legislation, determine through inquiry of appropriate client officials when the advance will be repaid.

If the client no longer intends for the advance to be repaid or repayment is unlikely, recommend that the client take appropriate steps to convert the advance to a transfer following the above procedures.

If advances have been converted to transfers, determine whether the transfer requirements summarized in Ohio Compliance Supplement Section 1-18 have been complied with retroactively.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

1-20 Compliance Requirement:

- Ohio Rev. Code Section 5705.13(A) - Reserve balance accounts and funds;
 - Ohio Rev. Code Section 5705.13(B) – A special revenue fund may be established to accumulate cash for severance payments or salaries when the number of pay periods exceeds the usual and customary number for a year;
 - Ohio Rev. Code Section 5705.13(C) – capital projects fund(s) may be established to accumulate resources to acquire, construct, or improve fixed assets.
- Ohio Rev. Code § 5705.13(A) allows a taxing authority of a subdivision to establish, by resolution, a reserve balance account⁶⁰ for each of the three following purposes:
1. Budget stabilization: may be created in the general fund or in any special fund used for operating purposes. The amount reserved in the account in any fiscal year must not exceed 5% of the fund’s revenue for the preceding fiscal year⁶¹. The reserve balance is excluded from the unencumbered balance when certifying available balances at year-end. The reserve for budget stabilization may be reduced or eliminated at any time by the taxing authority.
 2. Self-insurance program: may be created in the general fund or in the internal service fund established to account for the operation of the program. The amount to be reserved must be based on actuarial principles and the taxing authority may rescind the reserve balance account at any time.
 3. Retrospective Ratings Plan for Workers’ Compensation⁶²: may be created in the general fund or in the internal service fund established to account for the program. The amount to be reserved must be based on actuarial principles and the taxing authority may rescind the reserve balance account at any time.
- Ohio Rev. Code § 5705.13(B) allows a taxing authority to establish a special revenue fund to accumulate cash to pay accumulated leave, or for paying salaries when the number of pay periods exceeds the usual and customary number for a year. This leave includes payments

⁶⁰ ORC Section 5705.13 refers to these accounts as “reserve” accounts. However, for the GASB 54 financial reporting AOS Bulletin 2011-004 describes, the criterion for using the budget stabilization is not specific enough to meet the *committed* criteria and it does not meet the *restricted* criteria as the budget stabilization is not mandated by State statute. Therefore, a budget stabilization/reserve account should be reported as *unassigned* in the general fund. While statute also gives the authority to have stabilization reserve accounts in other operating funds, the fund balance is reported as *restricted, committed, or assigned* and the reserve account does not change the fund balance classification. ~~accounts established under ORC Section 5705.13(A) should be reported as *committed, assigned, or restricted* fund balance as appropriate under the circumstances described in GASB 54 rather than *reserved*, because these accounts are established at the governing body’s discretion (NCGAS1 par. 117-122).~~ Entity wide statements should report these as part of *unrestricted* net assets.

⁶¹ HB 225, effective 3/22/2012, provides that in the case of a reserve balance account of a county or of a township, the greater of that amount or one-sixth of the expenditures during the preceding fiscal year from the fund in which the account is established.

⁶² HB 225, effective 3/22/2012, allows various plans to provide for the payment of claims, assessments, and deductibles. The act allows these payments under a self-insurance program, individual retrospective ratings plan, group rating plan, group retrospective rating plan, medical only program, deductible plan, or large deductible plan for workers' compensation.

for accumulated sick leave and vacation leave, or for payments in lieu of taking compensatory time off, upon the termination of employment or retirement. Money may be transferred to this fund from any fund from which the termination or salary payments could lawfully be made. The reserve must be established by resolution or ordinance and the taxing authority may rescind the fund at any time with the accumulated resources being returned to the fund from which they came. Amounts accumulated in this fund should be reasonable based on the taxing authority's estimated liability for benefits.

- Ohio Rev. Code § 5705.13(C) provides that a taxing authority may create, by resolution, one or more capital projects funds⁶³ to accumulate resources for the acquisition, construction, or improvement of fixed assets, including motor vehicles. Each fund must be created by ordinance or resolution. The resolution or ordinance must identify the asset(s) to be acquired, the amount needed to be accumulated, the period over which the amount will be accumulated (with a limit of ten years from the date of the resolution or ordinance), and the source of the resources. Despite ORC 5705.14 through .16, money may be transferred to the capital projects fund from any other fund that could acquire, construct or improve the fixed assets. If a contract for the fixed asset(s) has not been entered into before the ten-year period expires, the money is returned to the fund from which it was transferred or that was originally intended to receive it. The taxing authority may rescind a capital projects fund at any time with the accumulated resources being returned to the fund from which they came. Auditor of State approval is not required for this transfer.
- Ohio Rev. Code § 5705.132 permits *townships* to establish by resolution reserve balance accounts in addition to those described above to accumulate currently available resources for any purpose for which the board of township trustees may lawfully expend township money.⁶⁴ The resolution must state the:
 - Specific purpose for which a reserve balance account is established,
 - Fund within which it is established,
 - Fund or account from which money will be transferred to it,
 - Number of years it will exist [there is a five year cap on how long the account may be in existence]
 - Maximum total amount of money that may be credited to it during its existence; and
 - Maximum amount of money to be credited to it each fiscal year it exists

Reserve balance accounts established under this authority may exist for not more than five years beginning with the year in which money is first set aside. In addition, money in such an account can be expended only for the purpose for which the account is established.

Money may be transferred to these new reserve balance accounts from another township fund or account only if money in that fund or account may lawfully be expended for the purpose

⁶³ Similar to the preceding note, governments should report these amounts as *committed, assigned, or restricted_ fund* balance as appropriate under the circumstances described in GASB 54 in governmental fund statements. Entity wide statements should report this equity as part of *unrestricted net assets*, because the restrictions are not externally imposed.

⁶⁴ Similar to reserve balance accounts created under existing law, reserves created under this section are not considered as an unencumbered balance or revenue of the township for purposes of annual budget reviews by the county budget commission. They are also not considered as an unencumbered balance or revenue for purposes of apportioning the county's undivided local government fund and the undivided local government revenue assistance fund.

for which the new reserve balance account is created. Townships may create more than one reserve balance account under this section. However, the total amount of money credited to *all* of the reserve balance accounts established under this section cannot exceed, **at any time in any fiscal year**, 5% of the total of the township’s revenue from all sources for the preceding fiscal year, plus any unencumbered balances carried over to the current fiscal year from the preceding fiscal year. There are three important aspects of this restriction. First, be aware that it is based on revenues only. Other financing sources such as debt proceeds or transfers will not count toward the calculation of the limitation.⁶⁵ Second, recognize that this language has the effect of allowing the same dollars to be counted twice in calculating the limitations, first when they were received in the prior year and second to the extent they are carried over as unencumbered into the current year. Finally, notice that the amount of the limitation changes each year because it is based on the preceding year’s revenues.

If a township does not expect to spend the money set-aside in a reserve balance account in the upcoming year, the money in the reserve balance account need not be included in the certificate of year-end balances filed with the budget commission at the beginning of the year. If the township plans to spend the money that has been set aside, the township should include the money in the certificate of year-end balances. The money will then be included in the amended certificate of estimated resources and may be appropriated and spent during the year. Appropriations should be made to an account that reflects the purpose of the reserve. Appropriations should not be made to, nor expenditures made from, a reserve balance account. For example, assume in 2006 a township created a reserve balance account not to exceed \$40,000 in the motor vehicle license tax fund to purchase a new mower. \$10,000 is set aside each year from 2006 through 2009. In 2010, the \$40,000 is included in the certificate of year-end balances and appears as part of the amended certificate. The money is appropriated in the capital outlay account in the motor vehicle license tax fund and the new mower is purchased.⁶⁶

Upon the expiration or rescission of a reserve balance account created under this section, any unexpended balance in the reserve account must be transferred to the fund or account from which money in the account was originally transferred. If money was transferred from multiple funds or accounts, a pro rata share of the unexpended balance must be transferred to each of them proportionate to the amount originally transferred from that fund or account.

Refer to AOS Bulletin 2007-002 for additional information regarding the new authority for townships to create reserve balance accounts.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring 		

⁶⁵ Page IV-5 of the March 2011 Ohio Township Manual lists all *Other Financing Sources*.

⁶⁶ For the purpose of setting aside money for the purchase of a capital asset, it may be easier and more convenient to create a separate capital projects fund under the provisions of Ohio Rev. Code Section 5705.13.

<ul style="list-style-type: none">• Management's identification of changes in laws and regulations• Management's communication of changes in laws and regulations to employees		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

If reserve balance accounts have been established:

- Determine through vouching, review of minutes, and inspection of accounting ledgers and authorizing legislation, whether reserve accounts were only established in the general fund, special fund used for operating purposes or appropriate internal service fund and for permitted purposes (budget stabilization, self-insurance program, or retrospective ratings program for worker's compensation).
- Recalculate reserve percentages and inspect worksheets and accounting ledgers to determine whether the amount reserved exceeded the 5 % cap (budget stabilization account).
- For self-insurance and worker's compensation reserve accounts, compare amounts reserved to estimates received from the entity's actuary.

If a "severance payout reserve" or "capital improvement reserve" fund has been established:

- Review minutes, ordinances and resolutions to determine whether the fund has been established by resolution or ordinance.
- If a capital improvement reserve fund has been established, review the authorizing legislation to determine whether the assets; amount required; accumulation period (not to exceed ten years); and source of funding have been identified.
- Select a representative number of disbursement transactions from the fund. Through vouching, determine whether the transactions were only for related activities as indicated above, and in accordance with the purpose stated in the authorizing legislation.
- Trace a representative number of transfers to the reserve fund and determine whether the transfers were from funds permitted to make the disbursements for which the reserve fund was established.
- Determine through inspection of worksheets, ledgers and other such documents, whether records reasonably provide for the return of accumulated resources, to the fund from which they were originally transferred or the fund intended to receive them (If records do not reasonably provide for the proper return of resources, this situation would generally result in a recommendation; a noncompliance citation should not be made).

If the reserve fund was rescinded or if the ten-year period has elapsed prior to entering into a contract (capital improvement reserve fund), determine through inspection of worksheets and accounting ledgers whether the accumulated resources were returned to the fund from which they were originally transferred or the fund intended to receive them.

If a township has established an additional reserve balance account(s), determine whether the necessary resolution, stating the purpose of the reserve account, has been adopted by the board of trustees.

- Review monies transferred to the new township reserve balance accounts from other township funds or accounts and determine whether those monies may lawfully be expended for the purpose for which the new reserve balance account was created.
- Determine whether the total amount of money credited to *all* of the reserve balance accounts established under Ohio Rev. Code § 5705.132 exceeded 5% of the total of the township's revenue from all sources for the preceding fiscal year and any unencumbered balances carried over to the current fiscal year from the preceding fiscal year.
- Scan expenditures in the additional reserve accounts and determine whether amounts were expended only for the purpose for which the account(s) was established.
- Determine that none of the additional reserve balance accounts have existed for more than five years.
- Upon the expiration or rescission of a reserve balance account created under Ohio Rev. Code § 5705.132, determine whether any remaining unexpended balance in the reserve account was transferred to the fund or account from which money in the account was originally transferred. If not, consider a finding for adjustment.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section E: Additional County Requirements

1-21 Compliance Requirement: Ohio Rev. Code Section 5101.144 requires that each county deposit all funds its public children services agency receives, regardless of source, into a special fund in the county treasury known as the children services fund.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

During revenue tests, trace a representative number of children services agency receipts to the fund.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

Section F: Additional County Hospital Requirement

The following section applies only to county hospitals:

1-22 Compliance Requirement: Ohio Rev. Code Section 339.06 - Organization of board of trustees; funds; administrator. **(County Hospitals)**

Summary of Requirements: The board of county hospital trustees must submit its proposed budget for the next fiscal year to the board of county commissioners for approval, by November 1.

If hospital tax levies, or the amount appropriated to the county hospital by the county commissioners in the annual appropriation measure for the county for the fiscal year, differ from the amount shown in the approved budget, the board of county commissioners may require the board of county hospital trustees to revise the hospital budget accordingly. If so, the board of trustees is not allowed to spend those funds until its budget for that calendar year is submitted to and approved by the board of county commissioners [R.C. § 339.06(D)(4)].

After that, the monies may be disbursed by the board of county hospital trustees, consistent with the approved budget, on a voucher signed by signatories designated and approved by the board of county hospital trustees. [R.C. § 339.06(D)(5)].

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Inspect documentation indicating a proposed budget was submitted by November 1 to the board of county commissioners.

Scan ledgers or other documents for expenditures in excess of the approved budget. Inspect vouchers for signatures of those persons designated and approved by the board of trustees.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section G: Additional College Requirements

The following section applies only to certain colleges (community colleges, state community colleges, and technical colleges; this does *not* include universities):

1-23 Compliance Requirement: Ohio Rev. Code Sections 3354.10(A), 3357.10, 3358.06, and 5705.41(D) - Treasurer's fiscal certificates.

Summary of Requirement: No orders or contracts of the boards of trustees of **community college** districts [R.C. § 3354.10(A)], **technical colleges** [R.C. § 3357.10(A)], and **state community colleges** [R.C. § 3358.06] involving the expenditure of money shall become effective until the treasurer certifies that funds are available.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Search for material unrecorded liabilities and/or encumbrances. Refer to minutes and records immediately following the fiscal year cutoff date.

Compare the date of the fiscal certificates with invoice dates, noting whether or not the certificate date precedes the invoice date.

(NOTE: This audit procedure can be part of expenditure tests.)

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

APPENDIX A

TRANSFERS AND ADVANCES

Transfers Defined

Questions sometimes arise about what constitutes a *transfer* as defined under Ohio Rev. Code Sections 5705.14, 5705.15, and 5705.16. Therefore, the AOS has developed this appendix to assist auditors in determining the proper accounting and legal noncompliance reporting treatment for transfers.

This guidance is non authoritative. It is the AOS's interpretation of Ohio Rev. Code Sections 5705.14, 5705.15, and 5705.16 requirements. Where conflicts arise, AOS will defer to well-reasoned opinions of legal counsel.

Fund accounting segregates legally restricted resources. Therefore, transferring cash restricted for one purpose to a fund with a different restricted purpose potentially permits spending the transfer in violation of its restricted purpose. Ohio Rev. Code Sections 5705.14 - .16 attempt to prevent these violations.

Not all interfund transactions are *transfers* as defined above and, therefore, not all interfund transactions are subject to Ohio Rev. Code Sections 5705.14 - .16. *Cash transfers* are not defined in the Ohio Rev. Code. Therefore, auditors must rely on common-use definitions.

GASB Cod. 1800.102 defines transfers as “flows of assets (such as *cash* or goods) without equivalent flows of assets in return and without a requirement for repayment.” In other words, a transfer is a nonreciprocal (i.e. *nonexchange transaction*) from one fund to another. It might be useful to think of transfers as “gifts” from one fund to another.

Some Transactions That May Not Be Transfers*Intrafund Appropriation Transfers*

Certain transactions do not qualify as transfers as contemplated by Ohio Rev. Code Sections 5705.14 - .16 and GASB Cod. 1800. For example, *intrafund* appropriation “transfers” are not transfers because there is no cash transaction. Intrafund appropriation “transfers” amend spending authority for one appropriation account and increase another account by the same amount, *within the same fund*.

Interfund services provided and used

“Interfund services provided and used,” as defined in GASB 1800.102, also do not qualify as transfers. Interfund services provided and used are considered by GASB to be *exchange transactions*, related to services “purchased and sold” between funds. Most payments to internal service funds, as described in GASB Cod. C50.130, are examples of interfund services provided and used.

Subdivisions should report these transactions as disbursements in the paying fund (i.e., charge the function, etc. benefiting from the exchange) and receipts in the fund providing the service or asset, etc. Subdivisions should not classify these as *transfers*; rather, they are often *charges for services*. These transactions are also not *transfers* under Ohio Rev. Code Sections 5705.14 - .16 because, *presumably*, a fund is paying for a service that does not violate its restricted purpose.

However, if a payment does violate a restriction, then auditors should cite noncompliance (*subject to Findings for Adjustment as discussed in the OCS Introduction*).

Auditors should also be alert for payments classified as interfund services provided and used that far exceed a reasonable value of the transaction. Excessive amounts are not payments for services; they are “gifts” (i.e. transfers). For example, the general fund may charge utility funds for billing and other administrative services. If these costs arise, auditors should determine that the charges are reasonable in relation to the salaries and other costs charged. Also, a subdivision should base an insurance internal service fund charges for services (or *interfund premiums* or other reasonably-descriptive revenue caption) upon an actuarial measurement or other method C50 permits. These charges may include an additional amount for a **reasonable**/prudent cushion. Subdivisions should record any charges *unreasonably* exceeding these amounts as *transfers*, subject to Ohio Rev. Code Sections 5705.14 - .16. Determining **reasonable** in both examples above requires careful judgment. We normally should question only significant, unsupported amounts.

Interfund Loans/Advances

GASB 1800.102 classifies “interfund loans” as exchange transactions, because they require repayment in an equal amount. However, auditors should note that a *reasonable* interest charge is permissible. Under GAAP, interfund loans are always fund liabilities, regardless of maturity. Also, AOS regulatory-basis entities should disclose interfund payables/receivables, if significant. The Ohio Rev. Code does not provide for interfund loans; therefore, the AOS issued Bulletin 97-03 (OCS 1-20), permitting *advances*. OCS 1-20 requires:

- “In order to advance cash from one fund to another, there must be statutory authority to use the money in the fund advancing the cash for the same purpose for which the fund receiving the cash was established”
- The debtor fund may repay advances from the creditor fund. That is, the AOS would not deem repaying advances to violate restrictions on use of the debtor’s fund resources
- So using advances properly avoids the primary concern regarding transfers. That is, an allowable advance should not violate restrictions on resource use.

AOS does not believe advances satisfying these requirements require court approval under Ohio Rev. Code Section 5705.16. *However, advances do require a formal resolution by the taxing authority.* On a cash basis, subdivisions should classify the cash payment/repayment as *advances out / in*, not *transfers*.

Under GASB Codification 1800.102, if repayment is not expected within a reasonable time, the interfund loans should be reduced and the amount that is not expected to be repaid should be reported as a *transfer* from the fund that made the loan to the fund that received the loan. Therefore, like any other receivable, auditors should consider whether interfund loans are properly valued (i.e. collectible). When reclassified as a *transfer*, said transfer(s) must satisfy all requirements included in Ohio Rev. Code Sections 5705.14 - .16 retroactively (appropriation, board resolution, court approval, etc.).

Note: Subdivisions can also sell securities between funds pursuant to Ohio Rev. Code Section 133.29. This is commonly known as “manuscript debt.” These sales and subsequent repayments are not “transfers”. (Refer to Chapter 3 for additional compliance guidance and audit steps applicable to manuscript debt.)

Interfund Reimbursements

GASB Cod 1800.102 defines “Interfund Reimbursements” as “repayments from the funds responsible for particular expenditures or expenses to the funds that initially paid for them.” However, under the terms of Ohio Rev. Code Section 5705.10, such reimbursements would be illegal transfers (*subject to possible Finding for Adjustment*) **if** the fund initially paying violated restrictions on its resource use.

Also, GASB states that “reimbursements should not be displayed in the financial statements.” This means that subdivisions should not use a **reimbursement** caption in a statement of activities / changes in fund balance, etc. It is generally preferable to **advance** money per Bulletin 97-03; however, advances may not always be possible. FEMA grants often require reimbursements, so they provide a useful reimbursement example subdivisions sometimes encounter. AOS Bulletin 98-013 describes other acceptable alternatives to treating these transactions as a **reimbursement** on the face of the financial statements. While this Bulletin is specific to FEMA grants, subdivisions can generally apply the guidance therein to any reimbursement transaction.

Transfers Clarification:

Allocation of Unrestricted Receipts to Restricted Funds

AOS recently deemed that once a government deposits unrestricted money into a fund with a restriction, it **is** restricted money subject to Ohio Rev. Code Sections 5705.14 - .16. For example, a subdivision may have enacted a resolution allocating unrestricted income taxes to a permanent improvement fund. Once the income tax fund receipts the income taxes collected under this authority, the income tax money is now restricted to permanent improvements.

Audit Adjustments

Audit adjustments, including Findings for Adjustment, adjust fund cash balances. However, even if subdivisions used the “transfers in/out” line-item to post audit adjustments into their financial statements, audit adjustments are not *transfers* subject to Ohio Rev. Code Sections 5705.14 - .16. Audit adjustments are corrections to restore cash to funds **permitted** to spend it. Therefore, audit adjustments should never result in cash being spent contrary to its restricted purpose.

Governing board approval

Ohio Rev. Code Section 5705.14 requires a resolution of the taxing authority passed by an affirmative vote of two-thirds of the members (except a simple majority is sufficient for transfers from the general fund). Sometimes, subdivisions fail to obtain the required approval prior to making transfers. Auditors should cite noncompliance (~~*subject to Findings for Adjustment as applicable*~~) for all unapproved transfers; however, there is no need to issue a Finding for Adjustment if the transfer(s) is(are) otherwise allowable under statute. ***Meaning, AOS will not require local governments to reverse the affects of unapproved transfers in their financial statements or accounting systems so long as local governments otherwise possessed statutory authority to make such transfers. For example, we will not require a finding for adjustment for an unapproved transfer from the general fund to the food service fund because Ohio Rev. Code section 5705.16 expressly permits this type of transfer. However, we would issue a noncompliance citation in this example because Ohio Rev. Code section 5705.14 requires approval by the governing board.***

Ohio Rev. Code Sections 5705.14 - .16 do not provide for retroactive approval of transfers. Therefore, subdivisions cannot retroactively approve transfers after auditors bring them to their attention ~~in an attempt to eliminate the noncompliance citation~~. ~~Subdivisions may approve the transfers now and post them to their current financial statements. However, this will not~~

~~eliminate the noncompliance citations and/or finding for adjustment issued for the period under audit.~~

Transfers to Debt Service Funds

Debt issued under the authority of Ohio Rev. Code Chapter 133 is required to be retired through a governmental Debt Service Fund type. Other types of debt may generally be retired within other fund types. *However, a separate account, special cost center, etc. should be used to separately track the sinking fund requirements.* Typically, it is preferable to retire the debt within the fund type that will be generating the revenues legally obligated to make the debt service payments.

For example, assume sewer fund debt covenant mandates a sewer debt service fund. Assume the covenant mandates periodic transfers from the sewer operating fund to the sewer debt service fund. These transfers are not subject to Ohio Rev. Code Sections 5705.14 - .16 because these transfers *fulfill* rather than *violate* restrictions on using the money. Therefore, auditors should not cite noncompliance for “transfers” to a debt service fund if this is an appropriate use of the money in the fund making the “transfer.” Subdivisions should record these transactions as *transfers* in their financial statements and make the appropriate disclosures described below.

Transfer Disclosure Requirements

GASB 38 ¶ 15 requires the following disclosures for *transfers*:

- A general description of the principal purposes of interfund transfers
- The intended purpose and the amount of significant transfers that meet either or both of the following criteria:
 - Do not occur on a routine basis—for example, a transfer to a wastewater enterprise fund for the local match of a federal pollution control grant.
 - Are inconsistent with the activities of the fund making the transfer—for example, a transfer from a sewer operating fund to the debt service fund (*because the subdivision mistakenly believed it was required to establish a separate governmental debt service fund to retire the non-Chapter 133, sewer-related debt*).

APPENDIX B

DIRECT CHARGES

(i.e. payments not requiring fiscal officer certification / encumbering)

The AOS interprets ORC 5705.41 and 5705.46⁶⁷ to authorize direct charges (certification/encumbering under 5705.41(D)) is not required).

Per 5705.41(D)(3) , “Contract” as used in this section excludes current payrolls of regular employees and officers. Therefore, the following payroll-related costs do not require certification:

- Salaries
- Employers’ Retirement Contributions
 - Ohio Public Employees Retirement System
 - Social Security
 - Medicare
 - Volunteer Firemen’s Dependents Fund
 - Ohio Police and Fire Pension Fund
 - Other Employer’s Retirement Contributions
- Employee Fringe Benefits
 - Workers’ Compensation
 - Unemployment Compensation

The following items do not involve a contract, therefore, do not require certification:

- Tax Collection Fees – Expenses and fees as deducted by the county auditor, county treasurer and the state department of taxation for the collection and administration of taxes including advertising for delinquent taxes (Updated definition to include advertising for delinquent taxes)
- Taxes and Assessments – General property taxes paid on newly acquired real estate and assessments paid on real property. Also included are state sales taxes collected on items sold of a taxable nature and later paid to the state.
- Election Expenses – Election expenses deducted by the county auditor
- Deposits Refunded – Utility Deposits Refunded
- Deposits Applied – Utility Deposits Applied

The following items require board action, therefore, do not require certification:

- Transfers
- Advances

The following items do not require certification per 5705.44.

- Payments from the utility operating fund do not require certification. (However, payments from utility grant funds DO require certification.)

Note: Advertising and payments to another political subdivision require a certification because direct charges are not allowed.

⁶⁷ AOS interprets payroll to include Salaries, Employer’s Retirement Contributions, Worker’s Compensation, and Unemployment Compensation.

Advertising – Includes expenses for publication of official notes, ads, legal advertising in newspapers and periodicals.

Payment to Another Political Subdivision – Payments made to another political subdivision for contracted services provided to the township, such as fire protection, county health fees, police services, EMS, garbage and refuse.

APPENDIX C**Conditions not requiring a citation under Ohio Rev. Code Section 5705.36
Adopted from AOS Bulletin 97-10**

The following examples illustrate circumstances under which a variance between the amended certificate of estimated resources and the actual resources is not indicative of a deleterious budgetary effect.

1. Additional revenue is estimated by the entity, but the entity does not obtain an amended official certificate of estimated resources as it does not anticipate appropriating the resources or incurring any obligations until the next fiscal year. For example, if an auditee determines six weeks before fiscal year end that it will receive an additional \$50,000 in a state grant fund, but it does not anticipate that this money will be appropriated, expended, or obligated until the next fiscal year and, therefore, does not obtain an amended official certificate of estimated resources, a variance between the amount of the most recent amended official certificate of estimated resources and a higher amount of actual resources attributable to this increase would not warrant a citation in the audit report.
2. Additional revenue is estimated by the entity, which obtains an amended official certificate of estimated resources, appropriates the additional revenue, and incurs obligations. The entity elects, however, to defer receipt of the additional revenue until the next fiscal year, when the related cash disbursements will be made. For example, a school district may obtain a new certificate due to an anticipated state loan and appropriate and obligate the resources in question. As payment will not, however, be due until the next fiscal year, it defers actual receipt of the loan proceeds. The result is a variance between the amount of the most recent amended official certificate of estimated resources and the lower amount of actual resources. A citation would not, however, be appropriate.
3. Actual revenue falls below the amount of the amended official certificate of estimated resources, but is sufficient to cover actual expenditures and encumbrances for the fiscal year. For example, an entity may have an amended official certificate of estimated resources in the amount of \$100,000, actual revenues of \$90,000, and expenditures and encumbrances of \$85,000. Under such circumstances, the failure to obtain an amended certification reflecting the lowered revenue level would not be required.
4. Actual revenue falls below the amount of the amended official certificate of estimated resources, but appropriations and expenditures plus obligations incurred prior to the point at which a revised estimate could have been made exceed the amended estimate. For example, an entity may have an amended certificate of estimated resources in the amount of \$100,000, in reliance upon which it adopts appropriations of \$95,000 and incur obligations of \$95,000. When it thereafter estimates that actual resources will be \$90,000, should it obtain an amended official certificate of estimated resources? And, if so, in what amount? Where expenditures are made or obligations incurred within the limits of an existing certificate and an amended certificate is subsequently obtained pursuant to Ohio Rev. Code § 5705.36 in an amount below the amount of expenditures and outstanding obligations, Ohio Rev. Code § 5705.36 prohibits the reduction of appropriations below that amount necessary to cover "obligations certified from or against the obligation."

- Thus, appropriations and expenditures and obligations incurred may exceed the year-end amount of the amended official certificate of estimated resources although no statutory violation has occurred. Under the circumstances set forth above, a reduced certificate in the amount of \$95,000, the lowest lawful amount to which appropriations can be reduced, should be obtained. This satisfies the control objective of the statute by preventing unlawful expenditures and obligations in excess of the estimated amount, but recognizes the legal prohibition upon any further reduction in appropriations.
5. The determination of compliance should be made on the basis of the currently estimable legal resources. For example, a subdivision has estimated proceeds of \$100,000, appropriates and expends or obligates \$100,000, but determines that actual resources for the fiscal year will be only \$80,000. It may, however, by transfer or borrowing, obtain the extra \$20,000. In determining whether a "reduction" certificate should have been obtained, look to what actions have been formally taken by the taxing authority of the subdivision. If no action was taken to transfer or borrow the \$20,000, a citation may be appropriate. If the money was transferred or borrowed so as to increase total actual resources to \$100,000, no citation would be necessary.

CHAPTER 5

DEPOSITS AND INVESTMENTS

Depository and investment regulations for political subdivisions from Ohio Rev. Code Chapter 135 generally apply to all public offices, other than to charter municipalities which have exempted themselves by charter or ordinance and community schools.^{1 2} (See the OCS Legal Matrices Appendix for more specific guidance regarding the applicability of the requirements in this chapter to particular entity types.) Auditors should design audit procedures based on charter municipalities’ own investment and deposit provisions. Provisions of Chapter 135 relating to counties are separate from those pertaining to other subdivisions.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: In assessing the risk of noncompliance, auditors should consider whether governments have adopted detailed deposit and investment policies and historically complied with those policies. Additionally, adequate training, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with deposits and investments requirements.

In assessing the adequacy of *policies*, remember ORC 135 *is* a policy in many respects. For example, it prescribes allowable investments, collateral requirements, etc. designed to help safeguard assets. However, Step 5-2 requires governments to adopt their own policy based on RC 135.

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Chapter 5 - Deposits and Investments

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¹ While charter governments can exempt themselves from Ohio Rev. Code Chapter 135, they cannot exempt themselves from Ohio Constitutional requirements. Therefore charter governments cannot purchase equity securities, because Ohio Constitution Article VIII, Sections 4 and 6 prohibit public bodies from becoming a “stockholder in any joint stock company, corporation or association.”

² In some cases, *cash held by a fiscal agent* may not be public moneys subject to Ohio Rev. Code Chapter 135. Ohio Rev. Code §135.01(k) defines public moneys of a political subdivision as “all such moneys coming lawfully into the possession of the treasurer of the subdivision.” Moneys held by a trustee (e.g., for entities participating in certain asset pools such as the OASBO Expanded Asset Pool program) are not considered public moneys until they are disbursed to the political subdivision. Therefore, these moneys are excluded from Ohio Rev. Code Chapter 135 requirements until they are spent. Such moneys would also be disclosed as uncollateralized deposits for reporting purposes under GASB 40.

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³ Appendix B is accounting (rather than compliance) guidance. It serves as a crosswalk of how to apply the GASB 40 presentation and disclosure guidance to the OCS compliance requirements for deposits and investments.

Section A: Subdivisions Other Than Counties

Revised: HB 209 and HB

225, 129th GA

Effective: 3/22/12

HB 487, 129th GA

Effective: 9/10/12

5-1 Compliance Requirement: Ohio Rev. Code §135.14, §135.144 and §133.03(A)(1), 12 CFR 370 – Eligible investments for **interim** monies; section 135.13: **inactive** deposits and maturities.

Summary of Requirements:

- Investments must mature within 5 years from the settlement date, unless the investment is matched to a specific obligation or debt of the subdivision, or unless other provisions apply. [Ohio Rev. Code §135.14(D)]
- The following classifications of obligations are eligible for such investment or deposit:
 - United States obligations or any other obligation guaranteed as to principal and interest by the United States.⁴ This law prohibits investing in stripped principal or interest obligations. [Ohio Rev. Code §135.14(B)(1)]
 - Bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality. All federal agency securities must be direct⁵ issuances of federal government agencies or instrumentalities. [Ohio Rev. Code §135.14(B)(2)]
 - Interim deposits in the eligible institutions applying for interim monies as provided in Ohio Rev. Code §135.08. [Ohio Rev. Code §135.14(B)(3)]
 - Per 135.13, *Interim deposits* are certificates of deposit⁶ maturing not more than one year from the deposit date, or savings or deposit accounts, including passbook accounts.
 - HB 209, effective 3/22/12, temporarily eliminated the one-year maturity limitation on certificates of deposit of interim deposits (ORC 135.13) and HB 225, also effective 3/22/12,

⁴ See appendix A for a list of agencies the Federal government guarantees.

⁵ An example of an *indirect* issuance would be a FNMA CMO (collateralized mortgage obligation), where FNMA pools mortgages it guarantees. However, the mortgages are not a direct issuance of FNMA.

⁶ It is the position of the Auditor of State that Ohio Rev. Code §135.03 & §135.32 prohibit purchasing certificates of deposit (negotiable or otherwise) from a bank unless the CD is subject to inspection by the Ohio Superintendent of Financial Institutions. Ohio is part of a nationwide cooperative agreement for examining multi-state banks in which these states agreed to recognize each other's supervisory authority for banks headquartered in another state but doing business in theirs. Therefore, it is reasonable to conclude that a multi-state bank in a state subject to this agreement is subject to inspection by Ohio's Superintendent of Financial Institutions. Multi-state banks are eligible to become a public depository for Ohio's governmental entities, subject to sections 135.01 to 135.21 of the Ohio Rev. Code. The bank should be registered with the Ohio Secretary of State to be an eligible public depository in Ohio. A government cannot purchase negotiable or nonnegotiable CDs unless the governing body has designated the bank as eligible to hold interim or inactive deposits. See ADAM 2002-05. (Ohio Rev. Code §135.144 provides an exception to this general rule regarding out-of-state CDs. See description of 135.144 requirements in this step.)

temporarily increased the maturity period from five years to ten years (ORC 135.35(C)). After an affirmative vote of the County's investment Advisory Committee, up to 25% of the portfolio can be invested in securities that mature longer than ten years (ORC 135.35(O)).

- HB 487, effective 9/10/12, repealed this HB 225 provision. Therefore, investments purchased on or after 9/10/12 revert to the prior requirement: they must mature within 5 years from the date of settlement unless the investment matches a specific obligation or debt, and the investment advisory committee specifically approves it.
 - A county may hold investments purchased between 3/22/12 and 9/10/12 until their maturity of up to 10 years.
- (Also see requirements for inactive deposits per Ohio Rev. Code 135.13 and CDARS and similar certificates of deposit per Ohio Rev. Code 135.144 at the end of this step.)
- Bonds or other obligations of the State of Ohio. [Ohio Rev. Code §135.14(B)(4)]
- No-load money market mutual funds consisting exclusively of obligations described in (B)(1) or (2) of Ohio Rev. Code §135.14 (i.e. the investments listed in the first two bullets above), and repurchase agreements secured by such obligations, provided the government purchases the money market mutual fund **only** through eligible institutions mentioned in Ohio Rev. Code §135.03 (which are, generally, Ohio banks and national banks authorized to do business in Ohio). [135.14(B)(5)] Also, per Ohio Rev. Code 135.01(O)(2), these funds must have the highest letter or numerical rating provided by at least one nationally recognized standard rating service.
- The Ohio Subdivisions Fund (STAR Ohio) as provided in Ohio Rev. Code §135.45. [Ohio Rev. Code §135.14(B)(6)]
- Chapter 133 securities (generally debt instruments Ohio State & local governments have issued) [Ohio Rev. Code §133.03].

➤ Per Ohio Rev. Code 135.14(E), the treasurer or governing board may also enter into a repurchase agreement with any **eligible institution** mentioned in Ohio Rev. Code §135.03 or any **eligible dealer** pursuant to Ohio Rev. Code §135.14(M). (**Eligible institutions** per Ohio Rev. Code 135.03 include any national bank, any bank doing business under authority granted by the superintendent of financial institutions, or any bank doing business under authority granted by the regulatory authority of another state of the United States, located in this state ~~national banks, or Ohio savings banks but do not include credit unions.~~) ~~Effective 10/16/09, HB 1 amended R.C. 135.03 to permit any savings association or savings bank located in Ohio, which is doing business under the authority of another state, to become an eligible public depository.~~ **Eligible dealers** per Ohio Rev. Code 135.14(M) are national association of securities dealers members (NASD), banks, savings bank, or savings and loan associations regulated by the superintendent of financial institutions, or institutions regulated by the comptroller of the currency, federal deposit insurance corporation, or board of governors of the federal reserve system.) In these agreements, the treasurer or governing board purchases, and such institution or dealer agrees unconditionally to repurchase any of the securities listed in division (B)(1) to (5) of §135.18,⁷ except letters of credit described in division (B)(2) are not permitted for repurchase agreements.

- The market value of securities subject to an overnight repurchase agreement must exceed the cash invested subject to the repurchase agreement by 2%.⁸ A term repurchase agreement may not exceed 30 days and must be marked to market daily.⁹

⁷ Ohio Rev. Code §135.18(B) (1) – (10) are summarized in Ohio Compliance Supplement Section 5-4.

⁸ Many states do not require minimum market values of securities for repurchase agreements. Therefore, the risk of noncompliance increases when banks merge with out-of-state banks. Ohio governments are still bound by Ohio

- All securities purchased pursuant to a repurchase agreement are to be delivered into the custody of the treasurer or governing board or an agent designated by the treasurer or governing board.¹⁰
- Repurchase agreements must be in writing. They must require that, for each transaction, the participating institution provide:
 - a) the par value of the securities;
 - b) the type, rate, and maturity date of the securities;
 - c) a numerical identifier (e.g., a CUSIP number) generally accepted in the industry that designates the securities.
- Agreements by which the treasurer or governing board agrees to sell securities owned by the subdivision to a purchaser and agrees with that purchaser to unconditionally repurchase those securities (i.e., Reverse Repos) are prohibited. [Ohio Rev. Code §135.14(E)]
- Derivative investments are prohibited. *Derivative*¹¹ means a financial instrument or contract or obligation whose value or return is based upon or linked to another asset or index, or both, separate from the financial instrument, contract, or obligation itself. Any security, obligation, trust account, or other instrument that is created from an issue of the United States Treasury or is created from an obligation of a federal agency or instrumentality or is created from both is considered a derivative.
 - An eligible investment described in Ohio Rev. Code §135.14 with a variable interest rate payment or single interest payment, based upon a single index comprised of other eligible investments provided for in division (B)(1) or (2) of §135.14 (see above), is **not** a derivative, if the variable rate investment has a maximum maturity of 2 years. [Ohio Rev. Code §135.14(C)] (Therefore, an investment with a variable interest rate indexed to Federal securities would be legal. However, an investment indexed to the London Interbank Offered Rate (LIBOR) or to a bank's prime rate would not be legal.)
 - OAG Opinion 99-26 deemed collateralized mortgage obligations to be illegal derivatives.
 - A treasury inflation-protected security (TIPS) is permissible for counties only, per Ohio Rev. Code §135.35 (B).
- Article VIII, Sections 4 and 6 of the Ohio Constitution prohibit public bodies from becoming a “stockholder in any joint stock company, corporation or association.”

laws even if a bank's depository agreement indicates the bank follows another state's laws for the market value of securities.

⁹ The dealer would be responsible for marking the securities, not the government.

¹⁰ Counterparties (e.g. banks) accomplish this by maintaining a separate “customer” account at the Federal Reserve designated as a customer account. (For purposes of GASB 40, we currently believe securities held in a customer account would not be exposed to custodial risk.)

¹¹ Note: The Ohio Rev. Code still uses the derivative definition from GASB Technical bulletin 94-1. GASB Statement No. 53, effective for periods beginning after June 15, 2009, defines derivatives differently than does the Revised Code. So, for legal compliance purposes, governments must follow the Ohio Rev. Code derivative definition. For financial reporting, governments must follow the GASB definition. For example, interest rate swaps and energy futures contracts (which are allowable under RC 9.835 to mitigate price fluctuations, and are not intended as investments) meet the GASB 53 derivative definition, and would be subject to GASB Statement No. 53 derivative measurement and disclosure requirements, but are *not* illegal.

- However, Article VIII, Section 6 of the Constitution provides an exemption which allows public bodies to purchase insurance from mutual insurance companies (Note that insured parties of mutual insurance companies become stockholders.).
 - The AOS also does not believe Ohio Rev. Code Chapter 135 (or 1715.52(E)(3)) prohibits a government from **holding** stock **donated** to it. (However, considering the volatility of many equity securities, our management letter should recommend liquidating stock, if liquidation does not violate a trust or other agreement.)
- Per Ohio Rev. Code 135.14(F), a government cannot purchase an investment unless it reasonably expects to hold it until maturity. **NOTE:** We believe the intention of this section is to reduce the likelihood a government would suffer losses on early redemptions required due to inadequate cash flow planning. See the description of audit procedures for more information.
- Per Ohio Rev. Code 135.14(G), subdivisions may not invest interim moneys in an investment pool except:
- The Ohio Subdivision's Fund (STAR Ohio) pursuant to Ohio Rev. Code §135.14(B)(6).
 - A fund created solely to acquire, construct, own, lease, or operate municipal utilities pursuant to Ohio Rev. Code §715.02 or Ohio Const. Art XVIII, §4.
- Leveraging (a government using its current investment assets as collateral for purchasing other investments) is prohibited. [Ohio Rev. Code §135.14(H)]
- Issuing taxable notes for arbitrage is prohibited. [Ohio Rev. Code §135.14(H)]
- Governments cannot contract to sell securities not yet acquired (short sales), for the purpose of purchasing such securities on the speculation that their price will decline. [Ohio Rev. Code §135.14(H)]
- Payment for securities may be made only upon delivery of the securities to the treasurer, governing board, or qualified trustees, or, if not represented by a certificate, only upon receipt of confirmation of transfer from the custodian. [Ohio Rev. Code §135.14(M)(2)]
- Proceeds from refunding securities must be held in the debt service fund or in escrow, and shall be invested in direct obligations of or obligations guaranteed as to payment by the United States that mature or are subject to redemption by and at the option of the holder not later than the date or dates when the moneys, together with interest or other investment income accrued on those moneys, will be required to refund the debt. [Ohio Rev. Code §133.34(D)].
- Ohio Rev. Code §135.13 requires depositing *inactive* funds in certificates of deposit maturing not later than the end of the depository designation period or by savings or deposit accounts, including, but not limited to, passbook accounts.
- HB 225, effective 3/22/12, temporarily increases the maturity period from five years to ten years (ORC 135.35(C)).
 - HB 487, effective 9/10/12, repealed this HB 225 provision. Therefore, investments purchased on or after 9/10/12 revert to the prior requirement: they must mature within 5 years from the date of settlement unless the investment matches a specific obligation or debt, and the investment advisory committee specifically approves it.
 - A county may hold investments purchased between 3/22/12 and 9/10/12 until their maturity of up to 10 years.
 - (Chapter 7 includes a test of depository designations.)

➤ Ohio Rev. Code §135.144 also permits governments to use the Certificate of Deposit Account Registry Services (CDARS) or similar programs meeting Ohio Rev. Code §135.144 requirements for interim deposits. If a government purchases CDs for more than the FDIC limit (*permanently* raised to \$250,000 on July 21, 2010) with a bank participating in CDARS, the bank “redeposits” the excess amounts with other institutions. Each bank accepts less than \$250,000 so that all deposits have FDIC coverage. Ohio Rev. Code §135.144 requires a government to place its deposits with an eligible depository per Ohio Rev. Code §135.03. However, the institutions the government’s depository places excess deposits with are not subject to Ohio Rev. Code §135.03. For example, they need not be located in Ohio. Because all CDARS deposits have FDIC coverage, the collateral requirements of Ohio Rev. Code §135.18 and §135.181 do not apply. (That is, these are *insured* deposits for GASB 40 purposes.) Refer to AOS Bulletin 2007-007 for additional information regarding CDARS.¹²

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Presence of an Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

Select a representative number¹³ of investments and:

1. Read investment dealer confirmations* to determine if the investment is of a type authorized.

* Note: Dealer confirmations are suitable evidence supporting the details (e.g. valuation, occurrence) of an investment at the time of purchase. However, it provides no evidence the government still owned the investment as of its fiscal year end (the *existence* assertion). Auditors should obtain other evidence to support existence at year end. The audit program should include suitable existence steps.

¹² It is conceivable programs similar to CDARS may be established. We believe these programs would be legal if they meet all Ohio Rev. Code §135.44 requirements. For example, we are aware that credit unions have established a similar program to insure deposits exceeding the limits covered by the National Credit Union Share Insurance Fund. However, Ohio Rev. Code §135.44 would not permit governments to use this program because Ohio Rev. Code §135.03 (via Ohio Rev. Code §1151.01) excludes credit unions from eligible depositories. ~~Note: Effective 10/16/09, HB 1 amended~~ However, R.C. 135.03 ~~to~~ permits any savings association or savings bank located in Ohio, which is doing business under the authority of another state, to become an eligible public depository. Therefore, if they establish programs complying with all § 135.44 requirements, those programs would have similar legal status to the CDARS program.

¹³ When judging “a representative number,” consider focusing on investments held at year end, but also consider testing other purchases and sales during the audit period. In judging how many purchases to test, consider the volume of purchases, the control environment, the adequacy of policies, and the results of prior audits.

2. Determine that the investments mature within the prescribed limits (generally no later than 5 years, but 1 year¹⁴ for interim deposits in a certificate of deposit, or *other* periods for repurchase agreements, bankers' acceptances and commercial paper.)
3. Inspect documentation supporting repurchase agreements and determine that:
 - a. The market values of securities exceed the principal values of securities subject to the overnight repurchase agreement by 2%. (Note: The risk of non-compliance increases when banks merge.)
 - b. A term repurchase agreement did not exceed 30 days and the values of the securities were marked to market daily.
 - c. Repurchase agreements were in writing, including the par value of the securities; the type, rate, and maturity date of the securities; and a numerical identifier.
4. Read the prospectus for money market mutual funds with which the government has significant investment. Determine whether the prospectus limits investments to those authorized under Ohio Rev. Code §135.14(B)(1) & (B)(2). (B)(1) & (B)(2) describe Federally issued or insured securities. §(B)(1) & (B)(2) would not include, for example, reverse repos consisting of Federal securities or securities other states issue.
5. Determine whether money market mutual funds have the highest credit rating issued by one national ratings agency (such as that S&P, Moody's or Fitch issues).
6. Regarding Ohio Rev. Code §135.14(F), scan investment records to determine whether the government is selling securities prior to maturity. If a significant number or amount of premature sales occurred because the government had an emergency need for cash, review the CFO's cash flow forecasts supporting that the government had reasonable support, at the time of purchase, that it could hold the security to maturity. ***If there is inadequate cash flow planning***,¹⁵ cite this section. The noncompliance finding should also recommend the government improve its cash flow forecasting. The finding should also describe any losses the government suffered from these sales.
7. If the government hires an investment manager for all or a portion of its investments, obtain copies of investment summary reports the manager prepares.
 - a. Read the agreement between the manager and the government. Determine if the agreement (or the investment policy Step 5-2 describes) requires the manager to comply with all applicable Ohio Rev. Code Chapter 135 requirements. Maintain a copy or summary of the agreement in the permanent file.
 - b. Test selected investments from the reports for compliance with steps 1 – 5 above.
 - c. Scan purchases and sales to determine whether the manager sells securities prior to their maturity for other than an urgent need for cash.

¹⁵ "Emergency" premature sales can result in losses. If inadequate cash flow planning contributed to the need to sell early, we should cite them. In other circumstances, a government may choose to redeem a security early at a loss in order to re-invest at a greater overall rate of return. We would not deem this latter circumstance to violate the intent of Ohio Rev. Code §135.14(F).

d. (Note that for financial audit purposes, an investment manager may constitute a service organization under SSAE 16, SAS 70 & 92.¹⁶)

Note: The steps above should normally be sufficient for most governments. Because we believe the risk of governments engaging in certain prohibited activities such as leveraging, short sales or arbitrage violations is low, there are no steps included to test these requirements. You should scan the other requirements in this step, and based on your knowledge of the government's investing activities, investigate them if evidence suggests the government may have materially violated these requirements.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

¹⁶ Note that SSAE No. 16 replaces SAS 70 for *service organizations*, effective for periods ending on or after June 15, 2011. Earlier implementation is permitted. Also, a new standard will replace the user organization audit guidance in SAS 70 for audits of *user organizations* when the "Clarity" auditing standards become effective. In the meantime, SAS 70 remains effective for user organization auditors until which time the new Clarity standard is adopted.

5-2 Compliance Requirement: Ohio Rev. Code §135.14 – Other Requirements.

Summary of Requirements:

- Per Ohio Rev. Code §135.14(O)(1), Investments or deposits under §135.14 cannot be made unless a written investment policy approved by the treasurer or governing board is on file with the Auditor of State, with the following two exceptions:
 - Per Ohio Rev. Code §135.14(O)(2), If a written investment policy is not filed with the Auditor of State, the treasurer or governing board can invest only in interim deposits, STAR Ohio, or no-load money market mutual funds.
 - Per Ohio Rev. Code §135.14(O)(3), A subdivision whose average annual investment portfolio is \$100,000 or less need not file an investment policy, provided that the treasurer or governing board certifies to the Auditor of State that the treasurer or governing board will comply and is in compliance with the provisions of §135.01 to §135.21.
- Per Ohio Rev. Code §135.14(O)(1), The investment policy must be signed by:
 - All entities conducting investment business with the treasurer or governing board (except the Treasurer of State);
 - All brokers, dealers, and financial institutions, described in §135.14(M)(1), initiating transactions with the treasurer or governing board by giving advice or making investment recommendations;
 - All brokers, dealers, and financial institutions, described in §135.14(M)(1), executing transactions initiated by the treasurer or governing board.
- If any securities or certificates of deposit purchased are issuable to a designated payee or to the order of designated payee, the designated party is to be the treasurer and the treasurer’s office¹⁷.
- If the securities are registerable either as to principal and/or interest, then the securities are to be registered in the treasurer’s name.
- The treasurer is responsible for safekeeping all the documents evidencing a deposit or investment. Any securities may be deposited for safekeeping with a qualified trustee as provided in Ohio Rev. Code §135.18.
- Except for investments in securities described in Ohio Rev. Code §135.14(B)(5) and (6) (no-load money funds, certain repos and STAR Ohio) and for investments by a municipal corporation in the issues of that municipal corporation, all investments must be made through:
 - members of the National Association of Securities Dealers, Inc. (NASD); or
 - institutions regulated by the Superintendent of Banks, Superintendent of Savings and Loan Associations, Comptroller of Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
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¹⁷ For example, an acceptable method of complying with this requirement is for the financial institution to make the securities or certificates of deposit payable to “ABC Township, Joe Jones, Treasurer.”

<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Presence of an Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures – Compliance (Substantive) Tests:

Read the government’s investment policy for the period.

If there is no written investment policy filed with the Auditor of State, scan the government’s investment portfolio for the period to determine that it is composed solely of interim deposits, STAR Ohio, or no-load money market mutual funds, or that its average annual size is \$100,000 or less. Additionally, inspect the certificate to the Auditor of State asserting¹⁸ that the treasurer or governing board will comply and is in compliance with the provisions of Ohio Rev. Code §135.01 to §135.21.

If applicable, inspect documentation that the policy was approved by the treasurer or governing board and is on file with the Auditor of State (For AOS employees the policies and exemptions are available at S:/Final Audit PDF/Region Folder/County Folder/Client Folder/Investment Policy Folder). (We need not repeat this step every audit. Keep a copy in the permanent file, and inquire whether the government has amended the policy since the prior audit.)

Inspect the policy for the requisite signatures:

- All entities conducting investment business with the treasurer or governing board (except the Treasurer of State);
- All brokers, dealers, and financial institutions initiating transactions with the treasurer or governing board by giving advice or making investment recommendations;
- All brokers, dealers, and financial institutions executing transactions initiated by the treasurer or governing board.
- Select a representative number of investments made by the entity and determine whether the investments are in accordance with the entity’s investment policy as adopted by the entity’s legislative body.

Determine if the policy requires financial institutions, brokers and dealers to comply with Ohio Rev. Code Chapter 135. (There is no legal requirement to include this, but if the policy does not include this requirement, we should recommend the government amend their policy to require compliance.)

¹⁸ Not required if the portfolio for the period is composed solely of interim deposits, STAR Ohio, or no-load money market mutual funds.

Select a representative number¹⁹ or amount of investments:

- Inspect purchase documents and determine that investments were made only through members of NASD, or institutions regulated by the Superintendent of Banks, Superintendent of Savings and Loan Associations, Comptroller of Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System.
- For certificates of deposit, inspect documentation that any designated payee is the treasurer or treasurer’s office; and that the CDs are in the treasurer’s name.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

¹⁹ When judging “a representative number,” consider focusing on investments held at year end, but also consider testing other purchases and sales during the audit period. In judging how many purchases to test, consider the volume of purchases, the control environment, the adequacy of policies, and the results of prior audits.

5-3 Compliance Requirements: Ohio Rev. Code §135.142 (school districts), §135.14(B)(7) (other subdivisions) – Additional investments allowable for subdivisions other than counties.

Summary of Requirements: Ohio Compliance Supplement Section 5-1 identifies certain investments that are eligible for **interim** monies. In addition to those investments, subdivisions can invest interim monies as follows:

➤ Up to twenty-five per cent of interim moneys available for investment in either of the following [Ohio Rev. Code §135.142(A) for school districts; §135.14(B)(7) for other subdivisions]:

Commercial paper notes issued by an entity defined in Ohio Rev. Code §1705.01(D) (see definition below) and that has assets exceeding five hundred million dollars, to which all the following apply:

- The notes are rated at the time of purchase in the highest classification established by at least two nationally recognized standard rating services.
- The aggregate value of the notes does not exceed ten per cent of the aggregate value of the outstanding commercial paper of the issuing corporation.
- The notes mature not later than one hundred eighty days after purchase.

Bankers’ acceptances of banks insured by the FDIC and to which both of the following apply:

- The obligations are eligible for purchase by the Federal Reserve System.
- The obligations mature not later than one hundred eighty days after purchase.

➤ Boards of education must authorize the treasurer to invest in commercial paper or bankers’ acceptances by a 2/3 majority vote. [Ohio Rev. Code §135.142(A)] (Once authorized, the authorization remains effective unless the policy changes. Therefore, we need not test this every audit. We should maintain documentation of the approval in the permanent file.)

➤ “Entity” means any of the following [Ohio Rev. Code §1705.01(D)]:

- A for profit corporation existing under the laws of this state or any other state;
- Any of the following organizations existing under the laws of this state, the United States, or any other state:
 - A business trust or association;
 - A real estate investment trust;
 - A common law trust;
 - An unincorporated business or for profit organization, including a general or limited partnership;
 - A limited liability company.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Presence of an Effective Accounting System 		

<ul style="list-style-type: none"> • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures – Compliance (Substantive) Tests:

1. Inspect a representative number²⁰ of dealer confirmations of the commercial paper notes purchased and determine that the entity has maintained related documentation that the:
 - Commercial paper was rated in the highest classification by two standard rating services.
 - The commercial paper matures not later than 180 days after purchase.
2. Inspect dealer confirmations of the bankers’ acceptances purchased and determine that the entity has maintained related documentation that the:
 - Banks are insured by the Federal Deposit Insurance Corporation.
 - Dealer confirmations should indicate if bankers’ acceptances were **NOT** eligible for purchase by the Federal Reserve System. Read the confirmation to determine whether the banker’s acceptance was **ineligible**. (A statement of ineligibility would indicate an **ineligible** investment, per Ohio Rev. Code §135.142(A) for school districts or §135.14(B)(7) for other non-county entities.
 - The acceptances mature not later than 180 days after purchase.
3. For school districts, assure the permanent file documents the resolution authorizing the treasurer to invest in commercial paper and / or bankers’ acceptances.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

²⁰ When judging “a representative number,” consider focusing on investments held at year end, but also consider testing other purchases and sales during the audit period. In judging how many purchases to test, consider the volume of purchases, the control environment, the adequacy of policies, and the results of prior audits.

**Revised: Dodd-Frank Wall Street
Reform and Consumer
Protection Act of 2010
Section 343
Effective: December 31, 2010**

5-4 Compliance Requirements: Ohio Rev. Code §135.18 (specific collateral) and §135.181 (pooled collateral) – Security for repaying public deposits; Ohio Rev. Code §135.37 – Security for repaying county (and county hospital) public deposits; 12 CFR 330; 12 CFR 370 - TLGP.

Summary of Requirements: The treasurer of a political subdivision must require the depository to provide security equal to the funds on deposit at all times. Security may consist of federal deposit insurance, surety company bonds, or pledged securities. [Ohio Rev. Code §135.18].

Depository security requirements for county (and county hospital) monies parallel the requirements of other governmental entities pursuant to Ohio Rev. Code §135.18. Ohio Rev. Code §135.37(F) expressly permits counties to follow the pool collateral requirements of Ohio Rev. Code §135.181.

FDIC Insurance Coverage and Temporary Liquidity Guarantee Program

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 into law, which, in part, *permanently* raised the current standard maximum FDIC deposit insurance amount to \$250,000, retroactive to January 1, 2008. ~~(The standard maximum insurance amount of \$100,000 had been temporarily raised to \$250,000 until December 31, 2013.)~~

On November 9, 2010, the FDIC Board of Directors (the “Board”) issued a final rule (the “November Final Rule”) to implement Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“DFA”) that provides temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts at all FDIC-insured depository institutions (the “Dodd-Frank Provision”) (12 CFR 330).

All funds in a “noninterest-bearing transaction account” are insured in full by the Federal Deposit Insurance Corporation from December 31, 2010, through December 31, 2012. This temporary unlimited coverage is in addition to, and separate from, the coverage of at least \$250,000 available to depositors under the FDIC’s general deposit insurance rules (12CFR 330.16).

A “noninterest-bearing transaction account” means: (1) a deposit or account maintained at an insured depository institution; (i) in which interest is neither accrued nor paid; (ii) in which the depositor or account holder is permitted to make withdrawals, telephone or electronic or other media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; (iii) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal²¹. A noninterest-bearing transaction account also includes a trust account established by an attorney or law firm commonly known as an Interest on Lawyers Trust Accounts (“IOLTAs”) or its functional equivalent as determined by the corporation.²²

²¹ See 12 C.F.R. §330.1(r)

²² The definition of noninterest-bearing transaction account cannot include any interest bearing accounts, NOW accounts, or money market deposit accounts except as expressly provided in 12 C.F.R. §330.16(b) with respect to certain swept funds. The exception for swept funds is applicable only in situations where funds are swept from a noninterest-bearing transaction account to a noninterest-bearing savings account, notably a money market deposit account (MMDA). Pursuant to 12 C.F.R. § 330.16(b), such noninterest-bearing savings accounts into which funds

On October 14, 2008, the FDIC announced the Temporary Liquidity Guarantee Program (TLGP), which consists of two components [12 CFR 370.3(b)]:

- a temporary guarantee of newly issued senior unsecured debt ("debt guarantee program"), and
 - a temporary and unlimited guarantee of the coverage of funds in non-interest bearing transaction accounts at FDIC-insured institutions ("transaction account guarantee (TAG) program").
- Beginning December 31, 2010 through December 31, 2012, deposits held in noninterest-bearing transaction accounts will be fully insured, regardless of the amount in the account, at all FDIC-insured institutions. Noninterest-bearing checking accounts include Demand Deposit Accounts (DDAs) and any transaction account that has unlimited withdrawals and that cannot earn interest. Also included are IOLTA accounts (regardless of the interest rate) and NOW accounts that do not earn more than 0.25% interest. This unlimited protection is only available at insured depository institutions that continue to participate in the TAG Program after September 30, 2010.

The transaction account guarantee applies to all personal and business checking deposit accounts that do not earn interest at participating institutions. For example, if a customer has \$500,000 in a noninterest-bearing transaction deposit account, the FDIC would fully insure the entire \$500,000. (In issuing the November Final Rule, the Board confirmed it would not extend the Transaction Account Guarantee Program ("TAGP") beyond its sunset date of December 31, 2010.)

Debt Guarantee Program

The Debt Guarantee Program expired on 12/31/2010, however:

- For debt that is issued before April 1, 2009 by any participating entity, the guarantee expires on the earliest of the mandatory conversion date for mandatory convertible debt, the maturity date of the debt, or June 30, 2012.
- For debt that is issued on or after April 1, 2009, by a participating entity that is either an insured depository institution, a participating entity that has issued guaranteed debt before April 1, 2009, a participating entity that has been approved pursuant to § 370.3(h) to issue guaranteed debt after June 30, 2009, and on or before October 31, 2009, or a participating entity that has been approved pursuant to § 370.3(k) to issue guaranteed debt after October 31, 2009, the guarantee expires on the earliest of the mandatory conversion date (for mandatory convertible debt), the maturity date of the debt, or December 31, 2012.
- For debt that is issued on or after April 1, 2009 by a participating entity other than an entity described in paragraph (d)(2) of this section, the guarantee expires on the earliest of the mandatory conversion date for mandatory convertible debt, the maturity date of the debt, or on June 30, 2012.

Under the Debt Guarantee Program, the FDIC also guaranteed certain newly issued senior unsecured debt²³ issued by *participating institutions*. The Debt Guarantee Program This program was extended for

are swept would be considered noninterest-bearing transaction accounts. Apart from this exception for "reserve sweeps," MMDAs and noninterest-bearing savings accounts do not qualify as noninterest-bearing transaction accounts.

²³ Senior unsecured debt includes [12 CFR 370.2(e)(3); 12 CFR 370.2(a)(1)(i-iv)]:

- Federal funds purchased;
- Commercial paper;

senior unsecured debt issued after April 1, 2009 and before October 31, 2009 and maturing on or before December 31, 2012 unless an entity opted out of the debt guarantee component of the Temporary Liquidity Guarantee Program. In that event, the debt guarantee expired when the FDIC's received the opt-out decision.

Generally, and as defined in the interim rule, the following entities were eligible to ~~be participating institutions in the TLGP~~ participate in the Debt Guarantee Program:

- any FDIC-insured depository institution;
- any U.S. bank holding company, including financial holding companies; and
- certain U.S. savings and loan holding companies.

Eligible entities may have elected to opt out of the Debt Guarantee Program, ~~the transaction account guarantee program, or both~~. The FDIC maintains a list of those entities that have opted out of ~~either or both components of the TLGP~~ the Debt Guarantee Program on its Web site (<http://www.fdic.gov/regulations/resources/TLGP/optout.html> (<http://www.fdic.gov/regulations/resources/TLGP/index.html>). [12 CFR 370.5]

Depositories may pledge the following securities under the subsections of Ohio Rev. Code §135.18(B) listed below:

- (1) Bonds, notes, or other obligations of the United States; or bonds, notes, or other obligations guaranteed as to principal and interest by the United States or those for which the full faith of the United States is pledged for the payment of principal and interest thereon, by language appearing in the instrument specifically providing such guarantee or pledge and not merely by interpretation or otherwise;
- (2) Bonds, notes, debentures, letters of credit, or other obligations or securities issued by any federal government agency, or instrumentality, or the export-import bank of Washington; bonds, notes, or other obligations guaranteed as to principal and interest by the United States or those for which the full faith of the United States is pledged for the payment of principal and interest thereon, by interpretation or otherwise and not by language appearing in the instrument specifically providing such guarantee or pledge;
- (3) Obligations of or fully insured or fully guaranteed by the United States or any federal government agency or instrumentality;
- (4) Obligations partially insured or partially guaranteed by any federal agency or instrumentality;
- (5) Obligations of or fully guaranteed by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Farm Credit Bank, or Student Loan Marketing Association;

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- Unsubordinated unsecured notes, including zero-coupon bonds;
 - U.S. dollar denominated certificates of deposit owed to an insured depository institution, an insured credit union as defined in the Federal Credit Union Act, or a foreign bank
 - U.S. dollar denominated deposits in an IBF of an insured depository institution owed to an insured depository institution or a foreign bank, and
 - U.S. dollar denominated deposits on the books and records of foreign branches of U.S. insured depository institutions that are owed to an insured depository institution or a foreign bank.

Although normally considered to be illegal investments for local governments, the securities above are believed to be *temporarily* legal investments because of the guarantee.

(6) Bonds and other obligations of this state and any county, municipal corporation, or other legally constituted taxing subdivision of another state, or an instrumentality of such public entities, if:

- The full faith and credit of the issue is pledged and,
- At the time of purchase, the security is rated in one of the two highest categories by at least one nationally recognized standard rating service

(7) Bonds and other obligations of any county, township, school district, municipal corporation, or other legally constituted taxing subdivision of this state, which is not at the time of such deposit, in default in the payment of principal or interest on any of its bonds or other obligations, for which the full faith and credit of the issuing subdivision is pledged.

(8) Bonds of other states of the United States which have not during the ten years immediately preceding the time of such deposit defaulted in payments of either interest or principal on any of their bonds;

(9) Shares of no-load money market mutual funds consisting exclusively of obligations described in division (B)(1) or (2) of Ohio Rev. Code §135.18 [these sections are (1) & (2), above] and repurchase agreements secured by such obligations.

(10) A surety bond issued by a corporate surety licensed by the state and authorized to issue surety bonds in this state pursuant to Ohio Rev. Code Chapter 3929 and qualified to provide surety bonds to the federal government pursuant to 96 Stat. 1047 (1982), 31 U.S.C.A. 9304.

By written notice to the treasurer, an institution designated as a public depository may designate a qualified trustee²⁴ and deposit the eligible securities required by this section with the trustee for safekeeping for the account of the treasurer (and the institution). In this case, the treasurer accepts the trustee's written receipt describing the securities which have been deposited with the trustee by the public depository. All such securities so deposited with the trustee are deemed to be pledged and deposited with the treasurer. [Ohio Rev. Code §135.18(D)].

Any federal reserve bank²⁵ or branch located in this state or Federal Home Loan Bank is qualified to act as trustee for the safekeeping of securities.

Any institution mentioned in Ohio Rev. Code §135.03 is qualified to act as trustee for the safekeeping of securities, other than those belonging to itself, under this section.

Ohio Rev. Code §135.181

In lieu of the specific pledging requirements of Section 135.18, a public depository at its option may pledge a single pool of eligible securities to secure the repayment of all its public deposits not otherwise secured, provided that at all times the total market value of the securities so pledged is at least equal to one hundred five per cent of its uninsured public deposits to be secured by the pooled securities.

²⁴ All securities eligible as collateral are book-entry only and held at the Federal Reserve. The Federal Reserve Bank acts as the government's agent and holds the collateral securities in the government's name. Deposits secured by collateral held in these accounts are not subject to custodial credit risk disclosures if the government can provide evidence that pledge accounts held in the government's name are in existence at the Federal Reserve.

²⁵ The Federal Reserve Bank of Cleveland sometimes uses the Boston Federal Reserve Bank for safekeeping. We do not deem this arrangement to violate this provision.

The securities described in division (B) of Ohio Rev. Code §135.18 (described above), shall be eligible as collateral, provided no such securities pledged as collateral are at any time in default as to either principal or interest.

A public depository must designate a qualified trustee (i.e., the Federal Reserve) and deposit the eligible pledged securities with that trustee for safekeeping. The depository must give written notice of the qualified trustee to any treasurer depositing public monies for which such securities are pledged. The treasurer shall accept the written receipt of the trustee describing the pool of securities so deposited by the depository. [Ohio Rev. Code §135.181(E)].

Upon request of a treasurer up to 4 times per year, a *public depository* must report: the amount of public monies deposited by the treasurer and secured and the total value based on the valuations described above, of the pool of securities pledged to secure public monies held by the depository, including those deposited by the treasurer [Ohio Rev. Code §135.181(L)].

Upon request of a treasurer up to 4 times per year, a *qualified trustee* must report the total value of the securities pool deposited with it by the depository and provide an itemized list of pooled securities. The trustee must make these reports as of the date the treasurer specifies.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Presence of an Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

Compare depository balances to the amount of pledged securities and other depository collateral during the audit period, noting maximum amounts on deposit at any time. Calculate (or inspect, if available, the government’s calculations) if legal security equaled or exceeded depository balances. Focus audit procedures on the most recent fiscal year end, but based on your assessment of the control environment, the nature of collateral²⁶ and other risks also consider whether you should evaluate the adequacy of collateral as of other dates during the audit when deposit or investment balances may have been materially higher, such as immediately after the receipt of tax settlements.

Inspect the financial institution’s listing of pledged securities. Select a few securities and determine if the institution pledged only eligible securities. (When determining the extent of testing, auditors should consider that we do not require a high level of assurance, so a “few” items should be sufficient. Auditors can reduce or eliminate this testing based on the assessed level of control risk* and past experience with the financial institution. Therefore, if the government documents its review of collateral eligibility, or we have not noted eligibility problems in prior audits, we can reduce or eliminate this test.)

²⁶ For example, there is generally less risk that a financial institution using a collateral pool will have insufficient collateral vs. a financial institution pledging specific securities.

* “Control risk” in this context refers to the *government’s* controls, if any, over reviewing their financial institutions’ collateral lists. The AOS has no basis for assessing a financial institution’s control risk.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Revised: HB 153, 129th GA
Effective: 9/29/11

5-5 Compliance Requirements: Article XII, Section 5a, Ohio Constitution; Ohio Rev. Code §135.21, §5705.10, §3315.01, and §5705.131; and 1982 Op. Atty Gen. No. 82-031 – Allocating interest among funds.

Summary of Requirements: The distribution of interest earned on monies held for the treasuries of other subdivisions (i.e. as fiscal agent or custodian) is generally subject to Ohio Rev. Code §135.21 and §5705.10, although specific exceptions may exist. As a general rule:

- Interest earned on monies deposited by a treasurer which do not belong in the treasury of the subdivision, due to their status as custodial funds,²⁷ because he is acting as ex officio treasurer, or otherwise, generally must be apportioned to the funds to which the principal belongs. [Ohio Rev. Code §135.21]
- All other interest earned must be credited to the general fund of the subdivision [Ohio Rev. Code §135.21], with the **following exceptions:**
 - Interest earned on money derived from a motor vehicle license or fuel tax must follow the principal²⁸. [Article XII, Section 5a, Ohio Const. and 1982 Op. Atty Gen. No. 82-031]
 - Federal regulations may require local governments to credit interest earned on federal money to the fund to which the principal belongs. Most Federal agencies have codified *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* that describe the accounting for interest earnings. In some situations, interest earnings on Federal money must follow the fund to which the principal belongs (such as interest earned on revolving loans). Conversely, local governments must generally refund interest earned in excess of \$100 annually to the Federal agency if the grant is advance funded. Auditors should refer to the applicable Federal program regulations and grant agreements to determine whether interest earned on federal money is program income and, therefore, must be credited to the fund where the principal belongs.
 - Interest earned on principal of a non-expendable trust fund²⁹ established to receive donations or contributions that the donor or contributor requires to be maintained intact must be credited to the non-expendable trust fund to which the principal belongs. [Ohio Rev. Code §5705.131].

²⁷ Op. Atty. Gen. No. 85-085 defines *Custodial Funds* as those funds held in possession of the treasurer of a government body for some other entity, but are considered to be outside the treasury of the governmental body – and not available for use by that governmental body itself. This would include funds properly classified as fiduciary funds per GASB Cod. 1300.102(c).

²⁸ This includes local motor vehicle license tax imposed under Ohio Rev. Code Chapter 4504, motor vehicle license tax imposed under Ohio Rev. Code 4503.02, highway use tax, and gasoline tax imposed under Ohio Rev. Code Chapter 5728, and the motor vehicle fuel tax imposed under Ohio Rev. Code Chapter 5735. [Op. Atty. Gen. No. 1982-031]

²⁹ For accounting purposes, funds this Ohio Rev. Code section describes would now be *permanent funds under GASB 54* or *private purpose trust funds* under GASB 34.

- Interest earned on debt proceeds from debt issued under Ohio Rev. Code Chapter 133 must be used for purposes for which the debt was issued or credited to the general fund. [Section 5705.10(E)] (Note: *Proceeds* exclude accrued interest and premiums, which the entity must credit to the sinking or bond retirement fund.)

School District Exceptions:

- The board of education of any school district may adopt a resolution requiring the treasurer of the district to credit the earnings made on the investment of the principal of the moneys specified in the resolution to the fund from which the earnings arose, or any other fund of the district as the board specifies in its resolution. [Ohio Rev. Code §3315.01(A)].

This procedure does not apply to the earnings made on the investment of a school district’s bond retirement fund, the sinking fund, a project construction fund established pursuant to Ohio Revised Code §3318.01 to §3318.20 (see school Classroom Facilities Assistance Program requirements in OCS Chapter 2), or the payments districts receive from the school foundation program. [Ohio Rev. Code §3315.01(B)].

- All investment earnings of a school district project construction fund shall be credited to the fund. After the a certificate of completion has been issued for a project under section 3318.48 of the Revised Code, has been completed:

(A). Any investment earnings remaining in the project construction fund attributable to the school district’s contribution to the fund shall be transferred to the district’s maintenance fund required by division (B) of Ohio Rev. Code §3318.05, and the money shall be used solely for maintaining the classroom facilities included in the project. [Ohio Rev. Code §3318.12(C)(1)]

(B). Any investment earnings remaining in the project construction fund that are attributable to the state’s contribution to the fund shall be transferred to the state commission for expenditure pursuant to Ohio Rev. Code 3318.01 to 3318.20. [Ohio Rev. Code §3318.12(C)(2)]

- All revenue, as defined in 7 CFR 210.2, received by or accruing to the food service fund of any school district or community schools including but not limited to, children’s payments, earnings on investments, and other local revenues should be credited to and used by those funds. (7 CFR 210.2 and 210.14 (a)).

Cemetery Exception:

Interest earned on a cemetery bequest fund that is attributable to an individual bequest is credited to that fund. That is, interest attributable to an endowment for the benefit of individual cemetery lots should follow the principal of the endowment (i.e., typically classified as a Permanent Fund under GASB 54 34) [Ohio Rev. Code §759.36, §759.14, and §517.15]. However, interest attributable to endowments generally benefitting the cemetery as whole may be allocated to a cemetery fund (i.e., typically classified as a Special Revenue Fund under GASB 54.34) to be used for general cemetery purposes.

Library Exception:

- The board of library trustees of any free public library district may adopt a resolution requiring the treasurer of the district to credit the earnings made on the investment of the principal of the moneys specified in the resolution to the fund from which the earnings arose or any other fund of the district as the board specifies in its resolution. [Ohio Rev. Code §3375.391]

- This does not apply to the earnings made on the investment of any library bond retirement fund or any sinking fund. [Ohio Rev. Code §3375.391]

In determining how the government ensures	What control procedures address the	W/P
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compliance, consider the following:	compliance requirement?	Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Presence of an Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

Trace a representative selection of interest earned during the fiscal year and determine that it was paid into the proper funds.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section B: County and County Hospital Requirements

The provisions of Ohio Rev. Code Chapter 135 relating to counties (and county hospitals) are in separate sections from the provisions relating to all other subdivisions. However, in most cases the requirements are very similar.

5-4 Compliance Requirements: Section 5-4 presented under Section A applies to counties and hospitals.

5-6 Compliance Requirement: Ohio Rev. Code §135.34 and §135.341 – Investment advisory committee; county commissioners’ review of investment policies.

Summary of Requirements:

Ohio Rev. Code §135.341(A) establishes in each county a county investment advisory committee of 3 members:

- 2 county commissioners; and
- the county treasurer

The board of county commissioners *may* declare that all 3 county commissioners shall serve on the county investment advisory committee. If the board so declares, the county investment advisory committee consists of 5 members:

- the 3 county commissioners;
- the county treasurer; and
- the clerk of court of common pleas of the county

The committee elects its own chair, and committee members receive no additional compensation. [Ohio Rev. Code §135.341(B)]

The committee must meet at least once every 3 months to review or revise its policies and to advise the investing authority (generally the county treasurer) on county investments, with the objective of ensuring the best and safest return of funds to the county. Any member of the committee, upon giving 5 days’ notice, may call a committee meeting. The committee’s policies may establish a limit on the period of time that moneys may be invested in any particular type of investment. [Ohio Rev. Code §135.341(C)]

The committee is authorized to retain the services of an investment advisor, provided that the advisor is registered with the Securities and Exchange Commission and possesses public funds investment management experience, specifically in the area of state and local government investment portfolios, or the advisor is an eligible institution mentioned in Ohio Rev. Code §135.03. [Ohio Rev. Code §135.341(D)]

The committee shall act as the investing authority in place of the treasurer for purposes of investing county funds and managing the county portfolio when this authority is transferred to it pursuant to divisions (E)(1) and (F)(2) of Ohio Rev. Code §321.46 or when ordered to do so by a court pursuant to §321.47. For these purposes, the committee shall retain the services of an investment advisor described in division (D) of this section. [Ohio Rev. Code §135.341(E)]

The board of county commissioners may semiannually review investment procedures of the investing authority. Whenever such reviews indicate that the investing authority has failed to invest inactive monies of the county as provided by law or in “documented substantial, material, and continuing” disregard of the advice or policies of the investment advisory committee, the board notifies the investing authority of its findings. If at the next review it determines that such procedures have not been corrected,

the board may designate, by resolution, a different investing authority. This may include the board of county commissioners, one of its members, or one of its employees. Thereafter, until rescinded by resolution of the board, the investing authority is as designated by the board. [Ohio Rev. Code §135.34]

All or part of the moneys determined not to be necessary to meet current county hospital demands may be invested by the hospital trustees in any classifications of securities eligible for deposit or investment of county moneys pursuant to Ohio Rev. Code §135.35, subject to the approval of the board's written investment policy by the county investment advisory committee established pursuant to Ohio Rev. Code §135.341. [Ohio Rev. Code §339.06(D)(2)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Presence of an Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

Read minutes and records of the county investment advisory committee and determine that the committee is meeting at least quarterly and has established written county investment policies.

Obtain a copy of the written investment policies established by the committee. Examine a representative selection of investment transactions to determine whether the investing authority is complying with the committee’s policies.

Inquire (or read minutes) as to the results of any quarterly reviews of the county investment procedures by the board of county commissioners and determine whether appropriate action was taken by the board.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Revised: HB 225, 129th GA

Effective: 3/22/12

HB 487, 129th GA

Effective: 9/10/12

5-7 (a) Compliance Requirements: Ohio Rev. Code §135.35 and 12 CFR 370 - Eligible Investments for inactive county money (county hospitals may invest in these same securities, per Ohio Rev. Code §339.06).

Summary of Requirements:

- Investments must mature within 5 years from the date of settlement unless the investment matches a specific obligation or debt, and the investment advisory committee specifically approves it.
- HB 225, effective 3/22/12, temporarily increases this to ten years (ORC 135.35(C)). Additionally, after an affirmative vote of the County's investment Advisory Committee, up to 25% of the portfolio can be invested in securities that mature longer than ten years (ORC 135.35(O)).
 - HB 487, effective 9/10/12, repealed this HB 225 provision. Therefore, investments purchased on or after 9/10/12 revert to the prior requirement: they must mature within 5 years from the date of settlement unless the investment matches a specific obligation or debt, and the investment advisory committee specifically approves it.
 - A county may hold investments purchased between 3/22/12 and 9/10/12 until their maturity of up to 10 years.
- The following classifications of securities and obligations are eligible for deposit or investment:
 - United States obligations or any other obligation guaranteed as to principal or interest by the United States, or any book entry, zero-coupon United States treasury security that is a direct obligation of the United States. [Ohio Rev. Code §135.35(A)(1)]
 - Stripped principal or interest obligations are not permitted. Except, Federally-issued or Federally-guaranteed stripped principal or interest obligations are permitted. [Ohio Rev. Code §135.35(A)(1)]
 - Bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality. All federal agency securities must be direct issuances of federal government agencies or instrumentalities. [Ohio Rev. Code §135.35(A)(2)]
 - Time certificates of deposit³⁰ or savings or deposit accounts, including passbook accounts, in any eligible³¹ institution mentioned in Section 135.32. [Ohio Rev. Code §135.35(A)(3)]

³⁰ It is the position of the Auditor of State that Ohio Rev. Code §135.03 & §135.32 prohibit purchasing certificates of deposit (negotiable or otherwise) from a bank unless the CD is subject to inspection by the Ohio Superintendent of Financial Institutions. Ohio is part of a nationwide cooperative agreement for examining multi-state banks in which these states agreed to recognize each other's supervisory authority for banks headquartered in another state but doing business in theirs. Therefore, it is reasonable to conclude that a multi-state bank in a state subject to this agreement is subject to inspection by Ohio's Superintendent of Financial Institutions. Multi-state banks are eligible to become a public depository for Ohio's governmental entities, subject to sections 135.01 to 135.21 of the Ohio Rev. Code. The bank should be registered with the Ohio Secretary of State to be an eligible public depository in Ohio. A government cannot purchase negotiable or nonnegotiable CDs unless the governing body has designated

- Ohio Rev. Code §135.353 also permits counties to use the Certificate of Deposit Account Registry Services (CDARS) or similar programs meeting Ohio Rev. Code §135.353 requirements. If a county purchases CDs for more than the FDIC limit (*permanently* raised to \$250,000 on July 21, 2010. See *OCS step 5-4* with a bank participating in CDARS, the bank “redeposits” the excess amounts with other institutions. Each bank accepts less than \$250,000 so that all deposits have FDIC coverage. Ohio Rev. Code §135.353 requires a county to place its deposits with an eligible depository per Ohio Rev. Code §135.32. However, institutions the county’s depository places excess deposits with are not subject to Ohio Rev. Code §135.32. For example, they need not be located in Ohio. Because all CDARS deposits have FDIC coverage, the collateral requirements of Ohio Rev. Code §135.18 and §135.181 do not apply. (That is, these are *insured* deposits for GASB 40 purposes.)
- Bonds and other obligations of this state or the political subdivisions of this state provided that such political subdivisions are located wholly or partly within the same county as the investing authority. [Ohio Rev. Code §135.35(A)(4)]
- HB 225, effective 3/22/12 allows the purchase of municipal debt of the State of Ohio or any political subdivision of the State (it removes the restriction that the subdivision lie within the County).
- No-load money market mutual funds consisting exclusively of obligations described in Ohio Rev. Code §135.35(A)(1) or (2) (see above), or repurchase agreements secured by such obligations, if purchased from eligible institutions mentioned in Ohio Rev. Code §135.32 (generally, Ohio banks and national banks authorized to do business in **Ohio**. [Ohio Rev. Code §135.35(A)(5)]*)
- No-load money market mutual funds if rated in the highest category at the time of purchase by at least one nationally recognized standard rating service and invested exclusively in:
 - United States treasury bills, notes, bonds, or any other obligations or securities issued by the United States treasury or any other obligation guaranteed as to principal and interest by the United States, Bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality or corporate commercial paper rated in the highest category by two ratings agencies (i.e. securities Ohio Rev. Code §135.143(A)(1), (2) or (6) permits);
 - Bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality; Commercial paper issued by any corporation incorporated under the laws of the United States or a state, which notes are rated at the time of purchase in the two highest categories by two nationally recognized rating agencies [Ohio Rev. Code §135.35(A)(10)]*

* Note: Ohio Rev. Code §135.35(A)(5) and (A)(10) are similar. Ohio Rev. Code § (A)(5) permits buying money market mutual funds which invest in repurchase agreements, but does not authorize commercial paper, and requires purchasing the fund through a bank. Ohio Rev. Code § (A)(10) permits buying money market mutual funds which invest in commercial paper but does not authorize repurchase agreements. Ohio Rev. Code § (A)(10) also permits purchasing a mutual fund though a bank or through a broker dealer. A county can follow either or both sections.

the bank as eligible to hold interim or inactive deposits. See ADAM 2002-05. (Ohio Rev. Code §135.144 provides an exception to this general rule regarding out-of-state CDs. See description of 135.144 requirements in this step.)

³¹ ~~Effective 10/16/09, HB 1 amended R.C. 135.03 to permit any savings association or savings bank located in Ohio doing business under the authority of another state, to become an eligible public depository.~~

- The Ohio Subdivision’s Fund (STAR Ohio) as provided in Ohio Rev. Code §135.45. [Ohio Rev. Code §135.35(A)(6)]
- Securities lending agreements with any eligible institution mentioned in Ohio Rev. Code §135.32 that is a member of the Federal Reserve System or Federal Home Loan Bank, or with any recognized U.S. government securities dealer,³² under the terms of which agreements in the investing authority lends securities and the eligible institution agrees to simultaneously exchange similar securities described in Section 135.35(A)(1) or (2) or cash or both securities and cash, equal value for equal value. [Ohio Rev. Code §135.35(A)(7)]
- Up to twenty-five per cent of the county’s total portfolio in either of the following [Ohio Rev. Code §135.35(A)(8)]:

Commercial paper issued by an “entity” that is defined in division (D) of Ohio Rev. Code §1705.01 (see definition below) and that has assets exceeding five hundred million dollars, to which notes all of the following apply:

- The aggregate value of the notes does not exceed ten per cent of the aggregate value of the outstanding commercial paper of the issuing corporation.
- The notes are rated at the time of purchase in the highest classification established by at least two nationally recognized standard rating services.
- The notes mature not later than 270 days after purchase.

Bankers’ acceptances of banks that are insured by the federal deposit insurance corporation and to which both of the following apply:

- The obligations are eligible for purchase by the Federal Reserve System.
- The obligations mature not later than one hundred eighty days after purchase.

No investment shall be made in commercial paper or bankers’ acceptances unless the treasurer or governing board has completed additional training for making those investments. The type and amount of additional training shall be approved by the auditor of state and may be conducted by or provided under the supervision of the auditor of state.

“Entity” means any of the following [Ohio Rev. Code §1705.01(D)]:

1. A for profit corporation existing under the laws of this state or any other state;
2. Any of the following organizations existing under the laws of this state, the United States, or any other state:
 - i. A business trust or association;
 - ii. A real estate investment trust;
 - iii. A common law trust;
 - iv. An unincorporated business or for profit organization, including a general or limited partnership;
 - v. A limited liability company.

³² Ohio Rev. Code §135.35(J)(I) defines these security dealers as being “members of the national association of securities dealers (NASD), through a bank, savings bank, or savings and loan association regulated by the superintendent of financial institutions, or through an institution regulated by the comptroller of the currency, federal deposit insurance corporation (FDIC), or board of governors of the federal reserve system.”

- Per Ohio Rev. Code §135.35(A)(9), up to fifteen per cent of the county's total average portfolio in notes issued by corporations incorporated under U.S. law and that operate within the United States, or by depository institutions doing business under U.S. authority or any state's authority, and that operate within the United States, provided both of the following apply:
 - The notes are rated in one of the two highest categories by at least two nationally recognized standard rating services at the time of purchase;
 - The notes mature not later than two years after purchase.

- Per Ohio Rev. Code §135.35(A)(11) up to 1% of its portfolio in the debt of foreign nations, if:
 - Rated at the time of purchase in the three highest categories by two nationally recognized standard rating services
 - The U.S. government recognizes it diplomatically.³³
 - All interest and principal shall be denominated and payable in United States funds.
 - The foreign government guarantees the debt.
 - The debt matures within five years of purchase. HB 225, effective 3/22/12, temporarily increases this to ten years (ORC 135.35(C)). Additionally, after an affirmative vote of the County's investment Advisory Committee, up to 25% of the portfolio can be invested in securities that mature longer than ten years (ORC 135.35(O)).
 - HB 487, effective 9/10/12, repealed this HB 225 provision. Therefore, investments purchased on or after 9/10/12 revert to the prior requirement: they must mature within 5 years from the date of settlement unless the investment matches a specific obligation or debt, and the investment advisory committee specifically approves it.
 - A county may hold investments purchased between 3/22/12 and 9/10/12 until their maturity of up to 10 years.

- The investing authority may also enter into a written repurchase agreement with any eligible institution mentioned in Ohio Rev. Code §135.32 or any eligible dealer pursuant to Ohio Rev. Code §135.35(J), under the terms of which agreement the investing authority purchases, and the eligible institution or dealer agrees unconditionally to repurchase any of the securities listed in divisions (B)(1) to (5) of §135.18, except letters of credit described in division (B)(2) are not permitted for repurchase agreements.³⁴ The market value of securities subject to an overnight repurchase agreement must exceed the principal value of securities subject to a repurchase agreement by 2%.⁸ A written repurchase agreement shall not exceed 30 days and the value of the securities must exceed the principal value by at least 2% and be marked to market daily. [Ohio Rev. Code §135.35(D)]
 - All securities purchased pursuant to a repurchase agreement are to be delivered into the custody of the investing authority or the qualified custodian of the investing authority or an agent designated by the investing authority³⁵. [Ohio Rev. Code §135.35(D)]
 - Repurchase agreements with an eligible securities dealer must be transacted on a delivery versus payment basis.

³³ As best as we can determine, the United States does not recognize the following nations: Cuba, Bhutan, Iran, North Korea, Sudan, Somalia, and the Republic of China (Taiwan).

³⁴ Ohio Compliance Supplement Step 5-4 summarizes Ohio Rev. Code §135.18(B)(1) to (10).

³⁵ Counterparties (e.g. banks) accomplish this by maintaining a separate "customer" account at the Federal Reserve designated as a customer account. (For purposes of GASB 40, we currently believe securities held in a customer account would not be exposed to custodial risk.)

- Repurchase agreements must be in writing. For each transaction, the participating institution must provide:
 1. the par value of the securities;
 2. the type, rate, and maturity date of the securities;
 3. a numerical identifier (e.g., a CUSIP number), generally accepted in the industry, designating the securities.
- Securities which are the subject of a repurchase agreement may be delivered to the treasurer or held in trust by the participating institution if it is a designated depository of the subdivision for the current period of designation. [Ohio Rev. Code §135.35(I)].
- Agreements by which the investing authority agrees to sell securities owned by the county to a purchaser and agrees with that purchaser to unconditionally repurchase those securities (*Reverse Repos*) are prohibited.
- Investment in derivatives is prohibited. A *derivative*³⁶ is a financial instrument or contract or obligation whose value or return is based upon or linked to another asset or index, or both, separate from the financial instrument, contract, or obligation itself. Any security, obligation, trust account, or other instrument that is created from an issue of the United States Treasury or is created from an obligation of a federal agency or instrumentality or is created from both is considered a derivative.
- An eligible investment described in Ohio Rev. Code §135.14 with a variable interest rate payment or single interest payment, based upon a single index comprised of other eligible investments provided for in division (A)(1) or (2) of Section 135.35, is **not** a derivative, if the variable rate investment has a maximum maturity of 2 years. [Ohio Rev. Code §135.14(C)]
- OAG Opinion 99-26 deemed collateralized mortgage obligations to be derivatives.
- A treasury inflation-protected security (TIPS) shall not be considered a derivative for counties, provided the security matures not later than five years after purchase (Ohio Rev. Code §135.35(B)). HB 225, effective 3/22/12, temporarily increases this to ten years (ORC 135.35(C)). Additionally, after an affirmative vote of the County's investment Advisory Committee, up to 25% of the portfolio can be invested in securities that mature longer than ten years (ORC 135.35(O)).
 - HB 487, effective 9/10/12, repealed this HB 225 provision. Therefore, investments purchased on or after 9/10/12 revert to the prior requirement: they must mature within 5 years from the date of settlement unless the investment matches a specific obligation or debt, and the investment advisory committee specifically approves it.
 - A county may hold investments purchased between 3/22/12 and 9/10/12 until their maturity of up to 10 years.
- Per Ohio Rev. Code §135.35(E): No investing authority can invest under §135.35, unless the investment authority reasonably expects that the investment can be held until its maturity. The investing

³⁶ Note: The Ohio Rev. Code still uses the definition of a derivative taken from GASB Technical Bulletin 94-1. GASB Statement No. 53, effective for periods beginning after June 15, 2009, includes swaps as derivatives. So, for legal compliance purposes, governments must follow the Ohio Rev. Code definition. For financial reporting governments must follow the GASB definition. For example, an interest rate swap and energy futures contracts (which are allowable under RC 9.835 to mitigate price fluctuations, and are not intended as investments) would be subject to GASB Statement No. 53 derivative measurement and disclosure requirements, but is **not** illegal.

authority’s written investment policy should specify the conditions under which an investment may be redeemed or sold prior to maturity.

➤ Per Ohio Rev. Code §135.35(F), no investing authority may pay a county’s inactive moneys, or moneys of a county library and local government support fund (also known as: “county public library funds” pursuant to SB 185, 127th General Assembly, effective 6/20/2008), into an investment pool *other than*:

- the Ohio Subdivision’s Fund (STAR Ohio) pursuant to Ohio Rev. Code §135.35(A)(6)
- a fund created solely for the purpose of acquiring, constructing, owning, leasing, or operating municipal utilities pursuant to Ohio Rev. Code §715.02 or Ohio Const. Art XVIII, Section 4.

➤ A county may not leverage its investments. (That is, a county cannot use its current investments as collateral to purchase other investments.) [Ohio Rev. Code §135.35(G)]

➤ A county cannot issue taxable notes for arbitrage purposes. [Ohio Rev. Code §135.35(G)] (That is, a county cannot invest the proceeds of taxable notes hoping to earn a higher return on the proceeds than the interest rate on the TAN.)

➤ A county cannot contract to sell securities it does not own. (These are called short sales, where a county purchases the rights to a security solely on the speculation that its price will decline.) [Ohio Rev. Code §135.35(G)]

➤ Payment for investments shall be made only upon the delivery of securities representing such investments to the treasurer, investing authority, or qualified trustee. If the securities transferred are not represented by a certificate, payment shall be made only upon receipt of confirmation of transfer from the custodian by the treasurer, governing board, or qualified trustee. [Ohio Rev. Code §135.35(J)(2)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Presence of an Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

Select a representative number³⁷ of investments and:

³⁷ When judging “a representative number,” consider focusing on investments held at year end, but also consider testing other purchases and sales during the audit period. In judging how many purchases to test, consider the volume of purchases, the control environment, the adequacy of policies, and the results of prior audits.

1. Read investment dealer confirmations* to determine if the investment is of a type authorized.

* Note: Dealer confirmations are suitable evidence supporting the details (e.g. part of the valuation [cost] and occurrence assertions) of an investment at the time of purchase. However, it provides no evidence the county still owned the investment as of its fiscal year end. Auditors should obtain other evidence to support existence at year end. The audit program should include suitable existence steps.

2. Determine that the investments mature within the prescribed limits (generally no later than 5 years, or **other** periods for repurchase agreements [30 days], bankers' acceptances and commercial paper [180 or 270 days, respectively, from the purchase date], or securities matched to debt maturities, etc.)

3. Inspect documentation supporting repurchase agreements and determine that:

a. The market values of securities exceed the principal values of securities subject to the overnight repurchase agreement by 2%. (Note: The risk of non-compliance increases when banks merge.)

b. A term repurchase agreement did not exceed 30 days and the values of the securities were marked to market daily.

c. Repurchase agreements were in writing, including the par value of the securities; the type, rate, and maturity date of the securities; and a numerical identifier.

4. For investments in Bankers' Acceptances and Commercial Paper Notes, inspect documentation and determine whether the additional training was received.

5. Read the prospectus for money market mutual funds with which the government has significant investments. Determine whether the prospectus limits investments to those authorized under Ohio Rev. Code §135.35(A)(1) & (A)(2) or 135.143(A)(1), (2) or (6).

6. Determine whether mutual funds, commercial paper, and any notes of U.S. corporations have the necessary credit rating issued by national ratings agencies (such as that S&P, Moody's or Fitch issues).

7. Inspect dealer confirmations of the bankers' acceptances purchased and determine that the county has maintained related documentation that the:

a. Banks are insured by the Federal Deposit Insurance Corporation

b. Dealer confirmations should indicate if banker's acceptances were **NOT** eligible for purchase by the Federal Reserve System. Read the confirmation to determine whether the banker's acceptance was **ineligible**. (A statement of ineligibility would indicate an **ineligible** investment, per Ohio Rev. Code §135.35(A)(8)(b)(i).

8. Scan the county's computation of the composition of its investments. Determine if the portfolio contains ≤:

a. 1% foreign national securities

b. 15% debt of U.S. corporations

c. 25% commercial paper + bankers' acceptances

9. Scan investment records to determine whether the county is selling securities prior to maturity. If a significant number or amount of premature sales occurred:

- a. Determine whether the premature sales complied with the county’s policy regarding early redemption. (We believe the policy should generally require sufficient cash flow planning to support that the county had sufficient cash at the time of purchase so that a premature sale would not be needed to meet emergency cash flow needs. Forced premature sales often result in losses.)
- b. Review the county’s cash flow forecasts supporting that the county had reasonable support at the time of purchase that it could hold the security to maturity. If there is inadequate cash flow planning necessitating premature sales, cite this section and recommend the government improve its cash flow forecasting. The finding should also describe any losses the government suffered from these sales.

Note: The steps above should normally be sufficient for most counties. Because we believe the risk of counties engaging in certain prohibited activities such as leveraging, short sales or arbitrage violations is low, there are no steps included to test these requirements. You should scan the other requirements in this step, and based on your knowledge of the county’s investing activities, investigate them if evidence suggests the county may have materially violated these requirements.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

**Revised: HB 209 and HB
225, 129th GA
Effective: 3/22/12**

5-7 (b) Compliance Requirements: Ohio Rev. Code §135.35 – Other County and County Hospital [Ohio Rev. Code §339.06] Requirements.

Summary of Requirements:

- Investments or deposits under Ohio Rev. Code §135.35 cannot be made unless a written investment policy approved by the investing authority (for hospitals, the authority is the county hospital board, per Ohio Rev. Code §339.06) is on file with the Auditor of State. If a written investment policy is not filed with the Auditor of State, the investing authority may invest only in certificates of deposit, savings or deposit accounts, STAR Ohio, or no-load money market mutual funds. [Ohio Rev. Code §135.35(K)(1)&(2)]
- The investment policy must be signed by:
 - All entities conducting investment business with the investing authority (except the Treasurer of State);
 - All brokers, dealers, and financial institutions, described in Ohio Rev. Code §135.35(J)(1), initiating transactions with the investment authority by giving advice or making investment recommendations;
 - All brokers, dealers, and financial institutions, described in Section 135.35(J)(1), executing transactions initiated by the investing authority.
- An investment made by the investing authority pursuant to Ohio Rev. Code §135.35 prior to September 27, 1996 that was a legal investment under the law before September 27, 1996 may be held until maturity. If the investment does not have a maturity date, it may be held until September 27, 2001, regardless of whether the investment would qualify as a legal investment under the terms of Ohio Rev. Code §135.35 as amended. [Ohio Rev. Code §135.35(N)]
- The investing authority is required to inventory all obligations and securities. The inventory includes a description of each obligation or security, including type, cost, par value, maturity date, settlement, date, and any coupon rate. [Ohio Rev. Code §135.35(L)(1)]
- The investing authority is required to keep a complete record of all purchases and sales of the obligations and securities. [Ohio Rev. Code §135.35(L)(2)]
- The investing authority is required to keep a monthly portfolio report and issue a copy of the monthly report describing its investments to the county investment advisory committee. This report indicates:
 - the current inventory of all obligations and securities,
 - all transactions during the month that affected the inventory,
 - any income received from the obligations and securities, and
 - any investment expenses paid.
 - The names of any persons executing transactions on behalf of the investing authority.

➤ The inventory and the monthly portfolio report are public records and must be filed with the board of county commissioners. [Ohio Rev. Code §135.35(L)(5)]

HB 225, effective 3/22/12 requires the monthly portfolio to be filed with the Treasurer of the State of Ohio. [ORC 135.35(L)(5)]. It is our understanding that the state treasurer postponed until after a meeting with county treasurers. Therefore, the first report may not be due until June or later.

➤ Any securities, certificates of deposit, deposit accounts, or any other documents evidencing deposits or investments must be issued in the name of the county with the county treasurer or investing authority as the designated payee. [Ohio Rev. Code §135.35(H)].

➤ If any such deposits or investments are registerable as to principal and/or interest, they must be registered in the name of the treasurer. [Ohio Rev. Code §135.35(H)].

➤ The investing authority is responsible for safekeeping documents evidencing a deposit or investment. Securities and documents confirming the purchase of securities under any repurchase agreement may be deposited with a qualified trustee. [Ohio Rev. Code §135.35(I)].

➤ Where securities, including securities which are the subject of a repurchase agreement, have been delivered to a qualified trustee for safekeeping, the qualified trustee must report on request to the treasurer, governing board, Auditor of State, or authorized IPA as to the identity, market value, and location of the document evidencing each security.

➤ All investments in securities except investments described in division (A) (5) and (6) [no load money market mutual funds and certain repos] are required to be made through

- members of the National Association of Securities Dealers, Inc., or
- institutions regulated by the Superintendent of Banks, Superintendent of Savings and Loan Associations, Comptroller of the Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System. [Ohio Rev. Code §135.35(J)(1)].

➤ Payment for securities may be made only upon delivery of the securities to the treasurer, investing authority, or qualified trustee, or, if in book-entry form, only upon confirmation of delivery to such parties. [Ohio Rev. Code §135.35 (J)(2)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Presence of an Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

Read the county's investment policy for the period. (Investment policies have been scanned and are posted on S:\Final Audit PDF. Click on the Region/County/Entity name.)

Inspect documentation that it was filed with the Auditor of State (if posted in the above directory, the policy was filed with AOS).

Inspect the policy for the requisite signatures:

- All entities conducting investment business with the county (except the Treasurer of State);
- All brokers, dealers, and financial institutions initiating transactions with the county by giving advice or making investment recommendations;
- All brokers, dealers, and financial institutions executing transactions initiated by the county.
- Select a representative number of investments made by the entity and determine whether the investments are in accordance with the county's investment policy as adopted by the county's legislative body.

Determine if the policy requires financial institutions, brokers and dealers to comply with Ohio Rev. Code Chapter 135. (There is no legal requirement to include this, but if the policy does not include this requirement, we should recommend the government amend their policy to require compliance.)

If there is no written investment policy filed with the Auditor of State, scan the county's investment portfolio for the period to determine that it is composed solely of certificates of deposit, savings or deposit accounts, STAR Ohio, or no-load money market mutual funds.

Select a representative number³⁸ or amount of investments and:

- Inspect documentation that any designated payee is the treasurer or treasurer's office; and that registerable securities are registered in the treasurer's name.
- Inspect purchase documents and determine that investments were made through appropriate parties: members of the National Association of Securities Dealers, Inc., or institutions regulated by the Superintendent of Banks, Superintendent of Savings and Loan Associations, Comptroller of the Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System. Compare purchase dates and payments and determine that payment for securities was made upon delivery of the securities or upon receipt of confirmation of transfer from the custodian.
- Inspect copies of the investing authority's (i.e. treasurer's) inventory documents: scan the documents and determine if it appears the inventory includes a description of each obligation or security, including type, cost, par value, maturity date, settlement, date, and any coupon rate; the inventory reflects a complete record of all purchases and sales of the obligations and securities; and that the county is keeping a monthly portfolio report and is issuing a quarterly investment report describing its investments to the county investment advisory committee.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant)
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³⁸ When judging "a representative number," consider focusing on investments held at year end, but also consider testing other purchases and sales during the audit period. In judging how many purchases to test, consider the volume of purchases, the control environment, the adequacy of policies, and the results of prior audits.

deficiencies/material weaknesses, and management letter comments):

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5-8 Compliance Requirements: Article XII, Section 5a, Ohio Constitution; Ohio Rev. Code §135.351 and §5705.10 & .131; and 1982 Op. Atty Gen. No. 82-031, – Allocating interest among county funds.

Summary of Requirements: Ohio Rev. Code §135.351(A) and §5705.10 govern the distribution of interest earned on money in the county treasury. Generally, all interest must be credited to the county general fund. The following are exceptions to this general rule:

- Ohio Rev. Code §135.351(B) establishes requirements for distributing monies belonging to other subdivisions which are invested or deposited by the county. If such monies are not distributed as required in divisions (B) (1), (2), or (3), Ohio Rev. Code §135.351(C) requires that all interest accruing after the required distribution date be paid to the subdivisions.
- Interest earned on money derived from a motor vehicle license or fuel tax (including local motor vehicle license tax imposed under Ohio Rev. Code Chapter 4504, motor vehicle license tax imposed under Ohio Rev. Code §4503.02, highway use tax and gasoline tax imposed under Ohio Rev. Code Chapter 5728, and motor vehicle fuel tax imposed under Ohio Rev. Code Chapter 5735 [OAG Opinion 1982-031]) must be paid into the fund to which the principal belongs, not to the general fund. Article XII, Section 5a, Ohio Constitution; 1982 Op. Atty Gen. No. 82-031.
- Federal statutory or regulatory requirements may require that interest earned on monies received from the federal government be paid into the fund to which the principal belongs. This must be determined on an individual basis with each federal program.
- Interest earned on money in the county treasury belonging to a metropolitan park district established under Chapter 1545, Ohio Rev. Code, must be paid into the fund to which the principal belongs. [Ohio Rev. Code §1545.22(B)(1), as referenced from Ohio Rev. Code §135.351(A)].
- Interest earned on the investment of monies in the county library and local government support fund (now legally known as: “county public library funds”) must be credited to that fund [Ohio Rev. Code §135.352].
- Interest earned on debt proceeds from debt issued under Ohio Rev. Code Chapter 133 must be used for purposes for which the debt was issued or credited to the general fund. [Ohio Rev. Code §5705.10(E)] (Note: *Proceeds* exclude accrued interest and premiums, which the entity must credit to the sinking or bond retirement fund.)
- Interest earned on principal of a non-expendable trust fund³⁹ established to receive donations or contributions that the donor or contributor requires to be maintained intact must be credited to the non-expendable trust fund to which the principal belongs. [Ohio Rev. Code §5705.131].

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Presence of an Effective Accounting System • Legislative and Management Monitoring 		

³⁹ For accounting purposes, funds the Ohio Rev. Code describes in this section would now be *permanent* funds under GASB 54 or *private-purpose trust* funds under GASB 34.

<ul style="list-style-type: none"> • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures – Compliance (Substantive) Tests:

Trace a representative selection of interest earned during the fiscal year and determine that it was paid into the proper funds.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section C: Community Schools

5-9 Compliance Requirements: Pursuant to Ohio Rev. Code §3314.04, Ohio Rev. Code Chapter 135 does not apply to community schools. However, other entities may impose restrictions on investments, collateral, etc. Such entities could be grantors, creditors, the sponsor, board policy, etc. Auditors should identify and list any applicable requirements below:

[Insert applicable depository and investment requirements.]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Presence of an Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests

[Insert applicable audit procedures. See other OCS Sections for example audit procedures.]

Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Appendix A Federal Agencies

Discount notes	US Govt. Guaranteed?
Fed Farm Credit Banks..... (Instrumentality)	No
FNMA (Fannie Mae)..... (Instrumentality)	No
Fed Home Loan Bank..... (Instrumentality)	No
Variable Rate Notes	
Student Loan Marketing Assn (Sally Mae) (Instrumentality)	Not directly
Small Business Administration (Agency)	Face value + int.
Agency for International Development (Agency)	Face value + int.
Coupon Securities	
FNMA (Fannie Mae)..... (Instrumentality)	No
Fed Home Loan Bank..... Instrumentality)	No
Bank for Co-ops (Instrumentality)	No
Federal Land Banks..... (Instrumentality)	No
World Bank (International Agency)	No
Private Export Funding Corp..... (Instrumentality)	No
Mortgage pass-through securities	
GNMA (Ginny Mae) (Agency)	Principal + int.
FHLMC (Freddie Mac) (Instrumentality)	No

This information is from GFOA’s *Investing Public Funds*, Page 115. It describes many of the agencies with which governments invest. If a government invests with an agency not on this list, the financial statement preparer and the auditor need another source to determine whether the Federal government insures the agency’s securities.

Appendix B Governmental Accounting Standards Board Statement No. 40

GASB 40 paragraph 6 (Codification I 50.127) requires governments to *briefly* describe policies related to the following risks for deposits and investments, *if* the government has instruments exposed to those risks:

<u>Risk</u>	<u>Deposits</u>	<u>Investments</u>
Credit		√
Custodial credit	√	√
Concentration of credit		√
Interest rate		√
Foreign currency	√	√

The 2010 GASB *Comprehensive Implementation Guide* (the CIG) question 1.5.2 implies the Ohio Revised Code is a source of policies requiring GASB 40 disclosure. A summary of Ohio Rev. Code requirements related to the risk disclosures of GASB Cod. I 50.128 -- .134 follows.

The Ohio Rev. Code is not the only source of potential policies requiring disclosure. For example, locally adopted policies and charter provisions may also contain policies requiring disclosure. Financial statement preparers must read GASB 40 and should refer to the CIG for more information when preparing GASB 40 disclosures.

ORC section	OCS Step	Requirement	Related GASB 40 Risk
§135.14 §135.35(A)(10)	5-1 5-7(a)	Per Ohio Rev. Code §135.01(O)(2), no load money market funds must have the highest credit rating issued by national raters. (Note: Per Imp. Guide Q. 1.9.12, governments should disclose the rating for mutual funds even if the fund limits investments to obligations the U.S. government guarantees, since it is the fund’s rating that is of concern, not its underlying investments.)	Credit risk
§135.14 §135.35(C) §135.35(O)	5-1 5-7a	<ul style="list-style-type: none"> • Investments generally must mature within 5 years of purchase. • <u>HB 225, effective 3/22/12, temporarily increases this to ten years (ORC 135.35(C)).</u> • <u>HB 487, effective 9/10/12, repealed this HB 225 provision. Therefore, investments purchased on or after 9/10/12 revert to the prior requirement: they must mature within 5 years from the date of settlement unless the investment matches a specific obligation or debt, and the investment advisory committee specifically approves it.</u> <ul style="list-style-type: none"> ○ <u>A county may hold investments purchased between 3/22/12 and 9/10/12 until their maturity of up to 10 years.</u> 	Interest rate

		<ul style="list-style-type: none"> • <u>HB 225, effective 3/22/12, after an affirmative vote of the County’s investment Advisory Committee, up to 25% of the portfolio can be invested in securities that mature longer than ten years (ORC 135.35(O)).</u> 	<u>Concentrations of credit</u>
§135.14& §135.35	5-1 5-7(a)	Repurchase agreements cannot exceed 30 days.	Interest rate
§135.35(C) §135.13	5-7a 5-1	<ul style="list-style-type: none"> ▪ <u>CDs counties purchase must mature within 5 years.</u> ▪ <u>HB 225, effective 3/22/12, temporarily increases this to ten years (ORC 135.35(C)). Additionally, after an affirmative vote of the County’s investment Advisory Committee, up to 25% of the portfolio can be invested in securities that mature longer than ten years (ORC 135.35(O)).</u> • <u>HB 487, effective 9/10/12, repealed this HB 225 provision. Therefore, investments purchased on or after 9/10/12 revert to the prior requirement: they must mature within 5 years from the date of settlement unless the investment matches a specific obligation or debt, and the investment advisory committee specifically approves it.</u> <ul style="list-style-type: none"> ○ <u>A county may hold investments purchased between 3/22/12 and 9/10/12 until their maturity of up to 10 years.</u> ▪ <u>CDs other subdivisions purchase must mature as follows:</u> <ul style="list-style-type: none"> - <u>Interim CDs: within one year.</u> - <u>HB 209, effective 3/22/12, eliminates the 1-year maturity limitation on certificates of deposit of interim deposits (ORC 135.13) and HB 225, also effective 3/22/12, temporarily increases the maturity period from five years to ten years (ORC 135.35(C)). Therefore CDs can have a maturity of ten years.</u> ▪ <u>HB 487, effective 9/10/12, repealed this HB 225 provision. Therefore, investments purchased on or after 9/10/12 revert to the prior requirement: they must mature within 5 years from the date of settlement unless the investment matches a specific obligation or debt, and the investment advisory committee specifically approves it.</u> <ul style="list-style-type: none"> ○ <u>A county may hold investments purchased between 3/22/12 and 9/10/12 until their maturity of up to 10 years.</u> - <u>Inactive CDs: No later than the expiration of the</u> 	Interest rate

		depository agreement. Note: Only negotiable CDs are investments subject to disclosing policies related to interest rate risk. (Nonnegotiable CDs are deposits.)	
§135.14 & §135.35	5-1 5-7(a)	The market value of securities for repurchase agreements must exceed the principal value by ≥ 2%.	Interest rate
§135.14& §135.35	5-1 5-7(a)	Repurchase agreement securities must be delivered into the custody of the treasurer or governing board or an agent. ⁴⁰	Custodial credit
§135.45(B)(1)	(Tested by the State Region)	STAR Ohio must maintain the highest letter or numerical rating provided by at least one nationally recognized standard service.	Credit
§135.14 & §135.142	5-3	Commercial paper + bankers’ acceptances cannot exceed 25% of a government’s investment portfolio	Concentrations of credit
§135.14 & §135.35	5-3 5-7(a)	Commercial paper must be rated in the highest classification by at least two nationally-recognized rating services	Credit
§135.14 & §135.35	5-3 5-7(a)	Commercial paper and bankers’ acceptances must mature within 180 days. (270 days for a county’s commercial paper.)	Interest rate
§135.18 & §135.181	5-4	Depositories must collateralize deposits.	Custodial credit
§135.35	5-7(a)	A county’s corporate debt investments must mature within 2 years of purchase.	Interest rate
§135.35	5-7(a)	A county’s corporate debt investments cannot exceed 15% of its investment portfolio	Concentrations of credit
§135.35	5-7(a)	A county’s corporate debt investments must be rated in 1 of the 2 highest categories by 2 ratings organizations.	Credit
§135.35	5-7(a) ⁴¹	A county’s foreign debt investments must mature within 5 years of purchase.	Interest rate
§135.35	5-7(a)	A county’s foreign debt investments cannot exceed 1% of its investment portfolio	Concentrations of credit
§135.35	5-7(a)	A county’s foreign debt investments must be rated in 1 of the 3 highest categories by 2 ratings organizations.	Credit
§135.13, §135.14, §135.144 & §135.35	5-1, 5-3, 5-7a	Authorized investments	*

* Note: In additions to the risk-related policies above, GASB Codification I50.125 requires disclosing investments the Ohio Rev. Code (or other legal or contractual provisions) authorize. The asterisked Ohio

⁴⁰ The following general guidance can be used to determine whether securities are held in trust or by counterparty, but in the government’s name (vs. not in the government’s name). If the government receives a statement in their name, identifying the specific investments, auditors can assume the member’s internal records identify the government as owner.

⁴¹ Foreign currency risk should not apply because the statute requires “all interest and principal shall be denominated and payable in United States funds.”

Rev. Code Sections / OCS steps list authorized investments.

CHAPTER 6

OTHER POTENTIALLY DIRECT AND MATERIAL LAWS AND REGULATIONS

The Auditor of State has identified the following laws and regulations not elsewhere classified that could directly and materially affect an entity’s financial statements in certain circumstances.

Compliance Requirement **Page**
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County Law Library Resource Boards are no longer separately audited.

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Section A: Various Entity Types

Revised: HB 153, 129th GA
Effective: 6/30/11

6-1 Compliance Requirement: Ohio Rev. Code §9.833, §2744.08 and §305.172 - Health Care Self Insurance^{1 2}

Summary of Requirement: Ohio Rev. Code §9.833 requires individual, self-insured governments or joint self-insured health-care programs to calculate (i.e., reserve³) amounts required to cover health care benefit liabilities. (Health care insurance includes, but is not limited to health care, prescription drugs, dental care and vision care.) It also requires programs to prepare a report, within 90 days after the fiscal year-end, reflecting those reserves (i.e., liabilities) and the disbursements made to pay self-insured claims, legal and consultant costs during the preceding fiscal year. This report is not filed with any office, including the Auditor of State; the government should make it available upon request. Programs must prepare (i.e. obtain) and maintain a certified audited financial statement and a report of amounts reserved for the program and disbursements made from such funds. The program administrator must provide the report to the Auditor of State. The program must include a contract with a certified public accountant and a member of the American Academy of Actuaries for the preparation of the written evaluations described in this paragraph.

The provisions regarding the self-insurance programs do not apply to an individual self-insurance program created solely by municipal corporations. For this purpose, "municipal corporation" means all municipal corporations, including those that have adopted a charter under the Ohio Constitution.

An actuary must certify that the amounts reserved are fairly stated in accordance with sound loss reserving principles. The actuary must be a member of the American Academy of Actuaries.

Individual governments subject to this requirement must establish an internal service fund to account for this activity.

¹ FYI: Ohio Rev. Code §9.833(D) also permits subdivisions to procure group life insurance for its employees in conjunction with an individual or joint self insurance program. However, neither a government nor a pool can self insure for life insurance. (That is, a government must purchase life policies from commercial insurers.)

² Ohio Rev. Code §305.172 and Ohio Rev. Code §9.833(B)(2), permit political subdivisions and boards of county commissioners that provide health care benefits for their officers or employees to establish and maintain an individual health savings account program as part of their self-insurance program. These accounts must be maintained in accordance with section 223 of the Internal Revenue Code [26 U.S.C. § 223]. Public moneys may be used to pay for or fund federally qualified high deductible health plans that are linked to health savings accounts or to make contributions to health savings accounts. Auditors should not audit compliance with Internal Revenue Code regulations governing health care savings accounts. Rather, be aware that such accounts may be included in self-insurance activity accounted for in the internal service or other appropriate fund as permitted by statute.

³ "Reserve" in this context means liabilities measured in accordance with accepted actuarial principles.

Per Ohio Rev. Code §9.833(E), some of the aforementioned requirements do not apply to ~~counties, townships, and~~ municipalities. See the matrix appended to Auditor of State Bulletin 2001-05 regarding which provisions apply to various government types. Ohio Rev. Code §9.833 applies to school districts. Note: Auditors should refer to Auditor of State Bulletin 2001-05 for additional guidance.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Subdivisions⁴ (except municipalities, townships, and counties) must establish an internal service fund to account for health self-insurance activity. Determine if the subdivision established the required fund.

~~Determine whether the subdivision (except municipalities, townships, and counties) obtained a report presenting the actuarially measured liabilities and disbursements.~~

Inspect the actuary’s certificate (i.e. opinion) that the amounts reserved conform to accepted loss reserving standards. (This requirement does not apply to municipalities, townships or counties.)

Test information the subdivision submitted **to the actuary** to determine this information is supported by the client’s accounting or other applicable records. Testing information the client provides to the actuary is necessary to comply with SAS No. 73, *Using the Work of a Specialist*. SAS 73 (AU 336.12(b)) applies when the actuary’s liability calculation is accrued as a GAAP liability⁵ or presented in a cash-basis entity’s notes.

Determine whether the actuary’s opinion language (including the scope of the work) generally complied with the example described in the “Actuarial Opinions” section of Auditor of State Bulletin 2001-05.

⁴ Ohio Rev. Code §9.833 and §2744.01 define a subdivision as any municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than the State. As used in Ohio Rev. Code §9.833, a “political subdivision” also includes the entity types described in Ohio Rev. Code §3905.36.

⁵ As Bulletin 2001-005 describes, actuarial principles for measuring these liabilities are similar but not identical to GAAP requirements per GASB 10. A government can use the actuarially-computed liability in its financial statements if it does not materially differ from GAAP measurement requirements.

Consider whether any qualification in the actuary's report affects the financial statement opinion or indicates noncompliance with 2744.081.

Determine if a cash-basis (or AOS basis) government's audited statements disclose self insurance activity based on the example disclosure in Bulletin 2001-05. (For cash-basis entities, an inability to adequately calculate and present the liability may constitute a qualification related to the adequacy of disclosure.)

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

6-2 Compliance Requirement: Ohio Rev. Code § 2744.081 - Liability Self Insurance

Summary of Requirement: This section requires joint self-insurance programs (such as governmental self-insurance pools) insuring against judgments, settlement of claims, expense, loss and damages that arise, or are claimed to have arisen, from an act or omission of the subdivision or any of its employees and to indemnify or hold harmless the subdivision’s employees, to reserve ⁶ amounts to cover potential costs. It also requires the program to prepare a report, within 90 days after the program’s fiscal year-end, reflecting those reserves (i.e., liabilities) and the disbursements made to pay self-insured claims, legal and consultant costs during the preceding fiscal year. This report is not filed with any office, including the Auditor of State; it should be retained by the government and be made available upon request.

An actuary must certify that the amounts reserved are fairly stated in accordance with sound loss reserving principles. The actuary must be a member of the American Academy of Actuaries.

The aforementioned requirements apply only to governmental risk pools or other joint governmental liability insurance programs.

Note: Auditors should refer to Auditor of State Bulletin 2001-05 for additional guidance.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Determine whether a report presenting the actuarially-measured liabilities and disbursements during the year was obtained.

Inspect the actuary’s certificate that the amounts reserved conform to accepted loss reserving standards.

Test information the client submitted to the actuary to determine this information is supported by the client’s accounting or other applicable records. Testing information the client provides to the actuary is necessary to comply per No. 73, *Using the Work of a Specialist*. SAS 73 (AU 336.12(b))

⁶ “Reserve” means liabilities measured in accordance with accepted actuarial principles.

when the actuary’s liability calculation is accrued as a GAAP liability⁷ or presented in a cash-basis entity’s notes.

Determine whether the actuary’s opinion language (including the scope of the work) generally complied with the example described in the “Actuarial Opinions” section of Auditor of State Bulletin 2001-05.

Consider whether any qualification in the actuary’s report affects the financial statement opinion or indicates noncompliance with 2744.081.

Determine if a cash-basis (or AOS basis) government’s audited statements disclose self insurance activity based on the example disclosure in Bulletin 2001-05. (For cash-basis entities, an inability to adequately calculate and present the liability may constitute a qualification related to the adequacy of disclosure.)

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

⁷ As Bulletin 2001-005 describes, actuarial principles for measuring these liabilities are similar but not identical to GAAP requirements per GASB 10. A government can use the actuarially-computed liability in its financial statements if it does not materially differ from GAAP measurement.

6-3 Compliance Requirement: Ohio Admin Code Sections 3745-27-15 through 18 Landfill Financial Responsibility and Certifications

The following is only a summary. When auditing a government managing a landfill, auditors should obtain and read copies of the applicable OAC sections.

Governments owning or managing landfills must annually certify financial information related to their ability to finance closure and postclosure liabilities to the OEPA. These reports are due within 180 days of fiscal year end.

An index to the relevant OAC requirement follows:

- 3745-27-15: Solid waste facility or scrap tire transporter final closure requirements (Section (L) describes the local government test)
 - 3745-27-16: Solid waste facility or scrap tire transporter final postclosure requirements (Section (L) describes the local government test)
 - 3745-27-17: Wording of financial assurance instruments (Section (H) describes the wording for the letter governments assured under the local government test must submit to OEPA).
 - 3745-27-18: Only applies when OEPA director mandates corrective action, such as to remediate landfill groundwater contamination described in 3745-27-10. (Section (M) describes the local government requirements, if applicable.)
- I. The Federal EPA adopted a regulation (40 CFR 258.74(f)) allowing governmental solid waste landfills (GSWLFs) to avoid acquiring third-party financial instruments (such as letters of credit, insurance or establishing trust funds) to assure current final closure, postclosure and/or corrective measure cost estimates and any other environmental obligations to the extent they meet certain financial tests. The Federal EPA placed the responsibility for monitoring compliance with this rule on the states. In response, the Ohio EPA adopted a regulation that parallels the Federal regulation in most aspects.
 - II. A GSWLF need not obtain third-party instruments for amounts up to 43% of the local government's **total revenue**,⁸ *provided* that it meets the tests described in **III** below. A GSWLF must obtain a third-party instrument (e.g., insurance, trust fund, bond) for all current final closure, postclosure and/or corrective measure cost estimates and any other environmental obligations, exceeding 43% of total revenue.
 - III. There are two alternatives to the third-party financial instruments nongovernments must have for (closure + postclosure + mandated corrective care costs). Governments do not need these instruments (for up to 43% of total annual revenue), if:

Alternative I

- a. The GSWLF issues GAAP financial statements.

⁸ Terms defined in the *State Support Document for the Local Government Financial Test* are printed in **boldface type** the first time they appear. A copy of this document was sent to each region

- b. The GSWLF has not:
1. Defaulted on GO bonds, or has not issued GO bonds of less than investment grade per Moody's or S&P.

Local governments issuing bonds secured by collateral or a guarantee (e.g. AMBAC insurance) must meet the minimum rating without that security. (This means consider the *government's* debt rating, not the rating of a particular insured or collateralized *issue*.)
 2. Has not operated at a deficit of greater than or equal to (5% x annual revenue) in either of the past two fiscal years. (The federal rule defines a deficit as total revenue minus **total expenditures**);
 3. Received a qualified opinion.

Also, either condition c. or d. must be met:

- c. All GO bonds must be of investment grade, rated by either Moody's or S&P.

OR:

Alternative II:

- d. The GSWLF must have:
1. **(Cash + marketable securities)** / total expenditures \geq 5%, AND
 2. **Debt service** / total expenditures \leq 20%, AND
 3. **Ratio of long term debt issued & outstanding / capital expenditures** must be \leq 2.0.

(Based on the federal regulation, we believe that the reference to "outstanding" debt immediately above only refers to debt issued in the current year that is still outstanding at year end.)

IV. Reporting requirements:

- a. The GAAP statements must comply with GASB 18 disclosures (this requirement does not appear in the OAC, but is included in the Federal regulation.) However, OAC 3745-27-15(C)(1)(a) requires the final closure financial assurance instrument for a sanitary landfill facility, solid waste transfer facility, solid waste incinerator, or Class I composting facility to contain an itemized written estimate, in current dollars, of the cost of final closure. The final closure cost estimate shall be based on the final closure costs at the point in the operating life of the facility when the extent and manner of its operation would make the final closure the most expensive, and shall be based on a third party conducting the final closure activities.
- b. The CFO must prepare a letter listing current final closure, postclosure and/or corrective measure cost estimates and any other environmental obligations, and certify whether the government meets III.a.-d. (above), and also certify that the government is assuring a liability \leq 43% of annual operating revenues.
- c. Audited financial statements must be kept as part of the "facility's operating record."

- d. Accountants must also issue an agreed-upon procedures report. The procedures must note whether amounts used for the ratios Alternative II above in the CFO’s letter agree to the audited GAAP statements.

V. Definitions:

To assure that the CFO’s letter is appropriate, it is critical that the financial information be consistent with the definitions in the *State Support Document for the Local Government Financial Test* (the Document). For example, the Document explains that “total expenditures” should not include capital project, internal service or fiduciary fund expenditures/expenses. A copy of the *Document* has been sent to each regional office.

The Federal EPA informed us they do not intend to update the Document for GASB 34. Therefore, we believe the amounts for the accounts described above appearing in the CFO’s letter (cash and marketable securities, revenues, etc.) should be derived from the governmental and proprietary **fund** financial statements, not from the entity-wide financial statements.

VI. Other

1. The Federal regulation gives state directors the option of allowing governments to discount the liability. However, Ohio does not permit discounting. Also, paragraph 42 of GASB 18 prohibits discounting.
2. Both the Federal and State regulations refer to governmental financial statements as *Comprehensive Annual Financial Reports*. However, while the Federal and State rules require GAAP reporting, there appears to be no explicit requirement to prepare a CAFR. In the Auditor of State’s opinion, basic financial statements complying with GASB 18 and including segment information (if applicable) for the landfill operation are sufficient.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, including copies of updated Ohio Admin. Code Sections 3745-27-15 through 18. • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

NOTE: These procedures relate to the local government test. If a government uses other assurance methods, auditors must read the applicable OAC 3745-27 requirements and design appropriate tests and reports.

For AOS staff: If the reporting differs from the example AUP available to AOS staff in the Briefcase, you must submit your draft report to Accounting & Auditing Support for review.

Determine whether the estimate of closure, postclosure and other corrective care liabilities has been updated through the most recent balance sheet date. Such estimates may require corroboration by an environmental specialist. (The auditor may need to consider SAS 73, *Using the Work of a Specialist*.)

Compare the format of the CFO’s letter to the EPA with the example included in Ohio Admin. Code §3745-27-17(H).

Prepare the agreed-upon procedures report required by the Federal EPA. An example report is available to AOS staff in the Audit Briefcase under “Shells”.

If the government cannot meet the government test, or has liabilities exceeding 43% of annual revenue, inquire which method the government has selected to assure these amounts. If the government has (1) established a final closure trust fund; (2) secured a surety bond guaranteeing payment; (3) obtained an irrevocable letter of credit or; (4) obtained commercial insurance to finance these liabilities, then inspect documentation that the required funds, bonds, letter of credit, or insurance have been obtained, and are in force.

GASB 18, paragraph 7(e) requires disclosing the methods /instruments used to finance closure and postclosure care. (AOS omitted this sentence because the local government requirements in OAC 3745-27-15, 16, 17, and 18 mandate GAAP financial statements.)

- Read the draft financial statements to determine if they meet the GAAP display and disclosure requirements for these assets/guarantees/commitments, etc.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section B: School Districts

Revised: HB 153, 129th GA
Effective: 6/30/11

6-4 Compliance Requirement: Ohio Rev. Code Sections 3317.01, 3317.02, 3317.03 (E), 3313.981 (F), 3313.48, and 3321.04; Ohio Admin. Code Section 3301-35-06 - School District Average Daily Membership.

Summary of Requirements: Average Daily Membership (ADM) is a material variable used to compute school districts' funding, pursuant to Ohio Rev. Code §3317.022(A). Ohio Rev. Code §3317.03 defines ADM.

A school district's calendar is also an important component in school funding. Ohio Rev. Code §3317.01 requires a school district to meet the minimum number of days or hours for a school to be open for instruction in order to be eligible for foundation payments. Ohio Rev. Code §3313.48 provides that each school shall be open for instruction with pupils in attendance for not less than one hundred eighty-two (182) days in each school year, which may include the following⁹

- Up to four school days per year in which classes are dismissed one-half day early or the equivalent amount of time during a different number of days (i.e., 2 full school days) for the purpose of individualized parent-teacher conferences and reporting periods;
- Up to two days for professional meetings of teachers when such days occur during a regular school week and schools are not in session;
- The number of days the school is closed as a result of public calamity, as provided in Ohio Rev. Code §3317.01¹⁰.

In accordance with Ohio Administrative Code section 3301-35-06, the required number of instructional hours in a school day are as follows:

- Students in kindergarten shall be offered at least two and one-half hours per day of classes, supervised activities or approved educational options, excluding the lunch period. [Ohio Admin. Code §3301-35-06(C)];
 - Districts that receive Disadvantaged Pupil Impact Aid funds for all-day kindergarten shall offer five hours per day, excluding the lunch period. [Ohio Admin. Code §3301-35-06(C)]
- The school day for students in grades one through six shall include scheduled classes, supervised activities, or approved educational options for at least five hours, excluding the lunch period. [Ohio Admin. Code §3301-35-06(D)]
- The school day for students in grades seven and eight shall consist of scheduled classes, supervised activities (excluding interscholastic athletics), or approved educational options for at least five and one-half hours, excluding the lunch period. [Ohio Admin. Code §3301-35-06(E)]
- The school day for students in grades nine through twelve shall consist of scheduled classes, supervised activities (excluding interscholastic athletics), or approved educational options for at least five and one-half hours excluding the lunch period. [Ohio Admin. Code §3301-35-06(F)]

Under limited circumstances, the superintendent of public instruction may provide a written waiver to waive the required minimum number of days or hours for a school district to be open

for instruction. [Ohio Rev. Code §3317.01(B)]

Ohio Rev. Code §3317.03 (E) requires a school district to accurately show, for each day the school is in session, the actual membership enrolled in regular day classes. This code provision further delineates which students should and should not be included in a school district's ADM count on the basis of residency, school attendance, and proficiency testing attendance.

Each school district is responsible for accurately reporting statistics to the Ohio Department of Education's Educational Management Information System (EMIS), which uses the statistics to compute the school district's ADM. Of the many statistics required to be reported, one of the most important is the determination of school attendance. Pursuant to Ohio Rev. Code §3317.03 (E), a school district's attendance for ADM purposes is arrived at by determining the number of students *enrolled* during the applicable count week. The law requires each district to certify its formula ADM once annually (~~see the new "evidence-based model" requirements below~~), for the first full week of October. (Ohio Rev. Code 3317.01, 3317.02, and 3317.03). Ohio Rev. Code §3317.03 (E) also defines *enrolled* to include students with disabilities currently receiving home instruction, in attendance, or not attending but having an excused absence for a valid legal reason.

When counting the number of students enrolled for ADM purposes, Ohio Rev. Code §3313.981 sets the requirements for the inclusion and exclusion of students who live in one district but who are paying "tuition" (i.e. *formula funding* defined in Ohio Rev. Code 3317.08) and enrolled in another district. A student should be included in the ADM count of the district in which he/she resides and not the district in which he/she pays tuition to attend.⁹

Valid legal reasons for not attending Ohio public schools are set forth in Ohio Rev. Code §3321.04. Any reason not delineated in this code provision shall be deemed unexcused and the pupil should not be reported as enrolled for that day for ADM purposes.

Average daily membership (ADM) measures the number of students in each district. ~~Under prior law and continuing in the current budget, a~~All students are counted in the ADM of the district in which they reside. ~~HB 153 discontinued the practice of using the prior year's October student count to derive most districts' formula ADM. Instead, it requires use of the current-year October count to derive the formula ADM for all districts. Two changes were made to the calculation of ADM for districts in the HB 1 Evidence Based Model school funding formula. Previously, there were two ADM counts each fiscal year, the first in October and the second in February. HB 1 eliminated the February count, using only the October count from the *previous* fiscal year. This count is generally finalized by the time the next fiscal year begins, giving districts greater predictability in their state aid. An exception to this provision is given to districts for which the October count in the current fiscal year is more than 2% greater than the October count in the previous fiscal year. For these districts, ADM is based on the October count of the current fiscal year.~~

⁹ NOTE: HB 4 153 continues the practice of counting students who enroll in community schools and STEM schools in the average daily memberships of their resident school districts, crediting those districts with state funds for those students, and deducting from those districts and paying to the respective community school or STEM school a per pupil amount attributable to each individual student. ~~In doing so, HB 1 retains, largely unchanged, the codified law on payments to community schools and STEM schools. But the evidence-based funding model for school districts does not provide for a per pupil amount of funding to each district, like the prior district funding model did; therefore, the act specifies certain per pupil amounts to be deducted from districts and paid to community schools and STEM schools based on the amounts computed for fiscal year 2009 under prior law. (R.C. 3314.088 and 3326.39)~~

Note: AOS expects to expand and modify its testing procedures over Average Daily Membership for fiscal year 2011 and subsequent school district audits. However, we have revised ADM testing only minimally for the fiscal year ending June 30, 2010. Under the provisions of HB 1, the State Superintendent must also develop new expenditure and reporting rules for the new Evidence Based Model (EBM) funding components. The rules for reporting standards cannot be effective before FY 2011, and the rules for expenditure standards cannot be effective before FY 2012. Rules for spending and reporting gifted funding will both be effective FY 2012.

EBM components must be classified into three categories for expenditure and reporting:

- **Core academic strategy components** – Districts will be given flexibility regarding expenditure of these components depending on the district’s performance rating.
- **Academic improvement components** – Districts in academic watch or emergency for two or more consecutive years will be subject to the expenditure standards for these components.
- **Other components** – Not subject to expenditure standards.

All EBM funding components will be subject to reporting standards.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: In assessing the risk of noncompliance, auditors should consider using the district-wide Enrollment trend analysis available on the Ohio General Assembly’s website [access the *School Funding by District* page by clicking on the following link: <http://ode.legislature.state.oh.us>. Then, select the county, school district, and “Enrollment” option under *Chart Type*] to analyze and evaluate the changes in average daily membership (ADM) over the past ten years. Recent significant fluctuations in enrollment may signify a need to test ADM for the compliance requirements below during the current audit period. However, slight variations in recent enrollment figures may further substantiate that the risk of material noncompliance is lessened.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring and reconciliation • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Document and evaluate procedures for determining the school district's instructional calendar. As part of this evaluation, determine whether:

- the school district was open for instruction for a minimum of 182 days during the school year *minus* up to the equivalent of 2 full school days for individualized parent-teacher conferences, 2 days for professional development, and a maximum of five¹⁰ calamity days.
- the days during the school year represented "full days" of pupil instruction (e.g., a full day for students in grades one through six constitutes a minimum of 5 instructional hours, in grades 7-12 a minimum of 5.5 instructional hours constitutes a full day).

If the school district was open for instruction for less than the required minimum number of days or hours, determine whether the school district received a written waiver from the superintendent of public instruction. *Authorized waivers are rare and should always be evidenced in writing.*

Document and evaluate procedures for enrolling and withdrawing pupils, and for processing excused student absences. As part of this evaluation, determine whether the district's policies include sufficient procedures for identifying and tracking all student for whom the district is financially responsible; (a) students residing in and attending district schools, (b) students attending schools in other districts through open enrollment and contractual arrangements, (c) students placed by the courts in facilities outside the district, (d) students attending community schools, and (e) students attending non-public schools through one of the scholarship programs.

Compare final counts per the EMIS system with the count sheets during the October ADM count week. Seek explanations for any significant differences or adjustments.

Perform Analytical Procedures such as:

- Comparing the number of students enrolled as of October to the prior two years. Investigate any unusual or significant changes. All material changes should relate to events such as increased housing in an area, large businesses moving in or out of a school district, and any other major event that may affect enrollment.
- ~~Compare counts the week before, the week of, and the week after, the October ADM count week. Note any apparent significant differences and seek explanations from management.~~
- Compare this year's counts for selected building with previous periods. Ask for management's explanation for any significant differences.
- Determine if other student headcount lists exist that were prepared independently from those responsible for preparing the ADM counts. (Corroborating evidence from independent sources is sometimes more reliable.) Compare these counts to the ADM count for reasonableness. If independently prepared counts are not available, determine

¹⁰ ~~Effective for school year 2010-2011 only, HB 1 reduced the number of calamity days from five to three days for school districts.~~ Calamity days are days a school is closed due to: (1) disease epidemic, (2) hazardous weather conditions, (3) inoperability of school buses or other necessary equipment, (4) damage to a school building, or (5) other temporary circumstances because of a utility failure that renders a building unfit for use. School districts are permitted to shorten any number of school days by up to two hours due to hazardous weather conditions and may pay teachers when schools are closed due to hazardous weather or other calamity.

if the school district maintained counts from other weeks during the school year. If so, haphazardly select another count to compare to the October count week for reasonableness.

Where the number of students paying tuition under Ohio Rev. Code 3317.08 is expected to be significant, inspect documentation that indicates students who are paying tuition to attend are excluded from the school district's ADM (consider using analytical procedures).

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section C: Community Schools

6-5 Compliance Requirement: Ohio Rev. Code Sections 3313.64, 3314.03, and 3314.08 – Community School Funding.

Summary of Requirements:

Ohio Rev. Code §3314.08 provides the formula by which Community Schools are funded. Community Schools receive funding from the state through the per-pupil foundation allocation. Unlike city, local, exempted village and joint vocational school districts, Community Schools have no tax base from which to draw funds for buildings and investment in infrastructure.

Full-Time Equivalence (FTE)

A full-time student is one who attends the entire school day and entire school year; that will result with the student having a FTE of 1.00. Students who attend a Community School for less than the entire year will have an FTE equal to the total days/hours attended divided by the number of days/hours in the school year. Community Schools are funded on a per-pupil FTE basis.

School Options Enrollment System (SOES)

SOES (~~effective with fiscal year 2009, ODE renamed the CSADM system as SOES~~) is the EMIS subsystem that drives funding for community schools. It is a Web application administered by the Ohio Department of Education and used by community schools and traditional public schools to enter and review data used to flow funds to community schools. Community school personnel enter data in the SOES system and traditional public school personnel review, verify or challenge that data.

Reporting Attendance in SOES

Ohio Rev. Code §3313.64(J) states that the treasurer of each school district shall, by the fifteenth day of January and July, furnish the superintendent of public instruction a report listing the names of each child in the permanent or legal custody of a government agency or person other than the child's parent and each child who resides in a home, who attended the district's schools during the preceding six calendar months. For each child, the report shall state the duration of attendance of that child, the school district responsible for tuition on behalf of the child, and any other information that the superintendent requires. Upon receipt of this report, the superintendent shall deduct each district's tuition obligations and pay to the district of attendance that amount plus any amount required to be paid by the state.

Ohio Rev. Code §3314.08 requires the board of education of each school district to annually report the number of students entitled to attend school in the district that are actually enrolled in community schools. This section also requires the governing authority of each community school to annually report the number of students enrolled in the community school. For each student, the governing board of the community school must report the city, exempted village, or local school district in which the student is entitled to attend.

Based on these reported numbers, the state Department of Education shall calculate and subtract the appropriate amount of state aid from each school district. The amount subtracted shall be paid to the corresponding community school or to the internet or computer-based community school entitled to receive those funds. When calculating and subtracting the appropriate amount of state aid, the department should take into consideration any enrollment of students in community schools for less than the equivalent of a full school year.

Ohio Rev. Code §3314.03 requires that the contract entered into between a sponsor and the governing authority of a community school state the following:

- that the governing authority will adopt an attendance policy that includes a procedure for automatically withdrawing a student from the school if the student, without a legitimate excuse, fails to participate in one hundred five consecutive hours of the learning opportunities offered to the student;¹¹
- that the school will provide learning opportunities to a minimum of twenty-five students for a *minimum* of nine hundred twenty (920) hours per school year; the school is required to meet the minimum 25 student count prior to September 30th and may fall below that count throughout the year.
 - ~~Note: HB 119 of the 127th General Assembly, effective for fiscal year 2008 audit periods, modified the calculation of the community school FTE funding formula contained in Ohio Rev. Code §3314.08(L)(3).—~~The Ohio Department of Education shall determine each community school student’s percentage of full-time equivalency based on the *percentage of learning opportunities* offered by the community school to that student, reported either as number of hours or number of days. A student must attend the community school for the entire school year. However, no internet- or computer-based community school shall be credited for any time a student spends participating in learning opportunities beyond ten hours within any period of twenty-four consecutive hours. Whether it reports hours or days of learning opportunities, each community school shall offer not less than nine hundred twenty hours of learning opportunities during the school year. [Ohio Rev. Code §3314.08(L)(3)]
- that the governing authority will adopt a policy regarding the admission of students who reside outside the district in which the school is located; and
- a financial plan detailing an estimated school budget for each year of the period of the contract and specifying the total estimated per pupil expenditure amount of each such year.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: In assessing the risk of noncompliance, auditors should consider the risk of a community school reporting “ghost” students. If this risk factor is believed to be present, auditors should consider comparing students included on ADM reports during count weeks to the applicable seating charts and final grades given to students. A student that is not present on a seating chart or that did not receive a final grade may be improperly included in the community school’s ADM reports. Where discrepancies are identified, auditors must determine the date the student left the community school. If the student left after the count week, then the student was properly included in the ADM count. However, if the student actually left prior to the count week, the community school should have withdrawn the student from its enrollment and excluded the student from the ADM count.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel 		

¹¹ Valid legal reasons for non-attendance are set forth in Ohio Admin. Code §3301-69-02.

<ul style="list-style-type: none"> • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests

Document and evaluate the school’s procedures for:

- Enrolling and withdrawing pupils timely;
- Documenting student absences; and
- Notifying the resident public school of withdrawn students or students truant for more than 105 or more consecutive hours.

As part of this evaluation, determine whether the Community School’s policies include sufficient procedures for identifying and tracking all students for whom the *community school* is responsible. These students include those: (a) residing and attending public schools (b) over the age of 18 that are not residing with a guardian (c) placed by the courts in facilities outside the district, (d) attending other community schools, and (e) that have been absent due to truancy for 105 consecutive hours or greater.

Inquire with community school management about the learning opportunities it offered as part of its operating standards during the audit period. Determine whether the community school offered the minimum 920 hours of learning opportunities. If the community school offered more or less than the required minimum, determine whether the community school reported the accurate number of learning opportunities to the Ohio Department of Education.

Perform the following analytical procedures:

For Brick & Mortar Schools (non-electronic schools)

- Select a representative number of students from the community school’s withdrawal list. The withdrawal list may be obtained by the community school through SOES or the community school’s student management database.
 - Identify when students were withdrawn and determine whether it was timely.
 - Using grade records and/or attendance records, determine the last day students were reported as attending the community school.
 - If a student was reported absent for 105 consecutive hours, determine the date the student should have been withdrawn.
 - Compare the dates determined in the steps above to the SOES or other student management database reports. Inquire with management about any significant differences or adjustments. Considering reporting noncompliance or other client communication for any significant unexplained variances.
 - *A community school should not wait until March to remove a student from its enrollment if the student withdrew in October. Significant delays in reporting student withdrawals constitutes noncompliance. Likewise, a student with excessive truancy should have received multiple*

communications from the school to verify the student's absence during the 105-hour period. Community schools should maintain a daily call log or obtain timely excuses from the parent, guardian, or adult-aged student for excessive absenteeism that does not result in removal of a student from enrollment.

- Consider whether the number of reported students is reasonable considering the size of the facility.
- Determine if other student headcount lists exist that were prepared independently from those responsible for preparing the ADM counts. (Corroborating evidence from independent sources is sometimes more reliable.) Compare these counts to the ADM count for reasonableness.
- Based on assessed risk, **consider** visiting school facilities and “informally” counting students on site. (This count must be informal. In other words, do not line up the students and ask them to count off – your count should not intrude on school activities. We realize this will not provide an exact count. Instead you are looking for evidence of obviously material overstatements of ADM.)

For E-schools

- In addition, select multiple students from the E-school's SOES or other student management database and compare the reported enrollment date to the latter of the: (1) login date, or (2) date the computer was received.

Note: Students are not enrolled in an E-school until the latter of first login date or the date the computer was received. Students may waive the right to a computer; however, this documentation must be kept on file by the community school. The community school should be able to produce a report that documents login dates. Community schools should also maintain shipping logs (with tracking numbers) from the computer vendor. If the student's parent physically picked up the computer, the community school should have the parent's signature on file to support receipt of the computer.

- Obtain the number of hours reported on the E-school's system (*this is a custom report that the community school will have to generate from their online learning portal or whatever system they use to store student hours*) for login times and non-login hours (e.g., field trips) for selected students. Compare these hours to FTEs reported in SOES for each selected students for the entire year. Inquire with management about any significant differences or adjustments. Considering reporting noncompliance or other client communication for any significant unexplained variances.

Note: This is admittedly a difficult step; however, similar to login sheets, the community school should be able to produce a report of total hours the student claimed as learning time during the year. These hours should include all learning opportunities, not just “seat time”.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

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6-6 Compliance Requirement: Ohio Rev. Code §3314.03(A)(11)(b) — Liability insurance.

Summary of Requirement: The governing authority of each community school must purchase liability insurance, or otherwise provide for the potential liability of the school.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> ● Policies and Procedures Manuals; ● Knowledge and Training of personnel ● Tickler Files/Checklists ● Legislative and Management Monitoring and reconciliation ● Management’s identification of changes in laws and regulations ● Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

Secure a copy of the school’s insurance policy. Note: We can very briefly scan the policy to assess the reasonableness of coverage, but we should not spend time “testing” the policy, because we are not insurance experts. We can issue a management letter comment if evidence strongly suggests the coverage is improper.

Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

6-6 Compliance Requirement: Ohio Rev. Code §3314.08(I) - Tuition.

Summary of Requirement: No community school is permitted to charge tuition to any student.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Obtain a copy of the school’s enrollment application and scan the receipts journal or ledger for evidence of tuition charges.

Inquire of the treasurer regarding any tuition charges.

<p>Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

Revised: HB 153, 129th GA
Effective: 9/29/11

6-7 Compliance Requirement: : Ohio Rev. Code §3314.02, §3314.023, §3314.03, §3314.07, §3314.072, §3314.073 Sponsor monitoring of community schools

Summary of Requirement:

- The sponsor may contract with the school to receive 3% or less of the amount *the State pays to a school annually*, solely for the costs of its oversight and monitoring activities.¹² In other words, the total amount of such payments for oversight and monitoring of the school shall not exceed 3% of the total amount of payments for *operating expenses that the school receives from the State*¹³. [3314.03(C)]
- The contract between the sponsor and the school must require the sponsor to monitor the following [3314.03(D)]:
 - Compliance with laws the contract specifies
 - At least annually, monitor and evaluate the academic and fiscal performance and the organization and operation of the community school
 - Report the results of the preceding evaluation to ODE and to the students’ parents.
 - Provide technical assistance to the school in complying with applicable laws and terms of the contract;
 - Intervene in the school's operation to correct problems in the school's overall performance,
 - Declare the school to be on probationary status pursuant to §3314.073 of the Revised Code,
 - Suspend the operation of the school pursuant to §3314.072 of the Revised Code,
 - Terminate the contract of the school pursuant to §3314.07
 - Have in place a plan of action to be undertaken in the event the community school experiences financial difficulties or closes prior to the end of a school year.
- Ohio Rev. Code § 3314.023 requires that in order to provide monitoring and technical assistance, a representative of the sponsor of a community school shall meet with the governing authority or treasurer of the school and shall review the financial and enrollment records of the school at least once every month.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel 		

¹² A sponsor can earn more than 3% if it provides additional services beyond sponsorship. A contract should specify these additional services, and should differentiate them from the services required of a sponsor. Effective 3/30/06, community schools cannot sponsor other community schools [Ohio Rev. Code §3314.02(C)(1)(f)].

¹³ AOS has determined that these monies would include Full-Time Equivalency (FTE is explained in section 6-4), State grant, and Federal grant monies. *Grant monies that are restricted from general operations (such as capital grants or grants for limited operation programs like special education) should be excluded from calculations as these monies cannot be used for general operating expenses.*

<ul style="list-style-type: none"> • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Examine the contract between the school and the sponsor. Determine if it provides payment to the sponsor for monitoring activities.

- Trace actual payments to the sponsor to the accounting records to determine whether they were ≤ 3% of the school’s State assistance (or met the terms of the contract of the sponsor provides additional services).

Inquire regarding the nature and extent of the sponsor’s monitoring activities.

- Examine minutes, correspondence, reports or other evidence supporting that the sponsor fulfilled its monitoring duties described above.
- Read the sponsor’s annual report to ODE. Based on other audit procedures, judge whether that report suggests the sponsor is diligent in its monitoring and is frank in its reporting to ODE.¹⁴

If based on other audit procedures, the school is experiencing financial or performance problems, judge whether the sponsor is taking the actions the Ohio Rev. Code prescribes above (e.g., declaring the school in probationary status, preparing an action plan to address financial difficulties.)

Assess whether the sponsor’s overall monitoring generally fulfills the requirements above. Report significant noncompliance as necessary.

Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

¹⁴ Staff should not spend significant time reviewing this report. We are not opining or providing any assurance on it. Consider tracing a “handful” of key financial amounts to current or prior audited statements or to accounting records we used in the audits. Read key passages to determine whether they are generally consistent with your understanding. If we find material misrepresentations in the report to ODE, we can report this as noncompliance by the sponsor. Our noncompliance finding should avoid imprecise statements such as “The sponsor’s report was inaccurate.” Instead, quote statements or amounts from the sponsor’s report compared to quotes or amounts we obtained from other sources. List our source in the finding.

Section D: Townships

Revised: HB 153, 129th GA
Effective: 9/29/11

6-8 Compliance Requirement: Ohio Rev. Code Sections 507.09 and 505.24(C) Allocating township trustee ~~per diem costs or salaries to funds~~ and fiscal officer compensation. (~~Amplified by Ohio Attorney General Opinion 2004-036~~)

Summary of Requirement, per Ohio Rev. Code §507.09 and §505.24(C):

- (1) **Trustees receiving per diem compensation:** When members of the board of township trustees are compensated per diem, a *majority* of the board must pass a resolution establishing the periodic notification method to be used for reporting the number of days spent in the service *and kinds of services rendered* on those days.¹⁵ The per diem compensation shall be paid from the township general fund or from other township funds in proportion to the kinds of services rendered, as documented. (For example, the township could charge trustee time spent on road repairs to the road & bridge fund.) Ohio Rev. Code §505.24 limits the number of days a trustee can be compensated to 200.

However, for *salaries not* paid from the general fund, 2004 OAG Opinion 2004-036 established the following documentation requirements:

As noted above, however, a board of trustees is authorized by R.C. 505.24 to pay trustees' salaries from the general fund or other township funds "in such proportions as the board may specify by resolution." The board may therefore determine, as part of its budgeting process, to appropriate money in the EMS Fund for payment of trustees' salaries. In order to meet the proviso in R.C. 505.84, that the EMS Fund be used only for ambulance and emergency medical services, however, the board would be required to establish administrative procedures for assuring that the proportionate amount paid from the EMS Fund for trustees' salaries properly reflected the proportion of time each trustee spent on EMS matters relative to other township matters. This would necessitate trustees documenting all time spent on township business and the type of service performed, in a manner similar to trustees paid a per diem. To the extent that the board is able to determine the portion of time spent on EMS matters, relative to the total time spent on township business, it may pay the proportionate cost of the trustee's salary from the EMS Fund. If a trustee's time is not documented, however, then no part of his salary may be paid from the EMS Fund.

¹⁵ The Ohio Rev. Code does not define a "day" for purposes of this requirement. Townships should consult with their legal counsel and adopt a policy in compliance with OAG Opinion 2004-036. If a Township has a duly enacted policy defining what constitutes a "day" in compliance with OAG Opinion 2004-036, we will audit in accordance with that policy. If the Township has not adopted a policy, we will audit proportionately as indicated above.

In other words, 2004 OAG Opinion 2004-036 requires trustees compensated on a per diem basis to establish administrative procedures to document the proportionate amount chargeable to other township funds based on the kinds of services rendered. The “administrative procedures” can be timesheets or a similar method of record keeping, as long as the trustees document all time spent on township business and the type of service performed, in a manner similar to trustees paid per diem compensation. If per diem trustees do not document their time, then no part of salaries may be paid from the restricted funds.

The important factor is the portion of time spent on other township funds, relative to the total time spent on township business (as opposed to the total days in a given month). In other words, do not factor days in which no township work is done into the allocation.

Per the above, ~~regardless of whether the township uses the “per diem” or “salary” method~~, per diem trustees must record the time spent on various tasks and the specific fund to which the township will charge their costs when paying any proportion of a trustee’s salary from a restricted fund. Although the fire and rescue services, ambulance services, and emergency medical services fund under R.C. 505.84 was the focus of OAG Opinion 2004-036, the ruling also applies to funds for the motor vehicle license tax pursuant to R.C. 4504.18 and 4504.19; motor vehicle tax pursuant to R.C. 4503.02; gasoline tax pursuant to R.C. 5735.27(A)(5)(d); the cemetery fund pursuant to R.C. 517.03, and any other restricted fund. (The sole exception to this is for trustees charging all salaries to the general fund, as described above.) The township must maintain daily records of tasks performed¹⁶ for each individual trustee that, when reviewed cumulatively for the fiscal year, will provide reasonable justification for the apportionment of salary between funds as specified in the resolution. **Monthly summaries in lieu of daily records are not acceptable.**

Important note: ~~Prior to this OAG Opinion, regarding (2) above, the AOS accepted resolutions that specified percentages of salaries to allocate to various funds, as complying with Ohio Rev. Code §505.24(C). This OAG Opinion alters that conclusion.~~ Resolutions to pay trustees by salary should specify that a township will allocate salaries based on **documentation** the trustees submit, not based on percentages a **resolution specifies**.

For example, ~~subsequent to the OAG Opinion~~, it is **not** acceptable for a township to resolve that they will “charge 50% of trustee salaries and benefits to the general fund and 50% of this compensation to the road & bridge fund.”

- (2) **Trustees receiving compensation by annual salary:** To be paid on a salary basis in equal monthly installments, the board of trustees must **unanimously** pass a resolution to allow it. To be paid from any fund(s) other than the general fund, the resolution must also specify the proportions of the salary that are to be paid from each fund (ORC 505.24(C)). These proportions are a guide for use throughout the year; however, total payment for the fiscal

¹⁶ A sufficient description of tasks performed during a calendar day, with a percentage of total time worked during that day attributed to each task, may be a reasonable substitute for logging the actual hours and minutes to perform such task(s).

year must be based on the cumulative *actual* service efforts¹⁷ during the fiscal year on restricted fund¹⁸ activity. If trustees use the salary method and are compensated from funds other than the general fund, they must certify the percentage of the time spent working on matters that are to be paid from funds other than the general fund. Trustees must complete a certification prior to receiving his/her pay for that pay period. The certification must be done individually, but is not required to be notarized. The certification is not required to be a time log. Rather, all that is required is a statement detailing the percentage of time that the trustee/fiscal officer spent during that pay period providing services related to each fund to be charged. A sample certification is attached to AOS bulletin 2011-07. If 100% of the compensation of the township trustee is to be paid from the general fund, no certification is required.

~~and are paid solely from the general fund, the only required documentation is a unanimously approved resolution. Ohio Rev. Code §505.24(C) does not prescribe “documentation of time spent”.~~

- (3) **Fiscal officer compensation:** Fiscal officers compensated from funds other than the general fund must certify the percentage of the time spent working on matters that are to be paid from funds other than the general fund. They must complete a certification prior to receiving his/her pay for that pay period. The certification must be done individually, but is not required to be notarized. The certification is not required to be a time log. Rather, all that is required is a statement detailing the percentage of time that the trustee/fiscal officer spent during that pay period providing services related to each fund to be charged. A sample certification is attached to AOS bulletin 2011-07. If 100% of the compensation of the township fiscal officer is to be paid from the general fund, no certification is required.

~~The Auditor of State has included this documentation requirement in the *Ohio Compliance Supplement* since 2006. Uncertified annual salaries for salaried-trustees/fiscal officer, for 2009 and subsequent years where the trustees/fiscal officers have been paid from funds other than the General Fund, should result in findings for adjustment and the consideration of opinion qualifications including adverse opinions. Undocumented per diem salaries for trustees, where the trustees officers have been paid from funds other than the General Fund, should result in findings for adjustment and the consideration of opinion qualifications including adverse opinions.~~

¹⁷ Townships should use a reasonable method to document and allocate Per Diem Township Trustee compensation to the appropriate funds. As an example, assume the Board of Trustees passes a Resolution at the beginning of the year dividing the Trustees’ compensation evenly between the General Fund and Road and Bridge Fund, The Township Fiscal Officer uses the amounts specified within the Resolution to allocate the Trustee compensation payments evenly to the appropriate funds throughout the year. However, at year end, the Township Fiscal Officer should reconcile the fund allocations to time and effort records, maintained by the Trustees, documenting the actual cumulative service effort for the year. If necessary, the Township Fiscal Officer should adjust the fund allocations according to the actual cumulative service effort. If, however, the fund allocation was reasonably close to the actual cumulative service effort (e.g., 52/48 split vs. 50/50), no adjustment is necessary. Another example would be to allocate each month according to actual time spent, if the cumulative allocation doesn’t match the resolution at the beginning of the year, no need to go back and change the resolution.

¹⁸ Regarding this Ohio Compliance Supplement step, a *restricted fund* is any fund other than the general fund.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: In assessing the risk of noncompliance, auditors should consider recent changes to the statutory requirements described in this OCS step. This statute contains intricate requirements and interpretations.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Time summaries / timecards • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Document how the township records the time spent on each township service.

Recompute selected ~~fiscal officer~~ allocations of trustee/fiscal officer salaries or per diem amounts to each fund.

For fiscal officers or trustees paid by annual salary with allocations to funds other than the general fund, trace selected allocations to certifications.

For trustees paid per diem, with allocations to funds other than the general fund, trace time or services performed to time or activity sheet.

Agree selected postings of the salaries from step 2 to the township’s check register.

Note: A failure to document the time spent on township tasks would constitute a scope restriction on the allocation of trustee salaries. This could affect our financial statement opinion, if the undocumented allocation is material to the financial statements.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section E: Counties and Law Libraries

6-10 Compliance Requirement: ~~Ohio Rev. Code §315.12 Allocating motor vehicle license and fuel tax receipts to support the county engineer (*County Only*)(Moved to Chapter 7)~~

Summary of Requirement:

Two thirds of the cost of operation of the county engineer’s office, including all salaries and maintenance costs of the engineer’s office as provided by the annual appropriation made by the board of county commissioners, shall be paid out of the county’s share of the funds derived from:

- ~~Motor vehicle licenses receipts as distributed under §4501.04 of the Revised Code~~
- ~~Motor vehicle fuel tax receipts as distributed under §5735.27 of the Revised Code~~

[Ohio Rev. Code §315.12(A)]

Where employees of the county engineer are temporarily assigned to perform engineering and plan preparation work on a bond-financed project, their salaries and expenses for such work may be paid from the proceeds from the sale of such bonds, instead of from the motor vehicle license and fuel tax receipts, throughout the duration of work performed by county engineer’s office employees on such projects. [Ohio Rev. Code §315.12(B)]

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: ~~While this is not new law, it is a new test that first appeared in the December 2008 OCS. In assessing the risk of noncompliance, auditors should consider whether this compliance requirement has been tested in previous audits. If not, auditors should test this step as part of the current audit.~~

~~In subsequent audits, assuming you did not detect noncompliance, and have assessed the control environment favorably, you might reduce this testing to an analytical comparison of current year and prior year(s) motor vehicle license and fuel tax receipt allocations in the County Engineer’s Fund.~~

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals; • Knowledge and Training of personnel • Time summaries / timecards • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

~~Document how the county allocates motor vehicle license and fuel tax receipts to the county engineer's office.~~

~~Recompute two thirds of the total appropriated cost of operation of the county engineer's office, including all salaries and maintenance costs, for the audit period. Determine whether motor vehicle license and fuel tax receipts were used to support these costs. Note: The use of bond proceeds to pay for a portion of the appropriated salaries and expenses of county engineer employees assigned to temporarily perform engineering and plan preparation work on a bond-financed project is an allowable exception to this requirement.~~

~~**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):**~~

6-11 Compliance Requirement: Ohio Rev. Code §§3375.48-53, 307.51, 307.511-513—Statutory Funding for County Law Library Resource Fund Counties and County Law Library Associations (LLA's)

Summary of Requirements:

HB 420 reformed the county law library structure. Beginning in 2010, the local County Law Library Resources Boards, which are new public agencies established under ORC §307.51 and §307.511-516, will manage the legal resource needs of the county law library. However, these boards are not legally separate from the county (i.e., they are a part of the county's primary government under GASB Statement 14). The county boards will submit and have its budget approved by the commissioners. A component of this budget will be the appropriation of the fine and penalty money which will be deposited in the county law library resources fund, a special revenue fund within the county treasury.

County Law Library Resources Boards (LLRB)

The act creates a LLRB in each county to replace each county's law library association. Beginning on January 1, 2010, subject to appropriations made by the board of county commissioners, each library resources board must provide legal research, reference, and library services to the county and to the municipal corporations, townships, and courts within the county and managing the coordination, acquisition, and utilization of legal resources. [ORC §307.51(B)]

The LLRB is comprised of five members who must be residents of the county, must be appointed by July 1, 2009 [ORC §307.511(D)], and are appointed as follows [ORC §307.511(A)]:

- The prosecuting attorney of the county appoints one member. The administrative judges or presiding judges of all municipal courts and county courts within the county shall meet to appoint one member. The person must be an attorney licensed to practice law in Ohio and in good standing before the Supreme Court of Ohio;
- The administrative judge or presiding judge of the court of common pleas of the county shall appoint one member. The person must be an attorney licensed to practice law in Ohio and in good standing before the Supreme Court of Ohio;
- The board of county commissioners appoints two members.

NOTE: During the period of July 1, 2009, through December 31, 2010, the LLRB consists of seven members—the five appointed members and two members who are residents of the county appointed by the board of trustees of the LLA [ORC §307.511(C)]

NOTE: A member of the board of trustees of a LLA may serve as a member of the LLRB if they disclose each membership to both the board of trustees of the LLA and the LLRB [ORC §307.511(F)]

Employees of the LLRB

The LLRB must employ a county law librarian who is the chief administrator of the LLRB. The LLRB may also employ additional staff to perform any functions as determined by the LLRB. The LLRB shall fix the compensation for the county law librarian and any additional employees who shall all be in the unclassified civil service of the county [ORC §307.51(C)].

WHAT HAPPENS IN 2009—The Year of Transition

HB 420 of the 127th General Assembly repealed the 5-year phase out schedules for county obligations to the LLA regarding the payment of compensation and provision of space. As

described in the Time Line below, during calendar year 2009 the county is responsible for paying 100% of staff compensation for the law librarian and up to two assistants and providing space and utilities for the LLA for what is the association's final year of operating the county law library. Also during 2009, the LLA becomes responsible for 100% of the costs of any furniture or fixtures they acquire. [ORC §3375.49, as amended by the Act] Although the LLRB does not assume management of the county law library until January 1, 2010, the board appointments are to be completed by July 1st, and its first meeting must be held by July 15, 2009. During the transition (i.e., January 1, 2009 through December 31, 2009), the LLA Board of Trustees will also serve as a "Transition Advisory Council" to the LLRB and the LLRB will initially be comprised of seven members—the 5 appointed members and 2 additional members appointed by the LLA Board of Trustees.

Transfer of Assets and Cash

Uncodified provisions of the Bill provide that each LLA will transfer both of the following to the LLRB on or before January 1, 2010:

1. All "unspent fines and penalties" in the LLA's general fund and retained moneys fund collected pursuant to ORC §§ 3375.50 to 3375.53.
 - a. Therefore, the cash payment to a county should equal the sum of the cash balances in its general and retained monies fund as of the transfer date. When the LLA transfers its cash to the county, it should also send unpaid invoices to the county auditor for encumbering and payment.
 - b. The County should record these amounts in the LLRF.
 - i. Subsequent to the transfer, all public money due to the LLA or LLRB should be deposited into the LLRF and not paid to the LLA.
 - ii. (Otherwise, the LLA would have public money still in its possession after January 1, 2010, contrary to the intent of the law.)
 - c. LLA need not pay its private money to the county. LLAs may continue to exist as either private associations or nonprofit corporations, and may spend their private money for any purpose consistent with its tax exemption.
 - i. Private monies include: membership dues, overdue book charges and photocopying charges. Fees the Library collects for the use of books and copiers remain private even though the books and copiers may have been purchased with public funds.
 - ii. This is not public money and will not be subject to audit by the Auditor of State.
 - d. Per Auditor of State Bulletin 2004-007, a LLA's accounting records should segregate private money in a fund separate from the general and retained monies.
 - i. Bulletin 2004-007 described how law libraries should identify and segregate general and retained monies funds vs. private funds if they had not previously segregated them. The Auditor of State believes this Bulletin has provided LLA sufficient time to identify and segregate any private money.
 - ii. If a LLA has not yet segregated public and private funds, it must determine the amounts it deems private vs. public prior to transferring its cash to the county.
 1. The Auditor of State (and contracting IPAs) will accept reasonable determinations / measurements of public vs. private monies. When an LLA makes this determination after the issuance of AOS Bulletin 2009-009, auditors should document their assessment of the reasonableness of the determination, and

- ~~should recompute or otherwise briefly test the public vs. private fund calculation as part of their 2009 financial statement audit.~~
- ~~2. If an LLA does not determine the amounts of its private funds, it should transfer all its cash to the county for deposit into the LLRF.~~
- ~~2. All personal property the association can reasonably identify as having been purchased by the fines and penalties in the LLA's general fund or retained moneys fund collected pursuant to ORC §§ 3375.50 to 3375.53.~~
- ~~a. The Auditor of State and contracting IPA's should inquire regarding the method the library's management used to differentiate property purchased from the general and retained funds vs. private funds. Audit documentation should include the results of these inquiries, and the results of other limited procedures (observation, examination of records, etc) supporting:~~
- ~~i. Whether management's method of determining the assets to transfer is reasonable.~~
- ~~ii. That the property transfer actually occurred and complied with the method management prescribed.~~
- ~~b. We will not report noncompliance for reasonable, good faith efforts to identify and transfer to the county the property purchased from the general and retained funds.~~
- ~~c. Consistent with the guidance in 1.d.ii.2 above, if an LLA cannot reasonably determine personal property purchased with private funds, it should transfer all its personal property to the LLRB.~~

IMPORTANT DATES — TIME LINE:

January 1, 2008 through December 31, 2008 — For 2008, pursuant to House Bills 363 and 66 then in effect, law libraries must pay 40% of the compensation for their librarian and up to two assistants from their own funds and the county pays 60%. For 2008, counties pay 80% of the cost of space, utilities and fixtures. [R.C. §3375.49(B)(2)(a)(ii) and §3375.49(B)(2)(b)(i)]

January 1, 2009 through December 31, 2009 — County pays the full compensation of the law librarian and up to two assistants and pays the cost of space and utilities for the law library [furniture and fixtures are responsibility of County Law Library Association].

July 1, 2009 — the members of the County Law Library Resources Board must be appointed by this date. [R.C. §307.511(D)]

July 1, 2009 through December 31, 2010

- Two additional persons appointed by the Trustees of the LLA serve as members of the County Law Library Resources Board [the Board is comprised of seven members during this time]. [R.C. §307.511(C)]
- Transition Advisory Council exists — members are the board of trustees of the County Law Library Association. [R.C. §307.51(E)]

July 15, 2009 — County Law Library Resources Board must hold its initial meeting on or before this date. [R.C. §307.512]

County Commissioner's budget process for calendar year 2010 — County Law Library Resources Board submits budget request and has its 2010 budget approved by the board of county commissioners. [R.C. §307.513(A)]

December 31, 2009

- ~~County Law Library Association's responsibility for management of the county law library ends.~~
- ~~Last day County Law Library Association receives fine and penalty money.~~
- ~~County obligations to County Law Library Association end.~~

January 1, 2010

- ~~County Law Library Resources Board begins management of legal resources needs of the county and the county law library.~~
- ~~County Law Library Resources Fund is effective—exists as a special revenue fund within the county treasury into which is deposited all fine and penalty money allocated to the County Law Library Resources Board and any appropriations permissively made to the Law Library Resources Fund from the general fund by the commissioners. [R.C. §307.513(B)]¹⁹~~
- ~~Fine and penalty money now directed to the county. [R.C. §307.514]~~

On or before January 1, 2010—~~County Law Library Association is to transfer to the county both of the following:~~

- ~~All unspent fines and penalties in the law library's general fund and retained moneys collected pursuant to ORC Sections 3375.50 to 3375.53. [R.C. §307.515(A)]~~
- ~~All personal property that the association can reasonably identify as having been purchased by the fines and penalties in the law library's general fund or retained moneys fund collected pursuant to ORC Sections 3375.50 to 3375.53.~~

July 1, 2010—~~The County Commissioner's Association must make the initial appointments of two members to the Statewide Consortium of County Law Library Resources Boards by this date—one appointment must be a chief administrator of a County Law Library Resources Board. [R.C. §3375.481(C)]~~

January 1, 2011

- ~~Statewide Consortium of County Law Library Resources Boards is effective. [R.C. §3375.481(A)]~~
- ~~Statewide Consortium of County Law Library Resources Boards Fund is established within the state treasury—the annual county assessments for the Statewide Consortium are deposited into this fund. [R.C. §3375.481(E)(1)]~~
- ~~County Law Library Resources Board may, at their discretion, create and appoint an Advisory Council—members appointed to the Advisory Council must be persons engaged in the private practice of law and have experience in the operation and funding of law libraries. [R.C. §3375.481(F)]~~

On or before February 15, 2011 and each year thereafter—~~county treasurers' are to have deposited their County Law Library Resources Board's annual assessment for the Statewide Consortium.~~

Refer to AOS Bulletin 2009-009 for additional information on implementing HB 420.

¹⁹ ~~Note: Interest earned on the Law Library Resources Fund is payable to the county's general fund.~~

POSSIBLE NONCOMPLIANCE RISK FACTORS:

~~Note: In assessing the risk of noncompliance, auditors should consider recent changes to the statutory requirements described in this OCS step. This statute has been amended several times over recent years. As a result, there is an increased risk of noncompliance, especially during the transition period.~~

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Time summaries / timecards • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

~~Step 1 below applies to 2009 county audits, not to audits of a law library. The remaining steps apply to 2008 or 2009 law library audits, as indicated.~~

1. ~~**For 2009 county audits:** Please show me documentation that the County Law Library Resources Fund was adopted and in effect as a county special revenue fund during fiscal year 2010. For example, please show me documentation supporting that fine and penalty money collected by the various courts within the county was deposited into the Law Library Resources Fund.~~
2. ~~**For 2009 law library audits:** Please show me documentation supporting whether the LLA transferred both of the following to the LLRB on or before January 1, 2010:

 - All “unspent fines and penalties” in the LLA’s general fund and retained moneys fund collected pursuant to ORC §§ 3375.50 to 3375.53.
 - All personal property the association can reasonably identify as having been purchased by the fines and penalties in the LLA’s general fund or retained moneys fund collected pursuant to ORC §§ 3375.50 to 3375.53.~~
3. ~~**For 2009 law library audits:** If the county did not pay 100% during fiscal year 2009, including fringe benefits, for the law librarian and up to two assistants, determine whether the county encumbered the unpaid portion as an expenditure and remitted it to the law library resources fund within a reasonable time subsequent to year end. If not, consider appropriate findings for adjustment between the new county law library resources fund and the county general fund.~~
4. ~~**For 2009 law library audits:** Please show me documentation supporting that the county paid 100% of the space, utilities, and fixtures for the law library resources board during fiscal year 2009.~~

- 5. ~~For 2008 law library audits:~~ If the law library association did not pay 20% of the cost of space, utilities, and fixtures during fiscal year 2008, determine whether the law library encumbered the unpaid portion as a 2008 expenditure and remitted it to the county within a reasonable time subsequent to December 31, 2008. If not, consider appropriate findings for recovery.

- 6. ~~For 2008 law library audits:~~ If the law library association did not pay 20% of the cost of space, utilities, and fixtures during fiscal year 2008, determine whether the law library encumbered the unpaid portion as a 2008 expenditure and remitted it to the county within a reasonable time subsequent to December 31, 2008. If not, consider appropriate findings for recovery.

~~Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):~~

Section E: Tax and Pension Withholdings

Revised: Section 2043 of the Small Business Jobs and Credit Act of 2010 (Public Law No. 111-240) Effective: Tax Years beginning after December 31, 2009

If the compliance attributes listed in 6-9 below were tested during payroll substantive testing, no additional tests needed.

6-9 Compliance Requirements: Internal Revenue Code (IRC) Chapter 26 [26 U.S.C.] - Collection of Income Tax at Source on Wages; 26 U.S.C. §3401 through §3406:

- §3401: Definitions;
- §3402: Withholding of income tax from wages;
- §3403: Employers liable for payment of the tax deducted and withheld;
- §3404: Return of amount deducted and withheld shall be made by appropriate officer of the governmental employer;
- §3405: Withholding on pensions and annuities;
- §3406: Backup withholding

- 26 U.S.C. §3102(a): Deduction of [Medicare] tax from wages;
- 26 U.S.C. §132: Exclusion of certain fringe benefits from gross income;
- Internal Revenue Regulations (26 C.F.R.):
 - §1.61-21: Taxation of fringe benefits;
 - §1.6041-1: Reporting of income aggregating \$600 or more [i.e., 1099s-MISC]²⁰;
 - §1.6041-2: Reporting of wage income aggregating \$600 or more [i.e., W-2s];
 - §1.6041-3: Various exclusions;
 - §1.6041-6: Time and place for filing forms 1099 and 1096;
 - §1.6050E-1: Income tax refund reporting.
- Ohio Rev. Code §5747.06 - Collection of Ohio income tax at source.
- Various local ordinances require withholding on wages earned in the particular municipality. These should be consulted for the requirements.

Summary of Requirement:

These sections of the various tax codes require the employing government to withhold federal, state, and local income and employment-related taxes (such as Medicare). They also require the government to report those tax matters to the appropriate tax authorities and to the recipients. Certain of these sections require consideration of whether employer-provided “fringe” benefits,

²⁰ All payments to attorneys of \$600 or more that are not otherwise reported (e.g., on form W-2 for attorneys who are employees) must be reported on form 1099-MISC.

such as use of government automobiles for private purposes, constitute taxable income to be reported and withheld upon.

Effective for tax years beginning after December 31, 2009, Section 2043 of the Small Business Jobs and Credit Act of 2010 (Public Law No. 111-240) removed employer-provided cell phones from the definition of “listed property” in the tax code. While cell phones are still subject to being a taxable benefit, the new legislation removes the special record-keeping requirements of listed property. However, employers still should have a policy prohibiting any more than a de minimus personal use of government-owned cell phones.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Auditors should consider whether governments have historically demonstrated effective internal controls over payroll. Additionally, adequate training of payroll personnel and supervisory monitoring controls can help mitigate the risk of noncompliance with payroll compliance requirements.

Risk of material noncompliance is elevated when governments are in financial distress and may not pay withholdings when due. In these circumstances auditors should not rotate this test, and should determine whether the government is remitting withholdings when due.

Note: See the *Ohio Compliance Supplement Introduction* regarding IRS Referrals.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Time summaries / timecards • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Note: It is normally efficient to integrate step 1 below with payroll testing.

1. When testing payroll, determine if the government withholds state, federal and local income taxes.
2. Inquire if the government provided any employees with potentially taxable fringe benefits, such as the use of a government-owned vehicle, or an auto or uniform

- allowance²¹? If so, inquire how they compute the benefit amounts reflected in the affected employees' Forms W-2? Review 1 or 2 employees' W-2s that include these amounts.
3. Inquire if the government paid any independent contractor (other than a corporation) \$600 or more during this year? If so, review a few issued Forms 1099s.
 4. If the government assesses an income tax, scan a few Forms 1099G for municipal income tax refunds exceeding \$10 each.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

²¹ The IRS rules regarding whether fringe benefits are taxable can be complex, and subject to frequent revision, such as by interpretive private letter rulings. For example: Uniforms are usually nontaxable if they meet these two tests: (1) the employee must be required to wear the article of clothing while at work (2) the item cannot be adaptable to everyday wear. Many commonly-required work clothes are adaptable (heavy-duty jeans, etc.) and would therefore normally be taxable benefits. In private letter* ruling 201005014, the IRS determined employer-provided clothing is a nontaxable benefit for employees of a political subdivision of a state. However, the IRS cautioned us that the private letter ruling applied only to the narrow circumstances described therein and ought to not be construed to mean government-provided clothing is generally nontaxable. Therefore, governments should obtain IRS publications or advice from a qualified tax practitioner in determining whether benefits are taxable. It is impractical to include this guidance in the Ohio Compliance Supplement.

* Letter Rulings may not be cited as a precedent by any government other than the one which requested the ruling; however, your legal advisor might find it useful to review.

If the compliance attributes listed in 6-10 below were tested during payroll substantive testing, no additional tests needed.

6-10 Compliance Requirement:

- Ohio Rev. Code Sections 145.01, 145.02, 145.03, 145.47, and 145.48 - **Public Employees Retirement System (PERS)**, definitions, exclusions, exemptions and rates of contributions.
- Ohio Rev. Code Sections 742.01, 742.02, 742.31, to 742.34 - **Police and Fire Disability and Pension Fund**, definitions, rates of contributions and reporting requirements.
- Ohio Rev. Code Sections 3307.01, 3307.35, 3307.51, 3307.53, 3307.56, and 3307.691 - **State Teachers Retirement System (STRS)**, definitions, employment of retired members, contribution rates. (These sections also apply to community school employees.)
- Ohio Rev. Code Sections 3309.23, 3309.341, 3309.47, 3309.49 and 3309.51²² - Membership in **Public School Employees Retirement System (SERS)**, employment of retired members, contribution rate, payment of expense fund. (These sections also apply to community school employees.)

Summary of Requirement: These sections require governments to enroll most of their employees²³ in the appropriate retirement system, and to withhold from the employees’ wages, or pay on behalf of the employees, a certain percentage of earned wages as defined and to pay over to the appropriate system the amounts withheld, matched with an appropriate percentage of employer matching contributions.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Auditors should consider whether governments have historically remitted employee and employer contributions to the appropriate retirement systems timely and demonstrated effective internal controls over payroll. Additionally, adequate training of payroll personnel and supervisory monitoring controls can help mitigate the risk of noncompliance with retirement system compliance requirements.

Risk of material noncompliance is elevated when governments are in financial distress and may not pay the contributions when due. In these circumstances auditors should not rotate this test, and should determine whether the government is remitting withholdings when due.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
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²² The Secretary of SERS certifies to ODE amounts ODE is to withhold from community school foundation payments for pension costs.

²³ Independent contractors performing the same duties as school employees as defined in Ohio Rev. Code §3307.01, such as contract teachers teaching in a classroom, may also be subject to membership in the STRS retirement system.

<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Time summaries / timecards • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

1. When testing payroll transactions, determine if the government withheld pension amounts at the proper rate.²⁴
2. Scan payroll ledgers. List a few employees for which no pension is withheld. Ask the CFO to provide documentation or explanation as to why there is no withholdings for these employees.
3. Examine selected payments of the withholdings from the government to the pension system. (This is an important step. Governments in financial distress occasionally resort to not paying withholdings when due. While unusual, this circumstance, even if not quantitatively material **would usually be qualitative material noncompliance.**)

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

²⁴ Pursuant to IRC Section 3121(b)(7), AOS considers employees of community school management companies who perform teaching and administrative services to be members of STRS or SERS. Therefore, the mandatory employee and employer contributions must be paid into the appropriate State retirement systems. We have therefore previously cited management companies that *also* deducted and paid contributions to social security. AOS formally requested the IRS to confirm that it would defer to the Ohio Retirement Systems’ determination and consider the community school employees exempt from social security due to their participation in a qualified retirement plan. However, the IRS declined to confirm this exemption. Therefore, management companies may determine to risk potential IRS penalties and deem an employee to be an employee of the management company rather than the school. Contributions should continue to be remitted to the appropriate Ohio Retirement Systems if management company Boards determine the employees are members of an Ohio Retirement System. Failure to do so will still result in non-compliance citations. ***However, auditors should no longer issue noncompliance citations for additional contributions to the social security system.***

CHAPTER 7

CHECKLISTS FOR OTHER LAWS AND REGULATIONS

Due to public policy considerations, the Auditor of State requires auditors assess the risk of material noncompliance and test certain laws and regulations for compliance requirements in this chapter with elevated risks even though they probably do not, in *most* circumstances, have a quantitative “direct and material” effect on determining financial statement amounts.

Important:

1. You can **generally** rotate substantive compliance testing in this Chapter. For example, there are over 40 compliance requirements in this chapter. (Not all of them apply to all entity types.) You should divide the applicable requirements approximately in half, and test half of them with each audit.
 - a. This applies to annual and biannual audits.
 - i. For example, if you audited officials’ surety bonds for a village’s 2008 and 2009 audit and found them to be compliant, you normally can omit this test for the 2010 and 2011 audit.
 - ii. This also applies if AUP were performed in the prior year(s). Auditors should select about half of the applicable steps for testing for the audit. Because of the lesser significance of most Chapter 7 requirements, we require no risk assessment or other documentation supporting the steps selected for testing. (Except auditors should apply b. and c. below.)
 - b. You should **not** rotate / omit a specific compliance test if the prior audit identified noncompliance or if evidence supports an elevated risk of noncompliance for the current audit.
 - c. You should test new Compliance Supplement requirements in the first year of their applicability.
2. If (1) controls exist to help assure compliance with a specific requirement, and (2) you obtain satisfactory results from testing the controls’ operating effectiveness you may be able to limit or omit substantive testing of the requirement.
 - a. Some of the requirements in this chapter are more likely to be subject to formal controls than are others. For example, we would expect a large government with many employee cell phones (step 7-2) to establish formal controls to review and approve these payments (i.e. establish suitable authorization controls).
 - b. The AOS believes it is acceptable to rely on the results of prior audit’s tests of controls if auditors apply the proper “updating” procedures. That is, auditors may use the concepts from AU 318.40 -- .45.
 - c. This approach only requires tests of operating effectiveness once every third year, not every third audit.
 - i. However, the auditor must apply procedures in each intervening year to determine whether continued reliance is appropriate. For

example, per AU 318.41, it is inappropriate to rely on a control that has changed since the auditor's last test of its operating effectiveness.

3. Some steps in the chapter include additional guidance about the extent of testing applicable to that specific compliance requirement.
4. Auditors can normally use the extent of testing described in this chapter. However, if auditors identify specific risks related to specific compliance steps in this chapter, working papers should document these risk assessments, whether they be favorable (which may support less testing) or unfavorable (suggesting additional testing).

This *Ohio Compliance Supplement* chapter provides a simplified process for assessing the government's compliance with these requirements. Auditors can generally complete these tests using inquiry, observation and, occasionally, certain other limited substantive procedures, such as inspection of documents or limited vouching.

As stated above, auditors should divide the steps subject to cycling approximately in half, and budget a similar amount for cyclic tests each audit to avoid audit cost fluctuations every other audit unless the risk of noncompliance warrants testing of these requirements every audit.

The *Sample Questions and Procedures* this chapter presents are merely examples of procedures you might use. You should add to, modify, or omit these procedures as appropriate in the circumstances. If existing control tests or substantive compliance tests satisfy these objectives, the auditor should cross-reference this work to these sections.

~~2007 *Government Auditing Standards (GAGAS)* describes the auditor's compliance reporting obligations:~~

~~**5.15** Under AICPA standards and GAGAS, auditors have responsibilities for detecting fraud and illegal acts that have a material effect on the financial statements and determining whether those charged with governance are adequately informed about fraud and illegal acts. GAGAS include additional reporting standards. When auditors conclude, based on sufficient, appropriate evidence, that any of the following either has occurred or is likely to have occurred, they should include in their audit report [i.e. GAGAS report on compliance] the relevant information about:~~

- ~~a. fraud and illegal acts that have an effect on the financial statements that is more than inconsequential;~~
- ~~b. violations of provisions of contracts or grant agreements that have a material effect on the determination of financial statement amounts or other financial data significant to the audit, and~~

~~e. abuse that is material, either quantitatively or qualitatively. (See GAGAS paragraphs 4.12 and 4.13 for a discussion of abuse.)~~

~~**5.16** When auditors detect violations of provisions of contracts or grant agreements or abuse that had an effect on the financial statements that is less than material but more than inconsequential, they should communicate those findings in writing to officials of the audited entity. Determining whether and how to communicate to officials of the audited entity fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse that is inconsequential is a matter of professional judgment. Auditors should document such communications.~~

For example, suppose the compliance requirement is for payroll withholding, and the auditor has documented and tested payroll control procedures that already satisfy the compliance requirements. The documentation of such a process might look something like the following:

-- SAMPLE --

Compliance Requirements: Internal Revenue Code (IRC) Chapter 26 [26 USCA] - Collection of Income Tax at Source on Wages; 26 U.S.C. Sections 3401 through 3406, and related regulations; exceptions; notification of amount withheld; liability of employer; 26 U.S.C. Section 132; Portions of Internal Revenue Regulations (26 C.F.R.) Sections 1.61, 1.6041, and 1.6050E-1. Ohio Rev. Code §5747.06 - Collection of Ohio income tax at source. Various local ordinances require withholding on wages earned in the particular municipality. These should be consulted for the exact requirements.

Summary of Requirement: These sections of the various tax codes require the employing government to withhold federal, state, and local income and employment-related taxes (such as Medicare). They also require the government to report those tax matters to the appropriate tax authorities and to the recipients. Certain of these sections require consideration of whether employer provided “fringe” benefits, such as use of government automobiles for private purposes, constitute taxable income to be reported and withheld upon.

-- SAMPLE --

Sample Questions and Procedures

1. When testing payroll, determine if the government withholds state, federal and local income taxes.

We have tested controls¹ on the payroll system. Our working papers reflect answers to questions 1 and 2. Our tests of controls and the results are found at w/p 100.15 (payroll).

¹ Chapter 7 does not require testing controls. This example illustrates how auditors might sometimes use the results of other audit work to fulfill Chapter 7 requirements. In the example, the auditors tested controls to reduce audit risk related to payroll and nonpayroll expenditures, not solely to satisfy Chapter 7 requirements. However, they were able to use the control tests results to help satisfy this Chapter 7 requirement.

2. Do you provide any of your employees with potentially taxable fringe benefits, such as the use of a government owned vehicle, or an auto or uniform allowance? If so, how do you determine the amounts of the benefits to be reflected in the affected employees' Forms W-2? Please show me 1 or 2 employees' W-2s that reflect these amounts.

Based on our inquiry with the treasurer, the superintendent has an auto allowance; however, the treasurer was unaware that it is a taxable benefit.

3. Did your government pay any independent contractor (other than a corporation) \$600 or more during this year? If so, please show me a few such Forms 1099 issued.

We tested controls over expenditures and contracts, noting no payments required to be reported on forms 1099. See w/p 103.03 (expenditures).

4. If the government assesses an income tax, scan a few Forms 1099G for municipal income tax refunds exceeding \$10 each.

This is a school district; therefore, question #5 is N/A.

Government Personnel Interviewed and Dates:

We interviewed Molly McIntyre, treasurer, on July 17, 2010. We also performed tests of controls at various times. See the referenced working papers.

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Our tests of controls indicated that the controls were operating effectively. Nothing came to our attention to indicate these requirements were not being met.

In the management letter, we will report the failure to include the superintendent's auto allowance as a taxable fringe benefit on his form W-2. There is no material effect on the f/s, therefore no further action is necessary.

Chapter 7 – Checklists

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Part 1: Contracting and Purchasing (General)

7-1 Compliance Requirement: Ohio Rev. Code Sections 307.93(F), 341.25, 753.22, and 2301.57 - Establishment and accounting treatment for commissaries.

Summary of Requirements: Commissaries may be established by a sheriff of a county jail, the director of public safety or the joint board that administers a municipal or municipal-county workhouse, the director of a community-based or district community-based correctional facility, or the corrections commission of a multicounty, municipal-county, or multicounty-municipal correctional center. Once a commissary is established, all persons incarcerated must be given commissary privileges. In addition, the commissary fund rules and regulations for the operation of the commissary must be established by the person establishing the commissary for the correctional facility. The commissary fund must be managed in accordance with the procedures established by the Auditor of State's Office, which are contained in **Auditor of State Bulletin 97-011**². The revenue generated in the commissary fund in excess of operating costs is considered profit. The profits must be expended for the purchase of supplies and equipment, life skills training, education and/or treatment services for the benefit of persons incarcerated in the correctional facility.

Sample Questions and Procedures:

1. Please show me your commissary funds rules and regulations. Who established these rules and regulations?
2. Did you review AOSAB 97-011 to determine if your policies and procedures require updating?
3. Scan selected expenditures from this fund. Determine that expenditures were for the benefit of those incarcerated (see list of acceptable expenditures above). Note: We do not require high levels of assurance from this procedure. Therefore, the sample sizes we require to obtain high assurance do not apply. Scanning alone should normally be sufficient, unless we have reason to suspect there are significant control or compliance issues.

Government Personnel Interviewed and Dates:
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Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

² AOS Bulletin 97-011 permits correctional facilities to issue a check to an inmate for the balance of the inmate's commissary account. Contrary to AOS Bulletin 97-011, Ohio Rev. Code Section 341.25 also permits profits from the commissary fund to be used to pay salary and benefits for employees of the sheriff who work in or are employed for the purpose of providing service to the commissary. Therefore, auditors should consider these items to be allowable costs of the Commissary Fund. The Auditor of State will also permit correctional facilities to develop reasonable policies and procedures for the use of debit cards, in lieu of a check, when disbursing remaining balances, less amounts owed to the correctional facility, of inmate commissary funds.

**Revised: Section 2043 of
the Small Business Jobs
and Credit Act of 2010
(Public Law No. 111-240)
Effective: Tax Years
beginning after December
31, 2009**

7-2 All Local Governments Compliance Requirement: Misc. local legislative body policies; charter requirements – Establishment of policies, restrictions on use, prohibitions for cell phones, government credit cards and purchasing cards, and government-owned vehicles and equipment (e.g., computers, internet and phone usage, etc.).

► *Also, see Step 7-4 regarding Ohio Rev. Code requirements for county credit and purchasing cards.*

Summary of Requirements: Most governmental entities have the authority to provide cell phones, credit cards and purchasing cards for use by authorized employees and to provide government-owned vehicles and equipment (e.g., computers, internet and phone usage, etc.) for use by authorized users. For example, the Ohio Rev. Code authorized counties, townships, park districts and agricultural societies to use credit cards.³ The use of these items should be specified in a policy the government’s legislative body adopts. These policies should, at a minimum, identify authorized users, guidelines for allowable use/ purchases, method of reimbursement (if personal use is allowed), specific unallowable uses, reporting, monitoring of use by appropriate levels of management, and other guidelines the legislative body deems appropriate.⁴

Effective for tax years beginning after December 31, 2009, Section 2043 of the Small Business Jobs and Credit Act of 2010 (Public Law No. 111-240) removed employer-provided cell phones from the definition of “listed property” in the tax code. While cell phones are still subject to being a taxable benefit, the new legislation removes the special record-keeping requirements of listed property. However, employers still should have a policy prohibiting any more than a de minimus personal use of government-owned cell phones.

Note: Effective Jan. 8, 2004, Ohio Rev. Code §3375.392(A) permits a library’s trustees to authorize its employees to use credit cards. This statute does not mandate controls over these cards. Nevertheless, auditors should consider and test credit card controls considering the materiality of credit card purchases.

Sample Questions and Procedures:

Steps 1 – 5 should normally only apply when the entity adopts a new or modified policy. Otherwise, our review of systems documentation or the permanent file should fulfill the requirements of steps 1 --5. We can apply step 6 by scanning a limited number of transactions. We do not require a high level of assurance from these procedures. Scanning

³ If there is doubt about an entity’s authorization to use credit cards, the government should consult with its legal counsel.

⁴ Auditors and governments may wish to refer to the Auditor of State’s Best Practices for discussions about and examples of cell phone policies (Spring, 2004); and procurement card and vehicle policies (Winter, 2004). You can read Best Practices at www.ohioauditor.gov under *Publications*.

a small number of reimbursements for reasonableness and evidence of reviews and documented approvals should be sufficient. Step 7 normally requires inquiry.

1. Obtain copies of existing policies for cell phone, government credit cards and purchasing cards, and government-owned vehicles and equipment.
2. Who is responsible for monitoring the usage of these items?
3. If the policies were established by the legislative body, obtain a copy of the resolution or ordinance. Include a copy or abstract of the policy in the permanent file.
4. Review the established policies. Obtain and scan the list of authorized users.
5. Include copies of the applicable policies in the working papers (Permanent File).
6. Scan a few ~~cell phone and~~ credit card / purchasing card transactions to determine whether use was by an authorized user and within the guidelines established in the policy (include a few transactions from the chief executive officer, chief fiscal officer, and elected officials in this review). ~~In addition, include usage by the chief executive officer, chief financial officer, and elected officials in the review.~~
7. Inquire whether the entity's monitoring procedures identified any misuse. Determine whether the employee was notified of the improper use or was the matter otherwise appropriately corrected. (Note: The results from this inquiry may affect our assessment of the control environment.)

Any exceptions to the established policies should be communicated to management and to the legislative body. If a policy does not exist or there are weaknesses in the policy, make appropriate recommendations to management and to the legislative body.

Government Personnel Interviewed and Dates:
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Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-3 Compliance Requirement: Misc. local legislative body policies; charter requirements; Ohio Ethics Commission⁵ Advisory Opinion No. 91-010; Ohio Rev. Code Sections 102.03(D) and (E), 2921.42(A)(4), and 2921.43(A) – Establishment of policies, allowable expenses, unallowable expenses, limitations on amount of reimbursement for travel reimbursement by employees; use of “frequent flyer” mileage earned on official travel for personal use and credit card rewards.

Summary of Requirements: Governmental entities can adopt policies to allow employees and/or officials to be reimbursed for travel related to official business, training, etc. The government should have a policy governing travel reimbursements established by the government’s legislative body. These policies should, at a minimum, identify the types of travel authorized; guidelines for allowable and unallowable expenses; limitations on amount of reimbursement; types of supporting documentation required for reimbursement requests; reporting; monitoring of use by appropriate levels of management; and other guidelines the legislative body deems appropriate.⁶

Ohio Ethics Commission Advisory Opinion No. 91-010 prohibits a state official or employee (Ohio Rev. Code §102.03(D) and (E)) and a state officer or employee (Ohio Rev. Code Sections 2921.42(A)(4) and 2921.43(A)) from accepting, soliciting, or using the authority or influence of her position to secure, for personal travel, a discounted or free “frequent flyer” airline ticket or other benefit from an airline if she has obtained the ticket or other benefit from the purchase of airline tickets, for use in official travel, by the department, division, agency, institution, or other entity with which she serves, or by which she is employed or connected.

In an informal opinion dated February 24, 2003, the Ohio Ethics Commission concluded that a public official or employee may retain the benefits of a reward program in connection with business travel expenses charged on a **personal** credit card except: (1) when he directs his purchase to take advantage of a reward program and it results in a higher cost to the state and (2) where the employee seeks reimbursement greater than what he is billed by his credit card issuer due to a discount.

The Auditor of State will also not object to employees retaining rewards for other legitimate, reimbursable governmental expenses when an employee extends their personal credit (i.e. uses their personal credit card) to assist in a governmental function, subject to the two exceptions described above.

Sample Questions and Procedures:

Steps 1–3 should normally only apply when the entity adopts a new or modified policy. Otherwise, our review of systems documentation or the permanent file should fulfill the requirements of steps 1--3. We can apply step 4 by scanning a limited number of transactions. We do not require a high level of assurance from these procedures. Scanning a small number of reimbursements for reasonableness and evidence of reviews and documented approvals should be sufficient.

⁵ Ethics Commission Referrals

All potential “consequential” ethics law violations are to be submitted to the Auditor of State Legal Division. After review, the Auditor of State Legal Division will make appropriate referrals. The Audit Division should consult with the Legal Division in determining how or if to report this matter. IPA’s should consult with the Center for Audit Excellence.

⁶ Auditors and governments may wish to refer to the Auditor of State’s Best Practices for discussions about and examples of travel policies (Spring, 2004). You can read Best Practices at www.ohioauditor.gov under *Publications*.

1. Do you adhere to the Ethics Commission Advisory Opinion or do you have a formal policy governing the accumulation and use of “frequent flyer” miles earned on official travel by officials, officers or employees of your government? (For entities other than the state government and departments: in the absence of such a policy, we should recommend the government establish a policy that (1) prohibits the accumulation of “frequent flyer” miles by officials, officers or employees of the government earned on official travel which is paid for or reimbursed by the government; or (2) requires the officials, officers or employees of the government to use such miles earned for future official travel for that employee or another employee of the government, or to forfeit such miles. State government and departments should follow Ohio Ethics Commission Advisory Opinion No. 91-010.)
2. Obtain copies of existing policies for travel reimbursement. Who established these rules and regulations? Who is responsible for approving and monitoring reimbursement requests?
3. If the policies were established by the legislative body, obtain a copy of the resolution or ordinance. Review the established policies. Include copies of the applicable policies in the working papers (Permanent File).
4. Scan a few reimbursement requests, noting any unusual reimbursement requests. Consider focusing on key elected and appointed officials for this scanning. Determine the adequacy of supporting documentation and whether the travel is for a valid governmental purpose and was properly authorized.
5. Any exceptions to the established policies should be communicated to management and to the legislative body. If a policy does not exist or there are weaknesses in the policy, make appropriate recommendations to management and to the legislative body.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-4 Compliance Requirement: Ohio Rev. Code §301.27 (county credit cards) and §301.29 (county procurement cards or “p-cards.”) These statutes require counties to establish policies and controls governing the use of county credit cards and p-cards.⁷

Summary of Requirements: 301.27 (credit cards) requirements include the following:

Note: Ohio Rev. Code §113.40(A)(1) defines credit cards as *financial transaction devices*, which Ohio Rev. Code §301.27 defines to include credit cards, charge cards, debit cards, or prepaid or stored value cards the commissioners do *not* deem to be procurement cards.

1. County employees, including commissioners and appointing authorities (i.e. other elected officials), can charge *only the following* work-related expenses to credit cards:
 - Food
 - Transportation
 - Gas & oil (only for vehicles the county owns or leases)
 - Telephone
 - Lodging
 - Internet service providers
 - Expenses for children temporarily in the care of a public children services agency
2. Appointing authorities must receive the commissioners’ approval to have credit cards.
3. The county must charge credit card expenses to appropriations established for the costs described in (1.) above. That is, the county cannot appropriate money for “credit card expenses.”
4. Unless the commissioners resolve otherwise:
 - Every card holder must submit a monthly estimate of credit card charges by appropriation code. (Note: commissioners may authorize periods exceeding one month for submitting estimates.)
 - The commissioners may amend the estimates, and then must “pre-certify” them, by appropriation line item total, to the auditor, who then must certify that amounts are available and appropriated under 5705.41(D) to pay these costs.

The resolution can exempt all credit cards from requirement (4), or can exempt specified cards.
5. Regardless of whether the county estimates and “pre- certifies” expenses, credit card expenses cannot exceed appropriations.
6. Commissioners can approve payments exceeding authorized card policy limits after the fact.
7. If commissioners do not waive overexpenditure, the cardholder or office holder and surety are liable.
8. Institutions issuing cards can impose finance or late charges, but only if the commissioners authorize these charges.

301.29 p-card requirements include the following:

Note: Ohio Rev. Code §301.29 defines procurement cards as any *financial transaction device* as defined in Ohio Rev. Code §301.28 including credit cards,⁸ charge cards, debit cards, or prepaid or stored value cards the commissioners deem to be procurement cards. P-card requirements are

⁷ Auditors and governments may wish to refer to the Auditor of State’s Winter, 2004 Best Practices for discussions about and examples of procurement cards. You can read Best Practices at www.ohioauditor.gov under *Publications*.

⁸ Credit cards the commissioners deem to be “credit cards” follow the credit card provisions of Ohio Rev. Code §301.27. Credit cards the commissioners deem to be “p-cards” follow the procurement card provisions of Ohio Rev. Code §301.29.

similar to credit card requirements above, **except**:

1. The Commissioners must competitively bid with companies offering the card services.
2. Commissioners must approve, by resolution involving advice of the county auditor:
 - The expenditure classes (i.e. object codes) for which employees can use these cards. (P-cards are not limited to the expense types listed for credit cards in step 1 above.).
 - Limitations on the number of transactions chargeable each day, month or other period.
 - Procedures for revoking the card.
3. The county auditor shall **consult with the Auditor of State** in developing controls to implement p-cards. Note: The AOS reviewed and commented on a draft p-card policy the County Auditors Association of Ohio (CAAO) prepared. If counties adopt policies consistent with the CAAO policy, we can accept it without additional consultation. Note that our comments to CAAO included recommending that each county consult with its prosecutor to assure the policy includes any county-specific modifications to conform with applicable laws.

Sample Questions and Procedures:

The steps below apply to both credit and p-cards, unless otherwise stated.

Steps 1 – 6 should normally only apply when the entity adopts a new or modified policy. Otherwise, our review of systems documentation or the permanent file should fulfill the requirements of steps 1 --6. We can limit the extent of our procedures in steps 7 – 10 based upon the significance of Pcard and credit card expenditures in relation to the entity's total nonpayroll disbursements. If desired, you can include these payments in your non-payroll samples.

1. Obtain and review copies of existing policies for county credit cards and purchasing cards. Maintain in the permanent file.
2. If there is a new or modified p-card policy since the prior audit, compare it with the CCAO sample policy. (The policies need not be identical, but auditors should check for omissions of important elements the CCAO example includes.)
3. If there is a new or modified policy, determine if the prosecutor reviewed the policy and if the county included her or his advice in the policy.
4. If the county newly adopted p-card usage, read documentation supporting the county accepted the best bid from companies offering these services (Visa, etc.)
5. If the county established or amended the policies during the audit period, determine if the commissioners approved the changes via resolution where required as described in the requirements above.
6. Determine who is responsible for monitoring the usage of these items. Document how they review card users and charges.
7. Obtain and scan the list of authorized users. Determine how the county assures only authorized personnel use the cards.
8. Scan a selection of credit or p-card transactions and determine whether use was by an authorized user and within the guidelines established in the policy. Include usage by the

chief executive officer, chief financial officer, and elected officials in the review.

9. If we note unauthorized use, did the entity’s monitoring procedures identify the misuse? Was the employee notified of the improper use or was the matter otherwise appropriately corrected?

10. Any exceptions to the established policies should be communicated to management and to the commissioners. If a policy does not exist or there are weaknesses in the policy, make appropriate recommendations to management and to the commissioners. Based on your assessment of the severity of deficiencies, assess the effect on our control risk assessment and opinion.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Part 2: Accounting and Reporting

Section A: General

7-5 Compliance Requirement: Ohio Rev. Code §9.38 - Deposits of public money.

Summary of Requirement: Public money must be deposited with the treasurer of the public office *or* to a designated depository on the business day following the day of receipt. Public money collected for other public offices must be deposited by the first business day following the date of receipt.

For example, a government employee, other than the fiscal officer collecting funds and issuing a receipt, must deposit the funds with the government's fiscal officer on the business day following the day of receipt. As an alternative to depositing the funds with the government's fiscal officer, the employee instead may deposit funds with the government's designated depository on the business day following the day of receipt.

If the amount of daily receipts does not exceed \$1,000 **and** the receipts can be safeguarded, public offices may adopt a policy permitting their officials who receive this money to hold it past the next business day, but the deposit must be made no later than 3 business days after receiving it. If the public office is governed by a legislative authority (counties, municipalities, townships, and school districts), only the legislative authority may adopt the policy. The policy must include provisions and procedures to safeguard the money during the intervening period. If the amount exceeds \$1,000 or a lesser amount cannot be safeguarded, the public official must then deposit the money on the first business day following the date of receipt.

Note: This section does not require the **fiscal officer** to deposit receipts with the designated depository on the business day following the day of receipt, or any other specified time. However, if the fiscal officer is holding significant amounts of cash and checks for an unreasonable period, you should make an internal control recommendation.

Auditors should be aware of this requirement, especially when testing governments with multiple cash collection points. Auditors should consider whether controls over cash collection points are adequate, including whether cash is timely deposited.

Also: Prisoners placing personal phone calls from the phones located in the county and city jails must place collect phone calls. To enable prisoners to place collect calls the County Sheriff and/or the City Police Chief may enter into agreements/contracts with long distance carriers. Often times to attract business, long distance carriers offer incentives such as refunds and/or rebates based on usage. Jail officials and employees must deposit rebates and refunds in accordance with 9.38.

Sample Questions and Procedures:

Note: To enhance efficiencies, we should integrate the tests below with the financial audit tests. We should only cite noncompliance if we determine significant amounts of cash are not deposited within the required time frames.

1. Systems documentation should include collection points receiving significant amounts of cash.

2. When testing cash collections, document the date collected vs. the date deposited to the CFO or the date the “collector” deposited to a designated depository.
3. Read any new contract/agreement between the county sheriff/police chief and his/her long distance carrier. If incentives are granted, review the accounting treatment of the incentives. Determine if phone contract monetary refunds and or rebates were paid into the treasury in accordance with Ohio Rev. Code §9.38. (We can limit step 3 to every other audit, unless we have reason to believe there may be issues with this.)

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-6 Compliance Requirement: Ohio Rev. Code §121.22 - Meeting of public bodies to be open, exceptions, and notice.

Summary of Requirement: All meetings of any public body (including community schools) are to be open to the public at all times. A member of a public body must be present in person at a meeting open to the public to be considered present or to vote and for determining whether a quorum is present. The minutes of a regular or special meeting of any such public body shall be promptly recorded and open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions. [Ohio Rev. Code §121.22(C)]

Every public body shall, by rule, establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four hours advance notice to the news media that have requested notification, except in the event of any emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested immediate notification. [Ohio Rev. Code §121.22(F)]

The members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold such a session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters [Ohio Rev. Code §121.22(G)]:

- (1) The appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or officials, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official licensee, or regulated individual requests a public hearing;
- (2) The purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal private interest is adverse to the general public interest.
- (3) Conducting conferences with an attorney for the public body, concerning disputes involving the public body that are the subject of pending or imminent court action.
- (4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment.
- (5) Matters required to be kept confidential by federal laws or rules or state statutes.
- (6) Specialized details of security arrangements and emergency response protocols where disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office.

A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized above. [Ohio Rev. Code §121.22(H)]

Note: Per OAG 2007-019

1. Neither the Ohio Rev. Code nor generally accepted rules of parliamentary procedure require a board of township trustees to vote to approve the minutes of its regular meetings. Except: A board of township trustees may be required by a formal motion of a trustee or the board's rules for meeting procedure to vote to approve the minutes of a regular meeting. When a board of

township trustees is required to vote to approve the minutes of a regular meeting, the vote must follow the board's rules for meeting procedure.

2. A board of township trustees is not required by statute to prepare and distribute to the public or media a written agenda for a regular meeting.

Sample Questions and Procedures:

1. How does your entity notify the general public and news media of when and where meetings are to be held?
2. Determine whether the minutes of public meetings are promptly recorded and available for public inspection.
3. Review the minutes and determine if executive sessions are only held at regular or special meetings.
4. Document that executive sessions are only held for the purposes outlined above.
5. Determine whether all formal governing board actions are adopted only in open meetings.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Revised: HB 153, 129th GA
Effective: 9/29/11

7-7 Compliance Requirement: Ohio Rev. Code §149.43 - Availability of public records⁹ [Each type of governmental entity has its own records commission as established in Ohio Rev. Code §149.38 - counties, §149.39 - municipalities, §149.41 – school districts and educational service centers¹⁰, §149.411 - libraries, §149.412 – special taxing districts, & §149.42 – townships.]

Summary of Requirement: Ohio Rev. Code §149.011(G) defines a “record” for the public records law, as any document, device, or item, regardless of physical form or characteristic, created, received by, or coming under the jurisdiction of any public office which document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office.

Ohio Rev. Code §149.43(A)(1) defines “public record” as any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units (including community schools), except medical records, records pertaining to adoption, probation, and parole proceedings, trial preparation records, usage information (including names and addresses of specific residential and commercial customers of a municipally owned or operated utility), confidential law enforcement investigatory records, records pertaining to abortions by minors (Ohio Rev. Code §2151.85), “security”¹¹ or “infrastructure”¹² records defined under Ohio Rev. Code §149.433 adoption records (Ohio Rev. Code §3107.42(A)), and records the release of which is prohibited by state or federal law.

All public records shall be promptly prepared and made available to any member of the general public at all reasonable times during regular business hours for inspection. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, public offices shall maintain¹³ public records in such a manner that they can be made available for inspection. [Ohio

⁹ Ohio Rev. Code Section 3314.03(A)(11)(d) requires that each contract entered into between a sponsor and the governing authority of a community school shall specify that the school will comply with ORC Section 149.43. Therefore, AOS interprets the requirements of ORC Section 149.43 described in this OCS step to be applicable to community schools.

¹⁰ This statute applies to each city, local, joint vocational, and exempted village school district as well as each educational service center. However, this statute does not apply to community schools. Community schools do not have a statutory records commission.

¹¹ “Security” record is defined as any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference or sabotage; or any records assembled, prepared or maintained by a public office or public body to prevent, mitigate or respond to “acts of terrorism.” [Ohio Rev. Code §149.433]

¹² “Infrastructure” record is defined as any record that discloses the configuration of a public office’s critical systems (e.g., communication, computer, electrical, mechanical, ventilation, water, plumbing, etc.) of the building in which the public office is located. Simple floor plans are not included in this definition. [Ohio Rev. Code §149.433]

¹³ Maintaining official records includes recording or copying to reduce storage space by any means which correctly and accurately reproduces, or provides a medium of copying, or reproducing, the original record

Rev. Code §9.01]

Public Records Policies and Posters

Pursuant to Ohio Rev. Code §149.43(E), the Ohio Attorney General shall develop and provide to all public offices a model public records policy for responding to public records requests in compliance with Ohio Rev. Code §149.43 in order to provide guidance to public offices in developing their own public record policies for responding to public records requests in compliance with that section. This model policy is available at:

<http://www.ohioattorneygeneral.gov/files/Publications/Publications-for-Legal/Sunshine-Laws/Model-Public-Records-Policy.aspx>

Pursuant to Ohio Rev. Code 149.43(B)(2), the entity shall have available a copy of its current records retention schedule at a location readily available to the public. The auditor of state, in the course of an annual or biennial audit of a public office pursuant to Ohio Rev. Code Chapter 117 shall audit the public office for compliance with this section and divisions (B) and (E) of Ohio Rev. Code §149.43. [Ohio Rev. Code §109.43(G)] The Auditor of State must ensure compliance with public records policy provisions.

Every public office must have a policy in place for compliance with Public Records Laws. There are three specific items that public offices cannot have in their public records policies. They policy cannot: (1) limit the number of public records it will make available to a single person; (2) limit the number of public records it will make available during a fixed period of time; or (3) establish a fixed period of time before it will respond to a request for inspection/copying of public records unless that period is less than eight hours. However, pursuant to Ohio Rev. Code 149(B)(7), the policy may limit the number of responses delivered by U.S. Mail to ten per month unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. For purposes of this division, “commercial” shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research. All public offices are required to distribute their Public Records Policy to the employee who is the records custodian/manager of otherwise has custody of the records of that office. Per Bulletin 2007-014, AOS will require written evidence that the records custodian/manager acknowledged receipt of a copy of the policy.

By September 29, 2007, all public offices were required to create a poster describing its public records policy. In addition, the public office is required to post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. Finally, if the public office has an employee policies and procedures manual or handbook, it is required that the public records policy be included in such manual or handbook. [Ohio Rev. Code §149.43(E)(2)] The AOS will require that: (1) the public office created a poster to describe its Public Records Policy; (2) the poster containing the policy has been posted in required locations; and (3) the policy has been included in the employee manual/handbook.

Destruction of Public Records

Any application or schedule for the destruction of records must be sent to the Ohio Historical Society for review to determine whether any of the records are of historical value [Ohio Rev. Code §149.39] Once reviewed by the Ohio Historical Society, the applications are then

[Ohio Rev. Code §9.01]. Therefore, scanned documents are considered properly maintained as long as they can be accurately reproduced.

forwarded to the Ohio Auditor of State's Office, General Services Department for final approval. [The following governments have separate records commission requirements: Ohio Rev. Code §149.38 - counties, §149.39 - municipalities, §149.41 – school districts and educational service centers¹⁴, §149.411 - libraries, §149.412 – special taxing districts, & §149.42 – townships.]

Public Records Training

All state and local elected officials¹⁵, or their designees¹⁶, must attend at least 3 hours of training on Ohio's Public Records Laws during each term of office. [Ohio Rev. Code §109.43(B) & §149.43(E)(1)] The training received must be certified by the Ohio Attorney General. Proof that training has been completed must include documentation that either the Attorney General's Office or another entity certified by the Attorney General provided the training to the elected official, or his/her designee. Attendees who successfully complete the training will receive a certificate to serve as proof of training.

Refer to AOS Bulletin 2007-014 and 2011-006 for additional information pertaining to Ohio Public Records Law.

Sample Questions and Procedures:

Unless the prior audit detected noncompliance:

- You can limit steps 1-7 to years in which the auditee adopted or changed its policy.
- You can limit steps 8 and 9 to every other audit. The working papers should document whether we tested this in the prior audit.

Ascertain if responsible personnel are aware of the above requirements and have implemented local policies and procedures regarding:

1. What records are made available.
2. Times when records may be reviewed.
3. Costs for copies to be made.
4. Obtain the entity's Public Records Policy and scan it to be sure that the policy does not limit the number of responses that will be made to a particular person, or limit the number of responses during a specified period of time, or establish a fixed period of time before it will respond unless that period is less than eight hours.
5. Ascertain whether the entity's policy was included in policy manuals, and displayed conspicuously in all branches of the public office. As part of this process, determine whether written evidence exists that the Public Records Policy was provided to the records custodian/manager.

¹⁴ This statute applies to each city, local, joint vocational, and exempted village school district as well as each educational service center. However, this statute does not apply to community schools. Community schools do not have a statutory records commission.

¹⁵ Includes officials elected to local or statewide office, but does not include: justices of the Supreme Court, court of appeals, common pleas, municipal court, county court, or a clerk of any of those courts.

¹⁶ Designees must be employees in the public office and there must be evidence of the designation. If there is more than one elected official in the public office, the designee should be the designee for all of the elected officials within the office.

6. Ascertain whether the entity’s policy for records retention (note: this is not the same policy as the public records policy) includes provisions for the application or schedule for destruction of public records, including transmission to the Ohio Historical Society and approval by the Auditor of State’s Office.
7. Ascertain whether the entity has a records retention policy readily available to the public.
8. Determine whether each elected official, or his/her designee, has successfully attended a certified three-hour Public Records Training for each term of office. Obtain copies of their certificates of completion and place them in the permanent file for future reference. For county auditors, confirmation can be obtained by reviewing the County Auditor Continuing Education Status Report available under IPA resources located at: <http://www.ohioauditor.gov/resources/ipa>.
9. If a designee attended the course, determine whether the designee was an employee of the public office and obtained evidence of the designation.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section B: Courts

7-8 Compliance Requirement: Ohio Rev. Code §2335.25 - Cashbook of costs; clerk shall receive money payable at office; deposits.

Summary of Requirement: Each clerk of courts must maintain a journal or cashbook.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements.

Sample Questions and Procedures (Questions should be posed to court personnel.):

1. Are the aforementioned records maintained? (Note: We will normally know this from performing financially-related audit procedures.)
2. Are there any cash collections made by the court that are not entered into the journal or cashbook?
3. Describe procedures used to assure that the cashbook is complete and accurate (e.g., supervisory reviews, bank reconciliations). Note: We include this step here for emphasis, though it should be part of the financial audit tests and does not require additional testing for Ohio Rev. Code purposes.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-9 Compliance Requirement: Ohio Rev. Code §2303.12 - Books to be kept by clerk of the court of common pleas.

Summary of Requirements: The clerk of the court of common pleas shall keep at least the following books: They shall be called the appearance docket, trial docket and printed duplicates of the trial docket for the use of the court and the officers thereof, journal, and execution docket.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.

Sample Questions and Procedures:

1. Are the aforementioned records maintained? (Note: We will normally know this from performing financially-related audit procedures.)
2. Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews). Note: We include this step here for emphasis, though it should be part of the financial audit tests and does not require additional testing for Ohio Rev. Code purposes.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-10 Compliance Requirement: Ohio Rev. Code §2101.12 - Records to be kept by the probate court.

Summary of Requirement: Probate courts must maintain:

- (A) Administration docket
- (B) Guardian docket
- (C) Civil docket
- (D) Minutes journal
- (E) Record of wills¹⁷
- (F) Execution dockets

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.

Sample Questions and Procedures:

1. Are the aforementioned records maintained? (Note: We will normally know most of this from performing financially-related audit procedures.)
2. Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews). Note: We include this step here for emphasis, though it should be part of the financial audit tests and does not require additional testing for Ohio Rev. Code purposes.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

¹⁷ The record of wills may serve as a source of obtaining missing trust documents to support trust fund obligations for some of our governments.

Revised: SB 124, 129th GA
Effective: 1/13/12

7-11 Compliance Requirement: Ohio Rev. Code §2335.34 - Lists of unclaimed costs. Ohio Rev. Code §2335.34-35 - Disposition of unclaimed fees and costs.

Summary of Requirements: On the first Monday of January, the clerk of each

- common pleas court clerk (or clerks from divisions of a common pleas court, such as a juvenile court clerk, domestic relations court clerk, etc.)
- court of appeals clerk
- probate judge clerk
- sheriff

shall make two certified lists of unclaimed fees and costs outstanding for one year, and post the list in her/his office and the courthouse for 30 days. Effective 1/13/2012, SB 124 requires one list to be posted in his/her office and the other list shall be posted at a public area of the courthouse or published on the web site of the court or officer, on the second Monday of January. Both lists must be posted for a period of 30 days. [Ohio Rev. Code §2335.34]

After the aforementioned 30 day period, the clerk or sheriff must pay the money to the county treasury. Each such officer shall indicate in her/his cashbook and docket the disposition of each unclaimed item. [Ohio Rev. Code §2335.35]

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.

Sample Questions and Procedures:

1. Describe procedures used to assure the list is maintained completely and accurately (these objectives will usually be addressed by the procedures used to maintain other required court records).
2. Please show me how you reconcile the unclaimed amounts to balances held in the bank.
3. Please show me your most recent listing of unclaimed funds.
4. How much was paid to the county for unclaimed funds during the year under audit?

Government Personnel Interviewed and Dates:

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Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-12 Compliance Requirements: Ohio Rev. Code §2151.18 - Records; annual report; distribution (**juvenile court**).

Summary of Requirement: Juvenile courts must maintain an appearance docket and a journal related to actions on cases before the court. (Note: This journal is not an accounting record.)

An annual report must be prepared, showing the number and types of cases heard and their disposition. Copies of this report must be filed with the county commissioners. (Note: Since this report is not a financial report, we do not require testing information in it.)

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.

Sample Questions and Procedures:

1. Are the aforementioned records maintained?
2. Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews). Note: We include this step here for emphasis, though it should be part of the financial audit tests and does not require additional testing for Ohio Rev. Code purposes.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-13 Compliance Requirement: Ohio Rev. Code §1907.20 - Records required of county courts.

Summary of Requirement: County courts must maintain a general index and a docket.

On the first Monday of each January, the clerk must list all cases more than one year past for which money has been collected but unclaimed. The clerk must transmit notice of unclaimed funds to the party or to the party's attorney. Money still unclaimed each April 1 must be paid to the county treasury. (Note: the funds remain the property of the potential claimant per Ohio Rev. Code §1907.20(D))

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.

Sample Questions and Procedures:

1. Are the aforementioned records maintained? (Note: We will normally know this from performing financially-related audit procedures.)
2. Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews). Note: We include this step here for emphasis, though it should be part of the financial audit tests and does not require additional testing for Ohio Rev. Code purposes.
3. Please show me an example of the correspondence you send regarding unclaimed funds to the party or to their attorney.
4. How do you identify amounts unclaimed for more than one year?
5. Show me your reconciliation of cash balances to the detailed listing of unclaimed funds.
6. How much was paid to the county for unclaimed funds during April of the year under audit?

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-14 Compliance Requirement: 1901.31---.Ohio Rev. Code- Municipal court records.

Summary of Requirement: Municipal court clerks must maintain a general index and a docket and a listing of all cash receipts and disbursements. [Ohio Rev. Code §1901.31(E)].

On the first Monday of each January, the clerk must list all cases more than one year past for which money has been collected but unclaimed. The clerk must transmit notice of unclaimed funds to the party or to the party's attorney. Money still unclaimed each April 1 must be paid to the municipal treasury (or county treasury, if it is a county-operated municipal court). [Ohio Rev. Code §1901.31(G)]

(Note: the funds remain the property of the potential claimant. That is, the government is holding this cash similar to an agent on behalf of the claimant.)

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.

Sample Questions and Procedures:

1. Are the aforementioned records maintained? (Note: We will normally know this from performing financially-related audit procedures.)
2. Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews). Note: We include this step here for emphasis, though it should be part of the financial audit tests and does not require additional testing for Ohio Rev. Code purposes.
3. Please show me an example of the correspondence you send regarding unclaimed funds to the party or to their attorney.
4. How do you identify amounts unclaimed for more than one year?
5. Show me your reconciliation of cash balances to the detailed listing of unclaimed funds.
6. How much was paid to the county for unclaimed funds in April following the year under audit?

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-15 Compliance Requirement: Ohio Rev. Code §1905.21 - Docket; disposition of receipts. Ohio Rev. Code §733.40 - Disposition of fines and other moneys for mayor’s court.

Summary of Requirements: The mayor of a municipal corporation and a mayor's court magistrate shall keep a docket. The mayor or mayor’s court magistrate shall account for and dispose of all such fines, forfeitures, fees, and costs collected. [Ohio Rev. Code §1905.21]

All moneys collected shall be paid by the mayor into the municipality on the first Monday of each month. At the first regular meeting of the legislative authority each month, the mayor shall submit a full statement of all money received, from whom and for what purposes received, and when paid into the treasury. [Ohio Rev. Code §733.40]

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.

Sample Questions and Procedures:
The financial audit procedures would normally include these steps. It is sufficient to cross reference results from financial audit procedures satisfying these requirements to this step without the need for any other procedures.

1. Do you maintain a docket?
2. How do you assure that the docket is maintained completely and accurately?
3. Do you submit the required statement each month? Please show me ____ (pick a few monthly statements and have personnel walk you through them).
4. Describe procedures used to assure that the statement is complete and accurate.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

New: HB 5, 129th GA
Effective: 9/23/11

7-16 Compliance Requirements: The following is a list of courts and of the related statutory provisions (all references are to the Ohio Rev. Code) for the collection, custody, and disbursement of fees, fines, costs, and deposits.

Effective 9/23/2011, HB 5, consolidates references to the numerous costs and fees, other than fees of receivers and attorney fees, that apply in Ohio's courts of record into eight new Revised Code sections. The act does not amend the sections that establish these costs and fees or abolish or create any costs or fees. Rather, the HB organizes existing costs and fees according to the courts in which they apply, and it refers to the Revised Code sections that create them. In essence, the act provides a reference guide to fees and costs in Ohio's courts.

<u>2746.01</u>	<u>All courts of record (primarily in civil cases)</u>
<u>2746.02</u>	<u>All courts of record (in criminal and juvenile cases and some civil actions related to criminal cases)</u>
<u>2746.03</u>	<u>Supreme Court, courts of appeals, Court of Claims (in addition to the charges applicable in all courts of record)</u>
<u>2746.04</u>	<u>Courts of common pleas (in certain civil cases, in addition to the charges applicable in all courts of record)</u>
<u>2746.05</u>	<u>Juvenile courts (in addition to the charges applicable in all courts of record and the courts of common pleas)</u>
<u>2746.06</u>	<u>Probate courts (in addition to the charges applicable in all courts of record and the courts of common pleas, subject to any waiver of fees for combat zone casualties under R.C. 2101.164 and any reduction of fees that R.C. 2101.20 allows the judge to make)</u>
<u>2746.07</u>	<u>Municipal courts (in addition to the charges applicable in all courts of record and the courts of common pleas)</u>
<u>2746.08</u>	<u>County courts (in addition to the charges applicable in all courts of record and the courts of common pleas)</u>

Municipal Court

1901.14	Powers of judge; fees; rules; annual reports
1901.26	Costs for operation of the court and special projects ¹⁸
1901.261	Additional fees for computerization of court or office of clerk of court*
1901.262	Fee for dispute resolution
1901.31	Clerk of Court, powers and duties
2951.021	Supervision fees (Probation)
2949.094(A)	15% Add-on fee for indigent alcohol treatment fund
4511.193	Fee for indigent alcohol treatment fund

Mayor's Court

733.40	Disposition of fines and other moneys
1907.261	Fees for computerization of clerk of court office * (applies per 1905.02)

¹⁸ ~~HB 226~~ [R.C. 1901.26(A)(1)(b)(i)] authorizes municipalities to establish fees for services related to a municipal court performed by officers or other employees of the municipal corporation's police department or marshal's office of any of the services specified in R.C. 311.17 and 509.15. The act provides that no fee in the schedule may be higher than the fee specified in R.C. 311.17 for the performance of the same service by the sheriff. If a fee set by municipal ordinance conflicts with a fee for the same service established in a statute or rule of court, the fee established in the statute or rule applies.

2949.094(A)	15% Add-on fee for indigent alcohol treatment fund ¹⁹
4511.193	Fee for indigent alcohol treatment fund

County Court

1907.20	Clerk of county court, powers and duties
1907.24	Schedule of fees and costs and disposition
1907.26	Disposition of fees and costs
1907.261	Additional fees for computerization of court or office of clerk of court*
1907.262	Fee for dispute resolution
2949.094(A)	15% Add-on fee for indigent alcohol treatment fund
4511.193	Fee for indigent alcohol treatment fund

Probate Court

325.28	Receipt for fees
2101.12	Records to be kept; indexes
2101.15	Probate judge to file itemized account of fees to county auditor
2101.16	Fees and costs generally
2101.162	Additional fees for computerization of court or office of clerk of court*
2101.163	Fee for dispute resolution
2101.17	Fees from county treasury
2101.20	Reduction of fees (if collected fees exceed court salary costs)
2333.26	Fees of probate court
3113.34	Additional fee for marriage license; fee for domestic violence shelter
3705.21	Registration of marriages, divorces, dissolutions, annulments
5310.05	Assurance fund rate
5310.06	Monthly payments of money to treasurer of state, investment of funds
5310.15	Miscellaneous Fees

Juvenile Court

325.28	Receipt for fees
2151.54	Fees and costs generally
2151.541	Additional fees for computerization of court or office of clerk of court*
2949.094(B)	15% Add-on fee for indigent alcohol treatment fund
4511.193	Fee for indigent alcohol treatment fund

Court of Common Pleas

325.28	Receipt for fees
2301.031	Fee for computerization of domestic relations division
2303.20	Fees and costs generally
2303.201	Fees for computerization of clerk of court office and disposition*
2303.22	Costs and fees taxed upon writs
2335.35	Disposition of unclaimed fees and costs
2335.37	Payment of certain costs to county treasury
2335.241	Interest on certificates of judgment; computerization of court/ clerk's office (Note: Ohio Rev. Code §2335.241 is not subject to the computerization fee restrictions of Bulletin 2005-003 discussed on the

¹⁹ Per ORC 733.40, distribution of the 15% referenced in 2949.094(A) depends on whether, it was a moving violation based on a statute or an ordinance. If the fine was collected based on violation of a statute then the money goes into the County Treasury; if the fine was collected based on a violation of a municipal ordinance, then the 15% goes into the municipal treasury.

	following page.)
3109.14	Fees for birth and death records and disposition of divorce or dissolution filings; Children's trust fund
2951.021	Supervision Fees (Probation)
4505.14	Fees for lists of title information
4519.59	Fees for certificate of title
4519.63	Preparation and furnishing title information; Fees
4519.69	Fee for processing physical inspection certificate
5310.05	Assurance fund rate
5310.06	Monthly payments of money to treasurer of state, investment of funds
5310.15	Miscellaneous Fees

Court of Appeals

2501.16	Clerk of Court, powers and duties; fees for special projects
2303.20	Fees & Costs Generally (applies via 2501.16 & 2303.03)

All Courts

2335.30	Posting table of fees
2743.70	Fine to fund reparations payments (collection and remittance to state)
2937.22	Surcharge for Bail for offenses other than traffic offenses or moving violations
2949.091	Execution of sentence (collection and remittance to state)
2949.094	Additional court cost for alcohol treatment and drug law enforcement funds (<i>fee per offender, not moving violation</i>)
4511.19(G)(5)(a)	Fine for enforcement and education fund
4513.263	Occupant restraining devices
5503.04	Disposition of fines and moneys arising from bail forfeitures

The clerks of various courts receive cash in payment of various court fees, costs, and fines, as well as contingent deposits pending the outcome of legal proceedings. Such monies normally may be deposited in banks or savings and loan associations pending distribution in accordance with statutory specifications or as directed by the court.

All moneys collected during a month and owed to the state shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of the state [Ohio Rev. Code Sections 1907.24(C), 2303.201(C), 2743.70 (A), 2949.091(A) (all courts) & (B), and 3109.14].

* Per Auditor of State Bulletin 2005-003, it is the AOS's opinion that a government cannot use these fees to compensate court employees who use a computer in their ordinary duties. Rather, the AOS believes the Ohio Legislature intended that such fees are to be used to procure and maintain computer systems or to computerize courts. This would include procuring services for installing, updating, and maintaining court computer systems (e.g., computer programmers or computer engineers). These services may be provided by employees or staff of the court and, in these circumstances, fees could be expended for employee or staff expenses as properly documented to demonstrate the percentage of time spent on such activities. However, employees and staff should not be compensated from computerization fees when using the court's computer systems as end-users.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.

Sample Questions and Procedures:

Note: The Ohio Rev. Code sections listed in this step are provided primarily for your reference. When testing the collection and distributions of fines, auditors must refer to the applicable statutes governing the amounts to collect and amounts and methods of distribution, regardless of whether listed here. These tests should be part of the financial audit of the court.

1. Inquire and examine how the court updates its fines and fees schedule for new fines/fees and changes to existing legislation. Ask the court to demonstrate how it updated its fines/fees schedule for the most recent statutory change and ensures the fines/fees collected are properly distributed to the appropriate fund. (e.g., RC 2937.22 now imposes a \$25 surcharge when posting bail for violations, except non-moving traffic offenses) *(Typically, we only require a low degree of assurance over compliance with this requirement. However, where courts are a material audit cycle, auditors should evaluate general IT controls (AOS staff should complete the RCEC) for automated court systems. When fine schedules are stored as standing data in an automated system subject to adequate general IT controls, examining one fine or fee that changed (the bail surcharge for example), normally provides sufficient evidence that the proper fine was charged. We also do not require staff to test all fine amounts set by statute. Instead, the objective should be to determine if the court is conscientious in updating its fine schedule timely and accurately.)*
2. Inquire as to how the court spends computerization fees. Determine whether the accounting system can segregate computerization fees received and spent; or how the court otherwise determines that these fees were only spent on permissible computerization activities per AOS Bulletin 2005-003.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-17 Compliance Requirement: Ohio Rev. Code Sections 2743.70 and 2949.091 - Additional costs in criminal cases in all courts to fund reparations payments; additional court costs for state general revenue fund.

Summary of Requirements: These sections generally require the court in which any person is convicted of or pleads guilty to any offense other than a traffic offense which is not a moving violation to impose and collect additional fines to be used for the state's reparations fund. The court may not waive the payment of this additional cost unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.

Sample Questions and Procedures:

Note: The Ohio Rev. Code sections listed in this step are provided primarily for your reference. When testing the collection and distributions of fines, auditors must refer to the applicable statutes governing the amounts to collect and amounts and methods of distribution, regardless of whether listed here. These tests should be part of the *financial* audit of the court.

Inquire and examine how the court updates its fines and fees schedule and ensures the fines/fees collected are properly distributed to the appropriate funds. Ask the court to show you a few state fund reparations costs and determine they were distributed reasonably. *(Typically, we only require a low degree of assurance over compliance with this requirement. However, where courts are a material audit cycle, auditors should evaluate general IT controls (AOS staff should complete the RCEC) for automated court systems.)*

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-18 Compliance Requirement: Ohio Rev. Code §307.515 ~~3375.53~~ - Fines and penalties for violation of liquor control laws and state traffic laws paid to the **county law library resources fund** (various courts). ~~Effective January 1, 2010, Ohio Rev. Code §3375.53 is repealed and reenacted as §307.515(D).~~

Ohio Rev. Code §~~3375.52~~ 307.515(C) - Court of **common pleas** and **probate court** to pay fines and penalties to the county law library resources fund. ~~Effective January 1, 2010, Ohio Rev. Code §3375.52 is repealed and reenacted as §307.515(C).~~

Ohio Rev. Code §307.515(A)~~3375.50~~ - Allowance to the county law library resources fund from fines and penalties of **municipal courts**. ~~Effective January 1, 2010, Ohio Rev. Code §3375.50 is renumbered as §307.515(A).~~

Summary of Requirement: These sections provide for distributing certain fines and penalties to the ~~board of trustees of the county law library association~~ resources fund.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.

Sample Questions and Procedures:

Note: The Ohio Rev. Code sections listed in this step are provided for your reference. When testing the collection and distributions of fines, auditors must refer to the applicable statutes governing the amounts to collect and amounts and methods of distribution, regardless of whether listed here. These tests should also be part of the *financial* audit of courts.

Inquire and examine how the court identifies fines and penalties collected under the statutes above and ensures they are properly distributed to the ~~law libraries~~ county law library resources fund. ~~(Effective January 1, 2010, distributions should be to the county law library resources fund).~~ Ask the court to show you a few fines and penalties for violation of liquor control laws and state traffic laws. Determine these collections were properly distributed to the county law library resources fund. *(Typically, we only require a low degree of assurance over compliance with this requirement. However, where courts are a material audit cycle and where courts are relying on general IT controls to identify and accumulate fines and penalties subject to distribution to the law ~~libraries~~ library resources fund, auditors should evaluate general IT controls (AOS staff should complete the RCEC) for automated court systems.)*

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-19 Compliance Requirement: Ohio Rev. Code Sections 2113.64 and 2113.65 - Unclaimed estate money (probate court).

Summary of Requirement: These sections provide procedures regarding unclaimed estate money. The probate court may direct the county treasury or may order the will’s executor or administrator to invest the money for a period not to exceed two years. If the amount remains unclaimed after the designated period, it is paid into the county general fund.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.

Sample Questions and Procedures:

1. How do you identify amounts unclaimed?
2. Show me your reconciliation of cash balances to the detailed listing of unclaimed funds.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section C: Libraries

~~7-20 Compliance Requirement: Ohio Rev. Code §3375.36 — monthly statement; financial statement; depository.~~

~~**Summary of Requirement:** The fiscal officer must report monthly to the board. The reports are to reflect:~~

- ~~➤ revenues and receipts~~
- ~~➤ the disbursements and their purposes, and~~
- ~~➤ the assets and liabilities of the board [however, we do not interpret this section to require GAAP accounting].~~

~~At the end of fiscal year, the fiscal officer is to submit to the board a complete financial statement showing the receipts and expenditures in detail for the entire fiscal year.~~

~~All moneys received by the fiscal officer for library purposes are to be immediately placed in the designated depository.~~

POSSIBLE NONCOMPLIANCE RISK FACTORS:

~~**Note:** Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in libraries is inherently higher. In assessing the risk of noncompliance, auditors should consider whether libraries have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of library personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with library requirements. Therefore, it may not be appropriate to rotate this step unless our noncompliance risk factors adequately support a reduction in compliance testing.~~

Sample Questions and Procedures:

- ~~1. Please show me a copy of one of your monthly reports to the board. Show me how you assure it agrees to the accounting system. (For example, if the accounting system prints these reports online [such as UAN*], we should normally have high assurance of agreement without needing additional tests. Conversely, if the fiscal officer must manually compile a monthly report from a manual accounting system, the risk of error would be greater.)~~
- ~~2. Please show me your most recent annual financial report. Show me how you assure it agrees to the accounting system. (For example, if the accounting system prints these reports online [such as UAN*], we should normally have high assurance of agreement without needing additional tests. Conversely, if the fiscal officer must manually compile a monthly report from a manual accounting system, the risk of error would be greater.)~~

~~* If the library uses UAN, and the fiscal officer uses UAN-generated reports to fulfill these requirements, there is no need to test these reports. Document evidence that the fiscal officer uses UAN reports to meet these requirements.~~

Government Personnel Interviewed and Dates:

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Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section C: Counties and County Hospitals

7-20 Compliance Requirements: Ohio Rev. Code §319.04 - Mandates training and continuing education requirements for **county** auditors.

Summary of Requirements: An elected county auditor needs to complete at least 16 hours of continuing education courses during the first year of each full term, and to complete at least eight more hours by the end of that term. The county auditor needs at least two hours of ethics and substance abuse training in the total 24 hours of required courses. The County Auditors Association of Ohio (the Association) must approve each course. If a county auditor teaches an approved course, the county auditor may receive credit for it. The Association shall keep track of the hours completed by each county auditor and, upon request will issue a statement of the number of hours of continuing education the county auditor has successfully completed. The Association will send this information to the Auditor of State’s office and to the Tax Commissioner each year. If a county auditor does not adhere to the requirements stated above, the Association shall issue a “notice of failure” to that county auditor. This notice is for informational purposes only and does not affect any individual’s ability to hold the office of county auditor. Also, each board of county commissioners shall approve reasonable amounts required by the county auditor to cover the costs incurred when meeting the above requirements.

Sample Questions and Procedures:

1. ~~Please show me~~ Review the County Auditor Association’s statement documenting ~~your attendance or confirm by reviewing the County Auditor Continuing Education Status Report located at:~~ <http://www.ohioauditor.gov/resources/ipa/>.
2. Determine if the Auditor obtained sufficient CPE.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Revised: HB 153, 129th GA
Effective: 9/29/11

7-22 Compliance Requirement: Ohio Rev. Code §319.11 County financial reports.

Summary of Requirements: Ohio Rev. Code §319.11 addresses county financial reports. This section states in part that the county auditor upon completing the annual financial report shall publish notice that the report has been completed and is available for public inspection at the office of the county auditor. This notice shall be published once in two newspapers a newspaper of general circulation published in the county; except that if only one newspaper is published in the county, then publication in only one newspaper is required. If there is are no newspapers in the county, then publication should be done is required in the largest circulating newspaper of an adjoining county.

Sample Questions and Procedures:

Please show me proof of publication notice stating the report is available for public inspection.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section D: Townships

7-21 Compliance Requirement: Ohio Rev. Code §517.15 – Creates the permanent cemetery endowment fund.²⁰

Summary of Requirements: Previously, this fund accounted for gifts and bequests a township invested, with the interest used to maintain the donor-designated burial lots.

Townships may receipt money from various sources into this fund, *which becomes part of the nonexpendable fund principle*.²¹

The sources of money a township can add to the nonexpendable endowment include gifts, charges added to the price regularly charged for burial lots, contributions and individual gifts and agreements with the purchase of a burial lot.

Townships can expend *endowment earnings* to maintain, improve and beautify specific burial lots and for general purpose maintenance, improvement and beautification of the cemeteries.

Sample Questions and Procedures:

1. What are the sources of the moneys receipted into the fund? Please show me support for these sources. (Scanning the support should normally be sufficient.)
2. For what purposes were the moneys in this fund used? Please show me support for these expenditures. (Scanning the support should normally be sufficient.)
3. Compare disbursements to investment earnings. Disbursements in excess of unspent accumulated investment earnings violate Ohio Rev. Code §517.15, as the Bill Analysis in the footnote below describes.)

Note: Depending upon the amounts involved and the significance of this fund to *remaining fund information*, auditors may need to test this requirement every audit (i.e. may not be able to rotate this step).

Government Personnel Interviewed and Dates:

²⁰ Ohio Rev. Code terminology does not affect fund classification for financial reporting. Financial statement preparers should classify this fund according to GASB Cod. 1300. This fund might be a permanent fund under GASB 54 or private-purpose trust fund under GASB 34.

²¹ According to the Bill Analysis of Amended Substitute House Bill Number 513, 124th General Assembly, these financial sources become part of the endowment fund, along with any gifts, devises, or bequests for the maintenance, improvement, or beautification of the cemetery generally, or of a designated burial lot. (§517.15.)

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Part 3: Payroll Misc

Section A: Insurance

7-22 Compliance Requirements: Ohio Rev. Code §505.60 and 505.601, AOS Bulletin 2009-003, and 2005 Op. Atty. Gen. No. 2005-038 - Reimbursement of insurance premiums – Townships.²²

Summary of Requirements:

~~Effective December 30, 2008, House Bill 458 made relevant changes to health care reimbursements for township officials, employees, and their dependents. These changes are explained below.~~

Townships may reimburse a township officer or employee for out-of-pocket premiums for insurance policies, including long-term care insurance. The reimbursement is permitted for a township officer or employee who is denied coverage under a township health care plan established pursuant to Ohio Rev. Code §505.60, **or** who elects not to participate in the township's plan. House Bill 458 clarifies that the township may reimburse for each out-of-pocket premium attributable to the coverage provided for the officer or employee for insurance benefits that the board could have provided under Ohio Rev. Code §505.60(A). The reimbursement cannot exceed an amount equal to the average premium paid by the township under any health care plan it procures [Ohio Rev. Code §505.60(D)].

~~HB 458 further clarifies that the Requirements governing township-procured health insurance coverage apply equally to township-paid coverage through a health insuring corporation contract as follows:~~

- that an officer or employee may decline coverage under either method without affecting the availability of coverage to other officers and employees
- that either method may provide the same kinds of coverage
- that coverage under either method is to be paid from the same township sources used to pay employee and officer compensation
- that immediate dependents may be covered under either method
- that reimbursement of an officer or employee for premiums paid for alternative coverage (e.g., through a spouse) is only for the part of the premium paid for the same kinds of coverage offered by the township's plan, whether it be provided through insurance or a health insuring corporation contract

A township not procuring health care benefits for its officers and employees is permitted to reimburse any township officer or employee for each out-of-pocket premium that the officer or employee incurs. However, pursuant to Ohio Rev. Code §505.601, the township must meet the following three conditions:

²² Note: The Internal Revenue Code [26 USC § 105 (b)] provides an exclusion from gross income of employees for “. . . amounts . . . paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in §213(d)) of the taxpayer, his spouse, and his dependents . . .”. §213 (d)(1)(D) provides that the term “medical care” includes amounts paid for insurance. Therefore, reimbursing township employees for their medical insurance generally should not result in a taxable event to those employees, if the township is reasonably assured that the reimbursements are not in excess of employees' expenditures for medical insurance as defined.

1. The board of township trustees adopts a resolution stating that the township has chosen not to procure a health care plan and has chosen instead to reimburse its officers and employees for each out-of-pocket premium,
2. The resolution provides for a uniform maximum monthly or yearly payment amount for each officer and employee,
3. The resolution states the specific benefits, pursuant to Ohio Rev. Code §505.60(A), that will be reimbursed.

~~HB 458 makes similar changes to R.C. 505.601 (reimbursement when a township does *not* offer health insurance to its officers/employees) regarding covers reimbursements made to township officers/employees for dependant health care coverage. The Bill clarifies that the Reimbursement is only for the part of the out-of-pocket premium attributable to the coverage provided for the officer or employee for insurance benefits that the board could have provided under R.C. 505.60(A), and that the reimbursement covers immediate dependents in addition to the officer or employee.~~

Note: 2005 Op. Atty. Gen. No. 2005-038 states that townships are not authorized to directly reimburse the employer of a township officer or employee's spouse for the cost of family coverage under a health care plan provided to the spouse by the spouse's employer. Auditors should consider appropriate findings if such reimbursements are identified. However, the officer or employee can be directly reimbursed for the out-of-pocket premium attributable to that officer or employee for health care coverage provided through the employer of a spouse as outlined in R.C. Sections 505.60 and 505.601.

Auditors should refer to AOS Bulletin 2009-003, House Bill 458 – Changes to Dependent Health Care Coverage and to R.C. 5705.05 & R.C. 5705.06, for additional information and uncodified guidance pertaining to previously issued findings for recovery.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: In assessing the risk of noncompliance, auditors should consider recent changes to the statutory requirements described in this OCS step. This statute has been amended several times over recent years. As a result, there is an increased risk of noncompliance.

Sample Questions and Procedures:

1. Did the township reimburse any officer or employees for insurance benefit premiums during the period?
2. If so, please show me the resolution authorizing reimbursement. (We should maintain a copy in the permanent file so we needn't repeat this step each audit.)
3. Were the employers of any township officers or employees' spouses reimbursed for family coverage obtained through a spouse? If so, auditors should report findings, as appropriate. However, based on conflicting opinions of several prosecuting attorneys as well as the amendments to Ohio Rev. Code §505.60 and 505.601, effective December 20, 2008, which generally allow for reimbursement for family coverage, we will not issue FFRs for 2008 and earlier audit periods.

4. Describe your procedures for ensuring reimbursements meet the requirements of [§505.60(C) or the reimbursement resolution].
5. Please show me a few employees' reimbursement transactions.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Revised: HB 225, 129th GA
Effective: 3/22/12

7-23 Compliance Requirements: Ohio Rev. Code § 505.603²³ - “Cafeteria Plans” - Townships.²⁴

Summary of Requirements: In addition to or in lieu of providing benefits to township officers and employees under Ohio Rev. Code §505.60, 505.601, or 505.602, a board of township trustees may offer benefits to officers and employees through a cafeteria plan that meets the requirements of section 125 of the "Internal Revenue Code." To offer benefits through a cafeteria plan, the township must adopt a policy authorizing an officer or employee to receive a cash payment in lieu of a benefit otherwise offered to township officers or employee. This cash payment may not exceed twenty-five per cent of the cost of premiums or payments that otherwise would be paid by the board for benefits for the officer or employee.

Ohio Rev. Code § 505.603 further requires that no cash payment in lieu of a benefit be made unless the officer or employee provides a signed statement with the following information:

- an affirmation that the individual is covered under another plan for that type of coverage
- the name of the employer (if any) that sponsors the coverage
- the name of the carrier that provides the coverage

23 HB 225, effective 3/22/2012, added the following new provisions:

In addition to providing the benefits to township officers and employees under section 505.60, 505.601, or 505.602 of the Revised Code, a board of township trustees may offer a health and wellness benefit program through which the township provides a benefit or incentive to township officers, employees, and their immediate dependents to maintain a healthy lifestyle, including, but not limited to, programs to encourage healthy eating and nutrition, exercise and physical activity, weight control or the elimination of obesity, and cessation of smoking or alcohol use.

The township fiscal officer may deduct from a township employee's salary or wages the amount authorized to be paid by the employee for one or more qualified benefits available under section 125 of the "Internal Revenue Code of 1986," 26 U.S.C. 125, and under the sections listed in division above, if the employee authorizes in writing that the township fiscal officer may deduct that amount from the employee's salary or wages, and the benefit is offered to the employee on a group basis and at least ten per cent of the township employees voluntarily elect to participate in the receipt of that benefit. The township fiscal officer may issue warrants for amounts deducted under this division to pay program administrators or other insurers for benefits authorized under this section or those sections listed above.

²⁴ Note: The Internal Revenue Code [26 USC § 105 (b)] excludes from gross income of employees “. . . amounts . . . paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in §213(d)) of the taxpayer, his spouse, and his dependents . . .” §213 (d)(1)(D) provides that the term “medical care” includes amounts paid for insurance. Therefore, reimbursing township employees for their medical insurance generally should not result in a taxable event to those employees, if the township is reasonably assured that the reimbursements are not in excess of employees’ expenditures for medical insurance as defined. If the township is not reasonably assured of that, then the cash paid should be reflected on the employee’s or officer’s Form W-2 as an additional taxable benefit. Similarly, if the cash is used for life insurance or any other purpose, the employee’s W-2 should reflect an additional taxable benefit.

- the policy or plan number for the coverage

Sample Questions and Procedures:

Note:

- **None of these steps apply if a township does not have a cafeteria plan.**
- **Steps 1 – 4 only apply when a township adopts or amends a cafeteria plan during the audit period.**
- **Reviewing the permanent file should address steps 1 – 4 for years in which there is no amendment.**
- **Steps 5 – 8 apply (on a rotational basis) for every audit in which a cafeteria plan exists.**

1. Do you offer your officers and employees benefits through a cafeteria plan?
2. Inquire if the township worked with their legal counsel and/or accountants to design and administer the plans properly. If so, secure any documentation legal counsel or the accountants have supplied to the township.
3. Did the IRS approve your plan? Please show me a copy of the approval letter.
4. Review the policy document for conformance with the requirements.
5. Describe your procedures for ensuring reimbursements met the requirements of §505.603.
6. Please show me [number] of signed statements with the attestations and the required information.
7. Calculate or review the entity’s calculations that cash in lieu of payments does not exceed 25% of the cost to the township for providing the benefit (that is no longer being received).
8. Determine if the employees’ W-2 forms reflect additional income for the benefit if applicable.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section B. Vacation and Sick Leave

Revised: HB 193129th GA
Effective:
HB 93 - 5/20/11

If the compliance attributes listed in 7-24 below were tested during payroll substantive testing, no additional tests needed.

7-24 Compliance Requirements: Vacation and sick leave

Vacation leave:

Ohio Rev. Code §325.19 and §3319.084 prescribe vacation benefits for **county** and **school non-teaching employees**, respectively. See tables below.

The governing authorities of other local governments set vacation policy by statute, ordinance or charter. However, collective bargaining agreements supersede local statutes, ordinances or charters.

Ohio Rev. Code §325.19 — County vacation leave

Ohio Rev. Code §325.19 Years of service	Vacation leave earned
<1	0
≥1 but <8	80 hrs. per year
≥8 but <15	120
≥15 but <25	160
≥25	200

Note: Employees of county departments of jobs and family services accrue vacation pursuant to Ohio Rev. Code §124.13. However, this Section prescribes the same vacation accruals as does Ohio Rev. Code §325.19, above. Additionally, effective 5/20/11 under HB 93, if a separation from county service occurs in connection with the lease, sale, or other transfer of all or substantially all the business and assets of a county hospital organized under Chapter 339 of the Revised Code to a private corporation or other entity, the county shall have no obligation to pay any compensation with respect to unused vacation leave accrued to the credit of an employee who accepts employment with the acquiring corporation or other entity, if at the effective time of separation the acquiring corporation or other entity expressly assumes such unused vacation leave accrued to the employee's credit.

Ohio Rev. Code §3319.084-- School nonteaching employee vacation leave

Ohio Rev. Code §3319.084 Years of service	Minimum vacation leave earned
<1	0
≥1 but <10	2 weeks
≥10 but <20	3 weeks
≥20	4 weeks

Ohio Rev. Code §9.44 generally requires an Ohio local government to include an employee's prior service with the State or other Ohio local governments when computing vacation leave. However, there are exceptions to this general rule. While this would rarely, if ever, be significant, if this applies to an employee's leave you are testing, see Ohio Rev. Code §9.44 regarding the exceptions.

Sick leave:

Ohio Rev. Code §124.38 prescribes 4.6 hours of sick leave for each 80 hours of completed service (120 hours / year), applicable to **county, municipal, civil service township service**, except to superintendent and management employees defined in Ohio Rev. Code §5126.20. Ohio Rev. Code §124.38 also applies to employees of any **state college or university**, and **certain board of education employees** (board of education employees for whom sick leave is not provided by §3319.141).

Ohio Rev. Code §3319.141- Sick leave for **school employees**: Earn 1¼ days per month (15 days / year), accumulating to a maximum of 120 days. However, a school board may adopt a policy permitting accumulations > 120 days. Effective 9/29/11, under HB 153, the requirements of Ohio Rev. Code §3319.141 do not apply to substitutes, adult education instructors who are scheduled to work the full-time equivalent of less than one hundred twenty days per school year, or persons who are employed on an as-needed, seasonal, or intermittent basis.

Per Ohio Rev. Code §124.39, employees governed by Ohio Rev. Code §124.38 and employed for ≥ 10 years, are eligible for payment of 25% of their unused sick leave balance, up to a maximum of 30 days, upon retirement.

Note: These sections describe minimum vacation and sick leave. Governments generally may provide more than the minimum. These sections also prescribe procedures for paying the employees' accumulated leave balances upon separation from service.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Auditors should consider whether governments have vacation and sick leave policies placed in operation and have historically demonstrated effective internal controls over payroll and related compliance requirement. Additionally, adequate training of payroll personnel and supervisory monitoring controls can help mitigate the risk of noncompliance with vacation and sick leave compliance requirements.

Sample Questions and Procedures:

For GAAP entities, it is usually efficient to include these procedures when testing the financial statement liability for compensated absences.

1. Obtain a copy of resolutions, ordinances or collective bargaining agreements setting vacation leave. Maintain an up to date copy in the permanent file.
2. What procedures do you follow for recording the accrual and use of sick leave and vacation? (If leave accrual is automated and online with standing data, very limited recomputations of additions to leave balances should suffice for testing credits (i.e. additions) to leave accrual.)

3. Please show me a few employees' calculations of leave balances credited and used, including appropriate leave forms. Determine whether the computations use the hours the ORC, local legislation or collective bargaining agreements authorize.
4. Did you have any employees leave service this year? Please show me, for a few of them, how you calculated and paid their accumulated leave balances. Determine whether the computations use the hours the ORC, local legislation or collective bargaining agreements authorize.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section C. Compensation Related Requirements

New: HB 153, 129th GA
Effective: 9/29/11

Only test the compliance attributes listed in 7-25 below if one of the officials listed below were selected as part of your sample for payroll testing.

7-25 Compliance Requirements: Ohio Rev. Code:

Schools:

§3311.19 and 3313.12 - School board compensation and mileage

~~§3314.025 — Community School board compensation²⁵~~

§3314.02(E)(4) - Compensation of School Board²⁶

§3314.03(A)(11)(i) - Compensation of School Treasurer

§3313.24 - Compensation of School Treasurer²⁷

²⁵ Under Ohio Rev. Code §3314.025, the governing authority of a start up community school may adopt a resolution to compensate its members for attending meetings of the governing authority. A member may be compensated up to \$125 per meeting. However, an individual may not receive more than \$125 total per month from each governing authority on which the person serves. Since the act limits members to serving on two start up community school governing authorities, a member could not receive more than \$250 per month for meeting attendance. If an individual serves on two governing authorities that meet at the same place on the same day, the individual's compensation for both meetings combined cannot be more than the highest per member, per meeting amount authorized by those governing authorities. That amount must be divided evenly between the two schools. Compensation for governing authority members generally must be paid by the community school's fiscal officer from the school's operating funds. However, in the case of a school managed by an operator, the compensation must be paid by the operator from fees paid to it by the school.

²⁶ Effective 9/29/11, HB 153 repealed the compensation requirements for members of the governing authority of a start up community school under Ohio Rev. Code §3314.025. Instead, HB 153 authorizes, under Ohio Rev. Code §3314.02(E)(4), start-up school governing authorities to provide by resolution for compensation of their members, provided that an individual is compensated no more than \$425 per meeting or a total of \$5,000 per year for all of the governing authorities on which the individual serves. Compensation for governing authority members generally must be paid by the community school's fiscal officer from the school's operating funds. However, in the case of a school managed by an operator, the compensation must be paid by the operator from fees paid to it by the school. A new start-up school means a community school other than one created by converting all or part of an existing public school or educational service center building, as designated in the school's contract pursuant to division (A)(17) of section 3314.03 of the Revised Code.

²⁷ ODE has indicated that, under Ohio law, treasurers must account for/administer all school district funds and accounts. In addition, Ohio law states that a treasurer's salary must be fixed and payable from the General Fund. Therefore, in the absence of an ODE-approved indirect cost allocation plan, it is not permissible to charge various State and/or Federal programs for supplemental compensation related to the Treasurer's statutory duties associated with these programs. Any such charges are unallowable under Ohio law and OMB Circular A-87 (2 CFR 225, Appendix A, part C.1.c) because in order for a Federal program cost to be allowable, it must be authorized or not prohibited under State or local laws or regulations. These charges may also qualify as supplanting under Federal guidelines if supplement not supplant provisions accompany the particular Federal award(s) being charged. However, if the treasurer can prove

§3319.01 - Appointment and duties of superintendent (including compensation)
 §3319.02 - Appointment of other (school) administrators, evaluation; renewal; vacation leave
 §3319.08 - Teacher employment and reemployment contract
 §3319.10 - Employment and status of substitute teachers
 §3319.081 - Contracts for non-teaching employees
§3319.0810 - Contracts for transportation staff
 §2921.43(A)(1) and Ohio Ethics Commission Op. No. 2008-01 – Compensation of school employees by outside organizations²⁸

Courts:

§141.04 and 141.05 - Compensation of judges (court of common pleas, including probate court judges)
 §2151.13 - Employees; compensation (courts).
 §1907.16 and 1907.17 - Compensation of (county court) judges
 §2303.03, 2501.16, and 2501.17 - Officers and employees (courts of appeals)
 §1907.20 - Clerks (court of common pleas)
 §1901.11 - Compensation of judges (Municipal Court)
 §1901.31 and 1901.32 - Clerks; deputy clerks; bailiffs (Municipal court)
 §141.04 (A) (3) - Compensation of judges (appellate court judges)

Libraries:

§3375.32 - Meeting of boards of library trustees; organization; election of clerk; bond.
 §3375.36 - Treasurer of library (deputy clerk)
 §3375.40 - Powers of boards of library trustees (compensation of employees)

Municipalities:

§731.07, 731.08, and 731.13 and 1973 Op. Atty Gen. No. 73-063 and 1983 Op. Atty Gen. No. 83-036 - Compensation (municipal officials)

Counties:

Chapter 325 - Compensation of county officials: auditor, 325.03; treasurer, 325.04; sheriff, 325.06; common pleas clerk, 328.08; recorder, 326.09; commissioners, 325.10; prosecutor, 325.11; engineer, 325.14; coroner, 325.15; vacation and holiday pay, 325.19; Op. Atty Gen No. 99-033 – in-term increase in compensation based on change in population according to decennial census (see Auditor of State Bulletin 99-015).

Townships:

§505.24 (trustees)²⁹ (see also compliance requirement 6-8), 505.60 (insurance - also see

that he/she was assigned to non-treasurer duties and was compensated additionally for those, then we will not take exception to the compensation.

²⁸ Ohio Ethics Commission Opinion No. 2008-01 prohibits a school employee (including coaches, teachers, administrators, supervisors, district officials, management level employees regardless of his or her duties) from being compensated for services provided for a school-related activity by any source other than the employing school. That is, booster groups and school support organizations are prohibited from promising or providing any compensation to a school employee for performing their duties at a school or school-related activity. This opinion applies to officials and employees of all school districts, educational service centers (ESCs), and community schools operating under Ohio Rev. Code §3314.03.

²⁹ Effective 9/29/11 under HB 153, each salaried township trustee shall certify the percentage of time spent working on matters to be paid from the township general fund and from other township funds in such

compliance requirement 6-8, 507.09 (clerk)³⁰ - compensation for township officials, and 505.71 – compensation for joint ambulance district trustees. Also, 1999 Op. Atty Gen. No 99-015 – Definition of “budget” for purposes of compensation (see Auditor of State Bulletin 99-008).

County Hospitals:

§339.03 - Board of county hospital trustees; powers and duties
 §339.06 - Compensation - county hospital administrator and employees

Municipal Hospitals:

§749.33 - Employment and compensation of superintendents, physicians, and employees (municipal hospitals)

Ohio State University [§3335.02(A)], Ohio University [§3337.01(A)], Miami University [§3339.01(A)], Bowling Green and Kent State Universities [§3341.02(E)], Central State University [§3343.05], Cleveland State University [§3344.01(A)], Wright State University [§3352.01(A)], Youngstown State University [§3356.01], University of Akron [§3359.01(A)], University of Toledo [§3364.01(A)], University of Cincinnati [§3361.01(A)], Shawnee State University [§3362.01(A)], Community College Districts [§3354.06], Technical Colleges [§3357.06], State Community Colleges [§3358.03], University Branch Districts [none specified].
 - Compensation of trustees.

Summary of Requirement: All of these various sections set out authority for appointing and/or compensating officials and employees of the various entities. For additional information and salary schedules for elected officials, see the *Elected Officials’ Compensation Appendix* to the OCS.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Auditors should consider whether governments have historically demonstrated effective internal controls over payroll. Additionally, adequate training of payroll personnel and supervisory monitoring controls can help mitigate the risk of noncompliance with compensation compliance requirements.

Sample Questions and Procedures:

Except for the two requirements described below, tests of payroll disbursement should normally address these requirements. You should include a few payments to elected officials in these tests. For those officials, agree their pay rate to OCS Compensation Appendix amounts. Officials who have a salary set by statute, cannot receive PERS pickup if the additional compensation (in the form of PERS pickup) would result in receiving total compensation greater than the statutory

proportions as the kinds of services performed. Refer to AOS Bulletin 2011-007 for examples and further guidance.

³⁰ Effective 9/29/11 under HB 153, a township fiscal officer may be compensated from the township general fund or from other township funds based on the proportion of time the township fiscal officer spends providing services related to each fund. A township fiscal officer must document the amount of time the township fiscal officer spends providing services related to each fund by certification specifying the percentage of time spent working on matters to be paid from the township general fund or from other township funds in such proportions as the kinds of services performed. Refer to AOS Bulletin 2011-007 for examples and further guidance.

limit. Therefore, we should calculate salary plus PERS pickup, if applicable, and compare this total compensation to the statutory limit. Compensation amounts exceeding the statutory limit should be findings for recovery if they meet the threshold guidelines.

- For community schools, inquire whether its board members also serve on the boards of other community schools. If so, inquire how the community school assures it is not paying these board members ~~for attending concurrent board meetings more than the statutory limit.~~ (See the requirement described in the footnote above per Ohio Rev. Code ~~§3314.025~~ §3314.02(E)(4).)
- Per the footnote above regarding school treasurer compensation, compare total compensation per the payroll register to the amount in the treasurer’s contract. If the register reports compensation exceeding the contract amount, determine if these payments were allowable per the footnote above.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Part 4: Deposits and Investments

~~7-30—Compliance Requirement: Designating depositories — Ohio Rev. Code:~~

~~*Subdivisions Other Than Counties*~~

~~§135.03—Eligible depositories.~~

~~§135.07 and 135.09—Award of inactive and interim deposits, respectively.~~

~~§135.12—Designation of depositories requires a 5-year designation for subdivisions other than counties.~~

~~*Counties*~~

~~§135.32—Eligible depositories.~~

~~§135.35 (D)—Eligible deposits or investments for county inactive moneys~~

~~§135.33—Requires commissioners to designate depositories for a four-year period.~~

~~*Courts*~~

~~§131.11—Security for funds deposited by certain public officials. Essentially requires courts to follow 135.18 or 135.181 collateral requirements.~~

~~*Libraries*~~

~~§3375.36—Treasurer of library funds; depository:~~

~~➤—The board must designate a depository.~~

~~➤—The clerk must report monthly and annual financial activity to the board.~~

~~**Summary of Requirements:** These sections require local governments to designate depositories.~~

However, as ADAM 2002-005 notes, these Ohio Rev. Code sections do **not** require a subdivision (including counties) to complete a “memorandum of agreement for deposit of public funds.” Therefore, we should not issue a noncompliance finding if a government has not completed a memorandum.³¹

~~**Sample Questions and Procedures:**~~

~~**Note:** The following procedure only applies if the prior depository designation expired during the audit period.~~

~~Show me the minutes, resolution or agreement whereby the governing body designated depositories for the period under audit.~~

Government Personnel Interviewed and Dates:
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³¹ The “Bureau of Inspection and Supervision of Public Offices” (the former title of the AOS Audit Division) prescribed a form for the Memorandum, Form No. 353, published by the Dayton Legal Blank Company. Ohio law does not require using this form or any other form.

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-26 Compliance Requirements: Ohio Rev. Code Sections 135.14(B)(7), 135.142, 135.22, 135.35, 319.04, 321.46 and 733.27 - Education Requirements

Summary of Requirements:

Subdivision Treasurers³²

Subdivision treasurers must complete annual continuing education programs provided by the Treasurer of State (TOS). The TOS issues certificates indicating that the treasurer has successfully completed the continuing education program.

The continuing education requirement does not apply to a subdivision treasurer who annually provides a notice of exemption to the Auditor of State, certified by the Treasurer of State (and confirmable through the TOS searchable database weblink below) that the treasurer is not subject to the continuing education requirements because the treasurer invests or deposits public funds in the following investments only:

- (1) Interim deposits pursuant to § 135.14 (B)(3);
- (2) STAR Ohio pursuant to § 135.14(B)(6);
- (3) No-load money market mutual funds pursuant to § 135.14 (B)(5)

Specific requirements apply to the officials listed below:

County Treasurers

Newly-elected treasurers must complete education programs (26 hours) approved by the Auditor of State (13 hours) and the Treasurer of State (13 hours) between December 1 and the first Monday in September following that person's election [Ohio Rev. Code §321.46]. For instance, a treasurer elected in November 2008, taking office in 2009, would be required to receive the initial 26 hours of training between December 1, 2008 and September 2009. In this example, the newly-elected treasurer would complete one year in office in September 2010 and would then enter into the biennial cycle for 2011/2012 for continuing education.

After completing one year in office, a county treasurer must take not fewer than 24 hours of continuing education approved by the Auditor of State (12 hours) and the Treasurer of State (12 hours) in each *biennial cycle* commencing the January 1 after the treasurer's first year in office. County treasurers may carry forward up to six hours received from the Auditor of State plus up to six hours received from the Treasurer of State in excess of 24 from the current to the next biennial cycle. [Ohio Rev. Code §321.46] The biennial time periods are:

- January 1, 2009 to December 31, 2010
- January 1, 2011 to December 31, 2012
- January 1, 2013 to December 31, 2014

Auditors should wait until the expiration of the applicable biennial time period to determine

³² A treasurer of an agricultural society must comply with the continuing education requirements of ORC 135.22. The treasurer meets the definition of "treasurer" in ORC 135.22 (which refers to the definition in ORC 135.01) which is as follows: (M) "Treasurer" means, in the case of the state, the treasurer of state and in the case of any subdivision, the treasurer, or officer exercising the functions of a treasurer, of such subdivision. In the case of a board of trustees of the sinking fund of a municipal corporation, the board of commissioners of the sinking fund of a school district, or a board of directors or trustees of any union or joint institution or enterprise of two or more subdivisions not having a treasurer, such term means such board of trustees of the sinking fund, board of commissioners of the sinking fund, or board of directors or trustees.

whether **existing treasurers** (as opposed to those **newly-elected**) have completed the continuing education requirements.

A treasurer who fails to complete the **initial** education programs required by §321.46 cannot invest and is *subject to removal from office*. Investment authority transfers immediately to the county investment advisory committee.

A treasurer who fails to complete the **continuing** education programs required by §321.46 is restricted to investing in STAR Ohio, no-load money market mutual funds pursuant to §135.14 (B)(5) and § 135.35(A)(5), or in certificates of deposit pursuant to Ohio Rev. Code §135.35(A)(6), or savings or deposit accounts pursuant to Ohio Rev. Code §135.35(A)(6). A county treasurer who has failed to complete the continuing education programs and invests in other than these investments is subject to removal from office.

Village Fiscal Officers

Must attend annual training programs for new village fiscal officer *and* annual continuing education programs provided by the Auditor of State [Ohio Rev. Code §733.27]. (The Auditor of State interprets this section as requiring a newly-elected fiscal officer to attend the new fiscal officer's training offered by the Auditor of State between December 1 and the following February 15, and any other annual training offered by the Auditor of State. Continuing fiscal officers must attend the annual update sessions only.)

All Local Governments

No investment shall be made in commercial paper or bankers acceptances unless the following have completed additional training for making those investments. The type and amount of additional training shall be approved by the Auditor of State:

- School treasurer [135.142(B)]
- County investing treasurer³³ [135.35(A)(8)]
- For other local governments: Treasurer or governing board [135.14(B)(7)]

TOS CPIM Confirmation and FAQ's

The Treasurer of State's website includes an online searchable CPIM report database³⁴ of treasurers receiving TOS-approved certifications and exemptions. The link to this website is: http://stateofohio-web.ungerboeck.com/ceu/ceu_lookup.aspx. However, the TOS website does not include CPIM for AOS-approved courses for county treasurers. Auditors should refer to the Continuing Education Hours Report under *County Treasurer's* box on the AOS website at <http://www.ohioauditor.gov/services/lgs/CountyTreasurers/ContinuingEducationHoursReport.pdf> to obtain a listing of AOS-approved CPIM received by county treasurers.

Auditors can also refer to AOS/TOS Frequently Asked Questions (FAQ's) regarding training requirements for county and local subdivision treasurers on our website listed as *Training*

³³ Ohio Rev. Code §135.35(A)(8) applies to the investing authority. However, the treasurer is the investing authority, except in the rare circumstance county commissioners determine a treasurer is not complying with county policies, per Ohio Rev. Code §135.34.

³⁴ Note: The reliability of the TOS online CPIM search results may be affected by the accuracy of information entered into the database. Therefore, auditors may still need to inquire with local treasurers regarding CPIM certifications if discrepancies are identified using the online database.

Requirements for County Treasurers or as Training Requirements for Treasurers of Subdivisions at: <http://www.ohioauditor.gov/conferences/default.htm>.

Sample Questions and Procedures:

For counties, please show me your certificates of completion for the last biennial period. *(Note: For efficiencies, auditors may be able to obtain these certifications using the weblink above for the Treasurer of State and the Auditor of State).*

For other subdivisions, please show me your annual certificates of completion. *(Note: For efficiencies, auditors may be able to obtain these certifications using the weblink above for the Treasurer of State and the Auditor of State).*

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Part 5: Fraud, Abuse, and Illegal Acts; Conflict of Interest; Ethics

New: HB 66, 129th GA
Effective: 5/4/12

7-27 Compliance Requirements and Summaries Thereof:

Ohio Rev. Code §**102.03** - Restrictions and prohibitions.

- This section restricts the conduct of public officials and employees with respect to their official positions. Per Ohio Rev. Code §3314.03(A)(11)(e), ~~as amended by HB 530 of the 125th General Assembly, effective~~ Ohio Rev. Code §102 applies to community schools. ~~HB 530 eliminated the two exceptions that were previously permitted under this section; however, it retains the general requirement for community schools to comply with the Ethics³⁵ Law. Therefore, effective~~ For fiscal year 2007 audits and later, members of a community school's governing authority cannot be employed by the school or, except in specified circumstances, have an interest in *any* contract awarded by the governing authority.
- Present and former public officials or employees are prohibited during their public employment or for twelve months thereafter from representing any person on any matter in which the public official or employee personally exercised administrative discretion as a public official or employee. (Also known as *the revolving door statute*.) [102.03(A)(1)]
- Division (A) of Ohio Rev. Code §102.03 shall not be construed to prohibit performing ministerial functions, including, but not limited to, the filing or amending tax returns, applications for permits and licenses, incorporation papers, and other similar documents. [Ohio Rev. Code §102.03(A)(7)]
- Public officials and employees are prohibited from using or authorizing the use of the authority or influence of office or employment to secure anything of value or to promise or to offer anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. [Ohio Rev. Code §102.03(D)]
- Public officials and employees are prohibited from soliciting or accepting anything of value that is of such character as to manifest a substantial and improper influence upon that public official or employee with respect to that person's duties. [Ohio Rev. Code §102.3E)]

Ohio Rev. Code sections governing interests in contracts by elected officials

- **Ohio Rev. Code §305.27** Prohibits county commissioners from having an interest in a county contract.

³⁵ All potential "consequential" ethics law violations are to be submitted to the Auditor of State Legal Division. After review, the Auditor of State Legal Division will make appropriate referrals. The Audit Division should consult with the Legal Division in determining how or if to report this matter. IPA's should consult with the Center for Audit Excellence.

- **Ohio Rev. Code §511.13** Prohibits any member, officer or employee of a board of township trustees from having an interest in any contract the trustees approve.
- **Ohio Rev. Code §731.02** Prohibits members of a city legislative authority from having an interest in any contract with the city.
- **Ohio Rev. Code §731.12** Prohibits members of a village legislative authority from having an interest in any contract with the village.

Ohio Rev. Code §3313.33 Prohibits board of education members from having a pecuniary interest in a board contract, or from being employed by the board. However, there are exceptions, per Ohio Rev. Code §3313.33(C). You should refer to the statute for details of the exceptions.

Ohio Rev. Code §2921.42 - Having an unlawful interest in a public contract.

This section prohibits such interests. Ohio Rev. Code §3314.03(A)(11)(e) requires community schools to comply with Ohio's Ethics Law, which, among other things, requires public officials to disclose conflicts of interest and prohibits them from having an interest in a contract awarded by their public office. Effective March 30, 2006, members of a community school's governing authority cannot be employed by the community school or, except in specified circumstances, have an interest in *any* contract awarded by the governing authority³⁶.

Ohio Rev. Code §9.833(F) expressly permits a subdivision's officials or employees to serve on the governing board of the program administrator of a governmental self-insurance program, if his or her government participates in that program.

Ohio Rev. Code §**2921.41**- Theft in office.

Public officials committing theft of public property (or services), or who use their offices in committing such acts, or permit their offices to be so used, are in violation of this Section. §2913.01(K) defines "theft."

Ohio Rev. Code §**2921.421** - Assistants and employees of prosecutors, law directors, and solicitors. This section provides procedures for employing persons associated in the private practice of law in these offices.

Ohio Rev. Code §**3329.10** - Purchases of school textbooks and supplies:

Superintendents, principals, teachers, and supervisors are prohibited from acting as sales agents for textbook companies including companies offering electronic textbooks. These school officials are also prohibited from representing companies selling school apparatus or equipment. (Not applicable to community schools.)

Ohio Rev. Code §**117.103 (B) (1)** – [Effective 5/4/2012] A public office shall provide information about the Ohio fraud-reporting system and the means of reporting fraud to each new

³⁶ It is permissible for a public official to have an interest in a public contract if (1) the contract covers necessary services or supplies for the official's public office, (2) the services or supplies cannot be obtained elsewhere for the same or lower cost or are being furnished to the public office as part of an ongoing relationship that started prior to the official's involvement with the office, (3) the treatment given to the public office is either preferential to or the same as the treatment given to other clients, and (4) the public office is aware of the official's interest in the contract and the official does not participate in any deliberations regarding the contract [Ohio Rev. Code §2921.42(C)].

employee upon employment with the public office. Each new employee shall confirm receipt of this information within thirty days after beginning employment. The auditor of state shall provide a model form on the auditor of state's web site to be printed and used by new public employees to sign and verify their receipt of information as required by this section. The auditor of state shall confirm, when conducting an audit under section 117.11 of the Revised Code, that new employees have been provided information as required by this division.

Op. Atty Gen. No. 79-111 - Incompatibility of public offices: A public officer or employee may be prohibited from holding another public position.

Note: You may find evidence of possible violations of Sections 102.03, 2921.41, 2921.42, and 2921.421 from various audit tests. These sections are criminal violations. Auditor of State staff should consult with the State Auditor's Legal Division whenever you suspect possible violations of these sections. Independent public accountants should consult with their own legal counsel.

Sample Questions and Procedures:

1. How does your [Entity] identify possible interests on the part of officials and employees in matters coming before them for official action? For example, does your [Entity] require officials and employees to report the outside businesses and organizations they work for to you?
2. Do you know if anyone has inquired with the Ohio Ethics Commission as to whether any complaints or inquiries have been received concerning public officials of the [entity]³⁷.
3. Do you know if any such transactions occurred during this year?
4. Do you know of any other illegal acts or frauds? (SAS 99 requires this step. If you already documented this in the FRAQ, you need not repeat this step here.)
5. If the school district purchased textbooks (including electronic textbooks) or school apparatus or equipment during this year, how did you assure yourselves that no one on the purchasing committee (superintendents, principals, teachers, and supervisors) acted as sales agents for those companies?
6. How have you notified employees about the new fraud reporting system? Describe your process for obtaining and maintaining confirmations from new hires signing off that they have received notification about the fraud reporting system.
7. Select a small number of newly hired employees (hired after 5/4/2012) and review the employees' confirmations that they have been notified about the fraud reporting system.

³⁷ Auditors and IPAs should not contact the Ethics Commission. If evidence comes to your attention concerning possible ethics violations, IPAs and AOS staff should follow this guidance from the *Ohio Compliance Supplement* Introduction:

Ethics Commission Referrals

All potential "consequential" ethics law violations are to be submitted to the Auditor of State Legal Division. After review, the Auditor of State Legal Division will make appropriate referrals. The Audit Division should consult with the Legal Division in determining how or if to report this matter. IPA's should consult with the Center for Audit Excellence.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Part 6: Prohibited Political Activity

<p>Revised: HB 153, 129th GA Effective: 7/1/11</p>

7-28 Compliance Requirements and Summaries Thereof:

Ohio Rev. Code §9.03 - Political subdivision newsletters and other means of communication.

No governing body of a political subdivision shall use public funds to publish, distribute, or communicate information that supports or opposes the nomination or election of a candidate for public office, the investigation, prosecution, or recall of a public official, or the passage of a levy or bond issue. In addition, no public funds shall be used to compensate any employee of the political subdivision for time spent on any activity to influence the outcome of an election for any of the purposes described above. However, public funds may be used to publish information about the political subdivision's finances, activities, and governmental actions in a manner that is not designed to influence the outcome of an election or the passage of a levy or bond issue. Public funds may also be used to compensate an employee for attending a public meeting to present such information in such a manner even though the election, levy, or bond issue is discussed or debated at the meeting.

However, this Section specifically exempts Alcohol Drug Addiction and Mental Health (ADAMH) Boards from the prohibition against using public funds to support a levy or a bond issue. ADAMH Boards are specifically authorized by Ohio Rev. Code Sections 340.03(A)(~~5~~)(7) and 340.033(A)(12) to use their public funds to obtain further financial support for their activities.

Ohio Rev. Code §124.57 - Political activity prohibited.

This section imposes restrictions upon the political activity of employees in the classified service of the State, counties, cities, city school districts, and civil service townships.

Ohio Rev. Code §124.59 - Payment for appointment or promotion prohibited.

Applicants for appointment or promotion in the classified service shall not pay for appointments or promotions.

Ohio Rev. Code §124.61 - Abuse of political influence.

Public officials (or potential public officials) shall not use or promise to use, any official authority or influence in order to secure or aid any person in securing any office or employment in the classified service, or any promotion or increase of salary therein, as a reward for political influence or service.

Ohio Rev. Code §3315.07 (C) - Support of school ballot issues.

No board of education shall use public funds to support or oppose the passage of a school levy or bond issue or to compensate any school district employee for time spent on any activity intended to influence the outcome of a school levy or bond issue election. However, the law specifically allows a school board to allow its employees to attend public meetings during working hours to give informational presentations regarding the district's finances and activities, even if the purpose of the meeting is to debate the passage of the school levy or bond issue.

Sample Questions and Procedures:

1. Inquire if the CFO is aware of these requirements and what controls the entity has established to prevent violations. Controls should include:
 - Policies or published notifications to employees regarding these requirements.
 - A requirement for a person knowledgeable of these requirements to review and approve payment requests.

2. Inquire if the CFO is aware of any possible violations. If so, or if other evidence comes to your attention suggestion violations may have occurred, investigate the allegations as needed.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Part 7: Public Officials' Bonding Requirements

7-29 Compliance Requirement:

General

Ohio Rev. Code §3.06 - Unless other statutes prescribe a bond for a particular officials (such as for the officials listed in OCS Bonding Appendix), Ohio Rev. Code §3.06(B) permits “. . . any department or instrumentality of the state or any county, township, municipal corporation, or other subdivision or board of education or department or instrumentality thereof, may procure a blanket bond from any duly authorized corporate surety covering officers, clerks and employees, other than. . .” treasurers or tax collectors and any officer, clerk or employee required by law to execute or file an individual official bond to qualify for office or employment.

Ohio Rev. Code §3.06 also requires “Any such blanket bond shall be approved as to its form and sufficiency of the surety by the officer or governing body authorized to require it.”

Ohio Rev. Code §3.30 - Failure to give bond deemed refusal of office.

A number of specific bonding requirements have been prescribed by statute for various public officers and employees. See *Ohio Compliance Supplement Bonding Appendix* for the requirements applicable to county, city, township, school, and library officials.

Universities (all universities listed below require Attorney General approval of their bonds unless otherwise indicated):

Ohio State University [§3335.05], Ohio University [none specified], Miami University [none specified], Bowling Green and Kent State Universities [§3341.03], Central State University [§3343.08], Cleveland State University [§3344.02], Wright State University [§3352.02], Youngstown State University [§3356.02], University of Akron [§3359.02], University of Toledo [§3364.02, which does not require Attorney General approval, effective July 1, 2006], University of Cincinnati [§3361.02], Shawnee State University [§3362.02, which does not require Attorney General approval, effective September 29, 2005], Community College Districts [none specified], Technical Colleges [none specified], State Community Colleges [§3358.06], University Branch Districts [§3355.051].

These compliance requirements apply to all state universities except Ohio and Miami Universities and the Medical College of Ohio at Toledo, and are also not specified for certain other types of institutions. If a deficiency is noted for institutions not listed above, treat it as a potential management comment rather than a noncompliance finding.

Community Schools

Ohio Rev. Code §3314.011 - Every community school established under this chapter shall have a designated fiscal officer. The Auditor of State may require by rule (see OAC 117-6-07 below) that the fiscal officer of any community school, before entering upon duties as the fiscal officer of the school, execute a bond in an amount and with surety to be approved by the governing authority of the school, payable to the state, conditioned for the faithful performance of all the official duties required of the fiscal officer. Any such bond shall be deposited with the governing authority of the school, and a copy thereof, certified by the governing authority, shall be filed with the county auditor.

Ohio Admin. Code § 117-6-07 requires a community school fiscal officer to execute a bond prior to entering upon the duties of the fiscal officer as provided for in Ohio Rev. Code §3314.011. The governing authority prescribes the bond amount and surety by resolution.

Summary of Requirement: These sections provide requirements for bonding certain public officials and employees.

Sample Questions and Procedures [See the *OCS Bonding Appendix* for details of requirements applicable to county, city, township, school, and library officials.]:

1. How do you determine who is required to be bonded?
2. Do you have blanket bonds on officials or employees? How do you determine whether employees are eligible for such blanket bonding?
3. If the amount of the bond is not specified by statute, inquire how the government determined whether amounts of the bonds are commensurate with the duties of their office, i.e., amount of funds for which the individual is responsible, limits of liability, etc. If the bond seems unreasonable, consider issuing a management comment.
4. Please show me a few representative bonds.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Part 8: Other Special Entity Requirements

Section A: County Requirements

7-30 Compliance Requirements: Ohio Rev. Code Sections 325.071, 325.12 and 325.13 - Furtherance of justice allowance to sheriffs and prosecuting attorneys.

Summary of Requirement: The Furtherance of Justice Funds, created in accordance with Ohio Rev. Code Sections 325.071, 325.12 and 325.13 exist in order to provide for the sheriff's and the prosecuting attorney's expenses relating to the performance of the officer's official duties and in the furtherance of justice.

Although the officers possess considerable discretion in determining an expense in the performance of their duties, these expenditures must be for a proper public purpose. The sheriff and prosecutor must be allowed one-half of the officer's official salary, with two exceptions according to §325.13. The first exception allows the county prosecutor to appeal to the common pleas court for up to \$10,000 if the amount available in the fund is not sufficient. The second exception allows moneys collected by a court for fines to be distributed to the fund by court order. The sheriff and the prosecutor must account for all of the expenditures that have been made from the Furtherance of Justice Fund and file the accounting with the county auditor by the first Monday in January. Any funds that remain at the end of the year including cash held by officers must be deposited to the county treasurer.

Sample Questions and Procedures:

Auditors should refer to the *Ohio Compliance Supplement FOJ Appendix*. The appendix includes audit programs to be used when performing tests of these funds. The audit programs are to be used at least **once every three years**³⁸ as discussed further in the appendix. For years in which use of the audit programs is not used, auditors should use the following sample questions and procedures:

1. Please show me any policies and procedures you have for administering this fund.
2. Did you file the required annual report of expenditures for this fund? Please show me a copy of it.
3. Please show me documentation that the expenditures from this fund were proper and in accordance with your policies and procedures. Auditors should scan expenditure documentation and determine whether appropriate documentation is being maintained (i.e. receipts, invoices, affidavits, etc.), and whether expenditures appear reasonable in nature (i.e. proper public purpose). If significant unusual items are noted, auditors should perform the disbursement testing procedures included in the audit programs in the **FOJ Appendix**.

Government Personnel Interviewed and Dates:
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³⁸ Unless you have identified elevated risks, you can continue to limit tests of Steps 7-35 (Furtherance of justice allowance) to once every three years.

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Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-31 Compliance Requirement: Ohio Rev. Code §325.07 - Sheriff's transportation of prisoners allowance.

Summary of Requirement: A monthly allowance is provided to the sheriff for expenses incurred in transporting or pursuing persons accused of crimes. The sheriff must file with the county commissioners an itemized monthly report of expenditures.

Sample Questions and Procedures:

Auditors should refer to the *Ohio Compliance Supplement FOJ Appendix*. The appendix includes audit programs to be used when performing tests of this fund. The audit programs are to be used at least **once every three years**³⁹ as discussed further in the appendix. For years in which use of the audit programs is not required, auditors should use the following sample questions and procedures:

1. Did you draw the advancement for pursuit and transportation of prisoners?
2. Please show me any policies and procedures you have for administering this fund.
3. Please show me a copy of the expenditure reports you filed for this fund. (The auditor should inspect this document for any apparent improprieties).
4. Please show me documentation that the expenditures from this fund were proper and in accordance with your policies and procedures. Auditors should scan expenditure documentation and determine whether appropriate documentation is being maintained (i.e. receipts, travel reports, etc.), and whether expenditures appear reasonable in nature (i.e. proper public purpose). If significant unusual items are noted, auditors should perform the disbursement testing procedures included in the audit programs in the **FOJ Appendix**.

Government Personnel Interviewed and Dates:
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Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

³⁹ Unless you have identified elevated risks, you can continue to limit tests of Steps 7-36 (Sheriff's transportation of prisoners) to once every three years.

New: HB 153, 129th GA
Effective: 9/29/11

7-32 Compliance Requirements: Ohio Rev. Code Sections 343.01, 3734.52, 3734.55, 3734.56, 3734.57(B), 3734.573, and 3734.57(G), and 3734.577 – Expenditures by solid waste management districts.

Summary of Requirement: Ohio Rev. Code Sections 343.01 and 3734.52 require all counties in Ohio to be a part of a solid waste management district, either individually or jointly as part of a multi-county (joint) solid waste management district. Ohio Rev. Code Sections 3734.55 and 3734.56 require all solid waste management districts to develop and submit solid waste management plans to Ohio EPA for approval. These plans address a variety of issues associated with solid waste management within the jurisdiction, including demonstrating that adequate landfill capacity exists for waste generated within the district and establishment of recycling goals. Once approved by the Ohio EPA, solid waste management districts are required to implement their plans.

Solid waste management districts are authorized to levy certain fees to fund the programs specified in their plans. Ohio Rev. Code Section 3734.57(B) specifies that solid waste management districts can levy fees on the disposal of solid waste in landfills within their boundaries, and Ohio Rev. Code Section 3734.573 specifies that solid waste management districts can levy fees on waste that is generated within their boundaries regardless of where the waste is disposed.⁴⁰ Both of these sections require the fee revenue shall be “kept in a separate and distinct fund to the credit of the district.” Ohio Rev. Code Section 3734.57(G) specifies that “moneys . . . arising from the [disposal of generation fees] shall be expended by the board of county commissioners or directors of the district in accordance with the district’s solid waste management plan or amended plan . . . exclusively for the following purposes: . . .” Ohio Rev. Code Section 3734.57(G) then provides ten “allowable uses” for the fee revenue.⁴¹

Although the board of county commissioners or directors of the district possess considerable discretion in determining how to expend fee revenue in the performance of their duties, these expenditures must be exclusively for an allowable use listed in Ohio Rev. Code Section 3734.57(G).

Sample Questions and Procedures:

Auditors should use the following sample questions and procedures:

1. Please show me any policies and procedures you have for administering this fund.
2. Please show me supporting documentation that the expenditures from this fund were:
 - Allowable under one of the ten “allowable use” criteria for the fee revenue listed in Ohio Rev. Code Section 3734.57(G); and

⁴⁰ If a district charges a fee to private sector commercially- licensed haulers, the district cannot waive this fee for public sector commercially- licensed haulers. (RC 3734.577)

⁴¹ OAG Opinion 2008-021 clarifies that the fee can be “used by the district for the purposes set forth in R.C. 3734.57(G)(1)-(10)] or to provide other remuneration or services to or on behalf of the district or its residents.” Since the fee can be used to subsidize the normal operations of the district, AOS believes districts should account for this fee within a separate sub-fund or account of the district’s general fund.

- Allowable in accordance with your policies and procedures.
3. If significant unusual items are noted, auditors should make a referral to Ohio EPA, Division of Solid and Infectious Waste Management, 614-644-3020.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section B: Municipality Requirements

7-33 Compliance Requirement: Ohio Rev. Code 5727

Summary of Requirement: Kilowatt-hour tax (kWh tax)

Municipal (Government) electric systems must assess a monthly kilowatt-hour (kWh) tax on end users. This tax is assessed at a variable rate that decreases as kilowatt-hour usage increases on the meters of end users (the last meter used to measure the kWh distributed). [Ohio Rev. Code §5727.81(A)]

Ohio Rev. Code §5727.82(A)(3) permits municipal electric communities to retain in their general fund the taxes collected from customers served inside their city or village limits (including taxes self-assessing customers pay, per §5727.81(C)(2)).

Note: This legislation did not change the constitutional rule that municipal electric systems can sell no more than one-third of electricity outside city or village limits.*

Municipal electric systems must file a monthly report and remit to the Tax Commissioner,⁴² by the 20th of the next month, taxes collected from any distribution customers served outside their city or village limits. Even if a municipal electric system has no sales outside of its community limits, a monthly report must be filed. [Ohio Rev. Code §5727.82(A)(1) & (A)(3)]

A self-assessing option exists for large users consuming more than 45 million kWh annually. This self-assessing customer must annually register with the Department of Taxation and pay an annual fee to the State. A self-assessing customer located inside a municipal electric community's limits must remit any kWh tax directly to the community. [Ohio Rev. Code §5727.81(C)(2)]

Every electric system liable for the kWh tax must keep complete and accurate records of all electric distributions and other records as required by the Tax Commissioner. The records must be preserved for four years after the return for the taxes for which the records pertain is due or filed, whichever is later, and be available for inspection. [Ohio Rev. Code §5727.92]

Note: AOS Bulletin 2001-011 explains these requirements in more detail. Auditors should familiarize themselves with this Bulletin before testing this requirement.

* Per Ohio Constitution, Article 18, §6: "Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per cent of the total service or product supplied by such utility within the municipality, provided that such fifty per cent limitation shall not apply to the sale of water or sewage services." (Note: 50% of the total supplied within the municipality = 1/3 of the total supply.)

Sample Questions and Procedures:

1. How do you segregate kWh taxes billed /collected for customers residing outside of the

⁴² Governments must pay the tax to the Tax Commissioner, unless required to remit the taxes via electronic funds transfer to the Treasurer of State per Ohio Rev. Code §5727.83.

municipality's limits vs. those billed / collected inside the municipality's limits?

2. Please show me a few of your monthly tax filing reports to the State Treasurer. Please show me how these agree with your ledgers.
3. Inquire with the municipality if there are any self-assessing customers to whom they supply electricity. If yes, inquire how the tax is transmitted to the general fund. (If the self assessor is located outside of the entity limits, the self assessor remits the kWh tax directly to the State.)
4. Inquire how the auditee determines that no more than one-third of its total sales are outside its limits.
5. Inquire about the municipality's procedures for complying with the record keeping requirements. Read a few electric distribution records to determine compliance.
6. Inquire how the government computes / segregates the tax billed to its residents and transfers the amount to its general fund.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section C: School Requirements

7-34 Compliance Requirement and Summaries Thereof:

Licensing, school districts:

- The state board of education requires treasurers to have licenses. [§3301.074(A)].
- The state board of education requires school district business managers to be licensed. [§3301.074(A)].

Community school requirements:

- Ohio Rev. Code §3314.011 – Prior to assuming the duties of fiscal officer, the fiscal officer must be licensed under Ohio Rev. Code §3301.074 or must complete not less than sixteen hours of continuing education classes, courses or workshops in school accounting as approved by the sponsor of the community school.

Any fiscal officer not licensed under Ohio Rev. Code §3314.074 must complete an additional twenty-four hours of continuing education classes, courses or workshops in school accounting as approved by the sponsor of the school within one year after assuming the duties of fiscal officer. Any hours in excess of sixteen hours completed by the fiscal officer prior to assuming their duties will count toward the additional twenty-four hours of continuing education required under this section.

In each subsequent year, any fiscal officer not licensed under Ohio Rev. Code §3314.074 must complete eight hours of continuing education classes, courses or workshops in school accounting as approved by the sponsor of the school.

- All community school classroom teachers are to be licensed in accordance with Ohio Rev. Code Sections 3319.22 to 3319.31, except that a community school may engage noncertificated persons to teach up to twelve hours per week pursuant to Ohio Rev. Code §3319.301. A permit must be issued by the Ohio Dept. of Education to these “noncertificated” persons in order to teach.

Sample Questions and Procedures:

1. What procedures do you have to insure yourselves that these employees’ licenses are current?
2. Please show me the current licenses for the officials listed above.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

~~7-40 Compliance Requirements: Ohio Rev. Code §3313.291 — School District Petty Cash Accounts. (Not applicable to community schools.)~~

~~Summary of Requirements: This section allows a Board of Education to adopt a resolution establishing a petty cash account from which a designated district official may make disbursements by check or debit card for purchases made within the district.~~

~~The resolution establishing the petty cash account MUST:~~

- ~~➤ Specify the maximum amount of money placed in the account;~~
- ~~➤ Designate the authorized district officials who may draw moneys from the account or require the school district treasurer to designate such officials; AND~~
- ~~➤ Establish procedures for replenishing the account.~~

~~Sample Questions and Procedures:~~

~~Steps 1 & 2 should normally only apply when the district adopts new or modified policies. Otherwise, our review of systems documentation or the permanent file should fulfill the requirements of steps 1--2.~~

- ~~1. Include a copy of the board approved, petty cash account policy and a list of authorized district officials in the permanent file.~~
- ~~2. Scan selected petty cash disbursements and determine whether appropriate documentation exists to support petty cash disbursements. Document your results. You should base the extent of this scanning on the amount of petty cash reimbursements and your assessment of risk related to petty cash accounts. You should apply procedures in addition to scanning if risk warrants it.~~

~~Government Personnel Interviewed and Dates:~~

~~Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):~~

~~7-41 Compliance Requirement: Ohio Rev. Code Sections 3314.03(A) Community School tax status⁴³~~

~~Summary of Requirements:~~

~~Ohio Rev. Code §3314.03(A)(1)(a): Community schools established prior to April 8, 2003 must be nonprofit corporations under Ohio Rev. Code Chapter 1702.~~

~~Per Ohio Rev. Code §3314.03(A)(1)(b), community schools established after April 3, 2003 must incorporate as public benefit corporations.~~

~~Per our interpretation of Ohio Rev. Code §3314.03(A)(1)(a) and (b), all community schools are organized for a public and charitable purpose. Also, their assets inure to the State of Ohio by statute. Therefore, community schools are automatically exempt from Federal and State income taxes and do not require 501(c)(3) filing status.~~

~~IRS Publication 4839 (January 2010) requires tax exempt organizations, other than churches and church-related organizations, to file annual information forms with the IRS. Such organizations must file one of the following forms, depending on their size: a Form 990, 990-EZ, 990-PF or the 990-N (e-Postcard). Filing the form is necessary to maintain an organization's tax exempt status.~~

~~Sample Questions and Procedures:~~

- ~~1. For PBC and nonprofits with IRS exemptions, scan the Form 990 filed with the IRS.

 - ~~a. Determine whether the school filed a 990 with the IRS.~~
 - ~~b. Scan the 990. Do not spend significant time, but if you note obvious misstatements, including misstatements in sections describing officials' compensation, or "Other Information," etc. include a management comment that the school should file an amended return.~~~~

~~Government Personnel Interviewed and Dates:~~

~~Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):~~

⁴³ Effective 9/29/2011 per HB 153, Ohio Rev. Code § 5709.07 (A) provides that real property and land used by a school or community school for the purpose of primary or secondary educational purposes is exempt from taxation.

Revised: HB 153, 129th GA
Effective: 9/29/11

7-42 Compliance Requirement: ~~Ohio Rev. Code §3313.642(B) School Fees for Low Income Students~~

Summary of Requirements:

~~No board of education of a school district shall charge a fee to a pupil who is eligible for a free lunch under the “National School Lunch Act,” 60 Stat. 230 (1946), 42 U.S.C. 1751, as amended, and the “Child Nutrition Act of 1966,” 80 Stat. 885, 42 U.S.C. 1771, as amended, for any materials needed to enable the pupil to participate fully in a course of instruction. The prohibition in this division against charging a fee does not apply to any fee charged for the following:~~

- ~~1. Any materials needed to enable a pupil to participate fully in extracurricular activities or in any pupil enrichment program that is not a course of instruction. (Ohio Rev. Code §3313.642(B)(1))~~
- ~~2. Any tools, equipment, and materials that are necessary for workforce readiness training within a career technical education program that, to the extent the tools, equipment, and materials are not consumed, may be retained by the student upon course completion (Ohio Rev. Code §3313.642(B)(2))~~

~~Additional information about school fees for low income students (i.e., Instructional Fee Waiver Q&A) is available on the Ohio Department of Education’s website at: <http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEDetail.aspx?page=523>.~~

Sample Questions and Procedures:

~~Inspect the school district’s fee schedule.~~

~~Determine whether the district charges fees for courses of instruction to pupils eligible for a free lunch under the National School Lunch Act.~~

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Revised: HB 116, 129th GA
Effective: 11/4/12

7-35 Compliance Requirement: Ohio Rev. Code §3313.666(A), (B), and (C) and §3314.03(A)(11)(d) Anti-Bullying Provisions⁴⁴

Summary of Requirements:

The board of education of each city, local, exempted village, and joint vocational school district and the governing authority of each community (charter) school must adopt a anti-bullying policy in consultation with parents, school employees, school volunteers, students, and community members.

The policy must prohibit the harassment, intimidation, or bullying of any student on school property or at a school-sponsored activity. It also must define the term "harassment, intimidation, or bullying" in a manner that includes the definition prescribed in ~~HB 276~~ Ohio Rev. Code §3313.666(A)(1)-(2). The act defines that term as "an intentional written, verbal, or physical act that a student has exhibited toward another student more than once and the behavior both (1) causes mental or physical harm to the other student, ~~and~~ (2) is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student and (3) violence within a dating relationship."

Each policy also must include the following additional items (Ohio Rev. Code §3313.666(A), (B), and (C) and §3314.03(A)(11)(d)):

- A procedure for reporting prohibited incidents;
- A requirement that school personnel report prohibited incidents of which they are aware to the school principal or other administrator designated by the principal;
- A requirement that the parents or guardians of a student involved in a prohibited incident be notified and, to the extent permitted by state and federal law governing student privacy, have access to any written reports pertaining to the prohibited incident;
- Procedures for documenting, investigating, and responding to a reported incident;
- A requirement that the district or community school administration provide semiannual written summaries of all reported incidents to the president of the district board of education or community school governing authority, and post them on the district's or school's website (if applicable);

⁴⁴ ~~Effective for fiscal year 2011 school audits, HB 19 of the 128th General Assembly Ohio Rev. Code §3313.666(A) requires each school district, community (charter) school, and STEM school to incorporate dating violence into its existing policy prohibiting student harassment, intimidation, or bullying. For this purpose, the ORC explicitly includes violence within a dating relationship as a form of harassment, intimidation, or bullying. In effect, then, the policy would cover dating violence that occurs on school property or at school-sponsored events. The district or school must update its policy within six months after the statute's effective date. The statute was effective on March 28, 2010, accordingly, each board shall update the policy adopted to include violence within a dating relationship by September 28, 2010. Effective November 4, 2012 HB 116 of the 129th General Assembly incorporates requirements for harassment via electronic media, and harassment on a bus. It also requires that to the extent that state or federal funds are appropriated for this purpose, each board shall require that all students enrolled in the district annually be provided with age-appropriate instruction, as determined by the board, on the board's policy, including a written or verbal discussion of the consequences for violations of the policy. Each board shall require that once each school year a written statement describing the policy and the consequences for violations of the policy be sent to each student's custodial parent or guardian. The statement may be sent with regular student report cards or may be delivered electronically.~~

- A strategy for protecting a victim from additional harassment and from retaliation following a report; and
- The disciplinary procedure for a student who is guilty of harassment, intimidation, or bullying.

These items form a framework for districts and community schools to use in developing their policies. The policy must be included in student handbooks and in publications that set forth the standards of conduct for schools and students. Employee training materials must also include information on the policy.

Auditor of State identification of harassment policy

Beginning in fiscal year 2009, the act **requires** the Auditor of State (or contracting IPAs), when auditing a school district or community school, to identify whether the district or school has adopted an anti-harassment policy. This determination must be recorded in the audit report. The Auditor of State may not prescribe the content or operation of the policy. (R.C. 117.53; §3)

Sample Questions and Procedures:

Inspect the anti-bullying policy the school adopted pursuant to Ohio Rev. Code §3313.666(A), (B), and (C) (for school districts) or §3314.03(A)(11)(d) (community schools). To comply with this reporting obligation, the Auditor of State and contracting independent accountants must include an additional agreed-upon procedures report describing the procedures applied and the results, for audits of fiscal year ended June 30, 2009 and in subsequent audits until full compliance is obtained⁴⁵ This report should appear immediately after the schedule of findings or schedule of prior year audit findings, if applicable. The table of contents should separately list this report. (Because this report is a statutory requirement, we believe it is inappropriate to include it with a management letter.)

Bulletin 2009-010, *School Anti-harassment Policy*, describes the reporting process AOS and IPA's should use to satisfy these requirements.

(Note: This procedure need not be repeated for future audits once we determine the school has fully complied with this requirement. However, "Full compliance" includes both compliance with the original anti-bullying laws as described in AOS Bulletin 2009-010 and the revision to Ohio Rev. Code §3313.666(A) which requires the addition of violence in a dating relationship to school district anti-bullying policies. Therefore, fiscal year 2011, (and later year(s) if a district has not fully complied for FYE 2011), school district audits will need to include an Agreed-Upon Procedures report describing the school district's compliance with the "violence in dating" revisions until full compliance is achieved.)

Government Personnel Interviewed and Dates:

⁴⁵ "Full compliance" includes both compliance with the original anti-bullying laws as described in AOS Bulletin 2009-010 and the ~~HB-19 amendment (128th General Assembly)~~ to revision to Ohio Rev. Code §3313.666(A) which requires the addition of violence in a dating relationship to school district anti-bullying policies. Therefore, all fiscal year 2011 school district audits will need to include an Agreed-Upon Procedures report describing the school district's compliance with the "violence in dating" revision ~~HB-19 amendment~~. Auditors should consider reminding school district officials about this requirement during their fiscal year 2010 audits.

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Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section D: Family and Children First Councils**7-36 Compliance Requirement:** Ohio Rev. Code §121.37(B)(1)

Summary of Requirements: Each county must establish a Family and Children First Council. In addition to local public or private agencies or groups that fund, advocate or provide services to families and/or children having representatives on the board, each county council must include the following individuals:

- (a) At least three individuals whose families are or have received services from an agency represented on the council or another county's council. Where possible, the number of members representing families shall be equal to twenty per cent of the council's membership.
- (b) The director of the board of alcohol, drug addiction, and mental health services that serves the county, **or**, in the case of a county that has a board of alcohol and drug addiction services and a community mental health board, the directors of both boards. If a board of alcohol, drug addiction, and mental health services covers more than one county, the director may designate a person to participate on the county's council.
- (c) The health commissioner, or the commissioner's designee, of the board of health of each city and general health district in the county. If the county has two or more health districts, the health commissioner membership may be limited to the commissioners of the two districts with the largest populations.
- (d) The director of the county department of job and family services;
- (e) The executive director of the county agency responsible for the administration of children services pursuant to Ohio Rev. Code §5153.15;
- (f) The superintendent of the county board of mental retardation and developmental disabilities;
- (g) The superintendent of the city, exempted village, or local school district with the largest number of pupils residing in the county, as determined by the department of education, which shall notify each board of county commissioners of its determination at least biennially;
- (h) A school superintendent representing all other school districts with territory in the county, as designated at a biennial meeting of the superintendents of those districts;
- (i) A representative of the municipal corporation with the largest population in the county;
- (j) The president of the board of county commissioners, or an individual designated by the board;
- (k) A representative of the regional office of the department of youth services;
- (l) A representative of the county's head start agencies, as defined in Ohio Rev. Code §3301.32;
- (m) A representative of the county's early intervention collaborative established pursuant to the federal early intervention program operated under the "Education of the Handicapped Act Amendments of 1986";
- (n) A representative of a local nonprofit entity that funds, advocates, or provides services to children and families.

Sample Questions and Procedures:

Obtain a list of the council members and the entity they represent, and compare the membership to the legislatively required membership.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-37 Compliance Requirement: Ohio Rev. Code §121.37(B)(5)(a) - Family and Children First Councils - Administrative Agent

Summary of Requirements: Each Family and Children First Council must designate an administrative agent from among the following public entities: the board of alcohol, drug addiction, and mental health services, including a board of alcohol and drug addiction or a community mental health board if the county is served by separate boards; the board of county commissioners; any board of health of the county's city and general health districts; the county department of jobs & family services; the county agency responsible for the administration of children's services pursuant to Ohio Rev. Code §5153.15; the county board of mental retardation and developmental disabilities; any of the county's boards of education or governing boards of educational service centers; or the county's juvenile court. Any of the foregoing public entities, other than the board of county commissioners, may decline to serve as the council's administrative agent.

The administrative agent serves as the council's appointing authority. In addition, the council must file an annual budget with the administrative agent and copies must be filed with the county auditor and the board of county commissioners.

If the County Council designates the Board of County Commissioners as its Administrative Agent, the County Commissioners can delegate, by resolution, any of its powers and duties as Administrative Agent, to an Executive Committee. (They may also repeal the resolution which provides for such delegation.) The Executive Committee is established by the Board and made up of members of the County Council.⁴⁶ The Board of County Commissioners may require the Executive Committee to submit an annual budget. An Executive Director may be hired (with Board approval) to assist the County Council.

Miscellaneous

Various other Ohio Compliance Supplement requirements apply to family and children first councils, including: Compliance Supplement Requirements 7-5 through 7-7, regarding daily deposit of funds, public meetings, and public records, respectively; Compliance Supplement Requirement 6-9 regarding withholding federal, state and local taxes; Compliance Supplement Requirement 6-10 regarding employee retirement system withholdings; and Compliance Supplement Requirement 7-27 regarding Ohio Ethics Laws. In addition, vacation and sick leave for family and children first councils are governed by the policies and procedures of the council's administrative agent.

Sample Questions and Procedures:

1. Who is your administrative agent?
2. Please show me documentation that you have filed your annual budget with your administrative agent; and, that copies have been filed with the County Auditor and Board of County Commissioners.
3. Has an Executive Committee been established (only if Board of County Commissioners has been designated as the Administrative Agent)? If so, please show me a copy of the

⁴⁶ Ohio Rev. Code §121.37 (B)(5)(a) provides that the Executive Committee so established must include certain members of the County Council. Where an Executive Committee has been established, auditors should refer to the statute for the detailed requirements.

Board's resolution and a list of Executive Committee members.

4. Use the guidance in the applicable sections to test compliance related to the Sections listed under "miscellaneous" above.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-38 Compliance Requirement: Ohio Rev. Code Chapter 1347 – Storage, Use and Distribution of Personal Information

Summary of Requirements: State and local government agencies are entrusted with the duty of collecting sensitive and private information, and auditors must make sure the necessary processes and procedures are in place to safeguard the personal data citizens entrust to them.

Ohio Rev. Code Chapter 1347 contains legal requirements related to personal information systems which are applicable to *all state and local agencies* and defines the terms and uses of this information. Specific excerpts from these requirements are highlighted below.

1347.01 Personal information systems definitions.

(E) “Personal information” means any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person.

1347.04 Exemptions from chapter

(A)(1) Provides that the following are exempt from the provisions of this chapter:

(a) Any state or local agency, or part of a state or local agency, that performs as its principal function any activity relating to the enforcement of the criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals;

(b) The criminal courts;

(c) Prosecutors;

(d) Any state or local agency or part of any state or local agency that is a correction, probation, pardon, or parole authority;

(e) Personal information systems that are comprised of investigatory material compiled for law enforcement purposes by agencies that are not described in divisions (A)(1)(a) and (d) of this section.

(A)(2) Provides that the following are not exempt from the provisions of this chapter:

(B) The provisions of this chapter shall not be construed to prohibit the release of public records, or the disclosure of personal information in public records, as defined in section 149.43 of the Revised Code, or to authorize a public body to hold an executive session for the discussion of personal information if the executive session is not authorized under division (G) of section 121.22 of the Revised Code.

The disclosure to members of the general public of personal information contained in a public record, as defined in section 149.43 of the Revised Code, is not an improper use of personal information under this chapter.

(C) The provisions of this chapter shall not be construed to prohibit, and do not prohibit, compliance with any order issued pursuant to division (D)(1) of section 2151.14 of the Revised

Code, any request for records that is properly made pursuant to division (D)(3)(a) of section 2151.14 or division (A) of section 2151.141 of the Revised Code, or any determination that is made by a court pursuant to division (D)(3)(b) of section 2151.14 or division (B)(1) of section 2151.141 of the Revised Code.

1347.05 Duties of state and local agencies maintaining personal information systems.

Every state or local agency that maintains a personal information system shall: (info paraphrased)

- (A) Appoint one individual to be directly responsible for the system;
- (B) Adopt and implement rules that provide for the operation of the system;
- (C) Inform each of its responsible employees of all rules adopted in accordance with this section;
- (D) Specify disciplinary measures for unauthorized use of information contained in the system;
- (E) Inform a person supplying personal information if it is legally required, or if they may refuse;
- (F) Develop procedures for purposes of monitoring the accuracy, relevance, timeliness, and completeness of the personal information in this system;
- (G) Take reasonable precautions to protect personal information in the system from unauthorized modification, destruction, use, or disclosure;
- (H) Collect, maintain, and use only personal information that is necessary and relevant to the functions that the agency is required or authorized to perform, and eliminate personal information from the system when it is no longer necessary and relevant to those functions.

1347.07 Using personal information.

A state or local agency shall only use the personal information in a personal information system in a manner that is consistent with the purposes of the system.

Sample Questions and Procedures:

Inquire of the client's officials as to the types of personal information the entity uses and/or maintains. Specifically determine:

- What personal information is used and/or maintained in their routine day-to-day operations.
- What infrequent activities are performed related to personal information.

Inquire if the agency has a written policy that governs when personal information may be accessed. Determine if the policy includes information requested from outside the entity and whether it addresses access to personal information from inside the entity. Determine if the policy includes valid reasons for which employees may access personal information.

Inquire with the client to identify any laws or provisions that govern the storage, use, and distribution of personal information, including Ohio Revised Code, Ohio Administrative Code, federal regulations, etc.

Ask the following questions and observe/obtain relevant documentation to support all answers:

(Note: This section does not apply to any departments that meet the exceptions listed under 1347.04 outlined above.)

1. Determine if the department meets any of the exemptions listed in 1347.04
2. If a policy is in place, who monitors it? How is monitoring documented?
3. How does the agency store and protect personal information?
4. What types of access controls are in place (both computer and manual) to ensure that personal information is only used for its intended purpose?
5. Who has access to personal information?
6. Is the appropriate level of access reviewed regularly?
7. How often is personal information accessed outside of the routine operations of business?
8. Who decides when it is appropriate to access personal information outside of the routine operations of business?
9. Is there approval of the access required?
10. Are logs or other documentation maintained to show who accessed the information and whose information was accessed?
11. What are the consequences for accessing personal information outside of the routine operations of business, if permission has not been given?
12. Do you know of any complaints or inquiries that have occurred during the year concerning access to personal information?
13. Do you know if any improper access to personal information has occurred during the year from within the entity? If so, was the person whose information was accessed notified?

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

7-39 Compliance Requirement: Ohio Rev. Code 117.13(C)(3) – Allocating Audit Costs

Summary of Requirements: Local governments can charge audit costs to funds other than the general fund only if the charges are properly allocated to those funds.

Ohio Rev. Code 117.13(C)(3) states the fiscal officer may distribute such total cost of the audit to each fund audited in accordance with its percentage of the total cost.

Auditor of State Bulletin 2009-011 includes the following guidance for allocating audit costs to funds:

The fiscal officer should determine which funds should be charged a percentage of the audit costs. The Auditor of State is of the opinion that most operating funds of a local government, including utility funds (i.e., water, sewer, electric, refuse), special levy funds, funds that receive gas taxes, and motor vehicle registration fees can be charged a portion of the audit costs.

Other funds of a local government that may be charged a percentage of the audit costs include bond and grant funds. The ability to charge bond funds will depend on the allowable uses defined in the bond legislation. Trust and other funds that receive donations restricted to specific purposes will require analysis by the fiscal officer of the restrictions imposed by the donor and/or trust agreement to determine if any audit costs may be charged to those funds. Agency funds, because of their custodial nature, should not be charged for any share of the cost of an audit for the fiscal officer's role as the fiscal agent.

In determining a percentage of total cost that may be charged to a fund, any reasonable and rational method such as a percentage of the fund's revenue or expenditures compared to the total revenue or expenditures for all funds, excluding agency funds, would be acceptable. A local government's indirect cost allocation plan may also be an acceptable method for allocating audit costs.

For grant funds, the costs of audits are allowable if the audits were performed in accordance with the Single Audit Act, and Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Generally, the percentage of costs charged to Federal awards for a single audit shall not exceed the percentage derived by dividing Federal funds expended by total funds expended by the recipient or sub-recipient (including program matching funds) during the fiscal year. The percentage may be exceeded only if appropriate documentation demonstrates higher actual costs. Other audit costs are allowable if specifically approved by the awarding or cognizant agency as a direct cost to an award or included as an indirect cost in a cost allocation plan or rate.

Sample Questions and Procedures:

Does the government charge funds other than the general fund for audit costs? If so, please show me documentation supporting how the government determines a reasonable basis for allocating audit costs to funds other than the general fund. (Lack of formal documentation should not result in a citation or finding for adjustment if the allocation is reasonable.)

Does the government allocate audit costs to grant funds? If so, please show me documentation supporting the government received a Single Audit and allocated the audit costs to grant funds in accordance with Federal guidelines.

Government Personnel Interviewed and Dates:

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

CHAPTER 2

CONTRACTS AND EXPENDITURES

In addition to using tax budgets and appropriations to control expenditures, there are several specific laws concerning contracts and the expenditure of public money. Some of these laws are in the Ohio Rev. Code, while others are in local governments’ charters, ordinances, and resolutions. Therefore, prior to auditing these requirements, the auditor should determine what the legislative authority’s powers and restrictions are in relation to contracts and expending public money.

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Section A: Statutory Municipalities

Revised: HB 153, 129th GA
Effective: 9/29/11

2-1 Compliance Requirements: Ohio Rev. Code Sections 9.48, 715.18, 731.02, 731.12, 731.14, 731.141, 735.05, 735.051, 735.052, 735.053, 737.03, and 2921.42 - **Municipal** contracts.

Summary of Requirements: Generally, all contracts made by the legislative authority of a city municipal government for material and labor which exceed \$25,000 are subject to competitive bidding procedures. (NOTE: This limit may not apply to some charter municipalities.) [735.05 Cities]

Effective 9/29/2011, HB 153 increases the competitive bidding threshold for expenditures of a village from \$25,000 to \$50,000, except for Villages that have established a village administrator under R.C. 735.271. [731.14 – Villages] In those villages that have an established village administrator, the competitive bidding threshold is twenty-five thousand dollars. [731.141]

Competitive bidding procedures require that a contract be entered into in writing with the lowest and best bidder¹ after advertisement of the proposal for bids for not less than two nor more than four consecutive weeks² in a newspaper of general circulation within the municipality or as provided in R.C. 7.16³. (Article XVIII, Sec. 3 of the Ohio Constitution allows municipalities to deviate from these requirements by charter.)[735.05]

Contracts for used equipment or supplies at a public auction or emergencies can be entered into without following competitive bidding procedures.

Contracts with qualified non-profit agencies and contracts with state departments, political subdivisions, or a regional planning commission may be authorized without bidding and advertising.

Municipalities that participate in a joint purchasing contract are exempt from using competitive bidding. [R.C. Section 9.48(C)-(D)]

¹ “Lowest and best bidder” There are no guidelines in either the statute and case law as to what constitutes “best.” Factors that may be appropriate to consider are brand name reliability, serviceability, proximity of service provider and past experience with bidder.

² For Villages under Ohio Revised Code § 731.14, if the legislative authority posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the village, provided that the first notice published in such newspaper meets all of the following requirements: (A) It is published at least two weeks before the opening of bids; (B) It includes a statement that the notice is posted on the legislative authority’s internet web site; (C) It includes the internet address of the legislative authority’s internet web site; and (D) It includes instructions describing how the notice may be accessed on the legislative authority’s internet web site.

³ Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16.

Municipalities also need not follow the bidding process where the contract involves specialized services, requiring particular skills and aptitudes, such as engineering or legal services. [State ex rel Doria v. Ferguson, 145 Ohio St. 12. (1945)]

Municipalities (both cities and villages) procuring professional design services, ~~over \$25,000~~, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require municipalities to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]

A municipality may purchase supplies or services from another political subdivision or by contract that the Ohio Department of Administrative Services has entered into on behalf of the municipality, if the municipality can prove that it can purchase those same supplies or services from the other party upon equivalent conditions and specifications but at a lower price. If so, the municipality need not competitively bid those supplies or services. [Section 125.04.]

Ohio Rev. Code Sections 731.02 (cities), 731.12 (villages), - Interest in contracts by elected officials. These sections prohibit elected officials from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold). Determine through inspection, vouching, or other such means that:

- Contracts over \$25,000 (cities or villages with a village administrator) or \$50,000 (villages without a village administrator) or any other local limitations were awarded using competitive bidding procedures. Be alert for indications of bid splitting or deliberate attempts to evade bid limitations, such as successive contracts just under the bid amount.
- Advertisements of the proposals for bids were made as indicated (or posted to the municipality’s website, as described above).
- Documentation indicates that the lowest and best bid was accepted.
- Contracts and expenditures were approved by the legislative authority in accordance with local requirements.
- Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

To enhance efficiency, include testing for unresolved findings for recovery (step 2-23) with these tests. However, violations of RC 9.24 would not normally constitute material noncompliance. They would normally be management letter comments.

- Select a representative number of purchases made through another subdivision or by “piggy backing” onto a DAS contract. Determine through inspection, vouching, comparison, or other such means whether the client is required to maintain records to demonstrate the following:
- The purchase conditions and specifications were substantially equivalent to those through the DAS Cooperative Purchasing Program.
- The purchase price was less than that available through the DAS Cooperative Purchasing Program.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

2-2 Compliance Requirements: Ohio Rev. Code Sections 731.16 (villages) and 735.07 (cities) Altering or modifying **municipal** contracts.

Summary of Requirements: When in the opinion of: (a) the legislative officers of a village, (b) the village administrator, or (c) the director of public service, it becomes necessary, in the prosecution of any work or improvement under contract, to alter or modify a contract, such alterations or modifications can only be made upon the order of these individuals.

A change order is not effective until the price to be paid for the work and material or both, under the altered or modified contract, has been agreed upon in writing and signed by these individuals and by the contractor.

Where a board of control exists, the board must approve contract modifications. [RC 735.07]

No contractor may recover anything for work or material because of any such alteration or modification unless the contract is modified as required.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

For a few selected contracts, compare cumulative contract expenditures with the original bid price. If these expenditures exceed the bid price, inspect the modified contract documents for signatures of the contractor and the appropriate officials (i.e., the legislative officers of a village, the village administrator, or the director of public service).

If a board of control exists, determine that the board documented their approval of any modifications.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

2-3 Compliance Requirement: Ohio Rev. Code Section 117.16 (A); 723.52 – Force accounts – [Certain] Municipal Corporations [Cities/Villages]. *This statute does not apply to a charter city or charter village pursuant to Ohio Rev. Code § 723.53.*

Summary of Requirements:

AOS Force Account Project Assessment Form

A director of public service in a city, or the legislative authority of a village, is required to estimate the costs of any “contract” for the construction, reconstruction, widening, resurfacing, or repair of a street or other public way using the Auditor of State’s force account project assessment form. *Note: the use of this form is required for contracted work pursuant to Ohio Rev Code § 723.52 and for force account projects pursuant to Ohio Rev. Code § 117.16 (A).*

The Auditor of State’s prescribed form [required by ORC 117.16(A)] for this purpose can be found on our website at the following link:

<http://www.ohioauditor.gov/services/lgs/publications/AuditorsForms/AuditForms/ForceAccountProjectAssessmentForm.pdf>

Auditor of State Bulletin 2003-003 states an entity may use certain “safe harbor” percentages in computing its estimated costs; if the entity used these safe harbors, auditor of state auditors may accept them without further analysis. The entity may develop its own percentages for the add-ons for labor fringes and overhead costs, and materials overhead costs; the entity should present documentation to the auditor to justify these self-computed percentage add-ons.

Joint Projects

Joint projects undertaken by 2 or more of the affected entities require that the higher force account limits of the participating parties be applied [117.161]. Participating entities shall not aggregate their respective limits, and the share of each entity shall not exceed its respective force account limit. Calculating the proper project force account limits and the share thereof to each participating party should be memorialized in the contracts or other agreements between the parties. One of the participating entities shall complete the force account project form prior to proceeding by force account. An entity shall not proceed with a joint force account project if any one of them is subject to reduced force account limits under RC 117.16(C) or (D).

Bid Specifications

If the city or village has an engineer or someone performing the duties and functions of an engineer, then that person may develop the estimates.

When the estimated cost of the total project, including labor, exceeds \$30,000, the city or village must invite and receive competitive bids from private contractors for completing the work. However, force accounts **may** be used if the city or village rejects all bids. The force account work must be performed in compliance with the plans and specifications upon which the private contractor bids were based.⁴

⁴ Occasionally, change orders may be necessary for force account projects. Change orders may be made for overruns in actual construction as long as: (1) the original estimate was made in good faith and (2) the change order request was for a legitimate unforeseen issue. Change orders to force account projects may constitute noncompliance if, however, estimates were intentionally low-balled to arrive under the bidding limits (e.g., not estimating the cost of labor or evidence that the entity knew from previous experience that a minimum amount of material would be required to complete a project but was not included in the original force account project estimate

The terms “construction, reconstruction, widening, resurfacing, or repair of a street or other public way” are not defined in this Ohio Rev. Code section. The city or village’s legal counsel or engineer should define these terms for the city or village. The Auditor of State will accept those definitions unless they are palpably and manifestly arbitrary or incorrect. *If the entity’s legal counsel, and/or engineer, as appropriate, did not define the indicated terms for the entity, indicate the same in your draft report. Consult with A&A Support and the AOS’s Legal department concerning any issues involving a potential finding or citation.*

Note: The following clarifies how all entity types subject to force account limits should measure these limits for fractions of miles, excerpted from Auditor of State Audit Bulletin 2007-01:

“A county must bid a project involving construction or reconstruction of a road if it exceeds \$30,000 per mile. However, it is unclear whether the limit for a 1.5 mile project would be \$45,000 (\$30,000 for the first mile, \$15,000 for the partial second mile), or \$60,000 (\$30,000 for each mile – full or partial – of the project). We determined that it was appropriate to consider the legislative intent separately for projects under one mile and for projects exceeding one mile.

For projects exceeding one mile, we determined that the intent of these statutes was to apply the limits proportionally for partial miles. In other words, for the example of the county cited above, the applicable force account limit would be \$45,000.

For projects less than a mile, the interpretation above would cause problems. In the example of a county commencing a small road repair project of one-tenth of a mile, a proportional limit would require the county to bid the project if it exceeded \$3,000 (one tenth of the \$30,000 per mile limit). We did not believe that this was the result intended by the legislature, so for projects of less than a mile, the entire per mile limit (in the case of the county in our example, \$30,000) will apply. In other words, any project that is less than a mile (regardless of distance) is to be treated as if it were a mile and subjected to the entity’s corresponding monetary limit.”

Ohio Attorney General Opinion 2008-007⁵ briefly states:

- Completing the Auditor of State’s force account project assessment form estimating the cost of the work constitutes commencement of the project for purposes of determining which force account limit is in effect and applicable to the project;
- The Auditor of State is authorized to require the use of a “safe harbor rate” for the cost of overhead or the justification of a different rate in estimating the cost of road, bridge and culvert work;
- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;

or was included at clearly insufficient amounts). Auditors should use professional skepticism when auditing force account project change orders and consult with Legal and A&A as needed.

⁵ Although the opinion was issued in response to a County’s inquiry, the Auditor of State will apply this guidance to each public office undertaking force account projects pursuant to AOS Bulletin 2008-004.

- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;
- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

Refer to AOS Bulletin 2008-004 for further information regarding Ohio Attorney General Opinion 2008-007 and the matters mentioned above.

Noncompliance

Note: These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities starting with the audits of fiscal year 2003 and thereafter. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the increased force account limits. Independent Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code section 117.12.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Ticker Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Read the minutes, inquire of management, and scan expenditures to reasonably determine if any capital construction or maintenance activity relating to a street or other public way took place during the audit period. Determine if such projects were undertaken using force accounts.

If such projects were undertaken, inspect a representative number of the entity’s completed Auditor of State Uniform Force Account Project Assessment forms. Trace wage rates, etc. to entity supporting documentation on a test basis.

Inspect the Auditor of State’s project assessment forms prepared by the entity and determine that work undertaken by force account for construction, reconstruction, widening, resurfacing, or repair of a street or other public way was documented to have an estimated cost of \$30,000 or less.

Determine if the entity used the “safe harbor” percentages described in Bulletin 2003 – 003. Recompute items on the form or scan the form for reasonableness. If the entity used its own labor fringes or overhead rates, or materials overhead rates, obtain supporting documentation and review for reasonableness.

Compare the actual projects’ costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates. Evaluate for reasonableness of the estimates. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.

Whether such projects have been undertaken or not, consider adding language to the audit management representation letter affirming or disaffirming the existence of projects subject to the applicable force account provisions.

Note: with “force account” provisions, it is possible to have non-compliance with the preparation of the Auditor of State form; with the bidding limits; or with both.

If the “force account” limits have been violated – that is, the municipal corporation did the work by force account even though it should have been bid – then the Auditor of State is required to notify the entity [and possibly the State tax commissioner] of the penalty provisions specified in AOS Bulletin 2003-003. Auditors should indicate in this block of the OCS if the Auditor of State is to notify the entity\State tax commissioner of any of the penalty provisions.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

Section B: Counties

2-4 Compliance Requirement: Ohio Rev. Code Section 305.30 - Responsibilities of the county administrator.

Summary of Requirements: County administrator responsibilities:

- administer policies and resolutions of the board
- supervise and direct the affairs of the county government
- attend meetings
- make recommendations to the board
- report to the board
- advise the board of the county’s financial condition
- perform additional duties determined by board resolution

Also, the county administrator shall, under the direction of the board of county commissioners, contract on behalf of the board and allow and pay claims for goods received and services rendered within limits provided by a resolution of the board. The board shall limit the ability of the county administrator to contract by specifying the type of contracts upon which the administrator may act without further resolution of the board. The county department receiving goods and services shall certify their receipt before the county administrator allows the payment of the claim.

Additionally, a county administrator can perform any or all functions conferred or incumbent upon the board of county commissioners in the case of a disaster or emergency, provided that the board, by resolution, has delegated the specific functions or all of the functions to the administrator. Ohio Rev. Code Sections 5502.21 (E) and (F) define “disaster” and “emergency.”

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Read the minutes and obtain a copy of the resolution authorizing the county administrator to contract or perform other functions on behalf of the county commissioners. When testing contract compliance, inspect contracts entered into by the county administrator to determine if the administrator had authority to enter into the contract.

When testing expenditures related to contracts entered into by the county administrator, inspect the voucher package to determine that receipt of goods was documented prior to payment.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

<p><u>Revised: HB 225, 129th GA</u> <u>Effective: 3/22/2012</u></p>
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2-5 Compliance Requirements: Ohio Rev. Code Sections 305.27, 319.16, 307.86, 307.862, and 9.37 - County payments to be by auditor's warrant; competitive bidding. Ohio Rev. Code Sections 307.87, 307.88, 307.91 - **County** notice and other bid procedures.

Summary of Requirements: Generally, expenditures of county funds must be paid with warrants issued by the county auditor, with the approval of the county commissioners [Section 319.16]. The warrant and all information related to the presentment of the warrant may be provided electronically [Section 9.37].

Ohio Rev. Code Section 319.16 expressly includes county boards of mental health and county boards of mental retardation and developmental disabilities as agencies authorized to approve the issuance of warrants.

Competitive bidding is required for procurements exceeding \$25,000, except where otherwise provided by law [Section 307.86].

The commissioners, by unanimous vote (defined as all three commissioners when all three are present, or two commissioners if only two are present and they constitute a quorum), can declare an emergency and waive the competitive bidding when:

1. the estimated cost is less than \$50,000 [Section 307.86(A)(1)], or
2. there is physical disaster to structures, radio communications equipment, or computers [Section 307.86(A)(2)].

A county may purchase supplies or services from another party, including another political subdivision, instead of through a contract that the Ohio Department of Administrative Services has entered into on behalf of the county, if the county can prove that it can purchase those same supplies or services from the other party upon equivalent conditions or specifications but at a lower price. If so, the county need not competitively bid those supplies or services. [Section 125.04(C)]

Ohio Rev. Code Section 305.27, - Interest in contracts by elected officials.

These sections prohibit commissioners from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract.

Other exceptions to the competitive bidding requirement are made for:

- purchase of supplies or replacement parts for which there is a single supplier [Section 307.86(B)];
- purchases from other government agencies [Section 307.86(C)];
- purchases of public social services by the county department of jobs and family services or of program services for provision by a county board of mental retardation and developmental disabilities [Section 307.86(D)];

- purchases of criminal justice services, social services programs, family services, or workforce development activities from nonprofit corporations or associations under programs funded by the federal government or by state grants [Section 307.86(E)];
- purchases of insurance or contracts negotiated under Section 307.86(F);
- purchases of computer hardware, software or consulting services that are necessary to implement a computerized case management automation project administered by the Ohio prosecuting attorneys association and funded by a grant from the federal government. [Section 307.86(G)];
- purchases of child day care for county employees [Section 307.86(H)];
- acquisition of property, including land, buildings, and other real property leased for offices, storage, or parking pursuant to 307.86 (I);
- purchase of programs or services under Section 307.86(J) for a felony delinquent, unruly youth, or status offender under the supervision of the juvenile court; and
- purchase of social services, programs, or certain ancillary services by a public children services agency for children at risk or alleged to be abused, neglected, or dependent children [Section 307.86(K)].
- Excluded from competitive bidding are expenditures for the services of an accountant, architect, attorney, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser. [Section 307.86].
- Certain acquisitions made through another entity's purchasing program See OCS 2-19 regarding ORC 9.48.
- Counties procuring professional design services, over ~~\$25,000~~ the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require counties to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]
- Effective 9/12/08, ORC 307.86(M) authorizes the use of competitive sealed proposals instead of competitive bidding when the county determines the use of competitive sealed proposals would be advantageous to the county and the county contracting authority complies with the proposal requirements outlined in R.C. §307.862. R.C. 307.862(G) precludes a county contracting authority from using competitive sealed proposals for contracts for construction, design, demolition, alteration, repair, or reconstruction of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, waterworks, and all other structures or works of any nature. Therefore, the competitive sealed proposal method may be used only for purchases of non-construction related products and supplies and to the acquisition of services other than those services already exempted from the continuing competitive bidding procedure. For example, it might be used to acquire janitorial services or to purchase office supplies and equipment.

- A county may contract for energy conservation savings pursuant to Ohio Rev. Code Section 307.041. This section provides two procurement options:
 1. To follow Ohio Rev. Code Sections 307.86 to 307.92 (i.e. competitively bid contracts ≥ \$25,000). [307.041(C)(1)]
 2. Request proposals from at least 3 vendors, after advertising the project. [307.041(C)(2)]

- Section 307.87 requires a county to advertise once per week for at least two consecutive weeks of its intent to seek competitive bids for purchases or leases with an estimated cost exceeding \$25,000. If the contracting authority posts the notice on its internet site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the county, provided that the first notice published in such a newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the contracting authority’s internet site on the world wide web; (3) It includes the internet address of the contracting authority’s internet site on the world wide web; and (4) It includes instructions describing how the notice may be accessed on the contracting authority’s internet site on the world wide web. The county should also maintain a copy of the bid. Section 307.88 requires that sealed⁶ bids be opened and tabulated (i.e., summarized).

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Ticker Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

When testing expenditures, determine that disbursements were made only by county warrant (or electronic transaction via the county auditor).

Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other such means that contracts over \$25,000 were awarded using competitive bidding procedures. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations, such as successive contracts just under the bid amount. In selecting payments to test,

⁶ HB 225, effective 3/22/2012, requires that bids be submitted pursuant to sections 307.86 to 307.92 and filed in the manner mentioned in the notice.

consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

For contracts selected above, determine whether advertisements of the proposals for bids were made at least once per week for two consecutive weeks (the notice may be posted to the county’s website in lieu of a second newspaper publication, as described above), and whether bids were tabulated.

For contracts exceeding \$25,000 meeting one or more of the exceptions indicated above, determine documentation exists to support expenditures as meeting those exceptions.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

To enhance efficiency, include testing for unresolved findings for recovery (Step 2-23) with these tests. However, violations of ORC 9.24 would not normally constitute material noncompliance. They would normally be management letter comments.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

2-6 Compliance Requirement: Ohio Rev. Code Section 117.16(A); 5543.19 – Force accounts - Counties.

Summary of Requirements:

AOS Force Account Project Assessment Form

A county engineer, when authorized by the county commissioners, may utilize county labor and materials when undertaking the construction, reconstruction, improvement, maintenance, or repair of **roads**. Before undertaking force account activity for **construction or reconstruction**, including **widening and resurfacing**, of **roads**, an estimate of the cost of the road work must be compiled using the Auditor of State's force account project assessment form. When the estimated cost of the total project, including labor,⁷ exceeds \$30,000 per mile, the county commissioners must invite and receive competitive bids from private contractors for completing the **road** work.

*Note: § 5543.19 (A) does not explicitly require using the Auditor of State's force account project assessment form for the **maintenance or repair** of roads. However, § 117.16(A) requires using this form for each public office that undertakes force account projects, presumably including, for counties, maintenance and repair of roads.*

The Auditor of State's prescribed form [required by ORC 117.16(A)] for this purpose can be found on our website at the following link:

<http://www.ohioauditor.gov/services/lgs/publications/AuditorsForms/AuditForms/ForceAccountProjectAssessmentForm.pdf>

Auditor of State Bulletin 2003-003 states an entity may use certain "safe harbor" percentages in computing its estimated costs; if the entity used these safe harbors, auditor of state auditors may accept them without further analysis. The entity may develop its own percentages for the add-ons for labor fringes and overhead costs, and materials overhead costs; the entity should present documentation to the auditor to justify these self-computed percentage add-ons.

Joint Projects

Joint projects undertaken by 2 or more of the affected entities require that the higher force account limits of the participating parties be applied [117.161]. Participating entities shall not aggregate their respective limits, and the share of each entity shall not exceed its respective force account limit. Calculating the proper project force account limits and the share thereof to each participating party should be memorialized in the contracts or other agreements between the parties. One of the participating entities shall complete the force account project form prior to proceeding by force account. An entity shall not proceed with a joint force account project if any one of them is subject to reduced force account limits under RC 117.16(C) or (D).

Bid Specifications

Various terms, such as **road maintenance and repair, construction, and reconstruction**, are not defined in the Ohio Rev. Code sections discussed in the individual subsections below. We indicate in each such section that the Auditor of State will accept definitions from the entity's legal counsel, and/or county engineer, as appropriate, unless the definitions are palpably and manifestly arbitrary or incorrect. *If the entity's legal counsel, and/or county engineer, as appropriate, did not define the indicated terms for*

⁷ Pursuant to Ohio Attorney General Opinion No. 2008-007 discussed in section 2-3, any work subcontracted to private contractors should be included in the total cost of the project to determine if the project should be bid.

the entity, indicate the same in your draft report. Consult with the AOS's Legal department concerning any issues involving a potential finding or citation.

A county engineer, when authorized by the county commissioners, may utilize county labor and materials when undertaking the construction, reconstruction, improvement, maintenance, or repair of **bridges and culverts**. Before undertaking force account activity, an estimate of the cost of the bridge/culvert work must be compiled using the Auditor of State's force account project assessment form.⁷ When the estimated cost of the work exceeds \$100,000, the county commissioners must invite and receive competitive bids from private contractors for completing the **bridge/culvert** work.

Note: The following clarifies how all entity types subject to force account limits should measure these limits for fractions of miles, excerpted from Auditor of State Audit Bulletin 2007-01:

“A county must bid a project involving construction or reconstruction of a road if it exceeds \$30,000 per mile. However, it is unclear whether the limit for a 1.5 mile project would be \$45,000 (\$30,000 for the first mile, \$15,000 for the partial second mile), or \$60,000 (\$30,000 for each mile – full or partial – of the project). We determined that it was appropriate to consider the legislative intent separately for projects under one mile and for projects exceeding one mile.

For projects exceeding one mile, we determined that the intent of these statutes was to apply the limits proportionally for partial miles. In other words, for the example of the county cited above, the applicable force account limit would be \$45,000.

For projects less than a mile, the interpretation above would cause problems. In the example of a county commencing a small road repair project of one-tenth of a mile, a proportional limit would require the county to bid the project if it exceeded \$3,000 (one tenth of the \$30,000 per mile limit). We did not believe that this was the result intended by the legislature, so for projects of less than a mile, the entire per mile limit (in the case of the county in our example, \$30,000) will apply. In other words, any project that is less than a mile (regardless of distance) is to be treated as if it were a mile and subjected to the entity's corresponding monetary limit.”

Ohio Attorney General Opinion 2008-007⁵ briefly states:

- Completing the Auditor of State's force account project assessment form estimating the cost of the work constitutes commencement of the project for purposes of determining which force account limit is in effect and applicable to the project;
- The Auditor of State is authorized to require the use of a “safe harbor rate” for the cost of overhead or the justification of a different rate in estimating the cost of road, bridge and culvert work;
- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;
- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;

- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

Refer to AOS Bulletin 2008-004 for further information regarding Ohio Attorney General Opinion 2008-007 and the matters mentioned above.

Noncompliance

Note: These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities starting with the audits of fiscal year 2003 and thereafter. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the increased force account limits. Independent Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code section 117.12.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Read the minutes, inquire of management, and scan expenditures to reasonably determine if any road capital construction or maintenance activity took place during the audit period. Determine if such projects were undertaken using force accounts.

If such projects were undertaken, inspect a representative number of the entity’s completed Auditor of State Uniform Force Account Project Assessment forms. Trace wage rates, etc. to entity supporting documentation on a test basis.

Inspect the Auditor of State’s project assessment forms prepared by the county engineer and determine that work undertaken by force account for construction, reconstruction, widening, or resurfacing of roads was documented to have an estimated cost of \$30,000 or less per mile.

Inspect the county engineer’s project assessment forms, and determine whether they document that work undertaken by force account to construct, reconstruct, improve, maintain, or repair bridges and culverts cost an estimated \$100,000 or less.

Determine if the entity used the “safe harbor” percentages described in Bulletin 2003 – 003. Recompute items on the form or scan the form for reasonableness. If the entity used its own labor fringes or overhead rates, or materials overhead rates, obtain supporting documentation and review for reasonableness.

Compare the actual projects’ costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates. Evaluate for reasonableness of the estimates. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.

Whether such projects have been undertaken or not, consider adding language to the audit management representation letter affirming or disaffirming the existence of projects subject to the applicable force account provisions.

Note: with “force account” provisions, it is possible to have non-compliance with the preparation of the Auditor of State form; with the bidding limits; or with both.

If the “force account” limits have been violated – that is, the county did the work by force account even though it should have been bid – then the Auditor of State is required to notify the entity [and possibly the State tax commissioner] of the penalty provisions specified in AOS Bulletin 2003-003. Auditors should indicate in this block of the OCS if the Auditor of State is to notify the entity\State tax commissioner of any of the penalty provisions. Auditor of State auditors should include this in the executive summary. IPAs should notify the Auditor of State Center for Audit Excellence.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section C: Townships

Revised: HB 153, 129th GA
Effective: 9/29/11

2-7 Compliance Requirements: Ohio Rev. Code Sections 9.48, 505.08, 505.101, 505.267, 505.37, 505.376, 505.42, 505.46, 507.11(B), 511.12, 511.13, 515.01, ~~515.07~~, 5549.21, and 5575.01 - **Township's** expenditures.

Summary of Requirements: No money belonging to a township may be paid out except upon an order signed personally by at least two trustees and countersigned by the fiscal officer. [Section 507.11(B)].

Footbridge repair: Construction, rebuilding and repair of footbridges across rivers and streams needed to access public schools may not exceed \$15,000. [Section 505.46]

Formerly, pursuant to R.C. 5705.05 and 5705.06, townships were prohibited from using proceeds from a general levy for current expenses for the construction, reconstruction, resurfacing, or repair of roads and bridges. This had been interpreted as also prohibiting transfers from a township's general fund to their road and bridge fund, unless the general levy monies were segregated from those unrestricted portions of the general fund. House Bill 458 of the 127th General Assembly, however, removes this statutory prohibition, and townships are no longer restricted from using general levy money for road and bridge purposes. However, all payments must be made from the township road fund. [Section 5549.21].

Ohio Rev. Code Section 511.13, - Interest in contracts by elected officials.

These sections prohibit elected officials from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract.

Competitive bidding is required in seven circumstances:

- Purchase of materials, machinery and tools to be used in constructing, maintaining and repairing roads and culverts, where the amount involved exceeds ~~\$25,000~~ 50,000. [Section 5549.21].
- Contracts for the maintenance or repair of roads, where the amount involved exceeds \$45,000. In each case, the board must advertise once, not later than two weeks prior to the letting of the contract, in a newspaper ~~published in the county and~~ of general circulation in the township. Award must be to the lowest responsible bidder. [Section 5575.01].
- Contracts for the construction and erection of a memorial building or monument. When competitive bidding is required, no contract shall be made or signed until an advertisement has been placed in a newspaper, published or of general circulation in the township, at least twice. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper published or of general circulation in the township, provided that the first notice published in such newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice

is posted on the Board's internet web site; (3) It includes the internet address of the Board's internet web site; and (4) It includes instructions describing how the notice may be accessed on the board's internet web site. [Section 511.12(B)]. Such contracts require competitive bidding only if the amount involved exceeds ~~\$25,000~~50,000. [Section 511.12].

- Contracts for equipment for fire protection and communication purposes estimated to exceed \$50,000 pursuant to Ohio Rev. Code Sections 505.37 and 505.376. When competitive bidding is required, the board shall advertise once a week for not less than two consecutive weeks in a newspaper of general circulation within the township. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the township, provided that the first notice published in such newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the board's internet web site; (3) It includes the internet address of the board's internet web site; and (4) It includes instructions describing how the notice may be accessed on the board's internet web site. [Section 505.37(A)].
- Contracts for street lighting systems where the cost exceeds ~~\$25,000~~50,000. The board shall prepare plans and specifications for the lighting equipment and shall, for two weeks, advertise for bids for furnishing the lighting equipment, either by posting the advertisement in three conspicuous places in the township or by publication of the advertisement once a week, for two consecutive weeks, in a newspaper of general circulation in the township. Any such contract for lighting shall be made with the lowest and best bidder. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation in the township, provided that the first notice published in such newspaper meets all of the following requirements: (A) It is published at least two weeks before the opening of bids; (B) It includes a statement that the notice is posted on the board's internet web site; (C) It includes the internet address of the board's internet web site; and (D) It includes instructions describing how the notice may be accessed on the board's internet web site. No lighting contract awarded by the board shall be made to cover a period of more than twenty years. The cost of installing and operating any lighting system or any light furnished under contract shall be paid from the general fund of the township treasury.[Section 515.01].
- Contracts for street lighting improvements where the cost exceeds ~~\$25,000~~50,000. When competitive bidding is required, the board of township trustees shall post, in three of the most conspicuous public places in the district, a notice specifying the number, candle power, and location of lights and the kind of supports for the lights as provided by section 515.06 of the Revised Code, as well as the time, which shall not be less than thirty days from the posting of the notices, and the place the board will receive bids to furnish the lights. The board shall accept the lowest and best bid, if the successful bidder meets the requirements of section 153.54 of the Revised Code. The board may reject all bids. [Section 515.07]
- Contracts for building modifications for energy savings pursuant to Ohio Rev. Code Section 505.264, where the estimated cost exceeds ~~\$25,000~~50,000, with certain exceptions. Award must be to the lowest and best bidder in accordance with the provisions of Sections 307.86 to 307.92.

- Contracts for private sewage collection tiles where the cost exceeds ~~\$25,000~~\$50,000 pursuant to Ohio Rev. Code Section 521.05. The successful bidder must meet the requirements of Section 153.54.

By unanimous resolution that a real and present emergency exists, trustees may enter into a contract, without bidding or advertising, for the purchase of equipment, supplies, materials or services needed to meet the emergency if the estimated cost of the contract is less than \$50,000. [Section 505.08].

Purchases from a department, agency, or political subdivision of the state, or from a regional planning commission, are exempt from competitive bidding. [Section 505.101].

Townships procuring professional design services, over ~~\$25,000~~ the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require townships to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]

Townships that participate in a joint purchasing contract are exempt from using competitive bidding. [R.C. Section 9.48(C)-(D)]

A township may purchase supplies or services from another party, including another political subdivision, instead of through a contract that the Ohio Department of Administrative Services has entered into on behalf of the township, if the township can prove that it can purchase those same supplies or services from the other party upon equivalent conditions and specifications but at a lower price. If so, the township does not have to competitively bid those supplies or services. [Section 125.04].

Townships need not competitively bid acquisitions made through another entity's purchasing program See OCS 2-19, regarding ORC 9.48.

Leasing Equipment:

Ohio Rev. Code Sections 505.267 and 5549.021 expand townships' powers, allowing them to lease **or** lease with an option to purchase for any purpose for which it may acquire real or personal property, including machinery, tools, trucks and other equipment used in constructing, maintaining or repairing roads:

A lease with option to purchase shall do the following:

- Transfer title to the asset to the township on or before the end of the lease.
- If the leased asset relates to road repair, construction or maintenance, the township must comply with **all** the following:
 - Make a cash down payment of at least three-twentieths (15%) of the total cost;
 - Require the cash down payment to be reduced by the amount of the selling price of the used equipment if the board sells used equipment as part of the lease with option to purchase;

- o Be entered into only with the lowest responsive and responsible⁸ bidder of the equipment after advertising for bids.

Ohio Rev. Code Sections 505.37 and 505.50 permit a board of township trustees to lease or lease with an option to purchase fire and police protection and emergency police protection, respectively. Additionally, Ohio Rev. Code Section 505.37(A) requires that contracts for the purchase of fire apparatus, mechanical resuscitators, other equipment, appliances, materials, fire hydrants, buildings, or fire-alarm communications equipment or services estimated to exceed \$50,000 be let by competitive bidding (whether leased or purchased).

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Inspect vouchers for signatures of at least two trustees and the fiscal officer.

Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other such means that contracts over the corresponding bid limits were awarded using competitive bidding procedures. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations, such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

For contracts exceeding ~~\$25,000~~ \$50,000, with certain exceptions that purport to meet one or more of the exceptions indicated above, (fire and communications equipment pursuant to Section 505.37(A) or emergency purchases and purchases from a department, agency, or political subdivision of the state, or from a regional planning commission, or pursuant to Section 125.04), determine documentation exists to support expenditures meeting those exceptions.

⁸ Lowest responsive and responsible bidder. A bidder on the contract shall be considered responsive if the bidder’s proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage. To determine if a bidder on the contract is responsible consider the experience of the bidder, the bidder’s financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly. (Ohio Rev. Code Section 9.312)

For footbridge construction, rebuilding and repair, determine documentation exists to support the necessity of the expenditures and that the total expenditures did not exceed \$15,000 for any footbridge accessing a school.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

Inspect lease agreements to determine whether the agreements were for permitted equipment. Determine whether the agreement is a lease with option to purchase or an installment purchase agreement. If it is a lease with an option to purchase, determine that the township made a down payment $\geq 15\%$. Determine that the township selected the lowest ~~and best~~ responsive and responsible bidder.

To enhance efficiency, include testing for unresolved findings for recovery (Step 2-23) with these tests. However, violations of ORC 9.24 would not normally constitute material noncompliance. They would normally be management letter comments.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

2-8 Compliance Requirement: Ohio Rev. Code Section 117.16(A); 5575.01 – Force accounts - Townships.**Summary of Requirements:****AOS Force Account Project Assessment Form**

In the **maintenance** and **repair** of **roads** the board of township trustees may use force account labor provided the board has first caused **the county engineer** to complete the Auditor of State’s prescribed force account project assessment form.

The Auditor of State’s prescribed form [required by ORC 117.16(A)] for this purpose can be found on our website at the following link:

<http://www.ohioauditor.gov/services/lgs/publications/AuditorsForms/AuditForms/ForceAccountProjectAssessmentForm.pdf>

Auditor of State Bulletin 2003-003 states an entity may use certain “safe harbor” percentages in computing its estimated costs; if the entity used these safe harbors, auditor of state auditors may accept them without further analysis. The entity may develop its own percentages for the add-ons for labor fringes and overhead costs, and materials overhead costs; the entity should present documentation to the auditor to justify these self-computed percentage add-ons.

Before undertaking the **construction** or **reconstruction** of a township road, the board shall obtain from the **county engineer** an estimate of the cost of such work, which estimate shall include labor, material, freight, fuel, hauling, use of machinery and equipment, and all other items of cost. The Auditor of State’s interpretation of ~~SB 82, which added~~ Ohio Rev. Code § 5575.01(C), is that the county engineer should use the Auditor of State’s force account project assessment form in estimating these costs. Note: when there is no AOS project assessment form completed, cite 5575.01(C). If neither the form nor any other type of estimate is completed, cite to both 5575.01(B) and (C).

The Auditor of State’s force account project assessment form is **not** required if the **road maintenance or repair** project’s total estimated cost is less than \$15,000 or if the **road construction or reconstruction’s** total estimated cost is less than \$5,000 per mile. The terms **road maintenance and repair, construction, and reconstruction**, are not defined in this Ohio Rev. Code section. The township’s legal counsel, and/or county engineer, along with the board, should define these terms for the township. The Auditor of State will accept those definitions unless they are palpably and manifestly arbitrary or incorrect.

Joint Projects

Joint projects undertaken by 2 or more of the affected entities require that the higher force account limits of the participating parties be applied [117.161]. Participating entities shall not aggregate their respective limits, and the share of each entity shall not exceed its respective force account limit. Calculating the proper project force account limits and the share thereof to each participating party should be memorialized in the contracts or other agreements between the parties. One of the participating entities shall complete the force account project form prior to proceeding by force account. An entity shall not proceed with a joint force account project if any one of them is subject to reduced force account limits under RC 117.16(C) or (D).

Bid Specifications

Various terms, such as **road maintenance and repair, construction, and reconstruction** are not defined in the Ohio Rev. Code sections discussed in the individual subsections below. We indicate in each such section that the Auditor of State will accept definitions from the entity's legal counsel, and/or county engineer, as appropriate, unless the definitions are palpably and manifestly arbitrary or incorrect. *If the entity's legal counsel, and/or county engineer, as appropriate, did not define the indicated terms for the entity, indicate the same in your draft report. Consult with the AOS's Legal department concerning any issues involving a potential finding or citation.* Independent Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code section 117.12.

Force accounts **may not** be used and bidding is required when the total estimated cost of the project, including labor, for **maintenance and repair** of roads exceeds \$45,000.

Bids from private contractors should be sought when the total estimated cost of the project, including labor, for **construction or reconstruction** of roads exceeds \$15,000 per mile. However, force accounts **may** be used if the board finds it in the best interest of the public. In this case, private contractor bids must have been received, considered, and rejected, and the force account work must be performed in compliance with the plans and specifications upon which the bids were based.⁴

Note: The following clarifies how all entity types subject to force account limits should measure these limits for fractions of miles, excerpted from Auditor of State Audit Bulletin 2007-01:

“A township must bid a project involving construction or reconstruction of a road if it exceeds \$15,000 per mile. However, it is unclear whether the limit for a 1.5 mile project would be \$22,500 (\$15,000 for the first mile, \$7,500 for the partial second mile), or \$30,000 (\$15,000 for each mile – full or partial – of the project). We determined that it was appropriate to consider the legislative intent separately for projects under one mile and for projects exceeding one mile.

For projects exceeding one mile, we determined that the intent of these statutes was to apply the limits proportionally for partial miles. In other words, for the example cited above, the applicable force account limit would be \$22,500.

For projects less than a mile, the interpretation above would cause problems. In the example of a township commencing a small road repair project of one-tenth of a mile, a proportional limit would require the township to bid the project if it exceeded \$1,500 (one tenth of the \$15,000 per mile limit). We did not believe that this was the result intended by the legislature, so for projects of less than a mile, the entire per mile limit (in the case of our example, \$15,000) will apply. In other words, any project that is less than a mile (regardless of distance) is to be treated as if it were a mile and subjected to the entity's corresponding monetary limit.”

Ohio Attorney General Opinion 2008-007⁵ briefly states:

- Completing the Auditor of State's force account project assessment form estimating the cost of the work constitutes commencement of the project for purposes of determining which force account limit is in effect and applicable to the project;
- The Auditor of State is authorized to require the use of a “safe harbor rate” for the cost of overhead or the justification of a different rate in estimating the cost of road, bridge and culvert work;

- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;
- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;
- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

Refer to AOS Bulletin 2008-004 for further information regarding Ohio Attorney General Opinion 2008-007 and the matters mentioned above.

Noncompliance

Note: These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities starting with the audits of fiscal year 2003 and thereafter. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the increased force account limits. Independent Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code section 117.12.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Read the minutes, inquire of management, and scan expenditures to reasonably determine if any road capital construction or maintenance activity took place during the audit period. Determine if such projects were undertaken using force accounts.

Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as less than \$15,000 for a **road maintenance or repair** project or less than \$5,000 per mile for a **road construction or reconstruction** project. If so, no Auditor of State force account project assessment form would have been required to have been completed.

Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as \$45,000 or less for **maintenance** and **repair** of roads.

Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as less than \$15,000 per mile for **construction or reconstruction** of roads.

If the bids from private contractors were taken for **construction or reconstruction** of roads but the board used the force account anyway, determine that the board documented that the private contractor bids were received, considered, and rejected, and the board's rationale for why using the force account approach was in the best interest of the public. Compare the force account's documented project specifications with the plans and specifications upon which the private contractor bids were based.

If such projects were undertaken, inspect a representative number of the entity's completed Auditor of State Uniform Force Account Project Assessment forms. Trace wage rates, etc. to entity supporting documentation on a test basis.

Determine if the entity used the "safe harbor" percentages described in Bulletin 2003 – 003. Recompute items on the form or scan the form for reasonableness. If the entity used its own labor fringes or overhead rates, or materials overhead rates, obtain supporting documentation and review for reasonableness.

Compare the actual projects' costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates. Evaluate for reasonableness of the estimates. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.

Whether such projects have been undertaken or not, consider adding language to the audit management representation letter affirming or disaffirming the existence of projects subject to the applicable force account provisions.

Note: with "force account" provisions, it is possible to have non-compliance with the preparation of the Auditor of State form; with the bidding limits; or with both.

If the "force account" limits have been violated – that is, the township did the work by force account even though it should have been bid – then the Auditor of State is required to notify the entity [and possibly the State tax commissioner] of the penalty provisions specified in AOS Bulletin 2003-003. Auditors should indicate in this block of the OCS if the Auditor of State is to notify the entity\State tax commissioner of any of the penalty provisions. Auditor of State auditors should include this in the executive summary. IPAs should notify the Auditor of State Center for Audit Excellence.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

Section D: Board of Education (Schools)

2-9 Compliance Requirement: Ohio Rev. Code Section 3313.33 - **Board of Education** (schools) conveyances and contracts.

Summary of Requirement: The board president and treasurer shall execute any “Conveyances.” No contract is binding unless authorized at a regular or special board meeting. A “conveyance” is not a donation; it is a transfer *between two entities* with adequate consideration other than money (Ohio Rev. Code section 721.02).

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Ticker Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Trace board approval from the minutes to the contracts or from the contracts to the minutes.

Inspect “conveyances” for board president and treasurer signatures.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

<p><u>Revised: HB 153, 129th GA</u> <u>Effective: 9/29/11</u></p>
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2-10 Compliance Requirement: Ohio Rev. Code Sections 9.48, 3313.46, 125.04(C), and 3313.533 - **Board of Education** procedures for bidding and letting contracts.

Summary of Requirements:

- When a Board of Education determines to purchase a bus pursuant to Ohio Revised Code § 3327.08, build, repair, enlarge, improve or demolish any school building with a cost in excess of \$25,000, the Board is required to:
 - Prepare plans and specifications. [Section 3313.46(A)(1)].
 - Advertise for bids once a week for at least two consecutive weeks, or as provided in R.C. 7.16⁹, in a newspaper of general circulation in the district prior to the date specified by the Board for receiving bids. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the school district, provided that the first notice published in such newspaper meets all of the following requirements: (a) It is published at least two weeks before the opening of bids; (b) It includes a statement that the notice is posted on the board of education's internet web site; (c) It includes the internet address of the board's internet web site; and (d) It includes instructions describing how the notice may be accessed on the board's internet web site.[Section 3313.46(A)(2)].
 - Open the bids at the time and place specified by the Board in the advertisement for bids. [Section 3313.46(A)(3)].
 - When the work bid includes both labor and materials, the Board may require that each be separately bid or may require that they be bid as one. [Section 3313.46(A)(5)].
 - The award of the contract is to the lowest responsible bidder. [Section 3313.46(A)(6)].
 - The contract is between the board and the bidders. The board is required to approve and retain estimates and make them available to the Auditor of State upon request. [Section 3313.46(A)(7)].
 - If two or more bids are equal and are lower than any others, either may be accepted. However, the work is not to be divided among the bidders. [Section 3313.46(A)(8)].
 - When there is reason to suspect collusion among the bidders, those suspects are to be rejected. [Section 3313.46(A)(9)].

The above requirements (i.e., RC 3313.46(A)) do not apply to:

⁹ Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16.

- an urgent necessity¹⁰ [Section 3313.46 (A)]
 - acquisition of educational materials used for teaching; [Section 3313.46(B)(1)]
 - any item which the Board, by a two-thirds vote, determines is available and can be obtained only through a single source; [Section 3313.46(B)(2)]
 - energy conservation measures, with the approval of two-thirds of the Board [Section 3313.46(B)(3)] or
 - acquiring computer software or hardware for instructional purposes pursuant to Section 3313.37 (B) (4). [Section 3313.46(B)(4)].
 - School districts that participate in a joint purchasing contract are exempt from using competitive bidding. [R.C. Section 9.48(C)-(D)]
- A school district may purchase supplies or services from another party, including another political subdivision, instead of through a contract that the Department of Administrative Services has entered into on behalf of the school district, if the school district can prove that it can purchase those same supplies or services from the other party upon equivalent conditions and specifications but at a lower price. If so, the school district does not have to competitively bid those supplies or services. [Section 125.04(C)]
 - School districts procuring professional design services, over \$25,000, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Sections 153.65-.71 which require school districts to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]
 - Districts operating alternative schools which meet certain criteria are permitted to contract with a nonprofit or for profit entity to operate the alternative school, including the provision of personnel, supplies, equipment, or facilities. [3313.533(C)]
 - When a school board contracts with a nonprofit or for-profit entity to run the school, the alternative school plan under 3313.533(B) must include the additional information 3313.533(G) describes. (See statute if this occurs.)

¹⁰ Defined in Mueller v. Board of Education 25 Ohio Dec. 195, 1911 WL 1730 Ohio Com.Pl. 1911. "[Urgent necessity]" means more than convenience and more than ordinary necessity. It is something that requires immediate action. Something that can not wait. When pleaded as an excuse for failure to comply with any statutory requirement it must be decided by the circumstances of the particular case in which it arises. "Whether or not a case of urgent necessity exists so that a board of education may be enabled to build, alter or repair a school house or make other improvements without complying with the provisions of this section, as to competitive bidding is dependent upon the determination and declaration of the board itself and cannot be questioned for any reason other than fraud, collusion, absence of good faith or abuse of discretion." 1927 OAG 908.

When a board of education determines to contract with a nonprofit or for-profit entity to operate an alternative school, the board shall:

- Publish a notice of request for proposal in a newspaper of general circulation once a week for at least two consecutive weeks, or as provided in R.C. 7.16¹¹, prior to the date specified by the board for receiving proposals. [3313.533(H)(1)]
- After the date specified for receiving proposals, evaluate the submitted proposals (which may include discussions with respondents) to understand the proposal and the qualifications of respondents. The evaluation shall concern the entity’s qualifications using factors the statute specifies. [3313.533(H)(2)]

The contract shall be awarded to the respondent the board considers to have the most merit, taking into consideration the scope, complexity, and nature of the services to be performed by the respondent under the contract. [3313.533(C), (G) and (H)(4)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Identify a few expenditures subject to contracting/competitive bidding requirements while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other means that payments exceeding \$25,000 and contracts for the operation of alternative schools, were awarded using competitive bidding procedures. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations, such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

Inspect bid files for documentation of:

- plans and specifications/RFP,
- bid/RFP advertising, and

¹¹ Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16.

- bid/proposal openings.

For contracts concerning the operation of alternative schools, review ORC 3313.533 (H) and determine whether the district documented its evaluation of the respondent’s qualifications.

For contracts exceeding \$25,000 purporting to meet one or more of the exceptions indicated above (i.e., acquisition of educational materials used for teaching; any item which the Board determined was available and could be obtained only through a single source; certain energy conservation measures; acquisition of computer software or hardware for instructional purposes; and acquisitions pursuant to Section 125.04), determine documentation exists to support expenditures meeting those exceptions.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

To enhance efficiency, include testing for unresolved findings for recovery (Step 2-23) with these tests. However, violations of ORC 9.24 would not normally constitute material noncompliance. They would normally be management letter comments.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

2-11 Compliance Requirement: Ohio Rev. Code Sections 3313.33(B), 3313.37, 3313.375, 3313.40, 3313.41, and Section 733.20 of Amended Substitute House Bill Number 1 - Acquisition of **school** real estate and building or other facilities, and office equipment; methods available.

Summary of Requirements: The board of education of any city, local, or exempted village school district may build, enlarge, repair and furnish school houses, purchase or lease real estate for the buildings and playgrounds or rent school rooms inside or out of the district and provide the necessary apparatus and provisions for such facilities. [Section 3313.37(A)(1)].

A governing board of an educational service center may acquire, lease or lease-purchase, or enter into a contract to purchase, lease or lease-purchase, or sell real and personal property and may construct, enlarge, repair, renovate, furnish, or equip facilities, buildings, or structures for the educational service center’s purposes. The board may enter into loan agreements, including mortgages, for the acquisition of such property. [3313.37(A)(2)]

Boards of education of city, local, and exempted village school districts may acquire land by gift, devise, appropriation or purchase. Purchases can be with cash, by installment payment, with or without mortgage, lease-purchase, or lease with the option to purchase (provided that the price is to be paid over a time not exceeding 5 years and a special levy may be authorized to provide a special fund to meet future time payments). [Section 3313.37(B)(1)]

Boards may acquire “office equipment” (which includes computer hardware and software for instructional purposes) for schools, and by purchase, lease, installment payments, lease-purchase or lease with the option to purchase. If the purchase price is to be paid over a period of time, that period is limited to 5 years. [Section 3313.37(B)(4)]

Boards may also acquire the necessary equipment for maintaining facilities and land under its control by entering into lease-purchase agreements not exceeding 5 years. [3313.37(B)(5)]

Ohio Rev. Code Section 3313.33(B)- Interest in contracts by elected officials.

These sections prohibit elected officials from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract.

Additional Lease-Purchase Options:

The board of education of a city, local exempted village, or joint vocational school district or the governing board of an educational service center or community school may enter into a lease-purchase agreement providing for the construction, enlarging, furnishing and equipping; lease; and eventual acquisition of a building or improvements to a building for any school district or educational service center purpose. [ORC Section 3313.375]

If a school district, educational service center or community school chooses to enter into a lease-purchase agreement, the agreement must provide for a lease with a series of 1 year renewable lease terms totaling not more than thirty years. Furthermore, the agreement must state that at the end of the series of lease terms; the title to the leased property shall be vested in the school district or educational service center, provided that all obligations stated in the agreement have been satisfied. [ORC Section 3313.375]

Additionally, any obligations under a lease-purchase agreement entered into pursuant to ORC 3313.375 shall not be considered to be net indebtedness pursuant to ORC 133.06. [ORC Section 3313.375]

School district ninety-nine year lease of excess real property

Under Section 733.20 of Amended Substitute House Bill Number 1, effective 10/19/09¹², if a board of education acquired or acquires a parcel of real property between January 1, 2008, and December 31, 2010, and if the board, by vote of a majority of its members, determines that a portion of the parcel, or a portion of the improvements located on or to be constructed on the parcel, is not required for school use, the board may convey a leasehold interest in that excess property for a term not to exceed 99 years, without reserving any right to cancel or terminate the lease other than breach of the lease by the lessee. The board may convey the leasehold interest as a single leasehold interest pursuant to one lease or as separate leasehold interests pursuant to two or more leases.

The board shall convey the leasehold interest at public auction or by sealed bid to the highest bidder. If the board proceeds by sealed bid, the board shall prescribe the form of the bid, and shall require that each bid contain the name of the person submitting the bid.

The board shall publish notice of the time and place of the auction or bid opening in a newspaper of general circulation in the school district or by posting notices in five of the most public places in the school district. The notice shall state that the terms and conditions of the lease are available in the office of the treasurer of the school district for review by prospective bidders. If the board proceeds by sealed bid, the notice shall include instructions for making a bid.

The board, from and after the day the notice is published, must make all the terms and conditions of the lease available in the office of the treasurer of the school district for review by prospective bidders. The notice, described above, must inform readers of this availability.

The base rent payable under the lease shall not be made part of the terms and conditions of the lease. Rather, the highest bid shall establish the base rent payable under the lease. The base rent may be in addition to other payments and nonmonetary obligations of the lessee under the lease.

If the board proceeds by auction, the board shall conduct the auction at the time and place stated in the notice. Similarly, if the board proceeds by sealed bid, the board shall open and tabulate bids at the time and place stated in the notice. The board may reject all bids, but only if the rejection occurs within 60 days following the auction or the opening of bids. Upon rejection of all the bids, the board may again proceed by public auction or sealed bid to convey the leasehold interest in the manner described here.

The president and treasurer of the board of education shall execute and deliver the lease agreement and any other agreements, documents, or instruments that are necessary to complete conveyance of the leasehold interest.

Acquisition by Exchange

With a majority vote, a school district board may exchange district real property for property owned by a municipal corporation upon the mutual agreement of the school district's board and the municipal corporation's legislative authority. The exchange may be made by a conveyance executed by the

¹² Section 733.20 of Amended Substitute House Bill Number 1 is **Uncodified Law**, and should, therefore, be treated accordingly.

president and treasurer of the school district board and the mayor and clerk of the municipal corporation, respectively [Section 3313.40].

With a majority vote, a district board may acquire new real property that it determines is needed for school purposes by either (1) exchanging other district real property that it owns in its corporate capacity or (2) by using the district property as part of or as the entire consideration for the purchase price of the new property. The acquisition or exchange must be made by a conveyance executed by the president and treasurer of the school district board. [Section 3313.41(F)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Read the board’s minutes and determine if the board acquired the use of property, buildings, or office equipment, by purchase, exchange, rent/lease, or lease-purchase agreements during the audit period. Consider inquiry of management as to whether such property was acquired or such agreements were entered into. Scan expenditures for evidence that such property was acquired.

If the district or educational service center is making installment payments for office or maintenance equipment acquired pursuant to Ohio Rev. Code Section 3313.37, determine whether these payments exceed the 5-year limitation.

If the district, educational service center or community school has entered into an agreement pursuant to Ohio Rev. Code Section 3313.375, determine whether the agreement, 1) consists of a series of one year renewable lease terms, 2) has a maximum total term of thirty years, and 3) provides that title vests with the district or educational service center at the end of the series of lease terms and fulfillment of the agreement’s obligations.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

To enhance efficiency, include testing for unresolved findings for recovery (Step 2-23) with these tests. However, violations of ORC 9.24 would not normally constitute material noncompliance. They would normally be management letter comments. Also, note that 9.24 does not apply to community schools.

“Conventional” School Districts Only

If the district is making installment payments for land acquired pursuant to Ohio Rev. Code Section 3313.37, determine whether these payments exceed the 5-year limitation.

If the district is lessor of unused property acquired between January 1, 2008, and December 31, 2010 (per uncodified law above), determine if:

- Documentation supports sale / lease to the highest bidder
 - In other words, this law only applies if a district acquired property during 2008, 2009 or 2010, then leased it to another user.
- Whether the district’s financial records recorded receipt of lease payments when due, and that the financial statements or notes reflect a capitalized lease receivable, if applicable.

If real property was acquired by exchanging real property already owned by the district (including using an exchange as partial consideration for the new real property), determine whether 1) the agreement was approved by a majority vote of the district’s board, and 2) the exchange was by a conveyance signed by the board president and the treasurer.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

2-12 Compliance Requirement: Ohio Rev. Code Chapter 3318 - **School Districts** participating in classroom facilities assistance programs.

Summary of the Program

Background:

Several programs provide financial assistance to construct or repair classroom facilities. The School Facilities Commission (Commission) administers these programs. The most common programs are the Classroom Facilities Assistance Program (CFAP), Expedited ~~Loan~~ Local Partnership Program, and Urban Initiative Program (i.e., applies to the following six city school districts: Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo). Certain classroom assistance programs established by Chapter 3318 follow the basic guidelines of the CFAP.

Locally Funded Initiatives:

The Commission informed us that a school district board may elect to add to the scope of any project and separately fund a scope of work (“local initiative”), which involves improving all or part of a project the Commission funds. The school district board may request the Commission to approve the incorporation of design and construction of the local initiative into the overall project. Whenever a local initiative is interconnected with a project the commission funds, the district and the commission will execute a memorandum of understanding to specify the additional cost of the local initiative and the terms and conditions for accounting for the cost. *The district must account for the local initiative in a separate fund, other than the project construction fund (USAS fund 010).*

The CFAP and related programs are discussed below.

CFAP Basics:

CFAP participation is based in part on the district’s relative wealth, the Commission’s determination of the district’s facility needs, and the time elapsed since prior CFAP participation.

Project commencement is contingent upon the district obtaining:

- The district’s share of project costs, funded by an additional bond levy, and /or certain local resources available for such purpose [3318.084], or
- The proceeds of a property tax/income tax levy, or a combination of both [3318.052, ORC], and
- The Board must levy an additional maintenance tax¹³ of at least one-half mill [Sections 3318.05 (B), 3318.06 (A)(2)(a) and (A)(3), and 3318.17 ORC], or
- the Board may elect, to satisfy its local maintenance requirement by earmarking from the proceeds of an existing permanent improvement tax levied under Section 5705.21, ORC an

¹³ The original regulations required a ½ mill levy, all of which was remitted to the State to repay project funding received. Later regulations still required the levy (or other funding), but provided that all or a portion would be retained by the district, to be used for maintenance of project facilities. All such funding is referred to as “maintenance funding” in this OCS Section. Some districts have entered into supplemental agreements which subject the district to the amended regulations.

amount equivalent to the amount of the additional tax described above or the District may elect to satisfy its local maintenance requirement by a combination of the half mill levy and the alternative funding source, or the district may elect to use a locally donated contribution under section 3318.084 of the Rev. Code. [RC 3318.05 (B), and 3318.06 (A)(2)(b)]

- ~~SB 321, effective 9/5/06, authorizes a new alternative mechanism for school districts to meet their maintenance obligation. Under the act,~~ A district commencing its project on or after the act's effective date may deposit into its maintenance fund, annually for 23 years, an amount from other district resources equal to 1/2 mill of the district's tax valuation¹⁴, instead of levying the maintenance tax¹⁵. The district's board must pass a resolution petitioning the Ohio School Facilities Commission to approve the arrangement. (R.C. 3318.05, 3318.051, and 3318.084)
- The district treasurer must annually certify to the Commission and the Auditor of State that the amount required for the year has been transferred¹⁶ into the maintenance fund.

In order to satisfy the transfer certification requirement to the Auditor of State, districts can carbon copy the Auditor of State regional offices on their certification to the Commission. See table below for regional Auditor of State contact information:

Regional Office Contact Information	
Toledo – George Prephan	One Government Center Room 1420 • Toledo, Ohio 43604
Akron/Canton – Daniel Stuetzer	101 Central Plaza South 700 Chase Tower • Canton, OH 44702
Cleveland – Carol-Ann Schindel	Lausche Building, 12th Floor 615 Superior Avenue, NW • Cleveland, Ohio 44113
Youngstown – Rick Kubic	Voinovich Government Center 242 Federal Plaza West, Suite 302 • Youngstown,

¹⁴ Joint vocational school districts participating in a state facilities program, annually for 23 years, must deposit into a maintenance account an amount equal to 1.5% of the current insurance value of the acquired facilities (R.C. 3318.43).

¹⁵ If a district board determines that it can no longer continue making the annual transfers, the act allows a district board to rescind its decision, but only if the district's voters approve the levy of a maintenance tax. The levy must be in effect for the remainder of the 23-year maintenance period (23 years minus the number of years that the district made transfers) and must be for not less than ½ mill for each dollar of district valuation. The act prescribes the ballot language to be used. A district electing to make the transfers authorized by the act is not relieved from its obligation to make annual deposits into its general "capital and maintenance fund," which applies to all districts under continuing law.

¹⁶ SB 321 provides that districts electing to make the transfers, instead of levying the maintenance tax, may not receive the new state maintenance equalization payments. (*Beginning in fiscal year 2007, the Ohio Department of Education is required to pay an equalized subsidy to city, exempted village, and local school districts participating in state-assisted facilities programs and have tax valuations per pupil below the statewide average. The subsidy equalizes to the statewide average the per pupil amount each eligible district raises from its 1/2-mill maintenance levy.*) (R.C. 3318.18)

	OH 44503
Dayton – Mike Botkin	One First National Plaza 130 West Second Street, Suite 2040 • Dayton, Ohio 45402
Columbus – William Collier	88 East Broad Street, 10th Floor • Columbus, OH 43215
Athens – Charles Barga	743 E. State Street, Suite B Athens Mall • Athens, Ohio 45701
Cincinnati – Loren Crisp	11117 Kenwood Road • Blue Ash, Ohio 45242

- The Auditor of State must “verify” the transfer as part of any audit of the district. If the Auditor of State finds that less than the required amount has been deposited, the Auditor must notify the district board in writing and require the board to deposit the necessary money within 90 days after the notice. If the district board fails to demonstrate to the Auditor's satisfaction that it has made the required deposit, the Auditor must notify the Ohio Department of Education. Upon that notice, the Ohio Department of Education must withhold 10% of the district's state operating funds for the current fiscal year, until the Auditor notifies the Ohio Department of Education that the Auditor is satisfied that the board has made the required transfer (ORC 3318.051(B)).
 - NOTE: Auditors should consult with the Auditor of State’s Legal Division if noncompliance is identified. The Auditor of State Legal Division will prepare the written notification to the school district board and to the Ohio Department of Education, if necessary. IPA’s should notify the Auditor of State’s Center for Audit Excellence if noncompliance is identified. The Auditor of State Center for Audit Excellence will then consult with the Auditor of State Legal Division as appropriate.

Districts are to establish a project construction fund [RC 3318.08] to account for project funding and expenditures (USAS fund 010),¹⁷ and a project maintenance fund [RC 3318.05] to account for maintenance funding and expenditures (USAS fund 034). ***Districts should not account for local funding initiatives in these funds. Rather, a separate fund should be established.***

The maintenance fund can only be used to maintain and repair completed facilities as identified in the approved maintenance plan, including preventative maintenance, periodic repairs, and the replacement of facility components. Routine janitorial and utility costs, equipment supplies and personnel costs associated with the day-to-day housekeeping and site upkeep are not allowable expenditures. No moneys other than costs associated with the development of the preventive maintenance plan may be expended out of fund 034 prior to the approval of the maintenance plan by the Commission. The construction manager is required to initiate the process of developing the plan at least six months prior to the completion of any facility for occupancy. [Legal criteria: The maintenance plan approved by the Commission, as evidenced by a signed Commission resolution]

CFAP Written Agreement [3318.08]:

¹⁷ Auditor of State Bulletins 99-004 and 2001-007 include USAS accounting and legal guidance for the CFAP program. The accounting guidance still applies, but auditors should not rely on the legal guidance of those bulletins because some of it is outdated.

Prior to project commencement the Commission and school district enter into a written agreement (“Project Agreement”). The Project Agreement is the contract between the district and the Commission. There can be many attachments to the Project Agreement and amendments to the Project Agreement. Some of the common attachments include schedules of the alternative funding sources for both the local portion for construction and/or the maintenance levy, and a Memorandum of Understanding (MOU) which sets forth the specific terms and conditions of the Local Initiative. The agreement and the applicable attachments, in part, will provide for the following:

- Sale and issuance of bonds or bond anticipation notes for all or a portion of the district’s share of project costs (to be deposited into the district’s project construction fund (USAS 010), and the transfer of approved local resources (if any) to the project construction fund. *(Note: the district’s local share of the project costs is not the same as a “locally funded initiative”. Locally funded initiatives should be accounted for in separate funds, not Fund 010.)*
- The funding source for project maintenance and the conditions, if any, under which a portion of maintenance funding will be paid to the State. Repaying the State is no longer required. As noted above, the money a one-half mill maintenance levy or an alternative funding source generates must be deposited into fund 034 and can only be used to maintain and repair facilities, including preventive maintenance, periodic repairs, and replacing facility components.
- Authorization to advertise for, receive, and award construction bids for the project, subject to Commission approval.
- Disbursement of moneys from the district’s project construction fund after receiving Commission approval. Payments from the construction fund are restricted to: 1) professional design and administration services, 2) payments to contractors who have performed work, 3) purchases related to the Project, and 4) any transactions authorized necessary or appropriate for establishing and administering investment accounts. Occasionally, districts will receive approval from the Commission for reimbursement of items that should have been project costs. If this is the case, the District should have an approval letter on file from the Commission that should be presented to the auditor to substantiate the expenditure. All payments from fund 010 should evidence approval by the district treasurer or another board designee and by the Commission, as delegated to the construction manager. *Locally Funded Initiatives should not be paid from fund 010, but from another fund identified by the district.*
- The Commission will pay the construction manager from the State’s share of the project. (These payments should be recorded in fund 010 as receipts of the State’s share and as construction expenditures. When establishing budgets for the project, these amounts should be included in estimated receipts and appropriations.)
- Disposition of any balance left in the project construction fund after completion of the project:
 - Regarding investment earnings attributable to the school’s own contributions to the project, the school should either: retain them in its project construction fund for future projects, transfer them to its project maintenance fund,¹⁸ or transfer them to its permanent improvement fund. [3318.12(C)(1)]

¹⁸ These monies shall be used solely for maintaining the classroom facilities included in the project.

- The school should transfer investment earnings attributable to the state's contribution to the School Facilities Commission [3318.12(C)(2)]
- Any other surplus remaining in the school district's project construction fund after the project's completion shall be transferred to the commission and the school district board in proportion to their respective contributions to the fund. [3318.12(C)(3)]

Note: There are exceptions to some of these general requirements. Auditors should review the terms of the district's project agreement, and any attachments or amendments to the agreement, to determine requirements specific to the project.

Related Programs:

Other ORC Chapter 3318 programs include the **School Building Assistance Expedited Local Partnership Program** [3318.36 and 3318.362] and the **Exceptional Needs School Facilities Assistance Program** [3318.37]. The Expedited program allows school districts to choose to fund a distinct portion of their Facilities Master Plan through local monies prior to the time their state funding becomes available. Once a district enters CFAP they receive credit against their required local contribution for the work completed under the Expedited program. None of the CFAP specific requirements related to the tracking and disposing of interest earnings apply to school districts participating in the Expedited Local Partnership Program. Since it is not a co-funded program, moneys related to that program should be accounted for in a fund other than fund 010. The Exceptional Needs program provides assistance to lower wealth districts with an exceptional need for immediate classroom facilities assistance, as determined by the Commission. The program is specifically designed for replacement as opposed to expansion or renovation.

With the exception of the Expedited program identified above, these programs follow the basic CFAP requirements discussed above, though there are differences. Districts will enter into agreements with the Commission. If the district participates in these or other Chapter 3318 facility projects, auditors should review the terms of the agreement and identify those requirements which may be material. When making that determination, auditors should consider the requirements and procedures addressed in this Ohio Compliance Supplement Section for the CFAP program.

Note: Community schools may not participate in these programs, except: per RC 3318.50, a community school may obtain a classroom facilities loan guarantee from the State, for up to 15 years.

Interfund Activity:

During the project

~~HB 119~~ (Ohio Rev. Code Section 3318.12) permits a school district board, by resolution, to use all or part of the interest attributable to the district's share of moneys in the project construction fund to pay the cost of local initiatives that are not included in the state-assisted project, but that are related to it. If a district board chooses to use some or all of the interest attributable to its share of the fund for local initiatives and, later, the cost of its state-assisted project exceeds the amount in the fund, the district must re-pay all of the interest used for those initiatives before further state funds will be released for the project.

After the project is completed

~~HB 119~~ (Ohio Rev. Code Section 3318.12(B)(2)) permits a school district board at its option, by resolution, to transfer the interest attributable to its local share in the project construction fund to its permanent improvement fund (where presumably it could be spent on any permanent improvement) or to

leave that interest in the project construction fund to pay the cost of future projects. A district board also may choose to transfer the interest to the district's maintenance fund. In either case, interest attributable to the state's share of the project construction fund must be returned to the state.

OSFC Agreed-Upon Procedures (AUP) Engagements:

OSFC conducts AUP engagements on select school districts that are in the construction phase. All school districts participating in classroom facilities programs will receive an AUP engagement at least once during a project's lifetime. The firms of Kennedy Cottrell Richards and Julian & Grube, Inc. conduct these engagements and are in good standing with the Auditor of State's Office.

The focus of the AUP engagements is accountability and compliance with the terms of the OSFC Project Agreement (including any amendments thereto) and Ohio Rev. Code Section 3318. The firms test the following areas, as applicable:

- deposit of project funds (both State and Local)
- spending of project funds
- interest earnings and allocation to the appropriate funds
- escrow accounting
- the closeout process

OSFC forwards the results of the AUP engagements to the Auditor of State, who then distributes the reports to regional chief auditors and independent public accounting firms. Pursuant to *Government Auditing Standards* paragraph 4.095, "auditors should evaluate whether the audited entity has taken appropriate corrective action to address findings and recommendations from previous engagements that could have a material effect on the financial statements or other financial data significant to the audit objectives. When planning the audit, auditors should ask management of the audited entity to identify previous audits, attestation engagements, and other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented. Auditors should use this information in assessing risk and determining the nature, timing, and extent of current audit work, including determining the extent to which testing the implementation of the corrective actions is applicable to the current audit objectives."

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: In assessing the risk of noncompliance, auditors should consider whether an AUP report that covered at least six months of the period under audit is available from OSFC. If so, auditors should evaluate the results of the AUP to assess the risk of noncompliance.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management's identification of changes 		

<p>in laws and regulations</p> <ul style="list-style-type: none"> • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Agreed-Upon Procedures:

Per GAGAS 4.09⁵, Inquire whether OSFC conducted an AUP engagement over the district’s construction project. If so, obtain a copy of the AUP report, place it in the permanent file, and perform the following:

- Determine what period was covered by the AUP engagement procedures
- Determine the extent of testing performed over the district’s construction activity. Auditors *may* rely on the AUP engagement to reduce the scope and extent of the audit steps enumerated below. *However, auditors should review the reported procedures to determine whether they apply: (1) only once during a project’s lifetime, or (2) if they are ongoing and should be tested annually. For example, we would expect tests of allowability of expenditures to be tested annually during the construction phase. However, the establishment of the appropriate project funds/special cost centers would only be applicable once, generally at the onset of the project. Therefore, testing of type (1) requirements (i.e., applicable one-time only) does not need to be repeated each year. Auditors may refer to prior year testing or an existing AUP engagement, regardless of the period covered, to satisfy these requirements. However, an AUP engagement may only be used to reduce testing of the steps below for type (2) requirements (i.e., applicable on an ongoing basis each year) if the period covered by the AUP engagement included at least six months of the current period under audit. Auditors should carefully read the AUP procedures to ensure they obtain an appropriate understanding of the testing procedures performed when making this assessment.*
- Determine whether any significant findings or recommendations requiring corrective action or follow up were included in the results of the AUP report. If so, determine whether the district has corrected the noncompliance or can document satisfactory progress towards addressing the noncompliance. Auditors should *annually* evaluate the significance of uncorrected items for inclusion in the current audit report.
 - If the school is not adhering to agreed upon timetables for corrective action, etc., auditors should consider reporting noncompliance. Noncompliance findings should include the following: (1) a reference to the existing noncompliance such as, “... in a report dated XX, AOS or an accounting firm reported noncompliance with ORC 3318.YY”, and (2) a description of the status of the noncompliance as of the date of the current audit report.

Review the project agreement between the district and Commission. Considering the requirements specific to the project, perform the following procedures (document specific requirements relevant to the following tests):

Project Funding:

Scan the accounting records to determine if the proper activities are being recorded in the project activities fund (USAS 010). Determine if the District is accounting for the following four revenue streams **separately**: (1) Local Revenue, (2) Interest on Local Funds, (3) State Revenue – aka “drawdowns”, and (4) Interest on State Revenue.

Determine if the District deposited the local share funds required by the Project Agreement into fund 010 for both the original contribution and any amendments.

Select contracts and related contract expenditures and determine through inspection, vouching, or other such means that contracts were awarded using competitive bidding procedures. *(Note: This step may be performed in conjunction with Step 2-10, Bidding and letting of contracts)*

Vouch a few transactions from fund 010 for allowable cost as defined in the agreements. We are not opining on this program, so we do not require a high level of assurance. Testing high dollar transactions and scanning other selected transactions should suffice. Review the supporting documentation to determine if the expenditure was:

- a. allowed under the terms of the Project Agreement;
- b. if it was approved by the district treasurer or another board designee and the construction manager prior to payment;
- c. if it excludes any costs for a locally funded initiative;
- d. if the amount paid agrees with the invoice and
- e. if it is recorded in the correct amount in the correct fund.
- f. If the District did not properly segregate transactions into a project construction fund (i.e., did not establish fund 010), report noncompliance accordingly. Auditors should also consider reporting a finding for adjustment. See the OCS Introduction for guidelines pertaining to Findings for Adjustments.

Scan interfund activity in fund 010. Determine whether material transfers or advances were properly approved and/or allowable under Ohio Rev. Code. If an advance is repaid out of fund 010 request the District provide the approval letter from the Commission which authorized the reimbursement.

Maintenance Funding:

Review accounting records and the Project Agreement and determine if the proper amount of maintenance funding was posted to the project maintenance fund (USAS fund 034).

Vouch a few disbursement transactions from fund 034. We are not opining on this program, so we do not require a high level of assurance. Testing high dollar transactions and scanning other selected transactions should suffice. Determine whether expenditures were only for maintenance of the funded project facilities in accordance with the district's approved maintenance plan. (If the District did not segregate transactions related to project maintenance (i.e. did not establish fund 034), report noncompliance accordingly. As noted above, the only allowable expenditures out of fund 034 prior to the completion of the project are for the costs associated with the development of the maintenance plan.

Locally Funded Initiative:

If applicable, review accounting records and related documents and determine if the district established a separate fund, or special cost center in a fund other than Fund 010, to track receipts and expenditures related to a locally funded initiative.

Vouch selected disbursement transactions from the LFI fund/special cost center. We are not opining on this program, so we do not require a high level of assurance. Testing high dollar transactions and scanning other selected transactions should suffice. Determine whether expenditures were: (1) approved by the district treasurer or another board designee and construction manager prior to payment, (2) in agreement with the vendor invoice, and (3) in compliance with the district's approved Memorandum of

Understanding with the OSFC. If the district did not segregate transactions related to LFI (i.e. did not establish a separate fund or a separate special cost center in a fund other than Fund 010), report noncompliance accordingly.

Alternate Maintenance Obligation:

Determine whether the school district has elected to use the new alternative mechanism for meeting its maintenance obligation. If so, obtain the district's annual certification¹⁹ to the Commission and determine if the school district carbon copied the Auditor of State regional office that the amount required for the year has been transferred into the maintenance fund.

IPA's perform agreed-upon procedures reports to serve as certification. Obtain a copy of this AUP report from the district and review for noncompliance. If the school district has deposited less than the required amount, determine whether AOS sent the required written notification to the district board mandating the necessary deposit within 90 days of the notice.

Interfund Activity:

Determine whether the district transferred interest out of the Project Construction Fund (Fund 010) during the audit period. If so, determine whether:

- the district board adopted a resolution approving the transfer
- the monies transferred represented only interest attributable to the district's local share of the project
- the monies were transferred to the appropriate funds and accounts. (*Note: the OSFC recommends using the Transfer-Out appropriation and Transfer-In receipt accounts to record this activity*).

Surplus Balance:

If a surplus remained after project completion, inspect the district's records supporting the distribution of the surplus. Determine whether the proper amounts were returned to the Commission and transferred to the district's respective funds.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

¹⁹ The following is sample annual certificate language: "The undersigned Treasurer of the Board of Education of the XYZ District, YYY County, Ohio hereby certifies that a resolution was duly passed by the Board of Education of said School District on MM/DD/YYYY to transfer \$xx,xxx from the General Fund to the OSFC Facility Maintenance Special Revenue Fund.

~~**2-13 Compliance Requirement:** Ohio Rev. Code Section 3318; Permissible expenditures for the **Big 8 School Districts** participating in the **School Building Program Assistance Limited Fund**, the required funds to account for the related activity, and the required match. The big eight school districts are as follows: Cleveland CSD, Columbus CSD, Cincinnati CSD, Toledo CSD, Youngstown CSD, Dayton CSD, Canton CSD, and Akron CSD.~~

Summary of Requirements:

Background:

~~Big 8 districts can only use these funds for major renovations and repairs of school facilities. Funds are allocated to the school districts on a per pupil basis, based on the total average daily membership of a base fiscal year. To be eligible to receive these funds, each school district must provide a 100 per cent match (i.e., the school district provides 50% of the total project cost) * from funds the Ohio School Facilities Commission approves and develop and submit a capital renovations plan for the use of state and local funds subject to approval by the Ohio School Facilities Commission. To account for grant and matching money received under this provision, recipient school districts should establish a School Building Assistance Limited Fund. This fund should be classified as a governmental fund type, capital projects fund. The fund code within the Uniform School Accounting System is 496. A special cost center should be used for each separate grant or award of money.~~

* Except, for the following four city school districts, the state/local split should be as follows:

- Cleveland: 68% state/32% local
- Akron 59% state/41% local
- Dayton 61% state/39% local
- Toledo 77% state/23% local.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> ● Policies and Procedures Manuals ● Knowledge and Training of personnel ● Tickler Files/Checklists ● Legislative and Management Monitoring ● Management’s identification of changes in laws and regulations ● Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

~~Vouch a representative number of expenditures from fund 496 for allowable cost as defined above. (If the District did not account for the related activity in fund 496 select the transactions from the applicable fund.)~~

~~Read the minutes of the Board of Education and trace the required match into fund 496.~~

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section E: Community Schools

2-13 Compliance Requirement: Although the competitive bidding procedures applicable to boards of education in ORC §3313.46 (and related sections in Chapter 153) do not apply to community schools, the sponsor (through its contract) may mandate a community school comply with these or other competitive bidding procedures. Auditors must read the contract to identify applicable competitive bidding procedures, and applicable grant requirements, if any.

Ohio Rev. Code Section 3313.33(B) - Interest in contracts by elected officials.

These sections prohibit elected officials from having any pecuniary interest in a contract or to be otherwise employed by the entity. They also provide that contracts are void unless authorized at a regular or special meeting. This statute does not apply to community schools unless the sponsor mandates it through the sponsor contract.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract. This statute applies to community schools.

(Also note that RC 9.24, regarding unresolved findings for recovery and contracts, does not apply to community schools.)

[Insert applicable competitive bidding procedures.]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

[Insert substantive audit procedures. See other Ohio Compliance Supplement Sections for example procedures related to bidding.]

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

Audit implications (adequacy of the system and controls, and the direct and material effects)

of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

2-14 Compliance Requirement: 3314.24(A) **Internet- or computer-based community school** cannot contract with a nonpublic school for instructional facility space.

Notes:

(1) Violations require ODE to withhold foundation payments for any students using nonpublic school facilities.

(2) ORC 3314.02(A)(7) defines Internet- or computer-based community schools as those in which the enrolled students work primarily from their residences on assignments in nonclassroom-based learning opportunities provided via an internet- or other computer-based instructional method that does not rely on regular classroom instruction or via comprehensive instructional methods including internet-based, other computer-based, and noncomputer-based learning opportunities.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Read internet schools’ contracts for instructional space. Determine if contracts for instructional space were with nonpublic schools.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

Section F: Hospitals

2-15 Compliance Requirement: Ohio Rev. Code Sections 9.48, 153.65-.71, and 339.05 - Bidding procedures and purchasing policies for supplies and equipment (**County Hospitals**).

Summary of Requirement: A board of county hospital trustees may adopt, annually, bidding procedures and purchasing policies for supplies and equipment that are routinely used in operating the hospital and that cost in excess of the amount specified in Ohio Rev. Code Section 307.86, which is \$25,000 as the threshold above which purchases must be competitively bid.

If a board of county hospital trustees adopts such policies and procedures, and the board of county commissioners approves them, the board of county hospital trustees may follow these policies and procedures in lieu of following the competitive bidding procedures of Ohio Rev. Code Sections 307.86 to 307.92.

Ohio Rev. Code Section 2921.42 - This section prohibits having an unlawful interest in a public contract.

County hospitals that participate in a joint purchasing contract are exempt from using competitive bidding. [R.C. Section 9.48(C)-(D)]

County hospitals procuring professional design services, over ~~\$25,000 the competitive bidding threshold~~, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require county hospitals to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]

(Note that RC 9.24 regarding unresolved findings for recovery and contracts does not apply to hospitals.)

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

By inquiry or reading the minutes, determine if the board of hospital trustees has adopted its own policies and procedures for competitive bidding. If so, trace approval of those policies by the board of county commissioners to an approval letter or to a notation in the minutes.

For a few expenditures over the policy limit, inspect bid files to determine if the policies and procedures were being followed as required. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

If the board of hospital trustees has not adopted its own policies and procedures, see Ohio Compliance Supplement Section 2-5 for suggested audit procedures regarding competitive bidding procedures for county hospitals.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

2-16 Compliance Requirement: Ohio Rev. Code Sections 749.26, 749.27, 749.28, 749.29, 749.30 and 749.31- Contract procedures; bids; bonds; bid openings (**Municipal Hospitals**).

Summary of Requirements: The board of hospital trustees, before contracting to erect a hospital building, or to rebuild or repair a hospital building, the cost of which exceeds \$10,000, must have plans, specifications, detailed drawings, and forms of bids prepared. These must be printed for distribution among the bidders. [Section 749.26].

All contracts must be made in the name of the board of hospital trustees. Contractors may not execute any extra work or make any modifications or alterations in the specifications and plans, unless ordered in writing by the board. Contractors may not claim any additional compensation unless such written order is given, and the additional compensation fixed and agreed upon. Copies of the plans and drawings, attested by the contractor, and the original bids, specifications, and contracts are required to be deposited in the office of the clerk of the municipal corporation. [Section 749.27].

The board of hospital trustees cannot enter into a contract for work or supplies where the estimated cost exceeds \$10,000, without first giving 30 days notice in one newspaper of general circulation in the municipal corporation that sealed proposals will be received for doing the work or furnishing the materials and supplies. [Section 749.28].

Each bid submitted under Ohio Rev. Code Section 749.28 for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement is required to meet the requirements of Ohio Rev. Code Section 153.54 regarding bid guaranty. Each bid submitted under Ohio Rev. Code Section 749.28 for any other contract must be accompanied with a bond, signed by sufficient sureties, for acceptance of the contract if awarded by the board of hospital trustees, to fully secure any difference between the amount of such bid and the next higher bid. That amount is to be collected by the board and paid into the hospital fund in case of the refusal by the bidder to enter into a contract according to its bid within such reasonable time as the board determines. [Section 749.29].

Each bid submitted under Ohio Rev. Code Section 749.28 is required to be enclosed in a sealed envelope and deposited with the clerk of the board of hospital trustees. The envelope should indicate the nature of the bid. All bids are required to be opened at the time, date, and place specified in the notice to bidders or specifications. The time, date, and place of the bid openings may be extended to a later date by the board of hospital trustees, provided that written or oral notice of the change is given to all persons who have received or requested specifications no later than 96 hours prior to the original time and date fixed for the opening. [Section 749.30].

Ohio Rev. Code Section 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

(Note that RC 9.24 regarding unresolved findings for recovery and contracts does not apply to hospitals.)

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists 		

<ul style="list-style-type: none"> • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Inquire or determine from reading the minutes or other means whether the hospital paid for work or supplies or for rebuilding or repairs exceeding \$10,000. Inspect a few bid files (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) and other related documentation to determine that:

- Plans, specifications, and detailed drawings are printed and distributed to bidders for the erection, rebuilding or repair of a hospital building.
- The contracts are made in the name of the board of hospital trustees and stipulate in the contract that the contractor will not execute any extra work or make any modifications or alterations in the work specifications and plans unless ordered in writing by the board.
- Copies of plans and drawings and the original bids, specifications and contracts are on file in the office of the clerk.
- Thirty days’ notice was given in one newspaper of general circulation in the municipal corporation that sealed proposals will be received.
- Bid guaranties and/or bonds were received with the proposals from contractors.
- Bids were enclosed in sealed envelopes and opened by the municipal clerk at the time, date, and place specified in the notice to bidders.
- The lowest and best bid was accepted (unless bond is considered inadequate by the board).

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section G: Colleges and Universities

Revised: HB 153, 129th GA

Effective: 9/29/11

2-17 Compliance Requirement: Ohio Rev. Code Sections 9.312, 153.65-.71, 3354.16, 3355.12, 3357.16, and 3358.10 - Bidding required on improvement contracts.

Summary of Requirements: When the board of trustees of a ~~community college [Section 3354.16(A), university branch [Section 3355.12(A)] or technical college [Section 3357.16(A)], or state community college district [Section 3358.10]~~ resolves to contract for improvements exceeding \$50,000²⁰, the college must advertise for bids once a week for three consecutive weeks, in at least one newspaper of general circulation within the college district where the work is to be done.

When the board of trustees of a community college [Section 3354.16(A), technical college [Section 3357.16(A)], or state community college district [Section 3358.10] resolves to contract for improvements exceeding \$200,000²⁰, the college must advertise for bids once a week for three consecutive weeks, or as provided in R.C. 7.16²¹, in at least one newspaper of general circulation within the college district where the work is to be done.

The board of trustees of the college district may contract with the lowest responsive and responsible bidder.

On January 1, of every even-numbered year, the chancellor of the Board of Regents must adjust the contract limit as provided for in Sections 3354.16(B) for community college districts, 3355.12(B) for university branch districts, 3357.16(B) for technical colleges and 3358.10 for state community colleges. The new limits are stated above.

These types of colleges may solicit separate or combined bids and award separate or combined contracts for each distinct branch or class of work. These contracts do not require bidding if the estimated cost is less than \$5,000.

A bidder on the contract is considered responsive if his proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage. The factors that the college must consider in determining whether a bidder on the contract is responsible include the experience of the bidder, and its financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly.

²⁰ Each of these statutes requires the Board of Regents to increase this amount every other January 1 based on increases in the U.S. Bureau of Census price deflator for construction. The Board of Regents informed us that because the Bureau of Census no longer issues this information, the Board of Regents has not increased this threshold. The Board is proposing a legislative revision to this statute.

²¹ Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16.

An apparent low bidder found not to be responsive and responsible is to be notified by the college of the finding and the reasons for it. The notification is given in writing and by certified mail. [Section 9.312(A)].

When the contract is awarded to a bidder other than the apparent low bidder or bidders, the institution is required to meet with the apparent low bidder or bidders upon filing of a timely written protest. The protest must be received within five days of the notification required above. No final award can be made until the institution either affirms or reverses its earlier determination. [Section 9.312(B)].

Ohio Rev. Code Section 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

Colleges and universities procuring professional design services, over \$25,000 the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require colleges and universities to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]

(Note that RC 9.24 regarding unresolved findings for recovery and contracts applies to state colleges and universities, but does not apply to technical colleges.)

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Inquire or determine through other means such as reading the minutes or performing analytical procedures whether improvements exceeding the bidding threshold (\$50,000 for a university branch or \$200,000 for a community college, state community college district, or technical college) occurred during the fiscal period. Inspect a few contracts (in selecting improvement payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold), bid files, and related documentation to determine whether:

- Contracts over the amounts indicated above were awarded using competitive bidding procedures.

- Advertisements of the proposals for bids were made.
- Documentation indicates the lowest and best bid was accepted, or documents why the low bidder was not selected.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section H: Libraries

Revised: HB 153, 129th GA
Effective: 9/29/11

2-18 Compliance Requirements: Ohio Rev. Code Sections 153.65-.71 and 3375.41 - Procedure for bidding and letting of contracts over \$25,000.

Summary of Requirements: When a board of library trustees appointed pursuant to Ohio Rev. Code Sections 3375.06 (county free library), 3375.10 (township library), 3375.12 (municipal free library), 3375.15 (school library), 3375.22 (county library district), or 3375.30 (regional library district) determines to construct, demolish, alter, repair, or reconstruct a library or make any improvements or repairs which will exceed \$25,000 except in cases of urgent necessity or for the security and protection of library property, it must advertise for two weeks for sealed bids in some newspaper of general circulation in the district, or as provided in R.C. 7.16²². ~~If there are two such papers, the board advertises in both of them.~~ If no newspaper has a general circulation in the district, the board advertises by posting the advertisement in three public places in the district.

Sealed bids are filed with the fiscal officer by 12:00 noon of the last day stated in the advertisement.

The sealed bids are:

- opened at the next meeting of the board,
- publicly read by the fiscal officer, and
- entered into the board's records.

By resolution, the board may provide for the public opening and reading of the bids by the fiscal officer, immediately after the time for filing such bids has expired, at the usual place of meeting of the board, and for tabulating the bids. A report of the tabulation of the bids is presented to the board at its next meeting.

When both labor and materials are embraced in the work that is being bid for, the board may require that each be separately stated in the sealed bid, with each being priced, or it may require that bids be submitted without being separated.

None but the lowest responsible bid shall be accepted. The board may reject all the bids or accept any bid for both labor and material which is the lowest in total.

The contract is between the board and the bidders. The board is required to pay the contract price for the work by the times and in the amounts indicated.

When two or more bids are equal, in whole or in part, and are lower than any others, either may be accepted. However, the work is not required to be divided between these bidders.

When there is reason to believe there is collusion or combination among the bidders, the bids of those concerned in collusion or combination are required to be rejected.

²² Ohio Revised Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Revised Code § 7.16.

Ohio Rev. Code Section 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

Libraries procuring professional design services, over \$25,000 the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of R.C. Section 153.65-.71 which require libraries to publically announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. [R.C. Sections 153.65-.71]

(Note that ORC 9.24 regarding unresolved findings for recovery and contracts, does not apply to libraries.)

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Inquire or determine through other means, such as analytical procedures or reading the minutes, if payments for repairs, improvements, etc. exceeding \$25,000 were made during the period. If so, inspect a few related bid files (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) and associated documentation that:

- Expenditures over \$25,000 were supported by contracts awarded in compliance with competitive bidding requirements (except in emergencies).
- Advertisements of the proposals for bids were made.
- Procedures used for opening bids were in agreement with those required (i.e., opened at the next meeting of the board, publicly read by the fiscal officer, and entered into the board’s records).
- Adequate documentation is on file to support the board’s decisions to select the lowest responsible bid as well as reject any bids.

Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment in the FRAQ.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section I: General

2-19 Compliance Requirement: Ohio Rev. Code Section 9.48 - Joint contracting and purchasing programs for **counties** and **townships**.

Summary of Requirements: A county or township may permit one or more other counties or townships to participate in contracts into which it has entered to acquire equipment, materials, supplies, or services, and may charge such participant(s) a reasonable fee to cover any additional costs incurred as a result of their participation. [RC 9.48 (B)(1)]

A county or township may participate in a joint purchasing program operated by or through a national or state association of political subdivisions for which they are eligible for membership. ~~HB 268 also allows~~ Counties or townships ~~to can~~ purchase supplies or services from another party, including another political subdivision, instead of through the association if the county or township can purchase the supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price than it can through the joint purchasing program. [RC 9.48 (B)(2)]

A county or township may also participate in a contract the Federal government offers, including those the Federal General Services Administration offers.²³ [9.48 (B)(3)]

Purchases under another entity’s contract are exempt from a county or township’s competitive bidding procedures if the other entity awarded the contract pursuant to a publicly-solicited request for proposals or competitive selection procedure. No county or township shall participate in a joint purchasing contract if it has already received bids for such acquisition unless participation enables it to make the acquisition at a lower price. [RC 9.48 (C)]

A county or township eligible to participate in a national or state association’s joint purchasing program may acquire supplies and services from another entity or subdivision without competitive bidding, if (1) the county or township can purchase those supplies and services from the other party upon equivalent terms and specifications and (2) if acquired at a lower price than the association’s contracts. The county or township must maintain documentation it satisfied conditions (1) and (2). [9.48(D)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

²³ For information about the General Services Administration, see www.gsa.gov.

Suggested Audit Procedures - Compliance (Substantive) Tests:

By reading the minutes, scanning disbursements, and inquiry, determine if the county or township has entered into joint contracting or purchasing programs.

For joint contracts, based on your reading of the minutes, determine if the entity did not competitively bid the project, or documented that the joint acquisition price was lower than the bids received.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Revised: HB 153, 129th GA
Effective: 9/29/11

2-20 Compliance Requirements: Ohio Rev. Code Sections 153.50, 153.51, and 153.52 - Separate bids and contracts required for each class of work on buildings and other structures (e.g., institutions, bridges, culverts, or improvements).

Summary of Requirements: Except for contracts made with a construction manager at risk²⁴, with a design-build firm, or with a general contracting firm, when a project is to be contracted out, the entity required to bid such project shall group the work to be done into the specifically listed classes below before drawing up the bid specifications. ~~The entity is not required to solicit separate bids for the specifically listed classes below if the estimated cost is less than five thousand dollars. Allowing them to group certain types of work into one bid streamlines the bidding procedure.~~

The separate classes are: plumbing and gas fitting; steam and hot water heating; ventilating apparatus; steam power plant; and electrical equipment; ~~if the estimated cost of such branch or class of work exceeds \$5,000~~ [153.50].

If an entity is able to bid the entire project in one bid and that bid is lower than the bids are if separately bid by branches or classes, the entity may then bid the project as one single bid. The entity may also bid groups or branches together, but not encompassing the whole project, if the aggregate of the bids is lower than the total sum of the individual bids for the classes or branches included in the single bid. Finally, if bidding the project by classes or groups does not allow the entity to include all the work required into the bids, and grouping classes or groups together would allow the entity to do so, the entity may then aggregate the classes or branches together into a single bid that would allow them to bid out the work required by the project but not otherwise included in the bidding process.[153.51]

The contract must be awarded to the lowest and best separate bidder if it is for a county, township, or municipal corporation or any public institution belonging thereto. If it is for the state, a school district, or any public institution belonging thereto, it must be awarded to the lowest responsive and responsible bidder. [153.52]

The contract must be made directly with the bidder(s) upon the terms, conditions, and limitations of the bid.

~~The above requirements do not apply to the erection of buildings and other structures which cost less than \$50,000.~~ When an entity is to bid work on buildings and other structures, the cost of which is greater than \$50,000, it shall require separate and distinct bids to be made for each of the following branches or classes of work to be performed, ~~if the estimated cost for that branch or class is \$5,000 or more except for contracts made with a construction manager at risk, with a design-build firm, or with a general contracting firm:~~ (1) plumbing and gas fitting; (2) steam and hot-water heating, ventilating apparatus and steam-power plant; (3) electrical equipment.

²⁴ Ohio Revised Code Section 9.833 defines “construction manager at risk” as “a person with substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement, but does not mean the person who provides the professional design services or who actually performs the construction, demolition, alteration, repair, or reconstruction work on the project.”

~~Multiple branches or classes may not be combined unless the separate bids do not cover all the work and materials required or the bids are lower than the separate bids in the aggregate. Also, The public authority to whom a contract is awarded may assign any or all of its interest in the contract as long as it is agreed to in the award of the contract.[153.51(B)(2)]~~

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Ticker Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Read a few bids and contracts (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) for erection, repair, alteration, improvement, and rebuilding of public buildings, bridges, and culverts and determine that:

- The government documented the classification structure for the bid requests in a manner that supports that the government was likely to receive the lowest possible combined or separate bids for the work;
- The contract was awarded to the lowest and best separate bidder (county, township, or municipal corporation or any public institution belonging thereto) or the lowest responsive and responsible bidder (state, a school district, or any public institution belonging thereto);
- The contract was made directly with the contractor(s) upon the terms, conditions, and limitations of the bid.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Revised: HB 153, 129th GA
Effective: 9/29/11

2-21 Compliance Requirements: Ohio Rev. Code Sections 4115.04 and 4115.05 - Prevailing wage rates in public works contracts.²⁵

Summary of Requirements: The prevailing wage laws essentially require an entity to obtain the prevailing wages in their area for the types of labor required to complete the project, prior to bidding and again when the contract is awarded, if the award is made more than 90 days after the original prevailing wage is determined. They then need to make sure that the contractors who are awarded the contracts agree, in the contract, to pay the prevailing wage.

Every public authority authorized to contract for or construct with its own forces a public improvement, before advertising for bids or undertaking such construction with its own forces, shall have the State director of Commerce determine the prevailing rates of wages of mechanics and laborers in accordance with section 4115.05 of the Rev. Code for the class of work called for by the public improvement, in the locality where the work is to be performed. Such schedule of wages shall be attached to and made part of the specifications for the work, and shall be printed on the bidding blanks where the work is done by contract. [4115.04(A)]

“Construction” means either of the following:

1. Any new construction of any public improvement, the total overall project cost of which is fairly estimated to be more than fifty thousand dollars adjusted biennially by the director of commerce pursuant to section 4115.034 of the Rev. Code and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority; [4115.03(B)(1)]²⁶
2. Any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of any public improvement, the total overall project cost of which is fairly estimated to be more

²⁵ Bidding and prevailing wage requirements are independent of each other. A threshold dollar amount must first be met before prevailing wage requirements apply. It is possible to meet the bidding threshold without meeting the prevailing wage threshold.

²⁶ There are separate thresholds for new construction and reconstruction. These thresholds are categorized by vertical and horizontal construction types.

Horizontal construction (new construction and reconstruction on public improvements that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction):

- Effective 1/1/ 2010 through 12/31/2011, the thresholds are \$78,258 (new) and \$23,447 (reconstruction).
- Effective 1/1/2012 through 12/31/2013, the thresholds are \$82,137 (new) and \$24,609 (reconstruction). (See <http://www.com.ohio.gov/laws/PrevailingWageThresholdLevels.aspx>)

Vertical construction (all other new construction and reconstruction):

- Effective 9/29/2011 through 9/28/2012, the thresholds are \$125,000 (new) and \$38,000 (reconstruction).
- Effective 9/29/2012 through 9/28/2013, the thresholds are \$200,000 (new) and \$60,000 (reconstruction).
- Effective 9/29/2013 through 9/28/2013, the thresholds are \$250,000 (new) and \$75,000 (reconstruction).

than fifteen thousand dollars adjusted biennially by the administrator pursuant to section 4115.034 of the Rev. Code and performed by other than full-time employees who have completed their probationary period in the classified civil service of a public authority. [4115.03(B)(2)]⁷

The State prevailing wage requirements (Ohio Rev. Code Sections 4115.03 – 4115.16) do not apply to:

- Public improvements partially or wholly funded by the Federal government or any of its agencies (whether by grant or loan), if Federal minimum wage requirements (i.e. Davis Bacon) apply to mechanics or laborers.
- A participant in a work activity, developmental activity or an alternative work activity under ORC 5107.40 to 5107.69, when a public authority directly uses the labor of the participant to construct a public improvement if the participant is not engaged in paid employment or subsidized employment pursuant to the activity.
- For public improvements undertaken by boards of education or educational service centers²⁷.
- The State prevailing wage law does not apply to county hospitals if none of the construction funds, including funds to repay any amounts borrowed, have been secured by obligations pledging the full faith and credit of the State, the county, a township, or a municipal corporation, or are funds that have been generated by the levy of a tax by the State, the county, a township, or a municipal corporation
- Any project described in divisions (D)(1)(a) to (D)(1)(e) of section 176.05 of the Revised Code;
- Public improvements undertaken by, or under contract for, a port authority as defined in section 4582.01 or 4582.21 of the Revised Code;
- Any portion of a public improvement undertaken and completed solely with labor donated by the individuals performing the labor, by a labor organization and its members, or by a contractor or subcontractor that donates all labor and materials for that portion of the public improvement project. [4115.04(B)].

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of 		

²⁷ Under no circumstances shall a public authority apply the prevailing wage requirements of chapter 4115 to an exempt public improvement of a board of education of any School District or the governing board of any Educational Service Center. (Ohio Revised Code §4115.04(C))

changes in laws and regulations to employees		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Select a few contracts subject to prevailing wages and perform the following:

Inquire if the contract is funded in whole or part by federal grant or contract. If so, determine whether Federal prevailing wage laws (the Davis Bacon Act) apply.

Inspect contracts exceeding the threshold amounts for the required “prevailing wage” language.

Inquire if any projects were sublet. If so, inspect the contractor’s contract for language authorizing the subletting.

Compare the date of prevailing wage establishment with the contract date. If more than 90 days elapsed between the two dates, determine that a prevailing wage redetermination was obtained by inspecting that document.

If a county hospital has claimed the exception provided by Section 4115.04 (B), review project documents and legislation authorizing the project, make inquiries, and perform such other procedures to determine whether financing sources meet the criteria of Section 4115.04(B).

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

2-22 Compliance Requirements: Ohio Rev. Code Section 9.314 – Reverse Internet auction.

Summary of Requirements:

Any political subdivision purchasing services or supplies²⁸ subject to competitive bidding requirements may purchase the services or supplies by reverse auction in lieu of written proposals. [Section 9.314(B)]

A political subdivision shall solicit proposals through a request for proposals. The request for proposals shall state the relative importance of price and other evaluation factors. The political subdivision shall give notice of the request for proposals in accordance with the rules it adopts. [Section 9.314(C)]

A political subdivision may award a contract to the offeror whose proposal the political subdivision determines to be the most advantageous to the political subdivision, taking into consideration factors such as price and the evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made. [Section 9.314(E)]

The rules that a political subdivision adopts under this section may require the provision of a performance bond, or another similar form of financial security, in the amount and in the form specified in the rules. [Section 9.314(F)]

As used in this Ohio Rev. Code Section 9.314:

- **“Contracting authority”** has the same meaning as in section 307.92 of the Rev. Code.
- **“Political subdivision”** means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state and also includes a contracting authority.
- **“Reverse auction”** means a purchasing process in which offerors submit proposals in competing to sell services or supplies in an open environment via the internet.
- **“Services”** means the furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. “Services” does not include services furnished pursuant to employment agreements or collective bargaining agreements.
- **“Supplies”** means all property, including, but not limited to, equipment, materials, other tangible assets, and insurance, but excluding real property or interests in real property.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel 		

²⁸ R.C. § 9.314 prohibits a political subdivision from purchasing supplies or services by reverse auction if the contract concerns the design, construction, alteration, repair, reconstruction, or demolition of a building, highway, road, street, alley, drainage system, water system, waterworks, ditch, sewer, sewage disposal plant, or any other structure or works of any kind. [Section 9.314(B)(2)]

<ul style="list-style-type: none"> • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

If the local government has elected to use reverse internet auction in lieu of sealed competitive bidding as may be otherwise required, review the minutes and obtain related contract files and review the documentation for a few auctions to determine whether:

- The entity adopted rules governing the use of reverse internet auction and whether the entity followed significant provisions in those rules, including giving notice of the Request For Proposal (RFP) and required submission of financial security (if any). (Retain a copy of the rules (or relevant excerpts) in the working papers).
- Proposals were made using RFPs and the RFPs included an indication of the relative importance of price and other proposal evaluation factors.
- The contract file documents the basis on which the selected proposal was awarded. Be alert for obvious departures from the evaluation factors and related importance as stated in the RFP.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Note: To enhance efficiency, consider including the tests described at the end of this step with the OCS Chapter 2 steps referenced at the end of this step. Noncompliance findings resulting from testing this would not normally be deemed material noncompliance.

2-23 Compliance Requirements: Ohio Rev. Code Section 9.24(A), (B), (D), (E), and (G); and AG Opinion 2004-014 – Unresolved findings for recovery

Summary of Requirements: No state agency and no political subdivision²⁹ receiving more than \$50,000 in state funds in a fiscal year (per OAG 2004-014) shall award a contract for goods, services, or construction, paid for in whole or in part with state funds, to a person [this section defines “person” as an individual, corporation,³⁰ business trust, partnership, and association; see Ohio Rev. Code Section 1.59] against whom a finding for recovery has been issued by the auditor of state, if the finding for recovery is unresolved. (Ohio Rev. Code Section 9.24(A))

AG Opinion 2004-014 and Ohio Rev. Code Section 9.24 provided the following definitions which are further discussed in AOS Bulletin 2004-006:

Per OAG 2004-014, the term “contract” only applies to contracts requiring a competitive contracting process. This does not include employment contracts, ODAS state term purchases, or transactions made via other means such as purchase orders, credit cards, debit cards, etc. Senate Bill 189 also indicated that a contract is considered to be awarded when it is entered into or executed, irrespective of whether the parties to the contract have exchanged money.

Ohio Rev. Code Section 9.24 (G)(1)(a) states that the only contracts subject to the provisions of the statute are those contracts in which the cost for the goods, services, or construction exceeds \$25,000. Division (G)(1)(b) provides an exception to this rule and applies the statute to a contract awarded to any person who, in the previous fiscal year, received contracts from the state agency or political subdivision, the aggregate of which exceeded \$50,000.

Per OAG 2004-014, the term “state funds” means moneys, other than federal funds, that are held in the state treasury and appropriated by the General Assembly in accordance with Ohio Constitution Article II, § 22 for expenditure by a state agency or political subdivision. If state funds are commingled with local funds, a contract paid with those funds would be presumed to include both state and local funds. In contrast, if a political subdivision segregates its funds and pays for a contract with only local funds, the contract would not be subject to Ohio Rev. Code 9.24.

For the purposes of Ohio Rev. Code Section 9.24(B), a finding for recovery is unresolved unless one of the following criteria applies:

1. The money identified in the finding for recovery is paid in full to the state agency or political subdivision to whom the money was owed;
2. The debtor has entered into a repayment plan that is approved by the attorney general and the state agency or political subdivision to which the money identified in the finding for recovery is

²⁹ The term “political subdivision” refers to any county, city, village, township, park district, or school district as defined in Ohio Rev. Code Section 9.82.

³⁰ It was unclear in the initial version of Ohio Rev. Code Section 9.24 whether a finding for recovery issued against a corporation also applied to individuals within the corporations, and vice versa. Ohio Rev. Code Section 9.24 (H)(5) now clarifies that the term “person” applies only to the person actually named in the finding for recovery.

owed. A repayment plan may include a provision permitting a state agency or political subdivision to withhold payment to a debtor for goods, services, or construction provided to or for the state agency or political subdivision pursuant to a contract that is entered into with the debtor after the date the finding for recovery was issued.

3. The attorney general waives a repayment plan described in division 9.24(B)(2) of this section for good cause;
4. The debtor and state agency or political subdivision to whom the money identified in the finding for recovery is owed have agreed to a payment plan established through an enforceable settlement agreement.
5. The state agency or political subdivision desiring to enter into a contract with a debtor certifies, and the attorney general concurs, that all of the following are true:
 - a. Essential services the state agency or political subdivision is seeking to obtain from the debtor cannot be provided by any other person besides the debtor;
 - b. Awarding a contract to the debtor for the essential services described in division 9.24(B)(5)(a) is in the best interest of the state;
 - c. Good faith efforts have been made to collect the money identified in the finding of recovery.
6. The debtor has commenced an action to contest the finding for recovery and a final determination on the action has not yet been reached.

The Auditor of State shall maintain a database, accessible to the public, listing persons against whom an unresolved finding for recovery has been issued, and the amount of the money identified in the unresolved finding for recovery. The Auditor of State currently has this database operational and the database will be updated periodically in accordance with Ohio Rev. Code Section 9.24(D). The database is available at the Auditor of State's website: www.ohioauditor.gov, under the *Recovery Database* link.

Before awarding a contract for goods, services, or construction, paid for in whole or in part with state funds, a state agency or political subdivision shall verify that the person to whom the state agency or political subdivision plans to award the contract does not appear in this Auditor of State database.

Under Ohio Rev. Code Section 9.24, bonding companies, insurance companies, self-insurance pools, joint self-insurance pools, risk management programs, or joint risk management programs are exempt from the provisions of this statute unless a court has entered a final judgment against the company and the judgment has not yet been satisfied. Medicaid provider agreements (see Ohio Rev. Code Chapter 5111) or payments or provider agreements under disability assistance medical assistance (Ohio Rev. Code Chapter 5115) are also exempt. Lastly, if federal law dictates that a specified entity provide the goods, services, or construction for which a contract is being awarded, the entity is exempt, regardless of whether that entity has an unresolved finding for recovery.

Also, ORC 9.24 (G)(1)(a) states that the only contracts subject to the provisions of the statute are those contracts in which the cost for the goods, services, or construction exceeds \$25,000. Division (G)(1)(b) provides an exception to this rule and applies the statute to a contract awarded to any person who, in the previous fiscal year, received contracts from the state agency or political subdivision, the aggregate of which exceeded \$50,000. Consequently, state agencies and political subdivisions should immediately review their contracts awarded in the previous fiscal year in order to identify persons to whom this aggregating provision applies. *In summary, ORC 9.24 applies only to contracts which are the subject of a*

competitive contracting process and which either exceed \$25,000 or meet the aggregating criteria described above.

Sample Questions and Procedures

You should test this in conjunction with tests of procurements subject to competitive bidding. See the related RC 9.24 step in OCS steps:

- 2-1 Municipalities
- 2-5 Counties
- 2-7 Townships
- 2-10 School districts
- 2-11 School districts

Note: R.C. 9.24 applies to state colleges and universities, and the two state medical colleges. ***R.C. 9.24 does not apply to community schools.***

R.C. 9.24 does not apply to community colleges, libraries (except for the State Library of Ohio), or hospitals.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

CHAPTER 3

DEBT

The power of a taxing authority to incur debt for public purposes is a power of local self-government provided by the Ohio Rev. Code through Chapter 133, the Uniform Public Securities Law. In addition, the taxing authority's charter, ordinances and resolutions may place further restrictions (or, in the case of a charter, fewer restrictions) on the taxing authority's power to incur debt.

In issuing debt, many governments either engage bond counsel or use a local financial institution to advise them regarding compliance with debt-related laws. Using legal counsel experienced with debt compliance can help a government meet Ohio Rev. Code Chapter 133 (and other requirements.) Auditors should consider this when determining the nature and extent of testing in this area.

Note: There are many Rev. Code Sections authorizing governmental debt, in addition to Chapter 133. Many requirements from other chapters refer to, and require compliance with certain Ohio Rev. Code §133 sections. It is impractical to describe every Rev. Code debt requirement in this chapter. This chapter focuses on some of the most common requirements applicable to local government securities. **However, auditors may need to refer to other Ohio Rev. Code sections, and amend the steps this Ohio Compliance Supplement Chapter lists for debt issued under other Ohio Rev. Code sections.**

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: In assessing the risk of noncompliance, auditors should consider whether the government has utilized the assistance of bond counsel for all debt issuances. Typically, bond counsel will evaluate (and possibly opine) on a government's compliance with certain laws and regulations related to debt *issuance*. An opinion or evaluation by bond counsel may lower the risk of noncompliance pertaining to recent debt *issuances*. However, an opinion from bond counsel will not mitigate the risk of noncompliance relating to covenants, debt retirement or reporting related to transactions or events occurring *after* the debt's issuance.

For example: where bond counsel was involved with debt issues we are testing, we usually can rely on documents they have prepared or opined on, as evidence that legislation authorizing the securities complies with statute. However, bond counsel would not "audit" the government's *subsequent* compliance with requirements. For example, we would not expect bond counsel to determine how the government accounted for debt proceeds or whether the proceeds were spent for authorized purposes.

Compliance Requirements
Chapter 3 – Debt

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Section A: Entities Other Than Community Schools

3-1 Ohio Const. Art. XII Section 11; Ohio Const. Art. XVIII, Section 12, ORC 133.10, 133.22, 133.24, 321.34, 5705.03, 5705.05, 5705.09 and 5705.10; 1981 Op. Atty Gen. No. 81-035: Retiring Debt 3

3-2 ORC 133.10, 133.22 and 133.24: Anticipation Notes 10

3-3 ORC 3375.404: Additional Borrowing Authority (Brd of Library) 14

3-4 17 C.F.R. § 240.15c2-12: Issuing Municipal Securities 16

3-5 ORC 505.401: Additional Borrowing Authority (Brd of Trustees, Fire Districts organized under ORC 505.37(C)) 20

3-6 ORC 133.29, 135.14, 731.56 Governments Investing in Their Own Securities 21

Section B: Community Schools

3-7 ORC 3314.08(J): Foundation Anticipation Notes 23

3-8 ORC 3318.50(B); School Classroom Facilities Loan Guarantee Program 24

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Section A: Entities Other Than Community Schools

3-1 Compliance Requirement: Ohio Const. Art. XII, Section 11; Ohio Const. Art. XVIII, Section 12 Ohio Rev. Code Sections 133.10, 133.22 133.24, 321.34, 5705.03, 5705.05, 5705.09 and 5705.10; 1981 Op. Atty Gen. No. 81-035 – **Issuing or Retiring Bonds and Notes.**

Summary of Requirements:

Common Types of Debt

BACKGROUND INFORMATION: Per Ohio Rev. Code 133.01(Q), *general obligation* securities are those collateralized by a pledge of taxing authority, up to the subdivision's available tax limit (sometimes described as a taxing authority's "full faith, credit and taxing authority.")

The following are examples of securities that are **not** general obligations:

RC 133.01(LL) defines *self-supporting securities* as securities, or portions of securities where the fiscal officer estimates that revenue sources, excluding taxes, are sufficient to pay for operating costs plus debt service. These are securities collateralized by pledged revenue,¹ without a pledge of taxes. Enterprise utility operations often issue self-supporting securities. Ohio Rev. Code 133.01(MM) authorizes various subdivisions to issue self-supporting securities; such as municipalities, townships, counties, school districts, and certain other districts. (See the statute for a complete list.) Ohio Rev. Code 133.01(MM) does not list community schools.

RC 133.08 defines *revenue* securities as those a county issues, collateralized only by pledged revenue and which are not secured by a county's full faith, credit and taxing authority.

Ohio Const. Art. XVIII, Section 12, authorizes a municipality to issue bonds collateralized by pledged revenues or mortgages to acquire, construct, or extend public utilities. These bonds do not impose any liability on the municipality, except the creditor's right to the pledged revenue and / or mortgage. That is, this debt is not a general obligation.

Issuance of Securities

- Ohio Const. Art. XII, Section 11 states "No bonded indebtedness of the state, or any political subdivision thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."
- Ohio Rev. Code § 5705.03 provides that the taxing authority of each subdivision must levy sufficient taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes and certificates of indebtedness of such subdivision subject to the limitations of applicable statutes.
- Ohio Rev. Code § 133.23 describes the legislation required to authorize new securities. Per Ohio Rev. Code § 133.23(C), Legislation must identify the source(s) of repaying the bonds, which may

¹ *Pledged revenue* is revenue the debt legislation or covenant provisions pledged as collateral to the debt owners.

be **any** moneys required by law to be used, or lawfully available, for the purpose authorized. If the bonds are general obligations, or a property tax otherwise must be levied for the debt service, the legislation shall provide for levying a property tax sufficient to pay the bonds' debt charges; but the tax amount levied or collected in any year may be reduced by the amount to be available from special assessments,² revenues and surplus funds of public utilities, any surplus in the funds from which such bonds are to be retired, or other moneys specifically assigned by law or by legislation of the taxing authority for payment of such debt charges.

We interpret Ohio Rev. Code § 133.23(C) as follows:

- Revenue (tax or otherwise) pledged to repay debt must be used for debt service unless the debt is repaid from other sources.
- A government can use unrestricted money or money restricted to purposes consistent with paying a debt issue to pay debt service. For example, a government might use restricted grant revenue³ to pay revenue anticipation note debt service, if the debt proceeds were spent for allowable grant purposes, even if the debt legislation pledges taxes.
- Therefore, if these bonds are a general obligation, a government must **authorize** a levy, but need not levy the tax if it can use other resources to pay the debt service.

Retirement of Securities

- Ohio Rev. Code § 5705.09(C) requires each subdivision to establish a bond retirement fund into which it must pay sufficient revenues to retire serial bonds, notes and certificates of indebtedness at maturity.
- Ohio Rev. Code § 5705.10 provides that all revenue derived from levies for debt charges on bonds, notes, or certificates of indebtedness must be paid into a [debt service] fund for that purpose.
- Ohio Rev. Code § 133.10(E) further provides that revenue anticipated (i.e. property taxes pledged to pay tax anticipation notes) may be appropriated for purposes other than paying debt charges only after deducting an amount sufficient to pay the debt. The amount (of anticipated revenues) to be applied to debt charges must be set aside in an account in the bond retirement fund. Ohio Rev. Code § 133.10(E) applies to certain other types of securities, for example in Ohio Rev. Code sections:
 - Ohio Rev. Code §133.13: Certain special assessments
 - Ohio Rev. Code §133.17: Securities anticipating special assessments
 - Ohio Rev. Code §133.32: All Ohio Rev. Code Chapter 133 securities
 - Conservancy district special assessments RAN

Issuance of Notes

² FYI: Special assessment anticipation notes issued per Ohio Rev. Code 133.17 are collateralized by a pledge of special assessments, **and** as general obligations. However, notes issued per Ohio Rev. Code 133.13, anticipating special assessments collected in one installment are collateralized only by the assessments and are **not** general obligations.

³ Unless the grant regulations prohibit debt payments. For example, Circular A-87 (now codified in 2 CFR 225) would generally permit using Federal grants to pay debt related to assets used in Federal programs, per Attachment B, item 23b.

- Ohio Rev. Code §133.22 requires that when a subdivision issues notes, its financial officer must notify the county auditor that such notes have been sold. Per Ohio Rev. Code 321.34(B), when a county auditor *advances* tax revenue to a subdivision, the county auditor must allocate the advance between the subdivision's general and debt service fund, to provide sufficient tax revenue to pay the subdivision's outstanding G.O. indebtedness.
- Ohio Rev. Code §505.262(A) authorizes a board of township trustees to issue notes of the township to finance installment payment purchases of equipment, buildings, and sites for any lawful township purpose. All notes issues shall be pursuant to Revised Code §133.20. Furthermore, The Attorney General opined that Ohio Rev. Code §505.262(A) does not grant explicitly or implicitly the authority of the township to grant a security interest in the property purchased by the installment contract. [1996 Op. Atty Gen. No. 1996-048]⁴

Notification of the County Auditor and Division of Taxes by County Budget Commission

- Per Ohio Rev. Code §133.23(D), if a government issues bonds or bond anticipation notes, the fiscal officer of the subdivision shall file a copy of the legislation with the county auditor of each county in which any part of the subdivision is located.
- Ohio Rev. Code §5705.31 requires the budget commission to ascertain that certain levies have been properly authorized, including division (B) "All levies for debt charges not provided for by levies in excess of the ten-mill limitation, including levies necessary to pay notes issued for emergency purposes" and, in part, division (D) "a minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or taxing unit".

Special Features

- FYI: Ohio Rev. Code 133 securities may include the following features:
 - Floating interest rates [133.26(A)]
 - Early redemption or call provisions [RC 133.26(B)]
- Legislation authorizing a debt issuance may contain restrictions on the source of payment for debt charges.

Retiring Debt from Funds Other than a Debt Retirement Fund

- ***Absent a specific requirement***, debt may be paid from any unrestricted monies held, segregated from restricted monies, in a fund which was established for a purpose not inconsistent with paying such debt. When evaluating compliance with the requirements in this section, place emphasis on the source of monies used to repay debt. When a subdivision pays debt from a fund other than a debt retirement fund, consider the following:
 - Ohio Rev. Code §5705.10 provides that money paid into a fund shall be used only for the purpose for which such fund was established. Therefore, money in a fund may be used to

⁴ For example, townships cannot take out a simple bank loan to purchase a truck for road purposes since "bank loans" are not a statutorily permitted form of debt for townships. However, townships do have authority to issue securities under Ohio Rev. Code 133 (e.g., anticipatory debt usually secured for infrastructure). However, Ohio Rev. Code §505.262(A) and 1996 Op. Atty Gen. No. 1996-048 provide specific authority for townships to issue Chapter 133 securities for the purposes this paragraph describes.

pay debt charges provided the payment of such debt charges is consistent with the purpose for which the fund was established;

- With regard to tax anticipation notes, Ohio Rev. Code §133.24(D) provides that, except for *capitalized interest*⁵, debt charges on tax anticipation notes are payable only from the revenue collected by the tax levy anticipated.
- Ohio Rev. Code §5705.05 prohibits using taxes levied for current expenses to pay debt charges.
- Ohio Rev. Code §5531.10(C) (issuing obligations for state infrastructure projects) provides that the holders or owners of such obligations shall have no right to have moneys raised by taxation by the state of Ohio obligated or pledged, and moneys so raised shall not be obligated or pledged, for the payment of bond service charges.⁶
 - Additionally, the section specifically permits townships receiving distributions from the Gasoline Excise Tax Fund in the state treasury to use that money to pay debt service on State Infrastructure Bank (SIB) obligations. (R.C. 5531.10 and 5735.27)
- 1981 Op. Atty Gen. No. 81-035 states:

Certain moneys paid into the general fund which are not derived from a general levy for current expenses are placed in the general fund precisely because their use is not restricted. (See Ohio Rev. Code §5705.10). Such monies may be used to pay debt charges provided that they have not been commingled with general fund monies which may not be used for debt payment. Where otherwise unrestricted monies have been paid into the general fund and have been commingled with restricted monies to the extent that the particular source from which the monies originated cannot be distinguished, such monies may be used to pay debt charges only after they have been transferred to an appropriate fund pursuant to Ohio Rev. Code §5705.14.

- Ohio Rev. Code §505.262(A) authorizes a board of township trustees to issue notes of the township to finance installment payment purchases of equipment, buildings, and sites for any lawful township purpose. All notes issues shall be pursuant to Revised Code §133.20. Furthermore, The Attorney General opined that Ohio Rev. Code §505.262(A) does not grant explicitly or implicitly the authority of the township to grant a security interest in the property purchased by the installment contract. [1996 Op. Atty Gen. No. 1996-048]

⁵ Ohio Rev. Code 133.01(E) defines *capitalized interest* as interest received with the proceeds of a security. For example, this would include interest payable accruing between the security's issuance date and the date the security was sold. Since the government must pay this interest to the security owners, the government generally must set aside this interest for the first debt service payment and should not use it for the purpose for which the principal was issued. [EX133.16] Do not confuse this with *capitalized interest discussed in FASB 34 & 62 or GASB 34, 37, etc.*

⁶ Ohio Rev. Code § 5531.10(C) is not a requirement to use a Debt Service Fund. Rather, this section describes statutory exceptions to the general rule that monies not otherwise restricted could be used to pay debt where the purposes of both were not inconsistent. In other words, governments with SIB loans cannot obligate or pledge State-levied taxes to pay moneys raised by taxation by the State of Ohio for the payment of bond service charges (except townships receiving distributions from the Gasoline Excise Tax Fund in the state treasury to use that money to pay debt service on State Infrastructure Bank (SIB) obligations).

- The Expedited Local Partnership Program provides a way for school districts to start approved school building projects using local funds while they wait for state funding under the “main” Classroom Facilities Assistance Program (CFAP) program. Once a district is eligible for CFAP, it may apply this advance expenditure of local resources toward its portion of the cost of its total CFAP project. If a district has spent more than its share of its CFAP project while proceeding under the Expedited Program, the School Facilities Commission must reimburse the district the amount of the over expenditure. Ohio Rev. Code § 3318.36(E)(2) provides that school districts may first deposit reimbursed money into either the district's general fund or a permanent improvement fund to replace local resources the district withdrew from those funds for constructing classroom facilities included in the district's CFAP project. The remaining reimbursement monies must be used to pay debt service on classroom facilities constructed under the Expedited Program. (R.C. 3318.36(E)(2))

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Bond Counsel/Lender Involvement • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests

For securities issued during the audit period, inspect the debt legislation and determine under which Rev. Code statute the debt was issued. If that section is not listed in this Ohio Compliance Supplement Chapter, read the specific statute and amend the testing steps to include tests to determine:

- The legality of the source of repayment and collateral. (We can normally rely on documents (such as an offering statement) bond counsel or the underwriter prepared describing the source of repayment and collateral, if they were involved with a debt issue. We should inspect their conclusions for reasonableness and summarize in the permanent file.)
 - Whether the government properly segregated any revenue pledged for debt service or capitalized interest and used that revenue for debt service. This will often require establishing a debt service fund.
 - Whether the government used the proceeds for the purposes authorized.
 - If the debt is still outstanding at the end of the audit period, include copies or summaries of the information related to the three bullet points above in the permanent file.

- If the debt includes features such as floating interest rates or early redemption or call provisions, determine if enabling legislation and the Ohio Rev. Code authorize those features. (For example, Ohio Rev. Code 133.22(D) describes features BAN can include.)

If a deficit exists in a bond retirement fund, inquire with management about the reasons. Determine whether the government complied with the debt contracts regarding segregating resources into the bond retirement fund pursuant to Ohio Rev. Code §5705.10.

If revenue-supported debt requires the government to set rates sufficient to cover debt service, inspect the government's computations supporting the sufficiency of revenue. Scan the trial balance of the fund receiving the revenue subject to the rate covenant. Determine if the receipts are sufficient to cover the fund's disbursements, including debt service. Note: ***This is not an Ohio Rev. Code requirement. Therefore, auditors would cite the covenant requiring sufficient rates when reporting any violations.***

Inspect the county tax settlements and trace revenues to the funds indicated. If amounts from tax levies for bond retirement are being placed into funds other than bond retirement funds, inspect documentation that the government deducted an amount sufficient to pay the debt charges. (RC 5705.10B)

By reading the government's financial statements or inspecting its ledgers, determine where debt is paid from. If other than bond retirement funds, determine that:

- Debt paid from a restricted fund was paid from revenue which could be used for the same purpose for which the debt proceeds were spent [Ohio Rev. Code §5705.10 or 133.24(D)];
- Restrictions, if any, in the debt-authorizing legislation were followed;
- Revenue derived from a general levy for current expenses is not used to pay debt charges [Ohio Rev. Code §5705.05]; or
- Monies used to pay debt from the general fund have not been commingled with general fund monies which may not be used for debt payment [1981 Op. Atty. Gen. No. 81-035].

Note: Where bond counsel was involved with debt issues we are testing, we can usually rely on documents they have prepared or opined on, as evidence that legislation authorizing the securities complies with statute. However, bond counsel would not "audit" the government's *subsequent* compliance with requirements. For example, we would not expect bond counsel to determine how the government accounted for debt proceeds or whether the proceeds were spent for authorized purposes.

Determine if the fiscal officer filed a copy of the legislation authorizing securities with the county auditor pursuant to Ohio Rev. Code §133.23(D).

If tax levies within the ten-mill limitation are being used to retire general obligation debt, determine whether the County Budget Commission ascertained that all levies were properly authorized and divided the income generated by those levies to a debt service fund where appropriate. [Ohio Rev. Code 5705.31]. If noncompliance with this requirement was due to the County Budget Commission being unaware of a levy, consider making a recommendation to the government to notify the County Budget Commission of all authorized tax levies.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

3-2 Compliance Requirement: Ohio Rev. Code Sections 133.10, 133.22 and 133.24 – Bond, Tax and Revenue Anticipation Notes (BAN, TAN and RAN).

Summary of Requirements: Per the Appendix at the end of this chapter, several Ohio Rev. Code sections authorize TAN, RAN or BAN. Short-term TAN or RAN are generally subject to (1) below.⁷ Long-term TAN are *generally* subject to (2) below.⁷ Significant requirements related to BAN are described at the end of step 3-2.

- 1) **Short-term** notes anticipating *current* revenues, most often current tax levies: A government cannot issue these notes for more than a defined percentage of the current-year's estimated revenue (for example, ½ the current annual estimated revenue from utility charges or grants [RC 133.10(B)], or approximately ½ of the next tax settlement, [RC 133.10(A)]). These notes normally mature within six months, or the end of the fiscal year, whichever occurs first. Most Ohio Rev. Code sections authorizing these notes require them to comply with Ohio Rev. Code 133.10. The remainder of this step refers to these notes as Ohio Rev. Code *133.10 short-term notes*.
- 2) **Long-term** notes anticipating *future tax* revenues, from voted tax levies, usually of a limited life: A government cannot issue these notes for more than the amount the levy will generate over its life, or a portion of its life. These notes mature over the life of the levy or a shorter period Ohio Rev. Code specifies, such as 5 or 10 years. Most Ohio Rev. Code sections authorizing these notes require them to comply with Ohio Rev. Code 133.24. The remainder of this step refers to these notes as Ohio Rev. Code *133.24 long-term notes*.

RC 133.10 short-term TAN or RAN

TAN:

- TAN must mature no later than the last day of the sixth month after the issue date, and in no case may they mature after the end of the fiscal year. The aggregate amount outstanding cannot exceed ½ of the amount anticipated for the next six months (typically the next settlement minus advances). [RC 133.10(A)]
- C 133.10(C) amends 133.10(A) above for counties, municipalities, townships and school districts. If one of these entities issues TANs under Ohio Rev. Code 133.10(C), these TANs need not mature until the end of the year. (That is, they are not restricted to a six-month maturity.)
- Notes a school district issues anticipating a delayed property tax settlement may be for up to 90% of the amount estimated to be received by that settlement (other than taxes to be received for paying debt charges) minus advances, and may mature as late as the August 31 after the June 30 fiscal year end. [RC 133.10(D)]

RAN:

- The notes issued cannot exceed ½ of the amount of the projected revenues remaining to be received during the fiscal year, minus advances and prior collections, as estimated by the fiscal officer. [RC 133.10(B)]

⁷ The references to *long-term* and *short-term* above refer to the legal requirements, not the classification of this debt under GAAP. Auditors should refer to GASB Codification B50 and GFOA General Purpose Government CAFR checklist for guidance on GAAP debt classifications.

- Notes issued anticipating current revenues in and for any fiscal year from any source or combination of sources, including distributions of any federal or state moneys, other than the proceeds of property taxes shall mature not later than the last day of the fiscal year for which the revenues are anticipated. [§133.10(E)(2)]

All ORC 133.10 short-term TAN or RAN

- Pledged revenue (tax or otherwise) collected to retire these notes is considered appropriated for debt charges and financing costs. The government can appropriate this revenue for other purposes only after deducting sufficient amounts to pay debt service. The government must deposit pledged revenue sufficient to pay the debt in an account in a debt service fund. [RC 133.10(E)(1)]
- These notes cannot be issued prior to the first day of the fiscal year. [RC 133.10(E)(2)] (The only exception is that a board of education of a school district may issue notes as early as 10 days before the first day of the fiscal year (i.e., by June 21), provided that the proceeds of the notes can neither be spent nor considered available for appropriation prior to the first day of the fiscal year [i.e., July 1]). [RC 133.10(H)]
- The government can spend note proceeds only for the purposes for which the related revenue can be spent. [RC 133.10(E)(3)] For example, if a government issues RAN, anticipating Federal grant proceeds, the government can spend the note proceeds only for purposes the Federal grant permits.

RC 133.24 long- term TAN

- The aggregate amount of principal outstanding may not exceed the anticipated levy proceeds provided in the applicable law by a statement of percentage or by a limitation on the amount of annual maturities. These TAN must mature by December 31 of the year authorized by statute, or by December 31 of the last year of the levy, whichever is earlier. [RC 133.24(B)] Therefore, the duration of these notes should match the levy's life. (Unless another Ohio Rev. Code section specifies a shorter period. See the appendix at the end of this chapter for examples.) The estimated annual debt service should approximate the annual levy proceeds.
- Debt service is payable only from the levy proceeds. (Except the government should use capitalized interest collected with the debt proceeds to pay capitalized interest due with the first debt service payment.) The levy proceeds are deemed appropriated for debt service, and must be deposited into an account in the debt service fund. (The interest payable from capitalized interest should be paid with capitalized interest.) [RC 133.24(D)]

--Any amount so deposited and not needed for the purpose in the particular fiscal year may, without compliance with any other law or approval by any other agency, be transferred to the special fund established for the proceeds of the tax levy [RC 133.24(D)] (such as a capital projects fund, if the tax was levied for both debt service and for a specific capital project.)

Requirements applicable to BAN

- Per Ohio Rev. Code 133.22, the legislative body must pass legislation authorizing:
 - The purpose for (eventually) issuing the bonds (which is limited to one purpose) [(A)(1)(a)]
 - The maximum amount of BAN, which cannot exceed the bond amount [(A)(2)(a)]
 - The maximum maturity, which cannot exceed (C). (See (C) below).

- If the bonds are eventually payable from a property tax, the legislation provides for the levy of property taxes while the BAN are outstanding;
- (Note: We can normally rely on bond counsel for assuring compliance with the following provisions. This requirement is listed as background information for you.) Per 133.22(C), BAN issued with a latest maturity of less than two hundred forty months may be renewed for up to two-hundred-forty months.
 - Per (C)(2), five years after issuing the original BAN, a portion of the principal shall be paid annually, in amounts at least equal to, and payable not later than the payment dates of, the principal that would have been paid if the government issued bonds at the expiration of the initial five-year period.
 - Per (C)(3), the latest maturity of BAN may not exceed the maximum maturity of the bonds anticipated plus five years. (Bond maturities can range from 5 to 50 years, per Ohio Rev. Code 133.20.)
 - Note: There are exceptions to these general rules, but they are too complex to summarize here. (Refer to Ohio Rev. Code 117.22(C) for exceptions.)
- (These features are listed for your information.) Per 133.22(D), BAN may include the following features:
 - Put options (D)(6)
 - Issue commercial paper in lieu of BAN (D)(7)
 - Floating interest rates (D)(8)
 - Interest rate swaps (D)(9)(b)

Notification to the County Auditor

- The subdivision’s financial officer shall file a copy of the legislation authorizing the BAN with the county auditor. [RC 133.22(B)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Bond Counsel/Lender Involvement • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

For notes issued during the audit period, inspect the debt legislation and determine under which Rev. Code statute the debt was issued. If that section is not listed in this Ohio Compliance Supplement Chapter (including the appendix), read the specific statute and amend the testing steps to include tests for the 5 debt requirements below. If a note is outstanding at the end of the

audit period, include copies or a summary of documentation addressing the 5 compliance tests below in the permanent file.

Determine whether:

1. Note proceeds did not exceed Ohio Rev. Code limits, typically limited by the related revenue estimate (RAN or TAN) or bond proceed (BAN) estimates. (We can normally rely on the work of bond counsel or the underwriter, if they were involved with a debt issue. We should inspect their conclusions for reasonableness and summarize for the permanent file.)
2. Notes did not exceed limitations on the time to maturity. (*Usually*, notes issued for operating expenses must mature in one year. Notes used for capital improvements have longer maturities. BAN can mature up to the life of the eventual bonds.) (We can normally rely on the work of bond counsel or the underwriter, if they were involved with a debt issue. We should inspect their conclusions for reasonableness and summarize for the permanent file.)
3. The government repaid the debt with the pledged or other legal revenue (RAN and TAN), or refinanced BAN according to the BAN legislation.
4. The government properly segregated any revenue pledged for debt service and used that revenue for debt service.
5. The government used the note proceeds for the purposes authorized.

For BAN issued during the audit period, determine if the fiscal officer filed a copy of the legislation with the county auditor(s) per Ohio Rev. Code 133.22(A) & (B). The legislation should specify:

- The purpose for which bonds will be used;
- The election results, if from a voted levy;
- The sources of repayment;
- For anticipatory securities:
 - The maximum amount to be outstanding;
 - The method of determining interest due;
 - The dates debt service is due;
 - The debt service due each payment date;
 - Provisions for early redemption or prepayment;
 - The provision of any levy needed to redeem the securities.

Audit implications (adequacy of the system and controls, and the direct and material effects of Non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

3-3 Compliance Requirement: Ohio Rev. Code § 3375.404 - Additional borrowing authority for boards of library trustees.

Summary of Requirements: Ohio Rev. Code § 3375.404 allows a board of library trustees of a public library that receives an allocation of the library fund to anticipate its portion of the proceeds of the library fund distribution and issue library fund facilities notes to pay the costs of financing the facilities (or certain other property), or to refund any refunding obligations.

A library board may issue such notes only if it projects that the annual note service charges (including interest, repayment of principal, and redemption premiums) are capable of being paid from the library’s annual Library and Local Government Support Fund (LLGSF) (also known as: “public library funds” pursuant to SB 185, 127th General Assembly, effective 6/20/2008) receipts.

The maximum annual debt service for these notes cannot exceed 30% of the average LLGSF funding (public library funds) the library received for the two years preceding the year the notes were issued.

The notes are payable from the LLGSF monies (public library funds) received by the library board issuing the notes, or from the proceeds of notes, refunding notes, or renewal anticipation notes which may be pledged for such payment in the authorizing resolution. The notes are payable solely from the funds pledged for their payment as authorized by Ohio Rev. Code § 3375.404 and all notes must contain on their face a statement to that effect.

The maximum maturity, in the case of any anticipation notes, cannot exceed 10 years from the date of issue of the *original* anticipation notes.

For *refunding* notes or any notes that are not anticipation notes, the maximum maturity cannot exceed 25 years from the date of the original issue of notes.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Bond Counsel/Lender Involvement • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

By reading the minutes, inspecting bond ledgers or other documents, or by inquiry, determine if the library used this type of borrowing.

Calculate, or inspect the library's calculations, that the maximum annual note debt service charges does not exceed 30% of the average LLGSF funding (public library funds) for the two years preceding the year in which the notes are issued. (This step should only apply in the year notes were issued.)

Inspect the notes for the statement that the notes are payable solely from the funds pledged for their payment as authorized by Ohio Rev. Code §3375.404.

Inspect the notes for the maximum maturities of 10/25 years.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

3-4 Compliance Requirement: 17 C.F.R. 240.15c2-12

Summary of Requirement: Underwriters contracting subsequent to July 3, 1995 to issue municipal securities (bonds, notes, or other secured debt instruments issued by any state or local government regardless of whether the government is a municipality) will be subject to the amended disclosure requirements of the Rule. The SEC has imposed certain requirements on underwriters (such as brokers and dealers) selling securities. The Rule prohibits underwriters from selling municipal securities unless they have performed due diligence procedures. Other requirements:

1. The underwriter must review and agree to provide a copy of the official statement to any requesting party *when issuing / marketing securities*. (That is, this step only applies when securities are issued.) The official statement must include:
 - The terms of the proposed issue.
 - Financial and/or operating data from each person material to potential investors, including information from all obligated persons.
 - A description of the secondary market disclosure undertaking.
 - Disclosure of any past failures to make required disclosures within the past five years.
2. ~~In December 2008 the SEC modified Rule 15c2-12 to provide that, effective July 1, 2009, Annual and material event information is to be filed with the Municipal Securities Rulemaking Board (MSRB) under its Electronic Municipal Market Access (EMMA) system, instead of with the four existing national repositories. The SEC also amended that Rule to require "Small issuers" that enter into such agreements on and after July 1, 2009, are required to make certain annual filings in the EMMA system. The MSRB has published a notice detailing its requirements for such filings in the EMMA system including that all submissions are to be electronic; all documents submitted must be in PDF and configured to permit documents to be saved, viewed, printed and retransmitted by electronic means (any PDF documents submitted after January 1, 2010 must also be word searchable); and all submissions must be accompanied by identifying information as prescribed by the MSRB. Further information is available at the SEC's website and the MSRB's website: <http://emma.msrb.org/>~~
3. The issuer and/or obligated persons (i.e., entities directly or contingently responsible for repaying the securities) must agree in writing, to provide to all approved to the State Information Depository (SID): See the note immediately following this section for the name and address of the SID⁸.
 - **Annual** financial information and operating data.
 - Timely material event notices.* Underwriters must also establish procedures to assure they receive these notices.
 - Audited financial statements, when and if available.
 - Timely notice of failure to provide required financial information.

* Material Events defined:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults;

⁸ Although 17 C.F.R. 240.15c2-12 no longer requires filing with the SID, continuing disclosure agreements may include a requirement to file with the SID.

3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security.
7. Modifications to rights of security holders;
8. Bond calls;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the securities;
11. Debt ratings changes⁹;
12. Failure to provide required annual financial information on or before the date specified;
13. Tender offers;
14. Bankruptcy, insolvency, receivership or similar event of the issuer or obligated person;
15. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, and
16. Appointment of a successor or additional trustee, or the change of name of a trustee.

Additionally, all material events are required to be disclosed no later than 10 business days after the event.

Exemptions: Certain municipal security issues are exempted from the Rule such as:

1. Security issues of less than \$1 million.
2. Securities with maturities of 18 months or less.
3. Securities sold in denominations of at least \$100,000.~~with maturities of no more than nine months.~~
 - ~~have 35 or fewer "sophisticated investors" and no re-offering of the securities;~~
 - ~~have a maturity of nine months or less.~~
4. ~~Securities sold to no more than 35 "sophisticated investors" with maturities of no more than nine months.~~

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Bond Counsel/Lender Involvement 		

⁹ We have been informed that ratings downgrades to bond insurance companies constitute a material event, requiring disclosure. (A number of such downgrades occurred early in 2008.) Should the bond’s insurer receive a downgraded rating, the entity should file a Material Event Notice with MSRB referencing the relevant transaction and rating downgrade.

<ul style="list-style-type: none"> • Legislative and Management Monitoring • Management's identification of changes in laws and regulations • Management's communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Scan copies of **annual** information submitted to the MSRB and the State Information Depository (SID). Document that such information was:

(1) filed with the MSRB/SID and

(2) whether the auditor noted any material errors or omissions to the information. *(We do not expect auditors to make time-consuming examinations of data. Instead, scan for obvious errors, such as omission of financial statements or footnotes, omission of a debt rating change¹⁰, whether the contractually agreed basis of accounting was followed, whether information requiring audit includes an opinion, etc.)*

In conjunction with other procedures related to debt issued subsequent to July 3, 1995, document whether any material events (as defined in amended SEC Rule 15c2-12) came to the auditor's attention. Document whether such material events were promptly disclosed to MSRB/SID.

Auditors should obtain written representations that management has transmitted all required information to MSRB/SID and underwriters required by SEC Rule 15c2-12.

Note: 17 C.F.R. 240.15c2-12 no longer requires filing with the SID. However, if no filings were made to the SID, scan the continuing disclosure agreement to confirm there was no requirement to file with the SID. If the continuing disclosure agreement required filing with the SID and no filing was made, auditors should cite the government for failing to meet the continuing disclosure agreement. Ohio State Information Depository information is as follows:

Ohio Municipal Advisory Council
 9321 Ravenna Road, Unit K
 Twinsburg, Ohio 44087-2445
 Ph. (800) 969-6622 or (330) 963-7444
 Fax (330) 963-7553
 Website: <http://www.ohiomac.com> or <http://www.ohiosid.com>
 E-mail: sid_filings@ohiomac.com

¹⁰ Municipal issuers and/or obligated persons whose bonds (1) are insured by Assured Guaranty, (2) have been assigned an S&P rating based upon the credit strength of Assured Guaranty and (3) are subject to a contractual continuing disclosure undertaking pursuant to SEC Rule 15c2-12, should have filed an event notice with the MSRB by December 14, 2011, because S&P downgraded Assured Guaranty's credit rating.

Debt notes should disclose this downgrade for fiscal years ending December 31, 2011 and June 30, 2012. We should report management letter noncompliance for governments that failed to file an event notice regarding Assured Guaranty's downgrade.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

3-5 Compliance Requirement: Ohio Rev. Code §505.401 – Bonds Fire District Trustees authorize.

Summary of Requirements: Pursuant to Ohio Rev. Code Chapter 133, Ohio Rev. Code §505.401 provides additional borrowing authority for the board of trustees for fire districts organized under Ohio Rev. Code §505.37(C). This section allows the fire district’s board of trustees to issue bonds to acquire fire-fighting equipment, buildings and sites for the district or to construct or improve a building to house fire equipment.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Bond Counsel/Lender Involvement • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

By reading the minutes, inspecting bond ledgers or other documents, or by inquiry, determine if the fire district used this type of borrowing.

If so,

- trace the bond issuance to the budget;
- inspect the resolution authorizing the bond issuance;
- determine whether the issuance is in accordance with Ohio Rev. Code Chapter 133 requirements; and
- determine whether the proceeds were used to acquire fire-fighting equipment, buildings or sites for the district or for the purpose of constructing or improving a building to house fire equipment.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

3-6 Compliance Requirement: Ohio Rev. Code §133.29, 135.14, ~~731.56~~ Governments investing in their own securities.

Important Note: Entities must have the legal authority to **both buy and sell** the debt. Ohio Rev. Code §133.29 authorizes entities to invest in their own securities; however, there must be a separate, specific authority to issue the debt before the Bond Retirement or other authorized Fund may purchase it.

Summary of Requirement:

Before a taxing authority sells any securities of the subdivision to others, the taxing authority may offer the securities at their purchase price and accrued interest to the officer or officers who have charge of the bond retirement fund of the subdivision, **or** in the case of a municipal corporation, to the treasury investment board for investment under §731.56 of the Ohio Rev. Code, or an officer or similar treasury investment board having the authority under a charter. (Ohio Rev. Code §133.29(A)).

This type of debt is often referred to as “manuscript debt”. Unless accounting for manuscript debt as an advance as described in the footnote below, governments purchasing their own securities should record them as “investments” in their accounting records. These investments are a form of interfund borrowing. Except as provided in division (E) of ORC 135.14, any investment made pursuant to ORC 135.14 must mature within five years from the date of settlement, unless the investment is matched to a specific obligation or debt of the subdivision.

Any securities sold under this section shall bear interest at a rate(s) that is a fair market rate(s) for such securities at the time of the sale, and a certificate of the fiscal officer that the interest rate(s) borne by the securities is the fair market rate(s) binding and conclusive as to the statements set forth. (Ohio Rev. Code §133.29(B)). Allocation of interest earned on manuscript debt proceeds should follow applicable requirements described in OCS section 5-5.

Accounting for Manuscript Debt¹¹

Record proceeds from the sale of notes in the borrowing fund (often the general fund or project fund). Then record the amount received from the Bond Retirement Fund (or other authorized fund in the case of municipal corporations) as an investment on the investment record. Do not decrease the Bond Retirement or other authorized fund’s balance. When preparing the bank reconciliation, outstanding securities should be included as an investment.

The county auditor, having been properly notified of the debt service requirements, should allocate property taxes on the tax settlement among the proper funds. The amount payable to the Bond Retirement or other authorized fund is the amount necessary to repay the principal plus interest on the outstanding securities. Debt service principal and interest, should be recorded in the Bond Retirement or other authorized fund. Upon payment of principal, a corresponding reduction of the investment should be recorded on the investment record.

¹¹ The “Accounting for Manuscript Debt” section above describes the preferred accounting method. ~~of accounting.~~ However, opting to record manuscript debt as an *advance* with adequate footnote disclosure ~~would be an acceptable method~~ is acceptable and would not require an audit adjustment. See OCS chapter 1, the section regarding advances.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Bond Counsel/Lender Involvement • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Determine whether the entity issued manuscript debt during the audit period or has any manuscript debt outstanding as of fiscal year end.

If so, review the governing body’s ordinance or resolution approving the issuance and determine the legal authority under which such debt/investment was issued. If applicable, we may rely on an opinion from bond counsel to verify the entity’s legal authority for issuing such debt. A copy of the ordinance or resolution and bond counsel opinion should be placed in the permanent file.

Determine the issuance date¹² of the debt/investment and review the entity’s debt/investment schedules to determine whether the principal matured within five years.

Review the entity’s debt/investment schedules and determine whether the entity has charged interest at the proper rate and amount in the Bond Retirement or other authorized fund.

For all entities other than municipal corporations, determine whether the amount of manuscript debt issued was limited to the available resources in the bond retirement fund.

For municipal corporations, determine whether the amount of manuscript debt issued was limited to the available resources in the general treasury or other authorized fund.

Scan the entity’s debt schedules, investment records, monthly bank reconciliations, and annual financial statements to determine whether the entity has properly accounted for all manuscript debt transactions (i.e., note proceeds, property tax and interest receipt allocations, debt service payments on principal and interest, and outstanding debt and investment amounts).

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

¹² Issuance date isn’t always the sale date. If the “Obligation’s Closing Date” is the actual date of the issuance, this should be recorded as the issuance date.

Section B: Community Schools

3-7 Compliance Requirement: Ohio Rev. Code §3314.08(J) Foundation anticipation notes.

Summary of Requirement: A community school may borrow money to pay any necessary and actual expenses in anticipation of State Foundation receipts. The school may issue notes to evidence such borrowing. The proceeds of the notes shall be used only for the purposes for which the school may lawfully expend the anticipated foundation receipts. [Ohio Rev. Code Ohio Rev. Code § 3314.08(J)(1)(a)]

A community school cannot issue debt secured by taxes. [3314.08(H)]

A school may also borrow money for a term not to exceed fifteen years to acquire facilities. [Ohio Rev. Code Ohio Rev. Code §3314.08(J)(1)(b)]

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Bond Counsel/Lender Involvement • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

By reading the minutes, inspecting receipts journals, or by inquiry determine whether or not the School issued any type of debt.

Examine disbursements made of the proceeds to determine that they were used only for the purposes described in the debt agreement.

Determine that moneys borrowed to acquire facilities are for a term of fifteen years or less, and were not collateralized by taxes.

Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

3-8 Compliance Requirement: Ohio Rev. Code §3318.50(B) School classroom facilities loan guarantee program; Ohio Rev. Code §3318.52 Establishment of community school loan guarantee fund.

Summary of Requirement: All community schools may participate in the community school classroom facilities loan guarantee program.

The Ohio school facilities commission may guarantee for up to fifteen years, up to eighty-five percent of the sum of the principal and interest on a loan made to the governing authority of a community school established under Ohio Rev. Code Chapter 3314 for the sole purpose of assisting the governing authority in acquiring, improving or replacing classroom facilities¹³ for the community school by lease, purchase, remodeling of existing facilities, or by any other means including new construction.

Per Ohio Rev. Code §3318.50, the commission shall not guarantee any loan under this section unless the loan is obtained from a financial institution regulated by the United States or this state.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Bond Counsel/Lender Involvement • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

By reading the minutes, inspecting records, or by inquiry determine whether or not the school participates in the community school classroom facilities loan guarantee program.

Determine that loan proceeds were used only to acquire, improve or replacing classroom facilities for the community school by lease, purchase, remodeling of existing facilities, or by any other means including new construction.

Note: While not a compliance test, assure the debt footnotes describe the guarantee properly.

Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

¹³ Per 3318.50(A), *classroom facilities* means buildings, land, grounds, equipment, and furnishings a community school uses to fulfill its mission.

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3-9 Compliance Requirement: Ohio Rev. Code §3314.30 ODE loans to community schools.

Summary of Requirements:

1. ODE must use Federal money to fund these loans [3314.30(B)].
2. The school must use the proceeds for any purpose described in the school’s contract ¹⁴ with its sponsor (i.e., for any purpose consistent with the school’s mission) [3314.30(C)].
3. A school can obtain more than one loan, but cannot have more than \$250,000 of loans from ODE outstanding at any time [3314.30(C)].
4. The loans must bear interest at the rate STAR Ohio is paying [3314.30(F)].
5. Each loan cannot be outstanding longer than 5 years [3314.30(G)].
6. ODE deducts debt service principal and interest from subsequent foundation payments[3314.30(G)].

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • ODE Involvement • Sponsor, Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

By reading the minutes, inspecting records, inquiry, reading the prior audited statements and by scanning the accounting records, determine whether the school received this loan(s) from ODE.

Since ODE lends Federal money, assure the School includes this loan in its Federal Awards Schedule or in notes to the schedule. See the AICPA’s Audit Guide, *Government Auditing Standards and Circular A-133 Audits*. 7.18 --- 7.20.

The school can use the proceeds for any purpose related to its mission. Therefore, any expenditure for a “proper public purpose” should be allowable.

Note: While not a compliance requirement, if material, assure the financial statements include the proceeds and repayment of the debt, and discloses the debt amortization, etc., and that the school will repay ODE via direct deductions from foundation receipts.

¹⁴ Ohio Rev. Code 3413.03 lists lengthy requirements the contract must address. Auditors can presume ODE reviewed the contract for compliance with 3413.03 requirements as part of their loan approval process.

Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Step 3-2 Appendix Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	Purpose	Reference to ORC §133.10	Reference to ORC §133.24
<p>§118.17. Issuance of local government fund notes</p> <p>Municipal corporation, county, or township (during fiscal emergency periods)</p>	<p>Current operating expenses the commission approves</p>	<p>§118.17(C)(3) states in part “Current revenue notes” means debt obligations described in 133.10 or Chapter 5705. of the Ohio Rev. Code or any other debt obligations issued to obtain funds for current operating expenses.”</p>	<p>No</p>
<p>§118.23. Current revenue notes issued during fiscal emergency</p> <p>Municipal corporation, county, or township (during fiscal emergency periods)</p>	<p>Current operating expenses the commission approves</p>	<p>§118.23(A) states “This section shall be applicable to current revenue notes approved by the financial planning and supervision commission or, when authorized by the commission, the financial supervisor pursuant to §118.15 of the Ohio Rev. Code and issued by a municipal corporation, county, or township pursuant to §133.10 of the Ohio Rev. Code and this section during a fiscal emergency period.”</p> <p>§118.23(G) states “ Current revenue notes of a municipal corporation, county, or township issued during a fiscal emergency period may mature on or before the thirty-first day of December of the calendar year in which issued, may, when issued in anticipation of the collection of current tax revenues, anticipate one-half of the amount that the budget commission estimates the subdivision will receive from all property taxes that are to be distributed to the subdivision from all settlements of taxes that are to be made in the remainder of that year, other than taxes to be received for the payment of debt charges, and less all advances, and may, if issued during the last two months of the calendar year in which the fiscal emergency period commenced, anticipate one-half the estimated amount of ad valorem property taxes levied in that year for the tax budget of the following year which were authorized to be levied by the municipal charter or otherwise authorized by vote of the electorate of the municipal</p>	<p>No</p>

Step 3-2 Appendix Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	Purpose	Reference to ORC §133.10	Reference to ORC §133.24
		corporation, county, or township and may mature not later than the thirty-first day of December of the year following the year in which such notes are issued, notwithstanding (i.e. in spite of) section 133.10 of the Ohio Rev. Code.	
<p>§118.24. Advance tax payment notes</p> <p>Municipal corporation, county, or township (during fiscal emergency periods)</p> <p>Note: <i>Advance tax payment notes</i> are not common, but involve a taxpayer prepaying taxes. In return, the government issues a note to the taxpayer. The face amount of the note = the tax prepayment + interest the government credits to the taxpayer over the life of the note. Therefore, these are discount notes. The taxpayer receives credit for the prepayment + accrued interest upon redemption.</p>	For purposes the commission approves per §118.15	<p>§118.24(H) states, “As used in this section <i>interest factor</i> means the amount calculated based on an interest rate, as determined by the fiscal officer as of the date of such note, that would have been paid by the municipal corporation, county, or township on current tax revenue notes, maturing in six months, issued on that date pursuant to §133.10 of the Ohio Rev. Code. The face amount of the note less the amount of the advance tax payment made in the purchase of such note, shall be and shall be deemed to be interest paid and received on such note.”</p> <p>§118.24(I) states “The aggregate principal amount of advance tax payment notes, together with the aggregate principal amount of any current revenue notes issued under §133.10 of the Ohio Rev. Code in anticipation of ad valorem property taxes for the same year that are outstanding at the time of issuance, shall not exceed one-half of the amount that the budget commission estimates the municipal corporation, county, or township will receive from all property taxes that are to be distributed to the municipality from all settlements of taxes that are to be made in the remainder of that year, after subtracting from such amount advances thereon and property taxes to be received for the payment of debt service on debt obligations or to be deposited with a fiscal agent as provided in §118.20 of the Ohio Rev. Code.”</p>	No

**Step 3-2 Appendix
Tax and Revenue Anticipation Notes**

Ohio Rev. Code § and Entities to which it applies	Purpose	Reference to ORC §133.10	Reference to ORC §133.24
§306.49. Annual tax levy; purpose Regional Transit Authority	Current expenses (§133.10) or Permanent improvements (§133.24)	§306.49(A) States in part: The regional transit authority may borrow money in anticipation of the collection of current revenues as provided in §133.10 of the Ohio Rev. Code. "	§306.49(A) <i>also</i> states in part “. . . the regional transit authority may levy upon the property within its territorial boundaries a tax, for all purposes other than bond debt charges, not in excess of five mills annually on the total value of all property as listed and assessed for taxation for any period <u>not exceeding ten years</u> . Such election shall be called, held, canvassed, and certified in the same manner as is provided for elections held pursuant to §5705.191 (refers to ORC §133.24. See separate description for §5705.191 below.) of the Ohio Rev. Code. On approval of such a levy, notes may be issued in anticipation of the collection of the proceeds thereof, in the amount and manner and at the times as are provided in §5705.193 (this section refers to §133.24 and is for permanent improvements) of the Ohio Rev. Code.
§1545.21. Election of tax levy for use of district; anticipation bonds Park District	Acquiring and improving land	No	§1545.21(B) states in part “When a tax levy has been authorized as provided in this section or in §1545.041 of the Ohio Rev. Code, the board of park commissioners may issue bonds¹⁵ pursuant to §133.24 of the Ohio Rev. Code in anticipation of the collection of such levy, provided that such bonds shall be issued only for the purpose of acquiring and improving lands.”
§3313.483. Closing or delaying opening for financial reasons prohibited; plan for implementing reductions; loans agreement School District	Permits obtaining various types of debt, <u>including</u> “§133.10 notes,” up to the amount of the deficit the AOS certifies.	§3313.483(E)(4) states “Pursuant to the terms of such a loan, a board of education may issue its notes in anticipation of the collection of its voted levies for current expenses or its receipt of such state funds or both. Such notes shall be issued in	No

¹⁵ Ohio Rev. Code § 1545.21(B) mentions a bond issuance per Ohio Rev. Code § 133.24. However, § 133.24 only refers to notes. We will not object to the legal form of the debt if the government follows the advice of their legal or bond counsel.

Step 3-2 Appendix Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	Purpose	Reference to ORC §133.10	Reference to ORC §133.24
		accordance with division (E) of §133.10 of the Ohio Rev. Code and constitute Chapter 133 securities to the extent such division and the otherwise applicable provisions of Chapter 133. of the Ohio Rev. Code are not inconsistent with this section, provided that in any event §133.24 and §5705.21 and divisions (A), (B), (C), and (E)(2) of §133.10 of the Ohio Rev. Code do not apply to these notes.”	
§3318.052. Payment of district’s portion of basic project cost from available tax proceeds; credits; issuance of securities School District	Permanent improvement levy for a stated number of years, per §5705.218	No	§3318.052 (E) states in part “Issue securities to provide moneys to pay all or part of the district's portion of the basic project cost of its classroom facilities project in accordance with an agreement entered into under division (A) of this section. Securities issued under this section shall be Chapter 133. securities and may be issued as general obligation securities or issued in anticipation of a school district income tax or as property tax anticipation notes under §133.24 of the Ohio Rev. Code. ”
§3381.16. Tax levy upon affirmative vote; authorized uses of funds; anticipation notes and borrowing; resubmission of levy Regional Arts and Cultural District	To grant money to other arts and cultural organizations, or for the District’s operating or capital asset costs.	§3381.16(A) states in part: The district may borrow money in anticipation of current revenues as provided in §133.10 of the Ohio Rev. Code. ”	§3381.16(A) <i>also</i> states in part “On approval of such a levy, notes may be issued in anticipation of the collection of the proceeds thereof, in the amount and manner and at the times as are provided in §5705.193 (this section refers to §133.24 and is for permanent improvements) of the Ohio Rev. Code, for the issuance of notes by a county in anticipation of the proceeds of a tax levy.
§4582.14. Tax levy; anticipatory notes Port Authority	Any allowable port authority expense including debt charges.	§4582.14 states in part, “The port authority may borrow money anticipating current revenues as provided in §133.10 of the Ohio Rev. Code. ”	§4582.14 <i>also</i> states in part “. . . the port authority may levy upon the property within its jurisdiction a tax, for all purposes including bond debt charges, not in excess of one mill annually on the total value of all property as listed and assessed for taxation for any period <u>not</u>

Step 3-2 Appendix Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	Purpose	Reference to ORC §133.10	Reference to ORC §133.24
			<u>exceeding five years, except that when the tax is for the payment of bond debt charges, such tax shall be for the life of the bond indebtedness.</u> On approval of such a levy, notes may be issued in anticipation of the collection of the proceeds thereof, other than the proceeds to be received for the payment of bond debt charges, in the amount and manner and at the times as are provided in §5705.193 of the Ohio Rev. Code (this section refers to 133.24 and is for permanent improvements), for the issuance of notes by a county in anticipation of the proceeds of a tax levy.
§4582.40. Tax levy to provide necessary funds Newly created port authorities	Any allowable port authority expense including debt charges.	§4582.40 states in part “. . . The port authority may borrow money in anticipation of the collection of current revenues as provided in §133.10 of the Ohio Rev. Code. ”	§4582.40 <i>also</i> states in part “. . . the port authority may levy upon the property within its jurisdiction a tax, for all purposes including bond debt charges, not in excess of one mill annually on the total value of all property as listed and assessed for taxation for any period <u>not exceeding five years, except that when the tax is to pay bond debt charges, the tax shall be for the life of the bond indebtedness.</u> On approval of such a levy, notes may be issued in anticipation of the collection of the proceeds of the tax levy, other than the proceeds to be received for the payment of bond debt charges, in the amount and manner and at the times as are provided in §5705.193 (this section refers to 133.24 and is for permanent improvements) of the Ohio Rev. Code, for the issuance of notes by a county in anticipation of the proceeds of a tax levy.
§5705.191. Approval of excess levy; issuing notes Any subdivision, other than the board of education of a school district or the taxing authority of a county	If it is necessary to levy a tax in excess of the 10 mill limit for any of the purposes in ORC 5705.19, or to supplement	No	§5705.191 states in part: “The notes shall be issued as provided in §133.24 of the Ohio Rev. Code , shall have principal payments during each year after the year of their issuance <u>over a period not exceeding the life of the levy</u> anticipated, and may

Step 3-2 Appendix Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	Purpose	Reference to ORC §133.10	Reference to ORC §133.24
school financing district	the general fund for one or more of the following purposes: public assistance, human or social services, relief, welfare, hospitalization, health, and support of general hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary, or special election to be held at a time therein specified.		have a principal payment in the year of their issuance.” An entity can also levy for operating expenses. The notes cannot exceed 50% of the proceeds of the levy. Notes issued for operations can mature over the life of a fixed-term levy. For an unlimited life levy, these notes must mature within 10 years.
§5705.193. County	Permanent Improvement	No	§5705.193 states in part “Such notes shall be issued as provided in §133.24 of the Ohio Rev. Code , shall have <u>principal payments during each remaining year of the life of the levy</u> after the year of their issuance, and may have a principal payment in the year of their issuance.”
§5705.194 School District	Emergency levy	No	§5705.194 states in part “After the approval of the levy and prior to the time when the first tax collection from the levy can be made, the board of education may <u>anticipate a fraction of the proceeds</u> of the levy and issue anticipation notes in an amount not exceeding the total estimated proceeds of the levy to be collected during the first year of the levy. The notes shall be issued as provided in §133.24 of the Ohio Rev. Code , <u>shall have principal payments during each year after the year of their issuance over a period not to exceed five years,</u>

Step 3-2 Appendix Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	Purpose	Reference to ORC §133.10	Reference to ORC §133.24
			and may have principal payment in the year of their issuance.”
§5705.198. Levy by joint recreation district	Parks and recreational purposes per 5705.19(H)	No	§5705.198 (limited to a fraction of the proceeds of that levy) “ such notes shall be issued as provided in §133.24 of the Ohio Rev. Code. ” These notes must mature by December 31 of the 5th year after the levy’s passage.
§5705.21. Special election on additional school levy School District	Permanent improvements	No	<p>§5705.21(C)(2) states” After the approval of a levy for general permanent improvements for a specified number of years, or for permanent improvements having the purpose specified in division (F) of §5705.19 of the Ohio Rev. Code, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy remaining to be collected in <u>each year over a period of five years after the issuance of the notes.</u></p> <p>The notes shall be issued as provided in §133.24 of the Ohio Rev. Code, shall have principal payments during each year after the year of their issuance over a period <u>not to exceed five years</u>, and may have a principal payment in the year of their issuance.”</p> <p>§5705.21(C)(3) states “After approval of a levy for general permanent improvements for a continuing period of time [i.e. an unlimited life levy], the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected in each year over a specified period of <u>years, not exceeding ten</u>, after the issuance</p>

Step 3-2 Appendix Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	Purpose	Reference to ORC §133.10	Reference to ORC §133.24
			<p>of the notes.</p> <p>The notes shall be issued as provided in §133.24 of the Ohio Rev. Code, shall have principal payments during each year after the year of their issuance over a <u>period not to exceed ten years</u>, and may have a principal payment in the year of their issuance.”</p>
<p>§5705.217. Special elections on additional tax for school district purposes; anticipation notes</p> <p>School District</p>	<p>Current operating expenses and permanent improvements</p>	No	<p>§5705.217(B)(3) provides that “after approval of a levy for general permanent improvements for a continuing period of time, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected in each <u>year over a specified period of years, not exceeding ten</u>, after the issuance of the notes.</p> <p>The notes shall be issued as provided in §133.24 of the Ohio Rev. Code, shall have <u>principal payments during each year after the year of their issuance over a period not to exceed ten years</u>, and may have a principal payment in the year of their issuance.”</p>
<p>§5705.218. Special elections on school district bond issues and tax levies; anticipation notes</p> <p>School Districts</p>	<p>Bonds or BAN for permanent improvements and current operating expenses</p>	No	<p>§5705.218(F)(3) states “After the approval of a tax for general, on-going permanent improvements under this section, the board of education may anticipate a fraction of the proceeds of such tax and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the tax to be collected in <u>each year over a specified period of years, not exceeding ten</u>, after issuance of the notes.</p> <p>Anticipation notes under this</p>

Step 3-2 Appendix Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	Purpose	Reference to ORC §133.10	Reference to ORC §133.24
			<p>section shall be issued as provided in §133.24 of the Ohio Rev. Code. Notes issued under division (F)(1) (for current operating expenses) mature within the next fiscal year. BAN issued under (F)(2) (specific permanent improvements) shall have principal payments during each year after the year of their issuance <u>over a period not to exceed five years</u>, and may have a principal payment in the year of their issuance. Notes issued under division (F)(3) (ongoing permanent improvements) shall have <u>principal payments during each year after the year of their issuance over a period not to exceed ten years</u>, and may have a principal payment in the year of their issuance.”</p>
<p>§5705.23. Resolution for special levy for public library; submission to electors</p> <p>Public Library</p>	<p>Current expenses or for constructing specific permanent improvements</p>	No	<p>Yes - §5705.23 states in part “After the approval of a levy on the current tax list and duplicate to provide an increase in current expenses, and prior to the time when the first tax collection from such levy can be made, the taxing authority at the request of the board of library trustees may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not exceeding fifty per cent of the <u>total estimated proceeds of the levy to be collected during the first year of the levy</u>.</p> <p>After the approval of a levy to provide revenues for <u>the construction or acquisition of any specific permanent improvement or class of improvements</u>, the taxing authority at the request of the board of library trustees may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be</p>

**Step 3-2 Appendix
Tax and Revenue Anticipation Notes**

Ohio Rev. Code § and Entities to which it applies	Purpose	Reference to ORC §133.10	Reference to ORC §133.24
			<p>collected in each year over a <u>period of ten years</u> after the issuance of such notes.</p> <p>The notes shall be issued as provided in §133.24 of the Ohio Rev. Code, shall have principal payments during each year after the year of their issuance over a <u>period not to exceed ten years</u>, and may have a principal payment in the year of their issuance.”</p>
<p>§5705.24. County tax levy for children services</p> <p>County</p>	<p>Operating or capital improvement expenditure necessary for the support of children services and the care and placement of children</p>	No	<p>§5705.24 states in part “After the approval of such levy and prior to the time when the first tax collection from such levy can be made, the board of county commissioners may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not to exceed fifty per cent of the total estimated proceeds of the levy throughout its life.</p> <p>Such notes shall be issued as provided in §133.24 of the Ohio Rev. Code, shall have principal payments during each year after the year of their issuance <u>over a period not exceeding the life of the levy</u>, and may have a principal payment in the year of their issuance.”</p>
<p>§5748.05. Income tax anticipation notes</p> <p>School District</p>	<p>Current operating expenses or permanent improvements</p>	No	<p>§5748.05 states in part “a board of education may anticipate a fraction of the proceeds of the tax and issue anticipation notes in an amount not exceeding fifty per cent of the total estimated proceeds of the tax <u>to be collected for its first year of collection</u> as estimated by the tax commissioner. The anticipation notes are Chapter 133. securities and shall be issued as provided in §133.24 of the Ohio Rev. Code as if property tax anticipation notes.”</p>
<p>§5748.08. Election on income tax and bond issue as one ballot question</p>	<p>Permanent improvement bonds or BAN</p>	No	<p>§5748.08(G) states “After approval of a question under this section, the board of education may anticipate a fraction of the</p>

**Step 3-2 Appendix
Tax and Revenue Anticipation Notes**

Ohio Rev. Code § and Entities to which it applies	Purpose	Reference to ORC §133.10	Reference to ORC §133.24
School District			proceeds of the school district income tax in accordance with §5748.05 of the Ohio Rev. Code. Any anticipation notes under this division shall be issued as provided in §133.24 of the Ohio Rev. Code , shall have principal payments during each year after the year of their issuance over a <u>period not to exceed five years</u> , and may have a principal payment in the year of their issuance.”

CHAPTER 4

ACCOUNTING AND REPORTING

The Auditor of State prescribes and requires by rules, that certain public offices prepare and file annual financial reports in accordance with generally accepted accounting principles. Certain public offices may also be required by statute, rule, or agreement to prepare and file performance or other special purpose reports.¹

Compliance Requirements		Page
Chapter 4 - Accounting and Reporting		
Section A: Reporting		
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Section D: Accounting requirements applicable to all public offices		
4-5	OAC 117-2-02(D) & (E) Required accounting records	17

¹ Ohio Administrative Code (OAC) 117-10-01(B) requires county and independent agricultural societies to record and report all financial transactions in accordance with Appendix A of the Auditor of State manual, "Uniform System of Accounting for Agricultural Societies." This Manual is available at www.ohioauditor.gov, under *Publications*.

As a matter of accountability and internal control, each public office should account for financial activities using an accounting system which demonstrate legal compliance and follows a documented chart of accounts appropriate for its particular activities; and is supported by appropriate subsidiary ledgers/journals. When a public office fails to maintain such an accounting system, auditors should consider whether the failure constitutes a reportable control deficiency or noncompliance. Also see Step 4-5 as it relates to accounting systems.

Section A: Reporting

4-1 Compliance Requirements: Ohio Admin. Code 117-2-03(B) and Ohio Rev. Code §117.38 and §1724.05: Annual financial reporting.

Summary of Requirements:

GAAP Basis Entities

Ohio Admin. Code 117-2-03(B) requires counties, cities, school districts, educational service centers, and community schools to report annually (but not necessarily account) on a GAAP basis.

Ohio Rev. Code 1724.05 requires Community Improvement Corporations established under Ohio Rev. Code Chapter 1724 to report annually (but not necessarily account) on a GAAP basis.

Per Ohio Rev. Code §117.38, GAAP-basis entities must file annual reports within 150 days of their fiscal year end (except ORC 1724.05 requires community improvement corporations to file within 120 days of their fiscal year end).²

Per AOS Bulletins 2006-02 and 2008-01, annual reports filed with AOS must be **complete** to avoid the application of a penalty of \$25 per day (\$750 maximum) permissible under Ohio Rev. Code §117.38. To be **complete**, GAAP entities must submit the basic financial statements, including the government-wide financial statements, fund financial statements, notes to the basic financial statements, Management's Discussion & Analysis, and any other required supplementary information to be considered a complete filing.³

² We will cite noncompliance if a "GAAP government" files OCBOA or regulatory statements, **regardless** of whether they filed within 60 days. That is, the 60-day requirement is irrelevant to "GAAP governments." For example, if a county filed OCBOA statements within 60 days of its year end, the following cite would apply:

"Ohio Administrative Code 117-2-03 (B) requires the County to prepare its annual financial report in accordance with generally accepted accounting principles. The County filed financial statements with the Auditor of State, but those statements followed a cash and investments accounting basis rather than generally accepted accounting principles. The accompanying financial statements and notes omit material assets, liabilities, fund equities, and disclosures. The County is subject to fines and various other administrative remedies."
(For this finding we need not differentiate regulatory vs OCBOA formatting or list the date the statements were filed, because it is irrelevant.)

³ Failing to file an annual report could be a symptom of an inadequate accounting system, inadequate training of personnel in understanding the accounting and reporting process, unposted or unreconciled records or other significant issues affecting the control environment, or which may even pose fraud risks.

Cash Basis Entities

Per Ohio Rev. Code §117.38, cash-basis entities must file annual reports with the Auditor of State within 60 days of the fiscal year-end. The Auditor of State may prescribe by rule or guidelines the forms for these reports. However, if the Auditor of State has not prescribed a reporting form, the public office⁴ shall submit its report on the form used by the public office. Any public office not filing the report by the required date shall pay a penalty of \$25 for each day the report remains unfiled, not to exceed \$750. The AOS may waive these penalties, upon the filing of the past due financial report.

The report shall contain the amount of: (A) receipts, and amounts due from each source; (B) expenditures for each purpose; (C) income of any public service industry that the entity owns or operates, as well as the costs of ownership or operation; and (D) **public debt** of each taxing district, the purpose of the debt, and how the debt will be repaid.

Cash and GAAP Basis Entity Requirement

Public offices must publish notice in a local newspaper stating the financial report is available for public inspection at the office of the chief fiscal officer.⁵

Note: We normally would not deem a “somewhat” late filing to constitute “direct and material” noncompliance on the determination of financial statement amounts (i.e. the auditor would normally not report a late filing citation in the GAGAS compliance report.)

Conversely, a significantly late filing may be material (i.e. reportable) GAGAS noncompliance, especially if related to an inability to prepare a complete filing.

Material noncompliance would also normally exist if:

- An entity subject to GAAP did not follow GAAP in its annual report.
- A GAAP filing was significantly incomplete (see discussion of complete in the *GAAP Basis Entities* section above).
- The filing was significantly misstated.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Presence of an Effective Accounting System 		

⁴ Ohio Rev. Code §117.01(D) states that, as used in Ohio Rev. Code Chapter 117, “public office means any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.” Op. Atty. Gen. No. 89-055 indicates the Auditor of State has discretion to interpret and apply the definition of “public office” used in Ohio Rev. Code §117.01(D). The Auditor of State has therefore determined that charter schools qualify as public offices as defined under this section.

⁵ Charter schools should publish notices in the newspapers of the locality where the constituents are located if different from where the office of the chief fiscal officer is located.

<ul style="list-style-type: none"> • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Inquire if the government files its financial reports with the Auditor of State on a GAAP basis. Confirm whether the report was filed timely.

Auditors should inspect a copy of the report retained and available in the fiscal office to determine whether a GAAP filing was substantially complete.

- There is no need to request the actual report filed from LGS.

Trace selected totals from the annual report to the underlying accounting system. *(If we use the annual report as a trial balance, AOS auditors will satisfy this requirement by completing the mandatory Trial Balance steps from the financial audit program.)* If the report is significantly deficient, we should cite Ohio Rev. Code §117.38 or §1724.05 for filing an incomplete or misleading report, as described in the box above.

Determine whether the filed report includes the statements, disclosures and required supplementary information (if applicable) required by GAAP (i.e. determine if the filing was substantially **complete** as described above.

When opining on non-GAAP presentations for governments required to follow GAAP, auditors should follow this guidance from AOS Bulletin 2005-002:

- If a GAAP-mandated government presents “34 look-alike statements,” include an emphasis of matter paragraph in the financial statement opinion, and report the noncompliance in the GAGAS report.
- If a GAAP-mandated government does not follow GAAP *or* present “34 look-alike statements,” issue an adverse opinion on the financial statements, as well as a GAGAS noncompliance finding. (These governments do not qualify for the “dual opinion.”)

You can limit the following step to every other audit, unless the prior audit found noncompliance or unless you have other reasons to suspect this may be a compliance issue. The working papers should document whether we tested this in the prior audit.

Examine the proof of publication for the annual notice.

<p>Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>

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4-2 Compliance Requirements: GAAP and annual financial reporting for community improvement corporations (CICs)⁶ and development corporations (DCs).⁷

Summary of Requirements: Annual Reporting (Ohio Rev. Code §1724.05– CICs and §1726.11– DCs)

- Corporations must submit (unaudited) annual GAAP financial reports to the Auditor of State. The corporation must file the annual report within 120 days of fiscal year end.⁸ The Ohio Rev. Code does not prescribe a fiscal year end for these corporations.

Failure to Report/Present Auditable Records (Ohio Rev. Code §1724.06- CICs and §1726.12- DCs)

- Additionally, the Auditor of State must certify corporations to the Secretary of State in the following two circumstances:
 - If a Corporation files its annual report more than 90 days delinquent (i.e., does not file its annual GAAP financial statement report within 120 days of its fiscal year end).
 - If a Corporation does not present auditable records within 90 days of a determination by the Auditor of State that a corporation is unauditale.
- Upon certification, the Secretary of State is to cancel the Corporation’s articles of incorporation until the deficiency is remedied.
- For more information, see AOS Bulletin 2001-003.

NOTE: Revisions to audit requirements in Ohio Rev. Code 9.234 per the 2005 budget bill (HB 66) do **not** alter the AOS’ statutory requirement to audit CICs or DCs.

In determining how the government ensures	What control procedures address the	W/P
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⁶ Being non-profit under chapter 1702 is not enough to be a CIC. To be a CIC requiring an AOS audit, the entity must be incorporated under both 1702 & 1724. (A Development Corp. would only be incorporated under chapter 1726.) Read the articles and see if they refer to chapters 1724 or 1726. Merely entitling an entity as an “improvement” or “development” corporation is not sufficient. The articles of incorporation must support that the entity falls under 1724 or 1726.

⁷ We are aware of only four DC, and at least two of them are inactive. Development corporations organized under ORC 1726 are stock-issuing entities.

⁸ CIC or DC that do not file GAAP statements and notes (and required supplementary information, if any) within 120 days of its fiscal year end are **not** subject to AOS penalties prescribed in ORC 117.38. “A community improvement corporation is, in essence, a private non-profit corporation which is bound by the general terms of RC Chapter 1702 (non-profit corporations). A privately organized entity that performs a public purpose occupies a status no different from that of countless other non-profit corporations, the private nature of which is indisputable. Nor is a community improvement corporation possessed of powers derived from statute. Although RC 1724.02 provides that a community improvement corporation shall possess, certain powers enumerated therein, the ultimate source of its power is not RC 1724.02, but its articles of incorporation and code of regulations.” [Ohio Atty Gen. Op. No. 79-061] Also, auditors should take note that CIC and DC are subject to a 120-day filing requirement rather than the 150-day requirement applicable to other GAAP entities.)

compliance, consider the following:	compliance requirement?	Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Presence of an Effective Accounting System • Legislative and Management Monitoring 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Read the corporation’s annual report. Determine if it complies with GAAP in material respects. Determine if the corporation filed its report with the AOS within 120 days of fiscal year end.

If a corporation does not file its annual GAAP financial statement report within 210 days of fiscal year end, or does not present auditable records within 90 days of the Auditor of State’s determination of unauditability:

- The Chief Auditor will consult with the Chief Deputy Auditor. The Chief Deputy Auditor will determine whether to request the Legal Division to issue a subpoena for the accounting records.
- IPA firms should contact the Regional Chief Auditor regarding these matters

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section B: Community School Additional Reporting

4-3 Compliance Requirements: Per Ohio Rev. Code § 3314.024: A management company providing services to a community school and charging more than twenty percent of the school’s annual gross revenues shall provide a detailed accounting, including the nature and costs of the services it provides to the community school. This information shall be included in the footnotes of the financial statements of the school and be subject to audit during the school’s regular financial audit.

Summary of Requirement: This footnote should list management company expenses during the year by object codes (e.g., salaries, supplies, etc.). Ohio Rev. Code §3314.03(A)(8) discusses the requirements of community schools to have financial audits by the Auditor of State. The contract between the sponsor and the governing authority shall require financial records of the school to be maintained in the same manner as are financial records of school districts, pursuant to rules of the Auditor of State, and the audits shall be conducted in accordance with section 117.10 of the Revised Code.⁹ This includes classifying costs by function and object codes. *Also*, this footnote should differentiate between the direct costs and any overhead costs a management company allocates to a community school.

Since AOS deems this information material, failing to provide an adequate level of audit assurance (as described above) will require the AOS to add an emphasis of a matter paragraph¹⁰ to the opinion for omitting a required disclosure, or will require a scope qualification for an inability to audit the footnote. Finally, AOS will report this as material noncompliance with Ohio Rev. Code § 3314.024.

See Auditor of State Bulletin 2004-009 for more information.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Presence of an Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

⁹ It is the intention of the Auditor of State to reinstate the Uniform Schools’ Accounting System (USAS) requirement that was listed in OAC 117-6-01. Since school districts conform to the USAS requirement of accounting, community schools are expected to, as well.

¹⁰ While the law requires the auditor to “qualify” the opinion, we believe an *emphasis of a matter* paragraph is preferable because inadequate disclosure of this matter is not a departure from GAAP.

The management company may elect to have AOS (or contracting IPA's) audit this information at the management company. AOS will examine the books, records, and other supporting documentation prepared and maintained by the management company.

Alternatively, AOS will accept a management company's independently audited financial statements as meeting the requirements of Ohio Rev. Code § 3314.024, provided the audit meets the audit and disclosure requirements set forth in the following paragraph. (IPA's may elect to follow this guidance.):

Where a management company manages more than one community school or has other "lines of business" in addition to managing a community school, AOS will require a statement showing direct and allocated indirect (e.g., overhead) expenses for each school. The companies should present this statement in a combining or consolidating format (i.e., present a column for each school). Additionally, the American Institute of Certified Public Accountants' (AICPA) audit and accounting guide, *Not-for-Profit Organizations*, sections 14.11 and 14.12 permits organizations to present this as supplemental information. Notes to the supplemental information should briefly describe the method used to allocate overhead costs. Since overhead allocations require subjective judgment, their amounts and allocation method should be considered disclosures of higher inherent risk. (An example disclosure is in Appendix A to Bulletin 2004-009.).

Where a management company's sole business is providing services to one community school, the company's audited statements should suffice, if the statements classify expenses in substantial conformance with USAS object codes. (IPA's may elect to follow this guidance.)

The management company's audit opinion must extend to the combining or consolidating columns. Auditors of community schools must set their materiality threshold to include assurance the supplemental information for each school is not materially misstated. Opinions that report only on the individual school statement's fair presentation in relation to the management company's basic financial statements do not provide sufficient audit assurance, unless accompanied with an agreed-upon procedures report related to the supplemental information.

Agreed Upon Procedures Guidelines

Bulletin 2004-009 Agreed Upon Procedures Guidelines, Revised 2010

AOS Bulletin 2004-009 included this sentence in the *Auditing the Footnote* section:

"Opinions that report only on the individual school statement's fair presentation in relation to the management company's basic financial statements do not provide sufficient audit assurance, unless accompanied with an agreed-upon procedures report related to the supplemental information."

Based on our experience since issuing this Bulletin, we are revising this sentence as follows:

"If a management company's audited financial statements do not present combining or consolidating columns for each of its schools, or if the auditor does not provide opinion-level assurance on the combining or consolidating columns presenting each school, the Auditor of State will accept an agreed-upon procedures (AUP) report per AICPA Attestation Standards Section 201. See Appendix B for procedures to which the AOS would agree."

The following is **Appendix B, as revised**:

1. The engagement should follow AICPA Attestation Standards, Section AT 201.
2. Per AT 201.11, the AOS will be a specified party permitted to rely on the report.
3. Per AT 201.07, “To satisfy the requirements that the practitioner and the specified parties agree upon the procedures performed or to be performed and that the specified parties take responsibility for the sufficiency of the agreed-upon procedures for their purposes, ordinarily the practitioner should communicate directly with and obtain affirmative acknowledgment from each of the specified parties.” AT 201.07 also states “The practitioner should not report on an engagement when specified parties do not agree upon the procedures performed or to be performed and do not take responsibility for the sufficiency of the procedures for their purposes.”

Therefore, you should e-mail a letter of arrangement and the draft (i.e. example) procedures to the schools and to AOS Center for Audit Excellence (Tim Downing, SAS70@ohioauditor.gov). Mr. Downing will electronically sign the letter of arrangement attesting to the sufficiency of the procedures on behalf of the AOS, prior to the practitioner (“auditor”) commencing the procedures.

The letter of arrangement should list the schools to which the agreed-upon procedures will apply.

Example required procedures are 11 through 14 below.

Each AUP report should specify the schools to which the procedures apply.

4. As a specified party, AOS requires the following, applicable to each Ohio school the company manages:
 - a. The accountant may issue one AUP report covering all the company’s Ohio schools.
 - b. The report must explain that the accountant performed 11. below to test the compilation of the footnotes separately for each school.
 - c. Regarding the individual expenditure tests below (steps 12. through 14.), the accountant may select one sample from the population of all costs charged to the company’s Ohio schools for each year ending June 30.
5. Ohio community schools’ fiscal years end each June 30. If the management company is on a different fiscal year, the management company must compile the footnote for each Ohio school’s June 30 fiscal year.

For example, if the management company’s fiscal year ended December 31, 2009, each Ohio school’s June 30, 2009 footnote would report expenses the management company incurred on a school’s behalf for the first six months of calendar 2009 plus the last six months of calendar 2008.

6. The accountant performing the AUP should describe the Ohio schools to which the AUP relate and should attach each of the community schools' footnotes to the AUP report.
7. As stated in AT 201.25, auditors should report all exceptions, such as costs charged to a school where documentation does not support it directly benefited the school, or for which insufficient documentation exists.
8. AOS will judge whether any noncompliance reported in the agreed-upon procedures report requires an explanatory paragraph in our opinion (i.e. report) regarding the footnote.

(We believe a material error in the note would result in an explanatory paragraph rather than a qualification, because legislation requires the footnote. Our opinion paragraph can only describe material errors related to GAAP.)

9. Because the procedures relate to each school's footnote, the accountant performing the AUP should apply the procedures to footnotes compiled from the management company's accounting system, separately summarizing the expenses for each Ohio community school. This requires that the management company's accounting system include accounts summarizing direct expenses the company incurs for each school. It is permissible to charge / assign indirect costs to these schools, *if the notes disclose the method for charging those costs, and if the note separately identifies indirect costs.*

If the management company's accounting system does not include separate accounts for direct expenses for each school, it is unlikely the management company can meet the requirements of RC. 3314.024. In this case, the management company or the firm completing the AUP should consult with the Auditor of State.

10. Federal OMB Circular A-133 § ___.310(b) also requires each school expending more than \$500,000 of federal awards in its fiscal year to prepare a federal awards expenditure schedule.

If the management company accounts for an Ohio school's federal awards, we believe it is reasonable to expect the management company to compile this schedule for each school, and for the AUP to include a procedure testing this compilation. (Also note that the Ohio Department of Education requires schools to present receipts for each program / CFDA number.)

Note that this requires that the management company's accounting system be capable of segregating receipts, disbursements and cash balances for each federal award program of each school.

Step 11.b below applies if a school expended more than \$500,000 of federal awards during its fiscal year.

11. The AUP report should list the following procedures and the results relating to **each** Ohio school's footnote:

- a. Trace the management company direct expenses from each footnote by object / accounting code to the community school's accounts in the management company's accounting system.
 - b. Trace each school's federal award receipts and disbursements from its federal awards expenditure schedule to the community school's accounts in the management company's accounting system.
12. Haphazardly or randomly select 100 direct nonpayroll expense transactions (checks, EFTs, etc.) the management company charged to its Ohio community schools. (One sample selected from all the management company's Ohio schools will suffice. If the management company accounts for only one Ohio school, you may reduce the sample size to 60.)

Compare the amount charged to a school to supporting documentation, including a canceled check (or EFT documentation, etc.) and vendor invoice, supporting that the cost:

- a. Is a direct expense benefiting the school
 - b. Is recorded for the proper amount for the proper period in the accounting system
 - c. Is charged to a proper object / accounting code
13. Haphazardly or randomly select 100 direct payroll expense transactions, including salaries and benefits the management company charged to its Ohio community schools. (One sample selected from all the management company's Ohio schools will suffice. If the management company accounts for only one Ohio school, you may reduce the sample size to 60.)

Compare the amount charged to a school to supporting documentation, including a canceled check and to personnel files supporting that the cost:

- a. Is a direct expense paid to an employee for services provided solely to the school
 - b. Is recorded for the proper amount for the proper period in the accounting system
 - c. The amount paid agreed to the salary schedule and/or to amounts withheld
 - d. Is charged to a proper object / accounting code
14. Haphazardly or randomly select 100 expense transactions (e.g checks) assigned to any indirect cost pool that include Ohio schools. (One sample from the pool(s) for Ohio schools will suffice. If the management company accounts for only one Ohio school, you may reduce the sample size to 60.)
- a. Compare the transaction to source documentation, such as vendor invoice, personnel file, etc. supporting the cost indirectly benefits the schools or other activities to which it is allocated.
 - b. Determine the transaction is recorded for the proper amount for the proper period in the accounting system.
 - c. Obtain an understanding of the method the management company uses to pool and assign indirect costs to individual schools. Recompute selected allocations for conformity with the method.
 - d. Compare the results from steps a through c with the overhead allocation disclosure in the footnote. Report any material departures from the footnote

description in terms of the actual method used and any projected dollar effects of the departure.

Note: Occasionally, these notes report more expenses than amounts the school paid to its management company. When this occurs, the management company is subsidizing (or loaning money to) the school. We believe the basic statements should report material amounts as revenue (Contribution from management company), and additional expenses.

While some may view recording this entry as “merely” grossing up revenue and expense, we believe the school’s true expenses are understated without this entry. Presenting the management company’s willingness to subsidize operations in the statements is also important information for readers. Also, we are aware that some contracts specify these amounts are repayable loans from the management company.

Auditors should obtain evidence supporting whether these amounts are subsidies or loans from the management company. Usually the contract with the management company will explain whether the school must repay the management company. We suggest representation letters include these amounts, and represent whether these amounts are contributions or repayable loans.

If these are repayable loans, consider whether the opening equity is overstated based on prior year unrecorded loans.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Section C: Counties' Electronic (i.e., Internet) Transactions

If you are auditing a county, Ohio Rev. Code § 117.111(A) mandates that we complete this step, if a county implemented or significantly updated systems related to commercial electronic (internet) transactions. This requirement applies to IPAs auditing counties.

4-4 Compliance Requirement: Ohio Rev. Code §117.111(A) Security controls over counties' electronic (i.e. internet) transactions

Summary of Requirement: The AOS (and IPAs contracting to audit counties) **must** inquire into the method, accuracy and effectiveness of any procedure a county office adopts under Ohio Rev. Code §304.02 to secure electronic signatures or records relating to county business that is conducted electronically under Chapter 1306 of the Revised Code.¹¹

Other statutes relevant to this requirement:

Per Ohio Rev. Code § 304.01:

(B) "County office" means any officer, department, board, commission, agency, court, or other instrumentality of a county.

(D) "Electronic record" means a record created, generated, sent communicated, received, or stored by electronic means.

(E) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

► Note: The signature can be by a county employee or a citizen transacting business with a county office.

Ohio Rev. Code § 304.02: Prior to a county office using electronic records and electronic signatures, under Chapter 1306 of the Revised Code and except as otherwise provided in Section 955.013 of the Revised Code, a county office shall adopt, in writing, a security procedure to verify that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. A security procedure includes, but is not limited to, a procedure requiring algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

Ohio Rev. Code § 955.013 permits paying dog and kennel registration fees by financial transaction devices (e.g. credit cards), including via the internet.

Ohio Rev. Code § 1306.02(A) provides that Chapter 1306 of the Revised Code, the Uniform Electronic Transactions Act, generally applies to electronic records and electronic signatures relating to a transaction.

Ohio Rev. Code § 1306.04(B) provides that sections 1306.01 to 1306.23 of the Revised Code apply only to transactions between parties each of which has agreed to conduct transactions by electronic means.

¹¹ Note: Since the legislature has mandated this step, we should deem it to be qualitatively material.

Ohio Rev. Code § 1306.01(P) defines “transaction” as an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

Ohio Rev. Code § 1306.11: (A) An electronic record of information generally satisfies record retention laws.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Accounting system designed to capture the required information • Accounting policies and procedures manual • Knowledge and training of accounting personnel • Legislative and Management Monitoring 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

1. Determine the electronic records and electronic signatures relating to a county office’s electronic (i.e. *internet*) transactions. These include:
 - a. Cash receipts where a county office accepts credit/debit cards electronically (i.e, via the internet).
 - b. Other types of internet transactions.¹²

2. Obtain and read the *written* security procedure the county office (or its internet transaction service organization¹³) adopted to safeguard each type of electronic (i.e. internet) transaction. Note: Because the service organization processes most elements of these transactions, it is sufficient if the *service organization* adopts security procedures. If the service organization requires the county office to adopt “user control” security procedures, we should consider whether the county office has implemented these controls. (Often the service organization’s contract or response to a county office’s RFP will describe the security procedures.)
 - a. Retain a copy or summary of the procedure in the permanent file.
 - b. Update systems’ documentation as needed.¹⁴

¹² As noted on the previous page, ORC 955.013 separately addresses electronic / internet sales of dog licenses. Direct deposits do *not* fall under Ohio Rev. Code 117.111 or Ohio Rev. Code 304.02.

¹³ Companies providing internet transaction services may be *service organizations*. We should consider service organization implications per AU 324 depending upon the materiality of the transactions.

¹⁴ AOS staff should update the RCEC where needed to incorporate electronic (i.e. internet) transactions, including controls and procedures designed to safeguard electronic transactions. Also, consider the appropriate degree of ISA involvement. AOS audit staff must consult with ISA when a government has a

3. Assess the effectiveness of the design of controls and determine that they have been “placed in operation.” (AOS staff can refer to AOSAM 30500.54 -.58.)
4. If these transactions are subject to audit (exceed tolerable error, etc.) and we assess CR at less than the maximum level or low, test monitoring or application controls related to electronic (i.e. internet) transactions and signatures.
5. Determine whether results from the steps above regarding the design and operation of controls related to securing electronic signatures and electronic records relating to internet transactions result in any management comments, significant deficiencies or material weaknesses. We must also report as a noncompliance finding. Since the statute explicitly refers to a security procedure adopted in writing, we should report the absence of a security procedure adopted in writing.

Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

complex IT environment (AOSAM 30500.41. Also consider that the nature of electronic transactions and signatures subject to this law may require ISA assistance.

Section D: Accounting requirements applicable to all public offices**4-5 Compliance Requirements:** Ohio Admin. Code Sections 117-2-02(D) and (E)

Accounting records

Summary of Requirement:

All local public offices may maintain accounting records in a manual or computerized format. The records used should be based on the nature of operations and services the public office provides, and should consider the degree of automation and other factors. Such records **should** include the following:

- (1) Cash journal, which typically contains the following information: The amount, date, receipt number, check number, account code, purchase order number, and any other information necessary to properly classify the transaction.
- (2) Receipts ledger, which typically assembles and classifies receipts into separate accounts for each type of receipt of each fund the public office uses. The amount, date, name of the payor, purpose, receipt number, and other information required for the transactions can be recorded on this ledger.
- (3) Appropriation ledger, which may assemble and classify disbursements or expenditure/expenses into separate accounts for, at a minimum, each account listed in the appropriation resolution. The amount, fund, date, check number, purchase order number, encumbrance amount, unencumbered balance, amount of disbursement, and any other information required may be entered in the appropriate columns.
- (4) In addition, all local public offices should maintain or provide a report similar to the following accounting records:
 - a. Payroll records including:
 - i. W-2's, W-4's and other withholding records and authorizations;
 - ii. Payroll journal that records, assembles and classifies by pay period the name of employee, social security number, hours worked, wage rates, pay date, withholdings by type, net pay and other compensation paid to an employee (such as a termination payment), and the fund and account charged for the payments;
 - iii. Check register that includes, in numerical sequence, the check number, payee, net amount, and the date;
 - iv. Information regarding nonmonetary benefits such as car usage and life insurance;
and
 - v. Information, by employee, regarding leave balances and usage;
 - b. Utilities billing records including:

- i. Master file of service address, account numbers, billing address, type of services provided, and billing rates;
 - ii. Accounts receivable ledger for each service type, including for each customer account, the outstanding balance due as of the end of each billing period (with an aging schedule for past due amounts), current usage and billing amount, delinquent or late fees due, payments received and noncash adjustments, each maintained by date and amount;
 - iii. Cash receipts records, recording cash received and date received on each account. This information should be used to post payments to individual accounts in the accounts receivable ledger described above
- c. Capital asset records* including such information as the original cost, acquisition date, voucher number, the asset type (land, building, vehicle, etc.), asset description, location, and tag number. Local governments preparing financial statements using generally accepted accounting principles will want to maintain additional data. Capital assets are tangible assets that normally do not change form with use and should be distinguished from repair parts and supply items.

Ohio Admin. Code Section 117-2-02(E) states that each local public office should establish a capitalization threshold* so that, at a minimum, eighty per cent of the local public office's non-infrastructure assets are identified, classified, and recorded on the local public office's financial records.

* These capital asset (fixed asset) record requirements apply to GAAP and non-GAAP mandated public offices. All public offices should have records of significant capital assets.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Accounting system designed to capture the required information • Accounting policies and procedures manuals • Knowledge and training of accounting personnel • Legislative and Management Monitoring 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Based on our systems documentation, results of inquiries and other audit procedures, assess whether the accounting system generally complies with the aforementioned requirements.¹⁵

¹⁵ Note: Per SAS 115, "A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance."

Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Noncompliance with these OAC requirements normally also suggest control deficiencies. Section 4.30 in the AICPA's *Government Auditing Standards and Circular A-133 Audits* requires auditors to report noncompliance findings (e.g. OAC 117-2-02(D) that also relate to control deficiencies in both (1) the internal control and (2) the compliance sections of the GAGAS report. Auditors should refer to Advisory Memos 2010-02, *Auditor of State Guidance regarding adopting Statement of Auditing Standards No. 115, Communicating Internal Control Related Matters Identified in an Audit (SAS 115)*, and 2007-07, *Reporting Control Deficiencies Under Auditing Standard No. 112*, to determine how and where to report control deficiencies **and** noncompliance with OAC 117-2-02(D) requirements. We would not automatically deem minor misclassifications or other lesser-significant errors as reportable noncompliance under this OAC Section. While a significant deficiency may exist, it is possible that the deficiency may not necessarily rise to the level of material noncompliance. This is a matter of professional auditor's judgment. We should consider the pervasiveness of the noncompliance matter in relation to the compliance requirement and the financial statements as whole. Conversely, a failure to maintain any utility billing records (for example) would not only be a material weakness, but would be reportable noncompliance with OAC 117-2-02(D).

APPENDIX A

PRESCRIBED FORMS FOR CITATION OF LEGAL AUTHORITY

The Auditor of State and independent public accountants (IPAs) performing audits of public offices pursuant to Ohio Rev. Code Sections 115.56(B), 117.11, or 117.43, must follow legal authority in determining “whether the laws, ordinances, and orders pertaining to [a public] office have been observed, and whether the requirements and rules of the auditor of state have been complied with” Ohio Rev. Code Section 117.11(A). Legal authorities which may be cited in an audit report may include the Federal and State constitutions, the United States Code, the Ohio Revised Code, the Ohio Administrative Code, Federal and State court decisions, Federal and State regulations, opinions of the Attorney General, opinions of the Ethics Commission, and local ordinances and charters. Also, as described in *Government Auditing Standards*, non-compliance with provisions of contracts or grant agreements should be reported.

You should use the following forms of citation in all reports, letters, memoranda, opinions, and other documents if you are on the professional staff of the Auditor of State or are an IPA acting under contracts pursuant to Ohio Rev. Code Sections 115.56, 117.11(B), or 117.43.

Statutory Citations

Citations to the Ohio Revised Code should be in the following form:

Ohio Rev. Code § 325.19

Ohio Rev. Code Chapter 325

Ohio Rev. Code Title 3

Citations to the United States Code should be in the following form:

26 U.S.C. § 3402(a)

Attorney General Opinions

Opinions should be cited by year and opinion number in the following form:

1993 Op. Atty. Gen. No. 93-004 or 1993 Op. Att’y Gen. No.93-004

Court Cases

All citations to a reported case should use the following form:

Parsons v. Ferguson (1976), 46 Ohio St. 2d 389
↓ ↓ ↓ ↓ ↓
1 2 3 4 5

The elements of such a citation include:

- 1. The title of the case (italicized);
- 2. The date (in parentheses).

3. The volume number of the reporter in which the case is reported;
4. The abbreviation for the reporter; and
5. The page number at which the case commences

The following abbreviations should be used:

<u>Reporter</u>	<u>Abbreviation</u>
Ohio State Reports	Ohio St.
Ohio State Reports, Second Series	Ohio St. 2d
Ohio State Reports, Third Series	Ohio St. 3d
Ohio Reports	Ohio
Ohio Appellate Reports	Ohio App.
Ohio Appellate Reports, Second Series	Ohio App. 2d
Ohio Appellate Reports, Third Series	Ohio App. 3d
Ohio Miscellaneous	Ohio Misc. Or Ohio Misc. 2d
Ohio Bar Reports	Ohio B.
Ohio Opinions	Ohio Op.
Ohio Opinions, Second Series	Ohio Op. 2d
Ohio Opinions, Third Series	Ohio Op. 3d
Ohio Decisions	Ohio Dec.
Ohio Decisions, Reprint	Ohio Dec. Reprint
Ohio Circuit Court Decisions	Ohio C.C. Dec.
Ohio Circuit Court Reports	Ohio C.C.
Ohio Circuit Court Reports, New Series	Ohio C.C. (n.s.)
Ohio Circuit Decisions	Ohio Cir. Dec.

If a case has not been reported, it should cite to the case *name*, docket number, court, and the date of the most recent (disposition). For example:

Collins v. Ferguson (July 22, 1980), FRANKLIN App. No. 80-AP-245, unreported.

Ohio Administrative Code

Citations to the Ohio Administrative Code should be by code section and date in the following form:

Ohio Admin. Code § 117-08-01

Federal Regulations

Federal administrative rules and regulations should be cited by title and section number to the Code of Federal Regulations in the following manner:

47 C.F.R. (Part, if known) § 609 (year).

Ohio Ethics Commission Advisory Opinions

Opinions of the Ethics Commission should be cited by year and opinion number in the following form:

1976 O.E.C. No. 76-008 or Ohio Ethics Comm'n, Advisory Op. No. 76-008

Special Legislation

Citations to special (uncodified) legislation enacted prior to January 4, 1971, should be cited by name, year of session, page number, and year of enactment in the following manner:

An Act to establish the Bucyrus, Oceola, and Upper Sandusky Free Turnpike Road, 1845 Ohio Laws 128 (1845)

Citations to such legislation enacted after January 3, 1971, should be cited by name, year of session, page number, and year of enactment as follows:

Am. S. B. No. 96, 1979 Ohio Legis. Bull 5-142 (1979)

Federal and Ohio Constitution

Cite in the following form:

U.S. Const. Art. III, Section 2

Ohio Const. Art. II, Section 20

Municipal Ordinances

In citing municipal ordinances, give the name of the municipality first, followed by the name of the code, section, or subdivision, and the year of publication:

Hilltown, Codified Ordinances, Section 133.05 (1977) Uncodified ordinances should be cited by name of municipality, number or name of the ordinance, and the exact date of adoption:

Middleville, Ordinance to Regulate the Conduct of Scarlet Women (1883)

APPENDIX B

PUBLIC OFFICERS' BONDS

This Appendix to Ohio Compliance Supplement Chapter 7 lists public officers' bonding requirements for county, city, township, school, and library officials. (Chapter 7 lists the bonding requirements for certain other public officials.)

Please keep the following in mind:

- 1 Bond required by ordinance: The Appendix lists only those municipal officers who are required by statute to give a bond. Other municipal officers may be required to give bond by ordinance passed by the municipal corporation's legislative authority. Ohio Rev. Code §§733.69 through 733.71, provide guidance on this matter. All municipal officers who must give bond by ordinance must do so before entering upon the duties of office, unless the code provides otherwise. Such bonds are prepared by the law director (or village solicitor) and are filed with the municipal auditor (or clerk). The legislative authority determines the amount of the bond, with the mayor's approval. (The mayor's bond is approved by the legislative authority.) All such official bonds are conditional upon the faithful performance of the duties of office.
- 2 Bonds of certain county employees: In addition to the bond requirements for county officers listed in the Appendix, Ohio Rev. Code Section 325.17 authorizes certain county officers (auditor, treasurer, probate judge, sheriff, clerk of courts, engineer and recorder) to appoint and employ the necessary assistants, clerks and deputies to manage the business of the office. Each officer may, at his discretion, require these employees to give bond to the state. The amount is fixed by the officer, the surety is approved by him, and the bond is conditioned for the faithful performance of the employee's official duties. All such bonds are filed with the county treasurer.

Some individuals who must give bond may be covered under a blanket bond. Others must obtain a bond in the individual's name only. Where it is provided by statute that an officer shall file a bond before entering upon the discharge of the duties of the office, that bond must be an individual official bond. If the requirement is not included in the statute, then an umbrella or blanket bond will satisfy the bonding requirement. 1965 Op. Atty. Gen. No. 65-087.

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COUNTY BUILDING COMMISSIONER

STATUTORY REFERENCES: Ohio Rev. Code Sections 153.24 and 153.21

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: In the same amount as required of members of the Board of County Commissioners.

GIVEN WITH/SIGNED BY: A surety or bonding company authorized to do business in this State and approved by the judge of Court of Common Pleas.

CONDITIONED UPON: The faithful and honest discharge of the duties of office.

FILED/DEPOSITED WITH: County Treasurer.

BOND PAID BY: County

APPROVED BY: Judge of the Court of Common Pleas.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the discharge of the duties of office.

COMMENTS: A county building commission is neither mandatory nor permanent, but exists only when created pursuant to Ohio Rev. Code Section 153.21.

COUNTY COMMISSIONER

STATUTORY REFERENCE: Ohio Rev. Code Section 305.04.

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: Not less than \$5,000.

GIVEN WITH/SIGNED BY: A bonding or surety company authorized to do business in this State, or two or more freeholders having real estate in the value of double the amount of the bond (over and above all encumbrances). If a bond/surety company is used, it must be approved by the probate judge of the county.

CONDITIONED UPON: Faithful discharge of the official duties of the office, and for the payment of any loss or damage that the county may sustain by reason of the bonded official's failure in performing his duties.

FILED/DEPOSITED WITH County Treasurer.

BOND PAID BY: Board of County Commissioners, charged to the general fund of the county.

APPROVED BY: Probate judge of the county.

TERM OF BOND Tenure of office.

WHEN GIVEN: Before entering upon the discharge of official duties.

PROSECUTING ATTORNEY

STATUTORY REFERENCES: Ohio Rev. Code Section 309.03, 309.11 (official bond); Ohio Rev. Code Section 325.12(D) (FOJ Bond).

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND Not less than \$1,000 in amount fixed by the Court of Common Pleas or the Probate Court (official bond); Not less than official salary, to be fixed by the Court of Common Pleas or Probate Court (FOJ bond).

GIVEN WITH/SIGNED BY: Official bond: a bonding or surety company authorized to do business in this State, or two or more freeholders having real estate in the value of double the amount of the bond (over and above all encumbrance). If a bonding/surety company is used, it must be approved by the Court of Common Pleas or the Probate Court. FOJ bond: a surety approved either by the Court of Common Pleas or Probate Court.

CONDITIONED UPON: Faithful discharge of the official duties, and to pay over all monies received by him in his official capacity.

FILED/DEPOSITED WITH: County Treasurer.

BOND PAID BY: Official bond: Board of County Commissioners, charged to the Faithful discharge of the official duties, and to pay over all general fund of the County.

APPROVED BY The Court of Common Pleas or the Probate Court.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the discharge of official duties (official bond); before payment of FOJ monies (FOJ bond).

COMMENTS: The Prosecuting Attorney prepares, in legal form, the bonds of all other county officers. Ohio Rev. Code Section 309.11. He must insure that all bonds are accepted, signed, indorsed and deposited with the proper officer. No bond shall be accepted or approved for any county officer until the prosecuting attorney has inspected it and certified it to be sufficient.

COUNTY SHERIFF

STATUTORY REFERENCES: Ohio Rev. Code Section 311.02 (official bond); Ohio Rev. Code Section 325.071 (FOJ bond).

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: Not less than \$5,000 nor more than \$50,000, in an amount to be fixed by the Board of County Commissioners (official bond); not less than official salary, to be fixed by the Court of Common Pleas or Probate Court (FOJ bond).

GIVEN WITH/SIGNED BY: Official bond: a bonding or surety company authorized to do business in this State, or two or more freeholders having real estate in the value of double the amount of the bond (over and above all encumbrances). If a bonding/surety company is used, it must be approved by the Board of County Commissioners. FOJ bond: a surety approved either by the Court of Common Pleas or the Probate Court.

CONDITIONED UPON: Faithful performance of all duties (official bond); Faithful discharge of all official duties and to pay over all monies received by him in his official capacity (FOJ bond)

FILED/DEPOSITED WITH: County Auditor (official bond); County Treasurer (FOJ bond).

BOND PAID BY: Board of County Commissioners, charged to the general fund of the County.

APPROVED BY: Board of County Commissioners (official bond), the Court of Common Pleas or the Probate Court (FOJ bond).

TERM OF BOND: Tenure of office.

WHEN GIVEN: Within 10 days after receiving his commission and before the first Monday of January next after his election (official bond); before payment of FOJ monies (FOJ bond).

COMMENTS: The Board of County Commissioners may require the Sheriff, at any time during his term of office, to give additional sureties on his official bond, or to give a new bond.

No judge or clerk of any court or attorney at law shall be a surety (act as a guarantor) on a sheriff's bond.

If a sheriff fails to give timely bond, or fails to give additional sureties on such bond (or a new bond) within 10 days after he has received notice that the Board so requires, the Board shall declare the office of such sheriff vacant.

COUNTY CORONER

STATUTORY REFERENCE: Ohio Rev. Code Section 313.03.

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: Not less than \$5,000 nor more than \$50,000 in an amount to be fixed by the Board of County Commissioners.

GIVEN WITH/SIGNED BY: A bonding or surety company authorized to do business in this State, or two or more freeholders having real estate in the value of double the amount of the bond (over and above all encumbrances). If a bonding/surety company is used, it must be approved by the Board of County Commissioners.

CONDITIONED UPON: Faithful performance of the official duties of office.

FILED/DEPOSITED WITH: County Auditor.

BOND PAID BY: Board of County Commissioners, charged to the general fund of the County.

APPROVED BY: Board of County Commissioners.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the duties of office.

COMMENTS: The Board of County Commissioners may require the coroner, at any time during his term of office, to give additional sureties on his bond, or to give a new bond.

No judge or clerk of any court or attorney at law shall be a surety (act as a guarantor) on a coroner's bond.

If a coroner fails to give timely bond, or fails to give additional sureties on such bond (or a new bond) within 10 days after he has received notice that the board so requires, the board shall declare the office of such coroner vacant.

COUNTY ENGINEER

STATUTORY REFERENCE: Ohio Rev. Code Section 315.03.

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: Not less than \$2,000 nor more than \$10,000, in an amount to be fixed by the Board of County Commissioners.

GIVEN WITH/SIGNED BY: A bonding or surety company authorized to do business in this State, or two or more freeholders having real estate in the value of double the amount of the bond (over and above all encumbrances). If a bonding/surety company is used, it must be approved by the Board of County Commissioners.

CONDITIONED UPON: Faithful performance of the official duties of office.

FILED/DEPOSITED WITH: County Treasurer.

BOND PAID BY: Board of County Commissioners, charged to the general fund of the County.

APPROVED BY: Board of County Commissioners.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the duties of office.

COUNTY RECORDER

STATUTORY REFERENCE: Ohio Rev. Code Section 317.02.

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: Not less than \$10,000, in an amount to be fixed by the Board of County Commissioners.

GIVEN WITH/SIGNED BY: A bonding or surety company authorized to do business in this State, or two or more freeholders having real estate in the value of double the amount of the bond (over and above all encumbrances). If a bonding/surety company is used, it must be approved by the Board of County Commissioners.

CONDITIONED UPON: Faithful discharge of the official duties of office.

FILED/DEPOSITED WITH: County Treasurer.

BOND PAID BY: Board of County Commissioners, charged to the general fund of the County.

APPROVED BY: Board of County Commissioners.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the duties of office.

COUNTY AUDITOR

STATUTORY REFERENCE: Ohio Rev. Code Section 319.02.

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: Not less than \$5,000 nor more than \$20,000, in an amount to be fixed by the Board of County Commissioners.

GIVEN WITH/SIGNED BY: A bonding or surety company authorized to do business in this State, or two or more freeholders having real estate in the value of double the amount of the bond (over and above all encumbrances). If a bonding/surety company is used, it must be approved by the Board of County Commissioners.

CONDITIONED UPON: Faithful discharge of the official duties of office.

FILED/DEPOSITED WITH: County Treasurer.

BOND PAID BY: Board of County Commissioners, charged to the general fund of the County.

APPROVED BY: Board of County Commissioners.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon of the duties of office.

COMMENTS: If an auditor-elect fails to give bond on or before the day on which he is required to take possession of his office, such office shall become vacant.

COUNTY TREASURER

STATUTORY REFERENCE: Ohio Rev. Code Section 321.02.

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: Given in such sum as the Board of County Commissioners shall direct.

GIVEN WITH/SIGNED BY: With a bonding or surety company authorized to do business in this State. The bonding/surety company must be approved by the Board of County Commissioners.

CONDITIONED UPON: Payment of all monies which come into his hands for state, county, township and other purposes.

FILED/DEPOSITED WITH: County Auditor.

BOND PAID BY: Board of County Commissioners, charged to the general fund of the County.

APPROVED BY: Board of County Commissioners.

TERM OF BOND: Term of office.

WHEN GIVEN: On or before the day of the commencement of the official term of office and before entering upon the discharge of the duties of office.

COMMENTS: When, in the opinion of a majority of the members of the Board of County Commissioners, the sureties have become insufficient, such Board may require the Treasurer to give additional sureties on his previously accepted bond. When in its opinion more money has passed or is about to pass the hands of the Treasurer than is or would be covered by his bond, the Board may demand and receive from such Treasurer an additional bond, payable and conditioned as required for the original bond, with such sureties and in such sum as it directs. If a Treasurer fails or refuses to give such additional sureties or bond for 10 days from the day on which the Board so requires, his office shall be vacant and another treasurer appointed as in other cases of vacancy.

A Treasurer's bond must be entered in full on the record of proceedings of the Board of County Commissioners on the day when accepted or approved by it.

If a person elected to the office of Treasurer fails to give bond, as required, on or before the day of the commencement of his official term, the office shall become vacant.

DIRECTOR OF COUNTY
DEPARTMENT OF JOB AND FAMILY SERVICES

STATUTORY REFERENCE: Ohio Rev. Code Section 329.01.

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: In such sum as fixed by the Board of County Commissioners.

GIVEN WITH/SIGNED BY: A bonding or surety company authorized to do business in this State and approved by the Board of County Commissioners.

CONDITIONED UPON: Faithful performance of the duties of office.

FILED/DEPOSITED WITH: County Treasurer.

BOND PAID BY: From the appropriation for administrative expenses of the County Department of Welfare.

APPROVED BY: Board of County Commissioners.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the discharge of the duties of office.

COMMENTS: The director may require any assistant or employee under his jurisdiction to give bond. Requirements for all such bonds are the same as above.

COUNTY DOG WARDEN & HIS DEPUTIES

STATUTORY REFERENCES: Ohio Rev. Code Sections 955.12, 3929.14, and 3929.17.

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: Not less than \$500, and not more than \$2,000, as set by the Board of County Commissioners.

GIVEN WITH/SIGNED BY: A surety or bonding company authorized to do business in this State. (3929.14)

CONDITIONED UPON: Faithful performance of the duties of office.

FILED/DEPOSITED WITH: County Auditor.

BOND PAID BY: Board of County Commissioners from County funds. (3929.17)

APPROVED BY: Board of County Commissioners.

TERM OF BOND: Tenure of office.

WHEN GIVEN: No statutory direction.

COMMENTS: The bond or bonds given under this statute may, in the discretion of the Board of County Commissioners, be individual or blanket bonds.

COUNTY PARK COMMISSIONER

STATUTORY REFERENCES: Ohio Rev. Code Sections 1545.05, 1545.13, 3929.14 and 3929.17.

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: \$5,000.

GIVEN WITH/SIGNED BY: A surety or bonding company authorized to do business in this State. (3929.14)

CONDITIONED UPON: The faithful performance of the duties of office.

FILED/DEPOSITED WITH: County Auditor.

BOND PAID BY: The County. (3929.17)

APPROVED BY: County Auditor.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the performance of the duties of office.

COMMENTS: The board of park commissioners may hire employees to act as rangers and patrollers. Such employees, having the powers of police officers within and adjacent to the lands under the jurisdiction and control of the board, must give bond to the state in such sum as the board prescribes, "before exercising such powers." Ohio Rev. Code Section 1545.13.

CLERK OF COUNTY COURT

STATUTORY REFERENCES:	Ohio Rev. Code Sections 1907.20(A), 1907.20(E)(1), 1907.20(F)(1), 1907.20(F)(2), 3929.14 and 3929.17.
BOND GIVEN TO:	State of Ohio.
AMOUNT OF BOND:	Not less than \$5,000, in an amount to be fixed by the Board of County Commissioners.
GIVEN WITH/SIGNED	BY: A surety or bonding company authorized to do business in this State. (3929.14)
CONDITIONED UPON:	Faithful performance of the duties of office.
BOND PAID BY:	Board of County Commissioners. (See Ohio Rev. Code Section 3929.17).
APPROVED BY:	We recommend the approval of the Board of County Commissioners. (See Ohio Rev. Code Section 3929.17).
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the duties of office.
COMMENTS:	The Clerk of Courts (i.e., the Clerk of the Court of Common Pleas) shall also serve as the Clerk of County Courts, except that the Board of County Commissioners may, with the concurrence of the County Court Judge, appoint a clerk for each such County Court Judge. Such appointed clerks serve at the pleasure of the Board of County Commissioners. Where the Clerk of Courts also serves as the Clerk of the County Court, <u>no additional bond is required</u> (i.e., the bond given pursuant to Section 2303.02 is deemed sufficient). The above requirements pertain only to <u>appointed</u> clerks.

In county court districts having appointed clerks, deputy clerks may be appointed by the Board of County Commissioners. The clerk may require any deputy clerk to give bond of not less than \$3,000. See Ohio Rev. Code §1907.20(E)(1). In county court districts having appointed clerks, the Board of County Commissioners may order the establishment of one or more branch offices of the clerk and may, with the concurrence of the County Court Judge, appoint a special deputy clerk to administer each branch office. The board may require any such special deputy clerk to give bond of not less than \$3,000. See Ohio Rev. Code §1907.20(F)(1).

A Clerk of Courts acting as Clerk of County Court may establish one or more branch offices for his duties as such Clerk and may, with the concurrence of the County Court Judge, appoint a special deputy clerk to administer each branch office. The Clerk may require any such special deputy clerk to give bond of not less than \$3,000. See Ohio Rev. Code §1907.20(F)(2).

Revised: SB 124, 129th GA
Effective: 1/13/12

PROBATE JUDGE

STATUTORY REFERENCES:	Ohio Rev. Code Sections 2101.03, 2101.06, 2101.11(A)(1), 2101.11(C), 3929.14 and 3929.17
BOND GIVEN TO:	State of Ohio.
AMOUNT OF BOND:	Not less than \$5,000.
GIVEN WITH/SIGNED BY:	The statute states only that bond shall be given with "sufficient surety." Therefore, it would appear that Section 3929.14 would control, i.e., a bonding or surety company authorized to do business in this State.
CONDITIONED UPON:	That the Probate Judge faithfully pay over all monies received by him in his official capacity; that he enter and record the orders, judgments and processing of the court; and, that he faithfully and impartially perform all the duties of his office.
FILED/DEPOSITED WITH:	County Treasurer.
BOND PAID BY:	Board of County Commissioners. See Ohio Rev. Code §3929.17.
APPROVED BY:	Board of County Commissioners. (In the absence from the county of two or more of the members of the board, the bond shall be approved by the County Auditor and County Recorder.)
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the discharge of the duties of office.
COMMENTS:	<p>As the state of business in the office of the Probate Judge renders it necessary, the Board of County Commissioners may require additional bond.</p> <p>The Probate Judge, upon motion of a party or his own motion, may appoint a <u>special master commissioner</u> in any matter pending before such judge. The judge may require any such commissioner to execute a bond to the state in such sum as the court directs, with surety approved by the Court, and bond filed in the Court. See Ohio Rev. Code Section 2101.06.</p> <p>Probate Judges are authorized by statute to appoint <u>deputy clerks, stenographers, a bailiff</u> and any other <u>necessary employees</u>. [2101.11(A)(1)] The judge may require any employee/appointee to give bond of not less than \$1,000. See Ohio Rev. Code Section 2101.11(C). The sureties shall be approved in the same manner as those of the judge. See Ohio Rev. Code Section 2101.03.</p>

CLERK OF JUVENILE COURT

(NOTE: Whenever the Courts of Common Pleas, Division of Domestic Relations, exercise the powers and jurisdiction conferred in Ohio Rev. Code Sections 2151.01, to 2151.54, or whenever the Juvenile Judge, or a majority of the juvenile judges of a multi-judge juvenile division, of a Court of Common Pleas, Juvenile Division and the Clerk of the Court of Common Pleas agree in an agreement that is signed by the Judge and the Clerk of Courts of Common Pleas shall keep the records of such costs. In all other cases, the Juvenile Judge shall be the Clerk of his own Court. The following requirements pertain only to counties where the judge acts as his own clerk.)

STATUTORY REFERENCES:	Ohio Rev. Code Sections 2151.12, 2151.13, 3929.17, 2153.08 and 2153.10
BOND GIVEN TO:	State of Ohio, the county, or any person who may suffer loss by reason of a default in any of the conditions of the bond.
AMOUNT OF BOND:	A sum to be determined by the Board of County Commissioners.
GIVEN WITH/SIGNED BY:	A bonding or surety company licensed to do business in this State, and approved by the Board of County Commissioners.
CONDITIONED UPON:	The faithful performance of the duties of office as clerk.
FILED/DEPOSITED WITH:	County Treasurer.
BOND PAID BY:	Board of County Commissioners. See ORC Section 3929.17.
APPROVED BY:	Board of County Commissioners.
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the duties of office as clerk.
COMMENTS:	The juvenile judge may appoint such bailiffs, probation officers, and other employees as are necessary for the Court's business. Such employees serve during the pleasure of the judge. The judge may require any employee to give bond in the sum of not less than \$1,000, conditioned for the honest and faithful performances of these duties. The sureties on such bonds shall be approved in the same manner as above. See Ohio Rev. Code Section 2151.13.

CLERK OF JUVENILE COURT (Continued)

CUYAHOGA COUNTY:

In Cuyahoga County, the administrative juvenile judge shall serve as the clerk of his own court. Each such judge shall execute and file with the County Treasurer of Cuyahoga County a bond in the sum of not less than \$5,000, to be determined by the Board of County Commissioners of Cuyahoga County, with sufficient surety, to be approved by the Board, conditioned for the faithful performance of such duties as clerk. The bond is given for the benefit of Cuyahoga County, the State, and any person who may suffer loss by reason of a default in any of the conditions of said bond. In addition, the administrative judge may appoint and employ such deputies, clerks, stenographers and other assistants as are reasonably necessary in connection with the work of the court. He may require any such employee/appointee to give bond in the sum of not less than \$1,000, conditioned for the faithful performance of his duties. The approval of the sureties, the terms, the filing and the beneficiaries of such bonds are the same as those of the administrative judge acting as clerk. See Ohio Rev. Code Sections 2153.08 and 2153.10.

COUNTY JUVENILE REHABILITATION FACILITY
SUPERINTENDENT

STATUTORY REFERENCES: Ohio Rev. Code Sections 2151.70, 3929.14 and 3929.17

BOND GIVEN TO: Juvenile Court Judge or the Board.

AMOUNT OF BOND: To be fixed by the Juvenile Court Judge or the Board.

GIVEN WITH/SIGNED BY: “Sufficient surety” to the Judge or Board. (i.e. A surety or bonding company authorized to transact business in this State.) (3929.14)

CONDITIONED UPON: The full and faithful accounting of all funds and properties coming into the superintendent's hands.

FILED/DEPOSITED WITH: Juvenile Court Judge./ Board of Trustees

BOND PAID BY: County. See ORC Section 3929.17.

APPROVED BY: Juvenile Court Judge.

TERM OF BOND: Tenure of Office.

WHEN GIVEN: Before entering upon the duties of office.

BAILIFF OF COURT OF COMMON PLEAS

STATUTORY REFERENCES: Ohio Rev. Code Sections 2301.16, 2301.12(C), 3929.14 and 3929.17.

BOND GIVEN TO: County Sheriff.

AMOUNT OF BOND: \$5,000.

GIVEN WITH/SIGNED BY: “Good and sufficient sureties” (i.e. A bonding or surety company authorized to do business in this State.) (3929.14)

CONDITIONS UPON: Faithful discharge of the duties of office.

FILED/DEPOSITED WITH: County Sheriff.

BOND PAID BY: County. See ORC Section 3929.17.

APPROVED BY: County Sheriff. See ORC Section 3929.17.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the discharge of duties of office.

COMMENTS: In counties where there are 4 or more judges in the Court of Common Pleas, the judges appoint a chief court constable instead of a bailiff. The constable must meet the same bond requirements as a bailiff. See Ohio Rev. Code Section 2301.12(C).

CLERK OF THE COURT OF COMMON PLEAS

STATUTORY REFERENCE: Ohio Rev. Code Section 2303.02.

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: Not less than \$10,000 nor more than \$40,000, to be fixed by the Board of County Commissioners.

GIVEN WITH/SIGNED BY: A bonding or surety company authorized to do business in this State, or by two or more freeholders having real estate in the value of double the amount of the bond (over and above all encumbrances). If a surety company is used, it must be approved by the Board of County Commissioners.

CONDITIONED UPON: That the clerk will enter and record all the orders, decrees, judgments and proceedings of the courts of which he is clerk; that he will pay over all monies received by him in his official capacity; and, that he will faithfully and impartially discharge the duties of his office.

FILED/DEPOSITED WITH: County Treasurer.

BOND PAID BY: Board of County Commissioners, charged to the general fund of the County.

APPROVED BY: Board of County Commissioners.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the discharge of the duties of office.

EXECUTIVE DIRECTOR OF COUNTY CHILDREN SERVICES

STATUTORY REFERENCES:	Ohio Rev. Code Section 5153.13, 5153.10, 3929.14 and 3929.17
BOND GIVEN TO:	County.
AMOUNT OF BOND:	In such sum as is fixed by Public Children Services Agency
GIVEN WITH/SIGNED BY:	"Sufficient surety" (i.e., a surety or bonding company authorized to transact business in this State). (3929.14)
CONDITIONED UPON:	Faithful performance of the duties of office and the full and faithful accounting of all funds and properties coming into the Director's hands.
FILED/DEPOSITED WITH:	No statutory direction.
BOND PAID BY:	County/Public Children's Services Agency. See ORC Section 3929.17.
APPROVED BY:	County/Public Children's Services Agency. See ORC Section 3929.17.
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the duties of office.
COMMENTS:	Each public children services agency shall designate an executive officer. The superintendent of the children's home, the county director of human services, or other individual may serve as Executive Director. See Ohio Rev. Code Section 5153.10.

In addition to the above bond to the county, the executive director must also give bond to the probate court. This bond must be given before entering upon the duties of office, with sufficient surety, conditioned upon the full and faithful accounting of all trust funds which the director holds on behalf of wards. The amount of this bond is determined by the court and may be modified by the court, provided that the minimum amount of the bond is \$5,000.

The agency may also require any employee thereof having custody or control of funds or property to give bond to the county in an amount that the board determines. The cost of such bonds is paid by the agency. In this context, "employee" would include the superintendent of the children's home.

SUPERINTENDENT/ADMINISTRATOR OF COUNTY HOME

STATUTORY REFERENCES: Ohio Rev. Code Sections 5155.04 and 3929.17

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: As the Board of County Commissioner requires.

GIVEN WITH/SIGNED BY: A surety acceptable to the Board of County Commissioners.

CONDITIONED UPON: Faithful discharge of the duties of office.

FILED/DEPOSITED WITH: County Treasurer.

BOND PAID BY: County. See ORC 3929.17.

APPROVED BY: Board of County Commissioners.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the duties of office.

COUNTY BRIDGE COMMISSIONERS

STATUTORY REFERENCES: Ohio Rev. Code Sections 5593.05, 3929.14 and 3929.17

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: \$5,000.

GIVEN WITH/SIGNED BY: A surety or bonding company authorized to transact business (3929.14) in this State.

CONDITIONED UPON: "According to Law."

FILED/DEPOSITED WITH: "(In the same manner) as other bonds required of county or city officials."

BOND PAID BY: County. See ORC Section 3929.17.

APPROVED BY: Board of County Commissioners.

TERM OF BOND: Tenure of office.

WHEN GIVEN: No statutory direction

TREASURER OF MUNICIPAL CORPORATION

STATUTORY REFERENCES: Ohio Rev. Code Sections 705.27, 733.69, 733.70, and 3929.14.

BOND GIVEN TO: Municipal Corporation. (705.27)

AMOUNT OF BOND: In such sums as the legislative authority of the Municipal Corporation fixed by ordinance or resolution. (705.27)

GIVEN WITH/SIGNED BY: A bonding or surety company authorized to do business in this State. (3929.14)

CONDITIONED UPON: Faithful performance of the duties of office. (705.27)

FILED/DEPOSITED WITH: Auditor (or Clerk) of the Municipal Corporation. (733.69)

BOND PAID BY: Municipal Corporation. (705.27)

APPROVED BY: Mayor. (733.70)

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the duties of office. (733.69)

COMMENTS: This Section (733.69) applies to all forms of municipal government, regardless of which "plan" the Municipal Corporation is organized under. (Therefore, the above requirements apply equally to the Commission Plan, the City Manager and the Federal Plan).

Ohio Rev. Code Section 705.27 also requires that bond be posted by all officers and employees of a Municipal Corporation who are directed to do so by the legislative authority. Bond requirements would be the same as those listed above.

AUDITOR (OR CLERK) OF MUNICIPAL CORPORATION

STATUTORY REFERENCES:	Ohio Rev. Code Sections 705.27, 733.69, 733.70 and 3929.14.
BOND GIVEN TO:	Municipal Corporation. (705.27)
AMOUNT OF BOND:	In such sums as the legislative authority of the Municipal Corporation Fixed by ordinance or resolution. (705.27)
GIVEN WITH/SIGNED BY:	A bonding or surety company authorized to do business in this State. (3929.14)
CONDITIONED UPON:	Faithful performance of the duties of office. (705.27)
FILED/DEPOSITED WITH:	Treasurer of the Municipal Corporation. (733.69)
BOND PAID BY:	Municipal Corporation. (705.27)
APPROVED BY:	Mayor. (733.70)
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the duties of office. (733.69)
COMMENTS:	<p>This section (733.69) applies to all forms of municipal government, regardless of which "plan" the Municipal Corporation is organized under. (Therefore, the above requirements apply equally to the Commission Plan, the City Manager Plan and the Federal Plan).</p> <p>Ohio Rev. Code Section 705.27 also requires that bond be posted by all officers and employees of a Municipal Corporation who are directed to do so by the legislative authority. Bond requirements would be the same as those listed above.</p>

CITY MANAGER

STATUTORY REFERENCES:	Ohio Rev. Code Sections 705.60, 733.69, 705.27, and 3929.14.
BOND GIVEN TO:	Municipal Corporation.
AMOUNT OF BOND:	In such sums as fixed by the council.
GIVEN WITH/SIGNED BY:	A surety or bonding company authorized to do business in this State. (3929.14)
CONDITIONED UPON:	The faithful performance of the duties of office
FILED/DEPOSITED WITH:	Auditor (or Clerk) of Municipal Corporation. (733.69)
BOND PAID BY:	Municipal Corporation. (705.27)
APPROVED BY:	The council of Municipal Corporation. (705.27)
TERM OF BOND:.	Tenure of office
WHEN GIVEN:	Before entering upon the duties of office.

SEALER OF WEIGHTS AND MEASURES

STATUTORY REFERENCES: Ohio Rev. Code Sections 733.65, 733.69, and 705.27.

BOND GIVEN TO: Municipal Corporation.

AMOUNT OF BOND: To be fixed by the legislative authority of the municipal corporation by ordinance.

GIVEN WITH/SIGNED BY: A surety or bonding company authorized to transact business in this state and approved by the mayor of the municipal corporation.

CONDITIONED UPON: The faithful performance of the duties of office.

FILED/DEPOSITED WITH: Auditor (or clerk) of the municipal corporation. (733.69)

BOND PAID BY: Municipal Corporation. (705.27)

APPROVED BY: Mayor of the municipal corporation.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the duties of office.

PUBLIC UTILITY BOARD MEMBER

STATUTORY REFERENCES:	Ohio Rev. Code Sections 735.03, 705.27, 733.69, 733.70, and 3929.14.
BOND GIVEN TO:	Municipal Corporation. (705.27)
AMOUNT OF BOND:	To be fixed by the legislative authority of the Municipal Corporation.
GIVEN WITH/SIGNED By:	A surety or bonding company authorized to transact business in this State. (3929.14)
CONDITIONED UPON:	Faithful performance of the duties of office. (705.27)
FILED/DEPOSITED WITH:	Auditor (or clerk) of the municipal corporation. (733.69)
BOND PAID BY:	Municipal Corporation.
APPROVED BY:	Mayor of the Municipal Corporation. (733.70)
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the duties of office. (733.69)
COMMENTS:	Bond for public utilities board members is not mandatory, but left to the discretion of the legislative authority of the municipal corporation.

TRUSTEES OF MUNICIPAL SINKING FUND

STATUTORY REFERENCES: Ohio Rev. Code Sections 739.02, 705.27, 733.69, and 733.70
BOND GIVEN TO: Municipal Corporation. (705.27)

AMOUNT OF BOND: To be fixed by the legislative authority of the Municipal Corporation. (705.27)

GIVEN WITH/SIGNED BY: A surety or bonding company authorized to transact business in this State.

CONDITIONED UPON: Faithful performance of the duties of office. (705.27)

FILED/DEPOSITED WITH: Auditor (or Clerk) of the municipal corporation. (733.69)

BOND PAID BY: Funds under the control of the Board of Trustees of the sinking fund.

APPROVED BY: Mayor of the Municipal Corporation. (733.70)

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the duties of office. (733.69)

COMMENTS: Bond left to discretion of legislative authority of the Municipal Corporation

RAPID TRANSIT COMMISSIONERS

STATUTORY REFERENCES:	Ohio Rev. Code Sections 747.01, 705.27, 733.69, 733.70, and 3929.14
BOND GIVEN TO:	Municipal Corporation. (705.27)
AMOUNT OF BOND:	To be fixed by the legislative authority of the Municipal Corporation.
GIVEN WITH/SIGNED BY:	A surety or bonding company authorized to transact business in this State. (3929.14)
CONDITIONED UPON:	Faithful performance of the duties of office. (705.27)
FILED/DEPOSITED WITH:	Auditor (or Clerk) of the Municipal Corporation. (733.69)
BOND PAID BY:	Municipal Corporation.
APPROVED BY:	Mayor of the Municipal Corporation. (733.70)
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the duties of office. (733.69)

TRUSTEES OF MUNICIPAL HOSPITAL

STATUTORY REFERENCES:	Ohio Rev. Code Sections 749.22, 705.27, 733.69, and 3929.14.
BOND GIVEN TO:	Municipal Corporation. (705.27)
AMOUNT OF BOND:	\$2,500.
GIVEN WITH/SIGNED BY:	A surety or bonding company authorized to transact business in this State. (3929.14)
CONDITIONED UPON:	Faithful performance of the duties of office. (705.27)
FILED/DEPOSITED WITH:	Auditor (or Clerk) of the Municipal Corporation. (733.69)
BOND PAID BY:	Municipal Corporation. (705.27)
APPROVED BY:	The mayor and the legislative authority of the Municipal Corporation.
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the discharge of the duties of office.

TRUSTEES OF MUNICIPAL PARK

STATUTORY REFERENCES:	Ohio Rev. Code Sections 755.23, 705.27, 733.69, and 3929.14.
BOND GIVEN TO:	Municipal Corporation. (705.27)
AMOUNT OF BOND:	\$2,500.
GIVEN WITH/SIGNED BY:	A surety or bonding company authorized to transact business in this State. (3929.14)
CONDITIONED UPON:	Faithful performance of the duties of office. (705.27)
FILED/DEPOSITED WITH:	Auditor (or Clerk) of the Municipal Corporation. (733.69)
BOND PAID BY:	Municipal Corporation. (705.27)
APPROVED BY:	The Mayor and the legislative authority of the Municipal Corporation.
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the discharge of the duties of office.

CLERK OF MUNICIPAL COURT

STATUTORY REFERENCES:	Ohio Rev. Code. Sections 1901.31(D), 1901.31(A)(1)(b), 1901.31(H), 1901.311, 733.69, 3929.14 and 705.27.
BOND GIVEN TO:	Municipal Court. (705.27)
AMOUNT OF BOND:	Not less than \$6,000 in an amount to be determined by the judges of the Court.
GIVEN WITH/SIGNED BY:	A bonding or surety company authorized to do business in this State. (3929.14)
CONDITIONED UPON:	Faithful performance of the duties as clerk.
FILED/DEPOSITED WITH:	Auditor (or Clerk) of the Municipal Corporation. (733.69)
BOND PAID BY:	Municipal Corporation. (705.27)
APPROVED BY:	The judges of the Municipal Court.
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the discharge of the duties of office.
COMMENTS:	<p><u>Special deputy clerk:</u> A municipal court may establish one or more branch offices or may appoint a special deputy clerk to administer each branch office. The municipal court may require any such special deputy clerk to give bond of not less than \$3,000, conditioned for the faithful performance of the duties of office. See Ohio Rev. Code Section 1901.311. <u>Deputy Clerk:</u> <u>Deputy Clerks</u> may be appointed by the clerk, who may require any such deputy to give bond or not less than \$3,000, conditioned for the faithful performance of his duties. See Ohio Rev. Code. Section 1901.31(H)</p>

In certain counties (e.g., Hamilton County) the clerk of courts of the county is required, by statute, to also serve as clerk of the municipal court. See Ohio Rev. Code Section 1901.31(A)(1)(b).

BAILIFF OF MUNICIPAL COURT

STATUTORY REFERENCES:	Ohio Rev. Code Sections 1901.32(A)(1), 1901.32(A)(2), 705.27, 733.69, 733.70, and 3929.14.
BOND GIVEN TO:	Municipal Court. (705.27)
AMOUNT OF BOND:	Not less than \$3,000, in an amount to be fixed by the legislative authority.
GIVEN WITH/SIGNED BY:	A surety or bonding company authorized to do business in this State. (3929.14)
CONDITIONED UPON:	Faithful performance of the duties of office.
FILED/DEPOSITED WITH:	Auditor (or Clerk) of the Municipal Corporation. (733.69)
BOND PAID BY:	Municipal Corporation. (705.27)
APPROVED BY:	Mayor of the Municipal Court. (733.70)
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the discharge of the duties of office.
COMMENTS:	The Court has the power to appoint any number of deputy bailiffs. Each deputy bailiff must give a bond in an amount of not less than \$1,000. See Ohio Rev. Code Section 1901.32(A)(2).

CITY BRIDGE COMMISSIONERS

STATUTORY REFERENCES: Ohio Rev. Code Sections 5593.05, 705.27, 733.69, and 3929.14.

BOND GIVEN TO: Municipal Corporation. (705.27)

AMOUNT OF BOND: \$5,000.

GIVEN WITH/SIGNED BY: A bonding or surety company authorized to transact business in this State. (3929.14)

CONDITIONED UPON: "According to law".

FILED/DEPOSITED WITH: Auditor (or Clerk) of the Municipal Corporation. (733.69)

BOND PAID BY: Municipal Corporation. (705.27)

APPROVED BY: The Board or legislative authority of the municipal corporation.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the duties of office. (733.69)

TOWNSHIP TRUSTEES

STATUTORY REFERENCES: Ohio Rev. Code Sections 505.02, 3929.17, 507.04(A), and 505.03.

BOND GIVEN TO: State of Ohio, for the use of the township.

AMOUNT OF BOND: \$1,000.

GIVEN WITH/SIGNED BY: At least 2 sureties, who shall be residents of the same township with the trustee or a corporate surety authorized to do business in this State.

CONDITIONED UPON: Faithful performance of the duties of office.

FILED/DEPOSITED WITH: Township fiscal officer. See Ohio Rev. Code Section 507.04(A), which requires the fiscal officer to record the acceptance of all bonds.

BOND PAID BY: Township. See ORC Section 3929.17.

APPROVED BY: A judge of the county court or judge of a municipal court having jurisdiction in the township.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the discharge of the duties of office.

COMMENTS: Whenever he claims it necessary, and on application of a least 12 free-holders of the township, the judge of the county court or municipal judge having jurisdiction in the township who approves the bond may require additional security or the execution of a new bond. If a trustee fails, for 10 days, to give additional security or execution of a new bond after service of such notice in writing, the office shall be declared vacant. See Ohio Rev. Code §505.03.

TOWNSHIP FISCAL OFFICER

STATUTORY REFERENCES: Ohio Rev. Code Sections 507.03, 3929.17, 507.02, 507.021(C).

BOND GIVEN TO: Board of Township Trustees.

AMOUNT OF BOND: In such sums as the Board of Township Trustees shall determine, but not less than the sum provided in 507.03, as amended.

GIVEN WITH/SIGNED BY: A surety or sureties approved by the Board of Township Trustee.

CONDITIONED UPON: Faithful performance of the duties of office.

FILED/DEPOSITED WITH: County Treasurer.

BOND PAID BY: Township. See Ohio Rev. Code Section 3929.17.

APPROVED BY: Board of Township Trustees.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Op. Atty. Gen. No. 2005-004 provides that a fiscal officer who entered upon duties of office prior to November 5, 2005 and gave bond in accordance with Ohio Rev. Code Section 507.03 then in effect, has provided the bond required to qualify for office and is not required to provide a bond that meets the minimum requirements established by HB 148.

An individual who seeks to enter into the office of fiscal officer on or after November 5, 2005, either to begin a new term or to fill a vacancy of an existing term, is required to give bond at not less than the minimums established in amended Ohio Rev. Code Section 507.03 (HB 148).

**MINIMUM BOND REQUIREMENTS
PER ORC 507.03**

For fiscal officers entering office on or after November 5, 2005, as amended:

Budget Range	Minimum Amount
\$50,000 or less	\$10,000
\$50,000 - \$100,000	\$35,000
\$100,000 - \$250,000	\$60,000
\$250,000 - \$500,000	\$85,000
\$500,000 - \$750,000	\$110,000
\$750,000 - \$1,500,000	\$135,000
\$1,500,000 - \$3,500,000	\$160,000
\$3,500,000 - \$6 million	\$195,000
\$6 million - \$10 million	\$220,000
\$10 million or more	\$250,000

TOWNSHIP FISCAL OFFICER (Continued)

COMMENTS:

When a Township fiscal officer is unable to carry out the duties of his office because of illness, or military service, or because he is otherwise incapacitated or disqualified, the Board of Township Trustees will appoint a deputy fiscal officer to discharge the duties of the office. Before entering upon the discharge of those duties, the deputy clerk must give bond, meeting all the above requirements. See Ohio Rev. Code Section 507.02.

Before serving, an assistant to the township fiscal officer shall give bond for the faithful discharge of duties of the office as may be delegated by the fiscal officer. The bond shall be payable to the board of township trustees and shall be for the same sum as required under section 507.03 of the Revised Code for the township clerk, with sureties approved by the board, and conditioned for the faithful performance of duties delegated by the clerk. The bond shall be recorded by the township fiscal officer, filed with the county treasurer, and carefully preserved. See Ohio Rev. Code Section 507.021(C).

TOWNSHIP CONSTABLE

STATUTORY REFERENCES:	Ohio Rev. Code Sections 509.02, 3929.17, and 3.06.
BOND GIVEN TO:	State of Ohio.
AMOUNT OF BOND:	Not less than \$500 nor more than \$2,000, to be fixed by the Board of Township Trustees.
GIVEN WITH/SIGNED BY:	Sureties that are residents of the township approved by the board of township trustees.
CONDITIONED UPON:	The faithful and diligent discharge of the duties of office.
FILED/DEPOSITED WITH:	Township fiscal officer.
BOND PAID BY:	Township. See Ohio Rev. Code Section 3929.17.
APPROVED BY:	Board of Township Trustees.
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the discharge of the duties of office.
COMMENTS:	A special constable appointed under Ohio Rev. Code Section 1907.201, is not required to give a bond. See 1958 Op. Atty Gen. No. 3061. This bond requirement may be fulfilled with a blanket bond obtained in compliance with Ohio Rev. Code Section 3.06.

TOWNSHIP PARK DISTRICT EMPLOYEES

STATUTORY REFERENCES: Ohio Rev. Code Sections 511.232, 507.04, 3929.14 and 3929.17.

BOND GIVEN TO: State of Ohio.

AMOUNT OF BOND: A sum to be fixed by the Board of Park Commissioners of the Township.

GIVEN WITH/SIGNED BY: A surety or bonding company authorized to do business in this state. (3929.14)

CONDITIONED UPON: The proper performance of duties.

FILED/DEPOSITED WITH: Township fiscal officer. (507.04)

BOND PAID BY: Township. See Ohio Rev. Code Section 3929.17

APPROVED BY: Board of Park Commissioners of the Township.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before exercising the powers granted by the Board.

COMMENTS: The above bond requirements do not necessarily apply to all park district employees. Ohio Rev. Code Section 511.232 states, in pertinent part: "Employees designated by the board...may enforce the laws of the state and the regulations of the board within and adjacent to the lands under the jurisdiction and control of the board. Before exercising such powers, the employees so designated shall...give a bond..." Thus, only those employees who are designated by the board as law enforcement employees are required to give bond under the above statute.

TOWNSHIP ZONING INSPECTOR

STATUTORY REFERENCES:	Ohio Rev. Code Sections 519.161 and 3929.17.
BOND GIVEN TO:	State of Ohio.
AMOUNT OF BOND:	Not less than \$1,000 nor more than \$5,000 in an amount to be fixed by the Board of Township Trustees.
GIVEN WITH/SIGNED BY:	A surety or bonding company authorized to do business in this state, or two or more freeholders having real estate in the value of double the amount of the bond, over and above all encumbrances. If a surety/bonding company is used, it must be approved by the Board of Township Trustees.
CONDITIONED UPON:	The faithful performance of the official duties.
FILED/DEPOSITED WITH:	Township fiscal officer.
BOND PAID BY:	Township. See Ohio Rev. Code Section 3929.17.
APPROVED BY:	Board of Township Trustees.
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the duties of office.

TOWNSHIP HIGHWAY SUPERINTENDENT

STATUTORY REFERENCES: Ohio Rev. Code Sections 5571.04, 3929.14, 3929.17, and 5571.02(C).

BOND GIVEN TO: State of Ohio, for the use of the Township.

AMOUNT OF BOND: \$2,000.

GIVEN WITH/SIGNED BY: A surety or bonding company authorized to transact business in this state. (3929.14)

CONDITIONED UPON: The faithful performance of the duties of office.

FILED/DEPOSITED WITH: Township fiscal officer.

BOND PAID BY: Township. See Ohio Rev. Code Section 3929.17.

APPROVED BY: Board of Township Trustees.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the discharge of the duties of office.

COMMENTS: The appointment of a person to the office of township highway superintendent is not mandatory, but within the discretion of the board of trustees. Therefore, bond is required only where the board determines to proceed with such appointment pursuant to Ohio Rev. Code Section 5571.02(C).

TREASURER OF BOARD OF EDUCATION

STATUTORY REFERENCES:	Ohio Rev. Code Sections 3313.25 and 3929.17.
BOND GIVEN TO:	State of Ohio.
AMOUNT OF BOND:	The Treasurer of a Board of Education must furnish a bond in an amount to be approved by the Board, but the amount of the bond must bear a reasonable relationship to the duties of the Treasurer and to the amount of money and property coming into his control during his term of office. 1957 Op. Atty Gen. 706.
GIVEN WITH/SIGNED BY:	A surety or bonding company authorized to do business in this state and approved by the Board of Education.
CONDITIONED UPON:	The faithful performance of all the official duties of office.
FILED/DEPOSITED WITH:	President of Board of Education. (A copy of this bond, certified by the President, must be filed with the County Auditor).
BOND PAID BY:	Board of Education. See Ohio Rev. Code Section 3929.17.
APPROVED BY:	Board of Education. See Ohio Rev. Code Section 3313.25.
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the duties of office.

BUSINESS MANAGER OF BOARD OF EDUCATION

STATUTORY REFERENCES:	Ohio Rev. Code Sections 3319.05, 3929.14 and 3929.17.
BOND GIVEN TO:	Board of Education.
AMOUNT OF BOND:	It is mandatory that the Business Manager of a city school district furnish bond in an amount to be approved by the Board of Education but the amount of the bond must bear a reasonable relationship to his duties and to the amount of property coming into this hands during his term of office. 1957 Op. Atty Gen. 706.
GIVEN WITH/SIGNED BY:	A bonding or surety company authorized to transact business in this State. (3929.14)
CONDITIONED UPON:	The faithful discharge of the duties of office.
FILED/DEPOSITED WITH:	Board of Education.
BOND PAID BY:	Board of Education. See Ohio Rev. Code Section 3929.17.
APPROVED BY:	Board of Education. See Ohio Rev. Code Section 3929.17.
TERM OF BOND:	Tenure of employment.
WHEN GIVEN:	No statutory guidance.

PUBLIC SCHOOL BUS DRIVER

STATUTORY REFERENCES:	Ohio Rev. Code Sections 3327.10(C), 3929.14 and 3929.17.
BOND GIVEN TO:	Board of Education.
AMOUNT OF BOND:	"Satisfactory and sufficient bond" to be fixed by the Board of Education.
GIVEN WITH/SIGNED BY:	A surety or bonding company authorized to do business in this State. (3929.14)
CONDITIONED UPON:	No statutory condition indicated.
FILED/DEPOSITED WITH:	Board of Education.
BOND PAID BY:	Board of Education. See Ohio Rev. Code Section 3929.17.
APPROVED BY:	Board of Education. See Ohio Rev. Code Section 3929.17.
TERM OF BOND:	Tenure of employment.
WHEN GIVEN:	No statutory guidance direction on this question.
COMMENTS:	<p>School bus drivers who are employees of a school district and who drive buses or motor vans owned by the school district are not required to give bond. However, where drivers or buses are furnished by contract, bond must be given.</p> <p>Blanket bonds may be procured for the coverage of school bus drivers. A bus driver does not have to execute an "individual" bond. See 1957 Op. Atty Gen. 1053.</p> <p>The statutory bond requirement is mandatory--- a board of education may not waive it. See 1957 Op. Atty Gen. 706.</p>

CLERK OF BOARD OF LIBRARY TRUSTEES

STATUTORY REFERENCES:	Ohio Rev. Code Sections 3375.32 and 3929.17.
BOND GIVEN TO:	Board of Library Trustees.
AMOUNT OF BOND:	To be fixed by the Board of Library Trustees.
GIVEN WITH/SIGNED BY:	A surety or bonding company authorized to do business in this state and approved by the Board of Library Trustees.
CONDITIONED UPON:	The faithful performance of the official duties required of him.
FILED/DEPOSITED WITH:	No statutory direction.
BOND PAID BY:	Board of Library Trustees. See Ohio Rev. Code Section 3929.17.
APPROVED BY:	Board of Library Trustees. See Ohio Rev. Code Section 3375.32.
TERM OF BOND:	Tenure of office.
WHEN GIVEN:	Before entering upon the duties of office.

DEPUTY CLERK OF BOARD OF LIBRARY TRUSTEES

STATUTORY REFERENCES: Ohio Rev. Code Sections 3375.36 and 3929.17.

BOND GIVEN TO: Board of Library Trustees.

AMOUNT OF BOND: To be fixed by the Board of Library Trustees.

GIVEN WITH/SIGNED BY: A surety or bonding company authorized to do business in this State and approved by the Board of Library Trustees.

CONDITIONED UPON: The faithful performance of the official duties required of him.
FILED/DEPOSITED WITH: No statutory direction.

BOND PAID BY: Board of Library Trustees. See Ohio Rev. Code Section 3929.17.

APPROVED BY: Board of Library Trustees. See Ohio Rev. Code Section 3375.36.

TERM OF BOND: Tenure of office.

WHEN GIVEN: Before entering upon the duties of office.

New: HB 153, 129th
General Assembly;
Effective 9/29/11

APPENDIX C

Ohio Rev. Code § 5705.01

Chapter 1 of this Ohio Compliance Supplement discusses budgetary, revenue, and certain other related laws and regulations applicable to “subdivisions,” “taxing authorities” and “taxing units,” as appropriate. These terms are defined below.

(A) "Subdivision" means any county; municipal corporation; township; township police district; joint police district; township fire district; joint fire district; joint ambulance district; joint emergency medical services district; fire and ambulance district; joint recreation district; township waste disposal district; township road district; community college district; technical college district; detention facility district; a district organized under section 2151.65 of the Revised Code; a combined district organized under sections 2152.41 and 2151.65 of the Revised Code; a joint-county alcohol, drug addiction, and mental health service district; a drainage improvement district created under section 6131.52 of the Revised Code; a union cemetery district; a county school financing district; or a city, local, exempted village, cooperative education, or joint vocational school district; or a regional student education district created under section 3313.83 of the Revised Code.

(C) "Taxing authority" or "bond issuing authority" means, in the case of any county, the board of county commissioners; in the case of a municipal corporation, the council or other legislative authority of the municipal corporation; in the case of a city, local, exempted village, cooperative education, or joint vocational school district, the board of education; in the case of a community college district, the board of trustees of the district; in the case of a technical college district, the board of trustees of the district; in the case of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2152.41 and 2151.65 of the Revised Code, the joint board of county commissioners of the district; in the case of a township, the board of township trustees; in the case of a joint fire district, the board of fire district trustees; in the case of a joint recreation district, the joint recreation district board of trustees; in the case of a joint-county alcohol, drug addiction, and mental health service district, the district's board of alcohol, drug addiction, and mental health services; in the case of a joint ambulance district or a fire and ambulance district, the board of trustees of the district; in the case of a union cemetery district, the legislative authority of the municipal corporation and the board of township trustees, acting jointly as described in section 759.341 of the Revised Code; in the case of a drainage improvement district, the board of county commissioners of the county in which the drainage district is located; in the case of a joint emergency medical services district, the joint board of county commissioners of all counties in which all or any part of the district lies; and in the case of a township police district, a township fire district, a township road district, or a township waste disposal district, the board of township trustees of the township in which the district is located. "Taxing authority" also means the educational service center governing board that serves as the taxing authority of a county school financing district as provided in section 3311.50 of the Revised Code and the board of directors of a regional student education district created under section 3313.83 of the Revised Code.

(H) "Taxing unit" means any subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts.

APPENDIX D: OCS COMPLIANCE ACE FORM

Assessment of the Compliance Controls' Environment

Note: This appendix includes control environment points of focus specific to the OCS.

Instructions for Using the OCS Compliance ACE Form

- Illustrative points of focus are given for each direct and material OCS Chapter (1 through 6). The auditor should not answer 'Yes' or 'No' to the points of focus. Rather, the auditor should comment on each area, using the points of focus as further guidance where appropriate, basing comments on information available from prior years' audits, inquiries of individuals inside and outside the organization, knowledge of factors outside the government that affect its activities, observation of circumstances that are known or are understood to exist within the government, and, in some circumstances, inspection of documents.
- The areas for assessment and illustrative points of focus in the ACE are not equally relevant to all engagements, and the significance of any particular area or point of focus varies with the government. Thus, the auditor should judge the applicability and importance of each in the context of the engagement.
- In assessing the control environment, the auditor should recognize that neither the areas for assessment nor the illustrative points of focus are necessarily all-inclusive. The auditor may encounter matters affecting the control environment other than those addressed by the ACE. The auditor should document those matters and assess their effect on the control environment.
- In assessing the control environment, the auditor should look beyond the form of control measures and management actions and should concentrate on their substance. An environment may appear to be favorable but in reality may not be. For instance, a system may provide adequate reports for the governing board or senior management, but if the information is not analyzed and acted on, the system does not contribute to the control environment. Similarly, a government may establish appropriate policies; however, to be effective, they should be enforced by management. For example, although a government may have a formal code of conduct, management may have a record of condoning actions that violate it. By not reprimanding such actions, management sends a clear message undermining the code of conduct.

Audit Implications

- After assessing each area, the auditor should consider the audit implications of any circumstances coming to his or her attention that may affect the audit strategy and audit program, or that may represent a matter for which we can offer a recommendation for improvement.

Application to Small and Mid-sized Entities

- Small and mid-sized entities may implement the control environment areas differently than larger entities. For example, smaller entities might not have a written code of conduct but instead, develop a culture that emphasizes the importance of integrity and ethical behavior through oral communication and by management example. However, these conditions may not affect the auditor's assessment of control risk.

Budgetary (OCS Chapter 1)	
Area for Assessment	Comments
<p>The following factors may influence the auditor's assessment of risk of significant non-compliance with budget laws and regulations:</p> <p>Management develops strategic plans and budgets to monitor the activities of the entity. ORC 5705 codifies an annual budget process designed to prevent fund cash deficits. To be effective, these plans and budgets should be realistic, based on valid assumptions and developed by knowledgeable individuals. Management must also have sufficient reliable information on a timely basis to review and evaluate the entity's operations.</p> <p><i>Consider for example, the following points of focus:</i></p> <ul style="list-style-type: none"> - <i>Existence of a budgetary monitoring system and compliance function (This is part of monitoring more than the control environment, but we have listed it here because of its importance and interaction with the control environment.)</i> - <i>The effectiveness of the budget process (i.e. segregation of duties for budget preparation, adoption, execution and reporting).</i> - <i>The level of detail (e.g. legal level of control) and informational value of plans and budgets and of financial, statistical, or other information management and those charged with governance use regarding:</i> <ul style="list-style-type: none"> • <i>its relevance to the respective manager's responsibilities,</i> • <i>its sufficiency,</i> • <i>the frequency and timeliness with which it is received, and</i> • <i>its reliability.</i> • <i>Appropriate involvement of personnel, for example:</i> • <i>both senior management and lower-level personnel,</i> • <i>managers, for activities relating to their respective areas of responsibility, and</i> • <i>suitably knowledgeable and experienced personnel (such as operating line management).</i> - <i>The assumptions underlying strategic plans and budgets; that is, whether they:</i> <ul style="list-style-type: none"> • <i>reflect the entity's historical experience and conditions currently affecting operations, and</i> • <i>are consistent and are communicated to the appropriate personnel.</i> - <i>The past record of the entity in meeting plans and budgets.</i> 	

<ul style="list-style-type: none"> - <i>The effectiveness of monitoring performance with respect to:</i> <ul style="list-style-type: none"> • <i>documenting significant departures from plans (i.e. budgets), with explanation,</i> • <i>evaluation of explanations by the appropriate levels of management or the governing authority,</i> • <i>implementing corrective actions by appropriate levels of management and follow-up by senior management and those charged with governance.</i> • <i>timeliness of consideration of the effect of changes in the economy, industry, and competition,</i> • <i>indication and timeliness of corrective actions,</i> - <i>An accounting system that integrates budgetary accounts to provide continuous information regarding available appropriations and estimated resources not yet received.</i> <p>Note: The AICPA’s State & Local Government Audit Guide, 11.24 & .26 cautions the auditor to consider whether the government uses its budget to control spending or instead, uses spending to establish (i.e. amend) the budget. Many governments do the latter, in which case analytical procedures relating to the budget may not be valid support for financial position and activity statement assertions.</p>	
<p>Audit implications and/or management comments:</p>	

Contracts and Expenditures (OCS Chapter 2)	
Area for Assessment	Comments
<p>Points of Focus</p> <ul style="list-style-type: none"> - <i>Existence of a contract and expenditures monitoring system and compliance function (This is part of monitoring more than the control environment, but we have listed it here because of its importance and interaction with the control environment.)</i> - <i>Legal actions brought against the entity, elected and non-elected officials related to contract compliance.</i> 	
<p>Audit implications and/or management comments:</p>	

Debt (OCS Chapter 3)	
Area for Assessment	Comments
<p>Points of Focus (Debt)</p> <ul style="list-style-type: none"> - <i>Existence of a debt monitoring system and compliance function (This is part of monitoring more than the control environment, but we have listed it here because of its importance and interaction with the control environment.)</i> - <i>Governing authority's and management's involvement in the internal control structure to assure compliance with debt laws, contracts and regulation such as covenant requirements and 17 C.F.R. § 240.15c2-12</i> - <i>Willingness to use bond counsel or other specialists (e.g. arbitrage specialists) when issuing debt.</i> - <i>Accounting system suitably designed to comply with any requirements to separately account for debt proceeds or debt service payments.</i> 	
<p>Audit implications and/or management comments:</p>	

Accounting and Reporting (OCS Chapter 4)	
Area for Assessment	Comments
<p>Points of Focus</p> <ul style="list-style-type: none"> - <i>Existence of a monitoring system and compliance function (This is part of monitoring more than the control environment, but we have listed it here because of its importance and interaction with the control environment.)</i> - <i>Accounting system suitably designed to accommodate the reporting requirements in Chapter 4 applicable to the auditee.</i> 	
<p>Audit implications and/or management comments:</p>	

Deposits and Investments (Chapter 5)	
Area for Assessment	Comments
<p>Points of Focus</p> <ul style="list-style-type: none"> - <i>Existence of a deposits and investments monitoring system and compliance function (This is part of monitoring more than the control environment, but we have listed it here because of its importance and interaction with the control environment.)</i> - <i>Basic knowledge of laws restricting investment instruments, or a practice of referring to ORC 135 and written investment policies</i> - <i>knowledge of the features and risks of investments prior to purchasing them.</i> - <i>Sufficient cash flow planning to avoid investment losses resulting from insufficient liquidity. (For example, RC 135.14(F) requires an ability to hold an investment to maturity.) Therefore, investing all available cash in a 5 year instrument could require selling it at a loss prior to maturity if the government needs the cash before the five-year maturity, contrary to RC 135.14(F).</i> 	
<p>Audit implications and/or management comments:</p>	

Other Potentially Direct and Material Laws and Regulations (OCS Chapter 6)	
Area for Assessment	Comments
<p>Points of Focus</p> <ul style="list-style-type: none"> - <i>Existence of an appropriate monitoring system and compliance function. (This is part of monitoring more than the control environment, but we have listed it here because of its importance and interaction with the control environment.)</i> - <i>Accounting system suitably designed to provide information when needed, such as information related to insurance claims, landfill closure or postclosure costs.</i> - <i>Suitable systems and procedures for collecting other financially significant information reliably, such as landfill usage, student attendance statistics.</i> - <i>A commitment by school management and those charged with their governance to obtain accurate ADM student counts.</i> 	
<p>Audit implications and/or management comments:</p>	

Appendix E

ELECTED OFFICIALS’ COMPENSATION LEGISLATION

This Appendix includes, respectively, a reproduction of Auditor of State Bulletin 2001-001, a table from Auditor of State Bulletin 1996-014, updated compensation tables for county officials, and updated compensation tables for township officials.

Appendix E – Table of Contents	Page
Excerpt from Auditor of State Bulletin 2001-001	3
Updated County Official Tables for 2007 and 2008** (Source: http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+200705.pdf&tabid=355&mid=974&language=en-US)	5
Updated Township Official Tables for <u>2008 through 2012</u> *** (Source: December 2011 OTA Newsletter, <i>Grassroots Clippings</i>)	26

The Ohio Constitution provides a general prohibition on in-term compensation changes for public officers, both increases and decreases, O. Const. Art II, §20.

However, pursuant to the doctrine of waiver, officers may elect to voluntarily waive a portion of their salary. OAG 2003-027. “A public officer that has voluntarily waived all or a portion of his statutorily-prescribed compensation [however] may not thereafter request and receive payment of the compensation he waived.” Id. at Note 8.

The elected officials would be able to reduce their salaries voluntarily (this would include voluntary furlough days). They would then be precluded during that term from receiving the portion that they waived. For instance, a council member could voluntarily waive her salary today. In December, she determines that she would like to rescind the waiver. She can take that action, and be entitled to her full salary going forward. She does not, however, have any rights to the amount that she waived.

****Current Ohio law (Revised Code Section 325.18) permits a cost of living increase for county officials through Dec. 31, 2008. The General Assembly did not include cost of living increases for 2009, 2010, and beyond in the Ohio Revised Code for county officials. This means that county officials will remain at the 2008 salary levels in 2009, 2010, 2011, 2012 and beyond, or until legislation is passed to extend the cost of living increase. When preparing budget documents for 2009, 2010, 2011, 2012 and subsequent years, counties should use the 2008 compensation figures.**

*****Current Ohio law (Revised Code Sections 505.24 and 507.09) permits a cost of living increase for township officials through Dec. 31, 2008. The General Assembly did not include cost of living increases for 2009, 2010, 2011, and beyond in the Ohio Revised Code for township officials. This means that township officials will remain at the 2008 salary levels in 2009, 2010, 2011, and beyond, or until legislation is passed to extend the cost of living increase. When preparing budget documents for 2009, 2010, 2011, 2012 and subsequent years, townships should use the 2008-2012 compensation figures.**

Note: For more information regarding township trustee and fiscal officer compensation, see pages A-13 through A-19 and A-26 through A-29 from the Ohio Township Handbook located at the following website:

http://www.auditor.state.oh.us/services/lgs/publications/LocalGovernmentManualsHandbooks/ohio_township_handbook.pdf

AUDITOR OF STATE BULLETIN 2001-001

February 9, 2001

**TO: ALL COUNTY AUDITORS
ALL COUNTY CLERKS OF COURTS
ALL COUNTY COMMISSIONERS
ALL COUNTY CORONERS
ALL COUNTY ENGINEERS
ALL COUNTY PROSECUTING ATTORNEYS
ALL COUNTY RECORDERS
ALL COUNTY SHERIFFS
ALL COUNTY TREASURERS
ALL INDEPENDENT PUBLIC ACCOUNTANTS**

**SUBJECT: COMPENSATION INCREASE LEGISLATION PERTAINING TO
NONJUDICIAL COUNTY ELECTED OFFICIALS
(SUBSTITUTE HOUSE BILL NUMBER 712)**

Attached is a copy of the County Commissioners' Association of Ohio's Advisory Bulletin 00-7 outlining the various compensation increases for county elected officials set forth in House Bill 712, which was passed by the General Assembly as an emergency measure and took effect on December 8, 2000. The information contained in the CCAO's advisory bulletin has been reviewed by the State Auditor's Office and we concur with its content.

Below are two points relating to the timing and effect of this pay increase legislation that are discussed in CCAO's bulletin which we believe deserve special emphasis.

Timing of Compensation Increases

Article II, section 20 of the Ohio Constitution generally prohibits elected officials from receiving increases in their compensation in the midst of their terms of office. Because HB 712 took effect on December 8, 2000, the compensation increases and the new eight (8) class population-based compensation schedule in the bill are applicable only to those county officials whose current terms of office began after December 8, 2000. Therefore, the two county commissioners, as well as the prosecuting attorney, sheriff, coroner, engineer, recorder and clerk of the court of common pleas in each county who were elected, or re-elected, in November 2000 and were sworn into office in January 2001 may receive the compensation increases provided for in the bill and are subject to the new eight (8) class population-based compensation schedule.

Because the new terms of office of elected, or re-elected, county treasurers this year do not begin until September 3, 2001, current county treasurers, even if re-elected in November 2000, are not

immediately entitled to the compensation increases provided for in the bill and are still subject to the former law's fourteen (14) class population-based compensation schedule until their next terms begin. Re-elected county treasurers can receive the compensation increase provided in HB 712 only upon commencement of their new term of office on September 3, 2001. Likewise, the county auditor and the one commissioner in each county who were not on the ballot in November 2000 cannot immediately receive the compensation increases in the bill, nor are they now subject to the new eight (8) class compensation schedule. Those county officials must be re-elected in November 2002 and commence their new terms of office in 2003 to receive the compensation increase in HB 712 and to be subject to the new compensation schedule.¹

In-Term Compensation Increases Based on Statutory Population Classes

With the results of the decennial census becoming available sometime in the next several months, it is important to highlight the effect the updated population figures will have on the compensation levels of county officials. A 1999 Ohio Attorney General Opinion (No. 99-033) makes it clear that an elected county official is permitted to receive an in-term increase in compensation as a result of a population increase that places the county in a higher classification, provided that the pertinent statutory schedule was in effect prior to the commencement of that officer's term. Thus, any county official whose county rises to a higher statutory population class will be eligible for an in-term compensation increase effective on the date the Governor receives the census results.

However, please note that 1999 Op. Att'y Gen. No. 99-033 explained that county officials may receive a compensation increase in the midst of their terms due to the decennial census pushing their county into a higher population classification only if the statutory compensation schedule was in effect prior to the commencement of their terms. With its effective date of December 8, 2000, HB 712 was not in effect prior to the commencement of the current terms of all county treasurers, county auditors and the one commissioner in each county not elected or re-elected in November 2000. Thus, for all county treasurers, county auditors and the one commissioner not elected or re-elected in November 2000, the former law's fourteen (14) class population-based compensation schedule should be analyzed for possible increases to higher population classes when the decennial census information is officially received by the Governor. For all other county elected officials, the new eight (8) class compensation schedule should be consulted when the decennial census information is released.

Questions about this bulletin may be directed to Cheryl Subler, CCAO Senior Policy Analyst, at csubler@ccao.org or at CCAO's toll free number 1-888-757-1904, or to the Auditor of State's Legal Division at (614) 752-8683.

¹The one exception to this would be if the county treasurer, or county auditor or the commissioner not elected or re-elected in November 2000, were to leave office and a new treasurer, auditor or commissioner were appointed, then it would appear that the new treasurer's, auditor's or commissioner's term would have commenced after the effective date of HB 712, thus making them eligible for not only the pay increases in HB 712, but also the eight (8) class population-based schedule instead of the former fourteen (14) class population schedule.



COUNTY ADVISORY BULLETIN

CAB

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Bulletin 2007-05

November 2007

2008 PAY TABLES FOR COUNTY OFFICIALS

INTRODUCTION

On December 8, 2000, Governor Taft signed House Bill 712 as an emergency measure, and it thus became effective immediately. This legislation provided salary increases to county elected officials along with statewide officeholders, lawmakers, judges, boards of elections officials, and township officials. Following the enactment of this legislation, the County Commissioners Association of Ohio (CCAO) published County Advisory Bulletin (CAB) 00-7, explaining the provisions of House Bill 712. The purpose of this CAB is to specifically provide the salary tables for 2008.

Since House Bill 712 provided that certain officials would receive cost of living increases in subsequent years based on the Consumer Price Index (CPI) through September of the preceding calendar year, salary tables must be produced annually in the fall, just a couple months prior to the officials receiving the increases. In October 2007, the United States Bureau of Labor Statistics published the CPI at 2.8 percent. This number is used to calculate the cost of living increases provided to most officials in 2008.

This CAB will explain the cost of living increase provision contained in House Bill 712; highlight the various county elected officials' salary provisions; and provide salary tables for calendar year 2008.

GENERAL CONCEPTS OF HOUSE BILL 712 & COMPENSATION IN 2008

Reduction of Salary Classes. In 2001, most county elected officials' pay classes were reduced from 14 to 8 classes, thereby providing a one-time adjustment in salary, which included a cost of living increase. Classes are based on the county's decennial census population. County auditors and commissioners elected in the gubernatorial election year (1999) did not receive this adjustment until the beginning of their next term, since they were in-term when the Legislature enacted this provision.

Cost of Living Increases. House Bill 712 provided cost of living increases for most county elected officials beginning in 2002 through 2008. In-term auditors and commissioners (who took office prior to December 8, 2000) were closed out of receiving raises until they began their next term of office in 2004, since they were in-term when the Legislature enacted this provision.

The cost of living increases are based on the percentage increase of the Consumer Price Index (CPI) capped at 3 percent. The CPI is determined over the twelve-month period that ends on September 30 of the immediately preceding calendar year, rounded to the nearest one-tenth of one per cent. Since the federal Department of Labor reports more than one CPI, the Ohio Revised code provides that the “consumer price index” to be used is the index for U.S. city average for urban wage earners and clerical workers: all items, 1982-1984=100; this is commonly referred to as CPI-W.

Practically speaking, this means:

1. Cost of living increases will be less than 3 percent if the CPI-W is lower. But, if the CPI-W is more than 3 percent, the annual increase can only be 3 percent.
2. Annual salaries through 2008 cannot be calculated prior to October of the preceding calendar year. Since the CPI-W is based on the twelve month period that ends on September 30 of the immediately preceding calendar year, calculations will have to be done on a yearly basis.

The CPI-W for salary purposes was 1.3 percent for calendar year 2003, 2.3 percent for calendar year 2004, and 2.4 percent for calendar year 2005, and 5.2 percent for calendar year 2006. However, in 2006, the pay raise was 3 rather than 5.2 percent since Ohio law provides a cap at 3 percent. In 2007, the CPI-W was 1.7 percent, and 2.8 percent for calendar year 2008.

The CPI is a measure of the average change in prices over time of goods and services purchased by households. This includes prices of food, clothing, shelter, fuels, transportation fares, charges for doctors’ & dentists’ services, drugs and other goods and services that people buy for day-to-day living. For further information about the CPI, visit the Bureau of Labor Statistics at <http://www.bls.gov/cpi/www.bls.gov/cpi/>

Calculating Elected Officials Salaries on a Calendar Basis. The compensation of all county elected officials contained in the Revised Code is on a calendar year basis. When a term of office is only part of a calendar year, the calendar year salary is pro-rated. (Attorney General Opinion 90-023)

NON-JUDICIAL OFFICEHOLDERS COMPENSATION

Commissioners (ORC 325.10 & 325.18)

Table 1 reflects the 2007 & 2008 salaries for commissioners.

Auditors (ORC 325.03, 325.18 & 5731.41)

Table 2 provides the salaries for auditors in 2007 and 2008.

In addition to the salary provided in Table 2, auditors are to receive 8 cents per capita for each full thousand of population for the first 20,000 and 2 cents per capita for each full thousand over 20,000 not less than \$1,200 nor more than \$3,000, which is paid from the undivided estate tax fund pursuant to Ohio Revised Code Section 5731.41.

Clerks of Courts (ORC 325.08, 325.18 & 2303.03)

Tables 3 and 4 provide the salaries for clerks of courts for 2007 & 2008, respectively. These tables show the county paid and state paid portions of their salaries. The state-paid compensation, which is equal to one-eighth of their county paid compensation, compensates the clerks for serving as the clerk of the court of appeals. The county should appropriate the amount listed under the county paid salary column. The state portion is paid directly by the state to the clerk.

In addition, clerks serving as municipal court clerks and/or county court clerks receive additional compensation. Such clerks are entitled to an additional 25 percent of county paid compensation for serving as either the clerk of the municipal or county court, pursuant to Ohio Revised Code Sections 1901.31 and 1907.20.

Coroners (ORC 325.15 & 325.18)

Table 5 provides the salaries for all coroners in counties with 175,000 or less in population or those coroners in the larger counties who have chosen to maintain a private medical practice. Table 6 shows the salaries for coroners in counties with a population of more than 175,000 who do not have a private medicine practice, who thereby receive higher compensation.

Section 325.15 also provides the process for a coroner to select compensation under the pay schedule for "Coroners Without a Private Practice." A coroner in a county with a population of 175,001 or more must elect to engage or not to engage in the private practice of medicine before the commencement of each new term of office. A coroner in such a county who engages in the private practice of medicine but who intends not to engage in the private practice of medicine during the coroner's next term of office must notify the board of county commissioners before taking office again.

Engineers (ORC 325.14 & 325.18)

Table 7 shows the salaries for engineers who maintain a private practice. Table 8 gives the salaries for engineers without a private practice, who thereby receive higher compensation.

A county engineer may elect to engage or not to engage in the private practice of engineering or surveying before the commencement of each new term of office. A county engineer who elected not to engage in the private practice of engineering or surveying may, for a period of six months after taking office, engage in the private practice of engineering or surveying for the purpose of concluding the affairs of private practice without any diminution of salary.

In addition to the salary prescribed by Tables 7 and 8 of this bulletin, a county engineer may also receive compensation when he/she performs services as the county sanitary engineer. Plus, House Bill 549, which became effective on March 12, 2001, enables county engineers to receive additional compensation if they are selected as the county drainage engineer. (ORC 315.14 and 6117.01)

Prosecuting Attorneys (ORC 325.11 & 325.18)

Table 9 provides the salaries of prosecutors who have a private practice. Tables 10 and 11 show the salaries for prosecutors without a private practice, who thereby receive higher compensation.

Tables 10 and 11 show that counties with 70,000 or less in population receive partial reimbursement from the state if the prosecutor does not have a private practice. The state is to reimburse counties 40 percent of the difference between the “without a private practice” and “with a private practice” entitlement each year. In addition, the state is to pay its relative share of employer PERS contributions and employer Medicare Part A contributions. However, reimbursement is conditional upon adequate state appropriations being made for this purpose. This “condition” of adequate state funding being appropriated was a provision added to House Bill 712 when changes were made to the bill in the Ohio House Finance Committee. As a result, counties will be responsible for a portion of the state’s share if the General Assembly does not appropriate adequate funds for the prosecuting attorneys compensation.

House Bill 712 also changed the state reimbursement schedule. The state, through the Attorney General, is to reimburse counties no later than March 15 and September 15 each year. Prior to House Bill 712, reimbursements were paid in equal monthly installments.

A prosecuting attorney may elect to engage or not to engage in the private practice of law before the commencement of each new term of office. A prosecuting attorney is not to engage in the private practice of law unless before taking office the prosecuting attorney notifies the board of county commissioners of his/her intention to engage in the private practice of law. In addition, a prosecuting attorney who engages in the private practice of law who intends not to engage in the private practice of law during the prosecuting attorney’s next term of office must so notify the board of county commissioners. A prosecuting attorney who elects not to engage in the private practice of law may, for a period of six months after taking office, engage in the private practice of law for the purpose of concluding the affairs of private practice of law without any diminution of salary as provided in the tables of this bulletin.

Recorders (ORC 325.09 & 325.18)

Table 12 provides the recorders’ salaries for calendar years 2007 and 2008.

Sheriffs (ORC 325.06 & 325.18)

Table 13 and 14 reveal the sheriffs’ salaries for calendar year 2007 and 2008, respectively. Counties are reimbursed by the state for one-eighth of the county paid portion of the sheriffs’ salaries. In addition, the state is to pay its relative share of employer PERS contributions and employer Medicare Part A contributions. Just like the prosecutors’ section, the state payment is conditional upon adequate appropriations being made. However, unlike the prosecutors’ section, sheriffs will only receive the additional compensation if “adequate funds have been appropriated by the General Assembly”; the county is not on the hook to make up the state’s share if the General Assembly did not appropriate enough money.

House Bill 712 changed the state reimbursement schedule. The state, through the Attorney General, is to reimburse counties no later than March 15th and September 15th each year. Prior to House Bill 712, reimbursements were to be paid no later than the 15th of March, June, September, and December. Counties should appropriate the total salary for sheriffs, assuming that adequate funds have been appropriated by the General Assembly, and counties will be fully reimbursed by the state.

Treasurers (ORC 325.04 & 325.18)

Table 15 provides the treasurers' salaries for calendar years 2007 and 2008.

APPROPRIATIONS TO FURTHERANCE OF JUSTICE FUNDS (FOJ)

Sheriff's FOJ Fund (ORC 325.071)

The Sheriff's FOJ Fund must be appropriated at the rate of 50 percent of the sheriff's county-paid salary. Language was included in House Bill 94 in 2001 providing that the appropriation is based only on the county paid portion of the sheriff's salary and does not include the state paid portion.

Prosecutors' FOJ Fund (ORC 325.12)

Appropriation to the Prosecutors' FOJ Fund is at the rate of 50 percent of the total salary the prosecutor receives irrespective of which payment option the prosecutor selects in counties over 70,000 population. In counties where the population is 70,000 or less, appropriations to the FOJ Fund are at the rate of 50 percent of the compensation provided in the pay schedule "with private practice." In these counties, even if the prosecutor is being paid under the "without private practice" schedule, appropriations to the FOJ Fund are still on the basis of the "with private practice" pay schedule.

JUDICIAL OFFICEHOLDERS COMPENSATION

House Bill 712 provided judges cost of living increases from 2002 through 2008. These cost of living increases are the same as granted to the non-judicial county elected officials. Therefore, the increase provided to judges in calendar year 2008 is 2.8 percent. This increase is calculated based on the total salary payable to the judge, exclusive of any amounts payable pursuant to ORC 1901.11(B)(2), 1907.16(C), or 1907.17, but added only to the state's portion of the judges's compensation.

Common Pleas Judges (ORC 141.04 and 141.05)

The compensation of common pleas judges is paid by both the state and the county. The county pays an amount equal to 18 cents per capita. This dollar amount may not be less than \$3,500 nor more than \$14,000 based on the official 2000 Census. See Table 16.

Full-time Municipal Court Judges and Part-time Municipal Court Judges Who Serve a Territory Exceeding 50,000 Population (ORC 141.04 and 1901.11)

The compensation for full-time municipal court judges and those part-time municipal court judges who serve in a territory with a population exceeding 50,000, is financed by

the state and local funding authorities. The local share is a fixed amount equal to \$61,750. See Table 17.

Part-time Municipal Court Judges Except Those Part-time Judges Who Serve a Territory Exceeding 50,000 Population (ORC 141.04 and 1901.11)

The compensation for part-time municipal court judges, other than those who serve in a territory with a population exceeding 50,000 is financed by the state and local funding authorities. The amount of the local share is fixed at \$35,500. See Table 17.

County Court Judges (ORC 141.04 and 1907.16)

Again, the compensation of county court judges is covered by the state and the county. The county's fixed share is \$35,500. See Table 17.

Additional Compensation for Judges Designated as a Presiding and Administrative Judges in a Municipal Court or County Courts (ORC references are included in Table 18) See Table 18.

County Optional Compensation for County Court Judges (ORC 1907.17)

In addition to the compensation of county court judges specified in Tables 17 and 18, the law authorizes the Board of County Commissioners to permissively supplement the salary of county court judges by an amount not to exceed \$2,000 in any year. It should be noted that this provision must be uniformly applied in counties with more than one county court judge. Also, this additional compensation can not be reduced during the term of office of any county court judge, but apparently can be changed at the beginning of a new term of office. (OAG 70-142)

BOARDS OF ELECTIONS MEMBERS (ORC 3501.12)

Members of the county board of elections were provided a cost of living increase in House Bill 712 that was atypical of the other elected officials. Unlike the other officials' whose cost of living increase was tied to the Consumer Price Index and went through 2008, the board of elections members were granted 3 percent increases in 2001, 2002, and 2003. Table 19 shows those increases. At this time, the Ohio Revised Code does not provide any statutory increase in salary for calendar year 2004 or thereafter.

ACKNOWLEDGMENTS

This County Advisory Bulletin was prepared by CCAO. We requested comments from the various associations that represent county elected officials and judges, and many provided valuable comments which improved the bulletin. The Bulletin was also reviewed by the State Auditor's office, which provided comments. Any errors, however, are the responsibility of CCAO alone. Questions or comments should be directed to Cheryl Subler, Managing Director of Policy, csubler@ccao.org who was primarily responsible for the preparation of this CAB.

Table 1
Commissioners

Class Number	Population Range	2007 Calendar Year Salary	2008 Calendar Year Salary
1	1-20,000	\$36,336	\$37,353
2	20,001-35,000	39,774	40,888
3	35,001-55,000	43,211	44,421
4	55,001-95,000	54,012	55,524
5	95,001-200,000	63,833	65,620
6	200,001-400,000	74,879	76,976
7	400,001-1 million	84,703	87,075
8	over 1 million	89,955	92,474

Table 2

Auditors*

Class Number	Population Range	2007 Calendar Year Salary	2008 Calendar Year Salary
1	1-20,000	\$51,976	\$53,431
2	20,001-35,000	54,724	56,256
3	35,001-55,000	56,549	58,132
4	55,001-95,000	66,527	68,390
5	95,001-200,000	74,663	76,754
6	200,001-400,000	83,764	86,109
7	400,001-1 million	88,763	91,248
8	over 1 million	91,425	93,985

***Auditors also receive 8 cents per capita for each full thousand of population for the first 20,000 and 2 cents per capita for each full thousand over 20,000 not less than \$1,200 nor more than \$3,000, which is paid from the undivided estate tax fund pursuant to Ohio Revised Code Section 5731.41**

**Table 3
Clerks of Courts***

Class	Population Range	2007 Calendar Year County Paid Salary**	2007 Calendar Year State Paid Salary***	2007 Calendar Year Total Salary
1	1-20,000	\$38,090	\$4,761	\$42,851
2	20,001-35,000	41,023	5,128	46,151
3	35,001-55,000	43,951	5,494	49,445
4	55,001-95,000	51,765	6,471	58,236
5	95,001-200,000	59,579	7,447	67,026
6	200,001-400,000	66,415	8,302	74,717
7	400,001-1 million	71,298	8,912	80,210
8	over 1 million	73,794	9,224	83,018

**Table 4
Clerks of Courts***

Class	Population Range	2008 Calendar Year County Paid Salary**	2008 Calendar Year State Paid Salary***	2008 Calendar Year Total Salary
1	1-20,000	\$39,157	\$4,895	\$44,052
2	20,001-35,000	42,172	5,272	47,444
3	35,001-55,000	45,182	5,648	50,830
4	55,001-95,000	53,214	6,652	59,866
5	95,001-200,000	61,247	7,656	68,903
6	200,001-400,000	68,275	8,534	76,809
7	400,001-1 million	73,294	9,162	82,456
8	over 1 million	75,860	9,483	85,343

* Clerks serving as Municipal Court Clerks and/or County Court Clerks receive additional compensation. Such clerks are entitled to an additional 25 percent of county paid compensation for serving as either the clerk of the municipal or county court.

** This amount should be appropriated by the county

*** This amount is to be paid directly by the state

Table 5
Coroners with a Private Practice

Class Number	Population Range	2007 Calendar Year Salary	2008 Calendar Year Salary
1	1-20,000	\$21,488	\$22,090
2	20,001-35,000	24,418	25,102
3	35,001-55,000	27,346	28,112
4	55,001-95,000	40,044	41,165
5	95,001-200,000	49,814	51,209
6	200,001-400,000	61,532	63,255
7	400,001-1 million	69,345	71,287
8	over 1 million	73,507	75,565

Table 6
Coroners without a Private Practice

Class Number	Population Range	2007 Calendar Year Salary	2008 Calendar Year Salary
1	1-20,000	NA	NA
2	20,001-35,000	NA	NA
3	35,001-55,000	NA	NA
4	55,001-95,000	NA	NA
5*	95,001-175,000	NA	NA
5*	175,001-200,000	112,552	115,703
6	200,001-400,000	112,552	115,703
7	400,001-1 million	115,285	118,513
8	over 1 million	118,018	121,323

* New Class 5 for Coroners without a Private Practice begins with a population of 175,001, unlike Class 5 for the other county elected officials. This difference is due to the fact that the law only allows coroners in counties with a population of 175,001 or more to have the option to earn a higher salary in exchange for forgoing a private practice.

Table 7

Engineers with a Private Practice

Class Number	Population Range	2007 Calendar Year Salary	2008 Calendar Year Salary
1	1-20,000	\$55,087	\$56,629
2	20,001-35,000	57,431	59,039
3	35,001-55,000	59,774	61,448
4	55,001-95,000	64,462	66,267
5	95,001-200,000	69,345	71,287
6	200,001-400,000	73,252	75,303
7	400,001-1 million	78,135	80,323
8	over 1 million	81,182	83,455

Table 8

Engineers without a Private Practice

Class Number	Population Range	2007 Calendar Year Salary	2008 Calendar Year Salary
1	1-20,000	\$78,342	\$80,536
2	20,001-35,000	80,685	82,944
3	35,001-55,000	83,029	85,354
4	55,001-95,000	87,718	90,174
5	95,001-200,000	92,600	95,193
6	200,001-400,000	96,507	99,209
7	400,001-1 million	101,391	104,230
8	over 1 million	104,433	107,357

Table 9

Prosecutors with a Private Practice

Class Number	Population Range	2007 Calendar Year Salary	2008 Calendar Year Salary
1	1-20,000	\$52,741	\$54,218
2	20,001-35,000	54,695	56,226
3	35,001-55,000	56,648	58,234
4	55,001-95,000	62,997	64,761
5	95,001-200,000	68,370	70,284
6	200,001-400,000	76,184	78,317
7	400,001-1 million	81,065	83,335
8	over 1 million	84,064	86,418

Table 10

Prosecutors without Private Practice

Class Number	Population Range	2007 Calendar Year County Paid Salary	2007 Calendar Year State Reimbursed Salary*	2007 Calendar Year Total Salary**
1	1-20,000	\$75,123	\$14,921	\$90,044
2	20,001-35,000	82,657	18,642	101,299
3	35,001-55,000	83,439	17,861	101,299
4***	55,001-70,000	92,730	19,822	112,552
4***	70,001-95,000	112,552	NA	112,552
5	95,001-200,000	112,552	NA	112,552
6	200,001-400,000	112,552	NA	112,552
7	400,001-1 million	115,285	NA	115,285
8	over 1 million	118,018	NA	118,018

*** This amount is reimbursed to the county if adequate funds have been appropriated by the General Assembly**

**** This amount should be appropriated by the county**

***** Class 4 is broken into two categories for the prosecutors without private practice simply to show the reimbursement provided by the state for counties with a population of less than 70,001.**

Table 11

Prosecutors without Private Practice

Class Number	Population Range	2008 Calendar Year County Paid Salary	2008 Calendar Year State Reimbursed Salary*	2008 Calendar Year Total Salary**
1	1-20,000	\$77,226	\$15,339	\$92,565
2	20,001-35,000	84,971	19,164	104,135
3	35,001-55,000	85,775	18,360	104,135
4***	55,001-70,000	95,326	20,377	115,703
4***	70,001-95,000	115,703	NA	115,703
5	95,001-200,000	115,703	NA	115,703
6	200,001-400,000	115,703	NA	115,703
7	400,001-1 million	118,513	NA	118,513
8	over 1 million	121,323	NA	121,323

*** This amount is reimbursed to the county if adequate funds have been appropriated by the General Assembly**

**** This amount should be appropriated by the county**

***** Class 4 is broken into two categories for the prosecutors without private practice simply to show the reimbursement provided by the state for counties with a population of less than 70,001.**

Table 12
Recorders

Class Number	Population Range	2007 Calendar Year Salary	2008 Calendar Year Salary
1	1-20,000	\$37,114	\$38,153
2	20,001-35,000	40,044	41,165
3	35,001-55,000	41,998	43,174
4	55,001-95,000	48,836	50,203
5	95,001-200,000	55,673	57,232
6	200,001-400,000	63,484	65,262
7	400,001-1 million	69,345	71,287
8	over 1 million	72,396	74,423

**Table 13
Sheriffs**

Class Number	Population Range	2007 Calendar Year County Paid Salary	2007 Calendar Year State Reimbursed Salary*	2007 Calendar Year Total Salary**
1	1-20,000	\$46,595	\$5,824	\$52,419
2	20,001-35,000	49,525	6,191	55,716
3	35,001-55,000	51,481	6,435	57,916
4	55,001-95,000	59,984	7,498	67,482
5	95,001-200,000	73,085	9,136	82,221
6	200,001-400,000	81,877	10,235	92,112
7	400,001-1 million	86,761	10,845	97,606
8	over 1 million	89,275	11,159	100,434

**Table 14
Sheriffs**

Class Number	Population Range	2008 Calendar Year County Paid Salary	2008 Calendar Year State Reimbursed Salary*	2008 Calendar Year Total Salary**
1	1-20,000	\$47,900	\$5,988	\$53,888
2	20,001-35,000	50,912	6,364	57,276
3	35,001-55,000	52,922	6,615	59,537
4	55,001-95,000	61,664	7,708	69,372
5	95,001-200,000	75,131	9,391	84,522
6	200,001-400,000	84,170	10,521	94,691
7	400,001-1 million	89,190	11,149	100,339
8	over 1 million	91,775	11,472	103,247

*** This amount is reimbursed to the county if adequate funds have been appropriated by the General Assembly. Note: Sheriffs' will not receive this full amount if adequate funds have not been appropriated by the General Assembly.**

**** This amount should be appropriated by the county.**

Table 15

Treasurers

Class Number	Population Range	2007 Calendar Year Salary	2008 Calendar Year Salary
1	1-20,000	\$38,090	\$39,157
2	20,001-35,000	41,023	42,172
3	35,001-55,000	43,951	45,182
4	55,001-95,000	51,765	53,214
5	95,001-200,000	59,579	61,247
6	200,001-400,000	66,415	68,275
7	400,001-1 million	71,298	73,294
8	over 1 million	73,794	75,860

Table 16

Salaries of Common Pleas Judges

Counties with Populations of 77,778 or More

Source of Funding	2007	2008
County	\$14,000	\$14,000
State	104,050	107,350
Total	118,050	121,350

Counties with Populations from 77,777 - 19,445

Source of Funding	2007	2008
County	18 cents per capita \$ _____	18 cents per capita \$ _____
State	Total Salary minus County Paid _____	Total Salary minus County Paid _____
Total	118,050	121,350

Counties with Populations of 19,444 or Less

Source of Funding	2007	2008
County	\$3,500	\$3,500
State	114,550	117,850
Total	118,050	121,350

Table 17

Municipal & County Court Judges

**Full-time Municipal Judges and Part-time Municipal Judges Who
Serve in a Territory Exceeding 50,000 Population**

Source of Funding	2007	2008
Local	\$61,750	\$61,750
State	49,250	52,350
Total	111,000	114,100

Note: Municipalities generally pay 60%, counties 40%, except in county operated municipal courts where county pays 100%

**Part-time Municipal Judges Except Those Part-time Municipal Court
Judges Who Serve in a Territory Exceeding 50,000 Population**

Source of Funding	2007	2008
Local	\$35,500	\$35,500
State	28,350	30,150
Total	63,850	65,650

Note: Municipalities generally pay 60%, counties 40%, except in county operated municipal courts where county pays 100%

County Court Judges

Source of Funding	2007	2008
County	\$35,500	\$35,500
State	28,350	30,150
Total	63,850	65,650

Note: Excludes county permissive payments pursuant to ORC 1907.17

Table 18

**Additional Compensation for Presiding & Administrative Judges in
Municipal & County Courts**

Municipal Courts

Number of Judges	Designation	ORC Reference	Additional Annual Compensation	ORC Reference	Source of Payment
One Judge	Specified in statute	1901.09 (A)			
Two or More Judges	Elected or designated as provided in the Rules of Superintendence for the Courts of Ohio	1901.09 (B)	\$1,500	1901.11 (B) (2)	Local Funding Authorities

Note: These amounts are generally paid 40% by the county; 60% by the municipality. If the court is a county operated municipal court, the county pays 100% of the additional compensation.

County Courts

Number of Judges	Designation	ORC Reference	Additional Annual Compensation	ORC Reference	Source of Payment
One Judge	Specified in statute	1907.131 (A)			
Two or More Judges	Elected or designated as provided in the Rules of Superintendence for the Courts of Ohio	1907.131 (B)	\$1,500	1907.16 (C)	County

Table 19

Boards of Elections Members

Base	2004	2005	2006	2007	2008
For each full 1,000 population of first 100,000	\$92.89	\$92.89	\$92.89	\$92.89	\$92.89
For each full 1,000 population of second 100,000	44.26	44.26	44.26	44.26	44.26
For each full 1,000 population of third 100,000	24.04	24.04	24.04	24.04	24.04
For each full 1,000 population over 300,000	7.37	7.37	7.37	7.37	7.37

Maximum & Minimum Compensation of Members

	2004	2005	2006	2007	2008
Minimum Compensation	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687
Maximum Compensation	21,855	21,855	21,855	21,855	21,855

2012 Compensation Charts

Per ORC Sections 505.24 and 507.09, township trustee and fiscal officer salaries are based on the annual budget of the township. The scheme for cost of living increases was altered in 2000 when the General Assembly passed legislation continuing the cost of living increase through 2008. Cost of living increases are determined by the lesser of two numbers: three percent or the Consumer's Price Index for Urban Wage Earners and Clerical Workers (CPI-W) rating for the previous year.

If you have any questions about the compensation charts, please contact Kaitlin Hall, director of public relations, at 614-863-0045, or hall@ohiotownships.org.

FISCAL OFFICER COMPENSATION ANNUAL SALARY

Township Budget	Pay for 2006 (3% increase)	Pay for 2007 (1.7% increase)	Pay for 2008-2012 (2.8% increase)
\$50,000 or less	\$4,306	\$4,379	\$4,502
\$50,001 - 100,000	\$6,766	\$6,881	\$7,074
\$100,001 - 250,000	\$9,472	\$9,633	\$9,903
\$250,001 - 500,000	\$12,179	\$12,386	\$12,733
\$500,001 - 750,000	\$13,532	\$13,762	\$14,147
\$750,001 - 1,500,000	\$16,238	\$16,515	\$16,977
\$1,500,001 - 3,500,000	\$18,945	\$19,267	\$19,806
\$3,500,001 - 6,000,000	\$20,298	\$20,643	\$21,221
\$6,000,001 - 10,000,000	\$23,296	\$23,692	\$24,355
Greater than \$10,000,000	\$26,951	\$27,409	\$28,176

TRUSTEE COMPENSATION AMOUNT PER DAY, NOT TO EXCEED 200 DAYS PER YEAR IF PAID SALARY, 200 TIMES DAILY RATE, PAID MONTHLY

Township Budget	Pay for 2006 (3% increase)	Pay for 2007 (1.7% increase)	Pay for 2008-2012 (2.8% increase)
\$50,000 or less	\$24.60	\$25.02	\$25.72
\$50,001 - 100,000	\$29.52	\$30.03	\$30.87
\$100,001 - 250,000	\$35.06	\$35.66	\$36.66
\$250,001 - 500,000	\$40.60	\$41.29	\$42.45
\$500,001 - 750,000	\$43.06	\$43.79	\$45.02
\$750,001 - 1,500,000	\$49.21	\$50.04	\$51.44
\$1,500,001 - 3,500,000	\$54.13	\$55.05	\$56.59
\$3,500,001 - 6,000,000	\$59.05	\$60.05	\$61.73
\$6,000,001 - 10,000,000	\$76.51	\$77.81	\$79.99
Greater than \$10,000,000	\$98.37	\$100.04	\$102.84

Appendix F

LEGAL MATRICES

This appendix contains three matrices. Each matrix matches the applicability of OCS steps to various entity types. The information in the matrices does not necessarily encompass every item requiring testing for these entities. Additionally, when footnotes in the matrices reference specific sections of the Ohio Rev. Code, you should read those sections when planning and/or conducting the audit.

Matrix 1 lists the following entities:

- Joint mental health districts
- Joint juvenile detention facilities
- Regional planning commissions
- Solid waste districts
- Joint Township cemeteries
- Union cemeteries
- Union cemetery districts
- Airport authorities
- Family and children first councils
- Soil and water districts
- Educational service centers
- Regional Student Education District
- Conservancy districts

Matrix 2 lists the following entities:

- Libraries
- Regional water & sewer districts
- General health districts
- Joint recreation districts
- Park districts
- Community and technical colleges
- State colleges and universities
- Joint ambulance districts
- Port Authorities
- Community Improvement and Development Corporations
- Joint Fire Districts
- Joint Police Districts
- Councils of Government
- Agricultural Societies¹

Matrix 3 includes a discussion of Home Rule Powers and lists the following entities:

- County
- Township
- City
- Village
- Public school districts and STEM schools
- Community schools

NOTE: Generally, the same laws applicable to city, local, exempted village, and joint vocational school districts are also applicable to STEM schools [ORC §3326.11].

¹ Auditors use Appendix H in conjunction with this Appendix when determining the applicability of certain compliance requirements to Agricultural Societies.

Matrix 1

Chapter 1: Budgetary & Certain Related Requirements

Step No.	Requirement	Joint Mental Health District	Jt. Juv. Detention Facility	Regional Planning Comm'n	Solid Waste District	Joint Township Cemetery or Union Cemetery	Union Cemetery District	Airport Authority	FCFC	Soil and Water District	ESC	<u>Regional Student Education District</u>	Conser-vancy District
	General Budgetary Requirements				2	3	2, 3		4	2		<u>2</u>	2
1.	5705.34 Certify tax levies	✓	✓		✓		✓			✓		<u>✓</u>	✓
2	5705.36 Cert. of revenue	✓	✓		✓		✓			✓		<u>✓</u>	✓
3.	5705.36 Amended cert. of est. resources	✓	✓		✓		✓			✓			✓
3.	5705.38 Annual appropriation measure	✓	✓		✓		✓			✓		<u>✓</u>	✓
4.	5705.36 & 5705.39 Amended certificates and Limitation of appropriations	✓	✓		✓		✓			✓		<u>✓</u>	✓

² If these entities levy taxes, the checkmarks noted above apply. However, often they do not levy taxes. When they do not levy taxes, Ohio Rev. Code §5705.28 (B)(2) requires a comparable, but somewhat streamlined budget process. Refer to OCS step 1-11. Ohio Rev. Code §5705.28(B)(2) requires entities to follow §5705.36, .38, .40, .41, .43, .44, and .45. However, documents prepared in accordance with these sections need not be filed with the county auditor or county budget commission. Finally, while Ohio Rev. Code §5705.39 does not apply, §5705.28(B)(2)(c) prohibits appropriations from exceeding estimated revenue (i.e. receipts + beginning unencumbered cash). For conservancy districts, auditors should additionally review the requirements of Ohio Rev. Code §6101.44 and tailor their compliance testing procedures accordingly, if necessary. For conservancy districts that levy taxes, we should cite to the budgetary requirements contained in Ohio Rev. Code § 6101.44 where they are similar to requirements contained in Ohio Rev. Code Chapter 5705. The more specific requirements contained in Ohio Rev. Code Chapter 6101 trump those contained in Chapter 5705. Auditors should apply the provisions of Ohio Rev. Code Chapter 5705 when Chapter 6101 does not address budgetary restrictions applicable to conservancy districts.

³ Joint Township Cemeteries and Union Cemeteries are not subject to Ohio Rev. Code Chapter 5705 because they are not taxing authorities as defined in Ohio Rev. Code §5705.01. Unlike Joint Township Cemeteries and Union Cemeteries, Union Cemetery Districts are subject to Ohio Rev. Code Chapter 5705. In a Union Cemetery District, the legislative authority of each municipal corporation and the board of township trustees of each township, jointly, is the taxing authority. However, this distinction does not affect the application of Ohio Rev. Code §5705.01 on a union cemetery district, which is specifically noted as a “subdivision.”

⁴ Ohio Rev. Code Chapter 5705 does not apply. However, §121.37(B)(5)(a) requires the council to file an annual budget with its administrative agent.

Matrix 1

Chapter 1: Budgetary & Certain Related Requirements (continued)

Step No.	Requirement	Joint Mental Health District	Jt. Juv. Detention Facility	Regional Planning Comm'n	Solid Waste District	Joint Township or Union Cemetery	Union Cemetery District	Airport Authority	FCFC	Soil and Water District	ESC	<u>Regional Student Education District</u>	Conser-vancy District
	General Budgetary Requirements												
5.	5705.36; 5705.38; 5705.41(A), (B), (C) and (D); and 5705.42 Restrictions on appropriating/expending money	✓	✓		✓		✓			✓		<u>✓</u>	✓
6.	5705.40 Amending or supplementing appropriations; contingencies	✓	✓		✓		✓			✓		<u>✓</u>	✓
7.	5705.41(D) "Blanket" fiscal officer certificates	✓	✓		✓		✓			✓		<u>✓</u>	✓
8.	9.34 Establish different fiscal year-ends for entities other than schools	✓	✓		✓		✓			✓		<u>✓</u>	✓
9.	5705 Requirements for taxing districts that do not levy a tax	✓	✓		✓		✓			✓			✓
14.	5705.02, .07, .18, and Art. XII Sec 2 of Const. of Ohio Ten Mill limitations	✓	✓		✓		✓			✓		<u>✓</u>	✓
15.	5705.09 Establish funds	✓	✓		✓ ⁵		✓			✗		<u>✓</u>	✗
16.	5705.10, 5731.48 Distribution of levy revenue	✓	✓		✓		✓			✓		<u>✓</u>	✓
17.	5705.12 Permission to establish funds	✓	✓		✓		✓			✓		<u>✓</u>	✓
18.	5705.14-.16 Transfer funds ⁶	✓	✓		✓		✓			✓		<u>✓</u>	✓
19.	Various 5705 Sections & AOS Bulletin 97-003 – Advances ⁶	✓	✓		✓		✓			✓		<u>✓</u>	✓
20.	5705.13 Reserve Accounts & Funds	✓	✓		✓		✓			✓		<u>✓</u>	✓

⁵ This only applies to township waste disposal districts.

⁶ Bulletin 97-03 applies to entities subject to RC 5705. This Bulletin describes the AOS' position regarding using transfers to advance / loan money from one fund to another. Auditors should also refer to OCS Chapter 1, Appendix A, *Transfers and Advances*, for additional guidance related to transfers and advances.

Matrix 1

Chapter 2: Contracts and Expenditures

Step No.	Requirement	Jt. Ment. Health Dist.	Jt. Juv. Detention Facility	Regional Planning Comm'n	Solid Waste Dist.	Joint Township or Union Cem.	Union Cemetery District	Airport Authority	FCFC	Soil and Water District	ESC	<u>Regional Student Education District</u>	Conser-vancy District
	General												
10.	125.04(C), 3313.46, and 3313.533: Procedures for bidding and letting of contracts											<u>✓</u>	
11.	3313.33(B), 37.375, 40, and 41: Acquisition of school real estate, building, equipment										7		
20.	153.50, 153.51, 153.52 Bids and contracts for buildings/structures ⁸							✓		✓			✓
21.	4115.04, 4115.05 Prevailing wage		✓	✓	✓	✓	✓	✓		✓	✓	<u>✓</u>	✓
22.	9.314 Reverse Internet auction in lieu of sealed bids	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
23.	9.24 Unresolved Findings for Recovery	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
Not in OCS	Other bidding requirements⁹												
	340.03 Jt. Mental Health District ¹⁰	✓											
	713.23 Regional Planning Comm. ¹¹			✓									

⁷ Only ORC 3313.37 and 3313.375 apply to ESCs.

⁸ These sections apply if the entity is required to bid in the circumstances listed under footnote 9, **Other bidding requirements**.

⁹ The OCS does not include descriptions or recommended tests for the **Other bidding requirements** listed, but auditors should refer to these Ohio Rev. Code sections and test them if material procurement occurred.

¹⁰ For joint mental health districts, bidding is not required, but the board should establish a contract review process. See Ohio Rev. Code §340.03(A)(8)(a).

¹¹ When a regional planning commission enters into a purchase contract on behalf of a political subdivision, it shall follow the competitive bidding procedures in Ohio Rev. Code §307.86-.92. (OCS step 2-5 includes a summary of Ohio Rev. Code §307.86.)

Matrix 1

Chapter 2: Contracts and Expenditures (continued)

Step No.	Requirement	Joint Mental Health District	Jt. Juv. Detention Facility	Regional Planning Comm'n	Solid Waste District	Joint Township or Union Cemetery	Union Cemetery District	Airport Authority	FCFC	Soil and Water District	ESC	<u>Regional Student Education District</u>	Conservancy District
	308.13 Airport competitive bidding							✓					
	121.37(B) (5)(a)(i)FCFC competitive bidding ¹²								✓				
Not in OCS	1515.08(H) Soil & Water District competitive bidding									✓			
	6101.16 Conservancy district competitive bidding												✓

¹² Agreements and contracts a council's administrative agent enters into for the purchase of family and child welfare or child protection services or other social or human services for families and children are exempt from the competitive bidding requirements of §307.86, if the FCFC council approved them. Please see §121.37(B)(5)(a) for further details.

Matrix 1

Chapter 3: Debt ¹³

Step No.	Requirement	Joint Mental Health District	Jt. Juv. Detention Facility	Regional Planning Comm'n	Solid Waste District	Joint Township or Union Cemetery	Union Cemetery District	Airport Authority	FCFC	Soil and Water District	ESC	<u>Regional Student Education District</u>	Conser-vancy District
1.	133.22 Leg. auth. anticip. securities				✓							<u>✓</u>	✓
1.	133.24 Tax anticipation notes				✓							<u>✓</u>	✓
1.	5705.03 Auth. to levy taxes	✓			✓ ¹⁴		✓					<u>✓</u>	✓ ¹⁴
1.	5705.05 Gen. levy for current exp.	✓					✓					<u>✓</u>	
1.	5705.09 Est. of funds	✓			15		✓					<u>✓</u>	
1.	5705.10 Disp. and use of tax rev.	✓					✓					<u>✓</u>	
1.	321.34 Advance payments to local authorities ¹⁶											<u>✓</u>	
2.	133.10, 133.22, and 133.24 Anticipation securities		✓		✓								✓
4.	17 CFR § 240.15c2-12 Municipal securities ¹⁷	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
6.	133.29 Governments investing in their own securities		✓		✓								

¹³ If the entity has a specific Ohio Rev. Code Section that refers to its ability to issue bonds, notes or anticipatory securities, that section takes precedence if there was a conflict between it and the general debt provisions in Chapter 133.

¹⁴ For solid waste districts and conservancy districts, the only parts of Ohio Rev. Code §5705.03 that apply are those sentences referring to a “taxing unit.”

¹⁵ This only applies to township waste disposal districts.

¹⁶ If any entity receives money from that county and the county is holding this money on behalf of the entity, the entity may ask for an advance.

¹⁷ The term *Municipal Security* refers to any local government security, not just those municipalities issue, pursuant to 15 U.S.C. §78c(a)(29).

Matrix 1

Chapter 4: Accounting and Reporting

Step No.	Requirement	Joint Mental Health District	Jt. Juv. Detention Facility	Regional Planning Comm'n	Solid Waste District	Joint Township or Union Cemetery	Union Cemetery District	Airport Authority	FCFC	Soil and Water District	ESC	<u>Regional Student Education District</u>	Conser-vancy District
	Accounting & Reporting Chapter												
1.	ORC 117.38 and 1724.05; OAC 117-2-03 (B): Annual Financial Reporting	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
5.	OAC 117-2-02 Required accounting records	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓

Note: ESCs are the only entities on this matrix required to follow GAAP. However for all entities listed on this matrix, auditors and financial statement preparers should read the guidance in AOS Bulletin 2008-01.

Matrix 1

Chapter 5: Deposits and Investments

Step No.	Requirement	Joint Mental Health District	Jt. Juv. Detention Facility	Regional Planning Comm'n	Solid Waste District	Joint Township or Union Cemetery	Union Cemetery District	Airport Authority	FCFC	Soil and Water District	ESC	<u>Regional Student Education District</u>	Conser-vancy District
	Subdivisions Other Than Counties												
1 through 3	135.14 and 135.144 Eligible investments of interim monies	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓
4.	135.18 & 135.181; <u>12 CFR 330</u> Collateral for public deposits	✓	✓	✓	✓	✓	✓		✓	✓	✓	<u>✓</u>	✓
5.	135.21 Crediting invest. earnings	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓
5.	5705.10 Disposition of tax revenues and proceeds	✓	✓				✓						
6. Through 8.	(Airports follow county investing requirements per RC 308.12.)							✓					
9.	135.351 Crediting interest	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓

Matrix 1

Chapter 6: Other Potentially Direct and Material Laws and Regulations

Step No.	Requirement	Joint Mental Health District	Jt. Juv. Detention Facility	Regional Planning Comm'n	Solid Waste District	Joint Township or Union Cemetery	Union Cemetery District	Airport Authority	FCFC	Soil and Water District	ESC	<u>Regional Student Education District</u>	Conser-vancy District
1.	ORC 9.833 and 305.172: Health Care Self Insurance ¹⁸	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
2.	2744.081 Liability self-insurance	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
	Payroll Taxes												
9.	Federal, state and local taxes	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
10.	Employees' retirement system	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓

¹⁸ See bulletin 2001-05 appendix 2 for a detailed table regarding the specific requirements for each type of self-insured subdivision. Only test the OCS steps to the extent they apply and are mandatory for the subdivision under audit.

Matrix 1

Chapter7: Checklist for Other Laws and Regulations

Step No.	Requirement	Joint Mental Health District	Jt. Juv. Detention Facility	Regional Planning Comm'n	Solid Waste District	Joint Township or Union Cemetery	Union Cemetery District	Airport Authority	FCFC	Soil and Water District	ESC	<u>Regional Student Education District</u>	Conser-vancy District
	Contracting & Purchasing												
2.	Various – use of government credit/ purchasing cards, cell phones, government-owned equipment, etc.)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
3.	Various – travel reimbursements (including “frequent flyer miles” accruals/ usage)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
	Accounting and Reporting												
5.	9.38 Deposits of public money	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
6.	121.22 Meeting of public bodies	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
7.	149.43 Availability of public records	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
	Deposits and Investments												
30.	135.03, .32, etc. designating depositories etc.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
26.	Various - investment education	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓

Matrix 1

Chapter 7: Checklist for Other Laws and Regulations (continued)

Step No.	Requirement	Jt. Ment. Health Dist.	Jt. Juv. Detention Facility	Regional Planning Comm'n	Solid Waste Dist.	Joint Township or Union Cem.	Union Cemetery District	Airport Authority	FCFC	Soil and Water District	ESC	<u>Regional Student Education District</u>	Conservancy District
	Fraud, Abuse, and Illegal Acts; Conflict of Interest; Ethics												
27.	1979 Op. Atty Gen. No. 79-111 Prohibitions from holding office	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
27.	Various fraud, abuse & illegal acts ¹⁹											<u>✓</u>	
	Prohibited Political Activity												
28.	Various ¹⁹											<u>✓</u>	
	Bonding Requirements												
29.	2151.70 Jt. Juv. Detention Facility		✓										
29.	759.36 Union Cemetery District ²⁰						✓						
29.	308.12 Airport Authority ²¹							✓					
29.	1515.07 Soil & Water District									✓			
29.	6101.12 Conservancy District ²²												✓
	Other Special Entity Requirements												
32.	ORC 343.01, 3734.52, 3734.55, 3734.56, 3734.57(B), 3734.573 and 3734.57(G) – Expenditures by solid waste management district)				✓								
36.	121.37(B)(1) Establishment and membership on Family and								✓				

¹⁹ Some provisions of these OCS Sections have general applicability while others do not. Also, other requirements may apply. Auditors should be alert for circumstances which raise questions about whether such activity has occurred and seek legal counsel when questionable activity is noted.

²⁰ The clerk-treasurer shall be bonded in an amount equal to or greater than the cemetery fund, but not less than \$1,000.

²¹ The secretary-treasurer shall be bonded in an amount required by the board.

²² For Conservancy Districts, the board may require any officer or employee to give bond and the board may determine the amount.

Children First Councils													
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Matrix 1

Chapter 7: Checklist for Other Laws and Regulations (continued)

Step No.	Requirement	Joint Mental Health District	Jt. Juv. Detention Facility	Regional Planning Comm'n	Solid Waste District	Joint Township or Union Cemetery	Union Cemetery District	Airport Authority	FCFC	Soil and Water District	ESC	<u>Regional Student Education District</u>	Conser-vancy District
37.	121.37(B)(5)(a) Administrative Agent								✓				
38.	1347 Storage, Use and Distribution of Personal Information	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓
39.	117.13(C)(3) Allocating Audit Costs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓

Matrix 2

Chapter 1: Budgetary & Certain Related Requirements

Step No.	Requirement	Library ²³	Council of Gov't	Regional Water & Sewer	General Health District	Joint Rec. District	Park District	Comm. & Technical College	State Colg./ Univ.	Joint Amb. Dist.	Joint Fire Dist.	<u>Joint Police Dist.</u>	Port Auth.	Ag. Soc.	DC & CIC
	Gen Budgetary Requirements			24	25		24						24	26	27

²³ An association library organized and operating prior to January 1, 1968 may participate in the proceeds of a county library and local government support fund ONLY where there are rules in place guaranteeing the benefit of the library to all inhabitants [Ohio Rev. Code §5705.28(D)]. ORC §5705.28(D) applies to association libraries and provides that to participate in the local government support fund, they must (1) demonstrate that their laws allow access to all people and (2) submit an estimate of revenue/expenditures to the taxing authority. (Association libraries receiving monies from the library and local government support fund must also follow the depositing and investing requirements of Chapter 135. See OCS Chapter 5 for Chapter 135 requirements.)

²⁴ If these entities levy taxes, the checkmarks apply. However, often they do not levy taxes. When they do not levy taxes, Ohio Rev. Code §5705.28 (B)(2) requires a comparable, but somewhat streamlined budget process. Ohio Rev. Code §5705.28(B)(2) requires entities to follow §5705.36, .38, .40, .41, .43, .44, and .45. However, documents prepared in accordance with these sections need not be filed with the county auditor or county budget commission. Also, while Ohio Rev. Code §5705.39 does not apply, §5705.28(B)(2)(c) prohibits appropriations from exceeding estimated revenue (i.e. receipts + beginning unencumbered cash). Ohio Rev. Code §4582.13 requires re-appropriation of surplus funds for Port Authorities.

²⁵ Ohio Rev. Code §3709.28 establishes budgetary requirements for General Health Districts, which are similar to certain Ohio Rev. Code Chapter 5705 budgetary requirements. On or about the first Monday of April the district must adopt an itemized appropriation measure. The appropriation measure, together with an itemized estimate of revenues to be collected during the next fiscal year, shall be certified to the county budget commission. Subject to estimated resources, the board of health may, by resolution, transfer funds from one appropriation item to another, reduce or increase any item, create new items, and make additional appropriations or reduce the total appropriation. Such appropriation modifications shall be certified to the county budget commission for approval. You should cite Ohio Rev. Code § 3709.28 if a General Health District: (1) does not adopt an itemized appropriation; (2) does not itemize estimated resources; or (3) appropriates more than its estimated resources as submitted to the county budget commission. Cite Ohio Rev. Code §5705.41(B) & (D) if a general health district: (1) disburses or encumbers more than appropriations at the legal level of control, or (2) obligates district moneys without the certification that section requires. Ohio Rev. Code §5705.28(C)(1) requires general health districts to file an estimate of contemplated revenue and expenses with the municipalities and townships within the district. They must file this by about June 1 (forty-five days prior to July 15). The county auditor cannot allocate property taxes from the municipalities and townships within the district if such filing has not been made (1984 Op. Atty. Gen. No. 84-013).

²⁶ This column indicates which general compliance requirements are applicable to agricultural societies. However, auditors must also test the compliance requirements specific to agricultural societies that are described within OCS Appendix H.

²⁷ Ohio Rev. Code Chapters 1724 and 1726 apply to community improvement corporations (CICs) and development corporations (DCs), respectively. Other than financial reporting (see OCS Chapter 4) the OCS does not include requirements generally considered to be direct and material. When auditing these entities, auditors should review the entity's articles of incorporation, by-laws, and contract, grant and debt agreements, to determine whether potentially direct and material requirements apply.

Matrix 2

Chapter 1: Budgetary & Certain Related Requirements (continued)

Step No.	Requirement	Library	Council of Gov't	Reg Water & Sewer	General Health District	Joint Rec. District	Park Dist.	Comm. & Technical College	State Colg./ Univ.	Joint Amb. Dist.	Joint Fire Dist.	<u>Joint Police Dist.</u>	Port Auth.	Ag Soc.	DC & CIC
1.	5705.34 Certify tax levies			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
2.	5705.36 Cert. of revenue			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
3.	5705.36 Amended cert. est res.			✓		✓	✓	✓		✓	✓		✓		
3.	5705.38 Annual appropriations	28		✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
4.	5705.36 & 5705.39 Amended Certificates and Limitation of appropriations			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
5.	5705.36; 5705.38; 5705.41(A), (B), (C) and (D); and 5705.42 Restrictions on appropriating/expending money	29		✓	30	✓	✓	✓		✓	✓	<u>✓</u>	✓		
6.	5705.40 Amending or supplementing appropriations			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
7.	5705.41(D) "Blanket" fiscal officer certificates	29		✓ ³¹	✓	✓	✓	✓		✓	✓	<u>✓</u>	✓		
8.	9.34 Establish different fiscal year-ends for entities other than schools			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		

²⁸ Ohio Admin. Code §117-8-02 requires libraries to appropriate annually, and prohibits expending more than appropriated.

²⁹ The majority of ORC Chapter 5705 applies to "subdivision", "taxing units", and "taxing authorities". However, R.C. 5705.41 also applies to "district authorities". Public library boards do not fall under any of these definitions, except, under certain circumstances, they can be considered district authorities. OAG 82-056 concluded that a board of public library trustees deriving funds from two or more subdivisions is therefore a district authority, subject to Ohio Rev. Code §5705.41. The Opinion provides that library funds derived from property tax proceeds are actually funds derived from the state, rather than funds derived from two or more subdivisions. The Opinion also provides that a special tax levied pursuant to R.C. 5705.23 would similarly not be considered "funds derived from two or more subdivisions" since the taxing authority's role would be strictly ministerial. The Opinion concludes by offering some examples of what could meet this definition, including the following levies: R.C. 5705.06(B), 5705.19(D), 3375.07, 3375.23, 3375.09, 3375.18, 3375.31, 3375.31 and 3375.42.

³⁰ The only part of Ohio Rev. Code §5705.41 that does not apply to a general health district is §5705.41(A). Instead, Ohio Rev. Code §3709.28 applies to health districts. See related footnote on preceding page.

³¹ 5705.44 contains an exception that payments made from "earnings" are not required to use the 5705.41 (D) certificate. Therefore, payments from the utility operating fund do not require certification. (However, payments from utility grant funds DO require certification.)

Matrix 2

Chapter 1: Budgetary & Certain Related Requirements (continued)

Step No.	Requirement	Library	Council of Gov't	Regional Water & Sewer	General Health District	Joint Rec. District	Park District	Comm. & Technical College	State Colg./ Univ.	Joint Amb. Dist.	Joint Fire Dist.	<u>Joint Police Dist.</u>	Port Auth.	Ag. Soc.	DC & CIC
9.	ORC 5705 Requirements for taxing districts that do not levy a tax			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
	Additional Public Library Requirements														
13.	5705.23 Special levy	✓													
	Generic Requirements of Revenue, Funds and Transfers														
14.	5705.02, .07, .18, and Art. XII Sec 2 of the Const. of Ohio Ten mill limitations			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
15.	5705.09 Establish funds			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
16.	5705.10, 5731.48, and 3315.20(A) Distribution of levy revenue			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
17.	5705.12 Approval to establish funds			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
18.	5705.14-.16 Transfer funds			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
19.	Various 5705 Sections & AOS Bulletin 97-003 – Advances ³²			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
20.	5705.13 Reserve Accounts & Funds			✓		✓	✓	✓		✓	✓	<u>✓</u>	✓		
	Add'l College Requirement														
23.	3354.10(A), 3357.10, 3358.06, 5705.41(D) Treas. fiscal certificate							✓	✓						

³² Auditors should refer to OCS Chapter 1, Appendix A, *Transfers and Advances*, for guidance on using transfers and advances.

Matrix 2

Chapter 2: Contracts and Expenditures

Step No.	Requirement	Library	Council of Gov't	Regional Water & Sewer	General Health District	Joint Rec. District	Park District	Comm. & Technical College	State Colg./ Univ.	Joint Amb. Dist.	Joint Fire Dist.	<u>Joint Police Dist.</u>	Port Auth.	Ag. Soc.	DC & CIC
	Colleges and Universities														
17.	9.312, 3354.16, 3355.12, 3357.16, 3358.10 Bidding on improvement contracts							✓							
	Libraries														
18.	3375.41 Contracts over \$25,000	✓													
	General														
20.	153.50, 153.51, 153.52 Bids and contracts for buildings/structures ³³	✓		✓				✓	✓	✓	✓	<u>✓</u>			
21.	4115.04, 4115.05 Prevailing wage	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✗	✓	
22.	9.314 Reverse Internet auction in lieu of sealed bids	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓		✓
23.	9.24 Unresolved Findings for Recovery	✓	✓	✓	✓	✓	✓		✓	✓	✓	<u>✓</u>	✓		
	Other ³⁴														
Not in OCS	167.08 Councils of government: contracts for services to political subdivisions		✓												
	6119.10 Regional water and sewer district: competitive bidding			✓											
	3709.08, 3709.081, 3709.085 General health district contracting provisions				✓										

³³ These sections are applicable if the entity is required to bid.

³⁴ These sections are not included in the OCS, but auditors should test if material activity occurred.

Matrix 2

Chapter 2: Contracts and Expenditures

Step No.	Requirement	Library	Council of Gov't	Regional Water & Sewer	General Health District	Joint Rec. District	Park District	Comm. & Technical College	State Colg./ Univ.	Joint Amb. Dist.	Joint Fire Dist.	<u>Joint Police Dist.</u>	Port Auth.	Ag. Soc.	DC & CIC
Not in OCS	1545.09 Park district: contracting procedures required in bylaws						✓								
	505.72 Gen. contracting procedures, 505.376 Bidding									✓					
	505.42 Contracts										✓ ³⁵	✓ ≡			
	4582.12 Competitive Bidding												✓ ³⁶		

³⁵ Joint fire districts are subject to contracting provisions in Ohio Rev. Code §731.14 (~~\$25,000~~\$50,000 bidding threshold) to §731.16.

³⁶ In addition to Ohio Rev. Code §4582.12 bidding requirements, note that port authorities need not bid for the lease, sale or lease with an option to purchase certain land and equipment. See Ohio Rev. Code §4582.06(F)(1).

Matrix 2

Chapter 3: Debt ³⁷

Step No.	Requirement	Library	Council of Gov't	Regional Water & Sewer	General Health District	Joint Rec. District	Park District	Comm. & Technical College	State Colg./ Univ.	Joint Amb. Dist.	Joint Fire Dist.	<u>Joint Police Dist.</u>	Port Auth.	Ag. Soc.	DC & CIC
1.	133.22 Leg. auth. Anticipation securities			✓		✓	✓	✓	✓	✓	✓	<u>✓</u>			
1.	133.24 Tax anticipation notes			✓		✓	✓	✓	³⁸	✓	✓	<u>✓</u>			
1.	5705.03 Auth. to levy taxes			✓ ³⁹		✓	✓ ³⁹	✓		✓	✓	<u>✓</u>	✓		
1.	5705.05 Gen. levy for current exp.					✓		✓		✓	✓	<u>✓</u>	✓		
1.	5705.09 Est. of funds					✓		✓		✓	✓	<u>✓</u>			
1.	5705.10 Disp. and use of tax rev.					✓		✓		✓	✓	<u>✓</u>	✓		
2.	133.10, 133.22, and 133.24 Anticipation securities	✓ ⁴⁰		✓		✓	✓	✓	✓	✓	✓	<u>✓</u>	✓		
3.	3375.404 Additional borrowing authority (Libraries)	✓													
4.	17 CFR § 240.15c2-12 Municipal securities ⁴¹	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓		✓
5.	505.401 Additional borrowing authority (Fire Districts)										✓	<u>✓</u>			
6.	133.29 Governments investing in their own securities	✓		✓		✓				✓	✓	<u>✓</u>			

³⁷ If the entity has a specific section that refers to its ability to issue bonds, notes or anticipatory securities, that section would supersede the general debt provisions in Chapter 133.

³⁸ For state universities, under Ohio Rev. Code §3345.66, they can issue notes, and this section states that Chapter 133 does not apply. However, if issuing bonds, Chapter 133 applies.

³⁹ For regional water and sewer districts and park districts, the only parts of Ohio Rev. Code §5705.03 that apply are those sentences referring to a “taxing unit.”

⁴⁰ County Library districts and regional library districts must follow Ohio Rev. Code Chapter 133. For all other libraries, only parts (A) and (B) of Ohio Rev. Code §133.10 apply.

⁴¹ The term *Municipal Security* refers to any local government security, not just those municipalities issue.

Matrix 2

Chapter 4: Accounting and Reporting

Step No.	Requirement	Library	Council of Gov't	Regional Water & Sewer	General Health District	Joint Rec. District	Park District	Comm. & Technical College	State Colg./ Univ.	Joint Amb. Dist.	Joint Fire Dist.	<u>Joint Police Dist.</u>	Port Auth.	Ag. Soc.	DC & CIC
	Accounting and Reporting Chapter														
1.	ORC 117.38 and 1724.05; OAC 117-2-03 (B): Annual Financial Reporting	✓	✓	✓	✓	✓	✓	✓	✓ ⁴²	✓	✓	<u>✓</u>	✓		✓
2.	ORC 1724.05 & 1726.11; Annual Reporting														✓
5.	OAC 117-2-02 Required accounting records	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓		

Note: Community improvement corporations and development corporations are the only entities on this matrix required to follow GAAP. However for all entities listed on this matrix, auditors and financial statement preparers should read the guidance in AOS Bulletin 2008-01.

⁴² Ohio Rev. Code §3345.72(b) requires state universities and colleges to submit annual financial reports to the Auditor of State within 4 months after the end of the fiscal year (see Auditor of State Bulletin 2001-012).

Matrix 2

Chapter 5: Deposits and Investments

Step No.	Requirement	Library	Council of Gov't	Regional Water & Sewer	General Health District	Joint Rec. District	Park District	Comm. & Technical College	State Colg./ Univ.	Joint Amb. Dist.	Joint Fire Dist.	<u>Joint Police Dist.</u>	Port Auth.	Ag. Soc.	DC & CIC
	Subdivisions Other Than Counties		43	44				45							
1 through 3	135.14 and 135.144 Eligible investments of interim monies	✓				✓	✓			✓	✓	<u>✓</u>	✓	✓	
4.	135.18 & 135.181; <u>12 CFR 330</u> Security for repayment of public deposits	✓		✓		✓	✓ ⁴⁶			✓	✓	<u>✓</u>	✓	✓	
5.	135.21 and 135.351 Crediting invest. Earnings	✓				✓	✓ ⁴⁷			✓	✓	<u>✓</u>	✓	✓	
5.	5705.10 Disposition of tax revenues and proceeds					✓				✓	✓	<u>✓</u>	✓	✓	
8.	135.37 Security for county deposits						✓								

⁴³ While not subject to Ohio Rev. Code Chapter 135, Ohio Rev. Code §167.04 requires a council of government's bylaws to address investing, depositing and disbursing funds.

⁴⁴ For regional water and sewer districts, Ohio Rev. Code §6119.16 addresses investing funds and crediting interest.

⁴⁵ Ohio Rev. Code §3354.10(A) and §3357.10 prescribe depository and security requirements for community and technical colleges.

⁴⁶ If a park district appoints a treasurer, then Ohio Rev. Code §131.18 and §131.181 may apply. If a treasurer is not appointed, two things could happen:

a. The board can resolve to select a depository per §135.01-135.21, in which case §135.18 or §135.181 apply (OCS step 5-4); or

b. If board resolutions are silent on this matter, the district must follow the procedures for county funds, which is Ohio Rev. Code §135.37 (OCS step 5-8)

⁴⁷ If a park district appoints a treasurer, Ohio Rev. Code §135.21 applies. If a park district does not appoint a treasurer, §135.351 applies. Ohio Rev. Code §135.351 requires park districts to credit interest as provided in §1545.22.

Matrix 2

Chapter 6: Other Potentially Direct and Material Laws and Regulations

Step No.	Requirement	Library	Council of Gov't	Regional Water & Sewer	General Health District	Joint Rec. District	Park District	Comm. & Technical College	State Colg./ Univ.	Joint Amb. Dist.	Joint Fire Dist.	<u>Joint Police Dist.</u>	Port Auth.	Ag. Soc.	DC & CIC
1.	ORC 9.833 and 305.172: Health Care Self Insurance ⁴⁸	✓	✓	✓	✓	✓	✓	✓		✓	✓	<u>✓</u>	✓	✓	
2.	2744.081 Liability self-insurance	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓	✓	
44.	307.51, .511-.513: Statutory Funding for County Law Library Resources Fund	✓													
9.	Federal, state and local taxes	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓	✓	✓
10.	Employees' Retirement Sys.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓		

⁴⁸ See bulletin 2001-05 appendix 2 for a detailed table regarding the specific requirements for each type of self-insured subdivision. Only test the OCS steps to the extent they apply and are mandatory for the subdivision under audit.

Matrix 2

Chapter 7: Checklist for Other Laws and Regulations

Step No.	Requirement	Library	Council of Gov't	Regional Water & Sewer	General Health District	Joint Rec. District	Park District	Comm. & Technical College	State Colg./ Univ.	Joint Amb. Dist.	Joint Fire Dist.	<u>Joint Police Dist.</u>	Port Auth.	Ag. Soc.	DC & CIC
	Contracting and Purchasing														
2.	Various – use of government credit/ purchasing cards, cell phones, government-owned equipment, etc.)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓	✓	✓
3.	Various – travel reimbursements (including “frequent flyer miles” accruals/ usage)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓		✓
	Accounting and Reporting														
5.	9.38 Deposits of public money	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓	✓	
6.	121.22 Meeting of public bodies	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓	✓	
7.	149.43 and 149.431 Availability of public records	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓	✓	
	Libraries														
20.	3375.36 Statements; depository	✓													
	Payroll Taxes														
24.	Federal, state and local taxes	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓	✓	✓
25.	Employees' Retirement Sys.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓		

Matrix 2

Chapter 7: Checklist for Other Laws and Regulations (continued)

Step No.	Requirement	Library	Council of Gov't	Reg Water & Sewer	General Health District	Joint Rec. District	Park Dist	Comm. & Technical College	State Colg./ Univ.	Joint Amb. Dist.	Joint Fire Dist.	<u>Joint Police Dist.</u>	Port Auth.	Ag. Soc.	DC & CIC
	Compensation Requirements														
25.	Compensation, etc.							✓	✓						
	Deposits and Investments														
30.	Various - Eligible deposits, etc.	✓				✓	✓			✓	✓	✓	✓		
26.	Various - investment education ⁴⁹	✓				✓	✓			✓	✓	<u>✓</u>	✓	✓	
	Fraud, Abuse, and Illegal Acts; Conflict of Interest; Ethics														
27.	1979 Op. Atty Gen. No. 79-111 Prohibitions from holding office	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓		
27.	Various ⁵⁰														
	Prohibited Political Activity														
28.	Various ⁵⁰														
	Bonding Requirements														
29.	1545.05 Park commission						✓ ⁵¹								
29.	3375.32 Library clerk	✓ ⁵¹													
29.	505.71 Joint ambulance district									✓ ⁵¹					
29.	505.372 Joint fire district clerk										✓ ⁵¹				
29.	<u>505.484 Joint police district</u>											<u>✓⁵¹</u>			
38.	1347 Storage, Use and Distribution of Personal Info.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓	✓	✓
39.	117.13(C)(3) Allocating Audit Costs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<u>✓</u>	✓	✓	✓

⁴⁹ If the treasurer of an entity invests under Ohio Rev. Code §135.14, the training requirements in §135.22 may apply.

⁵⁰ Some of the provisions of this OCS Section have general applicability while others do not. Also, other requirements may apply. Auditors should be alert for circumstances which raise questions about whether such activity has occurred and seek legal counsel when questionable activity is noted.

⁵¹ For park districts, the bond amount is \$5,000. For libraries, joint ambulance districts and joint fire districts, the board determines the clerk/treasurer's bond amount. Each university's Ohio Rev. Code section prescribes its bonding requirements.

Matrix 3

Chapter 1: Budgetary & Certain Related Requirements

Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
1.	5705.34: Certification of tax levies	✓	✓	✓	✓	✓	
2.	5705.36: Certification of available revenue	✓	✓	✓	✓	✓	
3.	5705.36: Amended certificates of estimated resources	✓	✓	✓	✓	✓	
3.	5705.38: Annual appropriation measure	✓	✓	✓	✓	✓	
4.	5705.36 & 5705.39: Amended certificates and appropriations limited by estimated resources	✓	✓	✓	✓	✓	
5.	5705.36; 5705.38; 5705.41 (A)(B)(C) and (D); 5705.42: Restrictions on the appropriation/expd. of money	✓	✓	✓	✓	✓	
6.	5705.40: Amending or supplementing appropriations	✓	✓	✓	✓	✓	
7.	5705.41 (D): "Blanket" fiscal officer certificates	✓	✓	✓	✓	✓	
8.	9.34: Establishing different fiscal year ends for subdivisions other than school districts or a county school financing district	✓	✓	✓	✓		
9.	118: Fiscal watch or fiscal emergency for a municipal corporation, county or township	✓	✓	✓	✓		
9.	5705.28 Requirements for taxing districts that do not levy a tax:	✓	✓	✓	✓	✓	
10.	5705.391 and OAC 3301-92-04: School districts and community schools prepare 5-year projections					✓	✓
11.	5705.412: Restriction upon school district expenditures					✓	
12.	3315, 3317; and 117-2: Capital reserve accounts					✓	

Matrix 3

Chapter 1: Budgetary & Certain Related Requirements (continued)

Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
13(A).	5705.29 (F); 3315.18(C); Budget reserve accounts					✓	
14.	3316.03: School district fiscal caution/watch/emergency					✓	
14.	5705.02: Ten-mill limitation	✓	✓	✓	✓	✓	
15.	5705.09: Establishing funds	✓	✓	✓	✓	✓	
16.	5705.10, 5731.48 and 3315.20(A): Distributing revenue derived from tax levies, etc.	✓	✓	✓	✓	✓	
17.	5705.12: Permission to establish funds	✓	✓	✓	✓	✓	
18.	5705.14, 5705.15, 5705.16: Transfer of funds	✓	✓	✓	✓	✓	
19.	Auditor of State Bulletin 97-003, and various ORC Sections: Advances	✓	✓	✓	✓	✓	
20.	5705.13 (A): Reserve balance accounts and funds	✓	✓	✓	✓	✓	
21.	5101.144: Use of Children Services Fund for all such receipts	✓					
22.	339.06: Organization of board of trustees; funds; administrator (hospitals)	✓					

Matrix 3

Chapter 2: Contracts and Expenditures

Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
1.	715.18, 731.02, 731.14, 731.141, 735.05, 735.051, 735.052, 735.053, 737.03 and 2921.42: Municipal contracts			✓	✓		
2.	731.16, 735.07: Altering or modifying municipal contracts			✓	✓		
3.	117.16(A), 723.52 – Force Accounts [Certain] Municipal Corporations [Cities/Villages]			✓	✓		
4.	305.30: Responsibilities of the county administrator	✓					
5.	305.27, 319.16, 307.86, 307.87, 307.88, 307.91, and 9.37 County payments to be by auditor's warrant; Competitive bidding	✓					
6.	117.16(A), 5543.19 – Force Accounts – Counties	✓					
7.	505.08, 505.101, 505.42, 505.267, 505.37, 505.42, 505.46, 507.11(B), 511.12, 515.01, 5549.21, and 5575.01: Township expenditures		✓				
8.	117.16(A), 5575.01 – Force Accounts – Townships		✓				
9.	3313.33: Conveyances and contracts					✓	
10.	125.04(C), 3313.46, and 3313.533: Procedures for bidding and letting of contracts					✓	
11.	3313.33(B), .37, .375, .40, and .41: Acquisition of school real estate, building, equipment					✓	✓ ⁵²

⁵² Ohio Rev. Code §3313.33(B) and 3313.37 do not apply to community schools. Ohio Rev. Code § 3313.375 does apply to community schools.

Matrix 3

Chapter 2: Contracts and Expenditures

Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
12.	Chapter 3318: Permissible expenditures for school districts participating in the Classroom Facilities Loan Program (and related classroom facility programs)					✓	
13.	3318: School Building Assistance Limited Fund for the Big 8 school districts					✓	
13.	Community School Bidding Requirements						✓
14.	3314.24(A) E-school leases for instructional space						✓
15.	339.05: County hospital bidding procedures and purchasing policies for supplies/equipment	✓					
16.	749.26, 749.27, 749.28, 749.29, 749.30, and 749.31: Municipal hospital contract procedures			✓			
19.	9.48: Joint contracting and purchasing programs for counties and townships	✓	✓				
20.	153.50, 153.51, 153.52: Bids and contracts for buildings/structures	✓	✓	✓	✓	✓	
21.	4115.04, 4115.05: Prevailing wage rates ⁵³	✓	✓	✓	✓		
22.	9.314: Reverse Internet auction in lieu of sealed bids (all political subdivisions)	✓	✓	✓	✓	✓	
23.	9.24 Unresolved Findings for Recovery	✓	✓	✓	✓	✓	

⁵³ This step cannot be superseded by home rule powers.

Matrix 3

Chapter 3:Debt

Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
1.	Ohio Const. Art. XII, Section 11; Ohio Const. Art. XVIII, Section 12, ORC 133.10, 133.22 133.24, 321.34, 5705.03, 5705.05, 5705.09 and 5705.10; 1981 Op. Atty Gen. No. 81-035: Retiring Debt	✓	✓	✓	✓	✓	
2.	133.10, 133.22 & 133.24: Anticipation Notes	✓	✓	✓	✓	✓	
4.	17 C.F.R. § 240.15c2-12: Issuing Municipal Securities	✓	✓	✓	✓	✓	
6.	133.29; 731.56 Governments Investing in Their Own Securities	✓	✓	✓	✓	✓	
7.	3314.08(J): Foundation Anticipation Notes						✓
8.	3318.50(B); School Classroom Facilities Loan Guarantee Program						✓
9.	3314.30 Community school revolving loan program						✓

Matrix 3

Chapter 4: Accounting and Reporting

Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
1.	OAC 117-2-03 (B): GAAP Financial Reporting (counties, cities, school districts, and community schools) , ORC 117.38	✓	✓	✓	✓	✓	✓
3.	3314.024 Footnote disclosure of management company expenses						✓
4.	117.111(A) Security controls over counties' electronic records	✓					
5.	OAC 117-2-02 Required accounting records	✓	✓	✓	✓	✓	✓

Note: Counties, Cities, STEM's, and Community Schools are the only entities on this matrix required to follow GAAP. However for all entities listed on this matrix, auditors and financial statement preparers should read the guidance in AOS Bulletin 2008-01.

Matrix 3

Chapter 5: Deposits and Investments

Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
1.	135.14, 135.144, 133.03(A)(1): Eligible investments for interim monies		✓	✓	✓	✓	
2.	135.14, 133.03(A)(1): Other requirements		✓	✓	✓	✓	
3.	135.142, 135.14(B)(7): Other allowable investments		✓	✓	✓	✓	
4.	135.18, 135.37, 135.181; <u>12 CFR 330</u> : Security for repayment of public deposits	✓	✓	✓	✓	✓	
5.	Article XII, Section 5a, Ohio Constitution; ORC 135.21, 5705.131, and 5705.10; 1982 Op. Atty. Gen. No. 82-031: Allocating interest among funds		✓	✓	✓	✓	
6.	135.34, 135.341: Investment advisory committee	✓					
7a.	135.35: Eligible investments	✓					
7b.	135.35: Other requirements	✓					
8.	Article XII, Section 5a, Ohio Constitution; ORC 135.351 and 5705.10; 1982 Op. Atty. Gen. No. 82-031: Allocation of interest among funds	✓					
9.	Community School Investments						✓

Matrix 3

Chapter 6: Other Direct and Material Laws

Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
1.	ORC 9.833 and 305.172: Health Care Self Insurance ⁵⁴	✓	✓	✓	✓	✓	
2.	2744.081: Liability Self Insurance	✓	✓	✓	✓	✓	✓
3.	OAC 3745-27-15 through 18: Landfill Certifications	✓	✓	✓	✓		
4.	3313.981(F), 3317.01, 3317.02, 3317.03 and 3321.04 :School District Average Daily Membership					✓	
5.	ORC 3313.64, 3314.03, 3314.08 – Community School Funding						✓
6.	3314.03(A)(11)(b): Community School Liability insurance						✓
6.	3314.08(I): Community School Tuition						✓
7.	3314.03 Sponsor monitoring of community schools						✓
8.	<u>507.09</u> : 505.24(C) and OAG Op. 2004-036 Allocating trustee per diem costs to funds		✓				
10.	315.12: Allocating motor vehicle license and fuel tax receipts to support the county engineer	✓					
11.	307.51, .511-.513: Statutory Funding for County Law Library Resources Fund	✓					
9.	Various federal and state codes: Income tax collection, liability etc	✓	✓	✓	✓	✓	✓
10.	Various ORC sections: Definitions, rates of contributions etc	✓	✓	✓	✓	✓	✓

⁵⁴ See bulletin 2001-05 appendix 2 for a detailed table regarding the specific requirements for each type of self-insured subdivision. Only test the OCS steps to the extent they apply and are mandatory for the subdivision under audit.

Matrix 3

Chapter 7: Checklist

Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
1.	307.93(F), 341.25, 753.22, and 2301.57: Establishment and accounting treatment of Commissaries	✓		✓	✓		
2.	Misc. local legislative body policies; charter requirements (for use of cell phones, government credit cards and purchasing cards, and government-owned vehicles and equipment)	✓	✓	✓	✓	✓	✓
3.	Misc. local legislative body policies; charter requirements; Ohio Ethics Commission Advisory Opinion No. 91-010; Ohio Rev. Code Sections 102.03(D) and (E), 2921.42(A)(4), and 2921.43(A) (travel reimbursements; "frequent flyer miles" accrual/usage)	✓	✓	✓	✓	✓	✓
4.	301.27, 301.29 County credit and procurement cards	✓					
5.	9.38: Deposits of public money	✓	✓	✓	✓	✓	✓
6.	121.22: Meeting of public bodies to be open, exceptions, and notice	✓	✓	✓	✓	✓	✓
7.	149.43: Availability of public records	✓	✓	✓	✓	✓	✓
8.	2335.25: Cashbook of costs etc	✓					
9.	2303.12: Books to be kept by clerk of the court of common pleas	✓					
10.	2101.12: Records to be kept by the probate courts	✓					
11.	2335.34 - .35: Unclaimed costs and fees (court of common pleas and probate court)	✓					
12.	2151.18: Records; annual report; distribution (juvenile court)	✓					
13.	1907.20: Records required of county courts	✓					
14.	1901.31-.32: Municipal court records	✓		✓			

Matrix 3

Chapter 7: Checklist

Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
15.	1905.21 and 733.40: Records required and disposition of receipts for mayor's court			✓	✓		
16.	Various ORC Sections: Collection, custody and disbursement of fees, fines	✓		✓	✓		
17.	2743.70, 2949.091, 2949.093 and 2949.094: Additional court costs	✓		✓	✓		
18.	Various ORC Sections 307.515: Fines and penalties to be paid to law libraries	✓		✓	✓		
19.	2113.64, 2113.65: Unclaimed money (probate court)	✓					
20.	319.04: Training and continuing education requirements for county auditors	✓					
22.	319.11: County financial reports	✓					
21.	517.15: Permanent cemetery endowment fund		✓				
24.	Various federal and state codes: Income tax collection, liability etc	✓	✓	✓	✓	✓	✓
25.	Various ORC sections: Definitions, rates of contributions etc	✓	✓	✓	✓	✓	✓
22.	505.60, 505.601, and 2005 Op. Atty. Gen. No. 2005-038: Reimbursement of insurance premiums – Townships		✓				
23.	505.603 - "Cafeteria Plans" – Townships		✓				
24.	Various ORC sections: Vacation and sick leave benefits	✓	✓	✓	✓	✓	
25.	Various ORC sections: Appointments, compensation, contracts etc	✓	✓	✓	✓	✓	✓
30.	Various ORC sections: Designating depositories	✓	✓	✓	✓	✓	—

Matrix 3

Chapter 7: Checklist

Step No.	Requirement	County	Township	City	Village	Public & STEM Schools	Community School
26.	135.22, 321.46: Education requirements	✓	✓	✓	✓	✓	
27.	Various ORC Sections: Fraud, Abuse, and Illegal Acts; Conflict of Interest; Ethics	✓	✓	✓	✓	✓	✓
28.	9.03, 124.57, 124.59, 124.61, 3315.07(C): Political activities prohibited	✓	✓	✓	✓	✓	
29.	Various ORC Sections: Bonding requirements	✓	✓	✓	✓	✓	✓
30.	325.071, 325.12, and 325.13: Furtherance of justice allowance	✓					
31.	325.07: Sheriff's transportation of prisoners allowance	✓					
33.	Various ORC Sections: Electric kilowatt-hour tax ⁵³	✓		✓	✓		
34.	Various ORC and OAC Sections: School licensing requirements					✓	✓
40.	3313.291 – School District Petty Cash Accounts					✓	—
41.	3314.03(A) Community School Tax Status						✓
42.	3313.642 School Fees for Low-Income Students					✓	
35.	3313.666(A), (B), and (C) and 3314.03(A)(11)(d) Anti-Bullying Provisions					✓	✓
38.	1347 Storage, Use and Distribution of Personal Information	✓	✓	✓	✓	✓	✓
39.	117.13(C)(3) Allocating Audit Costs	✓	✓	✓	✓	✓	✓

Appendix G

FOJ, SHERIFF TRANSPORTATION, AND LAW ENFORCEMENT TRUST FUND -- AUDIT PROGRAMS

Auditors auditing counties should use the audit programs in this appendix to test the Sheriff and Prosecutor Furtherance of Justice Funds, the Sheriff Transportation Fund, and any moneys county law enforcement agencies receive from the Law Enforcement Trust Fund. Auditors should develop a schedule for performing tests of compliance over these accounts on a rotational basis, with the audit programs being applied at least every third year. You should occasionally test these requirements every other year so the auditee cannot predict the year we will test this. We should not disclose our schedule to the auditee. However, if problems were noted with one of the funds in the previous year, apply the audit programs annually until the problems have been corrected (for example, the audit program procedures should be applied if significant expenditures were noted in the previous year which were not supported by appropriate documentation or were not for a proper public purpose). Auditors should also apply the audit program procedures in any year in which the sample questions and procedures outlined in Chapter 7 identify significant unusual items.

Furtherance of Justice (FOJ) Audit Program

Per Ohio Rev. Code § 325.071 the sheriff's annual FOJ appropriation equals ½ of the Sheriff's salary. Ohio Rev. Code § 325.06(A) and 325.18(C) prescribe sheriffs' salaries. Note that the additional 1/8 salary paid to sheriffs per RC 325.06(B) is **not** includable in the FOJ calculation.

Per Ohio Rev. Code §325.12, the prosecutor's annual FOJ appropriation equals ½ of the prosecutor's salary. This appropriation is to cover expenses incurred in performing the prosecutor's official duties and in the furtherance of justice.

The statutes require the sheriff and the prosecutor to file with the county auditor by the first Monday in January a full accounting of the expenditure of all funds from the FOJ account for the previous year. The statute requires the redeposit of any remaining funds, including cash held by officers, to the county treasury.

Suggested Audit Procedures – Compliance (Substantive) Tests:

1. Determine whether the sheriff and prosecutor filed a full accounting of expenditures of all funds from the FOJ account with the County Auditor by the first Monday in January as required by Ohio Rev. Code Section 325.071 and 325.12(E).
2. Examine the county's computation of amounts payable from the general fund to the FOJ account per RC 325.071 & 325.12. Compare the computation to actual payments. Investigate any differences and determine whether the prosecutor received approval from the court of common pleas under Ohio Rev. Code Section 325.13 to allocate any additional funds to the FOJ account.
3. Per AOS Bulletin 97-14, any amounts paid to the FOJ fund in excess of the statutory limits described above will result in a finding for adjustment against the FOJ fund.
4. Determine whether a written internal control policy exists for administering and expending funds in the FOJ account. Compare the county's internal control policies to the guidance provided in AOS MAS Bulletin/Circular 81-07 for consistency (available in the AOS Briefcase). Lack of a clear, written policy should be communicated to the audit committee and/or management officials of the County.
5. Does the policy establish clear internal controls regarding the distribution of the funds? If so:
 - Do officers receiving cash sign a form or prenumbered, duplicate receipt for all money received?
 - Does the officer providing the cash also sign a form acknowledging the disbursement of cash?
 - Obviously the department should not obtain receipts for payments to informants. However, do officers submit vendor invoices, cash register slips or other documentation to support other uses of funds (similar to an imprest petty cash fund)?
 - Are officers required to keep an Agent Expense Report or similar paperwork?
 - What does the policy state an officer should do when a receipt cannot be obtained? Examine evidence supporting whether or not officers comply with the policy.
 - Does the policy require affidavits when officers pay cash to informants and for other confidential purposes?
6. Obtain the county's reconciliation of bank balances to the activity in the FOJ account cash book.
 - Foot the reconciliation.
 - Agree the bank balance per the reconciliation to the bank account statement balance.

- Scan reconciling items for reasonableness.
 - Trace any relatively large outstanding checks or deposits in transit to subsequent bank deposits or the date on which outstanding checks subsequently cleared the bank.
 - Agree the book balance per the reconciliation to the FOJ account balance.
 - Trace payment of the remaining year end FOJ balance to a receipt / revenue into the county treasury, as RC 325.071 (sheriff) and RC 325.12(E) (prosecutors) requires.
7. Obtain the check register and review the payees* for reasonableness of the expenditure. If there are checks written to the Sheriff or other high ranking officials, include these disbursements in the test that step 7 describes.

*Due to the 21st Century Check Act, there are instances in which the bank is no longer able to return an original paper check or a photocopy of an original paper check. Instead, the bank is able to provide you with only a “display history” of a withdrawal from your checking account. Information on a bank’s “display history” typically includes, but is not limited to, the number of the account upon which the check is drawn, routing information, the person or entity to whom the check was made payable, the purpose for which the money was paid, and the amount paid to the person or entity. Because a bank’s “display history” of a withdrawal from a checking account sets forth the same information that appears on an original paper check or a photocopy of an original paper check, such a “display history,” like an original paper check or photocopy of an original paper check, may provide a reasonable and reliable means by which a county prosecuting attorney can accurately account for a disbursement from his furtherance of justice allowance. [AG Opinion 2005-035] Also see AOS Bulletin 2004-10.

8. Select a representative group of disbursements from the year end FOJ report, listing the check number, date, amount, and payee, and determine that:
- amount per the report agrees with the canceled check or receipt.
 - check is properly endorsed and signed by the Sheriff
 - expenditure is for furtherance of justice (almost everything counts except personal items— see the guidance in Bulletin 81-07 and 97-14)
 - Determine that the officer completes an affidavit to support confidential payments, describing the amount of the expenditure and either the check number or the receipt number related to the expenditure as well as a statement of a general nature of the expenditure. If an affidavit is executed, the Auditor of State will not require production of the actual check or receipt and will not make any further inquiry into the detail surrounding the expenditure unless there is probable cause to believe that the affidavit is false. If no affidavit is executed, the officer must produce sufficient documentation to support that the expenditure is for a proper public purpose. Please note that a mere assertion by the officer that an expenditure is confidential is not sufficient to negate the documentation requirements.
 - Determine whether other (i.e. non confidential) disbursements are adequately supported by original documents (e.g., original invoices, receipts, receiving report, etc.)
 - Determine that checks do not appear to have been altered
 - Determine whether amounts agree among related documents, and that computations (footings, extensions, etc.) are correct.

Audit implications and/or management comments:

Transporting Prisoners, Sheriff Travel and Training Audit Program

ORC 325.07 governs the Transportation of Prisoner account, and requires the county commissioners to make monthly allowances to the Sheriff for his **actual and necessary expenses**, incurred and expended in pursuing within or without the state or transporting persons accused or convicted of crimes or offenses.

Each Sheriff shall file under oath a monthly report containing a full, accurate, and itemized account of his actual and necessary expenses, including telephone tolls and any other transportation expense mentioned in this section, **before the board allows the expense.**

The statement shall show the number of cases, the court in which the service was rendered, and the point from which a transportation vehicle was used.

The board may authorize a sum not exceeding 50% of the sheriff's annual salary, as an advance necessary for the duties within this section.

After approving the monthly report, the board may restore to the fund the amount the sheriff expended. The sheriff shall pay any unexpended funds remaining at the end of the fiscal year into the county treasury.

Suggested Audit Procedures – Compliance (Substantive) Tests:

1. Determine whether the advance amount did not exceed the permitted amount. Compare the amount the statute permits (one half of the Sheriff's salary), to the advance the commissioners approved.
2. Obtain a copy of the department's written policies and procedures regarding transporting prisoners. Use this policy as the criteria for the testing described below. If there are no written policies, determine which policy, (i.e. the county's travel policy or the sheriff's travel policy) applies.
3. Scan selected sheriff's monthly reports to the commissioners, and determine if they are itemized and include all of the information required by law (i.e., the number of cases, the court in which the service was rendered, and the point from which a transportation vehicle was used). In addition, review several trips for reasonableness. For example, a trip to Florida might include transportation, meals, and lodging. Every expenditure related to the transportation must be supported by an actual receipt (hotel bills, itemized restaurant receipts, receipts for airline tickets, and a detailed description regarding the prisoner transport).
4. Select a few* transportation costs during the audit period and determine if the expenditures related to the trip are in compliance with the terms and limitations described in the policies obtained in Step 2 above. Obtain the expense reports the transporting officers submitted and compare the total expenses incurred for the transport(s) to the total recorded on the report to the commissioners. Document any discrepancies.

*Since we are not opining on this activity, we do not require a high level of assurance and need not test 60 items.

Audit implications and/or management comments:

Transporting Prisoners, Sheriff Travel and Training Audit Program

Travel and Training

Suggested Audit Procedures – Compliance (Substantive) Tests:

Select a few* conferences attended by the Sheriff and some of his top officers, comprising the largest conference disbursements, and review the detailed expenditures reimbursed for each trip to determine if they comply with the appropriate policy. In addition, review each trip for reasonableness. For example, a conference such as the National Sheriff Association (NSA) probably would include transportation, meals, and lodging. All expenses related to the trip should be recorded on one expense report for each individual attending the conference. All expenses should be supported by receipts.

*Since we are not opining on this activity, we do not require a high level of assurance and need not test 60 items. If conferences are infrequent, testing one might be sufficient.

Audit implications and/or management comments:

Law Enforcement Trust Fund Audit Program

Mandatory Drug Fine

Ohio Rev. Section 2925.03 (F)(1) requires the clerk of a court to pay any mandatory fine imposed pursuant to division (D)(1) of this section and any fine other than a mandatory fine imposed for a violation of this section pursuant to division (A) or (B)(5) of section 2929.18 of the Revised Code to the county. . . or state law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the Clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section. **(Steps 1-5)**

Ohio Rev. Section 2925.03 (F)(2) provides guidance on preparing an internal control policy which describes the general types of allowable expenditures from the Law Enforcement Trust Fund. **(Steps 1-5)**

Ohio Rev. Code Section 2925.03 (F)(2)(b) states in part that each law enforcement agency receiving fine moneys under (F)(1) of this section or division (B) of Ohio Rev. Code 2925.42 shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by that agency pursuant to (F)(2)(a) of this section, and shall send a copy of the cumulative report to the Attorney General by March 1. **(Steps 1-12)**

Forfeited Moneys

Ohio Rev. Code Section 2981.13(C)(2)(A) requires sheriffs and county prosecutors to adopt an internal control policy relating to proceeds and forfeited money. The policy should address the use and disposition of all the proceeds and forfeited moneys, the general type of expenditures to be made out of the proceeds and forfeited moneys received, and records to be maintained.

Ohio Rev. Code Section 2981.11(B)(2) provides that any law enforcement agency that receives or uses any proceeds or forfeited monies out of a law enforcement trust fund under section 2981.13 of the Revised Code shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept pursuant to this section and shall send a copy of the cumulative report to the Attorney General by March 1. **(Steps 1-12)**

Suggested Audit Procedures – Compliance (Substantive) Tests:

1. Obtain the written internal control policy RC 2925.03(F)(2)(a) requires. The policy should address the law enforcement agency's use and disposition of all drug fine moneys received, and require using detailed financial records of the receipts of the fine moneys, the general types of expenditures made of this fine money, and the specific amount of each general type of expenditure.

The policy shall not provide for or permit the identification of any specific expenditure made for an ongoing investigation. All financial records of receipts and expenditures by the law enforcement agency are considered public records open for inspection.

2. Review the written internal control policy for the appropriate elements noted in step 1 above. (If we reviewed the policy in a prior audit, scan for changes and document in the permanent file.)
3. Determine if the law enforcement agency implemented the written internal control policy and has complied with the provisions pertaining to the use and disposition of drug fine moneys received,

keeping of detailed financial records, allowability of expenditures made, and any limitations on the amount of each general type of expenditure.

We should test this via procedures we use to determine if controls have been placed in operation. These might include a walk-through and scanning a few disbursements and the related documentation and financial records. See AOSAM 30500.45.

4. Obtain the report RC 2925.03(F)(2)(b) requires, covering the current fiscal year cumulating all of the information contained in the public financial records kept by the agency and determine whether a copy was filed with the Attorney General's Office not later than March 1. Auditors should send RC 2925.03(F)(2)(b) noncompliance violations (report and/or management letter) to the Auditor of State legal division.
5. An additional fine imposed under RC 2929.18(B)(4) does not require distribution to LET funds under R.C. 2925.03(F).

Instead, fines imposed under RC 2929.18(B)(4) must be used as provided in R.C. 2925.03(H). This section requires fines to be used solely for the support of one or more eligible alcohol and drug addiction programs. Determine if any such fines existed and were spent according to RC 2925.03(H).

6. Obtain the bank accounts and support documentation representing LET fund activity established by the prosecuting attorney and by the sheriff.
7. Test the bank reconciliation.
 - Foot the reconciliation.
 - Agree the bank balance per the reconciliation to the bank account statement balance.
 - Scan reconciling items for reasonableness. Trace any relatively large outstanding checks or deposits in transit to subsequent bank deposits or the date on which outstanding checks subsequently cleared the bank.
 - Agree the book balance per the reconciliation to the LET fund accounting record's balance.
8. Scan disbursements for any unusual items.
9. This step applies to both drug fines (RC 2925.03(F)(1) and forfeited money (RC 2981.13(B)(4)(b)).

Scan selected LET fund disbursements and supporting documentation (e.g. invoices, etc.) to determine if they were used only for the following purposes (RC 2981.13(C)(2)(a)):

- protracted or complex investigations or prosecutions,
- to provide reasonable technical training or expertise,
- to provide matching funds to obtain federal grants to aid law enforcement,
- in support of DARE programs or other programs designed to educate adults or children with respect to the dangers associated with the use of drugs of abuse,
- to pay the costs of emergency actions taken under RC 3745.13 relative to operating an illegal methamphetamine laboratory if the forfeited property or money involved was that of a person responsible for operating the laboratory,
- or other law enforcement purposes that the superintendent of the state highway patrol, department of public safety, prosecutor, county sheriff, legislative authority, department of taxation, board of township trustees, or board of park commissioners⁺ determines appropriate.

⁺Sub. H.B. 120 of the 127th General Assembly added references to the Department of Taxation and its Enforcement Division and related funds in the appropriate places in the forfeiture law (R.C. Chapter 2981.). This was done to retain the Department's preexisting authority to obtain forfeiture and use the property or the proceeds, which had been inadvertently omitted in prior legislation. HB 1 of the 128th General Assembly makes a technical change to

- The funds must not be used to meet the operating costs of the prosecuting attorney or sheriff (R.C. §2981.13(C)(2)(c)).

The funds' use is also subject to the written internal control policy described in Step 1 above. If transactions do not comply with the policy, we should cite noncompliance with the policy.

We require only a low level of assurance from this testing. Select sample sizes accordingly, or use high dollar testing if it is more efficient and provides greater coverage.

10. Determine if the prosecuting attorney and sheriff have adopted a written internal control policy addressing the use of moneys received from contraband as required by RC 2981.13(C)(2)(A). Test costs selected in Step 9 above and ensure forfeited monies from drug related cases have been expended only in accordance with the written internal control policy adopted.
11. Determine if the prosecuting attorney and sheriff have filed the report RC 2981.11(B)(2) requires with the Attorney General by March 1. Auditors should send RC 2981.11(B)(2) noncompliance violations (report and/or management letter) to the Auditor of State legal division.
12. Determine if moneys from the sale of contraband were disbursed to the appropriate agency or fund as indicated in the internal control policy.

Audit implications and/or management comments:

Appendix H

AGRICULTURAL SOCIETY COMPLIANCE SUPPLEMENT

You should use this appendix for all audits of Agricultural Societies in addition to the general laws and regulations noted as applicable to Agricultural Societies in the Legal Matrix within Appendix F.

Agricultural societies incorporate as either county (per RC 1711.01) or independent (per RC 1711.02). Certain laws herein apply to one or both types. Each step describes to which type of society it applies.

The applicable Ohio Compliance Supplement chapter is noted for each step. Those noted as OCS Chapters 1 through 6 are laws and regulations that AOS normally considers “direct and material” (i.e., where significant violations require reporting in the compliance and internal controls report *Government Auditing Standards* requires). The sub steps in OCS Chapter 7 items are matters the Auditor of State considers important for fulfilling a society’s stewardship responsibilities, analogous to Chapter 7 in the Ohio Compliance Supplement. However, noncompliance with those requirements may not require reporting as material noncompliance. Auditors should evaluate the materiality of all noncompliance findings to determine the proper reporting. See the Introduction to the Ohio Compliance Supplement for more on testing and reporting requirements.

Agricultural Society Compliance Supplement

Applicability: County and independent societies

OCS Chapter 1

Budgetary Compliance Requirement: An Agricultural Society is not required to follow the budgetary statutes within ORC Chapter 5705. However, the *Uniform Agricultural Society Accounting System User Manual* states:

Each agricultural society shall prepare an annual budget of its revenues and expenses. The budget shall cover the period December 1st through November 30th.

The budget shall be considered and approved by the board of directors prior to the first day of the ensuing fiscal year. The budget shall be prepared at the level of the accounts from the chart of accounts which are used by the society.

Budgeted revenues and expenses should be distributed to the month they are likely to be received and expended. The distributed monthly budget should be integrated into the society's accounting system.

Actual revenues and expenses shall be compared to budgeted amounts each month, and reported to and reviewed by the board of directors. The board of directors shall determine the reasons why actual expenses exceed or are less than budgeted expenditures by making inquiries to fair management about the reasons.

The budget is not legally binding unless the Board adopts a resolution making the budget legally binding.¹

[Insert applicable budgetary requirements.]

* An appropriation is authorization to expend money.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Periodic Reviews/Comparisons of Budgeted and Actual Amounts • Presence of Effective Accounting System 		

¹ We believe Agricultural Society Boards should not present budgetary statements as part of their basic statements, because they lack the legal authority to adopt "legally binding" budget as described in GASB Codification 2400.102. Therefore, if a Society adopts a budget and wishes to present it, the statements should present it as supplemental information (not RSI). However, while not legally binding under the GASB criteria, over expending the budget could be noncompliance with a Society' budget resolution. Determining whether noncompliance exists requires judgment based on whether the Society intends their budget to limit expenditures vs. being only a planning tool, etc.

<ul style="list-style-type: none"> • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures – Compliance (Substantive) Tests:

- a. Read resolutions and determine whether the society intends their budget to be legally binding. If so, include a copy or abstract of the resolution in the permanent file, and include step e below.
- b. Inquire (or determine from reading the minutes) if amended or supplemental measures have been passed.
- c. Inspect the government’s records throughout the period to determine if updates and adjustments were properly and timely posted.
- d. Apply limited procedures to determine if the Board uses the budget to monitor activities. Evidence of monitoring would include:
 - Including a copy of budget vs. actual results in meeting agendas.
 - Evidence in the minutes of discussion of results.
 - Memos from board members to other employees investigating variances.
- e. If the budget is legally adopted:
 - Scan for negative variances at the legal level of control. Report these findings in the management letter or GAGAS report depending on their significance.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Note: Auditors should test the applicable prevailing wage requirements documented in Chapter 2 of the OCS. Refer to Appendix F for guidance on specific applicability.

Applicability: County societies

OCS Chapter 3

3a. Debt Compliance Requirement: Ohio Revised Code Sections 1711.18 – Issuance of county bonds to pay debts of county society; 1711.19 – Bonds; 1711.20 – Levy for payment of bonds; and 1711.21 – Use of money raised by county taxation.

Summary of Requirement: In a county in which there is a county agricultural society indebted fifteen thousand dollars or more and such society has purchased a fairground or title to such fairground is vested in fee in the county, the board of county commissioners shall submit to the electors of the county whether or not county bonds shall be issued and sold to liquidate such indebtedness. If a majority of the voters vote in favor thereof, the board of county commissioners shall issue and sell bonds of the county in the amount necessary. Such bonds shall bear interest at not more than the rate RC 9.95 provides,² payable semiannually, and shall be issued for a period of not less than ten nor more than twenty years.

From the proceeds arising from the sale of such bonds, the board shall pay off the indebtedness for which such bonds were sold. The board of county commissioners shall levy a tax upon all the taxable property on the tax duplicate of the county for the purpose of paying such bonds as they mature and the interest thereon.

When money has been raised by taxation by a county for the purpose of leasing lands for county fairs, erecting buildings for county fair purposes, or making improvements on a county fairground, or for any purpose connected with the use of a county fairground or with the management thereof by a county agricultural society, such money shall be used for such purpose only.

Note: Bonds a county issues under this section are **county** liabilities, though the society may agree to repay the county for debt service due on the bonds. (If the society contractually agrees to pay the county for the debt service, the society’s notes should disclose a debt obligation to the county. However, do **not** characterize the obligation as *bonds payable*.)

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Bond Counsel/Lender Involvement • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations 		

² RC 9.95 states, “Interest shall not exceed the maximum or maximum average annual interest rate per annum determined in or pursuant to the proceedings for the securities by the county commissioners.”

<ul style="list-style-type: none"> • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures – Compliance (Substantive) Tests:

- a. Inspect cash receipt records and minutes and determine if indebtedness exists.
- b. For bonds a county issues during the audit period, compare disbursements of the proceeds to the bond documents to determine if the proceeds were spent for purposes for which the bonds were issued.
- c. For bonds issued during the audit period, read bond contracts and summarize provisions applicable to the Society, and save in the permanent file. The summary should describe:
 - Purposes for which the debt was issued.
 - Collateral
 - An amortization schedule for any debt service the society owes to the county.
- d. For years in which the society owes debt service to the county, agree payments to the amortization schedule.
- e. Determine if a debt footnote describes the purpose, original issue amount, collateral, and an amortization schedule for this debt.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

Applicability: County society

OCS Chapter 3

3b. Debt Compliance Requirement: Ohio Revised Code Sections 1711.25 to 1711.30 – Sale, lease, purchase, and exchange of sites by county society; payment for new site by county funds or bonds; tax levy; and approval by electors.

Summary of Requirement: A county agricultural society may secure a different site for its annual fair. If this occurs, auditors should review the Ohio Revised Code sections listed above and develop appropriate audit procedures.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Bond Counsel/Lender Involvement • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

- a. By reading the minutes, determine if the Society procured a different site for its fair, or acquired or disposed of land where the annual fair is held. If so, review the code sections above for specific requirements.
- b. In the year these transactions occur, read contracts and summarize requirements imposing debt or lease payments, collateral, insurance or other obligations on the society. Save the summary in the permanent file.
- c. Determine if the footnotes adequately describe any leases or other society obligations, amortization schedules, etc.
- d. For subsequent years, agree any debt or lease payments owed to the contract summary in the permanent file.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies /material weaknesses, and management letter comments):

Applicability: County societies

OCS Chapter 3

3c. Debt Compliance Requirement: Ohio Revised Code Sections 1711.13 – County agricultural society may obtain mortgage debt or may enter into written agreements to obtain loans and credit for expenses.

Summary of Requirement: County agricultural societies may do either or both of the following:

(A) Mortgage their grounds for the purpose of renewing or extending pre-existing debts, and for the purpose of furnishing money to purchase additional land, but if the board of county commissioners has caused money to be paid out of the county treasury to aid in the purchase of the grounds, no mortgage shall be given without the consent of the board. Deeds, conveyances, and agreements in writing, made to and by such societies, for the purchase of real estate as sites for their fairs, shall vest a title in fee simple to the real estate described in those documents, without words of inheritance.

(B) Enter into agreements to obtain loans and credit for expenses related to the purposes of the county agricultural society, provided that the agreements are in writing and are first approved by the board of directors of the society. The total net indebtedness incurred by a county agricultural society pursuant to this division (B) shall not exceed an amount equal to twenty-five percent of its annual revenues.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Bond Counsel/Lender Involvement • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

- a. By reading the permanent file, minutes, cash receipt records, other documents, and by inquiry, determine if any such indebtedness exists.
- b. If there is mortgage debt, use the sources described in **a.** above to determine if the board of county commissioners paid county funds to aid in purchasing the grounds. Read a copy of the county commissioners’ resolution to determine if they gave the proper consent for this mortgage debt. Retain a copy of the resolution in the permanent file.

c. Loans and Credit³

- If the Society has procured loans and credit for expenses related to the purposes of the county agricultural society, verify these agreements are in writing and were first approved by the board of directors of the society.
- Examine the society's computation supporting that the total net indebtedness from loans and credit does not exceed twenty-five percent of its annual revenues.
- For debt issued during the audit period, compare disbursements of the proceeds to the bond documents to determine if the proceeds were spent for purposes for which the bonds were issued.
- For debt issued during the audit period, read related contracts and summarize provisions applicable to the society, and save in the permanent file. The summary should describe:
 - a. Purposes for which the debt was issued.
 - b. Collateral / mortgage
 - c. An amortization schedule for any debt service the society owes to the county.
- For years in which the society owes debt service, agree payments to the amortization schedule.
- Determine if a debt footnote describes the purpose, original issue amount, collateral, and an amortization schedule for this debt.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies /material weaknesses, and management letter comments):

³ The law authorizing this type of debt did not exist prior to the addition of (B) to Ohio Revised Code Section 1711.13, effective September 26, 2003. Therefore, if any of this type of debt was acquired prior to September 26, 2003, the Agricultural Society shall discharge such debt.

Applicability: County and independent societies

OCS Chapter 4

Accounting Compliance Requirement: Ohio Administrative Code section 117-10-01 – Financial reporting and accounting for county agricultural societies.

Summary of Requirement: Each county agricultural society and independent agricultural society shall, for financial reporting and accounting purposes, record and report all financial transactions on a fiscal year basis beginning on December 1 and ending November 30. Societies shall record and report all financial transactions in accordance with the *Uniform System of Accounting for Agricultural Societies*⁴. Note: You can view the latest version of this at www.auditor.state.oh.us, under *Publications*.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Presence of Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

- a. Compare the *Uniform System of Accounting for Agricultural Societies* requirements with the systems and records the society is using.
- b. Determine if:
 - The required chart of accounts is used.
 - A cash journal, a receipts ledger, an expense ledger, and an investment ledger are used.
 - The prescribed formats for accounting and reporting information are used (including receipts, purchase orders, vouchers, checks, and bank reconciliations).

⁴ The Auditor of State also requires by rules, that certain public offices follow a prescribed uniform chart of accounts and/or establish a fund accounting system to demonstrate legal compliance, financial accountability and to provide management with information for decision making. These rules are in Chapter 117-2 of the Ohio Administrative Code. As a matter of accountability and internal control, each public office should account for financial activities using an accounting system which demonstrates legal compliance; follows a documented chart of accounts appropriate for its particular activities; and is supported by appropriate subsidiary ledgers/journals. When a public office fails to maintain such an accounting system, auditors should consider whether the failure constitutes a reportable internal control deficiency or weakness.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies /material weaknesses, and management letter comments):

Note: Auditors should test the applicable deposit and investment requirements documented in Chapter 5 of the OCS. Refer to Appendix F for guidance on specific applicability.

Note: Auditors should test the applicable health care self insurance and liability insurance requirements documented in Chapter 6 of the OCS. Refer to Appendix F for guidance on specific applicability.

OCS Chapter 6

6a. Other Potentially Direct and Material Laws and Regulations: Ohio Revised Code Sections 3769.01, 3769.04, and 3769.06 – Horse-racing permit required, application for permit, and renewal of permit.

Summary of Requirement: No person, association, corporation, or trust shall hold, conduct, assist, or aid and abet in holding conducting any meetings, at which horse racing is permitted for any stake, purse, or award, unless such person, association, corporation, or trust secures a permit to conduct a horse-racing meeting.

Any person, associations, corporation, or trust desiring to hold or conduct a horse-racing meeting, wherein the pari-mutuel system of wagering is allowed, shall apply to the state racing commission (commission) for a permit. Each application, accompanied by a permit fee of ten dollars and a cash bond, certified check, or bank draft, shall be filed with the commission at least five days prior to the first day of each horse-racing meeting. The permit shall be signed by its president or vice-president and attested by the secretary or assistant secretary under the seal of the seal of the association, trust, or corporation, if it has a seal, and shall also be verified under oath by one of the officers signing the application.

Each permit issued under this section to hold or conduct a horse-racing meeting shall be issued for one year from the first day of January of the year for which it is issued. The holder of such permit shall be entitled to renewal of the permit upon application to the commission for a renewal.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files • Legislative and Management Monitoring 		

<ul style="list-style-type: none"> • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures – Compliance (Substantive) Tests:

Examine the required permit. Determine that it was current at the time of the races.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies /material weaknesses, and management letter comments):

Applicability: County and independent societies**OCS Chapter 6****6b. Other Potentially Direct and Material Laws and Regulations:** Ohio Revised Code Section 3769.082 – Ohio Fairs Fund; distribution.

Summary of Requirement: Ohio Fairs Fund moneys shall be distributed by the director of agriculture annually, on or before the first day of March, as follows:

- To each county agricultural society and to each independent agricultural society conducting an annual fair, a prescribed percentage of Ohio Fairs Fund money, to be allocated for general operations.
- To each county agricultural society and each independent agricultural society conducting horse races (harness races or running races) during their annual fair, the sum of four thousand dollars, to be used as purse money for horse races in accordance with this section, and the additional sum of one thousand dollars to each such county agricultural society and independent agricultural society to be used for race track maintenance and other expenses necessary for the conduct of such horse races or colt stakes.
- A grant of four thousand dollars shall be available to each county or independent agricultural society for the conduct of four stake races for two-year-old and three-year-old colts and for four stake races for two-year-old and three-year-old fillies at each gait of trotting and pacing, provided, that at least five hundred dollars shall be added to each race. Exclusive of entrance fees and the excess moneys provided below, the grant of four thousand dollars for purse money provided, a sum not to exceed three thousand dollars may be used by a society to reach the required purse for each of the eight stake races. Such stake races shall be distributed as evenly as possible throughout the racing season.
- In the event that the moneys available on the first day of March of any year are less than that required above, the amount distributed from the Ohio Fairs Fund may be different than the amounts reflected above.
- County agricultural societies and independent agricultural societies conducting stake races shall, on or before the first day of November in the year immediately preceding the year in which the moneys are to be distributed, make application for participation in such to the director of agriculture on forms provided by the director.
- Distribution of moneys for stake races shall not be paid to county agricultural societies and independent agricultural societies that conduct on their race courses automobile or motorcycle races during any year for which such distribution is requested, unless such automobile or motorcycle races are not conducted during the days and nights that horse racing is being conducted at such fair.
- Any county agricultural society or independent agricultural society which uses the moneys distributed under this section for any purse other than that provided in this section is not

eligible to receive distribution from the Ohio Fairs Fund for a period of two years after such misuse of such moneys occurs.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Periodic Reviews/Comparisons of Budgeted and Actual Amounts • Presence of Effective Accounting System • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

- a. Determine whether the society receipted Ohio Fairs Fund in the State and Local Fund, and how much was restricted for racing purses and track maintenance according to the above sections.
- b. Compare amounts distributed for race purses and track maintenance to the amounts restricted to these purposes, and compute whether the amounts disbursed at least equaled the restricted amounts.

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies /material weaknesses, and management letter comments):

Note: Auditors should test cell phone and government-owned vehicles/equipment requirements as applicable in Chapter 7 of the OCS. Refer to the Introduction and Appendix F for guidance on specific applicability.

Applicability: County and independent societies

Note: Auditors should test credit card requirements as applicable in Chapter 7 of the OCS. Refer to the Introduction and Appendix F for guidance on specific applicability.

Applicability: County and independent societies

OCS Chapter 7

7a. Compliance Requirement: Ohio Revised Code Sections 117.38, 901.06, and 1711.05 – Filing financial reports and Publication of treasurer’s account.

Summary of Requirement: Prior to the first day of December of each year, the director of agriculture shall set a date in January of the following year, on which the director shall meet with the presidents or other authorized delegates of agricultural societies which conduct fairs in compliance with sections 1711.01 to 1711.35, inclusive, of the Revised Code, and regulations of the department of agriculture. Each society shall deliver its annual report to the director at or before the January meeting. [RC 901.06]

Cash-basis entities must file annual reports with the Auditor of State within 60 days of the fiscal year end. Since the Auditor of State has not prescribed a form for the report, the society shall file an annual report using the format as suggested in the handbook titled, “Uniform System of Accounting for Agricultural Societies.” Any public office which does not file the report by the required date shall pay a penalty of twenty-five dollars for each day the report remains unfilled, not to exceed seven hundred fifty dollars. [RC 117.38]

Every county agricultural society annually shall publish an abstract of its treasurer’s account in a newspaper of the county and make a report of its proceedings during the year. [RC 117.38 & 1711.05]

Sample Questions and Procedures

1. Trace selected totals from the annual report to the underlying accounting system. If we use the annual report as a trial balance, we will satisfy this requirement by completing the mandatory Trial Balance steps from the financial audit program. If the report is significantly deficient, we should cite ORC 117.38 for filing an incomplete or misleading report.
2. Search LGS’s annual report file to determine whether the government filed an annual report with our office.
3. Inquire to determine the date the report was filed with the Director of Agriculture.

You can limit the following step to every other audit, unless the prior audit found noncompliance or unless you have other reasons to suspect this may be a compliance issue. The working papers should document whether we tested this in the prior audit.

4. Please show me a proof of publication for the annual notice.

List the government personnel interviewed, interview dates, documents examined, and observations made:

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies /material weaknesses, and management letter comments):

Note: Auditors should test depository requirements as applicable in Chapter 7 of the OCS. Refer to the Introduction and Appendix F for guidance on specific applicability.

Note: Auditors should test public meetings requirements as applicable in Chapter 7 of the OCS. Refer to the Introduction and Appendix F for guidance on specific applicability.

Note: Auditors should test public records requirements as applicable in Chapter 7 of the OCS. Refer to the Introduction and Appendix F for guidance on specific applicability.

Note: Auditors should test income tax requirements as applicable in Chapter 7 of the OCS. Refer to the Introduction and Appendix F for guidance on specific applicability.

Applicability: County and independent societies

OCS Chapter 7

7h. Compliance Requirement: Ohio Revised Code Section 5709.10 – Exemption of County Fairground from Real Estate Tax.

Summary of Requirement: Property used as a county fairground that is owned by the board of county commissioners or by a county agricultural society shall be exempt from taxation.

Sample Questions and Procedures

You can limit the following steps to every other audit, unless the prior audit found noncompliance or unless you have other reasons to suspect this may be a compliance issue. The working papers should document whether we tested this in the prior audit.

- a. How do you ensure the Society does not pay real estate tax?
- b. Verify the Society did not pay real estate tax by scanning the disbursements included in Account # 7480.

List the government personnel interviewed, interview dates, documents examined, and observations made:

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies /material weaknesses, and management letter comments):

Applicability: County societies**OCS Chapter 7**

7i. Compliance Requirement: Ohio Revised Code Section 1711.24 – Insurance on county society's buildings.

Summary of Requirement: The board of county commissioners of a county in which there is a county agricultural society shall insure the buildings on the grounds of such society for the benefit of such society.

Sample Questions and Procedures

You can limit the following steps to every other audit, unless the prior audit found noncompliance or unless you have other reasons to suspect this may be a compliance issue. The working papers should document whether we tested this in the prior audit.

- a. Scan the policy covering grounds and buildings.
- b. Judge whether the amount of the insurance adequate considering the value of the buildings and contents. If you deem it inadequate, discuss with management and determine whether we should recommend they consider increasing their coverage.

List the government personnel interviewed, interview dates, documents examined, and observations made:

Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies /material weaknesses, and management letter comments):