IMPLEMENTATION GUIDE FOR LEGAL COMPLIANCE AUDITING IN OHIO

NOTE: Red text throughout this Ohio Compliance Supplement is related to COVID-19

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Introduction

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. Ohio Rev. Code § 117.11 (A) states in part that when auditing Ohio public offices:

> . . . [i]nquiry shall be made into . . . whether the laws, rules, 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 § 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 subject to audit to (1) the requirements included in the Ohio Compliance Supplement (OCS), plus (2) other direct and indirect compliance requirements *not* included in this Supplement, but required by AU-C 250 (discussed below).

AU-C 250 *Consideration of Laws and Regulations in an Audit of Financial Statements* clarifies the auditor's responsibility regarding OCS tests:

".02 . . . The provisions of some laws or regulations have a ***direct*** effect on the financial statements in that they ***determine the reported amounts and [required] disclosures*** in an entity's financial statements. . ."

Conversely:

".A13 Many laws and regulations relating principally to the operating aspects of the entity do not *directly* affect the financial statements (their financial statement effect is **indirect**) and are *not captured by the entity's information systems relevant to financial reporting*. Their ***indirect effect*** may result from the need to disclose a contingent liability because of the allegation or determination of identified or suspected noncompliance."

- Based on the above (and AU-C 250.A9 – .A11), "**direct** and material compliance" refers ***only*** to laws a government's information system (which includes its accounting system) must "capture" to ***determine financial statement amounts and required disclosures***[1]. Therefore, we have classified a law as ***direct*** in this OCS if noncompliance has the potential to materially misstate the financial statements. Chapters 1 & 4A of this compliance supplement includes "direct" laws.
    - As one example, GAAP requires governments to present budgetary comparisons as basic statements or as RSI.
    - GAAP also requires these presentations to follow the government's legal budget basis.

[1] Few Ohio GAAP governments' have "formal" systems to compile most balance sheet assets or liabilities. Therefore, GAAP governments' "information systems" include trial balances, other spreadsheets or any other material used to compile GAAP amounts or disclosures.

Cash / AOS basis governments' *information systems* include documents used to prepare / support notes to the statements.

- In Ohio, a "5705 government's" information system must capture information using the accounting basis Ohio Rev. Code Chapter 5705 (via GASB Cod. 2400) prescribes to compile budget and actual amounts and budget variances GAAP requires.
- Ohio Rev. Code Chapter 5705 generally prescribes a cash + encumbrance accounting basis, which a compiler must understand and follow to satisfy GAAP.

AU-C 250.06 b requires more limited audit responsibilities for *indirect* laws, such as those:

i. fundamental to the operating aspects of the "business" (i.e. a government's operations),

ii. fundamental to an entity's ability to continue its business, or

iii. necessary for the entity to avoid material penalties

Chapters 2A & 4B includes "indirect" laws. Chapters 2B & 4C also includes laws that statutes mandate auditors to test during an audit.

In addition to the "direct," "indirect," and "mandated compliance tests" discussed above the Auditor of State has identified laws of significant public interest due to stewardship considerations. 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. Chapters 3 & 4D includes tests for these "stewardship" laws.

However, the categorization of a requirement in Chapter 2, 3 or 4B-D, or even its omission from this Supplement does not lessen a government's responsibility for compliance and for instituting controls it believes are necessary to assure compliance with any laws and regulations that apply to the government.

Note: The Auditor of State intends to select a few audits randomly each year, to test requirements listed in the OCS Optional Procedures Manual (OPM) & 4E. However, auditors should evaluate the requirements in the OPM & 4E for possible testing in the current audit based upon both quantitative and qualitative materiality factors.

The *OCS* 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 local government audit. As such, it is designed to help auditors fulfill their responsibility. However, the *OCS* is ***not*** a comprehensive list of "direct" or "indirect" compliance requirements for all governments.

In addition to the laws and regulations the *OCS* includes, auditors must also consider other compliance requirements applying 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 the *OCS* 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* (AAG SLG), 4B.13 ~~4.11~~ states:

> In accordance with paragraph AU-C 250.03, it is the responsibility of management, with the oversight of those charged with governance, to ensure that the entity's operations are conducted in accordance with the provisions of laws and regulations, including compliance with the provisions of laws and regulations that determine the reported amounts and disclosures in an entity's financial statements. That responsibility encompasses identifying applicable compliance requirements and establishing a system of internal controls designed to provide reasonable assurance that the entity complies with them. [2]

To the extent a public office does not fall within the classes of public offices the *OCS* includes, and also in part to (1) corroborate the completeness of the compliance requirements management identifies, and (2) to identify their potential material effect, AAG SLG 4B.23 ~~4.21~~ suggests:

> The auditor may consider performing the following procedures to assess management's identification of compliance requirements that could materially affect financial statement amounts and disclosures:
>
> - Consider knowledge about compliance requirements obtained during prior-period audits.
> - Interview the entity's chief financial officer, legal counsel, internal auditor, 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 and enabling legislation that relate to using and accounting for the revenue.
> - Obtain and review federal and state guidance 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), the Uniform Guidance cost principles and administrative requirements, as applicable to the award, the *OMB Compliance Supplement*, [3] 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.
> - 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.

[2] The internal controls AAG SLG 4B.13 ~~4.11~~ mentions are legal *compliance* controls. Some ***(but not all)*** compliance controls also help control the direct determination of financial statement amounts. Therefore the discussion of an auditor's responsibility to document and assess controls directly and materially affecting financial statement amounts does include only controls related to determining financial statement amounts. See discussion of ***Compliance Risk and Controls*** later in this **Implementation Guide**.

[3] Auditors can also use the Federal Award Compliance Control Records (FACCR's) included on the AOS website as a reference: http://www.ohioauditor.gov/references/practiceaids/faccrs.html.

- 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.

To obtain information about possible violations of compliance requirements, the auditor should consider making inquiries of management, legal counsel, internal auditors, grant administrators, and other appropriate sources; and testing transactions for adherence with compliance requirements.

Direct and Material Laws and Regulations

In addition to the discussion above from AU-C 250, the AAG SLG sections 4B.11 ~~4.09~~ through 4B.24 ~~4.13~~, discuss legal requirements which might directly and materially affect determining financial statement amounts for a governmental entity. Material noncompliance (having a direct or indirect effect) would often:

- Require adjusting amounts or revising disclosures.
    - Auditors should do the same regarding noncompliance ***indirectly*** affecting financial statement amounts or disclosures, if they become aware of it.
        - For example, AU-C 250.06 b.iii describes material penalties as an ***indirect effect***, though they may require disclosure or even accrual as a contingent expense
- Require reporting as a material GAGAS noncompliance finding.
- May represent significant / material violations of "finance-related legal and contractual provisions"
    - GASB Cod. 2300.106(h) require "notes to the financial statements should disclose material violations of finance-related legal and contractual provisions" and "actions taken to address significant violations".
    - Refer also to AAG SLG 4B.15 ~~4.13~~ for guidance.
    - See table below in this Implementation Guide.

AAG SLG 4B.14 ~~4.12~~ lists examples of laws that may directly and materially affect the determination of financial statement amounts and disclosures. When preparing this edition of the OCS we considered the examples in AAG SLG 4B.14 ~~4.12~~. Each law in OCS Chapters 1 & 4A have potential for a direct effect. Laws with indirect classification per AU-C 250.06 b are included in Chapters 2A & 4B.

GASB Cod. 2300.106(h) require ***financial statement note disclosure*** of material violations of "finance-related legal or contractual provisions" ***and actions taken to address significant violations***. The GASB Codification does not define *finance-related legal or contractual provisions*. However, the sources below describe the following as being *finance-related legal or contractual provisions*:

Finance-Related Legal or Contractual Provisions	Source
a. The accounting system must include all funds and procedures required by law or regulation to help assure restrictions on expenditures are met.	NCGAS 1, par. 8 GASB Cod. 1200.106
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.) 2. Disclose significant excesses of expenditure over appropriations for other funds.	GASB Statement No. 37, par. 19, Cod. 2200.207, Cod. 2400. 103 GASB Cod. 2400.702-18
c. Violations of debt covenants or contracts.	Cod. 2300.903, Illustrations 4 and 6
d. Significant violations during the period of legal or contractual provisions for deposits and investments	GASB Cod. I50.150
e. *Governmental Accounting, Auditing and Financial Reporting* (GAAFR) suggests the following constitute "finance-related legal and contractual requirements:" a. Budgetary b. Grant requirements c. Bond contracts (e.g. covenants) d. Laws and regulations of a higher government	2020 GAAFR, pg. 473
f. Deficit fund balances	Cod. 2300.903 Illustration 5
Note: Disclosure should only be as detailed as needed to inform users of 'significant' violations. The GASB Comprehensive Implementation Guide, Question 1.8.1, explains that the determination of "significant" violation is a matter of judgment. Therefore, disclosures may not be necessary for every instance of noncompliance.	

As described later in this ***Implementation Guide***, the auditor's responsibility for "direct compliance requirements" exceeds her or his responsibility for "indirect compliance requirements." Some of the disclosures listed in the table above relate to indirect compliance requirements. Auditors should certainly request auditees to include these disclosures if evidence suggests they apply. However, *in our judgment*, these disclosure requirements do not require an auditor to ***test*** compliance requirements with ***indirect*** financial statement effects using the nature or extent required of ***direct*** compliance requirements.

Compliance Risk and Controls

Important: AU-C ~~315A.33~~ 315.42 requires documenting the five internal control components (control environment, the entity's risk assessment process, the entity's process to monitor the system of internal control, the information and communication system, and control activities) related to external financial reporting. As described previously, OCS Chapters 1 & 4A requirements may ***directly*** affect the determination of financial statement amounts.

- For example, some controls a government establishes over budgetary reporting can help assure compliance with Ohio Rev. Code Chapter 5705 (compliance controls) ***and*** with GAAP or other applicable financial reporting frameworks (financial reporting controls). "5705 compliance controls" that also help detect or prevent misstatements in budgetary financial presentations therefore fall under AU-C ~~315A.33(b)~~ 315.42(b) & (c) documentation and evaluation requirements.
    - AU-C ~~315A.33~~ 315.42 financial control documentation and evaluation requirements do not apply to controls related solely to helping detect or prevent noncompliance.
    - Conversely, AU-C ~~315A.33~~ 315.42 documentation and evaluation requirements do apply to direct compliance requirements. For example, preparing budgetary presentations complying with Ohio Rev. Code Chapter 5705 requires ***completeness*** controls over appropriation amendments, and also requires controls to prevent recording appropriation amendments adopted after the fiscal year end.
        - Because AOS's position is that appropriation amendments adopted after the fiscal year end fail the ***existence*** assertion.

Compliance requirements in OCS Chapters 2, 3, and 4B-D do not fall within the scope of AU-C ~~315A.33~~ 315.42 control documentation and evaluation requirements. There is no requirement to document compliance controls for these compliance requirements.

- Auditors may elect to document and test the operating effectiveness of ***compliance*** controls related to ***any*** step in the OCS, if they believe it reduces the necessary extent of substantive testing.
    - Assuming audit tests support these controls' operating effectiveness.
    - We neither encourage nor discourage a controls' reliance approach. Auditors should use professional judgment to determine an effective and efficient approach.

Factors to consider in relying on compliance controls are similar to the judgments we use for any financial statement account. ***For example***, a compliance controls approach is often more efficient and effective if the volume of transactions subject to the compliance requirement is large. 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 Ohio Rev. Code § 135.13-.14 listing of allowable investments may be a sufficient basis for a "control".
- 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 usually still requires auditors to "re-perform" the control, which is also a substantive test / evaluation of the transfer's legality.
        - We believe relatively complex controls (such as non-routine transfer authorizations) require reperformance, as AU-C 330.A28 infers.

- However, we only require our staff to reperform a small number of control operations when sampling.
- For example, if a sampling table required testing 25 control operations, we would test all 25 for evidence the control was applied, but might only reperform 2 or 3 of the complex control operations.
    - Auditor of State staff should follow the control reperformance guidance in our Audit Manual.
- In conclusion regarding this example, and assuming transfers were material to opinion unit(s):
    - If there were a large number of transfers for similar purposes, controls reliance with limited reperformance of judging their legality might be efficient.
    - However, a large number of transfers for various purposes would suggest more tests of determining their legality (a substantive reperformance). This would tend to render controls reliance as inefficient.

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, especially regarding the compliance areas subject to potential controls reliance; and
- Involvement of the governing authority and management in the control structure to assure compliance.

Exhibit 3 of this Implementation Guide 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's Assessment of Control Environment (ACE). As described above, auditors need only complete sections of this ACE related to laws and regulations directly and materially affecting the determination of financial statement amounts. We have labeled the points of focus in the ACE with direct financial statement effects. Auditors must complete other points of focus only if they intend to rely on compliance controls with indirect financial statement effects.

If control procedures exist to reduce sufficiently the risk that direct and material noncompliance could occur and not be detected on a timely basis, the auditor may test the operating effectiveness of those controls and *significantly reduce substantive testing* of those compliance items. However, auditing standards always require some level of substantive evidence for direct and indirect compliance requirements. To use a controls reliance approach (an assessment that control risk is less than 100%), the auditor must:

1. Identify controls relevant to preventing or detecting material or significant non-compliance with the identified laws and regulations;
    a. Also document the *basis* for these controls. (The *basis* is documentation supporting the proper operation of the control, such as a signed authorization form.)

2. Test controls to obtain sufficient evidence of the controls' operating effectiveness throughout the audit period;
   a. Including limited reperformance of complex controls.

3. Document the control tests and results;

4. Unlike Single Audit compliance tests, 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-C 330.14(b) and AU-C 330.A40 -- .42. When controls are effective, rotating can enhance efficiency;

5. However, when rotating controls, auditors must carefully consider the guidance in AU-C 330.14(b) and 330.A40 -- .42 (such as a. --- c. below). Since some level of substantive evidence is required, rotating control tests without any substantive tests is insufficient;

   When relying on prior audit control tests, auditors should:
   a. Obtain evidence about changes to controls since the prior tests.
   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).

6. While the auditor's assessment of inherent and control risk *may* reduce the required nature and/or extent of substantive compliance testing, ***some*** substantive evidence or testing is necessary for compliance requirements directly and materially affecting the determination of financial statement amounts (similar to AU-C 330.18 and 330.A45 --- .50).

Organization of the OCS

Nature of Compliance Requirement	Responsibility / Extent of Testing
Chapters 1 & 4A	
Compliance requirements ***directly*** and often ***materially*** affecting the determination of financial statement amounts.	AU-C 250.13: "The auditor should obtain sufficient appropriate audit evidence regarding material amounts and disclosures in the financial statements that are determined by the provisions of those laws and regulations. . . " ***AOS Comments***: • While these requirements impose the highest responsibility on the auditor, we are not opining on them (unlike major Federal program compliance, upon which we *do* opine). • For example, while the extent of testing requires judgment, it would typically be less than the AICPA's *Government Auditing Standards and Single Audit* guide require opining on major Federal program compliance. o In other words, similar to any other misstatement, the auditor bases the extent (and nature) of tests on the assessed risk of "a noncompliance misstatement" in relation to the opinion unit(s) taken as a whole. o For example, if two laws directly affect the valuation of two asset accounts equaling 50% and 10% of an opinion unit's total assets, the auditor requires more evidence to support the asset constituting 50% of total assets. o Of course, this example assumes risks are otherwise equal, which often is not the case.
Chapters 2 & 4B-C	
Compliance requirements with indirect but potentially material financial statement effects	***AOS Comments:*** • AU-C 250.14 requires only (1) inquiry of management and (2) inspecting ~~examination of~~ correspondence with "regulators". • Per AU-C 250.08: " . . . remain alert to the possibility that other audit procedures applied for the purpose of forming an opinion on financial statements may bring instances of identified or suspected noncompliance with laws and regulations to the auditor's attention." o Therefore, procedures designed to obtain evidence about financial statement assertions might also yield evidence of noncompliance the auditor may need to report per 2018 GAGAS 6.41(a). o Some suggested steps in Chapter 2 for indirect noncompliance slightly exceed the "inquiring of management" and "inspecting correspondence" AU-C 250.14 requires. However, these additional steps always build on tests normally required to support a financial statement opinion. ▪ For example, an auditor needs sufficient evidence of the types of investments to support the investment footnote. We believe it is reasonable to request an auditor to use this information to determine whether investments were allowable under Ohio Rev. Code Chapter 135.

Audit tests mandated by law.	• The OCS includes procedures to help auditors obtain sufficient, appropriate evidence to assess compliance with these laws. • Though we do not require opinions on compliance, we have required separate reports for some compliance, such as agreed-upon procedures for anti-bullying policies and landfill certifications. o Because legislation does not require opinions on compliance, for efficiency, we sometimes include violations in the GAGAS report, though we judge materiality for the requirement, not vs. opinion unit amounts.
Chapters 3 & 4D	
Stewardship requirements[4]	• Inquiry and limited examination of documents, as described for each test. • Many steps allow rotation / performing every other audit. o Except, if auditors judge a requirement to directly and materially affect financial statement amounts or disclosures, they should meet the requirements for Chapters 1 or 4A above.

[4] Based on the auditee's transactions and operations, an auditor may judge some Chapter 3, 4D, or Optional Procedures Manual requirements to directly or indirectly (and materially) affect the determination of financial statement amounts. In these instances, auditors should follow guidance for direct or indirect requirements.

Home Rule Powers

Definition
Villages and cities are municipal corporations. They are defined and regulated in Ohio Const. Art. XVIII 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
Ohio Const. Art. XVIII 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 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 Ohio Const. Art. XVIII, Section 3, 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 derives from the Ohio Constitution, it may not be altered or superseded by laws enacted by the legislature, except where a constitutional limitation allows 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. Broadly speaking, by adopting a charter, the municipal corporation may set up a system of government which differs from the statutory plans. 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 can adopt charter provisions that permit deviation from regulation by the legislature in matters of both procedural and substantive 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 Ohio Const. Art. XVIII, Section 13 and Ohio Const. Art. XIII, Section 6, 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 Ohio Const. Art. XIII, Section 6;
4. Incurring debt - Laws may be passed by the General Assembly limiting this power; (Ohio Const. Art. XVIII, Section 13);
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 Ohio Const. Art. XVIII, Section 3. Ohio Const. Art. XVIII, Sections 4 and 5 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.

Township Home Rule

Township home rule powers do not come from the Ohio Constitution. Rather, there are statutes (Ohio Rev. Code Chapter 504) that permit townships to take action to become a "limited home rule" township. This is a statutory power and not a constitutional power like the home rule for municipalities. Nevertheless, similar compliance testing considerations to those above may apply to Townships that have adopted limited home rule government powers.

Reporting

The 2018 (as revised in April 2021) Government Accountability Office's *Government Auditing Standards (GAGAS, aka: "the Yellow Book"*) describes the auditor's compliance reporting obligations:

2018: 6.41 Auditors should include in their report on internal control or compliance the relevant information about noncompliance and fraud when auditors, based on sufficient, appropriate evidence, identify or suspect:

a. noncompliance with provisions of laws, regulations, contracts or grant agreements that have a material effect on the financial statements or other financial data significant to the audit objectives or

b. fraud that is material, either quantitatively or qualitatively, to the financial statements or other financial data significant to the audit objectives.

Reporting Immaterial Violations

2018: 6.44 Auditors should communicate in writing[5] to audited entity officials when:

a. identified or suspected noncompliance with provisions of laws, regulations, contracts, or grant agreements comes to the auditor's attention during the course of an audit that has an effect on the financial statements or other financial data significant to the audit objectives that is *less than material but warrants the attention of those charged with governance* or

b. the auditor has obtained evidence of identified or suspected instances of fraud 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*.

2018: 6.48 When identified or suspected noncompliance with provisions of laws, regulations, contracts, or grant agreements that does not warrant the attention of those charged with governance comes to the auditor's attention during the course of the audit, the auditors' determination of how to communicate such instances to audited entity officials is a matter of professional judgment. When identified or suspected noncompliance with provisions of laws, regulations, contracts, or grant agreements is clearly *inconsequential*, the auditors' determination of whether and how to communicate such instances to audited entity officials is a matter of professional judgment.

(Determining *inconsequential* requires auditor judgment. Absent qualitative considerations, it may equate to *trivial*, as described in footnote 9)

Examples

The auditor should refer to the AICPA's *Government Auditing Standards and Single Audits* guide, for reporting examples. (AOS staff can access these examples on the Intranet.)

[5] Auditors can satisfy the "in writing" requirement by reporting the noncompliance in the management letter.

Noncompliance Reporting Examples

Noncompliance	Example Evaluation	Reporting
The auditee records premiums received with a debt issuance in a capital project fund.	Ohio law requires recording premiums in a debt service fund (Ohio Rev. Code § 133.32). Therefore, resources and total assets in the capital project fund are overstated, and understated by similar amounts in the debt service fund. If these funds are in different opinion units, a misstatement occurred. If the two funds are in the same opinion unit (such as RFI), no misstatement occurred, so there is no direct effect. However, the matter is important enough to warrant attention by those charged with governance. The auditor would propose an audit adjustment to correct the balances in the two funds on the budgetary basis.	Report a finding in the GAGAS report. Also, as described in AOS Bulletin 2014-001, for bonds and notes issued on and after July 1, 2014, AOS will issue findings for adjustment. See the ***Findings for Adjustment*** section later in this Guide.
Total fund "X" budget expenditures exceed appropriations.	If the budgetary statement or budgetary RSI for the fund reports the negative variance (such as would occur for a major special revenue fund), no misstatement occurred. However, even for funds *not* included in budget presentations,[6] significant over-expenditure of appropriation could endanger the program's sustainability, so the noncompliance warrants the attention of those charged with governance.	Report a finding in the GAGAS report.
The government purchased a speculative hedging instrument.	If classified and disclosed properly, no misstatement occurred. However, because it is unauthorized in the Ohio Revised Code, and we assume it poses unnecessary risk of loss to the government, it warrants the attention of those charged with governance.	Report a finding in the GAGAS report.
Internet- or computer-based community school contracts with a nonpublic school for instructional facility space.	Violations require ODE to withhold foundation payments for any students using nonpublic school facilities. This is more in the nature of an indirect *penalty* per AU-C 250.06(b)(iii) than a direct effect, but we should report it because it could lead to the closing of the community school and therefore requires attention of those charged with governance.	Report a finding in the GAGAS report.

[6] Assume the fund is not the general or major special revenue fund for a GAAP government:

- Therefore there is no budget presentation for it.
- Accordingly, the auditor would not have designed budget tests for this fund.
- However, if the auditor becomes aware of the over expenditure via other procedures, it is subject to reporting as noncompliance in the GAGAS report.

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 categories[7]:

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

Noncompliance Citations

Noncompliance citations should cite the appropriate legal authority (i.e. the ***criteria*** 2018 GAGAS 6.25) 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, Ohio Administrative Code, local ordinances and charters, 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*.[8]

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 AOS Bulletin 2002-004. However, it is desirable for the finding to describe the bulletin as an informational resource, and 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 laws and regulations and provisions of contracts or grant agreements.

Exhibit 1 of this Implementation Guide sets forth guidelines for the appropriate form for citing legal authority.

2018 GAGAS defines the elements of a finding to include:

[7] *Questioned costs* normally apply only when opining on compliance under AU-C 935, such as Single Audits of Federal programs. This discussion does not pertain directly to questioned costs.

[8] 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 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.

6.25 Criteria: For inclusion in findings, criteria may include 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, conclusions, and recommendations in the report. In a financial audit, the applicable financial reporting framework, such as generally accepted accounting principles, represents one set of criteria.

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

6.27 Cause: The cause identifies the factor or factors responsible for the difference between the condition and the 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.

6.28 Effect or potential effect: The effect or potential effect is the outcome or consequence resulting from the difference between the condition and the criteria. 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.

6.52 Along with assisting management or oversight officials of the audited entity in understanding the need for corrective action, clearly developed findings assist auditors in making recommendations for corrective action. If auditors sufficiently develop the elements of a finding, they may provide recommendations for corrective action.

Auditee Responses to Findings

2018 GAGAS 6.57 – 6.62 establish requirements for obtaining and reporting the auditee's responses to findings. 2018 GAGAS 6.57 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." 2018 GAGAS 6.58 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 include their response in the applicable report (i.e., GAGAS or Single Audit report).

If an auditee responds verbally to a finding (for example, at the exit 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.

2018 GAGAS 6.59 states that when 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 comments. If the auditors disagree with the comments, they should explain in the report their reasons for disagreement. (*Note:* 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, because 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 2018 GAGAS 6.59. Responses indicating significant disagreement require review by the Center for Audit Excellence. (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, we discourage including the complete text of lengthy client responses 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, trivial[9], 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 *adjustments* fall into one of the following categories:

[9] ***Trivial*** as described in AU-C 450.A2, explains "trivial" is an amount the auditor designates, 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.

1 Material (at the opinion level) 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 (at the opinion level) adjustments with which the auditee disagrees and which are not posted to the accounting records or are not reflected in the financial statements (Note: If the client agrees and posts the adjustment to the financial statements but refuses to post the adjustment to the accounting records we will still issue a finding for adjustment to correct the accounting records);

3 Immaterial adjustments which are more than trivial. See discussion in the following section.
   a. This includes adjustments that are immaterial to opinion units, but material to one or more individual funds.

> Note: Auditors base materiality on opinion units when forming their opinion.
>
> However, when assessing whether a finding for adjustment is a material noncompliance finding, auditors should normally consider materiality in relation to individual funds rather than the opinion unit. (Remember, 2018 GAGAS 6.41 -- 6.44 also requires reporting noncompliance warranting attention by those charged with governance.) 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.

4 Trivial[9]

Treatment of Adjustments in Audit Reports

Adjustments in the **first** category above based on a violation of legal authority will result in a noncompliance citation and possibly a material weakness or significant deficiency in accordance with AU-C 265 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 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 modification 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 modified opinion 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. . .").

The status of any **second** category findings for adjustment from prior periods should be tracked in the Schedule of Prior Audit Findings in all future audits until the adjustment has been appropriately recorded by the client. If the issue that caused / allowed the finding for adjustment to occur has:

- Been corrected = there is no need to repeat the comment.
- Remains uncorrected = the situation should be evaluated for financial statement materiality and opinion modification.
- Remains uncorrected **and** additional errors occurred in the current audit / engagement period that add to the finding for adjustment = auditors should report for the cumulative amount of the errors, including amounts from the prior period, for the current period, and evaluate the errors for financial statement materiality and opinion modification.

A client not recording a necessary adjustment that requires an opinion modification should usually result in a material weakness / significant deficiency reported in the GAGAS report and the Schedule of Findings.

Adjustments in the **third** category (quantitatively immaterial but more than trivial) should be reported in the management letter if the misallocation of funds also constitutes a violation of law which warrants a noncompliance citation, per 2018 GAGAS 6.44. *However*, auditors should report these adjustments in the GAGAS letter whenever qualitative considerations of materiality (for example, material at the fund level) outweigh the quantitative materiality amounts, or if the auditor deems the matter of sufficient importance that it requires additional "emphasis" by those charged with governance.

- 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.

- Consistent with unadjusted identified misstatements exceeding trivial, post the adjustment to the Summary of Identified Misstatements (or similar documentation for IPAs) and carry forward each year to evaluate against the applicable opinion unit.

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

Summary of Finding for Adjustment Reporting Treatment

	Material (At the opinion level) adjustments with which the auditee agrees, which have been posted to the accounting records and which are reflected in the audited financial statements:	*Material (At the opinion level) adjustments with which the auditee disagrees and which are not posted to the accounting records or are not reflected in the financial statements:*	*Quantitatively Immaterial adjustments which are more than trivial (including those immaterial to opinion units, but material to one or move individual funds):*	*Adjustments which are trivial:*
GAGAS Report	If based on a violation of legal authority, report a noncompliance citation in the GAGAS report. Do not classify as a *finding for adjustment*.	If based on a violation of legal authority, report a noncompliance citation in the GAGAS report. AOS staff should include a *finding for adjustment* statement. (IPAs should not include a finding for adjustment statement.)	If based on a violation of legal authority, report a noncompliance citation in the management letter. However, if the matter is qualitatively material (for example, material at the fund level), or the auditor deems it of increased importance, report a noncompliance citation in the GAGAS report and include a finding for adjustment statement. (IPAs should not include a finding for adjustment statement.)	Not reported in the GAGAS report.
Auditor's report (opinion) on the financial statements	No modification 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, if the adjustment misstates opinion units.	Adjustments which are qualitatively material and are based on a violation of legal authority ***may*** 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	Not reported in the management letter. Document in the working papers only.

	Material (At the opinion level) adjustments with which the auditee agrees, which have been posted to the accounting records and which are reflected in the audited financial statements:	***Material (At the opinion level) adjustments with which the auditee disagrees and which are not posted to the accounting records or are not reflected in the financial statements:***	***Quantitatively Immaterial adjustments which are more than trivial (including those immaterial to opinion units, but material to one or move individual funds):***	***Adjustments which are trivial:***
			qualitatively immaterial. AOS staff should include a *finding for adjustment* 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.)	

Financial Statement Opinion Modified Paragraph Example

Qualified Opinion

In our opinion, except for the effects of the matter described in the Basis for Qualified and Unmodified Opinions section of our report, the accompanying financial statements referred to above present fairly……..

Basis for Qualified and Unmodified Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities…….

Matter Giving Rise to Qualified Opinion

During 20XX, Any Local School District expended $584,000 from the Bond Retirement Fund to pay employees' salaries. Ohio Rev. Code § 5705.10 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.

When the table above suggests an opinion modification use language similar to this example (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. Auditors should document evidence that the agreed-to adjustments have been properly posted to the auditee's 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 and auditors must obtain evidence the adjustment was made to the government's financial statements and accounting records.

Finally, AU-C 450.11(b) 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 required matters 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 . . ."). [10] 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 evidence of a Finding for Adjustment, the IPA should contact the regional chief auditor.

- The IPA should provide the regional chief auditor with all relevant factual information, including supporting documentation for the Finding.
    - For example, it is not sufficient to send AOS a testing spreadsheet alone. IPA's need to also submit copies of the relevant client records that support the IPA's testing spreadsheet.

- The regional chief auditor should notify the Chief of Quality Assurance that a finding for adjustment may be issued via ipareport@ohioauditor.gov. The Center for Audit Excellence will put a hold on the report until the finding is approved.

- The regional Chief Auditor or designee will prepare a preliminary Finding, along with any supportive documentation, and submit it to the AOS Legal Division and also the Center for Audit Excellence via the IPA specialty in Spiceworks for consultation.

- The Legal Division and the Center for Audit Excellence will review the proposed Finding and may ask the chief auditor or the IPA for additional information.

- After the Legal Division and the Center for Audit Excellence have approved the Finding, the regional chief auditor or designee will send the proposed Finding for Adjustment to all applicable parties.

[10] This is to comply with Ohio Rev. Code § 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 applicable parties are normally given five days to respond. If they respond, the regional chief auditor should evaluate the response and decide whether the Finding should be withdrawn or modified.

- The regional chief auditor must send a copy of AOS Legal Division's approved finding to the Chief of Quality Assurance or designee, through ipareport@ohioauditor.gov, for inclusion with the Acceptance Letter. The Auditor of State will describe material, unadjusted Findings for Adjustment in the Acceptance Letter we include in the front of each report. The Chief of Quality Assurance, or designee, certifies the report.

Findings for Recovery[18]

Ohio Rev. Code § 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 § 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 the public office."

Under Ohio Rev. Code § 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. When an illegal expenditure relates to a theft of cash, auditors should normally use the Public Property Converted or Misappropriated category for a Finding for Recovery.

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 that 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 (1951), 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 2014-002, 2014-003, 2004-002, and 2003-005 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." (Except for limited exceptions made for agricultural societies and other public offices purchasing alcohol only for resale, disbursing public money for alcohol will result in a Finding for Recovery, per AOS Bulletins 2014-002 and 2014-003[11].)

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. In some instances, where a public office has paid late fees, penalties, and/or interest charges because of a public officer's *gross negligence* by failing to properly remit, the amount of penalties, etc. may be determined to not serve a proper public purpose and may result in a Finding for Recovery. Some factors to be considered in determining whether gross negligence has occurred include: total amount, length of time withheld amounts are not remitted, repetition, extenuating circumstances, if it was the result of a prior fiscal officer, and reason for the failure to remit. The actual withheld amounts

[11] Note the prohibition on spending Federal money for alcohol described in the Federal government's Uniform Guidance (2 C.F.R. § 200.423) are more stringent than the state and local laws summarized in AOS Bulletins 2014-002 and 2014-003.

not yet remitted may result in a referral to the appropriate agency, but will not result in a Finding for Recovery.

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 § 117.01, has been received by the public office, but cannot be adequately accounted for by authorized disbursements of public monies. When the missing collections relate to a theft of cash, auditors should normally use the Public Property Converted or Misappropriated category for a Finding for Recovery.

A mere unidentified shortage of public monies is a sufficient basis for a Finding for Recovery, as certain public officials may be *strictly liable*[12].

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

3. Due but Not Collected

Public money that is due to a public office but which has not yet been collected may also be subject to a Finding for Recovery. Money may become due to 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 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 monies 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 may be 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.

[12] See the discussion of *strict liability* later in this Implementation Guide.

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 theft of cash or other property. Also, the auditor must be able 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, consult the AOS Legal Division and prepare a Noteworthy Memorandum that includes referral to the AOS Special Investigations Unit (SIU) for further investigation. This finding type should be used for all FFRs related to court cases pursued by SIU and/or other law enforcement agencies.

As it relates to theft of property, 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. Audit staff should consult with the AOS Legal Division if a noncompliance citation may be issued instead, citing Ohio Rev. Code § 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 § 9.24(A)). Ohio Rev. Code § 9.24(D) requires the Auditor of State to 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 updates the database periodically in accordance with Ohio Rev. Code § 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 reports and opinion letters issued by the Auditor of State are often seen as "closing the books" on a particular audit period. As with litigation, public policy demands finality of judgment in audit work.

In addition, governments typically operate on current revenue, and a Finding for Recovery for a long-past audit period may impact current needs and operations.

Accordingly, findings for recovery will generally not be issued for past audit periods absent a finding of fraud, deception or concealment, or other deliberate wrongdoing. The following factors should be considered in making such a determination:

- 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 SIU 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 designee *prior to testing outside of the audit period* to pursue a Finding for Recovery. However, SIU FFRs will always align with the determined special audit scope and do not require special approval regarding the audit period, other than approval by the Chief Forensic Auditor.

Additional Policies for Findings for Recovery for Auditor of State Audits

All potential Findings for Recovery, regardless of the amount, are required to be reviewed by the AOS Legal Division and the Center for Audit Excellence. Auditors should also refer to the **Additional Considerations** Section.

If the SIU identifies a finding for recovery while conducting special audit testing ~~as part of the regular financial audit~~:

- The FFR will be issued as part of a special audit report and will not be included in the financial audit (Note: SIU will consult with Region if FFR has potential material impact to the financial audit).
- SIU will be responsible for ensuring the required CFAE and Legal consultations are obtained, and
- SIU will prepare and send the *Notice of Proposed Finding for Recovery*.
    - In appropriate situations, SIU may base a Finding for Recovery upon a court's restitution order. Ohio Rev. Code § 2929.18 empowers Ohio courts to order a defendant to pay monetary restitution to a crime victim. Ohio courts, pursuant to Ohio Rev. Code § 2921.41(C)(2)(ii), order defendants found guilty of theft in office against a public office to pay restitution to a public office, while restitution is sometimes ordered for other criminal acts. Absent a plea agreement, Ohio law requires that a restitution order will include the costs of auditing the public entity who suffered loss as a result of theft in office. A court's restitution order has a "res judicata" or final judgment effect. A court's order of restitution, therefore, is a valid basis upon which AOS may issue a Finding for Recovery for the purpose of reimbursing a public office for public property that the defendant converted or misappropriated. The Finding for Recovery should agree to the restitution amount for all amounts payable to a public entity, including audit costs. Additionally, AOS will send only a Final Notice of Finding to the defendant since the court's Order is final. AOS does not need to send a Proposed Notice of Finding since the defendant's due process rights were protected (i.e., the defendant had the chance to produce evidence or otherwise respond in court before the restitution order was issued). AOS will modify the Sample Notice of Finding ~~in this Supplement~~ to include the date, unpaid restitution amount, a brief description of the trial court's finding, and a reference to the date of the court's journal entry. If AOS has identified findings in excess of the court's Order, a Notice of Proposed Finding is required to be sent.

In instances where the region has been requested to monitor a court case because the case is being conducted outside of an SIU special audit ~~conduct the special audit testing as part of the regular financial audit, and SIU is serving as a concurring reviewer for the work~~ or when a preliminary audit and investigation, with no criminal conviction, conducted by SIU results only in a referral to the region for a potential Finding for Recovery:

- Regional auditors will be ~~remain~~ responsible for ensuring the required CFAE and Legal consultations are obtained, and
- Regional auditors will also prepare and send the *Notice of Proposed/Final Finding for Recovery*. ~~In these instances, the region must obtain approval from SIU before sending out the *Notice of Proposed/Final Finding for Recovery (for both timing and SIU's review of the Finding for Recovery).*~~

- In the event that a Finding for Recovery is based solely upon a court's Order of restitution, the region will send only a Final Notice of Finding to the defendant since the court's Order is final. The Finding for Recovery should agree to the restitution amount for all amounts payable to a public entity, including audit costs. AOS does not need to send a Proposed Notice of Finding since the defendant's due process rights were protected (i.e., the defendant had the chance to produce evidence or otherwise respond in court before the restitution order was issued). AOS will modify the Sample Notice of Finding ~~in this Supplement~~ to include the date, unpaid restitution amount, a brief description of the trial court's finding, and a reference to the date of the court's journal entry.

Finding for Recovery Process:

- If the auditor preliminarily determines to issue a Finding for Recovery, the auditor should send a summary of the proposed finding along with all factual information, including supporting documentation 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 Chief Legal Counsel in the Legal Division or designee, draft GAGAS findings should be sent to the Center for Audit Excellence.
    - The Center reviews the proposed finding in the CFAE Consultation program folder of the applicable TeamMate project.
    - 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 (AOS auditors can see sample letter on intranet ~~a sample is provided on page 34~~).
    - 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 person(s) 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.

- After the Legal Division has approved the *Notice of Proposed Findings* letters, except for special audits conducted ~~by either the region or directly~~ by SIU, the auditor should send the *Notice of Proposed Findings* to each individual named in the Finding for Recovery and the bonding company(ies). Notice should be sent via certified mail to the individual sufficiently in advance of any 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.

- In the case of special audit testing, it may be necessary to delay notice to individuals about proposed findings until law enforcement or prosecuting officials approve release of this information. This decision will be made ~~coordinated~~ by SIU.

- 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 shall 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.

- A certified copy of the audit report shall be filed with the 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. [Ohio Rev. Code § 117.27]. The person receiving the audit report pursuant to Ohio Rev. Code § 117.27 is the person who is able to file a collection action to recover the FFR. This person is not necessarily the same person who acts as the attorney for the entity or proposed FFR debtor as the audit report is ongoing.

- Pursuant to Ohio Rev. Code §§ 117.28 and 117.30, the Attorney General may file an action ~~appears as legal counsel on behalf of the state and local government entities~~ to ~~pursue,~~ collect ~~and institute legal action to recover~~ unpaid Findings for Recovery issued by the Auditor of State when the authorities who received the audit report fail to file civil action to recover within 120 days. ~~when recovery efforts are either waived or declined by the entity's statutory legal counsel~~

- Findings for Recovery are collectible within six years of the audit report's release.

Exit Conference Procedures

After the individual's response to the notice is evaluated and a decision is made to delete, retain or modify the finding, the exit conference may be held. Under Ohio Rev. Code § 121.22(D)(2), conferences between auditors and the audited public office are an exception to the "Ohio Open Meetings Act" 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 the reports 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 exit conference have some discretion as to who may attend it. For example, auditors would have discretion not to conduct an exit 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 an exit 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 an exit 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 exit 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 exit conference contains any information questioning the validity or the amount of the proposed Finding for Recovery, the auditor, in consultation with the Legal Division, shall evaluate the response and determine whether the finding should be maintained, deleted, or modified.

Notice of Finding for Recovery

When an audit report is certified for release, unless the finding has been repaid or resolved, the regional office shall send separate copies of the approved *Notice of Finding*[13] to each individual named in the Finding for Recovery[13] and the bonding company(ies) and documentation should be maintained for how 'those charged with governance' were notified as well. In addition, the Legal Division shall send a copy of the *Letter on Findings for Recovery* to the entity's statutory legal counsel or the County Prosecuting Attorney if the entity does not have statutory legal counsel. The Legal Division will also notify the Ohio Attorney General, wherein associated work papers (in their original format) will be provided. The statutory legal counsel will have one hundred and twenty days to notify the Attorney General whether he or she intends to take action to collect or not to collect subject to Ohio Rev. Code § 117.28.

Additional Considerations

- Where a proposed Finding for Recovery has been paid in whole prior to the completion of the audit, the audit report finding should disclose the repayment as a "Finding for Recovery Repaid Under Audit."
    - If repaid under audit, the finding is still written, and includes information regarding when the payment was received and how much was repaid.

- "Resolved" findings include (for example) those already repaid or for which a repayment plan has been approved. See Ohio Rev. Code § 9.24(B) for a complete list of resolved findings.

- Repayment plans require the entity and the party responsible for repayment (e.g. the entity, an employee or vendor) to draft an agreement/contract. The contract between the entity and the responsible party will be reviewed by the assigned regional AOS attorney ~~who will then forward to the Attorney General for approval~~. [Ohio Rev. Code § 9.24(B)(4 ~~2~~)] (See ~~Attorney General approved~~ agreement example at https://ohioauditor.gov/ocs/2024/FFR_Repayment_Template.docx. ~~Use of this example~~ A finalized repayment agreement would allow the finding to be considered resolved. Auditors should provide the repayment agreement ~~it~~ to clients whenever possible and share the completed plan with the AOS attorney when the client finalizes it.)

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

~~Upon approval by the Attorney General, the agreement will be returned to the assigned financial auditor for execution by the entity and the contracted individual.~~ The executed original will be maintained in the audit workpapers and a copy will be saved in the finding folder on the AOS W:\ drive.

The agreement will be reviewed in the following period's audit to verify the prior audit finding has been repaid or if the contractual terms of the repayment agreement are being met if the term of the agreement exceeds the audit period. If the terms of the agreement have not been met, the AOS auditor is to immediately contact the regional attorney, who will then bring the matter to the attention of the Attorney General. IPA auditors should email the regional chief auditor.

- Findings which have only been partially repaid and no payment plan has been approved are not considered 'resolved'.

- Findings for Recovery and criminal restitution orders are imposed for different purposes, are parallel remedies on two tracks (civil vs. criminal), and have different enforcement mechanisms. Accordingly, a finding for recovery should be issued even if a criminal restitution order is already in place for the same conduct.

    - The finding for recovery may be denoted in the audit report as a "Finding for Recovery Repaid Under Audit" if the restitution order has resulted in 100% of the amount of the finding for recovery being repaid to the local public office prior to the completion of the audit. The finding for recovery may be denoted as "resolved" if the restitution order has been incorporated into a contractual agreement between the public office and the debtor pursuant to Ohio Rev. Code § 9.24(B). The contractual agreement must be submitted to the Attorney General for approval. AOS should recommend that the public office and the debtor use the template settlement agreement provided by the Attorney General. If the parties do not want to use the Attorney General's template and would prefer to draft their own settlement agreement, that agreement must also be submitted to the Attorney General for approval. Incorporating the terms of the restitution order into the contractual agreement must be done even if the criminal restitution order resulted from an agreed settlement of the criminal case between the Prosecutor and the defendant.
    - If there is no contractual agreement, and only a restitution order, the finding for recovery should be issued in the report as an unresolved finding for recovery.

- If a Finding for Recovery is resolved prior to sending the *Notice of Proposed Finding*, do not send the letter.

- If the Finding for Recovery is resolved after the *Notice of Proposed Finding* is issued and prior to the release of the audit report, do not send a *Notice of Finding.*

- If the Finding for Recovery is resolved, the *Letter on Findings for Recovery* (addressed to the public office legal counsel) is not sent.

- Findings for Recovery reported in the 20XX *Schedule of Findings* should be appropriately updated if resolved prior to report issuance.

- Findings for Recovery reported in section 2 of the *Schedule of Findings* still unpaid or unresolved in the 20XX+1 audit period should be summarized on the *Schedule of Prior Audit Findings*. (Note: Findings for Recovery reported in section 4 in the prior year, are not reported in the *Schedule of Prior Audit Findings*.)

- If the Finding for Recovery remains unresolved in 20XX+2, it does not need to be included in the 20XX+2 audit period's *Schedule of Prior Audit Findings* unless there is a material financial statement impact related to 20XX+2.

- Where the amount of the Finding for Recovery may change prior to 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.

- The Auditor of State does not generally issue Findings for Recovery where the amount in question aggregates[14] less than $500. However, auditors should consult on all potential findings for recovery, regardless of the amount, with the AOS Legal Division 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: Theft in office, or disbursing public money for alcohol ~~will always result in a Finding for Recovery~~). All Findings for Recovery are to be reported in the audit report due to their significance. Potential Findings for Recovery that are not deemed Findings for Recovery during the consultation process due to falling below the amount threshold should be evaluated by the auditor to determine if the underlying condition represents a non-compliance citation or control deficiency (not Findings for Recovery) that warrants the attention of those charged with governance.

  For potential FFRs for alcohol purchases, there are different standards for agricultural societies and other public offices:

  - Agricultural societies: Per AOS Bulletin 2003-005, except as updated by AOS Bulletins 2014-002 and 003 and 2013 Op. Att'y. Gen. No. 2013-023, a county agricultural society (or other public office) may use monies provided by the state, county, or "other sources" to acquire alcoholic beverages and a liquor permit to sell the beverages at an event that is open to the public and conducted on the society's or county's fairgrounds and retain the revenue derived from the sales, provided (1) the society's constitution and bylaws permit the expenditure; (2) the monies to be expended are not required to be used for other purposes; and (3) the expenditure is reasonable. Therefore, expenditures for alcohol among agricultural societies meeting these conditions are allowable.)
  - Other public offices: Per AOS Bulletin 2014-003, because the Division of Liquor Control is the State of Ohio's statutorily designated authority for the regulation of alcohol, due deference will be given to the decisions of the Division in issuing permits. The Auditor of State, therefore, will not issue findings to a political subdivision when the Division of Liquor Control has granted the political subdivision a valid permit to purchase and re-sell alcoholic beverages […] if the expenditure satisfies all of the following conditions:

[14] 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).

- The political subdivision obtained a valid permit from the Ohio Division of Liquor Control;
- The political subdivision complied with the terms of the issued permit;
- The political subdivision purchased the alcoholic beverages solely for resale to the public, e.g. at special events;
- The expenditure is reasonable;
- The proceeds are applied as required by any applicable statute or other controlling law (i.e. municipal charter, municipal ordinance, township resolution, or county resolution).

- Findings for Recovery are subject to specific documentation requirements. Any and all supporting documentation relied upon in issuing a Finding for Recovery is now required to be scanned and maintained on the W: drive in the following format (note: separate folders should be maintained for each Finding for Recovery): *W:\[Region or Division] Projects\[name] County\[entity type]\[entity name]\[audit period]\Findings\20## - #]\[name of file contents].*

  The following are examples of different types of documentation and instruction on how to properly document/maintain such information:

  - Bonds and Insurance Policies:
    - Where a Finding for Recovery is issued against an individual and that individual is bonded, include a copy of such bond.
    - Placing the bond in the permanent file is not sufficient. It must also be included in the Finding for Recovery documentation for each specific Finding for Recovery that names the bonded individual.
    - Include any bond or insurance policy in existence.
  - Administrative/Executive Policies:
    - When issuing a finding based on policy, ensure you copy that policy and include it in the supporting Finding for Recovery documentation.
    - Placing the policy in the permanent file is not sufficient.
  - Summary:
    - Summaries are not admissible in court unless each and every document that makes up the summary is available for inspection. Any document used to compile a summary should be scanned and placed in the Finding for Recovery documentation.
  - Minutes:
    - Minutes are utilized in the issuance of a Finding for Recovery to demonstrate when or if a specific act has (or has not) taken place. Those minutes are later utilized in litigation to demonstrate the same point.
    - When demonstrating an act occurred, it is sufficient to provide the minutes that reflect the act, along with pertinent resolutions.
    - When demonstrating an act did NOT occur, it is necessary to provide minutes for a time period to show action was not taken during that time. The time period will vary, depending on the circumstances surrounding the Finding for Recovery. AOS Auditors should consult your regional legal counsel for guidance in determining what time period is appropriate. IPA's auditors should email the regional chief auditor.
  - Correspondence:

- Include any and all correspondence and certified mail return receipt cards to the subject of the finding, including notice of proposed and finding letters to subjects and the notice of finding letter to the entity's statutory legal counsel. Additionally, include any rebuttal or response correspondence to the aforementioned letters.

This list of examples is not exhaustive. If there is other evidence the auditor has identified to corroborate the Finding for Recovery, include any relevant evidentiary documents.

- 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, unless the finding relates to a criminal case, in which case the finding should always be reported. If the amount is unpaid or only partially repaid, a Finding for Recovery is reported for the full amount and the amount that was repaid is listed. However, the auditor should evaluate the issue for other possible matters of audit interest, such as the possibility of fraud (which should be referred to SIU) 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.

- AOS's goal is for the client to be made whole, so in situations where an entity's insurance company covers a loss, a Finding for Recovery should still be issued against the individual(s) for the deductible amount not covered by the insurance company. Auditors should consult with their regional legal counsel.

- If a Finding for Recovery is issued because of a payroll overpayment, the amount to be recovered from the individual should be calculated at the Gross Pay amount.

- Although ALL AOS audit findings are referred to the AOS Legal Division for review, it is especially important to "red flag" and send findings that involve related party transactions, excess payments beyond the contract amount, grossly excessive contract amounts, and any documentation that appears to be fraudulent to the legal department for further evaluation as soon as they are identified. Additional information may be requested by the legal department for these types of Findings for Recovery.

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 $500 and greater (and any alcohol purchase[15] and other Findings for Recovery determined by the Auditor of State, 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 § 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 factual information, including supporting documentation and any repayment information for the Finding.
    1. For example, it is not sufficient to send AOS a testing spreadsheet alone. IPA's need to also submit copies of the relevant client records (including bond information) that support the IPA's testing spreadsheet.

- All potential Findings for Recovery, regardless of the amount, are required to be reviewed by the AOS Legal Division and the Center for Audit Excellence.

- The regional chief auditor or designee should notify the Chief of Quality Assurance that a Finding for Recovery may be issued via ipareport@ohioauditor.gov. The Center for Audit Excellence will put a hold on the report until the finding is approved. Additionally, the Center for Audit Excellence will verify the Proposed and Final Notices of Finding were appropriately sent.

- The regional chief auditor or designee will prepare a preliminary Finding, along with any needed supportive documentation, and submit to the AOS Legal Division for approval.

- The Legal Division will approve the potential finding as is, approve with modifications, disapprove, or request more information be submitted to evaluate the proposed finding.

- Once approved by the Chief Legal Counsel or designee, the regional chief auditor or designee should send the finding to the Center for Audit Excellence via the IPA specialty in Spiceworks for consultation.

[15] Except when all of the requirements in AOS Bulletins 2014-002 and 2014-003 are met regarding the re-sale of alcohol.

[16] This is to comply with Ohio Rev. Code § 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."

- Once approved by the Legal Division and the Center for Audit Excellence, the regional chief auditor or designee will submit the *Notice of Proposed Findings* letters to the Legal Division for approval.

- After the Legal Division has approved the *Notice of Proposed Findings* letters, ~~except for special audits conducted by either the region or directly by SIU,~~ the regional chief auditor or his/her designee will obtain the limited waiver from the IPA[17] and, send the *Notice of Proposed Finding* to each individual named in the Finding for Recovery and the bonding company(ies).
    - ~~In the case of special audit testing, it may be necessary to delay notice to individuals about proposed findings until law enforcement or prosecuting officials approve release of this information. This decision will be coordinated by SIU.~~

    - ~~In the case of a Finding for Recovery that the Special Investigations Unit (SIU) identifies while conducting special audit testing as part of the regular financial audit being conducted by an IPA, SIU will prepare and send the *Notice of Proposed Finding for Recovery*. However, prior to sending the notice, SIU is responsible for ensuring the required CFAE and Legal consultations are obtained.~~

- The applicable parties are normally given five days to respond. If they respond, the regional chief auditor should evaluate the response along with the Legal Division and decide whether to withdraw or modify the Finding.

- The regional chief auditor will send a copy of Legal Division's final approved finding to the Chief of Quality Assurance via ipareport@ohioauditor.gov for inclusion with the Acceptance Letter. The Chief of Quality Assurance, or designee, certifies the report.

- The regional chief auditor or designee will prepare and send the *Notice of Proposed Finding* and *Notice of Finding* letters to applicable parties, and any rebuttal or response correspondence to these letters via certified mail return and maintain receipt cards to/from the applicable party(ies) of the finding. The regional chief auditor or designee will notify the Chief of Quality Assurance that the Proposed and Final Notices of Finding were sent and provide copies of each for inclusion in the Quality Assurance files for the audit.

- The regional chief auditor or designee will send the *Notice of Finding* to each individual named in the Finding for Recovery and the bonding company(ies) upon releasing the report. The Center for Audit Excellence must verify that the Notice of Finding was sent by the region and include a copy in the Quality Assurance files for the audit.

- AOS Legal Division will send the statutory legal counsel letters.

IPAs should refer any matters involving possible criminal activities to the regional chief auditor, who should then inform the Chief Forensic Auditor of the Auditor of State's SIU.

[17] NOTE: Ohio Rev. Code § 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 Division 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.

In addition, independent public accountants are to make an immediate, written report of all non-compliance 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 and more detailed examples are available in the Standardized Comments file on the Intranet:

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 § 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 § 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 for all public money received or collected by them or by their subordinates under color of law. "Strict liability" means a person may be found liable for the loss even though he or she may not have been personally at fault. Mere unidentified shortages of public monies, or ~~such~~ an illegal expenditure, are sufficient reasons for a Finding for Recovery against such a public official. [18]

[18] Ohio Rev. Code § 3313.25 provides limitations on school treasurer liability. This statute protects from liability for the loss of public funds when the treasurer acts with reasonable care and without negligence or wrongfulness.

Ohio Rev. Code § 3313.31 provides limitations on school treasurer liability for any loss of public funds that results from a treasurer's reliance on the accuracy of nonfinancial information or data of the school district, except in instances where the loss results from the treasurer's negligence or other wrongful act.

Ohio Rev. Code § 3319.36 additionally protects school district or educational service center treasurers and superintendents from liability for any loss of public funds related to the payment of a teacher that is made by the treasurer in compliance with Ohio Rev. Code § 3319.36, unless the loss results from the treasurer or superintendent's negligence or other wrongful act.

Additionally, Ohio Rev. Code §§ 301.221, 319.41, 321.50, 507.14, 733.82, 3354.101, 3357.101, 3358.061, 3375.361 and 6119.61 provide similar limits from the liability for loss of public funds to county auditors, county treasurers, township fiscal officers or deputy fiscal officers, treasurers of municipal corporations or city auditors or other officers of municipal corporations having the duties of a municipal treasurer or of a city auditor, treasurers or other fiscal officers of community college districts, treasurers or other fiscal officers of technical college districts, treasurers or other fiscal officers of state community college districts, fiscal officers or deputy fiscal officers of any board of library trustees of a free public library, treasurers, auditors, or other officers having the duties of a county treasurer or a county auditor for a county that has adopted a charter under Ohio Const. Art. X, and fiscal officers, treasurers, compliance officers or other officers or designees of

Thus, public officials (including fiscal officers) must be aware of their role in 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 public official who received or collected the public money and the public official who supervises the person who received or collected the public money 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 AOS Bulletin 2010-001 clarifying this policy for county officials. County Auditors may also consult Ohio Rev. Code § 319.16 for clarification on their liability for public money. General concepts included in the Bulletin may 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 and more detailed examples are available in the Standardized Comments file on the Intranet:

Joe's Service Business, Inc. improperly submitted and received payment on invoices for $125,000 in excess of the amounts City's Council authorized. City Finance Director Jim Smith received or controlled the public money used to make the illegal expenditures. (←Remove the highlighted sentence if the finding was repaid under audit.)

Under Ohio law, public officials are strictly liable for all public money received or collected by them or their subordinates under color of law. Ohio Rev. Code § 9.39; *Cordray v. Internatl. Preparatory School*, 128 Ohio St.3d 50 (2010).

In accordance with the forgoing facts, and pursuant to Ohio Rev. Code § 117.28, a Finding for Recovery for public money illegally expended is hereby issued jointly and severally against Joe's Service Business, Inc. and Jim Smith and his bonding company Ace Insurance Corp. in the amount of $125,000, and in favor of the City of Anyplace. (←Remove the highlighted text in this paragraph if the finding was repaid under audit.)

If repaid or partially repaid under audit, include details regarding when and how much was repaid.

regional water and sewer districts performing such duties and functions, when these public officials perform their official duties with reasonable care and without negligence or wrongfulness. Applicable fiscal officers will receive the benefit of the liability limitations in audit periods that include conduct that occurs after September 13, 2022. See Auditor of State Bulletin 2022-010.

While these statutory changes limit some liabilities for public officials, any determination as to when liabilities may be limited respective to a potential FFR should be determined through consultation with AOS legal.

Findings for Waste or Abuse

The 2018 (as revised in April 2021) Government Accountability Office's (GAO) *Yellow Book* transitions the discussion of abuse to application guidance and adds the perspective of waste, which is also defined. The new guidance (GAGAS 6.20) states that evaluating internal control in a government environment may also include considering internal control deficiencies that result in waste or abuse but that auditors are not required to perform specific procedures to detect waste or abuse in financial audits. Auditors may consider whether and how to communicate such matters if they become aware of them. Auditors may also discover that waste or abuse are indicative of fraud or noncompliance with provisions of laws, regulations, contracts, and grant agreements. Examples of waste and abuse are also provided.

Abuse in Federal Programs

2 C.F.R. § 200.516(a) states the auditor **must** report the following as audit findings in a schedule of findings and questioned costs: (1) Significant deficiencies and material weaknesses in internal control over major programs **and significant instances of abuse relating to major programs.** The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

If auditors determine that a finding should be issued, they should follow the guidance below.

AOS Policies for Reporting Findings for Waste or Abuse

- The auditor should draft the proposed finding and send it, along with all factual information pertinent to the proposed finding, to the Legal Division and Center for Audit Excellence for review.
- Once the finding has been approved by both the Legal Division and the Center for Audit Excellence, it must be sent to the Chief Deputy Auditor, or designee, for final approval.
- Once final approval is given by the Chief Deputy Auditor, or designee, the auditor should immediately prepare and send a Notice of Proposed Finding for Waste or Abuse (available on the Intranet) to the Legal Division for review and approval.

The person(s) against whom the finding is contemplated is given five business days to respond. The notice should be sent sufficiently in advance of any 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.

Responses within the time allowed, with something other than a general denial of responsibility, should be evaluated by the Chief Auditor.

- If merited, the response should be submitted to the Legal Division and Center for Audit Excellence for consideration.
- If a decision is made to delete the proposed waste or abuse finding from the draft report, the person(s) against whom the finding was proposed and the Chief Deputy Auditor should be notified.
- If the finding is retained, the individual(s) should be notified of the opportunity to attend the exit conference or schedule a separate meeting to discuss the finding.

Issuing Findings for Waste or Abuse Before and/or After the Audit Period

The regional Chief Auditor should consult with the Chief Deputy Auditor, or designee, prior to testing outside of the audit period to pursue a finding for waste or abuse.

IPA Policies for Reporting Findings for Waste or Abuse

Independent Public Accountants (IPAs) must also provide written notification of potential waste or abuse that provides the person(s) against whom the finding is contemplated an opportunity to rebut the allegations.

- The notice must include language of the waste or abuse finding from the report and must be factually specific and detailed enough to allow the person(s) to understand the allegations made against them.
- Notice should be sent sufficiently in advance of any exit conference so he or she has time to respond.
- IPAs are responsible for determining their own process for evaluating responses and reporting waste or abuse.
- IPAs must notify the Regional Office when a potential waste or abuse issue is identified and then again, whether or not the comment will be issued in the audit report.

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 § 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 § 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. Reports containing Findings for Recovery will be sent to the statutory legal counsel listed within the entity's eServices account and the local prosecutor's office by default. Field auditors should verify with the client the recipient information listed in the entity's eServices account is accurate prior to the release of the audit report.

Referring Findings for Recovery to the Attorney General

Pursuant to Ohio Rev. Code §§ 117.28 and 117.30 where a Finding for Recovery is made and remains unpaid at the time the audit is released, the Auditor of State sends the audit report and notifies the Attorney General of Findings for Recovery.

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

IRS, Ohio Department of Taxation, STRS, SERS, OP&F Retirement System ,OPERS, Ohio Office of Unemployment Compensation, and BWC Comments

The Internal Revenue Service[19], the Ohio Department of Taxation[19], School Teachers Retirement System, School Employees Retirement System, Ohio Police and Fire Retirement System, Ohio Public Employees Retirement System, and Ohio Department of Education have requested notification when local government audits have comments or findings pertaining to their respective agencies. The Auditor of State has agreed to these requests. The Auditor of State will also refer any Employee vs. Independent Contractor Status issues to the IRS, Ohio Department of Taxation, Ohio Office of Unemployment Compensation, and Bureau of Workers Compensation. [20]

Additionally, Ohio Rev. Code §§ 117.105 and 3314.019 require the Auditor of State to provide written notice to sponsors of community schools regarding any action taken against a community school as part of an audit. We interpret this to mean the Auditor of State has a legal responsibility to provide copies of community school audit reports to sponsors.

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 consult with the Auditor of State's Legal Division of the referral prior to release of the audit report and sending the referral. 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. [21]

Ohio Department of Education

Per Ohio Rev. Code § 3313.30(A), if the Auditor of State or a public accountant, under Ohio Rev. Code § 117.41, declares a school district to be unauditable, the Auditor of State shall provide written notification of that declaration to the district and the Department of Education and Workforce. The Auditor of State also shall post the notification on the Auditor of State's web site (https://ohioauditor.gov/financial.html).

[19] When available, please include the Employee Identification Number (EIN) when submitting referrals to the AOS referral box. In lieu of this information, provide the client contact and address.

[20] When drafting comments please be as specific as we can as to the amounts that are due to the various agencies as this information is provided to the outside agencies and provides users of the report a perspective on the issues noted in the audit. Also, if the auditor is certain the outside agency already knows of the issue we have noted i.e., they have already assessed the entity penalties and interest then it is not necessary to refer to them. An internal control regarding the issue found will suffice.

[21] ODE's Office of Community Schools is automatically sent a copy of all community school reports when they are released (whether they contain referrals or not). In addition, other divisions within ODE are also automatically sent a copy of ***all*** school reports (traditional, JVS, community, etc.) when they are released. Therefore, no further referrals to ODE for schools are necessary, aside from the unauditable notification discussed below.

Ohio Secretary of State

1. Per Ohio Rev. Code §§ 1724.06 and 1726.12, the Auditor of State must notify the Secretary of State when a community improvement corporation (including economic development corporations and county land reutilization corporations) or development corporation fails to file with the Auditor of State within 90 days of the statutory filing date (i.e. 210 days after the end of the reporting period) or within 90 days of an unauditable declaration by the Auditor of State.

   The Auditor of State's Hinkle System manager will receive notification from the System if a corporation fails to file within 90 days of the statutory filing date (i.e. 210 days) and, after determining the region has communicated with the CIC/DC, will prepare correspondence from the Chief Deputy Auditor (or designee) to notify the Secretary of State's designated contact of the statutory requirement to cancel each non-compliant corporation's articles of incorporation. This correspondence will also be provided to the applicable regional chief auditor(s).

   If a corporation is declared unauditable and fails to file within 90 days of the declaration, the regional chief auditor must notify Chief Deputy Auditor (or designee) to notify the Secretary of State's designated contact of the statutory requirement to cancel the corporation's articles of incorporation. A copy of this correspondence will be provided to the applicable regional chief auditor.

2. Per Ohio Rev. Code § 1702.57 "No person shall exercise or attempt to exercise any rights, privileges, immunities, powers, franchises, or authority under the articles of a domestic corporation after such articles have been canceled or after such corporation has been dissolved or after the period of existence of the corporation specified in its articles has expired."

   If a community improvement corporation (including an economic development corporations and county land reutilization corporations), created under Ohio Rev. Code Chapters 1702 and 1724, is cited for noncompliance with Ohio Rev. Code § 1702.57, a notification email will automatically be generated at the time the audit report is issued to notify the Hinkle System manager to notify the Secretary of State office's designated contact.

Ohio Ethics Commission

All potential ethics law violations and supporting documentation (i.e. meeting minutes and payments) are to be submitted to the Auditor of State Legal Division for consultation on whether the matter will be referred to the Ohio Ethics Commission. After review, the Auditor of State Legal Division will make appropriate referrals. The region is to determine whether and how to report the conduct in accordance with auditing standards. If the matter is referred and reported, the report finding is to specify that the matter has been referred to the Ohio Ethics Commission.

If AOS previously referred a matter involving the auditee to the Ohio Ethics Commission, the region is to test whether the referred conduct has continued during the current audit period. If the conduct has continued, the region is to follow the procedure discussed in the preceding paragraph. The region may inquire with the client about the status of a prior referral, but the region should not report on the status of the prior referral or obtain information from the Ohio Ethics Commission about the status of the prior referral.

Ohio Ethics Commission – Independent Public Accountants (IPA)

During the course of an audit potential violations of Ohio's Ethics Law may occur which involve potential violations that relate to having an illegal interest in a public contract, nepotism violations, or a public official voting when he/she should have recused himself/herself, etc.

Should these types of matters come to your attention notify the regional chief auditor to alert them to the facts involved along with any factual information including any supporting documentation that may substantiate the possible ethics violation.

The regional chief auditor will forward this information to their regional AOS Legal consultant for review to determine if this is a reportable matter that will be referred to the Ohio Ethics Commission. AOS Legal may request the IPA to provide them additional supporting documentation pertaining to the matter in question. The IPA should alert AOS as soon as practical that a potential reportable matter may exist, for review and approval. This should be done while fieldwork is still in progress. If this is a matter that is determined to be a possible violation, AOS Legal will then notify the IPA, regional chief and the Chief of Quality Assurance via IPAreport@ohioauditor.gov that such a violation has occurred. Once the audit has been submitted, approved and released, the referral specialist within the Center for Audit Excellence will notify AOS Legal who will then notify the Ohio Ethics Commission.

Although an IPA may forward a potential ethics referral to the Ohio Ethics Commission directly, it is AOS preference this be done by the AOS. Should an IPA firm choose to make the referral, the regional chief should be notified that such referral has been made, along with any supporting documentation that was sent, for awareness. The following should be indicated in the audit finding – "This matter has been referred to the Ohio Ethics Commission by **[insert firm name]**". The regional chief will be responsible for notifying the Chief of Quality Assurance via IPAreport@ohioauditor.gov that such referral has already been made.

Appendix A – Budgetary and Certain Related Requirements (Applies to Chapter 1)

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.

Exhibit 5 includes matrices showing the applicability of this chapter's requirements to various governmental types.

Legal Level of Budgetary Control *(Applies to Section 1-1)*

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 Admin. 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, or "other financial reporting frameworks") must comply with the following budgetary presentation requirements from GASB Cod. 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 [NCGAI 6, ¶5; GASB Statement No. 34, ¶131; GASB Statement No. 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 Annual Comprehensive Financial Report (ACFR) 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 as amended by GASB Statement No. 98 ¶4]

Annual Comprehensive Financial Reports (ACFR)

.105 The Annual Comprehensive Financial Report (ACFR) should include budgetary comparison schedules for individual non-major special revenue funds and other governmental funds of the primary government (including its blended component units). [NCGAS 1, ¶139 and ¶155, as amended by GASB Statement No. 14, GASB Statement No. 34, ¶130 and GASB Statement No. 98 ¶4]

Additionally, many governments may pass budgets even though they are not legally required to (see OCS Legal Matrix for specific budgetary requirements). In these instances, governments should also consider the following guidance from GASB Cod. 2400.702-14:

> 7.91.14. *Q*—Does *legally adopted* mean that a government is required by law to adopt a budget, or does it mean that the governing body officially adopts a budget that has legal standing?
> *A—Legally adopted,* as used in paragraph 130 of Statement 34, as amended, refers to the notion that the government has no legal authority to spend resources until the budget is adopted. The intent of the legally adopted reference is that the budget (or appropriation ordinance, etc.) provides legal authority to spend resources. A government may formally adopt an operating budget, but if they have the legal authority to spend resources without it, it does not constitute a legally adopted budget as contemplated in the GASB standards.

There is no prescribed minimum for reporting budget-versus-actual information for governments using the Auditor of State's Regulatory 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 Ohio Rev. Code Chapter 5705 requirements. You can access these publications at www.ohioauditor.gov then click on *Resources* and then *Publications*.

Also note: Virtually all Ohio Rev. Code Chapter 5705 requirements applicable to *subdivisions* apply to municipalities that have adopted a charter under Ohio Const. Art. XVIII, Section 7. (See 5705.01(A) & (B).)

APPENDIX A-1 Transfers and Advances *(Applies to Sections 1-6 & 1-7 & 1-13)*

Transfers Defined

Questions sometimes arise about what constitutes a *transfer* per Ohio Rev. Code §§ 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 §§ 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 §§ 5705.14 - .16 attempt to prevent these violations.

Not all interfund transactions are *transfers*, therefore, not all interfund transactions are subject to Ohio Rev. Code §§ 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 Might Not Be Transfers

Intrafund Appropriation Transfers
Certain transactions do not qualify as transfers as contemplated by Ohio Rev. Code §§ 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 Cod. 1800.102, also do not qualify as transfers. GASB classifies Interfund services provided and used as ***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 §§ 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 this OCS Implementation Guide)*.

Important: Auditors should also be alert for payments classified as ***interfund services provided*** or ***used*** far exceeding a reasonable value of the exchange. 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 incurred. 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 §§ 5705.14 - .16. Determining ***reasonable*** in both examples above requires careful judgment. We normally should question only significant, unsupportable amounts.

Interfund Loans/Advances

GASB Cod. 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 Bulletin 1997-003 (Chapter 1 Section 1-7), permitting *advances*. OCS Chapter 1 Section 1-7 requires:

- Any advance must be clearly labeled as such, and must be distinguished from a transfer.
- 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.
- 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.
- An allowable advance should not violate restrictions on resource use.

AOS does not believe advances satisfying these requirements require approval of the Tax Commissioner under Ohio Rev. Code § 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 Cod. 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 reclassified (i.e. 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*, the transfer(s) must satisfy all requirements included in Ohio Rev. Code §§ 5705.14 - .16 retroactively (appropriation, board resolution, court approval, etc.).

Note: Subdivisions can also sell securities between funds pursuant to Ohio Rev. Code § 133.29. This is commonly known as "manuscript debt." These sales and subsequent repayments are not "transfers". (Refer to Chapter 1 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 § 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.

Coronavirus State and Local Fiscal Recovery has very broad allowable uses with a retroactive program performance period. Upon initial receipt, local government management may not have known exactly how the dollars would be spent, especially since the U.S. Department of Treasury did not issue final program guidance timely.

For the Local Fiscal Recovery Fund AOS recommends all Local Fiscal Recovery Fund expenditures be recorded in a single fund. However, certain exceptions will need to be made. As the allowable costs are determined, some of these funds will be best distributed to the various funds through a billing/revenue reallocation process. AOS Bulletin 2021-004, *Separate Accountability for Federal Programs Authorized by the American Rescue Plan Act of 2021*, includes general guidelines for accounting for the broad activities of the Local Fiscal Recovery Fund, including the lost revenue component.

~~**Since the beginning of the Pandemic, AOS has received numerous questions about proper accounting treatment for COVID-19 federal funding awards. As the COVID-19 federal programs have evolved, reimbursement accounting, has increased in complexity for many programs. We encountered this starting with the Coronavirus Relief Fund, which had broad accounting implications, due to its retroactive program performance period, depending upon how the local government chose to spend its resources and which fund(s) were reimbursed. Similarly, the Coronavirus State and Local Fiscal Recovery Fund has very broad allowable uses with a retroactive program performance period. Upon initial receipt, local government management may not have known exactly how the dollars would be spent, especially since the U.S. Department of Treasury did not issue final program guidance timely.**~~

~~**For the Local Fiscal Recovery Fund AOS recommends all Local Fiscal Recovery Fund expenditures be recorded in a single fund. However, certain exceptions will need to be made. As the allowable costs are determined, some of these funds will be best distributed to the various funds through a billing/revenue reallocation process. AOS Bulletin 2021-004, *Separate Accountability for Federal Programs Authorized by the American Rescue Plan Act of 2021*, includes general guidelines for accounting for the broad activities of the Local Fiscal Recovery Fund, including the lost revenue component, as follows:**~~

~~**The following are some general guidelines for accounting for the broad activities of the Local Fiscal Recovery Fund:**~~

~~**a. Place the Local Fiscal Recovery Fund award (i.e., receipts) into a special revenue fund called the "Local Fiscal Recovery Fund."**~~
~~**b. Pay costs directly from the special Local Fiscal Recovery Fund as often as practicable. For example, local governments making subawards to individuals, not- for-profits, etc. can account for these subawards as direct charges to the special Local Fiscal Recovery Fund. In addition, expenditures related to the government services up to the amount of lost revenue can also be recorded as direct charges to the special Local Fiscal Recovery Fund.**~~

~~Item c and e provide examples of when recording expenditures in the Local Fiscal Recovery Fund is not practicable.~~

~~c. Proprietary fund accounting highlights the extent to which charges for services cover the cost of providing goods and services; therefore, all costs should be reflected within the respective proprietary funds. Option b above does not align with the focus of proprietary accounting, meaning recording proprietary fund expenditures in the Local Fiscal Recovery Fund is not practicable. In keeping with proprietary fund accounting, local governments should continue to charge those costs to the appropriate proprietary funds. The local government can use a billing/revenue reallocation process to redistribute the Local Fiscal Recovery revenue. This reallocation process is achieved by reducing the revenue in the Local Fiscal Recovery Fund and increasing revenue in the fund(s) that made the original allowable federal program payment. Local governments should take due care to document, in detail, the revenue reductions and reallocation of the Local Fiscal Recovery Fund revenue to other funds. This documentation will serve as the audit trail and support for allowable costs. Therefore, the local government should create an itemized "bill" of eligible costs incurred by another fund(s) to support the reallocation of the Local Fiscal Recovery Fund monies into another fund to cover those costs (i.e., dollar for dollar). The Auditor of State recommends this process be completed periodically, recommended at a minimum monthly, given the large volume of activity related to this program and the risk of potential errors that could occur as these amounts aggregate over time.~~

~~d. (removed when Bulletin was updated)~~

~~e. There may be challenges to recording certain employee payroll deductions in the Local Fiscal Recovery Fund. As a result, the allowable payroll eligible for federal program reimbursement can remain in the original fund and the billing/revenue reallocation process described in item c. above would be appropriate.~~

~~f. The billing/revenue reallocation process has the originating fund paying for the allowable program costs until they can be billed and reallocated. For cash flow reasons, this may not always be possible, in which case an upfront billing process can be used. The originating fund can prepare an upfront billing based on estimated costs to be incurred. The Auditor of State recommends this process be completed periodically, recommended at minimum monthly, given the large volume of activity related to this program and the risk of potential errors that could occur as these amounts aggregate over time. Once the eligible costs are paid the local government should create an itemized "bill" of eligible costs incurred by another fund(s) to true-up the reallocation of the Local Fiscal Recovery Fund monies into another fund to cover those costs.~~

~~g. An appropriation for the newly created special Local Fiscal Recovery Fund is effectively created by operation of Ohio Rev. Code § 5705.42. Ohio Rev. Code § 5705.42 indicates Federal and State grants or loans are "deemed appropriated" for such purpose by the taxing authority as provided by law. In addition, those moneys are also treated as if they are in the process of collection by the fiscal officer of the subdivision. This means that under Ohio Rev. Code § 5705.42, the moneys are treated by the fiscal officer as if they have been appropriated for a specific purpose, without requiring the taxing authority to adopt an amended appropriation measure. However, the fiscal officer should include the appropriated amounts on the (amended) certificate, if the legislative authority intends to appropriate and expend the excess revenue. The fiscal officer should also record the estimated revenues from the amended certificate and appropriation in the accounting system. The "deemed appropriated" criteria applies to the Local Fiscal Recovery Fund, but~~

~~not to the funds to which the revenue is reallocated. The funds receiving the reallocation will need to estimate receipts and appropriate in the traditional manner.~~

~~Local governments on the Uniform Accounting Network (UAN) system should refer to UAN for information on how to properly handle reductions of expenditures and reallocation of receipts in the UAN system. For guidance UAN provided to users to reallocate/reimburse receipts and expenditures using Coronavirus Relief Fund awards, click here (note, AOS staff must be off VPN to access). Similar steps will apply to Local Fiscal Recovery Fund reimbursements.~~

~~Accounting for Local Fiscal Recovery Fund monies could generate reimbursements. The Auditor of State's office recommends that every local government consult its own legal counsel for advice pertinent to the local government's particular situation to ensure that Ohio Rev. Code § 5705.14-.16 are not violated. Where disagreement over the application of a rule or statute arises, AOS will give all due consideration to a well-reasoned legal opinion provided by the local government's legal counsel.~~

~~As a reminder, refunds of prior year receipt/expenditure (if used when expenditures and reimbursements are in different fiscal years) are not allowable other financing sources/uses and should be reclassified. Similarly, neither should interfund reimbursements be reported as transfers under any reporting framework (GAAP, OCBOA, or AOS Regulatory). Interfund reimbursements, regardless of the method of recording them in the accounting system, are reported as an expenditure/expense in the fund ultimately responsible and as a reduction of expenditure/expense in the fund being reimbursed on the financial statements. These reclassifications along with elimination of any duplicate receipts or expenditures resulting from reimbursement accounting should be made during the financial statement compilation process, prior to filing in the Hinkle System for all reporting frameworks (GAAP, OCBOA, and AOS Regulatory).~~

~~For reimbursements and reallocations occurring in a subsequent year, governments should be careful not to overstate intergovernmental revenue in the year in which the reimbursement or reallocation is posted. For entities filing on the AOS Regulatory or OCBOA basis, the fund receiving reimbursement from the COVID Special Revenue Fund should record the revenue as other/miscellaneous so as to not overstate intergovernmental revenue related to this funding. In this situation, a footnote disclosure should be made to provide transparency about material amounts classified as other/miscellaneous revenue. For entities filing on the GAAP basis, when unexpended prior year SLFRF monies are in Unearned Revenue, the government can record the reimbursement or reallocation to miscellaneous revenue on the day-to-day books and budgetary statements, but can adjust to intergovernmental revenue for GAAP reporting purposes.~~

~~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, questions sometimes arise about whether such reimbursements, adjustments to balances of funds, or billing/revenue reallocation constitutes "transfers" under Ohio Rev. Code §§ 5705.14-16. The Auditor of State's office recommends that every local government consult its own legal counsel for advice pertinent to the local government's particular situation to ensure that the transfer provisions, Ohio Rev. Code §§ 5705.14-16, are not violated. Where disagreement over the application of a rule or statute arises, AOS will give all due consideration to a well-reasoned legal opinion provided by the local government's legal counsel.~~

Transfers Clarification:

Allocation of Unrestricted Receipts to Restricted Funds
Once a government deposits unrestricted money into a fund with a restriction, it ***is*** restricted money subject to Ohio Rev. Code §§ 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 §§ 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 § 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). 1989 Att'y Gen. No. 89-075. Sometimes, subdivisions fail to obtain the required approval prior to making transfers. Auditors should cite noncompliance 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 effects of unapproved transfers in their financial statements or accounting systems if local governments otherwise possessed statutory authority to make such transfers and there is evidence that the appropriate level of majority of the governing board accepts the transfers that were made (e.g., a retroactive resolution or other documentary evidence).***

Ohio Rev. Code §§ 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.

Transfers to Debt Service Funds
Debt issued under the authority of Ohio Rev. Code Chapter 133 must 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 §§ 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 Statement No. 38 ¶ 15 (Codification 2300.106 and .127) 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 A-2 Direct Charges *(Applies to Sections 1-2 & 2A-2)*

DIRECT CHARGES
(i.e. payments not requiring fiscal officer certification / encumbering)

The AOS interprets Ohio Rev. Code §§ 5705.41 and 5705.46[22] to authorize direct charges (certification/encumbering under 5705.41(D)) is not required).

Per Ohio Rev. Code § 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

Payments from the utility operating fund do not require certification. (However, payments from utility grant funds DO require certification per Ohio Rev. Code § 5705.44.)

[22] AOS interprets payroll to include Salaries, Employer's Retirement Contributions, Worker's Compensation, and Unemployment Compensation.

Note: *Advertising* and *payments to another political subdivision* require a certification because direct charges are not allowed.

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 B – 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.

Note: Auditors should carefully consider whether contract expenditures are direct and material to their audit. Among other federal assistance, local governments are receiving historical levels of federal funding as part of the ARPA Coronavirus State and Local Fiscal Recovery Funds and Infrastructure Investment and Jobs Act. These programs include significant provisions for water, sewer, broadband and other potential infrastructure-oriented projects. Contracts charged, in whole or in part, to federal programs may need to follow Federal Procurement Rules described in the Uniform Guidance *(note however, that Federal Procurement Rules do not apply to the ARPA SLFRF Revenue Loss category based on Treasury's July 2022 revision to its Final Rule FAQs).* Auditors should refer to the terms and conditions of the federal program to determine if Procurement applies. If Federal Procurement rules apply, local governments must comply with Federal, state and local (including charter) requirements regarding contract procurement and bidding. Where conflicts exist, the most restrictive requirement prevails. See AOS COVID-19 FAQ's for additional procurement guidance related to certain COVID funding and the Federal Procurement guidance for clients listed on AOS's website. AOS auditors should consult with CFAE via the FACCR Specialty in Spiceworks if noncompliance with Federal procurement requirements is identified for a non-major program or a major program for which procurement is not tested in the FACCR.

Purchase Orders as Contracts

Please note that a purchase order can constitute a contract but only if certain elements/characteristics are present: (1) offer; (2) acceptance; (3) mutual assent; and (4) consideration. When federal dollars are used to make a purchase, "acceptance" is present either by the buyer signing the purchase order or by the vendor and the buyer performing under the terms of the purchase order. Performance would be the vendor supplying the service or goods and the buyer paying for them. When AOS auditors encounter a purchase order and would like to know whether it can be viewed as a contract, we recommend that they reach out to the attorneys in Legal for an evaluation.

Competitive Bidding Thresholds

Effective October 3, 2023, certain competitive bidding thresholds are established by Ohio Rev. Code § 9.17 which states the amount for purposes of a provision of the Revised Code that references this section shall be (1) beginning on the effective date of this section through calendar year 2024, $75,000; and (2) for each calendar year thereafter, the amount for the previous calendar year increased by three percent as determined and published by the director of commerce. Where the Ohio Compliance Supplement references Ohio Rev. Code § 9.17, the thresholds were as follows for the following time periods:

Before Oct. 3, 2023	Oct. 3, 2023 – December 31, 2024
$50,000	$75,000

Bid Evaluation Standards

Certain statutes outline different standards regarding the evaluation of bids such as "lowest and best bidder" and "lowest responsible bidder." In addition, Ohio Rev. Code § 9.312 offers an additional evaluation standard for competitive bidding called "lowest responsive and responsible bidder." Ohio Rev. Code § 9.312 applies when either 1) another law requires the standard to apply or 2) a political subdivision required by law to award contracts by competitive bidding adopts an ordinance or resolution to adopt a policy requiring its contracts to be awarded to the lowest responsive and responsible bidder in accordance with Ohio Rev. Code § 9.312.

A bid is 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. The factors which should be considered in determining a bidder is responsible include 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.

An apparent low bidder found not to be responsive and responsible is to be notified by the political subdivision of the finding and the reasons for it. The notification is given in writing and either by certified mail or, if the political subdivision has record of an internet identifier of record associated with the bidder, by ordinary mail and by that internet identifier of record.

When the contract is awarded to a bidder other than the apparent low bidder or bidders, the political subdivision 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 political subdivision either affirms or reverses its earlier determination.

APPENDIX C – Debt (Applies to Chapter 1)

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 Revised 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 Chapter 133. It is impractical to describe every Rev. Code debt requirement in the OCS. Chapter 1 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 in OCS Chapter 1 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.

APPENDIX C-1 Tax and Revenue Anticipation Notes *(Applies to Section 1-11)*

Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	**Purpose**	**Reference to Ohio Rev. Code § 133.10**	**Reference to Ohio Rev. Code § 133.24**
§ 118.17. Issuance of local government fund notes (during fiscal emergency) Municipal corporation, county, or township (during fiscal emergency periods)	Current operating expenses the commission approves	§ 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."	No
§ 118.23. Current revenue notes issued during fiscal emergency Municipal corporation, county, or township (during fiscal emergency periods)	Current operating expenses the commission approves	§ 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." § 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	No

Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	**Purpose**	**Reference to Ohio Rev. Code § 133.10**	**Reference to Ohio Rev. Code § 133.24**
		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 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."	
§ 118.24. Advance tax payment notes (during fiscal emergency) Municipal corporation, county, or township (during fiscal emergency periods)	For purposes the commission approves per § 118.15	§ 118.24(H) states, "As used in this section *interest factor* 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	No

Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	**Purpose**	**Reference to Ohio Rev. Code § 133.10**	**Reference to Ohio Rev. Code § 133.24**
Note: *Advance tax payment notes* 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.		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." § 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."	
§ 306.49. Annual tax levy; purpose Regional Transit Authority	Current expenses (§ 133.10) or Permanent improvements (§ 133.24)	§ 306.49(A) States in part: "[t]he regional transit authority may borrow money in anticipation of the collection of current revenues as	§ 306.49(A) *also* 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 not exceeding ten years. Such election shall be

Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	**Purpose**	**Reference to Ohio Rev. Code § 133.10**	**Reference to Ohio Rev. Code § 133.24**
		provided in § 133.10 of the Ohio Rev. Code."	called, held, canvassed, and certified in the same manner as is provided for elections held pursuant to § 5705.191 of the Ohio Rev. Code (Refers to Ohio Rev. Code § 133.24. See separate description for § 5705.191 below). 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 of the Ohio Rev. Code." (this section refers to § 133.24 and is for permanent improvements).
§ 1545.21. Election of tax levy for use of district; anticipation bonds Park District	Acquiring and improving land	No	§ 1545.21~~(B)~~ (C) states, in part, "When a tax levy has been authorized as provided in this section or in Ohio Rev. Code § 1545.041, the board of park commissioners may issue bonds[23] 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, including "§ 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 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	No

[23] 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.

Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	**Purpose**	**Reference to Ohio Rev. Code § 133.10**	**Reference to Ohio Rev. Code § 133.24**
		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 § 5705.21 or 5705.218	No	§ 3318.052 (E) states, in part, that a school district board may, "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) *also* 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 of the Ohio Rev. Code, (This section refers to § 133.24 and is for permanent improvements) for the issuance of notes 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 in anticipation of the collection of current revenues as provided in § 133.10 of the Ohio Rev. Code."	§ 4582.14 *also* 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 not 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. 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	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	§ 4582.40 *also* 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 not

Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	**Purpose**	**Reference to Ohio Rev. Code § 133.10**	**Reference to Ohio Rev. Code § 133.24**
Newly created port authorities		current revenues as provided in § 133.10 of the Ohio Rev. Code."	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. 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 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."
§ 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 school financing district	If it is necessary to levy a tax in excess of the 10 mill limit for any of the purposes in Ohio Rev. Code § 5705.19, or to supplement 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.	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 over a period not exceeding the life of the levy anticipated, and may 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 principal payments during each remaining year of the life of the levy 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 anticipate a fraction of the proceeds of the levy and issue anticipation notes in an amount not exceeding the total

Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	**Purpose**	**Reference to Ohio Rev. Code § 133.10**	**Reference to Ohio Rev. Code § 133.24**
			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, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, 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	§ 5705.21(D)(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 each year over a period of five years after the issuance of the notes. 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 not to exceed five years, and may have a principal payment in the year of their issuance." § 5705.21(D)(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 years, not exceeding ten, after the issuance of the notes. 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

Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	**Purpose**	**Reference to Ohio Rev. Code § 133.10**	**Reference to Ohio Rev. Code § 133.24**
			their issuance over a period not to exceed ten years, and may have a principal payment in the year of their issuance."
§ 5705.2112. Career-technical compact facilities STEM School	Acquisition of classroom facilities.	No	§ 5705.2112(F)(1) "… 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 not to exceed ten years, and may have a principal payment in the year of their issuance."
§ 5705.217. Special elections on additional tax for school district purposes; anticipation notes School District	Current operating expenses and permanent improvements	No	§ 5705.217(B)(3) provides, "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 year over a specified period of years, not exceeding ten, after the issuance of the notes. Anticipation notes under this section 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 not to exceed ten years, and may have a principal payment in the year of their issuance."
§ 5705.218. Special elections on school district bond issues and tax levies; anticipation notes School Districts	Bonds or BAN for permanent improvements and current operating expenses	No	§ 5705.218(F)(3) states, "After the approval of a tax for general, on-going permanent improvements as defined under § 5705.21 of the Revised Code, 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 each year over a specified period of years, not exceeding ten, after issuance of the notes. Anticipation notes under this 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) or (F)(2) (specific permanent improvements) shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have a principal payment in the year of their issuance. Notes issued under division (F)(3) (ongoing permanent improvements) shall have principal payments during each

Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	**Purpose**	**Reference to Ohio Rev. Code § 133.10**	**Reference to Ohio Rev. Code § 133.24**
			year after the year of their issuance over a period not to exceed ten years, and may have a principal payment in the year of their issuance."
§ 5705.23. Resolution for special levy for public library; submission to electors Public Library	Current expenses or for constructing specific permanent improvements	No	§ 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 total estimated proceeds of the levy to be collected during the first year of the levy. After the approval of a levy to provide revenues for the construction or acquisition of any specific permanent improvement or class of improvements, 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 collected in each year over a period of ten years after the issuance of such notes. 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 not to exceed ten years, and may have a principal payment in the year of their issuance."
§ 5705.24. County tax levy for children services County	Operating or capital improvement expenditure necessary for the support of children services and the care and placement of children	No	§ 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. 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 over a period not exceeding the life of the levy, and may have a principal payment in the year of their issuance."
§ 5748.05. Income tax anticipation notes	Current operating expenses or permanent improvements	No	§ 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

Tax and Revenue Anticipation Notes			
Ohio Rev. Code § and Entities to which it applies	**Purpose**	**Reference to Ohio Rev. Code § 133.10**	**Reference to Ohio Rev. Code § 133.24**
School District			amount not exceeding fifty per cent of the total estimated proceeds of the tax to be collected for its first year of collection 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."
§ 5748.08. Election on income tax and bond issue as one ballot question School District	Permanent improvement bonds or BAN	No	§ 5748.08(G) states, "After approval of a question under this section, the board of education may anticipate a fraction of the 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 period not to exceed five years, and may have a principal payment in the year of their issuance."

APPENDIX D – Not Used

APPENDIX E – Deposits and Investments (Applies to Chapter 2)

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.[24] [25] (See the OCS Legal Matrices Appendix for more specific guidance regarding the applicability of the requirements in Chapter 2 to particular entity types.) Auditors should design audit procedures based on charter municipalities' own investment and deposit provisions. Provisions of Ohio Rev. Code 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 Ohio Rev. Code Chapter 135 *is* a policy in many respects. For example, it prescribes allowable investments, collateral requirements, etc. designed to help safeguard assets. However, OCS Section 2A-15 requires governments to adopt their own policy based on Ohio Rev. Code Chapter 135.

[24] 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 Const. Art. VIII, Sections 4 and 6 prohibit public bodies from becoming a "stockholder in any joint stock company, corporation or association."

[25] 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 or custody of the treasurer of the state or the treasurer of any subdivision." Moneys held by a trustee 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 Statement No. 40.

APPENDIX E-1 Federal Agencies *(Applies to Section 2A-14)*

The table below describes the level of Federal guarantee, as well as other information. The "full faith and credit" language describes an ***explicit*** guarantee. GASB 40 does not require (thought it does not prohibit) disclosing the credit risk for securities with explicit US guarantees. Credit risk must be disclosed for Federal Agency securities with implied US guarantees.

Security	U.S. Gov't Guarantee	Interest payment schedule	Maturity range
Government securities			
U.S. Treasury bills	Full faith & credit	Face value at maturity	1 day to 1 year
U.S. Treasury notes	Full faith & credit	Semi-annual	~~1 to 10~~ 2, 3, 5 and 10 years
U.S. Treasury bonds	Full faith & credit	Semi-annual	~~Issued with maturities beyond 10~~ 30 yrs.
U.S. Treasury Strip	Full faith & credit	Face value at maturity	3 months to 30 yrs.
Treasury Inflation Protected Securities (TIPS)	Full faith & credit	Semi-annual	5 to 30 yrs.
Mortgage-backed securities			
Government National Mortgage Association (GNMA)	Full faith & credit	Monthly principal & interest	30, 15, 7 or 5 year maturity
Agencies			
Federal Home Loan Mortgage Corporation (FHLMC)	Implied backing	Semi-annual	1 to 20 yrs.
Federal National Mortgage Association (FNMA)	Implied backing	Semi-annual	1 to 20 yrs.
Federal Home Loan Bank (FHLB)	Implied backing	Semi-annual	1 to 20 yrs.
Resolution Funding Corporation (REFCORP)	Implied backing	Semi-annual Zeros at maturity	Out to the yr. 2030
Tennessee Valley Authority (T VA)	Implied backing	Semi-annual Zeros at maturity	1 to 50 yrs.
Federal Farm Credit Bank (FFCB)	Implied backing	Semi-annual	3 months to 20 yrs.

APPENDIX E-2 GASB No. 40 *(Applies to Sections 2A-14, 2A-16 & 2A-18)*

GASB Statement No. 40 paragraph 6 (Codification I50.151--.158) requires governments to *briefly* describe policies related to the following risks for deposits and investments, ***if*** the government has instruments exposed to those risks:

Risk	Deposits	Investments
Credit		√
Custodial credit	√	√
Concentration of credit		√
Interest rate		√
Foreign currency	√	√

The GASB Cod. I50.735-1 implies the Ohio Revised Code is a source of policies requiring GASB Statement No. 40 disclosure. A summary of Ohio Rev. Code requirements related to the risk disclosures of GASB Cod. I50.137-.143 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 Statement No. 40 and should refer to the CIG for more information when preparing GASB Statement No. 40 disclosures.

Ohio Rev. Code Section	OCS Step	Requirement	Related GASB 40 Risk
§ 135.01(O) § 135.35(A)(10)	2A-14 2A-18	Per Ohio Rev. Code § 135.01(O), no load money market funds must (1) be registered as investment companies under the Investment Company Act of 1940, (2) have the highest credit rating issued by at least one national statistical ~~rater~~ rating organization and (3) the fund does not include any investment in a derivative. (Note: Per GASB Cod. I50.738-12, 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 (A)(8) § 135.35(C) § 135.35(N)(2)	2A-14 2A-18	• Investments generally must mature within 5 years of purchase. • A county may hold investments acquired before 9/10/12 until their maturity.	Interest rate
		• After an affirmative vote of the County's investment Advisory Committee, the portfolio can be invested in securities that mature longer than five years (Ohio Rev. Code § 135.35(C)). Permits up to 40% of the county's total average portfolio invested in commercial paper notes that has assets exceeding five hundred million dollar and are rated in the highest	Concentrations of credit

		classification established by at least two nationally recognized ~~standard~~ statistical rating ~~services~~ organizations, aggregate value does not exceed 10% of outstanding commercial paper of the issuing corporation and mature not later than 270 days after purchase. The investment in commercial paper notes of a single issuer shall not exceed in the aggregate five per cent of interim moneys available for investment at the time of purchase. (Ohio Rev. Code § 135.35(A)(8)(a)(iv)).	
§ 135.14(E) § 135.35(D)	2A-14 2A-18	Repurchase agreements cannot exceed 30 days.	Interest rate
§ 135.14(E) § 135.35(D)	2A-14 2A-18	The market value of securities for repurchase agreements must exceed the principal value by ≥ 2%.	Interest rate
§ 135.14(E) § 135.35(D)	2A-14 2A-18	Repurchase agreement securities must be delivered into the custody of the treasurer or governing board or an agent.[26] County repurchase agreement securities must be delivered into the custody of the investing authority or the qualified custodian of the investing authority or a designated agent.	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~~ statistical rating ~~service~~ organization.	Credit
§ 135.14(B)(7) § 135.142(A)	2A-16	Commercial paper + bankers' acceptances cannot exceed 40% of a government's investment portfolio	Concentrations of credit
§ 135.14~~(D)~~(B)(7) § 135.35(A)(8)	2A-14 2A-18	Commercial paper must be rated in the highest classification by at least two nationally-recognized statistical rating ~~services~~ organizations	Credit
§ 135.14(B)(7) § 135.35(A)(8)	2A-14 2A-18	Commercial paper must mature within 270 days and bankers' acceptances must mature within 180 days.	Interest rate
§ 135.18 § 135.181[27] § 135.182	2A-17	Depositories must collateralize deposits.	Custodial credit
§ 135.35(A)(9)	2A-18	A county's corporate debt investments must mature within three years of purchase.	Interest rate
§ 135.35(A)(9)	2A-18	A county's corporate debt investments cannot exceed 15% of its investment portfolio	Concentrations of credit
§ 135.35(A)(9)	2A-18	A county's corporate debt investments must be rated in 1 of the three highest categories by 2 nationally recognized statistical ratings organizations.	Credit

[26] 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.

[27] This section is only applicable if the financial institution was issued an extension by the Treasurer of State.

§ 135.35(A)(10)	2A-18 [28]	A county's foreign debt investments must mature within 5 years of purchase.	Interest rate
§ 135.35(A)(10)	2A-18	A county's foreign debt investments cannot exceed 2% of its investment portfolio	Concentrations of credit
§ 135.35(A)(10)	2A-18	A county's foreign debt investments must be rated in 1 of the 3 highest categories by 2 nationally recognized statistical ratings organizations.	Credit
§ 135.13 § 135.14 § 135.144 § 135.35	2A-14 2A-16 2A-18	Authorized investments	*

***** ***Note***: In addition to the risk-related policies above, GASB Cod. I50.149 requires disclosing investments the Ohio Rev. Code (or other legal or contractual provisions) authorize. The asterisked Ohio Rev. Code Sections list authorized investments.

[28] *Foreign currency risk* should not apply because the statute requires "all interest and principal shall be denominated and payable in United States funds."

Exhibit 1 – Citation Format
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 §§ 117.115, 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 § 117.11(A). Legal authorities which may be cited in an audit report may include the Federal and State constitutions, the United States Code and rules, the Ohio Revised Code, the Ohio Administrative Code, Federal and State court decisions, Federal and State regulations, 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 §§ 117.115, 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. Att'y. 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, 46 Ohio St.2d 389 (1976)

⇩	⇩	⇩	⇩	⇩
1	2	3	4	5

The elements of such a citation include:

1. The title of the case (italicized);
2. The volume number of the reporter in which the case is reported;
3. The abbreviation for the reporter;
4. The page number at which the case commences; and
5. The date (in parentheses).

The following abbreviations should be used:

Reporter	Abbreviation
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. FRANKLIN App. No. 80-AP-245, unreported (July 22, 1980)

Ohio Administrative Code

Citations to the Ohio Administrative Code should be by code section and date in the following form:

Ohio Admin. Code 117-02-02

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. Bill 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)

Exhibit 2 – Public Officers' Bond *(Applies to Section 3-5)*

Keep the following in mind:

1. Bond requirements: This exhibit lists those who are required by statute to give a bond with a specified minimum amount, those required to give a bond without an amount specified, and those who may be required to give bond if an ordinance is passed by the legislative authority. Regardless of any minimum amounts specified, the governing board may specify a greater amount when/if they deem it necessary. In the alternative to a surety bond, a political subdivision as defined in Ohio Rev. Code § 3.061, may now, by ordinance or resolution, allow for the use of an employee dishonesty and faithful performance of duty policy, rather than a surety bond for, some officers, employees, or appointees (those positions highlighted in yellow in the following tables may utilize these policies[29]) that would otherwise be required to give an individual surety bond. The policy must be in:
    - effect and apply to the officer, employee, or appointee before the beginning of the individual's term of office or employment.
    - an amount equal to or greater than the maximum amount of the bond otherwise required by law. If no amount, or only a minimum amount, of coverage is specified in law for the particular officer, employee, or appointee, the amount of coverage shall be an amount agreed upon by the legislative authority.

    Note: Ohio Rev. Code § 3.30 now states, "Except as otherwise provided in section 3.061 of the Revised Code, a person elected or appointed to an office who is required by law to give a bond or security previous to the performance of the duties imposed on the person by the person's office, who refuses or neglects to give such bond or furnish such security within the time and in the manner prescribed by law, and in all respects to qualify for the performance of such duties, is deemed to have refused to accept the office to which the person was elected or appointed. Such office shall be considered vacant and shall be filled as provided by law.

    A person subject to a policy adopted under section 3.061 of the Revised Code, when the policy is in effect and becomes applicable to the person upon the beginning of the person's term of office or employment, is deemed to have refused to accept the office or employment when the person fails to take, certify, and file the oath of office as required by law or fails to document proof of insurance coverage as provided in division (B) of section 3.061 of the Revised Code and the office shall be considered vacant and shall be filled as provided by law.

    A person who becomes subject to a policy adopted under section 3.061 of the Revised Code during the person's term of office or employment is deemed to have vacated the office on the date when the person fails to document proof of insurance coverage as provided in division (D) of section 3.061 of the Revised Code and the vacancy shall be filled as provided by law."

2. Blanket bonds and/or Insurance in lieu of Surety Bonds: Some individuals who must give bond may be covered under a blanket bond, while others must obtain a bond in the individual's name only (if their legislative authority has not elected to obtain an employee dishonesty and faithful performance of duty policy in lieu of the surety requirement). (See Ohio Rev. Code § 3.06 and/or

[29] Charter governments may have additional surety bond requirements, consult with AOS Legal to determine whether employee dishonesty and faithful performance of duty policies are a permissible alternative.

1965 Op. Att'y. Gen. No. 1965-087). Note: Insurance policies and surety bonds may be similar, however, there are various differences (see table below).

3. Bond given with/signed by: All bonds required or permitted by law should be given by a surety or bonding company authorized to transact business in this state. (Ohio Rev. Code § 3929.14)

4. Bond paid by: The premium of any bond required or permitted by law is allowed to be paid by the state, county, township, municipal corporation, or other subdivision, or board of education, of which such person giving the bond is such officer, deputy, or employee. (Ohio Rev. Code § 3929.17)

5. Term of bond: When a bond is required, it should be in place for the entirety of the tenure of office/employment. Renewals of bonds are allowable, however, lapses should not exist.

See additional information on the related FAQ document available on the AOS website at: https://ohioauditor.gov/ocs/2022/ORC_3.061_Dishonesty_and_faithful_performance_of_duty_policy_FAQs_2021.pdf

Topic	Surety Bond	Insurance
Parties involved	Three party agreement. The surety guarantees the faithful performance of the principal to the obligee.	Generally, two party agreement. The insurance company agrees to pay the insured directly for certain losses incurred.
Loss Expectation	Losses not expected. The surety takes only those risks which its underwriting experience indicates is safe. A surety will usually look at the applicant's credit, arrest, and bankruptcy history, as well as any previous bond claims made against the applicant.	Losses expected. Insurance rates are adjusted to cover losses and expenses as the law of averages fluctuates.
Recoverable	Losses recoverable. After a claim is paid, the surety expects to recoup its losses from the principal. This means the public official has "skin in the game," and the risk of loss stays with the official.	Losses usually not recoverable. When an insurance company pays a claim, it usually doesn't expect to get repaid by the insured. Risk of loss is transferred to the insurance company.
Premium costs	The cost of the bond covers expenses. A large portion of the surety bond price is really a service charge for weeding out unqualified candidates and for issuing the bond.	Premium covers losses and expenses. Insurance premiums are collected to pay for expected losses.
Selectivity	Sureties are selective.	Insurers cover most risks. The insurance agent generally tries to write a policy on anything that comes along (at the appropriate premium rate) and allows for a large volume to cover the risk.
Length of agreement	2 or 3 page document.	Often a multipage document containing many exclusions and exemptions.
Benefactor	Written in favor of the entity based on statute requirements	Typically, written in favor of the insurance company.

Dollar Amount of Coverage	Bond amounts vary depending on the applicable statutory requirements for the position. For some officials, this is a specific amount as stated in the law. For other officials the amount is based on the amount of local revenues or on population. And for some, the amount of the bond is determined by the legislative body or presiding judge.	Can vary significantly.
Third Party involvement	Official bonds allow any injured party to recover on the bond.	Third party may not bring suit. Policy usually written to only allow recovery for the insured. That is, the policy is written for the sole benefit of the insured, the governmental entity.
	Official bonds are not issued for the protection of the official himself, but rather to protect the government or the public from any injuries caused by the public official while in office.	
Coverage	The statutes generally contain two basic obligations: (1) that the official faithfully discharge or perform the duties of the office; and (2) that the official truly account for and turn over public money, property, and records entrusted to the official by the duties of office.	In theory, insurance could cover everything that the bond covers.
	The public official bond covers the failure of the bonded official to carry out either one of these duties with the motives of the official being irrelevant.	
	A breach of the bond can occur as the result of the failure to act, negligence of the principal, or intentional conduct, i.e., nonfeasance, misfeasance, and malfeasance. In essence, the failure to faithfully discharge one's duties may be attributed to either failing to take a required act or failing to refrain from doing something which by its nature should not have been done. Provided that loss occurs to one entitled to recover on a bond, all liability on a public official bond is absolute and is predicated on breach of duty.	

Table 1: Required by statute to give bond (min specified)			
Entity Type	**ORC**	**Employee/officer Position**	**Minimum amount of bond***
Union cemetery districts	759.36	Clerk-Treasurer	greater of - "amount in fund" or $1,000
General health districts	3709.31	~~Custodian of health fund~~ Designee of Health Commissioner, if any	$1,000,000
Joint recreation districts	755.23	Park Trustee	$2,500
Park districts	1545.05	Commissioner	$5,000
County	305.04	Commissioner	$5,000
	309.03	Prosecuting Attorney	$1,000
	325.12	Prosecuting Attorney	annual salary
	311.02	Sheriff	$5,000 - $50,000
	325.071	Sheriff	annual salary
	313.03	Coroner	$5,000 - $50,000
	315.03	Engineer	$2,000 - $10,000
	317.02	Recorder	$10,000
	319.02	Auditor	$5,000 - $20,000
	955.12	Dog Warden/deputy	$500 - $2,000
	1907.20(A)	Clerk of County Court	$5,000
	2101.03	Probate Judge	$5,000
	2153.10	Cuyahoga county juvenile court judge/clerk	$5,000
	2301.16	Criminal Bailiff of Court of Common Pleas	$5,000
	2303.02	Clerk of the Court of Common Pleas	$10,000 - $40,000
	5153.13	Executive Director of Children Services	$5,000
	5593.05	Bridge Commissioner	$5,000
Sanitary Districts	6115.57	County Treasurer	not less than probable amount of levy(s)
Township	505.02	Trustees	$1,000
	507.03	Fiscal Officer	Based on budget
	509.02	Constable	$500 - $2,000
	519.161	Zoning Inspector	$1,000 - $5,000
	5571.04	Highway Superintendent	$2,000
City	749.22	Hospital Trustee	$2,500
	755.23	Park Trustee	$2,500
	1901.32(A)(1)	Bailiff of Muni Court	$3,000
	1901.32(A)(2)	Deputy bailiff of Muni Court	$1,000
	1901.31(D)	Clerk/deputy clerk of Muni Court	$6,000
New Community Organizations	349.04	Board Member	$10,000

Table 2: Required to give bond (no amount specified by law)			
Entity Type	**ORC**	**Employee/officer Position**	**Amount**
Joint juvenile detention facilities	2151.70	Superintendent	Determined by board/court/etc., or amount otherwise not specified
	2152.42	Superintendent	
Airport authorities	308.12	Fiscal Officer	
Soil and water conservation districts	940.05	all entrusted with funds	
Conservancy District	6101.58	County treasurer	
Libraries	3375.32	Clerk	
	3375.36	Deputy Clerk	
State Community ~~and technical~~ colleges	3358.06	Treasurer~~/fiscal officer~~	
	3345.04	Law enforcement officer	
State colleges and universities	Various	Treasurer	
	3345.04	Law enforcement officer	
Technical colleges	3345.04	Law enforcement officer	
Joint ambulance districts	505.71	Clerk	
Joint Fire Districts	505.372	Clerk	
Fire & Ambulance District	505.375	Clerk	
Joint Police Districts	505.484	Treasurer	
Park District	1545.13	Park law enforcement officer	
Port Authorities	4582.15	Secretary	
	4582.41	Secretary	
County	153.24	Building Commissioner	
	321.02	Treasurer	
	329.01	CDJFS director	
	2151.12	Judge/clerk of Juvenile Court	
	2301.12(C)	Chief Court Constable	
	5155.04	Superintendent of County Home	
Township	507.02	Deputy Fiscal Officer	
	511.232	Township Park Law Enforcement	
Village	705.27	Treasurer/Auditor	
	739.02	Trustees of Municipal Sinking Fund	
City	705.27	Treasurer/Auditor	
	705.60	City Manager	
	733.65	Sealer of Weights and measures	
	739.02	Trustees of Municipal Sinking Fund	
	747.01	Rapid Transit Commissioner	
	5593.05	Bridge Commissioner	
Traditional school districts	3313.25	Treasurer	
	3319.05	Business Manager	
	3327.10(C)	Non-employee Bus Drivers	
Community schools	3314.011	Fiscal Officer	
STEM/STEAM schools	3326.21	Treasurer	
Joint Children's Home	5153.41	Superintendent	
Regional Transit Authority (RTAs)	306.42	Secretary Treasurer	

Table 2: Required to give bond (no amount specified by law)			
Entity Type	**ORC**	**Employee/officer Position**	**Amount**
Regional Library Systems	3375.92	Fiscal Officer and Deputy	
Sanitary Districts	6115.51	Treasurer	
Regional Arts and Cultural Districts	3381.10	Executive Director	
Watershed Districts	6105.10	Secretary Treasurer	
Memorial Buildings (Board of Trustees)	345.10	Trustees	

Table 3: Board may require bond			
Entity Type	**ORC**	**Employee/officer Position**	**Minimum amt.**
Joint Township cemeteries or Union cemeteries	759.06	Officer	*
Conservancy districts	6101.12	Secretary, employees	*
County	329.01	CDJFS employees	*
	1907.20(E)(1)	Deputy Clerks of County Court	$3,000
	1907.20(F)(1)	Special Deputy Clerks of County Court	$3,000
	1907.20(F)(2)	Special Deputy Clerks of County Court	$3,000
	2101.06	Special Master Commissioner	*
	2101.11(C)	Judge Appointees	$1,000
	2151.13	Juvenile Court Employees	$1,000
Township	505.03	Trustees	*
	507.021(C)	Fiscal Officer Assistants	*
City	733.69	Various (“additional bonds”)	*
	705.27	Various	*
	735.03	Public Utility Board Member	*
	1901.31(H)	Deputy clerk of Muni Court	$3,000
	1901.311	Special deputy clerk of Muni Court	$3,000
Village	705.27	Various	*
	733.69	Various (required by ordinance)	*
Lake Facilities Authority	353.03	Any	*
Any entity	3.06**	Deputies, Clerks	*

** = Determined by board/court/etc., or amount otherwise not specified*

*** = Yellow highlight in this cell indicates any deputy or clerk appointed/employed by a “political subdivision” as defined in Ohio Rev. Code § 3.061 could be covered by an employee dishonesty and faithful performance of duty policy in place of the bond.*

Exhibit 3 – Compliance ACE Form

Assessment of the Compliance Controls' Environment

Note: This exhibit 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 OCS Chapters 1 & 4A. 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, the lack of a written code of conduct may not affect the auditor's assessment of control risk.

Budgetary (OCS Chapters 1 & 4A)	
Area for Assessment	**Comments**
The following factors may influence the auditor's assessment of risk of significant misstatements of budgetary presentations: Ohio Rev. Code Chapter 5705 codifies an annual budget process designed to prevent fund cash deficits. It prescribes levels of budgetary control, and a basis for recognizing budgetary receipts and budgetary expenditure, which can affect the fair presentation of budgetary statements and disclosures. *Consider for example, the following points of focus:* - *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.)* - *The effectiveness of the budget process (i.e. segregation of duties for budget preparation, adoption, execution and reporting).* • *The level of detail (e.g. legal level of control) and suitably knowledgeable and experienced personnel (such as operating line management).* - *The effectiveness of monitoring performance with respect to:* • *A commitment by those charged with governance and management to comply with budgetary laws.* • *indication and timeliness of corrective actions,* - *An accounting system that integrates budgetary accounts to provide continuous information regarding available appropriations and estimated resources not yet received.* Note: The AICPA's State & Local Government Audit Guide, 11.24 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 very useful audit support for financial position and activity statement assertions.	
Audit implications and/or management comments:	

Debt (OCS Chapters 1 & 4A)	
Area for Assessment	**Comments**
Points of Focus (Debt) - *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.)* - *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* - *Willingness to use bond counsel or other specialists (e.g. arbitrage specialists) when issuing debt.* - *Accounting system suitably designed to comply with any requirements to separately account for debt proceeds or debt service payments.*	
Audit implications and/or management comments:	

Accounting and Reporting (OCS Chapters 1 & 4A)	
Area for Assessment	**Comments**
Points of Focus - *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.)* - *Accounting system suitably designed to accommodate the reporting requirements in Chapter 2 applicable to the auditee.*	
Audit implications and/or management comments:	

Other Potentially Direct and Material Laws and Regulations (OCS Chapters 1 & 4A)	
Area for Assessment	**Comments**
Points of Focus - *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.)* - *Accounting system suitably designed to provide information when needed, such as information related to insurance claims, landfill costs, especially closure or post closure costs.* - *Suitable systems and procedures for collecting other financially significant information reliably, such as landfill usage, student attendance statistics.* - *A commitment by school management and those charged with their governance to obtain accurate ADM student counts.*	
Audit implications and/or management comments:	

Exhibit 4 – Changes in Compensation *(Applies to Section 1-23 & 3-3)*

Ohio Const. Art. II, Section 20 provides a prohibition on in-term compensation changes for public officers, both increases and decreases. Reviewing changes in an officials' compensation can be very complicated because a complete review of whether an elected official received the proper compensation may require analysis of several Ohio statutes (including the Ohio ethics laws), the Ohio Constitution, a charter (if applicable), case law, and Ohio Attorney General Opinions. Compensation is comprised of both salary or wage and benefits.

This Exhibit provides some general guidance on how to work through changes in salary or wages of township trustees and township fiscal officers. A change in any other benefit that is part of compensation may also be subject to the prohibitions of Ohio Const. Art. II, Section 20. Auditors should obtain legal advice to assist in a determination of whether the constitution was violated by a change in compensation.

Township Trustees and Fiscal Officers

Generally, a change in a township officer's salary or wage is prohibited if the change results from (1) direct legislative action that (2) alters the formula setting the officer's compensation that existed when the term of office began. Therefore, where a statute setting forth the formula for the compensation of an officer is effective before the commencement of such officer's term, any salary increase which results from a change in one of the factors used by the existing statute to calculate the compensation would not be prohibited by Ohio Const. Art. II, Section 20 when paid to the officer while in term.

When reviewing the legality of a change in a township fiscal officer's salary under Ohio Rev. Code § 507.09, three steps should be followed:

(1) identify the term of office;
(2) identify the legislation setting the salary as it existed at the start of the officer's term of office; and
(3) determine whether the change is expected by the terms of Ohio Rev. Code § 507.09 that was in effect at the start of the fiscal officer's term of office.

If the change is expected by the version of the legislation that was in effect at the start of the term, then the formula has not changed as a result of direct legislative action and a prohibited change in compensation has not occurred. The following examples outline this rule.

> At the start of the township fiscal officer's term of office, assume the Ohio Revised Code stated for calendar year 2020, if budget is A, salary is $5,000; if budget is C, salary is $7,000. This Revised Code language sets the formula for the compensation. The township trustees could adopt a resolution that states "fiscal officer is entitled to the maximum salary permitted by the Revised Code for each year of the officer's term of office." Alternatively, the township trustees could adopt a resolution that states that the fiscal officer shall be paid $5,000 for calendar year 2020 based on the application of the formula in the version of the Ohio Revised Code.
>
> If in the next year of the fiscal officer's term of office, the resources of the township increase so that the fiscal officer's salary is set by the next salary tier, the township could adopt another resolution that sets the compensation at $7,000. A prohibited in-term change in compensation has not occurred because the resolution simply applied the formula that was in existence at

the start of the officer's term of office. Ohio Rev. Code § 507.09 does not delegate any authority to the township trustees to set the compensation at a rate that is different than the formula specified in the Ohio Revised Code. The formula is set by the Ohio Revised Code and the legislative action taken by the township trustees does not alter the formula, it is merely applying the formula based on changing external factors (the township's budget).

However, if the General Assembly amended the Ohio Revised Code and said if resources are A, salary is $10,000, the fiscal officer's salary could not be changed in accordance with the new version of the Ohio Revised Code, until the next term of office begins, even if the resolution stated that the fiscal officer's compensation shall be the maximum salary permitted by the Revised Code. The township resolution can set the compensation at a different dollar amount, as long as that dollar amount is the result of applying the formula that was established by the original version of the Revised Code that was in effect at the start of the term of office. If the township were to adopt a resolution that changes the compensation based on the formula in the new version of the statute, there has been direct legislative action that alters the formula and therefore is a prohibited in-term change in compensation. The formula is changed by direct legislative action at the state and, then consequently, at the local level.

Turning to a township trustee's salary, it is important to note the difference between Ohio Rev. Code §§ 507.09 and Ohio Rev. Code § 505.24. Ohio Rev. Code § 505.24 sets a range within which a township trustee shall be paid (a minimum of one per diem payment for one day up to a maximum per diem payment for a maximum number of days based on the township's budget). Ohio Rev. Code § 505.24 also permits the township trustees to adopt a resolution permitting trustee salaries to be paid on an annual basis, not exceeding the maximum amount that could be paid on a per diem basis. Accordingly, both the Ohio Revised Code and the township resolution must be considered when evaluating whether a direct legislative action has altered the formula setting the trustees' compensation.

When reviewing the legality of a change in a township trustee's salary under Ohio Rev. Code § 505.24, the following steps should be followed:

(1) identify the term of office;
(2) identify the version of the statute and the version of the township resolution that were in effect when the trustee's term of office began;
(3) determine whether the increase or decrease is contemplated/anticipated by the version of Ohio Rev. Code § 505.24 and the version of the township resolution that was in effect at the time the trustee's term of office began.

If the change in compensation was not anticipated by the version of the state or local legislation that existed at the time the term of office began, the change in compensation is not lawful. The following examples demonstrate application of this rule.

At the start of the township trustee's term of office, assume the Ohio Revised Code stated for calendar year 2020, if budget is A, the maximum salary permissible a township trustee may receive in a given year is $15,000; if budget is C, the maximum salary permissible a township trustee may receive in a given year is $17,000. Note: These maximum amounts are derived from an Ohio Revised Code formula, where a per diem payment (i.e. $80/day for townships

within budget bracket X) is multiplied by a total number of allowable days a trustee may receive per diem compensation (currently fixed at 200 total days).

In addition, assume that the township with budget A, at the start of the township trustee's term of office, has chosen to adopt the yearly salary method of compensation and has fixed, via resolution, the salaries of its trustees at "the maximum amount permitted under Ohio Rev. Code § 505.24" without setting a specific dollar figure. In this example, the Revised Code and the township resolution set a clear formula for the maximum amount of compensation a township trustee can receive in any given year. If the township's amended certificate increases the township's budget to budget C, the trustee could lawfully receive the $2000 yearly salary increase during his term of office. This is a lawful in-term pay increase, because the Ohio Revised Code fixed the maximum salary amounts for township trustees, via formula, prior to the trustee's term of office and the township also enacted a resolution, prior to the trustee's term of office, that entitled the trustee to "the maximum amount permitted under Ohio Rev. Code § 505.24. What resulted in the increase in salary was a change that was contemplated by the legislation that set the trustees' salary. The increase was not the result of direct legislative action that altered the formula.

However, if the township budget was increased to budget C in-term for the trustee in our example above, and the legislature had at the same time amended the Ohio Revised Code in a manner that increased the per diem payment for township trustees with budget C, so that the maximum salary a trustee would be entitled to, via formula, would increase from $17,000 to $18,000 annually, the trustee in our example would only be entitled to the $17,000 maximum salary amount permitted at the start of his/her term of office (regardless of the language of the township resolution).

The question of whether an in-term pay change is lawful or prohibited is extremely fact specific and often turns upon small nuances of fact/law. Therefore, auditors should refer all questions regarding in-term pay changes to Legal for analysis.

Effective Date of the United States Census for the Purposes of Computing County Officials' Pay

2021 Op. Att'y Gen. No 2021-021 indicates that, for the purposes of calculating officials' salaries under Ohio Rev. Code Chapter 325, the results of the federal decennial census are effective as of the date on which the State receives the completed tabulations of population from the United States Secretary of Commerce. For the most recent federal decennial census, that date was August 12, 2021.

Waiver of Salary

Pursuant to the doctrine of waiver, officers may elect to voluntarily waive a portion of their salary. 2003 Op. Att'y. Gen. No. 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). However, they would then be precluded, during their term, from receiving the portion of their salaries 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.

County Official Tables

See the new county officials' compensation charts for compensation rates through 2028 at: **https://ohioauditor.gov/publications/bulletins/2019/2019-001-rev.pdf .**

Township Official Tables

Ohio Rev. Code §§ 505.24 and 507.09 set forth amounts of township officials' compensation. Beginning in 2019 through 2028, fiscal officers will receive an annual increase of one and three-quarters per cent.

Note: For the compensation charts (A-15 and A-32) and more information regarding township trustee and fiscal officer compensation, see the Ohio Township Handbook. In addition, compensation charts published by the Ohio Township Association, updated by year, may also be found at https://resources.ohiotownships.org/compensation-charts.

Exhibit 5 – Legal Matrix

The matrix matches the applicability of OCS steps to various entity types. The information in the matrix does not necessarily encompass every item requiring testing for these entities. Additionally, when footnotes in the matrix reference specific sections of the Ohio Rev. Code, you should read those sections when planning and/or conducting the audit.

The legal matrix is depicted in a separate Excel file at https://ohioauditor.gov/references/compliancemanuals.html. Entities are included alphabetically in the tab titled "OCS – Exhibit 5".

Exhibit 6 – Entities Not Included

This exhibit contains the entity types which have NOT been considered for the applicability of OCS steps. Below is a table of the Ohio Rev. Code sections which establish these entity types. This table is not intended to define the requirements for these entities. Instead, it is intended to be used as a reference on where to begin the determination of the applicable compliance sections.

This is depicted in a separate Excel file at https://ohioauditor.gov/references/compliancemanuals.html. See tab titled "OCS – Exhibit 6".

Questions and Comments

The Auditor of State welcomes comments and suggestions on the *OCS*. You may submit them through:

https://ohioauditor.gov/contact/inquiry.aspx