

CHAPTER 2 INDIRECT LAWS & STATUTORILY MANDATED TESTS

AU-C 250.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.

AU-C 250.06 b also requires testing other laws that do not have a direct effect. These other “indirect” laws are defined as laws which may be:

- i. fundamental to the operating aspects of the business,
- ii. fundamental to an entity's ability to continue its business, or
- iii. necessary for the entity to avoid material penalties

Chapter 2 includes “indirect” laws. Chapter 2 also includes laws that statutes mandate auditors to test during an audit.

NOTE: Red text throughout this Ohio Compliance Supplement is related to COVID-19 and the Infrastructure Investment and Jobs Act (IIJA).

The legal 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”. See tab titled “OCS – Exhibit 6” for entity types not listed in Exhibit 5.

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SECTION A: INDIRECT LAWS

2A-1 Compliance Requirement: Ohio Rev. Code §§ 5705.28, 5705.39 and 5705.40 - Appropriations limited by estimated revenue.

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

Auditors should continue to cite entities for healthy funds (those with positive cash balances at the time of declaration) that experience a deficit after declaration¹. Therefore, auditors should compare fund deficits during the audit period to the funds that were in deficit at the point when the Fiscal Emergency was originally declared to determine whether any new funds have incurred a deficit balance.

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

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

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

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

Project-Length Budgeting

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

¹ In rare instances, complying with the recovery plan can cause violations of Chapter 5705. In these instances, auditors should not cite violations of 5705 if they were necessary in order to comply with the recovery plan.

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

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

§ 5705.28(B)(2) Requirements for entities that do not levy taxes (See the Legal Matrices in Exhibit 5 of the OCS Implementation Guide for applicable entities)

If an entity levies taxes, the sections above apply. However, some entities with taxing authority do not levy taxes. When they do not levy taxes, Ohio Rev. Code § 5705.28 (B)(2) permits a comparable, but somewhat streamlined budget process. Ohio Rev. Code § 5705.28(B)(2) requires entities to follow § 5705.36. While Ohio Rev. Code § 5705.39 does not apply, § 5705.28(B)(2)(c) prohibits appropriations from exceeding estimated revenue (i.e. receipts + beginning unencumbered cash).

Suggested Audit Procedures - Compliance (Substantive) Tests:

1. Compare the final year end (current year only – do not include any carryover encumbrances appropriated) appropriation measures for selected funds (normally the general fund and major funds are sufficient) and determine that the appropriations do not exceed the official or amended estimate of resources (estimated revenues plus unencumbered fund balances) as of the fiscal year end. (It should not be necessary to schedule out all of the appropriation amendments throughout the year.)
Except: if the government is in fiscal emergency, and you are testing a fund with a beginning unencumbered deficit, compare appropriations to estimated receipts instead of to estimated resources.
2. For grants or loans awarded by the Federal or State government, determine whether the entity implemented project-length budgeting pursuant to Ohio Rev. Code § 9.34(B). If so, determine whether the fiscal officer obtained an Official Certificate of Estimated Resources for the entire project-length fiscal period and that only the amount estimated to be obligated during the current fiscal year was recorded as appropriated for advance-funded grants and loans. If the local government appropriated amounts beyond fiscal year end, determine whether the exception above was met (i.e. reimbursable grants or loans).

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

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2A-2 Compliance Requirement: Ohio Rev. Code §§ 5705.41(A) and (B); and 5705.42 - Restrictions on appropriating and expending money.

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

Auditors should continue to cite entities for healthy funds (those with positive cash balances at the time of declaration) that experience a deficit after declaration². Therefore, auditors should compare fund deficits during the audit period to the funds that were in deficit at the point when the Fiscal Emergency was originally declared to determine whether any new funds have incurred a deficit balance.

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

NOTE: An appropriation for a new ~~state or federal COVID-19 or Infrastructure Investment and Jobs Act~~ program 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. The fiscal officer should also record the appropriation in the accounting system. The “deemed appropriated” criteria applies to new federal programs but not to the American Rescue Plan Act funds for which the revenue is reallocated as described in AOS Bulletin 2021-004. The funds receiving the reallocation will need to estimate receipts and appropriate in the traditional manner.

See [AOS COVID-19 FAQ's](#) and [AOS Bulletin 2021-004](#).

² In rare instances, complying with the recovery plan can cause violations of Chapter 5705. In these instances, auditors should not cite violations of 5705 if they were necessary in order to comply with the recovery plan.

Summary of Requirements:

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

Similarly, Federal and State grants or loans are “*deemed appropriated*”³ for such purpose by the taxing authority” as provided by law and shall be recorded as such by the fiscal officer of the subdivision, and is deemed in process of collection [Ohio Rev. Code § 5705.42].

No subdivision or taxing unit is to expend money unless ~~it has~~ the fiscal officer of the subdivision or taxing authority has certified that all of the following apply:

- a. The expenditure has been appropriated as provided in Ohio Rev. Code Chapter 5705. [Ohio Rev. Code § 5705.41(B)(1)(a)]
- b. The expenditure has been appropriated by the subdivision’s or taxing unit’s legislative authority. [Ohio Rev. Code § 5705.41(B)(1)(b)]
- c. The expenditure is not compelled by a process authorizing management, control, distribution, or disbursement of an appropriation or expenditure by a vote of the subdivision’s or taxing unit’s residents. [Ohio Rev. Code § 5705.41(B)(1)(c)]

Nothing in division (B)(1) of this section prohibits a subdivision or taxing unit from doing either of the following:

- a. Authorizing a bond issue otherwise permitted by law; [Ohio Rev. Code § 5705.41(B)(2)(a)]
- b. Soliciting public input related to the management, control, distribution, or disbursement of funds. [Ohio Rev. Code § 5705.41(B)(2)(b)]

§ 5705.28(B)(2) Requirements for entities that do not levy taxes (See the Legal Matrices in Exhibit 5 of the OCS Implementation Guide for applicable entities)

If an entity levies taxes, the sections above apply. However, some entities with taxing authority do not levy taxes. When they do not levy taxes, Ohio Rev. Code § 5705.28(B)(2) permits a comparable, but somewhat streamlined budget process. Ohio Rev. Code § 5705.28(B)(2) requires these entities to follow § 5705.41(B) and so they cannot disburse more than appropriated.

³ “Deemed an appropriation” under this section means the Federal or State government has already appropriated and established the purpose(s) for which a government can spend monies received from Federal or State grants and loans. The taxing authority cannot deviate from this purpose; the taxing authority can only resolve to spend the money for a purpose already prescribed in a contract, grant agreement, loan agreement, etc. Therefore, Federal and State grants and loans received under Ohio Rev. Code § 5705.42 *do not* require formal appropriation by the legislative body. In other words, Ohio Rev. Code § 5705.42 effectively eliminates an unnecessary appropriation action by the taxing authority. However, Ohio Rev. Code § 5705.42 directs the fiscal officer to *record* the appropriation amount “as such” which AOS interprets to be the accounting system* and/or the budgetary statements or footnotes as applicable for their financial reporting framework. The fiscal officer should also include the appropriated amounts on the (amended) certificate to properly monitor budget versus actual activity. *Note:* Amounts “deemed appropriated” are subject to inclusion in GAAP budgetary presentations (GASB Cod. 2400.102). The government has no legal authority to spend these resources unless they were either appropriated by the legislative authority or deemed appropriated by the Federal or State government. (GASB Cod. 2400.702-14)

**Note:* If the auditee does not record the appropriation amount in the accounting system, but does report in the financial statements and/or footnotes, auditors should consider issuing a management letter comment for the auditee to record in their accounting system.

Suggested Audit Procedures - Compliance (Substantive) Tests:

For selected funds (normally the general fund and major funds are sufficient) compare total expenditures plus contract commitments (including outstanding encumbrances) from each fund versus appropriations and determine if the expenditures and commitments are within the appropriations for the tested funds at year end (current year).

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

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2A-3 Compliance Requirements: Ohio Rev. Code §§ 9.17, 9.48, 125.04, 153.65-.71, 723.52, 731.02, 731.12, 731.14, 731.141, 735.05 and 2921.42 - Municipal contracts.

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.

Summary of Requirements:

Contracts for Expenditures Other Than Streets or Other Public Way

Generally, all contracts made by the legislative authority of a city for material and labor which exceed the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide Appendix B) are subject to competitive bidding procedures. No expenditure subject to this section shall be divided into component parts, separate projects, or separate items of work in order to avoid the requirements of this section. (*Note:* This limit may not apply to some charter municipalities.) [Ohio Rev. Code § 735.05 Cities]

The competitive bidding threshold for expenditures of a village is \$50,000 specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide Appendix B). [Ohio Rev. Code § 731.14 – Villages]

The competitive bidding threshold for expenditures of a village that have established the position of a village administrator is the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide Appendix B). No expenditure subject to this section shall be divided into component parts, separate projects or separate items of work in order to avoid the requirements of this section. [Ohio Rev. Code § 731.141 Villages with village administrator]

Contracts for Streets or Other Public Way

Before letting or making any contract for the construction, reconstruction, widening, resurfacing, or repair of a street or other public way, the director of public service in a city, the village administrator, or the legislative authority in a village, shall make an estimate of the cost of such work using the force account project assessment form under Ohio Rev. Code § 117.16. In municipal corporations having an engineer, or an officer having a different title but the duties and functions of an engineer, the estimate shall be made by the engineer or other officer. Where the total estimated

cost of any such work exceeds \$70,000⁴ the municipal corporation shall be required to invite and receive competitive bids. [Ohio Rev. Code § 723.52] (*Note:* Auditors should refer to OCS 2B-1 for tests of force accounts and the force account project assessment form.)

Competitive bidding procedures require that a contract be entered into in writing with the lowest and best bidder⁵ after advertisement of the proposal for bids for not less than two nor more than four consecutive weeks⁶ in a newspaper of general circulation within the municipality or as provided in Ohio Rev. Code § 7.16.⁷ (Ohio Const. Art. XVIII, Section 3 allows municipalities to deviate from these requirements by charter.) [Ohio Rev. Code §§ 731.141 and 735.05]

Contracts for used equipment or supplies at a public auction or emergencies can be entered into without following competitive bidding procedures.

Contracts with qualified non-profit agencies and contracts with state departments, political subdivisions, or a regional planning commission may be authorized without bidding and advertising.

Municipalities that participate in a joint purchasing contract are exempt from using competitive bidding. [Ohio Rev. Code § 9.48(C)-(D)]

Municipalities also need not follow the bidding process where the contract involves specialized services, requiring particular skills and aptitudes, such as engineering or legal services. [*State ex rel Doria v. Ferguson*, 145 Ohio St. 12 (1945)]

Municipalities (both cities and villages) procuring professional design services do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require municipalities to publicly announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Ohio Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Ohio Revised Code. Ohio Rev. Code §§ 153.66 to 153.70 do not apply to any of the following:

- Any project with an estimated professional design fee of \$25,000 or less;

⁴ Prior to June 30, 2023, this threshold was \$30,000. On the first day of July of every year beginning in 2024, the threshold amount established in this section increases by an amount not to exceed the lesser of five per cent, or the percentage amount of any increase in the department of transportation's construction cost index as annualized and totaled for the prior calendar year. The director of transportation shall notify each appropriate engineer or other officer of the increased amount. For the period of July 1, 2023, to June 30, 2024, this amount was \$70,000. For the period of July 1, 2024, to June 30, 2025, this amount was \$73,500.

⁵ "*Lowest and best bidder*" There is no guidelines in either the statute or case law as to what constitutes "best." Factors that may be appropriate to consider are brand name reliability, serviceability, proximity of service provider and past experience with bidder.

⁶ For Villages under Ohio Rev. Code § 731.14, if the legislative authority posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the village, provided that the first notice published in such newspaper meets all of the following requirements: (A) It is published at least two weeks before the opening of bids; (B) It includes a statement that the notice is posted on the legislative authority's internet web site; (C) It includes the internet address of the legislative authority's internet web site; and (D) It includes instructions describing how the notice may be accessed on the legislative authority's internet web site.

⁷ Ohio Rev. Code § 7.16 allows the second publication to be in an abbreviated form and provides that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Rev. Code § 7.16.

- Any project with an estimated professional design fee of more than \$25,000 but less than \$50,000 if both of the conditions in Ohio Rev. Code § 153.71(B)(2)(a) and (b) are met;
- Any project determined in writing by the head of the public authority to be an emergency requiring immediate action including, but not limited to, any projects requiring multiple contracts let as part of a program requiring a large number of professional design firms of the same type;

[Ohio Rev. Code §§ 153.65 through 153.71]

A political subdivision or a board of elections may purchase supplies or services from another party, including another political subdivision, instead of participating in a contract that the Department of Administrative Services has entered for the purchase of supplies and services, if the political subdivision or board of elections can purchase those supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price than it can through those contracts. Purchases that a political subdivision or board of elections makes under this division are exempt from any competitive selection procedures otherwise required by law. [Ohio Rev. Code § 125.04(C)]

Ohio Rev. Code §§ 731.02 (cities) and 731.12 (villages) - Interest in contracts by elected officials.

These sections prohibit elected officials from having any pecuniary interest in a contract or to be otherwise employed by the entity. ~~They also provide that contracts are void unless authorized at a regular or special meeting.~~

Ohio Rev. Code § 2921.42 - This section prohibits having an unlawful interest in a public contract.

See additional guidance related to contracts & expenditures in OCS Implementation Guide, Appendix B.

Suggested Audit Procedures - Compliance (Substantive) Tests:

Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold). Determine through inspection, vouching, or other such means that:

1. Contracts over the applicable amounts specified above or any other local limitations were awarded using competitive bidding procedures. Be alert for indications of bid splitting or deliberate attempts to evade bid limitations, such as successive contracts just under the bid amount.
2. Advertisements of the proposals for bids were made as indicated (or posted to the municipality's website, as described above).
3. Documentation indicates that the lowest and best bid was accepted.
4. Contracts and expenditures were approved by the legislative authority in accordance with local requirements.
5. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

6. Select a representative number of purchases made through another subdivision or by “piggy backing” onto a DAS contract. Determine through inspection, vouching, comparison, or other such means whether the client ~~is required to~~ maintained records to demonstrate the following:
 - a. The purchase conditions and specifications were substantially equivalent to those through the DAS Cooperative Purchasing Program.
 - b. The purchase price was less than that available through the DAS Cooperative Purchasing Program.

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

2A-4 Compliance Requirements: Ohio Rev. Code § 731.16 (villages) and 735.07 (cities) - Altering or modifying **municipal** contracts.

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.

Summary of Requirements: When in the opinion of: (a) the legislative officers of a village, (b) the village administrator, or (c) the director of public service, it becomes necessary, in the prosecution of any work or improvement under contract, to alter or modify a contract, such alterations or modifications can only be made upon the order of these individuals.

A change order is not effective until the price to be paid for the work and material or both, under the altered or modified contract, has been agreed upon in writing and signed by these individuals and by the contractor.

Where a board of control exists, the board must approve contract modifications. [Ohio Rev. Code § 735.07]

No contractor may recover anything for work or material because of any such alteration or modification unless the contract is modified as required.

See additional guidance related to contracts & expenditures in OCS Implementation Guide, Appendix B.

Suggested Audit Procedures - Compliance (Substantive) Tests:

1. For a few selected contracts, compare cumulative contract expenditures with the original bid price. If these expenditures exceed the bid price, inspect the modified contract documents for signatures of the contractor and the appropriate officials (i.e., the legislative officers of a village, the village administrator, or the director of public service).
2. If a board of control exists, determine that the board documented their approval of any modifications.

<p>Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>
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2A-5 Compliance Requirements: Ohio Rev. Code §§ 9.17, 9.37, 125.04, 153.65-.71, 305.27, 307.041, 307.86.92, 319.16, 2921.42 and 5543.19 - County payments to be by auditor's warrant; competitive bidding. Ohio Rev. Code § 307.87 - County notice and other bid procedures.

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.

Summary of Requirements: Generally, expenditures of county funds must be paid with warrants issued by the county auditor, with the approval of the county commissioners [Ohio Rev. Code § 319.16]. The warrant and all information related to the presentment of the warrant may be provided electronically [Ohio Rev. Code § 9.37(F)].

Ohio Rev. Code § 319.16 expressly includes county boards of mental health and county boards of developmental disabilities as agencies authorized to approve the issuance of warrants.

Competitive bidding is required for procurements exceeding the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B), except where otherwise provided by law. No purchase, lease, project, or other transaction subject to this section shall be divided into component parts, separate projects, or separate items of work in order to avoid these requirements. [Ohio Rev. Code § 307.86]

Competitive bidding is required, in accordance with Ohio Rev. Code §§ 307.86 to 307.92, for construction and reconstruction, including widening and resurfacing, of **roads** when the total estimated cost of the work exceeds \$70,000 per mile or for the construction, reconstruction, improvement, maintenance or repair of **bridges or culverts** when the total estimated costs of the work exceeds \$233,000.⁸ These projects may be undertaken by force account when authorized by the board of county commissioners and when not required by another law to use competitive bidding, when the estimates, according to the force account project assessment form, as prepared by the county engineer, are less than these thresholds. [Ohio Rev. Code §

⁸ Prior to June 30, 2023, these thresholds were \$30,000 per mile (roads) and \$100,000 (bridges and culverts), respectively. On the first day of July of every year beginning in 2024, the threshold amounts established in this section increase by amounts not to exceed the lesser of five per cent, or the percentage amount of any increase in the department of transportation's construction cost index as annualized and totaled for the prior calendar year. The director of transportation shall notify each appropriate county engineer of the increased amounts. [Ohio Rev. Code § 5543.19(C)]. For the period of July 1, 2023, to June 30, 2024, these amounts were \$70,000 per mile (roads) and \$233,000 (bridges and culverts), respectively. For the period of July 1, 2024, to June 30, 2025, these amounts were \$73,500 per mile (roads) and \$244,650 (bridges and culverts), respectively.

5543.19] (*Note:* Auditors should refer to OCS 2B-2 for tests of force accounts and the force account project assessment form.)

The commissioners, by unanimous vote (defined as all three commissioners when all three are present, or two commissioners if only two are present and they constitute a quorum), can declare an emergency (and that determination and the reasons for it are entered in the minutes of the proceedings of the board) and waive the competitive bidding when any of the following apply:

1. the estimated cost is less than \$125,000[Ohio Rev. Code § 307.86(A)(1)], or
2. there is physical disaster to structures, radio communications equipment, or computers. [Ohio Rev. Code § 307.86(A)(2)]

A county may purchase supplies or services from another party, including another political subdivision, instead of participating in a contract that the Ohio Department of Administrative Services has entered for the purchase of supplies and services, if the county can prove that it can purchase those same supplies or services from the other party upon equivalent terms, conditions or specifications but at a lower price. If so, the county need not competitively bid those supplies or services. [Ohio Rev. Code § 125.04(C)]

Ohio Rev. Code § 305.27 - Interest in contracts by elected officials.

This section prohibits commissioners from having any pecuniary interest in a contract or to be otherwise employed by the entity. Ohio Rev. Code § 305.25 also provides that contracts are void unless authorized at a regular or special meeting.

Ohio Rev. Code § 2921.42 - This section prohibits having an unlawful interest in a public contract.

Other exceptions to the competitive bidding requirement are made for:

- A. the purchase of supplies, or replacement parts, or information technology, for which there is a single supplier or source [Ohio Rev. Code § 307.86(B)(1)-(2)];
- B. purchases from other government agencies [Ohio Rev. Code § 307.86(C)];
- C. purchases of family services duties or workforce development activities by the county department of jobs and family services or of program services by a county board of developmental disabilities [Ohio Rev. Code § 307.86(D)];
- D. purchases of criminal justice services, social services programs, family services, or workforce development activities from nonprofit corporations or associations under programs funded by the federal government or by state grants [Ohio Rev. Code § 307.86(E)];
- E. purchases of insurance or contracts negotiated under Ohio Rev. Code § 307.86(F) (subject to certain conditions);
- F. purchases of computer hardware, software or consulting services that are necessary to implement a computerized case management automation project administered by the Ohio prosecuting attorneys association and funded by a grant from the federal government. [Ohio Rev. Code § 307.86(G)];
- G. purchases of child care services for county employees [Ohio Rev. Code § 307.86(H)];
- H. acquisition of property, including land, buildings, and other real property leased for offices, storage, parking, or other purposes, pursuant to § 307.86(I) (subject to certain conditions);

- I. purchase of programs or services under § 307.86(J) for a felony or misdemeanor delinquent, unruly youth, or status offender under the supervision of the juvenile court;
- J. purchase of family services, programs, or certain ancillary services by a public children services agency for children at risk or alleged to be abused, neglected, or dependent children [Ohio Rev. Code § 307.86(K)];
- K. purchase of emergency medical services by a contract made by the board of county commissioners with a joint emergency medical services district [Ohio Rev. Code § 307.86(L)].
- L. The purchase consists of used supplies and is made at a public auction [Ohio Rev. Code § 307.86(N)]
- M. Excluded from competitive bidding are expenditures for the services of an accountant, architect, attorney, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser. [Ohio Rev. Code § 307.86].
- N. Certain acquisitions made through another entity's purchasing program pursuant to Ohio Rev. Code § 9.48. [Ohio Rev. Code § 307.86]
- O. Counties procuring professional design services, over the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require counties to publicly announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Ohio Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Ohio Revised Code. Ohio Rev. Code §§ 153.66 to 153.70 do not apply to any of the following:
 - 1. Any project with an estimated professional design fee of \$25,000 or less;
 - 2. Any project with an estimated professional design fee of more than \$25,000 but less than \$50,000 if both of the conditions in Ohio Rev. Code § 153.71(B)(2)(a) and (b) are met;
 - 3. Any project determined in writing by the head of the public authority to be an emergency requiring immediate action including, but not limited to, any projects requiring multiple contracts let as part of a program requiring a large number of professional design firms of the same type;[Ohio Rev. Code §§ 153.65 through 153.71]
- P. Ohio Rev. Code § 307.86(M) authorizes the use of competitive sealed proposals instead of competitive bidding when the county determines the use of competitive sealed proposals would be advantageous to the county and the county contracting authority complies with the proposal requirements outlined in Ohio Rev. Code § 307.862. Ohio Rev. Code § 307.862(G) precludes a county contracting authority from using competitive sealed proposals for contracts for construction, design, demolition, alteration, repair, or reconstruction of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, waterworks, and all other structures or works of any nature. Therefore, the competitive sealed proposal method may be used only for purchases of non-construction related products and supplies and to the acquisition of services other than those services already exempted from the continuing competitive bidding procedure. For example, it might be used to acquire janitorial services or to purchase office supplies and equipment.

- Q. A county may contract for energy conservation savings pursuant to Ohio Rev. Code § 307.041. This section provides two procurement options:
1. To follow Ohio Rev. Code §§ 307.86 to 307.92 (i.e. competitively bid contracts in excess of the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B)). [Ohio Rev. Code § 307.041(C)(1)(a)]
 2. Request proposals from at least 3 vendors, after advertising the project. [Ohio Rev. Code § 307.041(C)(1)(b)]
- R. Ohio Rev. Code § 307.87 requires a county to advertise once per week for at least two consecutive weeks of its intent to seek competitive bids for purchases or leases with an estimated cost exceeding the bidding threshold. If the contracting authority posts the notice on its internet site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the county, provided that the first notice published in such a newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the contracting authority's internet site on the world wide web; (3) It includes the internet address of the contracting authority's internet site on the world wide web; and (4) It includes instructions describing how the notice may be accessed on the contracting authority's internet site on the world wide web. The county should also maintain a copy of the notice. Ohio Rev. Code § 307.88 requires that sealed⁹ bids be opened and tabulated (i.e., summarized).

See additional guidance related to contracts & expenditures in OCS Implementation Guide, Appendix B.

Suggested Audit Procedures - Compliance (Substantive) Tests:

1. When testing expenditures, determine that disbursements were made only by county warrant (or electronic transaction via the county auditor).
2. Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other such means that contracts over the amounts specified above were awarded using competitive bidding procedures. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations¹³, such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).
3. For contracts selected above, determine whether advertisements of the proposals for bids were made at least once per week for two consecutive weeks (the notice may be posted to the county's website in lieu of a second newspaper publication, as described above), and whether bids were tabulated.
4. For contracts exceeding the amounts specified above meeting one or more of the exceptions indicated above, determine documentation exists to support expenditures as meeting those exceptions.
5. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

⁹ Ohio Rev. Code § 307.88, requires that bids be submitted pursuant to Ohio Rev. Code §§ 307.86 to 307.92 and filed in the manner mentioned in the notice.

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

2A-6 Compliance Requirements: Ohio Rev. Code §§ 9.17, 9.48, 125.04, 153.65-.71, 505.08, 505.101, 505.267, 505.37, 505.46, 511.12, 511.13, 515.01, 515.07, 521.05, 2921.42, 5549.21, and 5575.01 - Township's expenditures and competitive bidding.

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.

Summary of Requirements

Footbridge repair: Construction, rebuilding and repair of footbridges across rivers and streams needed to access public schools may not exceed \$15,000. [Ohio Rev. Code § 505.46]

Town hall: When a town hall is being built, improved, enlarged, or removed at a cost greater than the amount specified in Ohio Rev. Code § 9.17, the trustees must first get the approval of the voters to levy the necessary tax, which shall not exceed four mills and not be levied for more than seven years. [Ohio Rev. Code §§ 511.01-.02]

Ohio Rev. Code § 5705.05 permits townships to use general levy money for road and bridge purposes. Ohio Rev. Code § 5705.06(F) permits a township to impose a special levy "for the construction, reconstruction, resurfacing, and repair of roads and bridges, excluding state roads and bridges, including the township's portion of the cost of the construction, improvement, maintenance, and repair of county roads and bridges." The revenue from the special levy imposed under Ohio Rev. Code § 5705.06(F) must be placed in a special fund created for the purpose of the levy. [Ohio Rev. Code § 5705.09(D)]. All payments on account of machinery, tools, material, and labor must be made from the Township Road Fund¹⁰. [Ohio Rev. Code § 5549.21]

Ohio Rev. Code § 511.13 - This section prohibits elected officials from having any pecuniary interest in a contract.

Ohio Rev. Code § 2921.42 - This section prohibits having an unlawful interest in a public contract.

Competitive bidding is required in eight circumstances:

1. Purchase of materials, machinery and tools to be used in constructing, maintaining and repairing roads and culverts, where the amount involved exceeds the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B). [Ohio Rev. Code § 5549.21].

¹⁰ Typically, this is referred to as the Road and Bridge Fund. The Gasoline Tax and Motor Vehicle License Tax Funds are separate funds that should be used for their permissible uses directly from those funds which also include expenses for use in constructing, reconstructing, maintaining, and repairing roads and culverts within the Township.

2. Contracts for the **maintenance or repair** of roads, where the amount involved exceeds \$105,000. In each case, the board must advertise once, not later than two weeks prior to the letting of the contract, in a newspaper of general circulation in the township. Award must be to the lowest responsible bidder. For contracts for the **construction or reconstruction** of a township road, the board shall cause to be made an estimate of the cost of the work by the county engineer. Where the total estimated cost of the work exceeds \$35,000 per mile, the Board shall invite and receive competitive bids as provided in Ohio Rev. Code § 5575.02. [Ohio Rev. Code § 5575.01]¹¹.
3. Contracts for the construction and erection of a memorial building or monument. When competitive bidding is required, no contract shall be made or signed until an advertisement has been placed in a newspaper, published or of general circulation in the township, at least twice. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper published or of general circulation in the township, provided that the first notice published in such newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the Board's internet web site; (3) It includes the internet address of the Board's internet web site; and (4) It includes instructions describing how the notice may be accessed on the board's internet web site. [Ohio Rev. Code § 511.12(B)]. Such contracts require competitive bidding only if the amount involved exceeds the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B). No project subject to this section shall be divided into component parts, separate projects, or separate items of work in order to avoid the requirements of this section. [Ohio Rev. Code § 511.12].
4. Contracts for equipment (including fire trucks) for fire protection, mechanical resuscitators, underwater rescue and recovery, and communication estimated to exceed the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B) pursuant to Ohio Rev. Code § 505.37. No purchase or transaction subject to this section shall be divided into component parts in order to avoid the requirements of this section. When competitive bidding is required, the board shall advertise once a week for not less than two consecutive weeks in a newspaper of general circulation within the township. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the township, provided that the first notice published in such newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the board's internet web site; (3) It includes the internet address of the board's internet web site; and (4) It includes instructions describing how the notice may be accessed on the board's internet web site. [Ohio Rev. Code § 505.37(A)].
5. Contracts for street lighting systems where the cost exceeds the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B). No procurement subject to this section shall be divided into component parts, separate projects, or separate items of work in order to avoid the requirements of this section. The board shall prepare plans and specifications for the lighting equipment and shall, for two weeks, advertise for bids for furnishing the lighting equipment, either by posting the advertisement in three conspicuous places in the township or by publication of the advertisement once

¹¹ Prior to June 30, 2023, these thresholds were \$45,000 and \$15,000 per mile, respectively. On the first day of July of every year beginning in 2024, the threshold amounts established in this section increase by amounts not to exceed the lesser of five per cent, or the percentage amount of any increase in the department of transportation's construction cost index as annualized and totaled for the prior calendar year. The director of transportation shall notify each appropriate county engineer of the increased amounts. [Ohio Rev. Code § 5575.01(D)]. For the period of July 1, 2023, to June 30, 2024 these amount were \$105,000 and \$35,000 per mile, respectively. For the period of July 1, 2024, to June 30, 2025 these amounts were \$110,250 and \$36,750 per mile, respectively.

a week, for two consecutive weeks, in a newspaper of general circulation in the township. Any such contract for lighting shall be made with the lowest and best bidder. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation in the township, provided that the first notice published in such newspaper meets all of the following requirements: (A) It is published at least two weeks before the opening of bids; (B) It includes a statement that the notice is posted on the board's internet web site; (C) It includes the internet address of the board's internet web site; and (D) It includes instructions describing how the notice may be accessed on the board's internet web site. No lighting contract awarded by the board shall be made to cover a period of more than twenty years. The cost of installing and operating any lighting system or any light furnished under contract shall be paid from the general fund of the township treasury. [Ohio Rev. Code § 515.01].

6. Contracts for street lighting improvements where the cost exceeds \$50,000. When competitive bidding is required, the board of township trustees shall post, in three of the most conspicuous public places in the district, a notice specifying the number, candle power, and location of lights and the kind of supports for the lights as provided by section 515.06 of the Ohio Revised Code, as well as the time, which shall not be less than thirty days from the posting of the notices, and the place the board will receive bids to furnish the lights. The board shall accept the lowest and best bid, if the successful bidder meets the requirements of section 153.54 of the Ohio Revised Code. The board may reject all bids. [Ohio Rev. Code § 515.07]
7. Contracts for building modifications for energy savings pursuant to Ohio Rev. Code § 505.264, where the estimated cost exceeds the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B), with certain exceptions. Award must be to the lowest and best bidder in accordance with the provisions of Sections 307.86 to 307.92. Townships desiring to implement energy conservation measures may also proceed under the method of requesting proposals from at least three vendors and following the other requirements of Ohio Rev. Code § 505.264(C)(2).
8. Contracts for private sewage collection tiles where the cost exceeds \$50,000 pursuant to Ohio Rev. Code § 521.05. The successful bidder must meet the requirements of Section 153.54.

By unanimous resolution that a real and present emergency exists, trustees may enter into a contract, without bidding or advertising, for the purchase of equipment, supplies, materials or services needed to meet the emergency if the estimated cost of the contract is less than the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B). [Ohio Rev. Code § 505.08]

The board of township trustees of any township may, by resolution, enter into a contract, without advertising or bidding, for the purchase or sale of motor vehicles, materials, equipment, or supplies from or to any department, agency, or political subdivision of the state, for the purchase of services with a soil and water conservation district, for the purchase of supplies, services, materials, and equipment with a regional planning commission, or for the purchase of services from an educational service center. [Ohio Rev. Code § 505.101]

Townships procuring professional design services, over the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require townships to publicly announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Ohio Revised Code or

a professional engineer or surveyor registered under Chapter 4733 of the Ohio Revised Code. Ohio Rev. Code §§ 153.66 to 153.70 do not apply to any of the following:

- Any project with an estimated professional design fee of \$25,000 or less;
- Any project with an estimated professional design fee of more than \$25,000 but less than \$50,000 if both of the conditions in Ohio Rev. Code § 153.71(B)(2)(a) and (b) are met;
- Any project determined in writing by the head of the public authority to be an emergency requiring immediate action including, but not limited to, any projects requiring multiple contracts let as part of a program requiring a large number of professional design firms of the same type;

[Ohio Rev. Code §§ 153.65 through 153.71]

Townships that participate in a joint purchasing contract are exempt from using competitive bidding. [Ohio Rev. Code § 9.48(C)-(D)]

A township may purchase supplies or services from another party, including another political subdivision, instead of participating in a contract that the Ohio Department of Administrative Services has entered for the purchase of supplies and services, if the township can prove that it can purchase those same supplies or services from the other party upon equivalent conditions and specifications but at a lower price. If so, the township does not have to competitively bid those supplies or services. [Ohio Rev. Code § 125.04(C)]

Townships need not competitively bid acquisitions made through another entity's purchasing program. [Ohio Rev. Code § 9.48]

Leasing Equipment:

Ohio Rev. Code § 505.37 and § 505.50 permit a board of township trustees to lease or lease with an option to purchase fire and police protection and emergency police protection, respectively. Additionally, Ohio Rev. Code § 505.37(A) requires that contracts for the purchase of fire apparatus, mechanical resuscitators, underwater rescue and recovery equipment, other fire equipment, appliances, materials, fire hydrants, buildings, or fire-alarm communications equipment or services estimated to exceed the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B) be let by competitive bidding (whether leased or purchased).

Ohio Rev. Code § 505.267 and § 5549.021 expand townships' powers, allowing them to lease **or** lease with an option to purchase for any purpose for which it may acquire real or personal property, including machinery, tools, trucks and other equipment used in constructing, maintaining or repairing roads:

A lease with option to purchase shall do the following:

1. Transfer title to the asset to the township on or before the end of the lease.
2. If the leased asset relates to road repair, construction or maintenance, the township should comply with the following:
 - a. Make a cash down payment of at least three-twentieths (15%) of the total cost;
 - b. If the board sells used equipment as part of the lease with option to purchase, the cash down payment may be reduced by the amount of the selling price of the used equipment;
 - c. Be entered into only with the lowest responsive and responsible¹² bidder of the equipment after advertising for bids.

¹² *Lowest responsive and responsible bidder.* A bidder on the contract shall be considered responsive if the bidder's proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage. To determine if a bidder on the contract is responsible, consider the experience of the bidder, the bidder's financial

See additional guidance related to contracts & expenditures in OCS Implementation Guide, Appendix B.

Suggested Audit Procedures - Compliance (Substantive) Tests:

1. Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other such means that contracts over the corresponding bid limits were awarded using competitive bidding procedures. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations¹³, such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).
2. For contracts exceeding the bid thresholds specified above, where the township did not use competitive bidding, determine if they meet any of the exceptions noted above.
3. For footbridge construction, rebuilding and repair, determine documentation exists to support the necessity of the expenditures and that the total expenditures did not exceed \$15,000 for any footbridge accessing a school.
4. For the building, improvement, enlargement, or removal of a town hall, determine if voter approval was obtained.
5. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.
6. Inspect lease agreements to determine whether the agreements were for permitted equipment related to fire and police protection. Determine whether the agreement is a lease with option to purchase or an installment purchase agreement. Determine that the township selected the lowest responsive and responsible bidder.
7. Inspect lease agreements to determine whether the agreements were for permitted equipment related to repair and construction of roads. Determine whether the agreement is a lease with option to purchase or an installment purchase agreement. If it is a lease with an option to purchase, determine that the township made a down payment $\geq 15\%$. Determine that the township selected the lowest responsive and responsible bidder.

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

condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly. (Ohio Rev. Code § 9.312)

¹³ Auditors should also be aware of and look for other schemes and recommend solutions such as those highlighted [here](#).

2A-7 Compliance Requirement: Ohio Rev. Code §§ 9.17, 9.48, 153.65-.71, 339.05 and 2921.42 - Bidding procedures and purchasing policies for supplies and equipment (**County Hospitals**).

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.

Summary of Requirement: A board of county hospital trustees may adopt, annually, bidding procedures and purchasing or leasing policies for supplies and equipment that are routinely used in operating the hospital and that cost in excess of the amount specified in Ohio Rev. Code § 307.86, as the amount above which purchases must be competitively bid (purchases in excess of the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B)). [Ohio Rev. Code § 339.05]

If a board of county hospital trustees adopts such policies and procedures, and the board of county commissioners approves them, the board of county hospital trustees may follow these policies and procedures in lieu of following the competitive bidding procedures of Ohio Rev. Code §§ 307.86 to 307.92. [Ohio Rev. Code § 339.05(A)]

The board is exempt from competitive bidding if, by unanimous vote, they make a determination that a real and present emergency exists, and any of the following applies (the board shall also enter the determination of emergency and the reasons for it in the minutes of its proceedings) [Ohio Rev. Code § 339.05(B)]:

1. the estimated cost is less than \$100,000 or
2. there is actual physical damage to structures or equipment.

Ohio Rev. Code § 2921.42 - This section prohibits having an unlawful interest in a public contract.

County hospitals that participate in a joint purchasing contract are exempt from using competitive bidding. [Ohio Rev. Code § 9.48(C)-(D)]

County hospitals procuring professional design services, over the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require county hospitals to publicly announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Ohio Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Ohio Revised Code. Ohio Rev. Code §§ 153.66 to 153.70 do not apply to any of the following:

- Any project with an estimated professional design fee of \$25,000 or less;

- Any project with an estimated professional design fee of more than \$25,000 but less than \$50,000 if both of the conditions in Ohio Rev. Code § 153.71(B)(2)(a) and (b) are met;
- Any project determined in writing by the head of the public authority to be an emergency requiring immediate action including, but not limited to, any projects requiring multiple contracts let as part of a program requiring a large number of professional design firms of the same type;

[Ohio Rev. Code §§ 153.65 through 153.71]

(Note that Ohio Rev. Code § 9.24 regarding unresolved findings for recovery and contracts does not apply to hospitals.)

See additional guidance related to contracts & expenditures in OCS Implementation Guide, Appendix B.

Suggested Audit Procedures - Compliance (Substantive) Tests:

1. By inquiry or reading the minutes, determine if the board of hospital trustees has adopted its own policies and procedures for competitive bidding. If so, trace approval of those policies by the board of county commissioners to an approval letter or to a notation in the minutes.
2. For a few expenditures over the policy limit, inspect bid files to determine if the policies and procedures were being followed as required¹³. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).
3. If the board of hospital trustees has not adopted its own policies and procedures, see OCS Section 2A-5 for Counties for suggested audit procedures regarding competitive bidding procedures for county hospitals.
4. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

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

2A-8 Compliance Requirement: Ohio Rev. Code §§ 749.26, 749.27, 749.28, 749.29, 749.30 and 2921.42 - Contract procedures; bids; bonds; bid openings (**Municipal Hospitals**).

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.

Summary of Requirements: The board of hospital trustees, before contracting to erect a hospital building, or to rebuild or repair a hospital building, the cost of which exceeds \$50,000, must have plans, specifications, detailed drawings, and forms of bids prepared. These must be printed for distribution among the bidders. [Ohio Rev. Code § 749.26]

All contracts must be made in the name of the board of hospital trustees. Contractors may not execute any extra work or make any modifications or alterations in the specifications and plans, unless ordered in writing by the board. Contractors may not claim any additional compensation unless such written order is given, and the additional compensation fixed and agreed upon. Copies of the plans and drawings, attested by the contractor, and the original bids, specifications, and contracts are required to be deposited in the office of the clerk of the municipal corporation. [Ohio Rev. Code § 749.27]

The board of hospital trustees cannot enter into a contract for work or supplies where the estimated cost exceeds \$50,000, without first giving 30 days' notice in one newspaper of general circulation in the municipal corporation that sealed proposals will be received for doing the work or furnishing the materials and supplies. [Ohio Rev. Code § 749.28]

Each bid submitted under Ohio Rev. Code § 749.28 for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement must meet the requirements of Ohio Rev. Code § 153.54 regarding bid guaranty. Each bid submitted under Ohio Rev. Code § 749.28 for any other contract must be accompanied with a bond, signed by sufficient sureties, for acceptance of the contract if awarded by the board of hospital trustees, to fully secure any difference between the amount of such bid and the next higher bid. That amount is to be collected by the board and paid into the hospital fund in case of the refusal by the bidder to enter into a contract according to its bid within such reasonable time as the board determines. [Ohio Rev. Code § 749.29]

Each bid submitted under Ohio Rev. Code § 749.28 is required to be enclosed in a sealed envelope and deposited with the clerk of the board of hospital trustees. The envelope should indicate the nature of the bid. All bids are required to be opened at the time, date, and place specified in the notice to bidders or specifications. The time, date, and place of the bid openings may be extended to a later date by the board of hospital trustees, provided that written or oral notice of the change is given to all persons who have

received or requested specifications no later than 96 hours prior to the original time and date fixed for the opening. [Ohio Rev. Code § 749.30]

Ohio Rev. Code § 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

(Note that Ohio Rev. Code § 9.24 regarding unresolved findings for recovery and contracts does not apply to hospitals.)

See additional guidance related to contracts & expenditures in OCS Implementation Guide, Appendix B.

Suggested Audit Procedures - Compliance (Substantive) Tests:

1. Inquire or determine from reading the minutes or other means whether the hospital paid for work or supplies or for rebuilding or repairs exceeding the bidding threshold. Inspect a few bid files (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) and other related documentation to determine that:
 - a. Plans, specifications, and detailed drawings are printed and distributed to bidders for the erection, rebuilding or repair of a hospital building.
 - b. The contracts are made in the name of the board of hospital trustees and stipulate in the contract that the contractor will not execute any extra work or make any modifications or alterations in the work specifications and plans unless ordered in writing by the board.
 - c. Copies of plans and drawings and the original bids, specifications and contracts are on file in the office of the clerk.
 - d. Thirty days' notice was given in one newspaper of general circulation in the municipal corporation that sealed proposals will be received.
 - e. Bid guaranties and/or bonds were received with the proposals from contractors.
 - f. Bids were enclosed in sealed envelopes and opened by the municipal clerk at the time, date, and place specified in the notice to bidders.
 - g. The lowest and best bid was accepted (unless bond is considered inadequate by the board).¹³
2. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

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

2A-9 Compliance Requirement: Ohio Rev. Code §§ 9.312, 153.65-.71, 2921.42, 3354.16, 3355.12, 3357.16, and 3358.10 – Colleges and Universities - Bidding required on improvement contracts.

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.

Summary of Requirements: When the board of trustees of a university branch resolves to contract for improvements exceeding \$50,000¹⁴, the college must advertise for bids once a week for three consecutive weeks, in at least one newspaper of general circulation within the college district where the work is to be done. [Ohio Rev. Code § 3355.12(A)]

When the board of trustees of a community college [Ohio Rev. Code § 3354.16(A)], technical college [Ohio Rev. Code § 3357.16(A)], or state community college district [Ohio Rev. Code § 3358.10] resolves to contract for improvements exceeding ~~\$211,562~~¹⁵ \$200,000, the college must advertise for bids once a week for three consecutive weeks in at least one newspaper of general circulation within the college district where the work is to be done, as provided in Ohio Rev. Code § 7.16¹⁶.

The board of trustees of the college district may contract with the lowest responsive and responsible bidder.

On January 1, of every even-numbered year, the chancellor of the ~~Department of Higher Education Board of Regents~~ must adjust the contract limit as provided for in Ohio Rev. Code § 3354.16(B) for community college districts, § 3355.12(B) for university branch districts, § 3357.16(B) for technical colleges and § 3358.10 for state community colleges.

These types of colleges may solicit separate or combined bids and award separate or combined contracts for each distinct branch or class of work. University branch districts' contracts do not require bidding if the estimated cost is less than \$5,000.

A bidder on the contract is considered responsive if his proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the

¹⁴ This statute requires the ~~Department of Higher Education Board of Regents~~ to increase this amount every other January 1. The ~~Department of Higher Education Board of Regents~~ informed us they have not increased this the threshold for this cycle for Ohio Rev. Code § 3355.12.

¹⁵ <https://highered.ohio.gov/educators/budget-financial/capital-planning/capital/capital-planning>

¹⁶ Ohio Rev. Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Rev. Code § 7.16.

amount of the bid or otherwise give the bidder a competitive advantage. The factors that the college must consider in determining whether a bidder on the contract is responsible include the experience of the bidder, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly. [Ohio Rev. Code § 9.312(A)]

An apparent low bidder found not to be responsive and responsible is to be notified by the college of the finding and the reasons for it. The notification is given in writing and either by certified mail or, if the state agency or political subdivision has record of an internet identifier¹⁷ of record associated with the bidder, by ordinary mail and by that internet identifier of record. [Ohio Rev. Code § 9.312(A)]

When the contract is awarded to a bidder other than the apparent low bidder or bidders, the institution is required to meet with the apparent low bidder or bidders upon filing of a timely written protest. The protest must be received within five days of the notification required above. No final award can be made until the institution either affirms or reverses its earlier determination. [Ohio Rev. Code § 9.312(B)]

Ohio Rev. Code § 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

Colleges and universities procuring professional design services, over the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require colleges and universities to publicly announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Ohio Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Ohio Revised Code. Ohio Rev. Code §§ 153.66 to 153.70 do not apply to any of the following:

- Any project with an estimated professional design fee of \$25,000 or less;
- Any project with an estimated professional design fee of more than \$25,000 but less than \$50,000 if both of the conditions in Ohio Rev. Code § 153.71(B)(2)(a) and (b) are met;
- Any project determined in writing by the head of the public authority to be an emergency requiring immediate action including, but not limited to, any projects requiring multiple contracts let as part of a program requiring a large number of professional design firms of the same type;

[Ohio Rev. Code §§ 153.65 through 153.71]

(Note that Ohio Rev. Code § 9.24 regarding unresolved findings for recovery and contracts applies to state colleges and universities but does not apply to technical colleges.)

See additional guidance related to contracts & expenditures in OCS Implementation Guide, Appendix B.

Suggested Audit Procedures - Compliance (Substantive) Tests:

1. Inquire or determine through other means such as reading the minutes or performing analytical procedures whether improvements exceeding the bidding threshold (\$50,000 for a university branch or ~~\$211,562~~ ~~\$200,000~~ for a community college, state community college district, or technical college) occurred during the fiscal period. Inspect a few contracts (in selecting improvement payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold), bid files, and related documentation to determine whether:

¹⁷ "Internet Identifier of Record" is defined as an electronic mail address, or any other designation used for self-identification or routing in internet communication or posting, provided for the purpose of receiving communication. [Ohio Rev. Code § 9.312(D)]

- a. Contracts over the amounts indicated above were awarded using competitive bidding procedures.
 - b. Advertisements of the proposals for bids were made.
 - c. Documentation indicates the lowest and best bid was accepted, or documents why the low bidder was not selected.¹³
2. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

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

2A-10 Compliance Requirements: Ohio Rev. Code §§ 9.17, 153.65-.71, 2921.42, 3375.06, 3375.10, 3375.12, 3375.15, 3375.22, 3375.30 and 3375.41 – Library procedure for bidding and letting of contracts.

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.

Summary of Requirements: When a board of library trustees appointed pursuant to Ohio Rev. Code §§ 3375.06 (county free library), 3375.10 (township library), 3375.12 (municipal free library), 3375.15 (school library), 3375.22 (county library district), or 3375.30 (regional library district) determines to construct, demolish, alter, repair, or reconstruct a library or make any improvements or repairs which will exceed the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide Appendix B), except in cases of urgent necessity or for the security and protection of library property, it must advertise for two weeks for sealed bids in some newspaper of general circulation in the district, or as provided in Ohio Rev. Code § 7.16¹⁸. If no newspaper has a general circulation in the district, the board must post the advertisement in three public places in the district. [Ohio Rev. Code § 3375.41]

Sealed bids are filed with the fiscal officer by 12:00 noon of the last day stated in the advertisement. [Ohio Rev. Code § 3375.41(B)]

The sealed bids are:

- opened at the next meeting of the board,
- publicly read by the fiscal officer, and
- entered in full into the board’s records.

By resolution, the board may provide for the public opening and reading of the bids by the fiscal officer, immediately after the time for filing such bids has expired, at the usual place of meeting of the board, and for tabulating the bids. A report of the tabulation of the bids is presented to the board at its next meeting. [Ohio Rev. Code § 3375.41(C)]

When both labor and materials are embraced in the work that is being bid for, the board may require that each be separately stated in the sealed bid, with each being priced, or it may require that bids be submitted without being separated. [Ohio Rev. Code § 3375.41(E)]

None but the lowest responsible bid shall be accepted. The board may reject all the bids or accept any bid for both labor and material that is the lowest in total. [Ohio Rev. Code § 3375.41(F)]

¹⁸ Ohio Rev. Code § 7.16 allows the second publication to be in an abbreviated form and provides that that any further publications can be eliminated if the second notice meets all of the requirements of Ohio Rev. Code § 7.16.

The contract is between the board and the bidders. The board is required to pay the contract price for the work by the times and in the amounts indicated. [Ohio Rev. Code § 3375.41(G)]

When two or more bids are equal, in whole or in part, and are lower than any others, either may be accepted. However, the work may not be divided between these bidders. [Ohio Rev. Code § 3375.41(H)]

When there is reason to believe there is collusion or combination among the bidders, the bids of those concerned in collusion or combination are required to be rejected. [Ohio Rev. Code § 3375.41(I)]

No project subject to Ohio Rev. Code § 3375.41 may be divided into component parts, separate projects, or items of work in order to avoid these requirements. [Ohio Rev. Code § 3375.41(J)]

Ohio Rev. Code § 2921.42 - Having an unlawful interest in a public contract. This section generally prohibits unlawful interests.

Libraries procuring professional design services, over the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require libraries to publicly announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Ohio Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Ohio Revised Code. Ohio Rev. Code §§ 153.66 to 153.70 do not apply to any of the following:

- Any project with an estimated professional design fee of \$25,000 or less;
- Any project with an estimated professional design fee of more than \$25,000 but less than \$50,000 if both of the conditions in Ohio Rev. Code § 153.71(B)(2)(a) and (b) are met;
- Any project determined in writing by the head of the public authority to be an emergency requiring immediate action including, but not limited to, any projects requiring multiple contracts let as part of a program requiring a large number of professional design firms of the same type;

[Ohio Rev. Code §§ 153.65 through 153.71]

(Note that Ohio Rev. Code § 9.24 regarding unresolved findings for recovery and contracts, does not apply to libraries.)

See additional guidance related to contracts & expenditures in OCS Implementation Guide, Appendix B.

Suggested Audit Procedures - Compliance (Substantive) Tests:

1. Inquire or determine through other means, such as analytical procedures or reading the minutes, if payments for repairs, improvements, etc. exceeding the bidding threshold were made during the period. If so, inspect a few related bid files (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) and associated documentation that:
 - a. Expenditures over the bidding threshold were supported by contracts awarded in compliance with competitive bidding requirements (except in emergencies).
 - b. Advertisements of the proposals for bids were made.
 - c. Procedures used for opening bids were in agreement with those required (i.e., opened at the next meeting of the board, publicly read by the fiscal officer, and entered into the board's records).

- d. Adequate documentation is on file to support the board’s decisions to select the lowest responsible bid as well as reject any bids.¹³
- 2. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

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

2A-11 Compliance Requirements: Ohio Rev. Code §§ 9.33, 9.331, 9.333–.335.– Construction Manager at Risk Requirements, 153.50, 153.51 - , and 153.52 - Separate bids and contracts required for each class of work on buildings and other structures (e.g., institutions, bridges, culverts, or improvements), 153.67, 153.692- 694, and 153.70 – Design-Build Firm Requirements.

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.

Summary of Requirements: Except for contracts made with a construction manager at risk¹⁹, with a design-build firm²⁰, or with a general contracting firm²¹, when a project is required by law to be subject to bidding, the entity required to bid such project shall group the work to be done into the specifically listed classes below before drawing up the bid specifications.

The separate classes are:

- plumbing and gas fitting;
- steam and hot-water heating; ventilating apparatus; steam-power plant; and
- electrical equipment [Ohio Rev. Code § 153.50].

If an entity is able to bid the entire project in one bid and that bid is lower than the bids are if separately bid by branches or classes, the entity may then bid the project as one single bid. The entity may also bid groups or branches together, but not encompassing the whole project, if the aggregate of the bids is lower than the total sum of the individual bids for the classes or branches included in the single bid. Finally, if bidding the project by classes or groups does not allow the entity to include all the work required into the bids, and grouping classes or groups together would allow the entity to do so, the entity may then aggregate the classes or branches together into a single bid that would allow them to bid out the work required by the project but not otherwise included in the bidding process. [Ohio Rev. Code § 153.51]

¹⁹ Ohio Rev. Code § 9.33 defines “construction manager at risk” as “a person with substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement and who provides the public authority a guaranteed maximum price as determined in Ohio Rev. Code § 9.334.”

²⁰ Ohio Rev. Code § 153.65 defines “design-build firm” as a person capable of providing design-build services. “Design-build services” means services that form an integrated delivery system for which a person is responsible to a public authority for both the design and construction, demolition, alteration, repair, or reconstruction of a public improvement.

²¹ “General contracting firm” means a person capable of performing general contracting. “General contracting” means constructing and managing an entire public improvement project, including the branches or classes of work specified in Ohio Rev. Code § 153.50(B) under the award of a single aggregate lump sum contract.

A contract for general contracting or for doing the work belonging to each separate branch or class of work specified in Ohio Rev. Code § 153.50(B), or for the furnishing of materials therefore, must be awarded to the lowest and best separate bidder if it is for a county, township, or municipal corporation or any public institution belonging thereto, in its discretion. If it is for the state, a school district, or any public institution belonging thereto, it must be awarded to the lowest responsive and responsible bidder, in its discretion. [Ohio Rev. Code § 153.52]

The contract must be made directly with the bidder(s) upon the terms, conditions, and limitations of the bid. [Ohio Rev. Code § 153.52]

The public authority may assign any or all of its interest in the contract as long as it is agreed to in the award of the contract. [Ohio Rev. Code § 153.51(B)(2)]

~~Auditors should consult with the CFAE OCS Specialty if auditing an entity with a project undertaken through a construction manager at risk or a design-build firm.~~

~~For details regarding the significant construction manager at risk requirements, refer to Ohio Rev. Code §§ 9.33, 9.331, 9.333, 9.334 and 9.335.~~

~~For details regarding the significant design-build firm requirements, refer to Ohio Rev. Code §§ 153.67, 153.692, 153.693, 153.694 and 153.70.~~

See additional guidance related to contracts & expenditures in OCS Implementation Guide, Appendix B.

Suggested Audit Procedures - Compliance (Substantive) Tests:

Read a few bids and contracts (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) for erection, repair, alteration, improvement, and rebuilding of public buildings, bridges, and culverts and determine that:

1. The government documented the classification structure for the bid requests in a manner that supports that the government was likely to receive the lowest possible combined or separate bids for the work¹³;
2. The contract was awarded to the lowest and best separate bidder (county, township, or municipal corporation or any public institution belonging thereto) or the lowest responsive and responsible bidder (state, a school district, or any public institution belonging thereto);
3. The contract was made directly with the contractor(s) upon the terms, conditions, and limitations of the bid.

~~Auditors should consult with the CFAE OCS Specialty if auditing an entity with a project undertaken through a construction manager at risk or a design-build firm.~~

For significant projects undertaken through a construction manager at risk:

Inspect documentation and determine that:

1. The government properly advertised notice of intent to employ a construction manager at risk in accordance with Ohio Rev. Code § 9.331.

2. The construction manager at risk provided a surety bond to the public authority prior to the commencement of construction. (Ohio Rev. Code § 9.333(B))
3. The government appropriately received and evaluated proposals in accordance with Ohio Rev. Code § 9.334 and the contract was entered into with the construction manager at risk determined to be the “best value.”

For significant projects undertaken through a design-build firm:

Inspect documentation and determine that:

1. The government properly announced all contracts available from it for design-build services in accordance with Ohio Rev. Code § 153.67.
2. The government obtained the services of a criteria architect or engineer by either contracting for services consistent with Ohio Rev. Code §§ 153.65-153.70 or through an architect or engineer that is already an employee of the government to assist in the evaluation of the statements of qualifications submitted by design-build firms specifically regarding the project. (Ohio Rev. Code §§ 153.692-.693)
3. The government appropriately received and evaluated proposals in accordance with Ohio Rev. Code § 153.693 and the contract was entered into with the design-build firm whose pricing proposal the government determined to be the “best value.”
4. The design-build firm provided a surety-bond to the government prior to the commencement of construction in accordance with Ohio Rev. Code § 153.70(C).

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

2A-12 Compliance Requirements: Ohio Rev. Code §§ 4115.04 and 4115.03 - Prevailing wage rates in public works contracts.²²

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 the Davis Bacon Act described in the Uniform Guidance.

Summary of Requirements: The prevailing wage laws essentially require an entity to obtain the prevailing wages in their area for the types of labor required to complete the project, prior to bidding and again when the contract is awarded, if the award is made more than 90 days after the original prevailing wage is determined. They then need to make sure that the contractors who are awarded the contracts agree, in the contract, to pay the prevailing wage.

Every public authority authorized to contract for or construct with its own forces a public improvement, before advertising for bids or undertaking such construction with its own forces, shall have the State director of Commerce determine the prevailing rates of wages of mechanics and laborers in accordance with Ohio Rev. Code § 4115.05 for the class of work called for by the public improvement, in the locality where the work is to be performed. Such schedule of wages shall be attached to and made part of the specifications for the work and shall be printed on the bidding blanks where the work is done by contract. [Ohio Rev. Code § 4115.04(A)]

Pursuant to Ohio Rev. Code § 4115.03, “Construction” means any of the following:

1. Except as provided in 3. below, any new construction of any public improvement, the total overall project cost of which is fairly estimated to be more than ~~\$250,000~~ the following amounts and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority.²³
 - a. ~~One hundred twenty five thousand dollars, beginning on September 29, 2011, and continuing for one year thereafter;~~
 - b. ~~Two hundred thousand dollars, beginning when the time period described in (a) expires and continuing for one year after;~~
 - c. ~~Two hundred and fifty thousand dollars, beginning when the time period described in (b) expires.~~

²² Bidding and prevailing wage requirements are independent of each other. A threshold dollar amount must first be met before prevailing wage requirements apply. It is possible to meet the bidding threshold without meeting the prevailing wage threshold.

²³ There are separate thresholds for new construction and reconstruction. These thresholds are categorized by vertical and horizontal construction types. These thresholds are updated biennially.

Horizontal construction (new construction and reconstruction on public improvements that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction): (See <https://com.ohio.gov/divisions-and-programs/industrial-compliance/wage-and-hour/guides-and-resources/prevailing-wage-threshold-levels>)

- Effective ~~1/1/2022~~ 1/1/2024 through ~~12/31/2023~~ 12/31/2025, the thresholds are ~~\$96,091~~ \$98,974 (new) and ~~\$28,789~~ \$29,653 (reconstruction).

Vertical construction (all other new construction and reconstruction):

- Effective 9/29/2013 and later, the thresholds are \$250,000 (new) and \$75,000 (reconstruction).

2. Except as provided in 4. below, any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement, the total overall project cost of which is fairly estimated to be more than ~~\$75,000 the following amounts~~ and performed by other than full-time employees who have completed their probationary period in the classified civil service of a public authority.²⁴
 - a. ~~Thirty eight thousand dollars, beginning on September 29, 2011, and continuing for one year after;~~
 - b. ~~Sixty thousand dollars, beginning when the period above expires and continuing for one year thereafter;~~
 - c. ~~Seventy five thousand dollars, beginning when the time period in (b) expires.~~
3. Any new construction of a public improvement that involves roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction, the total overall project cost of which is fairly estimated to be more than seventy-eight thousand two hundred fifty-eight dollars adjusted biennially by the director of commerce pursuant to Ohio Rev. Code § 4115.034 and performed by other than full-time employees who have completed their probationary periods in the classified services of a public authority; [Ohio Rev. Code § 4115.03(B)(3)]
4. Any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement that involves roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction, the total overall project cost of which is fairly estimated to be more than twenty-three thousand four hundred forty-seven dollars adjusted biennially by the director of commerce pursuant to Ohio Rev. Code § 4115.034 and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority. [Ohio Rev. Code § 4115.03(B)(4)]

The State prevailing wage requirements (Ohio Rev. Code §§ 4115.03 – 4115.16) do not apply to:

- Public improvements partially or wholly funded by the Federal government or any of its agencies (whether by grant or loan), if Federal minimum wage requirements (i.e. Davis Bacon) apply to mechanics or laborers.
- A participant in a work activity, developmental activity or an alternative work activity under Ohio Rev. Code §§ 5107.40 to 5107.69, when a public authority directly uses the labor of the participant to construct a public improvement if the participant is not engaged in paid employment or subsidized employment pursuant to the activity.
- For public improvements undertaken by boards of education or educational service centers²⁵.
- The State prevailing wage law does not apply to county or municipal hospitals if none of the construction funds, including funds to repay any amounts borrowed, have been secured by obligations pledging the full faith and credit of the State, the county, a township, or a municipal corporation, or are funds that have been generated by the levy of a tax by the State, the county, a township, or a municipal corporation
- Any project described in divisions (D)(1)(a) to (D)(1)(e) of Ohio Rev. Code § 176.05;

²⁴ Pursuant to 2008 Op. Att’y. Gen. No. 2008-007, any work subcontracted to private contractors should be included in the total cost of the project to determine if the project should be bid.

²⁵ Under no circumstances shall a public authority apply the prevailing wage requirements of Chapter 4115 to an exempt public improvement of a board of education of any School District or the governing board of any Educational Service Center. (Ohio Rev. Code § 4115.04(C))

- Public improvements undertaken by, or under contract for, a port authority as defined in Ohio Rev. Code §§ 4582.01 or 4582.21;
- Any portion of a public improvement undertaken and completed solely with labor donated by the individuals performing the labor, by a labor organization and its members, or by a contractor or subcontractor that donates all labor and materials for that portion of the public improvement project. [Ohio Rev. Code § 4115.04(B)(7)].

Suggested Audit Procedures - Compliance (Substantive) Tests:

Select a few contracts subject to prevailing wages and perform the following:

1. Inquire if the contract is funded in whole or part by federal grant or contract. If so, determine whether Federal prevailing wage laws (the Davis Bacon Act) apply.
2. Inspect contracts exceeding the threshold amounts for the required “prevailing wage” language.
3. Inquire if any projects were sublet. If so, inspect the contractor’s contract for language authorizing the subletting.
4. Compare the date of prevailing wage establishment with the contract date. If more than 90 days elapsed between the two dates, determine that a prevailing wage redetermination was obtained by inspecting that document.
5. If a county hospital has claimed the exception provided by Section 4115.04(B), review project documents and legislation authorizing the project, make inquiries, and perform such other procedures to determine whether financing sources meet the criteria of Section 4115.04(B).

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

2A-13 Compliance Requirement: Ohio Admin. Code 117-2-02(D) and (E) - Required accounting records²⁶

Summary of Requirement:

All local public offices may maintain accounting records in a manual or computerized format. The records used should be based on the nature of operations and services the public office provides, and should consider the degree of automation and other factors. Such records **should** include the following:

- (1) Cash journal, which typically contains the following information: the amount, date, receipt number, check number, account code, purchase order number, and any other information necessary to properly classify the transaction.
- (2) Receipts ledger, which typically assembles and classifies receipts into separate accounts for each type of receipt of each fund the public office uses. The amount, date, name of the payor, purpose, receipt number, and other information required for the transactions can be recorded on this ledger.
- (3) Appropriation ledger, which may assemble and classify disbursements or expenditure/expenses into separate accounts for, at a minimum, each account listed in the appropriation resolution. The amount, fund, date, check number, purchase order number, encumbrance amount, unencumbered balance, amount of disbursement, and any other information required may be entered in the appropriate columns.
- (4) In addition, all local public offices should maintain or provide a report similar to the following accounting records:
 - a. Payroll records including:
 - i. W-2's, W-4's and other withholding records and authorizations;
 - ii. Payroll journal that records, assembles and classifies by pay period the name of employee, social security number, hours worked, wage rates, pay date, withholdings by type, net pay and other compensation paid to an employee (such as a termination payment), and the fund and account charged for the payments;
 - iii. Check register that includes, in numerical sequence, the check number, payee, net amount, and the date;
 - iv. Information regarding nonmonetary benefits such as car usage and life insurance; and
 - v. Information, by employee, regarding leave balances and usage;
 - b. Utilities billing records including:
 - i. Master file of service address, account numbers, billing address, type of services provided, and billing rates;
 - ii. Accounts receivable ledger for each service type, including for each customer account, the outstanding balance due as of the end of each billing period (with an aging schedule for past due amounts), current usage and billing amount, delinquent or late fees due, payments received and noncash adjustments, each maintained by date and amount;
 - iii. Cash receipts records, recording cash received and date received on each account. This information should be used to post payments to individual accounts in the accounts receivable ledger described above.

²⁶ Although not required, Ohio Rev. Code § 9.16, effective March 2, 2022, allows a governmental entity to utilize distributed ledger technology, including blockchain technology, in the exercise of its authority. AOS auditors should consult with CFAE if they become aware of an entity using this technology.

- c. Capital asset records* including such information as the original cost, acquisition date, voucher number, the asset type (land, building, vehicle, etc.), asset description, location, and tag number. Local governments preparing financial statements using generally accepted accounting principles will want to maintain additional data. Capital assets are tangible assets that normally do not change form with use and should be distinguished from repair parts and supply items.

Ohio Admin. Code 117-2-02(E) states that each local public office should establish a capitalization threshold so that, at a minimum, eighty per cent of the local public office's non-infrastructure assets are identified, classified, and recorded on the local public office's financial records.*

* These capital asset record requirements apply to GAAP and non-GAAP mandated public offices. All public offices should have records of significant capital assets.

Suggested Audit Procedures - Compliance (Substantive) Tests:

Ohio Admin. Code 117-2-01 and 117-2-02 require governments to establish internal controls and report financial information properly. Auditors may include this citation in a finding to emphasize its importance (which results in classifying the finding as noncompliance as well as a control deficiency). However, we would not automatically deem one misclassification as reportable noncompliance under this Ohio Admin. Code rule.

Based on our systems documentation, results of inquiries, and other audit procedures, assess whether the accounting system generally complies with the aforementioned requirements.²⁷

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

²⁷ **Note:** Per AU-C 265, “A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.”

Noncompliance with these Ohio Administrative Code requirements normally also suggest control deficiencies. We would not automatically deem minor misclassifications or other lesser-significant errors as reportable noncompliance under this Ohio Admin. Code rule. While a significant deficiency may exist, it is possible that the deficiency may not necessarily rise to the level of material noncompliance. This is a matter of professional auditor’s judgment. We should consider the pervasiveness of the noncompliance matter in relation to the compliance requirement and the financial statements as a whole. Conversely, a failure to maintain any utility billing records (for example) would not only be a material weakness, but would be reportable noncompliance with Ohio Admin. Code 117-2-02(D).

2A-14 Compliance Requirement: Ohio Rev. Code §§ 135.13, 135.14, 135.144, 135.145 and 133.03(A)(1), – Eligible investments for interim monies; Ohio Rev. Code § 135.13 - inactive deposits and maturities.

(FOR COUNTY DEPOSIT AND INVESTMENTS SEE SECTION 2A-18 Compliance Requirement: Ohio Rev. Code §§ 135.35, 135.353, and 339.061(D) - Eligible Investments for inactive county money (county hospitals may invest in these same securities, per Ohio Rev. Code § 339.06).

Summary of Requirements:

Investments must mature within 5 years from the settlement date, unless the investment is matched to a specific obligation or debt of the subdivision, or unless other provisions apply. [Ohio Rev. Code § 135.14(D)]

The following classifications of obligations are eligible for such investment or deposit:

- A. United States obligations or any other obligation guaranteed as to principal and interest by the United States.²⁸ This law prohibits investing in stripped principal or interest obligations. [Ohio Rev. Code § 135.14(B)(1)]
- B. Bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality. All federal agency securities must be direct²⁹ issuances of federal government agencies or instrumentalities. [Ohio Rev. Code § 135.14(B)(2)]
- C. Interim deposits in the eligible institutions applying for interim monies as provided in Ohio Rev. Code § 135.08. [Ohio Rev. Code § 135.14(B)(3)]
 1. Per 135.13, *Interim deposits* are certificates of deposit³⁰ or savings or deposit accounts, including passbook accounts.
 2. Ohio Rev. Code §§ 135.144 and 135.145 also permits governments to use the IntraFi Network Deposits (formerly Certificate of Deposit Account Registry Services (CDARS)) or similar programs (one example is the Government Insured Deposit Program (GIDP)) meeting Ohio Rev. Code § 135.144 or 135.145 requirements for interim deposits. If a government purchases CDs or deposits for more than the FDIC limit (\$250,000) with a bank participating in IntraFi Network Deposits (formerly CDARS) or similar program, the bank or program “redeposits” the excess amounts with other institutions. Each bank accepts less than \$250,000 so that all deposits have FDIC coverage. Ohio Rev. Code §§

²⁸ See appendix E-1 of the OCS Implementation Guide for a list of agencies the Federal government guarantees.

²⁹ An example of an *indirect* issuance would be a FNMA CMO (collateralized mortgage obligation), where FNMA pools mortgages it guarantees. However, the mortgages are not a direct issuance of FNMA.

³⁰ It is the position of the Auditor of State that Ohio Rev. Code §§ 135.03 & 135.32 prohibit purchasing certificates of deposit (negotiable* or otherwise) from a bank unless the CD is subject to inspection by the Ohio Superintendent of Financial Institutions. Ohio is part of a nationwide cooperative agreement for examining multi-state banks in which these states agreed to recognize each other's supervisory authority for banks headquartered in another state but doing business in theirs. Therefore, it is reasonable to conclude that a multi-state bank in a state subject to this agreement is subject to inspection by Ohio's Superintendent of Financial Institutions. Multi-state banks are eligible to become a public depository for Ohio's governmental entities, subject to Ohio Rev. Code §§ 135.01 to 135.21. The bank should be registered with the Ohio Secretary of State to be an eligible public depository in Ohio. A government cannot purchase negotiable/brokered or nonnegotiable CDs unless the governing body has designated the bank as eligible to hold interim or inactive deposits.

*Another term for “negotiable” CDs is “brokered” CDs.

135.144 and 135.145 requires a government to place its deposits with an eligible depository per Ohio Rev. Code § 135.03. However, the institutions the government's depository places excess deposits with are not subject to Ohio Rev. Code § 135.03. For example, while the deposit must be initiated at an Ohio depository branch, the Ohio depository can purchase CDs from depositories outside of Ohio for the excess. Because all IntraFi Network Deposits (formerly CDARS) and GIDP deposits have FDIC coverage, the collateral requirements of Ohio Rev. Code §§ 135.18 and 135.181 do not apply. (That is, these are *insured* deposits for GASB Statement No. 40 purposes, Appendix E-2 of the OCS Implementation Guide.)³¹

3. Any CD's purchased by a broker must be held in the name of the government. Also, the broker cannot be in possession of cash at any time. If we believe a broker has held cash for any length of time, AOS auditors should refer the matter to the Center for Audit Excellence and AOS Legal division for further evaluation. A way to verify compliance is to request monthly statements provided by the public depository located in Ohio. Ohio Rev. Code § 135.144(A)(5) requires the initial public depository to provide public offices with a monthly account statement that includes the amount of its funds deposited and held at each bank, savings bank, or savings and loan association for which the public depository acts as a custodian pursuant to Ohio Rev. Code § 135.144. If a public office does not have these statements, it may indicate that the money is being held by a broker-dealer in violation of Ohio Rev. Code § 135.144.

D. Bonds or other obligations of the State of Ohio, or the political subdivisions of this state, provided that, with respect to bonds or other obligations of political subdivisions, all of the following apply:

1. The bonds or other obligations are payable from general revenues of the political subdivision and backed by the full faith and credit of the political subdivision.
2. The bonds or other obligations are rated at the time of purchase in the three highest classifications established by at least one nationally recognized statistical rating organization and purchased through a registered securities broker or dealer.
3. The aggregate value of the bonds or other obligation does not exceed twenty per cent of interim moneys available for investment at the time of purchase.
4. The treasurer or governing board is not the sole purchaser of the bonds or other obligations at original issuance.
5. The bonds or other obligations mature within ten years from the date of settlement

No investment shall be made under Ohio Rev. Code § 135.14(B)(4) unless the treasurer or governing board has completed additional training for making the investments authorized by this section. The type and amount of additional training shall be approved by the treasurer of state and may be conducted by or provided under the supervision of the treasurer of state. [Ohio Rev. Code § 135.14(B)(4)]

E. No-load money market mutual funds consisting exclusively of obligations described in (B)(1) or (2) of Ohio Rev. Code § 135.14 (i.e. the investments listed in the first two bullets above), and repurchase agreements secured by such obligations, provided the government purchases the money

³¹ It is conceivable programs similar to IntraFi Network Deposits (formerly CDARS) may be established. We believe these programs would be legal if they meet all Ohio Rev. Code § 135.144 requirements. As another example, we are aware that credit unions have established a similar program to insure deposits exceeding the limits covered by the National Credit Union Share Insurance Fund; however, Ohio Rev. Code § 135.144 would not permit governments to use this program because Ohio Rev. Code § 135.03 effectively excludes credit unions from eligible depositories as it does not name them in its list of institutions that may be public depositories. However, Ohio Rev. Code § 135.03 permits any savings association or savings bank located in Ohio, which is doing business under the authority of another state, to become an eligible public depository. Therefore, if they establish programs complying with all § 135.144 requirements, those programs would have similar legal status to the IntraFi Network Deposits (formerly CDARS) program.

market mutual fund **only** through eligible institutions mentioned in Ohio Rev. Code § 135.03 (which are, generally, Ohio banks and national banks authorized to do business in Ohio). [§ 135.14(B)(5)] Also, per Ohio Rev. Code § 135.01(O)(2), these funds must have the highest letter or numerical rating provided by at least one nationally recognized statistical rating organization.

- F. The Ohio Subdivisions Fund (STAR Ohio³²) as provided in Ohio Rev. Code § 135.45. [Ohio Rev. Code § 135.14(B)(6)]
- G. Chapter 133 securities (generally debt instruments Ohio State & local governments have issued) [Ohio Rev. Code § 133.03].

Per Ohio Rev. Code § 135.14(E), the treasurer or governing board may also enter into a repurchase agreement with any **eligible institution** mentioned in Ohio Rev. Code § 135.03 or any **eligible dealer** pursuant to Ohio Rev. Code § 135.14(M). (**Eligible institutions**, per Ohio Rev. Code § 135.03, include any national bank, any bank doing business under authority granted by the superintendent of financial institutions, or any bank doing business under authority granted by the regulatory authority of another state of the United States, located in this state.) **Eligible dealers**, per Ohio Rev. Code § 135.14 (M), are financial industry regulatory authority (FINRA), banks, savings bank, or savings and loan associations regulated by the superintendent of financial institutions, or institutions regulated by the comptroller of the currency, federal deposit insurance corporation, or board of governors of the federal reserve system.) In these agreements, the treasurer or governing board purchases, and such institution or dealer agrees unconditionally to repurchase any of the securities listed in division (D)(1) to (5) of § 135.18,³³ except letters of credit described in division (D)(2) are not permitted for repurchase agreements.

- A. The market value of securities subject to an overnight repurchase agreement must exceed the cash invested subject to the repurchase agreement by 2%.³⁴ A term repurchase agreement may not exceed 30 days and must be marked to market daily.³⁵
- B. All securities purchased pursuant to a repurchase agreement are to be delivered into the custody of the treasurer or governing board or an agent designated by the treasurer or governing board.³⁶
- C. Repurchase agreements must be in writing. They must require that, for each transaction, the participating institution provide:
 1. the par value of the securities;
 2. the type, rate, and maturity date of the securities;
 3. a numerical identifier (e.g., a CUSIP number) generally accepted in the industry that designates the securities.

³² Investment of public moneys in the Ohio Subdivisions Fund may be in a separately managed account (referred to as STAR SMA) or a pooled account. [Ohio Rev. Code § 135.45(C)]

³³ Ohio Rev. Code §§ 135.18(D)(1) – (11) are summarized in Ohio Compliance Supplement Step 2A-17.

³⁴ Many states do not require minimum market values of securities for repurchase agreements. Therefore, the risk of noncompliance increases when banks merge with out-of-state banks. Ohio governments are still bound by Ohio laws even if a bank's depository agreement indicates the bank follows another state's laws for the market value of securities.

³⁵ The dealer would be responsible for marking the securities, not the government.

³⁶ Counterparties (e.g. banks) accomplish this by maintaining a separate "customer" account at the Federal Reserve designated as a customer account. (For purposes of GASB Statement No. 40, we currently believe securities held in a customer account would not be exposed to custodial risk.)

Agreements by which the treasurer or governing board agrees to sell securities owned by the subdivision to a purchaser and agrees with that purchaser to unconditionally repurchase those securities (i.e., Reverse Repos) are prohibited. [Ohio Rev. Code § 135.14(E)]

Per Ohio Rev. Code § 135.14, Derivative investments are generally prohibited. A *Derivative* is a financial instrument or contract or obligation whose value or return is based upon or linked to another asset or index, or both, separate from the financial instrument, contract, or obligation itself.

A. Per Ohio Rev. Code § 135.14(C), Any security, obligation, trust account, or other instrument that is created from an issue of the United States Treasury or is created from an obligation of a federal agency or instrumentality or is created from both is considered a derivative, and is prohibited.

1. Except, An eligible investment described in Ohio Rev. Code § 135.14 with a variable interest rate payment or single interest payment, based upon a single index comprised of other eligible investments provided for in division (B)(1) or (2) of § 135.14 (see above), is **not** a derivative, if the variable rate investment has a maximum maturity of 2 years. [Ohio Rev. Code § 135.14(C)]
 - a. For example, a two-year investment in Federal securities with a variable interest rate indexed to other Federal securities would be legal, because Ohio Rev. Code § 135.14(C) expressly permits using Federal securities as part of a derivative if it matures within two years. Conversely, an investment indexed to an interbank offered rate³⁷ or to a bank's prime rate would not be legal because these are not listed in Ohio Rev. Code § 135.14(B)(1) or (B)(2).
2. **Note:** The Ohio Rev. Code still uses the derivative definition from GASB Technical Bulletin 94-1 (which was superseded by GASB Technical Bulletin 2003-1). GASB Statement No. 53 (GASB Cod. D40.103), defines derivatives differently than does the Ohio Revised Code. So, for legal compliance purposes, governments must follow the Ohio Rev. Code derivative definition. For financial reporting, GAAP governments must follow the GASB definition to value, present, and disclose derivatives.
 - a. For example, interest rate swaps³⁸ and energy futures contracts (which are allowable under Ohio Rev. Code § 9.835 to mitigate price fluctuations, and are not intended as investments) meet the GASB Statement No. 53 (GASB Cod. D40.103) derivative definition, and would be subject to GASB Statement No. 53 (GASB Cod. D40) derivative measurement and disclosure requirements, but are **not** illegal.
3. 1999 Op. Att'y. Gen. No. 99-026 deemed collateralized mortgage obligations to be illegal derivatives.
4. FA treasury inflation-protected security (TIPS) is permissible for counties only, per Ohio Rev. Code § 135.35(B).

³⁷ Note: As of July 1, 2023, the ICE Benchmark Administration ceased publishing any LIBOR setting using the methodology in place as of December 31, 2021. As a result, as of July 1, 2023, LIBOR is no longer an appropriate benchmark interest rate for a derivative instrument that hedges the interest rate risk of taxable debt for purposes of GASB Statement 53.

³⁸ For Ohio governments, interest-rate swaps normally refer to debt issued at a variable interest rate, which the government (issuer) converts to a fixed interest rate.

- Swaptions describe an option to swap variable for fixed-rate debt if the strike rate meets the forward rate.
- Swaps and swaptions can result in deferred inflows or outflows, but if properly used they are hedging instruments, designed to hedge (i.e. reduce) interest-rate risk. If properly used, they are not classified as investments.

Swaps and swaptions are derivatives per GASB Statement No. 53, but they do meet the Ohio Rev. Code 135 derivative definition; therefore Ohio Rev. Code 135 does not prohibit them.

Article VIII, Sections 4 and 6 of the Ohio Constitution prohibit public bodies from becoming a “stockholder in any joint stock company, corporation or association.”

- However, Article VIII, Section 6 of the Constitution provides an exemption which allows public bodies to purchase insurance from mutual insurance companies (Note that insured parties of mutual insurance companies become stockholders.).
- The AOS also does not believe Ohio Rev. Code Chapter 135 (nor § 1715.52(E)(3)) prohibits a government from **holding** stock **donated** to it. (However, considering the volatility of many equity securities, our management letter should recommend liquidating stock, if liquidation does not violate a trust or other agreement.)

Per Ohio Rev. Code § 135.14(F), a government cannot purchase an investment unless it reasonably expects to hold it until maturity. *Note:* We believe the intention of this section is to reduce the likelihood a government would suffer losses on early redemptions required due to inadequate cash flow planning. See the description of audit procedures for more information.

Per Ohio Rev. Code § 135.14(G), subdivisions may not invest interim moneys in an investment pool except:

- The Ohio Subdivision’s Fund (STAR Ohio³²) pursuant to Ohio Rev. Code § 135.14(B)(6).
- A fund created solely to acquire, construct, own, lease, or operate municipal utilities pursuant to Ohio Rev. Code § 715.02 or Ohio Const. Art XVIII, § 4.

Leveraging (a government using its current investment assets as collateral for purchasing other investments) is prohibited. [Ohio Rev. Code § 135.14(H)]

Issuing taxable notes for arbitrage is prohibited. [Ohio Rev. Code § 135.14(H)]

Governments cannot contract to sell securities not yet acquired (short sales), for the purpose of purchasing such securities on the speculation that their price will decline. [Ohio Rev. Code § 135.14(H)]

Payment for investments may be made only upon delivery of the securities to the treasurer, governing board, or qualified trustees, or, if not represented by a certificate, only upon receipt of confirmation of transfer from the custodian. [Ohio Rev. Code § 135.14(M)(2)]

Proceeds from refunding securities must be held in the debt service fund or in escrow, and shall be held in cash or invested in whole or in part in direct obligations of or obligations guaranteed as to payment by the United States that mature or are subject to redemption by and at the option of the holder not later than the date or dates when the moneys invested, together with interest or other investment income accrued on those moneys, and any moneys held in cash and not invested will be required to refund the debt. [Ohio Rev. Code § 133.34(D)].

Ohio Rev. Code § 135.13 requires depositing *inactive* funds in certificates of deposit maturing not later than the end of the depository designation period or by savings or deposit accounts, including, but not limited to, passbook accounts.

- Investments must mature within 5 years from the date of settlement unless the investment matches a specific obligation or debt, and the investment advisory committee specifically approves it.

Suggested Audit Procedures – Compliance (Substantive) Tests:

Note: Some of the steps below require the same documentation / evidence auditors also use to support the *existence, valuation and classification* of investments. You can gain efficiency by combining the steps below with the substantive steps related to the aforementioned assertions.

Select a representative number³⁹ of investments and:

1. Read investment dealer confirmations* to determine if the investment is of a type authorized.

* **Note:** Dealer confirmations are suitable evidence supporting the details (e.g. valuation, occurrence) of an investment at the time of purchase. However, it provides no evidence the government still owned the investment as of its fiscal year end (the *existence* assertion). Auditors should obtain other evidence to support existence at year end. The audit program should include suitable existence steps.

2. If the government holds financial instruments or contract or obligation whose value or return is “based upon or linked to another asset or index, or both, separate from the financial instrument,” consider whether the instrument is an illegal derivative.
 - a. If the instrument is not an interest-rate swap, or expressly permitted (such as energy futures under Ohio Rev. Code § 9.835), consult with the Center for Audit Excellence to determine its Legality, Valuation, Presentation and Disclosure.
3. For investments in bonds or other obligations of the State of Ohio, or the political subdivisions of this state, inspect documentation and determine whether the additional training was received. [Ohio Rev. Code § 135.14(B)(4)]
4. Determine that the investments mature within the prescribed limits (generally no later than 5 years, or *other* periods for repurchase agreements, bankers’ acceptances and commercial paper.)
5. Inspect documentation supporting repurchase agreements and determine that:
 - a. The market values of securities exceed the principal values of securities subject to the overnight repurchase agreement by 2%. (**Note:** The risk of non-compliance increases when banks merge.)
 - b. A term repurchase agreement did not exceed 30 days and the values of the securities were marked to market daily.
 - c. Repurchase agreements were in writing, including the par value of the securities; the type, rate, and maturity date of the securities; and a numerical identifier.
6. Read the prospectus for money market mutual funds with which the government has significant investment. Determine whether the prospectus limits investments to those authorized under Ohio Rev. Code § 135.14(B)(1) & (2). Ohio Rev. Code § 135.14(B)(1) & (2) describe federally issued or insured securities. Ohio Rev. Code § 135.14(B)(1) & (2) would not include, for example, reverse repos consisting of Federal securities or securities other states issue.

³⁹ When judging “a representative number,” consider focusing on investments held at year end, but also consider testing other purchases and sales during the audit period. In judging how many purchases to test, consider the volume of purchases, the control environment, the adequacy of policies, and the results of prior audits.

7. Determine whether money market mutual funds have the highest credit rating issued by one nationally recognized statistical ratings organization (such as that S&P, Moody's or Fitch issues).
8. Regarding Ohio Rev. Code § 135.14(F), scan investment records to determine whether the government is selling securities prior to maturity. If a significant number or amount of premature sales occurred because the government had an emergency need for cash, review the CFO's cash flow forecasts supporting that the government had reasonable support, at the time of purchase, that it could hold the security to maturity. ***If there is inadequate cash flow planning***,⁴⁰ cite this section. The noncompliance finding should also recommend the government improve its cash flow forecasting. The finding should also describe any losses the government suffered from these sales.
9. If the government hires an investment manager for all or a portion of its investments, obtain copies of investment summary reports the manager prepares.
 - a. Read the agreement between the manager and the government. Determine if the agreement (or the investment policy Step 2A-15 describes) requires the manager to comply with all applicable Ohio Rev. Code Chapter 135 requirements. Maintain a copy or summary of the agreement in the permanent file.
 - b. Test selected investments from the reports for compliance with steps 1 – 5 above.
 - c. Scan purchases and sales to determine whether the manager sells securities prior to their maturity for other than an urgent need for cash.

(**Note** that for financial audit purposes, an investment manager may constitute a service organization under AU-C 402)

Note: The steps above should normally be sufficient for most governments. Because we believe the risk of governments engaging in certain prohibited activities such as leveraging, short sales or arbitrage violations is low, there are no steps included to test these requirements. You should scan the other requirements in this step, and based on your knowledge of the government's investing activities, investigate them if evidence suggests the government may have materially violated these requirements.

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

⁴⁰ "Emergency" premature sales can result in losses. If inadequate cash flow planning contributed to the need to sell early, we should cite them. In other circumstances, a government may choose to redeem a security early at a loss in order to re-invest at a greater overall rate of return. We would not deem this latter circumstance to violate the intent of Ohio Rev. Code § 135.14(F).

2A-15 Compliance Requirement: Ohio Rev. Code §§ 135.14 and 135.18 – Other Requirements.
(FOR COUNTY DEPOSIT AND INVESTMENTS SEE SECTION 2A-18)

Summary of Requirements:

Per Ohio Rev. Code § 135.14(O)(1), Investments or deposits under § 135.14 cannot be made unless a written investment policy approved by the treasurer or governing board is on file with the Auditor of State, with the following two exceptions:

- Per Ohio Rev. Code § 135.14(O)(2), If a written investment policy is not filed with the Auditor of State, the treasurer or governing board can invest only in interim deposits⁴¹, STAR Ohio³², or no-load money market mutual funds.
- Per Ohio Rev. Code § 135.14(O)(3), A subdivision whose average annual investment portfolio is \$100,000 or less need not file an investment policy, provided that the treasurer or governing board certifies to the Auditor of State that the treasurer or governing board will comply and is in compliance with the provisions of §§ 135.01 to 135.21.

Per Ohio Rev. Code § 135.14(O)(1), the investment policy must be signed by:

- All entities conducting investment business with the treasurer or governing board (except the Treasurer of State);
- All brokers, dealers, and financial institutions, described in § 135.14(M)(1), initiating transactions with the treasurer or governing board by giving advice or making investment recommendations;
- All brokers, dealers, and financial institutions, described in § 135.14(M)(1), executing transactions initiated by the treasurer or governing board.

If any securities or certificates of deposit purchased are issuable to a designated payee or to the order of designated payee, the designated party is to be the treasurer and the treasurer's office⁴².

If the securities are registerable either as to principal and/or interest, then the securities are to be registered in the treasurer's name.

An institution designated as a public depository shall designate a qualified trustee and place the eligible securities required by Ohio Rev. Code § 135.18(D) with the trustee for safekeeping. [Ohio Rev. Code § 135.18(E)]

Except for investments in securities described in Ohio Rev. Code § 135.14(B)(5) and (6) (no-load money funds, certain repos and STAR Ohio³²) and for investments by a municipal corporation in the issues of that municipal corporation, all investments must be made through:

- members of the National Association of Securities Dealers, Inc. (NASD); or

⁴¹ The Government Insured Deposit Program (GIDP) (which replaced Star Plus) would be considered a deposit and no signed investment policy would be necessary for deposits in this program.

⁴² For example, an acceptable method of complying with this requirement is for the financial institution to make the securities or certificates of deposit payable to "ABC Township, Joe Jones, Treasurer."

- institutions regulated by the Superintendent of Banks, Superintendent of Savings and Loan Associations, Comptroller of Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System.

Suggested Audit Procedures – Compliance (Substantive) Tests:

1. Read the government's investment policy for the period.
2. If there is no written investment policy filed with the Auditor of State, scan the government's investment portfolio for the period to determine that it is composed solely of interim deposits⁴¹, STAR Ohio³², or no-load money market mutual funds, or that its average annual size is \$100,000 or less. Additionally, inspect the certificate to the Auditor of State asserting⁴³ that the treasurer or governing board will comply and is in compliance with the provisions of Ohio Rev. Code §§ 135.01 to 135.21.
3. If applicable, inspect documentation that the policy was approved by the treasurer or governing board and is on file with the Auditor of State (For AOS employees the policies and exemptions are available at GPInfoSearch or S:/Final Audit PDF/Region Folder/County Folder/Client Folder/Investment Policy Folder⁴⁴). (We need not repeat this step every audit. Keep a copy in the permanent file, and inquire whether the government has amended the policy since the prior audit.)
4. Inspect the policy for the requisite signatures:
 - a. All entities conducting investment business with the treasurer or governing board (except the Treasurer of State);
 - b. All brokers, dealers, and financial institutions initiating transactions with the treasurer or governing board by giving advice or making investment recommendations;
 - c. All brokers, dealers, and financial institutions executing transactions initiated by the treasurer or governing board.
 - d. Select a representative number of investments made by the entity and determine whether the investments are in accordance with the entity's investment policy as adopted by the entity's legislative body.
5. Determine if the policy requires financial institutions, brokers and dealers to comply with Ohio Rev. Code Chapter 135. (There is no legal requirement to include this, but if the policy does not include this requirement, we should recommend the government amend their policy to require compliance.)
6. Select a representative number³⁹ or amount of investments:
 - a. Inspect purchase documents and determine that investments were made only through members of NASD, or institutions regulated by the Superintendent of Banks, Superintendent of Savings and Loan Associations, Comptroller of Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System.

⁴³ Not required if the portfolio for the period is composed solely of interim deposits, STAR Ohio, or no-load money market mutual funds.

⁴⁴ Any investment policies received prior to 1/2021 were retained on the S drive and not migrated to eServices/GP; any received after that date are saved only in GP.

- b. For certificates of deposit, inspect documentation that any designated payee is either the entity's name or in the treasurer's name, unless the CD is an issued security registerable to principal or interest or both *requiring* the Certificate to also be registerable to the Treasurer.

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

2A-16 Compliance Requirement: Ohio Rev. Code § 135.142 (school districts), § 135.14(B)(7) (other subdivisions) – Other allowable investments for subdivisions other than counties.

Summary of Requirements: Ohio Compliance Supplement Step 2A-14 identifies certain investments that are eligible for **interim** monies. In addition to those investments, subdivisions can invest interim monies as follows:

Up to forty per cent of interim moneys available for investment⁴⁵ in either of the following [Ohio Rev. Code § 135.142(A) for school districts; § 135.14(B)(7) for other subdivisions]:⁴⁶

Commercial paper notes issued by an entity defined in Ohio Rev. Code §1706.01(K) (see definition below) and that has assets exceeding five hundred million dollars, to which all the following apply:

- The notes are rated at the time of purchase in the highest classification established by at least two nationally recognized statistical rating organizations.
- The aggregate value of the notes does not exceed ten per cent of the aggregate value of the outstanding commercial paper of the issuing corporation.
- The notes mature not later than 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.

Bankers' acceptances of banks insured by the FDIC and to which the obligations mature not later than one hundred eighty days after purchase.

Boards of education must authorize the treasurer to invest in commercial paper or bankers' acceptances by a 2/3 majority vote. [Ohio Rev. Code § 135.142(A)] (Once authorized, the authorization remains effective unless the policy changes. Therefore, we need not test this every audit. We should maintain documentation of the approval in the permanent file.) Additionally, the treasurer or governing board must complete additional training. The type and amount of additional training shall be approved by the treasurer of state and may be conducted by or provided under the supervision of the treasurer of state. [Ohio Rev. Code § 135.14(B)(7)]

“Entity” means a general partnership, limited partnership, limited liability partnership, limited liability company, association, corporation, professional corporation, professional association, nonprofit corporation, business trust, real estate investment trust, common law trust, statutory trust, cooperative association, or any similar organization that has a governing statute, in each case, foreign or domestic. [Ohio Rev. Code § 1706.01(K)]

Note: Some of the steps below require the same documentation/evidence auditors also use to support the *existence*, *valuation*, and *classification* of investments. You can gain efficiency by combining the steps below with the substantive financial audit steps related to the aforementioned assertions.

⁴⁵ School districts may have additional investments if OFCC bond proceedings permit such investments [see Ohio Rev. Code § 3318.26(M) and Ohio Rev. Code § 3318.26(E)(5)]. Auditors should evaluate bond documents if 40% threshold appears to be exceeded.

⁴⁶ Ohio Rev. Code § 135.01(F) defines Interim moneys including the statement “that such moneys will not be needed for immediate use but will be needed before the end of the period of designation.” Therefore, this calculation while subject to various acceptable interpretations is best calculated using the cash balance less encumbrances expected to be immediately used.

See related information on GASB Statement No. 40 in Appendix E-2 of the OCS Implementation Guide.

Suggested Audit Procedures – Compliance (Substantive) Tests:

1. Inspect a representative number⁴⁷ of dealer confirmations of the commercial paper notes purchased and determine that the entity has maintained related documentation that the: [Ohio Rev. Code § 135.14(B)(7)(a)]
 - a. Commercial paper was rated in the highest classification by two statistical rating organizations.
 - b. The commercial paper matures not later than 270 days after purchase.
 - c. The investment in commercial paper notes of a single issuer does not exceed the aggregate five per cent of interim moneys available at the time of purchase.
2. Inspect dealer confirmations of the bankers’ acceptances purchased and determine that the entity has maintained related documentation that the: [Ohio Rev. Code § 135.14(B)(7)(b)]
 - a. Banks are insured by the Federal Deposit Insurance Corporation.
 - b. The acceptances mature not later than 180 days after purchase.
3. For investments in Bankers’ Acceptances and Commercial Paper Notes, inspect documentation and determine whether the additional training was received.
4. For school districts, assure the permanent file documents the resolution authorizing the treasurer to invest in commercial paper and / or bankers’ acceptances.

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

⁴⁷ When judging “a representative number,” consider focusing on investments held at year end, but also consider testing other purchases and sales during the audit period. In judging how many purchases to test, consider the volume of purchases, the control environment, the adequacy of policies, and the results of prior audits.

2A-17 Compliance Requirement: Ohio Rev. Code § 135.18 (specific collateral), and § 135.182 – Security for repaying public deposits; Ohio Rev. Code § 135.37 – Security for repaying county (and county hospital) public deposits

Summary of Requirements: Each institution designated as a public depository and awarded public deposits, shall provide security for the repayment of all public deposits by securing all uninsured public deposits of each public depositor separately (Ohio Rev. Code § 135.18(A)(1)), or as applicable to Ohio Rev. Code § 135.182 by establishing and pledging to the treasurer of state a single pool of collateral for the benefit of every public depositor (Ohio Rev. Code § 135.18(A)(2)).

Depository security requirements for county (and county hospital) monies parallel the requirements of other governmental entities pursuant to Ohio Rev. Code § 135.18. Ohio Rev. Code § 135.37(A)(2) expressly permits counties to follow the pool collateral requirements of Ohio Rev. Code § 135.182.

Depositories may pledge the following securities or other obligations under the subsections of Ohio Rev. Code § 135.18(D) listed below:

- (1) Bonds, notes, or other obligations of the United States; or bonds, notes, or other obligations guaranteed as to principal and interest by the United States or those for which the full faith of the United States is pledged for the payment of principal and interest thereon, by language appearing in the instrument specifically providing such guarantee or pledge and not merely by interpretation or otherwise;
- (2) Bonds, notes, debentures, letters of credit, or other obligations or securities issued by any federal government agency, or instrumentality, or the export-import bank of Washington; bonds, notes, or other obligations guaranteed as to principal and interest by the United States or those for which the full faith of the United States is pledged for the payment of principal and interest thereon, by interpretation or otherwise and not by language appearing in the instrument specifically providing such guarantee or pledge;
- (3) Obligations of or fully insured or fully guaranteed by the United States or any federal government agency or instrumentality;
- (4) Obligations partially insured or partially guaranteed by any federal agency or instrumentality;
- (5) Obligations of or fully guaranteed by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Farm Credit Bank, or Student Loan Marketing Association⁴⁸;
- (6) Bonds and other obligations of this state;
- (7) Bonds and other obligations of any county, township, school district, municipal corporation, or other legally constituted taxing subdivision of this state, which is not at the time of such deposit, in default in the payment of principal or interest on any of its bonds or other obligations, for which the full faith and credit of the issuing subdivision is pledged;
- (8) Bonds of other states of the United States which have not during the ten years immediately preceding the time of such deposit defaulted in payments of either interest or principal on any of their bonds;

⁴⁸ Financial institutions are allowed to utilize these guarantees as a form of collateral, however, they are still not permitted to pool multiple governments' deposits against a single guarantee. Rather, they should have specific pledges.

- (9) Shares of no-load money market mutual funds consisting exclusively of obligations described in division (D)(1) or (2) of Ohio Rev. Code § 135.18 [these sections are (1) & (2), above] and repurchase agreements secured by such obligations;
- (10) A surety bond issued by a corporate surety licensed by the state and authorized to issue surety bonds in this state pursuant to Ohio Rev. Code Chapter 3929 and qualified to provide surety bonds to the federal government pursuant to 96 Stat. 1047 (1982), 31 U.S.C. § 9304;
- (11) Bonds or other obligations of any county, municipal corporation, or other legally constituted taxing subdivision of another state of the United States, or of any instrumentality of such county, municipal corporation, or other taxing subdivision, for which the full faith and credit of the issuer is pledged and, at the time of purchase of the bonds or other obligations, rated in one of the two highest categories by at least one nationally recognized statistical rating organization.

Pooled Collateral Requirements

The only legal method for pooled collateral arrangements in Ohio is through the Ohio Pooled Collateral System (OPCS)⁴⁹. ~~The treasurer of state created the OPCS July 1, 2017.~~ Under this program, public depositories that select the pledging method prescribed in Ohio Rev. Code § 135.18(A)(2) or Ohio Rev. Code § 135.37(A)(2), shall pledge to the treasurer of state a single pool of eligible securities for the benefit of all public depositors to secure the repayment of all uninsured public deposits at the public depository; provided that at all times the total market value of the securities so pledged is at least equal either of the following:

- (a) One hundred two percent of the total amount of all uninsured public deposits. (Ohio Rev. Code § 135.182(B)(1))
- (b) An amount determined by rules adopted by the treasurer of state that set forth the criteria for determining the aggregate market value of the pool of eligible securities pledged by a public depository pursuant to division (B) of this section. Such criteria shall include, but are not limited to, prudent capital and liquidity management by the public depository and the safety and soundness of the public depository as determined by a third-party rating organization. (Ohio Rev. Code § 135.182(B)(1))

NOTE: The treasurer of state shall monitor the eligibility, market value, and face value of the pooled securities pledged by the public depository. Each public depository shall carry in its accounting records at all times a general ledger or other appropriate account of the total amount of all public deposits to be secured by the pool, as determined at the opening of business each day, and the total market value of securities pledged to secure such deposits, and report such information to the treasurer of state in a manner and frequency as determined by the treasurer of state pursuant to rules adopted by the treasurer of state. **A public depositor shall be responsible for periodically confirming the accuracy of its account balances with the treasurer of state; otherwise, the treasurer of state shall be the sole public depositor responsible for monitoring and ensuring the sufficiency of securities pledged under this section.** (Ohio Rev. Code § 135.182(B)(2))

~~Effective March 2, 2022,~~ If, on any day, the total market value of the securities pledged by the public depository is less than that specified in a) and b) above, whichever is applicable, the public depository shall have two business days to pledge additional eligible securities having a market value sufficient, when combined with the market value of eligible securities already pledged, to satisfy the requirement

⁴⁹ If an entity maintains a pool outside of the OPCS, it should be considered non-compliance. Auditors should evaluate whether non-collateralized balances are material when determining how the citation will be communicated. Since financial auditors have no basis in determining what the risk of bank failure actually is, every situation of an illegal pool should be treated as a material non-compliance (depending on quantitative materiality of balances).

of a) and b) above, as applicable, to secure the repayment of all uninsured deposits at the public depository. (Ohio Rev. Code § 135.182(B)(3))⁵⁰

Also, in addition to the statutory requirements above, entities have the ability to negotiate a collateral rate greater than the minimum amounts required. Many entities may have local charter requirements or other agreements with their financial institutions putting these limits in place, auditors should test whether the OPCS has appropriately included such requirements.

The public depository shall designate a qualified trustee approved by the treasurer of state for the safekeeping of eligible pledged securities. [Ohio Rev. Code § 135.182(C)]

Ohio Admin. Code 113-40-01 (M) States: "Operating policies" means the set of operational procedures, policies, and requirements for the use of OPCS. All participation in OPCS and use of OPCS shall be subject to the operating policies, which are maintained at the sole discretion of the treasurer of state. The operating policies are available at <https://opcs.ohio.gov/login#/registrationforms>

Page 24 of those operating policies indicates: "PUs (Public Units or governments) are responsible for reviewing the reports posted on OPCS for their public funds deposits and for verifying the accuracy of their specific deposit details. PUs are responsible to report any deposit account discrepancies to their FIs (Financial Institutions). Additionally, PUs are to proactively inform their FIs of a significant change to the amount of their deposits within a reasonable timeframe. FIs may notify the Treasurer's Office if a PU repeatedly fails to inform them of a significant change in their deposit amount."

Ohio Rev. Code § 135.182(L)(1)) indicates some information in (or obtained from) the Ohio Pooled Collateral System is to be treated as "confidential and not a public record under Ohio Rev. Code § 149.43":

- (a) All reports or other information obtained or created about a public depository for purposes of division (B)(1)(b) of this section;
- (b) The identity of a public depositor's public depository;⁵¹
- (c) The identity of a public depository's public depositors.

However; the Treasurer of State may release or exchange such confidential information as required by law for the operation of the pooled collateral program.

Specific Pledged Collateral Requirements

Ohio Rev. Code § 135.18(B) indicates if a public depository elects to provide security pursuant to Ohio Rev. Code § 135.18(A)(1), the public depository must pledge eligible securities equal to at least one hundred five per cent.

Ohio Rev. Code § 135.18(C) says "the public depository and the public depositor shall first execute an agreement that sets forth the entire arrangement" which shall:

- meet the requirements of 12 U.S.C. § 1823(e)
- authorize the public depositor to obtain control of the collateral pursuant to Ohio Rev. Code § 1308.24(D).

⁵⁰ A shortfall of collateral pledged by a public depository at an entity's fiscal year end could impact the entity's custodial credit risk disclosure for deposits under GASB 40 as the amount of the deficiency would be considered uninsured and uncollateralized; however, if the shortfall is appropriately remedied within two business days under Ohio Rev. Code § 135.182(B)(3) this would not represent noncompliance.

⁵¹ Only the depository's name would need to be redacted, not the entire work paper. Even if the entity openly shares, auditors are still restricted from releasing information obtained from the OPCS.

Ohio Rev. Code § 135.18(E) says a public depository shall designate a qualified trustee⁵² and place the eligible securities with the trustee for safekeeping. The trustee shall:

- hold the eligible securities in an account indicating the public depositor's security interest in the securities⁵³, and
- report to the public depositor information relating to the securities pledged to secure the public deposits in the manner and frequency required by the public depositor.

Note: Any Federal Reserve Bank⁵⁴ or branch located in this state or Federal Home Loan Bank is qualified to act as trustee for the safekeeping of securities. And any institution mentioned in Ohio Rev. Code § 135.03 is qualified to act as trustee for the safekeeping of securities, other than those belonging to itself, under this section.

FDIC Insurance Coverage

12 C.F.R § 330.15 contains guidance for government (public unit) accounts. For coverage under the Government Accounts category, accounts are grouped into two categories:

- a. Demand Deposit Accounts: A Demand Deposit Account is a deposit that is payable on demand and for which the depository institution does not reserve the right to require at least seven days' written notice of an intended withdrawal. The following deposit types are included within the definition of Demand Deposit Accounts:
 - i. Checking (Non-Interest and Interest bearing)
- b. Time and Savings Accounts: The following deposit types are included within the definition of "Time and Savings"
 - i. NOW Account (these are deposits on which the depository institution has reserved the right to require at least 7 days written notice prior to withdrawal or transfer of any funds from the account)
 - ii. Savings
 - iii. Certificate of Deposit (CD)
 - iv. Money Market Deposit Account (MMDA)

A public unit (including a political subdivision) is insured through its official custodian. Government Accounts will be insured, for each official custodian, at each insured depository as follows:

In-State:

Up to \$250,000 for the combined amount of all time and savings accounts, and

Up to \$250,000 for all demand deposit accounts.

Out-of-State:

Up to \$250,000 for the combined total of all deposit accounts.

The term "political subdivision" is defined to include drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between the states. The term "political subdivision" also includes any subdivision or

⁵² All securities eligible as collateral are book-entry only and held at the Federal Reserve. The Federal Reserve Bank acts as the government's agent and holds the collateral securities in the government's name. Deposits secured by collateral held in these accounts are not subject to custodial credit risk disclosures if the government can provide evidence that pledge accounts held in the government's name are in existence at the Federal Reserve.

⁵³ While the statute does not explicitly mandate the securities be held in the name of the government, it is common practice to satisfy this requirement by doing so.

⁵⁴ The Federal Reserve Bank of Cleveland sometimes uses the Boston Federal Reserve Bank for safekeeping. We do not deem this arrangement to violate this provision.

principal department of a public unit (state, county, or municipality) if the subdivision or department meets the following tests:

- The creation of the subdivision or department has been expressly authorized by the law of such public unit;
- Some functions of government have been delegated to the subdivision or department by such law; and
- The subdivision or department is empowered to exercise exclusive control over funds for its exclusive use.

An official custodian is an officer, employee, or agent of a public unit having official custody of public funds and lawfully depositing the funds in an insured institution. In order to qualify as an official custodian, a person must have plenary authority - including control - over the funds. Control of public funds includes possession as well as the authority to establish accounts in insured depository institutions and to make deposits, withdrawals and disbursements.

One person may serve as official custodian of the deposits of more than one public unit. *In addition, a public unit may have two or more official custodians, all of whom will have separate insurance coverage for the deposits in their control.* To qualify for separate insurance coverage, however, each official custodian must have plenary authority, including control, over the deposits owned by the public unit.

Deposit insurance coverage cannot be increased by dividing funds among several putative official custodians who lack plenary authority over such funds. Similarly, coverage cannot be increased by dividing funds among several accounts controlled by the same official custodian for the same public unit. If the exercise of authority or control over the deposits of a public unit requires action by, or the consent of, two or more custodians, the FDIC would treat the two custodians acting together as one official custodian for the purpose of calculating deposit insurance coverage.

[Sources: [FDIC: Financial Institution Employee's Guide to Deposit Insurance](#) and [FDIC: Deposit Insurance for Accounts Held by Government Depositors](#)]

Due to the complexity of these requirements and analyses, AOS auditors should request their AOS attorney assigned to their region review and approve their determinations through Spiceworks. AOS Auditors should attach their analysis and all supporting documentation for their conclusion. In the event that AOS auditors feel the analysis is overly complex, AOS auditors may consult with AOS Legal to perform the analysis on their behalf.

Suggested Audit Procedures – Compliance (Substantive) Tests:

Determine whether the auditee had material deposits during the audit period with a financial institution enrolled in the OPCS (see listing with dates enrolled at <https://opcs.ohio.gov/login/>)

- a. ~~Complete procedures #1&2 for those in OPCS, and~~
- b. ~~Complete #3&4 for those not in OPCS~~

Procedures for Financial Institutions enrolled in OPCS

1. Obtain and review the AOS State Regions annual report related to the testing of the OPCS (<https://ohioauditor.gov/ipa/correspondence>)⁵⁵
2. Auditors may use credentials to access⁵⁶ [https://opcs.ohio.gov/login#/#](https://opcs.ohio.gov/login#/) and test compliance using the following steps:
 - a. Review *PU Attestation* and *PU Never Logged In Reports* for appropriate dates to:
 - i. Determine if the auditee is sufficiently monitoring the accuracy of its account balances as required. (Note: The Treasurer of State is responsible for monitoring and ensuring the sufficiency of securities pledged under Ohio Rev. Code § 135.182)
 - b. Review the *Deposit Information & Sufficiency Report* and/or *Public Unit Insufficiency Report* and perform the following:
 - i. Observe, document, and compare the year-end balance to confirmed balances in cash testing. (Note: Some completeness testing should also be performed to determine that all accounts that should be included in OPCS are actually included.)
 - ii. Observe, document, and print evidence of collateral sufficiency⁵⁷ for multiple dates during the audit period.

Note: When issuing comments for collateral insufficiencies⁵⁸, auditors should consider

1. *Is it a frequent occurrence?*
2. *Was it corrected immediately (i.e. within two business days as allowed by ORC 135.182(B)(3))?*
3. *Is the uncovered balance significant (based on applicable benchmarks)?*
4. *Did the entity inform the financial institution of deposits within a reasonable time as required by operating policies (see guidance above)?*

Note: For additional help on using OPCS reports see the AOS OPCS Training Manual available at <https://opcs.ohio.gov/login#/faqhelp>

⁵⁵ Testing performed by AOS State Region provides assurance over:

- Bank Rating System (SCALE)
- Collateral Sufficiency Calculations (meet Ohio Rev. Cod requirements)
- Security Interest Perfection

⁵⁶ AOS auditors should contact the helpdesk and IPA auditors should contact IPAcorrespondance@ohioauditor.gov to obtain credentials.

⁵⁷ “Collateral sufficiency” is variable based on approvals from the Treasurer of State (see Pooled collateral requirements in the Summary of Requirements above). Collateral sufficiency thresholds may be as low as 50% (effective date of approval for each financial institution can be found in OPCS), however, the default is 102% if the financial institution has not applied or been approved for the reduced amount.

⁵⁸ Consider, when issuing comments, that Ohio Rev. Code § 135.182 only requires the public unit to monitor the accuracy of its account balances. The Treasurer of State is legally required to monitor the sufficiency of securities pledged. However, collateral insufficiency for an extended period of time may be an indication that the public unit is not appropriately monitoring the accuracy of their account balances.

Procedures for Financial Institutions not enrolled in OPCS

1. Determine if the financial institution has an agreement with the entity for a specific pledge agreement (Note: pooled arrangements are not allowed outside of OPCS⁴⁹)
2. Compare depository balances to depository collateral during the audit period, noting maximum amounts on deposit at any time. Calculate (or inspect, if available, the government's calculations) if legal security was at least equal to 105% of depository balances. Focus audit procedures on the most recent fiscal year end, but based on your assessment of the control environment, the nature of collateral and other risks also consider whether you should evaluate the adequacy of collateral as of other dates during the audit when deposit or investment balances may have been materially higher, such as immediately after the receipt of tax settlements.
3. Inspect the financial institution's listing of pledged securities. Select a few securities and determine if the institution pledged only eligible securities. (When determining the extent of testing, auditors should consider that we do not require a high level of assurance, so a "few" items should be sufficient. Auditors can reduce or eliminate this testing based on the assessed level of control risk* and past experience with the financial institution. Therefore, if the government documents its review of collateral eligibility, or we have not noted eligibility problems in prior audits, we can reduce or eliminate this test.)

* "Control risk" in this context refers to the government's controls, if any, over reviewing their financial institutions' collateral lists. The AOS has no basis for assessing a financial institution's control risk.

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

2A-18 Compliance Requirement: Ohio Rev. Code §§ 135.35, 135.353, 135.354 and 339.061(D) - Eligible Investments for inactive county money (county hospitals may invest in these same securities, per Ohio Rev. Code § 339.06).

The provisions of Ohio Rev. Code Chapter 135 relating to counties (and county hospitals) are in separate sections from the provisions relating to all other subdivisions. However, in most cases the requirements are very similar.

Summary of Requirements:

The following classifications of securities and obligations are eligible for deposit or investment (*Note:* All investments, unless noted otherwise below, must mature within 5 years from the date of settlement [Ohio Rev. Code § 135.35(C)]):

- A. United States obligations or any other obligation guaranteed as to principal or interest by the United States, or any book entry, zero-coupon United States treasury security that is a direct obligation of the United States. [Ohio Rev. Code § 135.35(A)(1)]
- B. Stripped principal or interest obligations are not permitted. Except, Federally-issued or Federally-guaranteed stripped principal or interest obligations are permitted. [Ohio Rev. Code § 135.35(A)(1)]
- C. Bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality. All federal agency securities must be direct issuances of federal government agencies or instrumentalities. [Ohio Rev. Code § 135.35(A)(2)]
- D. Time certificates of deposit³⁰ or savings or deposit accounts, including passbook accounts, in any eligible institution mentioned in Ohio Rev. Code § 135.32. [Ohio Rev. Code § 135.35(A)(3)]
- E. Ohio Rev. Code §§ 135.353 and 135.354 also permits counties to use the IntraFi Network Deposits (formerly Certificate of Deposit Account Registry Services (CDARS)) or similar programs (one example is the Government Insured Deposit Program (GIDP)) meeting Ohio Rev. Code §§ 135.353 and 135.354 requirements. If a county purchases CDs for more than the FDIC limit (\$250,000), *See OCS step 2A-14*, with a bank participating in IntraFi Network Deposits (formerly CDARS) or similar program, the bank or program “redeposits” the excess amounts with other institutions. Each bank accepts less than \$250,000 so that all deposits have FDIC coverage. Ohio Rev. Code §§ 135.353 and 135.354 requires a county to place its deposits with an eligible depository per Ohio Rev. Code § 135.32. However, institutions the county’s depository places excess deposits with are not subject to Ohio Rev. Code § 135.32. For example, while the deposit must be initiated at an Ohio depository branch, the Ohio depository can purchase CDs from depositories outside of Ohio for the excess. Because all IntraFi Network Deposits (formerly CDARS) and GIDP deposits have FDIC coverage, the collateral requirements of Ohio Rev. Code §§ 135.18, 135.181, or 135.182 do not apply. (That is, these are *insured* deposits for GASB Statement No. 40 purposes.)
 1. Any CD’s purchased by a broker must be held in the name of the government. Also, the broker cannot be in possession of cash at any time. If we believe a broker has held cash for any length of time, AOS auditors should refer the matter to the Center for Audit Excellence and AOS Legal division for further evaluation. A way to verify compliance is to request monthly statements provided by the public depository located in Ohio. Ohio Rev. Code § 135.353(A)(3)(e) requires the initial public depository to provide public offices with a monthly account statement that includes the amount of its funds deposited and held at each bank, savings bank, or savings and loan association for which the public depository acts as a custodian pursuant to Ohio Rev. Code § 135.353. If a public office

does not have these statements, it may indicate that the money is being held by a broker-dealer in violation of Ohio Rev. Code § 135.353.

- F. Bonds and other obligations of this state or the political subdivisions of this state, provided the bonds or other obligations of political subdivisions mature within **ten years** from the date of settlement. [Ohio Rev. Code § 135.35(A)(4)]
1. Ohio Rev. Code § 135.35(C) allows the purchase of municipal debt of the State of Ohio or **any** political subdivision of the State with maturity periods greater than 10 years provided that the investment is specifically approved by the investment advisory committee.
- G. No-load money market mutual funds rated in the highest category at the time of purchase by at least one nationally recognized statistical rating organization or consisting exclusively of obligations described in Ohio Rev. Code § 135.143(A)(1), (2), or (6) and repurchase agreements secured by such obligations, if purchased from eligible institutions mentioned in Ohio Rev. Code § 135.32 (which are generally Ohio banks and national banks authorized to do business in **Ohio**.) [Ohio Rev. Code § 135.35(A)(5)]
- H. United States treasury bills, notes, bonds, or any other obligations or securities issued by the United States treasury or any other obligation guaranteed as to principal and interest by the United States; bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality or commercial paper rated in the highest category by two standard rating services (i.e. securities Ohio Rev. Code § 135.143(A)(1), (2), or (6) permits);
- I. The Ohio Subdivision's Fund (STAR Ohio³²) as provided in Ohio Rev. Code § 135.45. [Ohio Rev. Code § 135.35(A)(6)]
- J. Securities lending agreements with any eligible institution mentioned in Ohio Rev. Code § 135.32 that is a member of the Federal Reserve System or Federal Home Loan Bank, or with any recognized U.S. government securities dealer,⁵⁹ under the terms of which agreements in the investing authority lends securities and the eligible institution agrees to simultaneously exchange similar securities described in Ohio Rev. Code § 135.35(A)(1) or (2) or cash or both securities and cash, equal value for equal value. [Ohio Rev. Code § 135.35(A)(7)]
- K. Up to forty per cent of the county's total average portfolio in either of the following [Ohio Rev. Code § 135.35(A)(8)]:
1. **Commercial paper** issued by an "entity" that is defined in Ohio Rev. Code § 1706.01(K)⁶⁰(see definition below) and that has assets exceeding five hundred million dollars, to which all of the following apply:
 - a. The aggregate value of the notes does not exceed ten per cent of the aggregate value of the outstanding commercial paper of the issuing corporation.

⁵⁹ Ohio Rev. Code § 135.35(J)(1) defines these security dealers as being "a member of the financial industry regulatory authority (FINRA), through a bank, savings bank, or savings and loan association regulated by the superintendent of financial institutions, or through an institution regulated by the comptroller of the currency, federal deposit insurance corporation (FDIC), or board of governors of the federal reserve system."

⁶⁰ Ohio Rev. Code § 135.35(A)(8) refers to Ohio Rev. Code §§ 1705.01(D) and 1706.01(E). Ohio Rev. Code § 1705.01 was previously repealed and Ohio Rev. Code § 1706.01(E) actually defines "Contribution" rather than "Entity" therefore the Summary of Requirements in the Ohio Compliance Supplement have been updated to include the correct sections.

- b. The notes are rated at the time of purchase in the highest classification established by at least two nationally recognized statistical rating organizations.
 - c. The notes mature not later than 270 days after purchase.
 - d. The investment in commercial paper notes of a single issuer shall not exceed in the aggregate 5% of interim moneys available for investment at the time of purchase.
2. **Bankers' acceptances** of banks that are insured by the federal deposit insurance corporation and to which the obligations mature not later than one hundred eighty days after purchase.

No investment shall be made in commercial paper or bankers' acceptances unless the treasurer or governing board has completed additional training for making those investments. The type and amount of additional training shall be approved by the Treasurer of State and may be conducted by or provided under the supervision of the Auditor of State. See also OCS step 2B-6.

- L. Per Ohio Rev. Code § 135.35(A)(9), up to fifteen per cent of the county's total average portfolio in notes issued by corporations incorporated under U.S. law and that operate within the United States, or by depository institutions doing business under U.S. authority or any state's authority, and that operate within the United States, provided both of the following apply:
- o The notes are rated in one of the three highest categories by at least two nationally recognized statistical rating organizations at the time of purchase;
 - o The notes mature not later than three years after purchase.
- M. Per Ohio Rev. Code § 135.35(A)(10) up to 2% of its portfolio in the debt of foreign nations, if:
- o Rated at the time of purchase in the three highest categories by two nationally recognized statistical rating organizations
 - o The U.S. government recognizes it diplomatically.⁶¹
 - o All interest and principal shall be denominated and payable in United States funds.
 - o The foreign government guarantees the debt.
 - o Investments must mature within 5 years from the date of settlement.

"Entity" means a general partnership, limited partnership, limited liability partnership, limited liability company, association, corporation, professional corporation, professional association, nonprofit corporation, business trust, real estate investment trust, common law trust, statutory trust, cooperative association, or any similar organization that has a governing statute, in each case, foreign or domestic. [Ohio Rev. Code § 1706.01(K)]⁶⁰

The investing authority may also enter into a written repurchase agreement with any eligible institution mentioned in Ohio Rev. Code § 135.32 or any eligible dealer pursuant to Ohio Rev. Code § 135.35(J), under the terms of which agreement the investing authority purchases, and the eligible institution or dealer agrees unconditionally to repurchase any of the securities listed in divisions (D)(1) to (5) of § 135.18, except

⁶¹ As best as we can determine, the United States does not diplomatically recognize the following nations: ISIS, Islamic Emirate of Afghanistan, Iran, Syria, North Korea, as well as Abkhazia, Transnistria, and Somaliland (i.e., the last three are not considered independent countries). While the United States does have relations with Kosovo and the Holy See (despite the UN not recognizing them), they do not recognize Palestine or Western Sahara as countries, and therefore have no relations with either state. The United States also does not recognize the Republic of China as a sovereign nation, but do maintain informal relations with the "people of Taiwan" (i.e., the United States provides some assistance to Taiwan).

letters of credit described in division § 135.18(D)(2) are not permitted for repurchase agreements.⁶² The market value of securities subject to an overnight repurchase agreement must exceed the principal value of securities subject to a repurchase agreement by at least 2%.³⁴ A written repurchase agreement shall not exceed 30 days and the value of the securities must exceed the principal value by at least 2% and be marked to market daily. [Ohio Rev. Code § 135.35(D)]

- A. All securities purchased pursuant to a repurchase agreement are to be delivered into the custody of the investing authority or the qualified custodian of the investing authority or an agent designated by the investing authority⁶³. [Ohio Rev. Code § 135.35(D)]
- B. Repurchase agreements with an eligible securities dealer must be transacted on a delivery versus payment basis.
- C. Repurchase agreements must be in writing. For each transaction, the participating institution must provide:
 1. the par value of the securities;
 2. the type, rate, and maturity date of the securities;
 3. a numerical identifier (e.g., a CUSIP number), generally accepted in the industry, designating the securities.
- D. Securities which are the subject of a repurchase agreement may be delivered to the treasurer or held in trust by the participating institution if it is a designated depository of the subdivision for the current period of designation. [Ohio Rev. Code § 135.35(I)].

Agreements by which the investing authority agrees to sell securities owned by the county to a purchaser and agrees with that purchaser to unconditionally repurchase those securities (*Reverse Repos*) are prohibited.

Per Ohio Rev. Code § 135.14, Derivative investments are generally prohibited. A *Derivative* is a financial instrument or contract or obligation whose value or return is based upon or linked to another asset or index, or both, separate from the financial instrument, contract, or obligation itself.

- A. Per Ohio Rev. Code § 135.14(C), Any security, obligation, trust account, or other instrument that is created from an issue of the United States Treasury or is created from an obligation of a federal agency or instrumentality or is created from both is considered a derivative, and is prohibited.
 1. Except, An eligible investment described in Ohio Rev. Code § 135.14 with a variable interest rate payment or single interest payment, based upon a single index comprised of other eligible investments provided for in division (B)(1) or (2) of § 135.14 (see above), is **not** a derivative, if the variable rate investment has a maximum maturity of 2 years. [Ohio Rev. Code § 135.14(C)]
 - a. For example, a two-year investment in Federal securities with a variable interest rate indexed to other Federal securities would be legal, because Ohio Rev. Code § 135.14(C) expressly permits using Federal securities as part of a derivative if it matures within two years. Conversely, an investment indexed to an interbank offered rate³⁷ or to a bank's prime rate would not be legal because these are not listed in Ohio Rev. Code § 135.14(B)(1) or (B)(2).

⁶² Ohio Compliance Supplement Step 2A-17 summarizes Ohio Rev. Code § 135.18(D)(1) to (11).

⁶³ Counterparties (e.g. banks) accomplish this by maintaining a separate "customer" account at the Federal Reserve designated as a customer account. (For purposes of GASB Statement No. 40, we currently believe securities held in a customer account would not be exposed to custodial risk.)

2. *Note:* The Ohio Rev. Code still uses the derivative definition from GASB Technical Bulletin 94-1 (which was superseded by GASB Technical Bulletin 2003-1). GASB Statement No. 53 (GASB Cod. D40.103), defines derivatives differently than does the Ohio Revised Code. So, for legal compliance purposes, governments must follow the Ohio Rev. Code derivative definition. For financial reporting, GAAP governments must follow the GASB definition to value, present, and disclose derivatives.
 - a. For example, interest rate swaps³⁸ and energy futures contracts (which are allowable under Ohio Rev. Code § 9.835 to mitigate price fluctuations, and are not intended as investments) meet the GASB Statement No. 53 (GASB Cod. D40.103) derivative definition, and would be subject to GASB Statement No. 53 (GASB Cod. D40) derivative measurement and disclosure requirements, but are *not* illegal.
3. 1999 Op. Att’y. Gen. No. 99-026 deemed collateralized mortgage obligations to be illegal derivatives.
4. A treasury inflation-protected security (TIPS) is permissible for counties only, per Ohio Rev. Code § 135.35(B) [~~H.B. 225, effective 3/22/12 and then repealed 9/10/12, temporarily increased this to ten years.~~]

Per Ohio Rev. Code § 135.35(E): No investing authority can invest under § 135.35, unless the investing authority reasonably expects that the investment can be held until its maturity. The investing authority’s written investment policy should specify the conditions under which an investment may be redeemed or sold prior to maturity.

Per Ohio Rev. Code § 135.35(F), no investing authority may pay a county’s inactive moneys or moneys of a county library fund into an investment pool *other than*:

- A. the Ohio Subdivision’s Fund (STAR Ohio³²) pursuant to Ohio Rev. Code § 135.35(A)(6);
- B. a fund created solely for the purpose of acquiring, constructing, owning, leasing, or operating municipal utilities pursuant to Ohio Rev. Code § 715.02 or Ohio Const. Art XVIII, Section 4.

A county may not leverage its investments. (That is, a county cannot use its current investments as collateral to purchase other investments.) [Ohio Rev. Code § 135.35(G)]

A county cannot issue taxable notes for arbitrage purposes. [Ohio Rev. Code § 135.35(G)] (That is, a county cannot invest the proceeds of taxable notes hoping to earn a higher return on the proceeds than the interest rate on the TAN.)

A county cannot contract to sell securities it does not own. (These are called *short sales*, where a county purchases the rights to a security solely on the speculation that its price will decline.) [Ohio Rev. Code § 135.35(G)]

Title to investments made by a board of county hospital trustees of a charter county hospital with money received from the operation of the county hospital shall not be vested in the county, but shall be held in trust by the board. [Ohio Rev. Code § 339.061(D)]

Payment for investments shall be made only upon the delivery of securities representing such investments to the treasurer, investing authority, or qualified trustee. If the securities transferred are not represented by a certificate, payment shall be made only upon receipt of confirmation of transfer from the custodian by the treasurer, governing board, or qualified trustee. [Ohio Rev. Code § 135.35(J)(2)]

See related information on GASB Statement No. 40 in Appendix E-2 of the OCS Implementation Guide.

Suggested Audit Procedures – Compliance (Substantive) Tests:

Note: Some of the steps below require the same documentation / evidence auditors also use to support the *existence*, *valuation* and *classification* of investments. You can gain efficiency by combining the steps below with the substantive steps related to the aforementioned assertions.

Select a representative number⁶⁴ of investments and:

1. Read investment dealer confirmations* to determine if the investment is of a type authorized.

* **Note:** Dealer confirmations are suitable evidence supporting the details (e.g. part of the valuation [cost] and occurrence assertions) of an investment at the time of purchase. However, it provides no evidence the county still owned the investment as of its fiscal year end. Auditors should obtain other evidence to support existence at year end. The audit program should include suitable existence steps.

2. If the government holds financial instruments or contract or obligation whose value or return is “based upon or linked to another asset or index, or both, separate from the financial instrument,” consider whether the instrument is an illegal derivative.
 - a. If the instrument is not an interest-rate swap, or expressly permitted (such as energy futures under Ohio Rev. Code § 9.835), consult with the Center for Audit Excellence to determine its Legality, Valuation, Presentation and Disclosure.
3. Determine that the investments mature within the prescribed limits (generally no later than 5 years, or *other* periods for repurchase agreements [30 days], bankers’ acceptances and commercial paper [180 or 270 days, respectively, from the purchase date], or securities matched to debt maturities, etc.)
4. Inspect documentation supporting repurchase agreements and determine that:
 - a. The market values of securities exceed the principal values of securities subject to the overnight repurchase agreement by at least 2%. (**Note:** The risk of non-compliance increases when banks merge.)
 - b. A term repurchase agreement did not exceed 30 days and the values of the securities were marked to market daily.
 - c. Repurchase agreements were in writing, including the par value of the securities; the type, rate, and maturity date of the securities; and a numerical identifier.
5. For investments in Bankers’ Acceptances and Commercial Paper Notes, inspect documentation and determine whether the additional training was received.
6. Read the prospectus for money market mutual funds with which the government has significant investments. Determine whether the prospectus limits investments to those authorized under Ohio Rev. Code §§ 135.35(A)(1) & (A)(2) or 135.143(A)(1), (2), or (6).

⁶⁴ When judging “a representative number,” consider focusing on investments held at year end, but also consider testing other purchases and sales during the audit period. In judging how many purchases to test, consider the volume of purchases, the control environment, the adequacy of policies, and the results of prior audits.

7. Determine whether mutual funds, commercial paper, and any notes of U.S. corporations have the necessary credit rating issued by nationally recognized statistical rating organizations (such as that S&P, Moody's or Fitch issues).
8. Inspect dealer confirmations of the bankers' acceptances purchased and determine that the county has maintained related documentation that the:
 - a. Banks are insured by the Federal Deposit Insurance Corporation
 - b. Dealer confirmations should indicate if banker's acceptances were **NOT** eligible for purchase by the Federal Reserve System. Read the confirmation to determine whether the banker's acceptance was **ineligible**. (A statement of ineligibility would indicate an **ineligible** investment, per Ohio Rev. Code § 135.35(A)(8)(b).
9. Scan the county's computation of the composition of its investments. Determine if the portfolio contains ≤:
 - a. 2% foreign national securities
 - b. 15% debt of U.S. corporations
 - c. 40% commercial paper + bankers' acceptances
10. Scan investment records to determine whether the county is selling securities prior to maturity. If a significant number or amount of premature sales occurred:
 - a. Determine whether the premature sales complied with the county's policy regarding early redemption. (We believe the policy should generally require sufficient cash flow planning to support that the county had sufficient cash at the time of purchase so that a premature sale would not be needed to meet emergency cash flow needs. Forced premature sales often result in losses.)
 - b. Review the county's cash flow forecasts supporting that the county had reasonable support at the time of purchase that it could hold the security to maturity. If there is inadequate cash flow planning necessitating premature sales, cite this section and recommend the government improve its cash flow forecasting. The finding should also describe any losses the government suffered from these sales.

Note: The steps above should normally be sufficient for most counties. Because we believe the risk of counties engaging in certain prohibited activities such as leveraging, short sales or arbitrage violations is low, there are no steps included to test these requirements. You should scan the other requirements in this step, and based on your knowledge of the county's investing activities, investigate them if evidence suggests the county may have materially violated these requirements.

<p>Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>
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2A-19 Compliance Requirement: Ohio Rev. Code §§ 135.35 and 339.061(B) – Other County and County Hospital [Ohio Rev. Code § 339.06] Requirements.

Summary of Requirements:

Investments or deposits under Ohio Rev. Code § 135.35 cannot be made unless a written investment policy approved by the investing authority (for hospitals, the authority is the county hospital board, per Ohio Rev. Code § 339.06) is on file with the Auditor of State. If a written investment policy is not filed with the Auditor of State, the investing authority may invest only in certificates of deposit, savings or deposit accounts⁶⁵, STAR Ohio³², or no-load money market mutual funds. [Ohio Rev. Code § 135.35(K)(1)&(2)]

The investment policy must be signed by:

- All entities conducting investment business with the investing authority (except the Treasurer of State);
- All brokers, dealers, and financial institutions, described in Ohio Rev. Code § 135.35(J)(1), initiating transactions with the investment authority by giving advice or making investment recommendations;
- All brokers, dealers, and financial institutions, described in Ohio Rev. Code § 135.35(J)(1), executing transactions initiated by the investing authority.

The investing authority is required to inventory all obligations and securities. The inventory includes a description of each obligation or security, including type, cost, par value, maturity date, settlement, date, and any coupon rate. [Ohio Rev. Code § 135.35(L)(1)]

The investing authority is required to keep a complete record of all purchases and sales of the obligations and securities. [Ohio Rev. Code § 135.35(L)(2)]

The investing authority is required to keep a monthly portfolio report and issue a copy of the monthly report describing its investments to the county investment advisory committee. This report indicates: [Ohio Rev. Code § 135.35(L)(3)]

- the current inventory of all obligations and securities,
- all transactions during the month that affected the inventory,
- any income received from the obligations and securities, and
- any investment expenses paid.
- The names of any persons executing transactions on behalf of the investing authority.

The inventory and the monthly portfolio report are public records and must be filed with the board of county commissioners and the Treasurer of the State of Ohio. [Ohio Rev. Code § 135.35(L)(5)]

Any securities, certificates of deposit, deposit accounts, or any other documents evidencing deposits or investments must be issued in the name of the county with the county treasurer or investing authority as the designated payee. [Ohio Rev. Code § 135.35(H)]

If any such deposits or investments are registerable as to principal and/or interest, they must be registered in the name of the treasurer. [Ohio Rev. Code § 135.35(H)]

⁶⁵ The Government Insured Deposit Program (GIDP) (which replaced Star Plus) would be considered a deposit and no signed investment policy would be necessary for deposits in this program.

The investing authority is responsible for safekeeping documents evidencing a deposit or investment. Securities and documents confirming the purchase of securities under any repurchase agreement may be deposited with a qualified trustee. [Ohio Rev. Code § 135.35(I)]

The investing authority, board of county hospital trustees of a charter county hospital, is responsible for holding and administering all money received from the operation of the county hospital. This includes money arising from rendering medical services to patients and all other fees, deposits, charges, receipts, and income received as the result of the operation of the county hospital and medical staff. [Ohio Rev. Code § 339.061(B)]

- A. Money must be invested according to an investment policy which provides the following:
1. At least 25% of the average amount of the investment portfolio over the course of the preceding fiscal year must be invested as a reserve in U.S. governmental securities, the Ohio Subdivisions Fund, Ohio state or political subdivision securities, certificates of deposit issued by national banks located in Ohio, repurchase agreements with Ohio financial institutions that are members of the Federal Reserve System or Federal Home Loan Bank, money market funds, or bankers' acceptance maturing within 270 days or less;
 2. Money not required to be invested as a reserve may be pooled with other institutional funds and invested;
 3. An investment committee is to be created and meet quarterly to review revisions to the board's investment policy and advise the board on investments.
 4. If an investment advisor is retained, they must be licensed by the Division of Securities or registered with the U.S., Securities and Exchange Commission, and must have experience in the management of investments of public funds and investment of state government portfolios, or be an institution that is eligible to be a public depository. [Ohio Rev. Code § 339.061(C)]

Where securities, including securities which are the subject of a repurchase agreement, have been delivered to a qualified trustee for safekeeping, the qualified trustee must report on request to the treasurer, governing board, Auditor of State, or authorized IPA as to the identity, market value, and location of the document evidencing each security.

All investments in securities except investments described in Ohio Rev. Code § 135.35(A)(5), (6), and (11) [no load money market mutual funds and certain repos] are required to be made through

- members of the Financial Industry Regulatory Authority (FINRA), or
- institutions regulated by the Superintendent of Banks, Superintendent of Savings and Loan Associations, Comptroller of the Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System. [Ohio Rev. Code § 135.35(J)(1)]

Payment for investments may be made only upon delivery of the securities to the treasurer, investing authority, or qualified trustee, or, if in book-entry form, only upon confirmation of delivery to such parties. [Ohio Rev. Code § 135.35(J)(2)]

Suggested Audit Procedures – Compliance (Substantive) Tests:

1. Read the county's investment policy for the period.

2. Inspect documentation that the investment policy was filed with the Auditor of State (Investment policies filed with AOS have been scanned and are posted on S:\Final Audit PDF. Click on the Region/County/Entity name.⁶⁶).
3. Inspect the policy for the requisite signatures:
 - a. All entities conducting investment business with the county (except the Treasurer of State);
 - b. All brokers, dealers, and financial institutions initiating transactions with the county by giving advice or making investment recommendations;
 - c. All brokers, dealers, and financial institutions executing transactions initiated by the county.
 - d. Select a representative number of investments made by the entity and determine whether the investments are in accordance with the county's investment policy as adopted by the county's legislative body.
4. Determine if the policy requires financial institutions, brokers and dealers to comply with Ohio Rev. Code Chapter 135. (There is no legal requirement to include this, but if the policy does not include this requirement, we should recommend the government amend their policy to require compliance.)
5. If there is no written investment policy filed with the Auditor of State, scan the county's investment portfolio for the period to determine that it is composed solely of certificates of deposit, savings or deposit accounts⁶⁵, STAR Ohio³², or no-load money market mutual funds.
6. Select a representative number⁶⁷ or amount of investments and:
 - a. Inspect documentation that any designated payee is the treasurer or treasurer's office; and that registerable securities are registered in the treasurer's name.
 - b. Inspect purchase documents and determine that investments were made through appropriate parties: members of the National Association of Securities Dealers, Inc., or institutions regulated by the Superintendent of Banks, Superintendent of Savings and Loan Associations, Comptroller of the Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System. Compare purchase dates and payments and determine that payment for securities was made upon delivery of the securities or upon receipt of confirmation of transfer from the custodian. Any CD's purchased by a broker must be held in the name of the government. Also, the broker cannot be in possession of cash at any time. If we believe a broker has held cash for any length of time, AOS auditors should refer the matter to the Center for Audit Excellence and AOS Legal division for further evaluation. A way to verify compliance is to request monthly statements provided by the public depository located in Ohio. Ohio Rev. Code § 135.144(A)(5) requires the initial public depository to provide public offices with a monthly account statement that includes the amount of its funds deposited and held at each bank, savings bank, or savings and loan association for which the public depository acts as a custodian pursuant to Ohio Rev. Code § 135.144. If a public office does not have these statements, it may indicate that the money is being held by a broker-dealer in violation of Ohio Rev. Code § 135.144.

⁶⁶ Any investment policies received prior to 1/2021 were retained on the S drive and not migrated to eServices/GP; any received after that date are saved only in GP.

⁶⁷ When judging "a representative number," consider focusing on investments held at year end, but also consider testing other purchases and sales during the audit period. In judging how many purchases to test, consider the volume of purchases, the control environment, the adequacy of policies, and the results of prior audits.

- c. Inspect copies of the investing authority’s (i.e. treasurer’s) inventory documents: scan the documents and determine if it appears the inventory includes a description of each obligation or security, including type, cost, par value, maturity date, settlement, date, and any coupon rate; the inventory reflects a complete record of all purchases and sales of the obligations and securities; and that the county is keeping a monthly portfolio report and is issuing a ~~monthly~~ quarterly portfolio investment report describing its investments to the county investment advisory committee.

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

2A-20 Compliance Requirement: Ohio Rev. Code § 2335.25 - Cashbook of County costs; Ohio Rev. Code § 1901.31 – Municipal court records; Ohio Rev. Code § 1905.21 – Disposition of fines and other moneys for mayor’s court.

Summary of Requirement: Each clerk of courts must maintain a journal, cashbook, listing of all receipts and disbursements, or account for all fines, forfeitures, fees, and costs collected.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: Due to the large volume of over the counter cash receipts and the complexity of statutory fines and fees, the risk of noncompliance in courts is inherently higher. In assessing the risk of noncompliance, auditors should consider whether courts have historically demonstrated effective internal controls and compliance with applicable requirements. Additionally, adequate training of court personnel, segregation of duties, and supervisory monitoring controls can help mitigate the risk of noncompliance with court requirements.

Suggested Audit Procedures - Compliance (Substantive) Tests:

Determine if a cashbook or similar listing of cash receipts and disbursements is maintained. (***Note:*** We will normally know this from performing financially-related audit procedures.)

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

SECTION B: STATUTORILY MANDATED TESTS

2B-1 Compliance Requirement: Ohio Rev. Code §§ 117.16 (A); 117.161, 723.52, 5517.02, and 5517.021 – Force accounts – **[Certain] Municipal Corporations [Cities/Villages]**. *This statute does not apply to a charter city or charter village pursuant to Ohio Rev. Code § 723.53.*

Summary of Requirements:**AOS Force Account Project Assessment Form (See note below for Ohio Department of Transportation Projects)**

A director of public service in a city, or the legislative authority of a village, is required to estimate the costs of any “contract” for the construction, reconstruction, widening, resurfacing, or repair of a street or other public way using the Auditor of State’s force account project assessment form. *Note: the use of this form is required for contracted work pursuant to Ohio Rev. Code § 723.52 and for force account projects pursuant to Ohio Rev. Code § 117.16(A).*

The Auditor of State’s prescribed form [required by Ohio Rev. Code § 117.16(A)] for this purpose can be found on our website at the following link:

<http://www.ohioauditor.gov/references/development/ElectronicForceAccountProjectAssessmentForm.xls>

Clarified Guidance for Force Accounts Undertaken as part of a Federally-Funded Local Project Agreement with ODOT:

Local governments that are performing Force Account work as part of a Federally-funded (in whole or in part) project under an LPA agreement with ODOT can no longer use the safe harbor rates. This is due to changes brought about by the Uniform Guidance Act and the Federal Highway Administration’s termination of Ohio’s waiver program. While local governments that are party to an LPA agreement with ODOT may not use safe harbor percentages for projects beginning in 2016 or later, ODOT does provide alternative guidance for Force Accounts in their CMS Manual ([ODOT Construction and Material Specifications manual](#)). Auditors testing Assistance Listing nos., 20.205, 20.219, or 23.003 as a major program should be aware of this during their single audit compliance testing.

Clarified Guidance for Force Accounts Undertaken Strictly by the Local (i.e., NOT as part of a Federally-Funded Local Project Agreement with ODOT):

Where local governments undertake a project by Force Account solely under their own local authority, local governments are permitted to apply the safe harbor percentages in computing their estimated costs. If the local government uses the safe harbor percentages, the auditor may accept them without further analysis. Or, as an alternative, the local government may develop its own percentages for the add-ons for labor fringes and overhead costs, and materials overhead costs; however, the local government must be able to provide documentation to its auditor to justify the reasonableness of the self-computed percentage add-ons.

Joint Projects (See note below for Ohio Department of Transportation Projects)

Joint projects undertaken by 2 or more of the affected entities require that the higher force account limits of the participating parties be applied [Ohio Rev. Code § 117.161]. Participating entities shall not aggregate their respective limits, and the share of each entity shall not exceed its respective force account limit. Calculating the proper project force account limits and the share thereof to each participating party should be memorialized in the contracts or other agreements between the parties. One of the participating entities shall complete the force account project form prior to proceeding by force account. An entity shall not proceed with a joint force account project if any one of them is subject to reduced force account limits under Ohio Rev. Code § 117.16(C) or (D).

Bid Specifications (See note below for Ohio Department of Transportation Projects)

If the city or village has an engineer or someone performing the duties and functions of an engineer, then that person may develop the estimates.

Effective June 30, 2023, when the estimated cost of the total project, including labor, exceeds \$70,000, the city or village must invite and receive competitive bids from private contractors for completing the work. However, force accounts **may** be used if the city or village rejects all bids. The force account work must be performed in compliance with the plans and specifications upon which the private contractor bids were based.⁶⁸ [Ohio Rev. Code § 723.52]

On the first day of July of every year beginning in 2024, the threshold amount established in this section shall increase by an amount not to exceed the lesser of five per cent, or the percentage amount of any increase in the department of transportation's construction cost index as annualized and totaled for the prior calendar year. The director of transportation shall notify each appropriate engineer or other officer of the increased amount. [Ohio Rev. Code § 723.52] The July 1, 2021 to June 30, 2023 force account limit for locals is \$30,516 for the total project. The July 1, 2023 to June 30, 2024 force account limit for locals is \$70,000 for the total project. The July 1, 2024 to June 30, 2025 force account limit for locals is \$73,500 for the total project. (<https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/maintenance-operations/force-account>).

The terms “construction, reconstruction, widening, resurfacing, or repair of a street or other public way” are not defined in this Ohio Rev. Code section. The city or village’s legal counsel or engineer should define these terms for the city or village. The Auditor of State will accept those definitions unless they are palpably and manifestly arbitrary or incorrect. *If the entity’s legal counsel, and/or engineer, as appropriate, did not define the indicated terms for the entity, indicate the same in your draft report. Consult with CFAE and the AOS’s Legal department concerning any issues involving a potential finding or citation as directed in the Audit Findings section of the Implementation Guide.*

Note: The following applies to Ohio Department Of Transportation Projects AND municipal projects performed in conjunction with the Ohio Department Of Transportation ([AOS Bulletin 2015-003](#))

Force Account Limits (Ohio Rev. Code § 5517.02)

On July 1, 2013, the statutory limits for ODOT force account projects increased from \$25,000 to \$30,000 per mile of highway and from \$50,000 to \$60,000 for any traffic control signal or any other single project. The changes also require the ODOT Director to increase these limits on the first day of July of every odd-numbered year beginning in 2015 by an amount to not exceed the lesser of three per cent or the percentage increase in ODOT’s construction cost index, as annualized and totaled for the two prior calendar years. The July 1, 2021 to June 30, 2023 rates are \$32,159 per mile of highway and \$64,318 per traffic signal or other single project. The July 1, 2023 to June 30, 2025 rates are \$33,124 per mile of highway and \$66,248 per traffic signal or other single project. The Director shall publish the applicable amounts on ODOT’s website (<https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/maintenance-operations/force-account>).

⁶⁸ Occasionally, change orders may be necessary for force account projects. Change orders may be made for overruns in actual construction as long as: (1) the original estimate was made in good faith and (2) the change order request was for a legitimate unforeseen issue. Change orders to force account projects may constitute noncompliance if, however, estimates were intentionally low-balled to arrive under the bidding limits (e.g., not estimating the cost of labor or evidence that the entity knew from previous experience that a minimum amount of material would be required to complete a project but was not included in the original force account project estimate or was included at clearly insufficient amounts). Auditors should use professional skepticism when auditing force account project change orders and consult with AOS Legal Division or CFAE as needed.

Work Exempt from Competitive Bidding/Force Account Requirements (Ohio Rev. Code § 5517.021)

Certain work that may be undertaken by ODOT that does not require competitive bidding:

- Replace any single span bridge in its substantial entirety or widen any single span bridge, including necessary modifications to accommodate widening the existing substructure and wing walls. The deck area of the new or widened bridge may not exceed 700 square feet as measured around the outside perimeter of the deck.
- Replace the bearing, beams, and deck of any bridge on that bridge's existing foundation if the deck area of the rehabilitated structure does not exceed 800 square feet.
- Construct or replace any single cell or multi-cell culvert whose total waterway opening does not exceed 52 square feet.
- Pave or patch an asphalt surface if the operation does not exceed 120 tons of asphalt per lane-mile of roadway length. The department may not perform a continuous resurfacing operation under this section if the cost of work exceeds the amounts established in Ohio Rev. Code § 5517.02.
- Approach roadway work, extending not more than 150 feet as measured from the back side of the bridge abutment wall or outside the edge of the culvert, as applicable. The length of the approach guardrail shall be in accordance with ODOT's design requirements and shall not be included in the approach work size limitation.

These projects are not subject to the force account requirements of Ohio Rev. Code § 117.16, do not require an estimate, and are exempt from audit for force account purposes except to determine compliance with applicable size or tonnage restrictions.

Force Account Assessment Forms (Ohio Rev. Code § 117.16)

Ohio Rev. Code § 117.16 requires that, before undertaking a project by force account, a public entity must estimate the cost of the project using a form approved by the Auditor of State. With projects constructed by or in conjunction with ODOT, an estimate may be prepared using the Department's automated system (currently the Enterprise Information Management System (EIMS), which replaced the Transportation Management System (TMS), effective June 16, 2014) or other internal standardized forms. Such estimates are acceptable in lieu of the Auditor of State's force account project assessment form provided all the necessary elements of an estimate, as required by Ohio Rev. Code § 117.16, are included. However, whether prepared using the AOS form, the electronic ODOT system, or another standard ODOT form, an estimate is required to be completed and documentation supporting the estimate should be retained for **ALL** projects, unless specifically exempted by Ohio Revised Code. If the total estimated cost exceeds the statutory limits defined in Ohio Revised Code, the project must be competitively bid.

Ohio Attorney General Opinion 2008-007⁶⁹ briefly provides:

- Completing the Auditor of State's force account project assessment form estimating the cost of the work constitutes commencement of the project for purposes of determining which force account limit is in effect and applicable to the project;

⁶⁹ Although the opinion was issued in response to a County's inquiry, the Auditor of State will apply this guidance to each public office undertaking force account projects.

- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;
- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;
- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

Noncompliance

Note: These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the decreased⁷⁰ force account limits. Certified Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code § 117.12.

Suggested Audit Procedures - Compliance (Substantive) Tests:

Note: For ODOT projects, ODOT forms may be used in place of an Auditor of State form. You should test whichever form is appropriate for your project.

1. Read the minutes, inquire of management, and scan expenditures to reasonably determine if any capital construction or maintenance activity relating to a street or other public way took place during the audit period. Determine if such projects were undertaken using force accounts.
2. If such projects were undertaken, inspect a representative number of the entity's completed Auditor of State Uniform Force Account Project Assessment or ODOT forms. Trace wage rates, etc. to entity supporting documentation on a test basis.
3. Inspect the Auditor of State's project assessment or ODOT forms prepared by the entity and determine that work undertaken by force account for construction, reconstruction, widening, resurfacing, or repair of a street or other public way was documented to not exceed the amounts documented in the Summary of Requirements above.
4. Obtain supporting documentation of the labor fringe benefits or overhead rates, or materials overhead rates and review for reasonableness. (See clarified guidance in the requirements regarding the Safe Harbor Rule.)
5. Compare the actual projects' costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates.

⁷⁰ For a municipal corporation, the reduced limit shall be one-third of that municipal corporation's force account limits for the construction, reconstruction, widening, resurfacing or repair of a street or other public way. [Ohio Rev. Code § 117.16(C)(1)(c)] Refer to Ohio Rev. Code § 117.16 (C) & (D) if an entity violates force account restrictions for 2 or more times or related to a joint project.

Evaluate for reasonableness of the estimates. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.

6. Whether such projects have been undertaken or not, add language to the audit management representation letter affirming or disaffirming the existence of projects subject to the applicable force account provisions.

Note: with “force account” provisions, it is possible to have non-compliance with the preparation of the Auditor of State form; with the bidding limits; or with both.

7. If the “force account” limits have been violated – that is, the municipal corporation did the work by force account even though it should have been bid – then the Auditor of State is required to notify the entity [and possibly the State tax commissioner] of the penalty provisions. Auditors should indicate in this block of the OCS if the Auditor of State is to notify the entity\State tax commissioner of any of the penalty provisions. Auditor of State auditors should include this in the executive summary. IPAs should notify the Auditor of State Center for Audit Excellence.

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

2B-2 Compliance Requirement: Ohio Rev. Code §§ 117.16(A); 5517.02, 5517.021 and 5543.19 – Force accounts - Counties.

Summary of Requirements:

AOS Force Account Project Assessment Form (See note below for Ohio Department of Transportation Projects)

A county engineer, when authorized by the county commissioners, may utilize county labor and materials when undertaking the construction, reconstruction, improvement, maintenance, or repair of **roads**. Before undertaking force account activity for **construction** or **reconstruction**, including **widening** and **resurfacing**, of **roads**, an estimate of the cost of the road work must be compiled using the Auditor of State's force account project assessment form. Effective June 30, 2023, when the estimated cost of the total project, including labor,⁷¹ exceeds \$70,000 per mile, the county commissioners must invite and receive competitive bids from private contractors for completing the **road** work. [Ohio Rev. Code § 5543.19 (A)]

*Note: Neither Ohio Rev. Code § 5543.19(A) nor § 117.16(A) require using the Auditor of State's force account project assessment form for the **improvement, maintenance or repair** of roads. However, § 5543.19(B) explicitly requires force account assessment forms for **construction, reconstruction, improvement, maintenance or repair** of bridges or culverts.*

The Auditor of State's prescribed form [required by Ohio Rev. Code § 117.16(A)] for this purpose can be found on our website at the following link:

<http://www.ohioauditor.gov/references/development/ElectronicForceAccountProjectAssessmentForm.xls>

Clarified Guidance for Force Accounts Undertaken as part of a Federally-Funded Local Project Agreement with ODOT:

Local governments that are performing Force Account work as part of a Federally-funded (in whole or in part) project under an LPA agreement with ODOT can no longer use the safe harbor rates. This is due to changes brought about by the Uniform Guidance Act and the Federal Highway Administration's termination of Ohio's waiver program. While local governments that are party to an LPA agreement with ODOT may not use safe harbor percentages for projects ~~beginning in 2016 or later~~, ODOT does provide alternative guidance for Force Accounts in their CMS Manual ([ODOT Construction and Material Specifications manual](#)). Auditors testing Assistance Listing nos., 20.205, 20.219, or 23.003 as a major program should be aware of this during their single audit compliance testing.

Clarified Guidance for Force Accounts Undertaken Strictly by the Local (i.e., NOT as part of a Federally-Funded Local Project Agreement with ODOT):

Where local governments undertake a project by Force Account solely under their own local authority, local governments are permitted to apply the safe harbor percentages in computing their estimated costs. If the local government uses the safe harbor percentages, the auditor may accept them without further analysis. Or, as an alternative, the local government may develop its own percentages for the add-ons for labor fringes and overhead costs, and materials overhead costs; however, the local government must be able to provide documentation to its auditor to justify the reasonableness of the self-computed percentage add-ons.

Joint Projects (See note below for Ohio Department of Transportation Projects)

Joint projects undertaken by 2 or more of the affected entities require that the higher force account limits of the participating parties be applied [Ohio Rev. Code § 117.161]. Participating entities shall not aggregate their respective limits, and the share of each entity shall not exceed its respective force account limit. Calculating the proper project force account limits and the share thereof to each participating party should

⁷¹ Pursuant to 2008 Op. Att'y. Gen. No. 2008-007, any work subcontracted to private contractors should be included in the total cost of the project to determine if the project should be bid.

be memorialized in the contracts or other agreements between the parties. One of the participating entities shall complete the force account project form prior to proceeding by force account. An entity shall not proceed with a joint force account project if any one of them is subject to reduced force account limits under Ohio Rev. Code § 117.16(C) or (D).

Bid Specifications (See note below for Ohio Department of Transportation Projects)

Various terms, such as **road maintenance and repair, construction and reconstruction**, are not defined in the Ohio Rev. Code sections discussed in the individual subsections below. We indicate in each such section that the Auditor of State will accept definitions from the entity's legal counsel, and/or county engineer, as appropriate, unless the definitions are palpably and manifestly arbitrary or incorrect. *If the entity's legal counsel, and/or county engineer, as appropriate, did not define the indicated terms for the entity, indicate the same in your draft report. Consult with CFAE and the AOS's Legal department concerning any issues involving a potential finding or citation as directed in the Audit Findings section of the Implementation Guide.*

A county engineer, when authorized by the county commissioners, may utilize county labor and materials when undertaking the construction, reconstruction, improvement, maintenance, or repair of **bridges and culverts**. Before undertaking force account activity, an estimate of the cost of the bridge/culvert work must be compiled using the Auditor of State's force account project assessment form. Effective June 30, 2023, when the estimated cost of the work exceeds \$233,000, the county commissioners must invite and receive competitive bids from private contractors for completing the **bridge/culvert** work [Ohio Rev. Code § 5543.19 (B)].

On the first day of July of every year beginning in 2024, the threshold amounts established in this section shall increase by an amount not to exceed the lesser of five percent, or the percentage amount of any increase in the department of transportation's construction cost index as annualized and totaled for the prior calendar year. The director of transportation shall notify each appropriate county engineer of the increased amount. [Ohio Rev. Code § 5543.19 (C)] The July 1, 2021 to June 30, 2023 force account limit for locals are \$101,702 for Bridges/Culverts and \$30,516 per mile. The July 1, 2023 to June 30, 2024 force account limit for locals are \$233,000 for Bridges/Culverts and \$70,000 per mile. The July 1, 2024 to June 30, 2025 force account limit for locals are \$244,650 for Bridges/Culverts and \$73,500 per mile.

(<https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/maintenance-operations/force-account>).

Note: The following clarifies how all entity types subject to force account limits should measure these limits for fractions of miles (The amounts in the example are relevant to force accounts effective June 30, 2023. See above for current rates to use.):

“A county must bid a project involving construction or reconstruction of a road if it exceeds \$70,000 per mile. However, it is unclear whether the limit for a 1.5 mile project would be \$105,000 (\$70,000 for the first mile, \$35,000 for the partial second mile), or \$140,000 (\$70,000 for each mile – full or partial – of the project). We determined that it was appropriate to consider the legislative intent separately for projects under one mile and for projects exceeding one mile.

For projects exceeding one mile, we determined that the intent of these statutes was to apply the limits proportionally for partial miles. In other words, for the example of the county cited above, the applicable force account limit would be \$105,000.

For projects less than a mile, the interpretation above would cause problems. In the example of a county commencing a small road repair project of one-tenth of a mile, a proportional limit would require the county to bid the project if it exceeded \$7,000 (one tenth of the \$70,000 per mile limit). We did not believe that this was the result intended by the legislature, so for projects of less than a mile, the entire

per mile limit (in the case of the county in our example, \$70,000) will apply. In other words, any project that is less than a mile (regardless of distance) is to be treated as if it were a mile and subjected to the entity's corresponding monetary limit."

Note: The following applies to Ohio Department Of Transportation Projects AND county projects performed in conjunction with the Ohio Department Of Transportation ([AOS Bulletin 2015-003](#))

Force Account Limits (Ohio Rev. Code § 5517.02)

On July 1, 2013, the statutory limits for ODOT force account projects increased from \$25,000 to \$30,000 per mile of highway and from \$50,000 to \$60,000 for any traffic control signal or any other single project. The changes also require the ODOT Director to increase these limits on the first day of July of every odd-numbered year beginning in 2015 by an amount to not exceed the lesser of three per cent or the percentage increase in ODOT's construction cost index, as annualized and totaled for the two prior calendar years. The July 1, 2021 to June 30, 2023 rates are \$32,159 per mile of highway and \$64,318 per traffic signal or other single project. The July 1, 2023 to June 30, 2025 rates are \$33,124 per mile of highway and \$66,248 per traffic signal or other single project. The Director shall publish the applicable amounts on ODOT's website (<https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/maintenance-operations/force-account>).

Work Exempt from Competitive Bidding/Force Account Requirements (Ohio Rev. Code § 5517.021)

Certain work that may be undertaken by ODOT that does not require competitive bidding:

- Replace any single span bridge in its substantial entirety or widen any single span bridge, including necessary modifications to accommodate widening the existing substructure and wing walls. The deck area of the new or widened bridge may not exceed 700 square feet as measured around the outside perimeter of the deck.
- Replace the bearing, beams, and deck of any bridge on that bridge's existing foundation if the deck area of the rehabilitated structure does not exceed 800 square feet.
- Construct or replace any single cell or multi-cell culvert whose total waterway opening does not exceed 52 square feet.
- Pave or patch an asphalt surface if the operation does not exceed 120 tons of asphalt per lane-mile of roadway length. The department may not perform a continuous resurfacing operation under this section if the cost of work exceeds the amounts established in Ohio Rev. Code § 5517.02.
- Approach roadway work, extending not more than 150 feet as measured from the back side of the bridge abutment wall or outside the edge of the culvert, as applicable. The length of the approach guardrail shall be in accordance with ODOT's design requirements and shall not be included in the approach work size limitation.

These projects are not subject to the force account requirements of Ohio Rev. Code § 117.16, do not require an estimate, and are exempt from audit for force account purposes except to determine compliance with applicable size or tonnage restrictions.

Force Account Assessment Forms (Ohio Rev. Code § 117.16)

Ohio Rev. Code § 117.16 requires that, before undertaking a project by force account, a public entity must estimate the cost of the project using a form approved by the Auditor of State. With projects constructed by or in conjunction with ODOT, an estimate may be prepared using the Department's automated system (currently the Enterprise Information Management System (EIMS), which replaced the Transportation Management System (TMS), effective June 16, 2014) or other internal standardized forms. Such estimates are acceptable in lieu of the Auditor of State's force account project assessment

form provided all the necessary elements of an estimate, as required by Ohio Rev. Code § 117.16, are included.

However, whether prepared using the AOS form, the electronic ODOT system, or another standard ODOT form, an estimate is required to be completed and documentation supporting the estimate should be retained for **ALL** projects, unless specifically exempted by Ohio Revised Code. If the total estimated cost exceeds the statutory limits defined in Ohio Revised Code, the project must be competitively bid.

Ohio Attorney General Opinion 2008-007⁶⁹ briefly provides:

- Completing the Auditor of State’s force account project assessment form estimating the cost of the work constitutes commencement of the project for purposes of determining which force account limit is in effect and applicable to the project;
- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;
- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;
- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

Noncompliance

Note: These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the decreased⁷² force account limits. Certified Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code § 117.12.

Suggested Audit Procedures - Compliance (Substantive) Tests:

Note: For ODOT projects, ODOT forms may be used in place of an Auditor of State form. You should test whichever form is appropriate for your project.

1. Read the minutes, inquire of management, and scan expenditures to reasonably determine if any road capital construction or maintenance activity took place during the audit period. Determine if such projects were undertaken using force accounts.

⁷² For a county, the reduced limit shall be one-third of that county’s force account limits for construction or reconstruction of a road and one-third of that county’s force account limits for construction, reconstruction, maintenance or repair of a bridge or culvert. [Ohio Rev. Code § 117.16(C)(1)(a)] Refer to Ohio Rev. Code § 117.16 (C) & (D) if an entity violates force account restrictions for 2 or more times or related to a joint project.

2. If such projects were undertaken, inspect a representative number of the entity’s completed Auditor of State Uniform Force Account Project Assessment or ODOT forms. Trace wage rates, etc. to entity supporting documentation on a test basis.
3. Inspect the Auditor of State’s project assessment or ODOT forms prepared by the county engineer and determine that work undertaken by force account for construction, reconstruction, widening, or resurfacing of roads was documented to not exceed the amounts documented in the Summary of Requirements above.
4. Inspect the county engineer’s project assessment or ODOT forms, and determine whether work undertaken by force account to construct, reconstruct, improve, maintain, or repair bridges and culverts was documented to not exceed the amounts in the Summary of Requirements above.
5. Obtain supporting documentation of the labor fringe benefits or overhead rates, or materials overhead rates and review for reasonableness. (See clarified guidance in the requirements regarding the Safe Harbor Rule.)
6. Compare the actual projects’ costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates. Evaluate for reasonableness of the estimates. Be alert for indications of “bid-splitting” or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.
7. Whether such projects have been undertaken or not, add language to the audit management representation letter affirming or disaffirming the existence of projects subject to the applicable force account provisions.

Note: with “force account” provisions, it is possible to have non-compliance with the preparation of the Auditor of State form; with the bidding limits; or with both.

8. If the “force account” limits have been violated – that is, the county did the work by force account even though it should have been bid – then the Auditor of State is required to notify the entity [and possibly the State tax commissioner] of the penalty provisions. Auditors should indicate in this block of the OCS if the Auditor of State is to notify the entity\State tax commissioner of any of the penalty provisions. Auditor of State auditors should include this in the executive summary. IPAs should notify the Auditor of State Center for Audit Excellence.

<p>Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>
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2B-3 Compliance Requirement: Ohio Rev. Code §§ 117.16(A); 5517.02, 5517.021 and 5575.01 – Force accounts - Townships

Summary of Requirements:

AOS Force Account Project Assessment Form (See note below for Ohio Department of Transportation Projects)

In the **maintenance** and **repair** of **roads** the board of township trustees may use force account labor provided the board has first caused **the county engineer** to complete the Auditor of State’s prescribed force account project assessment form. In the **construction** and **reconstruction** of roads the board of township trustees may use force account labor if the board finds it to be in the best interest of the public provided the board has first caused to be made by **the county engineer** an estimate of the cost of the work.

Note: Force account assessment forms are not required for road maintenance or repair projects, or road construction or reconstruction projects of less than one-third of the applicable force account limit. [Ohio Rev. Code § 5575.01(C)]

The Auditor of State’s prescribed form [required by Ohio Rev. Code § 117.16(A)] for this purpose can be found on our website at the following link:

<http://www.ohioauditor.gov/references/development/ElectronicForceAccountProjectAssessmentForm.xls>

Clarified Guidance for Force Accounts Undertaken as part of a Federally-Funded Local Project Agreement with ODOT:

Local governments that are performing Force Account work as part of a Federally-funded (in whole or in part) project under an LPA agreement with ODOT can no longer use the safe harbor rates. This is due to changes brought about by the Uniform Guidance Act and the Federal Highway Administration’s termination of Ohio’s waiver program. While local governments that are party to an LPA agreement with ODOT may not use safe harbor percentages for projects ~~beginning in 2016 or later~~, ODOT does provide alternative guidance for Force Accounts in their CMS Manual ([ODOT Construction and Material Specifications manual](#)). Auditors testing Assistance Listing nos., 20.205, 20.219, or 23.003 as a major program should be aware of this during their single audit compliance testing.

Clarified Guidance for Force Accounts Undertaken Strictly by the Local (i.e., NOT as part of a Federally-Funded Local Project Agreement with ODOT):

Where local governments undertake a project by Force Account solely under their own local authority, local governments are permitted to apply the safe harbor percentages in computing their estimated costs. If the local government uses the safe harbor percentages, the auditor may accept them without further analysis. Or, as an alternative, the local government may develop its own percentages for the add-ons for labor fringes and overhead costs, and materials overhead costs; however, the local government must be able to provide documentation to its auditor to justify the reasonableness of the self-computed percentage add-ons.

Joint Projects (See note below for Ohio Department of Transportation Projects)

Joint projects undertaken by 2 or more of the affected entities require that the higher force account limits of the participating parties be applied [Ohio Rev. Code § 117.161]. Participating entities shall not aggregate their respective limits, and the share of each entity shall not exceed its respective force account limit. Calculating the proper project force account limits and the share thereof to each participating party should be memorialized in the contracts or other agreements between the parties. One of the participating entities shall complete the force account project form prior to proceeding by force account. An entity shall not proceed with a joint force account project if any one of them is subject to reduced force account limits under Ohio Rev. Code § 117.16(C) or (D).

Bid Specifications (See note below for Ohio Department of Transportation Projects)

Various terms, such as **road maintenance and repair, construction, and reconstruction** are not defined in the Ohio Rev. Code sections discussed in the individual subsections below. We indicate in each such section that the Auditor of State will accept definitions from the entity's legal counsel, and/or county engineer, as appropriate, unless the definitions are palpably and manifestly arbitrary or incorrect. *If the entity's legal counsel, and/or county engineer, as appropriate, did not define the indicated terms for the entity, indicate the same in your draft report. Consult with the AOS's Legal department concerning any issues involving a potential finding or citation.* IPAs auditing force accounts should follow the guidance in Ohio Rev. Code § 117.12.

Effective June 30, 2023, force accounts **may not** be used and bidding is required when the total estimated cost of the project, including labor, for **maintenance and repair** of roads exceeds \$105,000. [Ohio Rev. Code § 5575.01(A)]

Effective June 30, 2023, bids from private contractors should be sought when the total estimated cost of the project, including labor, for **construction or reconstruction** of roads exceeds \$35,000 per mile. However, force accounts **may** be used if the board finds it in the best interest of the public. In this case, private contractor bids must have been received, considered, and rejected, and the force account work must be performed in compliance with the plans and specifications upon which the bids were based.⁶⁸ [Ohio Rev. Code § 5575.01(B)]

On the first day of July of every year beginning in 2024, the threshold amounts established in divisions (A) and (B) of this section shall increase by an amount not to exceed the lesser of five per cent, or the percentage amount of any increase in the department of transportation's construction cost index as annualized and totaled for the prior calendar year. The director of transportation shall notify each appropriate county engineer of the increased amount. [Ohio Rev. Code § 5575.01(D)] The July 1, 2021 to June 30, 2023 force account limit for locals are \$45,774 bid limits and \$15,258 per mile. The July 1, 2023 to June 30, 2024 force account limit for locals are \$105,000 bid limits and \$35,000 per mile. The July 1, 2024 to June 30, 2025 force account limit for locals are \$110,250 bid limits and \$36,750 per mile. (<https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/maintenance-operations/force-account>).

Note: The following clarifies how all entity types subject to force account limits should measure these limits for fractions of miles (The amounts in the example are relevant to force accounts effective June 30, 2023. See above for current rates to use.):

“A township must bid a project involving construction or reconstruction of a road if it exceeds \$35,000 per mile. However, it is unclear whether the limit for a 1.5 mile project would be \$52,500 (\$35,000 for the first mile, \$17,500 for the partial second mile), or \$70,000 (\$35,000 for each mile – full or partial – of the project). We determined that it was appropriate to consider the legislative intent separately for projects under one mile and for projects exceeding one mile.

For projects exceeding one mile, we determined that the intent of these statutes was to apply the limits proportionally for partial miles. In other words, for the example cited above, the applicable force account limit would be \$52,500.

For projects less than a mile, the interpretation above would cause problems. In the example of a township commencing a small road repair project of one-tenth of a mile, a proportional limit would require the township to bid the project if it exceeded \$3,500 (one tenth of the \$35,000 per mile limit). We did not believe that this was the result intended by the legislature, so for projects of less than a mile, the entire per mile limit (in the case of our example, \$35,000) will apply. In other words, any project that is less than a mile (regardless of distance) is to be treated as if it were a mile and subjected to the entity's corresponding monetary limit.”

Note: The following applies to Ohio Department Of Transportation Projects AND township projects performed in conjunction with the Ohio Department Of Transportation ([AOS Bulletin 2015-003](#))

Force Account Limits (Ohio Rev. Code § 5517.02)

On July 1, 2013, the statutory limits for ODOT force account projects increased from \$25,000 to \$30,000 per mile of highway and from \$50,000 to \$60,000 for any traffic control signal or any other single project. The changes also require the ODOT Director to increase these limits on the first day of July of every odd-numbered year beginning in 2015 by an amount to not exceed the lesser of three per cent or the percentage increase in ODOT's construction cost index, as annualized and totaled for the two prior calendar years. The July 1, 2021 to June 30, 2023 rates are \$32,159 per mile of highway and \$64,318 per traffic signal or other single project. The July 1, 2023 to June 30, 2025 rates are \$33,124 per mile of highway and \$66,248 per traffic signal or other single project. The Director shall publish the applicable amounts on ODOT's website (<https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/maintenance-operations/force-account>).

Work Exempt from Competitive Bidding/Force Account Requirements (Ohio Rev. Code § 5517.021)

Certain work that may be undertaken by ODOT that does not require competitive bidding:

- Replace any single span bridge in its substantial entirety or widen any single span bridge, including necessary modifications to accommodate widening the existing substructure and wing walls. The deck area of the new or widened bridge may not exceed 700 square feet as measured around the outside perimeter of the deck.
- Replace the bearing, beams, and deck of any bridge on that bridge's existing foundation if the deck area of the rehabilitated structure does not exceed 800 square feet.
- Construct or replace any single cell or multi-cell culvert whose total waterway opening does not exceed 52 square feet.
- Pave or patch an asphalt surface if the operation does not exceed 120 tons of asphalt per lane-mile of roadway length. The department may not perform a continuous resurfacing operation under this section if the cost of work exceeds the amounts established in Ohio Rev. Code § 5517.02.
- Approach roadway work, extending not more than 150 feet as measured from the back side of the bridge abutment wall or outside the edge of the culvert, as applicable. The length of the approach guardrail shall be in accordance with ODOT's design requirements and shall not be included in the approach work size limitation.

These projects are not subject to the force account requirements of Ohio Rev. Code § 117.16, do not require an estimate, and are exempt from audit for force account purposes except to determine compliance with applicable size or tonnage restrictions.

Force Account Assessment Forms (Ohio Rev. Code § 117.16)

Ohio Rev. Code § 117.16 requires that, before undertaking a project by force account, a public entity must estimate the cost of the project using a form approved by the Auditor of State. With projects constructed by or in conjunction with ODOT, an estimate may be prepared using the Department's automated system (currently the Enterprise Information Management System (EIMS), which replaced the Transportation Management System (TMS), effective June 16, 2014) or other internal standardized forms. Such estimates are acceptable in lieu of the Auditor of State's force account project assessment form provided all the necessary elements of an estimate, as required by Ohio Rev. Code § 117.16, are included. However, whether prepared using the AOS form, the electronic ODOT system, or another standard ODOT form, an estimate is required to be completed and documentation supporting the estimate

should be retained for **ALL** projects, unless specifically exempted by Ohio Revised Code. If the total estimated cost exceeds the statutory limits defined in Ohio Revised Code, the project must be competitively bid.

Ohio Attorney General Opinion 2008-007⁶⁹ briefly provides:

- Completing the Auditor of State's force account project assessment form estimating the cost of the work constitutes commencement of the project for purposes of determining which force account limit is in effect and applicable to the project;
- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;
- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;
- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

Noncompliance

Note: These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the decreased⁷³ force account limits. IPAs auditing force accounts should follow the guidance in Ohio Rev. Code § 117.12.

Suggested Audit Procedures - Compliance (Substantive) Tests:

Note: For ODOT projects, ODOT forms may be used in place of an Auditor of State form. You should test whichever form is appropriate for your project.

1. Read the minutes, inquire of management, and scan expenditures to reasonably determine if any road capital construction or maintenance activity took place during the audit period. Determine if such projects were undertaken using force accounts.
2. Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as less than one-third of the applicable force account limit for a **road maintenance or repair** project or less than one-third of the applicable force account limit for a **road**

⁷³ For a township, the reduced limit shall be one-third of that township's force account limits for maintenance and repair of a road or one-third of that township's force account limits for construction and reconstruction of a township road. [Ohio Rev. Code § 117.16(C)(1)(b)] Refer to Ohio Rev. Code § 117.16 (C) & (D) if an entity violates force account restrictions for 2 or more times or related to a joint project.

construction or reconstruction project. If so, no Auditor of State force account project assessment form would have been required to have been completed.

3. Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as the amount noted in the Summary of Requirements above or less for **maintenance** and **repair** of roads.
4. Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as the amount per mile or less noted in the Summary of Requirements above for **construction or reconstruction** of roads.
5. If the bids from private contractors were taken for **construction or reconstruction** of roads but the board used the force account anyway, determine that the board documented that the private contractor bids were received, considered, and rejected, and the board's rationale for why using the force account approach was in the best interest of the public. Compare the force account's documented project specifications with the plans and specifications upon which the private contractor bids were based.
6. If such projects were undertaken, inspect a representative number of the entity's completed Auditor of State Uniform Force Account Project Assessment or ODOT forms. Trace wage rates, etc. to entity supporting documentation on a test basis.
7. Obtain supporting documentation of the labor fringe benefits or overhead rates, or materials overhead rates and review for reasonableness. (See clarified guidance in the requirements regarding the Safe Harbor Rule.)
8. Compare the actual projects' costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates. Evaluate for reasonableness of the estimates. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.
9. Whether such projects have been undertaken or not, add language to the audit management representation letter affirming or disaffirming the existence of projects subject to the applicable force account provisions.

Note: with "force account" provisions, it is possible to have non-compliance with the preparation of the Auditor of State or ODOT form; with the bidding limits; or with both.

10. If the "force account" limits have been violated – that is, the township did the work by force account even though it should have been bid – then the Auditor of State is required to notify the entity [and possibly the State tax commissioner] of the penalty provisions. Auditors should indicate in this block of the OCS if the Auditor of State is to notify the entity\State tax commissioner of any of the penalty provisions. Auditor of State auditors should include this in the executive summary. IPAs should notify the Auditor of State Center for Audit Excellence.

<p>Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>
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2B-4 Compliance Requirement: Ohio Rev. Code §§ 117.111(A), 304.01, 304.02, 955.013, 1306.01(P), 1306.02(A), 1306.04(B), and 1306.11 - Security controls over counties' electronic (i.e. internet) transactions.

Summary of Requirement: The AOS **must** inquire into the method, accuracy and effectiveness of any procedure a county office adopts under Ohio Rev. Code § 304.02 to secure electronic signatures or records relating to county business that is conducted electronically under Chapter 1306 of the Ohio Revised Code.⁷⁴

Other statutes relevant to this requirement:

Per Ohio Rev. Code § 304.01:

(B) "County office" means any officer, department, board, commission, agency, court, or other instrumentality of a county.

(D) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(E) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

► **Note:** The signature can be by a county employee or a citizen transacting business with a county office.

Ohio Rev. Code § 304.02: Prior to a county office using electronic records and electronic signatures, under Chapter 1306 of the Ohio Revised Code and except as otherwise provided in § 955.013 of the Ohio Revised Code, a county office shall adopt, in writing, a security procedure to verify that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. A security procedure includes, but is not limited to, a procedure requiring algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

Ohio Rev. Code § 955.013 permits paying dog and kennel registration fees by financial transaction devices (e.g. credit cards), including via the internet.

Ohio Rev. Code § 1306.02(A) provides that Chapter 1306 of the Ohio Revised Code, the Uniform Electronic Transactions Act, generally applies to electronic records and electronic signatures relating to a transaction.

Ohio Rev. Code § 1306.04(B) provides that Sections 1306.01 to 1306.23 of the Ohio Revised Code apply only to transactions between parties each of which has agreed to conduct transactions by electronic means.

Ohio Rev. Code § 1306.01:

(G) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means. A record or contract that is secured through blockchain technology is considered to be in an electronic form and to be an electronic record.

(H) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. A signature that is secured through blockchain technology is considered to be in an electronic form and to be an electronic signature.

⁷⁴ **Note:** Since the legislature has mandated this step, we should deem it to be qualitatively material.

(P) Defines “transaction” as an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

Ohio Rev. Code § 1306.11(A): An electronic record of information generally satisfies record retention laws.

AOS Note: While not a statutory mandate, auditors should consider whether testing this requirement at a service organization is necessary based upon the assessed audit risks and materiality of the service organization(s)’s activities. If deemed necessary to test, update planning and include the steps in your service organization procedures within the audit project. Results of testing these procedures at a service organization would not result in noncompliance.

Suggested Audit Procedures - Compliance (Substantive) Tests:

1. Determine the electronic records and electronic signatures relating to a county office’s electronic (i.e. *internet*) transactions. These include:
 - a. Cash receipts where a county office accepts credit/debit cards electronically (i.e., via the internet).
 - b. Other types of internet transactions.⁷⁵
2. Obtain and read the *written* security procedure the county office (or its internet transaction service organization⁷⁶) adopted to safeguard each type of electronic (i.e. internet) transaction. **Note:** Because the service organization processes most elements of these transactions, it is sufficient if the **service organization** adopts security procedures. If the service organization requires the county office to adopt “user control” security procedures, we should consider whether the county office has implemented these controls. (Often the service organization’s contract or response to a county office’s RFP will describe the security procedures.)
 - a. Retain a copy or summary of the procedure in the permanent file.
 - b. Update systems’ documentation as needed.⁷⁷

Assess the effectiveness of the design of controls and determine that they have been “implemented.” (AOS staff can refer to AOSAM 30500.65-.71)

⁷⁵ As noted on the previous page, Ohio Rev. Code § 955.013 separately addresses electronic / internet sales of dog licenses. Direct deposits do **not** fall under Ohio Rev. Code § 117.111 or Ohio Rev. Code § 304.02.

⁷⁶ Companies providing internet transaction services may be **service organizations**. We should consider service organization implications per AU-C 402 depending upon the materiality of the transactions.

⁷⁷ AOS staff should update the RCEC where needed to incorporate electronic (i.e. internet) transactions, including controls and procedures designed to safeguard electronic transactions. Also, consider the appropriate degree of Data & Information Technology Audit (DITA) involvement. AOS audit staff must consult with DITA when a government has a complex IT environment (AOSAM 30500.51-.55). Also consider that the nature of electronic transactions and signatures subject to this law may require DITA assistance.

3. Determine whether results from the steps above regarding the design and implementation of controls related to securing electronic signatures and electronic records relating to internet transactions result in any management comments, significant deficiencies or material weaknesses. We must also report as a noncompliance finding. Since the statute explicitly refers to a security procedure adopted in writing, we should report the absence of a security procedure adopted in writing.

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

2B-5 Compliance Requirement: Ohio Admin. Code 3745-27-15 through 18 - Landfill Financial Assurance Responsibility and Certifications. Ohio Admin. Code 3745-503-05 and 3745-503-20 – Solid Waste Transfer Facility Financial Assurance Responsibility and Certifications.

The following is only a summary. When auditing a government managing a landfill or solid waste transfer facility, auditors should obtain and read copies of the applicable Ohio Administrative Code rules.

Governments owning or managing landfills or solid waste transfer facilities must annually certify financial information related to their ability to finance closure and post-closure care liabilities to the Ohio EPA. These reports are due within 180 days of fiscal year end.

An index to the relevant Ohio Administrative Code requirements for **landfills** follows:

- § 3745-27-15: Solid waste facility ~~or scrap tire transporter~~ final closure requirements (Section (L) describes the local government test)
- § 3745-27-16: Solid waste facility final post-closure care requirements (Section (L) describes the local government test)
- § 3745-27-17: Wording of financial assurance instruments (Section (H) describes the wording for the letter governments assured under the local government test must submit to Ohio EPA).
- § 3745-27-18: Only applies when OEPA director mandates corrective action for a landfill, such as to remediate landfill groundwater contamination described in § 3745-27-10. (Section (M) describes the local government requirements, if applicable.)

An index to the relevant Ohio Administrative Code requirements for **solid waste transfer facilities** follows:

- § 3745-503-05: Solid waste transfer facility final closure requirements (Section (L) describes the local government test)
 - § 3745-503-20: Wording of financial assurance instruments (Section (H) describes the wording for the letter governments assured under the local government test must submit to OEPA).
- I. The Federal EPA adopted a regulation (40 C.F.R. § 258.74(f)) allowing governmental solid waste landfills (GSWLFs) and governmental solid waste transfer facilities (GSWTFs) to potentially avoid the expenses of third-party financial instruments (such as letters of credit, insurance or establishing trust funds⁷⁸) to assure current final closure, post-closure care and/or corrective measures cost estimates and any other environmental obligations to the extent they meet certain financial tests. The Federal EPA placed the responsibility for monitoring compliance with this rule on the states. In response, the Ohio EPA adopted regulations that parallel the Federal regulation in most aspects. The Ohio EPA's requirements are in II, III and IV below.

Note: The underlined revisions below are not changes to the Ohio Admin. Code. Instead they are intended to clarify how the requirements apply (or don't apply).

⁷⁸ In this Ohio Admin. Code section, a trust fund may differ from the GASB definition. If the government elects to assure liabilities with a trust fund, see the definition in Ohio Admin. Code 3745-27-15(F), which among other requirements, states: "The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency."

- II. Ohio Admin. Code 3745-27-15(L)(3)(a)(iv) & 3745-27-15(L)(3)(b)(ii) (closure) and 3745-27-16(L)(3)(a)(iv) & 3745-27-16(L)(3)(b)(ii) (post-closure care) state that:

A Government need not obtain third-party instruments for the following liabilities up to 43% of the local government's **total revenue**,⁷⁹ *provided* that it meets the tests described in **III & IV** below.

1. Landfill closure and post-closure care liabilities
2. GSWTF closure liabilities

In other words, a landfill or GSWTF **must** obtain a third-party instrument (e.g., insurance, trust fund, or bond) for all current final closure, post-closure care and/or corrective measure cost estimates and any other environmental obligations, **exceeding** 43% of total revenue.

- III. Ohio Admin. Code 3745-27-15(L)(2) (**for closure costs**) and 3745-27-16(L)(2) (**for post-closure care costs**) include the following identical four requirements. Governmental landfills and GSWTF must:

- a. Prepare GAAP financial statements
 1. The opinion must be unqualified, per 40 C.F.R. § 258.74(f)(1)(iii)(D)
- b. The government must not have operated at a deficit > or = 5% of total revenue in either of the previous two years. (This requirement appears to apply to the government overall, not just to the landfill or GSWTF fund. See definitions of **revenue** and **deficit** in the footnote below.)
- c. There must not have been a default in outstanding GO bonds. (This applies to any GO bonds, not just those that might relate to a landfill or GSWTF fund.)
- d. No outstanding GO bonds can be less than investment grade (BBB for Standard and Poor's or Baa for Moody's).
 1. (Note that 3745-27-15(L)(3)(b)(i) (closure) and 3756-27-16(L)(3)(b)(i) (post-closure care) repeat this prohibition of having GO bonds of less than investment grade. See discussion in IV below.)

- IV. Finally, the law also requires complying with one of the two following alternatives.

First Alternative -- 3745-27-15(L)(3)(a) (for the closure liability) and 3745-27-16(L)(3)(a) (for the post-closure care liability):

Note: The first alternative is **required** only if the government does not have outstanding investment grade GO bonds. This can occur two ways:

- The government has no outstanding GO bonds, or
- The government has outstanding GO bonds, but they are rated lower than BBB by Standard and Poor's or Baa for Moody's.

The first alternative also requires a landfill or GSWTF to have:

- i. **(Cash + marketable securities)** / total expenditures \geq 5%, AND
- ii. **Debt service** / total expenditures \leq 20%, AND
- iii. **Ratio of long term debt issued & outstanding / capital expenditures** must be \leq 2.0.
- iv. Requirement iv. is the same as III above. (That is, it restates the "43%" requirement.)

Second Alternative 3745-27-15(L)(3)(b) (for the closure liability) and 3745-27-16(L)(3)(b) (for the post-closure care liability)

The second alternative lists two requirements, which are the same as requirements II and III(d) above:

⁷⁹ Terms defined in the [State Support Document for the Local Government Financial Test](#) are printed in **boldface type** the first time they appear. ~~A copy of this document was sent to each region.~~

- (i) the government has GO bonds outstanding at year end, and their ratings cannot be less than BBB (Standard and Poors) or Baa (Moody's).
- (ii) the closure + post-closure care liability must be less than 43% of total revenue.

But if a government has met II and III(d), it has already met this second alternative, and therefore needn't consider the first alternative.

V. Reporting requirements:

- a. The GAAP statements must comply with GASB Statement No. 18 disclosures (this requirement does not appear in the Ohio Administrative Code, but is included in the Federal regulation 40 C.F.R. §258.74(f)(1)(ii)).
- b. The following applies for liability amounts exceeding 43% of revenue: Ohio Admin. Code 3745-27-15(C)(1)(a) requires the closure financial assurance *instrument* for a sanitary landfill facility, solid waste transfer facility, or solid waste incinerator to contain an itemized written estimate, in current dollars, of the cost of closure. The closure cost estimate shall be based on the closure costs at the point in the operating life of the facility when the extent and manner of its operation would make the closure the most expensive, and shall be based on a third party conducting the closure activities.
- c. Ohio Admin. Code 3745-503-05(L) allows a local government solid waste *transfer facility* to use the local government test described in (L) below in lieu of executing a financial assurance instrument meeting the requirements set forth in section (E) of that regulation. Ohio Admin. Code 3475-503-05(L) requires the government:
 - i. Per (L)(1), by resolution, create a **local governmental financial test fund** to accumulate an amount equal to or greater than the closure liability. Therefore, this requires full funding. The fund cannot have negative net position under GAAP. (In other words, any deficits require the government to obtain a financial assurance instrument such as letter of credit, etc.) You should read Section (L) for more detail on this requirement.
 - ii. Per (L)(2) and (3), satisfy II, III and one of the alternatives in IV, described above.
- d. The CFO must prepare a letter listing current final closure, post-closure care and/or corrective measures cost estimates and any other environmental obligations, and certify whether the government meets III.a.-d. (above), and also certify that the government is assuring a liability \leq 43% of annual operating revenues.
- e. Audited financial statements must be kept as part of the "facility's operating record."
- f. Accountants must also issue an agreed-upon procedures report. The procedures must note whether amounts used for the ratios in III above in the CFO's letter agree to the audited GAAP statements.

VI. Definitions:

To assure that the CFO's letter is appropriate, it is critical that the financial information be consistent with the definitions in the [State Support Document for the Local Government Financial Test](#) (the Document). For example, the Document explains that "total expenditures" should not include capital project, internal service or fiduciary fund expenditures/expenses. ~~A copy of the Document has been sent to each regional office.~~

The Federal EPA informed us they do not intend to update the Document for GASB Statement No. 34. Therefore, we believe the amounts for the accounts described above appearing in the CFO's letter (cash and marketable securities, revenues, etc.) should be derived from the governmental and proprietary **fund** financial statements, not from the entity-wide financial statements.

VII. Other

- a. The Federal regulation gives state directors the option of allowing governments to discount the liability. However, Ohio does not permit discounting. Also, paragraph 42 of GASB Statement No. 18 prohibits discounting.
- b. Both the Federal and State regulations refer to governmental financial statements as *Annual Comprehensive Financial Reports*. However, while the Federal and State rules require GAAP reporting, there appears to be no explicit requirement to prepare an Annual Comprehensive Financial Report. In the Auditor of State's opinion, basic financial statements complying with GAAP, including GASB Statement No. 18 and including segment information (if applicable) are sufficient.

Suggested Audit Procedures - Compliance (Substantive) Tests:

Note: These procedures relate to the *local government test*. If a government uses other assurance methods, auditors must read the applicable Ohio Admin. Code 3745-27, 3745-503 or 3745-580 requirements and design appropriate tests and reports. (The Suggested Audit Procedures in this section need tested if applicable to the entity. The Agreed Upon Procedure does not satisfy all of the compliance requirements tested in this section.)

For AOS staff: If the reporting differs from the example AUP available to AOS staff on the Intranet, you must submit your draft report to the Center for Audit Excellence for review.

1. For landfills, determine whether the estimate of closure, post-closure care and corrective measures liabilities have been updated through the most recent balance sheet date. For SWTFs, determine whether estimate of closure liabilities has been updated through the most recent balance sheet date. These estimates should include an increase for the annual inflation factor, calculated by dividing the annual implicit price deflator published in February and dividing it by the deflator for the previous year (see Ohio Admin. Code 3745-27-15(D)(3), 3745-27-16(D)(2), 3745-27-18(E)(2) and 3745-555-610(Q). Such estimates may require corroboration by an environmental specialist. (The auditor may need to consider AU-C 620, *Using the Work of a Specialist*.)
2. Compare the format of the CFO's letter to the EPA with the example included in Ohio Admin. Code 3745-27-17(H) for GSWLF or Ohio Admin. Code 3745-503-20(H) for GSWTF.
3. Prepare the agreed-upon procedures report and cross reference the information in the letter to supporting work paper. (Those work papers would support that the closure / post-closure care liabilities were < 43% of revenue, that bonds were investment grade, etc.). An example report is available to AOS staff on the Intranet under Documents/Audit Resources/Reporting_and_Practice_Aids/AUPS/Report Shells.
4. If the government cannot meet the government test or has closure / post-closure care liabilities exceeding 43% of annual revenue, inquire which method the government has selected to assure these amounts. If the government has (1) established a final closure and/or post-closure care trust fund; (2)

secured a surety bond guaranteeing payment; (3) secured a surety bond guaranteeing performance; (4) ~~(3)~~ obtained an irrevocable letter of credit or; ~~(5)~~(4) obtained commercial insurance to finance these liabilities, then inspect documentation that the required funds, bonds, letter of credit, or insurance have been obtained, and are in force.

5. The local government requirements in Ohio Admin. Code 3745-27-15, 16, 18, Ohio Admin. Code 3745-503-05 mandate GAAP financial statements.
 - Read the draft financial statements to determine if they meet the GAAP display and disclosure requirements for these assets/guarantees/commitments, etc. in GASB Statement No. 18, ¶17 (Cod. L10.115).
6. For GSWTF, per Ohio Admin. Code 3745-503-05(L), determine whether the *Local Government Financial Test Fund* (LGFT) has accumulated resources at least equal to the current estimate of the cost of closure. Also refer to the formulas in Section (L) for guidance:
 - (1) The local government shall, by resolution, establish a restricted LGFT fund specifically for funding the estimated cost of closure of the solid waste facility. The LGFT fund shall be established to accumulate an amount at least equal to the current estimate of the cost of closure. The LGFT fund shall be maintained throughout the operating life of the solid waste facility.
 - (2) For a *new* facility, the first payment into the LGFT fund shall be calculated using the average daily waste receipt and the approved volume of the solid waste facility provided in the permit to install, registration, or license, as applicable.
 - (3) For *existing* facilities, annual payments to the LGFT fund shall be calculated based on the amount of waste that was accepted for disposal at the facility as listed on the annual report for the previous operating year, unless an alternative calculation or amount is authorized by Ohio EPA.
 - (4) Note that *landfill* financial assurance for closure and post-closure care must be funded in full, in accordance with GASB Statement No. 18 (Cod. L10), upon approval of the permit to install. The GSWLF in Ohio Admin. Codes 3745-27-15(L) and 3745-27-16(L) do not specify the establishment of a restricted fund and do not allow for a pay-in period.
 - (5) Resources can be from charges for services, legal transfers from another fund or other allowable sources.

<p>Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>
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2B-6 Compliance Requirement: Ohio Rev. Code §§ 135.14(B)(7), 135.142, 135.22, 135.35, 319.04, 321.46, 507.12, 733.27, and 733.81 - Education Requirements

Summary of Requirements:

Subdivision Treasurers⁸⁰ (Ohio Rev. Code § 135.22)

Subdivision treasurers must complete annual continuing education programs provided by the Treasurer of State (TOS). The TOS issues certificates indicating that the treasurer has successfully completed the continuing education program.

The continuing education requirement does not apply to a subdivision treasurer who annually provides a notice of exemption to the Auditor of State, certified by the Treasurer of State (and confirmable through the TOS searchable database weblink below) that the treasurer is not subject to the continuing education requirements because the treasurer invests or deposits public funds in the following investments only (Ohio Rev. Code § 135.22):

- (1) Interim deposits pursuant to Ohio Rev. Code §§ 135.14(B)(3) or 135.145 (IntraFi Network Deposits (formerly CDARS), Government Insured Deposit Program (GIDP), and similar programs);
- (2) STAR Ohio³² pursuant to Ohio Rev. Code § 135.14(B)(6);
- (3) No-load money market mutual funds pursuant to Ohio Rev. Code § 135.14(B)(5)

Specific requirements apply to the officials listed below:

County Treasurers (Ohio Rev. Code § 321.46)

Newly-elected county treasurers must complete education programs (26 hours) approved by the Auditor of State (13 hours) and the Treasurer of State (13 hours) between December 1 and the first Monday in September following that person's election [Ohio Rev. Code § 321.46(A)]. For instance, a treasurer elected in November 2020, taking office in 2021, would be required to receive the initial 26 hours of training between December 1, 2020 and September 2021.

County treasurers who are appointed or specially elected to fill a county treasurer vacancy shall complete initial education requirements within four months after taking the oath of office. [Ohio Admin. Code 113-5-05]. If the specially elected or appointed county treasurer cannot reasonably complete their initial training requirements, the auditor of state and treasurer of state may enter into a written agreement with the county treasurer to extend the timeline. [Ohio Admin. Code 113-5-05].

After completing one year in office, a county treasurer must take not fewer than 24 hours of continuing education approved by the Auditor of State (12 hours) and the Treasurer of State (12 hours) in each *biennial cycle* commencing January 1 of an odd-numbered year and ending on December 31 in the following even-numbered year. [Ohio Rev. Code § 321.46; Ohio Admin. Code 113-5-03; Ohio Admin. Code 113-5-04].

⁸⁰ Ohio Rev. Code § 135.22 training applies only to treasurers of "subdivisions" as that term is defined in Ohio Rev. Code § 135.01(L). Municipal corporations that have adopted a charter under Art. XVIII of the Ohio Constitution and that have adopted charter provisions or ordinances that set forth "special provisions" regarding the deposit or investment of the chartered municipal corporation's public money are not "subdivisions" under Ohio Rev. Code § 135.01(L). A treasurer of an agricultural society does not need to comply with the continuing education requirements of Ohio Rev. Code § 135.22. The following treasurers must complete training required by Ohio Rev. Code § 135.22: "in the case of any subdivision, the treasurer, or officer exercising the functions of a treasurer, of such subdivision. In the case of a board of trustees of the sinking fund of a municipal corporation, the board of commissioners of the sinking fund of a school district, or a board of directors or trustees of any union or joint institution or enterprise of two or more subdivisions not having a treasurer, such term means such board of trustees of the sinking fund, board of commissioners of the sinking fund, or board of directors or trustees." Ohio Rev. Code § 135.01(M); Ohio Rev. Code § 135.22(A).

For example, a newly-elected treasurer taking office in 2021, would complete one year in office in September 2022 and the biennial cycle for continuing education would start January 1, 2023 and end December 31, 2024. Auditors should wait until the expiration of the applicable biennial time period to determine whether *existing treasurers* (as opposed to those *newly-elected*) have completed the continuing education requirements.

To determine the biennial cycle for the county treasurers during the audit period.

1. When was the treasurer sworn in?
2. What is one-year (12 months) after the date noted in step 1?
3. What is the next odd numbered year following the date from step 2?

The biennial cycle starts January 1 of the odd numbered year from step 3 and ends on December 31 of the following even numbered year.

County treasurers may carry forward up to six hours received from the Auditor of State plus up to six hours received from the Treasurer of State in excess of 24 from the current to the next biennial cycle. [Ohio Rev. Code § 321.46(B)(3)(b)]

A treasurer who fails to complete the **initial** education programs before taking office cannot invest. Investment authority transfers immediately to the county investment advisory committee until full compliance with the initial education programs is determined by the Treasurer of State. [Ohio Rev. Code § 321.46(E)]

A treasurer who fails to complete the **initial** or **continuing** education programs required by Ohio Rev. Code § 321.46 is restricted to investing in the Ohio subdivision fund pursuant to Ohio Rev. Code § 135.35(A)(6), no-load money market mutual funds pursuant to § 135.35(A)(5), or in certificates of deposit pursuant to Ohio Rev. Code § 135.35(A)(3), or savings or deposit accounts pursuant to Ohio Rev. Code § 135.35(A)(3). [Ohio Rev. Code § 321.46(F)]. A county treasurer who has failed to complete the **continuing education** programs and invests in other than these investments is subject to possible suspension of the treasurer's authority to invest county funds and to manage the county portfolio.

County Auditors (Ohio Rev. Code § 319.04)

An elected county auditor needs to complete at least 16 hours of continuing education courses during the first year of each full term, and to complete at least eight more hours by the end of that term. The county auditor needs at least two hours of ethics and substance abuse training in the total 24 hours of required courses. The County Auditors Association of Ohio (the Association) must approve each course. If a county auditor teaches an approved course, the county auditor shall receive credit for it. The Association shall keep track of the hours completed by each county auditor and, upon request will issue a statement of the number of hours of continuing education the county auditor has successfully completed. The Association shall send this information to the Auditor of State's office and to the Tax Commissioner each year. The Auditor of State shall issue a certificate of completion to each county auditor who completes the continuing education courses required by this section. If a county auditor does not adhere to the requirements stated above, the Auditor of State shall issue a "notice of failure" to that county auditor. This notice is for informational purposes only and does not affect any individual's ability to hold the office of county auditor. Also, each board of county commissioners shall approve reasonable amounts required by the county auditor to cover the costs incurred when meeting the above requirements.

Village Fiscal Officers (Ohio Rev. Code § 733.27)

In addition to the requirements in the following section, a village clerk, clerk-treasurer, or fiscal officer must attend training for new village clerks, clerk-treasurers, or fiscal officers *and* annual continuing education programs provided by the Auditor of State pursuant to Ohio Rev. Code § 117.44 (Ohio Rev. Code § 733.27). The Auditor of State interprets this section as requiring a newly-elected clerk or clerk-treasurer or an appointed fiscal officer to attend the new fiscal officer's training offered by the Auditor of State between December 1 and the following February 15, and any other annual training offered by the

Auditor of State. Continuing fiscal officers must attend the annual update sessions only.

This requirement may be fulfilled by the hours obtained for the Fiscal Integrity Act. ~~Ohio Rev. Code § 507.12(D)(2) states, “(2) A township fiscal officer may apply to the continuing education hours required by division (C) of this section any hours of continuing education completed under section 135.22 of the Ohio Revised Code after being elected or appointed as a township fiscal officer.”~~

Municipal and Township Fiscal Officers - Fiscal Integrity Act

“Fiscal officer” includes city auditor, city treasurer, village fiscal officer, village clerk-treasurer, village clerk, and for chartered municipalities, any officer with duties and functions similar to those of the city or village officers previously stated (Ohio Rev. Code § 733.81 (A)) and a township clerk/fiscal officer (Ohio Rev. Code § 507.12).

A newly elected or appointed fiscal officer shall complete at least six hours of initial education programs before commencing, or during the first year of office. An additional eighteen hours of continuing education must be completed within the fiscal officer’s first term. Twelve hours of training shall be completed for each subsequent term.⁸¹ (Ohio Rev. Code §§ 507.12(B)-(C) and 733.81(C)-(D)) Consider the following training guidelines:

- Training obtained under Ohio Rev. Code §§ 117.44, 109.43 or 135.22 can be applied to the required hours.
- For fiscal officers who are appointed to fill a vacancy, these requirements shall be required proportionate to the time remaining in the vacated office. Refer to Ohio Admin. Code § 117-14-01 to determine the appropriate hour rates based on the appointment date and type of fiscal officer.
- Two hours of ethics instruction shall be included in the continuing education requirements for each term.
- CPAs serving as a fiscal officer may apply hours of continuing education completed under Ohio Rev. Code § 4701.11.
- Fiscal officers who teach approved continuing education course(s) may apply that credit in the same manner as if they had attended the course.

~~In addition, Ohio Rev. Code § 507.12(D)(2) states, “(2) A township fiscal officer may apply to the continuing education hours required by division (C) of this section any hours of continuing education completed under section 135.22 of the Ohio Revised Code after being elected or appointed as a township fiscal officer.”~~

The Auditor of State is responsible for conducting education programs and continuing education courses for fiscal officers. Training may also be conducted by the Ohio township association or Ohio municipal league if approved by the Auditor of State (Ohio Rev. Code §§ 507.12(A) and 733.81(B)). The Auditor of State shall also verify completion of initial education programs and continuing education courses. Certificates of completion shall be issued by the Auditor of State. A “failure to complete” notice will be issued by the Auditor of State for those fiscal officers who fail to complete the requirements. The notice is issued at two deadlines: 1) if newly-elected fiscal officers do not complete 6 hours of training during their first year of office, and 2) if any fiscal officer does not complete their required total hours by the end of their term. This does not affect the individual’s ability to hold office and is for informational purposes only (Ohio Rev. Code §§ 507.12(E) and 733.81(F)).

⁸¹ Per Ohio Admin. Code 117-14-01(C) – For the purposes of this section, a nonelected municipal fiscal officer, who has been hired to fill such a position, shall have a term equivalent to that of an elected township fiscal officer, whose term is governed by section 507.01 of the Ohio Revised Code. Thus, a nonelected municipal fiscal officer's term shall be four years, and such term shall begin on the first day of April in 2016. All subsequent such terms shall begin on the first day of April quadrennially thereafter.

Auditor of State

AOS developed an on-line training database. The database includes a list of approved training, which is maintained by our training department. Fiscal Officers must register and create a personal username and password for the Auditor of State's Fiscal Integrity site for reporting purposes. Training is then reported by choosing the training courses and dates attended. Fiscal officers are required to self-report their hours, otherwise they will not receive credit for the training. Fiscal Officers can access and print their certificates via the Fiscal Integrity Act portal available at <http://www.ohioauditor.gov/fiscalintegrity/default.html>. The following linked guidance shows how to enter training support into the portal for a new election cycle period without overwriting the prior reporting period: [Adding a New Term.pdf \(ohioauditor.gov\)](#).

Fiscal officers who have obtained a license, CPA or CPIM (Center for Public Investment Management), are not required to report their hours as the training requirements for these certifications are more stringent than the Fiscal Integrity Act. The only exception are those fiscal officers with the CPIM certification, they will have to report ethics and certified public records training. License numbers are reported in the database and verified by the Auditor of State training staff twice annually.

All Local Governments

No investment shall be made in commercial paper or bankers acceptances unless the following have completed additional training⁸² for making those investments. The type and amount of additional training shall be approved by the Treasurer of State:

- School treasurer [Ohio Rev. Code § 135.142(B)]
- County investing treasurer⁸³ [Ohio Rev. Code § 135.35(A)(8)]
- For other local governments: Treasurer or governing board [Ohio Rev. Code § 135.14(B)(7)]

Refer to Ohio Compliance Supplement section 2A-16 for additional information regarding commercial paper and bankers acceptances.

TOS CPIM Confirmation and FAQ's

Auditors should contact the Treasurer of State's office at CPIM@tos.ohio.gov website includes an online searchable CPIM report database⁸⁴ of to inquire about treasurers receiving TOS-approved certifications and exemptions. The link to this website is: <http://tos.ohio.gov/epim/fiscalofficers/>— Auditors can also review TOS policies and FAQs related to TOS CPIM requirements at <https://www.tos.ohio.gov/center-for-public-investment-management/> this link. However, the TOS website does not include CPIM for AOS-approved courses for county treasurers. Auditors should refer to the Continuing Education Hours Report under *County Treasurer's* box on the AOS website at <https://ohioauditor.gov/trainings/treasurers.html> to obtain a listing of AOS-approved CPIM received by county treasurers. CPIM training requirements are by calendar year.

Auditors can also refer to AOS/TOS Frequently Asked Questions (FAQ's) regarding training requirements for county and local subdivision treasurers on our website listed as *Training Requirements for County Treasurers* or as *Training Requirements for Treasurers of Subdivisions* at: https://ohioauditor.gov/trainings/docs/2021/CPIM_FAQs.pdf.

⁸² While not specified in statute, the TOS has indicated that this training need only be completed once. It is not intended to be an annual requirement.

⁸³ Ohio Rev. Code § 135.35(A)(8) applies to the investing authority. However, the treasurer is the investing authority, except in the rare circumstance county commissioners determine a treasurer is not complying with county policies, per Ohio Rev. Code § 135.34.

⁸⁴ ~~Note: The reliability of the TOS online CPIM search results may be affected by the accuracy of information entered into the database. Therefore, auditors may still need to inquire with local treasurers regarding CPIM certifications if discrepancies are identified using the online database.~~

Timing of Training

New public officials should be able to receive technical training prior to actually taking office. Additionally, payment for training attendance under these circumstances, even prior to taking office, is a proper public expenditure and should not be questioned in an audit. (See also <http://ohioauditor.gov/ocs/2019/191205%20OTA%20Letter.pdf>)

Suggested Audit Procedures - Compliance (Substantive) Tests:

Note: Testing requirements related to commercial paper and bankers acceptances should be completed in OCS 2A-16 when applicable.

Counties (Auditor and Treasurer)

1. Obtain certificates of completion for the last biennial period⁸⁵. *(Note: For efficiencies, auditors may be able to obtain these certifications ~~using the weblink above for~~ from the Treasurer of State (email CPIM@tos.ohio.gov) and the Auditor of State).*
 - a. For County Auditors, Review the County Auditor Association's statement documenting attendance or confirm by reviewing the County Auditor Continuing Education Status Report located at: <https://ohioauditor.gov/references/confirmations/hours.html>.
 - b. Determine if the Auditor obtained sufficient CPE.

All other Subdivisions as outlined in Ohio Rev. Code § 135.01(L)⁸⁰

2. Obtain annual certificates of completion to determine that the Fiscal Officer earned at least six (6.0) hours of CPIM Training or obtain the notice of exemption to the Auditor of State that the treasurer is not subject to continuing education requirements. *(Note: For efficiencies, auditors may be able to obtain these certifications ~~using the~~ from the Treasurer of State (email CPIM@tos.ohio.gov) ~~weblink for the Treasurer of State~~).*

Municipal and Township Fiscal Officer – Fiscal Integrity Act

3. If a newly elected or appointed municipal or township fiscal officer⁸⁶ has completed the first year of their term during the years being reviewed OR the fiscal officer's term ended during the years being reviewed. Obtain evidence that fiscal officers have received the required training.
 - a. Newly elected, hired or appointed fiscal officers must complete six (6) hours of initial education courses before commencing their term in office or within the first year in office and 18 hours of additional continuing education courses before the end of their first term in office.
 - b. Re-elected fiscal officers must complete 12 hours of continuing education course before the end of each subsequent term (including two (2) hours of ethics training.

Evidence of training may be obtained from the Fiscal Officer, or by searching the Fiscal Integrity Act portal.

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

⁸⁵ If the official's biennial cycle did not end during the audit period or the official was not in office at the end of the biennial cycle, no testing would be required.

⁸⁶ Note this is for fiscal officers whose term begins after 3-23-2015.

2B-7 Compliance Requirement: Various ORC Sections - Fraud and Abuse; Conflict of Interest; Ethics.**Ohio Rev. Code § 102.03 - Restrictions and prohibitions.**

- This section restricts the conduct of public officials and employees with respect to their official positions. Per Ohio Rev. Code § 3314.03(A)(11)(e) and Ohio Ethics Comm'n, Advisory Op. No. 2010-01 (<https://www.ethics.ohio.gov/advice/opinions/2010-01.pdf>), Ohio Rev. Code Chapter 102 applies to community schools. ~~Members of a community school's governing authority cannot be employed by either the school or, except in specified circumstances, have an interest in any contract awarded by the governing authority.~~ No person who is a member of the governing authority of a community school under Chapter 3314 may be a member of a board of education. [Ohio Rev. Code § 3313.131]

Ohio Rev. Code § 3314.02(E)(2) further restricts the following from membership of community school governing authorities:

- (1) A person who owes the state money or is in dispute over whether the person owes the state any money concerning the operation of a community school that has closed.
- (2) A person who would otherwise be subject to refusal, limitation, or revocation of a license to teach, if the person were a licensed educator,
- (3) A person who has pleaded guilty to or has been convicted of a theft in office or a similar offense, and
- (4) A person who has not submitted to a criminal records check.⁸⁷

Ohio Rev. Code § 3314.02(E)(4) indicates for a community school that is not sponsored by a school district or education service center:

- (1) No present or former member (or immediate relative⁸⁸) of the governing authority shall be an owner, employee, or consultant of the sponsor/operator, unless at least one year has elapsed since conclusion of the person's membership on the governing authority

Or if the community school is sponsored by a school district or education service center, no present or former member (or immediate relative) of the governing authority shall:

- (1) Be an officer of the district board or service center governing board that serves as the sponsor, unless at least one year has elapsed since conclusion of the person's membership on the governing authority
- (2) Serve as an employee of, or consultant for, the department, division, or section of the sponsoring district or service center that is responsible for sponsoring, unless at least one year has elapsed since conclusion of the person's membership on the governing authority

- Present and former public officials or employees are prohibited during their public employment or for twelve months thereafter from representing any person on any matter in which the public official or employee personally exercised administrative discretion as a public official or employee. (Also known as *the revolving door statute*.) [Ohio Rev. Code § 102.03(A)(1)]
- Division (A) of Ohio Rev. Code § 102.03 shall not be construed to prohibit performing ministerial functions, including, but not limited to, the filing or amending tax returns, applications for permits and licenses, incorporation papers, and other similar documents. [Ohio Rev. Code § 102.03(A)(7)]
- Public officials and employees are prohibited from using or authorizing the use of the authority or

⁸⁷ Any person who has not submitted to a criminal records check is prohibited from engaging in the financial day-to-day management of the community school.

⁸⁸ Immediate relatives are limited to spouses, children, parents, grandparents, and siblings, as well as in-laws residing in the same household as the person serving on the governing authority. [Ohio Rev. Code § 3314.02(E)(1)]

influence of office or employment to secure anything of value or to promise or to offer anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. [Ohio Rev. Code § 102.03(D)]

- Public officials and employees are prohibited from soliciting or accepting anything of value that is of such character as to manifest a substantial and improper influence upon that public official or employee with respect to that person's duties. [Ohio Rev. Code § 102.03(E)]

Ohio Rev. Code sections governing interests in contracts by elected officials

- **Ohio Rev. Code § 305.27** Prohibits county commissioners from having an interest in a county contract.
- **Ohio Rev. Code § 511.13** Prohibits any member, officer or employee of a board of township trustees from having an interest in any contract the trustees approve.
- **Ohio Rev. Code § 731.02** Prohibits members of a city legislative authority from having an interest in any contract with the city.
- **Ohio Rev. Code § 731.12** Prohibits members of a village legislative authority from having an interest in any contract with the village.
- **Ohio Rev. Code § 3313.33** Prohibits board of education members from having a pecuniary interest in a board contract, or from being employed by the board. However, there are exceptions, per Ohio Rev. Code § 3313.33(C). You should refer to the statute for details of the exceptions. *Note:* this statute does not apply to community schools unless the sponsor mandates it through the sponsor contract.

Ohio Rev. Code § 2921.42 - Having an unlawful interest in a public contract.⁸⁹

This section prohibits such interests.⁹⁰ Ohio Rev. Code § 3314.03(A)(11)(e) requires community schools to comply with Ohio's Ethics Laws, which, among other things, requires public officials to disclose conflicts of interest and prohibits them from having an interest in a contract awarded by their public office. For example, a community school's Treasurer should not loan money to a community school they work for, as this could violate Ohio Rev. Code § 2921.42. ~~Effective March 30, 2006, Members of a community school's governing authority cannot be employed by the community school or, except in specified circumstances, have an interest in any contract awarded by the governing authority.~~

Ohio Rev. Code § 9.833(F) expressly permits a subdivision's officials or employees to serve on the governing board of the program administrator of a governmental self-insurance program, if his or her government participates in that program.

Ohio Rev. Code § 3314.02(E)(6) - (8) - No employees of a school district or ESC shall serve on the governing authority of a community school sponsored by that school district or ESC. No person who is a

⁸⁹ It is permissible for a public official to have an interest in a public contract if (1) the contract covers necessary services or supplies for the official's public office, (2) the services or supplies cannot be obtained elsewhere for the same or lower cost or are being furnished to the public office as part of an ongoing relationship that started prior to the official's involvement with the office, (3) the treatment given to the public office is either preferential to or the same as the treatment given to other clients, and (4) the public office is aware of the official's interest in the contract and the official does not participate in any deliberations regarding the contract. [Ohio Rev. Code § 2921.42(C)]

⁹⁰ [2016 O.E.C. No 2016-01](#) discusses in greater detail exceptions and considerations related to Ohio Rev. Code § 2921.42.

member of a school district board of education shall serve on the governing authority of *any* community school.⁹¹

Each member of the governing authority shall annually file a disclosure statement ~~setting forth reporting~~ the names of any immediate relatives or business associates ~~employed by any of the following~~ within the previous three years ~~by either the~~ (1) sponsor or operator of the community school, (2) school district or ESC ~~that~~ has contracted with the community school, or (3) vendor that ~~is or has~~ engaged in business with the community school.

Ohio Rev. Code § 2921.41- Theft in office.

Public officials committing theft of public property (or services), or who use their offices in committing such acts, or permit their offices to be so used, are in violation of this Section. Ohio Rev. Code § 2913.01(K) defines “theft.”

Ohio Rev. Code § 2921.421 - Assistants and employees of prosecutors, law directors, and solicitors. This section provides procedures for employing persons associated in the private practice of law in these offices.

Ohio Rev. Code § 3329.10 - Purchases of school textbooks and supplies:

Superintendents, principals, teachers, and supervisors are prohibited from acting as sales agents for textbook companies including companies offering electronic textbooks. These school officials are also prohibited from representing companies selling school apparatus or equipment. (Not applicable to community schools.)

Ohio Rev. Code § 117.103(B)– The auditor of state shall create training material detailing Ohio’s fraud-reporting system and the means of reporting fraud, waste, and abuse. The auditor of state shall provide the training material about the Ohio fraud-reporting system and the means of reporting fraud to employees and elected officials of a political subdivision. Current employees and elected officials as of the effective date of this amendment shall complete the training within 90 days of a date specified by the auditor of state unless good cause exists for noncompliance. Each new employee or elected official shall confirm receipt of this material within thirty days after taking office or beginning employment. The training shall be required every four years for each employee or elected official. The auditor of state shall provide a model form on the auditor of state’s web site (<https://ohioauditor.gov/fraud/docs/FraudReportingSystemModelForm.pdf> <http://www.ohioauditor.gov/trainings/fraud.html>) to be printed and used by public employees and elected officials to sign and verify their receipt of material as required by this section. The auditor of state shall confirm, when conducting an audit under Ohio Rev. Code § 117.11, that public employees and elected officials have been provided material as required by this division.

Note: The Auditor of State ~~is currently developing the HB 33 fraud training material and will issued a AOS Bulletin 2024-005~~ to all public officials enumerating the process and specified timeframe within which all public employees and elected officials must complete the training. ~~Until this bulletin is published and in effect, auditors should continue to audit compliance with the existing Fraud Reporting System Model Form and pre HB 33 requirements.~~ The training, created by the AOS, is an on-demand virtual training that employees can self-register for free and is available, along with Frequently Asked Questions, on the AOS webpage at <http://www.ohioauditor.gov/trainings/fraud.html>. CPE certificates will be provided once the training is viewed. ~~These certificates should be collected from employees and retained for audit.~~ Current employees and elected officials are required to complete the initial training within the timeline listed in the

⁹¹ We interpret these requirements to mean that representatives of the community school’s sponsor organization are prohibited from being voting members of the community school’s governing authority. A sponsor is statutorily required to be actively monitoring and present at community school board meetings. While representatives of the sponsor organization may make their wishes known during the board meetings, they are prohibited from voting.

chart below. The training may be viewed earlier than the start date listed; however, must be completed no later than the end date listed by entity type unless good cause exists for completion at a later date.

Entity Type	Start Date	End Date (90 days from start date)
County, City, Village, Township	July 1, 2024	September 28, 2024
State Agency	August 1, 2024	October 29, 2024
Traditional School (including Joint Vocational School Districts, Educational Service Centers, & STEM/STEAM Schools)	September 1, 2024	November 29, 2024
Community School	September 1, 2024	November 29, 2024
All other entities	October 1, 2024	December 29, 2024

Notes:

1. Ohio Rev. Code § 117.103 requires the training of *employees and elected officials of political subdivisions*. If an entity's board members are neither employees of the entity (receives a W-2), nor elected officials of the entity, then they are not required to take the fraud training required by Ohio Rev. Code § 117.103.
2. The Auditor of State's Office permits entities to upload the fraud training video (obtained directly from AOS upon request) to their own Learning Management System (LMS), and produce their own certificates/reports/proof of completion.

1979 Op. Att'y. Gen. No. 1979-111 - Incompatibility of public offices: A public officer or employee may be prohibited from holding another public position. The Attorney General maintains a listing of incompatible public offices (<http://www.ohioattorneygeneral.gov/About-AG/Service-Divisions/Opinions/Compatibility-of-Public-Offices-or-Positions>)

Note: You may find evidence of possible violations of Ohio Rev. Code §§ 102.03, 2921.41, 2921.42, and 2921.421 from various audit tests. These sections are criminal violations. Auditor of State staff should consult with the State Auditor's Legal Division whenever you suspect possible violations of these sections. Independent public accountants should consult with their own legal counsel.

Suggested Audit Procedures - Compliance (Substantive) Tests:

1. Determine how the entity identifies possible interests on the part of officials and employees in matters coming before them for official action. For example, are officials and employees required to report the outside businesses and organizations they work for to the entity?
2. Inquire if any correspondence was received from the Ohio Ethics Commission regarding ethical violations.⁹² If so, read correspondence regarding ethical violations and document the impact of any violations on the audit.
3. Inquire if any conflicts of interest or unethical transactions occurred during this year.

⁹² Auditors and IPAs should not contact the Ethics Commission. If evidence comes to your attention concerning possible ethics violations, IPAs and AOS staff should follow this guidance from the *Ohio Compliance Supplement Implementation Guide*.

4. Inquire if the entity is aware of any other fraud. (AU-C 240 requires this step. If you already documented this in the FRAQ, you need not repeat this step here.)
5. If the school district purchased textbooks (including electronic textbooks) or school apparatus or equipment during this year, determine how the school assured that no one on the purchasing committee (superintendents, principals, teachers, and supervisors) acted as sales agents for those companies.

~~**NOTE:** Select EITHER the Pre HB 33 OR HB 33 steps below, as appropriate.: The Auditor of State is currently developing the HB 33 fraud training material and will issue a bulletin to all public officials enumerating the process and specified timeframe within which all public employees and elected officials must complete the training. Until this bulletin is published and in effect, auditors should test the Pre HB 33 fraud reporting system requirements.~~

Pre HB 33 Fraud Reporting System Requirements

- ~~6. Determine if the entity's employees and elected officials were notified about the fraud reporting system. Inquire regarding the entity's process for obtaining and maintaining acknowledgement forms from new employees and elected officials.~~
- ~~7. Select a small number of new employees and elected officials and confirm they were provided the required information.~~

HB 33 Fraud Training Material

8. Determine if the entity's employees and elected officials completed the required training about the fraud reporting system within 90 days of the date specified by AOS [in Bulletin 2024-005](#). Inquire regarding the entity's process for obtaining and maintaining confirmations from new employees and elected officials signing off that they have received training material about the fraud reporting system.
9. Select a small number of new employees and elected officials and confirm they were provided the fraud training materials within thirty (30) days after taking office or beginning employment as required.
10. Inquire regarding the entity's process for ensuring employees and elected officials are viewing the fraud training every four years.⁹³
11. **For traditional schools that sponsor community schools**, inquire whether any employees of the school district or ESC serve on the governing authority of a community school sponsored by the school district or ESC.
12. **For traditional schools**, inquire whether the district board members serve on the governing authority of ANY community school.
13. **For community schools:**
 - a. Inquire whether any of the governing board members are also employees or governing board members of the sponsoring traditional school or ESC.
 - b. Determine whether the Treasurer loaned the community school money. This would include previous loans still being repaid during the current audit period, or money loaned to the school during the current audit period.

⁹³ Any internal control comments resulting from an entity not having developed a process to ensure all employees or elected officials have taken the fraud training every four years should be documented in the working papers and communicated verbally to management in the initial audit under these new training requirements.

Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):

2B-8 Compliance Requirement: Ohio Rev. Code §§ 109.43, 121.22, 149.351, 149.43, 3314.037 and AOS Bulletin 2021-007 & 2019-003 – Ohio Sunshine Laws⁹⁴

This section is re-organized and appears different from other sections of the OCS, with the requirements and associated testing interspersed in the “Test Procedures” section. The requirements are numbered and associated testing follows in italicized text.

FAQs are available from both the Public Office and Auditor viewpoints. See [Sunshine Laws and StaRS Frequently Asked Questions](#) for additional guidance as necessary.

The Auditor of State issued [Bulletin 2021-007](#) announcing a change in the interpretation of Public Records and Open Meetings Laws applicability to community schools. However, this new interpretation will not be applied to community school audits until further notice. For fiscal year ~~2024~~ 2025, auditors should continue to test community school requirements as outlined in the OCS.

Summary of Requirements

The Sunshine Law incorporates two acts, the Ohio Public Records Act Ohio Rev. Code § 149.43 and the Ohio Open Meetings Act Ohio Rev. Code § 121.22. As provided in the Acts and Ohio Rev. Code § 109.43, during an annual/biennial audit pursuant to Ohio Rev. Code Chapter 117 the AOS will test for compliance with these statutes. A brief description of the Acts follow.⁹⁵

AOS will be testing for statutory compliance with the Ohio Public Records Act and Ohio Open Meetings Act, and reporting those results with more emphasis. The General Assembly has empowered the public to ensure their local governments are acting transparently in carrying out the peoples’ business by creating these two self-help statutes. If a citizen believes a public office has violated either Act, they can file an action in the appropriate court.

Ohio Public Records Act - Ohio Rev. Code § 149.43

This Act requires that a public office make public records⁹⁶ available for inspection or copying. The time required for a response depends on the type of request.

1. If a request is to INSPECT public records, the response must be **prompt**.
2. If COPIES are requested, those copies must be provided within a **reasonable period of time**.

As is often noted, the terms "promptly" and "reasonable period of time" are not defined by a specific period of time. Rather, these terms have been interpreted by courts to mean "without delay" and "with reasonable

⁹⁴ We should not test for University Foundations or Courts or Clerk of Courts.

⁹⁵ For full details of all requirements and exceptions see the Ohio Sunshine Law Manual (AG Yellowbook) at: <https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws>.

⁹⁶ Ohio courts routinely treat text messages and emails sent by public officials and employees in the same manner as any other records, regardless of whether messages and emails are on publicly issued or privately-owned devices. (Source: Ohio Sunshine Law Manual (AG Yellowbook) <https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws>). If the content or information in the message or email documents the functions or activities of the public office, the message or email is a public record regardless of whether it is on a privately-owned device. In addition, the Ohio Supreme Court has found that merely attaching a document to a public record does not automatically incorporate that document into the public record. Rather, the document must be affirmatively incorporated by making a notation on it referring to the public record to which it is attached. (Source: Ohio Sunshine Law Manual (AG Yellowbook))

speed,⁹⁷" and the ultimate determination of "reasonableness" will differ in each case depending on the particular facts and circumstances of a request.⁹⁸ Additionally, courts have held that a "prompt" or "reasonable period of time" includes the time for a public office to: (1) identify the responsive records; (2) locate and retrieve records from place of storage; (3) review, analyze and make necessary redactions (or legal review); (4) prepare the requests; and (5) provide for delivery.

Not all documents and information maintained by a public office are subject to disclosure under the Act. In these instances, it may be necessary to withhold records such as when the document is not a public record, or redact information from the response, such as social security numbers. When redacting information from a request, the public office is required to notify the requester of any redaction or make the redaction plainly visible.⁹⁹ Additionally, where the request is denied, in whole or in part, including redactions, the public office must provide the requester with a reason, including the legal authority for the denial/redaction.¹⁰⁰

Because the Public Records Act is a self-help statute, if a person believes the public office has violated the Act in any way, he or she must initiate a legal action themselves. Neither the AOS nor any other public official can do so on their behalf. More general information can be found in the Ohio Sunshine Manual found at <http://www.ohioauditor.gov/open.html>. For more specific information, both citizens and public offices should consult their legal counsel.

Ohio Open Meetings Act – Ohio Rev. Code § 121.22

This Act requires that all meetings of any public body be open to the public. The minutes of regular and special meetings are to be promptly recorded and open to the public for inspection. Executive session may be held at a regular or special meeting, but must be entered into and returned from during the public meeting. To enter into executive session requires a roll call vote while ending an executive session only requires a notation in the minutes that the body has returned to open session. But both instances must occur during the public portion of the meeting. Matters that can be discussed during executive session are specifically limited by Ohio Rev. Code § 121.22(G); actions and decisions must occur during the open meetings. The minutes need to only reflect the general subject matter of discussions in executive sessions.

⁹⁷ *State ex rel. Office of Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, at ¶16; *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Educ.*, 97 Ohio St.3d 58, 2002-Ohio-5311, at ¶37; *State ex rel. Wadd v. City of Cleveland*, 81 Ohio St.3d 50, 53, 1998-Ohio-444.

⁹⁸ *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, at ¶17 ("Given the broad scope of the records requested, the governor's office's decision to review the records before producing them, to determine whether to redact exempt matter, was not unreasonable."); *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, at ¶44 (delay due to "breadth of the requests and the concerns over the employees' constitutional right of privacy" was not unreasonable); *State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Educ.*, 97 Ohio St.3d 58, 2002-Ohio-5311; *State ex rel. Striker v. Cline* (5th Dist.), 2010-Ohio-3592 (provision of records within nine business days was a reasonable period of time to respond to a records request.); *State ex rel. Holloman v. Collins* (10th Dist.), 2010-Ohio-3034 (Assessing whether there has been a violation of the public records act, the critical time frame is not the number of days between when respondent received the public records request and when relator filed his action. Rather, the relevant time frame is the number of days it took for respondent to properly respond to the relator's public records request.).

⁹⁹ Ohio Rev. Code § 149.43(B)(1).

¹⁰⁰ Ohio Rev. Code § 149.43(B)(3).

Every public body shall establish a reasonable method¹⁰¹ of notifying the public of the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A special meeting requires twenty-four hour notice to the news media that have requested notification, except in the event of an emergency requiring immediate action, whereby notice shall be immediate.

Because the Open Meetings Act is a self-help statute, if a person believes the public office has violated the Act in any way, he or she must initiate a legal action themselves. Neither the AOS nor any other public official can do so on their behalf. More general information can be found in the Ohio Sunshine Manual found at <http://www.ohioauditor.gov/open.html>. For more specific information, both citizens and public offices should consult their legal counsel.

~~For two-year audits including December 31, 2022 FYE, effective March 9, 2020 until July 1, 2021, during the period of the Governor's emergency public health orders, and effective February 17, 2022 through June 30, 2022, members of a public body may hold and attend meetings and may conduct and attend hearings by means of teleconference, video conference, or any other similar electronic technology and all of the following apply:¹⁰²~~

- ~~1) Any formal action shall have the same effect as if it had occurred during an open meeting;~~
- ~~2) Members attending an electronic meeting are considered present as if attending an in-person meeting, are permitted to vote, and are counted for purposes of determining a quorum;~~
- ~~3) Twenty four hours in advance of the virtual meeting or hearing, public bodies must notify: 1) the public, 2) media that have requested notification of a meeting, and 3) the parties that must be notified of a meeting or hearing. The public body must provide this notice by reasonable methods that allow a person to determine the time, location, and manner by which this meeting or hearing will be conducted;~~
- ~~4) In the event of an emergency, the public body need not follow these notification requirements and instead must immediately notify the news media that have requested notification or the parties that must be notified of the time, place, and purpose of the meeting or hearing;~~
- ~~5) Said public body shall provide the public access to view any meeting held electronically (that the public would otherwise be able to attend) through live streaming by means of the internet, local radio, television, cable, or public access channels, call in information for a teleconference, or by means of any other similar electronic technology. The public body shall ensure that the public can observe and hear the discussions and deliberations of all the members of the public body, whether the member is participating in person or electronically.~~

~~When members of a public body conduct a hearing by means of teleconference, video conference, or any other similar electronic technology, the public body must establish a means, through the use of electronic equipment that is widely available to the general public, to converse with witnesses, and to receive documentary testimony and physical evidence.~~

Meetings of a public body may ~~continue to~~ be presented by teleconference, videoconference, or other similar electronic technology ~~after July 1, 2021~~. However, the Open Meeting Act, ~~including the period from July 1, 2021 through February 16, 2022 and after June 30, 2022~~, requires members of a public body be

¹⁰¹ Ohio Rev. Code § 121.22(F); *Katterhenrich v. Fed. Hocking Local School Dist. Bd. of Edn.*, 121 Ohio App.3d 579, 587 (4th Dist. 1997) (“Typically, one would expect regular meetings to be scheduled well in advance”).

¹⁰² ~~Section 12 of Am. Sub. H. B. No. 197 133rd G.A as amended by Section 12 of Am. Sub. H. B. No. 404 133rd G.A and Section 3 of Sub. H.B. No. 51 134th G.A.~~

present in-person to be counted in the quorum and to vote.¹⁰³ These Open Meeting Act requirements may not apply to charter municipalities, charter counties, and/or limited home-rule townships which have adopted charter language directly contrary or a valid ordinance or resolution to the same effect.

Suggested Audit Procedures - Compliance (Substantive) Tests:

NOTE: For all procedures below, those entities, such as counties, that have multiple departments, agencies, elected officials, and/or oversight boards should be tested on a rotating basis. **Test half of the departments, agencies, elected officials, and/or oversight boards each year**, unless there has been a change, then test in the year of the change. **The public office's main policy & public body should be tested annually (i.e. County Commissioner policy followed by various departments, agencies, elected officials, and/or oversight boards).** Charter entities may have different requirements depending on their charters. Therefore, requirements/testing for charter entities may differ. In addition, for entities listed on Exhibit 6 of the legal matrix in the Implementation Guide, see the columns on the matrix indicating whether the Public Records Act and/or Open Meetings Act are applicable. Steps below citing Ohio Rev. Code § 149.43 are from the Public Records Act, and those citing Ohio Rev. Code § 121.22 are from the Open Meetings Act.

1. The public office shall create and adopt a policy for responding to public records requests. Except for the exception noted in Ohio Rev. Code § 149.43(B)(7)(c), the public records policy may not: (a) limit the number of public records that the public office will make available to a single person, (b) limit the number of public records that it will make available during a fixed period of time, and (c) establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours. [Ohio Rev. Code § 149.43(E)(2)]

Obtain the public office's Public Records Policy and scan it to be sure the policy did not limit the number of responses that will be made to a particular person or limit the number of responses during a specified period of time, unless the exception noted above applies, or establish a fixed period of time before it will respond unless that period is less than eight hours.
2. Select five (or total population if less than five) public records requests from the audit period to ensure: (Note: one selection of five (or total population if less than five) is sufficient for each policy tested no matter how many departments follow that policy. In addition, if there are no denials or redactions pulled in the selection, auditors do not need to pull an additional selection.)
 - a. Public records are promptly prepared and sent to the requestor, and/or promptly prepared and made available for inspection by the requestor within a reasonable time. [Ohio Rev. Code § 149.43(B)(1)]
 - b. If a request is denied, in part or in whole, the public office shall provide the requester with an explanation, including legal authority. [Ohio Rev. Code § 149.43(B)(3)]
 - c. The public office shall notify the requester of any redaction(s) or make them plainly visible and provided an explanation, including legal authority. [Ohio Rev. Code § 149.43(B)(1)]

¹⁰³ Effective October 3, 2023, Ohio Rev. Code § 5126.0223 allows a county board of developmental disabilities to establish a policy that allows board members to attend a meeting of the county board via means of electronic communication. A member who attends via electronic communication is considered present at the meeting, is counted for purposes of establishing a quorum and may vote at the meeting. In addition, the Ohio Rev. Code permits virtual participation for the open meetings act under Ohio Rev. Code § 121.22(C) for the following boards: Board of Directors of a Port Authority (Ohio Rev. Code § 4582.60) and Board of Supervisors of a Soil and Water Conservation District (Ohio Rev. Code § 940.39).

3. A public office shall have a copy of its current records retention schedule at a location readily available to the public. [Ohio Rev. Code § 149.43(B)(2)]
Ascertain whether the public office has a records retention schedule, and that it is readily available to the public.
4. The public office shall distribute the public records policy to the employee who is the records custodian or records manager or employee who otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. [Ohio Rev. Code § 149.43(E)(2)]
Determine whether written evidence exists that the Public Records Policy was provided to the records custodian/manager.
5. If the public office has established a manual or handbook of its general policies and procedures, the public office shall include the public records policy in the manual or handbook. [Ohio Rev. Code § 149.43(E)(2)]
Ascertain whether the public office's public records policy was included in policy manuals.
6. The public office shall create a poster describing their public records policy and shall post it in a conspicuous place in all public locations of that public office. [Ohio Rev. Code § 149.43(E)(2)]
Ascertain whether the public office's poster describing the policy is displayed conspicuously in all branches of the public office.
7. The appropriate records commission¹⁰⁴ shall review the schedules of records retention and disposition, as well as any applications for the one-time disposal of obsolete records. [Ohio Rev. Code §§ 149.38, 149.39, 149.41, 149.411, 149.412, and 149.42]
If submitted, obtain up to five applications for one-time disposal of obsolete records, and also review the schedules of records retention and dispositions for the audit period. In both instances, confirm approval by the appropriate records commission. (Note: the records retention schedule is not the same policy as the public records policy. Review the OCS Legal Matrix, OCS 2B-8 Step 7 Applicability tab to determine the section of the ORC which applies to the public office. "No Records Authority" indicates this step is not applicable.)
8. All elected officials or their designees (see clarification regarding designees on Step #5 of 2B-8 Exhibit A) shall attend public records training approved by the Attorney General. [Ohio Rev. Code § 149.43(E)(1)] Training is required to be three hours for every term of office. [Ohio Rev. Code § 109.43(B)]¹⁰⁵ Community school administrators are required to complete annual training on public records and open meeting laws. [Ohio Rev. Code § 3314.037]

¹⁰⁴ 2013 Op. Att'y Gen. No. 13-006 defined the term "special taxing district" as used in Ohio Rev. Code § 149.412. To determine the appropriate records commission for a "special taxing district," it must be determined if the entity is subject to the jurisdiction of another records commission established in Ohio Rev. Code § 149. Based on this test, a county veterans service commission and a county board of developmental disabilities are subject to the jurisdiction of a county commission under Ohio Rev. Code § 149.38. A county soil and water conservation district, a single county alcohol, drug addiction, and mental health service district, a general health district, and a combined general health district are subject to the jurisdiction of a special taxing district records commission under Ohio Rev. Code § 149.412.

¹⁰⁵ Newly elected public officials should be able to receive training prior to actually taking office. (See also <http://ohioauditor.gov/ocs/2019/191205%20OTA%20Letter.pdf>)

Determine whether each elected official¹⁰⁶ (or his/her designee) successfully attended a certified three-hour Public Records Training for each term of office. Obtain proof of attendance and include it in the permanent file for future reference.

Note: The Attorney General's Office (AGO) currently uploads an attendance roster for each certified public records training provided by its office to its external website. The roster is now proof of attendance from the AGO to attendees. The attendance rosters are located here: <https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws/Sunshine-Laws-Training-Attendance-Reports>. All attendees are notified at the trainings where the rosters are posted. The Auditor of State's Office provides certificates as proof of attendance. Additionally, the AGO may contract with other state agencies, political subdivisions, or other public or private entities to conduct the training programs and seminars. AOS auditor should consult with Legal to determine whether any other trainings qualify as a certified public records training. See Ohio Rev. Code § 109.43(D).

Determine whether each community school governing authority member, or community school administrative staff (designated fiscal officer, chief administrative officer, and all individuals performing supervisory or administrative services) completed annual training on public records and open meetings laws.

9. Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place (~~or means~~) of all regularly scheduled meetings, and the time, place (~~or means~~) and purpose of all special and emergency meetings. [Ohio Rev. Code § 121.22(F)]
- A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action.
 - In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

Determine whether the public office notified the general public and news media of when and where meetings during the audit period are to be held.

10. The minutes of a regular or special meeting of any public body shall be promptly prepared, filed and maintained and shall be open to public inspection. [Ohio Rev. Code § 121.22(C)]

Determine whether the minutes of public meetings during the audit period were:

- Prepared promptly – a file is created following the date of the meeting*
- Filed – placed with similar documents in an organized manner*
- Maintained - retained, at a minimum, for the audit period*
- Open to public inspection – available for public viewing or request.*

11. An executive session requires a majority of a quorum by roll call vote at a regular or special meeting for the sole purpose of the consideration of only the following matters: [Ohio Rev. Code § 121.22(G)]
- Specified employment matter of public employee/official;
 - Purchase of property for public purpose or sale/disposition of property;
 - Conferences with an attorney for the public body concerning disputes that are the subject of pending or imminent court action;
 - Preparing for, conducting or reviewing negotiations or bargaining sessions;
 - Matters required to be kept confidential by federal law or regulations or state statutes;

¹⁰⁶ Does not include judges or clerks of courts. See Ohio Rev. Code § 109.43(A)(2). In addition, Ohio law does not require STEM school officials to attend the training, since they are not elected officials, and Chapter 3326 does not contain a provision requiring it.

- f. Specialized details of security arrangements and emergency response protocols;
- g. Consideration of trade secrets for hospitals;
- h. Confidential information related to marketing plans, business strategy, trade secrets, or personal financial statements of an applicant for economic development assistance.

Review the minutes from the audit period and determine if executive sessions were only held at regular or special meetings.

Review the minutes of meetings held during the audit period and the purpose for going into an executive session (when applicable). Confirm the purpose correlates with one of the matters listed in a-h above.

Determine whether formal governing board actions from the audit period were adopted in open meetings.

AOS staff should consult with the assistant legal counsel assigned to their region regarding any non-compliance or questions related to these requirements or violations of Ohio Rev. Code § 149.351 (destruction of records) related to these records. Further, any conclusions in the final audit report or management letter comments must be reviewed and approved by AOS Legal. Include any directly-relevant documentation accompanying the consultation, along with all relevant factual information.

NOTE: If the entity is compliant with all applicable 11 tests above and there are no violations of Ohio Rev. Code §149.351 (destruction of records) related to these records, as applicable, it has earned a single star under the StaRS rating. Staff should then test best practices in Exhibit A to this section.

<p>Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</p>
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2B-8 Exhibit A: AOS Bulletin 2019-003 – Star Rating System (StaRS)¹⁰⁷





The best practices testing is strictly to determine the optional StaRS rating above one star if the entity has chosen to implement one or more best practices. The best practices will *not* have any bearing on determining compliance with Ohio Sunshine Laws, and the auditors shall *not* issue control deficiencies related to the best practices. It is within the discretion of the entity to implement none, some or all of the suggested best practices.

Sunshine Law Star Rating System (StaRS):

If the public office implements best practices beyond what is required by law, our office will recognize that achievement. The StaRS level each public office has achieved will be posted on the Auditor of State’s website.

StaRS Overview:

A public office **MUST** be compliant with all the applicable statutory requirements listed above to become eligible for consideration for a StaRS Award. To achieve a higher level reflected in the StaRS levels chart below, a public office should adopt the best practices from the list of suggested best practices provided by the AOS (which follows the StaRS chart) to enhance transparency consistent with the spirit of the Sunshine Laws. These procedures and practices are not required by law but are suggested to help public offices meet and fully address the requirements of the law. Each public office’s StaRS level will be based on compliance and the number of best practices implemented.

StaRS Levels:	
	Open and Transparent Government - Meets all Sunshine Law requirements.
	Achievement in Open and Transparent Government - Implemented 1-2 best practices
	Outstanding Achievement in Open and Transparent Government - Implemented 3-4 best practices
	Highest Achievement in Open and Transparent Government - Implemented 5 or more best practices
Non-Compliant	Non-compliant - Sunshine Law requirements are not fully achieved.

StaRS Best Practices:

To achieve additional success toward a more open and transparent government operation, the AOS suggests the following be implemented; these suggestions are not required by Ohio’s Sunshine Laws.

NOTE: For those entities, such as counties, that have multiple departments, agencies, elected officials, and/or oversight boards that have adopted their own public record policies should be tested on a rotating basis. **Test half of the departments, agencies, elected officials, and/or oversight boards each year**, unless there has been a change to the policy, then test in the year of the change. **The public office’s main policy should be tested annually (i.e. County Commissioner policy followed by various departments,**

¹⁰⁷ We should not test for University Foundations or Courts or Clerk of Courts.

agencies, elected officials, and/or oversight boards). Charter entities may have different requirements depending on their charters. Therefore, requirements/testing for charter entities may differ.

In order to meet each best practice identified below, the public office must address a majority of the elements of that best practice.

1. The public office employs some method to track public records requests. For example, the public office uses a log or similar tracking method. The tracking method should include a majority of these elements. Additionally, a sample log is included in Appendix A of [AOS Bulletin 2019-003](#).
 - a. Date in-person, verbal, written or email request received (date stamp written requests)
 - b. Name of Requester (only if voluntarily provided; requests can be under a pseudonym or made anonymously)
 - c. Type of records requested
 - d. Date requests were fulfilled
 - e. Name of person fulfilling request

Determine whether the public office tracks public records requests and what method is used. Select five (or total population if less than five) and review the tracking method for evidence of the majority of the elements listed above.

2. To assist the public in making a request for records, the public office has an optional standard request form that is available to requestors to use if they wish, as well as for the staff to use when a request is made via phone (Example: Appendix A). The informational fields can include:
 - a. The date of the request in order to be tracked.
 - b. A description of the records requested (agendas, minutes, resolutions, budgets, etc.).
 - c. The format the requestor would like the records produced in (paper, electronic, etc.).
 - d. The method the requestor would like to receive the requested records (in person, via e-mail, standard mail, electronic media, etc.).
 - e. If the public office has a website, is the form available in order to submit a request on the website, or to download and submit by email, mail, fax, or in person.

Determine whether the public office makes available a standard request form for public records requests by mail, in person, or on the phone, and confirm the request form includes a majority of the elements listed above.

3. The public office provides an acknowledgement to the requestor when a public records request is received, consistent with the manner in which the request was made.
 - a. The acknowledgement by phone, email or mail provides a “tracking” number (date of request for example) the requestor can reference.
 - b. The acknowledgement is recorded in the public records log or similar tracking method by date and method that request was submitted to the office.
 - c. The acknowledgement should be made in a reasonable period of time to assure requestor their request has been received and is being processed.

Determine whether and how the public office acknowledges public records requests with a tracking number for requestor and was recorded. Select five (or total population if less than five) and confirm that acknowledgements are made/issued within a reasonable period of time.

4. To assist the public in making a request for records, the public office has publicized (website, public records poster, etc.) the name or office title of the records custodian and his/her contact information. Further, the public office’s staff has been trained on how to route public records requests to the record

custodian, who also has been trained on fulfilling the public records requests, including guidelines for negotiating ambiguous or large requests.

Review the Public Records Policy to verify the policy identifies the employee or office title of the public records custodian and the contact's telephone number, email and mailing address. Obtain evidence of training received by the public office's staff and public records custodian such as a Certificate of Public Records Training.

5. As tested in #8 of the requirements, all elected officials or their designees shall attend public records training once during a term. The applicable required Certified Public Records Training for all elected officials or their designees was completed within the first year of taking office or each subsequent term. To receive a star for this best practice, if a designee is an elected official whose term of office ends during the audit period, the best practice must be satisfied with respect to the designee and each elected official for whom the designee is taking the training. A designee can use a single CPRT to satisfy his or her own requirement to attend and to satisfy the requirement of the officials for whom he or she is a designee, as long as the designee and the officials' first year of office is the same year. In addition, community school administrators are required to complete annual training on public records and open meeting laws. The applicable required Certified Public Records Training and the annual training for community school administrators was completed within the first four months of employment or the beginning of each school year for rehires/retained personnel.

Determine whether each elected official¹⁰⁸ (or his/her designee) successfully attended the required Public Records Training within one year of taking office.

Note: The Attorney General's Office (AGO) currently uploads an attendance roster for each certified public records training provided by its office to its external website. The roster is now proof of attendance from the AGO to attendees. The attendance rosters are located here: <https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws/Sunshine-Laws-Training-Attendance-Reports>. All attendees are notified at the trainings where the rosters are posted. The Auditor of State's Office provides certificates as proof of attendance. Additionally, the AGO may contract with other state agencies, political subdivisions, or other public or private entities to conduct the training programs and seminars. AOS auditor should consult with Legal to determine whether any other trainings qualify as a certified public records training. See Ohio Rev. Code § 109.43(D).

Determine whether each community governing authority member, or community school administrative staff (designated fiscal officer, chief administrative officer, and all individuals performing supervisory or administrative services) completed annual training on public records and open meetings laws within four months of hire or the beginning of each school year for rehires/retained personnel.

6. The public office has an online presence and it provides details regarding upcoming events and the operations of the office. Some examples may include:
 - a. Agendas of meetings in advance.
 - b. Public records policy.
 - c. Records retention policy.
 - d. Meeting schedule of the public office and any of its committees.
 - e. Minutes of all meetings of the public office and any of its committees.

¹⁰⁸ Elected official does not include judges. See Ohio Rev. Code § 109.43(A)(2).

Confirm on the public office website that the majority of the items are available. For the minutes available for public meetings held during the audit period, confirm the corresponding agendas were published in advance of meetings.

7. The public office has an online presence that provides access to official documents that may be routinely requested by the public or media. Some examples may include, but are not limited to:
 - a. Annual Budget
 - b. Annual Report
 - c. Compensation for Public Officials
 - d. Most recent Audit Report
 - e. Contact information and hours of various departments

Confirm on the public office website that the majority of the items including but not limited to those listed are available.

After testing best practices, complete the StaRS Best Practices section of the Executive Summary or IPA Portal.