

## CHAPTER 3 STEWARDSHIP

Citizens and public officials want and need to know whether governments are handling their funds properly and complying with laws and regulations. Public officials entrusted with public resources are responsible for complying with those laws and regulations. The laws and regulations in this chapter have stewardship considerations that we have deemed significant and therefore require compliance testing.

### **Important:**

1. The following sections should be performed **ANNUALLY** if applicable to your entity:
  - ***Furtherance of Justice (FOJ), Law Enforcement Trust (LET), and Drug Law Enforcement Funds***
  - ***Submission of information for National Instant Criminal Background Check System (NICS) (PROCEDURES ARE LIMITED TO THE FOLLOW UP OF PRIOR YEAR RECOMMENDATIONS – TESTING FOR THIS SECTION HAS BEEN SUSPENDED)***
  - ***Dropout Prevention and Recovery School Eligibility Requirements***
2. Except for the areas listed above, auditors can **generally** rotate substantive compliance testing in this Chapter. For example, there are several compliance requirements in this chapter. (Not all of them apply to all entity types.) You should divide the applicable requirements approximately in half, and test half of them with each audit.
  - This applies to annual and biannual audits.
    - i. For example, if you audited officials' surety bonds for a village's 2016 and 2017 audit and found them to be compliant, you normally can omit this test for the 2018 and 2019 audit.
    - ii. This also applies if AUP were performed in the prior year(s). Auditors should select about half of the applicable steps for testing for the audit. Because of the lesser significance of most Chapter 3 requirements, we require no risk assessment or other documentation supporting the steps selected for testing. (Except auditors should apply b. and c. below.)
  - You should **not** rotate / omit a specific compliance test if the prior audit identified noncompliance or if evidence supports an elevated risk of noncompliance for the current audit.
  - You should test new Compliance Supplement requirements in the first year of their applicability.
3. If (1) controls exist to help assure compliance with a specific requirement, and (2) you obtain satisfactory results from testing the controls' operating effectiveness you may be able to limit or omit substantive testing of the requirement.
  - Unlike Single Audit requirements, we do not require you to test controls. You should select the most efficient audit strategy that results in sufficient evidence.
  - Some of the requirements in this chapter are more likely to be subject to formal controls than are others.
  - The AOS believes it is acceptable to rely on the results of prior audit's tests of controls if auditors apply the proper "updating" procedures. That is, auditors may use the concepts from AU-C 330.13 -- .14.
  - This approach only requires tests of operating effectiveness once every third year, not every third audit.

- i. However, the auditor must apply procedures in each intervening year to determine whether continued reliance is appropriate. For example, per AU-C 330.14(a), it is inappropriate to rely on a control that has changed since the auditor’s last test of its operating effectiveness.
- 4. Some steps in the chapter include additional guidance about the extent of testing applicable to that specific compliance requirement.
- 5. Auditors can normally use the extent of testing described in this chapter. However, if auditors identify specific risks related to specific compliance steps in this chapter, working papers should document these risk assessments, whether they be favorable (which may support less testing) or unfavorable (suggesting additional testing).

This *Ohio Compliance Supplement* chapter provides a simplified process for assessing the government’s compliance with these requirements. Auditors can generally complete these tests using inquiry, observation and, occasionally, certain other limited substantive procedures, such as inspection of documents or limited vouching.

As stated above, auditors should divide the steps subject to cycling approximately in half, and budget a similar amount for cyclic tests each audit to avoid audit cost fluctuations every other audit unless the risk of noncompliance warrants testing of these requirements every audit.

**The *Sample Questions and Procedures* this chapter presents are merely examples of procedures you might use.** You should add to, modify, or omit these procedures as appropriate in the circumstances. If existing control tests or substantive compliance tests satisfy these objectives, the auditor should cross-reference this work to these sections.

**NOTE: Red text throughout this 2021 Ohio Compliance Supplement is a change related to COVID-19**

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## GENERAL

**Revised: HB 481, 133 GA**  
**Effective: June 19, 2020**

**Revised: HB 614, 133 GA**  
**Effective: October 1, 2020**

### 3-1 Compliance Requirement: Ohio Rev. Code § 9.38 - Deposits of public money.

**Summary of Requirement:** Public money must be deposited with the treasurer of the public office *or* to a designated depository on the business day following the day of receipt. Public money collected for other public offices must be deposited by the first business day following the date of receipt.

For example, a government employee, other than the fiscal officer collecting funds and issuing a receipt, must deposit the funds with the government's fiscal officer on the business day following the day of receipt. As an alternative to depositing the funds with the government's fiscal officer, the employee instead may deposit funds with the government's designated depository on the business day following the day of receipt.

If the amount of daily receipts does not exceed \$1,000 **and** the receipts can be safeguarded, public offices may adopt a policy permitting their officials who receive this money to hold it past the next business day, but the deposit must be made no later than 3 business days after receiving it. If the public office is governed by a legislative authority (counties, municipalities, townships, and school districts), only the legislative authority may adopt the policy. The policy must include provisions and procedures to safeguard the money during the intervening period. If the amount exceeds \$1,000 or a lesser amount cannot be safeguarded, the public official must then deposit the money on the first business day following the date of receipt.

**Note:** This section does not require the **fiscal officer** to deposit receipts with the designated depository on the business day following the day of receipt, or any other specified time. However, if the fiscal officer is holding significant amounts of cash and checks for an unreasonable period, you should make an internal control recommendation.

Auditors should be aware of this requirement, especially when testing governments with multiple cash collection points. Auditors should consider whether controls over cash collection points are adequate, including whether cash is timely deposited.

**Also:** Prisoners placing personal phone calls from the phones located in the county and city jails must place collect phone calls. To enable prisoners to place collect calls the County Sheriff and/or the City Police Chief may enter into agreements/contracts with long distance carriers. Often times to attract business, long distance carriers offer incentives such as refunds and/or rebates based on usage. Jail officials and employees must deposit rebates and refunds in accordance with Ohio Rev. Code § 9.38.

#### Sample Questions and Procedures:

**Note:** To enhance efficiencies, we should integrate the tests below with the financial audit tests. We should only cite noncompliance if we determine significant amounts of cash are not deposited within the required time frames.

1. Systems documentation should include collection points receiving significant amounts of cash.
2. When testing cash collections, document the date collected vs. the date deposited to the CFO or the

date the “collector” deposited to a designated depository.

**When testing, consider any related General Auditor of State FAQs listed here - [http://www.ohioauditor.gov/resources/COVID19\\_assistance.html](http://www.ohioauditor.gov/resources/COVID19_assistance.html)**

3. Read any new contract/agreement between the county sheriff/police chief and his/her long distance carrier. If incentives are granted, review the accounting treatment of the incentives. Determine if phone contract monetary refunds and or rebates were paid into the treasury in accordance with Ohio Rev. Code § 9.38.

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

3-2

**This section intentionally left blank.**

Only test the compliance attributes listed in 3-3 below if one of the officials listed below were selected as part of your sample for payroll testing.

Revised: HB 164, 133 GA  
Effective: June 19, 2020

Revised: HB 197, 133 GA  
Effective: March 27, 2020

Revised: HB 404, 133 GA  
Effective: November 23, 2020

**3-3 Compliance Requirements:** Various Ohio Rev. Code sections – Appointments, compensation, contracts etc.

**Summary of Requirement:** All of these various sections set out authority for appointing and/or compensating officials and employees of the various entities. For additional information and salary schedules for elected officials, see the *Elected Officials' Compensation Exhibit 4* in the OCS Implementation Guide. Virtual participation (i.e. tele or web conference) does not constitute attendance for compensation under Ohio Rev. Code § 121.22(C) which indicates board members must “be present in person” to be considered present [\[See footnote 1 for exceptions to this rule\]](#).

**Schools:**

§ 3311.19 and 3313.12 - School board compensation and mileage (amended by H.B. 2)

§ 3313.24 - Compensation of School Treasurer<sup>2</sup>

§ 3314.02(E) - Compensation of School Board

*Note: Start-up or conversion school governing authorities may provide, by resolution, requirements for compensation of their members. The maximum number of governing authorities of start-up<sup>3</sup> community schools on which a person can serve at the same time is five (unless the person serves in a volunteer capacity on all such boards, with no compensation under this section and the operator (if the school has one) is a nonprofit organization). Each member may be*

<sup>1</sup> Two entities permit virtual participation for the open meetings act under Ohio Rev. Code § 121.22(C), Ohio Board of Regents and board of directors of a port authority. [Additionally, during the period of March 9, 2020 - July 1, 2021; 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 \[Section 12 of Am. Sub. H. B. No. 197 133<sup>rd</sup> G.A as amended by Section 12 of Am. Sub. H. B. No. 404 133<sup>rd</sup> G.A.\]](#)

<sup>2</sup> ODE has indicated that, under Ohio law, treasurers must account for/administer all school district funds and accounts. In addition, Ohio law states that a treasurer’s salary must be fixed and payable from the General Fund. Therefore, in the absence of an ODE-approved indirect cost allocation plan, it is not permissible to charge various State and/or Federal programs for supplemental compensation related to the Treasurer’s statutory duties associated with these programs. Any such charges are unallowable under Ohio law and 2 C.F.R. § 200.403(c) because in order for a Federal program cost to be allowable it must be reasonable. In order to be reasonable it must be authorized or not prohibited under State or local laws or regulations. (For transactions under the Uniform Guidance, transactions are unallowable if they are not deemed reasonable. In determining reasonableness, consideration must be given to the restraints or requirements imposed by Federal, state or local laws (Uniform Guidance 2 C.F.R. §§ 200.403 & 200.404)). These charges may also qualify as supplanting under Federal guidelines if supplement not supplant provisions accompany the particular Federal award(s) being charged. However, if the treasurer can prove that he/she was assigned to non-treasurer duties and was compensated additionally for those, then we will not take exception to the compensation.

<sup>3</sup> A new start-up school means a community school other than one created by converting all or part of an existing public school or educational service center building, as designated in the school’s contract pursuant to division (A)(17) of Ohio Rev. Code § 3314.03. However, per Ohio Rev. Code § 3314.02(B)(5), a school established as a conversion school that later changes to a sponsor that is not a traditional public school or ESC, shall then be deemed a start-up school. Auditors may check the AOS master community school spreadsheet for the schools designation as a start-up or conversion school.

**Schools (Continued):***compensated:*

- *no more than \$125 per meeting or a total of \$5,000 per year for all of the governing authorities on which the individual serves*
- *for attendance at an approved training program, provided that such compensation shall not exceed \$60 a day for attendance at a training program three hours or less, and \$125 a day for attendance at a training program lasting longer than three hours. (AOS interpretation is that the community school's governing board or sponsor must approve the training program, and compensation for attendance at approved training programs must be included in the \$5,000 compensation limit for the entire school year.*

§ 3319.01 - Appointment and duties of superintendent (including compensation)

§ 3319.02 - Appointment of other (school) administrators, evaluation; renewal; vacation leave

§ 3319.08 - Teacher employment and reemployment contract

§ 3319.10 - Employment and status of substitute teachers

§ 3319.081 - Contracts for non-teaching employees

§ 3319.0810 - Contracts for transportation staff

§ 2921.43(A)(1) and Ohio Ethics Commission Op. No. [2008-01](#) – Compensation of school employees by outside organizations<sup>4</sup>**Courts:**

§§ 141.04 and 141.05 - Compensation of judges (court of common pleas, including probate court judges)

§ 2151.13 - Employees; compensation (courts).

§ 1907.16 and 1907.17 - Compensation of (county court) judges

§§ 2303.03, 2501.16, and 2501.17 - Officers and employees (courts of appeals); Clerk of Common Pleas Court to serve as Clerk of Court of Appeals.

§ 1907.20 - Clerks (court of common pleas)

§ 1901.11 - Compensation of judges (Municipal Court)

§§ 1901.31 and 1901.32 - Clerks; deputy clerks; bailiffs (Municipal court)

§ 141.04 (A) (3) - Compensation of judges (appellate court judges)

**Libraries:**

§ 3375.32 - Meeting of boards of library trustees; organization; election of clerk; bond.

§ 3375.36 - Treasurer of library (deputy clerk)

§ 3375.40 - Powers of boards of library trustees (compensation of employees)

**Municipalities:**

§§ 731.07, 731.08, and 731.13 and 1973 Op. Att'y. Gen. No. 73-063, 1981 Op. Att'y. Gen. No. 81-011 and 1983 Op. Att'y. Gen. No. 83-036 - Compensation (municipal officials)

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<sup>4</sup> Ohio Ethics Commission Opinion No. 2008-01 prohibits a school employee (including coaches, teachers, administrators, supervisors, district officials, management level employees regardless of his or her duties) from being compensated for services provided for a school-related activity by any source other than the employing school. That is, booster groups and school support organizations are prohibited from promising or providing any compensation to a school employee for performing their duties at a school or school-related activity. This opinion applies to officials and employees of all school districts, educational service centers (ESCs), and community schools operating under Ohio Rev. Code § 3314.03.



**Counties:**

Chapter 325 - Compensation of county officials: auditor, 325.03; treasurer, 325.04; sheriff, 325.06<sup>5</sup>; common pleas clerk, 325.08; recorder, 325.09; commissioners, 325.10; prosecutor, 325.11; engineer, 325.14, 315.12; coroner, 325.15; vacation and holiday pay, 325.19; 1999 Op. Att’y. Gen. No. 99-033 – in-term increase in compensation based on change in population according to decennial census (see AOS Bulletin 1999-015, 2001-01, & 2016-01);

**Townships:**

§§ 505.24 (trustees)<sup>6</sup> (see also compliance requirement 1-29), 505.60 (insurance - also see compliance requirement 3-15), 507.09 (fiscal officer)<sup>7</sup> - compensation for township officials, and 505.71 – compensation for joint ambulance district trustees. Also, 1999 Op. Att’y. Gen. No. 99-015 – Definition of “budget” for purposes of compensation (see AOS Bulletin 1999-008).

**Note:** IRS Notice 2013-54 and Department of Labor Technical Release 2013-03 states that employers may only reimburse employees’ premiums for non-employer sponsored health care with post-tax dollars (i.e., employers must withhold taxes prior to making reimbursement). Such reimbursements are not used in computing allowable “gross salary” as prescribed in Ohio Rev. Code §§ 505.24 and 505.09. Additional considerations for reimbursement arrangements are outlined in OCS 3-13.

**County Hospitals:**

§ 339.03 - Board of county hospital trustees; powers and duties  
§ 339.06 – Powers and duties of board of county hospital trustees

**Municipal Hospitals:**

§ 749.33 - Employment and compensation of superintendents, physicians, and employees (municipal hospitals)

**Universities:**

Ohio State University [§ 3335.02(A)], Ohio University [§ 3337.01(A)], Miami University [§ 3339.01(A)], Bowling Green and Kent State Universities [§ 3341.02(E)], Central State University [§ 3343.05], Cleveland State University [§ 3344.01(A)], Wright State University [§ 3352.01(A)], Youngstown State University [§ 3356.01], University of Akron [§ 3359.01(A)], University of Toledo [§ 3364.01(B)], University of Cincinnati [§ 3361.01(A)], Shawnee State University [§ 3362.01(A)], Community College Districts [§ 3354.06], Technical Colleges [§ 3357.06], State Community Colleges [§ 3358.03].

<sup>5</sup> There are known transposition errors codified in this statute effecting the FY 2018 salary in counties with pop. < 55,000 (\$61,624 should be \$61,264). The AOS will not take exception to or issue findings for payments made in accordance with the codified legislation.

<sup>6</sup> Each salaried township trustee shall certify the percentage of time spent working on matters to be paid from the township general fund and from other township funds in such proportions as the kinds of services performed. A noncompliance citation would be issued instead of a Finding for Adjustment if the Township has reasonable supporting documentation (such as detailed time and effort records, timesheets, etc.). In addition, the certification should be signed retroactively and attached to the time and effort records. Refer to OCS 1-29 for further guidance.

<sup>7</sup> A township fiscal officer may be compensated from the township general fund or from other township funds based on the proportion of time the township fiscal officer spends providing services related to each fund. A township fiscal officer must document the amount of time the township fiscal officer spends providing services related to each fund by certification specifying the percentage of time spent working on matters to be paid from the township general fund or from other township funds in such proportions as the kinds of services performed. Refer to OCS 1-29 for further guidance.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

**Note:** Auditors should consider whether governments have historically demonstrated effective internal controls over payroll. Additionally, adequate training of payroll personnel and supervisory monitoring controls can help mitigate the risk of noncompliance with compensation compliance requirements.

**Sample Questions and Procedures:**

1. If officials were included in your payroll test, agree their pay rate to OCS Implementation Guide Exhibit 4 amounts. Officials who have a salary set by statute, cannot receive PERS pick up if the additional compensation (in the form of PERS pickup) would result in receiving total compensation greater than the statutory limit. Therefore, we should calculate salary plus PERS pickup, if applicable, and compare this total compensation to the statutory limit. Compensation amounts exceeding the statutory limit should be findings for recovery if they meet the threshold guidelines in the OCS Implementation Guide.
2. For community schools, inquire whether its board members also serve on the boards of other community schools. If so, inquire how the community school assures it is not paying these board members more than the statutory limit. (See the requirements described above per Ohio Rev. Code § 3314.02(E)(5).)
3. Per footnote 2, regarding school treasurer compensation, compare total compensation per the payroll register to the amount in the treasurer’s contract. If the register reports compensation exceeding the contract amount, determine if these payments were allowable per the footnote.

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

**3-4 Compliance Requirements:** Ohio Rev. Code §§ 9.03, 124.57, 124.59, 124.61 and 3315.07(C) - Political activities prohibited.

**Summary of Requirements:**

Ohio Rev. Code § 9.03 - Political subdivision newsletters and other means of communication.

No governing body of a political subdivision shall use public funds to publish, distribute, or communicate information that supports or opposes the nomination or election of a candidate for public office, the investigation, prosecution, or recall of a public official, or the passage of a levy or bond issue. In addition, no public funds shall be used to compensate any employee of the political subdivision for time spent on any activity to influence the outcome of an election for any of the purposes described above. However, public funds may be used to publish information about the political subdivision's finances, activities, and governmental actions in a manner that is not designed to influence the outcome of an election or the passage of a levy or bond issue. Public funds may also be used to compensate an employee for attending a public meeting to present such information in such a manner even though the election, levy, or bond issue is discussed or debated at the meeting.

However, this Section specifically exempts Alcohol Drug Addiction and Mental Health (ADAMH) Boards from the prohibition against using public funds to support a levy or a bond issue. ADAMH Boards are specifically authorized by Ohio Rev. Code § 340.03(A)(7) to use their public funds to obtain further financial support for their activities.

Ohio Rev. Code § 124.57 - Political activity prohibited.

This section imposes restrictions upon the political activity of employees in the classified service of the State, counties, cities, city school districts, and civil service townships.

Ohio Rev. Code § 124.59 - Payment for appointment or promotion prohibited.

Applicants for appointment or promotion in the classified service shall not pay for appointments or promotions.

Ohio Rev. Code § 124.61 - Abuse of political influence.

Public officials (or potential public officials) shall not use or promise to use, any official authority or influence in order to secure or aid any person in securing any office or employment in the classified service, or any promotion or increase of salary therein, as a reward for political influence or service.

Ohio Rev. Code § 3315.07(C) - Support of school ballot issues.

No board of education shall use public funds to support or oppose the passage of a school levy or bond issue or to compensate any school district employee for time spent on any activity intended to influence the outcome of a school levy or bond issue election. However, the law specifically allows a school board to allow its employees to attend public meetings during working hours to give informational presentations regarding the district's finances and activities, even if the purpose of the meeting is to debate the passage of the school levy or bond issue.

**Sample Questions and Procedures:**

1. Inquire if the CFO is aware of these requirements and what controls the entity has established to prevent violations. Controls should include:
  - Policies or published notifications to employees regarding these requirements.
  - A requirement for a person knowledgeable of these requirements to review and approve payment requests.

2. Inquire if the CFO is aware of any possible violations. If so, or if other evidence comes to your attention suggestion violations may have occurred, investigate the allegations as needed.

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

**3-5 Compliance Requirement:** Ohio Rev. Code §§ 3.06, 3.30 and various others specific to Universities - Bonding requirements

**Summary of Requirement:** These sections provide requirements for bonding certain public officials and employees.

### **General**

Ohio Rev. Code § 3.06 - Unless other statutes prescribe a bond for particular officials (such as for the officials listed in Tables 1 and 2 of Bonding Exhibit 2 in the OCS Implementation Guide), Ohio Rev. Code § 3.06(B) permits “. . . any department or instrumentality of the state or any county, township, municipal corporation, or other subdivision or board of education or department or instrumentality thereof, may procure a blanket bond from any duly authorized corporate surety covering officers, clerks and employees, other than. . .” treasurers or tax collectors and any officer, clerk or employee required by law to execute or file an individual official bond to qualify for office or employment.

Ohio Rev. Code § 3.06 also requires “Any such blanket bond shall be approved as to its form and sufficiency of the surety by the officer or governing body authorized to require it.” Note: While blanket bonds are required, there is a distinction between blanket bonds and insurance policies (as outlined in Exhibit 2 of the OCS Implementation Guide)

Ohio Rev. Code § 3.061 now permits an “Employee dishonesty and faithful performance of duty policy” in lieu of surety bonds for some officers, employees, or appointees (See Ohio Compliance Supplement Implementation Guide Exhibit 2 for those specific positions, they are highlighted in yellow in the included tables)

Ohio Rev. Code § 3.30 – Refusal or neglect to give bond deemed refusal of office.

Bonding Exhibit 2 in the OCS Implementation Guide includes:

- Table 1: Those required by statute to give bond (min specified),
- Table 2: Those required by statute to give bond (with no amount specified), and
- Table 3: Those for which the board may require to give bond

### **Some additional bonding requirements not included in the tables mentioned above are:**

***Universities (all universities listed below require Attorney General approval of their bonds unless otherwise indicated):***

Ohio State University [§ 3335.05], Ohio University [none specified], Miami University [none specified], Bowling Green and Kent State Universities [§ 3341.03], Central State University [§ 3343.08], Cleveland State University [§ 3344.02], Wright State University [§ 3352.02], Youngstown State University [§ 3356.02], University of Akron [§ 3359.02], University of Toledo [§ 3364.02, which does not require Attorney General approval, effective July 1, 2006], University of Cincinnati [§ 3361.02], Shawnee State University [§ 3362.02, which does not require Attorney General approval, effective September 29, 2005], Community College Districts [none specified], Technical Colleges [none specified], State Community Colleges [§ 3358.06], University Branch Districts [§ 3355.051].

These compliance requirements apply to all state universities except Ohio and Miami Universities and the Medical College of Ohio at Toledo, and are also not specified for certain other types of institutions. If a deficiency is noted for institutions not listed above, treat it as a potential management comment rather than a noncompliance finding.

**Sample Questions and Procedures:**

[See the *OCS Implementation Guide Exhibit 2 – Public Officers’ Bond* for details of requirements.]:

## 1. Inquire of the client:

- How they determine who is required to be bonded and/or insured with an Employee dishonesty and faithful performance of duty policy,
- Whether or not they have blanket bonds on officials or employees,
- How they determine whether employees are eligible for such blanket bonding? (Note: None of the bond requirements in Tables 1 or 2 in Exhibit 2 in the OCS Implementation Guide may be substituted with a blanket bond. However, those highlighted yellow may instead have an Employee dishonesty and faithful performance of duty policy)
- [If the amount of the bond is not specified by statute], how they determined whether amounts of the bonds are commensurate with the duties of their office, i.e., amount of funds for which the individual is responsible, limits of liability, etc. (Note: If the bond seems unreasonable, consider issuing a management comment.)

Assess the answers to the above questions and consider whether compliance citations or recommendations are necessary for any responses.

## 2. Obtain a few representative bonds and/or Employee dishonesty and faithful performance of duty policies, and determine amounts:

- meet or exceed requirements in Table 1 in Exhibit 2 in the OCS Implementation Guide, or
- are commensurate with duties of their office/position and meet or exceed amounts established by the governing authority for those listed in Tables 2 or 3 in Exhibit 2 in the OCS Implementation Guide

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

## COMMUNITY SCHOOLS

**Revised: HB 166, 133 GA**  
**Effective: July 18, 2019**

**Revised: HB 409 133 GA, as**  
**amended by HB 67, 134 GA**  
**Effective: March 20, 2021**

**3-6 Compliance Requirement:** Ohio Rev. Code §§ 3301.0710, 3301.0712, 3314.017, 3314.034, 3314.38; Ohio Admin. Code 3301-102-10 - Dropout Prevention and Recovery School Eligibility Requirements

**Summary of Requirements:**

Schools designated as [Dropout Prevention and Recovery \(DOPR\)](#) schools:

- Are eligible to receive an alternative report card described at: <http://education.ohio.gov/.../Dropout-Recovery/Understanding-Ohios-New-Dropout-Recovery-Community-School-Report-Card.pdf>;
- Are eligible for the alternative NWEA MAP assessment testing of students; and
- Have flexibility with regards to certain requirements in the Ohio Rev. Code, such as start date (3314.03).

**Ohio Admin. Code 3301-102-10(A)** states a Dropout Prevention and Recovery school is one to which any of the following applies:

- (1) Any community school that operates a drug recovery program in cooperation with a court; or
- (2) Any community school in which the majority<sup>8</sup> of students are enrolled in a dropout prevention and recovery program operated by the school that meets the following criteria:
  - a) The program serves only students not younger than sixteen years of age and not older than twenty-one years of age;
  - b) The program enrolls students who, at the time of their initial enrollment, either, or both, are at least one grade level behind their cohort age groups or experience crises that significantly interfere with their academic progress such that they are prevented from continuing their traditional programs;
  - c) The program requires students to attain at least the applicable score designated for each of the assessments prescribed under division (B)(1) of section 3301.0710 of the Revised Code or, to the extent prescribed by rule of the state board of education under division (D)(6)<sup>9</sup> of section 3301.0712 of the Revised Code, division (B)(2) of that section;
  - d) The program develops an individual career plan for the student that specifies the student's matriculating to a two-year degree program, acquiring a business and industry credential, or entering an apprenticeship;
  - e) The program provides counseling and support for the student related to the plan developed under division (A)(4) of Ohio Rev. Code § 3301.0710 during the remainder of the student's high school experience; and

<sup>8</sup> "Majority" = greater than 50%.

<sup>9</sup> There is a typo in Ohio Admin. Code 3301-102-10(A) that references Ohio Rev. Code § 3301.0712(D)(6), as (D)(6) does not exist. Ohio Rev. Code § 3314.36 contains similar language and it references Ohio Rev. Code § 3301.0712 (D)(5).

- f) The program's instructional plan demonstrates how the academic content standards adopted by the state board of education under section 3301.079 of the Revised Code will be taught and assessed; or

Any conversion community school whose sponsoring district has received a waiver from having the school's academic data rolled up into the district's local report card because the school primarily enrolls students between sixteen and twenty-two years of age who dropped out of high school or are at risk of dropping out of high school due to poor attendance, disciplinary problems, or suspensions.

**Ohio Rev. Code § 3314.38** (A) states an individual who is at least twenty-two years of age and who is an eligible individual as defined in Ohio Rev. Code § 3317.23 may enroll for up to two consecutive school years in a dropout prevention and recovery program operated by a community school that is designed to allow enrollees to earn a high school diploma.

**Note:** Ohio Admin. Code (OAC) 3301-102-10 refers to Dropout Prevention and Recovery “schools” in certain places, and refers to Dropout Prevention and Recovery “programs” in other places. Ohio Rev. Code § 3314.38 strictly refers to Dropout Prevention and Recovery “programs”. Pursuant to OAC 3301-102-10(A)(2)(a) a DOPR “school,” among other criteria, is a school that only enroll students between ages 16-21 and the majority of the students must be enrolled in DOPR. However, DOPR “programs” allow students over the age of 22 to enroll. A “program” can consist of only a few individuals. There is no majority requirement for this type of “program”. DOPR community “schools” sponsor DOPR “programs.” Therefore, if a DOPR school were to enroll a student over the age of 22 then they would not meet the eligibility criteria. However an individual over 22 years of age may enroll in a DOPR program that is sponsored by the school without issue. In addition, these individuals enrolled under the Ohio Rev. Code § 3314.38 (A) “program” do not fall into the majority (50%) enrollment for DOPR “schools”.

#### **Timeline for Form Submission – Dropout Prevention and Recovery Report Card designation:**

**Note: Due to the COVID-19 pandemic, the 133<sup>rd</sup> GA, H.B. 409, as amended by the 134<sup>th</sup> GA, H.B. 67 prohibits ODE from publishing state report card ratings for Fy 2021.**

July 1: Sponsor and school complete and submit the completed application.

- If the community school was approved for the DOPR designation for the prior year, they are not required to resubmit all attachments with the application if there were no changes to the DOPR program; they are only required to complete the signature/affirmation pages of the application.
- If there were changes, the community school must include updated documentation with the completed application.

July 1: Community schools no longer seeking the Dropout Prevention and Recovery report card designation must notify Ohio Department of Education (ODE) in writing prior to the start of the new academic year.

August 15: Sponsor and school will receive a decision from ODE on the status of application.

Ten business days prior to the first day of instruction: For schools in their first year of operations, or schools that are not e-schools and changed buildings, sponsors must submit opening assurances indicating the community school has met all the requirements of the Dropout Prevention and Recovery school.



[Drop-Out-Prevention-and-Recovery Report Card Designation Application \(2020-2021\)](#)

**Ohio Rev. Code § 3314.017(C)(4)** states, “growth in student achievement in reading, or mathematics, or both as measured by separate nationally norm-referenced assessments that have developed appropriate standards for students enrolled in dropout prevention and recovery programs, adopted or approved by the state board.”

**Ohio Rev. Code § 3314.017(D)** Based on a school's level of attainment or nonattainment of the expected performance levels and benchmarks for each of the indicators, the department shall rate each school in one of the following categories:

- (a) Exceeds standards;
- (b) Meets standards;
- (c) Does not meet standards.

**Suggested Questions and Procedures - Compliance (Substantive) Tests:**

1. Inquire with the community school management or sponsor about whether the community school was designated as a Dropout Prevention and Recovery School for the audit period, under **Ohio Admin. Code 3301-102-10(A)**. (Note: ODE’s Community School Directory contains *current* school year information, and therefore cannot be used for this step.)
2. For Dropout Prevention and Recovery schools that received the designation under **Ohio Admin. Code 3301-102-10(A)(3)** (conversion school whose sponsoring district received a waiver), perform the following steps below for the fiscal year(s) under audit: <sup>10</sup>
  - a. Inspect a copy of the Dropout Prevention and Recovery application<sup>11</sup> submitted to ODE for completeness.
  - b. Inspect ODE’s approval of the application, and related waiver.
  - c. If this is the community schools first year of operations, or if the school changed buildings and this is the first year operating in the new building, inspect Section III of the school’s annual opening assurances to ODE indicating the community school met all requirements of a Dropout Prevention and Recovery school.
3. For Dropout Prevention and Recovery schools that received the designation under **Ohio Admin. Code 3301-102-10(A)(2)**, perform the following steps below for the fiscal year(s) under audit:<sup>12</sup>
  - a. Inspect a copy of the Dropout Prevention and Recovery application submitted to ODE for completeness.
  - b. Inspect ODE’s approval of the application.
  - c. If this is the community schools first year of operations, or if the school changed buildings and this is the first year operating in the new building, inspect Section III of the school’s annual opening

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<sup>10</sup> We are not currently aware of any Dropout Prevention and Recovery schools that received the designation under Ohio Admin. Code 3301-102-10(A)(1), and therefore testing steps have not been included for such. Contact CFAE’s Community School Specialist if one is encountered.

<sup>11</sup> This application may be different than the DOPR application linked to above. As long as ODE approved it, auditors should not take exception.

<sup>12</sup> Even though ODE does not require resubmission of certain information with the application for reoccurring applicants, auditors will still test all eligibility requirements.

assurances to ODE indicating the community school met all requirements of a Dropout Prevention and Recovery school.

- d. Inspect documentation that more than 50 percent of the students were enrolled in the dropout prevention and recovery program. See exception above for students enrolled under Ohio Rev. Code § 3314.38 (A).
- e. Determine that the students enrolled in the dropout prevention and recovery programs are between ages 16 and 21. See exception above for students enrolled under Ohio Rev. Code § 3314.38 (A).
- f. Obtain documentation on how the school determines that students enrolling in the dropout prevention and recovery program, at the time of their initial enrollment, either, or both, were at least one grade level behind their cohort age groups or experienced crises that significantly interfered with their academic progress such that they were prevented from continuing their traditional programs.
- g. Determine what academic assessment is administered at the time of enrollment to determine student's academic achievement levels.
- h. Inspect documentation describing the program requirements for students to attain the score designated by the state for each of state mandated assessments required for graduation. Students are required to take the following test/exams – determine if students completed the required test/exams.<sup>13</sup>
  - i. Measure of Academic Progress (MAP) Assessment (twice a year)
  - ii. Students starting high school (9<sup>th</sup>) grade before July 1, 2014 – Ohio Graduation Test (OGT)
  - iii. Students starting high school (9<sup>th</sup>) grade on or after July 1, 2014 - Seven end-of-course examinations, one in each of the areas of English language arts I, English language arts II, science, Algebra I, geometry, American history, and American government.
  - iv. Students who enter ninth grade for the first time on or after July 1, 2019 – Five end-of-course examinations, one in each areas of English language arts II, science, Algebra I, American history, and American government. However, only the end-of-course examinations in English language arts II and Algebra I shall be required for graduation.
- i. Determine that Individual Career Plan's (ICP) were developed for students. The plan must specify the student enrolling/registering to a two-year degree program, acquiring a business and industry credential, or entering into an apprenticeship.
- j. Inspect documentation that demonstrates how the school provides ongoing counseling and support services for students during the remainder of the high school experience related to the Individual Career Plan described above.
- k. Determine whether the school has developed and completed educational plans for DOPR students that appear to document how the academic standards adopted by the state board of education will be met. (An example of this should be included in the school's contract but may be supported by additional information.) Auditors are not expected to review the educational plans for sufficiency. Rather, auditors should scan student files and educational plans to ensure the community school appears to be completing them. It is the responsibility of the sponsor to determine the sufficiency of the educational plan's documentation.

If the Dropout Prevention and Recovery school did not meet the eligibility requirements, contact the AOS CFAE Community School Specialist. AOS will refer noncompliant community schools to their sponsor and ODE.

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<sup>13</sup> [The requirement for FY 2020 state testing was removed by the legislature, and subsequent federal waiver, due to the COVID-19 pandemic. For Fy 2021, 133 GA, HB 409, as amended by 134 GA, HB 67 removed the American History end-of-course examination requirement; and granted certain leniency to awarding Fy 2021 diplomas.](#)

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

## COMMISSARIES

**3-7 Compliance Requirement:** Ohio Rev. Code §§ 307.93(F), 341.25, 753.22, and 2301.58 - Establishment and accounting treatment for commissaries.

**Summary of Requirements:** Commissaries may be established by:

- a sheriff of a county jail, [Ohio Rev. Code § 341.25]
- the director of public safety or the joint board workhouse, [Ohio Rev. Code § 753.22]
- the director of a community-based or district community-based correctional facility, or [Ohio Rev. Code § 2301.58]
- the corrections commission of a multicounty, municipal-county, or multicounty-municipal correctional center. [Ohio Rev. Code § 307.93]

Once a commissary is established, all persons incarcerated must be given commissary privileges, and a commissary fund must be established. In addition, the commissary fund rules and regulations for the operation of the commissary must be established by the office establishing the commissary for the correctional facility. The commissary fund must be managed in accordance with the procedures established by the Auditor of State's Office, which are included in the AOS Sheriff's Manual (<https://ohioauditor.gov/publications/SheriffManual%209-27-18.pdf>) and AOS Bulletin 1997-011 Appendix 1<sup>14</sup>. The revenue generated in the commissary fund in excess of operating costs is considered profit.

For Counties: The profits must be expended for the purchase of supplies and equipment, life skills training, education and/or treatment services for the benefit of persons incarcerated in the correctional facility, pay salary and benefits for employees of the sheriff who work in or are employed for the purpose of providing service to the commissary, or to purchase technology designed to prevent contraband from entering the jail. [Ohio Rev. Code § 341.25(B)(3)]

For Municipalities: The profits must be expended for the purchase of supplies and equipment for the benefit of persons incarcerated in the workhouse, and to pay salary and benefits for employees of the workhouse who work in or are employed for the sole purpose of providing service to the commissary. [Ohio Rev. Code § 753.22]

### Sample Questions and Procedures:

1. Read the commissary funds rules and regulations to determine if they are consistent with requirements listed above.
2. Scan selected expenditures from this fund. Determine that expenditures were for the benefit of those incarcerated (see list of acceptable expenditures above). *Note:* We do not require high levels of assurance from this procedure. Therefore, the sample sizes we require to obtain high assurance do not apply. Scanning alone should normally be sufficient, unless we have reason to suspect there are significant control or compliance issues.

<sup>14</sup> AOS Bulletin 1997-011 Appendix 1 permits correctional facilities to issue a check to an inmate for the balance of the inmate's commissary account. The Auditor of State will also permit correctional facilities to develop reasonable policies and procedures for the use of debit cards, in lieu of a check, when disbursing remaining balances, less amounts owed to the correctional facility, of inmate commissary funds.

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

**COURTS**

**3-8 Compliance Requirement:** Ohio Rev. Code § 2335.34 - Lists of unclaimed costs. Ohio Rev. Code § 2335.34-35 - Disposition of unclaimed fees and costs.

**Summary of Requirements:** On the first Monday of January, the clerk of each

- common pleas court clerk (or clerks from divisions of a common pleas court, such as a juvenile court clerk, domestic relations court clerk, etc.)
- court of appeals clerk
- probate judge clerk
- sheriff

shall make two certified lists of unclaimed fees and costs outstanding for one year, and post the list in her/his office and the courthouse for 30 days. One list is required to be posted in his/her office and the other list shall be posted at a public area of the courthouse or published on the web site of the court or officer, on the second Monday of January. Both lists must be posted for a period of 30 days. [Ohio Rev. Code § 2335.34]

After the aforementioned 30 day period, the clerk or sheriff must pay the money to the county treasury. Each such officer shall indicate in her/his cashbook and docket the disposition of each unclaimed item. [Ohio Rev. Code § 2335.35]

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

1. Describe procedures used to assure the list is maintained completely and accurately (these objectives will usually be addressed by the procedures used to maintain other required court records).
2. Please show me how you reconcile the unclaimed amounts to balances held in the bank.
3. Please show me your most recent listing of unclaimed funds.
4. How much was paid to the county for unclaimed funds during the year under audit?

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

**3-9 Compliance Requirement:** Ohio Rev. Code § 1907.20 - Records required of county courts.

**Summary of Requirement:** County courts must maintain a general index and a docket.

On the first Monday of each January, the clerk must list all cases more than one year past for which money has been collected but unclaimed. The clerk must transmit notice of unclaimed funds to the party or to the party's attorney. Money still unclaimed each April 1 must be paid to the county treasury. (*Note:* the funds remain the property of the potential claimant per Ohio Rev. Code § 1907.20(D))

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

1. Are the aforementioned records maintained? (*Note:* We will normally know this from performing financially-related audit procedures.)
2. Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews). *Note:* We include this step here for emphasis, though it should be part of the financial audit tests and does not require additional testing for Ohio Rev. Code purposes.
3. Please show me an example of the correspondence you send regarding unclaimed funds to the party or to their attorney.
4. How do you identify amounts unclaimed for more than one year?
5. Show me your reconciliation of cash balances to the detailed listing of unclaimed funds.
6. How much was paid to the county for unclaimed funds during April of the year under audit?

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

**3-10 Compliance Requirement:** Ohio Rev. Code § 1901.31 - Municipal court records.

**Summary of Requirement:** Municipal court clerks must maintain a general index and a docket. [Ohio Rev. Code § 1901.31(E)]

On the first Monday of each January, the clerk must list all cases more than one year past for which money has been collected but unclaimed. On the first Monday in January each year, the clerk must transmit notice of unclaimed funds to the party or to the party’s attorney. Money still unclaimed each April 1 must be paid to the municipal treasury (or county treasury, if it is a county-operated municipal court). [Ohio Rev. Code § 1901.31(G)]

(*Note:* the funds remain the property of the potential claimant. That is, the government is holding this cash similar to an agent on behalf of the claimant.)

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

1. Are the aforementioned records maintained? (*Note:* We will normally know this from performing financially-related audit procedures.)
2. Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews). *Note:* We include this step here for emphasis, though it should be part of the financial audit tests and does not require additional testing for Ohio Rev. Code purposes.
3. Please show me an example of the correspondence you send regarding unclaimed funds to the party or to their attorney.
4. How do you identify amounts unclaimed for more than one year?
5. Show me your reconciliation of cash balances to the detailed listing of unclaimed funds.
6. How much was paid to the county for unclaimed funds in April following the year under audit?

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



**3-11 Compliance Requirement:** Ohio Rev. Code § 1905.21 - Docket; disposition of receipts. Ohio Rev. Code § 733.40 - Disposition of fines and other moneys for mayor’s court.

**Summary of Requirements:** The mayor of a municipal corporation and a mayor's court magistrate shall keep a docket. [Ohio Rev. Code § 1905.21]

All moneys collected shall be paid by the mayor into the municipality on the first Monday of each month. At the first regular meeting of the legislative authority each month, the mayor shall submit a full statement of all money received, from whom and for what purposes received, and when paid into the treasury. [Ohio Rev. Code § 733.40]

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

*The financial audit procedures would normally include these steps. It is sufficient to cross reference results from financial audit procedures satisfying these requirements to this step without the need for any other procedures.*

1. Do you maintain a docket?
2. How do you assure that the docket is maintained completely and accurately?
3. Do you submit the required statement each month? Please show me \_\_\_\_\_ (pick a few monthly statements and have personnel walk you through them).
4. Describe procedures used to assure that the statement is complete and accurate.

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

**3-12 Compliance Requirements:** The following is a list of courts and of the related statutory provisions (all references are to the Ohio Revised Code Section) for the collection, custody, and disbursement of fees, fines, costs, and deposits.

2746.01	All courts of record (primarily in civil cases)
2746.02	All courts of record (in criminal and juvenile cases and some civil actions related to criminal cases)
2746.03	Supreme Court, courts of appeals, Court of Claims (in addition to the charges applicable in all courts of record)
2746.04	Courts of common pleas (in certain civil cases, in addition to the charges applicable in all courts of record)
2746.05	Juvenile courts (in addition to the charges applicable in all courts of record and the courts of common pleas)
2746.06	Probate courts (in addition to the charges applicable in all courts of record and the courts of common pleas, subject to any waiver of fees for combat zone casualties under Ohio Rev. Code § 2101.164 and any reduction of fees that Ohio Rev. Code § 2101.20 allows the judge to make)
2746.07	Municipal courts (in addition to the charges applicable in all courts of record and the courts of common pleas)
2746.08	County courts (in addition to the charges applicable in all courts of record and the courts of common pleas)

#### ***Municipal Court***

1901.14	Powers of judge; fees; rules; annual reports
1901.26	Costs for operation of the court and special projects <sup>15</sup>
1901.261	Additional fees for computerization of court or office of clerk of court*
1901.262	Fee for dispute resolution
1901.31	Clerk of Court, powers and duties
2951.021	Supervision fees (Probation)
2949.094(A)	15% Add-on fee for indigent alcohol treatment fund
4511.193	Fee for indigent alcohol treatment fund

#### ***Mayor's Court***

733.40	Disposition of fines and other moneys
1907.261	Fees for computerization of clerk of court office * (applies per 1905.02)
2949.094(A)	15% Add-on fee for indigent alcohol treatment fund <sup>16</sup>
4511.193	Fee for indigent alcohol treatment fund

<sup>15</sup> Ohio Rev. Code § 1901.26(A)(1)(b)(i) authorizes municipalities to establish fees for services related to a municipal court performed by officers or other employees of the municipal corporation's police department or marshal's office of any of the services specified in Ohio Rev. Code § 311.17 and § 509.15. The act provides that no fee in the schedule may be higher than the fee specified in Ohio Rev. Code § 311.17 for the performance of the same service by the sheriff. If a fee set by municipal ordinance conflicts with a fee for the same service established in a statute or rule of court, the fee established in the statute or rule applies.

<sup>16</sup> Per Ohio Rev. Code § 733.40, distribution of the 15% referenced in § 2949.094(A) depends on whether, it was a moving violation based on a statute or an ordinance. If the fine was collected based on violation of a statute then the money goes into the County Treasury; if the fine was collected based on a violation of a municipal ordinance, then the 15% goes into the municipal treasury.

**County Court**

1907.20	Clerk of county court, powers and duties
1907.24	Schedule of fees and costs and disposition
1907.26	Disposition of fees and costs
1907.261	Additional fees for computerization of court or office of clerk of court*
1907.262	Fee for dispute resolution
2949.094(A)	15% Add-on fee for indigent alcohol treatment fund
4511.193	Fee for indigent alcohol treatment fund

**Probate Court**

325.28	Receipt for fees
2101.12	Records to be kept; indexes
2101.15	Probate judge to file itemized account of fees to county auditor
2101.16	Fees
2101.162	Additional fees for computerization of court or office of clerk of court*
2101.163	Fee for dispute resolution
2101.17	Fees from county treasury
2101.20	Reduction of fees (if collected fees exceed court salary costs)
2333.26	Fees of probate court
3113.34	Additional fee for marriage license; fee for domestic violence shelter
3705.21	Registration of marriages, divorces, dissolutions, annulments
5310.05	Assurance fund rate
5310.06	Monthly payments of money to treasurer of state, investment of funds
5310.15	Miscellaneous Fees

**Juvenile Court**

325.28	Receipt for fees
2151.54	Fees and costs generally
2151.541	Additional fees for computerization of court or office of clerk of court*
2949.094(B)	15% Add-on fee for indigent alcohol treatment fund
4511.193	Fee for indigent alcohol treatment fund

**Court of Common Pleas**

325.28	Receipt for fees
2301.031	Fee for computerization of domestic relations division
2303.20	Fees and costs generally
2303.201	Computerizing court or paying cost of computerized legal research (amended by SB 177)*
2303.22	Costs and fees taxed upon writs
2335.35	Disposition of unclaimed fees and costs
2335.37	Payment of certain costs to county treasury
2335.241	Interest on certificates of judgment; computerization of court/ clerk's office ( <b>Note:</b> Ohio Rev. Code § 2335.241 is not subject to the computerization fee restrictions of AOS Bulletin 2005-003.)
3109.14	Fees for birth and death records and disposition of divorce or dissolution filings; Children's trust fund
2743.75(D)(1)	Filing fee for disputes over denial of access to public records

***Court of Common Pleas (Continued)***

2951.021	Supervision Fees (Probation)
4505.14	Fees for lists of title information
4519.59	Fees for certificate of title
4519.63	Preparation and furnishing title information; Fees
4519.69	Fee for processing physical inspection certificate
5310.05	Assurance fund rate
5310.06	Monthly payments of money to treasurer of state, investment of funds
5310.15	Miscellaneous Fees

***Court of Appeals***

2501.16	Clerk of Court, powers and duties; fees for special projects
2303.20	Fees & Costs Generally (applies via 2501.16 & 2303.03)
2953.37/.38/.53	Fee associated with Court Notice of Order to seal or expunge records

***All Courts***

2335.30	Posting table of fees
2743.70	Fine to fund reparations payments (collection and remittance to state)
2937.22	Surcharge for Bail for offenses other than traffic offenses or moving violations
2949.091	Execution of sentence (collection and remittance to state)
2949.094	Additional court cost for alcohol treatment and drug law enforcement funds ( <i>fee per offender, not moving violation</i> )
4511.19(G)(5)(a)	Fine for enforcement and education fund
4513.263	Occupant restraining devices
5503.04	Disposition of fines and moneys arising from bail forfeitures in State Highway Patrol cases.

The clerks of various courts receive cash in payment of various court fees, costs, and fines, as well as contingent deposits pending the outcome of legal proceedings. Such monies normally may be deposited in banks or savings and loan associations pending distribution in accordance with statutory specifications or as directed by the court.

All moneys collected during a month and owed to the state shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of the state [Ohio Rev. Code § 1907.24(C), 2303.201(C), 2743.70 (A), 2949.091(A) (all courts) & (B), and 3109.14].

\* Per AOS Bulletin 2005-003, it is the AOS's opinion that a government cannot use these fees to compensate court employees who use a computer in their ordinary duties. Rather, the AOS believes the Ohio Legislature intended that such fees are to be used to procure and maintain computer systems or to computerize courts. This would include procuring services for installing, updating, and maintaining court computer systems (e.g., computer programmers or computer engineers). These services may be provided by employees or staff of the court and, in these circumstances, fees could be expended for employee or staff expenses as properly documented to demonstrate the percentage of time spent on such activities. However, employees and staff should not be compensated from computerization fees when using the court's computer systems as end-users.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

**Note:** The Ohio Revised Code sections listed in this step are provided primarily for your reference. When testing the collection and distributions of fines, auditors must refer to the applicable statutes governing the amounts to collect and amounts and methods of distribution, regardless of whether listed here. These tests should be part of the financial audit of the court.

1. Inquire and examine how the court updates its fines and fees schedule for new fines/fees and changes to existing legislation. Ask the court to demonstrate how it updated its fines/fees schedule for the most recent statutory change and ensures the fines/fees collected are properly distributed to the appropriate fund. (e.g., Ohio Rev. Code § 2303.201 imposes an additional fee of \$15 to a custody, visitation or parentage action for the juvenile division of the court of common pleas) *(Typically, we only require a low degree of assurance over compliance with this requirement. However, where courts are a material audit cycle, auditors should evaluate general IT controls (AOS staff should complete the RCEC) for automated court systems. When fine schedules are stored as standing data in an automated system subject to adequate general IT controls, examining one fine or fee that changed, normally provides sufficient evidence that the proper fine was charged. We also do not require staff to test all fine amounts set by statute. Instead, the objective should be to determine if the court is conscientious in updating its fine schedule timely and accurately.)*
2. Inquire as to how the court spends computerization fees. Determine whether the accounting system can segregate computerization fees received and spent; or how the court otherwise determines that these fees were only spent on permissible computerization activities per AOS Bulletin 2005-003.

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

**3-13 Compliance Requirement:** Ohio Rev. Code §§ 2743.70 and 2949.091 - Additional costs in criminal cases in all courts to fund reparations payments; additional court costs for state general revenue fund.

**Summary of Requirements:** These sections generally require the court in which any person is convicted of or pleads guilty to any offense other than a traffic offense which is not a moving violation to impose and collect additional fines to be used for the state's reparations fund. The court may not waive the payment of this additional cost unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

**Note:** The Ohio Rev. Code sections listed in this step are provided primarily for your reference. When testing the collection and distributions of fines, auditors must refer to the applicable statutes governing the amounts to collect and amounts and methods of distribution, regardless of whether listed here. These tests should be part of the *financial* audit of the court.

Inquire and examine how the court updates its fines and fees schedule and ensures the fines/fees collected are properly distributed to the appropriate funds. Ask the court to show you a few state fund reparations costs and determine they were distributed reasonably. *(Typically, we only require a low degree of assurance over compliance with this requirement. However, where courts are a material audit cycle, auditors should evaluate general IT controls (AOS staff should complete the RCEC) for automated court systems.)*

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

**COUNTIES**

**3-14 Compliance Requirements:** Ohio Rev. Code §§ 325.071, 325.06, 325.12, 325.18 - Furtherance of Justice (FOJ)

**Summary of Requirements:**

Per Ohio Rev. Code § 325.071 the sheriff's annual FOJ appropriation equals ½ of the Sheriff's salary. Ohio Rev. Code §§ 325.06(A) and 325.18(A-B) prescribe sheriffs' salaries. Note that the additional 1/8 salary paid to sheriffs per Ohio Rev. Code § 325.06(B) is **not** includable in the FOJ calculation.

Per Ohio Rev. Code § 325.12, the prosecutor's annual FOJ appropriation equals ½ of the prosecutor's salary. This appropriation is to cover expenses incurred in performing the prosecutor's official duties and in the furtherance of justice.

The statutes require the sheriff and the prosecutor to file with the county auditor by the first Monday in January a full accounting of the expenditure of all funds from the FOJ account for the previous year. The statute requires the redeposit of any remaining funds, including cash held by officers, to the county treasury.

Refer to the AOS Ohio Sheriff's Manual for further guidance:  
<https://ohioauditor.gov/publications/SheriffManual%209-27-18.pdf>.

**Sample Questions and Procedures (To be performed every year):**

1. Please show me any policies and procedures you have for administering this fund.
2. Did you file the required annual report of expenditures for this fund? Please show me a copy of it.
3. Please show me documentation that the expenditures from this fund were proper and in accordance with your policies and procedures. Auditors should scan expenditure documentation and determine whether appropriate documentation is being maintained (i.e. receipts, invoices, affidavits, etc.), and whether expenditures appear reasonable in nature (i.e. proper public purpose). If significant unusual items are noted, auditors should perform the disbursement testing procedures included in the audit program below.

**FOJ Audit Program Steps:**

1. Determine whether the sheriff and prosecutor filed a full accounting of expenditures of all funds from the FOJ account with the County Auditor by the first Monday in January as required by Ohio Rev. Code §§ 325.071 and 325.12(E).
2. Examine the county's computation of amounts payable from the general fund to the FOJ account per Ohio Rev. Code §§ 325.071 & 325.12. Compare the computation to actual payments. Investigate any differences and determine whether the prosecutor received approval from the court of common pleas under Ohio Rev. Code § 325.13 to allocate any additional funds to the FOJ account.
3. Per AOS Bulletin 1997-014, any amounts paid to the FOJ fund in excess of the statutory limits described above will result in a finding for adjustment against the FOJ fund.
4. Determine whether a written internal control policy exists for administering and expending funds in the FOJ account. Compare the county's internal control policies to the guidance provided in AOS Bulletin

1981-007. Lack of a clear, written policy should be communicated to the audit committee and/or management officials of the County.

5. Does the policy establish clear internal controls regarding the distribution of the funds? If so:
  - a. Do officers receiving cash sign a form or prenumbered, duplicate receipt for all money received?
  - b. Does the officer providing the cash also sign a form acknowledging the disbursement of cash?
  - c. Obviously the department should not obtain receipts for payments to informants. However, do officers submit vendor invoices, cash register slips or other documentation to support other uses of funds (similar to an imprest petty cash fund)?
  - d. Are officers required to keep an Agent Expense Report or similar paperwork?
  - e. What does the policy state an officer should do when a receipt cannot be obtained? Examine evidence supporting whether or not officers comply with the policy.
  - f. Does the policy require affidavits when officers pay cash to informants and for other confidential purposes?
6. Obtain the county's reconciliation of bank balances to the activity in the FOJ account cash book.
  - a. Foot the reconciliation.
  - b. Agree the bank balance per the reconciliation to the bank account statement balance.
  - c. Scan reconciling items for reasonableness.
    - Trace any relatively large outstanding checks or deposits in transit to subsequent bank deposits or the date on which outstanding checks subsequently cleared the bank.
  - d. Agree the book balance per the reconciliation to the FOJ account balance.
  - e. Trace payment of the remaining year end FOJ balance to a receipt / revenue into the county treasury, as Ohio Rev. Code §§ 325.071 (sheriff) and 325.12(E) (prosecutors) requires.
7. Obtain the check register and review the payees\* for reasonableness of the expenditure. If there are checks written to the Sheriff or other high ranking officials, include these disbursements in the test that step 8 describes.

\*Due to the 21st Century Check Act, there are instances in which the bank is no longer able to return an original paper check or a photocopy of an original paper check. Instead, the bank is able to provide you with only a "display history" of a withdrawal from your checking account. Information on a bank's "display history" typically includes, but is not limited to, the number of the account upon which the check is drawn, routing information, the person or entity to whom the check was made payable, the purpose for which the money was paid, and the amount paid to the person or entity. Because a bank's "display history" of a withdrawal from a checking account sets forth the same information that appears on an original paper check or a photocopy of an original paper check, such a "display history," like an original paper check or photocopy of an original paper check, may provide a reasonable and reliable means by which a county prosecuting attorney can accurately account for a disbursement from his furtherance of justice allowance. [2005 Op. Att'y. Gen. No. 2005-035] Also see AOS Bulletin 2004-010.
8. Select a representative group of disbursements from the year end FOJ report, listing the check number, date, amount, and payee, and determine:
  - a. the amount per the report agrees with the canceled check or receipt.
  - b. the check is properly endorsed and signed by the Sheriff.
  - c. the expenditure is for furtherance of justice (almost everything counts except personal items—see the guidance in Bulletin 1981-007 and 1997-014).



- d. the officer completes an affidavit to support confidential payments, describing the amount of the expenditure and either the check number or the receipt number related to the expenditure as well as a statement of a general nature of the expenditure. If an affidavit is executed, the Auditor of State will not require production of the actual check or receipt and will not make any further inquiry into the detail surrounding the expenditure unless there is probable cause to believe that the affidavit is false. If no affidavit is executed, the officer must produce sufficient documentation to support that the expenditure is for a proper public purpose. Please note that a mere assertion by the officer that an expenditure is confidential is not sufficient to negate the documentation requirements.
- e. whether other (i.e. non confidential) disbursements are adequately supported by original documents (e.g., original invoices, receipts, receiving report, etc.).
- f. that checks do not appear to have been altered.
- g. whether amounts agree among related documents, and that computations (footings, extensions, etc.) are correct.

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

**TOWNSHIPS**

**3-15 Compliance Requirements:** Ohio Rev. Code §§ 505.60 and 505.601, AOS Bulletin 2015-002, and 2005 Op. Att’y. Gen. No. 2005-038, 2013-022, 2015-021, 2017-007, and 2017-026 - Reimbursement of insurance premiums

**Summary of Requirements:**

With the enactment of the Affordable Care Act (ACA), as noted in Bulletin 2015-002, Federal authorities have issued various guidance which suggest that some practices in Ohio Rev. Code §§ 505.60 and 505.601 may constitute violations of provisions of that voluminous legislation and may subject townships engaging in the same to penalty.

The IRS issued Notice 2015-17 in which it is indicated that an employer payment plan which involves the employer’s reimbursement to employees for some or all of their health insurance premiums incident to a policy secured other than through the employer constitutes a group health plan which is subject to regulation under the Patient Protection and Affordable Care Act (ACA). On that basis, the IRS indicates that any such reimbursement plan, since it limits the amount of payments, is in violation of the ACA, and may subject the employer to fines and penalties. The Federal 21<sup>st</sup> Century Cures Act, amends the ACA effective January 1, 2017<sup>17</sup>. This act creates an exception for “Qualified Small Employer Health Reimbursement Arrangements”<sup>18</sup> in which qualified eligible employers who make health care reimbursements may do so without threat of penalty. To qualify, a township must employ fewer than 50 full-time or full-time equivalent (FTE) employees and does not offer a group health plan to any of its employees. The following conditions must also apply:

1. It is provided uniformly to all eligible employees;
2. It is funded solely by the eligible employer;
3. No salary reduction contributions are made under the reimbursement plan; and
4. Payments and reimbursements for any year do not exceed \$4,950.00 per employee (\$10,000 if the arrangement provides for payments or reimbursements for family members of employee).

See the AOS Bulletin 2017-002 for details.

Employers may make premium reimbursements if their program is “integrated”, under Federal regulations, into a group health care plan offered by the employer, and they may utilize so-called 125 payment plans. Absent the provision by the public employer of health care insurance coverage, neither premium reimbursement nor a 125 premium payment plan is permissible under relevant provisions of the Patient Protection and Affordable Care Act, as said enactment has been interpreted by the Internal Revenue Service. See AOS Bulletin 2015-002, 2015 Op. Att’y. Gen. No. 2015-021, and 2017 Op. Att’y. Gen. No. 2017-026.

Currently included in the Ohio Rev. Code:

Generally, Ohio Rev. Code § 505.60 permits townships to procure their own healthcare coverage, while Ohio Rev. Code § 505.601 permits townships to opt not to procure their own plans, but still reimburse officers’ and employees’ for their healthcare premiums. Ohio Rev. Code § 505.60 specifically permits townships to procure the following forms of healthcare coverage: hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance. In addition, Ohio Rev. Code § 505.60 allows townships to reimburse a township officer or employee for out-of-pocket premiums for insurance policies, including long-term

<sup>17</sup> This is effective for years beginning after December 31, 2016. However; our office will not issue findings for recovery in accordance with this act or the 2017 Op. Att’y. Gen. No. 2017-007 until audits performed for periods beginning after December 31, 2017.

<sup>18</sup> Cafeteria plans may qualify as Qualified Small Employer Reimbursement Arrangements.

care insurance<sup>19</sup>. The reimbursement is permitted for a township officer or employee who is denied coverage under a township health care plan established pursuant to Ohio Rev. Code § 505.60, or who elects not to participate in the township's plan. The township may reimburse for each out-of-pocket premium attributable to the coverage provided for the officer or employee for insurance benefits that the board could have provided under Ohio Rev. Code § 505.60(A). The reimbursement for the officer, employee, and their immediate dependent cannot exceed an amount equal to the average premium paid by the township under any health care plan it procures [Ohio Rev. Code § 505.60(D)] and cannot be reimbursed for immediate dependents if they elect not to participate in the plan (2017 Op. Att'y. Gen. No. 2017-007).<sup>17</sup>

Requirements governing township-procured health insurance coverage apply equally to township-paid coverage through a health insuring corporation contract as follows:

- that an officer or employee may decline coverage under either method without affecting the availability of coverage to other officers and employees
- that either method may provide the same kinds of coverage
- that coverage under either method is to be paid from the same township sources used to pay employee and officer compensation
- that immediate dependents may be covered under either method
- that reimbursement of an officer or employee for premiums paid for alternative coverage (e.g., through a spouse) is only for the part of the premium paid for the same kinds of coverage offered by the township's plan, whether it be provided through insurance or a health insuring corporation contract

The statute does not permit reimbursements for:

- deductibles
- the employer's portion of premiums
- healthcare expenses related to family members, not on the township healthcare plan

If a township opts not to procure its own health insurance, it still is permitted to reimburse any township officer or employee for each out-of-pocket premium that the officer or employee incurs pursuant to Ohio Rev. Code § 505.601. However, pursuant to Ohio Rev. Code § 505.601, the township must meet the following three conditions:

1. The board of township trustees adopts a resolution stating that the township has chosen not to procure a health care plan and has chosen instead to reimburse its officers and employees for each out-of-pocket premium,
2. The resolution provides for a uniform maximum monthly or yearly payment amount for each officer and employee,
3. The resolution states the specific benefits, pursuant to Ohio Rev. Code § 505.60(A), that will be reimbursed.

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<sup>19</sup> For example, a township official who obtained coverage through an outside employer sought reimbursement for this outside employer's portion of his insurance premium. This is not permitted by law. Townships can only reimburse for the official's out-of-pocket portion of the premium (unless the reimbursement is integrated with another group health plan in accordance with federal law) – up to the average amount of premiums paid under the township's health insurance plan. These reimbursements do not qualify as a "group health plan" or as a "qualified small employer health reimbursement arrangement." (2018 Op. Att'y. Gen. No. 2018-001)

Ohio Rev. Code § 505.601 (reimbursement when a township does *not* offer health insurance to its officers/employees) covers reimbursements made to township officers/employees for dependent health care coverage. Reimbursement is only for the part of the out-of-pocket premium attributable to the coverage provided for the officer or employee for insurance benefits that the board could have provided under Ohio Rev. Code § 505.60(A), and that the reimbursement covers immediate dependents in addition to the officer or employee.

**2005 Op. Att’y. Gen. No. 2005-038** states that townships are not authorized to directly pay the employer of a township officer or employee’s spouse for the cost of family coverage under a health care plan provided to the spouse by the spouse’s employer. Auditors should consider appropriate findings if such direct payments are identified. However, the officer or employee can be directly reimbursed for the out-of-pocket premium attributable to that officer or employee for health care coverage provided through the employer of a spouse as outlined in Ohio Rev. Code § 505.60 and 505.601.

In 2013, the IRS issued Notice 2013-54 and the Department of Labor issued Technical Release 2013-03 which indicate that employers may reimburse employees’ premiums for non-employer sponsored health care with only post-tax dollars (i.e., employers must withhold taxes prior to making reimbursement), but that these reimbursements need not be used in computing allowable “gross salary” as prescribed in Ohio Rev. Code § 505.24 and § 505.09.

**2013 Op. Att’y. Gen. No. 2013-022** states a board of township trustees may reimburse a township officer or employee pursuant to Ohio Rev. Code § 505.601 for monthly Medicare Parts A, B, and D premium payments made by the officer or employee, so long as the benefits provided by Medicare Parts A, B, and D are consistent with the benefits identified in the township resolution stating that the township has chosen not to procure a health care plan under Ohio Rev. Code § 505.60 and the reimbursement does not exceed the uniform monthly or yearly payment amount set by that resolution.

Auditors should refer to AOS Bulletin 2015-002 for additional information regarding auditing health care reimbursements.

### **Sample Questions and Procedures:**

1. Inquire and scan the records to determine if the township reimbursed any officer or employees for insurance benefit premiums during the period under Ohio Rev. Code § 505.60 or § 505.601?
2. If the Township has one employee:
  - a. Review the resolution authorizing reimbursement. (We should maintain a copy in the permanent file so we needn’t repeat this step each audit.)
  - b. Review the township’s procedures for ensuring reimbursements meet the requirements of [Ohio Rev. Code § 505.60(A) or the reimbursement resolution from Ohio Rev. Code § 505.601].
  - c. Review a few employees’ reimbursement transactions to determine if they were allowable.
3. If more than one employee, determine for premium reimbursements if the Township’s program is “integrated”, under Federal regulations, into a group health care plan offered by the public employer, and if, therefore, the public employer may utilize so-called 125 payment plans. If they operate a cafeteria plan, see OCS section 3-16.

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

**COUNTIES, MUNICIPALITIES & TOWNSHIPS****3-16 Compliance Requirements:** Ohio Rev. Code §§ 305.171 and 505.603<sup>20</sup> - “Cafeteria Plans”<sup>21</sup>**Summary of Requirements:****Counties**<sup>22</sup>

A board of county commissioners may offer, to a county officer or employee, benefits through a cafeteria plan meeting the requirements of section 125 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 125, as amended, and, as part of that plan, may offer the county officer or employee the option of receiving a cash payment in any form permissible under such cafeteria plans. Any cash payment made to a county officer or employee under this provision shall not exceed twenty-five per cent of the cost of premiums or payments that otherwise would be paid by the board for benefits for the county officer or employee under the health care policy or plan provided by the county as permitted by Ohio Rev. Code § 305.171(A).

A board of county commissioners may also duly establish an “opt-out payment plan” which provides that any county officer or employee, who is not covered under a health care plan or policy by the county as permitted by Ohio Rev. Code § 305.171, may receive cash payment in lieu of benefit. Any cash payment made to a county officer or employee under this provision shall not exceed twenty-five per cent of the cost of premiums or payments that otherwise would be paid by the board for benefits for the county officer or employee under the health care policy or plan provided by the county as permitted by Ohio Rev. Code § 305.171(A). Further, no cash payment in lieu of a benefit may be made under the provision unless the officer or employee provides a signed statement with the following information:

- an affirmation that the individual is covered under another plan for that type of coverage
- the name of the employer (if any) that sponsors the coverage
- the name of the carrier that provides the coverage
- the policy or plan number for the coverage

<sup>20</sup> In addition to providing the benefits to township officers and employees under section 505.60, 505.601, or 505.602 of the Ohio Rev. Code, a board of township trustees may offer a health and wellness benefit program through which the township provides a benefit or incentive to township officers, employees, and their immediate dependents to maintain a healthy lifestyle, including, but not limited to, programs to encourage healthy eating and nutrition, exercise and physical activity, weight control or the elimination of obesity, and cessation of smoking or alcohol use. (Ohio Rev. Code § 505.603(B))

The township fiscal officer may deduct from a township employee's salary or wages the amount authorized to be paid by the employee for one or more qualified benefits available under section 125 of the "Internal Revenue Code of 1986," 26 U.S.C. § 125, and under the sections listed in division above, if the employee authorizes in writing that the township fiscal officer may deduct that amount from the employee's salary or wages, and the benefit is offered to the employee on a group basis and at least ten per cent of the township employees voluntarily elect to participate in the receipt of that benefit. The township fiscal officer may issue warrants for amounts deducted under this division to pay program administrators or other insurers for benefits authorized under this section or those sections listed above. (Ohio Rev. Code § 505.603(C))

<sup>21</sup> According to Internal Revenue Code [26 U.S.C. § 125 (b)] cafeteria plan amounts are not included in gross income of a participant, unless the participants are greater than \$130,000.

<sup>22</sup> See also [2019 Op. Att'y. Gen. No. 2019-026](#)

**Townships**

In addition to or in lieu of providing benefits to township officers and employees under Ohio Rev. Code § 505.60, 505.601, or 505.602, a board of township trustees may offer benefits to officers and employees through a cafeteria plan that meets the requirements of section 125 of the "Internal Revenue Code." To offer benefits through a cafeteria plan, the township must adopt a policy authorizing an officer or employee to receive a cash payment in lieu of a benefit otherwise offered to township officers or employee. This cash payment may not exceed twenty-five percent of the cost of premiums or payments that otherwise would be paid by the board for benefits for the officer or employee.

Ohio Rev. Code § 505.603 further requires that no cash payment in lieu of a benefit be made unless the officer or employee provides a signed statement with the following information:

- an affirmation that the individual is covered under another plan for that type of coverage
- the name of the employer (if any) that sponsors the coverage
- the name of the carrier that provides the coverage
- the policy or plan number for the coverage

**Sample Questions and Procedures:****Note:**

- Steps 1 – 3 only apply when the entity adopts or amends a cafeteria plan during the audit period, or in the initial year it is tested for compliance.
- Reviewing the permanent file should address steps 1 – 3 for years in which there is no amendment.

1. Do you offer your officers and employees benefits through a cafeteria plan?  
Note: None of the steps below apply if the entity does not have a cafeteria plan.
2. Inquire if the entity worked with their legal counsel and/or accountants to design and administer the plans properly. If so, secure any documentation legal counsel or the accountants have supplied to the township.
3. Review the policy document for conformance with the requirements.
4. Describe your procedures for ensuring reimbursements met the requirements of Ohio Rev. Code § 305.171 or 505.603.
5. Please show me [number] of signed statements with the attestations and the required information.
6. Calculate or review the entity's calculations that cash in lieu of payments does not exceed 25% of the cost to the entity for providing the benefit (that is no longer being received).

Inquire with the appropriate person to determine how health care reimbursements are recorded.

For UAN entities: Use the wage base earning report – detail and summary. For periods before 2015, use the wage detail report.

7. Determine if the employees' W-2 forms reflect additional income for the benefit if applicable.

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



**3-17 Compliance Requirements:** Ohio Rev. Code §§ 2925.03(F), 2929.18, 2981.11, 2981.13 and 2981.14  
- Law Enforcement Trust (LET) and Drug Law Enforcement Funds

**Summary of Requirements:**

*Note:* This section is only applicable when related fines, forfeitures, or penalties are distributed to the entity, and/or when they have unspent balances from previous distributions.

Refer to the AOS Ohio Sheriff's Manual for further guidance:  
<https://ohioauditor.gov/publications/SheriffManual%209-27-18.pdf>.

**Law Enforcement Trust Funds**

Several different receipts require activity to be tracked/monitored in a Law Enforcement Trust Fund (**Procedure No. 1 below**) including:

***Mandatory Drug Fines***

Ohio Rev. Code § 2925.03 (F)(1) requires the clerk of a court to pay<sup>23</sup> any mandatory fine imposed pursuant to division (D)(1) of this section and any fine other than a mandatory fine imposed for a violation of this section pursuant to division (A) or (B)(5) of Ohio Rev. Code § 2929.18 of the Revised Code to the county, township, municipal corporation, park district. . . or state law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender.<sup>24</sup> (**Procedure No. 3 below**)

However, the Clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section. (**Procedure No. 2 below**)

Ohio Rev. Code § 2925.03(F)(2) provides guidance on preparing an internal control policy indicating it must:

- address the agency's use<sup>25</sup> and disposition of all fine moneys so received,
- provide for the keeping of detailed financial records of:
  - the receipts of those fine moneys,
  - the general types of expenditures made out of those fine moneys, and
  - the specific amount of each general type of expenditure.
- not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation.

<sup>23</sup> Payments are made electronically to the Ohio Treasurer of State through the Reparations Rotary. A [report](#) is available on the AOS Intranet showing which entities made payments.

<sup>24</sup> These proceeds should be recorded in a LET fund when received from the clerk.

<sup>25</sup> Ohio 2017 Op. Att'y. Gen. 2017-018 states, in part, that "personal property purchased by a county prosecuting attorney ... with ... law enforcement trust fund moneys ... constitutes county property." As county property, the board of county commissioners are vested with the title to all property of the county. As such, the board of county commissioners must follow Ohio Rev. Code § 307.12 when disposing of property and this section does not provide for the gifting/donating of property to a private individual.

*Note:* The following are to be considered public records open for inspection under Ohio Rev. Code § 149.43:

- The written internal control policy,
- All financial records of the receipts of those fine moneys,
- The general types of expenditures made out of those fine moneys, and
- The specific amount of each general type of expenditure by an agency.

### ***Forfeitures and Seizures***

#### ***Care of Property in Law Enforcement Custody*** Ohio Rev. Code § 2981.11

Ohio Rev. Code § 2981.11(B)(1) provides that any law enforcement agency that receives or uses certain proceeds or forfeited monies shall adopt and comply with an internal control policy that provides for keeping detailed records of: **(Procedure No. 2 below)**

- the amount of property acquired by the agency and the date property was acquired;
- the disposition of the property, which shall include, but not be limited to, both of the following:
  - The manner in which it was disposed, the date of disposition, detailed financial records concerning any property sold, and the name of any person who received the property. The record shall not identify or enable identification of the individual officer who seized any item of property.
  - An itemized list of the specific expenditures made with amounts that are gained from the sale of the property and that are retained by the agency, including the specific amount expended on each expenditure, except that the policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation and shall be open to public inspection during the agency's regular business hours.

#### ***Sale of forfeited property*** Ohio Revised Code § 2981.13

Each County Sheriff, township, municipal corporation, park district that receives proceeds from the sale of forfeited property and contraband seized during law enforcement activities must:

- Establish a law enforcement trust fund [Ohio Revised Code § 2981.13(C)(1)],
- File a report with the County Auditor/Municipal Corp./Board of Township Trustees/Park Commissioner/or Attorney General, no later than the thirty-first day of January the next calendar year, verifying that the proceeds and forfeited moneys were expended only for the purposes authorized and specifying the amounts expended for each authorized purpose. [Ohio Rev. Code § 2981.13(C)(3)], **(Procedure No. 5 below)**
- Write/adopt and comply with an internal control policy relating to proceeds and forfeited money addressing [Ohio Rev. Code § 2981.13(C)(2)(a)]: **(Procedure No. 2 below)**
  - The use and disposition of all the proceeds and forfeited moneys,
  - The general type of expenditures to be made out of the proceeds and forfeited moneys received, and
  - The records to be maintained.

#### ***Forfeiture under federal law*** Ohio Rev. Code § 2981.14

Ohio Rev. Code § 2981.14(B) states, A law enforcement agency or prosecuting authority shall not directly or indirectly transfer or refer any property seized by the agency or authority to any federal law enforcement authority or other federal agency for purposes of forfeiture under federal law unless the value of the seized property exceeds \$100,000<sup>26</sup>, excluding the potential value of the sale of contraband, or the property is being transferred or referred for federal criminal forfeiture proceedings. **(Procedure No. 4 below)**

<sup>26</sup> Such transfers may result in federal reporting requirements under Treasury or Justice Equitable Sharing Programs (see Catalog of Federal Domestic Assistance (CFDA<sup>27</sup>) # 16.922 and/or 21.016)

**Drug Law Enforcement Fund****Non-Mandatory Drug Fines**

An additional fine imposed under Ohio Rev. Code § 2929.18(A) or (B)(4) does not require distribution to LET funds under Ohio Rev. Code § 2925.03(F). Instead, fines imposed under Ohio Rev. Code § 2929.18(B)(4) must be used as provided in Ohio Rev. Code § 2925.03(H). This section requires fines to be used solely for the support of one or more eligible community addiction services providers. (**Procedures No. 6-7 below**)

**Sample Questions and Procedures (To be performed every year):****Law Enforcement Trust Fund Testing**

1. The following activity should be accounted for in a Law Enforcement Trust Fund, inquire with the client (including related courts and/or law enforcement agencies) and review supporting audit information in order to determine whether they have any of the following and account for it accordingly:

- Receipts of Mandatory Drug fines,
- Expenditures of Mandatory Drug fine proceeds from previous periods, or
- Receipt or use of forfeited or seized property.

**If there were none, skip to # 6**

2. Obtain any internal control policy(ies) and if applicable determine if it is written in accordance with:

- Ohio Rev. Code § 2925.03(F)(2) – For Mandatory Drug Fines;
- Ohio Rev. Code § 2981.11(B)(1) – For Care of Property in Law Enforcement Custody;
- Ohio Rev. Code § 2981.13(C)(2)(a) – For Sale of forfeited property

3. Determine if the law enforcement agency implemented the written internal control policies.

*(We should test this via procedures we use to determine if controls have been implemented. These might include a walk-through and scanning a few disbursements and the related documentation and financial records. AOS Auditors see AOSAM 30500.68.)*

4. Test this LET activity using the following procedures:

- Obtain the bank accounts and related support documentation and test the bank reconciliation(s) through:
  - i. Footing the reconciliation(s).
  - ii. Agreeing the bank balance per the reconciliation(s) to the bank account statement balance(s).
  - iii. Scanning reconciling items for reasonableness. Trace any relatively large outstanding checks or deposits in transit to subsequent bank deposits or the date on which outstanding checks subsequently cleared the bank.
  - iv. Agreeing the book balance per the reconciliation(s) to the accounting record's balance.
- Auditors should scan expenditure documentation and determine whether appropriate documentation is being maintained (i.e. receipts, invoices, affidavits, etc.), and whether expenditures appear reasonable in nature (i.e. proper public purpose and in accordance with the internal control policy and related statutes above). If significant unusual items are noted, or if auditor judgment dictates, auditors should:
  - i. Test selected disbursements and supporting documentation (e.g. invoices, etc.) to determine if they were used only for the purposes described above. *(Note: We require only a low level of assurance from this testing. Select sample sizes accordingly, or use high dollar testing if it is more efficient and provides greater coverage.)*

- Inquire about any transfers of property seized by the agency or authority to any federal law enforcement authority.
    - i. Evaluate the value of transferred property and if applicable test requirements of Treasury or Justice Equitable Sharing Programs (see Catalog of Federal Domestic Assistance (CFDA<sup>27</sup>) # 16.922 and/or 21.016)
5. If they had sales of forfeited property, determine whether they complied with the reporting requirement in Ohio Rev. Code § 2981.13(C)(3). Review the report for accuracy and completeness.

### **Drug Law Enforcement Fund Testing**

6. Inquire with the client (including related courts and/or law enforcement agencies) and review supporting audit information in order to determine whether there were any additional fines (referred to above as Non-Mandatory Drug fines) imposed under Ohio Rev. Code § 2929.18(A) or (B)(4).

**If there were none, no further testing is required.**

7. This activity should be accounted for in a Drug Law Enforcement Fund. Test this activity using the following procedures:
- Obtain the bank accounts and related support documentation and Test the bank reconciliation(s) through:
    - i. Footing the reconciliation(s).
    - ii. Agreeing the bank balance per the reconciliation(s) to the bank account statement balance(s).
    - iii. Scanning reconciling items for reasonableness. Trace any relatively large outstanding checks or deposits in transit to subsequent bank deposits or the date on which outstanding checks subsequently cleared the bank.
    - iv. Agreeing the book balance per the reconciliation(s) to the accounting record's balance.
  - Auditors should scan expenditure documentation and determine whether appropriate documentation is being maintained (i.e. receipts, invoices, affidavits, etc.), and whether expenditures appear reasonable in nature (i.e. proper public purpose and in accordance with Ohio Rev. Code § 2925.03(H)). If significant unusual items are noted, or if auditor judgment dictates, auditors should:
    - i. Test selected disbursements and supporting documentation (e.g. invoices, etc.) to determine if they were used only for the purposes described above. *(Note: We require only a low level of assurance from this testing. Select sample sizes accordingly, or use high dollar testing if it is more efficient and provides greater coverage.)*

<p><b>Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):</b></p>
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<sup>27</sup> Effective for federal awards made after November 12, 2020, the terms “Catalog for Federal Domestic Assistance (CFDA) number” and “CFDA program title” have been changed to the terms “Assistance Listings number” and “Assistance Listings program title”. Auditors may see either term being used interchangeably for a period of time.

**3-18 Compliance Requirements:** Ohio Rev. Code §§ 109.57, 109.571, 109.60, and 5122.311 – Submission of information for National Instant Criminal Background Check System (NICS)

Procedures for this section are limited to the evaluation of prior year comments. Test procedures are not required for periods applicable to the 2021 OCS.

**Sample Questions and Procedures:**

1. Auditors should evaluate the status of any prior year comments issued for NICS. If the matter is resolved, document in the working papers. If the issue is not resolved, bring to the management's attention via a verbal comment only.