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Auditor of State

OHIO COMPLIANCE SUPPLEMENT

Preface

This is the latest revision to the Ohio Compliance Supplement, superseding the March 2006 version. This revision incorporates significant new or revised legal and regulatory requirements as well as comments we have received from auditors and our clients. The following page, titled Implementation Instructions, explains how you can identify updates.

In accordance with Government Auditing Standards, auditors must design their audit to reasonably assure detection of material misstatements resulting from violations of provisions of laws, regulations, contracts, or of grant agreements that directly and materially affect the determination of financial statement amounts (*Government Auditing Standards*, 4.10).

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

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

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

In order to reduce costs, the Ohio Compliance Supplement is available only in electronic format via the Auditor of State's website at <http://www.auditor.state.oh.us>. However, if you are unable to access the website or have difficulty accessing these files, please contact the Accounting and Auditing Support Division at 1-800-282-0370.

As in the past, we plan regular revisions. Comments we receive from our staff and others have always been an important source of revisions and improvements. We appreciate your comments regarding the Ohio Compliance Supplement in our continual effort to improve it.

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Implementation Instructions

This **December 2008 Ohio Compliance Supplement** (OCS) replaces the March 2006 version. The OCS is available at www.auditor.state.oh.us, under *Publications*, in both Word and Portable Document Format. (Auditor of State staff can also access MS Word versions in the Audit Employees folder of the Briefcase.) Due to the wide availability of internet access, we no longer provide the OCS in paper or disc formats.

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

The Table of Contents follows these Implementation Instructions. A table for each chapter is also located in the front of each chapter. The table of contents identifies legislative requirements. The table identifies new or revised requirements via shading. The table also identifies superseded legal requirements using strikeout font. We have not deleted these sections since they may still apply to portions of incomplete audits. For example, Step 6-11 is a new legislative requirement / OCS step, and appears in the table of contents as follows:

6-11	<u>ORC 3375.49 – Statutory Funding for Counties and County Law Library Associations (LLA’s)</u>	28
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In addition, we have included a box at the top left hand corner within each modified step indicating if the section is a revised or new legislative requirement. In both cases, the effective date also appears enable you to easily determine if the revision applies to the audit period. Below is an example appearing in the OCS:

<u>New</u>
- <u>HB 363, 125th GA, Effective: 8/3/06</u>
- <u>HB 66, 126th GA, Effective: 9/29/05</u>

In addition to the box described above, the OCS uses double underlining to indicate new or revised legislative requirements.

The OCS uses waved underlining to highlight:

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

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

Auditors with engagements in process prior to the issuance of the *2008 Supplement* need not discard work performed using the 2006 OCS. However, they must compare the 2008 changes to their work from the 2006 OCS and assure they have tested the legal provisions applicable to their audit period. More than one legal requirement could apply if a legislative change was effective during the audit period.

2008 Ohio Compliance Supplement Table of Contents

Chapter 1: Budgeting

<u>Compliance Requirements</u>	<u>Page</u>
Section A: General Budgetary Requirements	
1-1 ORC 5705.28: Adoption of tax budget	6
1-2 ORC 5705.281: Waiver of tax budget submission requirement	7
1-3 ORC 5705.34: Certification of tax levies	8
1-4 <u>ORC 5705.36: Certification of available revenue</u>	9
1-5 <u>ORC 5705.36: Amended certificates</u>	11
1-6 <u>ORC 5705.38: Annual appropriation measure</u>	13
1-7 <u>ORC 5705.39: Appropriations limited by estimated resources</u>	17
1-8 <u>ORC 5705.40: Amending or supplementing appropriations, contingencies</u>	19
1-9 <u>ORC 5705.38; 5705.41 (A)(B)(C) and (D); and 5705.42:Restrictions on the appropriating/expending money</u>	21
1-10 ORC 5705.41 (D): “Blanket” fiscal officer certificates	25
1-11 <u>ORC 9.34: Establishment of different fiscal year ends for subdivisions other than school districts or a county school financing district</u>	27
1-12 ORC 118: Fiscal watch or fiscal emergency for a municipal corporation, county or township.....	29
1-13 <u>ORC 5705: Requirements for taxing districts that do not levy a tax;</u>	33
Section B: Additional School Requirements	
1-14 <u>ORC 5705.391 and OAC 3301-92-04: School districts and community schools must prepare 5-year projections</u> Boards (and community schools) to adopt spending plan	35
1-15 <u>ORC 5705.412: Restriction upon school district expenditures</u>	38
1-16 <u>ORC 3315, 3317; Admin. Code 3301-92: Textbook and, capital reserve accounts</u>	44
1-16(A) <u>ORC 5705.29 (F), 3315.18(C); OAC 3301-92-03: Budget reserve accounts</u>	49
1-17 <u>ORC 3316.03: School district fiscal caution/watch/emergency</u>	63
Section C: Additional Public Library Requirements	
1-18 ORC 5705.23: Special levy for library purposes; submission to electors.....	67
1-19 ORC 5705.28(B)(1): Adoption of tax budget; school library district tax budget, etc.....	69
1-20 ORC 5705.281(B): Waiver of tax budget submission requirement	70
Section D: Generic Requirements of Revenue, Funds and Transfers	
1-21 ORC 5705.02, 5705.07, 5705.18, and Article XII Section 2 of the Constitution of the State of Ohio: Ten-mill limitation	72
1-22 <u>ORC 5705.09: Establishing funds</u>	73
1-23 <u>ORC 5705.10, 5731.48 and 3315.20(A): Distributing revenue derived from tax levies, etc</u>	75
1-24 ORC 5705.12: Permission to establish funds	79
1-25 <u>ORC 5705.14, 5705.15, 5705.16: Transfer of funds</u>	81
1-26 <u>Auditor of State Bulletin 97-003, and various ORC Sections: Advances</u>	85
1-27 <u>ORC 5705.13: Reserve balance accounts and funds</u>	88

2008 Ohio Compliance Supplement Table of Contents

Chapter 1: Budgeting (Continued)

<u>Compliance Requirements</u>	<u>Page</u>
Section E: Additional County Requirement	
1-28 ORC 5101.144: Use of Children Services Fund for all such receipts.....	93
Section F: Additional County Hospital Requirement	
1-29 ORC 339.06: Organization of board of trustees; funds; administrator (hospitals)	94
Section G: Additional College Requirement	
1-30 ORC 3354.10(A), 3357.10, 3358.06, 5705.41(D): Treas. fiscal certificate (college).....	96
Appendix A. Transfers and Advances.....	97

2008 Ohio Compliance Supplement Table of Contents

Chapter 2 - Contracts and Expenditures

Compliance Requirements	Page
Section A: Statutory Municipalities	
2-1 ORC 715.18, 731.02, 731.12, 731.14, 731.141, 735.05, 735.051, 735.052, 735.053, 737.03 and 2921.42: Municipal contracts	3
2-2 ORC 731.16, 735.07: Altering or modifying municipal contracts	5
2-3 <u>ORC 117.16(A), 723.52 – Force Accounts Municipal Corporations [Cities/Villages]</u>	6
Section B: Counties	
2-4 ORC 305.30: Responsibilities of the county administrator	10
2-5 ORC 305.27, 319.16, 307.86, 9.37, 307.87, 307.88, and 307.91 County payments to be by auditor’s warrant; competitive bidding	12
2-6 <u>ORC 117.16(A), 5543.19 Force Accounts – Counties</u>	15
Section C: Townships	
2-7 ORC 505.08, 505.101, 505.267, <u>505.37</u> , 505.42, 505.46, 507.11(B), 511.12, 511.13, 515.01, 5549.21, 5575.01 - Township expenditures and competitive bidding	19
2-8 <u>ORC 117.16(A), 5575.01 – Force Accounts – Townships</u>	23
Section D: Board of Education (Schools)	
2-9 ORC 3313.33: Conveyances and contracts	27
2-10 ORC 3313.46, 125.04(C), 3313.533: Procedures for bidding and letting of contracts	28
2-11 ORC 3313.33(B), 3313.37 3313.375, 3313.40, and 3313.41: Acquisition of school real estate, building, equipment	31
2-12 <u>ORC Chapter 3318: Permissible expenditures for school districts participating in the Classroom Facilities Loan Program (and related classroom facility programs)</u>	34
2-13 <u>ORC 3318: Temporary Law; Section 7 of Senate Bill No. 102 of the 122nd General Assembly; School Building Assistance Limited Fund for the Big 8</u> school districts	42
2-14 ORC 3327.08: School bus purchases	44
Section E: Community Schools	
2-15 Community School Bidding Requirements	45
2-16 ORC 3314.24(A) E-school leases for instructional space	47
Section F: Hospitals	
2-17 ORC 339.05: County hospital bidding procedures and purchasing policies for supplies/equipment	48
2-18 ORC 749.26, 749.27, 749.28, 749.29, 749.30, and 749.31: Municipal hospital contract procedures	50
Section G: Colleges and Universities	
2-19 ORC 9.312, 3354.16, 3355.12, 3357.16, and 3358.10: Bidding on improvement contracts	52

2008 Ohio Compliance Supplement Table of Contents

Chapter 2 - Contracts and Expenditures (Continued)

Compliance Requirements	Page
Section H: Libraries	
2-20 ORC 3375.41: Bidding and letting of contracts over \$25,000	54
Section I: General	
2-21 ORC 9.48: Joint contracting and purchasing programs for counties and townships	56
2-22 ORC 153.50, 153.51, 153.52: Bids and contracts for buildings/structures	58
2-23 ORC 4115.04, 4115.05: Prevailing wage rates	60
2-24 ORC 9.314: Reverse Internet auction in lieu of sealed bids (all political subdivisions) ..	62
2-25 ORC 117.16(A), 723.52, 5543.19, 5575.01 — Force Accounts	59
(Note: Step 2-25 above is now incorporated in steps 2-3, 2-6 and 2-8.)	
2-25 ORC 9.24 Unresolved Findings for Recovery	64

2008 Ohio Compliance Supplement Table of Contents

Chapter 3 - Debt

Compliance Requirements	Page
Section A: Entities Other Than Community Schools	
3-1 <u>Ohio Const. Art. XII Section 11; Ohio Const. Art. XVIII, Section 12, ORC 133.10, 133.22 133.24, 321.34, 5705.03, 5705.05, 5705.09 and 5705.10; 1981 Op. Atty Gen. No. 81-035: Retiring Debt</u>	2
3-2 <u>ORC 133.10, 133.22 and 133.24: Anticipation Notes</u>	9
3-3 <u>ORC 3375.404: Additional Borrowing Authority (Brd of Library)</u>	13
3-4 <u>17 C.F.R. § 240.15c2-12: Issuing Municipal Securities</u>	15
3-5 <u>ORC 505.401: Additional Borrowing Authority (Brd of Trustees, Fire Districts organized under ORC 505.37(C))</u>	19
3-6 <u>ORC 133.29 Governments Investing in Their Own Securities</u>	20
Section B: Community Schools	
3-7 <u>ORC 3314.08(J): Foundation Anticipation Notes</u>	22
3-8 <u>ORC 3318.50(B); School Classroom Facilities Loan Guarantee Program</u>	23
3-9 <u>ORC 3314.30 Community School Revolving Loan Program</u>	25
Appendix to Step 3-2	27

2008 Ohio Compliance Supplement Table of Contents

Chapter 4 - Accounting and Reporting

Compliance Requirements	Page
Section A: GAAP Annual Reporting	
4-1 OAC 117-2-03 (B), ORC 117.38 and 1724.05: GAAP Annual Financial Reporting (counties, cities, school districts, educational service centers and community schools)	2
4-2 ORC Section 1724.05: CICs and Section 1726.11: DCs - Annual Reporting	5
Section B: Community School Additional Reporting	
4-3 ORC 3314.024 Footnote disclosure of management company expenses	7
Section C: Counties' Electronic (i.e., Internet) Transactions Records	
4-4 ORC 117.111(A) Security controls over counties' electronic records (i.e. internet) transactions	11
Section D: Accounting requirements applicable to all public offices	
4-5 OAC 117-2-02(D) & (E) Required accounting records	14

2008 Ohio Compliance Supplement Table of Contents

Chapter 5 - Deposits and Investments

Compliance Requirements	Page
Section A: Subdivisions other than counties	
5-1 ORC 135.13, 135.14, <u>135.144</u> , 135.45, 133.03: Eligible investments for interim monies	3
5-2 ORC 135.14: Other requirements	9
5-3 ORC 135.142, 135.14(B)(7): Other eligible investments	12
5-4 <u>ORC 135.18, 135.181: Security for repayment of public deposits</u>	14
5-5 <u>Article XII, Section 5a, Ohio Constitution; ORC 135.21 and 5705.10; 1982 Op. Atty. Gen. No. 82-031 and 7 CFR Part 210.02, 210.2, 210.5 and 210.14(a): Allocating interest among funds</u>	17
Section B: County (and County Hospital) Requirements	
5-6 ORC 135.34, 135.341: Investment advisory committee	20
5-7(a) <u>ORC 135.35: Eligible investments</u>	22
5-7(b) ORC 135.35: Other requirements	29
5-8 ORC 135.37: Security for repaying public deposits	32
5-9 <u>Article XII, Section 5a, Ohio Constitution; ORC 135.21, 135.351 and 5705.10 & .131; 1982 Op. Atty. Gen. No. 82-031: Allocating interest among funds</u>	33
Section C: Community Schools	
5-10 Contractually imposed deposit and investment requirements.....	35
Appendices:	
A Federal agency guarantees	36
B Governmental Accounting Standards Board Statement No. 40: Disclosing policies the Ohio Rev. Code mandates related to investment and deposit risks	37

2008 Ohio Compliance Supplement Table of Contents

Chapter 6 Other Potentially Direct and Material Laws and Regulations

Compliance Requirements	Page
Section A: Various Entity Types	
6-1 ORC 9.833 and 305.172: Health Care Self Insurance	2
6-2 ORC 2744.081: Liability Self Insurance	5
6-3 OAC 3745-27-15 through 18: Landfill Certifications	7
6-4 ORC 5735.29 Fuel excise taxes – “supplement, not supplant” requirement (Note: Step 6-4 removed pending clarifying methods of measuring compliance.)	
Section B: School Districts	
6-4 ORC 3317.01, 3317.02, 3317.03, 3321.04, and 3313.981(F) OAC 3301.51-13: School District Average Daily Membership	11
6-5 OAC 3301.61-16 Vocational and Special Education Funding (Note: ODE monitors compliance; therefore, AOS will no longer test this requirement.)	
Section C: Community Schools	
6-5 ORC 3313.64, 3314.03, 3301.074, 3314.08 – Community School Funding	14
6-6 ORC 3314.03(A)(11)(b): Community School Liability insurance	19
6-7 ORC 3314.08(I): Community School Tuition	20
6-8 ORC 3314.02(E): Governing authority (Moved to chapter 7.)	
6-8 ORC 3314.03 Sponsor monitoring of community schools	21
Section D: Townships	
6-9 ORC 505.24(C) and OAG Op. 2004-036 Allocating trustee per diem costs to funds	23
Section E: - Counties and Law Libraries	
6-10 ORC 315.12 Allocating motor vehicle license and fuel tax receipts to support the county engineer (<i>counties only</i>)	26
6-11 ORC 3375.49 – Statutory Funding for Counties and County Law Library Associations (LLA’s).....	28

2008 Ohio Compliance Supplement Table of Contents

Chapter 7 CHECKLISTS FOR OTHER LAWS AND REGULATIONS

Compliance Requirements Page

Part 1: Contracting and Purchasing

7-1	ORC 307.93(F), 341.25, 753.22, and 2301.57: Establishment and accounting treatment for commissaries	6
7-2	Misc. local legislative body policies; charter requirements (for use of cell phones, government credit cards and purchasing cards, and government-owned vehicles and equipment), <u>using personal credit cards</u>	7
7-3	<u>Misc. local legislative body policies; charter requirements; Ohio Ethics Commission Advisory Opinion No. 91-010; Ohio Rev. Code Sections 102.03(D) and (E), 2921.42(A)(4), and 2921.43(A) (travel reimbursements; “frequent flyer miles” accrual/ usage)</u>	9
7-4	ORC 301.27, 301.29 County credit and procurement cards	11

Part 2: Accounting and Reporting

Section A: General

7-5	ORC 117.38: Filing financial reports (other than state agencies)	
	(This section was combined with OCS section 4-1)	
7-5	ORC 9.38: Deposits of public money	16
7-6	ORC 121.22: Meeting of public bodies to be open, exceptions, and notice	18
7-7	ORC 149.43: Availability of public records and policies related thereto	20

Section B: Courts

7-8	ORC 2335.25: Cashbook of costs etc.	23
7-9	ORC 2303.12: Books to be kept by clerk of the court of common pleas	24
7-10	ORC 2101.12: Records to be kept by the probate courts	25
7-11	ORC 2335.34 - .35: Unclaimed costs and fees (court of common pleas and probate court)	26
7-12	ORC 2151.18: Records; annual report; distribution (juvenile court)	27
7-13	ORC 1907.20: Records required of county courts	28
7-14	ORC 1901.31: Municipal court records	29
7-15	ORC 1905.21 and 733.40: Records required and disposition of receipts for mayors’ courts	30
7-16	<u>Various ORC Sections: Collection, custody and disbursement of fees, fines etc.</u>	31
7-17	ORC 2743.70, 2949.091: Additional court costs	34
7-18	ORC 3375: Fines and penalties to be paid to law libraries	35
7-19	ORC 2113.64, 2113.65: Unclaimed money (probate court)	36

Section C: Libraries

7-20	ORC 3375.36: Monthly statement; financial statement; depository	37
------	---	----

Section D: Counties and County Hospitals

7-21	ORC 319.04: Training and continuing education requirements for county auditors	38
7-22	ORC 319.11: County financial reports	39

2008 Ohio Compliance Supplement Table of Contents

Chapter 7 Checklists for Other Laws and Regulations (Continued)

Compliance Requirements	Page
Section E: Townships	
7-23 ORC 517.15: Permanent cemetery endowment fund.....	40
<i>Part 3: Payroll, Taxes</i>	
Section A: Federal, State and Local Taxes	
7-24 Various federal and state codes: Income tax collection, liability etc.....	41
Section B: Employees' Retirement Systems and Fringe Benefits	
7-25 <u>Various ORC sections: Definitions, rates of contributions etc.</u>	43
7-26 ORC 505.60, 505.601, and OAG Op. 2005-038: Reimbursement of insurance premiums – Townships	45
7-27 ORC 505.603 - “Cafeteria Plans” – Townships.....	47
Section C: Vacation and Sick Leave	
7-28 Various ORC sections: Vacation and sick leave benefits	49
Section D: Compensation Related Requirements	
7-29 <u>Various ORC sections: Appointments, compensation, contracts etc</u>	51
<i>Part 4: Deposits and Investments</i>	
7-30 Various ORC sections: Designating depositories	54
7-31 <u>Various ORC sections: Investment Education Requirements</u>	56
<i>Part 5: Fraud, Abuse, and Illegal Acts; Conflict of Interest; Ethics</i>	
7-32 <u>Various ORC Sections: Fraud, Abuse, and Illegal Acts; Conflict of Interest; Ethics</u>	59
<i>Part 6: Prohibited Political Activity</i>	
7-33 ORC 9.03, 124.57, 124.59, 124.61, 3315.07 (C): Political activities prohibited	62
<i>Part 7: Public Officials' Bonding Requirements</i>	
7-34 <u>Various ORC Sections: Bonding requirements</u>	64
<i>Part 8: Other Special Entity Requirements</i>	
Section A: County Requirements	
7-35 ORC 325.071, 325.12, 325.13: Furtherance of justice allowance	66
7-36 ORC 325.07: Sheriff's transportation of prisoners allowance	68
7-37 <u>ORC 3119.27 and 3125.10: Child support fees</u> (This section was removed from the OCS)	
Section B: Municipality Requirements	
7-37 Various ORC Sections: Electric kilowatt-hour tax	70

2008 Ohio Compliance Supplement Table of Contents

Chapter 7 Checklists for Other Laws and Regulations (Continued)

Compliance Requirements	Page
Section C: School Requirements (including community schools)	
7-38 Various ORC and OAC Sections: Licensing requirements	72
7-39 ORC 3313.291 - School District Petty Cash Accounts.....	74
7-40 <u>ORC 3314.03(A), 3314.082 Community School Tax Status.....</u>	75
7-41 <u>ORC 3701.93, 3701.931, 3701.932 Jarod's Law/School Health Inspections.....</u>	77
7-42 <u>ORC 3313.666(A), (B), and (C) and 3314.03(A)(11)(d) Anti-Bullying Provisions.....</u>	79
Section D: Family and Children First Councils	
7-43 ORC 121.37(B)(1)Establishment and membership on Family and Children First Councils	81
7-44 ORC 121.37(B)(5)(a) Administrative Agent	83

Appendices

Appendix A:	Prescribed forms for citation of legal authority
Appendix B:	Public officers' bonds
Appendix C:	Ohio Rev. Code § 5705.01
Appendix D:	Compliance ACE form
Appendix E:	Elected officials' compensation legislation
Appendix F:	Legal matrices
Appendix G:	FOJ, sheriff transportation, and law enforcement trust fund
Appendix H:	Agricultural society compliance supplement

LEGAL COMPLIANCE AUDITING IN OHIO

Introduction

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

Ohio Administrative Code Section 117-2-05 requires independent auditors of public offices in Ohio to follow the Comptroller General of the United States' generally accepted *Government Auditing Standards* (GAGAS, 2007 revision). GAGAS 4.28 states:

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

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

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

Auditors must also consider other laws and regulations applicable to the government, such as charters, ordinances, resolutions, contracts, grant agreements, debt covenants and leases. If any of these requirements could materially affect the determination of financial statement amounts, the auditor should design tests for them. Regarding laws and regulations this *Supplement* does not include, auditing standards recognize management's year-round involvement with operations should provide them with knowledge of these requirements. It is therefore reasonable to expect management to identify and convey these requirements to their auditor, though AU 801.07 obliges the auditor to apply corroborating procedures (see next page). The AICPA's *State and Local Governments Accounting and Audit Guide* states:

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

“An entity's management is responsible for ensuring compliance with the laws, regulations, and provisions of grants and contracts applicable to its activities. That ***responsibility encompasses identifying applicable compliance requirements*** and establishing internal control designed to provide reasonable assurance that the entity complies with them.”²

To the extent that a public office does not fall within the classes of public offices the *Ohio Compliance Supplement* includes, and also in part to (1) corroborate the completeness of the compliance requirements management identifies, and (2) to identify their potential material effect, the auditor should follow the guidance from Auditing Standards Section AU 801.07 in determining legal requirements subject to testing:

“The auditor should obtain an understanding of the possible effects on financial statements of laws and regulations that are generally recognized by auditors to have a direct and material effect on the determination of amounts in an entity's financial statements. The auditor should also assess whether *management has identified* laws and regulations that have a direct and material effect on the determination of amounts in the entity's financial statements and obtain an understanding of the possible effects on the financial statements of such laws and regulations. The auditor may consider performing the following procedures in assessing such laws and regulations and in obtaining an understanding of their possible effects on the financial statements.

- a. Consider knowledge about such laws and regulations obtained from prior years' audits.
- b. Discuss such laws and regulations with the entity's chief financial officer, legal counsel, or grant administrators.
- c. Obtain written representation from management regarding the completeness of management's identification.
- d. Review the relevant portions of any directly related agreements, such as those related to grants and loans.
- e. Review the minutes of meetings of the legislative body and governing board of the governmental entity being audited for the enactment of laws and regulations that have a direct and material effect on the determination of amounts in the governmental entity's financial statements.
- f. Inquire of the office of the federal, state, or local auditor, or other appropriate audit oversight organization about the laws and regulations applicable to entities within their jurisdiction, including statutes and uniform reporting requirements.
- g. Review information about compliance requirements, such as the information included in the Compliance Supplements issued by OMB: *Compliance Supplement for Single Audits of State and Local Governments* and *Compliance Supplement for Audits of Institutions of Higher Learning and Other Non-Profit Institutions*,³ Catalog of Federal Domestic Assistance, issued by the Government Printing Office, and state and local policies and procedures.”

² *Government Auditing Standards* Appendix I, A1.08(b) has a similar requirement.

³ Auditors should now use the Compliance Supplement updated annually related to OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*

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

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

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

The materials included for other public offices in the *Ohio Compliance Supplement* may also serve as guidance in applying these criteria. Auditors can also obtain guidance for selecting these compliance requirements from the Auditor of State's regional chief auditors. Additionally, Appendix F lists the applicability of certain requirements included in the *Ohio Compliance Supplement* to certain additional classes of public offices.

Direct and Material Laws and Regulations

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

- *GAAP Requirements.* Governments often are subject to legal or contractual provisions that require them to prepare their financial statements in conformity with GAAP.
- *Federal and State Taxes.* Governments are subject to various federal tax requirements, including those relating to employment taxes, employee benefits, and tax-exempt debt (such as arbitrage rebate requirements). State-level tax requirements also may apply.
- *Legal Authority for Transactions.* Governments often should have legal authority to execute transactions. That is, governments, especially local governments, often cannot exercise powers or conduct activities unless authorized by law. For example, a local government may not be able to levy property taxes unless specifically authorized to do so under state law and taxes levied without proper authority may be subject to refund.
- *Establishment of Funds.* Legal and contractual provisions may require governments to establish individual funds to account for and report on particular activities. (For example, Ohio Rev. Code Section 5705.09 establishes the basic fund structure for political subdivisions in the State of Ohio, and Ohio Rev. Code Section 5705.10 establishes basic legal requirements for allocating receipts to funds. Failure to comply with these statutory requirements may materially affect financial statement presentation.)
- *Time and Other Eligibility Requirements and Purpose Restrictions on Nonexchange Transactions.* Time and other eligibility requirements and purpose restrictions affect the recognition and reporting of nonexchange transactions. A government's failure to comply with a provider's eligibility requirements and purpose restrictions may cause the provider to withdraw the intended support or request a refund of amounts previously paid. For example, certain costs are not allowable costs for federal programs under OMB Circular No. A-87⁴, *Cost Principles for State and Local Governments*, but they may have been inappropriately charged to those programs. Similarly, legal provisions may restrict a government's use of its tax revenues (such as a constitutional requirement that the proceeds of a state gasoline tax be expended only for the maintenance of highways).
- *Other Legal- and Contract-Based Compliance Requirements.* Besides the eligibility requirements and purpose restrictions that affect the recognition and reporting of nonexchange transactions, providers of such resources may impose

⁴ The Federal government has now codified OMB Circular A-87 as 2 CFR Subtitle A, Chapter II Part 225.

other compliance requirements on recipients. For example, federal financial assistance programs often require recipients to adhere to specific procurement and cash management policies. There also may be contractual compliance requirements relating to exchange transactions, such as those discussed below for debt issuances.

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

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

a. The accounting system must include all funds required by law or regulation to help assure restrictions on expenditures are met.	NCGA 1, par. 8 Cod. 1200.106
b. 1. Any excesses of expenditures over appropriations in the general or major special revenue funds included in budgetary statements. (Disclose in footnotes to RSI if presented as RSI.) 2. Disclose significant excesses of expenditure over appropriations for other funds.	GASB 37, par. 19 Cod 2200.180 GASB Comprehensive Implementation Guide <u>7.93.1</u>
c. Violations of debt covenants or contracts.	Cod 2300.903, Illustrations 4, 5, 6
d. <u>Significant violations during the period of legal or contractual provisions for deposits and investments</u>	<u>GASB Cod. I 50.125</u>
e. <i>Governmental Accounting, Auditing and Financial Reporting</i> (GAAFR) suggests the following constitute “finance-related legal and contractual requirements:” a. Budgetary b. Grant requirements c. Bond covenants d. Deposits and investments	GAAFR 224

Immaterial Laws and Regulations

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

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

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

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

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

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

Home Rule Powers

Definition

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

Classification

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

Plans of Government

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

Home Rule

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

Charter vs. Non-Charter

All municipal corporations have Home Rule powers, but the extent of these powers differ depending upon whether a charter has been adopted. By adopting a charter, the municipal corporation may set up a system of government which differs from the statutory plans. It may provide for the officers and procedures for all governmental functions. Non-charter municipal corporations must comply with all State laws concerning matters of procedural local self-government. Matters of substantive local self-government are not controlled by State laws, whether or not the municipal corporation has adopted a charter.

Local Self-Government Powers vs. Police Regulations

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

Local Self-Government Powers

Procedural Local Self-Government Powers are powers which concern the organization of municipal government as well as the procedures under which the municipal corporation must

function. Charter governments may deviate from State laws regulating matters of procedural local selfgovernment only by adopting a charter. Examples of these powers are as follows:

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

Substantive Local Self-Government Powers

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

1. Power to contract - The State cannot, by law, restrict the charter government's general power to contract;
2. Taxation - There are explicit constitutional limitations provided in Article XVIII, Section 13 and Article XIII, Section 6 of the Ohio Constitution, as it is necessary to provide for coordination of State and local taxation. Otherwise, State laws cannot restrict the charter government's power to tax;
3. Assessments - This power is limited by Article XIII, Section 6 of the Ohio Constitution;
4. Incurring debt - Laws may be passed by the General Assembly limiting this power; (Article XVIII, Section 13 of the Ohio Constitution);
5. Power to purchase, appropriate, or dispose of property - The decision to purchase, appropriate, or dispose of property is a power of substantive local self-government. However, the procedures used to purchase, appropriate, or dispose of property are matters of procedural local self-government and are regulated by State laws, unless the municipal corporation has adopted a charter;
6. Compensation of employees and officers - This area is purely a matter of substantive local self-government. Statutes regulating many matters of compensation can be overridden by local ordinance. Recent court cases have held that the sick leave provision of Ohio Rev. Code §124.38 does not apply to municipalities or villages, and that sick leave benefits are a form of compensation. Therefore, the municipality or village may or may not provide sick leave benefits to its employees and officers;
7. Power to establish, locate, and vacate streets; and
8. Power to restrict the weight of vehicles using the charter government's streets.

Police Regulations

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

Public Utilities

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

Compliance Testing

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

Compliance Risk and Controls

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

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

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

- Existence of a monitoring system for compliance with such areas as debt issuance, budgets, contracts, and intergovernmental assistance;
- Management's attitudes toward compliance with laws and regulations;
- Legal actions brought against the government, and/or its elected and appointed officials;
- Involvement of the governing authority and management in the control structure to assure compliance.

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

In addition to a suitable control environment, an effective internal control structure should also monitor compliance and determine whether controls related to compliance are operating effectively. Therefore, the control structure should also include a monitoring system, and the auditor should consider whether responsibility for compliance is assigned to appropriate

individual(s). For example, auditors should consider (given the size and complexity of the government's operations) whether responsibility is assigned for the following compliance issues:

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

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

1. Identify controls relevant to preventing or detecting material or significant non-compliance with the identified laws and regulations;
2. Test controls to obtain sufficient evidence controls' operating effectiveness;
3. Document the tests of controls.

Also:

- The audit risk model in AU 312 is appropriate in helping the auditor assess the nature and extent of substantive testing vs. tests of controls' operating effectiveness [AU 312.17 – 312.26].
- Inquiry alone ordinarily does not provide sufficient appropriate audit evidence to detect a material misstatement at the relevant assertion level. Moreover, inquiry alone is not sufficient to test the operating effectiveness of controls [AU 326.35];
- Observation provides audit evidence about the performance of a process or procedure but is limited to the point in time at which the observation takes place and by the fact that the act of being observed may affect how the process or procedure is performed. [AU 326.30];
- If the auditor plans to use audit evidence about the operating effectiveness of controls obtained in prior audits, the auditor should obtain audit evidence about whether changes in those specific controls have occurred subsequent to the prior audit[AU 318.40 -- .44];

Organization of The Ohio Compliance Supplement

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

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

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

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

- Testing compliance requirements material to the financial statement in each audit (generally Chapters One through Six);
- Testing compliance requirements not material to the financial statements listed in *Ohio Compliance Supplement* Chapter Seven each audit, except as follows:
 - The Ohio Compliance Supplement labels **some** requirements in Chapter Seven as those which auditors may cycle. That is, auditors can limit testing these items to every other audit, such as once every two years if we audit the government annually, or once every four years if we audit the government biennially. This **only** applies to steps Chapter Seven expressly labels as permitting testing every other audit.

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.

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

Reporting

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

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

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

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

GAGAS 5.09 infers auditors may communicate violations of lesser significance than those listed in 5.15 in a management letter. When the auditor reports these matters in a management letter, GAGAS 5.09 still requires the GAGAS report to refer to the management letter. However, per 5.16 above, written communication other than a management letter is also acceptable. Auditor of State staff should report such items in a management letter (unless they are inconsequential).

Examples of the GAGAS and “management letter” reports follow. The auditor should refer to the AICPA’s accounting and auditing guide, *Government Auditing Standards and Circular A-133 Audits*, for reporting examples. (AOS staff can access these examples in the Audit Briefcase.)

**INDEPENDENT ACCOUNTANTS' REPORT ON INTERNAL CONTROL OVER
FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS
REQUIRED BY GOVERNMENT AUDITING STANDARDS**

Governing Body
Any Local Government
ABC County

To the Governing Body:

We have audited the financial statements of the governmental activities, the business-type activities, the aggregate discretely-presented component units, each major fund, and the aggregate remaining fund information of Any Local Government, ABC County, (the Government) as of and for the year ended December 31, 2008, which collectively comprise the Government's basic financial statements and have issued our report thereon dated March 31, 2009. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in the Comptroller General of the United States' *Government Auditing Standards*.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Government's internal control over financial reporting as a basis for designing our audit procedures for expressing our opinions on the financial statements, but not to opine on the effectiveness of the Government's internal control over financial reporting. Accordingly, we have not opined on the effectiveness of the Government's internal control over financial reporting.

A control deficiency exists when the design or operation of a control does not allow management or employees, in performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the Government's ability to initiate, authorize, record, process, or report financial data reliably in accordance with its applicable accounting basis, such that there is more than a remote likelihood that the Government's internal control will not prevent or detect a more-than-inconsequential financial statement misstatement.

A material weakness is a significant deficiency, or combination of significant deficiencies resulting in more than a remote likelihood that the Government's internal control will not prevent or detect a material financial statement misstatement.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all internal control deficiencies that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider material weaknesses, as defined above.

We noted a certain matter that we reported to the Government's management in a separate letter dated March 31, 2009.

Compliance and Other Matters

As part of reasonably assuring whether the Government's financial statements are free of material misstatement, we tested its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could directly and materially affect the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and accordingly, we do not express an opinion. The results of our tests disclosed an instance of noncompliance or other matters that we must report under *Government Auditing Standards* which is described in the accompanying schedule of findings and questioned costs as item 2008-001.

We also noted certain noncompliance or other matters not requiring inclusion in this report that we reported to the Government's management in a separate letter dated March 31, 2009.

The Government's response to the finding identified in our audit is described in the accompanying schedule of findings. We did not audit the Government's response and, accordingly, we express no opinion on it.

We intend this report solely for the information and use of the audit committee, management, the governing body, and federal awarding agencies and pass-through entities. We intend it for no one other than these specified parties.

Mary Taylor, CPA
Auditor of State

**ANY LOCAL GOVERNMENT
ABC COUNTY**

**SCHEDULE OF FINDINGS
OMB CIRCULAR A -133 § .505
DECEMBER 31, 2008**

1. SUMMARY OF AUDITOR'S RESULTS		
(d)(1)(i)	Type of Financial Statement Opinion	Unqualified
(d)(1)(ii)	Were there any material control weaknesses reported at the financial statement level (GAGAS)?	No
(d)(1)(ii)	Were there any other <u>significant deficiencies</u> in internal control reported at the financial statement level (GAGAS)?	No
(d)(1)(iii)	Was there any reported material noncompliance at the financial statement level (GAGAS)?	Yes
(d)(1)(iv)	Were there any material internal control weaknesses reported for major federal programs?	No
(d)(1)(iv)	Were there any other <u>significant deficiencies</u> in internal control reported for major federal programs?	No
(d)(1)(v)	Type of Major Programs' Compliance Opinion	Unqualified
(d)(1)(vi)	Are there any reportable findings under § .510?	Yes
(d)(1)(vii)	Major Programs (list):	Medical Assistance Program – Title XIX (CAFS) - CFDA #93.778 Highway Planning and Construction - CFDA#20.205
(d)(1)(viii)	Dollar Threshold: Type A\B Programs	Type A: > \$300,000
(d)(1)(ix)	Low Risk Auditee?	Yes

2. FINDINGS RELATED TO THE FINANCIAL STATEMENTS REQUIRED TO BE REPORTED IN ACCORDANCE WITH GAGAS

<i>Finding Number</i>	2008-001
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Ohio Rev. Code Section 5705.38 requires in part that each fiscal year, subdivisions and other taxing units are to certify to the County Auditor the total amount from all sources available for expenditure from each fund in the tax budget, along with any balances that existed at the end of the preceding year.

The County's Certificate of Estimated Resources filed with the County Budget Commission did not report estimated resources on an individual fund basis. The County budget commission was unable to certify the availability of resources for appropriation to any given fund as a result.

We recommend the County prepare future Certificates with the required individual fund information.

Official's Response:

The County Auditor stated he did not understand this requirement. He agreed to review this Revised Code requirement.⁵

⁵ See *Client Responses* later in this Introduction.

Management Letter

Governing Body
Any Local Government
ABC County, Ohio

To the Governing Body:

We have audited the financial statements of Any Local Government, Any County, (the Government) in accordance with *Government Auditing Standards*, as of and for the year ended December 31, 2008, and have issued our report thereon dated March 31, 2009.

Government Auditing Standards require us to report significant internal control deficiencies, fraud, and illegal acts (including noncompliance with laws and regulations), and also abuse and noncompliance with contracts and grant agreements that could directly and materially affect the determination of financial statement amounts. We have issued the required report dated March 31, 2009, for the year ended December 31, 2008.⁶

Office of Management and Budget Circular A-133 requires that we report all material (and certain immaterial) instances of noncompliance, significant deficiencies, and material weaknesses in internal control related to major federal financial assistance programs. We have issued the required report dated March 31, 2009, for the year ended December 31, 2008.

We are also submitting the following comments for your consideration regarding the Government's compliance with applicable laws, regulations, grant agreements, contract provisions, and internal control. These comments reflect matters that do not require inclusion in the reports *Government Auditing Standards* or Office of Management and Budget Circular A-133 require. Nevertheless, these comments represent matters for which we believe improvements in compliance or internal controls or operational efficiencies might be achieved. Due to the limited nature of our audit, we have not fully assessed the cost-benefit relationship of implementing these recommendations. However, these comments reflect our continuing desire to assist your government. If you have questions or concerns regarding these comments please contact your regional Auditor of State office.

Noncompliance Findings

Ohio Rev. Code Section 9.24(A) provides that no state agency and no political subdivision receiving more than \$50,000 in state funds in a fiscal year shall award a contract for goods, services, or construction, paid for in whole or in part with state funds, to a person against whom a finding for recovery has been issued by the auditor of state, if the finding for recovery is unresolved. The Auditor of State shall maintain a database, accessible to the public, listing persons against whom an unresolved finding for recovery has been issued, and the amount of the money identified in the unresolved finding for recovery. The Auditor of State currently has this database operational and the database will be updated periodically in accordance with Ohio Rev.

⁶ If a portion of the audit (such as a component unit) was not audited under GAGAS, add the following sentence: "The financial statements of [name of fund or component unit] were audited under generally accepted auditing standards, but were not audited in accordance with *Government Auditing Standards*."

Code Section 9.24(D). The database is available at the Auditor of State's website: www.auditor.state.oh.us. Before awarding a contract for goods, services, or construction, paid for in whole or in part with state funds, a state agency or political subdivision shall verify that the person to whom the state agency or political subdivision plans to award the contract does not appear in this Auditor of State database.

The Government did not check the Unresolved Findings for Recovery Database prior to awarding any of the contracts tested during the audit period. The Government should require the Unresolved Findings for Recovery Database is reviewed before a contract is awarded and proper documentation is maintained verifying the database was checked.

We intend this report for the information and use of the governing board, audit committee, and management.

Mary Taylor, CPA
Auditor of State

March 31, 2009

Audit Findings

An audit *finding* is a conclusion of fact an auditor *finds* as part of the audit process. Findings of legal noncompliance in Ohio fall into three categories⁷:

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

Noncompliance Citations

Noncompliance citations should cite the appropriate legal authority (i.e. the *criteria* GAGAS 4.15 requires in written noncompliance findings). Legal authorities auditors can cite include the Federal and State constitutions, the United States Code and rules, the Ohio Revised Code and rules, Federal and State court decisions, Federal and State regulations, ~~opinions of the Attorney General~~, and opinions of the Ohio Ethics Commission. Auditors may refer to ~~opinions of the Attorney General~~, AOS Technical Bulletins, and other advisory materials within the text of a finding as additional guidance, but ~~AG opinions~~, AOS Technical Bulletins, and advisory materials are not legally binding *criteria*.⁸

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

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

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

GAGAS defines the elements of a finding to include:

⁷ *Questioned costs* normally apply only to A-133 audits of Federal programs. This discussion does not pertain directly to questioned costs.

⁸ Ohio Rev. Code § 117.20(C) states that the Auditor of State may prepare and disseminate to public offices and other interested parties advisory bulletins, directives and instructions relating to accounting and financial reporting systems, budgeting procedures, fiscal controls and constructions by the Auditor of constitutional and statutory provisions, court decisions and opinions of the Attorney General. These bulletins, directives and instructions are of an advisory nature.

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

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

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

4.18 Effect or potential effect: The effect is a clear, logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria). The effect or potential effect identifies the outcomes or consequences of the condition.

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

Auditee Responses to Findings

GAGAS 5.32 – 5.38 establish requirements for obtaining and reporting the auditee’s responses to findings. GAGAS 5.32 states, “. . . Auditors should obtain and report the views of responsible officials concerning findings, conclusions, and recommendations, as well as planned corrective actions.”

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

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

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

GAGAS 5.37 states that when we believe the responses lack validity or when planned corrective action does not adequately address the issue, we should state our reasons for disagreeing with the client's response or corrective action. However, we should always attempt to resolve disagreements before issuing the final report. If we can resolve the differences, the report should not include the client's original response. (We can include an updated response.) The report would not refer to a disagreement, since the disagreement no longer exists.

If we cannot agree with the client, we should summarize the client's substantive reasons for disagreeing and our reasons, per GAGAS 5.37. Responses indicating significant disagreement require review by the Accounting & Auditing Support Group. (This review requirement does not apply to IPA audits.)

Important: In some instances, we should include most of the text of the client's response, if the issue is complex or if there is substantial disagreement. However, often we need not include the complete text of the client's response in our reports. For brevity, we prefer a summary within the body of the finding in question, indicating their general agreement or disagreement and planned corrective action.⁹ Deciding whether to summarize versus including the complete text requires auditor judgment. When we summarize the response, we must allow the client to read the draft finding, our summary of their response, and our rebuttal to their response if we disagree with it. We should include their signature on a draft of the finding in the audit documentation indicating they have read the final draft, including their response (and our rebuttal, if there is one).

⁹ An example of a *summarized* response appears in Example Finding 2008-001 in this *Introduction*: "The County Auditor stated he did not understand this requirement. He agreed to review this Revised Code requirement."

Findings for Adjustment

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

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

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

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

Treatment of Findings for Adjustment in Audit Reports

Adjustments in the first category above based on a violation of legal authority will result in a noncompliance citation reported in the GAGAS report. The auditor should neither label the noncompliance as a *Finding for Adjustment* nor use a “finding for adjustment statement” (i.e. “In accordance with the foregoing facts, we hereby issue a finding for adjustment . . .) but the finding should cite the legal criterion and briefly state the client has agreed to and posted adjustments which are also reflected in the financial statements. No qualification of the auditor’s financial statement opinion is necessary because the adjustment corrected the material misstatement.

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

~~Adjustments in the third category, if the misallocation also constitutes a violation of law which warrants a noncompliance citation, will be reflected either in the GAGAS report (and include a finding for adjustment statement), if significant or sensitive, or in the management letter (and exclude a finding for adjustment statement) if of lesser significance or sensitivity. Judgment is necessary to determine the proper placement of adjustments that fall into this category. Some~~

factors to consider in judging this are whether an individual fund will be significantly misstated if the adjustment is not made, if there is a heightened public awareness of a transaction, and if the dollar amount is large in an absolute sense, rather than relative to some other measurement of financial position or results of operations.

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

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

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

Summary of Finding For Adjustment Reporting Treatment

	<i>Material adjustments with which the auditee agrees, which have been posted to the accounting records and which are reflected in the audited financial statements:</i>	<i>Material adjustments with which the auditee disagrees and which are neither posted to the accounting records nor reflected in the financial statements:</i>	<i>Quantitatively Immaterial adjustments which are more than clearly inconsequential (< material & > \$100)</i>	<i>Adjustments which are inconsequential (≤ \$100):</i>
GAGAS Report	If based on a violation of legal authority, report a noncompliance citation in the GAGAS report. Do not classify as a <i>finding for adjustment</i> .	If based on a violation of legal authority, report a noncompliance citation in the GAGAS report. AOS staff should include a <i>finding for adjustment statement</i> . (IPAs should not include a finding for adjustment statement.)	If based on a violation of legal authority, report a <u>noncompliance citation in the management letter</u> . However, if the <u>matter is qualitatively material</u> , report a <u>noncompliance citation in the GAGAS report</u> . If the misallocation of funds also constitutes a violation of law which warrants a noncompliance citation, a citation will be reflected in the	Not reported in the GAGAS report.

	<u>Material</u> adjustments with which the auditee agrees, which have been posted to the accounting records and which are reflected in the audited financial statements:	<u>Material</u> adjustments with which the auditee disagrees and which are neither posted to the accounting records nor reflected in the financial statements:	<u>Quantitatively Immaterial</u> adjustments which are more than clearly inconsequential (< material & > \$100)	<u>Adjustments which are inconsequential</u> (\leq \$100):
GAGAS Report (continued)			GAGAS report if the matter is significant or sensitive	
Auditor's report (opinion) on the financial statements	No qualification of the auditor's opinion.	Adjustments which are based on a violation of legal authority will result in a qualified (or adverse) opinion on the financial statements.	Adjustments which <u>are qualitatively material</u> and are based on a violation of legal authority <u>may</u> result in a qualified (or adverse) opinion on the financial statements. <u>This requires judgment.</u>	No effect.
Management letter	Not applicable	Not applicable	If the misallocation of funds also constitutes a violation of law which warrants a noncompliance citation, a citation will be reflected in the management letter if the matter is <u>quantitatively and qualitatively immaterial</u> . <u>AOS staff should include a finding for adjustment statement if the auditee does not agree to or post the adjustment. (IPAs should not include a finding for adjustment statement.)</u>	<u>Not reported in the management letter. Document in the working papers only.</u>

Financial Statement Opinion Qualification Paragraph

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

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

The explanatory paragraph will result in either a qualified ("except for") or adverse opinion. A government can avoid a qualified or adverse opinion only if they adjust their accounting records. A mere commitment by the public office to adjust is insufficient. That is, the auditee has not agreed to the adjustment until she or he has posted it to the accounting system.

Finally, paragraph 52 of SAS 107 requires auditors to consider the effect of uncorrected prior audit adjustments on the current audit. Therefore auditors should consider whether uncorrected prior findings for adjustment affect the current audit's financial statements.

Findings for Adjustment Procedures for Independent Public Accountants (IPA)

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

IPAs should report a noncompliance finding in their GAGAS report for the matters requiring it as listed above. However, IPAs should not label these as *findings for adjustment* and should not include the "finding for adjustment statement" (i.e. "In accordance with the foregoing facts, we hereby issue a finding for adjustment . . .")¹⁰. When the IPA believes a finding for adjustment condition exists and the client does not agree with and does not make the adjustment, the following procedures apply.

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

¹⁰ This is to comply with RC 117.12 which states, "IPA's have no authority to make formal findings of illegality, malfeasance, or gross neglect under this division or section 117.23 of the Revised Code."

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

Findings for Recovery

Ohio Rev. Code Section 117.28 authorizes the Auditor of State to report a *finding for recovery* in audit reports when legal action may be appropriate to recover public money or property.

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

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

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

Each of these is discussed below.

1. Illegal Expenditure

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

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

Proper Public Purpose

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

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

1. Whether the expenditure is for or promotes the public health, safety, morals or general welfare;

2. Whether the primary objective is to promote a public purpose, although it may incidentally advance a private interest;
3. If there has been a prospective legislative determination of a proper public purpose.

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

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

In general, if the principal benefit is for the public, an expenditure is not invalid merely because a private party derives an incidental benefit. A public officer's determination that a contemplated expenditure serves a valid public purpose is generally not subject to question unless this determination is "palpably and manifestly arbitrary and incorrect." (However, disbursing public money for alcohol will result in a finding for recovery, per Bulletin 2003-05.¹¹)

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

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

2. Collected but Unaccounted For

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

A mere unidentified shortage of public moneys is a sufficient basis for a finding for recovery, as public officials are *strictly liable*¹² without fault to account for public funds entrusted to their care.

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

¹¹ Note the prohibition on spending public money for alcohol is consistent with the Federal government's prohibition stated in 2 CFR Part 225 (OMB Circular A-87), Appendix B.3.

¹² See the discussion of *strict liability* later in this introduction.

of shortages. Conversely, we may report shortages as FFRs if a government's controls are not in place or are inadequate.¹³

3. Due but Not Collected

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

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

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

4. Public Property Converted or Misappropriated

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

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

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

¹³ See *Best Practices in Cash Handling* in the AOS' Fall, 2007 *Best Practice* publication. You can view this article under the Publications link at www.auditor.state.oh.us

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

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

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

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

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

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

Additional Policies for Findings for Recovery for Auditor of State Audits

If the auditor preliminarily determines to issue a finding for recovery, the auditor should draft the proposed finding and send it, along with all factual information pertinent to the proposed finding, to the Legal Division and to Accounting & Auditing Support for review. The Legal Division reviews the proposed finding and returns it to the auditor with a *Legal Division Cover Sheet* attached, stating that the proposed finding is approved as is, is approved as modified, is disapproved, or that more information is needed to evaluate the proposed finding. Accounting & Auditing Support will also approve the finding's conformance with GAGAS reporting requirements.

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

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

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

Post-Audit Conference Procedures

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

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

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

Notice of Finding for Recovery

When the Clerk of the Bureau certifies an audit report for release, the regional office shall send separate copies of the approved *Notice of Finding* (a sample is provided on the second following page) to each individual named in the Finding for Recovery¹⁴ and the bonding company(ies).

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

¹⁴ IPA's follow different procedures. See the *Finding for Recovery Procedures for Independent Public Accountants (IPA)* discussion later in the Introduction.

Sample NOTICE OF (PROPOSED)¹⁵ FINDING

DATE

To: NAME
STREET ADDRESS
CITY, Etc.

The Auditor of State [**is auditing**] [has audited] Washington Township, Sandusky County for the period January 1, 200X through December 31, 200X +2.

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

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

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

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

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

¹⁵ This example is both for proposed and approved findings for recovery. The **bold** red font language applies to **proposed** notices of findings. However, do not use red font in the letter you issue!

Notice of Proposed Findings
July 14, 2009
Page 2

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

Therefore, because certain Township Officers signed the warrants resulting in improper payments, the following are jointly and severally liable for the entire amount of \$XXX; NAME, Township Trustee; NAME, Township Trustee; NAME, Townships Trustee; NAME, Fiscal Officer; and NAME, their bonding company.

[If a Finding for Recovery were to be issued, the] [The] Auditor of State **[would be]** [is] required, under Ohio Revised Code section 117.28, to forward a copy of the audit report containing this Finding For Recovery to the statutorily designated legal counsel for the public office, who then has the discretionary authority to institute legal proceedings to collect the amount alleged to be due the public office. Under certain circumstances such action might also be instituted by the Attorney General of the State of Ohio.

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

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

**GOOD GUY, CPA
Senior Audit Manager
AOS OFFICE ADDRESS**

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

Very truly yours,

Mary Taylor, CPA
Auditor of State

Additional Considerations

- Where a proposed finding for recovery has been paid in whole or in part prior to the completion of the audit, the audit report finding should disclose the repayment as a “Finding for Recovery Repaid Under Audit.”
- The Auditor of State does not issue Findings for Recovery where the amount in question aggregates \$100 or less. However, auditors should discuss the matter in the management letter. Amounts aggregating more than \$100 are to be reported in the GAGAS report due to their qualitative significance.
- If a government identifies a finding for recovery *before* the auditors do and the entity or individual repays the money before the audit report is issued, the auditor should not report the matter as a Finding for Recovery. However, the auditor should evaluate the issue for other possible matters of audit interest, such as the possibility of fraud or reportable internal control weaknesses. Also, the matter might be a citation for an illegal expenditure of money or other violation of law. Conversely, the entity’s identification and resolution of the matter may indicate the internal control structure is properly detecting and correcting errors, in which case the auditor might determine not to report the matter.
- The auditor should determine the amount of a finding for recovery during audit field work. The method used to calculate the amount must be clearly set forth in the working papers. Any partial payment or reimbursement made prior to completing the audit should be noted in the audit report with appropriate credit given when calculating the amount.
- If a finding for recovery is issued because public property has been converted or misappropriated, the amount of the finding should reflect the fair market value of the property at the time that it was discovered to be missing. The basis for determining this amount must be disclosed in the working papers.
- Where the amount of the finding for recovery may change prior to or after the release of the audit report, the auditor should date the amount. Example: "As of December 31, 20XX, this amount is \$X,XXX." In these instances, the method of calculating the amount should be stated in the audit report so that the amount can be calculated on the day of repayment.

Finding for Recovery Procedures for Independent Public Accountants (IPA)

Ohio Rev. Code 117.12 prohibits IPAs from issuing Findings for Recovery. IPA's should report these matters exceeding \$100 as noncompliance findings, but they should not label them as *finding for recovery* and the finding should not state: "In accordance with the forgoing facts, and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public money collected but not accounted for (or illegally expended, etc.) is hereby issued against . . ." ¹⁶

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

- An IPA should NOT inform anyone other than the Auditor of State of possible Findings for Recovery either orally or in writing.
- As soon as the IPA has an indication there could be Findings for Recovery, the IPA should contact the regional chief auditor.
- The IPA should provide the regional chief auditor, with all relevant supporting audit documentation for the Finding.
- After notifying the Chief Auditor of Quality Assurance that a finding for recovery may be issued, the regional chief auditor or his designee will prepare a preliminary Finding, and submit it to the Auditor of State Legal Division for review. Included will be any needed supporting documentation and the *Notice of Proposed Findings* letters.
- The Legal Division will review the proposed Finding and may ask the regional chief auditor or the IPA for additional information.
- After the Legal Division has approved the Finding, the regional chief auditor or his designee will obtain the limited waiver from the IPA ¹⁷ and send the *Notice of Proposed Finding* to all applicable parties. The applicable parties are normally given five days to respond. If they respond, the chief auditor evaluates the response along with the Legal Division and decides whether to withdraw or modify the Finding.
- The regional chief auditor will send a copy of the approved finding to the Chief Auditor, Quality Assurance or his designee for inclusion with the Acceptance Letter and send the *Notice of Finding* to the applicable parties upon releasing the report.

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

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

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

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

Example Findings for Recovery

An example *finding for recovery* is included below:

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

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

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

Responsibility for Paying Findings for Recovery: Strict Liability Laws

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

Thus, public officials (including fiscal officers) must be aware of their role in approving expenditures and safeguarding amounts collected, and take steps to prevent mistakes, errors or omissions resulting in the loss of public funds. In the context of an AOS audit, both the supervising/approving officer or employee and the fiscal officer may be liable for such losses, and may therefore be included as a party liable for repaying a *finding for recovery*, even if they did not personally account for the transaction. The Auditor of State issued Bulletin 2008-06 clarifying this policy for county officials. However the Bulletin applies to all public offices. A copy of this Bulletin is appended to this *Introduction*.

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

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

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

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

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

Accordingly, a Finding for Recovery is hereby issued against Jim Smith, former City Finance Director, and Ace Insurance Corp., jointly and severally, for \$15,000 and in favor of the City of Anyplace, and a Finding for Recovery is hereby issued against Bill Wilson, City Finance Director, and Ace Insurance Corp., jointly and severally, for \$110,000 and in favor of the City of Anyplace. Jim Smith and Bill Wilson shall be secondarily liable for these illegal expenditures to the extent that Joe's Service Business, Inc. does not recover or make restitution.

Referring Audit Reports

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

Referring Findings for Recovery to the Attorney General

Ohio Rev. Code Section 117.28 requires the Auditor of State to notify the Attorney General of Findings for Recovery, whether or not repaid before the audit report's release. Field auditors and IPAs who prepare reports containing Findings for Recovery should prepare a letter, substantially in the following form, for the Auditor of State to sign upon release of the reports:

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

Re: Findings for Recovery in an Audit Report

Dear Attorney General [last name]:

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

If you have any questions, or if you need further information, please contact the Auditor of State's Legal Division at 466-4515.

Very truly yours,

Mary Taylor, CPA
Auditor of State

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

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

Ethics Commission Referrals

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

Referrals to Other Agencies

When referring an audit report to any other State or Federal agency, the regional audit office will prepare a letter to send with the report when it is submitted to the Clerk of the Bureau for release. The Regional office will also notify the Auditor of State’s Legal Division. The regional office should retain a copy of the cover letter.

IRS and OPERS Comments

The Internal Revenue Service and the Ohio Public Employees Retirement System have both requested that we notify them when AOS issues reports (in the case of the IRS, also management letters) containing comments or findings pertaining to their respective agencies. The Auditor of State has agreed to these requests. The Accounting & Auditing Support division will notify these agencies based upon being informed by either Auditor of State regional auditors or the Quality Assurance division that such reports (or management letters) exist.

Questions and Comments

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

<http://www.auditor.state.oh.us/ContactInformation/Default.htm>