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**OHIO COMPLIANCE SUPPLEMENT**
**Preface**

This is the latest edition of the Ohio Compliance Supplement, superseding the November 2023 version. This edition 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 OCS Instructions, explains how to identify updates.

In accordance with *Government Auditing Standards*, financial statement audits include reporting on compliance with provisions of laws, regulations, contracts, and grant agreements that have a material effect on the financial statements or other financial data significant to the audit objectives. (*Government Auditing Standards*, 6.41(a) (2018, as revised in April 2021))

It is the responsibility of management, with the oversight of those charged with governance, to ensure that the entity's operations are conducted in accordance with the provisions of laws and regulations, including compliance with the provisions of laws and regulations that determine the reported amounts and disclosures in an entity's financial statements. (*Generally Accepted Auditing Standards,* AU-C 250.03)

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 should not be a substitute for legal advice from your statutory counsel, nor 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.

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

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

KEITH FABER
Auditor of State

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# OCS Instructions

The **2024 Ohio Compliance Supplement (OCS)** is now available at www.ohioauditor.gov, under *Resources / Publications,* in both Word and Portable Document Format (PDF). (Auditor of State staff can also use the 2024 OCS procedures built into TeamMate.)

What Formats are Available:
The OCS (Chapters 1-4) and the OCS Optional Procedures Manual (OPM) are available in MS Word format so auditors can document work or cross reference to other audit documentation in those documents. The OCS Implementation Guide is only available in PDF, since we do not expect that auditors would document their work in this section.

Due to the Auditor of State's annual Fall/Winter release of the Ohio Compliance Supplement (OCS), AOS created Chapter 4. Schools operate on a June 30 fiscal year basis and legislative changes impacting school audits are often still occurring in the Fall/Winter months. For this reason, the OCS and OPM steps that are ***only*** applicable to Traditional Schools, Community Schools, ESCs, or STEM/STEAM Schools are self-contained in Chapter 4 to allow AOS to update and release school compliance changes separately (generally in the Spring/Early Summer) from the remainder of the Supplement, when appropriate. Sections of the Ohio Compliance Supplement which apply to schools ***and*** other entity types are retained in Chapters 1-3 or the OPM.

The OCS Implementation Guide contains important information regarding compliance testing and should be used in conjunction with the four OCS Chapters.

The Auditor of State selects a few audits randomly each year, to test certain requirements listed in the OCS Optional Procedures Manual.

How to Identify Changes:
The OCS consists of four chapters and the OPM, and the Table of Contents is located in the front of each chapter. The Table of Contents identifies legislative requirements. The table identifies superseded legal requirements or sections that were moved to another chapter using strikeout font. The Table of Contents also identifies new sections with "(NEW)", in years where such exists.

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. The effective date also appears to enable you to easily determine if the revision applies to the audit period. Below is an example appearing in the OCS:

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

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

How to Apply to Current Engagements:
This May 2024 Ohio Compliance Supplement (OCS) replaces the November 2023 version and applies to

engagements with fiscal years ending December 31, 2023 through November 30, 2024. The only difference between the November 2023 and May 2024 versions is the release of the 2024 Chapter 4, and the updates included within it. **Auditors with engagements in process prior to the November 2023 issuance of the *2024 Supplement* need not discard work performed using the 2023 OCS. However, they must compare the 2024 changes to their work from the 2023 OCS and ensure 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. Refer to the change document sent to AOS staff & IPA's.**

# CHAPTER 1
# DIRECT LAWS

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

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

Conversely:

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

A. Based on the above (and AU-C 250.A9 – .A11), "**direct** and material compliance" refers ***only*** to laws a government's information system (which includes its accounting system) must "capture" to ***determine financial statement amounts and required disclosures***[1]. Therefore, we have classified a law as ***direct*** in this OCS if noncompliance has the potential to materially misstate the financial statements. Chapter 1 of this compliance supplement includes "direct" laws.

    1. As one example, GAAP requires governments to present budgetary comparisons as basic statements or as RSI.
    2. GAAP also requires these presentations to follow the government's legal budget basis.
        a. In Ohio, a "5705 government's" information system must capture information using the accounting basis Ohio Rev. Code Chapter 5705 (via GASB Cod. 2400) prescribes to compile budget and actual amounts and budget variances GAAP requires.
        b. Ohio Rev. Code Chapter 5705 generally prescribes a cash + encumbrance accounting basis, which a compiler must understand and follow to satisfy GAAP.

B. In addition to the discussion above from AU-C 250, the AICPA Audit and Accounting Guide *State and Local Governments* (AAG SLG), sections 4B.11 ~~4.09~~ through 4B.24 ~~4.22~~, discusses legal requirements which might directly and materially affect determining financial statement amounts for a governmental entity. Material noncompliance (having a direct or indirect effect) would often:
    1. Require adjusting amounts or revising disclosures.
        a. Auditors should do the same regarding noncompliance ***indirectly*** affecting financial statement amounts or disclosures, if they become aware of it.
            i. For example, AU-C 250.06 b.iii describes material penalties as an ***indirect effect***, though they may require disclosure or even accrual as a contingent expense
    2. Require reporting as a material GAGAS noncompliance finding.
    3. May represent significant / material violations of "finance-related legal and contractual provisions"

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

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

a. GASB Cod. 2300.106(h) require "notes to the financial statements should disclose significant violations of finance-related legal and contractual provisions" and "actions taken to address significant violations".
b. See the OCS Implementation Guide page 7 for the Finance Related Legal or Contractual Provisions.

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

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

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

**The legal matrix is depicted in a separate Excel file at: https://ohioauditor.gov/references/compliancemanuals.html . Entities are included alphabetically in the tab titled "OCS – Exhibit 5". See tab titled "OCS – Exhibit 6" for entity types not listed in Exhibit 5.**

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# DIRECT LAWS

**1-1 Compliance Requirement:** Ohio Rev. Code § 5705.38 Annual appropriation measures - classification.

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

**NOTE: The United States and the State of Ohio declared a state of emergency in March of 2020 due to the COVID-19 pandemic. Ohio's state of emergency ended in June 2021 while the national state of emergency ended in April 2023.** ~~The Governor's public health orders went into effect in March 2020, prior to the April 1, 2020 deadline. As a result, many local governments were unable to meet in person and were uncertain about whether the Ohio Rev. Code permitted virtual meetings to conduct business. The Ohio Attorney General later clarified that virtual meetings could be held during the period covered by the Governor's public health emergency in accordance with then recently passed HB 197, but this guidance was not made publicly available until April 6th, 2020. The Governor's emergency public health orders were rescinded on June 18th, 2021 via Executive Order 2021-08D and are no longer in effect. From July 2, 2021 through February 16, 2022, in order for resolutions, rules, and other formal actions to be effective, a public body had to conduct meetings and hearings in person. During this time period, if members of public bodies were attending a meeting virtually these members were not considered present as in person, were not counted for quorum purposes, and could not vote. Effective February 17, 2022 through June 30, 2022, H.B. 51 allows members of public bodies to attend meetings virtually, considers them as if present in person, allows them to vote, and counts them for quorum purposes. H.B. 51 also gives resolutions, rules, and other formal actions the same effect as actions that occurred during an open meeting or hearing.~~ **Barring further additional legislation authorizing virtual meetings for public bodies, on July 1, 2022, public bodies will once again be required to hold meetings and hearings in person.**

Ohio Rev. Code § 5705.38(B) provides that a board of education shall pass its annual appropriation measure by the first day of October. If a school district's annual appropriation measure is delayed as permitted by law (see below), the board may pass a temporary measure for meeting the ordinary expense of the school district until it passes an annual appropriation measure. (Note: Except for those items covered by carryover encumbrances and federal and state grants/loans that are "deemed appropriated", money must be appropriated to be expended pursuant to Ohio Rev. Code § 5705.41. As a practical matter, a school district will have to pass some type of appropriation between July 1 and October 1 if it intends to expend money; however, failing to file a temporary appropriation measure by July 1 does not violate Ohio Rev. Code § 5705.38(B).)

The taxing authority of a taxing unit that does not levy a tax must still appropriate at the minimum level of control prescribed by Ohio Rev. Code § 5705.38(C) (or a lower level). No budget commission approval is required by 5705.28(B)(2)[2].

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

There are two circumstances when school district certificates/certifications would be issued after October 1st:

- A certificate/certification would be issued after October 1 when a school district has borrowed against its spending reserve. This certificate/certification would not be issued until second half personal property taxes are settled.

- A certificate/certification would be issued after October 1 when the delivery of a tax duplicate is delayed under Ohio Rev. Code § 323.17 because a subdivision in the county has placed a levy on the November ballot which, if approved, will go on the current tax list and duplicate.

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

**Legal Level of Control: Minimum Requirements**[3]

1. Ohio Admin. Code 117-2-02(C)(1) states in part: "The legal level of control is the level (e.g., fund, program or function, department, or object) at which spending in excess of budgeted amounts would be a violation of law. This is established by the level at which the legislative body appropriates. For all local public offices subject to the provisions of Chapter 5705 of the Revised Code, except school districts and public libraries, the minimum legal level of control is described in section 5705.38 of the Revised Code **(see 2 below)**. For school districts, the minimum legal level of control is prescribed in rule 117-6-02 of the Administrative Code **(see 3 below)**. For public libraries, the minimum legal level of control is prescribed in rule 117-8-02 of the Administrative Code **(see 4 below)**. The legal level of control is a discretionary decision to be made by the legislative authority, ***unless otherwise prescribed by statute***." (Emphasis added.)

2. Ohio Rev. Code § 5705.38(C) requires the following minimum level of budgetary control for "subdivisions" other than schools: "Appropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services."[4]

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[3] **We should not recommend that governments adopt the highest level of control the statutes allows.** Appropriating at lower levels than the minimums the Ohio Rev. Code or Ohio Admin. Code requires provides the legislative authority with more control over disbursements. However, appropriating at *very* low levels can significantly increases the volume of appropriation amendments requiring legislative approval as well as possibly requiring additional disbursement codes (more function, object codes, etc.). Conversely, appropriating at higher levels may simplify appropriation measures, but in doing so, the legislative authority effectively delegates more spending decisions to the fiscal officer. The legislative authority should choose the level of control it believes meets its needs to control expenditures. Also, the legislative authority may choose differing levels of control for different funds, *as long as they meet at least the minimum statutory requirements*. See additional guidance on the legal level of budgetary control in the Ohio Compliance Supplement Implementation Guide, Appendix A.

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

- Because Ohio Admin. Code 117-6-02 permits school districts to use the fund as their level of budgetary control, we presume noncompliance will not be an issue for school districts.

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

3. Ohio Admin. Code 117-6-02 prescribes the following for school districts' legal level of control: "At a minimum, appropriation measures shall be classified to set forth separately the amounts appropriated by fund. The appropriation measure as passed by the school board shall be the legal level of control. This is the level at which compliance with statutory budgetary requirements will be determined." **The AOS recommends that boards of education pass appropriations at a more detailed level. This is, however, a discretionary decision for the board of education based on the degree of control the board of education wishes to maintain over the financial activity of the school district.**

4. Ohio Admin. Code 117-8-02 requires the library's legislative body to adopt appropriation measures. These measures establish the legal level of control.

5. Ohio Admin. Code 117-2-02(C)(1) also states in part: "All local public offices should integrate the budgetary accounts, at the legal level of control or lower, into the financial accounting system. This means designing an accounting system to provide ongoing and timely information on unrealized budgetary receipts and remaining uncommitted balances of appropriations."

**Amounts / Funds Not Subject to Budgeting:**

- The nonexpendable principal of nonexpendable trust funds.[5] Appropriating nonexpendable principal would authorize the fiscal officer to spend the principal in violation of the trust agreement. [Ohio Rev. Code § 5705.36(A)]
- Budget stabilization reserves [Ohio Rev. Code §§ 5705.13, 5705.29(F)]
- The balance in a township reserve balance account established under Ohio Rev. Code § 5705.132.
- For some time, AOS policy has been that agency/custodial funds do not require budgeting. Agency/custodial funds[6] account for money a government holds in a custodial capacity on behalf of another person or entity. Therefore, a government has minimal discretion in spending this money. Accordingly, the legislative body need not authorize a purpose for spending the money.

[5] Ohio Rev. Code § 5705.131 refers to "nonexpendable trust funds." There are many additional accounting and reporting considerations for these funds. See AOS Bulletins 2011-004, 2020-003 & 2020.008.

[6] GASB Statement No. 84 eliminates "agency funds" from existence and adds "custodial funds." Most agency funds are consistent with the new definition for custodial funds and are not subject to budgetary requirements. However, with the implementation of GASB 84, some funds previously classified as "agency funds" may fall under another fund type where budgetary requirements do apply (e.g., special revenue).

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Accounting system capable of recording appropriations and comparing them to actual results<br>• Reconciling appropriation totals to totals recorded in the accounting system.<br>• Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Read the minutes and determine if the governing board adopted an annual appropriation measure by the required date.

2. If a school district has delayed adoption of an annual appropriation measure, inquire about the reasons for the delay.

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

4. Determine if the accounting system "integrates" budgetary data at the legal level of control. This means the accounting system should report appropriations, encumbrances, unencumbered cash balances, and estimated receipts, and should compare budgetary data to actual results. If the client uses a manual system (i.e. spreadsheets) determine if the manual system used by the client adequately tracks and compares budgetary data.

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

**1-2 Compliance Requirements:** Ohio Rev. Code §§ 5705.41 (D) and 5705.42 - Restriction upon appropriation and expenditure of money – certificate of fiscal officer.

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

Similarly, Federal and State grants or loans are "***deemed appropriated***"[7] for such purpose by the taxing authority" as provided by law and shall be recorded as such by the fiscal officer of the subdivision, and is deemed in process of collection [Ohio Rev. Code § 5705.42].

**NOTE:** ~~An appropriation for federal COVID 19 funding, such as CARES Act, Consolidated Appropriations Act and the American Rescue Plan Act of 2021 moneys and Infrastructure Investment and Jobs Act is effectively created by operation of Ohio Rev. Code § 5705.42. Ohio Rev. Code § 5705.42 indicates Federal and State grants or loans are "deemed appropriated" for such purpose by the taxing authority as provided by law. In addition, those moneys are also treated as if they are in the process of collection by the fiscal officer of the subdivision. This means that under Ohio Rev. Code § 5705.42, the moneys are treated by the fiscal officer as if they have been appropriated for a specific purpose, without requiring the taxing authority to adopt an amended appropriation measure. However, the fiscal officer should include the appropriated amounts on the (amended) certificate. The fiscal officer should also record the appropriation in the accounting system.~~ **This guidance applies to COVID 19 funding and Infrastructure Investment and Jobs Act. However, the "deemed appropriated" criteria applies to the COVID 19 funding but not to the funds for which the revenue is reallocated as described in AOS Bulletin 2021-004. The funds receiving the reallocation will need to estimate receipts and appropriate in the traditional manner.**

**See AOS COVID-19 FAQ's and AOS Bulletin 2021-004.**

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

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

No orders or contracts involving the expenditure of money are to be made unless there is a certificate of the fiscal officer that the amount required for the order or contract has been lawfully appropriated and is in the treasury **or in the process of collection**[8] to the credit of an appropriate fund free from any previous encumbrances. [Ohio Rev. Code § 5705.41(D)(1)][9] [10]

If an entity levies taxes, Ohio Rev. Code § 5705.41 applies. However, some entities with taxing authority do not levy taxes. When they do not levy taxes, Ohio Rev. Code § 5705.28(B)(2) permits a comparable, but somewhat streamlined budget process. Ohio Rev. Code § 5705.28(B)(2) requires entities to follow § 5705. 41.[11]

Per Ohio Rev. Code § 5705.41(D)(3), "Contract" as used in this section excludes current payrolls of regular employees and officers**.**

***Note*:** See Appendix A-2 of the OCS Implementation Guide for examples of direct charges that do not require a certificate under Ohio Rev. Code § 5705.41(D).

The statute provides the following exceptions to this basic requirement:

Then and Now Certificate: This exception provides that, if the fiscal officer can certify that both at the time that the contract[12] or order was made and at the time that he is completing his certification, sufficient funds were available or in the process of collection, to the credit of a proper fund, properly appropriated and free from any previous encumbrance, the taxing authority can authorize the drawing of a warrant. The taxing authority has 30 days from the receipt of such certificate to approve payment by resolution or ordinance. If approval is not made within 30 days, there is no legal liability on the part of the subdivision or taxing district.

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

[9] Under Ohio Rev. Code §§ 9.10 and 9.11, the fiscal officer need not manually sign each certification. Electronic or mechanical signatures are permissible. However, Ohio Rev. Code § 9.10 expressly prohibits using rubber stamp signatures. (We likely would not deem using a rubber stamp to be material noncompliance.)

[10] Ohio Rev. Code § 3315.20 permits schools to incur a fund cash deficit in certain circumstances.

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

[12] 1987 Op. Att'y. Gen. No. 87-069 concluded that when a government uses *Then and Now* certificates, they should charge the cost to the appropriation in effect at the time they incurred the obligation. For example, if a calendar-year government orders an item in December 20XX, the government should charge the cost to 20XX appropriations, even if the fiscal officer signs a *Then and Now* Certificate in January 20XX+1.

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

~~Fiscal officers may prepare "blanket" certificates for a sum not exceeding an amount established by resolution or ordinance[13] adopted by the members of the legislative authority against any specific line item account over a period not extending[14] beyond the end of the current fiscal year. The blanket certificates may, but need not, be limited to a specific vendor. Only one blanket certificate may be outstanding at one particular time for any one particular line item[15] appropriation.~~

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

Ohio Rev. Code § 5705.41(D)(3) allows fiscal officers to prepare "blanket" certificates for a specific kind of expenditure from a line-item account, up to an amount established by resolution or ordinance[13] rather than requiring the fiscal officer to submit a separate certificate each time that type of expenditure is incurred in a particular line-item account. The blanket certificate cannot extend beyond the end of the current fiscal year[14] and only one blanket certificate may be outstanding at a time for each line-item appropriation account.[15]

In addition to regular blanket certificates, a fiscal officer may also issue so-called "super blanket" certificates for certain types of expenditures from a line-item account for any amount that has been appropriated or otherwise authorized for a permitted purpose. The permissible types of expenditures are professional services, fuel, oil, food items, any purchase exempt from competitive bidding, and any other recurring and reasonably predictable operating expense. Super blanket certificates cannot extend beyond the fiscal year, or, in the case of counties, beyond the quarterly spending plan established by the county commissioners. More than one super blanket certificate may be outstanding at a time against more than one specific line-item account.

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

[14] The "extend beyond the fiscal year" language in the first two paragraphs of Ohio Rev. Code § 5705.41(D)(3) (first paragraph applicable to blanket certificates and second paragraph applicable to super blanket certificates) means that a blanket certificate and a super blanket certificate cannot be created to exist for more than one fiscal year. For example, you could not create one blanket certificate that is in effect for more than one fiscal year (e.g., FY22 through FY24). A blanket or super blanket certificate once issued can only exist in one single fiscal year. Nevertheless, once an expense or a non-continuing contract has been certified, there is no need to certify it again; the preservation of that money as available to meet that previously certified expense/contract remains in a subsequent fiscal year (i.e. represents a carryover encumbrance if a valid obligation does indeed exist). (In other words, the government should consider these unpaid year-end commitments similar to other outstanding commitments/encumbrances, and reduce next year's opening unencumbered balances for these amounts.)

[15] AOS interprets "line item" to mean accounting line item, which is not necessarily the "legal level of control."

The following is a comparison of the characteristics of "blanket" certificates versus "super blanket" certificates:

| Characteristics | "Blanket" Certificate | "Super Blanket" Certificate |
|---|---|---|
| Maximum Amount | A sum not exceeding an amount established by resolution or ordinance adopted by members of the legislative authority | A sum that is lawfully appropriated, authorized, or directed for a permitted purpose. This amount can be different from the amount set for regular blanket certificates. |
| Time Period | May not extend beyond year-end of the current fiscal year | May not extend beyond the fiscal year (For counties, may not extend beyond the quarterly spending plan established by the county commissioners) |
| May be used for… | Any expenses requiring certification | Recurring and reasonably predictable operating expenses (for example, professional services, fuel, oil and food items) |
| Must be limited to a specific line-item appropriation account? | Yes | Yes |
| Allowable number outstanding at one particular time from a particular line-item appropriation account | One | Unlimited |

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

Per Unit Contracts: Where contracts are entered into on a per unit basis, only the amount estimated to become due in the current fiscal year need be certified. (1987 Op. Att'y. Gen. No. 87-069)

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

Payments made from the earnings of a public utility are exempted from the certification (and encumbering) requirements of Ohio Rev. Code § 5705.41(D). [Ohio Rev. Code § 5705.44 and 1987 Op. Att'y. Gen. No. 87- 069] However, these payments are still subject to the requirements of Ohio Rev. Code § 5705.41(B).

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

If a government subject to Ohio Rev. Code § 5705.41(D) enters into a continuing contract under which no goods or services will be delivered during the current fiscal year and payment will not be due until delivery, no amount need be certified as available during the current fiscal year. Pursuant to Ohio Rev. Code §

5705.44, the amount remaining unpaid at the end of a fiscal year to become due in the next fiscal year must be included in the annual appropriation measure for the next fiscal year as a fixed charge.

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

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

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

County Commissioner Authorization: A board of county commissioners, by resolution, may exempt purchases of $1,000 or less from the prior certification requirement. The resolution must specify the dollar limit applicable to such purchases and whether it applies to all purchases, is limited to certain classes of purchases, or is limited to specific purchases. The board must notify the county auditor in writing of its intention to adopt such a resolution and the scope of the resolution. The county auditor has 15 days to comment on the resolution before it may be adopted by the board. Where such a resolution has been adopted, any person authorized to make purchases, within 3 business days (or other time limit the commissioners resolve) of making a purchase exempted under the resolution, must file with the county auditor a written or electronic document stating the purpose, amount, appropriation line item and date of the purchase, and the name of the vendor.

| **In determining how the government ensures compliance, consider the following:** | **What control procedures address the compliance requirement?** | **W/P Ref.** |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Review/Comparison/Recomputations of Purchase Documents<br>• Budgetary/Purchasing Accounting/Monitoring System<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees – Policies and Procedures Manuals | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

2. During the search for material unrecorded liabilities and/or encumbrances at year end, compare the date of the fiscal certificates with invoice dates, noting whether or not the certificate date precedes the invoice/obligation date and was recorded as an encumbrance in the proper year.
   Note:
   a. The obligation date may precede the invoice date. If separately identified, use the obligation date when determining compliance.
   b. If the government does not expect to complete the project in the current year, the remainder of the project must be appropriated immediately in the subsequent year(s).[7]

3. Inspect a representative number of "regular blanket" certificates outstanding near year end and determine that:

   a. The amount is established by an ordinance or resolution passed by a majority of the legislative body. (If the legislative authority passed this in the prior years, agree to permanent file documentation.)

   b. They are not dated after the fiscal year end.

   c. They do not exceed the amount the legislative body established.

   d. Only one certificate is outstanding per line item appropriation.

4. For subdivisions using "super blanket" certificates, inspect the certification of the fiscal officer and determine whether:

   a. The certificates were for professional services, fuel, oil, food items or any other specific recurring and reasonably predictable operating expenses that were lawfully appropriated, authorized, or directed for a permitted purpose and,

   b. They do not run beyond the fiscal year (or quarterly spending plan, if a county adopted a plan).

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**1-3 Compliance Requirement:** Ohio Rev. Code § 5705.40 - Amending or supplementing appropriation, ordinance – transfer – unencumbered balance – appropriation for contingencies.

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

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

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

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

| **In determining how the government ensures compliance, consider the following:** | **What control procedures address the compliance requirement?** | **W/P Ref.** |
|---|---|---|
| • Accounting system capable of recording appropriations and comparing them to actual results.<br>• Reconciling appropriation totals to totals recorded in the accounting system.<br>• Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Comparison of Outstanding Encumbrances and Balances to Proposed Amendments<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Inquire (or determine from reading the minutes) if amended or supplemental appropriation measures have been passed.

2. Inspect the government's records to determine if selected appropriation amendments were accurately and timely posted into an accounting system that integrates budget and actual receipts and disbursements. If the client uses a manual system (i.e. spreadsheets) determine if the manual system used by the client adequately tracks and compares budgetary data. Base the extent of this testing on the control environment, especially the CFO's competence and dedication to complying with Ohio Revised Code requirements, past errors noted, etc.

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

   *Note:* We suggest you test the general and other major / large funds and perhaps rotate a few smaller funds each audit.
   - However, normally scanning the fund-accounting records and listing noncompliance as of year-end is not time consuming. This should be a reliable test if evidence suggests the auditee accurately records all budgetary amendments into its accounting system, and if the system reports negative variances.

   Also consider including funds for which we reported noncompliance in the prior audit.
   There is rarely a need to "recreate" the budget in the working papers. That is, we do not require a spreadsheet listing all funds' estimated resources, appropriations (and amendments thereto), receipts, disbursements, and encumbrances.

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 501, 134 GA**
**Effective: April 6, 2023**

**1-4 Compliance Requirement:** Ohio Rev. Code §§ 5705.09 and 5705.12 - Establishing funds and Permission to establish special funds.

**Summary of Requirements:** Each subdivision must establish (when applicable) the following funds:

- General fund [Ohio Rev. Code § 5705.09];
- Sinking fund whenever the subdivision has outstanding bonds other than serial bonds [Ohio Rev. Code § 5705.09];
- Bond retirement fund, for the retirement of serial bonds, notes, or certificates of indebtedness [Ohio Rev. Code § 5705.09];
- A special fund for each special levy [Ohio Rev. Code §§ 5705.09, 5705.2112(D)];
- A special bond fund for each bond issue [Ohio Rev. Code § 5705.09];
- A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose [Ohio Rev. Code § 5705.09];
- A special fund for each public utility operated by a subdivision [Ohio Rev. Code § 5705.09];
- A trust fund for any amount received by a subdivision in trust [Ohio Rev. Code § 5705.09];
- A sanitary police pension fund, an urban redevelopment tax increment equivalent fund, or a cemetery fund [Ohio Rev. Code § 5705.121];
- Fund balance reserves [Ohio Rev. Code § 5705.13 (see also Section 1-8)];
- A nonexpendable trust fund [Ohio Rev. Code § 5705.131];
- An urban redevelopment tax increment equivalent fund [Ohio Rev. Code § 5709.43];
- Downtown redevelopment district fund [Ohio Rev. Code § 5709.47];
- A township public improvement tax increment equivalent fund[16] [Ohio Rev. Code § 5709.75];
- A redevelopment tax equivalent fund [Ohio Rev. Code § 5709.80].
- A Union Cemetery District permanent endowment fund [Ohio Rev. Code § 759.36] See also section 1-21 – Permanent endowment funds.

[16] Ohio Rev. Code § 5709.75 also indicates that a Township may establish a redevelopment tax increment equivalent fund in which to deposit service payments in lieu of taxes distributed by the County Treasurer for improvements exempt from taxation pursuant to an ordinance adopted under Ohio Rev. Code § 5709.41.

Establishing these funds (or other funds statutes mandate) does not require Auditor of State authorization.

> **NOTE:** ~~While Local governments do not need to seek AOS approval for establishing new funds for COVID-19 or Infrastructure Investment and Jobs Act federal programs, legislation to create the fund should be approved by the entity's governing board. Additionally, the governing board should pass a resolution or formal action to apply for and accept COVID-19 funds.~~
>
> ~~For two-year audits including any months falling within the covered period through December 2021, local government subrecipients (i.e., certain counties, cities, villages and townships) of the Coronavirus Relief Funds distributed by the State under H.B. 481, as amended by H.B. 614, needed to only adopt the resolution or ordinance required by these bills. The resolution served as governing board authorization for the establishment of the Coronavirus Relief Fund.~~
>
> **Local governments have authority under Ohio Rev. Code § 5705.09 to establish** ~~new~~ **COVID-19, Infrastructure Investment and Jobs Act, and other federal funds, without seeking AOS approval.**
>
> **Auditors should refer to the AOS Bulletin 2021-004 and AOS COVID-19 FAQ, "How do I reimburse expenditures made out of other state and local funds with my COVID-19 federal funding?"** ~~and Bulletin 2021-004, when auditing the establishment of new funds for federal financial assistance related to COVID-19 funding.~~
>
> ~~Refer to AOS COVID-19 FAQs at: https://ohioauditor.gov/resources/covid19_faqs.html.~~
>
> **Additionally, to effectively document the specific Local Assistance and Tribal Consistency Fund (LATCF) programmatic expenditures and comply with Single Audit reporting requirements, the Auditor of State (AOS) encourages counties to maintain these LATCF monies in a separate special revenue fund. Bulletin 2022-011 serves as the authorization Ohio Rev. Code § 5705.12 requires to establish this fund, no additional AOS approval is required. As an alternative where accounting systems permit it, counties may use a separate subfund within their General Fund to account for LATCF revenue and expenditure activity.**

However, should a taxing authority desire to establish other funds not authorized in the Ohio Revised Code, they must obtain ***approval of the Auditor of State***. The subdivision may provide by ordinance or resolution that money derived from special sources other than the general property tax shall be paid directly into such funds. [Ohio Rev. Code § 5705.12]

It is necessary to request the Auditor of State's permission to establish any fund not specifically authorized by statute or when the purpose of the fund is not identified in the Ohio Rev. Code, such as (but not limited to) § 5705.09(A)-(H)[17]. Situations requiring Auditor of State approval include:

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

[17] As noted in Auditor of State Bulletin 2022-003, for OneOhio Opioid Settlement funds, before a local government receives their portion of these funds from the state, AOS recommends the local government accepting the funds provide by a written ordinance or resolution, that the funds shall be placed in a separate fund and used only for the approved purposes as required by the OneOhio MOU. As the special fund is created under Ohio Rev. Code § 5705.09(F), local governments do not need to seek AOS approval for establishing this new fund. Please refer to AOS Bulletin 2022-003 for additional guidance.

In some circumstances, the AOS deems the use of additional funds unnecessary and will not approve the request. See AOS Bulletin 1999-006 for additional information.

Ohio Rev. Code §§ 5705.09(F) and 5705.10(I) imply that a resolution must be present in order for the restrictions on the use of the funds to be documented and evident. ~~**As mentioned above, for two year audits including any months in the covered period through December 2021, in the case of Coronavirus Relief Fund (CRF) moneys that a local government receives under H.B. 481 and/or H.B. 614, the resolution that the local government provided in order to receive the CRF moneys is sufficient to satisfy Ohio Rev. Code §§ 5705.09(F) and 5705.10(I).**~~

Also, as further described in GASB NCGAS 1, legal provisions governing the establishment of funds may sometimes conflict with GAAP. These differences often occur because constitutional, charter, or other legal provisions governing fiscal operations are antiquated and difficult to change. A variety of possible conflicts of this kind may be encountered. One type can arise from statutory specification of fund purpose and accounting requirements. For example, law may require that both operating and capital expenditures for a designated general governmental function be paid from and accounted for through the General Fund, even though the capital expenditures are financed by long-term borrowing. Such a provision violates the generally accepted accounting principle that such capital outlays financed from general obligation bond proceeds be accounted for through a Capital Projects Fund. Another example would be the statutory requirement of the cash basis of accounting for an Enterprise Fund, whereas the accrual basis is essential to determining an enterprise's financial position and operating results in conformity with GAAP.

While the budgetary basis of a local government's accounting system must comply with legal requirements, the basic financial statements should be prepared in conformity with GAAP. Furthermore, local governments that want their independent auditors to express unqualified opinions that their financial statements are prepared in conformity with GAAP obviously must prepare statements in accordance with these principles. GAAP-based reporting requires disclosure of material violations of legal and contractual provisions.

| **In determining how the government ensures compliance, consider the following:** | **What control procedures address the compliance requirement?** | **W/P Ref.** |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Presence of Effective Accounting System<br>• Checklists<br>• Legislative and Management Monitoring<br>• Periodic Reviews of Fund Ledgers<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Compare funds on the subdivision's chart of accounts with funds that existed in the prior audit period.

2. For any new funds, apply the following steps:

   a. Inspect authority (e.g., board resolution) to establish the fund.
      i. *Note: The legislative body of a local government may always specify, for management purposes, how they want specific resources spent. Absent any statutory restrictions on such resources, an internal purpose restriction does not justify the creation of a separate fund. New funds must be created based on the guidelines in AOS Bulletin 1999-006.*

   b. Determine code section under which established.

   c. If not established under State statute, inspect Auditor of State approval letters for funds created during the current audit period.
      i. If a fund is not authorized under Ohio Rev. Code § 5705.09 or another Ohio Rev. Code section and the entity did not receive Auditor of State approval to establish the fund, propose findings for adjustment to remove the unauthorized fund(s) and place the activity in the General Fund or other appropriate fund. *(If the fund was set up properly for GAAP purposes a finding for adjustment may not be necessary.)*

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

3. For funds existing in prior years, review the fund activity to determine whether the fund is still being used for the statutorily approved purpose. Consider whether the government has:
   a. Funds where the government is no longer using the fund for the purpose for which it was originally established and approved
   b. Funds that do not meet any fund type definition and do not have statutory authority (sometimes a government will have a fund it just should not have)
   c. Funds with no restricted/committed revenue source (except for Debt Service sinking funds where governments must make transfers from the General Fund to satisfy a sinking fund requirement)

   AOS auditors that identify any of the situations described above should consult with Center for Audit Excellence and AOS Legal Division to determine whether a potential noncompliance citation or finding for adjustment to reclassify the activity back to the General Fund, or some other appropriate fund based on the facts and circumstances, should be made.

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

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**1-5 Compliance Requirement:** Ohio Rev. Code §§ ~~131.01~~133.01, 1545.23, 3315.20, 5155.33, 5705.01, 5705.05~~-.06~~, 5705.10, 5705.14(E) and 5735.28 - Distributing revenue derived from tax levies, proceeds from sale of bond issue, proceeds from sale of permanent improvement.

**Summary of Requirements:**
All revenue derived from the following must be paid into the general fund [Ohio Rev. Code § 5705.10, unless otherwise indicated below]:

A. the general levy for current expense within the ten mill limitation; Current expenses, as defined in Ohio Rev. Code § 5705.01(F), are "lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision."
B. any general levy for current expense authorized by vote in excess of the ten mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law (see the circumstances requiring a separate fund in the preceding OCS Step);
   1. Counties are precluded from using general levy revenue for current expenses for the construction, reconstruction, resurfacing, and repair of roads and bridges. [Ohio Rev. Code §§ 5705.05 ~~& .06~~]. ~~Other entities (except counties)~~ Townships may transfer general levy revenue for current expenses to ~~Road and Bridge Funds~~ the Township Road Fund via a resolution or a motion passed by a simple majority of the governing authority [Ohio Rev. Code § 5705.14(E)] to pay for machinery, tools, material, and labor as are necessary for use in constructing, reconstructing, maintaining, and repairing roads and culverts within the Township. Any other expenses of acquiring or constructing a permanent improvement that is not required to be purchased from the Township Road Fund[18] may be purchased with general levy revenue directly from the general fund. ~~or may pay for these expenses directly from the General Fund [Ohio Rev. Code §§ 5705.05 & .06].~~

All revenue derived from general or special levies for debt charges which is levied for the debt charges on serial bonds, notes, or certificates of indebtedness having a life less than five years, must be paid into the bond retirement fund. All such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness is to be paid into the sinking fund [Ohio Rev. Code § 5705.10(B)].

All revenue derived from a special levy is to be credited to a special fund for the purpose for which the levy was made [Ohio Rev. Code § 5705.10(C)].[19]

All revenue derived from a source other than the general property tax and which the law prescribes, shall be used for a particular purpose is to be paid into a special fund (see Section 1-4 for a listing of possible "special" funds) for such purpose [Ohio Rev. Code § 5705.10(D)].

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

[19] Townships receiving distributions from the Gasoline Excise Tax Fund in the state treasury are permitted to use that money to pay debt service on State Infrastructure Bank obligations. (Ohio Rev. Code §§ 5531.10 and 5735.27)

All proceeds from the sale of public obligations or fractionalized interests in public obligations as defined in Ohio Rev. Code § 133.01, *except premium and accrued interest*, are to be paid into a special fund for the purpose of such issue. Any interest earned on money in the special fund may be used for the purposes for which the indebtedness was authorized, or may be credited and used for an authorized fund or account [Ohio Rev. Code § 5705.10(E)].

The *premium* and *accrued interest* received from the sale of public obligations or fractionalized interests in public obligations as defined in Ohio Rev. Code § 133.01 is to be paid into the subdivision's sinking fund or the bond retirement fund [Ohio Rev. Code § 5705.10(E)].

- "Public obligations" means both of the following: (1) Securities; (2) Obligations of a public issuer to make payments under installment sale, lease, lease purchase, or similar agreements, which obligations may bear interest or interest equivalent [Ohio Rev. Code § ~~131.01~~133.01(GG)].
- "Fractionalized interests in public obligations" means participations, certificates of participation, shares, or other instruments or agreements, separate from the public obligations themselves, evidencing ownership of interests in public obligations or of rights to receive payments of, or on account of, principal or interest or their equivalents payable by or on behalf of an obligor pursuant to public obligations." [Ohio Rev. Code § 133.01(N)]
- "Bond retirement fund" means the bond retirement fund provided for in section 5705.09 of the Revised Code, and also means a sinking fund or any other special fund, regardless of the name applied to it, established by or pursuant to law or the proceedings for the payment of debt charges. Provision may be made in the applicable proceedings for the establishment in a bond retirement fund of separate accounts relating to debt charges on particular securities, or on securities payable from the same or common sources, and for the application of moneys in those accounts only to specified debt charges on specified securities or categories of securities. Subject to law and any provisions in the applicable proceedings, moneys in a bond retirement fund or separate account in a bond retirement fund may be transferred to other funds and accounts [Ohio Rev. Code § ~~131.01~~133.01(D)].

***Note:*** We wish to emphasize to governments and to their auditors the importance of complying with this. We have seen instances where investors desire interest payments exceeding market rates. They are willing to exchange the necessary up-front payment (***premium***) to obtain these returns in the future.

Depositing premiums (or accrued interest) into a fund other than the sinking / bond retirement would violate the requirements above, and be subject to a finding for adjustment, see AOS Bulletin 2014-001 for more information.

If a board of education of a school district disposes of real property under Ohio Rev. Code §§ 3313.41, 3313.411, or 3313.413 the proceeds received from the sale shall be used to either: [Ohio Rev. Code § 5705.10(H)]

- Retire any debt that was incurred by the district with respect to that real property. Proceeds in excess of the funds necessary to retire that debt may be paid into the school district's capital and maintenance fund and used only to pay for the costs of nonoperating capital expenses related to technology infrastructure and equipment to be used for instruction and assessment fund, or
- Paid into a special fund for the construction or acquisition of permanent improvements.

If a park district enters into an agreement for the sale or lease of mineral rights regarding a park within the district, the royalties or moneys from that sale or lease must be deposited into a special fund created by the board of park commissioners to be used exclusively for the maintenance of parks within the District or for acquisition of new park lands [Ohio Rev. Code § 1545.23].

If a permanent improvement[20] of the subdivision is sold, the amount received from it shall be paid into the sinking fund, the bond retirement fund, or into a special fund for the construction or acquisition of permanent improvements (Ohio Rev. Code § 5705.10(F)).[21] However, after a county home has been closed as provided by Ohio Rev. Code § 5155.31, the board of county commissioners may sell or lease any part of the county home farm, and all receipts from such sales or leases shall be paid to the county treasurer and credited to the general county fund, and shall be subject to appropriation for such purposes as the board decides [Ohio Rev. Code § 5155.33].

Proceeds from the sale of a public utility are to be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility [Ohio Rev. Code § 5705.10(F)].

Proceeds from the sale of property other than a permanent improvement are to be paid into the fund from which such property was acquired or is maintained, or if there is no such fund, into the general fund [Ohio Rev. Code § 5705.10(F)].

Even if the permanent improvement was purchased or maintained with special levy revenue, the proceeds from the sale of the permanent improvement shall be credited in accordance with Ohio Rev. Code § 5705.10(F) or other specific statute that addresses the crediting or use of sale proceeds.

Monies collected under Ohio Rev. Code §§ 4501.04, and 5735.27 must be deposited into a special fund for the purpose of street construction and maintenance. This includes gas tax and license taxes distributed through the county. However, if the municipal corporation sits on the line of the state highway system as designated by the director of transportation as an extension or continuance of the state highway then 7.5% of the monies will be posted to a state highway fund. [Ohio Rev. Code § 5735.28]

> ***Note***: Also, the $5 or $10 license taxes that can be levied by a municipality under Ohio Rev. Code Chapter 4504 can be receipted directly into a Permissive MVL fund.

Money paid into a fund must be used only for the purposes for which such fund has been established. As a result, a negative fund cash balance[22] indicates that money from one fund was used to cover the expenses of another fund [Ohio Rev. Code § 5705.10(I)]. However, Ohio Rev. Code § 3315.20 provides an allowable exception for school districts. A school district may have a deficit in any special fund (see

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[20] ***Permanent improvement*** includes any capital asset with a useful life five years or greater. [Ohio Rev. Code § 5705.01(E)]

[21] Ohio Rev. Code § 5705.10(F) & (G), include an exception for certain townships, with a population greater than 15,000, having used township tax increment financing (TIF) for real property in the township according to the most recent federal decennial census. These townships may pay proceeds from the sale of a permanent improvement of the township into its general fund if both of the following conditions are satisfied: (see bullets below or on next page)

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

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

Section 1-4 for a listing of possible "special" funds) of the school district[23], but only if all of the following conditions are satisfied[24]:

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

See additional guidance related to debt in OCS Implementation Guide, Appendix C.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Presence of Effective Accounting System<br>• Periodic Reviews/Comparisons of Budgeted and Actual Revenues<br>• Independent Inspection/Comparison of Revenues to Source Documents<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Trace a representative number of receipts from tax levies, bond issues, and sales of permanent improvements, to the funds.

[23] Deficits should not be permitted when the funding source is an automatic or cash advance payout from the State of Ohio (e.g. 467 Student Wellness Funds). That is, the deficit conditions prescribed by Ohio Rev. Code §3315.20 are only permissible when schools have to submit cash requests for payments to receive funding.

**[24] A school district, community school or STEM school may have a deficit in the special revenue fund established to receive funds from the Elementary and Secondary School Emergency Relief Fund under the CARES Act, Consolidated Appropriations Act and American Rescue Plan Act in fiscal years 2021 ~~and~~ through 2025 ~~2022~~ when that deficit resulted from a temporary delay in the Department of Education and Workforce's ability to process claims reimbursements. [Sec. 209.60 of Am. Sub. H.B. No. 169 134th G.A. & Sec. 265.470 of H.B. No. 33 135th G.A.]**

***Note***: Because recording receipts to an incorrect opinion unit is a misstatement, auditors should test these transactions to the extent required to reasonably assure there was no material misstatement. Also, auditors should consider reporting noncompliance for misposting to incorrect funds (rather than opinion units) as described in the ***Finding for Adjustment*** guidance in the ***Ohio Compliance Supplement Implementation Guide***.

2. Trace significant interest earned on bond proceeds to the credit of (1) a fund used for purposes for which the debt was authorized, or (2) the general fund. [Ohio Rev. Code § 5705.10(E)] (***Note***: Proceeds exclude accrued interest and premiums, which the entity must credit to the sinking or bond retirement fund. Refer to AOS Bulletin 2014-001) Also note that this interest may be subject to Federal arbitrage regulations—AOS staff should refer to the arbitrage procedures in the specimen debt audit program.

3. Inspect accounting ledgers as of fiscal year end. Determine whether significant negative fund balances existed.

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

   *Also, if management can demonstrate that the general fund had sufficient allowable resources to cover the deficit of a special fund, and management has documented an evaluation to that effect at the time the deficit was incurred then a citation may not be necessary. The key here is that management made this evaluation prior to incurring the deficit and documented it. Auditors should review evidence that such an evaluation occurred if that is the case. An evaluation not performed until after auditors have brought the matter to management's attention would not provide evidence of sufficient budgetary control and compliance and a citation would still be warranted. Even in situations where management has performed such an evaluation, we encourage the use of transfers and advances to avoid a special fund incurring a deficit (and an internal control recommendation would still be appropriate even if we determine a citation is not). (This note would not apply to schools as they must meet all exceptions as outlined in Ohio Rev. Code § 3315.20 – see testing in step 4)*

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

   a. *Inspecting* the school district's Project Cash Request (PCR) forms. In most cases, these forms will be available for viewing online in ODE's Comprehensive Continuous Improvement Plan (CCIP) application at https://ccip.ode.state.oh.us.

   b. Computing the unspent and unencumbered balance in the school district's general fund and vouching whether it is greater than the aggregate of deficit amounts in all of the school district's special funds.

5. If a school district disposed of real property, determine whether the school district used the proceeds received from the sale to retire any debt that was incurred by the district with respect to that real property.

   ***Note***: The proceeds received from the sale shall be used to retire any debt that was incurred by the district with respect to that real property. Proceeds in excess of the funds necessary to retire that

debt may be paid into the school district's capital and maintenance fund and used only to pay for the costs of nonoperating capital expenses related to technology infrastructure and equipment to be used for instruction and assessment fund, or payment into a special fund for construction or acquisition of permanent improvements.

6. If a park district enters into an agreement for the sale or lease of mineral rights regarding a park within the district, confirm that the royalties or moneys from that sale or lease were deposited into a special fund created by the board of park commissioners.

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

**1-6 Compliance Requirements:** Ohio Rev. Code §§ 5705.05~~-.06~~, and 5705.14-16- Transfer of funds. (Refer to Appendix A-1 in the OCS Implementation Guide for a more detailed discussion on what constitutes a "transfer" under Ohio Rev. Code § 5705.14 - .16.)

**Summary of Requirements:** No transfer can be made from one fund of a subdivision to any other fund, except as follows:[25]

A. The unexpended balance in a bond fund [i.e. a capital project fund financed with bond proceeds] that is no longer needed for the purpose for which such fund was created shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable. [Ohio Rev. Code § 5705.14(A)]

B. The unexpended balance in any specific permanent improvement fund, other than a bond fund, after the payment of all obligations incurred in the acquisition of such improvement, shall be transferred to the sinking fund or bond retirement fund of the subdivision. However, if such money is not required to meet the obligations payable from such funds, it may be transferred to a special fund for the acquisition of permanent improvements, or, with the approval of the court of common pleas of the county in which such subdivision is located, to the general fund of the subdivision. [Ohio Rev. Code § 5705.14(B)]

C. Except as provided below, the unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest, and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred, in the case of the sinking fund, to the bond retirement fund, and in the case of the bond retirement fund, to the sinking fund. However, if the transfer is impossible by reason of the nonexistence of the fund to receive the transfer, the unexpended balance may be transferred to any other fund of the subdivision with the approval of the court of common pleas of the county in which such division is located. [Ohio Rev. Code § 5705.14(C)(1)]

   1. Money in a bond fund or bond retirement fund of a city, local, exempted village, cooperative education, or joint vocational school district may be transferred to a specific permanent improvement fund provided that the county budget commission of the county in which the school district is located approves the transfer upon its determination that the money transferred will not be required to meet the obligations payable from the bond fund or bond retirement fund. In arriving at such a determination, the county budget commission shall consider the balance of the bond fund or bond retirement fund, the outstanding obligations payable from the fund, and the sources and timing of the fund's revenue. [Ohio Rev. Code § 5705.14(C)(2)]

D. The unexpended balance in any special fund, other than an improvement fund, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service, or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund. [Ohio Rev. Code § 5705.14(D)][26]

E. Money may be transferred from the general fund to any other fund of the subdivision [Ohio Rev. Code § 5705.14(E)]. ***Note***: Ohio Rev. Code § 5705.14 indicates "except in the case of transfer pursuant to division (E) of this section, transfers authorized by this section shall only be made by resolution of the taxing authority passed with the affirmative vote of two-thirds of the members."

[25] GASB 2300.127 requires certain disclosures regarding the amounts and purposes of transfers in the notes to the financial statements.

[26] An example would be a proprietary fund where the government sells its enterprise assets to a private vendor or another government.

According to 1989 Op. Att'y. Gen. No. 89-075, a resolution or motion, as expanded by the courts, passed by a simple majority of the legislative authority is required to transfer moneys from the general fund to any other fund of the subdivision. When moneys are transferred from a fund other than the general fund in accordance with Ohio Rev. Code § 5705.14, a resolution passed by a two-thirds majority is required.

1. Counties are precluded from transferring general levy revenue for current expenses to other county funds for the construction, reconstruction, resurfacing, and repair of roads and bridges. [Ohio Rev. Code §~~§~~ 5705.05 ~~& .06~~]. Other entities (except counties) may transfer general levy revenue for current expenses to Road ~~and Bridge~~ Funds via a resolution or a motion passed by a simple majority of the governing authority [Ohio Rev. Code § 5705.14(E)].

F. Moneys retained by a county in accordance with Ohio Rev. Code § 4501.04 (auto registration distribution fund), or in accordance with Ohio Rev. Code § 5735.27 (gasoline excise tax fund), may be transferred from the fund into which they were deposited to the sinking fund or bond retirement fund from which any principal, interest, or charges for which such moneys may be used is payable. [Ohio Rev. Code § 5705.14(F)]

G. Moneys retained or received by a municipal corporation under Ohio Rev. Code § 4501.04 (motor vehicle license tax), or division (A) (1) or (2) of Ohio Rev. Code § 5735.27 (motor vehicle fuel excise taxes), may be transferred from the fund into which they were deposited to the sinking fund or bond retirement fund from which any principal, interest, or charges for which such moneys may be used is payable. [Ohio Rev. Code § 5705.14(G)]

H. After payment of the expenses of conducting and managing the water works, any surplus of a municipal corporation's water fund may be applied to the repairs, enlargement, or extension of the works or of the reservoirs, the payment of the interest of any loan made for their construction, or for the creation of a sinking fund for the liquidation of the debt. In those municipal corporations in which water works and sewerage systems are conducted as a single unit, under one operating management, a sum not to exceed ten per cent of the gross revenue of the water works for the preceding year may be taken from any surplus remaining after all of the preceding purposes have been cared for and may be used for the payment of the cost of maintenance, operation, and repair of the sewerage system and sewage pumping, treatment, and disposal works and for the enlargement or replacement thereof. Each year a sum equal to five per cent of the gross revenue of the preceding year shall be first retained from paid surplus as a reserve for waterworks purposes.[27] The amount authorized to be levied and assessed for waterworks purposes shall be applied by the legislative authority to the creation of the sinking fund for payment of any indebtedness incurred for the construction and extension of water works and for no other purposes; provided, where such municipal corporation does not operate or maintain a water works or a sewage pumping, treatment, and disposal works, any or all such surplus may be transferred to the general fund of the municipal corporation in the manner provided for in sections 5705.15 and 5705.16 of the Revised Code, which includes approval of the Tax Commissioner. [Ohio Rev. Code § 743.05]

I. Money may be transferred from the County Developmental Disabilities general fund to the County Developmental Disabilities capital fund established under Ohio Rev. Code § 5705.091, or to any other fund created for purposes of the County Board of Developmental Disabilities so long as it is

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

spent for the particular purpose of the transfer. An unexpended balance in an account may be transferred back to the County Developmental Disabilities general fund. Transfers shall be done by resolution of the Board of County Commissioners. [Ohio Rev. Code § 5705.14(H)]

J. Money may be transferred from the public assistance fund established under Ohio Rev. Code § 5101.161 to either of the following funds, so long as the money to be transferred from the public assistance fund may be spent for the purposes for which money in the receiving fund may be used [Ohio Rev. Code § 5705.14(I)]:

(1) The children services fund established under Ohio Rev. Code § 5101.144;

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

K. Money may be transferred among various funds and accounts from which a loss was directly attributable to allocate insurance and self-insurance program costs, including deductibles, under Ohio Rev. Code §§ 2744.08 and 2744.082. If a subdivision or joint self-insurance pool makes such an allocation or requires the payment of deductibles from specific funds or accounts, the subdivision's fiscal officer, pursuant to an ordinance or resolution of the subdivision's legislative authority, must transfer amounts equal to those costs or deductibles from the funds or accounts to the subdivision's general fund if both of the following apply:

(1) The subdivision requests payment from the employee responsible for the funds or accounts for those costs or deductibles [Ohio Rev. Code § 2744.082(A)(1)], and
(2) The employee receiving the request fails to remit payment within 45 days after the date the request is received [Ohio Rev. Code § 2744.082(A)(2)].

L. The transfers listed above can be made only by resolution of the taxing authority passed with the affirmative vote of two thirds of the members. Transfers from the general fund require a resolution or a motion passed by a simple majority of the board members (i.e., a two thirds vote is not required for general fund transfers, ~~though~~ but a resolution or a motion passed by a simple majority is required. A simple majority constitutes a quorum of greater than 50% of the members.) [Ohio Rev. Code §§ 5705.14 & .16]

Per Ohio Rev. Code §§ 5705.15 & .16: In addition to the transfers listed above, which Ohio Rev. Code § 5705.14 authorizes, the taxing authority of any political subdivision, with the approval of the Tax Commissioner (effective 6/30/17)[28], may transfer from one fund to another any public funds under its supervision, ***except*** the proceeds or balances of:

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

[28] Forms for the approval of the Tax Commissioner are available at https://tax.ohio.gov/wps/portal/gov/tax/government/forms-for-local-officials.

**NOTE: Where a local government decided within the program period of performance but after the fiscal year end to reimburse eligible expenditures made prior to fiscal year end with allowable federal programs: This reimbursement activity, while allowable, has considerations that should be evaluated to determine if they are accounted for correctly and addressed any cut-off considerations appropriately in the preparation of their financial statements. See further guidance in Appendix A-1 of the OCS Implementation Guide, AOS Bulletin 2021-004, and AOS Advisory Memo, *Prior Fiscal Year Expenditures Reimbursed with Federal Funds in the Subsequent Fiscal Year* at 20210702-PriorFiscalYearExpenditures.pdf (ohioauditor.gov).**

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Periodic Reviews/Comparisons of Budgeted and Actual Transfers<br>• Independent Inspection/Comparison of Transfers to Source Documents<br>• Knowledge and Training of personnel<br>• Presence of Effective Accounting System<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

1. Inspect documents authorizing transfers during the audit period and determine that transfers involving balances described below met the requirements above:
    a. Unexpended bond balance;
    b. Permanent improvement balance;
    c. Bond retirement;
    d. Special fund;
    e. Auto registration;
    f. Resolution;
    g. Municipal corporation (motor vehicle license tax, motor vehicle fuel excise tax, water works);
    h. Public assistance;
    i. Developmental disabilities.

2. Determine if any material transfers were made from the proceeds or balances of:
    a. loans,
    b. bond issues,
    c. special levies for the payment of loans or bond issues,
    d. the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, or
    e. the proceeds or balances of any license fees imposed by law for a specified purpose.

3. Determine if selected transfers were authorized by resolution or a simple majority vote of the governing board as described above.

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

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**1-7 Compliance Requirement:** AOS Bulletin 1997-003 and various ORC sections – Advances.

Though no statutory provisions directly address inter-fund *advances*, the following requirements are in part derived from Ohio Rev. Code §§ 5705.10 (restriction on the purpose for which funds may be used); 5705.14, 5705.15, and 5705.16 (transfer of funds); 5705.39 (appropriations limited by estimated revenue); 5705.41 (restriction upon appropriation/ expenditure of money); and 5705.36 (certification of available revenue). AOS Bulletin 1997-003 sets forth the requirements for inter-fund advances and provides additional guidance for recording such transactions.

***Note***: This section applies when a subdivision purchases its own debt with its debt service fund cash, etc. pursuant to Ohio Rev. Code § 133.29 and accounts for it as *advances* and *interfund activity* in its financial statements. However, refer to Section 1-13 if the subdivision accounts for a purchase of its own debt as an ***investment*** and ***debt***. See Ohio Rev. Code §§ 133.03 and 133.29, and Appendix A-1 of the *OCS Implementation Guide*, the Village Officer's Handbook (Ohio Village Officer's Handbook), and the Ohio Township Handbook (Ohio Township Handbook 03-19.pdf) for additional guidance on legal requirements applicable to intra-entity borrowing. Ohio Compliance Supplement Chapter 1, Section 1-13 describes the legal compliance requirements for the issuance and retirement of manuscript debt.

**NOTE: As explained in the Transfers section (OCS 1-6), upon availability of federal award funding, entities should use advances to cover temporary fund deficits if a COVID-19 program is operating on a cash request/reimbursement basis. Auditors must evaluate whether schools meet the criteria in Ohio Rev. Code § 3315.20, which provides an allowable exception for school districts. A school district may have a deficit in any special fund (see Section 1-4 for a listing of possible "special" funds) of the school district, but only if all of the following conditions are satisfied:**

- **The school district has a request for payment pending with the state sufficient to cover the amount of the deficit. [Ohio Rev. Code § 3315.20(A)]**
- **There is a reasonable likelihood that the payment will be made. [Ohio Rev. Code § 3315.20(A)]**
- **The unspent and unencumbered balance in the school district's general fund is greater than the aggregate of deficit amounts in all of the school district's special funds. [Ohio Rev. Code § 3315.20(B)]**
- **A school district, community school or STEM school may have a deficit in the special revenue fund established to receive funds from the Elementary and Secondary School Emergency Relief Fund under the CARES Act, Consolidated Appropriations Act and American Rescue Plan Act in fiscal years 2021 through 2025 when that deficit resulted from a temporary delay in the Department of Education and Workforce's ability to process claims reimbursements. [Sec. 209.60 of Am. Sub. H.B. No. 169 134th G.A. & Sec. 265.470 of H.B. No. 33 135th G.A.] [Footnote 24]**

**ODE federal funding in CCIP is generally expenditure driven. However, federal funding outside CCIP can be advance funded or expenditure driven. Advanced funding would preclude a school district from satisfying the request for payment criterion above. Where federal programs are advance-funded, Ohio Rev. Code § 3315.20 cannot be relied upon to avoid advancement of funds to prevent fund cash deficits.**

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

to require repayment within the current or succeeding year. Inter-fund cash advances are subject to the following requirements:

A. Any advance must be clearly labeled as such, and must be distinguished from a transfer. Transfers are intended to reallocate money permanently from one fund to another and may be made only as authorized in Ohio Rev. Code §§ 5705.14 to 5705.16. Advances, on the other hand, *temporarily* reallocate cash from one fund to another and involve an expectation of repayment;

B. In order to advance cash from one fund to another, there must be statutory authority to use the money in the fund advancing the cash (the "creditor" fund) for the same purpose for which the fund receiving the cash (the "debtor" fund) was established;

C. The debtor fund may repay advances from the creditor fund. That is, the AOS would not deem repaying advances to violate restrictions on use of the debtor's fund resources; and

D. Advances must be approved by a formal resolution of the taxing authority of the subdivision, which must include:
   1. A specific statement that the transaction is an advance of cash, and
   2. An indication of the money (fund) from which it is expected that repayment will be made.

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

Other Budgetary Considerations

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

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

The official certificate of estimated resources must be prepared and provided in cases in which the Budget Commission waives the requirement that the taxing authority of a subdivision adopt a tax budget. Ohio Rev. Code § 5705.281(A) indicates the county budget commission by an affirmative vote of a majority of the commission, including an affirmative vote by the county auditor, may waive the requirement that the taxing authority of a subdivision or other taxing unit adopt a tax, but the taxing authority is still required to provide information to the commission in order for it to perform its duties, including dividing the rates of each of the subdivision's or taxing unit's tax levies. In addition, Ohio Rev. Code § 5705.34 requires the

budget commission to certify its action to the taxing authority. Ohio Rev. Code § 5705.35(A) makes reference to "[t]he certification of the budget commission to the taxing authority of each subdivision or taxing unit, as set forth in section 5705.34 of the Revised Code…", and indicates that "[t]here shall be attached to the certification a summary, which shall be known as the 'official certificate of estimated resources,' that shall state the total estimated resources of each fund of the subdivision that are available for appropriation in the fiscal year…".

Conversion to a Transfer

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

- The necessary formal procedures for approval of the transfer should be completed including, if necessary, approval of the commissioner of tax equalization and of the court of common pleas (see Ohio Rev. Code §§ 5705.14, 5705.15 and 5705.16);

- The transfer should be formally recorded on the records of the subdivision; and

- The entries recording the cash advance should be reversed.

Accounting for Manuscript Debt as an Advance and Interfund Activity

Before a taxing authority sells any securities of the subdivision to others, the taxing authority may offer the securities at their purchase price and accrued interest to the officer or officers who have charge of the bond retirement fund of the subdivision, or in the case of a municipal corporation, to the treasury investment board for investment under Ohio Rev. Code § 731.56, or an officer or similar treasury investment board having the authority under a charter. (Ohio Rev. Code § 133.29(A)) This type of debt is often referred to as "manuscript debt". For more information, see the Manuscript Debt section in section *1-13 Compliance Requirement: Ohio Rev. Code §§ 133.29, 135.14, 135.35, 731.56-.58,* 1995 *Op. Att'y. Gen. No. 55-5263, and 1985 Op. Att'y. Gen. No. 85-072 - Governments investing in* their own securities.

| **In determining how the government ensures compliance, consider the following:** | **What control procedures address the compliance requirement?** | **W/P Ref.** |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Presence of Effective Accounting System<br>• Independent Inspection/Comparisons of Advances and Source Documentation<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

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

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

4. If the client no longer intends for the advance to be repaid or repayment is unlikely, issue a finding for adjustment if the amounts are material and the client does not take appropriate steps to convert the advance to a transfer following the above procedures.

5. If advances have been converted to transfers, determine whether the transfer requirements summarized in Ohio Compliance Supplement Section 1-6 have been complied with retroactively.

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

**1-8 Compliance Requirement:** Ohio Rev. Code §§ 5705.13, 5705.132, 5705.222 and 5705.29 - Reserve balance accounts and funds.

- Ohio Rev. Code § 5705.13(A) - Reserve balance accounts and funds;
- Ohio Rev. Code § 5705.13(B) – A special revenue fund may be established to accumulate cash for severance payments or salaries when the number of pay periods exceeds the usual and customary number for a year;
- Ohio Rev. Code § 5705.13(C) – Capital projects fund(s) may be established to accumulate resources to acquire, construct, or improve fixed assets;
- Ohio Rev. Code § 5705.222(C) – Reserve balance account for county board of developmental disabilities;
- Ohio Rev. Code § 5705.29 – Contingencies may be established not designated for any particular purpose.

**Summary of Requirements:**

1. Ohio Rev. Code § 5705.13(A) allows a taxing authority of a subdivision to establish, by resolution, a reserve balance account[29] for each of the three following purposes:

   a. Budget stabilization: may be created in the general fund or in any special fund used for operating purposes. The amount reserved in the account in any fiscal year must not exceed 5% of the fund's revenue for the preceding fiscal year[30]. The reserve balance is <u>excluded</u> from the unencumbered balance when certifying available balances at year-end. The reserve for budget stabilization may be reduced or eliminated at any time by the taxing authority.

   b. Self-insurance program: may be created in the general fund or in the internal service fund established to account for the operation of the program. The amount to be reserved must be based on actuarial principles and the taxing authority may rescind the reserve balance account at any time.

   c. Retrospective Ratings Plan for Workers' Compensation[31]: may be created in the general fund or in the internal service fund established to account for the program. The amount to be reserved must be based on actuarial principles and the taxing authority may rescind the reserve balance account at any time.

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[29] Ohio Rev. Code § 5705.13 refers to these accounts as "reserve" accounts. However, for the GASB Statement No. 54 financial reporting that AOS Bulletin 2011-004 describes, the criterion for using the budget stabilization is not specific enough to meet the ***committed*** criteria and it does not meet the ***restricted*** criteria as the budget stabilization is not mandated by State statute. Therefore, a budget stabilization/reserve account should be reported as ***unassigned*** in the general fund. While statute also gives the authority to have stabilization reserve accounts in other operating funds, the fund balance is reported as ***restricted***, ***committed***, or ***assigned*** and the reserve account does not change the fund balance classification. Entity wide statements should report these as part of ***unrestricted*** net assets. Note: Bulletin 2020-008 simplified the reporting of fund balance classifications in the AOS regulatory cash basis financial statements and footnotes beginning with the December 31, 2020 FYE reporting.

[30] In the case of a reserve balance account of a county or of a township, the budget stabilization amount can be the greater of 5% of the fund's revenues from the preceding fiscal year or one-sixth of the expenditures during the preceding fiscal year from the fund in which the account is established, under Ohio Rev. Code § 5705.13(A)(3). This is our AOS opinion; however, statutory language is less than precise, and may be subject to an alternative interpretation if accompanied with a well-reasoned legal opinion.

[31] Various plans to provide for the payment of claims, assessments, and deductibles are allowed. Plans allowed are: payments under a self-insurance program, individual retrospective ratings plan, group rating plan, group retrospective rating plan, medical only program, deductible plan, or large deductible plan for workers' compensation.

2. Ohio Rev. Code § 5705.13(B) allows a taxing authority to establish a special revenue fund to accumulate cash to pay accumulated leave, or for paying salaries when the number of pay periods exceeds the usual and customary number for a year. This leave includes payments for accumulated sick leave and vacation leave, or for payments in lieu of taking compensatory time off, upon the termination of employment or retirement. Money may be transferred to this fund from any fund from which the termination or salary payments could lawfully be made. The reserve must be established by resolution or ordinance and the taxing authority may rescind the fund at any time with the accumulated resources being returned to the fund from which they came. Amounts accumulated in this fund should be reasonable based on the taxing authority's estimated liability for benefits.

3. Ohio Rev. Code § 5705.13(C) provides that a taxing authority may create, by resolution, one or more capital projects funds[32] to accumulate resources for the acquisition, construction, or improvement of fixed assets, including motor vehicles. Each fund must be created by ordinance or resolution. The resolution or ordinance must identify the asset(s) to be acquired, the amount needed to be accumulated, the period over which the amount will be accumulated (with a limit of ten years from the date of the resolution or ordinance), and the source of the resources. Despite Ohio Rev. Code § 5705.14 through .16, money may be transferred to the capital projects fund from any other fund that could acquire, construct or improve the fixed assets. If a contract for the fixed asset(s) has not been entered into before the ten-year period expires, the money is returned to the fund from which it was transferred or that was originally intended to receive it. The taxing authority may rescind a capital projects fund at any time with the accumulated resources being returned to the fund from which they came.

4. Ohio Rev. Code § 5705.132 permits *townships* to establish by resolution reserve balance accounts in addition to those described above to accumulate currently available resources for any purpose for which the board of township trustees may lawfully expend township money.[33] The resolution must state the:
   a. Specific purpose for which a reserve balance account is established,
   b. Fund within which it is established,
   c. Fund or account from which money will be transferred to it,
   d. Number of years it will exist [there is a five year cap on how long the account may be in existence]
   e. Maximum total amount of money that may be credited to it during its existence; and
   f. Maximum amount of money to be credited to it each fiscal year it exists

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

   Money may be transferred to these new reserve balance accounts from another township fund or account only if money in that fund or account may lawfully be expended for the purpose for which the new reserve balance account is created. Townships may create more than one reserve balance account under this section. However, the total amount of money credited to *all* of the reserve balance accounts established under this section cannot exceed, ***at any time in any fiscal year***, 5% of the total of the

[32] Similar to the preceding note, GAAP/OCBOA governments should report these amounts as *committed, assigned, or restricted* fund balance as appropriate under the circumstances described in GASB Statement No. 54 in governmental fund statements. Entity wide statements should report this equity as part of *unrestricted net assets*, because the restrictions are not externally imposed. Note: Bulletin 2020-008 simplified the reporting of fund balance classifications in the AOS regulatory cash basis financial statements and footnotes beginning with the December 31, 2020 FYE reporting.

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

township's revenue from all sources for the preceding fiscal year, plus any unencumbered balances carried over to the current fiscal year from the preceding fiscal year. There are three important aspects of this restriction. First, be aware that it is based on revenues only. Other financing sources such as debt proceeds or transfers will not count toward the calculation of the limitation.[34] Second, recognize that this language has the effect of allowing the same dollars to be counted twice in calculating the limitations, first when they were received in the prior year and second to the extent they are carried over as unencumbered into the current year. Finally, notice that the amount of the limitation changes each year because it is based on the preceding year's revenues.

If a township does not expect to spend the money set-aside in a reserve balance account in the upcoming year, the money in the reserve balance account need not be included in the certificate of year-end balances filed with the budget commission at the beginning of the year. If the township plans to spend the money that has been set aside, the township should include the money in the certificate of year-end balances. The money will then be included in the amended certificate of estimated resources and may be appropriated and spent during the year. Appropriations should be made to an account that reflects the purpose of the reserve. Appropriations should not be made to, nor expenditures made from, a reserve balance account. For example, assume in 2006 a township created a reserve balance account not to exceed $40,000 in the motor vehicle license tax fund to purchase a new mower. $10,000 is set aside each year from 2006 through 2009. In 2010, the $40,000 is included in the certificate of year-end balances and appears as part of the amended certificate. The money is appropriated in the capital outlay account in the motor vehicle license tax fund and the new mower is purchased.[35]

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

**Note:** Steps 5 and 6 do not apply to a subdivision or taxing unit for which the county budget commission has waived the requirement to adopt a tax budget pursuant to section 5705.281 of the Revised Code. The tax budget shall present the following information in such detail as is prescribed by the Auditor of State.

5. Ohio Rev. Code § 5705.29(A)(1) Allows entities (except schools) to establish contingencies, not designated for any particular purpose (contingency reserve balance – spending reserve) and not to exceed 3% of appropriations for current expenses.

6. Ohio Rev. Code § 5705.29(A)(1) Allows school districts to establish contingencies, not designated for any particular purpose (contingency reserve balance – spending reserve) and not to exceed 13% of appropriations for current expenses.

    a. In the fiscal year in which a levy is first extended, an estimate of expenditures to be known as a **voluntary contingency reserve balance**, which shall not be greater than 25% of the total amount of the levy estimated to be available for such year. (Ohio Rev. Code § 5705.29(E)(1)).
    b. In the fiscal year following the year in which a levy is first extended an estimate of expenditures to be known as a **voluntary contingency reserve balance**, which shall not be greater than 20% of the total amount of the levy estimated to be available for such year. (Ohio Rev. Code § 5705.29(E)(2))

[34] Appendix IV-5 of the March 2019 Ohio Township Handbook lists all *Other Financing Sources*.

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

The full amount of any reserve balance shall be retained by the county auditor and county treasurer out of the first semiannual settlement of taxes until the beginning of the next succeeding fiscal year where it shall be turned over to the board of education to be used for the purposes of such fiscal year. Except in cases where by two thirds vote, the board of education appropriates (for any lawful purpose) any amount withheld for this contingency during the fiscal year; wherein, the county auditor shall draw a warrant payable (from the districts account) to the district in the amount requested. (Ohio Rev. Code § 5705.29(E)(3-4))

7. *County Board of Developmental Disabilities*
Ohio Rev. Code § 5705.222(C) requires the county auditor, upon receipt of a resolution from the county board of developmental disabilities, to establish a capital improvements account or a reserve balance account, or both, as specified in the resolution. The capital improvements account shall be a contingency account for the necessary acquisition, replacement, renovation, or construction of facilities and movable and fixed equipment. Upon the request of the county board of developmental disabilities, moneys not needed to pay for current expenses may be appropriated to this account, in amounts such that this account does not exceed twenty-five per cent of the replacement value of all capital facilities and equipment currently used by the county board of developmental disabilities for developmental disabilities programs and services. Other moneys available for current capital expenses from federal, state, or local sources may also be appropriated to this account.

The reserve balance account shall contain those moneys that are not needed to pay for current operating expenses and not deposited in the capital improvements account but that will be needed to pay for operating expenses in the future. Upon the request of a county board of developmental disabilities, the board of county commissioners may appropriate county funds, including funds from federal and state sources, to the reserve balance account. The total balance in a reserve balance account shall not exceed forty per cent of the county board of developmental disabilities' expenditures for all services in the preceding calendar year. Amounts in a capital improvements account or reserve balance account that are not in excess of the limitations prescribed in this division shall be considered reasonable and shall not be taken into consideration by the county budget commission when determining whether to reduce the taxing authority of a county under Ohio Rev. Code § 5705.32.

| **In determining how the government ensures compliance, consider the following:** | **What control procedures address the compliance requirement?** | **W/P Ref.** |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. If reserve balance accounts have been established:

   a. Determine through vouching, review of minutes, and inspection of accounting ledgers and authorizing legislation, whether reserve accounts were only established in the general fund, special fund used for operating purposes or appropriate internal service fund and for permitted purposes (budget stabilization, self-insurance program, or retrospective ratings program for worker's compensation).

   b. Recalculate reserve percentages and inspect worksheets and accounting ledgers to determine whether the amount reserved exceeded the 5% cap (budget stabilization account). In the case of Townships or Counties see footnote 30.

   c. For self-insurance and worker's compensation reserve accounts, compare amounts reserved to estimates received from the entity's actuary.

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

   a. Review minutes, ordinances and resolutions to determine whether the fund has been established by resolution or ordinance.

   b. If a capital improvement reserve fund has been established, review the authorizing legislation to determine whether the assets; amount required; accumulation period (not to exceed ten years); and source of funding have been identified.

   c. Select a representative number of disbursement transactions from the fund. Through vouching, determine whether the transactions were only for related activities as indicated above, and in accordance with the purpose stated in the authorizing legislation.

   d. Trace a representative number of transfers to the reserve fund and determine whether the transfers were from funds permitted to make the disbursements for which the reserve fund was established.

   e. Determine through inspection of worksheets, ledgers and other such documents, whether records reasonably provide for the return of accumulated resources, to the fund from which they were originally transferred or the fund intended to receive them (If records do not reasonably provide for the proper return of resources, this situation would generally result in a recommendation; a noncompliance citation should not be made).

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

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

   a. Review monies transferred to the new township reserve balance accounts from other township funds or accounts and determine whether those monies may lawfully be expended for the purpose for which the new reserve balance account was created.
   b. Determine whether the total amount of money credited to *all* of the reserve balance accounts established under Ohio Rev. Code § 5705.132 exceeded 5% of the total of the township's revenue

from all sources for the preceding fiscal year and any unencumbered balances carried over to the current fiscal year from the preceding fiscal year.

c. Determine whether reserve accounts were only used for the purpose for which the account(s) was established.
d. Determine that none of the additional reserve balance accounts have existed for more than five years.
e. Upon the expiration or rescission of a reserve balance account created under Ohio Rev. Code § 5705.132, determine whether any remaining unexpended balance in the reserve account was transferred to the fund or account from which money in the account was originally transferred. If not, consider a finding for adjustment.

5. If an entity (other than a school district) has established a voluntary contingency reserve balance:

   a. Determine through vouching, review of minutes, and inspection of accounting ledgers and authorizing legislation, whether reserve accounts were only established in the general fund, special fund used for operating purposes or appropriate internal service fund and for permitted purposes (budget stabilization, self-insurance program, or retrospective ratings program for worker's compensation).
   b. Recalculate reserve percentages and inspect worksheets and accounting ledgers to determine whether the reserve is limited to 3% of appropriations
   c. For self-insurance and worker's compensation reserve accounts, compare amounts reserved to estimates received from the entity's actuary.

6. If school district has established a voluntary contingency reserve balance:

   a. Determine through vouching, review of minutes, and inspection of accounting ledgers and authorizing legislation, whether reserve accounts were only established in the general fund, special fund used for operating purposes or appropriate internal service fund and for permitted purposes (budget stabilization, self-insurance program, or retrospective ratings program for worker's compensation).

   b. Recalculate reserve percentages and inspect worksheets and accounting ledgers to determine whether the amount reserved is limited to the lesser of:
      i. 13% of appropriations for current expenses; or
      ii. 25% of the total amount of the levy estimated to be available for the initial year, or 20% in succeeding years.

   c. For self-insurance and worker's compensation reserve accounts, compare amounts reserved to estimates received from the entity's actuary.

7. If a county board of developmental disabilities has established a reserve balance account:

   a. Recalculate reserve percentages and inspect accounting ledgers to determine whether the amount reserved is limited to 40% of the county board of developmental disabilities expenditures for all services in the preceding calendar year.

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**1-9 Compliance Requirement:** Ohio Rev. Code § 5101.144 - County Children Services Fund

**Summary of Requirements:** Requires that each county deposit all funds its public children services agency receives, regardless of source, into a special fund in the county treasury known as the children services fund.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

| Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments): |
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**1-10 Compliance Requirement:** Ohio Const. Art. XII, Section 11; Ohio Const. Art. XVIII, Section 12, Ohio Rev. Code §§ 133.10, 133.22, 133.23, 133.24, 133.26, 167.041, 308.08, 308.09, 321.34, 505.262, 505.401, 3318.36, 5531.10, 5705.03, 5705.05, 5705.09, 5705.10 and 5705.2113; 1981 Op. Att'y. Gen. No. 81-035 and 1996 Op. Att'y. Gen. No. 96-048 – Issuing or Retiring Bonds and Notes.

**Summary of Requirements:**

***Common Types of Debt***

**BACKGROUND INFORMATION:** Per Ohio Rev. Code § 133.01(Q), *general obligation (G.O.)* securities are those collateralized by a pledge of taxing authority, up to the subdivision's available tax limit (sometimes described as a taxing authority's "full faith, credit and taxing authority.")

The following are examples of securities that are **not** general obligations:

Ohio Rev. Code § 133.01(LL) defines *self-supporting securities* as securities, or portions of securities where the fiscal officer estimates that revenue sources, excluding taxes, are sufficient to pay for operating costs plus debt service. These are securities collateralized by pledged revenue,[36] without a pledge of taxes. Enterprise utility operations often issue self-supporting securities. Ohio Rev. Code § 133.01(MM) lists the various subdivisions authorized to issue self-supporting securities; such as municipalities, townships, counties, school districts, and certain other districts. (See the statute for a complete list.) Ohio Rev. Code § 133.01(MM) does not list community schools.

Ohio Rev. Code § 133.08(D) defines *revenue* securities as those a county issues, collateralized only by pledged revenue and which are not secured by a county's full faith, credit and taxing authority.

Ohio Const. Art. XVIII, Section 12, authorizes a municipality to issue bonds collateralized by pledged revenues or mortgages to acquire, construct, or extend public utilities. These bonds do not impose any liability on the municipality, except the creditor's right to the pledged revenue and / or mortgage. That is, this debt is not a general obligation.

***Issuance of Securities***

Ohio Const. Art. XII, Section 11 states that "[n]o bonded indebtedness of the state, or any political subdivision thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

Ohio Rev. Code § 5705.03 provides that the taxing authority of each subdivision may levy sufficient taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes and certificates of indebtedness of such subdivision subject to the limitations of applicable statutes.

Ohio Rev. Code § 133.23 describes the legislation required to authorize new securities. Per Ohio Rev. Code § 133.23(C), legislation must identify the source(s) of repaying the bonds, which may be **any** moneys required by law to be used, or lawfully available, for the purpose authorized. If the bonds are general obligations, or a property tax otherwise must be levied for the debt service, the legislation shall provide for levying a property tax sufficient to pay the bonds' debt charges; but the tax amount levied or collected in

[36] *Pledged revenue* is revenue the debt legislation or covenant provisions pledged as collateral to the debt owners.

any year may be reduced by the amount to be available from special assessments,[37] revenues and surplus funds of public utilities, any surplus in the funds from which such bonds are to be retired, or other moneys specifically assigned by law or by legislation of the taxing authority for payment of such debt charges.

We interpret Ohio Rev. Code § 133.23(C) as follows:

- Revenue (tax or otherwise) pledged to repay debt must be used for debt service unless the debt is repaid from other sources.
- A government can use unrestricted money or restricted money for purposes consistent with the restriction to pay debt service. For example, a government might use restricted grant revenue[38] to pay revenue anticipation note debt service, if the debt proceeds were spent for allowable grant purposes, even if the debt legislation pledges taxes.
- Therefore, if these bonds are a general obligation, a government must ***authorize*** a levy, but need not levy the tax if it can use other resources to pay the debt service.

***Debt Issuance for Board of Trustees for Fire Districts***
Pursuant to Ohio Rev. Code Chapter 133, Ohio Rev. Code § 505.401 provides additional borrowing authority for the board of trustees for fire districts organized under Ohio Rev. Code § 505.37(C). This section allows the fire district's board of trustees to issue bonds to acquire fire and rescue equipment, buildings and sites for the district or to construct or improve a building to house fire equipment.

***Infrastructure Loans for Regional Councils of Government***
An educational service center serving as a fiscal agent for a regional council of governments can enter into agreements with the governing body of one or more member governments to lend money to improve infrastructure within the member's territory. [Ohio Rev. Code § 167.041]

***Debt Issuance for Qualifying Partnerships (Career-Technical Education Compact)***
Pursuant to Ohio Rev. Code Chapter 133, 5705.2113 a ***Qualifying Partnership***[39] may declare that it is necessary to issue general obligation bonds to acquire "classroom facilities and necessary appurtenances", subject to the approval of a majority of the electors in the combined territory. Under the authority of Ohio Rev. Code § 5705.2112 and 5705.2113, a qualifying partnership may levy and issue taxes to pay for all or part of the bonds pledged for the Classroom Facilities project. Further, pursuant to Ohio Rev. Code §§ 3318.71, 5705.2112, and 5705.2113, the member districts in the compact agreement (i.e., contract) must designate a fiscal agent to act on behalf of the members in the qualifying partnership. Auditors should carefully review the contract agreement of the Qualifying Partnership to determine the exact terms and conditions along with potential bond covenants related to the bond issuance that must be maintained by the members of the qualifying partnership. Additionally, auditors must assess which school district the related debt issuance belongs to and whether the qualifying partnership has its own-source revenue for purposes of determining "legally separate" and other GASB Codification 2600 criteria. Generally, all member districts of the qualifying partnership share equal responsibility for the related bond obligation. These can be

[37] FYI: Special assessment anticipation notes issued per Ohio Rev. Code § 133.17 are collateralized by a pledge of special assessments, ***and*** as general obligations. However, notes issued per Ohio Rev. Code § 133.13, anticipating special assessments collected in one installment are collateralized only by the assessments and are ***not*** general obligations.

[38] Unless the grant regulations prohibit debt payments. For example, 2 C.F.R. 200.449(a) would generally permit using Federal grants to pay debt related to assets used in Federal programs.

[39] A ***qualifying partnership*** is a group of city, exempted village, or local school districts which meet the following criteria: (1) the districts are part of a career-technical education compact, the districts have entered into an agreement for joint or cooperative establishment and operation of a STEM education program under Ohio Rev. Code § 3313.842, and (3) the aggregate territory of the districts is located in two adjacent counties, each having a population greater than 40,000 but less than 50,000, and at least one of which borders another state. [Ohio Rev. Code § 3318.71]

complex determinations; therefore, auditors are encouraged to consult with the Center for Audit Excellence as needed.

***Debt Issuance for Regional Airport Authorities***
Ohio Rev. Code § 308.08 provides additional borrowing authority for regional airport authorities. This section allows the airport to issue revenue bonds to construct, replace, extend, enlarge, maintain, or operate any airport or airport facility (or repay or refund any outstanding debt issues related to the aforementioned purposes). The bonds may be collateralized by pledged revenues and do not impose any liability on the airport, except the creditor's right to the pledged revenue. This debt is not a general obligation. Additionally, Ohio Rev. Code § 308.09 permits the board of trustees of the regional airport authority to secure the revenue bonds via trust agreement with a corporate trustee. This trust agreement may not convey or mortgage any of the regional airport authority property nor pledge the general credit of the regional airport authority.

***Retirement of Securities***
Ohio Rev. Code § 5705.09(C) requires each subdivision to establish a bond retirement fund into which it must pay sufficient revenues to retire serial bonds, notes and certificates of indebtedness at maturity.

Ohio Rev. Code § 5705.10 provides that all revenue derived from levies for debt charges on bonds, notes, or certificates of indebtedness must be paid into a [debt service] fund for that purpose.

Ohio Rev. Code § 133.10(E) further provides that revenue anticipated (i.e. property taxes pledged to pay tax anticipation notes) may be appropriated for purposes other than paying debt charges only after deducting an amount sufficient to pay the debt. The amount (of anticipated revenues) to be applied to debt charges must be set aside in an account in the bond retirement fund. Ohio Rev. Code § 133.10(E) applies to certain other types of securities, for example in Ohio Rev. Code sections:

- Ohio Rev. Code § 133.13: Certain special assessments
- Ohio Rev. Code § 133.17: Securities anticipating special assessments
- Ohio Rev. Code § 133.32: All Ohio Rev. Code Chapter 133 securities
- Ohio Rev. Code § 6101.50: Conservancy district special assessments RAN

***Issuance of Notes***
Ohio Rev. Code § 133.22(B) requires that when a subdivision issues notes, its financial officer must notify the county auditor that such notes have been sold. Per Ohio Rev. Code § 321.34(B), when a county auditor *advances* tax revenue to a subdivision, the county auditor must allocate the advance between the subdivision's general and debt service fund, to provide sufficient tax revenue to pay the subdivision's outstanding G.O. indebtedness.

Ohio Rev. Code § 505.262(A) authorizes a board of township trustees to issue notes of the township to finance installment payment purchases of equipment, buildings, and sites for any lawful township purpose. All notes issues shall be pursuant to Ohio Rev. Code § 133.20. Furthermore, the Attorney General opined that Ohio Rev. Code § 505.262(A) does not grant explicitly or implicitly the authority of the township to grant a security interest in the property purchased by the installment contract. [1996 Op. Att'y. Gen. No. 96-048][40]

[40] For example, townships cannot take out a simple bank loan to purchase a truck for road purposes since "bank loans" are not a statutorily permitted form of debt for townships. However, townships do have authority to issue securities under Ohio Rev. Code Chapter 133 (e.g., anticipatory debt usually secured for infrastructure). However, Ohio Rev. Code § 505.262(A) and 1996 Op. Att'y. Gen. No. 96-048 provide specific authority for townships to issue Chapter 133 securities for the purposes this paragraph describes.

***Special Features***
Ohio Rev. Code Chapter 133 securities may include the following features:

- Floating interest rates [Ohio Rev. Code § 133.26(A)]
- Early redemption or call provisions [Ohio Rev. Code § 133.26(B)]

Legislation authorizing a debt issuance may contain restrictions on the source of payment for debt charges.

***Retiring Debt from Funds Other than a Debt Retirement Fund***
***Absent a specific requirement***, debt may be paid from any unrestricted monies held, segregated from restricted monies, in a fund which was established for a purpose not inconsistent with paying such debt. When evaluating compliance with the requirements in this section, place emphasis on the source of monies used to repay debt. When a subdivision pays debt from a fund other than a debt retirement fund, consider the following:

A. Ohio Rev. Code § 5705.10(I) provides that money paid into a fund shall be used only for the purpose for which such fund was established. Therefore, money in a fund may be used to pay debt charges provided the payment of such debt charges is consistent with the purpose for which the fund was established;

B. With regard to tax anticipation notes, Ohio Rev. Code § 133.24(D) provides that, except for ***capitalized interest***[41], debt charges on tax anticipation notes are payable only from the revenue collected by the tax levy anticipated.

C. Ohio Rev. Code § 5705.05 prohibits using taxes levied for current expenses to pay debt charges.

D. Ohio Rev. Code § 5531.10 (C) (issuing obligations for state infrastructure projects) provides that the holders or owners of such obligations shall have no right to have moneys raised by taxation by the state of Ohio obligated or pledged, and moneys so raised shall not be obligated or pledged, for the payment of bond service charges.[42]

    1. Additionally, the section specifically permits townships receiving distributions from the Gasoline Excise Tax Fund in the state treasury to use that money to pay debt service on State Infrastructure Bank (SIB) obligations. (Ohio Rev. Code §§ 5531.10 and 5735.27)

E. 1981 Op. Att'y. Gen. No. 81-035 states:
Certain moneys paid into the general fund which are not derived from a general levy for current expenses are placed in the general fund precisely because their use is not restricted. (See Ohio Rev. Code § 5705.10). Such monies may be used to pay debt charges provided that they have not been commingled with general fund monies which may not be used for debt payment.

[41] Ohio Rev. Code § 133.01(E) defines *capitalized interest* as interest received with the proceeds of a security. For example, this would include interest payable accruing between the security's issuance date and the date the security was sold. Since the government must pay this interest to the security owners, the government generally must set aside this interest for the first debt service payment and should not use it for the purpose for which the principal was issued. [Ohio Rev. Code § 133.16] Do not confuse this with *capitalized interest discussed in GASB Statement No. 34, 37, 62 (¶10), 89 etc.*

[42] Ohio Rev. Code § 5531.10(C) does not require establishing a Debt Service Fund. Rather, this section describes statutory exceptions to the general rule that monies not otherwise restricted could be used to pay debt where the purposes of both were consistent. In other words, governments with SIB loans cannot obligate or pledge State-levied taxes to pay bond service charges (except townships receiving distributions from the Gasoline Excise Tax Fund in the state treasury to use that money to pay debt service on State Infrastructure Bank (SIB) obligations).

Where otherwise unrestricted monies have been paid into the general fund and have been commingled with restricted monies to the extent that the particular source from which the monies originated cannot be distinguished, such monies may be used to pay debt charges only after they have been transferred to an appropriate fund. [Ohio Rev. Code § 5705.14]

1. 1981 Op. Att'y. Gen. No. 81-035 further clarifies 'commingled' funds with the following and says that counties wishing to spend moneys in a general fund directly for a specified purpose must be able to establish that no 'restricted' funds are being used:
   *"the use of some of the revenue deposited in the general fund of a subdivision is not restricted by law (except, of course, by the public purpose requirement), it may, in fact, be restricted by practical considerations. Where moneys from various sources are deposited in the general fund and thereafter become commingled, it may be difficult or impossible from a practical standpoint to insure that general levy revenues or any other similarly restricted revenues would not be included within a proposed expenditure." Additionally, The Supreme Court of Ohio, in State ex rel. Locher v. Menning, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916), held as follows: "The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."*

F. Ohio Rev. Code § 505.262(A) authorizes a board of township trustees to issue notes of the township to finance installment payment purchases of equipment, buildings, and sites for any lawful township purpose. All notes issues shall be pursuant to Ohio Rev. Code § 133.20. Furthermore, the Attorney General opined that Ohio Rev. Code § 505.262(A) does not grant explicitly or implicitly the authority of the township to grant a security interest in the property purchased by the installment contract. [1996 Op. Att'y. Gen. No. 96-048]

The Expedited Local Partnership Program provides a way for school districts to start approved school building projects using local funds while they wait for state funding under the "main" Classroom Facilities Assistance Program (CFAP) program. Once a district is eligible for CFAP, it may apply this advance expenditure of local resources toward its portion of the cost of its total CFAP project. If a district has spent more than its share of its CFAP project while proceeding under the Expedited Program, the School Facilities Commission must reimburse the district the amount of the over expenditure. Ohio Rev. Code § 3318.36(E)(2) provides that school districts may first deposit reimbursed money into either the district's general fund or a permanent improvement fund to replace local resources the district withdrew from those funds for constructing classroom facilities included in the district's CFAP project. The remaining reimbursement monies must be used to pay debt service on classroom facilities constructed under the Expedited Program. [Ohio Rev. Code § 3318.36(E)(2)]

***Leasing Equipment - Townships***

Ohio Rev. Code § 505.37 and § 505.50 permit a board of township trustees to lease or lease with an option to purchase fire and police protection and emergency police protection, respectively. Ohio Rev. Code § 505.267 and § 5549.021 expand townships' powers, allowing them to lease **or** lease with an option to purchase for any purpose for which it may acquire real or personal property, including machinery, tools, trucks and other equipment used in constructing, maintaining or repairing roads. Please refer to Ohio Compliance Supplement section 2A-6 for a summary of the requirements regarding the leasing of equipment by Townships.

See additional guidance related to debt in OCS Implementation Guide, Appendix C.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Bond Counsel/Lender Involvement<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures – Compliance (Substantive) Tests**
Note: Procedures 1 through 3 apply to all entity types. In addition, procedures 4 through 9 would apply to the entity types listed in the corresponding headings. Testing of requirements related to Township's leasing equipment should be completed in OCS 2A-6.

***All Entity Types***

1. For securities issued during the audit period, inspect the debt legislation and determine under which Rev. Code statute the debt was issued. If that section is not listed in this Ohio Compliance Supplement Chapter, read the specific statute and amend the testing steps to include tests to determine:

    a. The legality of the source of repayment and collateral[43]. (We can normally rely on documents (such as an offering statement) bond counsel or the underwriter prepared describing the source of repayment and collateral, if they were involved with a debt issue. We should inspect their conclusions for reasonableness and summarize in the permanent file.)
        i. Whether the government properly segregated any revenue pledged for debt service or capitalized interest (i.e. interest accruing between the security's issuance date and the date the security was sold) and used that revenue for debt service. This will often require establishing a debt service fund.
        ii. Whether the government used the proceeds for the purposes authorized.

[43] Auditors may consult with CFAE if they encounter complex arrangements associated with the offerings. Such complexities may include interest rate swaps. For Ohio governments, interest-rate swaps normally refer to debt issued at a variable interest rate, which the government (issuer) converts to a fixed interest rate.

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

Swaps and swaptions are derivatives per GASB Statement No. 53 (GASB Cod. D40.103-.109), but they do meet the Ohio Rev. Code 135 derivative definition; therefore Ohio Rev. Code 135 does not prohibit them.

iii. Whether the government made any debt covenants in the debt legislation. Auditors should select material debt covenants for testing annually to ensure ongoing compliance. In addition, if the debt is subject to the filing requirements of the Municipal Securities Rulemaking Board (MSRB), auditors should include Optional Procedures Manual Section O-8 and perform testing accordingly.
iv. If the debt is still outstanding at the end of the audit period, include copies or summaries of the information related to the three bullet points above in the permanent file.
v. If the debt includes features such as floating interest rates or early redemption or call provisions, determine if enabling legislation and the Ohio Rev. Code authorize those features. (For example, Ohio Rev. Code § 133.22(D) describes features BAN can include.)

2. Inspect the county tax settlements and trace revenues to the funds indicated. If amounts from tax levies for bond retirement are being placed into funds other than bond retirement funds, inspect documentation that the government deducted an amount sufficient to pay the debt charges. [Ohio Rev. Code § 5705.10(B)]

3. By reading the government's financial statements or inspecting its ledgers, determine where debt is paid from. If other than bond retirement funds, determine that:

   a. Debt paid from a restricted fund was paid from revenue which could be used for the same purpose for which the debt proceeds were spent [Ohio Rev. Code § 5705.10 or 133.24(D)];

   b. Restrictions, if any, in the debt-authorizing legislation were followed;

   c. Revenue derived from a general levy for current expenses is not used to pay debt charges [Ohio Rev. Code § 5705.05]; or

   d. Monies used to pay debt from the general fund have not been commingled with general fund monies which may not be used for debt payment [1981 Op. Att'y. Gen. No. 81-035].

   ***Note***: Where bond counsel was involved with debt issues we are testing, we can usually rely on documents they have prepared or opined on, as evidence that legislation authorizing the securities complies with statute. However, bond counsel would not "audit" the government's *subsequent* compliance with requirements. For example, we would not expect bond counsel to determine how the government accounted for debt proceeds or whether the proceeds were spent for authorized purposes.

***Board of Trustees for Fire Districts***

4. By reading the minutes, inspecting bond ledgers or other documents, or by inquiry, determine if the fire district used this type of borrowing.

   If so,
   a. trace the bond issuance to the budget;

   b. inspect the resolution authorizing the bond issuance;

   c. determine whether the issuance is in accordance with Ohio Rev. Code Chapter 133 requirements; and

   d. determine whether the proceeds were used to acquire fire-fighting equipment, buildings or sites for the district or for the purpose of constructing or improving a building to house fire equipment.

***Council of Governments***

5. Review the agreement and determine if they are following the requirements;

6. Determine expenditures for the loans are for proper public purposes;

7. Determine if the repayment for the loans is paid from the proper fund.

***Career-Technical Education Compact Qualifying Partnerships***

8. By reading the minutes, inspecting bond ledgers or other documents, or by inquiry, determine if this type of borrowing was used.

   If so,
   a. trace the bond issuance to the respective budget(s);

   b. inspect the resolution(s) authorizing the bond issuance;

   c. determine whether the issuance is in accordance with Ohio Rev. Code Chapter 133 requirements; and

   d. determine whether the proceeds were used to acquire classroom facilities.

***Regional Airport Authority***

9. By reading the minutes, inspecting bond ledgers or other documents, or by inquiry, determine if the Airport Authority used this type of borrowing.

   If so,
   a. inspect the resolution authorizing the bond issuance;

   b. determine whether the proceeds were used to construct, replace, extend, enlarge, maintain, or operate any airport or airport facility;

   c. If secured with a trustee, obtain and evaluate the agreement to determine that it does not convey or mortgage any of the regional airport authority property nor pledge the general credit of the regional airport authority.

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

**1-11 Compliance Requirement**: Ohio Rev. Code §§ 133.10, 133.22, 133.24, and 4582.56(B) & (C) – Bond, Tax and Revenue Anticipation Notes (BAN, TAN and RAN).

**Summary of Requirements:** Per Appendix C-1 in the OCS Implementation Guide, several Ohio Rev. Code sections authorize TAN, RAN or BAN. Short-term TANs or RANs are generally subject to (1) below.[44] Long-term TAN are *generally* subject to (2) below.[44] Significant requirements related to BAN are described at the end of this step.

1) **Short-term** notes anticipating ***current*** revenues, most often current tax levies: A government cannot issue these notes for more than a defined percentage of the current-year's estimated revenue (for example, ½ the current annual estimated revenue from utility charges or grants (Ohio Rev. Code § 133.10(B)), or approximately ½ of the next tax settlement, (Ohio Rev. Code § 133.10(A))). These notes normally mature within six months, or the end of the fiscal year, whichever occurs first. Most Ohio Rev. Code sections authorizing these notes require them to comply with Ohio Rev. Code § 133.10. The remainder of this step refers to these notes as Ohio Rev. Code *§ 133.10 short-term notes*.

2) **Long-term** notes anticipating ***future tax*** revenues, from voted tax levies, usually of a limited life: A government cannot issue these notes for more than the amount the levy will generate over its life, or a portion of its life. These notes mature over the life of the levy or a shorter period Ohio Rev. Code specifies, such as 5 or 10 years. Most Ohio Rev. Code sections authorizing these notes require them to comply with Ohio Rev. Code § 133.24. The remainder of this step refers to these notes as Ohio Rev. Code *§ 133.24 long- term notes*.

**RC 133.10 short-term TAN or RAN**

**TAN:**
TAN must mature no later than the last day of the sixth month after the issue date, and in no case may they mature after the end of the fiscal year. The aggregate amount outstanding cannot exceed ½ of the amount anticipated for the next six months (typically the next settlement minus advances). [Ohio Rev. Code § 133.10(A)]

Ohio Rev. Code § 133.10(A) applies to subdivisions generally, Ohio Rev. Code § 133.10(C) is specifically applicable to counties, municipalities, townships and school districts. If one of these entities issues TANs under Ohio Rev. Code § 133.10(C), these TANs need not mature until the end of the year. (That is, they are not restricted to a six-month maturity.)

Notes a school district issues anticipating a delayed property tax settlement may be for up to 90% of the amount estimated to be received by that settlement (other than taxes to be received for paying debt charges) minus advances, and may mature as late as the August 31 after the June 30 fiscal year end. [Ohio Rev. Code § 133.10(D)]

**RAN:**
The notes issued cannot exceed ½ of the amount of the projected revenues remaining to be received during the fiscal year, minus advances and prior collections, as estimated by the fiscal officer. [Ohio Rev. Code § 133.10(B)]

[44] The references to *long-term* and *short-term* above refer to the legal requirements, not the classification of this debt under GAAP. Auditors should refer to GASB Cod. B50 and GFOA's Annual Comprehensive Financial Report (ACFR) checklist for guidance on GAAP debt classifications.

Notes issued anticipating current revenues in and for any fiscal year from any source or combination of sources, including distributions of any federal or state moneys, other than the proceeds of property taxes shall mature not later than the last day of the fiscal year for which the revenues are anticipated. [Ohio Rev. Code § 133.10(E)(2)]

**All Ohio Rev. Code § 133.10 short-term TAN or RAN**

Pledged revenue (tax or otherwise) collected to retire these notes is considered appropriated for debt charges and financing costs. The government can appropriate this revenue for other purposes only after deducting sufficient amounts to pay debt service. The government must deposit pledged revenue sufficient to pay the debt in an account in a debt service fund. [Ohio Rev. Code § 133.10(E)(1)]

These notes cannot be issued prior to the first day of the fiscal year. [Ohio Rev. Code § 133.10(E)(2)] (The only exception is that a board of education of a school district may issue notes as early as 10 days before the first day of the fiscal year (i.e., by June 21), provided that the proceeds of the notes can neither be spent nor considered available for appropriation prior to the first day of the fiscal year [i.e., July 1]). [Ohio Rev. Code § 133.10(H)]

The government can spend note proceeds only for the purposes for which the related revenue can be spent. [Ohio Rev. Code § 133.10(E)(3)] For example, if a government issues RAN, anticipating Federal grant proceeds, the government can spend the note proceeds only for purposes the Federal grant permits.

**Ohio Rev. Code § 133.24 long- term TAN**

The aggregate amount of principal outstanding may not exceed the anticipated levy proceeds provided in the applicable law by a statement of percentage or by a limitation on the amount of annual maturities. These TAN must mature by December 31 of the year authorized by statute, or by December 31 of the last year of the levy, whichever is earlier. [Ohio Rev. Code § 133.24(B)] Therefore, the duration of these notes should match the levy's life. (Unless another Ohio Revised Code section specifies a shorter period. See the Appendix C-1 in the OCS Implementation Guide for examples.) The estimated annual debt service should approximate the annual levy proceeds.

Debt service is payable only from the levy proceeds. (Except the government should use capitalized interest collected with the debt proceeds to pay capitalized interest due with the first debt service payment.) The levy proceeds are deemed appropriated for debt service, and must be deposited into an account in the debt service fund. (The interest payable from capitalized interest should be paid with capitalized interest.) [Ohio Rev. Code § 133.24(D)]

> --Any amount so deposited and not needed for the purpose in the particular fiscal year may, without compliance with any other law or approval by any other agency, be transferred to the special fund established for the proceeds of the tax levy [Ohio Rev. Code § 133.24(D)] (such as a capital projects fund, if the tax was levied for both debt service and for a specific capital project.)

**Requirements applicable to BAN**

Per Ohio Rev. Code § 133.22, the legislative body must pass legislation authorizing:

- The purpose for (eventually) issuing the bonds (which is limited to one purpose) [(A)(1)(a)]
- The maximum amount of BAN, which cannot exceed the bond amount [(A)(2)(a)]
- The maximum maturity, which cannot exceed (C). (See Ohio Rev. Code § 133.22(C) below).
- If the bonds are eventually payable from a property tax, the legislation provides for the levy of property taxes while the BAN are outstanding;

(***Note***: We can normally rely on bond counsel for assuring compliance with the following provisions. This requirement is listed as background information for you.) Per Ohio Rev. Code § 133.22(C), BAN issued with a latest maturity of less than two hundred forty months may be renewed for up to two-hundred-forty months.

- Per (C)(2), five years after issuing the original BAN, a portion of the principal shall be paid annually, in amounts at least equal to, and payable not later than the payment dates of, the principal that would have been paid if the government issued bonds at the expiration of the initial five-year period.
- Per (C)(3), the latest maturity of BAN may not exceed the maximum maturity of the bonds anticipated plus five years. (Bond maturities can range from 5 to 50 years, per Ohio Rev. Code § 133.20.)
- ***Note***: There are exceptions to these general rules, but they are too complex to summarize here. (Refer to Ohio Rev. Code § 133.22(C) for exceptions.)

(These features are listed for your information.) Per Ohio Rev. Code § 133.22(D), BAN may include the following features:

- Put options [(D)(6)]
- Issue commercial paper in lieu of BAN [(D)(7)]
- Floating interest rates [(D)(8)]
- Interest rate swaps [(D)(9)(b)]

**Lake Erie Shoreline Improvements**

The board of county commissioners pledges all revenue from levies of an excise tax to Port authorities who are part of the Lakeshore Improvement project[45]. The revenue must be used to fund or pay debt charges related to the construction of port authority facilities under an agreement between the county and port authority. [Ohio Rev. Code § 4582.56(B)]

- The port authority may issue special obligation bonds, and notes anticipating the proceeds of the bonds (BAN). [Ohio Rev. Code § 4582.56(C)]

[45] A *Lakeshore improvement project* includes constructing ("Construction" includes acquisition, alteration, construction, creation, development enlargement, equipment, improvement, installation, reconstruction, remodeling, renovation, or any combination thereof) a port authority facility within one mile of the Lake Erie shoreline in a County whose territory includes a part of the Lake Erie shoreline at least fifty percent of the linear length of the county's border with other counties. [Ohio Rev. Code § 4582.56(A)]

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Bond Counsel/Lender Involvement<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. For notes issued during the audit period, inspect the debt legislation and determine under which Rev. Code statute the debt was issued. If that section is not listed in this Ohio Compliance Supplement Chapter (including Appendix C-1 of the OCS Implementation Guide), read the specific statute and amend the testing steps to include tests for the 5 debt requirements below. If a note is outstanding at the end of the audit period, include copies or a summary of documentation addressing the 5 compliance tests below in the permanent file.

2. Determine whether:
   ***Note***: For Lake Erie Shoreline Improvements only steps d through f ~~and e~~ apply.

   a. Note proceeds did not exceed Ohio Rev. Code limits, typically limited by the related revenue estimate (RAN or TAN) or bond proceed (BAN) estimates. (We can normally rely on the work of bond counsel or the underwriter, if they were involved with a debt issue. We should inspect their conclusions for reasonableness and summarize for the permanent file.)

   b. Notes did not exceed limitations on the time to maturity. (*Usually*, notes issued for operating expenses must mature in one year. Notes used for capital improvements have longer maturities. BAN can mature up to the life of the eventual bonds.) (We can normally rely on the work of bond counsel or the underwriter, if they were involved with a debt issue. We should inspect their conclusions for reasonableness and summarize for the permanent file.)

   c. The government repaid the debt with the pledged or other legal revenue (RAN and TAN), or refinanced BAN according to the BAN legislation.

   d. The government properly segregated any revenue pledged for debt service and used that revenue for debt service.

   e. The government used the note proceeds for the purposes authorized.

f. Identify material debt covenants by reviewing the debt documents, official statement and opinions of bond counsel. Annually test material covenants to ensure ongoing compliance throughout the life of the outstanding debt.

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

**1-12 Compliance Requirement:** Ohio Rev. Code § 3375.404 - Additional borrowing authority for **boards of library trustees**.

**Summary of Requirements:** Ohio Rev. Code § 3375.404 allows a board of library trustees of a public library that either receives an allocation of the library fund, or, levies a property tax under Ohio Rev. Code § 5705.23 to anticipate its portion of the proceeds of the library fund distribution or the property tax and issue library fund facilities notes to pay the costs of financing the facilities (or certain other property), or to refund any refunding obligations.

A library board may issue such notes only if it projects that the annual note service charges (including interest, repayment of principal, and redemption premiums) are capable of being paid from the library's annual Library and Local Government Support Fund (LLGSF) (also known as: "public library funds") receipts or the property tax receipts.

The maximum annual debt service for these notes cannot exceed:

1. 40% of the average LLGSF funding (public library funds) the library received for the two years preceding the year the notes were issued
2. The portion of the lawfully available proceeds from the property tax levied under Ohio Rev. Code § 5705.23 that the board has, in the authorizing proceedings, covenanted to appropriate annually for the purpose of paying note service charges.

The notes are payable from the LLGSF monies (public library funds) or the property tax receipts received by the library board issuing the notes, or from the proceeds of notes, refunding notes, or renewal anticipation notes which may be pledged for such payment in the authorizing resolution. The notes are payable solely from the funds pledged for their payment as authorized by Ohio Rev. Code § 3375.404 and all notes must contain on their face a statement to that effect.

The maximum maturity, in the case of any anticipation notes, cannot exceed 10 years from the date of issue of the *original* anticipation notes.

For *refunding* notes or any notes that are not anticipation notes, the maximum maturity cannot exceed 40 years from the date of the original issue of notes.

See additional guidance related to debt in OCS Implementation Guide, Appendix C.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Bond Counsel/Lender Involvement<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. By reading the minutes, inspecting bond ledgers or other documents, or by inquiry, determine if the library used this type of borrowing.

2. Calculate, or inspect the library's calculations, that the maximum annual note debt service charges does not exceed 40% of the average LLGSF funding (public library funds) for the two years preceding the year in which the notes are issued. (This step should only apply in the year notes were issued.)

3. Inspect the notes for the statement that the notes are payable solely from the resources pledged for their payment as authorized by Ohio Rev. Code § 3375.404. In other words, ensure the debt service funds were allocated to the appropriate fund(s) based on the legal authority to retire the debt.

4. Inspect the notes for the maximum maturities of 10/40 years.

5. Identify material debt covenants by reviewing the debt documents, official statement and opinions of bond counsel. Annually test material covenants to ensure ongoing compliance throughout the life of the outstanding debt.

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

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**1-13 Compliance Requirement**: Ohio Rev. Code §§ 133.29, 135.14, 135.35, 731.56-.58, 1995 Op. Att'y. Gen. No. 55-5263, and 1985 Op. Att'y. Gen. No. 85-072 - Governments investing in their own securities.

***Note***: Entities must have the legal authority to ***both buy and sell*** the debt. Ohio Rev. Code § 133.29 authorizes entities to invest in their own securities; however, there must be a separate, specific authority to issue the debt before the Bond Retirement or other authorized Fund may purchase it.

**Summary of Requirement**:

**Manuscript and Treasury Debt in General**

Before a taxing authority sells any securities of the subdivision to others, the taxing authority may offer the securities at their purchase price and accrued interest to the subdivision. The securities may be offered to the officer or officers who have charge of the bond retirement fund of the subdivision, or in the case of a municipal corporation, to the treasury investment board, or an officer or similar treasury investment board having the authority under a charter. (Ohio Rev. Code § 133.29) Ohio Rev. Code § 133.01(NN) defines a "taxing authority" to include a county's board of county commissioners, a municipal corporation's legislative authority, a school district's board of education, and a township's board of township trustees, among others defined in the Code.

This type of debt is often referred to as "manuscript debt" or "treasury debt." Manuscript or treasury debt can be outstanding for five years, unless it is matched to a specific obligation or debt of the subdivision (such as obligations of the debt retirement fund). [Ohio Rev. Code § 135.14(D)]

Any securities sold under this section shall bear interest at a rate(s) that is a fair market rate(s) for such securities at the time of the sale, and a certificate of the fiscal officer that the interest rate(s) borne by the securities is the fair market rate(s) is binding as to the statements set forth. [Ohio Rev. Code § 133.29(B)]

Interest earned on the principal of any special fund, regardless of the source or purpose of the principal, is revenue derived from a source other than the general property tax for which the law does not prescribe use for a particular purpose and shall be paid into the general fund. [1985 Op. Att'y. Gen. No. 85-072]

In addition to a taxing authority's ability to direct the bond retirement fund of the subdivision to purchase its securities, certain taxing authorities have additional options for purchasing manuscript or treasury debt.

**County**

A County shall invest its "inactive moneys" in bonds or other obligations of the County. (Ohio Rev. Code § 135.35(A)(4)) Ohio Rev. Code § 135.31 defines a county's "inactive moneys" as all public moneys in public depositories in excess of the amount determined to be needed as active moneys (which are the amount of public moneys in public depositories determined to be necessary to meet current demands upon a county treasury, and deposited in a commercial or money market account). There is no limit on what fund the inactive moneys must be drawn from, so there is more flexibility for purchasing manuscript or treasury debt.

**Other Political Subdivisions in General**

All other political subdivision investments are addressed in Ohio Rev. Code § 135.14. The statute permits a political subdivision to invest "interim moneys" in a series of investment categories. "Interim moneys" are defined in Ohio Rev. Code § 135.01(F) as public moneys in the treasury of ~~the state or~~ any subdivision after the award of inactive deposits has been made in accordance with Ohio Rev. Code § 135.07, which moneys are in excess of the aggregate amount of the inactive deposits (a public deposit other than an interim deposit or an active deposit) as estimated by the governing board prior to the period of designation and which the treasurer or governing board finds should not be deposited as active or inactive deposits for the reason that such moneys will not be needed for immediate use but will be needed before the end of the depository period of designation. The depository period of designation is the period of time during which the governing board has designated a public depository for public moneys of the subdivision, a designation that must be made once every five years. (Ohio Rev. Code § 135.12(B)) An "active deposit" is defined as a public deposit necessary to meet current demands on the treasury.

**Municipal Corporation (City and Village)**

In addition to the bond retirement fund options provided in Ohio Rev. Code § 133.29, a municipal corporation (city or village) may invest moneys in the treasury that will not be required to be used for a period of six months or more in the obligations of the municipal corporation (Ohio Rev. Code § 731.56). For the purposes of this section, any "interim moneys" or "inactive deposits" that will not be needed within six months may be invested. Similar to the rules for a County, there is no prescription as to which fund the "interim moneys" or "inactive deposits" must be drawn from.

Ohio Rev. Code §§ 731.57 and 731.58 add some extra qualifiers for manuscript or treasury debt investments. Before the investment is made, the auditor or chief fiscal officer must certify to the mayor or village solicitor/law director the probable requirements of money for the use of the municipal corporation for the next six months. The mayor or village solicitor/law director may then order the investments. It is not necessary to advertise bonds to make such an investment.

When a municipal corporation acts to convert such investments into cash, the obligations must first be offered to the sinking fund commission. If the sinking fund commission does not purchase the investments, they may then be sold in any manner authorized by law for the sale of investments by the sinking fund.

For as long as the treasury maintains these investments, they are held in a "treasury investment account". The chief accounting officer of the municipal corporation will enter all transactions relating to the investment of treasury funds in security obligations of the municipal corporation. When securities or interest coupons are due, the accounting officer shall collect them in the same manner as other receipts are collected.

**Charter Municipal Corporations**

If a municipal corporation has adopted a charter, it may adopt its own set of investment principles that may be different from those expressed in the Ohio Revised Code. Ohio Rev. Code § 133.29 authorizes a municipal corporation that has a charter to authorize a treasury investment account that would operate in the same way as a municipal corporation treasury investment account under Ohio Rev. Code § 731.56. Beyond this provision, a municipal corporation may adopt a charter that addresses its ability to invest in manuscript or treasury debt as long as it does not conflict with general laws. [Ohio Const. Art. XVIII, Section 3]

**School Districts**

School districts do not have any options for manuscript or treasury debt beyond using moneys in the bond retirement fund as discussed in Ohio Rev. Code § 133.29, 1955 Op. Att'y. Gen. No. 55-5263. Such a transaction will be considered an investment of the sinking fund or bond retirement fund, and interest will be deposited and reinvested just like other investments of the sinking fund or bond retirement fund.

**Townships**

Townships do not have any options for manuscript or treasury debt beyond using moneys in the bond retirement fund as discussed in Ohio Rev. Code § 133.29.

***Accounting for Manuscript Debt***

There are two methods for recording manuscript debt in the accounting records:

*Investment Method*
Record proceeds from the sale of notes in the borrowing fund (often the general fund or project fund). Then record the amount received from the Bond Retirement Fund (or other authorized fund in the case of municipal corporations) as an investment on the investment record. Do not decrease the Bond Retirement or other authorized fund's balance. When preparing the bank reconciliation, outstanding securities should be included as an investment.

The county auditor, having been properly notified of the debt service requirements, should allocate property taxes on the tax settlement among the proper funds. The amount payable to the Bond Retirement or other authorized fund is the amount necessary to repay the principal plus interest on the outstanding securities. Debt service principal and interest, should be recorded in the Bond Retirement or other authorized fund. Upon payment of principal, a corresponding reduction of the investment should be recorded on the investment record.

*Advance/Interfund Method*
Record an advance-in in the debtor (borrowing) fund and a corresponding advance-out of the creditor (loaning) fund. Also, governments reporting under GAAP should record an interfund asset and offsetting interfund liability for both modified and full accrual bases. If the borrowing is between a governmental activity and a business type activity, the entity wide statements should also report this as an internal balance (GASB Cod. 1300.122 and 1800.102(a)).

GAAP Governments must use the Advance/Interfund method for financial statement reporting (GASB Cod. I50.701-4). This means that if a GAAP entity uses the Investment Method for their accounting records, they must convert the transactions to the Advance/Interfund Method during the GAAP conversion.

GAAP, Cash, and OCBOA basis governments should disclose the fund liabilities, including interest rates and repayment schedules, in their notes under either accounting method.

See additional guidance related to debt & manuscript debt in OCS Implementation Guide, Appendices C & A-1.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Bond Counsel/Lender Involvement<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Determine whether the entity issued manuscript debt during the audit period or has any manuscript debt outstanding as of fiscal year end.

2. If so, review the governing body's ordinance or resolution approving the issuance and determine the legal authority under which such debt/investment was issued. If applicable, we may rely on an opinion from bond counsel to verify the entity's legal authority for issuing such debt. A copy of the ordinance or resolution and bond counsel opinion should be placed in the permanent file.

3. Determine the issuance date[46] of the debt/investment and review the entity's debt/investment schedules to determine whether the principal matured within five years.

4. Review the entity's debt/investment schedules and determine whether the entity has charged interest at the proper rate and amount in the Bond Retirement or other authorized fund.

5. ***For all entities other than municipal corporations***, determine whether the amount of manuscript debt issued was limited to the available resources in the bond retirement fund.

6. ***For counties and municipal corporations***, determine whether the amount of manuscript debt issued was limited to the available resources in the general treasury or other authorized fund.

7. Scan the entity's debt schedules, investment records, monthly bank reconciliations, and annual financial statements to determine whether the entity has properly accounted for all manuscript debt transactions (i.e., note proceeds, property tax and interest receipt allocations, debt service payments on principal and interest, and outstanding debt and investment amounts).

[46] Issuance date isn't always the sale date. If the "Obligation's Closing Date" is the actual date of the issuance, this should be recorded as the issuance date.

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

**1-14 Compliance Requirements:** Ohio Admin. Code 117-2-03(B) and 126:3-1-01(A)(2)(a) and Ohio Rev. Code §§ 117.38, 167.04, 991.06, 1724.05 and 1726.11, and AOS Bulletin 2015-007 - Annual financial reporting.

**Summary of Requirements**:

The Auditor of State prescribes and requires by rules, that certain public offices prepare and file annual financial reports in accordance with generally accepted accounting principles. Certain public offices may also be required by statute, rule, or agreement to prepare and file performance or other special purpose reports. [47]

***Note*:** The Auditor of State (AOS) requires the use of the Hinkle Annual Financial Data Reporting System (Hinkle System), an internet-based application that allows certain financial statement, debt, and demographic data to be entered, uploaded and transmitted to the AOS to satisfy the filing requirements prescribed by the Ohio Revised Code (ORC) and the Ohio Administrative Code (OAC), for all entities that are statutorily mandated to file financial reports. Each entity shall file its financial report annually via the Hinkle System, and it is the expectation of AOS that each entity will only submit the filing once by the statutory due date (or approved extension date.) Prior to submitting the filing, the entity should complete all reviews, verify the correct basis of accounting has been selected, and view the uploaded file to ensure it is the correct and complete file. Refer to the AOS website at https://ohioauditor.gov/financialreporting/default.html and AOS Bulletin 2015-007 for additional information. Additionally, auditors should perform a GASB Codification 2600 analysis for entities not mentioned in AOS Bulletin 2015-007 to determine whether they may be legally separate for financial reporting purposes. This analysis should be documented in the entity's permanent file.

Ohio Rev. Code § 991.06 requires The Ohio Exposition Commission to file annual financial reports with the Auditor of State no later than September 30th of each year.

***Generally Accepted Accounting Principles (GAAP) Basis Entities***
Ohio Admin. Code 117-2-03(B) requires counties, cities, school districts, educational service centers, community schools, and government insurance pools to report annually (but not necessarily account) on a GAAP basis.

Ohio Rev. Code §§ 1724.05 and 1726.11 require community improvement corporations, including economic development corporations and county land reutilization corporations, and development corporations established under Ohio Rev. Code Chapter 1724 and 1726, respectively, and colleges and universities pursuant to Ohio Rev. Code § 3345.72 and Ohio Admin. Code 126:3-1-01(A)(2)(a) to report annually [but not necessarily account] on a GAAP basis.

Per Ohio Rev. Code § 117.38, entities filing on a GAAP-basis must file annual reports within 150 days of their fiscal year end (except Ohio Rev. Code §§ 1724.05 and 1726.11 require community improvement corporations and development corporations to file within 120 days of their fiscal year end). Colleges and universities must file by October 31st per Ohio Admin. Code 126:3-1-01(A)(2)(a). [48]

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[47] Ohio Admin. Code 117-10-01(B) requires county and independent agricultural societies to record and report all financial transactions in accordance with Appendix A of the Auditor of State manual, "Uniform System of Accounting for Agricultural Societies." This Manual is available at www.ohioauditor.gov, under *Resources/Publications*.

[48] We will cite noncompliance if a "GAAP mandated public office" files special purpose framework (OCBOA) - cash, modified cash or regulatory cash financial statements. When citing, follow the appropriate example from the standardized comments found on the AOS Intranet.

Per AOS Bulletin 2015-007, annual reports filed with AOS must be ***complete*** to avoid the application of a penalty of $25 per day ($750 maximum) permissible under Ohio Rev. Code § 117.38. To be ***complete***, GAAP entities must submit the basic financial statements, including the government-wide financial statements, fund financial statements, notes to the basic financial statements, Management's Discussion & Analysis, and any other required supplementary information to be considered a complete filing.[49]

***Cash Basis Entities***
Per Ohio Rev. Code § 117.38, entities filing on a cash-basis[50] must file annual reports with the Auditor of State within 60 days of the fiscal year-end. The Auditor of State may prescribe by rule or guidelines the forms for these reports. However, if the Auditor of State has not prescribed a reporting form, the public office[51] shall submit its report on the form used by the public office. Any public office not filing the report by the required date shall pay a penalty of $25 for each day the report remains unfiled, not to exceed $750.[49] The AOS may waive these penalties, upon the filing of the past due financial report.

The report shall contain the amount of: (A) receipts, and amounts due from each source; (B) expenditures for each purpose; (C) income of any public service industry the entity owns or operates, as well as the costs of ownership or operation; and (D) **public debt** of each taxing district, the purpose of the debt, and how the debt will be repaid. ***Note***: Using AOS shell reports will meet this requirement[52].

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[49] Failing to file an annual report could be a symptom of an inadequate accounting system, inadequate training of personnel in understanding the accounting and reporting process, unposted or unreconciled records or other significant issues affecting the control environment, or which may even pose fraud risks. It may also result in the entity being declared "unauditable" by the Auditor of State. This also applies for OCBOA cash, OCBOA modified cash and regulatory cash basis financial statements.

[50] Cash basis includes special purpose framework (OCBOA)-cash, OCBOA modified cash and regulatory cash basis.

[51] Ohio Rev. Code § 117.01(D) states in part that, as used in Ohio Rev. Code Chapter 117, "*Public office* means any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." 1989 Op. Att'y. Gen. No. 89-055 indicates the Auditor of State has discretion to interpret and apply the definition of "public office" used in Ohio Rev. Code § 117.01(D). The Auditor of State has therefore determined that community schools qualify as public offices as defined under this section.

[52] For OCBOA-cash or OCBOA-modified cash basis, to be ***complete***, the applicable basic financial statements must include the government-wide financial statements, fund financial statements, notes to the basic financial statements, and Management's Discussion & Analysis (optional). For AOS Regulatory cash basis to be ***complete***, the applicable basic financial statements include statement(s) or combined statement(s) of receipts, disbursements and changes in fund balance – governmental, proprietary and fiduciary, as applicable and notes to the basic financial statements.

***Note:*** We normally would not deem a late filing to constitute "direct and material" noncompliance on the determination of financial statement amounts (i.e. the auditor would normally not report a late filing citation in the GAGAS compliance report, however the auditor should issue a management letter comment for late filings.) Failing to include the Management's Discussion & Analysis when filing would not be considered a lack of controls over financial reporting or materially impact the financial statements; therefore would be reported in the management letter.

Material noncompliance would exist if:

- An entity subject to GAAP did not follow GAAP in its annual report.
- An entity's filing was significantly incomplete (see discussion of complete in the *GAAP Basis Entities* and *Cash Basis Entities* sections above).For additional information, refer to AOS Bulletin 2015-007.
- The filing was significantly misstated.

***Councils of Governments***

Ohio Rev. Code § 167.04(D) requires the officers of a council of governments to notify the Auditor of State of the regional council's formation, provide a copy of the council's by-laws, and provide on a form prescribed by the auditor of state any other information regarding the regional council that the Auditor of State considers necessary. The council shall take no official action, other than formation, before notifying the Auditor of State of its formation in accordance with this section. Any official action the council takes before making such notification, including entering into any contract, is void.

| **In determining how the government ensures compliance, consider the following:** | **What control procedures address the compliance requirement?** | **W/P Ref.** |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Presence of an Effective Accounting System<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Confirm whether the report was filed timely.

   ***Note***: The Hinkle System tracker and/or GPInfoSearch include due dates and filing dates. Auditors should check the tracker to determine compliance with due dates. If an entity's report was not filed by

the required due date or by an approved extension date, a management letter comment should be issued.[53]

2. Auditors should inspect the filed report (AOS auditors can obtain this report through the Hinkle System tracker and/or GPInfoSearch. GPInfoSearch information is available to contracted IPA firms for their clients via logging into the IPA Portal.)

3. Trace selected totals from the filed report to the underlying accounting system. *(If we use the filed report as a trial balance, AOS auditors will satisfy this requirement by completing the mandatory Trial Balance steps from the financial audit program.)* If the report is significantly deficient, we should cite Ohio Rev. Code §§ 117.38, 1724.05, 1726.11, or Ohio Admin. Code 126:3-1-01(A)(2)(a), as appropriate, for filing an incomplete or misleading report.[54]

4. Determine whether the filed report includes the financial statements, notes to the financial statements, and required supplementary information (if applicable) (i.e. determine if the filing was substantially ***complete*** as described above.

5. The AOS (and any independent public accounting (IPA) firms contracted to perform audits for the AOS) will audit the financial statements uploaded and submitted to the AOS via the Hinkle System. A re-filing should only occur in situations where the original filing was incomplete, the basis of accounting identified in the filing is inconsistent with the financial statements and/or notes to the financial statements filed, or the financial statements were either unauditable or for a different reporting year. Modifications to the financial statements, such as an inclusion/modification of a note disclosure or correction of an error that was noted during the audit, are **not** reasons for re-filing. Errors identified should be considered during the audit, and any adjustments should be reflected in the financial statements in the audit report. Re-filing the financial statements does not eliminate the auditor's responsibility for consideration of errors noted. Auditors should not request an entity to re-file without first contacting the Hinkle System administrator (HinkleSystem@ohioauditor.gov) to determine if the re-filing is appropriate. If a public office is required to refile financial statements due to an incomplete filing, the filing date and accounting basis of the re-filed annual financial report will then become the basis for determining compliance with the filing requirements[55]. Failure to file via the Hinkle System may result in the AOS declaring the public office "unauditable."

   Ohio Rev. Code § 117.41 enables the AOS to declare a public office to be "unauditable" when its accounts, records, files or reports have been improperly maintained and, as such, are insufficient to allow the audit to be performed.

6. If the government is not mandated to follow GAAP and presents AOS Regulatory cash basis ("AOS basis") financial statements (rather than OCBOA cash or OCBOA modified cash financial statements ("GAAP look-alike")):

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[53] Auditor judgment may be required to determine if a non-compliance citation should be issued, considering whether the client made a good-faith effort to file by the statutory or extended due date.

[54] Auditors should evaluate and document, using professional judgment, whether the financial statements are significantly deficient requiring a citation and, if cited, the level of that citation (report, management letter, verbal). AOS auditors should evaluate the necessity of a control deficiency using guidance from AU-C 265 and AOSAM 38100 AOS specific guidelines.

[55] Auditors should use professional judgement when determining whether to report noncompliance with timely filing if the public office or other entity required to file originally submitted timely but had to refile in order for the AOS/IPA firm to audit the financial statements submitted via the Hinkle System.

a. Follow AU-C 800.22 which applies when regulatory cash basis statements are available for general use (local government statements we or IPAs audit are available for general use). AU-C 800.22 requires issuing a dual opinion:
   i. An adverse opinion on conformance with GAAP.
   ii. A second opinion on the regulatory cash basis.

7. If a GAAP-mandated government does not follow GAAP or present OCBOA cash or OCBOA modified cash ("GAAP look alike") basis financial statements but presents regulatory cash basis ("AOS Basis") financial statements:
   a. Issue adverse opinion on conformance with GAAP.
      i. These governments do not qualify for the "dual opinion."
   b. Issue GAGAS noncompliance finding.

8. If a GAAP-mandated government presents their financial statements using OCBOA cash or OCBOA modified cash basis ("GAAP look-alike"):
   a. Follow AU-C 800.A31 which requires auditors to include an emphasis of matter paragraph following the opinion paragraph alerting the users of the auditor's report that the financial statements are prepared in accordance with a special purpose framework (OCBOA) basis of accounting and the basis of accounting is other than GAAP.
   b. Issue GAGAS noncompliance finding.

***Councils of Governments (COG)***

9. For any new COG established, review the Auditor of State's listing of registered COGs (https://ohioauditor.gov/local/cog/CogListing.aspx) and determine if the COG has completed the registration process with the Auditor of State as required.

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

**1-15 Compliance Requirements**: Ohio Rev. Code §§ 1702.57, 1724.05, 1724.06, 1726.11, and 1726.12 - GAAP and annual financial reporting for community improvement corporations (CICs)[56] and development corporations (DCs).[57]

**Summary of Requirements**: Annual Reporting

The Auditor of State prescribes and requires by rules, that certain public offices prepare and file annual financial reports in accordance with generally accepted accounting principles. Certain public offices may also be required by statute, rule, or agreement to prepare and file performance or other special purpose reports.

Corporations must submit (unaudited) annual GAAP financial reports to the Auditor of State. The corporation must file the annual report within 120 days of fiscal year end.[58] The Ohio Revised Code does not prescribe a fiscal year end for these corporations.

**Failure to Report/Present Auditable Records** (Ohio Rev. Code § 1724.06- CICs and § 1726.12- DCs)

Additionally, the Auditor of State must certify corporations to the Secretary of State in the following three circumstances:

- When a CIC/DC files its annual report more than 90 days delinquent (i.e., does not file its annual GAAP financial statement report within 210 days of its fiscal year end).
- When a CIC/DC does not present auditable records within 90 days of a determination by the Auditor of State that a corporation is unauditable.
- When a DC has failed to begin business for a period of three years from the effective date of the filing of its articles of incorporation.

Late filing notifications to the Secretary of State will be prepared by the Hinkle System Coordinator for approval by the Chief Deputy Auditor after determining the region has communicated with the CIC/DC, and the regional chief auditor will prepare the unauditable declaration for approval by the Chief Deputy Auditor, if applicable.

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[56] Being non-profit under chapter 1702 is not enough to be a CIC. To be a CIC requiring an AOS audit, the entity must be incorporated under both chapter 1702 & 1724. (A Development Corp. would only be incorporated under chapter 1726.) Read the articles and see if they refer to chapters 1724 or 1726. Merely titling an entity as an "improvement" or "development" corporation is not sufficient. The articles of incorporation must support that the entity falls under chapter 1724 or 1726.

[57] Development corporations organized under Ohio Rev. Code Chapter 1726 are stock-issuing entities.

[58] CICs or DCs that do not file GAAP statements and notes (and required supplementary information, if any) within 210 days of its fiscal year end are ***not*** subject to AOS penalties prescribed in Ohio Rev. Code § 117.38. "A community improvement corporation is, in essence, a private non-profit corporation which is bound by the general terms of Ohio Rev. Code Chapter 1702 (non-profit corporations). A privately organized entity that performs a public purpose occupies a status no different from that of countless other non-profit corporations, the private nature of which is indisputable. Nor is a community improvement corporation possessed of powers derived from statute. Although Ohio Rev. Code § 1724.02 provides that a community improvement corporation shall possess certain powers enumerated therein, the ultimate source of its power is not Ohio Rev. Code § 1724.02, but its articles of incorporation and code of regulations." [1979 Op. Att'y. Gen. No. 79-061] Also, auditors should take note that CIC and DC are subject to a 120-day filing requirement rather than the 150-day requirement applicable to other GAAP entities.)

Upon certification, the Secretary of State is to cancel the Corporation's articles of incorporation until the deficiency is remedied.

**Secretary of State Requirements (SoS)**

The Secretary of State of Ohio maintains a database (SoS Database) which details the status of all corporations with respect to Ohio Rev. Code § 1702.57, which states in part "No person shall exercise or attempt to exercise any rights, privileges, immunities, powers, franchises, or authority under the articles of a domestic corporation after such articles have been canceled or after such corporation has been dissolved or after the period of existence of the corporation specified in its articles has expired."

Those statuses are:

- Active – The Corporation is allowed to legally function.
- Dead – The corporation cannot legally function because the corporation has taken action to dissolve
- Cancelled – The corporation cannot legally function because the SoS has taken action to dissolve the corporation (as the result of inactivity by the corporation)
- Held – The Corporation cannot legally function under this status but the SoS has placed a hold on the corporation's name for one year (in case they want to reinstate) before moving the status to ***cancelled***.

| **In determining how the government ensures compliance, consider the following:** | **What control procedures address the compliance requirement?** | **W/P Ref.** |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Presence of an Effective Accounting System<br>• Legislative and Management Monitoring | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. If testing in OCS 1-14 indicates the corporation's report has NOT been filed, notify the corporation immediately of the requirement to file (per AOS Bulletin 2015-007, the financial statements filed via the Hinkle System must be audited.) After notification, if the corporation does not file:

    a. The regional chief auditor will consult with the Chief Deputy Auditor. The Chief Deputy Auditor will determine whether to request the Legal Division to issue a subpoena for the accounting records and/or declare the corporation unauditable. (***Note***: IPA firms should contact the regional chief auditor regarding these issues.)

    b. If a corporation does not file its annual GAAP financial statement report via the Hinkle System within 210 days of its reporting year end, or does not present auditable records within 90 days of the Auditor of State's determination of unauditability, the AOS must notify the Secretary of State's Office.[59]

[59] Refer to the process for "Referrals to Ohio Secretary of State" as described in the OCS Implementation Guide.

2. If a corporation is operating and has created financial statements and filed them with the AOS via the Hinkle system, but are not in "Active" status auditors should:

   a. Continue to audit the entity (inactive status does not mean the entity is not subject to audit);

   b. Consider whether the situation constitutes an illegal operation which will likely be considered to be non-compliance with Ohio Rev. Code § 1702.57;

   c. If this should be referred to the Secretary of State, contact the Regional Chief Auditor.[59]

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

**1-16 Compliance Requirement**: Ohio Rev. Code §§ 9.833, 305.172, and 5705.13 - Health Care Self Insurance[60] [61]

**Summary of Requirement**: Ohio Rev. Code § 9.833 requires individual, self-insured governments (or county board of developmental disabilities) or joint self-insured health-care programs to calculate (i.e., reserve[62]) amounts required to cover health care benefit liabilities. (Health care insurance includes, but is not limited to health care, prescription drugs, dental care and vision care.) It also requires programs to prepare a report, reflecting those reserves (i.e., liabilities) and the aggregate of disbursements made to pay self-insured claims, legal and consultant costs during the preceding fiscal year. Programs must prepare (i.e. obtain) and maintain a financial statement and a report of amounts reserved for the program and disbursements made from such funds. The program administrator must provide the report to the Auditor of State.[63] The program must include a contract with a certified public accountant and a member of the American Academy of Actuaries for the preparation of the written evaluations described in this paragraph. [See AOS Bulletin 2011-008]

The provisions regarding the self-insurance programs do not apply to an individual self-insurance program created solely by municipal corporations. For this purpose, ***municipal corporation*** means all municipal corporations, including those that have adopted a charter under the Ohio Constitution.

An actuary must certify that the amounts reserved are fairly stated in accordance with sound loss reserving principles. The actuary must be a member of the American Academy of Actuaries.

Individual governments subject to this requirement must establish a special fund[64] to account for this activity.

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[60] Ohio Rev. Code § 9.833(D) also permits subdivisions or county boards of developmental disabilities to procure group life insurance for its employees in conjunction with an individual or joint self-insurance program. However, neither a government nor a pool can self-insure for life insurance. (That is, a government must purchase life policies from commercial insurers.)

[61] Ohio Rev. Code §§ 305.172 and 9.833(B)(2), permit political subdivisions and boards of county commissioners that provide health care benefits for their officers or employees to establish and maintain an individual health savings account program as part of their self-insurance program. These accounts must be maintained in accordance with section 223 of the Internal Revenue Code [26 U.S.C. § 223]. Public moneys may be used to pay for or fund federally qualified high deductible health plans that are linked to health savings accounts or to make contributions to health savings accounts. Auditors should not audit compliance with Internal Revenue Code regulations governing health care savings accounts. Rather, be aware that such accounts may be included in self-insurance activity accounted for in the internal service or other appropriate fund as permitted by statute.

[62] "Reserve" in this context means liabilities measured in accordance with accepted actuarial principles.

[63] This is presumed to be satisfied through submission on the Hinkle system.

[64] Ohio Rev. Code § 9.833(C)(1) requires political subdivisions that offer self-insurance programs to reserve enough money, under actuarial principles, to cover the potential cost of health care benefits for the officers and employees of the political subdivision. Ohio Rev. Code § 9.833(C)(2) requires the moneys necessary for the self-insurance program to be placed in a special fund. Alternatively, Ohio Rev. Code § 5705.13(A)(2) permits "taxing authorities" of "subdivisions" to accumulate currently available resources in a reserve balance account in the general fund or in an internal service fund to provide for the payment of claims and deductibles. ~~Ohio Rev. Code § 9.833(C)(2) indicates political subdivisions shall establish a "special" fund to account for this activity.~~ GASB Cod. C50.126 through C50.131 (GASB Statement No. 66) permits the use of governmental funds or internal service funds for this purpose. See GASB Cod. C50.715-2 for further guidance. ~~Note: The law requires the use of a "special" fund. We interpret this to mean either a special revenue fund or internal service fund. Additionally,~~ Under GASB requirements, regardless of the legal accounting requirements, it would be permissible to combine this fund with the general fund for financial statement reporting purposes.

Per Ohio Rev. Code § 9.833(E), some of the aforementioned requirements do not apply to municipalities. ***Note***: Auditors should refer to AOS Bulletin 2011-008 for additional guidance and/or see table at https://ohioauditor.gov/ocs/2023/Self_Insurance_Table_2022-11.xlsx.

| **In determining how the government ensures compliance, consider the following:** | **What control procedures address the compliance requirement?** | **W/P Ref.** |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**
*Questions are organized according to the Self Insurance table (https://ohioauditor.gov/ocs/2023/Self_Insurance_Table_2022-11.xlsx), and only test for 'required' or 'prohibited' compliance elements as follows:*

- *Single Subdivision[65] Programs test: 1, 2a, 4*
- *Single Municipality Programs test: none (no required or prohibited elements)[66]*
- *Pool Members test:1, 2a, ~~3~~*
- *Pools test: 2b, 4*

[65] Ohio Rev. Code §§ 9.833 and 2744.01 define a political subdivision in part as any municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than the State. According to 2017 Op. Att'y. Gen. No. 2017-001, a person authorized by a board of county commissioners or a board of township trustees to perform work related to the demolition of vacant or abandoned buildings and the remediation of other nuisance properties is considered an "employee" when acting within the scope of their employment even if not compensated for the work. As used in Ohio Rev. Code § 9.833, a "political subdivision" also includes the entity types described in Ohio Rev. Code § 3905.36. Ohio Rev. Code § 9.833 also says "County Board means a county board of developmental disabilities."

[66] These programs are not required to establish a separate "special" fund. However, if they do establish such a fund, then the procedures related to recovering the costs are applicable and required.

1. [Ohio Rev. Code § 9.833(C)(2) or Ohio Rev. Code § 5705.13(A)(2)] Was a separate special fund[64] or reserve balance account[67] established by ordinance or resolution to account for all claims~~,~~ ~~administrative and other~~ related to the self-insurance program ~~costs~~?

2. [Ohio Rev. Code §§ 9.833(C)(2&6), 5705.13(A)(2), & 5705.10] Are self-insurance fund costs recovered by appropriate charges:
   a. Single Subdivision Programs or Pool Members: to other funds based on those funds' relative exposures or loss experiences? (These interfund charges should be recorded as revenues and expenditures rather than transfers, and are not subject to the restrictions on interfund transfers or Ohio Rev. Code § 5705.14 - .16)
   b. Pools: to participating subdivisions based on the subdivisions' relative experience, loss exposure or as otherwise agreed by contract?
   Note: If the answer is no to either of the above, does another appropriate and allowable financing source exist to cover the costs?

~~3. [Ohio Rev. Code § 5705.13(A)(2)] Are there any reserves established on fund equity to provide for self-insurance costs?~~

4. [Ohio Rev. Code § 9.833(C)(1&4)] Was a report prepared by a member of the American Academy of Actuaries[68] within 90 days of year end listing where:
   a. The actuary's opinion language (including the scope of the work):
      i. Generally complied with the example described in the "Actuarial Opinions" section of AOS Bulletin 2001-005, and
      *Note: Consider whether any qualification in the actuary's report affects the financial statement opinion or indicates noncompliance with Ohio Rev. Code § 9.833.*
      ii. Indicated amounts reserved conform to accepted loss reserving standards.
   b. The actuarial liability as of the last day of the fiscal year, and
   c. Program disbursements, including claims paid, legal representation and consultant costs?

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

[67] A reserve balance account established pursuant to Ohio Rev. Code § 5705.13(A)(2) shall be established in the general fund of the subdivision or by the establishment of a separate internal service fund established to account for the operation of an individual or joint self-insurance program described in division (A)(2) of this section and shall be based on sound actuarial principles. See also OCS 1-8 regarding reserve balance account requirements and testing.

[68] AU-C 620 clarifies that the ***Specialist*** standard only applies to a specialist the auditor employs or contracts with. Auditors are responsible for testing the liability an actuary computes on behalf of the auditee using the ***Evidence*** standard in AU-C 500.

**1-17 Compliance Requirement**: Ohio Rev. Code § 2744.081 - Liability Self Insurance

**Summary of Requirement**: This section requires joint self-insurance programs (such as governmental self-insurance pools) insuring against judgments, settlement of claims, expense, loss and damages that arise, or are claimed to have arisen, from an act or omission of the subdivision or any of its employees and to indemnify or hold harmless the subdivision's employees, to reserve [69] amounts to cover potential costs. It also requires the program to prepare a report, reflecting those reserves (i.e., liabilities) and the aggregate of disbursements made to pay self-insured claims, legal and consultant costs during the preceding fiscal year. This report shall be submitted by the pool administrator to the Auditor of State, and it should be retained by the government to be made available upon request.

An actuary must certify that the amounts reserved are fairly stated in accordance with sound loss reserving principles. The actuary must be a member of the American Academy of Actuaries.

The aforementioned requirements apply only to governmental risk pools or other joint governmental liability insurance programs.

***Note*: Auditors should refer to AOS Bulletin 2001-005 & 2011-008 for additional guidance.**

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

[69] "Reserve" means liabilities measured in accordance with accepted actuarial principles.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**
*Questions are organized according to the Self Insurance table (*https://ohioauditor.gov/ocs/2023/Self_Insurance_Table_2022-11.xlsx*) and only test for 'required' or 'prohibited' compliance elements as follows:*

- *Single Subdivision*[70] *Programs test: none (no required or prohibited elements)*[66]
- *Pool Members test: #2*
- *Pools test: 1, 3*

1. [Ohio Rev. Code § 2744.081(A)(4)] Are self-insurance fund costs recovered by appropriate charges to participating subdivisions based on the subdivisions' relative experience, loss exposure or as otherwise agreed by contract?

2. [Ohio Rev. Code § 5705.13(A)(2)] Are there any reserves established on fund equity to provide for self-insurance costs?

3. [Ohio Rev. Code § 2744.081(A)(1&3)] Was a report prepared by a member of the American Academy of Actuaries[68] within 90 days of year end listing where:
   a. The actuary's opinion language (including the scope of the work):
      i. Generally complied with the example described in the "Actuarial Opinions" section of AOS Bulletin 2001-005, and
      *Note: Consider whether any qualification in the actuary's report affects the financial statement opinion or indicates noncompliance with Ohio Rev. Code § 2744.081.*
      ii. Indicated amounts reserved conform to accepted loss reserving standards.
   b. The actuarial liability as of the last day of the fiscal year, and
   c. Program disbursements, including claims paid, legal representation and consultant costs?

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

[70] Ohio Rev. Code §§ 9.833 and 2744.01 define a political subdivision in part as any municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than the State. According to 2017 Op. Att'y. Gen. No. 2017-001, a person authorized by a board of county commissioners or a board of township trustees to perform work related to the demolition of vacant or abandoned buildings and the remediation of other nuisance properties is considered an "employee" when acting within the scope of their employment even if not compensated for the work. As used in Ohio Rev. Code § 9.833, a "political subdivision" also includes the entity types described in Ohio Rev. Code § 3905.36. Ohio Rev. Code § 9.833 also says "County Board means a county board of developmental disabilities."

**If the compliance attributes listed below were tested during payroll substantive testing, no additional tests are needed.**

**1-18 Compliance Requirements:** Various ORC Sections - Vacation and sick leave.

**Vacation leave:**
Ohio Rev. Code §§ 325.19 and 3319.084 prescribe vacation benefits for **county** and **school non-teaching employees**, respectively. See tables below.

The governing authorities of other local governments set vacation policy by statute, ordinance or charter. However, collective bargaining agreements supersede local statutes, ordinances or charters.

**Ohio Rev. Code § 325.19 - County vacation leave**

| Ohio Rev. Code § 325.19 Years of service | Vacation leave earned |
|---|---|
| <1 | 0 |
| ≥1 but <8 | 80 hrs. per year |
| ≥8 but <15 | 120 |
| ≥15 but <25 | 160 |
| ≥25 | 200 |

***Note***: Employees of county departments of jobs and family services accrue vacation pursuant to Ohio Rev. Code § 124.13. However, this Section prescribes the same vacation accruals as does Ohio Rev. Code § 325.19, above. Additionally, if a separation from county service occurs in connection with the lease, sale, or other transfer of all or substantially all the business and assets of a county hospital organized under Ohio Rev. Code Chapter 339 to a private corporation or other entity, the county shall have no obligation to pay any compensation with respect to unused vacation leave accrued to the credit of an employee who accepts employment with the acquiring corporation or other entity, if at the effective time of separation the acquiring corporation or other entity expressly assumes such unused vacation leave accrued to the employee's credit.

**Ohio Rev. Code § 3319.084 - School nonteaching employee vacation leave**

| Ohio Rev. Code § 3319.084 Years of service | Minimum vacation leave earned |
|---|---|
| <1 | 0 |
| ≥1 but <10 | 2 weeks |
| ≥10 but <20 | 3 weeks |
| ≥20 | 4 weeks |

**Ohio Rev. Code § 9.44** generally requires an Ohio local government to include an employee's prior service with the State or other Ohio local governments when computing vacation leave. However, there are exceptions to this general rule. While this would rarely, if ever, be significant, if this applies to an employee's leave you are testing, see Ohio Rev. Code § 9.44 regarding the exceptions.

**Sick leave:**
Ohio Rev. Code § 124.38 prescribes 4.6 hours of sick leave for each 80 hours of completed service (120 hours / year), applicable to **county (**except for superintendent and management employees of County

Boards of Development Disabilities defined in Ohio Rev. Code § 5126.20)**, city, and civil service township service**. Ohio Rev. Code § 124.38 also applies to employees of any **state college or university**, and **certain board of education employees** (board of education employees for whom sick leave is not provided by Ohio Rev. Code § 3319.141).

Ohio Rev. Code § 3319.141- Sick leave for **school employees**: Earn 1¼ days per month (15 days / year), accumulating to a maximum of 120 days. However, a school board may adopt a policy permitting accumulations > 120 days. The requirements of Ohio Rev. Code § 3319.141 do not apply to substitutes, adult education instructors who are scheduled to work the full-time equivalent of less than one hundred twenty days per school year, or persons who are employed on an as-needed, seasonal, or intermittent basis.

Per Ohio Rev. Code § 124.39, employees governed by Ohio Rev. Code § 124.38 and employed for ≥ 10 years, are eligible for payment of 25% of their unused sick leave balance, up to a maximum of 30 days, upon retirement.

***Note*:** These sections describe minimum vacation and sick leave. Governments generally may provide more than the minimum. These sections also prescribe procedures for paying the employees' accumulated leave balances upon separation from service.

~~Families First Coronavirus Response Act (FFCRA) Leave:~~
~~Allowable period: Mandatory not later than 15 days after the date of the bill linked below (or) April 1, 2020 through December 31, 2020. Optionally, it may be extended through March 31, 2021. The American Rescue Plan Act (ARPA) further extended the tax credit from April 1, 2021 through September 30, 2021, though the ARPA credit will now apply against an employer's Medicare taxes rather than Social Security taxes. In addition, ARPA increased the maximum tax credits available and expanded the leave reasons eligible for the credit.~~

~~Link to guidelines:~~

1. ~~December mandate included in FFCRA: https://www.congress.gov/bill/116th-congress/house-bill/6201/text/enr~~
2. ~~March extension included in Consolidated Appropriations Act (CAA): https://www.congress.gov/bill/116th-congress/house-bill/133~~
    a. ~~See also Department of Labor FAQs for more information at https://www.dol.gov/agencies/whd/pandemic/ffcra-questions~~
3. ~~April 1, 2021 through September 30, 2021 extension included in American Rescue Plan Act (ARPA): https://www.congress.gov/bill/117th-congress/house-bill/1319/text~~

~~Summary: An employer shall provide to each employee paid sick time to the extent the employee is unable to work (or telework) from March 1 through December 31, 2020 or March 31, 2021 (if their policy indicates they chose to optionally extend based on the CAA which is linked above), and/or April 1, 2021 through September 30, 2021 because:~~

1. ~~The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;~~
2. ~~The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;~~
3. ~~The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;~~
4. ~~The employee is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);~~
5. ~~The employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19;~~
6. ~~The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.~~

~~7. Employee is obtaining a COVID-19 vaccine;~~
~~8. Employee is recovering from an injury, disability, illness, or condition related to the COVID-19 vaccine; or~~
~~9. Employee is seeking or waiting on a diagnostic test or medical diagnosis for COVID-19.~~

~~Additionally, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.~~

~~Duration of Leave/Calculation of Pay:~~
~~For leave reasons (1), (2), (3), (7), (8), or (9): employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to $511 per day and $5,110 in the aggregate (over a 2-week period).~~

~~For leave reasons (4) or (6): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to $200 per day and $2,000 in the aggregate (over a 2-week period).~~

~~For leave reason (5): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to $200 per day and $12,000 in the aggregate (over a 12-week period, including expanded family leave).~~

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

***Note*: Auditors should consider whether governments have vacation and sick leave policies placed in operation and have historically demonstrated effective internal controls over payroll and related compliance requirement. Additionally, adequate training of payroll personnel and supervisory monitoring controls can help mitigate the risk of noncompliance with vacation and sick leave compliance requirements.**

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref |
|---|---|---|
| • Policies and Procedures Manuals,<br>• Knowledge and Training of personnel<br>• Time summaries / timecards<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

**For GAAP entities, it is usually efficient to include these procedures when testing the financial statement liability for compensated absences.**

1. Obtain a copy of resolutions, ordinances or collective bargaining agreements setting vacation leave. Maintain an up-to-date copy in the permanent file.

2. Determine the procedures followed for recording the accrual and use of sick leave and vacation. (If leave accrual is automated and online with standing data, very limited recomputations of additions to leave balances should suffice for testing credits (i.e. additions) to leave accrual).

3. Review the calculations of employees' leave balances credited and used, including appropriate leave forms. Determine whether the computations use the hours the Ohio Revised Code, local legislation or collective bargaining agreements authorize.

4. Determine if any employees left service this year. For a representative number of employees who left service, determine whether the computations use the hours the Ohio Revised Code, local legislation or, collective bargaining agreements authorize.

~~Families First Coronavirus Relief Act Leave Procedures:~~

5. ~~Inquire with management and document the procedures followed for granting and recording FFCRA leave.~~

6. ~~Review the calculations of employees' FFCRA leave credited / used, including appropriate leave requests. Determine whether the computations use the hours the FFCRA law allows. (If leave accrual is automated and online with standing data, very limited recomputations of additions to leave balances should suffice for testing credits (i.e. additions) to leave accrual).~~

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

**If the compliance attributes listed below were tested during payroll substantive testing, no additional tests are needed.**

**1-19 Compliance Requirements:** Internal Revenue Code (I.R.C.) Chapter 26 [26 U.S.C.] - Collection of Income Tax at Source on Wages; 26 U.S.C. §§ 3401 through 3406:

A. § 3401: Definitions;
B. § 3402: Withholding of income tax from wages;
C. § 3403: Employers liable for payment of the tax deducted and withheld;
D. § 3404: Return of amount deducted and withheld shall be made by appropriate officer of the governmental employer;
E. § 3405: Withholding on pensions and annuities;
F. § 3406: Backup withholding

G. 26 U.S.C. § 3102(a): Deduction of [Medicare] tax from wages;
~~Note: Consolidated Appropriations Act [[https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf], Treasury IRS Guidance n-20-65 [https://www.irs.gov/pub/irs-drop/n-20-65.pdf], and Treasury IRS Guidance n-21-11 [https://www.irs.gov/pub/irs-drop/n-21-11.pdf] include authority for crediting certain paid leave costs against the tax obligations related to this statutes and/or deferring the tax obligations to future periods. The American Rescue Plan Act of 2021 (ARP) [Text - H.R.1319 - 117th Congress (2021-2022): American Rescue Plan Act of 2021 | Congress.gov | Library of Congress], enacted March 11, 2021, amended and extended the tax credits (and the availability of advance payments of the tax credits) for paid sick and family leave for wages paid with respect to the period beginning April 1, 2021, and ending on September 30, 2021.~~

H. 26 U.S.C. § 132: Exclusion of certain fringe benefits from gross income;

I. Internal Revenue Regulations (26 C.F.R):
1. § 1.61-21: Taxation of fringe benefits;
2. § 1.6041-1: Reporting of income aggregating $600 or more [i.e., 1099s-MISC/NEC][71];
3. § 1.6041-2: Reporting of wage income aggregating $600 or more [i.e., W-2s];
4. § 1.6041-3: Various exclusions;
5. § 1.6041-6: Time and place for filing forms 1099 and 1096;
6. § 1.6050E-1: Income tax refund reporting.

J. Ohio Rev. Code § 5747.06 - Collection of Ohio income tax at source.

K. Janus v. American Federation of State, County, and Municipal Employees, Council 31, No. 16-1466, 585 U.S. __ (2018), 138 S.Ct. 2448; public employees cannot be forced to pay "fair share" fees to labor unions. [Effective June 27, 2018] See also - https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf

L. Various local ordinances require withholding on wages earned in the particular municipality. These should be consulted for the requirements.

**Summary of Requirement:**
These sections of the various tax codes require the employing government to withhold federal, state, and local income and employment-related taxes (such as Medicare). They also require the government to report

[71] All payments to attorneys of $600 or more that are not otherwise reported (e.g., on form W-2 for attorneys who are employees) must be reported.

those tax matters to the appropriate tax authorities and to the recipients. Certain of these sections require consideration of whether employer-provided "fringe" benefits, such as use of government automobiles for private purposes, constitute taxable income to be reported and withheld upon.

Effective for tax years beginning after December 31, 2009, Section 2043 of the Small Business Jobs and Credit Act of 2010 (Public Law No. 111-240) removed employer-provided cell phones from the definition of "listed property" in the tax code. While cell phones are still subject to being a taxable benefit, the legislation removes the special record-keeping requirements of listed property. However, employers still should have a policy prohibiting any more than a de minimis personal use of government-owned cell phones.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Risk of material noncompliance is elevated when governments are in financial distress and may not pay withholdings when due.**

***Note***: See the *Ohio Compliance Supplement Implementation Guide* regarding IRS Referrals.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals,<br>• Knowledge and Training of personnel<br>• Time summaries / timecards<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

***Note***: It is normally efficient to integrate step 1 below with payroll testing.

1. When testing payroll, determine if the government withholds state, federal and local income taxes.

   ➢ ~~If the government applied the provisions in the Families First Coronavirus Response Act, Coronavirus, Aid, Relief, Economic Security Act, Treasury IRS Guidance n-20-65 as modified by Treasury IRS Guidance n-21-11, or the American Rescue Plan Act of 2021 determine if they~~

~~properly credited the paid leave costs against the tax obligations and / or deferred the tax obligations to future periods.~~

2. Determine if the government provided any employees with potentially taxable fringe benefits, such as the use of a government-owned vehicle, or an auto or uniform allowance[72]. If so, determine the benefit amounts were reflected in the affected employees W-2. Review a representative number of W-2s that include these amounts, and verify a 1099 was not issued.

3. Determine if the government paid any independent contractor (other than a corporation) $600 or more during this year. If so,
   a. Review a representative number of issued Forms 1099s, and verify a W-2 was not issued,

   b. Review vendor list and disbursement ledger and determine if Forms 1099 were issued.

4. If the government assesses an income tax, scan a few Forms 1099G for municipal income tax refunds exceeding $10 each.

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

[72] The IRS rules regarding whether fringe benefits are taxable can be complex, and subject to frequent revision, such as by interpretive private letter rulings. For example: Uniforms are usually nontaxable if they meet these two tests: (1) the employee must be required to wear the article of clothing while at work (2) the item cannot be adaptable to everyday wear. Many commonly-required work clothes are adaptable (heavy-duty jeans, etc.) and would therefore normally be taxable benefits.

**If the compliance attributes listed below were tested during payroll and nonpayroll substantive testing, no additional tests are needed.**

**1-20 Compliance Requirement:** Various ORC Sections – Definitions, rates of contributions etc.

- Ohio Rev. Code §§ 145.01, 145.03, 145.402, 145.47, 145.48, and Ohio Admin. Code 145-1-26 - **Public Employees Retirement System (PERS)**, definitions, exclusions, exemptions and rates of contributions.

- Ohio Rev. Code §§ 742.01, 742.02, 742.31 to 742.34 - **Police and Fire Disability and Pension Fund**, definitions, rates of contributions and reporting requirements.

- Ohio Rev. Code §§ 3307.01, 3307.26, 3307.35, 3307.51, 3307.53, 3307.56, 3307.561(This addition is a result of SB 42), 3307.691 and 3314.10 - **State Teachers Retirement System (STRS)**, definitions, employment of retired members, contribution rates. (These sections also apply to community school employees.)

- Ohio Rev. Code §§ 3309.23, 3309.341, 3309.43(This addition is a result of SB 42), 3309.47, 3309.49 3309.51 and 3314.10[73] - Membership in **Public School Employees Retirement System (SERS)**, employment of retired members, contribution rate, payment of expense fund. (These sections also apply to community school employees.)

**NOTE: Auditors should be alert for changes in the account classification for related costs as compared to prior years because payments to cover payroll or benefits expenses of public employees for those employees whose work duties that are substantially dedicated to mitigating or responding to the COVID-19 public health emergency may be charged to the premium pay for those essential workers (as defined by the American Rescue Plan's Local Fiscal Recovery program) that regularly perform in-person work, interact with others at work, or physically handle items handled by others charged to the Local Fiscal Recovery Fund. Among other limitations under the American Rescue Plan Coronavirus State and Local Fiscal Recovery Funds, employees are not eligible for premium pay during periods they were teleworking. Additionally, elected officials should avoid voting on premium payments for themselves as this may constitute a violation of Ohio Ethics Laws. If AOS auditors find premium payments paid out to elected officials, they should consult with the Center for Audit Excellence and AOS Legal department for a determination of lawfulness and allowability under the Ethics Laws and federal program, respectively.**

**On March 23, 2023 Congress voted to terminate the national emergency concerning COVID-19 which was declared in 2020. The termination was effective April 10, 2023. The State and Local Fiscal Recovery Funds (SLFRF) statute and final rule provide that recipients can use SLFRF funds to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency. As such, recipients may not use SLFRF funds to provide premium pay to essential workers for work conducted after April 10, 2023, the termination of the public health emergency. Recipients may continue to use SLFRF funds to support workers through the public health and negative economic impact and revenue loss eligible use categories.**

US Treasury Coronavirus Relief Fund FAQs & SLFRPFAQ.pdf (treasury.gov).

[73] The SERS board certifies to ODE amounts ODE is to withhold from community school foundation payments for pension costs.

**Summary of Requirement:** These sections require governments to enroll most of their employees[74] in the appropriate retirement system, and to withhold from the employees' wages, or pay on behalf of the employees, a certain percentage of earned wages as defined and to pay over to the appropriate system the amounts withheld, matched with an appropriate percentage of employer matching contributions.

PERS withholdings should be computed on earnable (i.e. usually gross) salary, that is computed on gross pay before deducting medical, dental, vision, and flexible spending (Ohio Rev. Code § 145.47, and Ohio Admin. Code 145-1-26).

Certain community school teaching employees are included in STRS and others are excluded. Ohio Rev. Code §§ 3307.01(B)(1) and 3314.10 include in STRS membership any person who is employed in the school as a teacher or faculty member.[75] The following are excluded under § 3307.01(B)(2)(b):

- The person is employed by a community school operator, if on or before February 1, 2016 the operator was withholding and paying Social Security taxes on the person's behalf,
- Unless the person had contributing service in a community school in Ohio within one year preceding the later of February 1, 2016, or the date on which the operator for the first time withholds and pays Social Security taxes for that person.

STRS excludes from membership any person not described above for whom a community school operator withholds and pays Social Security taxes, if the person is employed as a teacher or terminates employment with an operator and has no contributing service in a community school in Ohio for at least one year from the date of terminating employment. Each teacher shall contribute a certain percent not greater than 14%, of the teacher's earned compensation. (Ohio Rev. Code § 3307.26(A)).

Ohio Rev. Code §§ 3309.011, 3309.013, and 3314.10 specify which nonteaching community school employees are included in SERS membership and which are excluded. It excludes both of the following for employees of an operator withholding and paying social security taxes on or before February 1, 2016:

- Any person initially employed on or after July 1, 2016, by a community school operator that withholds Social Security taxes beginning with the first paycheck after commencing employment;

  OR

- Except as described below, any person who is a former employee of a community school operator and is reemployed on or after July 1, 2016, by the same operator if the operator withholds Social Security taxes beginning with the first paycheck after commencing reemployment.

SERS includes in membership any person reemployed on or after July 1, 2016, by the same operator if the operator withholds Social Security taxes beginning with the first paycheck after commencing reemployment and the person is employed by the same operator at any time within the period July 1, 2015, to June 30, 2016, and the date of reemployment is before July 1, 2017.

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[74] Independent contractors performing the same duties as school employees as defined in Ohio Rev. Code § 3307.01 or 3309.01, such as contract teachers teaching in a classroom, or others in a position not required to have a certificate/license, may also be subject to membership in the STRS/SERS retirement system.

[75] "Faculty" means the teaching staff of a university, college, or school, including any academic administrators as defined in Ohio Rev. Code § 3307.01(P).

By law, all non-teaching employees of Ohio's boards of education, school districts, vocational and technical schools, community schools, and community colleges are required to contribute to SERS unless their position permits exemption from membership, optional membership, or exclusion from membership.

Once an employee is covered under SERS, the employee must continue to contribute to SERS for as long as the employee is employed in a SERS-covered position. If an individual meets the definition of "employee" as stated in Ohio Rev. Code § 3309.01(B), that individual must contribute to SERS. Paragraphs (B)(1), (B)(2) and (B)(3) of Ohio Rev. Code § 3309.01 set forth separate definitions for "employee."

1. **Common Law Employees** - Paragraph (B)(1) defines employee as "any person employed by a public employer" in a non-teaching position.
   a. This refers to an employee-employer relationship as established by judicial decisions, also called a "common law" employee-employer relationship.

   b. This definition applies when a school contracts directly with an individual for the individual's services.

   c. Classifying an individual hired to perform services as an "independent contractor" does not necessarily avoid the obligation of SERS' membership, if the actual status of the worker is that of an employee. Employers should consult with their legal counsel when deciding if an individual working for the school is properly classified as an independent contractor.

   d. If the overall facts of the situation indicate an employer-employee relationship between the school and the worker, SERS membership is required.

2. **Contract Employees** - Paragraph (B)(2) defines a person as an employee "if the person performs a service common to the normal daily operation of a school [76]even though the person is employed and paid by one who has contracted with an employer to perform the service."

   a. SERS sometimes refers to these persons as "contract employees."

   b. This definition applies when a school contracts with a contractor for the provision of services by employees of the contractor.

   c. For SERS' purposes, the contracting board or school is the employer.

3. **Employees** - Paragraph (B)(3) defines employees as any person employed in a non-faculty position in a school, college or other institution—wholly controlled and managed—and wholly or partly supported by the state or any political subdivision.

SERS has provided an Employer Services Fact Sheet for membership. The Fact Sheet includes additional details and guidance related to required membership, and descriptions of what is considered a service common to the normal daily operation of a school. A copy of the Pension SERS Membership Fact Sheet as well as the SERS-STRS Joint Communication on Membership Determination are included in the Intranet under Audit Resources > Reporting and Practice Aids > Pension Examinations.

[76] Ohio Admin. Code 3309-1-11(D) defines "common to the normal daily operation" for SERS membership determination. The SERS Membership Fact Sheet on the Intranet includes details of the definition and examples.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

***Note*: Auditors should consider whether governments have historically remitted employee and employer contributions to the appropriate retirement systems timely and demonstrated effective internal controls over payroll. Additionally, adequate training of payroll personnel and supervisory monitoring controls can help mitigate the risk of noncompliance with retirement system compliance requirements.**

**Risk of material noncompliance is elevated when governments are in financial distress and may not pay the contributions when due.**

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals,<br>• Knowledge and Training of personnel<br>• Time summaries / timecards<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. When testing payroll transactions, determine if the government withheld pension amounts at the proper rate.[77] [78] (***Note***: PERS withholdings must be taken out prior to medical, dental, vision and flexible spending account deductions. Also, unless they meet the exceptions described above, employees of community school operators (i.e., management companies) must make contributions to STRS or SERS, even if the operator is already contributing to Social Security for these employees.)

2. Scan payroll ledgers. List a few employees for which no pension is withheld. Ask the CFO to provide documentation or explanation as to why there is no withholdings for these employees.

   ***Note***: Third party contractors who provide pupil services (i.e. therapists and therapy assistants, pathologists, audiologists, social workers, nurses) are required members of STRS per STRS.

3. Examine selected payments of the withholdings from the government to the pension system. (This is an important step. Governments in financial distress occasionally resort to not paying withholdings when due. While unusual, this circumstance, even if not quantitatively material **would usually be qualitative material noncompliance**.)

4. Obtain and haphazardly choose 3 of the most recent 1099 NECs. Evaluate services provided to determine if the contractors are used for the daily operations of the school. If so, determine if STRS or SERS contributions are made (for required amounts) or if an exemption exists.

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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[77] Pursuant to 26 U.S.C. § 3121(b)(7) and Ohio Rev. Code §§ 3307.01(B)(2)(b), 3309.011, 3309.013, and 3314.10, AOS considers employees of community school management companies who perform teaching and administrative services to be members of STRS or SERS unless they meet certain limited exceptions. Therefore, the mandatory employee and employer contributions must be paid into the appropriate State retirement systems unless the employee meets the exceptions described above. We have therefore previously cited management companies that *also* deducted and paid contributions to social security. AOS formally requested the IRS to confirm that it would defer to the Ohio Retirement Systems' determination and consider the community school employees exempt from social security due to their participation in a qualified retirement plan. However, the IRS declined to confirm this exemption. Therefore, management companies may determine to risk potential IRS penalties and deem an employee to be an employee of the management company rather than the school. Contributions should continue to be remitted to the appropriate Ohio Retirement Systems if management company Boards determine the employees are members of an Ohio Retirement System. Failure to do so will still result in non-compliance citations. ***However, auditors should no longer issue noncompliance citations for additional contributions to the social security system.***

[78] Per Ohio Admin. Code 145-1-26(G)(9), payments made as fees or commissions that are fixed charges or calculated as a percentage of an amount are not "earnable salary". Ohio PERS (OPERS) has determined that payments for meetings such as those made to Village Council should not be used for a basis of OPERS contributions. Therefore, any person receiving per meeting payments (i.e., board of public affairs, joint fire districts, cemetery districts) should be subject to the same determination.

**1-21 Compliance Requirement:** Ohio Rev. Code §§ 1715.51-59, 517.15 and 759.36 – Permanent endowment funds.

**Summary of Requirements:** Accounting for gifts, endowments, and/or bequests with donor-restrictions.

**Uniform Prudent Management of Institutional Funds (UPMIFA)[79]**
**Ohio Rev. Code §§ 1715.51--.59**

.53(C) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits" or "to preserve the principal intact," or words of similar import, ***create an endowment fund of permanent duration, unless other language in the gift instrument limits the duration or purpose of the fund,*** and do not otherwise limit the authority under division (A) of this section to appropriate for expenditure or accumulate.

.55 indicates the restrictions on the permanent/non-spendable portion of the endowment may be released or modified if:

(A) The donor consents in a record[80],

(B) Application of an institution, to an appropriate court, indicating the restriction has:

- become impracticable or wasteful,
- impairs the management or investment of the fund, or
- a restriction, that if modified, will further the purposes of the fund.

**AND**

1. The institutional fund subject to the restriction has a total value of less than two hundred fifty thousand dollars;
2. More than ten years have elapsed since the fund was established;
3. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

***Exceptions to requiring donor or court approval:***
Ohio Rev. Code § 1715.53(D) The government may appropriate and spend not greater than 5% of the fair market value of an endowment fund (considered an "irrebuttable presumption of prudence"). Assuming:

- Fair market value is determined at least quarterly and averaged over a period of not less than 3 years (or period the fund has been in existence if less than 3 years) immediately preceding the year in which the appropriation for expenditure was made,
- An appropriation of greater than 5% is only unallowable for the portions that exceed 5%.

[79] Under this act, a governmental organization that qualifies as an "institution" may manage and invest an institutional fund. [Ohio Rev. Code § 1715.52(E)(3)] The term "institution" includes, a governmental organization to the extent that it holds funds exclusively for a charitable purpose." Ohio Rev. Code § 1715.51(B)(2).
If a particular governmental entity has statutory authority itself to hold and invest donations that it receives, it may do so. If a particular governmental entity does not have statutory authority itself to invest and hold moneys that it receives as donations, the moneys must be paid to the appropriate treasurer for deposit and investment.

[80] According to Ohio Rev. Code § 1715.51(H) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**Townships with a cemetery endowment fund – Ohio Rev. Code § 517.15** [81]
Dollars receipted into a Cemetery Fund under this section can be for a variety of purposes, as follows:

(A) "Gifts, devises, or bequests received for the purpose of maintaining, improving, or beautifying township cemeteries;" (These dollars would be presented in a special revenue fund.)
(B) "Charges added to the price regularly charged for burial lots for the purpose of maintaining, improving, or beautifying township cemeteries;" (These dollars may be presented in a permanent fund.)
(C) "Contributions of money from the township general fund;" These dollars would most likely not be the foundation revenue of the fund. (These dollars would be presented in a special revenue fund.)
(D) "An individual agreement with the purchaser of a burial lot providing that a part of the purchase price is to be applied to the purpose of maintaining, improving, or beautifying any burial lot designated and named by the purchaser;" (These dollars would be presented in a private purpose trust fund.)
(E) "Individual gift, devises, or bequests made for the maintenance, improvement, and beautification of any burial lot designated and named by the person making the gift, devise, or bequest." (These dollars would be presented in a private purpose trust fund.)

State statute allows this activity to be in one fund; however, maintaining separate funds may simplify financial reporting issues.

Upon unanimous consent of the board of trustees, the board may use the principal of the fund if the board is unable to maintain, improve, and beautify township cemeteries using only the income from the fund.[82]

***Union Cemetery Districts – Ohio Rev. Code § 759.36***
The board of cemetery trustees may create a permanent endowment fund for the express purpose of keeping the cemetery clean and in good order and may:

(A) Add to the price regularly charged for lots a sum for that purpose;
(B) Receive gifts for that purpose;
(C) Enter into separate agreements with the purchasers of lots by which an agreed part of the purchase price shall constitute a permanent fund;
(D) Receive individual gifts for the fund, the income thereof to be used for the upkeep and care of lots.[83]

When any such funds are received or created, they shall be a permanent fund for such use and the income therefrom shall be used only for such purpose, and the principal sum shall be kept and invested … **except that upon unanimous consent of the board of cemetery trustees, the board may use the principal of the fund if the board is unable to keep the cemetery clean and in good order using only the income from the fund**. See also section 1-4 Establishing funds and Permission to establish special funds.

[81] See also AOS Audit Bulletin 2011-004 & 2020-008. Bulletin 2020-008 simplified the reporting of fund balance classifications in the AOS regulatory cash basis financial statements and footnotes beginning with the December 31, 2020 FYE reporting.

[82] In addition to the unanimous consent, the Board of Trustees should retain document and support the inability to maintain, improve and beautify cemeteries using only the income from the fund as well as use of funds.

[83] AOS staff should consult with the AOS Legal Division for determination on whether the Board of Trustees has the authority to override individual requests.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals,<br>• Knowledge and Training of personnel<br>• Time summaries / timecards<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Obtain supporting documentation for any material endowments (may include bequests, legal agreements, resolutions/ordinances, minutes, etc.). Dependent upon the supporting documentation available, the activity may be recorded in:
    a. A Private Purpose Trust Fund: If documentation indicates all or some of the amount given is required to be used for the benefit of individuals, private organizations, or other governments (i.e. for the beautification of a particular burial lot);
    b. A Permanent Fund: If documentation indicates there are legal restrictions to spend only the interest and not the principal **AND** the restrictions are for the benefit of the government or its citizenry.
    c. A Special Revenue Fund: If documentation supports program level restrictions (i.e. 'embellishment or care of the cemeteries grounds); or
    d. The General Fund: If no evidence is available to support the above classifications **and** the board/council pass a resolution authorizing the transfer.[84] [85]

**If an endowment fund is appropriately recorded, and the government wants to release or modify a portion of it:**

2. If more than 5% (as described in Ohio Rev. Code § 1715.53(D) above) of any of the "non-spendable" portions were released, spent, or otherwise modified during the period.
    a. [Townships or Union Cemetery Districts] Determine if the Board of Trustees gave unanimous consent to use the fund principal as described above, and evaluate the supporting documentation retained as evidence of their inability to maintain, improve and beautify cemeteries using only the income from the fund.
    b. [for all other entities]:
        i. Review any applications/approvals from appropriate courts,
        ii. Determine if limitations on time and/or totals were adhered to, and

[84] The board minutes (from the time of bequest) can be, in some cases, considered as sufficient evidence of intent if nothing else is available; however, all efforts to obtain evidence should be exhausted before money is moved to the general funds.

[85] If a situation arises in which an entity does not pass a resolution, we will issue a comment to recommend that the entity take such action to ensure a legally sufficient transfer in accordance with the Ohio Rev. Code and GASB. An audit adjustment will not be made if no such resolution is made first.

iii. Determine if the uses are consistent with expressed purposes.

*Note*: Non-compliance with these UPMIFA may require audit reactions beyond non-compliance citations (i.e. opinion modifications, findings for recovery/adjustment, etc.) and AOS staff should consult with AOS Legal Division.

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**1-22 Compliance Requirement:** Ohio Rev. Code Chapter 5727 – Electric kilowatt-hour tax.

**Summary of Requirement: Kilowatt-hour tax (kWh tax)**

Municipal (Government) electric systems must assess a monthly kilowatt-hour (kWh) tax on end users. This tax is assessed at a variable rate that decreases as kilowatt-hour usage increases on the meters of end users (the last meter used to measure the kWh distributed). [Ohio Rev. Code § 5727.81(A)]

Ohio Rev. Code § 5727.82(A)(3) permits municipal electric communities to retain in their general fund the taxes collected from customers served inside their city or village limits (including taxes self-assessing customers pay, per Ohio Rev. Code § 5727.81(C)(2)).
***Note****: This legislation did not change the constitutional rule* that municipal electric systems can sell no more than one-third of electricity outside city or village limits.*

Municipal electric systems must file a monthly report and remit to the Tax Commissioner,[86] by the 20th of the next month, taxes collected from any distribution customers served outside their city or village limits. Even if a municipal electric system has no sales outside of its community limits, a monthly report must be filed. [Ohio Rev. Code § 5727.82(A)(1) & (A)(3)]

A self-assessing option exists for large users consuming more than 45 million kWh annually. This self-assessing customer must annually register with the Department of Taxation and pay an annual fee to the State. A self-assessing customer located inside a municipal electric community's limits must remit any kWh tax directly to the community. [Ohio Rev. Code § 5727.81(C)(2)]

Every electric system liable for the kWh tax must keep complete and accurate records of all electric distributions and other records as required by the Tax Commissioner. The records must be preserved for four years after the return for the taxes for which the records pertain is due or filed, whichever is later, and be available for inspection. [Ohio Rev. Code § 5727.92]

***Note***: AOS Bulletin 2001-011 explains these requirements in more detail. Auditors should familiarize themselves with this Bulletin before testing this requirement.

Receipts can be recorded as either "Other Local Taxes" or "Intergovernmental" depending on the situation. For example, excise taxes collected by an electric distribution plant are normally recorded as "Other Local Taxes." However; a portion of excise tax collected from the electric distribution plants is paid to the state and distributed to the various subdivisions. These receipts should be recorded as "Intergovernmental."

* Per Ohio Const. Art. XVIII, Section 6: "Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per cent of the total service or product supplied by such utility within the municipality, provided that such fifty per cent limitation shall not apply to the sale of water or sewage services." (***Note***: 50% of the total supplied within the municipality = 1/3 of the total supply.)

[86] Governments must pay the tax to the Tax Commissioner, unless required to remit the taxes ~~via electronic funds transfer to the Treasurer of State~~ electronically per Ohio Rev. Code § 5727.83.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals,<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

**If the kWh tax is not material to the financial statements:**

1. Inquire with management if they are aware of and comply with this law.

2. Inquire with management if they have received any correspondence from an oversight agency regarding compliance or noncompliance with this law. If so, obtain and review correspondence to determine if a material penalty exists.

**If the kWh tax is material to the financial statements:**

1. Determine how kWh taxes billed /collected for customers residing outside of the municipality's limits vs. those billed / collected inside the municipality's limits.

2. Inquire with the municipality if there are any self-assessing customers to whom they supply electricity. If yes, determine how the tax is transmitted to the general fund. (If the self-assessor is located outside of the entity limits, the self-assessor remits the kWh tax directly to the State.)

3. Test how the government computes / segregates the tax billed to its residents and allocates the amount to its general fund.

4. Test that the revenue was posted to the correct line item.

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**1-23 Compliance Requirement**: Ohio Rev. Code §§ 507.09 and 505.24(C) - Allocating township trustee and fiscal officer compensation.

**Summary of Requirement, per Ohio Rev. Code §§ 507.09(D) and 505.24(C):**

Attendance at board meetings and other activities supporting the general business of the township must be allocated to the general fund; therefore, allocating 100 percent of an official's compensation to funds other than the general fund is not permitted under Ohio law.

(1) **Trustees receiving per diem compensation (MUST USE TIME AND EFFORT DOCUMENTATION)**: When members of the board of township trustees are compensated per diem, a ***majority*** of the board must pass a resolution establishing the periodic notification method to be used for reporting the number of days spent in the service ***and kinds of services rendered*** on those days.[87] The per diem compensation shall be paid from the township general fund or from other township funds in proportion to the kinds of services rendered, as documented. (For example, the township could charge trustee time spent on road repairs to the road & bridge fund.) Ohio Rev. Code § 505.24(A) limits the number of days a trustee can be compensated to 200.

However, for ***salaries*** **not** paid from the general fund, 2004 Op. Att'y. Gen. No. 2004-036 established the following documentation requirements:

> As noted above, however, a board of trustees is authorized by Ohio Rev. Code § 505.24 to pay trustees' salaries from the general fund or other township funds "in such proportions as the board may specify by resolution." The board may therefore determine, as part of its budgeting process, to appropriate money in the EMS Fund for payment of trustees' salaries. In order to meet the provision in Ohio Rev. Code § 505.84, that the EMS Fund be used only for ambulance and emergency medical services, however, the board would be required to establish administrative procedures for assuring that the proportionate amount paid from the EMS Fund for trustees' salaries properly reflected the proportion of time each trustee spent on EMS matters relative to other township matters. This would necessitate trustees documenting all time spent on township business and the type of service performed, in a manner similar to trustees paid a per diem. To the extent that the board is able to determine the portion of time spent on EMS matters, relative to the total time spent on township business, it may pay the proportionate cost of the trustee's salary from the EMS Fund. If a trustee's time is not documented, however, then no part of his salary may be paid from the EMS Fund.
>
> In other words, 2004 Op. Att'y. Gen. No. 2004-036 requires trustees compensated on a per diem basis to establish administrative procedures to document the proportionate amount chargeable to other township funds based on the kinds of services rendered. The "administrative procedures" can be timesheets or a similar method of record keeping, as long as the trustees document all time spent on township business and the type of service performed. If per diem trustees do not document their time, then no part of salaries may be paid from the restricted funds.

[87] The Ohio Rev. Code does not define a "day" for purposes of this requirement. Townships should consult with their legal counsel and adopt a policy in compliance with 2004 Op. Att'y. Gen. No. 2004-036. If a Township has a duly enacted policy defining what constitutes a "day" in compliance with 2004 Op. Att'y. Gen. No. 2004-036, we will audit in accordance with that policy. If the Township has not adopted a policy, we will audit based on our determination of a "day" as an 8 hour workday.

The important factor is the portion of time spent on other township funds, relative to the total time spent on township business (as opposed to the total days in a given month). In other words, do not factor days in which no township work is done into the allocation.

Per the above, per-diem trustees must record the time spent on various tasks and the specific fund to which the township will charge their costs when paying any proportion of a trustee's salary from a restricted fund. Although the fire and rescue services, ambulance services, and emergency medical services fund under Ohio Rev. Code § 505.84 was the focus of 2004 Op. Att'y. Gen. No. 2004-036, the ruling also applies to funds for the motor vehicle license tax pursuant to Ohio Rev. Code §§ 4504.18 and 4504.19; motor vehicle tax pursuant to Ohio Rev. Code § 4503.02; gasoline tax pursuant to Ohio Rev. Code § 5735.27(A)(5)(d); the cemetery fund pursuant to Ohio Rev. Code § 517.03, and any other restricted fund. (The sole exception to this is for trustees charging all salaries to the general fund, as described above.) The township must maintain daily records of tasks performed for each individual trustee that, when reviewed cumulatively for the fiscal year, will provide reasonable justification for the apportionment of salary between funds as specified in the resolution. **Monthly summaries in lieu of daily records are not acceptable.**

(2) **Trustees receiving compensation by annual salary (MUST USE CERTIFICATIONS IF PAID FROM FUNDS OTHER THAN THE GENERAL FUND)**: To be paid on a salary basis in equal monthly installments, the board of trustees must ***unanimously*** pass a resolution to allow it. To be paid from any fund(s) other than the general fund, the resolution must also specify the proportions of the salary that are to be paid from each fund (Ohio Rev. Code § 505.24(C)). If trustees use the salary method and are compensated from funds other than the general fund, they must certify the percentage of the time spent working on matters that are to be paid from funds other than the general fund. Trustees must complete a certification prior to receiving his/her pay for that pay period. The certification must be done individually, but is not required to be notarized. The certification is not required to be a time log. Rather, all that is required is a statement detailing the percentage of time that the trustee/fiscal officer spent during that pay period providing services related to each fund to be charged. A sample certification can be found at: Example Payroll Certification.pdf. If 100% of the compensation of the township trustee is to be paid to from the general fund, no certification is required.

(3) **Fiscal officer compensation:** Fiscal officers compensated from funds other than the general fund must certify the percentage of the time spent working on matters that are to be paid from funds other than the general fund. They must complete a certification prior to receiving his/her pay for that pay period. The certification must be done individually, but is not required to be notarized. The certification is not required to be a time log. Rather, all that is required is a statement detailing the percentage of time that the trustee/fiscal officer spent during that pay period providing services related to each fund to be charged. A sample certification can be found at: Example Payroll Certification.pdf. If 100% of the compensation of the township fiscal officer is to be paid from the general fund, no certification is required.

For salaried trustees only, AOS will forgo issuance of a finding for adjustment in any case where the Township has reasonable supporting documentation (such as detailed time and effort records, timesheets, etc.) in lieu of the certifications. Absent this documentation, auditors should issue a finding for adjustment. Also, auditors should still issue a noncompliance citation for not preparing the certifications as required by statute in all cases.

Undocumented per diem salaries for trustees, where the trustees officers have been paid from funds other than the General Fund, should result in findings for adjustment and the consideration of opinion qualifications including adverse opinions (if the auditee refuses to post the adjustment).

Townships allocating 100 percent of officials' salaries to restricted funds will be subject to audit findings. Townships must properly allocate the officials' salaries for the entire period. Failure to make necessary allocation revisions could result in findings for adjustment that may serve to disqualify the township from lower-cost agreed upon procedure audits, result in qualified opinions, or otherwise increase audit costs.

***Note***: If the township allocated salaries incorrectly, it is likely they allocated reimbursable health care benefits incorrectly. Improper allocations of health care benefit reimbursements should be included in the findings for adjustment (if the auditee refuses to post the adjustment).

See Exhibit 4 in the OCS Implementation Guide for Township officials' compensation tables, and guidance regarding changes in compensation.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

***Note*: In assessing the risk of noncompliance, auditors should consider recent changes to the statutory requirements described in this OCS step. This statute contains intricate requirements and interpretations.**

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals,<br>• Knowledge and Training of personnel<br>• Time summaries / timecards<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Document how the township records the time spent on each township service.

2. Recompute selected allocations of trustee/fiscal officer salaries or per diem amounts to each fund.

For UAN entities: Use the wage base earning report – detail and summary.

3. For fiscal officers or trustees paid by annual salary with allocations to funds other than the general fund, trace selected allocations to certifications.

4. For trustees paid per diem, with allocations to funds other than the general fund, trace time or services performed to time or activity sheet.

5. Agree selected postings of the salaries from step 2 to the township's check register.

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**1-24 Compliance Requirements:** Ohio Rev. Code §§ 343.01, 3734.52, 3734.55, 3734.56, 3734.57(B), 3734.573, 3734.57(G), and 3734.577 – Expenditures by solid waste management districts.

**Summary of Requirement:** Ohio Rev. Code §§ 343.01 and 3734.52 require all counties in Ohio to be a part of a solid waste management district, either individually or jointly as part of a multi-county (joint) solid waste management district. Ohio Rev. Code §§ 3734.55 and 3734.56 require all solid waste management districts to develop and submit solid waste management plans to Ohio EPA for approval. These plans address a variety of issues associated with solid waste management within the jurisdiction, including demonstrating that adequate landfill capacity exists for waste generated within the district and establishment of recycling goals. Once approved by the Ohio EPA, solid waste management districts are required to implement their plans.

Solid waste management districts are authorized to levy certain fees to fund the programs specified in their plans. Ohio Rev. Code § 3734.57(B) specifies that solid waste management districts can levy fees on the disposal of solid waste in landfills within their boundaries, and Ohio Rev. Code § 3734.573 specifies that solid waste management districts can levy fees on waste that is generated within their boundaries regardless of where the waste is disposed.[88] Both of these sections require the fee revenue shall be "kept in a separate and distinct fund to the credit of the district." Ohio Rev. Code § 3734.57(G) specifies that "moneys . . . arising from the [disposal of generation fees] shall be expended by the board of county commissioners or directors of the district in accordance with the district's solid waste management plan or amended plan . . . exclusively for the following purposes: . . ." Ohio Rev. Code § 3734.57(G) then provides ten "allowable uses" for the fee revenue.[89]

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals,<br>• Knowledge and Training of personnel<br>• Time summaries / timecards<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Test that disbursements were:
    a. Allowable under one of the ten "allowable use" criteria for the fee revenue listed in Ohio Rev. Code § 3734.57(G); and
    b. Allowable in accordance with the policies and procedures.

[88] If a district charges a fee to private sector commercially- licensed haulers, the district cannot waive this fee for public sector commercially- licensed haulers. [Ohio Rev. Code § 3734.577]

[89] 2008 Op. Att'y. Gen. No. 2008-021 clarifies that the fee can be "used by the district for the purposes set forth in Ohio Rev. Code § 3734.57(G)(1)-(10)] or to provide other remuneration or services to or on behalf of the district or its residents." Since the fee can be used to subsidize the normal operations of the district, AOS believes districts should account for this fee within a separate sub-fund or account of the district's general fund.

2. If significant unusual items are noted, auditors should make a referral to Ohio EPA, Division of Solid and Infectious Waste Management by sending an email to Referrals@ohioauditor.gov.

3. If the solid waste management district administers a fee under Ohio Rev. Code § 3734.573, is this maintained in a separate fund.

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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# *Appendix A: Agricultural Society Compliance Supplement*

You should use this appendix for all audits of Agricultural Societies in addition to the general laws and regulations noted as applicable to Agricultural Societies in the Legal Matrix within Implementation Guide Exhibit 5.

Agricultural societies incorporate as either county (per Ohio Rev. Code § 1711.01) or independent (per Ohio Rev. Code § 1711.02). Certain laws herein apply to one or both types. Each step describes to which type of society it applies.

For additional information see:

- Department of Agriculture's Redbook: Fairs_RedBook.pdf
- Uniform System of Accounting for Agricultural Societies: https://ohioauditor.gov/publications.html

***Agricultural Society Compliance Supplement***

**Applicability: County and independent societies**

**Budgetary Compliance Requirement:** An Agricultural Society is not required to follow the budgetary statutes within Ohio Rev. Code Chapter 5705. However, the *Uniform System of Accounting for Agricultural Societies* states:

- Each agricultural society shall prepare an annual budget of its revenues and expenses. The budget shall cover the period December 1st through November 30th.

- The budget shall be considered and approved by the board of directors prior to the first day of the ensuing fiscal year. The budget shall be prepared at the level of the accounts from the chart of accounts which are used by the society.

- Budgeted revenues and expenses should be distributed to the month they are likely to be received and expended. The distributed monthly budget should be integrated into the society's accounting system.

- Actual revenues and expenses shall be compared to budgeted amounts each month, and reported to and reviewed by the board of directors. The board of directors shall determine the reasons why actual expenses exceed or are less than budgeted expenditures by making inquiries to fair management about the reasons.

We believe Agricultural Society Boards should not present budgetary statements as part of their basic statements, because they lack the legal authority to adopt "legally binding" budget as described in GASB Cod. 2400.102. Therefore, if a Society adopts a budget and wishes to present it, the statements should present it as supplemental information (not RSI). However, while not legally binding under the GASB criteria, over expending the budget could be noncompliance with a Society's budget resolution. Determining whether noncompliance exists requires judgment based on whether the Society intends its budget to limit expenditures vs. being only a planning tool, etc.

~~*[Insert applicable budgetary requirements.]*~~

***Note***: An appropriation is authorization to expend money.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Periodic Reviews/Comparisons of Budgeted and Actual Amounts<br>• Presence of Effective Accounting System<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

1. Read resolutions and determine whether the society enacted a budget. (If no budget was adopted include a management letter comment that one be adopted per the *Uniform System of Accounting for Agricultural Societies)*.

2. Inquire (or determine from reading the minutes) if amended or supplemental measures have been passed.

3. Inspect the society's records throughout the period to determine if updates and adjustments were properly and timely posted.

4. Determine if the accounting system "integrates" budgetary data. This means the accounting system should report appropriations, encumbrances, unencumbered cash balances, and estimated receipts, and should compare budgetary data to actual results. If the client uses a manual system (i.e. spreadsheets) determine if the manual system used by the client adequately tracks and compares budgetary data.

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

**3a. Debt Compliance Requirement:** Ohio Rev. Code § 1711.18 – Issuance of county bonds to pay debts of county society; § 1711.19 – Bonds; § 1711.20 – Levy for payment of bonds; and § 1711.21 – Use of money raised by county taxation.

**Summary of Requirement:** In a county in which there is a county agricultural society indebted fifteen thousand dollars or more and such society has purchased a fairground or title, the board of county commissioners, upon the presentation of a petition signed by not less than five hundred resident electors of the county, shall submit to the electors of the county whether or not county bonds shall be issued and sold to liquidate such indebtedness with a copy of such resolution to be certified to the county board of elections and such board of elections, within ten days after such certification. If a majority of the voters vote in favor thereof, the board of county commissioners shall issue and sell bonds of the county in the amount necessary. Such bonds shall bear interest at not more than the rate Ohio Rev. Code § 9.95 provides,[90] payable semiannually, and shall be issued for a period of not less than ten nor more than twenty years.

From the proceeds arising from the sale of such bonds, the board shall pay off the indebtedness for which such bonds were sold. The board of county commissioners shall levy a tax upon all the taxable property on the tax duplicate of the county for the purpose of paying such bonds as they mature and the interest thereon.

When money has been raised by taxation by a county for the purpose of leasing lands for county fairs, erecting buildings for county fair purposes, or making improvements on a county fairground, or for any purpose connected with the use of a county fairground or with the management thereof by a county agricultural society, such money shall be used for such purpose only.

***Note***: Bonds a county issues under this section are **county** liabilities, though the society may agree to repay the county for debt service due on the bonds. (If the society contractually agrees to pay the county for the debt service, the society's notes should disclose a debt obligation to the county. However, do **not** characterize the obligation as *bonds payable*.)

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Bond Counsel/Lender Involvement<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

[90] Ohio Rev. Code § 9.95 states, "Interest shall not exceed the maximum or maximum average annual interest rate per annum determined in or pursuant to the proceedings for the securities by the county commissioners."

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

1. Inspect cash receipt records and minutes and determine if indebtedness exists.

2. For bonds a county issues during the audit period, compare disbursements of the proceeds to the bond documents to determine if the proceeds were spent for purposes for which the bonds were issued.

3. For bonds issued during the audit period, read bond contracts and summarize provisions applicable to the Society, and save in the permanent file. The summary should describe:
    a. Purposes for which the debt was issued.
    b. Collateral
    c. An amortization schedule for any debt service the society owes to the county.

4. For years in which the society owes debt service to the county, agree payments to the amortization schedule.

5. Determine if a debt footnote describes the purpose, original issue amount, collateral, and an amortization schedule for this debt.

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

**3b. Debt Compliance Requirement:** Ohio Rev. Code §§ 1711.25 to 1711.30 – Sale, lease, purchase, and exchange of sites by county society; payment for new site by county funds or bonds; tax levy; and approval by electors.

**Summary of Requirement:** A county agricultural society may secure a different site for its annual fair. If this occurs, auditors should review the Ohio Revised Code sections listed above and develop appropriate audit procedures.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Bond Counsel/Lender Involvement<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

1. By reading the minutes, determine if the Society procured a different site for its fair, or acquired or disposed of land where the annual fair is held. If so, review the code sections above for specific requirements.

2. In the year these transactions occur, read contracts and summarize requirements imposing debt or lease payments, collateral, insurance or other obligations on the society. Save the summary in the permanent file.

3. Determine if the footnotes adequately describe any leases or other society obligations, amortization schedules, etc.

4. For subsequent years, agree any debt or lease payments owed to the contract summary in the permanent file.

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

**Applicability: County societies**

**3c. Debt Compliance Requirement:** Ohio Rev. Code §§ 1711.13 and 1711.33 – County agricultural society may obtain mortgage debt or may enter into written agreements to obtain loans and credit for expenses.

**Summary of Requirement:**

Ohio Rev. Code § 1711.13 - County agricultural societies may do either or both of the following:

(A) Mortgage their grounds for the purpose of renewing or extending pre-existing debts, and for the purpose of furnishing money to purchase additional land, but if the board of county commissioners has caused money to be paid out of the county treasury to aid in the purchase of the grounds, no mortgage shall be given without the consent of the board. Deeds, conveyances, and agreements in writing, made to and by such societies, for the purchase of real estate as sites for their fairs, shall vest a title in fee simple to the real estate described in those documents, without words of inheritance. This means the Agricultural Society owns the land outright without any third party claims.

(B) Subject to section 1711.33 of the Revised Code, enter into agreements to obtain loans and credit for expenses related to the purposes of the county agricultural society, provided that the agreements are in writing and are first approved by the board of directors of the society. The total annual payments for debt obligation incurred by a county agricultural society pursuant to this division (B) shall not exceed an amount equal to twenty-five percent of its prior three-year average of annual revenues.

Ohio Rev. Code § 1711.33:

(A) When a board of county commissioners pays or has paid money out of the county treasury for the purchase of real estate as a site for the holding of fairs by a county agricultural society, the society shall not incur any debt, by mortgage or otherwise, without the consent of the board, entered upon its journal.

(B) With respect to real estate debt for which consent is obtained under division (A) of this section, a society may encumber such real estate, in order to pay the cost of necessary repairs and improvements thereon, up to an amount not exceeding fifty per cent of its value. In order to ascertain the value of such real estate the board shall appoint three disinterested freeholders who are residents of the county to appraise such real estate. The appraisers so appointed shall, within ten days after their appointment, upon actual view of such real estate, appraise it and return such appraisement under oath to the board. The appraisement so made shall be considered the value of such real estate for the purpose of mortgage or other encumbrance.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Bond Counsel/Lender Involvement<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

1. By reading the permanent file, minutes, cash receipt records, other documents, and by inquiry, determine if any such indebtedness exists.

2. If there is mortgage debt, use the sources described ~~in a.~~ above to determine if the board of county commissioners paid county funds to aid in purchasing the grounds. Read a copy of the county commissioners' resolution to determine if they gave the proper consent for this mortgage debt. Retain a copy of the resolution in the permanent file.
   a. If mortgage debt is for repairs or improvements, ensure it does not exceed 50% of the real estate appraised value.

3. Loans and Credit[91]
   a. If the Society has procured loans and credit for expenses related to the purposes of the county agricultural society, verify these agreements are in writing and were first approved by the board of directors of the society.
   b. Examine the society's computation supporting that the annual payments for debt obligation from loans and credit does not exceed twenty-five percent of its prior three-year average of annual revenues.

4. For debt issued during the audit period, compare disbursements of the proceeds to the bond documents to determine if the proceeds were spent for purposes for which the bonds were issued.

5. For debt issued during the audit period, read related contracts and summarize provisions applicable to the society, and save in the permanent file. The summary should describe:
   a. Purposes for which the debt was issued.
   b. Collateral / mortgage
   c. An amortization schedule for any debt service the society owes to the county.

[91] The law authorizing this type of debt did not exist prior to the addition of (B) to Ohio Rev. Code § 1711.13, effective September 26, 2003. Therefore, if any of this type of debt was acquired prior to September 26, 2003, the Agricultural Society shall discharge such debt.

6. For years in which the society owes debt service, agree payments to the amortization schedule.

7. Determine if a debt footnote describes the purpose, original issue amount, collateral, and an amortization schedule for this debt.

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

**Accounting Compliance Requirement:** Ohio Admin. Code 117-10-01 – Financial reporting and accounting for county agricultural societies and independent agricultural societies.

**Summary of Requirement:** Ohio Admin. Code 117-10-01 – Each county agricultural society and independent agricultural society shall, for financial reporting and accounting purposes, record and report all financial transactions on a fiscal year basis beginning on December 1 and ending November 30. Societies shall record and report all financial transactions in accordance with Appendix A of the *Uniform System of Accounting for Agricultural Societies*[92]. ***Note***: You can view the latest version of this at www.ohioauditor.gov, under *Resources/Publications*.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| ➢ Policies and Procedures Manuals<br>➢ Knowledge and Training of personnel<br>➢ Presence of Effective Accounting System<br>➢ Legislative and Management Monitoring<br>➢ Management's identification of changes in laws and regulations<br>➢ Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

1. Compare the *Uniform System of Accounting for Agricultural Societies* requirements with the systems and records the society is using.

2. Determine if:
   a. The required chart of accounts is used.
   b. A cash journal, a receipts ledger, an expense ledger, and an investment ledger are used.
   c. The prescribed formats for accounting and reporting information are used (including receipts, purchase orders, vouchers, checks, and bank reconciliations).

[92] The Auditor of State also requires by rules, that certain public offices follow a prescribed uniform chart of accounts and/or establish a fund accounting system to demonstrate legal compliance, financial accountability and to provide management with information for decision making. These rules are in Chapter 117-2 of the Ohio Admin. Code. As a matter of accountability and internal control, each public office should account for financial activities using an accounting system which demonstrates legal compliance; follows a documented chart of accounts appropriate for its particular activities; and is supported by appropriate subsidiary ledgers/journals. When a public office fails to maintain such an accounting system, auditors should consider whether the failure constitutes a reportable internal control deficiency or weakness.

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies /material weaknesses, and management letter comments):** |
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***Note*: Auditors should also test OCS requirements for:**

- **Deposits and investments in Chapter 2,**
- **Health care self-insurance and liability insurance in Chapter 1**

**Refer to OCS Implementation Guide Exhibit 5 for guidance on specific applicability.**

**Applicability: County and independent societies**

**Compliance Requirement:** Ohio Rev. Code §§ 117.38, 1711.06, and 1711.05 – Filing financial reports and Publication of treasurer's account.

**Summary of Requirement:** Prior to the first day of December of each year, the director of agriculture shall set a date in January of the following year, on which the director shall meet with the presidents or other authorized delegates of agricultural societies which conduct fairs in compliance with sections this chapter and regulations of the department of agriculture. Each society shall deliver its annual report to the director at or before the January meeting. [Ohio Rev. Code § 1711.06]

Every county agricultural society annually shall do all of the following:

(A) Make a report of its proceedings during the year;

(B) File a financial report, in accordance with section 117.38 of the Revised Code and forward it to the Director of Agriculture as provided for in section 1711.06.

[Ohio Rev. Code § 1711.05]

Cash-basis entities must file annual reports with the Auditor of State. The Auditor of State has prescribed a form for the report here - http://www.ohioauditor.gov/references/shells/regulatory.html. Any public office which does not file the report by the required date shall pay a penalty of twenty-five dollars for each day the report remains unfilled, not to exceed seven hundred fifty dollars. [Ohio Rev. Code § 117.38] See section 1-14 for detail on filing requirements with the Auditor of State.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Periodic Reviews/Comparisons of Budgeted and Actual Amounts<br>• Presence of Effective Accounting System<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Trace selected totals from the annual report to the underlying accounting system. If we use the annual report as a trial balance, we will satisfy this requirement by completing the mandatory Trial Balance steps from the financial audit program. If the report is significantly deficient, we should cite Ohio Rev. Code § 117.38 for filing an incomplete or misleading report.

2. Search The Hinkle System, the Annual Financial Data Reporting System, to determine whether the government filed an annual report with our office.

3. Inquire to determine the date the annual report was filed with the Director of Agriculture.

4. Review documentation to determine the following reports were completed and distributed appropriately:
    a. an abstract of the treasurer's account was published in a newspaper of general circulation in the county.
    b. a synopsis of its awards for improvement in agriculture and in household manufactures shall be forwarded to the Director of Agriculture and that it was sent before the annual meeting of directors of the society.

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

**Applicability: County and independent societies**

**Other Potentially Direct and Material Laws and Regulations:** Ohio Rev. Code §§ 3769.082 and 3769.086 – Ohio Fairs Fund; distribution.

**Summary of Requirement:** Ohio Fairs Fund moneys shall be distributed by the director of agriculture annually, on or before the first day of March, as follows:

- To each county agricultural society and to each independent agricultural society conducting an annual fair, twelve percent of the total Ohio Fairs Fund money, to be allocated for general operations.

- To each county agricultural society and each independent agricultural society conducting horse races (harness races or running races) during their annual fair, the sum of four thousand dollars, to be used as purse money for horse races in accordance with this section, and the additional sum of one thousand dollars to each such county agricultural society and independent agricultural society to be used for race track maintenance and other expenses necessary for the conduct of such horse races or colt stakes.

- A grant of four thousand dollars shall be available to each county or independent agricultural society for conducting the four stake races for two-year-old and three-year-old colts and for four stake races for two-year-old and three-year-old fillies at each gait of trotting and pacing, provided, that at least five hundred dollars shall be added to each race. Exclusive of entrance fees and the excess money provided below, the grant of four thousand dollars for purse money provided, a sum not to exceed three thousand dollars may be used by a society to reach the required purse for each of the eight stake races. Such stake races shall be distributed as evenly as possible throughout the racing season.

- In the event that the money available on the first day of March of any year are less than that required above, the amount distributed from the Ohio Fairs Fund may be different than the amounts reflected above.

- County agricultural societies and independent agricultural societies conducting stake races shall, on or before the first day of November in the year immediately preceding the year in which the money are to be distributed, make application for participation in such to the director of agriculture on forms provided by the director.

- Distribution of money for stake races shall not be paid to county agricultural societies and independent agricultural societies that conduct on their race courses automobile or motorcycle races during any year for which such distribution is requested, unless such automobile or motorcycle races are not conducted during the days and nights that horse racing is being conducted at such fair.

- Any county agricultural society or independent agricultural society which uses the money distributed under this section for any purse other than that provided in this section is not eligible to receive distribution from the Ohio Fairs Fund for a period of two years after such misuse of such moneys occurs.

Ohio Rev. Code § 3769.086 says:

(A) If a county agricultural society or independent agricultural society is unable to conduct races in accordance with section 3769.082 of the Revised Code because of unfavorable weather or another cause or if the number of horse races and stake races that are conducted by an agricultural society is fewer than the number that was scheduled to be conducted, the pro rata remainder of the money distributed from the Ohio fairs fund under division (A)(3) of section 3769.082 of the Revised Code for each horse race and stake race not conducted shall be returned to the director to be credited to the fund.

(B) If a county agricultural society or independent agricultural society is unable to conduct an annual fair, the society shall return the money distributed by the director in accordance with division (A)(1) of section 3769.082 of the Revised Code. However, the society may keep such money if the society cancels the annual fair because of unfavorable weather or another cause, provided that the society still conducts live horse racing.

(C) If the Ohio expositions commission is unable to conduct an annual fair, the commission shall return the money distributed by the director in accordance with division (A)(2) of section 3769.082 of the Revised Code. However, the commission may keep such money if the society cancels the annual fair because of unfavorable weather or another cause, provided that the commission still conducts live horse racing

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Periodic Reviews/Comparisons of Budgeted and Actual Amounts<br>• Presence of Effective Accounting System<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

1. Determine whether the society receipted Ohio Fairs Fund in the State and Local Fund, and how much was restricted for racing purses and track maintenance according to the above sections.

2. Compare amounts distributed for race purses and track maintenance to the amounts restricted to these purposes, and compute whether the amounts disbursed at least equaled the restricted amounts.

3. As needed, and in accordance with Ohio Rev. Code § 3769.086, determine whether the society:
   a. Returned money to the director, or
   b. Met one of the exceptions allowing the society to keep the money.

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies /material weaknesses, and management letter comments):** |
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***Note*: Auditors should also test OCS requirements for:**

- **Income tax in Chapter 1,**
- **Public Deposits in Chapter 2,**
- **Sunshine Laws in Chapter 2,**

**Refer to OCS Implementation Guide Exhibit 5 for guidance on specific applicability.**

# CHAPTER 2

# INDIRECT LAWS & STATUTORILY MANDATED TESTS

**AU-C 250.A13** Many laws and regulations relating principally to the operating aspects of the entity do not directly affect the financial statements (their financial statement effect is indirect) and are not captured by the entity's information systems relevant to financial reporting. Their indirect effect may result from the need to disclose a contingent liability because of the allegation or determination of identified or suspected noncompliance.

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

i. fundamental to the operating aspects of the business,

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

iii. necessary for the entity to avoid material penalties

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

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

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

**The legal matrix is depicted in a separate Excel file at: https://ohioauditor.gov/references/compliancemanuals.html . Entities are included alphabetically in the tab titled "OCS – Exhibit 5". See tab titled "OCS – Exhibit 6" for entity types not listed in Exhibit 5.**

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## SECTION A: INDIRECT LAWS

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

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

Auditors should continue to cite entities for healthy funds (those with positive cash balances at the time of declaration) that experience a deficit after declaration[1]. Therefore, auditors should compare fund deficits during the audit period to the funds that were in deficit at the point when the Fiscal Emergency was originally declared to determine whether any new funds have incurred a deficit balance.

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

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

~~NOTE: There are no budgetary exemptions for COVID-19 and other federal funding; therefore, the government would need to follow the same procedures for expenditures, including any required modifications and certificate requests to the County. Additionally, local governments receiving the ARP Coronavirus State and Local Fiscal Recovery Funds and other programs with lengthy periods of performance may utilize project-length budgeting, in some cases, for the first time. Auditors should be alert for this.~~
~~See AOS COVID-19 FAQ's~~

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

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

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

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

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

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

**§ 5705.28(B)(2) Requirements for entities that do not levy taxes (See the Legal Matrices in Exhibit 5 of the OCS Implementation Guide for applicable entities)**
If an entity levies taxes, the sections above apply. However, some entities with taxing authority do not levy taxes. When they do not levy taxes, Ohio Rev. Code § 5705.28 (B)(2) permits a comparable, but somewhat streamlined budget process. Ohio Rev. Code § 5705.28(B)(2) requires entities to follow § 5705.36. While Ohio Rev. Code § 5705.39 does not apply, § 5705.28(B)(2)(c) prohibits appropriations from exceeding estimated revenue (i.e. receipts + beginning unencumbered cash).

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Compare the final year end (current year only – do not include any carryover encumbrances appropriated) appropriation measures for selected funds (normally the general fund and major funds are sufficient) and determine that the appropriations do not exceed the official or amended estimate of resources (estimated revenues plus unencumbered fund balances) as of the fiscal year end. (It should not be necessary to schedule out all of the appropriation amendments throughout the year.)
   ***Except***: if the government is in fiscal emergency, and you are testing a fund with a beginning unencumbered deficit, compare appropriations to estimated receipts instead of to estimated resources.

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

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments)** |
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**2A-2 Compliance Requirement:** Ohio Rev. Code §§ 5705.41(A) and (B); and 5705.42 - Restrictions on appropriating and expending money.

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

Auditors should continue to cite entities for healthy funds (those with positive cash balances at the time of declaration) that experience a deficit after declaration[2]. Therefore, auditors should compare fund deficits during the audit period to the funds that were in deficit at the point when the Fiscal Emergency was originally declared to determine whether any new funds have incurred a deficit balance.

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

**NOTE: An appropriation for a new federal COVID-19 or Infrastructure Investment and Jobs Act program is effectively created by operation of Ohio Rev. Code § 5705.42. Ohio Rev. Code § 5705.42 indicates Federal and State grants or loans are "deemed appropriated" for such purpose by the taxing authority as provided by law. In addition, those moneys are also treated as if they are in the process of collection by the fiscal officer of the subdivision. This means that under Ohio Rev. Code § 5705.42, the moneys are treated by the fiscal officer as if they have been appropriated for a specific purpose, without requiring the taxing authority to adopt an amended appropriation measure. However, the fiscal officer should include the appropriated amounts on the (amended) certificate. The fiscal officer should also record the appropriation in the accounting system. The "deemed appropriated" criteria applies to new federal programs but not to the ARPA funds for which the revenue is reallocated as described in AOS Bulletin 2021-004. The funds receiving the reallocation will need to estimate receipts and appropriate in the traditional manner.**

**See AOS COVID-19 FAQ's and AOS Bulletin 2021-004.**

**Summary of Requirements:**

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

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

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

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

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

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

~~NOTE: see OCS Implementation Guide Appendix A-2 for additional H.B. 481/614 encumbrance OBM guidance.~~

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

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

| **Revised: HB 23, 135 GA**<br>**Effective: June 30, 2023** | **Revised: HB 33, 135 GA**<br>**Effective: October 3, 2023** |
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**2A-3 Compliance Requirements:** Ohio Rev. Code §§ 9.17, 9.48, 125.04, 153.65-.71, 723.52, 731.02, 731.12, 731.14, 731.141, 735.05 and 2921.42 - Municipal contracts.

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

**Summary of Requirements:**

**Contracts for Expenditures Other Than Streets or Other Public Way**

Generally, all contracts made by the legislative authority of a city for material and labor which exceed ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide Appendix B) are subject to competitive bidding procedures. No expenditure subject to this section shall be divided into component parts, separate projects, or separate items of work in order to avoid the requirements of this section. (***Note***: This limit may not apply to some charter municipalities.) [Ohio Rev. Code § 735.05 Cities]

The competitive bidding threshold for expenditures of a village is $50,000. [Ohio Rev. Code § 731.14 – Villages]

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

**Contracts for Streets or Other Public Way**

Before letting or making any contract for the construction, reconstruction, widening, resurfacing, or repair of a street or other public way, the director of public service in a city, the village administrator, or the legislative authority in a village, shall make an estimate of the cost of such work using the force account project assessment form under Ohio Rev.

Code § 117.16. In municipal corporations having an engineer, or an officer having a different title but the duties and functions of an engineer, the estimate shall be made by the engineer or other officer. Where the total estimate cost of any such work exceeds $70,000[4] the municipal corporation shall be required to invite and receive competitive bids. [Ohio Rev. Code § 723.52] (***Note***: Auditors should refer to OCS 2B-1 for tests of force accounts and the force account project assessment form.)

Competitive bidding procedures require that a contract be entered into in writing with the lowest and best bidder[5] after advertisement of the proposal for bids for not less than two nor more than four consecutive weeks[6] in a newspaper of general circulation within the municipality or as provided in Ohio Rev. Code § 7.16.[7] (Ohio Const. Art. XVIII, Section 3 allows municipalities to deviate from these requirements by charter.) [Ohio Rev. Code §§ 731.141 and 735.05]

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

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

~~During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, contracts for the purchase of personal protective equipment[9] needed to meet the emergency, can be entered into without following competitive bidding procedures. (Executive Order 2020-01D was rescinded by Executive Order 2021-08D on June 18, 2021) [Ohio Rev. Code § 731.14 - Villages]~~

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

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

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

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

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

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

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

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

[Ohio Rev. Code §§ 153.65 through 153.71]

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

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

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

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

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

1. Contracts over ~~$50,000 (cities or villages)~~ the applicable amounts specified above or any other local limitations were awarded using competitive bidding procedures. Be alert for indications of bid splitting or deliberate attempts to evade bid limitations, such as successive contracts just under the bid amount.

2. Advertisements of the proposals for bids were made as indicated (or posted to the municipality's website, as described above).

3. Documentation indicates that the lowest and best bid was accepted.

4. Contracts and expenditures were approved by the legislative authority in accordance with local requirements.

5. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

6. Select a representative number of purchases made through another subdivision or by "piggy backing" onto a DAS contract. Determine through inspection, vouching, comparison, or other such means whether the client is required to maintain records to demonstrate the following:

    a. The purchase conditions and specifications were substantially equivalent to those through the DAS Cooperative Purchasing Program.

    b. The purchase price was less than that available through the DAS Cooperative Purchasing Program.

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**2A-4 Compliance Requirements:** Ohio Rev. Code § 731.16 (villages) and 735.07 (cities) - Altering or modifying **municipal** contracts.

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

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

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

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

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

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. For a few selected contracts, compare cumulative contract expenditures with the original bid price. If these expenditures exceed the bid price, inspect the modified contract documents for signatures of the contractor and the appropriate officials (i.e., the legislative officers of a village, the village administrator, or the director of public service).

2. If a board of control exists, determine that the board documented their approval of any modifications.

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 23, 135 GA**
**Effective: June 30, 2023**

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**2A-5 Compliance Requirements:** Ohio Rev. Code §§ 9.17, 9.37, 125.04, 153.65-.71, 305.27, 307.041, 307.86-~~.87~~.92, 319.16, 2921.42 and 5543.19 - County payments to be by auditor's warrant; competitive bidding. Ohio Rev. Code § 307.87 - County notice and other bid procedures.

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

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

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

Competitive bidding is required for procurements exceeding ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B), except where otherwise provided by law. No purchase, lease, project, or other transaction subject to this section shall be divided into component parts, separate projects, or separate items of work in order to avoid these requirements. [Ohio Rev. Code § 307.86]

Competitive bidding is required, in accordance with Ohio Rev. Code §§ 307.86 to 307.92, for construction and reconstruction, including widening and resurfacing, of **roads** when the total estimated cost of the work exceeds $70,000 per mile or for the construction, reconstruction, improvement, maintenance or repair of **bridges or culverts** when the total estimated costs of the work exceeds $233,000.[8] These projects may be undertaken by force account when authorized by the board of county commissioners and when not required by another law to use competitive bidding, when the estimates, according to the force account project assessment form, as prepared by the county engineer, are less than these thresholds. [Ohio Rev. Code § 5543.19] (***Note***: Auditors should refer to OCS 2B-2 for tests of force accounts and the force account project assessment form.)

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

1. the estimated cost is less than ~~$100,000~~ $125,000[Ohio Rev. Code § 307.86(A)(1)], or
2. there is physical disaster to structures, radio communications equipment, or computers. [Ohio Rev. Code § 307.86(A)(2)]
3. ~~The product to be purchased is personal protective equipment[9], and the purchase is completed during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020. [Ohio Rev. Code § 307.86(A)(3)] (Executive Order 2020-01D was rescinded by Executive Order 2021-08D on June 18, 2021)~~

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

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

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

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

Other exceptions to the competitive bidding requirement are made for:

A. the purchase of supplies, or replacement parts, or information technology, for which there is a single supplier or source [Ohio Rev. Code § 307.86(B)(1)-(2)];

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

~~[9] Personal protective equipment is equipment worn to minimize exposure to hazards that cause workplace injuries and illnesses.~~

B. purchases from other government agencies [Ohio Rev. Code § 307.86(C)];

C. purchases of family services duties or workforce development activities by the county department of jobs and family services or of program services by a county board of developmental disabilities [Ohio Rev. Code § 307.86(D)];

D. purchases of criminal justice services, social services programs, family services, or workforce development activities from nonprofit corporations or associations under programs funded by the federal government or by state grants [Ohio Rev. Code § 307.86(E)];

E. purchases of insurance or contracts negotiated under Ohio Rev. Code § 307.86(F) (subject to certain conditions);

F. purchases of computer hardware, software or consulting services that are necessary to implement a computerized case management automation project administered by the Ohio prosecuting attorneys association and funded by a grant from the federal government. [Ohio Rev. Code § 307.86(G)];

G. purchases of child care services for county employees [Ohio Rev. Code § 307.86(H)];

H. acquisition of property, including land, buildings, and other real property leased for offices, storage, parking, or other purposes, pursuant to § 307.86(I) (subject to certain conditions);

I. purchase of programs or services under § 307.86(J) for a felony or misdemeanant delinquent, unruly youth, or status offender under the supervision of the juvenile court; and

J. purchase of family services, programs, or certain ancillary services by a public children services agency for children at risk or alleged to be abused, neglected, or dependent children [Ohio Rev. Code § 307.86(K)]; and

K. purchase of emergency medical services by a contract made by the board of county commissioners with a joint emergency medical services district [Ohio Rev. Code § 307.86(L)].

L. The purchase consists of used supplies and is made at a public auction [Ohio Rev. Code § 307.86(N)]

M. Excluded from competitive bidding are expenditures for the services of an accountant, architect, attorney, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser. [Ohio Rev. Code § 307.86].

N. Certain acquisitions made through another entity's purchasing program pursuant to Ohio Rev. Code § 9.48. [Ohio Rev. Code § 307.86]

O. Counties procuring professional design services, over the competitive bidding threshold, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require counties to publicly announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the

most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Ohio Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Ohio Revised Code. Ohio Rev. Code §§ 153.66 to 153.70 do not apply to any of the following:

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

[Ohio Rev. Code §§ 153.65 through 153.71]

P. Ohio Rev. Code § 307.86(M) authorizes the use of competitive sealed proposals instead of competitive bidding when the county determines the use of competitive sealed proposals would be advantageous to the county and the county contracting authority complies with the proposal requirements outlined in Ohio Rev. Code § 307.862. Ohio Rev. Code § 307.862(G) precludes a county contracting authority from using competitive sealed proposals for contracts for construction, design, demolition, alteration, repair, or reconstruction of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, waterworks, and all other structures or works of any nature. Therefore, the competitive sealed proposal method may be used only for purchases of non-construction related products and supplies and to the acquisition of services other than those services already exempted from the continuing competitive bidding procedure. For example, it might be used to acquire janitorial services or to purchase office supplies and equipment.

Q. A county may contract for energy conservation savings pursuant to Ohio Rev. Code § 307.041. This section provides two procurement options:

1. To follow Ohio Rev. Code §§ 307.86 to 307.92 (i.e. competitively bid contracts ≥ in excess of ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B)). [Ohio Rev. Code § 307.041(C)(1)(a)]
2. Request proposals from at least 3 vendors, after advertising the project. [Ohio Rev. Code § 307.041(C)(1)(b)]

R. Ohio Rev. Code § 307.87 requires a county to advertise once per week for at least two consecutive weeks of its intent to seek competitive bids for purchases or leases with an estimated cost exceeding the bidding threshold. If the contracting authority posts the notice on its internet site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the county, provided that the first notice published in such a newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the contracting authority's internet site on the world wide web; (3) It includes the internet address of the contracting authority's internet site on the world wide web; and (4) It includes instructions describing how the notice may be accessed on the contracting authority's internet site on the world wide web. The county

should also maintain a copy of the ~~bid~~ notice. Ohio Rev. Code § 307.88 requires that sealed[10] bids be opened and tabulated (i.e., summarized).

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. When testing expenditures, determine that disbursements were made only by county warrant (or electronic transaction via the county auditor).

2. Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other such means that contracts over ~~$50,000~~ the amounts specified above were awarded using competitive bidding procedures. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations[14], such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

3. For contracts selected above, determine whether advertisements of the proposals for bids were made at least once per week for two consecutive weeks (the notice may be posted to the county's website in lieu of a second newspaper publication, as described above), and whether bids were tabulated.

4. For contracts exceeding ~~$50,000~~ the amounts specified above meeting one or more of the exceptions indicated above, determine documentation exists to support expenditures as meeting those exceptions.

5. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

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

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

**Revised: HB 23, 135 GA**
**Effective: June 30, 2023**

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

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

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

**Summary of Requirements**

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

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

Ohio Rev. Code § 5705.05 ~~and .06~~ permits townships to use general levy money for road and bridge purposes. Ohio Rev. Code § 5705.06(F) permits a township to impose a special levy "for the construction, reconstruction, resurfacing, and repair of roads and bridges, excluding state roads and bridges, including the township's portion of the cost of the construction, improvement, maintenance, and repair of county roads and bridges." The revenue from the special levy imposed under Ohio Rev. Code § 5705.06(F) must be placed in a special fund created for the purpose of the levy. [Ohio Rev. Code § 5705.09(D)]. All payments on account of machinery, tools, material, and labor must be made from the Township Road Fund[11]. [Ohio Rev. Code § 5549.21]

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

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

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

Competitive bidding is required in eight circumstances:

1. Purchase of materials, machinery and tools to be used in constructing, maintaining and repairing roads and culverts, where the amount involved exceeds ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B). [Ohio Rev. Code § 5549.21].

2. Contracts for the **maintenance or repair** of roads, where the amount involved exceeds ~~$45,000~~ $105,000. In each case, the board must advertise once, not later than two weeks prior to the letting of the contract, in a newspaper of general circulation in the township. Award must be to the lowest responsible bidder. For contracts for the **construction or reconstruction** of a township road, the board shall cause to be made an estimate of the cost of the work by the county engineer. Where the total estimated cost of the work exceeds $35,000 per mile, the Board shall invite and receive competitive bids as provided in Ohio Rev. Code § 5575.02. [Ohio Rev. Code § 5575.01][12].

3. Contracts for the construction and erection of a memorial building or monument. When competitive bidding is required, no contract shall be made or signed until an advertisement has been placed in a newspaper, published or of general circulation in the township, at least twice. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper published or of general circulation in the township, provided that the first notice published in such newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the Board's internet web site; (3) It includes the internet address of the Board's internet web site; and (4) It includes instructions describing how the notice may be accessed on the board's internet web site. [Ohio Rev. Code § 511.12(B)]. Such contracts require competitive bidding only if the amount involved exceeds ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B). No project subject to this section shall be divided into component parts, separate projects, or separate items of work in order to avoid the requirements of this section. [Ohio Rev. Code § 511.12].

4. Contracts for equipment (including fire trucks) for fire protection, mechanical resuscitators, underwater rescue and recovery, and communication estimated to exceed ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B) pursuant to Ohio Rev. Code § 505.37~~ and 505.376~~. No purchase or transaction subject to this section shall be divided into component parts in order to avoid the requirements of this section. When competitive bidding is required, the board shall advertise once a week for not less than two consecutive weeks in a newspaper of general circulation within the township. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed

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

by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the township, provided that the first notice published in such newspaper meets all of the following requirements: (1) It is published at least two weeks before the opening of bids; (2) It includes a statement that the notice is posted on the board's internet web site; (3) It includes the internet address of the board's internet web site; and (4) It includes instructions describing how the notice may be accessed on the board's internet web site. [Ohio Rev. Code § 505.37(A)].

5. Contracts for street lighting systems where the cost exceeds ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B). No procurement subject to this section shall be divided into component parts, separate projects, or separate items of work in order to avoid the requirements of this section. The board shall prepare plans and specifications for the lighting equipment and shall, for two weeks, advertise for bids for furnishing the lighting equipment, either by posting the advertisement in three conspicuous places in the township or by publication of the advertisement once a week, for two consecutive weeks, in a newspaper of general circulation in the township. Any such contract for lighting shall be made with the lowest and best bidder. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation in the township, provided that the first notice published in such newspaper meets all of the following requirements: (A) It is published at least two weeks before the opening of bids; (B) It includes a statement that the notice is posted on the board's internet web site; (C) It includes the internet address of the board's internet web site; and (D) It includes instructions describing how the notice may be accessed on the board's internet web site. No lighting contract awarded by the board shall be made to cover a period of more than twenty years. The cost of installing and operating any lighting system or any light furnished under contract shall be paid from the general fund of the township treasury. [Ohio Rev. Code § 515.01].

6. Contracts for street lighting improvements where the cost exceeds $50,000. When competitive bidding is required, the board of township trustees shall post, in three of the most conspicuous public places in the district, a notice specifying the number, candle power, and location of lights and the kind of supports for the lights as provided by section 515.06 of the Ohio Revised Code, as well as the time, which shall not be less than thirty days from the posting of the notices, and the place the board will receive bids to furnish the lights. The board shall accept the lowest and best bid, if the successful bidder meets the requirements of section 153.54 of the Ohio Revised Code. The board may reject all bids. [Ohio Rev. Code § 515.07]

7. Contracts for building modifications for energy savings pursuant to Ohio Rev. Code § 505.264, where the estimated cost exceeds ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B), with certain exceptions. Award must be to the lowest and best bidder in accordance with the provisions of Sections 307.86 to 307.92. Townships desiring to implement energy conservation measures may also proceed under the method of requesting proposals from at least three vendors and following the other requirements of Ohio Rev. Code § 505.264(C)(2).

8. Contracts for private sewage collection tiles where the cost exceeds $50,000 pursuant to Ohio Rev. Code § 521.05. The successful bidder must meet the requirements of Section 153.54.

By unanimous resolution that a real and present emergency exists, trustees may enter into a contract, without bidding or advertising, for the purchase of equipment, supplies, materials or services needed to meet the emergency if the estimated cost of the contract is less than ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B). ~~During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, the board of township trustees may, by resolution, enter into a contract, without bidding or advertising, for the purchase of personal protective equipment[9] needed to meet the emergency, regardless of the estimated cost of the contract. (Executive Order 2020-01D was rescinded by Executive Order 2021-08D on June 18, 2021)~~
[Ohio Rev. Code § 505.08]

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

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

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

[Ohio Rev. Code §§ 153.65 through 153.71]

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

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

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

**Leasing Equipment:**

Ohio Rev. Code § 505.37 and § 505.50 permit a board of township trustees to lease or lease with an option to purchase fire and police protection and emergency police protection, respectively. Additionally, Ohio Rev. Code § 505.37(A) requires that contracts for the purchase of fire apparatus, mechanical resuscitators, underwater rescue and recovery equipment, other fire equipment, appliances, materials, fire hydrants, buildings, or fire-alarm communications equipment or services estimated to exceed ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B) be let by competitive bidding (whether leased or purchased).

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

A lease with option to purchase shall do the following:

1. Transfer title to the asset to the township on or before the end of the lease.
2. If the leased asset relates to road repair, construction or maintenance, the township should comply with the following:
    a. Make a cash down payment of at least three-twentieths (15%) of the total cost;
    b. If the board sells used equipment as part of the lease with option to purchase, the cash down payment may be reduced by the amount of the selling price of the used equipment;
    c. Be entered into only with the lowest responsive and responsible[13] bidder of the equipment after advertising for bids.

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Identify a few expenditures that should have been subject to competitive bidding while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other such means that contracts over the corresponding bid limits were awarded using competitive bidding procedures. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations[14], such as successive contracts just under the bid amount. In selecting payments to test, consider selecting

[13] *Lowest responsive and responsible bidder.* A bidder on the contract shall be considered responsive if the bidder's proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage. To determine if a bidder on the contract is responsible, consider the experience of the bidder, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly. (Ohio Rev. Code § 9.312)

[14] Auditors should also be aware of and look for other schemes and recommend solutions such as those highlighted here ~~by the Attorney General's Office in this publication: http://ohioauditor.gov/ocs/2019/PartnershipforCompetitivePurchasingBrochure.pdf~~.

from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

2. For contracts exceeding ~~$50,000~~ the bid thresholds specified above, where the township did not use competitive bidding, determine if they meet any of the exceptions noted above.

3. For footbridge construction, rebuilding and repair, determine documentation exists to support the necessity of the expenditures and that the total expenditures did not exceed $15,000 for any footbridge accessing a school.

4. For the building, improvement, enlargement, or removal of a town hall, determine if voter approval was obtained.

5. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

6. Inspect lease agreements to determine whether the agreements were for permitted equipment related to fire and police protection. Determine whether the agreement is a lease with option to purchase or an installment purchase agreement. Determine that the township selected the lowest responsive and responsible bidder.

7. Inspect lease agreements to determine whether the agreements were for permitted equipment related to repair and construction of roads. Determine whether the agreement is a lease with option to purchase or an installment purchase agreement. If it is a lease with an option to purchase, determine that the township made a down payment ≥ 15%. Determine that the township selected the lowest responsive and responsible bidder.

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

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**2A-7 Compliance Requirement:** Ohio Rev. Code §§ 9.17, 9.48, 153.65-.71, ~~307.86~~ 339.05 and 2921.42 - Bidding procedures and purchasing policies for supplies and equipment **(County Hospitals).**

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

**Summary of Requirement:** A board of county hospital trustees may adopt, annually, bidding procedures and purchasing or leasing policies for supplies and equipment that are routinely used in operating the hospital and that cost in excess of the amount specified in Ohio Rev. Code § 307.86, as the amount above which purchases must be competitively bid (purchases in excess of ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide, Appendix B)). [Ohio Rev. Code § 339.05]

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

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

1. the estimated cost is less than $100,000 ~~[Ohio Rev. Code § 307.86(A)(1)],~~ or
2. there is actual physical damage to structures or equipment. ~~physical disaster to structures, radio communications equipment, or computers. [Ohio Rev. Code § 307.86(A)(2)]~~
3. ~~The product to be purchased is personal protective equipment[9] and the purchase is completed during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020. [Ohio Rev. Code § 307.86(A)(3)] (Executive Order 2020-01D was rescinded by Executive Order 2021-08D on June 18, 2021)~~

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

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

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

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

[Ohio Rev. Code §§ 153.65 through 153.71]

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

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. By inquiry or reading the minutes, determine if the board of hospital trustees has adopted its own policies and procedures for competitive bidding. If so, trace approval of those policies by the board of county commissioners to an approval letter or to a notation in the minutes.

2. For a few expenditures over the policy limit, inspect bid files to determine if the policies and procedures were being followed as required[14]. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

3. If the board of hospital trustees has not adopted its own policies and procedures, see OCS Section 2A-5 for Counties for suggested audit procedures regarding competitive bidding procedures for county hospitals.

4. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

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

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

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

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

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

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

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

Each bid submitted under Ohio Rev. Code § 749.28 is required to be enclosed in a sealed envelope and deposited with the clerk of the board of hospital trustees. The envelope should indicate the nature of the bid. All bids are required to be opened at the time, date, and place specified in the

notice to bidders or specifications. The time, date, and place of the bid openings may be extended to a later date by the board of hospital trustees, provided that written or oral notice of the change is given to all persons who have received or requested specifications no later than 96 hours prior to the original time and date fixed for the opening. [Ohio Rev. Code § 749.30]

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

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

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Inquire or determine from reading the minutes or other means whether the hospital paid for work or supplies or for rebuilding or repairs exceeding the bidding threshold. Inspect a few bid files (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) and other related documentation to determine that:

    a. Plans, specifications, and detailed drawings are printed and distributed to bidders for the erection, rebuilding or repair of a hospital building.

    b. The contracts are made in the name of the board of hospital trustees and stipulate in the contract that the contractor will not execute any extra work or make any modifications or alterations in the work specifications and plans unless ordered in writing by the board.

    c. Copies of plans and drawings and the original bids, specifications and contracts are on file in the office of the clerk.

    d. Thirty days' notice was given in one newspaper of general circulation in the municipal corporation that sealed proposals will be received.

    e. Bid guaranties and/or bonds were received with the proposals from contractors.

    f. Bids were enclosed in sealed envelopes and opened by the municipal clerk at the time, date, and place specified in the notice to bidders.

    g. The lowest and best bid was accepted (unless bond is considered inadequate by the board).[14]

2. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

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

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

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

**Summary of Requirements:** When the board of trustees of a university branch resolves to contract for improvements exceeding $50,000[15], the college must advertise for bids once a week for three consecutive weeks, in at least one newspaper of general circulation within the college district where the work is to be done. [Ohio Rev. Code § 3355.12(A)]

When the board of trustees of a community college [Ohio Rev. Code § 3354.16(A)], technical college [Ohio Rev. Code § 3357.16(A)], or state community college district [Ohio Rev. Code § 3358.10] resolves to contract for improvements exceeding $200,000, the college must advertise for bids once a week for three consecutive weeks in at least one newspaper of general circulation within the college district where the work is to be done, as provided in Ohio Rev. Code § 7.16[16].

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

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

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

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[15] This statute requires the Board of Regents to increase this amount every other January 1. The Board of Regents informed us they have not increased this threshold for this cycle.

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

A bidder on the contract is considered responsive if his proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage. The factors that the college must consider in determining whether a bidder on the contract is responsible include the experience of the bidder, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly. [Ohio Rev. Code § 9.312(A)]

An apparent low bidder found not to be responsive and responsible is to be notified by the college of the finding and the reasons for it. The notification is given in writing and either by certified mail or, if the state agency or political subdivision has record of an internet identifier[17] of record associated with the bidder, by ordinary mail and by that internet identifier of record. [Ohio Rev. Code § 9.312(A)]

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

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

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

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

[Ohio Rev. Code §§ 153.65 through 153.71]

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

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

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

    a. Contracts over the amounts indicated above were awarded using competitive bidding procedures.

    b. Advertisements of the proposals for bids were made.

    c. Documentation indicates the lowest and best bid was accepted, or documents why the low bidder was not selected.[14]

2. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**2A-10 Compliance Requirements:** Ohio Rev. Code §§ 9.17, 153.65-.71, 2921.42, 3375.06, 3375.10, 3375.12, 3375.15, 3375.22, 3375.30 and 3375.41 – Library procedure for bidding and letting of contracts ~~over $50,000~~.

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

**Summary of Requirements:** When a board of library trustees appointed pursuant to Ohio Rev. Code §§ 3375.06 (county free library), 3375.10 (township library), 3375.12 (municipal free library), 3375.15 (school library), 3375.22 (county library district), or 3375.30 (regional library district) determines to construct, demolish, alter, repair, or reconstruct a library or make any improvements or repairs which will exceed ~~$50,000~~ the amount specified in Ohio Rev. Code § 9.17 (see OCS Implementation Guide Appendix B), except in cases of urgent necessity or for the security and protection of library property, it must advertise for two weeks for sealed bids in some newspaper of general circulation in the district, or as provided in Ohio Rev. Code § 7.16[18]. If no newspaper has a general circulation in the district, the board must post the advertisement in three public places in the district. [Ohio Rev. Code § 3375.41]

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

The sealed bids are:

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

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

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

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

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

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

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

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

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

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

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

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

[Ohio Rev. Code §§ 153.65 through 153.71]

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

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Inquire or determine through other means, such as analytical procedures or reading the minutes, if payments for repairs, improvements, etc. exceeding the bidding threshold were made during the period. If so, inspect a few related bid files (in selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold) and associated documentation that:

    a. Expenditures over the bidding threshold were supported by contracts awarded in compliance with competitive bidding requirements (except in emergencies).

    b. Advertisements of the proposals for bids were made.

    c. Procedures used for opening bids were in agreement with those required (i.e., opened at the next meeting of the board, publicly read by the fiscal officer, and entered into the board's records).

    d. Adequate documentation is on file to support the board's decisions to select the lowest responsible bid as well as reject any bids.[14]

2. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**2A-11 Compliance Requirements:** Ohio Rev. Code §§ 153.50, 153.51, and 153.52 - Separate bids and contracts required for each class of work on buildings and other structures (e.g., institutions, bridges, culverts, or improvements).

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

**Summary of Requirements:** Except for contracts made with a construction manager at risk[19], with a design-build firm[20], or with a general contracting firm[21], when a project is required by law to be subject to bidding ~~to be contracted out~~, the entity required to bid such project shall group the work to be done into the specifically listed classes below before drawing up the bid specifications.

The separate classes are:

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

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

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

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

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

allow the entity to do so, the entity may then aggregate the classes or branches together into a single bid that would allow them to bid out the work required by the project but not otherwise included in the bidding process. [Ohio Rev. Code § 153.51]

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

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

~~When an entity is to bid work on buildings and other structures, the cost of which is greater than $50,000, it shall require separate and distinct bids to be made for each of the following branches or classes of work to be performed, except for contracts made with a construction manager at risk, with a design-build firm, or with a general contracting firm: (1) plumbing and gas fitting; (2) steam and hot-water heating, ventilating apparatus and steam-power plant; (3) electrical equipment. [Ohio Rev. Code § 153.50(B)]~~

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

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

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

1. The government documented the classification structure for the bid requests in a manner that supports that the government was likely to receive the lowest possible combined or separate bids for the work[14];

2. The contract was awarded to the lowest and best separate bidder (county, township, or municipal corporation or any public institution belonging thereto) or the lowest responsive and responsible bidder (state, a school district, or any public institution belonging thereto);

3. The contract was made directly with the contractor(s) upon the terms, conditions, and limitations of the bid.

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

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**2A-12 Compliance Requirements:** Ohio Rev. Code §§ 4115.04 and 4115.03 - Prevailing wage rates in public works contracts.[22]

**Note: Auditors should carefully consider whether contract expenditures are direct and material to their audit. Among other federal assistance, local governments are receiving historical levels of federal funding as part of the ARPA Coronavirus State and Local Fiscal Recovery Funds and Infrastructure Investment and Jobs Act. These programs include significant provisions for water, sewer, broadband and other potential infrastructure-oriented projects. Contracts charged, in whole or in part, to federal programs may need to follow the Davis Bacon Act described in the Uniform Guidance.**

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

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

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

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

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

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

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

- Effective ~~1/1/2018~~ 1/1/2022 through ~~12/31/2019~~ 12/31/2023, the thresholds are ~~$91,150~~ $96,091(new) and ~~$27,309~~ $28,789(reconstruction).

Vertical construction (all other new construction and reconstruction):

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

2. Except as provided in 4. below, any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement, the total overall project cost of which is fairly estimated to be more than the following amounts and performed by other than full-time employees who have completed their probationary period in the classified civil service of a public authority:[24]
   a. Thirty-eight thousand dollars, beginning on September 29, 2011, and continuing for one year after;
   b. Sixty thousand dollars, beginning when the period above expires and continuing for one year thereafter;
   c. Seventy-five thousand dollars, beginning when the time period in (b) expires.

3. Any new construction of a public improvement that involves roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction, the total overall project cost of which is fairly estimated to be more than seventy-eight thousand two hundred fifty-eight dollars adjusted biennially by the director of commerce pursuant to Ohio Rev. Code § 4115.034 and performed by other than full-time employees who have completed their probationary periods in the classified services of a public authority; [Ohio Rev. Code § 4115.03(B)(3)]

4. Any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement that involves roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction, the total overall project cost of which is fairly estimated to be more than twenty-three thousand four hundred forty-seven dollars adjusted biennially by the director of commerce pursuant to Ohio Rev. Code § 4115.034 and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority. [Ohio Rev. Code § 4115.03(B)(4)]

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

- Public improvements partially or wholly funded by the Federal government or any of its agencies (whether by grant or loan), if Federal minimum wage requirements (i.e. Davis Bacon) apply to mechanics or laborers.

- A participant in a work activity, developmental activity or an alternative work activity under Ohio Rev. Code §§ 5107.40 to 5107.69, when a public authority directly uses the labor of the participant to construct a public improvement if the participant is not engaged in paid employment or subsidized employment pursuant to the activity.

- For public improvements undertaken by boards of education or educational service centers[25].

- The State prevailing wage law does not apply to county or municipal hospitals if none of the construction funds, including funds to repay any amounts borrowed, have been secured by obligations pledging the full faith and credit of the State, the county, a township, or a municipal corporation, or are funds that have been generated by the levy of a tax by the State, the county, a township, or a municipal corporation

- Any project described in divisions (D)(1)(a) to (D)(1)(e) of Ohio Rev. Code § 176.05;

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

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

- Public improvements undertaken by, or under contract for, a port authority as defined in Ohio Rev. Code §§ 4582.01 or 4582.21;

- Any portion of a public improvement undertaken and completed solely with labor donated by the individuals performing the labor, by a labor organization and its members, or by a contractor or subcontractor that donates all labor and materials for that portion of the public improvement project. [Ohio Rev. Code § 4115.04(B)(7)].

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

1. Inquire if the contract is funded in whole or part by federal grant or contract. If so, determine whether Federal prevailing wage laws (the Davis Bacon Act) apply.

2. Inspect contracts exceeding the threshold amounts for the required "prevailing wage" language.

3. Inquire if any projects were sublet. If so, inspect the contractor's contract for language authorizing the subletting.

4. Compare the date of prevailing wage establishment with the contract date. If more than 90 days elapsed between the two dates, determine that a prevailing wage redetermination was obtained by inspecting that document.

5. If a county hospital has claimed the exception provided by Section 4115.04(B), review project documents and legislation authorizing the project, make inquiries, and perform such other procedures to determine whether financing sources meet the criteria of Section 4115.04(B).

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

**2A-13 Compliance Requirement:** Ohio Admin. Code 117-2-02(D) and (E) - Required accounting records[26]

**Summary of Requirement:**

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

(1) Cash journal, which typically contains the following information: the amount, date, receipt number, check number, account code, purchase order number, and any other information necessary to properly classify the transaction.

(2) Receipts ledger, which typically assembles and classifies receipts into separate accounts for each type of receipt of each fund the public office uses. The amount, date, name of the payor, purpose, receipt number, and other information required for the transactions can be recorded on this ledger.

(3) Appropriation ledger, which may assemble and classify disbursements or expenditure/expenses into separate accounts for, at a minimum, each account listed in the appropriation resolution. The amount, fund, date, check number, purchase order number, encumbrance amount, unencumbered balance, amount of disbursement, and any other information required may be entered in the appropriate columns.

(4) In addition, all local public offices should maintain or provide a report similar to the following accounting records:

a. Payroll records including:

i. W-2's, W-4's and other withholding records and authorizations;

ii. Payroll journal that records, assembles and classifies by pay period the name of employee, social security number, hours worked, wage rates, pay date, withholdings by type, net pay and other compensation paid to an employee (such as a termination payment), and the fund and account charged for the payments;

iii. Check register that includes, in numerical sequence, the check number, payee, net amount, and the date;

iv. Information regarding nonmonetary benefits such as car usage and life insurance; and

v. Information, by employee, regarding leave balances and usage;

b. Utilities billing records including:

i. Master file of service address, account numbers, billing address, type of services provided, and billing rates;

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

ii. Accounts receivable ledger for each service type, including for each customer account, the outstanding balance due as of the end of each billing period (with an aging schedule for past due amounts), current usage and billing amount, delinquent or late fees due, payments received and noncash adjustments, each maintained by date and amount;

iii. Cash receipts records, recording cash received and date received on each account. This information should be used to post payments to individual accounts in the accounts receivable ledger described above.

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

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

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

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

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

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

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

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

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

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

**Summary of Requirements:**

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

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

A. United States obligations or any other obligation guaranteed as to principal and interest by the United States.[28] This law prohibits investing in stripped principal or interest obligations. [Ohio Rev. Code § 135.14(B)(1)]

B. Bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality. All federal agency securities must be direct[29] issuances of federal government agencies or instrumentalities. [Ohio Rev. Code § 135.14(B)(2)]

C. Interim deposits in the eligible institutions applying for interim monies as provided in Ohio Rev. Code § 135.08. [Ohio Rev. Code § 135.14(B)(3)]

    1. Per 135.13, *Interim deposits* are certificates of deposit[30] or savings or deposit accounts, including passbook accounts.
    2. Ohio Rev. Code §§ 135.144 and 135.145 also permits governments to use the IntraFi Network Deposits (formerly Certificate of Deposit Account Registry Services (CDARS)) or similar programs (one example is the Government Insured Deposit Program (GIDP))

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

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

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

meeting Ohio Rev. Code § 135.144 or 135.145 requirements for interim deposits. If a government purchases CDs or deposits for more than the FDIC limit ($250,000) with a bank participating in IntraFi Network Deposits (formerly CDARS) or similar program, the bank or program "redeposits" the excess amounts with other institutions. Each bank accepts less than $250,000 so that all deposits have FDIC coverage. Ohio Rev. Code §§ 135.144 and 135.145 requires a government to place its deposits with an eligible depository per Ohio Rev. Code § 135.03. However, the institutions the government's depository places excess deposits with are not subject to Ohio Rev. Code § 135.03. For example, while the deposit must be initiated at an Ohio depository branch, the Ohio depository can purchase CDs from depositories outside of Ohio for the excess. Because all IntraFi Network Deposits (formerly CDARS) and GIDP deposits have FDIC coverage, the collateral requirements of Ohio Rev. Code §§ 135.18 and 135.181 do not apply. (That is, these are *insured* deposits for GASB Statement No. 40 purposes, Appendix E-2 of the OCS Implementation Guide.)[31]

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

D. Bonds or other obligations of the State of Ohio, or the political subdivisions of this state, provided that, with respect to bonds or other obligations of political subdivisions, all of the following apply:
   1. The bonds or other obligations are payable from general revenues of the political subdivision and backed by the full faith and credit of the political subdivision.
   2. The bonds or other obligations are rated at the time of purchase in the three highest classifications established by at least one nationally recognized ~~standard~~ statistical rating ~~service~~ organization and purchased through a registered securities broker or dealer.
   3. The aggregate value of the bonds or other obligation does not exceed twenty per cent of interim moneys available for investment at the time of purchase.
   4. The treasurer or governing board is not the sole purchaser of the bonds or other obligations at original issuance.
   5. The bonds or other obligations mature within ten years from the date of settlement

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

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

treasurer of state and may be conducted by or provided under the supervision of the treasurer of state. [Ohio Rev. Code § 135.14(B)(4)]

E. No-load money market mutual funds consisting exclusively of obligations described in (B)(1) or (2) of Ohio Rev. Code § 135.14 (i.e. the investments listed in the first two bullets above), and repurchase agreements secured by such obligations, provided the government purchases the money market mutual fund **only** through eligible institutions mentioned in Ohio Rev. Code § 135.03 (which are, generally, Ohio banks and national banks authorized to do business in Ohio). [§ 135.14(B)(5)] Also, per Ohio Rev. Code § 135.01(O)(2), these funds must have the highest letter or numerical rating provided by at least one nationally recognized ~~standard~~ statistical rating ~~service~~ organization.

F. The Ohio Subdivisions Fund (STAR Ohio[32]) as provided in Ohio Rev. Code § 135.45. [Ohio Rev. Code § 135.14(B)(6)]

G. Chapter 133 securities (generally debt instruments Ohio State & local governments have issued) [Ohio Rev. Code § 133.03].

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

A. The market value of securities subject to an overnight repurchase agreement must exceed the cash invested subject to the repurchase agreement by 2%.[34] A term repurchase agreement may not exceed 30 days and must be marked to market daily.[35]

B. All securities purchased pursuant to a repurchase agreement are to be delivered into the custody of the treasurer or governing board or an agent designated by the treasurer or governing board.[36]

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

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

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

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

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

C. Repurchase agreements must be in writing. They must require that, for each transaction, the participating institution provide:
   1. the par value of the securities;
   2. the type, rate, and maturity date of the securities;
   3. a numerical identifier (e.g., a CUSIP number) generally accepted in the industry that designates the securities.

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

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

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

   1. Except, An eligible investment described in Ohio Rev. Code § 135.14 with a variable interest rate payment or single interest payment, based upon a single index comprised of other eligible investments provided for in division (B)(1) or (2) of § 135.14 (see above), is **not** a derivative, if the variable rate investment has a maximum maturity of 2 years. [Ohio Rev. Code § 135.14(C)]

      a. For example, a two-year investment in Federal securities with a variable interest rate indexed to other Federal securities would be legal, because Ohio Rev. Code § 135.14(C) expressly permits using Federal securities as part of a derivative if it matures within two years. Conversely, an investment indexed to an interbank offered rate[37] or to a bank's prime rate would not be legal because these are not listed in Ohio Rev. Code § 135.14(B)(1) or (B)(2).

   2. ***Note:*** The Ohio Rev. Code still uses the derivative definition from GASB Technical bulletin 94-1. GASB Statement No. 53 (GASB Cod. D40.103), defines derivatives differently than does the Ohio Revised Code. So, for legal compliance purposes, governments must follow the Ohio Rev. Code derivative definition. For financial reporting, GAAP governments must follow the GASB definition to value, present, and disclose derivatives.

[37] Note: ~~**LIBOR** will be phased out after 2021. Other interbank offered rates will replace it. GASB 93 permits entities to continue to apply hedge accounting to derivatives with renegotiated rates when an interbank offered rate (IBOR) is replaced as the reference rate of the hedging derivative instrument's variable payment. (Without this amendment, GASB Statement No. 53 would require reclassifying these renegotiated hedges as (speculative) investments.) GASB 99, issued April 2022 and effective upon issuance for LIBOR, permits an extension of the period of time for which LIBOR is considered an appropriate benchmark. GASB 99 indicates that LIBOR is no longer an appropriate benchmark interest rate for a derivative instrument that hedges the interest rate risk of taxable debt when LIBOR ceases to be determined by the ICE Benchmark Administration using the methodology in place as of December 31, 2021.~~ As of July 1, 2023, the ICE Benchmark Administration ceased publishing any LIBOR setting using the methodology in place as of December 31, 2021. As a result, as of July 1, 2023, LIBOR is no longer an appropriate benchmark interest rate for a derivative instrument that hedges the interest rate risk of taxable debt for purposes of GASB Statement 53.

a. For example, interest rate swaps[38] and energy futures contracts (which are allowable under Ohio Rev. Code § 9.835 to mitigate price fluctuations, and are not intended as investments) meet the GASB Statement No. 53 (GASB Cod. D40.103) derivative definition, and would be subject to GASB Statement No. 53 (GASB Cod. D40) derivative measurement and disclosure requirements, but are ***not*** illegal.

3. 1999 Op. Att'y. Gen. No. 99-026 deemed collateralized mortgage obligations to be illegal derivatives.
4. FA treasury inflation-protected security (TIPS) is permissible for counties only, per Ohio Rev. Code § 135.35(B).

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

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

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

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

- The Ohio Subdivision's Fund (STAR Ohio[32]) pursuant to Ohio Rev. Code § 135.14(B)(6).

- A fund created solely to acquire, construct, own, lease, or operate municipal utilities pursuant to Ohio Rev. Code § 715.02 or Ohio Const. Art XVIII, § 4.

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

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

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

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

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

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

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

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

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

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

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

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

Select a representative number[39] of investments and:

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

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

2. If the government holds financial instruments or contract or obligation whose value or return is "based upon or linked to another asset or index, or both, separate from the financial instrument," consider whether the instrument is an illegal derivative.
   a. If the instrument is not an interest-rate swap, or expressly permitted (such as energy futures under Ohio Rev. Code § 9.835), consult with the Center for Audit Excellence to determine its Legality, Valuation, Presentation and Disclosure.

3. For investments in bonds or other obligations of the State of Ohio, or the political subdivisions of this state, inspect documentation and determine whether the additional training was received. [Ohio Rev. Code § 135.14(B)(4)]

4. Determine that the investments mature within the prescribed limits (generally no later than 5 years, or ***other*** periods for repurchase agreements, bankers' acceptances and commercial paper.)

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

5. Inspect documentation supporting repurchase agreements and determine that:

   a. The market values of securities exceed the principal values of securities subject to the overnight repurchase agreement by 2%. (***Note:*** The risk of non-compliance increases when banks merge.)

   b. A term repurchase agreement did not exceed 30 days and the values of the securities were marked to market daily.

   c. Repurchase agreements were in writing, including the par value of the securities; the type, rate, and maturity date of the securities; and a numerical identifier.

6. Read the prospectus for money market mutual funds with which the government has significant investment. Determine whether the prospectus limits investments to those authorized under Ohio Rev. Code § 135.14(B)(1) & (2). Ohio Rev. Code § 135.14(B)(1) & (2) describe federally issued or insured securities. Ohio Rev. Code § 135.14(B)(1) & (2) would not include, for example, reverse repos consisting of Federal securities or securities other states issue.

7. Determine whether money market mutual funds have the highest credit rating issued by one nationally recognized statistical ratings ~~agency~~ organization (such as that S&P, Moody's or Fitch issues).

8. Regarding Ohio Rev. Code § 135.14(F), scan investment records to determine whether the government is selling securities prior to maturity. If a significant number or amount of premature sales occurred because the government had an emergency need for cash, review the CFO's cash flow forecasts supporting that the government had reasonable support, at the time of purchase, that it could hold the security to maturity. ***If there is inadequate cash flow planning***,[40] cite this section. The noncompliance finding should also recommend the government improve its cash flow forecasting. The finding should also describe any losses the government suffered from these sales.

9. If the government hires an investment manager for all or a portion of its investments, obtain copies of investment summary reports the manager prepares.

   a. Read the agreement between the manager and the government. Determine if the agreement (or the investment policy Step 2A-15 describes) requires the manager to comply with all applicable Ohio Rev. Code Chapter 135 requirements. Maintain a copy or summary of the agreement in the permanent file.

   b. Test selected investments from the reports for compliance with steps 1 – 5 above.

   c. Scan purchases and sales to determine whether the manager sells securities prior to their maturity for other than an urgent need for cash.

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

***Note***: The steps above should normally be sufficient for most governments. Because we believe the risk of governments engaging in certain prohibited activities such as leveraging, short sales or arbitrage

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

violations is low, there are no steps included to test these requirements. You should scan the other requirements in this step, and based on your knowledge of the government's investing activities, investigate them if evidence suggests the government may have materially violated these requirements.

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

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

**Summary of Requirements:**

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

- Per Ohio Rev. Code § 135.14(O)(2), If a written investment policy is not filed with the Auditor of State, the treasurer or governing board can invest only in interim deposits[41], STAR Ohio[32], or no-load money market mutual funds.

- Per Ohio Rev. Code § 135.14(O)(3), A subdivision whose average annual investment portfolio is $100,000 or less need not file an investment policy, provided that the treasurer or governing board certifies to the Auditor of State that the treasurer or governing board will comply and is in compliance with the provisions of §§ 135.01 to 135.21.

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

- All entities conducting investment business with the treasurer or governing board (except the Treasurer of State);

- All brokers, dealers, and financial institutions, described in § 135.14(M)(1), initiating transactions with the treasurer or governing board by giving advice or making investment recommendations;

- All brokers, dealers, and financial institutions, described in § 135.14(M)(1), executing transactions initiated by the treasurer or governing board.

If any securities or certificates of deposit purchased are issuable to a designated payee or to the order of designated payee, the designated party is to be the treasurer and the treasurer's office[42].

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

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

Except for investments in securities described in Ohio Rev. Code § 135.14(B)(5) and (6) (no-load money funds, certain repos and STAR Ohio[32]) and for investments by a municipal corporation in the issues of that municipal corporation, all investments must be made through:

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

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

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

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

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

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

2. If there is no written investment policy filed with the Auditor of State, scan the government's investment portfolio for the period to determine that it is composed solely of interim deposits[41], STAR Ohio[32], or no-load money market mutual funds, or that its average annual size is $100,000 or less. Additionally, inspect the certificate to the Auditor of State asserting[43] that the treasurer or governing board will comply and is in compliance with the provisions of Ohio Rev. Code §§ 135.01 to 135.21.

3. If applicable, inspect documentation that the policy was approved by the treasurer or governing board and is on file with the Auditor of State (For AOS employees the policies and exemptions are available at GPInfoSearch or S:/Final Audit PDF/Region Folder/County Folder/Client Folder/Investment Policy Folder[44]). (We need not repeat this step every audit. Keep a copy in the permanent file, and inquire whether the government has amended the policy since the prior audit.)

4. Inspect the policy for the requisite signatures:
   a. All entities conducting investment business with the treasurer or governing board (except the Treasurer of State);

   b. All brokers, dealers, and financial institutions initiating transactions with the treasurer or governing board by giving advice or making investment recommendations;

   c. All brokers, dealers, and financial institutions executing transactions initiated by the treasurer or governing board.

   d. Select a representative number of investments made by the entity and determine whether the investments are in accordance with the entity's investment policy as adopted by the entity's legislative body.

5. Determine if the policy requires financial institutions, brokers and dealers to comply with Ohio Rev. Code Chapter 135. (There is no legal requirement to include this, but if the policy does not include this requirement, we should recommend the government amend their policy to require compliance.)

6. Select a representative number[39] or amount of investments:

   a. Inspect purchase documents and determine that investments were made only through members of NASD, or institutions regulated by the Superintendent of Banks, Superintendent of Savings and Loan Associations, Comptroller of Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System.

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

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

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

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

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

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

Up to forty per cent of interim moneys available for investment[45] in either of the following [Ohio Rev. Code § 135.142(A) for school districts; § 135.14(B)(7) for other subdivisions]:[46]

**Commercial paper** notes issued by an entity defined in Ohio Rev. Code § ~~1705.01(D)~~ 1706.01(K) (see definition below) and that has assets exceeding five hundred million dollars, to which all the following apply:

- The notes are rated at the time of purchase in the highest classification established by at least two nationally recognized ~~standard~~ statistical rating ~~services~~ organizations.
- The aggregate value of the notes does not exceed ten per cent of the aggregate value of the outstanding commercial paper of the issuing corporation.
- The notes mature not later than 270 days after purchase.
- The investment in commercial paper notes of a single issuer shall not exceed in the aggregate five per cent of interim moneys available for investment at the time of purchase.

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

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

"Entity" means ~~any of the following~~ a general partnership, limited partnership, limited liability partnership, limited liability company, association, corporation, professional corporation, professional association, nonprofit corporation, business trust, real estate investment trust, common law trust, statutory trust,

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

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

cooperative association, or any similar organization that has a governing statute, in each case, foreign or domestic. [Ohio Rev. Code § ~~1705.01(D)~~ 1706.01(K)]~~:~~

~~A. A corporation existing under the laws of this state or any other state;~~

~~B. Any of the following organizations existing under the laws of this state, the United States, or any other state:~~
~~1. A business trust or association;~~
~~2. A real estate investment trust;~~
~~3. A common law trust;~~
~~4. An unincorporated business or for profit organization, including a general or limited partnership;~~
~~5. A limited liability company.~~

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

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

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

1. Inspect a representative number[47] of dealer confirmations of the commercial paper notes purchased and determine that the entity has maintained related documentation that the: [Ohio Rev. Code § 135.14(B)(7)(a)]

   a. Commercial paper was rated in the highest classification by two ~~standard~~ statistical rating ~~services~~ organizations.

   b. The commercial paper matures not later than 270 days after purchase.

   c. The investment in commercial paper notes of a single issuer does not exceed the aggregate five per cent of interim moneys available at the time of purchase.

2. Inspect dealer confirmations of the bankers' acceptances purchased and determine that the entity has maintained related documentation that the: [Ohio Rev. Code § 135.14(B)(7)(b)]

   a. Banks are insured by the Federal Deposit Insurance Corporation.

   b. The acceptances mature not later than 180 days after purchase.

3. For investments in Bankers' Acceptances and Commercial Paper Notes, inspect documentation and determine whether the additional training was received.

4. For school districts, assure the permanent file documents the resolution authorizing the treasurer to invest in commercial paper and / or bankers' acceptances.

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

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

**Revised: Ohio Admin. Code 113-40**
**Effective: August 10, 2023**

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

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

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

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

(1) Bonds, notes, or other obligations of the United States; or bonds, notes, or other obligations guaranteed as to principal and interest by the United States or those for which the full faith of the United States is pledged for the payment of principal and interest thereon, by language appearing in the instrument specifically providing such guarantee or pledge and not merely by interpretation or otherwise;

(2) Bonds, notes, debentures, letters of credit, or other obligations or securities issued by any federal government agency, or instrumentality, or the export-import bank of Washington; bonds, notes, or other obligations guaranteed as to principal and interest by the United States or those for which the full faith of the United States is pledged for the payment of principal and interest thereon, by interpretation or otherwise and not by language appearing in the instrument specifically providing such guarantee or pledge;

(3) Obligations of or fully insured or fully guaranteed by the United States or any federal government agency or instrumentality;

(4) Obligations partially insured or partially guaranteed by any federal agency or instrumentality;

(5) Obligations of or fully guaranteed by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Farm Credit Bank, or Student Loan Marketing Association[48];

(6) Bonds and other obligations of this state;

(7) Bonds and other obligations of any county, township, school district, municipal corporation, or other legally constituted taxing subdivision of this state, which is not at the time of such deposit, in default in the payment of principal or interest on any of its bonds or other obligations, for which the full faith and credit of the issuing subdivision is pledged;

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

(8) Bonds of other states of the United States which have not during the ten years immediately preceding the time of such deposit defaulted in payments of either interest or principal on any of their bonds;

(9) Shares of no-load money market mutual funds consisting exclusively of obligations described in division (D)(1) or (2) of Ohio Rev. Code § 135.18 [these sections are (1) & (2), above] and repurchase agreements secured by such obligations;

(10) A surety bond issued by a corporate surety licensed by the state and authorized to issue surety bonds in this state pursuant to Ohio Rev. Code Chapter 3929 and qualified to provide surety bonds to the federal government pursuant to 96 Stat. 1047 (1982), 31 U.S.C. § 9304;

(11) Bonds or other obligations of any county, municipal corporation, or other legally constituted taxing subdivision of another state of the United States, or of any instrumentality of such county, municipal corporation, or other taxing subdivision, for which the full faith and credit of the issuer is pledged and, at the time of purchase of the bonds or other obligations, rated in one of the two highest categories by at least one nationally recognized statistical rating organization.

***Pooled Collateral Requirements***

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

(a) One hundred two percent of the total amount of all uninsured public deposits. (Ohio Rev. Code § 135.182(B)(1))

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

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

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

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

when combined with the market value of eligible securities already pledged, to satisfy the requirement of a) and b) above, as applicable, to secure the repayment of all uninsured deposits at the public depository. (Ohio Rev. Code § 135.182(B)(3))[50]

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

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

Ohio Admin. Code 113-40-01 (~~17~~M) States: "Operating policies" means the set of operational procedures, policies, and requirements for the use of OPCS~~, to be made available by the treasurer of state~~. All participation in OPCP and use of OPCS shall be subject to the operating policies, which are maintained at the sole discretion of the treasurer of state. The operating policies ~~will be~~ are available at https://opcs.ohio.gov/login#/registrationforms

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

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

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

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

***Specific Pledged Collateral Requirements***

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

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

- meet the requirements of 12 U.S.C. § 1823(e)

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

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

- authorize the public depositor to obtain control of the collateral pursuant to Ohio Rev. Code § 1308.24(D).

Ohio Rev. Code § 135.18(E) says a public depository shall designate a qualified trustee[52] and place the eligible securities with the trustee for safekeeping. The trustee shall:

- hold the eligible securities in an account indicating the public depositor's security interest in the securities[53], and
- report to the public depositor information relating to the securities pledged to secure the public deposits in the manner and frequency required by the public depositor.

*Note*: Any Federal Reserve Bank[54] or branch located in this state or Federal Home Loan Bank is qualified to act as trustee for the safekeeping of securities. And any institution mentioned in Ohio Rev. Code § 135.03 is qualified to act as trustee for the safekeeping of securities, other than those belonging to itself, under this section.

***FDIC Insurance Coverage***

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

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

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

In-State:
Up to $250,000 for the combined amount of all time and savings accounts, and
Up to $250,000 for all demand deposit accounts.

Out-of-State:
Up to $250,000 for the combined total of all deposit accounts.

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

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

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

The term "political subdivision" is defined to include drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between the states. The term "political subdivision" also includes any subdivision or principal department of a public unit (state, county, or municipality) if the subdivision or department meets the following tests:

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

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

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

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

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

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

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

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

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

***Procedures for Financial Institutions enrolled in OPCS***

1. Obtain and review the AOS State Regions annual report related to the testing of the OPCS (https://ohioauditor.gov/ipa/correspondence)[55]

2. Auditors may use credentials to access[56] https://opcs.ohio.gov/login#/ and test compliance using the following steps:
    a. Review *PU Attestation* and *PU Never Logged In Reports* for appropriate dates to:
        i. Determine if the auditee is sufficiently monitoring ~~compliance~~ the accuracy of its account balances as required. (Note: The Treasurer of State is responsible for monitoring and ensuring the sufficiency of securities pledged under Ohio Rev. Code § 135.182)
    b. Review the *Deposit Information & Sufficiency Report* and/or *Public Unit Insufficiency Report* and perform the following:
        i. Observe, document, and compare the year-end balance to confirmed balances in cash testing. (*Note*: Some completeness testing should also be performed to determine that all accounts that should be included in OPCS are actually included.)
        ii. Observe, document, and print evidence of collateral sufficiency[57] for multiple dates during the audit period.

        *Note*: When issuing comments for collateral insufficiencies[58], auditors should consider

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

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

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[55] Testing performed by AOS State Region provides assurance over:
- Bank Rating System (SCALE)
- Collateral Sufficiency Calculations (meet Ohio Rev. Cod requirements)
- Security Interest Perfection

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

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

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

***Procedures for Financial Institutions not enrolled in OPCS***

1. Determine if the financial institution has an agreement with the entity for a specific pledge agreement (Note: pooled arrangements are not allowed outside of OPCS[49])

2. Compare depository balances to depository collateral during the audit period, noting maximum amounts on deposit at any time. Calculate (or inspect, if available, the government's calculations) if legal security was at least equal to 105% of depository balances. Focus audit procedures on the most recent fiscal year end, but based on your assessment of the control environment, the nature of collateral and other risks also consider whether you should evaluate the adequacy of collateral as of other dates during the audit when deposit or investment balances may have been materially higher, such as immediately after the receipt of tax settlements.

3. Inspect the financial institution's listing of pledged securities. Select a few securities and determine if the institution pledged only eligible securities. (When determining the extent of testing, auditors should consider that we do not require a high level of assurance, so a "few" items should be sufficient. Auditors can reduce or eliminate this testing based on the assessed level of control risk* and past experience with the financial institution. Therefore, if the government documents its review of collateral eligibility, or we have not noted eligibility problems in prior audits, we can reduce or eliminate this test.)

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

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

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

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

**Summary of Requirements:**

The following classifications of securities and obligations are eligible for deposit or investment (*Note*: All investments, unless noted otherwise below, must mature within 5 years from the date of settlement [Ohio Rev. Code § 135.35(C)])[59]:

A. United States obligations or any other obligation guaranteed as to principal or interest by the United States, or any book entry, zero-coupon United States treasury security that is a direct obligation of the United States. [Ohio Rev. Code § 135.35(A)(1)]

B. Stripped principal or interest obligations are not permitted. Except, Federally-issued or Federally-guaranteed stripped principal or interest obligations are permitted. [Ohio Rev. Code § 135.35(A)(1)]

C. Bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality. All federal agency securities must be direct issuances of federal government agencies or instrumentalities. [Ohio Rev. Code § 135.35(A)(2)]

D. Time certificates of deposit[30] or savings or deposit accounts, including passbook accounts, in any eligible institution mentioned in Ohio Rev. Code § 135.32. [Ohio Rev. Code § 135.35(A)(3)]

E. Ohio Rev. Code §§ 135.353 and 135.354 also permits counties to use the IntraFi Network Deposits (formerly Certificate of Deposit Account Registry Services (CDARS)) or similar programs (one example is the Government Insured Deposit Program (GIDP)) meeting Ohio Rev. Code §§ 135.353 and 135.354 requirements. If a county purchases CDs for more than the FDIC limit ($250,000), *See OCS step 2A-14,* with a bank participating in IntraFi Network Deposits (formerly CDARS) or similar program, the bank or program "redeposits" the excess amounts with other institutions. Each bank accepts less than $250,000 so that all deposits have FDIC coverage. Ohio Rev. Code §§ 135.353 and 135.354 requires a county to place its deposits with an eligible depository per Ohio Rev. Code § 135.32. However, institutions the county's depository places excess deposits with are not subject to Ohio Rev. Code § 135.32. For example, while the deposit must be initiated at an Ohio depository branch, the Ohio depository can purchase CDs from depositories outside of Ohio for the excess. Because all IntraFi Network Deposits (formerly CDARS) and GIDP deposits have FDIC coverage, the collateral requirements of Ohio Rev. Code §§ 135.18, 135.181, or 135.182 do not apply. (That is, these are *insured* deposits for GASB Statement No. 40 purposes.)

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[59] ~~A county may hold investments purchased between 3/22/12 and 9/10/12 until their maturity of up to 10 years due to a temporary change in this law. (This is because in 2012 H.B. 225 was enacted and then repealed months later)~~

1. Any CD's purchased by a broker must be held in the name of the government. Also, the broker cannot be in possession of cash at any time. If we believe a broker has held cash for any length of time, AOS auditors should refer the matter to the Center for Audit Excellence and AOS Legal division for further evaluation. A way to verify compliance is to request monthly statements provided by the public depository located in Ohio. Ohio Rev. Code § 135.353(A)(3)(e) requires the initial public depository to provide public offices with a monthly account statement that includes the amount of its funds deposited and held at each bank, savings bank, or savings and loan association for which the public depository acts as a custodian pursuant to Ohio Rev. Code § 135.353. If a public office does not have these statements, it may indicate that the money is being held by a broker-dealer in violation of Ohio Rev. Code § 135.353.

F. Bonds and other obligations of this state or the political subdivisions of this state, provided the bonds or other obligations of political subdivisions mature within **ten years** from the date of settlement. [Ohio Rev. Code § 135.35(A)(4)]

1. Ohio Rev. Code § 135.35(C) allows the purchase of municipal debt of the State of Ohio or **any** political subdivision of the State with maturity periods greater than 10 years provided that the investment is specifically approved by the investment advisory committee.

G. No-load money market mutual funds rated in the highest category at the time of purchase by at least one nationally recognized ~~standard~~ statistical rating ~~service~~ organization or consisting exclusively of obligations described in Ohio Rev. Code § 135.143(A)(1), (2), or (6) and repurchase agreements secured by such obligations, if purchased from eligible institutions mentioned in Ohio Rev. Code § 135.32 (which are generally Ohio banks and national banks authorized to do business in **Ohio**.) [Ohio Rev. Code § 135.35(A)(5)]

H. United States treasury bills, notes, bonds, or any other obligations or securities issued by the United States treasury or any other obligation guaranteed as to principal and interest by the United States; bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality or commercial paper rated in the highest category by two standard rating services (i.e. securities Ohio Rev. Code § 135.143(A)(1), (2), or (6) permits);

I. The Ohio Subdivision's Fund (STAR Ohio[32]) as provided in Ohio Rev. Code § 135.45. [Ohio Rev. Code § 135.35(A)(6)]

J. Securities lending agreements with any eligible institution mentioned in Ohio Rev. Code § 135.32 that is a member of the Federal Reserve System or Federal Home Loan Bank, or with any recognized U.S. government securities dealer,[60] under the terms of which agreements in the investing authority lends securities and the eligible institution agrees to simultaneously exchange similar securities described in Ohio Rev. Code § 135.35(A)(1) or (2) or cash or both securities and cash, equal value for equal value. [Ohio Rev. Code § 135.35(A)(7)]

K. Up to forty per cent of the county's total average portfolio in either of the following [Ohio Rev. Code § 135.35(A)(8)]:

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

1. **Commercial paper** issued by an "entity" that is defined in ~~division (D) of~~ Ohio Rev. Code § ~~1705.01~~ 1706.01(K)[61](see definition below) and that has assets exceeding five hundred million dollars, to which all of the following apply:

   a. The aggregate value of the notes does not exceed ten per cent of the aggregate value of the outstanding commercial paper of the issuing corporation.

   b. The notes are rated at the time of purchase in the highest classification established by at least two nationally recognized ~~standard~~ statistical rating ~~services~~ organizations.

   c. The notes mature not later than 270 days after purchase.

   d. The investment in commercial paper notes of a single issuer shall not exceed in the aggregate 5% of interim moneys available for investment at the time of purchase.

2. **Bankers' acceptances** of banks that are insured by the federal deposit insurance corporation and to which the obligations mature not later than one hundred eighty days after purchase.

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

L. Per Ohio Rev. Code § 135.35(A)(9), up to fifteen per cent of the county's total average portfolio in notes issued by corporations incorporated under U.S. law and that operate within the United States, or by depository institutions doing business under U.S. authority or any state's authority, and that operate within the United States, provided both of the following apply:
   - The notes are rated in one of the three highest categories by at least two nationally recognized ~~standard~~ statistical rating ~~services~~ organizations at the time of purchase;
   - The notes mature not later than three years after purchase.

M. Per Ohio Rev. Code § 135.35(A)(10) up to 2% of its portfolio in the debt of foreign nations, if:
   - Rated at the time of purchase in the three highest categories by two nationally recognized ~~standard~~ statistical rating ~~services~~ organizations
   - The U.S. government recognizes it diplomatically.[62]
   - All interest and principal shall be denominated and payable in United States funds.
   - The foreign government guarantees the debt.
   - Investments must mature within 5 years from the date of settlement.

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

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

~~***Note***: A county may hold investments purchased between 3/22/12 and 9/10/12 until their maturity of up to 10 years (this is because in 2012 H.B. 225 was enacted and then repealed months later).~~

"Entity" means ~~any of the following~~ a general partnership, limited partnership, limited liability partnership, limited liability company, association, corporation, professional corporation, professional association, nonprofit corporation, business trust, real estate investment trust, common law trust, statutory trust, cooperative association, or any similar organization that has a governing statute, in each case, foreign or domestic. [Ohio Rev. Code § ~~1705.01(D)~~1706.01(K)][61]~~:~~

~~A. A corporation existing under the laws of this state or any other state;~~
~~B. Any of the following organizations existing under the laws of this state, the United States, or any other state:~~
~~1. A business trust or association;~~
~~2. A real estate investment trust;~~
~~3. A common law trust;~~
~~4. An unincorporated business or for profit organization, including a general or limited partnership;~~
~~5. A limited liability company.~~

The investing authority may also enter into a written repurchase agreement with any eligible institution mentioned in Ohio Rev. Code § 135.32 or any eligible dealer pursuant to Ohio Rev. Code § 135.35(J), under the terms of which agreement the investing authority purchases, and the eligible institution or dealer agrees unconditionally to repurchase any of the securities listed in divisions (D)(1) to (5) of § 135.18, except letters of credit described in division § 135.18(D)(2) are not permitted for repurchase agreements.[63] The market value of securities subject to an overnight repurchase agreement must exceed the principal value of securities subject to a repurchase agreement by at least 2%.[34] A written repurchase agreement shall not exceed 30 days and the value of the securities must exceed the principal value by at least 2% and be marked to market daily. [Ohio Rev. Code § 135.35(D)]

A. All securities purchased pursuant to a repurchase agreement are to be delivered into the custody of the investing authority or the qualified custodian of the investing authority or an agent designated by the investing authority[64]. [Ohio Rev. Code § 135.35(D)]

B. Repurchase agreements with an eligible securities dealer must be transacted on a delivery versus payment basis.

C. Repurchase agreements must be in writing. For each transaction, the participating institution must provide:
   1. the par value of the securities;
   2. the type, rate, and maturity date of the securities;
   3. a numerical identifier (e.g., a CUSIP number), generally accepted in the industry, designating the securities.

D. Securities which are the subject of a repurchase agreement may be delivered to the treasurer or held in trust by the participating institution if it is a designated depository of the subdivision for the current period of designation. [Ohio Rev. Code § 135.35(I)].

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

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

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

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

A. Per Ohio Rev. Code § 135.14(C), Any security, obligation, trust account, or other instrument that is created from an issue of the United States Treasury or is created from an obligation of a federal agency or instrumentality or is created from both is considered a derivative, and is prohibited.
    1. Except, An eligible investment described in Ohio Rev. Code § 135.14 with a variable interest rate payment or single interest payment, based upon a single index comprised of other eligible investments provided for in division (B)(1) or (2) of § 135.14 (see above), is **not** a derivative, if the variable rate investment has a maximum maturity of 2 years. [Ohio Rev. Code § 135.14(C)]
        a. For example, a two-year investment in Federal securities with a variable interest rate indexed to other Federal securities would be legal, because Ohio Rev. Code § 135.14(C) expressly permits using Federal securities as part of a derivative if it matures within two years. Conversely, an investment indexed to an interbank offered rate[37] or to a bank's prime rate would not be legal because these are not listed in Ohio Rev. Code § 135.14(B)(1) or (B)(2).

    2. ***Note:*** The Ohio Rev. Code still uses the derivative definition from GASB Technical bulletin 94-1. GASB Statement No. 53 (GASB Cod. D40.103), defines derivatives differently than does the Ohio Revised Code. So, for legal compliance purposes, governments must follow the Ohio Rev. Code derivative definition. For financial reporting, GAAP governments must follow the GASB definition to value, present, and disclose derivatives.
        a. For example, interest rate swaps[38] and energy futures contracts (which are allowable under Ohio Rev. Code § 9.835 to mitigate price fluctuations, and are not intended as investments) meet the GASB Statement No. 53 (GASB Cod. D40.103) derivative definition, and would be subject to GASB Statement No. 53 (GASB Cod. D40) derivative measurement and disclosure requirements, but are ***not*** illegal.

    3. 1999 Op. Att'y. Gen. No. 99-026 deemed collateralized mortgage obligations to be illegal derivatives.

    4. A treasury inflation-protected security (TIPS) is permissible for counties only, per Ohio Rev. Code § 135.35(B) [H.B. 225, effective 3/22/12 and then repealed 9/10/12, temporarily increased this to ten years.]

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

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

A. the Ohio Subdivision's Fund (STAR Ohio[32]) pursuant to Ohio Rev. Code § 135.35(A)(6);

B. a fund created solely for the purpose of acquiring, constructing, owning, leasing, or operating municipal utilities pursuant to Ohio Rev. Code § 715.02 or Ohio Const. Art XVIII, Section 4.

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

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

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

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

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

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

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

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

Select a representative number[65] of investments and:

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

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

2. If the government holds financial instruments or contract or obligation whose value or return is "based upon or linked to another asset or index, or both, separate from the financial instrument," consider whether the instrument is an illegal derivative.
   a. If the instrument is not an interest-rate swap, or expressly permitted (such as energy futures under Ohio Rev. Code § 9.835), consult with the Center for Audit Excellence to determine its Legality, Valuation, Presentation and Disclosure.

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

3. Determine that the investments mature within the prescribed limits (generally no later than 5 years, or ***other*** periods for repurchase agreements [30 days], bankers' acceptances and commercial paper [180 or 270 days, respectively, from the purchase date], or securities matched to debt maturities, etc.)

4. Inspect documentation supporting repurchase agreements and determine that:

   a. The market values of securities exceed the principal values of securities subject to the overnight repurchase agreement by at least 2%. (***Note:*** The risk of non-compliance increases when banks merge.)
   b. A term repurchase agreement did not exceed 30 days and the values of the securities were marked to market daily.
   c. Repurchase agreements were in writing, including the par value of the securities; the type, rate, and maturity date of the securities; and a numerical identifier.

5. For investments in Bankers' Acceptances and Commercial Paper Notes, inspect documentation and determine whether the additional training was received.

6. Read the prospectus for money market mutual funds with which the government has significant investments. Determine wither the prospectus limits investments to those authorized under Ohio Rev. Code §§ 135.35(A)(1) & (A)(2) or 135.143(A)(1), (2), or (6).

7. Determine whether mutual funds, commercial paper, and any notes of U.S. corporations have the necessary credit rating issued by nationally recognized statistical rating organizations ~~agencies~~ (such as that S&P, Moody's or Fitch issues).

8. Inspect dealer confirmations of the bankers' acceptances purchased and determine that the county has maintained related documentation that the:

   a. Banks are insured by the Federal Deposit Insurance Corporation
   b. Dealer confirmations should indicate if banker's acceptances were **NOT** eligible for purchase by the Federal Reserve System. Read the confirmation to determine whether the banker's acceptance was **ineligible**. (A statement of ineligibility would indicate an **ineligible** investment, per Ohio Rev. Code § 135.35(A)(8)(b).

9. Scan the county's computation of the composition of its investments. Determine if the portfolio contains ≤:

   a. 2% foreign national securities
   b. 15% debt of U.S. corporations
   c. 40% commercial paper + bankers' acceptances

10. Scan investment records to determine whether the county is selling securities prior to maturity. If a significant number or amount of premature sales occurred:

    a. Determine whether the premature sales complied with the county's policy regarding early redemption. (We believe the policy should generally require sufficient cash flow planning to support that the county had sufficient cash at the time or purchase so that a premature sale would not be needed to meet emergency cash flow needs. Forced premature sales often result in losses.)
    b. Review the county's cash flow forecasts supporting that the county had reasonable support at the time or purchase that it could hold the security to maturity. If there is inadequate cash flow planning necessitating premature sales, cite this section and recommend the government improve its cash

flow forecasting. The finding should also describe any losses the government suffered from these sales.

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

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

**Summary of Requirements**:
Investments or deposits under Ohio Rev. Code § 135.35 cannot be made unless a written investment policy approved by the investing authority (for hospitals, the authority is the county hospital board, per Ohio Rev. Code § 339.06) is on file with the Auditor of State. If a written investment policy is not filed with the Auditor of State, the investing authority may invest only in certificates of deposit, savings or deposit accounts[66], STAR Ohio[32], or no-load money market mutual funds. [Ohio Rev. Code § 135.35(K)(1)&(2)]

The investment policy must be signed by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

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

2. Inspect documentation that the investment policy was filed with the Auditor of State (Investment policies filed with AOS have been scanned and are posted on S:\Final Audit PDF. Click on the Region/County/Entity name.).

3. Inspect the policy for the requisite signatures:
   a. All entities conducting investment business with the county (except the Treasurer of State);

   b. All brokers, dealers, and financial institutions initiating transactions with the county by giving advice or making investment recommendations;

   c. All brokers, dealers, and financial institutions executing transactions initiated by the county.

   d. Select a representative number of investments made by the entity and determine whether the investments are in accordance with the county's investment policy as adopted by the county's legislative body.

4. Determine if the policy requires financial institutions, brokers and dealers to comply with Ohio Rev. Code Chapter 135. (There is no legal requirement to include this, but if the policy does not include this requirement, we should recommend the government amend their policy to require compliance.)

5. If there is no written investment policy filed with the Auditor of State, scan the county's investment portfolio for the period to determine that it is composed solely of certificates of deposit, savings or deposit accounts[66], STAR Ohio[32], or no-load money market mutual funds.

6. Select a representative number[67] or amount of investments and:

   a. Inspect documentation that any designated payee is the treasurer or treasurer's office; and that registerable securities are registered in the treasurer's name.

   b. Inspect purchase documents and determine that investments were made through appropriate parties: members of the National Association of Securities Dealers, Inc., or institutions regulated by the Superintendent of Banks, Superintendent of Savings and Loan Associations, Comptroller of the Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System. Compare purchase dates and payments and determine that payment for securities was made upon delivery of the securities or upon receipt of confirmation of transfer from the custodian. Any CD's purchased by a broker must be held in the name of the government. Also, the broker cannot be in possession of cash at any time. If we believe a broker has held cash for any length of time, AOS auditors should refer the matter to the Center for Audit Excellence and AOS Legal division for further evaluation. A way to verify compliance is to request monthly statements provided by the public depository located in Ohio. Ohio Rev. Code § 135.144(A)(5) requires the initial public depository to provide public offices with a monthly account statement that includes the amount of its funds deposited and held at each bank, savings bank, or savings and loan association for which the public depository acts as a custodian pursuant to Ohio Rev. Code § 135.144. If a public office does not have these statements, it may indicate that the money is being held by a broker-dealer in violation of Ohio Rev. Code § 135.144.

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

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

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**2A-20 Compliance Requirement:** Ohio Rev. Code § 2335.25 - Cashbook of County costs; Ohio Rev. Code § 1901.31 – Municipal court records; Ohio Rev. Code § 1905.21 – Disposition of fines and other moneys for mayor's court.

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

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

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

## SECTION B: STATUTORILY MANDATED TESTS

**Revised: HB 23, 135 GA**
**Effective: June 30, 2023**

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

**Summary of Requirements:**

**AOS Force Account Project Assessment Form (See note below for Ohio Department of Transportation Projects)**
A director of public service in a city, or the legislative authority of a village, is required to estimate the costs of any "contract" for the construction, reconstruction, widening, resurfacing, or repair of a street or other public way using the Auditor of State's force account project assessment form. ***Note:*** *the use of this form is required for contracted work pursuant to Ohio Rev. Code § 723.52 and for force account projects pursuant to Ohio Rev. Code § 117.16(A).*

The Auditor of State's prescribed form [required by Ohio Rev. Code § 117.16(A)] for this purpose can be found on our website at the following link:
http://www.ohioauditor.gov/references/development/ElectronicForceAccountProjectAssessmentForm.xls

**Clarified Guidance for Force Accounts Undertaken as part of a Federally-Funded Local Project Agreement with ODOT:**
Local governments that are performing Force Account work as part of a Federally-funded (in whole or in part) project under an LPA agreement with ODOT can no longer use the safe harbor rates. This is due to changes brought about by the Uniform Guidance Act and the Federal Highway Administration's termination Ohio's waiver program. While local governments that are party to an LPA agreement with ODOT may not use safe harbor percentages for projects beginning in 2016 or later, ODOT does provide alternative guidance for Force Accounts in their CMS Manual (ODOT Construction and Material Specifications manual). Auditors testing ~~the Federal Highway Planning and Construction Cluster (~~Assistance Listing ~~CFDA~~[68] nos., 20.205, 20.219, ~~and~~ or 23.003~~)~~ as a major program should be aware of this during their single audit compliance testing.

**Clarified Guidance for Force Accounts Undertaken Strictly by the Local (i.e., NOT as part of a Federally-Funded Local Project Agreement with ODOT):**
Where local governments undertake a project by Force Account solely under their own local authority, local governments are permitted to apply the safe harbor percentages in computing their estimated costs. If the local government uses the safe harbor percentages, the auditor may accept them without further analysis. Or, as an alternative, the local government may develop its own percentages for the add-ons for labor fringes and overhead costs, and materials overhead costs; however, the local government must be able to provide documentation to its auditor to justify the reasonableness of the self-computed percentage add-ons.

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

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~~[68] Effective for federal awards made after November 12, 2020, the terms "Catalog for Federal Domestic Assistance (CFDA) number" and "CFDA program title" have been changed to the terms "Assistance Listings number" and "Assistance Listings program title". Auditors may see either term being used interchangeably for a period of time.~~

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

**Bid Specifications (See note below for Ohio Department of Transportation Projects)**
If the city or village has an engineer or someone performing the duties and functions of an engineer, then that person may develop the estimates.

~~Prior to July 1, 2021~~ Effective June 30, 2023, when the estimated cost of the total project, including labor, exceeds ~~$30,000~~ $70,000, the city or village must invite and receive competitive bids from private contractors for completing the work. However, force accounts **may** be used if the city or village rejects all bids. The force account work must be performed in compliance with the plans and specifications upon which the private contractor bids were based.[69] [Ohio Rev. Code § 723.52]

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

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

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

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

**Force Account Limits (Ohio Rev. Code § 5517.02)**
On July 1, 2013, the statutory limits for ODOT force account projects increased from $25,000 to $30,000 per mile of highway and from $50,000 to $60,000 for any traffic control signal or any other single project. The changes also require the ODOT Director to increase these limits on the first day of July of every odd-numbered year beginning in 2015 by an amount to not exceed the lesser of three per cent or the percentage increase in ODOT's construction cost index, as annualized and totaled for the two prior calendar years. The July 1, 2021 to June 30, 2023 rates are $32,159 per mile of highway and $64,318 per traffic signal or other single project. The July 1, 2023 to June 30, 2025 rates are $33,124 per mile of highway and $66,248 per traffic signal or other single project. The Director shall publish the applicable amounts on ODOT's website (https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/maintenance-operations/force-account).

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

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

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

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

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

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

**Ohio Attorney General Opinion 2008-007**[70] briefly provides:

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

- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;

- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;

- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

**Noncompliance**

***Note:*** These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the ~~increased~~ decreased[71] force account limits. Certified Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code § 117.12.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

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

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

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

2. If such projects were undertaken, inspect a representative number of the entity's completed Auditor of State Uniform Force Account Project Assessment or ODOT forms. Trace wage rates, etc. to entity supporting documentation on a test basis.

3. Inspect the Auditor of State's project assessment or ODOT forms prepared by the entity and determine that work undertaken by force account for construction, reconstruction, widening, resurfacing, or repair of a street or other public way was documented to not exceed the amounts documented in the Summary of Requirements above.

4. Obtain supporting documentation of the labor fringe benefits or overhead rates, or materials overhead rates and review for reasonableness. (See clarified guidance in the requirements regarding the Safe Harbor Rule.)

5. Compare the actual projects' costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates. Evaluate for reasonableness of the estimates. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.

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

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

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

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 23, 135 GA**
**Effective: June 30, 2023**

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

**Summary of Requirements:**

**AOS Force Account Project Assessment Form (See note below for Ohio Department of Transportation Projects)**
A county engineer, when authorized by the county commissioners, may utilize county labor and materials when undertaking the construction, reconstruction, improvement, maintenance, or repair of **roads**. Before undertaking force account activity for **construction** or **reconstruction**, including **widening** and **resurfacing**, of **roads**, an estimate of the cost of the road work must be compiled using the Auditor of State's force account project assessment form. ~~Prior to July 1, 2021~~ Effective June 30, 2023, when the estimated cost of the total project, including labor,[72] exceeds ~~$30,000~~ $70,000 per mile, the county commissioners must invite and receive competitive bids from private contractors for completing the **road** work. [Ohio Rev. Code § 5543.19 (A)]

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

The Auditor of State's prescribed form [required by Ohio Rev. Code § 117.16(A)] for this purpose can be found on our website at the following link:
http://www.ohioauditor.gov/references/development/ElectronicForceAccountProjectAssessmentForm.xls

**Clarified Guidance for Force Accounts Undertaken as part of a Federally-Funded Local Project Agreement with ODOT:**
Local governments that are performing Force Account work as part of a Federally-funded (in whole or in part) project under an LPA agreement with ODOT can no longer use the safe harbor rates. This is due to changes brought about by the Uniform Guidance Act and the Federal Highway Administration's termination Ohio's waiver program. While local governments that are party to an LPA agreement with ODOT may not use safe harbor percentages for projects beginning in 2016 or later, ODOT does provide alternative guidance for Force Accounts in their CMS Manual (ODOT Construction and Material Specifications manual). Auditors testing ~~the Federal Highway Planning and Construction Cluster (~~Assistance Listing ~~CFDA~~[68] nos., 20.205, 20.219, ~~and~~ or 23.003~~)~~ as a major program should be aware of this during their single audit compliance testing.

**Clarified Guidance for Force Accounts Undertaken Strictly by the Local (i.e., NOT as part of a Federally-Funded Local Project Agreement with ODOT):**
Where local governments undertake a project by Force Account solely under their own local authority, local governments are permitted to apply the safe harbor percentages in computing their estimated costs. If the local government uses the safe harbor percentages, the auditor may accept them without further analysis. Or, as an alternative, the local government may develop its own percentages for the add-ons for labor fringes

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

and overhead costs, and materials overhead costs; however, the local government must be able to provide documentation to its auditor to justify the reasonableness of the self-computed percentage add-ons.

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

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

A county engineer, when authorized by the county commissioners, may utilize county labor and materials when undertaking the construction, reconstruction, improvement, maintenance, or repair of **bridges and culverts**. Before undertaking force account activity, an estimate of the cost of the bridge/culvert work must be compiled using the Auditor of State's force account project assessment form. ~~Prior to July 1, 2021~~ Effective June 30, 2023, when the estimated cost of the work exceeds ~~$100,000~~ $233,000, the county commissioners must invite and receive competitive bids from private contractors for completing the **bridge/culvert** work [Ohio Rev. Code § 5543.19 (B)].

On the first day of July of every ~~odd-numbered~~ year beginning in ~~2021~~ 2024, the threshold amounts established in this section shall increase by an amount not to exceed the lesser of ~~three~~ five percent, or the percentage amount of any increase in the department of transportation's construction cost index as annualized and totaled for the prior ~~two~~ calendar ~~years~~ year. The director of transportation shall notify each appropriate county engineer of the increased amount. [Ohio Rev. Code § 5543.19 (C)] The July 1, 2021 to June 30, 2023 force account limit for locals are $101,702 for Bridges/Culverts and $30,516 per mile. The July 1, 2023 to June 30, 2024 force account limit for locals are $233,000 for Bridges/Culverts and $70,000 per mile.
(https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/maintenance-operations/force-account ).

***Note**: The following clarifies how all entity types subject to force account limits should measure these limits for fractions of miles (The amounts in the example are relevant to force accounts ~~prior to July 1, 2021~~ effective June 30, 2023. See above for current rates to use.):*

"A county must bid a project involving construction or reconstruction of a road if it exceeds ~~$30,000~~ $70,000 per mile. However, it is unclear whether the limit for a 1.5 mile project would be ~~$45,000~~ $105,000 (~~$30,000~~ $70,000 for the first mile, ~~$15,000~~ $35,000 for the partial second mile), or ~~$60,000~~ $140,000 (~~$30,000~~ $70,000 for each mile – full or partial – of the project). We determined that it was appropriate to consider the legislative intent separately for projects under one mile and for projects exceeding one mile.

**For projects exceeding one mile**, we determined that the intent of these statutes was to apply the limits proportionally for partial miles. In other words, for the example of the county cited above, the applicable force account limit would be ~~$45,000~~ $105,000.

**For projects less than a mile**, the interpretation above would cause problems. In the example of a county commencing a small road repair project of one-tenth of a mile, a proportional limit would require the county to bid the project if it exceeded ~~$3,000~~ $7,000 (one tenth of the ~~$30,000~~ $70,000 per mile limit). We did not believe that this was the result intended by the legislature, so for projects of less than a mile, the entire per mile limit (in the case of the county in our example, ~~$30,000~~ $70,000) will apply. In other words, any project that is less than a mile (regardless of distance) is to be treated as if it were a mile and subjected to the entity's corresponding monetary limit."

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

**Force Account Limits (Ohio Rev. Code § 5517.02)**
On July 1, 2013, the statutory limits for ODOT force account projects increased from $25,000 to $30,000 per mile of highway and from $50,000 to $60,000 for any traffic control signal or any other single project. The changes also require the ODOT Director to increase these limits on the first day of July of every odd-numbered year beginning in 2015 by an amount to not exceed the lesser of three per cent or the percentage increase in ODOT's construction cost index, as annualized and totaled for the two prior calendar years. The July 1, 2021 to June 30, 2023 rates are $32,159 per mile of highway and $64,318 per traffic signal or other single project. The July 1, 2023 to June 30, 2025 rates are $33,124 per mile of highway and $66,248 per traffic signal or other single project. The Director shall publish the applicable amounts on ODOT's website (https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/maintenance-operations/force-account).

**Work Exempt from Competitive Bidding/Force Account Requirements (Ohio Rev. Code § 5517.021)**
Certain work that may be undertaken by ODOT that does not require competitive bidding:

- Replace any single span bridge in its substantial entirety or widen any single span bridge, including necessary modifications to accommodate widening the existing substructure and wing walls. The deck area of the new or widened bridge may not exceed 700 square feet as measured around the outside perimeter of the deck.
- Replace the bearing, beams, and deck of any bridge on that bridge's existing foundation if the deck area of the rehabilitated structure does not exceed 800 square feet.

- Construct or replace any single cell or multi-cell culvert whose total waterway opening does not exceed 52 square feet.
- Pave or patch an asphalt surface if the operation does not exceed 120 tons of asphalt per lane-mile of roadway length. The department may not perform a continuous resurfacing operation under this section if the cost of work exceeds the amounts established in Ohio Rev. Code § 5517.02.
- Approach roadway work, extending not more than 150 feet as measured from the back side of the bridge abutment wall or outside the edge of the culvert, as applicable. The length of the approach guardrail shall be in accordance with ODOT's design requirements and shall not be included in the approach work size limitation.

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

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

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

**Ohio Attorney General Opinion 2008-007**[70] briefly provides:

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

- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;

- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;

- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

**Noncompliance**

***Note***: These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the ~~increased~~ decreased[73] force account limits. Certified Public Accountants auditing force accounts should follow the guidance in Ohio Rev. Code § 117.12.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

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

2. If such projects were undertaken, inspect a representative number of the entity's completed Auditor of State Uniform Force Account Project Assessment or ODOT forms. Trace wage rates, etc. to entity supporting documentation on a test basis.

3. Inspect the Auditor of State's project assessment or ODOT forms prepared by the county engineer and determine that work undertaken by force account for construction, reconstruction, widening, or resurfacing of roads was documented to not exceed the amounts documented in the Summary of Requirements above.

4. Inspect the county engineer's project assessment or ODOT forms, and determine whether work undertaken by force account to construct, reconstruct, improve, maintain, or repair bridges and culverts was documented to not exceed the amounts in the Summary of Requirements above.

5. Obtain supporting documentation of the labor fringe benefits or overhead rates, or materials overhead rates and review for reasonableness. (See clarified guidance in the requirements regarding the Safe Harbor Rule.)

6. Compare the actual projects' costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates. Evaluate for reasonableness of the estimates. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.

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

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

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

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

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 23, 135 GA**
**Effective: June 30, 2023**

**2B-3 Compliance Requirement:** Ohio Rev. Code §§ 117.16(A); 5517.02, 5517.021 and 5575.01 – Force accounts - Townships

**Summary of Requirements:**

**AOS Force Account Project Assessment Form (See note below for Ohio Department of Transportation Projects)**
In the **maintenance** and **repair** of **roads** the board of township trustees may use force account labor provided the board has first caused **the county engineer** to complete the Auditor of State's prescribed force account project assessment form. In the **construction** and **reconstruction** of roads the board of township trustees may use force account labor if the board finds it to be in the best interest of the public provided the board has first caused to be made by **the county engineer** an estimate of the cost of the work.

Note: Force account assessment forms are not required for road maintenance or repair projects ~~of less than $15,000~~, or road construction or reconstruction projects of less than ~~$5,000 per mile~~ one-third of the applicable force account limit. [Ohio Rev. Code § 5575.01(C)]

The Auditor of State's prescribed form [required by Ohio Rev. Code § 117.16(A)] for this purpose can be found on our website at the following link:
http://www.ohioauditor.gov/references/development/ElectronicForceAccountProjectAssessmentForm.xls

**Clarified Guidance for Force Accounts Undertaken as part of a Federally-Funded Local Project Agreement with ODOT:**
Local governments that are performing Force Account work as part of a Federally-funded (in whole or in part) project under an LPA agreement with ODOT can no longer use the safe harbor rates. This is due to changes brought about by the Uniform Guidance Act and the Federal Highway Administration's termination Ohio's waiver program. While local governments that are party to an LPA agreement with ODOT may not use safe harbor percentages for projects beginning in 2016 or later, ODOT does provide alternative guidance for Force Accounts in their CMS Manual (ODOT Construction and Material Specifications manual). Auditors testing ~~the Federal Highway Planning and Construction Cluster (~~Assistance Listing ~~CFDA[68]~~ nos., 20.205, 20.219, ~~and~~ or 23.003~~)~~ as a major program should be aware of this during their single audit compliance testing.

**Clarified Guidance for Force Accounts Undertaken Strictly by the Local (i.e., NOT as part of a Federally-Funded Local Project Agreement with ODOT):**
Where local governments undertake a project by Force Account solely under their own local authority, local governments are permitted to apply the safe harbor percentages in computing their estimated costs. If the local government uses the safe harbor percentages, the auditor may accept them without further analysis. Or, as an alternative, the local government may develop its own percentages for the add-ons for labor fringes and overhead costs, and materials overhead costs; however, the local government must be able to provide documentation to its auditor to justify the reasonableness of the self-computed percentage add-ons.

**Joint Projects (See note below for Ohio Department of Transportation Projects)**
Joint projects undertaken by 2 or more of the affected entities require that the higher force account limits of the participating parties be applied [Ohio Rev. Code § 117.161]. Participating entities shall not aggregate their respective limits, and the share of each entity shall not exceed its respective force account limit. Calculating the proper project force account limits and the share thereof to each participating party should be memorialized in the contracts or other agreements between the parties. One of the participating entities

shall complete the force account project form prior to proceeding by force account. An entity shall not proceed with a joint force account project if any one of them is subject to reduced force account limits under Ohio Rev. Code § 117.16(C) or (D).

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

~~Prior to July 1, 2021~~ Effective June 30, 2023, force accounts **may not** be used and bidding is required when the total estimated cost of the project, including labor, for **maintenance** and **repair** of roads exceeds ~~$45,000~~ $105,000. [Ohio Rev. Code § 5575.01(A)]

~~Prior to July 1, 2021~~ Effective June 30, 2023, bids from private contractors should be sought when the total estimated cost of the project, including labor, for **construction or reconstruction** of roads exceeds ~~$15,000~~ $35,000 per mile. However, force accounts **may** be used if the board finds it in the best interest of the public. In this case, private contractor bids must have been received, considered, and rejected, and the force account work must be performed in compliance with the plans and specifications upon which the bids were based.[69] [Ohio Rev. Code § 5575.01(B)]

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

***Note**: The following clarifies how all entity types subject to force account limits should measure these limits for fractions of miles (The amounts in the example are relevant to force accounts ~~prior to July 1, 2021~~ effective June 30, 2023. See above for current rates to use.):*

"A township must bid a project involving construction or reconstruction of a road if it exceeds ~~$15,000~~ $35,000 per mile. However, it is unclear whether the limit for a 1.5 mile project would be ~~$22,500~~ $52,500 (~~$15,000~~ $35,000 for the first mile, ~~$7,500~~ $17,500 for the partial second mile), or ~~$30,000~~ $70,000 (~~$15,000~~ $75,000 for each mile – full or partial – of the project). We determined that it was appropriate to consider the legislative intent separately for projects under one mile and for projects exceeding one mile.

**For projects exceeding one mile**, we determined that the intent of these statutes was to apply the limits proportionally for partial miles. In other words, for the example cited above, the applicable force account limit would be ~~$22,500~~ $52,500.

**For projects less than a mile**, the interpretation above would cause problems. In the example of a township commencing a small road repair project of one-tenth of a mile, a proportional limit would require the township to bid the project if it exceeded ~~$1,500~~ $3,500(one tenth of the ~~$15,000~~ $35,000 per mile limit). We did not believe that this was the result intended by the legislature, so for projects of less than a mile, the entire per mile limit (in the case of our example, ~~$15,000~~ $35,000) will apply. In other words, any project that is less than a mile (regardless of distance) is to be treated as if it were a mile and subjected to the entity's corresponding monetary limit."

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

**Force Account Limits (Ohio Rev. Code § 5517.02)**
On July 1, 2013, the statutory limits for ODOT force account projects increased from $25,000 to $30,000 per mile of highway and from $50,000 to $60,000 for any traffic control signal or any other single project. The changes also require the ODOT Director to increase these limits on the first day of July of every odd-numbered year beginning in 2015 by an amount to not exceed the lesser of three per cent or the percentage increase in ODOT's construction cost index, as annualized and totaled for the two prior calendar years. The July 1, 2021 to June 30, 2023 rates are $32,159 per mile of highway and $64,318 per traffic signal or other single project. The July 1, 2023 to June 30, 2025 rates are $33,124 per mile of highway and $66,248 per traffic signal or other single project. The Director shall publish the applicable amounts on ODOT's website (https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/maintenance-operations/force-account).

**Work Exempt from Competitive Bidding/Force Account Requirements (Ohio Rev. Code § 5517.021)**
Certain work that may be undertaken by ODOT that does not require competitive bidding:

- Replace any single span bridge in its substantial entirety or widen any single span bridge, including necessary modifications to accommodate widening the existing substructure and wing walls. The deck area of the new or widened bridge may not exceed 700 square feet as measured around the outside perimeter of the deck.
- Replace the bearing, beams, and deck of any bridge on that bridge's existing foundation if the deck area of the rehabilitated structure does not exceed 800 square feet.
- Construct or replace any single cell or multi-cell culvert whose total waterway opening does not exceed 52 square feet.

- Pave or patch an asphalt surface if the operation does not exceed 120 tons of asphalt per lane-mile of roadway length. The department may not perform a continuous resurfacing operation under this section if the cost of work exceeds the amounts established in Ohio Rev. Code § 5517.02.
- Approach roadway work, extending not more than 150 feet as measured from the back side of the bridge abutment wall or outside the edge of the culvert, as applicable. The length of the approach guardrail shall be in accordance with ODOT's design requirements and shall not be included in the approach work size limitation.

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

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

**Ohio Attorney General Opinion 2008-007**[70] briefly provides:

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

- A public office may acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with the appropriate competitive bidding requirements;

- The estimate of the cost of road, bridge or culvert work must include the cost of materials and equipment that would be acquired by contract, and the cost of work that would be performed pursuant to a subcontract, if the project were undertaken by force account. If the total exceeds the applicable force account limit, the whole project must be competitively bid;

- Failure to comply with competitive bidding requirements when contracting for materials or equipment as part of a force account project, or when subcontracting work performed on a force account project, constitutes a violation of the force account limits as well as the applicable competitive bidding law.

**Noncompliance**
***Note***: These laws require the Auditor of State to track all published [GAGAS-level] citations and any notifications sent to affected entities. Auditor of State staff should document on the Audit Executive Summaries, force account citations in the GAGAS report or if you have recommended that the Auditor of

State send the entity [or the State Tax Commissioner] the communication required by these changes notifying the entities of the ~~increased~~ decreased[74] force account limits. IPAs auditing force accounts should follow the guidance in Ohio Rev. Code § 117.12.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

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

2. Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as less than ~~$15,000~~ one-third of the applicable force account limit for a **road maintenance or repair** project or less than ~~$5,000 per mile~~ one-third of the applicable force account limit for a **road construction or reconstruction** project. If so, no Auditor of State force account project assessment form would have been required to have been completed.

3. Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as the amount noted in the Summary of Requirements above or less for **maintenance** and **repair** of roads.

4. Inspect the estimates prepared by the county engineer and determine that work undertaken by force account was documented as the amount per mile or less noted in the Summary of Requirements above for **construction or reconstruction** of roads.

5. If the bids from private contractors were taken for **construction or reconstruction** of roads but the board used the force account anyway, determine that the board documented that the private contractor bids were received, considered, and rejected, and the board's rationale for why using the force account approach was in the best interest of the public. Compare the force account's documented project specifications with the plans and specifications upon which the private contractor bids were based.

6. If such projects were undertaken, inspect a representative number of the entity's completed Auditor of State Uniform Force Account Project Assessment or ODOT forms. Trace wage rates, etc. to entity supporting documentation on a test basis.

7. Obtain supporting documentation of the labor fringe benefits or overhead rates, or materials overhead rates and review for reasonableness. (See clarified guidance in the requirements regarding the Safe Harbor Rule.)

8. Compare the actual projects' costs with the project assessment form estimates. Inquire of management for reasons for any change orders or apparent excessive costs compared with the project estimates. Evaluate for reasonableness of the estimates. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations, such as successive estimations just under the bid amount.

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

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

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

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

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

**Summary of Requirement:** The AOS **must** inquire into the method, accuracy and effectiveness of any procedure a county office adopts under Ohio Rev. Code § 304.02 to secure electronic signatures or records relating to county business that is conducted electronically under Chapter 1306 of the Ohio Revised Code.[75]

Other statutes relevant to this requirement:

**Per Ohio Rev. Code § 304.01**:
(B) "County office" means any officer, department, board, commission, agency, court, or other instrumentality of a county.

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

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

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

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

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

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

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

**Ohio Rev. Code § 1306.01:**
(G) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means. A record or contract that is secured through blockchain technology is considered to be in an electronic form and to be an electronic record.

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

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

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

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

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Determine the electronic records and electronic signatures relating to a county office's electronic (i.e. ***internet***) transactions. These include:

   a. Cash receipts where a county office accepts credit/debit cards electronically (i.e., via the internet).

   b. Other types of internet transactions. [76]

2. Obtain and read the *written* security procedure the county office (or its internet transaction service organization[77]) adopted to safeguard each type of electronic (i.e. internet) transaction. ***Note:*** Because the service organization processes most elements of these transactions, it is sufficient if the ***service organization*** adopts security procedures. If the service organization requires the county office to adopt "user control" security procedures, we should consider whether the county office has implemented these controls. (Often the service organization's contract or response to a county office's RFP will describe the security procedures.)

   a. Retain a copy or summary of the procedure in the permanent file.

   b. Update systems' documentation as needed.[78]

   Assess the effectiveness of the design of controls and determine that they have been "implemented." (AOS staff can refer to AOSAM 30500.65-.70)

3. Determine whether results from the steps above regarding the design and implementation of controls related to securing electronic signatures and electronic records relating to internet transactions result in any management comments, significant deficiencies or material weaknesses. We must also report as a

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

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

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

noncompliance finding. Since the statute explicitly refers to a security procedure adopted in writing, we should report the absence of a security procedure adopted in writing.

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**2B-5 Compliance Requirement:** Ohio Admin. Code 3745-27-15 through 18 - Landfill Financial Assurance Responsibility and Certifications. Ohio Admin. Code 3745-503-05 and 3745-503-20 – Solid Waste Transfer Facility Financial Assurance Responsibility and Certifications.

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

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

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

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

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

- § 3745-503-05: Solid waste transfer facility final closure requirements (Section (L) describes the local government test)
- § 3745-503-20: Wording of financial assurance instruments (Section (H) describes the wording for the letter governments assured under the local government test must submit to OEPA).

I. The Federal EPA adopted a regulation (40 C.F.R. § 258.74(f)) allowing governmental solid waste landfills (GSWLFs) and governmental solid waste transfer facilities (GSWTFs) to potentially avoid the expenses of third-party financial instruments (such as letters of credit, insurance or establishing trust funds[79]) to assure current final closure, post-closure care and/or corrective measures cost estimates and any other environmental obligations to the extent they meet certain financial tests. The Federal EPA placed the responsibility for monitoring compliance with this rule on the states. In response, the Ohio EPA adopted regulations that parallel the Federal regulation in most aspects. The Ohio EPA's requirements are in II, III and IV below.

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

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

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

A Government need not obtain third-party instruments for the following liabilities up to 43% of the local government's **total revenue**,[80] *provided* that it meets the tests described in **III & IV** below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. Reporting requirements:

a. The GAAP statements must comply with GASB Statement No. 18 disclosures (this requirement does not appear in the Ohio Administrative Code, but is included in the Federal regulation 40 CFR §258.74(f)(1)(ii).)

b. The following applies for liability amounts exceeding 43% of revenue: Ohio Admin. Code 3745-27-15(C)(1)(a) requires the closure financial assurance ***instrument*** for a sanitary landfill facility, solid waste transfer facility, or solid waste incinerator to contain an itemized written estimate, in current dollars, of the cost of closure. The closure cost estimate shall be based on the closure costs at the point in the operating life of the facility when the extent and manner of its operation would make the closure the most expensive, and shall be based on a third party conducting the closure activities.

c. Ohio Admin. Code 3745-503-05(L) allows a local government solid waste ***transfer facility*** to use the local government test described in (L) below in lieu of executing a financial assurance instrument meeting the requirements set forth in section (E) of that regulation. Ohio Admin. Code 3475-503-05(L) requires the government:

   i. Per (L)(1), by resolution, create a **local governmental financial test fund** to accumulate an amount equal to or greater than the closure liability. Therefore, this requires full funding. The fund cannot have negative net position under GAAP. (In other words, any deficits require the government to obtain a financial assurance instrument such as letter of credit, etc.) You should read Section (L) for more detail on this requirement.
   ii. Per (L)(2) and (3), satisfy II, III and one of the alternatives in IV, described above.

d. The CFO must prepare a letter listing current final closure, post-closure care and/or corrective measures cost estimates and any other environmental obligations, and certify whether the government meets III.a.-d. (above), and also certify that the government is assuring a liability ≤ 43% of annual operating revenues.

e. Audited financial statements must be kept as part of the "facility's operating record."

f. Accountants must also issue an agreed-upon procedures report. The procedures must note whether amounts used for the ratios in III ~~Alternative II~~ above in the CFO's letter agree to the audited GAAP statements.

VI. Definitions:

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

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

VII. Other

a. The Federal regulation gives state directors the option of allowing governments to discount the liability. However, Ohio does not permit discounting. Also, paragraph 42 of GASB Statement No. 18 prohibits discounting.

b. Both the Federal and State regulations refer to governmental financial statements as *Annual Comprehensive Financial Reports*. However, while the Federal and State rules require GAAP reporting, there appears to be no explicit requirement to prepare an Annual Comprehensive Financial Report. In the Auditor of State's opinion, basic financial statements complying with GAAP, including GASB Statement No. 18 and including segment information (if applicable) are sufficient.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

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

1. For landfills, determine whether the estimate of closure, post-closure care and ~~other~~ corrective ~~care~~ measures liabilities have been updated through the most recent balance sheet date. For SWTFs, determine whether estimate of closure ~~and other corrective care~~ liabilities has been updated through the most recent balance sheet date. Such estimates may require corroboration by an environmental specialist. (The auditor may need to consider AU-C 620A, *Using the Work of a Specialist.)*

2. Compare the format of the CFO's letter to the EPA with the example included in Ohio Admin. Code 3745-27-17(H) for GSWLF or Ohio Admin. Code 3745-503-20(H) for GSWTF.

3. Prepare the agreed-upon procedures report ~~required by the Federal EPA~~ and cross reference the information in the letter to supporting work paper. (Those work papers would support that the closure / post-closure care liabilities were < 43% of revenue, that bonds were investment grade, etc.). An example report is available to AOS staff on the Intranet under Documents/Audit Resources/Reporting_and_Practice_Aids/ AUPS/Report Shells.

4. If the government cannot meet the government test, or has closure / post-closure care liabilities exceeding 43% of annual revenue, inquire which method the government has selected to assure these amounts. If the government has (1) established a final closure and/or post-closure care trust fund; (2) secured a surety bond guaranteeing payment; (3) obtained an irrevocable letter of credit or; (4) obtained commercial insurance to finance these liabilities, then inspect documentation that the required funds, bonds, letter of credit, or insurance have been obtained, and are in force.

5. The local government requirements in Ohio Admin. Code 3745-27-15, 16, ~~17,~~ 18, Ohio Admin. Code 3745-503-05 ~~and 20~~ mandate GAAP financial statements.

   - Read the draft financial statements to determine if they meet the GAAP display and disclosure requirements for these assets/guarantees/commitments, etc. in GASB Statement No. 18, ¶17 (Cod. L10.115).

6. For GSWTF, per Ohio Admin. Code 3745-503-05(L), determine whether the *Local Government Financial Test Fund* (LGFT) has accumulated resources at least equal to the current estimate of the cost of closure. Also ~~per~~ refer to the formulas in Section (L) for guidance:
   (1) The local government shall, by resolution, establish a restricted LGFT fund specifically for funding the estimated cost of closure of the solid waste facility. The LGFT fund shall be established to accumulate an amount at least equal to the current estimate of the cost of closure. The LGFT fund shall be maintained throughout the operating life of the solid waste facility.
   (2) For a ***new*** facility, the first payment into the LGFT fund shall be calculated using the average daily waste receipt and the approved volume of the solid waste facility provided in the permit to install, registration, or license, as applicable.
   (3) For ***existing*** facilities, annual payments to the LGFT fund shall be calculated based on the amount of waste that was accepted for disposal at the facility as listed on the annual report for the previous operating year, unless an alternative calculation or amount is authorized by Ohio EPA.
   ~~(4) Refer to the formulas in (L) for guidance.~~
   (5) Resources can be from charges for services, legal transfers from another fund or other allowable sources.
   ~~(6) See the formulas in (L)~~

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

**Summary of Requirements:**

**Subdivision Treasurers[81] (Ohio Rev. Code § 135.22)**
Subdivision treasurers must complete annual continuing education programs provided by the Treasurer of State (TOS). The TOS issues certificates indicating that the treasurer has successfully completed the continuing education program.

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

(1) Interim deposits pursuant to Ohio Rev. Code §§ 135.14(B)(3) or 135.145 (IntraFi Network Deposits (formerly CDARS), Government Insured Deposit Program (GIDP), and similar programs);
(2) STAR Ohio[32] pursuant to Ohio Rev. Code § 135.14(B)(6);
(3) No-load money market mutual funds pursuant to Ohio Rev. Code § 135.14(B)(5)

Specific requirements apply to the officials listed below:

**County Treasurers (Ohio Rev. Code § 321.46)**
Newly-elected county treasurers must complete education programs (26 hours) approved by the Auditor of State (13 hours) and the Treasurer of State (13 hours) between December 1 and the first Monday in September following that person's election [Ohio Rev. Code § 321.46(A)]. For instance, a treasurer elected in November ~~2011~~ 2020, taking office in ~~2012~~ 2021, would be required to receive the initial 26 hours of training between December 1, ~~2011~~ 2020 and September ~~2012~~ 2021.

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

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

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

~~from the Auditor of State plus up to six hours received from the Treasurer of State in excess of 24 from the current to the next biennial cycle. [Ohio Rev. Code § 321.46] The biennial time periods are:~~

- ~~January 1, 2012 to December 31, 2013~~
- ~~January 1, 2014 to December 31, 2015~~
- ~~January 1, 2016 to December 31, 2017~~

~~In the example above of~~ For example, a newly-elected treasurer taking office ~~for the first time~~ in ~~2012~~ 2021, ~~the newly-elected treasurer~~ would complete one year in office in September ~~2013~~ 2022 and ~~would then enter into~~ the biennial cycle for ~~2014/2015~~ for continuing education would start January 1, 2023 and end December 31, 2024. Auditors should wait until the expiration of the applicable biennial time period to determine whether ***existing treasurers*** (as opposed to those ***newly-elected***) have completed the continuing education requirements.

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

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

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

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

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

A treasurer who fails to complete the **initial** or **continuing** education programs required by Ohio Rev. Code § 321.46 is restricted to investing in ~~STAR Ohio~~[32] the Ohio subdivision fund pursuant to Ohio Rev. Code § 135.35(A)(6), no-load money market mutual funds pursuant to §~~§ 135.14 (B)(5) and~~ 135.35(A)(5), or in certificates of deposit pursuant to Ohio Rev. Code § 135.35(A)(3), or savings or deposit accounts pursuant to Ohio Rev. Code § 135.35(A)(3). [Ohio Rev. Code § 321.46(F)]. A county treasurer who has failed to complete the **continuing education** programs and invests in other than these investments is subject to possible suspension of the treasurer's authority to invest county funds and to manage the county portfolio.

**County Auditors (Ohio Rev. Code § 319.04)**

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

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

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

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

A newly elected or appointed fiscal officer shall complete at least six hours of initial education programs before commencing, or during the first year of office. An additional eighteen hours of continuing education must be completed within the fiscal officer's first term. Twelve hours of training shall be completed for each subsequent term.[82] (Ohio Rev. Code §§ 507.12(B)-(C) and 733.81(C)-(D)) Consider the following training guidelines:

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

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

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

their term. This does not affect the individual's ability to hold office and is for informational purposes only (Ohio Rev. Code §§ 507.12(E) and 733.81(F)).

**Auditor of State**

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

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

**All Local Governments**

No investment shall be made in commercial paper or bankers acceptances unless the following have completed additional training[83] for making those investments. The type and amount of additional training shall be approved by the Treasurer of State:

- School treasurer [Ohio Rev. Code § 135.142(B)]
- County investing treasurer[84] [Ohio Rev. Code § 135.35(A)(8)]
- For other local governments: Treasurer or governing board [Ohio Rev. Code § 135.14(B)(7)]

**TOS CPIM Confirmation and FAQ's**

The Treasurer of State's website includes an online searchable CPIM report database[85] of treasurers receiving TOS-approved certifications and exemptions. The link to this website is: http://tos.ohio.gov/cpim/fiscalofficers/. Auditors can also review TOS policies and FAQs related to TOS CPIM requirements at this link. However, the TOS website does not include CPIM for AOS-approved courses for county treasurers. Auditors should refer to the Continuing Education Hours Report under *County Treasurer's* box on the AOS website at https://ohioauditor.gov/trainings/treasurers.html to obtain a listing of AOS-approved CPIM received by county treasurers. CPIM training requirements are by calendar year.

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

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

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

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

**Timing of Training**

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. For counties, obtain certificates of completion for the last biennial period[86]. *(**Note**: For efficiencies, auditors may be able to obtain these certifications using the weblink above for the Treasurer of State and the Auditor of State).*
   a. For County Auditors, Review the County Auditor Association's statement documenting attendance or confirm by reviewing the County Auditor Continuing Education Status Report located at: https://ohioauditor.gov/references/confirmations/hours.html.
   b. Determine if the Auditor obtained sufficient CPE.

2. For other subdivisions, show me your annual certificates of completion. *(**Note**: For efficiencies, auditors may be able to obtain these certifications using the weblink above for the Treasurer of State).*

3. If a newly elected or appointed municipal or township fiscal officer[87] has completed the first year of their term during the years being reviewed OR the fiscal officer's term ended during the years being reviewed. Obtain evidence that fiscal officers have received the required training.
   a. Evidence of training may be obtained from the Fiscal Officer, or by searching the Fiscal Integrity Act portal.

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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[86] If the official's biennial cycle did not end during the audit period or the official was not in office at the end of the biennial cycle, no testing would be required.

[87] Note this is for fiscal officers whose term begins after 3-23-2015.

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**2B-7 Compliance Requirement:** Various ORC Sections - Fraud and Abuse; Conflict of Interest; Ethics.

Ohio Rev. Code § 102.03 - **Restrictions and prohibitions.**

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

  Ohio Rev. Code § 3314.02(E)(2) further restricts the following from membership of community school governing authorities:
  (1) A person who owes the state money or is in dispute over whether the person owes the state any money concerning the operation of a community school that has closed.
  (2) A person who would otherwise be subject to refusal, limitation, or revocation of a license to teach, if the person were a licensed educator,
  (3) A person who has pleaded guilty to or has been convicted of a theft in office or a similar offense, and
  (4) A person who has not submitted to a criminal records check.[88]

  Ohio Rev. Code § 3314.02(E)(4) indicates for a community school that is not sponsored by a school district or education service center:
  (1) No present or former member (or immediate relative[89]) of the governing authority shall be an owner, employee, or consultant of the sponsor/operator, unless at least one year has elapsed since conclusion of the person's membership on the governing authority

  Or if the community school is sponsored by a school district or education service center, no present or former member (or immediate relative) of the governing authority shall:
  (1) Be an officer of the district board or service center governing board that serves as the sponsor, unless at least one year has elapsed since conclusion of the person's membership on the governing authority
  (2) Serve as an employee of, or consultant for, the department, division, or section of the sponsoring district or service center that is responsible for sponsoring, unless at least one year has elapsed since conclusion of the person's membership on the governing authority

- Present and former public officials or employees are prohibited during their public employment or for twelve months thereafter from representing any person on any matter in which the public official or employee personally exercised administrative discretion as a public official or employee. (Also known as *the revolving door statute*.) [Ohio Rev. Code § 102.03(A)(1)]

- Division (A) of Ohio Rev. Code § 102.03 shall not be construed to prohibit performing ministerial

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

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

functions, including, but not limited to, the filing or amending tax returns, applications for permits and licenses, incorporation papers, and other similar documents. [Ohio Rev. Code § 102.03(A)(7)]

- Public officials and employees are prohibited from using or authorizing the use of the authority or influence of office or employment to secure anything of value or to promise or to offer anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. [Ohio Rev. Code § 102.03(D)]

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

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

- **Ohio Rev. Code § 305.27** Prohibits county commissioners from having an interest in a county contract.

- **Ohio Rev. Code § 511.13** Prohibits any member, officer or employee of a board of township trustees from having an interest in any contract the trustees approve.

- **Ohio Rev. Code § 731.02** Prohibits members of a city legislative authority from having an interest in any contract with the city.

- **Ohio Rev. Code § 731.12** Prohibits members of a village legislative authority from having an interest in any contract with the village.

- **Ohio Rev. Code § 3313.33** Prohibits board of education members from having a pecuniary interest in a board contract, or from being employed by the board. However, there are exceptions, per Ohio Rev. Code § 3313.33(C). You should refer to the statute for details of the exceptions. ***Note***: this statute does not apply to community schools unless the sponsor mandates it through the sponsor contract.

**Ohio Rev. Code § 2921.42** - Having an unlawful interest in a public contract.
This section prohibits such interests.[90] Ohio Rev. Code § 3314.03(A)(11)(e) requires community schools to comply with Ohio's Ethics Laws, which, among other things, requires public officials to disclose conflicts of interest and prohibits them from having an interest in a contract awarded by their public office. For example, a community school's Treasurer should not loan money to a community school they work for, as this could violate Ohio Rev. Code § 2921.42**.** Effective March 30, 2006, members of a community school's governing authority cannot be employed by the community school or, except in specified circumstances, have an interest in *any* contract awarded by the governing authority[91].

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

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

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

government participates in that program.

**Ohio Rev. Code § 3314.02(E)(6) - (8) -** No employees of a school district or ESC shall serve on the governing authority of a community school sponsored by that school district or ESC. ***No*** person who is a member of a school district board of education shall serve on the governing authority of ***any*** community school.[92]

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

**Ohio Rev. Code § 2921.41**- Theft in office.
Public officials committing theft of public property (or services), or who use their offices in committing such acts, or permit their offices to be so used, are in violation of this Section. Ohio Rev. Code § 2913.01(K) defines "theft."

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

**Ohio Rev. Code § 3329.10** - Purchases of school textbooks and supplies:
Superintendents, principals, teachers, and supervisors are prohibited from acting as sales agents for textbook companies including companies offering electronic textbooks. These school officials are also prohibited from representing companies selling school apparatus or equipment. (Not applicable to community schools.)

**Ohio Rev. Code § 117.103(B)~~(1)~~** – The auditor of state shall create training material detailing Ohio's fraud-reporting system and the means of reporting fraud, waste, and abuse. ~~A public office~~ The auditor of state shall provide the training material ~~information~~ about the Ohio fraud-reporting system and the means of reporting fraud to ~~each new~~ employees[93] and elected officials of a political subdivision ~~upon employment with the public office~~. Current employees and elected officials as of the effective date of this amendment shall complete the training within 90 days of a date specified by the auditor of state unless good cause exists for noncompliance. Each new employee or elected official shall confirm receipt of this ~~information~~ material within thirty days after taking office or beginning employment. The training shall be required every four years for each employee or elected official. The auditor of state shall provide a model form on the auditor of state's web site (https://ohioauditor.gov/fraud/docs/FraudReportingSystemModelForm.pdf) to be printed and used by ~~new~~ public employees and elected officials to sign and verify their receipt of ~~information~~ material as required by this section. The auditor of state shall confirm, when conducting an audit under Ohio Rev. Code § 117.11, that ~~new~~ public employees and elected officials have been provided ~~information~~ material as required by this division.

*Note: The Auditor of State is currently developing the HB 33 fraud training material and will issue a bulletin to all public officials enumerating the process and specified timeframe within which all public employees and elected officials must complete the training. Until this bulletin is published and in effect,*

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

~~[93] Due to the ethical component in this requirement, we interpret this to include and be applicable to any "Public Official or employee" (as defined in Ohio Rev. Code § 102.01(B))~~

*auditors should continue to audit compliance with the existing Fraud Reporting System Model Form and pre-HB 33 requirements.*

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

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Determine how the entity identifies possible interests on the part of officials and employees in matters coming before them for official action. For example, are officials and employees required to report the outside businesses and organizations they work for to the entity?

2. Inquire if any correspondence was received from the Ohio Ethics Commission regarding ethical violations.[94] If so, read correspondence regarding ethical violations and document the impact of any violations on the audit.

3. Inquire if any conflicts of interest or unethical transactions occurred during this year.

4. Inquire if the entity is aware of any other fraud. (AU-C 240 requires this step. If you already documented this in the FRAQ, you need not repeat this step here.)

5. If the school district purchased textbooks (including electronic textbooks) or school apparatus or equipment during this year, determine how the school assured that no one on the purchasing committee (superintendents, principals, teachers, and supervisors) acted as sales agents for those companies.

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

   **Pre-HB 33 Fraud Reporting System Requirements**

6. Determine if the entity's employees and elected officials were notified about the fraud reporting system. Inquire regarding the entity's process for obtaining and maintaining acknowledgement forms from new employees and elected officials.

7. Select a small number of new employees and elected officials and confirm they were provided the required information.

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

**HB 33 Fraud Training Material**

8. Determine if the entity's employees and elected officials completed the required training about the fraud reporting system within 90 days of the date specified by AOS. Inquire regarding the entity's process for obtaining and maintaining confirmations from new employees and elected officials signing off that they have received training material about the fraud reporting system.

9. Select a small number of new employees and elected officials and confirm they were provided the fraud training materials as required.

10. **For traditional schools that sponsor community schools,** inquire whether any employees of the school district or ESC serve on the governing authority of a community school sponsored by the school district or ESC.

11. **For traditional schools,** inquire whether the district board members serve on the governing authority of ANY community school.

12. **For community schools**:
    a. Inquire whether any of the governing board members are also employees or governing board members of the sponsoring traditional school or ESC.

    b. Determine whether the Treasurer loaned the community school money. This would include previous loans still being repaid during the current audit period, or money loaned to the school during the current audit period.

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**2B-8 Compliance Requirement:** Ohio Rev. Code §§ 109.43, 121.22, 149.351, 149.43, 3314.037 and AOS Bulletin 2021-007 & 2019-003 – Ohio Sunshine Laws[95]

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

**FAQs are available from both the Public Office and Auditor viewpoints. See Sunshine Laws and StaRS FAQs.docx for additional guidance as necessary.**

The Auditor of State issued Bulletin 2021-007 announcing a change in the interpretation of Public Records and Open Meetings Laws applicability to community schools. However, this new interpretation will not be applied to community school audits until further notice ~~fiscal year~~ 2024. For fiscal year 2024 ~~2023~~, auditors should continue to test community school requirements as outlined in the OCS.

***Summary of Requirements***
The Sunshine Law incorporates two acts, the Ohio Public Records Act Ohio Rev. Code § 149.43 and the Ohio Open Meetings Act Ohio Rev. Code § 121.22. As provided in the Acts and Ohio Rev. Code § 109.43, during an annual/biennial audit pursuant to Ohio Rev. Code Chapter 117 the AOS will test for compliance with these statutes. A brief description of the Acts follow.[96]

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

***Ohio Public Records Act - Ohio Rev. Code § 149.43***
This Act requires that a public office make public records available for inspection or copying. The time required for a response depends on the type of request.

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

As is often noted, the terms "promptly" and "reasonable period of time" are not defined by a specific period of time. Rather, these terms have been interpreted by courts to mean "without delay" and "with reasonable speed,[97]" and the ultimate determination of "reasonableness" will differ in each case depending on the

[95] We should not test for University Foundations or Courts or Clerk of Courts.

[96] For full details of all requirements and exceptions see the Ohio Sunshine Law Manual at: https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws.

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

particular facts and circumstances of a request.[98] Additionally, courts have held that a "prompt" or "reasonable period of time" includes the time for a public office to: (1) identify the responsive records; (2) locate and retrieve records from place of storage; (3) review, analyze and make necessary redactions (or legal review); (4) prepare the requests; and (5) provide for delivery.

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

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

***Ohio Open Meetings Act – Ohio Rev. Code § 121.22***

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

Every public body shall establish a reasonable method[101] of notifying the public of the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A special meeting requires twenty-four hour notice to the news media that have requested notification, except in the event of an emergency requiring immediate action, whereby notice shall be immediate.

Because the Open Meetings Act is a self-help statute, if a person believes the public office has violated the

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

[99] Ohio Rev. Code § 149.43(B)(1).

[100] Ohio Rev. Code § 149.43(B)(3).

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

Act in any way, he or she must initiate a legal action themselves. Neither the AOS nor any other public official can do so on their behalf. More general information can be found in the Ohio Sunshine Manual found at http://www.ohioauditor.gov/open.html. For more specific information, both citizens and public offices should consult their legal counsel.

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

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

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

Meetings of a public body may continue to be presented by teleconference, videoconference, or other similar electronic technology after July 1, 2021. However, the Open Meeting Act, including the period from July 1, 2021 through February 16, 2022 and after June 30, 2022, requires members of a public body be present in-person to be counted in the quorum and to vote.[103] These Open Meeting Act requirements may not apply to charter municipalities, charter counties, and/or limited home-rule townships which have adopted charter language directly contrary or a valid ordinance or resolution to the same effect.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

[103] Effective October 3, 2023, Ohio Rev. Code § 5126.0223 allows a county board of developmental disabilities to establish a policy that allows board members to attend a meeting of the county board via means of electronic communication. A member who attends via electronic communication is considered present at the meeting, is counted for purposes of establishing a quorum and may vote at the meeting.

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

1. The public office shall create and adopt a policy for responding to public records requests. Except for the exception noted in Ohio Rev. Code § 149.43(B)(7)(c), the public records policy may not: (a) limit the number of public records that the public office will make available to a single person, (b) limit the number of public records that it will make available during a fixed period of time, and (c) establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours. [Ohio Rev. Code § 149.43(E)(2)]
   *Obtain the public office's Public Records Policy and scan it to be sure the policy did not limit the number of responses that will be made to a particular person or limit the number of responses during a specified period of time, unless the exception noted above applies, or establish a fixed period of time before it will respond unless that period is less than eight hours.*

2. Select five (or total population if less than five) public records requests from the audit period to ensure: (Note: one selection of five (or total population if less than five) is sufficient for each policy tested no matter how many departments follow that policy. In addition, if there are no denials or redactions pulled in the selection, auditors do not need to pull an additional selection.)
   a. Public records are promptly prepared and sent to the requestor, and/or promptly prepared and made available for inspection by the requestor within a reasonable time. [Ohio Rev. Code § 149.43(B)(1)]

   b. If a request is denied, in part or in whole, the public office shall provide the requester with an explanation, including legal authority. [Ohio Rev. Code § 149.43(B)(3)]

   c. The public office shall notify the requester of any redaction(s) or make them plainly visible and provided an explanation, including legal authority. [Ohio Rev. Code § 149.43(B)(1)]

3. A public office shall have a copy of its current records retention schedule at a location readily available to the public. [Ohio Rev. Code § 149.43(B)(2)]
   *Ascertain whether the public office has a records retention schedule, and that it is readily available to the public.*

4. The public office shall distribute the public records policy to the employee who is the records custodian or records manager or employee who otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. [Ohio Rev. Code § 149.43(E)(2)]
   *Determine whether written evidence exists that the Public Records Policy was provided to the records custodian/manager.*

5. If the public office has established a manual or handbook of its general policies and procedures, the public office shall include the public records policy in the manual or handbook. [Ohio Rev. Code § 149.43(E)(2)]

*Ascertain whether the public office's public records policy was included in policy manuals.*

6. The public office shall create a poster describing their public records policy and shall post it in a conspicuous place in all public locations of that public office. [Ohio Rev. Code § 149.43(E)(2)]
   *Ascertain whether the public office's poster describing the policy is displayed conspicuously in all branches of the public office.*

7. The appropriate records commission shall review the schedules of records retention and disposition, as well as any applications for the one-time disposal of obsolete records. [Ohio Rev. Code §§ 149.38, 149.39, 149.41, 149.411, 149.412, and 149.42]
   *If submitted, obtain up to five applications for one-time disposal of obsolete records, and also review the schedules of records retention and dispositions for the audit period. In both instances, confirm approval by the appropriate records commission. (Note: the records retention schedule is not the same policy as the public records policy. Review the OCS Legal Matrix, OCS 2B-8 Step 7 Applicability tab to determine the section of the ORC which applies to the public office. "No Records Authority" indicates this step is not applicable.)*

8. All elected officials or their designees (see clarification regarding designees on Step #5 of 2B-8 Exhibit A) shall attend public records training approved by the Attorney General. [Ohio Rev. Code § 149.43(E)(1)] Training is required to be three hours for every term of office. [Ohio Rev. Code § 109.43(B)][104] Community school administrators are required to complete annual training on public records and open meeting laws. [Ohio Rev. Code § 3314.037]

   *Determine whether each elected official[105] (or his/her designee) successfully attended a certified three-hour Public Records Training for each term of office. Obtain proof of attendance and include it in the permanent file for future reference.*

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

   *Determine whether each community school governing authority member, or community school administrative staff (designated fiscal officer, chief administrative officer, and all individuals performing supervisory or administrative services) completed annual training on public records and open meetings laws.* ~~*Beginning in audits of fiscal year end 2024, the annual training on public records and open meetings laws must have been training that is certified by the Ohio Attorney General in accordance with Ohio Rev. Code § 109.43(B).*~~

9. Every public body, by rule, shall establish a reasonable method whereby any person may determine the

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

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

time and place **(or means)** of all regularly scheduled meetings, and the time, place **(or means)** and purpose of all special and emergency meetings. [Ohio Rev. Code § 121.22(F)]

a. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action.
b. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

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

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

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

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

11. An executive session requires a majority of a quorum by roll call vote at a regular or special meeting for the sole purpose of the consideration of only the following matters: [Ohio Rev. Code § 121.22(G)]

a. Specified employment matter of public employee/official;
b. Purchase of property for public purpose or sale/disposition of property;
c. Conferences with an attorney for the public body concerning disputes that are the subject of pending or imminent court action;
d. Preparing for, conducting or reviewing negotiations or bargaining sessions;
e. Matters required to be kept confidential by federal law or regulations or state statutes;
f. Specialized details of security arrangements and emergency response protocols;
g. Consideration of trade secrets for hospitals;
h. Confidential information related to marketing plans, business strategy, trade secrets, or personal financial statements of an applicant for economic development assistance.

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

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

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

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

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

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

**2B-8 Exhibit A:** AOS Bulletin 2019-003 – Star Rating System (StaRS)[106]

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

**Sunshine Law Star Rating System (StaRS):**
If the public office implements best practices beyond what is required by law, our office will recognize that achievement. The StaRS level each public office has achieved will be posted on the Auditor of State's website.

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

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

**StaRS Best Practices:**
To achieve additional success toward a more open and transparent government operation, the AOS suggests the following be implemented; these suggestions are <u>not required</u> by Ohio's Sunshine Laws.

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

[106] We should not test for University Foundations or Courts or Clerk of Courts.

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

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

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

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

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

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

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

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

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

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

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

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

   *Determine whether each elected official[107] (or his/her designee) successfully attended the required Public Records Training within one year of taking office.*

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

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

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

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

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

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

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

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

**~~2B-9 Compliance Requirement: Am. Sub. H. B. No. 481 133rd G.A, H.B. No. 614 133rd G.A., 42 U.S.C. 801 – CARES Act, Coronavirus Relief Fund~~**

# CHAPTER 3
# STEWARDSHIP

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

***Important:***

1. The following sections should be performed ***ANNUALLY*** if applicable to your entity***:***
    a. ***Commissaries - Section 3-7***
    b. ***Furtherance of Justice (FOJ)- Section 3-14***
    c. ***Law Enforcement Trust (LET) and Drug Law Enforcement Funds – Section 3-17***
    ~~d. ***Submission of information for National Instant Criminal Background Check System (NICS) – Section 3-18 (PROCEDURES ARE LIMITED TO THE FOLLOW UP OF PRIOR YEAR RECOMMENDATIONS – TESTING FOR THIS SECTION HAS BEEN SUSPENDED)***~~

2. Auditors can ***generally*** rotate substantive compliance testing in Court Sections 3-8 thru 3-13 and Sections 3-15 and 3-16 every other audit cycle. (If the Township is cycling back from an AUP to a GAGAS audit, then 3-15 & 3-16 should be evaluated for applicability & tested in this current cycle.) However, applicable Court Sections must be tested in any audit period when the court activity is material. For example, there are several compliance requirements in these sections. (Not all of them apply to all entity types.) You should divide the applicable requirements approximately in half, and test half of them with each audit.
    a. This applies to annual and biannual audits.
        i. For example, if you audited cafeteria plans for a village's 2018 and 2019 audit and found them to be compliant, you normally can omit this test for the 2020 and 2021 audit.
        ii. This also applies if AUP were performed in the prior year(s). Auditors should select about half of the applicable steps for testing for the audit. Because of the lesser significance of most Chapter 3 requirements, we require no risk assessment or other documentation supporting the steps selected for testing. (Except auditors should apply b. and c. below.)
    b. You should ***not*** rotate / omit a specific compliance test if the prior audit identified noncompliance or if evidence supports an elevated risk of noncompliance for the current audit.
    c. You should test new Compliance Supplement requirements in the first year of their applicability.

3. General Sections 3-1 thru 3-5 may be rotated and tested every 3rd audit cycle
    a. You should ***not*** rotate / omit a specific compliance test if the prior audit identified noncompliance ***or*** if there was a change in fiscal officer since the prior audit and the compliance requirement would have been performed by the new fiscal officer.
    b. Section 3-3 must be tested in an audit period in which any officials are selected in your payroll sample.

4. If (1) controls exist to help assure compliance with a specific requirement, and (2) you obtain satisfactory results from testing the controls' operating effectiveness you may be able to limit or omit substantive testing of the requirement.
    a. Unlike Single Audit requirements, we do not require you to test controls. You should select the most efficient audit strategy that results in sufficient evidence.
    b. Some of the requirements in this chapter are more likely to be subject to formal controls than are others.
    c. The AOS believes it is acceptable to rely on the results of prior audit's tests of controls if auditors apply the proper "updating" procedures. That is, auditors may use the concepts from AU-C 330.13 -- .14.
    d. This approach only requires tests of operating effectiveness once every third year, not every third audit.
        i. However, the auditor must apply procedures in each intervening year to determine whether continued reliance is appropriate. For example, per AU-C 330.14(a), it is inappropriate to rely on a control that has changed since the auditor's last test of its operating effectiveness.

5. Some steps in the chapter include additional guidance about the extent of testing applicable to that specific compliance requirement.

6. Auditors can normally use the extent of testing described in this chapter. However, if auditors identify specific risks related to specific compliance steps in this chapter, working papers should document these risk assessments, whether they be favorable (which may support less testing) or unfavorable (suggesting additional testing).

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

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

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

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

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

**The legal matrix is depicted in a separate Excel file at: https://ohioauditor.gov/references/compliancemanuals.html . Entities are included alphabetically in the tab titled "OCS – Exhibit 5". See tab titled "OCS – Exhibit 6" for entity types not listed in Exhibit 5.**

## Compliance Requirements Page

***STEWARDSHIP*** ..... ***4***

3-1 Compliance Requirement: Ohio Rev. Code § 9.38 - Deposits of public money. ..... 4

3-2 *This section intentionally left blank*..... 6

3-3 Compliance Requirements: Various Ohio Rev. Code sections – Appointments, compensation, contracts, etc. ..... 7

3-4 Compliance Requirements: Ohio Rev. Code §§ 9.03, 124.57, 124.59, 124.61, 3315.07(C) and 3501.054 - Political activities prohibited. ..... 11

3-5 Compliance Requirement: Ohio Rev. Code §§ 3.06, 3.061, and 3.30 (and various others specific to Universities) - Bonding requirements ..... 13

3-6 *This section intentionally left blank* ..... 15

3-7 Compliance Requirement: Ohio Rev. Code §§ 307.93(F), 341.25, 753.22, and 2301.58 - Establishment and accounting treatment for commissaries. ..... 16

3-8 Compliance Requirement: Ohio Rev. Code § 2335.34 – Courts - Lists of unclaimed costs. Ohio Rev. Code § 2335.34-.35 - Disposition of unclaimed fees and costs. ..... 18

3-9 Compliance Requirement: Ohio Rev. Code § 1907.20 - Records required of county courts. ..... 20

3-10 Compliance Requirement: Ohio Rev. Code § 1901.31 - Municipal court records. ..... 22

3-11 Compliance Requirement: Ohio Rev. Code § 1905.21 - Docket; disposition of receipts. Ohio Rev. Code § 733.40 - Disposition of fines and other moneys for mayor's court. ..... 24

3-12 Compliance Requirements: The following is a list of courts and of the related statutory provisions (all references are to the Ohio Revised Code Section) for the collection, custody, and disbursement of fees, fines, costs, and deposits. ..... 25

3-13 Compliance Requirement: Ohio Rev. Code §§ 2743.70 and 2949.091 - Additional costs in criminal cases in all courts to fund reparations payments; additional court costs for state general revenue fund. ..... 29

3-14 Compliance Requirements: Ohio Rev. Code §§ 325.071, 325.06, 325.12, 325.18 – Counties-Furtherance of Justice (FOJ) ..... 30

3-15 Compliance Requirements: Ohio Rev. Code §§ 505.60 and 505.601, AOS Bulletins 2015-002 and 2017-002, and 2005 Op. Att'y. Gen. No. 2005-038, 2013-022, 2015-021, 2017-007, and 2017-026 – Township - Reimbursement of insurance premiums ..... 33

3-16 Compliance Requirements: Ohio Rev. Code §§ 305.171 and 505.603 - "Cafeteria Plans" ..... 36

3-17 Compliance Requirements: Ohio Rev. Code §§ 2925.03(F), 2929.18, 2981.11, 2981.13 and 2981.14 - Law Enforcement Trust (LET) and Drug Law Enforcement Funds ..... 39

~~3-18 Compliance Requirements: Ohio Rev. Code §§ 109.57, 109.571, 109.60, and 5122.311 – Submission of information for National Instant Criminal Background Check System (NICS)~~ . 43

## *STEWARDSHIP*

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

**Note: As stated on pg. 1 of Chapter 3, this section may be performed every 3rd audit cycle if noted requirements met. See further guidance on pg. 1 of Chapter 3.**

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

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

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

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

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

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

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

1. Systems documentation should include collection points receiving significant amounts of cash.

2. When testing cash collections, document the date collected vs. the date deposited to the CFO or the date the "collector" deposited to a designated depository.

   **When testing, consider any related AOS COVID-19 FAQs listed here –**

https://ohioauditor.gov/resources/covid19_faqs.html

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

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**3-2**

**This section intentionally left blank.**
**Information moved to Chapter 2, Sections 2A-3 – 2A-12, and Chapter 4, Section 4B-6.**

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

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

**Note: As stated on pg. 1 of Chapter 3, this section may be performed every 3rd audit cycle if noted requirements met. However, this section MUST be tested in an audit period in which ANY officials are selected in your payroll sample. See further guidance on pg. 1 of Chapter 3.**

**Summary of Requirement:** All of these various sections set out authority for appointing and/or compensating officials and employees of the various entities. For additional information and salary schedules for elected officials, see the ***Elected Officials' Compensation Exhibit 4*** in the OCS Implementation Guide. Virtual participation (i.e. tele or web conference) does not constitute attendance for compensation under Ohio Rev. Code § 121.22(C) which indicates board members must "be present in person" to be considered present [See footnote 1 and OCS section 2B-8 for exceptions to this rule].

**Schools:**
§ 3311.19 and 3313.12 - School board compensation and mileage (amended by H.B. 2)
§ 3313.24 - Compensation of School Treasurer[2]
§ 3314.02(E) - Compensation of School Board

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

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[1] ~~Two entities permit virtual participation for the open meetings act under Ohio Rev. Code § 121.22(C), Ohio Board of Regents and board of directors of a port authority.~~ The Ohio Rev. Code permits virtual participation for the open meetings act under Ohio Rev. Code § 121.22(C) for the following boards: Board of Directors of a Port Authority (Ohio Rev. Code § 4582.60), Board of Supervisors of a Soil and Water Conservation District (Ohio Rev. Code § 940.39) and a County Board of Developmental Disabilities (Ohio Rev. Code § 5126.0223). ~~Additionally~~ For two year audits ending 12/31/22, during the period of March 9, 2020 - July 1, 2021 and February 17, 2022 – June 30, 2022; members of a public body may hold and attend meetings and may conduct and attend hearings by means of teleconference, video conference, or any other similar electronic technology [Section 12 of Am. Sub. H. B. No. 197 133rd G.A as amended by Section 12 of Am. Sub. H. B. No. 404 133rd G.A.; Section 3 of Sub. H. B. No. 51 134th G.A.]

[2] Ohio law states that a treasurer's salary must be fixed and payable from the General Fund. If federal funds are used to compensate a school treasurer, consult the appropriate FACCR to determine testing steps, if applicable.

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

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

§ 3319.01 - Appointment and duties of superintendent (including compensation)
§ 3319.02 - Appointment of other (school) administrators, evaluation; renewal; vacation leave
§ 3319.08 - Teacher employment and reemployment contract
§ 3319.10 - Employment and status of substitute teachers
§ 3319.081 - Contracts for non-teaching employees
§ 3319.0810 - Contracts for transportation staff
§ 2921.43(A)(1) and Ohio Ethics Comm'n, Advisory Op. No. 2008-01 – Compensation of school employees by outside organizations[4]

**Courts**:
§§ 141.04 and 141.05 - Compensation of judges (court of common pleas, including probate court judges)
§ 2151.13 - Employees; compensation (courts).
§ 1907.16 and 1907.17 - Compensation of (county court) judges
§§ 2303.03, 2501.16, and 2501.17 - Officers and employees (courts of appeals); Clerk of Common Pleas Court to serve as Clerk of Court of Appeals.
§ 1907.20 - Clerks (court of common pleas)
§ 1901.11 - Compensation of judges (Municipal Court)
§§ 1901.31 and 1901.32 - Clerks; deputy clerks; bailiffs (Municipal court)
§ 141.04 (A) (3) - Compensation of judges (appellate court judges)

**Libraries**:
§ 3375.32 - Meeting of boards of library trustees; organization; election of clerk; bond.
§ 3375.36 - Treasurer of library (deputy clerk)
§ 3375.40 - Powers of boards of library trustees (compensation of employees)

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

**Counties**:

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

Chapter 325 - Compensation of county officials: auditor, 325.03; treasurer, 325.04; sheriff, 325.06[5]; common pleas clerk, 325.08; recorder, 325.09; commissioners, 325.10; prosecutor, 325.11; engineer, 325.14, 315.12; coroner, 325.15; vacation and holiday pay, 325.19; 1999 Op. Att'y. Gen No. 99-033 – in-term increase in compensation based on change in population according to decennial census (see AOS Bulletin 1999-015, 2001-001, & 2016-001); 2021 Op. Att'y Gen No. 21-021 – determining the effective date of the results of the federal decennial census for county officer salaries.

**Townships**:
§§ 505.24 (trustees)[6] (see also compliance requirement 1-23), 505.60 (insurance - also see compliance requirement 3-15), 507.09 (fiscal officer)[7] - compensation for township officials, 511.10 – appointment of personnel-holidays-maintenance uniforms, and 505.71 – compensation for joint ambulance district trustees. Also, 1999 Op. Att'y. Gen. No 99-015 – Definition of "budget" for purposes of compensation (see AOS Bulletin 1999-008).

***Note***: IRS Notice 2013-54 and Department of Labor Technical Release 2013-03 states that employers may only reimburse employees' premiums for non-employer sponsored health care with post-tax dollars (i.e., employers must withhold taxes prior to making reimbursement). Such reimbursements are not used in computing allowable "gross salary" as prescribed in Ohio Rev. Code §§ 505.24 and 505.09. Additional considerations for reimbursement arrangements are outlined in OCS 3-15.

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

**Municipal Hospitals:**
§ 749.33 - Employment and compensation of superintendents, physicians, and employees (municipal hospitals)

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

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

[6] Each salaried township trustee shall certify the percentage of time spent working on matters to be paid from the township general fund and from other township funds in such proportions as the kinds of services performed. A noncompliance citation would be issued instead of a Finding for Adjustment if the Township has reasonable supporting documentation (such as detailed time and effort records, timesheets, etc.). In addition, the certification should be signed retroactively and attached to the time and effort records. Refer to OCS 1-23 for further guidance.

[7] A township fiscal officer may be compensated from the township general fund or from other township funds based on the proportion of time the township fiscal officer spends providing services related to each fund. A township fiscal officer must document the amount of time the township fiscal officer spends providing services related to each fund by certification specifying the percentage of time spent working on matters to be paid from the township general fund or from other township funds in such proportions as the kinds of services performed. Refer to OCS 1-23 for further guidance.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

**Except for the tests below, much of the information above will be utilized in payroll disbursement testing.**

1. If elected or appointed officials, who have a salary set by statute (i.e. Township & County), were included in your payroll test, agree their pay rate to OCS Implementation Guide Exhibit 4 amounts~~.~~ ~~Officials who have a salary set by statute,~~ - these officials cannot receive PERS pick up if the additional compensation (in the form of PERS pickup) would result in receiving total compensation greater than the statutory limit. Therefore, we should calculate salary plus PERS pickup, if applicable, and compare this total compensation to the statutory limit. Compensation amounts exceeding the statutory limit should be findings for recovery if they meet the threshold guidelines in the OCS Implementation Guide.

2. For community schools, inquire whether its board members also serve on the boards of other community schools. If so, inquire how the community school assures it is not paying these board members more than the statutory limit. (See the requirements described above per Ohio Rev. Code § 3314.02(E)(5).)

3. Per footnote 2, regarding school treasurer compensation, compare total compensation per the payroll register to the amount in the treasurer's contract. If the register reports compensation exceeding the contract amount, determine if these payments were allowable per the footnote.

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

**3-4 Compliance Requirements:** Ohio Rev. Code §§ 9.03, 124.57, 124.59, 124.61, 3315.07(C) and 3501.054 - Political activities prohibited.

**Note: As stated on pg. 1 of Chapter 3, this section may be performed every 3rd audit cycle if noted requirements met. See further guidance on pg. 1 of Chapter 3.**

**Summary of Requirements:**

Ohio Rev. Code § 9.03 - Political subdivision newsletters and other means of communication.
No governing body of a political subdivision shall use public funds to publish, distribute, or communicate information that supports or opposes the nomination or election of a candidate for public office, the investigation, prosecution, or recall of a public official, or the passage of a levy or bond issue. In addition, no public funds shall be used to compensate any employee of the political subdivision for time spent on any activity to influence the outcome of an election for any of the purposes described above. However, public funds may be used to publish information about the political subdivision's finances, activities, and governmental actions in a manner that is not designed to influence the outcome of an election or the passage of a levy or bond issue. Public funds may also be used to compensate an employee for attending a public meeting to present such information in such a manner even though the election, levy, or bond issue is discussed or debated at the meeting.

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

Ohio Rev. Code § 124.57 - Political activity prohibited.
This section imposes restrictions upon the political activity of employees in the classified service of the State, counties, cities, city school districts, and civil service townships.

Ohio Rev. Code § 124.59 - Payment for appointment or promotion prohibited.
Applicants for appointment or promotion in the classified service shall not pay for appointments or promotions.

Ohio Rev. Code § 124.61 - Abuse of political influence.
Public officials (or potential public officials) shall not use or promise to use, any official authority or influence in order to secure or aid any person in securing any office or employment in the classified service, or any promotion or increase of salary therein, as a reward for political influence or service.

Ohio Rev. Code § 3315.07(C) - Support of school ballot issues.
No board of education shall use public funds to support or oppose the passage of a school levy or bond issue or to compensate any school district employee for time spent on any activity intended to influence the outcome of a school levy or bond issue election. However, the law specifically allows a school board to allow its employees to attend public meetings during working hours to give informational presentations regarding the district's finances and activities, even if the purpose of the meeting is to debate the passage of the school levy or bond issue.

Ohio Rev. Code § 3501.054 – Administering and conducting elections.
No public official that is responsible for administering or conducting an election in this state shall collaborate with, or accept or expend any money from, a nongovernmental person or entity for any costs or activities related to voter registration, voter education, voter identification, get-out-the-vote, absent voting, election official recruitment or training or any other election-related purpose other than the collection of

any fee that is authorized by law, the use of any building to conduct an election, including as a polling place on election day, or the donation of food for precinct election officials at a polling place on election day.

**Sample Questions and Procedures:**

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

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

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**3-5 Compliance Requirement:** Ohio Rev. Code §§ 3.06, 3.061, and 3.30 (and various others specific to Universities) - Bonding requirements

**Note: As stated on pg. 1 of Chapter 3, this section may be performed every 3rd audit cycle if noted requirements met. See further guidance on pg. 1 of Chapter 3.**

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

**General**

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

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

Ohio Rev. Code § 3.061 now permits an "Employee dishonesty and faithful performance of duty policy" in lieu of surety bonds for some officers, employees, or appointees (See Ohio Compliance Supplement Implementation Guide Exhibit 2 for those specific positions, they are highlighted in yellow in the included tables). Additionally, a person who becomes covered under an employee dishonesty and faithful performance of duty policy during the individual's term or employment and who remains covered under the employee dishonesty and faithful performance of duty policy for the duration of the individual's term or employment shall be considered qualified to hold the office or employment, without maintaining bond for the duration of the individual's term or employment as required by law. [Ohio Rev. Code § 3.061(D)(3)]

Ohio Rev. Code § 3.30 – Refusal or neglect to give bond deemed refusal of office. A person who becomes subject to a policy adopted under Ohio Rev. Code § 3.061 during the person's term of office or employment is deemed to have vacated the office when the person fails to document proof of insurance coverage and the vacancy shall be filled as provided by law.

Bonding Exhibit 2 in the OCS Implementation Guide includes:

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

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

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

Ohio State University [§ 3335.05], Ohio University [none specified], Miami University [none specified], Bowling Green and Kent State Universities [§ 3341.03], Central State University [§ 3343.08], Cleveland State University [§ 3344.02], Wright State University [§ 3352.02], Youngstown State University [§ 3356.02], University of Akron [§ 3359.02], University of Toledo [§ 3364.02, which does not require

Attorney General approval, effective July 1, 2006], University of Cincinnati [§ 3361.02], Shawnee State University [§ 3362.02, which does not require Attorney General approval, effective September 29, 2005], Community College Districts [none specified], Technical Colleges [none specified], State Community Colleges [§ 3358.06], University Branch Districts [§ 3355.051].

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

**Sample Questions and Procedures:**
[See the ***OCS Implementation Guide Exhibit 2 – Public Officers' Bond*** for details of requirements.]:

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

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

2. Obtain a few representative bonds and/or Employee dishonesty and faithful performance of duty policies, and determine amounts:
    a. meet or exceed requirements in Table 1 in Exhibit 2 in the OCS Implementation Guide, or
    b. are commensurate with duties of their office/position and meet or exceed amounts established by the governing authority for those listed in Tables 2 or 3 in Exhibit 2 in the OCS Implementation Guide

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**3-6**

**This section intentionally left blank.**

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

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

**Note: As stated on pg. 1 of Chapter 3, this section should be performed *ANNUALLY* if applicable to your entity.**

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

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

Once a commissary is established, all persons incarcerated must be given commissary privileges, and a commissary fund must be established. In addition, the commissary fund rules and regulations for the operation of the commissary must be established by the office establishing the commissary for the correctional facility. The commissary fund must be managed in accordance with the procedures established by the Auditor of State's Office, which are included in the Ohio County Sheriff's Manual (https://ohioauditor.gov/publications.html) and **AOS Bulletin 1997-011 Appendix 1**[8]. The revenue generated in the commissary fund in excess of operating costs is considered profit.

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

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

**Sample Questions and Procedures:**

1. Read the commissary funds rules and regulations to determine if they are consistent with requirements listed above.

2. Scan selected expenditures from this fund. Determine that expenditures were for the benefit of those

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

incarcerated (see list of acceptable expenditures above). ***Note***: We do not require high levels of assurance from this procedure. Therefore, the sample sizes we require to obtain high assurance do not apply. Scanning alone should normally be sufficient, unless we have reason to suspect there are significant control or compliance issues.

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 343, 134 GA**
**Effective: April 6, 2023**

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

**Note: As stated on pg. 1 of Chapter 3, auditors can *generally* rotate substantive compliance testing in this section every other audit cycle; however, this section MUST be tested in ANY audit period when the court activity is material. See further guidance on pg. 1 of Chapter 3.**

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

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

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

After the aforementioned 30-day period, the clerk or sheriff must pay the money to the county treasury, except for unclaimed moneys that are for restitution payments for crime victims. Each such officer shall indicate in her/his cashbook and docket the disposition of each unclaimed item. [Ohio Rev. Code § 2335.35(A)]

All the moneys remaining unclaimed that are for restitution payments for crime victims must be sent to the reparations fund (State treasury) created under Ohio Rev. Code § 2743.191, with a list from the clerk or other officer responsible for the collection and distribution of restitution payments specifying the amounts and individual identifying information of the funds. [Ohio Rev. Code § 2335.35(B)]

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

1. Describe procedures used to assure the list is maintained completely and accurately (these objectives will usually be addressed by the procedures used to maintain other required court records).

2. Show me how you reconcile the unclaimed amounts to balances held in the bank.

3. Show me your most recent listing of unclaimed funds.

4. How much was paid to the county for unclaimed funds during the year under audit?

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 343, 134 GA**
**Effective: April 6, 2023**

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

**Note: As stated on pg. 1 of Chapter 3, auditors can *generally* rotate substantive compliance testing in this section every other audit cycle; however, this section MUST be tested in ANY audit period when the court activity is material. See further guidance on pg. 1 of Chapter 3.**

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

On the first Monday of each January, the clerk must list all cases more than one year past for which money has been collected but unclaimed. The clerk must transmit notice of unclaimed funds to the party or to the party's attorney. All the moneys remaining unclaimed that are for restitution payments for crime victims shall be sent to the reparations fund (State treasury) created under Ohio Rev. Code § 2743.191, with a list from the clerk or other officer responsible for the collection and distribution of restitution payments specifying the amounts and individual identifying information of the funds. All other moneys ~~Money~~ still unclaimed each April 1 must be paid to the county treasury. (***Note***: the funds remain the property of the potential claimant per Ohio Rev. Code § 1907.20(D))

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

1. Are the aforementioned records maintained? (***Note***: We will normally know this from performing financially-related audit procedures.)

2. Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews). ***Note***: We include this step here for emphasis, though it should be part of the financial audit tests and does not require additional testing for Ohio Rev. Code purposes.

3. Show me an example of the correspondence you send regarding unclaimed funds to the party or to their attorney.

4. How do you identify amounts unclaimed for more than one year?

5. Show me your reconciliation of cash balances to the detailed listing of unclaimed funds.

6. How much was paid to the county for unclaimed funds during April of the year under audit?

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 343, 134 GA**
**Effective: April 6, 2023**

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

**Note: As stated on pg. 1 of Chapter 3, auditors can *generally* rotate substantive compliance testing in this section every other audit cycle; however, this section MUST be tested in ANY audit period when the court activity is material. See further guidance on pg. 1 of Chapter 3.**

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

On the first Monday of each January, the clerk must list all cases more than one year past for which money has been collected but unclaimed. On the first Monday in January each year, the clerk must transmit notice of unclaimed funds to the party or to the party's attorney. All the moneys remaining unclaimed that are for restitution payments for crime victims shall be sent to the reparations fund (State treasury) created under Ohio Rev. Code § 2743.191, with a list from the clerk or other officer responsible for the collection and distribution of restitution payments specifying the amounts and individual identifying information of the funds. All other moneys ~~Money~~ still unclaimed each April 1 must be paid to the municipal treasury (or county treasury, if it is a county-operated municipal court). [Ohio Rev. Code § 1901.31(G)]

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

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

1. Are the aforementioned records maintained? (***Note***: We will normally know this from performing financially-related audit procedures.)

2. Describe procedures used to assure that these records are complete and accurate (e.g., supervisory reviews). ***Note***: We include this step here for emphasis, though it should be part of the financial audit tests and does not require additional testing for Ohio Rev. Code purposes.

3. Show me an example of the correspondence you send regarding unclaimed funds to the party or to their attorney.

4. How do you identify amounts unclaimed for more than one year?

5. Show me your reconciliation of cash balances to the detailed listing of unclaimed funds.

6. How much was paid to the county for unclaimed funds in April following the year under audit?

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**3-11 Compliance Requirement:** Ohio Rev. Code § 1905.21 - Docket; disposition of receipts. Ohio Rev. Code § 733.40 - Disposition of fines and other moneys for mayor's court.

**Note: As stated on pg. 1 of Chapter 3, auditors can *generally* rotate substantive compliance testing in this section every other audit cycle; however, this section MUST be tested in ANY audit period when the court activity is material. See further guidance on pg. 1 of Chapter 3.**

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

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

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

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

1. Do you maintain a docket?

2. How do you assure that the docket is maintained completely and accurately?

3. Do you submit the required statement each month? Show me _____ (pick a few monthly statements and have personnel walk you through them).

4. Describe procedures used to assure that the statement is complete and accurate.

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

**Revised: SB 288, 134 GA**
**Effective: April 4, 2023**

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

**Note: As stated on pg. 1 of Chapter 3, auditors can *generally* rotate substantive compliance testing in this section every other audit cycle; however, this section MUST be tested in ANY audit period when the court activity is material. See further guidance on pg. 1 of Chapter 3.**

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

***Municipal Court***

| | |
|---|---|
| 1901.26 | Costs for operation of the court and special projects[9] |
| 1901.261 | Additional fees for computerization of court or office of clerk of court* |
| 1901.262 | Fee for dispute resolution |
| 1901.31 | Clerk of Court, powers and duties |
| 2951.021 | Supervision fees (Probation) |
| 2949.094(A) | 15% Add-on fee for indigent alcohol treatment fund |
| 4511.193 | Fee for indigent alcohol treatment fund |

***Mayor's Court***

| | |
|---|---|
| 733.40 | Disposition of fines and other moneys |
| 1907.261 | Fees for computerization of clerk of court office * (applies per 1905.02) |

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

***Mayor's Court (Continued)***

| | |
|---|---|
| 2949.094(A) | 15% Add-on fee for indigent alcohol treatment fund[10] |
| 4511.193 | Fee for indigent alcohol treatment fund |

***County Court***

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

***Probate Court***

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

***Juvenile Court***

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

***Court of Common Pleas***

| | |
|---|---|
| 325.28 | Receipt for fees |
| 2301.031 | Fee for computerization of domestic relations division |
| 2303.20 | Fees and costs generally |

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

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

| | |
|---|---|
| 2303.201 | Computerizing court or paying cost of computerized legal research (amended by SB 177)* |
| 2303.22 | Costs and fees taxed upon writs |
| 2335.35 | Disposition of unclaimed fees and costs |
| 2335.37 | Payment of certain costs to county treasury |
| 2335.241 | Interest on certificates of judgment; computerization of court/ clerk's office (***Note*:** Ohio Rev. Code § 2335.241 is not subject to the computerization fee restrictions of AOS Bulletin 2005-003.) |
| 3109.14 | Fees for birth and death records and disposition of divorce or dissolution filings; Children's trust fund |
| 2743.75(D)(1) | Filing fee for disputes over denial of access to public records |
| 2951.021 | Supervision Fees (Probation) |
| 4505.14 | Fees for lists of title information |
| 4519.59 | Fees for certificate of title |
| 4519.63 | Preparation and furnishing title information; Fees |
| 4519.69 | Fee for processing physical inspection certificate |
| 5310.05 | Assurance fund rate |
| 5310.06 | Monthly payments of money to treasurer of state, investment of funds |
| 5310.15 | Miscellaneous Fees |

***Court of Appeals***

| | |
|---|---|
| 2501.16 | Clerk of Court, powers and duties; fees for special projects |
| 2303.20 | Fees & Costs Generally (applies via 2501.16 & 2303.03) |
| 2953.~~37~~.35/~~.38~~.36/~~.53~~.39 | Fee associated with Court Notice of Order to seal or expunge records |

***All Courts***

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

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

All moneys collected during a month and owed to the state shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of the state [Ohio Rev. Code §§ 1907.24(C), 2303.201(C), 2743.70 (A)(2), 2949.091(A) (all courts) & (B), and 3109.14]. Except, all moneys collected for an offense other than a traffic offense that is not a moving violation shall be transmitted on the first business day of each month by the clerk of court to the treasurer of state. [Ohio Rev.

Code § 2743.70(A)(1)]

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

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

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

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

2. Inquire as to how the court spends computerization fees. Determine whether the accounting system can segregate computerization fees received and spent; or how the court otherwise determines that these fees were only spent on permissible computerization activities per AOS Bulletin 2005-003.

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

**Revised: HB 343, 134 GA**
**Effective: April 6, 2023**

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

**Note: As stated on pg. 1 of Chapter 3, auditors can *generally* rotate substantive compliance testing in this section every other audit cycle; however, this section MUST be tested in ANY audit period when the court activity is material. See further guidance on pg. 1 of Chapter 3.**

**Summary of Requirements:** These sections generally require the court in which any person is convicted of or pleads guilty to any offense other than a traffic offense which is not a moving violation, to impose and collect additional fines to be used for the state's reparations fund. The court may not waive the payment of this additional cost ~~unless~~ except for court costs imposed under Ohio Rev. Code § 2949.091 when the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

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

**Sample Questions and Procedures:**

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

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

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

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

**Note: As stated on pg. 1 of Chapter 3, this section should be performed *ANNUALLY* if applicable to your entity.**

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

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

The statutes require the sheriff and the prosecutor to file with the county auditor by the first Monday in January a full accounting of the expenditure of all funds from the FOJ account for the previous year. The statute requires the redeposit of any remaining funds, including cash held by officers, to the county treasury.[11]

Refer to the AOS Ohio County Sheriff's Manual for further guidance:
https://ohioauditor.gov/publications.html.

**Sample Questions and Procedures:**

1. Show me any policies and procedures you have for administering this fund.

2. Did you file the required annual report of expenditures for this fund? Show me a copy of it.

3. Show me documentation that the expenditures from this fund were proper and in accordance with your policies and procedures. Auditors should scan expenditure documentation and determine whether appropriate documentation is being maintained (i.e. receipts, invoices, affidavits, etc.), and whether expenditures appear reasonable in nature (i.e. proper public purpose). If significant unusual items are noted, auditors should perform the disbursement testing procedures included in the audit program below.

**FOJ Audit Program Steps:**

1. Determine whether the sheriff and prosecutor filed a full accounting of expenditures of all funds from the FOJ account with the County Auditor by the first Monday in January as required by Ohio Rev. Code §§ 325.071 and 325.12(E). Determine whether any unexpended funds have been redeposited to the County Treasury as required.[11]

2. Examine the county's computation of amounts payable from the general fund to the FOJ account per Ohio Rev. Code §§ 325.071 & 325.12. Compare the computation to actual payments. Investigate any differences and determine whether the prosecutor received approval from the court of common pleas under Ohio Rev. Code § 325.13 to allocate any additional funds to the FOJ account.

[11] The statute requires the sheriff and prosecutor to repay monies to the county treasury that are "unexpended" rather than unencumbered. Therefore, amounts encumbered should not be considered when determining the amount to redeposit into the county treasury.

3. Per AOS Bulletin 1997-014, any amounts paid to the FOJ fund in excess of the statutory limits described above will result in a finding for adjustment against the FOJ fund.

4. Determine whether a written internal control policy exists for administering and expending funds in the FOJ account. Compare the county's internal control policies to the guidance provided in AOS Bulletin 1981-007. Lack of a clear, written policy should be communicated to the audit committee and/or management officials of the County.

5. Does the policy establish clear internal controls regarding the distribution of the funds? If so:

   a. Do officers receiving cash sign a form or prenumbered, duplicate receipt for all money received?
   b. Does the officer providing the cash also sign a form acknowledging the disbursement of cash?
   c. Obviously, the department should not obtain receipts for payments to informants. However, do officers submit vendor invoices, cash register slips or other documentation to support other uses of funds (similar to an imprest petty cash fund)?
   d. Are officers required to keep an Agent Expense Report or similar paperwork?
   e. What does the policy state an officer should do when a receipt cannot be obtained? Examine evidence supporting whether or not officers comply with the policy.
   f. Does the policy require affidavits when officers pay cash to informants and for other confidential purposes?

6. Obtain the county's reconciliation of bank balances to the activity in the FOJ account cashbook.

   a. Foot the reconciliation.
   b. Agree the bank balance per the reconciliation to the bank account statement balance.
   c. Scan reconciling items for reasonableness.
      - Trace any relatively large outstanding checks or deposits in transit to subsequent bank deposits or the date on which outstanding checks subsequently cleared the bank.
   d. Agree the book balance per the reconciliation to the FOJ account balance.
   e. Trace payment of the remaining year-end FOJ balance to a receipt / revenue into the county treasury, as Ohio Rev. Code §§ 325.071 (sheriff) and 325.12(E) (prosecutors) requires.

7. Obtain the check register and review the payees* for reasonableness of the expenditure. If there are checks written to the Sheriff or other high-ranking officials, include these disbursements in the test that step 8 describes.

   *Due to the 21st Century Check Act, there are instances in which the bank is no longer able to return an original paper check or a photocopy of an original paper check. Instead, the bank is able to provide you with only a "display history" of a withdrawal from your checking account. Information on a bank's "display history" typically includes, but is not limited to, the number of the account upon which the check is drawn, routing information, the person or entity to whom the check was made payable, the purpose for which the money was paid, and the amount paid to the person or entity. Because a bank's "display history" of a withdrawal from a checking account sets forth the same information that appears on an original paper check or a photocopy of an original paper check, such a "display history," like an original paper check or photocopy of an original paper check, may provide a reasonable and reliable means by which a county prosecuting attorney can accurately account for a disbursement from his furtherance of justice allowance. [2005 Op. Att'y. Gen. No. 2005-035] Also see AOS Bulletin 2004-010.

8. Select a representative group of disbursements from the year end FOJ report, listing the check number, date, amount, and payee, and determine:

   a. the amount per the report agrees with the canceled check or receipt.
   b. the check is properly endorsed and signed by the Sheriff.
   c. the expenditure is for furtherance of justice (almost everything counts except personal items—see the guidance in Bulletin 1981-007 and 1997-014). (Note: Travel expenses must be made on a reimbursement basis. Per diem allowances are unallowable. See Bulletin 1981-007 and 2017 Op. Att'y. Gen. No. 2017-018)
   d. the officer completes an affidavit to support confidential payments, describing the amount of the expenditure and either the check number or the receipt number related to the expenditure as well as a statement of a general nature of the expenditure. If an affidavit is executed, the Auditor of State will not require production of the actual check or receipt and will not make any further inquiry into the detail surrounding the expenditure unless there is probable cause to believe that the affidavit is false. If no affidavit is executed, the officer must produce sufficient documentation to support that the expenditure is for a proper public purpose. Note that a mere assertion by the officer that an expenditure is confidential is not sufficient to negate the documentation requirements.
   e. whether other (i.e. non-confidential) disbursements are adequately supported by original documents (e.g., original invoices, receipts, receiving report, etc.).
   f. that checks do not appear to have been altered.
   g. whether amounts agree among related documents, and that computations (footings, extensions, etc.) are correct.

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**3-15 Compliance Requirements:** Ohio Rev. Code §§ 505.60 and 505.601, AOS Bulletins 2015-002 and 2017-002, and 2005 Op. Att'y. Gen. No. 2005-038, 2013-022, 2015-021, 2017-007, and 2017-026 – Township - Reimbursement of insurance premiums

**Note: As stated on pg. 1 of Chapter 3, auditors can *generally* rotate substantive compliance testing in this section every other audit cycle if noted requirements met. See further guidance on pg. 1 of Chapter 3. (If the Township is cycling back from an AUP to a GAGAS audit, then this section should be evaluated for applicability & tested in this current cycle.)**

**Summary of Requirements:**
With the enactment of the Affordable Care Act (ACA), as noted in Bulletins 2015-002 and 2017-002, Federal authorities have issued various guidance which suggest that some practices in Ohio Rev. Code §§ 505.60 and 505.601 may constitute violations of provisions of that voluminous legislation and may subject townships engaging in the same to penalty.

The IRS issued Notice 2015-17 in which it is indicated that an employer payment plan which involves the employer's reimbursement to employees for some or all of their health insurance premiums incident to a policy secured other than through the employer constitutes a group health plan which is subject to regulation under the Patient Protection and Affordable Care Act (ACA). On that basis, the IRS indicates that any such reimbursement plan, since it limits the amount of payments, is in violation of the ACA, and may subject the employer to fines and penalties. The Federal 21st Century Cures Act amends the ACA effective January 1, 2017[12]. This act creates an exception for "Qualified Small Employer Health Reimbursement Arrangements"[13] in which qualified eligible employers who make health care reimbursements may do so without threat of penalty. To qualify, a township must employ fewer than 50 full-time or full-time equivalent (FTE) employees and does not offer a group health plan to any of its employees. The following conditions must also apply:

1. It is provided uniformly to all eligible employees;
2. It is funded solely by the eligible employer;
3. No salary reduction contributions are made under the reimbursement plan; and
4. Payments and reimbursements for any year do not exceed $4,950.00 per employee ($10,000 if the arrangement provides for payments or reimbursements for family members of employee).[14]

See the AOS Bulletin 2017-002 for details.

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

Currently included in the Ohio Rev. Code:

Generally, Ohio Rev. Code § 505.60 permits townships to procure their own healthcare coverage, while

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

[13] Cafeteria plans may qualify as Qualified Small Employer Reimbursement Arrangements.

[14] The cap on payments and reimbursements is adjusted each year for inflation. 26 U.S.C. § 9831(d)(2)(B)(iii). For a table of the amounts applicable for each year ~~through 2021~~, see https://www.healthcare.gov/small-businesses/learn-more/qsehra/.

Ohio Rev. Code § 505.601 permits townships to opt not to procure their own plans, but still reimburse officers' and employees' for their healthcare premiums. Ohio Rev. Code § 505.60 specifically permits townships to procure the following forms of healthcare coverage: hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance. In addition, Ohio Rev. Code § 505.60 allows townships to reimburse a township officer or employee for out-of-pocket premiums for insurance policies, including long-term care insurance. The reimbursement is permitted for a township officer or employee who is denied coverage under a township health care plan established pursuant to Ohio Rev. Code § 505.60, **or** who elects not to participate in the township's plan. The township may reimburse for each out-of-pocket premium attributable to the coverage provided for the officer or employee for insurance benefits that the board could have provided under Ohio Rev. Code § 505.60(A). The reimbursement for the officer, employee, and their immediate dependent cannot exceed an amount equal to the average premium paid by the township under any health care plan it procures [Ohio Rev. Code § 505.60(D)] and cannot be reimbursed for immediate dependents if they elect not to participate in the plan (2017 Op. Att'y. Gen. No. 2017-007).[12]

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

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

The statute does not permit reimbursements for:

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

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

1. The board of township trustees adopts a resolution stating that the township has chosen not to procure a health care plan and has chosen instead to reimburse its officers and employees for each out-of-pocket premium,

2. The resolution provides for a uniform maximum monthly or yearly payment amount for each officer and employee,

3. The resolution states the specific benefits, pursuant to Ohio Rev. Code § 505.60(A), that will be reimbursed.

Ohio Rev. Code § 505.601 (reimbursement when a township does *not* offer health insurance to its officers/employees) covers reimbursements made to township officers/employees for dependent health

care coverage. Reimbursement is only for the part of the out-of-pocket premium attributable to the coverage provided for the officer or employee for insurance benefits that the board could have provided under Ohio Rev. Code § 505.60(A), and that the reimbursement covers immediate dependents in addition to the officer or employee.

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

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

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

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

**Sample Questions and Procedures:**

1. Inquire and scan the records to determine if the township reimbursed any officer or employees for insurance benefit premiums during the period under Ohio Rev. Code § 505.60 or § 505.601?

2. If the Township has one employee:
   a. Review the resolution authorizing reimbursement. (We should maintain a copy in the permanent file so we need not repeat this step each audit.)
   b. Review the township's procedures for ensuring reimbursements meet the requirements of [Ohio Rev. Code § 505.60(A) or the reimbursement resolution from Ohio Rev. Code § 505.601].
   c. Review a few employees' reimbursement transactions to determine if they were allowable, and whether sufficient documentation exists to support the reimbursements.
   d. Determine reimbursement was made from the general fund, or from other allowable funds in relation to the services or activities that are normally payable from those funds.

3. If more than one employee, determine for premium reimbursements if the Township's program is "integrated", under Federal regulations, into a group health care plan offered by the public employer, and if, therefore, the public employer may utilize so-called 125 payment plans. If they operate a cafeteria plan, see OCS section 3-16.

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

**3-16 Compliance Requirements:** Ohio Rev. Code §§ 305.171 and 505.603[15] - "Cafeteria Plans"[16]

**Note: As stated on pg. 1 of Chapter 3, auditors can *generally* rotate substantive compliance testing in this section every other audit cycle if noted requirements met. See further guidance on pg. 1 of Chapter 3. (If the Township is cycling back from an AUP to a GAGAS audit, then this section should be evaluated for applicability & tested in this current cycle.)**

**Summary of Requirements:**
**Counties**[17]
A board of county commissioners may offer, to a county officer or employee, benefits through a cafeteria plan meeting the requirements of section 125 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 125, as amended, and, as part of that plan, may offer the county officer or employee the option of receiving a cash payment in any form permissible under such cafeteria plans. Any cash payment made to a county officer or employee under this provision shall not exceed twenty-five per cent of the cost of premiums or payments that otherwise would be paid by the board for benefits for the county officer or employee under the health care policy or plan provided by the county as permitted by Ohio Rev. Code § 305.171(A).

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

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

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

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

[16] According to Internal Revenue Code [26 U.S.C. § 125 (b)] cafeteria plan amounts are not included in gross income of a participant, unless the participants are greater than $135,000.

[17] See also 2019 Op. Att'y. Gen. No. 2019-026.

- the policy or plan number for the coverage

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

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

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

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

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

1. Do you offer your officers and employees benefits through a cafeteria plan?
   Note: None of the steps below apply if the entity does not have a cafeteria plan.

2. Inquire if the entity worked with their legal counsel and\or accountants to design and administer the plans properly. If so, secure any documentation legal counsel or the accountants have supplied to the township.

3. Review the policy document for conformance with the requirements.

4. Describe your procedures for ensuring reimbursements met the requirements of Ohio Rev. Code § 305.171 or 505.603.

5. Show me [number] of signed statements with the attestations and the required information.

6. Calculate or review the entity's calculations that cash in lieu of payments does not exceed 25% of the cost to the entity for providing the benefit (that is no longer being received).

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

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

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

8. For a selection of employees, determine that payments were made from the general fund or from other allowable funds in relation to the services or activities that are normally payable from those funds.

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**3-17 Compliance Requirements:** Ohio Rev. Code §§ 2925.03(F), 2929.18, 2981.11, 2981.13 and 2981.14 - Law Enforcement Trust (LET) and Drug Law Enforcement Funds

**Note: As stated on pg. 1 of Chapter 3, this section should be performed *ANNUALLY* if applicable to your entity.**

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

Refer to the AOS Ohio County Sheriff's Manual for further guidance:
https://ohioauditor.gov/publications.html.

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

***Mandatory Drug Fines***
Ohio Rev. Code § 2925.03 (F)(1) requires the clerk of a court to pay[18] any mandatory fine imposed pursuant to division (D)(1) of this section and any fine other than a mandatory fine imposed for a violation of this section pursuant to division (A) or (B)(5) of Ohio Rev. Code § 2929.18 of the Revised Code to the county, township, municipal corporation, park district. . . or state law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender.[19] **(Procedure No. 3 below)**

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

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

A. address the agency's use[20] and disposition of all fine moneys so received,
B. provide for the keeping of detailed financial records of:
    1. the receipts of those fine moneys,
    2. the general types of expenditures made out of those fine moneys, and
    3. the specific amount of each general type of expenditure.

[18] Payments are made electronically to the Ohio Treasurer of State through the Reparations Rotary. A report is available on the AOS Intranet showing which entities made payments (Documents/Audit_Resources/Confirmation_Listings/Calendar_Year_Entities/State/Reparations Rotary Report).

[19] These proceeds should be recorded in a LET fund when received from the clerk.

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

C. not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation.

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

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

***Forfeitures and Seizures***

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

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

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

*Sale of forfeited property* Ohio Rev. Code § 2981.13

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

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

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

Ohio Rev. Code § 2981.14(B) states, A law enforcement agency or prosecuting authority shall not directly or indirectly transfer or refer any property seized by the agency or authority to any federal law enforcement authority or other federal agency for purposes of forfeiture under federal law unless the value of the seized

property exceeds $100,000[21], excluding the potential value of the sale of contraband, or the property is being transferred or referred for federal criminal forfeiture proceedings. **(Procedure No. 4 below)**

**Drug Law Enforcement Fund**

***Non-Mandatory Drug Fines***

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

**Sample Questions and Procedures:**

**Law Enforcement Trust Fund Testing**

1. The following activity should be accounted for in a Law Enforcement Trust Fund, inquire with the client (including related courts and/or law enforcement agencies) and review supporting audit information in order to determine whether they have any of the following and account for it accordingly:
    a. Receipts of Mandatory Drug fines,
    b. Expenditures of Mandatory Drug fine proceeds from previous periods, or
    c. Receipt or use of forfeited or seized property.

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

2. Obtain any internal control policy(ies) and if applicable determine if it is written in accordance with:
    a. Ohio Rev. Code § 2925.03(F)(2) – For Mandatory Drug Fines;
    b. Ohio Rev. Code § 2981.11(B)(1) – For Care of Property in Law Enforcement Custody;
    c. Ohio Rev. Code § 2981.13(C)(2)(a) – For Sale of forfeited property

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

4. Test this LET activity using the following procedures:
    a. Obtain the bank accounts and related support documentation and test the bank reconciliation(s) through:
        i. Footing the reconciliation(s).
        ii. Agreeing the bank balance per the reconciliation(s) to the bank account statement balance(s).
        iii. Scanning reconciling items for reasonableness. Trace any relatively large outstanding checks or deposits in transit to subsequent bank deposits or the date on which outstanding checks subsequently cleared the bank.
        iv. Agreeing the book balance per the reconciliation(s) to the accounting record's balance.
    b. Auditors should scan expenditure documentation and determine whether appropriate documentation is being maintained (i.e. receipts, invoices, affidavits, etc.), and whether expenditures appear reasonable in nature (i.e. proper public purpose and in accordance with the internal control policy and related statutes above). If significant unusual items are noted, or if auditor judgment dictates, auditors should:

[21] Such transfers may result in federal reporting requirements under Treasury or Justice Equitable Sharing Programs ~~(see Catalog of Federal Domestic Assistance (CFDA[22])~~ (see Assistance Listing # 16.922 and/or 21.016)

i. Test selected disbursements and supporting documentation (e.g. invoices, etc.) to determine if they were used only for the purposes described above. *(Note: We require only a low level of assurance from this testing. Select sample sizes accordingly, or use high dollar testing if it is more efficient and provides greater coverage.) (Note: Per diem allowances for travel are unallowable. See 2017 Op. Att'y. Gen. No. 2017-018.)*

c. Inquire about any transfers of property seized by the agency or authority to any federal law enforcement authority.
   i. Evaluate the value of transferred property and if applicable test requirements of Treasury or Justice Equitable Sharing Programs (see ~~Catalog of Federal Domestic Assistance~~ Assistance Listing ~~CFDA~~[22] # 16.922 and/or 21.016)

5. If they had sales of forfeited property, determine whether they complied with the reporting requirement in Ohio Rev. Code § 2981.13(C)(3). Review the report for accuracy and completeness.

**Drug Law Enforcement Fund Testing**

6. Inquire with the client (including related courts and/or law enforcement agencies) and review supporting audit information in order to determine whether there were any additional fines (referred to above as Non-Mandatory Drug fines) imposed under Ohio Rev. Code § 2929.18(A) or (B)(4).
   ***If there were none, no further testing is required.***

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

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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[22] ~~Effective for federal awards made after November 12, 2020, the terms "Catalog for Federal Domestic Assistance (CFDA) number" and "CFDA program title" have been changed to the terms "Assistance Listings number" and "Assistance Listings program title". Auditors may see either term being used interchangeably for a period of time.~~

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

~~**Procedures for this section are limited to the evaluation of prior year comments, and as noted on pg. 1 of Chapter 3, should be performed ANNUALLY if applicable to your entity.**~~

~~**Sample Questions and Procedures:**~~

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

# CHAPTER 4 – SCHOOL COMPLIANCE TESTING

| CHAPTER 4 APPLICABILITY | TRADITIONAL SCHOOLS<br>COMMUNITY SCHOOLS<br>STEM/STEAM SCHOOLS<br>EDUCATIONAL SERVICE CENTERS (ESC) |
|---|---|

Due to the Auditor of State's annual Fall/Winter release of the Ohio Compliance Supplement (OCS) AOS created Chapter 4. Schools operate on a June 30 fiscal year basis and legislative changes impacting school audits are often still occurring in the Fall/Winter months. For this reason, ~~beginning with the fiscal year 2023 Supplement,~~ the OCS and Optional Procedures Manual (OPM) steps that are ***only*** applicable to Traditional Schools, Community Schools, ESCs, or STEM/STEAM Schools ~~will be~~ are self-contained in Chapter 4 to allow AOS to update and release school compliance changes separately (generally in the Spring/Early Summer) from the remainder of the Supplement when appropriate. Sections of the Ohio Compliance Supplement which apply to schools ***and*** other entity types are retained in Chapters 1-3 or the OPM.

| ~~CHAPTER 4 SECTIONS~~ | ~~PREVIOUSLY INCLUDED IN OCS CHAPTERS / MANUALS~~ |
|---|---|
| ~~CHAPTER 4A – DIRECT LAWS~~ | ~~CHAPTER 1~~ |
| ~~CHAPTER 4B – INDIRECT LAWS~~ | ~~CHAPTER 2~~ |
| ~~CHAPTER 4C – STATUTORILY MANDATED TESTS~~ | ~~CHAPTER 2~~ |
| ~~CHAPTER 4D – STEWARDSHIP~~ | ~~CHAPTER 3~~ |
| ~~CHAPTER 4E – SCHOOL OPTIONAL PROCEDURES~~ | ~~OPTIONAL PROCEDURES MANUAL (OPM)~~ |

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

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

**The legal matrix is depicted in a separate Excel file: Legal Matrix.xlsx. Entities are included alphabetically in the tab titled "OCS – Exhibit 5". See tab titled "OCS – Exhibit 6" for entity types not listed in Exhibit 5.**

**Ohio Rev. Code § 3301.13 (new section enacted by HB 33 of the 135th GA) changed the Ohio Department of Education's name to the Department of Education and Workforce. Updates to the name and acronym (ODE to DEW) were not marked throughout this chapter, except for instances where the law was quoted & had the name change.**

## COMPLIANCE REQUIREMENTS PAGE

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# CHAPTER 4A –DIRECT LAWS

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

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

Conversely:

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

A. Based on the above (and AU-C 250.A9 – .A11), "**direct** and material compliance" refers ***only*** to laws a government's information system (which includes its accounting system) must "capture" to ***determine financial statement amounts and required disclosures***[1]. Therefore, we have classified a law as ***direct*** in this OCS if noncompliance has the potential to materially misstate the financial statements. Chapter 4A of this compliance supplement includes "direct" laws.

    1. As one example, GAAP requires governments to present budgetary comparisons as basic statements or as RSI.
    2. GAAP also requires these presentations to follow the government's legal budget basis.
        a. In Ohio, a "5705 government's" information system must capture information using the accounting basis Ohio Rev. Code Chapter 5705 (via GASB Cod. 2400) prescribes to compile budget and actual amounts and budget variances GAAP requires.
        b. Ohio Rev. Code Chapter 5705 generally prescribes a cash + encumbrance accounting basis, which a compiler must understand and follow to satisfy GAAP.

B. In addition to the discussion above from AU-C 250, the AICPA Audit and Accounting Guide *State and Local Governments* (AAG SLG), sections 4B.11 ~~4.09~~ through 4B.24 ~~4.22~~, discuss legal requirements which might directly and materially affect determining financial statement amounts for a governmental entity. Material noncompliance (having a direct or indirect effect) would often:
    1. Require adjusting amounts or revising disclosures.
        a. Auditors should do the same regarding noncompliance ***indirectly*** affecting financial statement amounts or disclosures, if they become aware of it.
            i. For example, AU-C 250.06 b.iii describes material penalties as an ***indirect effect***, though they may require disclosure or even accrual as a contingent expense.
    2. Require reporting as a material GAGAS noncompliance finding.

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

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

3. May represent significant / material violations of "finance-related legal and contractual provisions"
    a. GASB Cod. 2300.106(h) require "notes to the financial statements should disclose significant violations of finance-related legal and contractual provisions" and "actions taken to address significant violations".
    b. See the OCS Implementation Guide page 7 for the Finance Related Legal or Contractual Provisions.

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

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4A-1 Compliance Requirement: Ohio Rev. Code § 3313.33 - Board of Education (schools) conveyances and contracts..... 5

4A-2 Compliance Requirement: Ohio Rev. Code Chapter 3318 (Traditional School Districts & STEM Schools); section 501.10 Am. Sub. House Bill 64, 131st GA, section 237.40 Am. Sub. House Bill 481, 133rd GA, section 237.17 Am. Sub. House Bill 597, 134th GA (Community Schools); section 237.10 Am. Sub. House Bill 33, 135th GA (School Security/Safety Program); section 287.20 Am. Sub. House Bill 33, 135th GA (Career Technical Construction Program) – Permissible expenditures for school districts participating in classroom facilities assistance programs; Interest accounting and allocation and maintenance plan funding and expenditures.. 6

4A-3 Compliance Requirement: Ohio Rev. Code §§ 3314.03, 3314.08 and 2015 Ohio Op. Att'y Gen. No. 2015-007 – Community School Debt. ..... 17

4A-4 Compliance Requirement: Ohio Rev. Code §§ 3301.079, 3302.41, 3302.42, 3313.48, 3313.482, 3313.668, 3317.03, 3317.031, and 3317.034; Ohio Admin. Code 3301-35-01, 3301-35-03, 3301-35-16, and 3301-69-02- School District Funding. ..... 19

4A-5A Compliance Requirement: Ohio Rev. Code §§ 3313.64, 3313.482, 3314.03, 3314.08, and 3317.022; Ohio Admin. Code 3301-102-02; 34 C.F.R. § 222.176 – Community School Funding (*Brick and Mortar only*)..... 31

4A-5B Compliance Requirement: Ohio Rev. Code §§ 3313.64, 3314.02, 3314.03, 3314.08, 3314.086, 3314.26, 3314.261, 3314.262, 3314.27, 3317.022, 3317.22; Ohio Admin. Code 3301-102-02 –Community School Funding (*Electronic Schools (E-Schools) only*)..... 44

4A-5C Compliance Requirement: Ohio Rev. Code §§ 3301.079, 3302.41, 3313.64, 3314.03, 3314.08, and 3317.022; Ohio Admin. Code 3301-102-02, 3301-35-01 – Community School Funding (*Blended only*). ..... 58

**4A-1 Compliance Requirement:** Ohio Rev. Code § 3313.33 - Board of Education (schools) conveyances and contracts.

**Summary of Requirement:** The board president and treasurer shall execute any "Conveyances." No contract is binding unless authorized at a regular or special board meeting. A "conveyance" is not a donation; it is a transfer ***between two entities*** with adequate consideration other than money.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Trace board approval from the minutes to the contracts or from the contracts to the minutes.

2. Inspect "conveyances" for board president and treasurer signatures.

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**4A-2 Compliance Requirement:** Ohio Rev. Code Chapter 3318 (Traditional School Districts & STEM Schools); section 501.10 Am. Sub. House Bill 64, 131st GA, section 237.40 Am. Sub. House Bill 481, 133rd GA, section 237.17 Am. Sub. House Bill 597, 134th GA (Community Schools); section 237.10 Am. Sub. House Bill 33, 135th GA (School Security/Safety Program); section 287.20 Am. Sub. House Bill 33, 135th GA (Career Technical Construction Program) – Permissible expenditures for school districts participating in classroom facilities assistance programs; Interest accounting and allocation and maintenance plan funding and expenditures.

**Summary of the Program**

**Background:**

Several programs provide financial assistance to construct or repair classroom facilities. The Ohio Facilities Construction Commission (OFCC) administers these programs. The most common programs are the Classroom Facilities Assistance Program (CFAP), Community School Classroom Facilities Grant Project, Expedited Local Partnership Program (ELPP), STEM Public Schools, and Urban Initiative Program (i.e., applies to the following six city school districts: Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo). Certain classroom assistance programs established by Ohio Rev. Code Chapter 3318 follow the basic guidelines of the CFAP. Guidance about these programs can be found on OFCC's website: https://ofcc.ohio.gov/our-programs/k-12-schools ~~Maintenance Plan Guidelines~~ and ~~K-12 Schools~~.

**Programs and Agreements:**

Each project, regardless of the program, will be defined in the Project Agreement. Sample OFCC Project Agreements are located on OFCC's website; however, auditors should obtain and review the school's own Project Agreement for compliance testing. The Project Agreement (updated in September of 2023 ~~July of 2022~~) is a contract that is signed by the Commission, the School Board President and Treasurer of the participating District. [Ohio Rev. Code § 3318.18(A)(5).] There can be many attachments to the Project Agreement and amendments to the Project Agreement. Some of the common attachments include schedules of the alternative funding sources for both the local portion for construction and/or the maintenance levy, and a Memorandum of Understanding (MOU) which sets forth the specific terms and conditions of the Locally Funded Initiative (LFI). The following sections of the updated Project Agreement for the CFAP (most common) define the Project and significant responsibilities and applicable compliance requirements:

A. Scope of the Project (Section I) – provides the total budget for the project and the split between the State and Local share. In addition, if there's Required Locally Funded Initiatives (LFIs) each will be included. Other LFI's not specifically referenced in this section of the agreement will be described in Section VII. In addition, if Allowances are provided for the project each will be included. Allowances include: Demolition, Swing Space, Site Access Safety Improvements, Storm Shelter, Emergency Responder Radio Communications System, Enhanced ADA Playground Surface, and Abandoned Facilities.

B. Ownership of the Project (Section II) – defines ownership of the Project from design and construction through completion. Until the Project is completed and a Certificate of Completion is issued both the School Board and the Commission share ownership according to their respective contributions defined in Section I of the Project Agreement. Once the Certificate of Completion is issued the Commission's interest is considered transferred to the School District Board.

C. School District Board Share of Basic Project Cost (Section III) – defines how the District provided their share of the Project as a condition precedent to the execution of the Project Agreement. The funding options for a CFAP Project include:

1. CFAP Bonds or Notes [Ohio Rev. Code §§ 3318.05, 3318.06, or 3318.062 and 3318.08(A)]
2. Property Tax\Income Tax Levy [Ohio Rev. Code § 3318.052]
3. Local Donated Contributions including federal grant monies, monies donated or granted, letters of credit, cash on hand, other bonds (non 3318), lease purchase proceeds, and contributions spent directly by a third party source.
4. Credit – credit given for the District's participation in the Expedited Local Partnership Program (ELPP), if applicable, will be documented in this section. [Ohio Rev. Code § 3318.36(E)(1).]

D. Maintenance of Completed Facilities (Section IV) - defines how the School District Board will provide for funding of the Maintenance Fund (USAS Fund 034), required approval of the maintenance plan, and allowable expenditures out of the fund. This fund should be classified as a governmental fund type, special revenue fund.

1. A maintenance plan is required to be prepared in accordance with the Commission's Maintenance Plan Guidelines and submitted to the Commission for approval prior to the expenditure of monies out of this fund.

    a. Allowable uses include the maintenance and repair of the completed facilities, periodic repairs, and the replacement of facility components.
    b. Unallowable uses include routine janitorial and utility costs, equipment supplies, maintenance staff salaries and personnel associated with the day to day housekeeping and site upkeep per normal and customary standards.
    c. The Commission pre-approves the use the maintenance fund to pay for the cost of the development of the plan in accordance with the Commission's Guidelines, and to support training of the School District's building operator and maintenance staff via a Building Operator Certification Program or additional training specific to the District's mechanical and control systems.

2. The School District Treasurer is required to identify the source of funds to be used to fund the maintenance fund. The following sources are available:

    a. Levy an additional tax[2] for the maintenance of the Project of at least one-half mill [Ohio Rev. Code §§ 3318.05(B), 3318.06(A)(2)(a) and (A)(3), and 3318.17.]
    b. Earmarking from the proceeds of an existing permanent improvement tax levied under Ohio Rev. Code § 5705.21, an amount equivalent to the amount required in accordance with maintenance fund requirements described above.
    c. Funding can also be satisfied by applying the proceeds of a property tax or the proceeds of an income tax, or a combination thereof [Ohio Rev. Code § 3318.052.]
    d. The School Board may extend a previously approved tax of one-half mill for each dollar of taxable value levied as a condition of participating in a previous state school

[2] The original regulations required a ½ mill levy, all of which was remitted to the State to repay project funding received. Later regulations still required the levy (or other funding), but provided that all or a portion would be retained by the district, to be used for maintenance of project facilities. All such funding is referred to as "maintenance funding" in this OCS Section. Some districts have entered into supplemental agreements which subject the district to the amended regulations.

building assistance program so the half mill will be collected for at least twenty-three years after the completion of the Project Agreement [Ohio Rev. Code § 3318.061.]

e. If approved by the Commission, the school district may deposit locally donated contributions as an offset of all or part of the district's obligation to provide for the maintenance fund as described above by the anticipated completion date of the Project according to a schedule for deposit approved by the Commission [Ohio Rev. Code §§ 3318.084(D)(2) and 3318.08(E)]

f. A district may deposit into its maintenance fund, annually for 23 years, an amount from other district resources equal to 1/2 mill of the district's tax valuation[3], instead of levying the maintenance tax[4]. The district's board must pass a resolution petitioning the Ohio Facilities Construction Commission to approve the arrangement. [Ohio Rev. Code §§ 3318.05, 3318.051, and 3318.084]

g. Regardless of the funding mechanism selected, the total amount required to be deposited annually into Fund 034, the Maintenance Fund, should equal the amount that would be generated from a half mil levy over 23 years.

3. School Districts may not transfer money out of the 034 Fund and into other funds.

4. If the district elects to deposit funding into the maintenance fund per Ohio Rev. Code § 3318.051, the district treasurer must annually certify to the OFCC and the Auditor of State that the amount required for the year has been transferred[5] into the maintenance fund[8].

   a. In order to satisfy the transfer certification requirement to the Auditor of State, districts should upload a certification in the district's eServices account (see Certification of Maintenance Set-Aside Transfers under Required Filings & Notifications on the AOS website https://ohioauditor.gov/resources/AOSNotifications.html). ~~can electronically submit the copy of the Auditor of State's certification to OFCC@OhioAuditor.gov or carbon copy the Auditor of State regional offices on their~~ Certification to the ~~Commission at~~ OFCC should be e-mailed to maintenancecertification@ofcc.ohio.gov. ~~See the Auditor of State website www.ohioauditor.gov (Contact Us for regional office contact information.)~~

   b. The Auditor of State must "verify" the transfer as part of any audit of the district. If the Auditor of State finds that less than the required amount has been deposited, the Auditor must notify the district board in writing and require the board to deposit the

[3] Joint vocational school districts participating in a state facilities program, annually for 23 years, must deposit into a maintenance account an amount equal to 1.5% of the current insurance value of the acquired facilities. [Ohio Rev. Code § 3318.43.]

[4] If a district board determines that it can no longer continue making the annual transfers, the act allows a district board to rescind its decision, but only if the district's voters approve the levy of a maintenance tax. The levy must be in effect for the remainder of the 23-year maintenance period (23 years minus the number of years that the district made transfers) and must be for not less than ½ mill for each dollar of district valuation. The act prescribes the ballot language to be used. A district electing to make the transfers authorized by the act is not relieved from its obligation to make annual deposits into its general "capital and maintenance fund," which applies to all districts under continuing law.

[5] Districts electing to make the transfers, instead of levying the maintenance tax, may not receive the new state maintenance equalization payments. *(The ~~Ohio~~ Department of Education and Workforce is required to pay an equalized subsidy to city, exempted village, and local school districts participating in state-assisted facilities programs and have tax valuations per pupil below the statewide average. The subsidy equalizes to the statewide average the per pupil amount each eligible district raises from its 1/2-mill maintenance levy.)* [Ohio Rev. Code § 3318.18.]

necessary money within 90 days after the notice. If the district board fails to demonstrate to the Auditor's satisfaction that it has made the required deposit, the Auditor must notify the ~~Ohio~~ Department of Education and Workforce. Upon that notice, the ~~Ohio~~ Department of Education and Workforce must withhold 10% of the district's state operating funds for the current fiscal year, until the Auditor notifies the ~~Ohio~~ Department of Education and Workforce that the Auditor is satisfied that the board has made the required transfer. [Ohio Rev. Code § 3318.051(B).]

i. ***Note***: Auditors should consult with the Auditor of State's Legal Division if noncompliance is identified. The Auditor of State Legal Division will prepare the written notification to the school district board and to the Ohio Department of Education and Workforce, if necessary. IPA's should notify the Auditor of State's Center for Audit Excellence if noncompliance is identified. The Auditor of State Center for Audit Excellence will then consult with the Auditor of State Legal Division as appropriate.

E. State Share of Project Cost (Section V) – defines the Commission's responsibility for funding their share of the Project and the conditions the District must meet preceding each draw.

1. The Commission will not transfer monies to the District until quarterly draw reconciliations are completed by the School District Treasurer and approved by the Commission.

   a. Note - the monitoring performed by designated CPA firms over the required quarterly reconciliations replaces the Agreed-Upon Procedures (AUPs) engagements previously completed by designated CPA firms on behalf of the Commission. No AUPs have been completed/released since December of 2019 and the monitoring procedures became effective for the quarter end date of September 30, 2021.

2. The School District funds and the Commission's funds are required to be spent concurrently throughout the life of the project in amounts proportional to the State and School District Board's share of the project cost.

F. The Project Construction Fund (Section VI) – defines the responsibility of the School District to establish the Fund (USAS Fund 010), allowable uses of the Fund, required use of the Ohio Administrative Knowledge System-Capital Improvements (OAKS-CI), provides guidance on the accounting for interest earnings and its allowable uses, and sets a schedule for required reconciliations.

1. Transactions from the Fund are restricted to: 1) payments for professional design, owner-agent or other administration services, 2) payments to contractors who have performed work on the Project, 3) purchases related to the Project, and 4) any transactions authorized necessary or appropriate for establishing and administering investment accounts.

   a. Note – all expenditures out of the Fund require Commission approval prior to payment.

2. The School District is required to separately account for interest earned on the State and Local Share of the required contributions within the Project Construction Fund.

   a. The School District Board may, in accordance with Ohio Rev. Code § 3318.12(B)(2), and by a duly adopted resolution, choose to use all or part of the investment earnings from the investment of Local Share to pay the cost of classroom facilities or portions or components of classroom facilities that are not included in the School District's basic project cost but are related to the School District's project.

i. Note – if the School District chooses to use any or all of the investment earnings in this manner, and, subsequently, the cost of the project exceeds the amount in the Project Construction Fund, the School District is required to restore the Project Construction Fund the full amount of investment earnings used under Ohio Rev. Code § 3318.12(B)(2) before any additional state moneys are released for the project.

b. If interest earnings remain in the Project Construction Fund after the project has been completed, at the discretion of the School District Board the remaining local interest can be:

i. retained in the Project Construction Fund for future projects;
ii. transferred to the School District's Maintenance Fund (Fund 034) and used solely for maintaining the classroom facilities included in the project[6];
iii. transferred to the School District's permanent improvement fund.

c. Any interest earnings related to the Commission's contribution is required to be transferred to the Commission for expenditure pursuant to sections 3318.01 to 3318.20 or sections 3318.40 to 3318.45 of the Revised Code. [Ohio Rev. Code § 3318.12(C)(2).]

3. The Treasurer is required to work with the Commission's Designee to review and reconcile the fund transactions and balances with records maintained by the Commission's Designee on a monthly basis. In addition, quarterly reconciliations are due along with updates to the draw tool by dates specified on the Commission's website, https://ofcc.ohio.gov/our-programs/k-12-schools/k12-resources/treasurer-resources ~~https://ofcc.ohio.gov/Resources/For-Treasurers~~ .

a. Note - as described above, designated CPA firms have been hired by the Commission to perform quarterly monitoring procedures over the required reconciliations beginning with the quarter end date of September 30, 2021. The reconciliations and the completed monitoring procedures, with no unexplained variances, are required to be completed and approved by the Commission prior to the release of the Commission's share of the Project through monthly draws.

G. Locally Funded Initiatives (LFI) (Section VII) – a School District Board may elect to add to the scope of any project and separately fund a scope of work ("local initiative"), which involves improvements to all or part of a project funded through the Commission. The School District Board may request the Commission to approve the incorporation of design and construction of the LFI into the overall project.

1. Whenever a LFI will be purchased through contracts that are subject to the Commission's approval, a Locally Funded Initiative Budget Summary will be executed by the School District and the Commission, setting forth the budgeted and committed LFI amounts subject to the terms and conditions of the Project Agreement.
2. The School District Board will assume all the financial responsibility for the LFI and establish a LFI Fund or special cost center in a fund other than the Project Construction Fund, Fund 010.

The sections of the Project Agreement described above relate to the Classroom Facilities Assistance Program (CFAP) which is the most utilized program of those offered by the Commission. The Project Agreement is the key document for all Programs offered by the Commission and the elements described

[6] These monies shall be used solely for maintaining the classroom facilities included in the project.

above are commonly defined in each Project Agreement for each Program. If the district participates in other programs, auditors should review the terms of the agreement and identify those requirements which may be material. Other prevalent Programs available through the Commission include:

A. Expedited Local Partnership Program (ELPP) [Ohio Rev. Code §§ 3318.36 and 3318.364]

1. ELPP is designed to give districts not yet participating in the CFAP the opportunity to move ahead with portions of their project. The program allows school districts to pass a resolution to enter ELPP. The Commission then performs an assessment of the district's facilities and enters into an agreement with the district on a Facility Master Plan that covers the entire needs of the district. The district then chooses a "distinct portion" of their Master Plan to fund through local efforts. When the district's turn later arises in the Classroom Facilities Program, the money spent by the district on the distinct portion is credited against the local share of the entire Master Plan projects.

B. Alternative Facilities Assistance Program (AFAP) [Ohio Rev. Code § 3318.39]

1. Under this program, also known as the 1:1 School Facilities Option Program, the Commission provides a reduced portion of projected state funds to assist eligible districts in constructing acquiring, reconstructing or making additions to any feature of a classroom facility consistent with the Master Facilities Plan (MFP) and that meets the design standards of the Ohio School Design Manual (OSDM). In consideration for the reduced state share, the district has more flexibility to create its own reduced scope for the project.

C. Vocational Facilities Assistance Program (VFAP) [Ohio Rev. Code § 3318.40]

1. This program allows the Commission to provide assistance to Joint Vocational School Districts (JVSDs) for the acquisition of classroom facilities suitable to their vocational education programs. Current law requires the Commission to begin with the lowest ranked JVSD in terms of the three year average property valuation per pupil and provide funding for the entire district's needs. The projects are funded by a combination of state and local funds. State law prohibits the Commission from providing assistance for any space that will be used exclusively for an adult education program, the operation of a drive training school, or for any other space not used for education programs of the JVSD.

D. STEM Public Schools (STEM) [Ohio Rev. Code § 3318.70]

1. This program allows the Commission to provide funding to assist STEM schools. STEM schools not governed by a single school district board of education may apply for assistance in constructing, reconstructing, repairing, or making additions to classroom facilities. Further details about this program can be found on the OFCC website at: https://ofcc.ohio.gov/our-programs/k-12-schools/programs/stem-public-schools.

E. Community Schools Classroom Facilities Grant [section 501.10 Am. Sub. House Bill 64, 131st GA, section 237.40 Am. Sub. House Bill 481, 133rd GA, section 237.17 Am. Sub. House Bill 597, 134th GA]

1. In June 2015, Ohio lawmakers authorized the creation of the Community School Classroom Facilities Grant Program. In the first three rounds of the program, a total of $31.7 million in grants were awarded to nineteen high-performing schools. [7]

2. The law permits the Commission to provide grants for the purchase, construction, reconstruction, renovation, remodeling, or addition to classroom facilities to (1) "eligible high-performing community schools" and (2) newly established community schools that are implementing a model that has a track record of high quality academic performance. Further details about this program, and the schools awarded the grants can be found on the OFCC site: https://ofcc.ohio.gov/grants/community-school-classroom-facilities, or DEW site: http://education.ohio.gov/Topics/Community-Schools/Community-Schools-Classroom-Facilities-Grants

3. ***Note***: This ~~is a relatively new~~ program ~~and~~ is likely to qualify as direct and material for any school that receives it. Procedures should be included as necessary in accordance with the grant agreement.

Upon Completion of Project, the Commission or their designee will work with the District as well as the Construction Manager or the equivalent, depends on the construction model, to reconcile the Project. Once the Project is reconciled and all parties sign off on the Closeout Calculator, the reconciliation, the Commission will provide notice to the District and the Construction Manager or the equivalent the Project is officially closed. This notification will include instructions on how the remaining funds should be distributed.

**Other Grant Programs**

A. School Security/Safety Program

1. Section 237.10 of Am. Sub. House Bill 33, 135th GA, authorized appropriations for the ARPA School Security grant program. The grants shall be used by the Facilities Construction Commission to award grants of up to $100,000 per school building to eligible public school districts and chartered nonpublic schools. Grants shall be awarded according to guidelines adopted by the Commission after consultation with the Ohio Department of Education and Workforce and the division of Homeland Security of the Department of Public Safety. In awarding grants, the Commission may consider applications submitted by eligible public school districts in response to similar grant programs operated by the Commission that have not been awarded if such applications comply with guidelines adopted under this division.

2. The grant program is funded as a subaward from the State of Ohio's allocation of Coronavirus State Fiscal Recovery Funds (SFRF) (Assistance Listing No. 21.027) as authorized pursuant to the American Rescue Plan Act (ARPA). The ARPA School Security Grant must follow the federal requirements associated with ARPA, see (State and Local Fiscal Recovery Funds) and the terms and conditions of the program (see Terms and Conditions).

[7] ~~The schools approved for grants in round 1 are listed here (ODE 2016-2017 Annual Report.pdf pg. 29), round 2 are listed here (OFCC Awards Community School Facility Grants.pdf), and round 3 grants are listed here (Round 3 Awards) are listed .~~

3. Therefore, this Program is required to be reported on the district's schedule of expenditures of federal awards (SEFA) and subject to the requirements of the Single Audit Act.

4. Other resources can be found on OFCC website at https://ofcc.ohio.gov/grants/ohios-k-12-school-safety-grant-program. A comprehensive list of districts receiving funding can be found at SSGP-Award-Lists-R1-R5_1.pdf (ohio.gov).

B. Ohio's Career Technical Construction Program

1. Section 287.20 of Am. Sub. House Bill 33, 135th GA, authorized appropriations for the Career Technical Construction Program. The Program aims to boost capacity at career tech institutions by granting funds to eligible vocational school districts for facility construction or expansion. This program is open to a joint vocational school district or city, local, and exempted village school district designated as the lead district of a Career Technical Planning District.

2. Funding is available for projects that renovate, improve, or build facilities to support the occupations on the Governor's Office of Workforce Transformation's Ohio's Top Jobs List or that qualify for the Innovative Workforce Incentive Program under the Ohio Department of Education and Workforce.

3. This is state funding and should not be reported on the district's schedule of expenditures of federal awards (SEFA). The activity should be accounted for in fund 495. Additional guidance on the program including FAQs and districts receiving awards can be found on OFCC's website https://ofcc.ohio.gov/grants/career-technical-construction-program

4. Expenditure of funds may be subject to applicable procurement requirements in OCS 4B-6.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

***Note*: In assessing the risk of noncompliance, auditors should consider whether the District has a process in place to record interest earned on the Local and State funds (if material). In addition, the District should have internal controls in place to ensure the Maintenance Fund is funded in accordance with the Project Agreement and expenditures out of the Maintenance Fund are allowable.**

**Additionally, based upon the control process/procedures performed at the OFCC-level (quarterly reconciliation process, approval of disbursements prior to payment, etc. described above), there should be a reduced risk of noncompliance at the District-level over project disbursements. Auditors may consider documenting these controls and testing there implementation within the control section below if information to support their implementation is available from the District. In these cases substantive tests of disbursements would still be required but would not need to be extensive.**

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

**Project Funding**

1. Scan the accounting records to determine if the proper activities are being recorded in the project activities fund (USAS 010). Determine if the District/STEM school is accounting for the following four revenue streams **separately**: (1) Local Revenue, (2) Interest on Local Funds, (3) State Revenue – aka "drawdowns", and (4) Interest on State Revenue.

2. Determine if the District/STEM school deposited the local share funds required by the Project Agreement into fund 010 for both the original contribution and any amendments.

3. Select contracts and related contract expenditures and determine through inspection, vouching, or other such means that contracts were awarded using competitive bidding procedures.

4. Vouch a few transactions from fund 010 for allowable cost as defined in the agreements. ~~We are not opining on this program, so we do not require a high level of assurance.~~ Unless the program is a major program under Single Audit or a material opinion unit, testing high dollar transactions and scanning other selected transactions should suffice. Review the supporting documentation to determine if the expenditure was:
    a. allowed under the terms of the Project Budget Policy (OFCC policy number: OP-FI-02, rev. Dec. 2017);
    b. if it was processed in OAKS CI;
    c. if it excludes any costs for a locally funded initiative;
    d. if the amount paid agrees with the invoice and
    e. if it is recorded in the correct amount in the correct fund.
    f. If the District did not properly segregate transactions into a project construction fund (i.e., did not establish fund 010), report noncompliance accordingly. Auditors should also consider reporting a finding for adjustment. See the *OCS Implementation Guide* for guidelines pertaining to Findings for Adjustments.

5. Scan interfund activity in fund 010. Determine whether material transfers or advances were properly approved and/or allowable under Ohio Rev. Code. If an advance is repaid out of fund 010, request the District/STEM school provide the approval letter from the OFCC which authorized the reimbursement.

**Interest Accounting and Allocation (if material)**

6. If the District has an active project with the Commission, review the financial activity recorded in the Project Construction Fund (Fund 010) and determine if the School District separately accounted for interest earned on the State and Local contributions.

7. Vouch a few receipts to determine if the interest earned on Local and State funds is correctly posted to the Local and State special cost centers.

8. For active projects, scan Fund 010 to determine if the District transferred all or part of the local interest earnings out of the Fund in accordance with Ohio Rev. Code § 3318.12(B)(2). If the District transferred interest verify the School Board approved this transfer by Board resolution.

   If the District did make a transfer in accordance with Ohio Rev. Code § 3318.12(B)(2), and, subsequently, the cost of the project exceeds the amount in the Project Construction Fund (over budget), determine the School District restored to the Project Construction Fund the full amount of investment earnings used before any additional state moneys are released for the project.

9. For projects completed during the fiscal year under audit with interest remaining in the Project Construction Fund determine the following:

   a. The remaining local interest has been: 1) retained in the Project Construction Fund for future projects, 2) transferred to the School District's Maintenance Fund (Fund 034), 3) transferred to the School District's permanent improvement fund.
   b. The remaining interest related to the Commission's contribution remains in the Project Construction Fund and returned to the Commission upon completion of the Closeout Calculator and final instructions regarding distribution of remaining funds by the Commission.

**Maintenance Funding and Expenditures**

10. Inquire with the client or review capital asset records to determine if the District/STEM school ever had an OFCC project. If so, determine whether the project maintenance fund (USAS Fund 034) has received the required ½ mill in accordance with the approved maintenance plan for the entire 23 years. ***Note***: If they are using the alternate maintenance obligation see procedure number 11 below.

11. Determine whether the school district/STEM school has elected to use the new alternative mechanism for meeting its maintenance obligation. If so, obtain the district's annual certification[8] to the Commission and determine if the school district uploaded a certification through the district's eServices account to notify the Auditor of State ~~carbon copied the Auditor of State regional office~~ that the amount required for the year has been transferred into the maintenance fund.

12. Vouch a few disbursement transactions from Fund 034. ~~We are not opining on this program, so we do not require a high level of assurance.~~ Testing high dollar transactions and scanning other selected

[8] The following is sample annual certificate language: "The undersigned Treasurer of the Board of Education of the XYZ District, YYY County, Ohio hereby certifies that a resolution was duly passed by the Board of Education of said School District on MM/DD//YYYY to transfer $XX,XXX from the General Fund to the OFCC Facility Maintenance Special Revenue Fund."

transactions should suffice. Determine whether expenditures were only for maintenance of the funded project facilities in accordance with the district's approved maintenance plan. (If the District/STEM school did not segregate transactions related to project maintenance (i.e. did not establish Fund 034), report noncompliance accordingly. As noted above, the only allowable expenditures out of Fund 034 prior to the completion of the project are for the costs associated with the development of the maintenance plan.

13. Determine whether the school district made any illegal transfers out of the 034 Fund into other funds.

**Locally Funded Initiative (LFI)**

14. If applicable, review accounting records and related documents and determine if the district/STEM school established a separate fund, or special cost center in a fund other than Fund 010, to track receipts and expenditures related to a locally funded initiative.

15. Vouch selected disbursement transactions from the LFI fund/special cost center. We are not opining on this program, so we do not require a high level of assurance. Testing high dollar transactions and scanning other selected transactions should suffice. Determine whether expenditures were: (1) processed in OAKS CI, (2) in agreement with the vendor invoice, and (3) in compliance with the district's/STEM school's approved Memorandum of Understanding with the OFCC. If the district/STEM school did not segregate transactions related to LFI (i.e. did not establish a separate fund or a separate special cost center in a fund other than Fund 010), report noncompliance accordingly.

**Other**

16. If the Project was completed during the fiscal year and officially closed out by the Commission, verify the remaining funds in the Project Construction Fund were distributed in accordance with the instructions provided by the Commission.

***Community School Grants:***

17. If material grant revenues were received,[7] determine if there were related expenditures made during the audit period and test them for compliance with significant grant agreement provisions.

***School Security/Safety Program:***

18. If School Safety Program funds were received, and are material, but the program is not selected for federal testing, vouch a few disbursements for compliance with significant grant agreement provisions.

***Ohio's Career Technical Construction Program:***

19. If Ohio's Career Technical Construction Program funds were received:
    a. Determine if any contracts were entered into subject to competitive bidding requirements in OCS 4B-6 and if so, test accordingly in that section.
    b. If material, vouch a representative number of disbursements and determine if the related expenditures complied with significant grant agreement provisions.

| **Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**4A-3 Compliance Requirement:** Ohio Rev. Code §§ 3314.03, 3314.08 and 2015 Ohio Op. Att'y Gen. No. 2015-007 – Community School Debt.

*Note: This section applies if the community school had any previous debt still outstanding/being repaid during the current audit period, or new money loaned* ***to/from*** *the school during the current audit period*

**Summary of Requirement**:
Allowable community school debt:

A. A community school may borrow money to pay any necessary and actual expenses in anticipation of State Foundation receipts. The school may issue notes to evidence such borrowing. The proceeds of the notes shall be used only for the purposes for which the school may lawfully expend the anticipated foundation receipts. [Ohio Rev. Code § 3314.08(G)(1)(a)]
B. A school may also borrow money for a term not to exceed fifteen years to acquire facilities. [Ohio Rev. Code § 3314.08(G)(1)(b)]
C. A community school may borrow money from the school's operator (i.e. facilities loans / cash flow assistance), but such must be accounted for, documented, and bear interest at a fair market rate. [Ohio Rev. Code § 3314.03(A)(30)] See further information regarding loans from operator/management company to community school in Ohio Compliance Supplement, section 4B-2.

Unallowable community school debt:

A. A community school cannot levy taxes or issue debt secured by taxes. [Ohio Rev. Code § 3314.08(E)]
B. As mentioned in Section 2B-7 of the Ohio Compliance Supplement, a community school's Treasurer should not loan money to a community school they work for, as this could violate Ohio Rev. Code § 2921.42.
C. Community schools do not have legal authority to make loans to other community schools. Consult with AOS legal & CFAE if such a loan is encountered on either the loaning or recipient community school audit. A Finding for Recovery may be issued against the community school receiving the funds as part of the audit of the community school loaning the funds.[9]
    1. Unless a specific statute authorizes a public entity to loan public moneys, the public entity is without authority to do so. [2015 Ohio Op. Att'y Gen. No. 2015-007 (Mar. 6, 2015)]
    2. While Ohio Rev. Code § 3314.08(G)(1)(a) states a community school may borrow money, Ohio Rev. Code Chapter 3314 does not authorize a community school to loan money.

The state is not liable for debt incurred by the governing authority of a community school. (Ohio Rev. Code § 3314.08(G)(2))

See additional guidance related to debt in OCS Implementation Guide, Appendix C.

[9] Although this would not be noncompliance at the receiving school, if such is noted being received by a community school, consult with AOS legal & CFAE. Legal will evaluate and determine if a FFR should be issued in the audit report of the loaning school. As a general rule, FFRs will be issued for loans entered into after the issuance date of AOS Bulletin 2021-002 (2/19/2021). Additionally, AOS legal and CFAE should notify the applicable regional Chief Auditors and Chief Deputy Auditor, or his designee, if a FFR should be issued in another community school's audit report. Further implementation details are included in 2021-002, including guidance for existing loans outstanding on 2/19/2021.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | | |

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

1. By reading the minutes, inspecting receipts journals, and by inquiry, determine whether or not the School received any type of debt proceeds during the audit period[10].
   a. Examine disbursements made of the proceeds to determine that they were used only for the purposes described in the debt agreement.
   b. Determine that moneys borrowed were not collateralized by taxes.
   c. Determine that moneys borrowed to acquire facilities are for a term of fifteen years or less.
   d. Determine if the type of debt was allowable.
   e. Review debt agreement for material covenants and test to ensure the school is in compliance.

2. For any previous loans still outstanding/being repaid during the current audit period, new money loaned to/from the school during the current audit period, determine if:
   a. The type of debt was allowable
   b. Moneys were borrowed from the school's operator. If so, were they accounted for (recorded in accounting records / financial statements), documented, and bear interest at a fair market rate[11]?
   c. The school is maintaining ongoing compliance with material covenants.

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

[10] Also consider referencing the 5 year forecast as another source indicating possible debt to evaluate.

[11] If the interest rate does not approximate market rates at the time of issuance, determine if a reasonable rate should be imputed. (Imputing interest, if material, is required by GASB Cod. I30 paragraphs 101-115 for full accrual statements.)

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**4A-4 Compliance Requirement:** Ohio Rev. Code §§ 3301.079, 3302.41, 3302.42, 3313.48, 3313.482, 3313.668, 3317.03, 3317.031, and 3317.034; Ohio Admin. Code 3301-35-01, 3301-35-03, 3301-35-16, and 3301-69-02- School District Funding.

**Summary of Requirements:**

| Types of Traditional Schools | |
|---|---|
| Brick & Mortar (operating in a traditional in-person fashion) | Brick and Mortar schools have a physical location (i.e. school facility/classroom facility) that students are expected to attend pursuant to the school calendar adopted by the governing board based on statutorily prescribed minimum instructional hours.<br><br>See 34 C.F.R. § 222.176 Subpart L which defines a school facility as "a building used to provide free public education, including instructional, resource, food service, and general or administrative support areas, so long as they are a part of the facility."<br><br>Ohio Rev. Code § 3318.01 defines "classroom facilities" as rooms in which pupils regularly assemble in public school buildings to receive instruction and education and such facilities and building improvements for the operation and use of such rooms as may be needed in order to provide a complete educational program, and may include space within which a child care facility or a community resource center is housed. "Classroom facilities" includes any space necessary for the operation of a vocational education program for secondary students in any school district that operates such a program |
| Brick & Mortar using a Blended Learning Model | Districts using a Blended Learning Model must have a blended learning declaration on file with the Ohio Department of Education and Workforce (DEW). The use of a Blended Learning Model has been an available option to Brick & Mortar schools since 2012.<br><br>Ohio Rev. Code § 3302.41 states "blended learning" has the same meaning as in Ohio Rev. Code § 3301.079.<br><br>Ohio Rev. Code § 3301.079 states blended learning is the delivery of instruction in a combination of time **primarily in a supervised physical location away from home and online delivery** whereby the student has some element of control over time, place, path, or pace of learning and includes noncomputer-based learning opportunities. (For purposes of that definition, "primarily" means over the course of the school year, a student works more than fifty per cent of the time from a supervised physical location away from home [Ohio Admin. Code 3301-35-01].) Ohio Admin. Code 3301-35-03(D) states district-operated schools using one or more blended learning models must comply with requirements in the Operating Standards for School and Districts, but only to the extent that said Operating Standards do not conflict with Ohio Admin. Code 3301-35-03.<br><br>Use of a blended learning model(s) must be part of an overall plan to provide instruction throughout the entire school year. A blended learning plan cannot be made on a contingent basis, but a blended learning plan can be adopted to permit online delivery based on contingent events. ~~During FY 2023 and beyond - Blended learning~~ |

| | |
|---|---|
| | ~~is not to be used on an emergency or contingent basis including but not limited to the following reasons:~~<br>~~A. Temporary closure due to disease or sickness;~~<br>~~B. Weather-related closures;~~<br>~~C. Parent-teacher conferences, teacher workdays or other professional; development;~~<br>~~D. Staffing shortages.~~<br>~~See DEW's Blended Learning Guidance.~~<br><br>Ohio Rev. Code § 3302.41(A) states if a school is operated using a Blended Learning Model or is to cease operating using a Blended Learning Model, the superintendent of the school or district or director of the school shall notify the department of education and workforce of that fact not later than the first day of July of the school year for which the change is effective. |
| Brick & Mortar with an Online Learning Model/School | Beginning with FY 2022, Districts can opt to add an Online Learning Model/School under Ohio Rev. Code § 3302.42 for those students attending primarily from home. Online Learning Schools are required to have a separate IRN.<br><br>Ohio Rev. Code § 3302.42 states "online learning" has the same meaning as in Ohio Rev. Code § 3301.079.<br><br>Ohio Rev. Code § 3301.079 states for Online Learning Models, students work **primarily from their residence** on assignments delivered via internet- or other computer-based instructional method. (For purposes of that definition, "primarily" means over the course of the school year, a student works more than fifty per cent of the time from their residence on assignments delivered via the internet or other computer-based instructional method [Ohio Admin. Code 3301-35-01].)<br><br>Ohio Rev. Code § 3302.42 states the district superintendent must notify the Department, by July 1 of the school year for which the change is effective, that a school in the district is operated or is ceasing to operate using an Online Learning Model.<br><br>A school district may operate an online learning school in addition to operating other schools with a different model, including blended learning. See: Traditional District Online Learning School Full Time Equivalency (FTE) Review Manual. |

***Alert: Beginning with Fy24, certain schools are moving to a 4-day week for students.***

- ***It is imperative that they are still complying with the minimum number of required hours, and learning model that they have in place.***
- ***For example, if they are utilizing a blended learning model, keep in mind that the definition of such has a required online component.***
- ***As another example, if they are operating as a traditional brick & mortar school, the only hours that count are those as described in the 'required hours' table below.***
- ***Auditors should consult with the CFAE OCS Team via Spiceworks (AOS) or the IPAcorrespondence@ohioauditor.gov email address (IPA) for any schools that do not appear to be operating as required.***

**School Funding and Reporting Attendance:**

Public school districts use a combination of state funds, local ~~sources such as~~ property taxes (and in some cases income taxes) and federal funds.

Payments from DEW are made twice each month according to a schedule published each spring. DEW calculates state Foundation funding payments from data reported by the district. **Students are counted in the district in which they are enrolled for foundation funding purposes (i.e., the educating district or school).**

> ~~House Bill 110, 134th GA requires~~ Often called the Fair School Funding Formula, state operating funding is ~~to be~~ paid directly to school districts, community schools, and STEM schools for the students they are educating but it excludes direct funding for contract career tech and special education co-op students. ~~**This direct funding concept differs from prior law** where community and STEM school students and students who open enroll were included in the student count of their resident school districts, and the funds attributable to those students were deducted from their resident districts and then paid to the schools in which they were enrolled~~. Similarly, the Fair School Funding Formula ~~it~~ requires direct payment of state scholarships, rather than deducting the amounts of those scholarships from students' resident districts. ~~[LSC HB 110 Bill Analysis] *LBO Final Analysis*, p. 146-147] Retrieved from: LSC HB 110, 134th GA Analysis.~~
>
> The state operating budget for fiscal years 2024 and 2025, Am. Sub. HB 33 of the 135th Ohio General Assembly, continued the phase-in of the Fair School Funding formula, first implemented in FY22. The formula was subsequently updated in FY24, is the result of a workgroup of practitioners convened by the legislature in late 2017.
>
> ~~In addition to the language above, House Bill 110, 134th GA made significant changes to the calculation of state funding for primary and secondary education. The new~~ The Fair School Funding Formula ~~funding model~~ includes the following key elements:
>
> - Funding students where they are educated rather than where they live. Generally, this eliminates the deduction and transfer of dollars from resident districts to other schools or districts for students who attend community schools, STEM schools, scholarship programs and open enrollment (as noted above).
> - Establishes an input-based funding model ~~depending on the school size and make up~~ informed by professional judgment. The formula establishes a base cost methodology using student/teacher ratios, minimum staffing levels and actual costs. This results in a unique base cost per-pupil for each school and district in the state.
> - Equalize funding and provide additional money to schools and districts that do not have capacity and wealth to raise revenues locally. The state and local cost methodology uses both assessed property values and income to determine the state share.
> - Provided supplemental funding (i.e., Categorical Aid) based on student need and demographics. This includes funding for students with disabilities, English learners, gifted students, economically disadvantaged students and those participating in career-technical education. Generally, these supplemental dollars are restricted to support these student subgroups.
>
> Source: DEW's FY2024 School Finance Payment Report Line by Line Explanation
>
> ~~In June of 2022, the 134th General Assembly enacted House Bill 583. House Bill 583 made a number of technical corrections to the school funding formula identified following passage of House Bill 110, 134th GA. The amount of state foundation funding a district receives is directed by~~

~~a new formula. The calculation of the funding formula is still predicated on a base-cost approach in which district-wide base cost amounts are calculated to generate a universal statewide base cost per pupil for use in funding calculations. House Bill 583, 134th GA introduced some changes to the provisions of House Bill 110, 134th GA including the:~~

- ~~State Share Percentage~~
- ~~FY 2020 Funding Base~~
- ~~Supplemental Targeted Assistance~~
- ~~20% Credit for Open Enrollment Students Participating in Career Technical Education (CTE) at a JVSD or Compact~~
- ~~English Learner Categories~~
- ~~Special Education Transportation (Education Service Center and County Boards of Developmental Disabilities)~~

~~Source: DEW's September 2023 Payment #1 Letter.~~

For more information on Foundation Funding refer to Supplemental Information - Foundation Funding - ~~(Amended HB 110 and HB 583, 134th GA)~~

Though state law does place many requirements on schools, much is still left up to local policy. DEW uses the data schools report in EMIS, in part, to calculate school foundation funding and to generate components of the school accountability report card. Districts must have local attendance and truancy policies which include maintaining a student "membership record" for at least five years (Ohio Rev. Code §3317.031). Superintendents must develop guidelines that establish procedures so that students and parents have an opportunity to challenge the district's attendance record prior to the withdrawal of a student. Districts must also have local policies to guide employees in addressing and resolving students' habitual truancy (Ohio Rev. Code § 3321.191). As these policies have an impact on EMIS reporting, it is important for EMIS coordinators to be aware of and familiar with these policies. [EMIS 2.1.1] Students with excused absences remain enrolled ~~and will be funded~~. No school district or school shall suspend, expel, or remove a student from school solely on the basis of the student's absences from school without legitimate excuse [Ohio Rev. Code § 3313.668]. Instead, districts must have policies that outline their interventions and plans.

**For additional guidance on enrollment, withdrawal, excused absences and unexcused absences refer to: Enrollment, Withdrawal, Excused Absences and Unexcused Absences**

**A. Education Management Information System (EMIS):**

DEW's Education Management Information System (EMIS) provides a streamlined system for districts to report information required to receive state funding and to determine eligibility for federal funding. [School districts, data processing centers operated by ITCs, and other EMIS reporting entities are linked for the purposes of transferring data to the DEW.] EMIS automates the complexity of the funding formula calculations specified in Ohio law so that districts do not have to interpret the legislation to calculate and report total counts of students. Districts report specific information on each student, such as various student demographic attributes, percent of time educated, attendance/absence days, ~~and~~ disability condition, etc. EMIS aggregates and compiles the data to determine funding. [EMIS 1.1]

As part of their EMIS reporting requirements, school districts must collect the following data on each pupil which will be used, in part, for Foundation funding and report card calculations and is viewable by other attending schools within the Student Cross Reference (SCR):

- Student name (listed alphabetically)
- Grade level
- Date of enrollment (date pupil enrolled in the counting school)

- Status – this is the status code used in EMIS (i.e., most will be 0 = resident student).
- Resident district IRN number (i.e., Most students will be residents of the home school district). The counting school should use the child's resident school district IRN number for students outside of the district, such as open enrollment students.
- Attending home IRN number and indicator
- Pupil attendance[12] (the attendance documents should indicate each day a student is not in attendance and the reason for the absence).

The data that districts ~~and community schools~~ report in EMIS significantly impacts the services and opportunities provided to students, by driving district funding, district and schools Report Cards, and other programs and services determined by district data. As such, it is critical for superintendents and treasurers to review their EMIS data and verify the data is accurate and complete. [13]

Superintendents are legally required to review and certify the quality of data, as noted in the following:

- Ohio Rev. Code § 3301.0714 requires districts to report data in the statewide education management information system (EMIS).
- Ohio Admin. Code 3301-14-01 (G) requires district superintendents and treasurers to verify and approve all EMIS data for reporting purposes.
- Ohio Rev. Code § 3317.03 (B) requires district superintendents to certify average daily membership (ADM) figures in the Funding Certification Report used to calculate funding.

Source: EMIS 1.1.1 and https://education.ohio.gov/Topics/Data/EMIS/Reporting-Responsibilities/EMIS-Data-Review-Verification/EMIS-Data-Review-Verification-FAQ/General-Questions

**Reporting to DEW versus District Responsibilities**
All children in the state of Ohio are entitled to a free and appropriate education. Between the ages of 6 and 18, children are required to attend school. Each district is responsible for the students living within the district's boundaries who should be attending its schools. That responsibility extends beyond the reach of EMIS reporting. For instance, anytime a district learns that a student within its boundaries is allegedly truant, an investigation per state laws and local truancy policies must be undertaken. This is true regardless of whether or not the district is required to report that student via EMIS. [EMIS 2.1.1]

**B. Required Hours:**

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[12] Traditional district brick and mortar schools and blended schools receive funding regardless of student attendance (including excused and unexcused absences). Online learning schools receive funding based on documented learning opportunities and missed days (both excused and unexcused) or assignments do not count as hours. For additional guidance on documented learning opportunities for Online learning schools see Traditional District Online Learning School Full Time Equivalency (FTE) Review Manual.

[13] DEW requires each student be assigned a Statewide Student Identifier (SSID) for funding because state law restricts DEW from collecting personally-identifiable student information. For this reason, most districts utilize an ITC (Information Technology Center) to format their data and remove personally-identifiable student information from the data set prior to submission to DEW in EMIS. SSIDs are different from the local IDs assigned to students. If the local district does not have a SSID for an entered student, they would not be included in the funding calculation.

| | |
|---|---|
| Brick & Mortar (operating in a traditional in-person fashion) | Schools must comply with minimum hours of instruction instead of a minimum number of school days each year (Ohio Rev. Code § 3313.48).<br><br>The minimum "open for instruction" hours are:<br>• 455 hours for students in half-day kindergarten;<br>• 910 hours for students in full-day kindergarten through Grade 6; and<br>• 1,001 hours for students in Grades 7-12<br><br>Open for instruction includes time when the district or building is open and all students are participating in:<br>• Regularly scheduled classes;<br>• Supervised activities, such as assemblies;<br>• Approved education options; and<br>• Co-curricular activities during the scheduled school day.<br>• As part of the minimum hours, districts and schools may use:<br>• Up to two equivalent days for the purpose of individualized parent-teacher conferences and reporting periods;<br>• Up to two equivalent days for the purpose of professional meetings of teachers; and<br>• Morning and afternoon recess periods of no more than fifteen minutes each for students in Grades Kindergarten through 6.<br><br>Time spent during lunch periods, breakfast periods and extracurricular activities does not count as open for instruction.<br><br>Calamity days are no longer applicable. Instead, schools may schedule "excess" hours above the minimum number. Hours missed above the minimum do not have to be made up. However, if a school ~~closes~~ misses enough instructional hours that it will fall below the minimum number of hours, the school must extend its scheduled year. [14] |
| Brick & Mortar using a Blended Learning Model | Ohio Rev. Code § 3302.41 requires schools using a Blended Learning Model to operate an annual instructional calendar of not less than 910 hours.<br><br>DEW interprets the law as Brick and Mortar School Districts using a Blended Learning Model do not have an obligation or expectation to adjust reported FTEs for funding purposes based on documented learning opportunities, as they do not affect funding. |

[14] ~~One way to make up the hours missed below the minimum required is to use web lessons and blizzard bags (Ohio Rev. Code § 3313.482). Schools will adopt plans explaining how they will make up the missed hours, instead of days, up to the equivalent of three scheduled days. Web lessons/blizzard bags may only be used when it is necessary to close the school because of: disease epidemic; hazardous weather conditions; law enforcement emergencies; inoperability of school buses or other equipment necessary to the school's operation; damage to a school building; or other temporary circumstances due to utility failure rendering the school building unfit for school use.~~ Ohio Rev. Code § 3313.482 states not later than the first day of August of each school year, the governing body of each qualifying school shall adopt a plan to provide instruction via online delivery in order to make up hours in that school year for which it is necessary to close schools for disease epidemic, hazardous weather conditions, law enforcement emergencies, inoperability of school buses or other equipment necessary to the school's operation, damage to a school building, or other temporary circumstances due to utility failure rendering the school building unfit for use….A plan adopted under this section shall provide for making up….a maximum of the number of hours that are the equivalent of three school days. Section (C) includes additional provisions for joint vocational school districts.

| | |
|---|---|
| Brick & Mortar with an Online Learning Model / School | Ohio Rev. Code § 3302.42 requires schools operating using an Online Learning Model are required to have an annual instructional calendar of not less than 910 hours.<br><br>Online Learning Schools operated by a district shall implement a learning management system that tracks the time students participate in online learning activities. All student learning activities completed while off-line (non-online) shall be documented with all participation records checked and approved by the teacher of record [Ohio Rev. Code § 3302.42(A)(5)]. The school may have more than one online system that tracks durational time. In these circumstances, a school may not overlap times or count the same time period more than once. Non-online time may not overlap online time.<br><br>Students can generate full funding if they engage in the minimum required hours of instruction. This is a combination of ~~in-person time,~~ logged online learning activities and appropriately approved time related to ~~off-line~~ non-online learning activities. For students who engage in less than the minimum hours of instruction, the district will be required to reduce the student's percent of time element in EMIS ~~data reporting~~. This will have the impact of reducing the student's calculated full time-equivalency (FTE) and the amount of funding the student generates for the district. The district should be prepared to provide evidence that supports the claimed engagement for each student. ~~In this sense, traditional districts with an Online Learning Model/School are now funded similarly to community schools. The Ohio Department of Education suggests districts (and their auditors) review the community school FTE Review Manual for a more thorough description of the requirements related to documented learning opportunities. In particular, the Department recommends reviewing pages 15-16, 19-21, and 47-48 of the Manual.~~<br><br>Districts may use their current student information system, if that system is able to track attendance, participation, online learning activities (usually tracked based on specific interaction with the computer in use) and ~~off-line~~ non-online learning activities that must be certified by a teacher. Schools should be prepared to show the daily, weekly and monthly accounting of learning opportunities a student participated in. Reading resource documents, writing research papers, completing assignments offline, phone calls with teachers to discuss coursework, taking tests, field trips and credit-bearing work experience are some of the examples of non-online learning activities. However, travel time to and from a school building, state testing and field trips cannot be included. ~~Schools may count other classroom-based learning and non-computer, non-classroom-based learning opportunities, but these must be documented and certified by a teacher to support EMIS data reporting.~~<br><br>The department shall develop a review process and make all adjustments of state funding to districts to reflect any participation of students in Online Learning Schools for less than the equivalent of a full school year [Ohio Rev. Code § 3302.42(B)(3)(b)]. Starting in FY2024, DEW is conducting FTE Reviews of Online Learning Model / Schools.<br><br>See the Traditional District Online Learning School Full Time Equivalency (FTE) Review Manual for a more thorough description of the requirements related to the documented learning activities for Online Learning Models / Schools and the FTE Review process. |

**C. Enrolled Average Daily Membership, Per-Student Full-Time Equivalent, and Master Calendars:**

**For important definitions used in this section and additional guidance on the funding calculation, refer to** Supplemental Information - Foundation Funding ~~(Amended HB 110 and HB 583, 134th GA)~~

For purposes of testing a school's compliance with state funding, auditors should focus on:

1. Student-level FTE EMIS inputs that are used to generate state payments;
    a. Funding continues to update and annualize with changes in student enrollment and any DEW formula corrections throughout the school year;
2. Verify calendar submissions to ensure compliance with minimum hour requirements.
3. For schools operating online schools, ensure schools adjust percent of time element for students with less than 910 hours of engagement.

Pursuant to Ohio Rev. Code § 3317.03, the school superintendent shall report to the department ~~state board~~ of education as of the last day of October, March, and June of each year the number of students entitled to receive services from schools under the superintendent's supervision, and the numbers of other students entitled to attend school in the district under Ohio Rev. Code §§ 3313.64 or 3313.65, so that the department ~~of education~~ can calculate the district's enrolled ADM, formula ADM, total ADM, category one through five career-technical education ADM, category one through three English learner ADM, category one through six special education ADM, transportation ADM, and, for purposes of provisions of law outside of Chapter 3317. of the Revised Code, average daily membership.

In order for DEW to calculate the State Foundation payments to schools on an hourly/per student FTE basis, schools are required to assign each student to a calendar in EMIS. DEW requires schools to create a Master Calendar that details each day a school is in session (or not in session). DEW uses the Master Calendar to validate that a particular day is a full or partial school day that students assigned to this calendar are supposed to be in attendance. Schools will generally also need to create sub calendars for different schools, buildings, grades, students enrolled in a Blended Learning Model or Online Learning Model / School or other groups of students that have a deviation from the Master Calendar (e.g., special education, career technical education, credit flex, etc.). For example, Kindergarten students might only have half day attendance where students in Grades 1 through 5 have full day attendance. In this example, schools would need to create a sub calendar for its Kindergarten students in order to document the deviation from the Master Calendar that students in Grades 1 through 5 are assigned.

Furthermore, if a district has five buildings and operates an Online Learning School, each building may need its own unique Master Calendar and one for the Online Learning School as well as other calendars to cover unique situations. For example, the district may require the high school students to attend the day before Thanksgiving but the elementary and middle school students have the day off because of Parent Teacher Conferences. Having a separate Master Calendar in each building allows for this and other scenarios.

Attending groups may consist of (but are not limited to) the following groups of students:

- KG grade level students with staggered start days (KG students starting on a later day than all other regular students);
- Seniors who get out of school earlier than all other students in the building;
- Post-secondary students who have attending patterns such as M/W/F and T/TH of the next week, M/W/1/2 day Friday, etc.;
- Students who attend another district but your district is responsible for reporting their attendance;

- Any other attending pattern where events/exceptions are neither district wide nor building wide for a particular subset of students.

Refer to EMIS 2.1.1 and Enrollment, Withdrawal, Excused Absences and Unexcused Absences for requirements pertaining to student enrollment funding and reporting to Ohio Department of Education and Workforce.

DEW will continue to adjust the FTE used for the funding formula as the school updates its information throughout the year. At the close of the school's fiscal year end, DEW will reconcile the Final FTE Foundation payments and determine whether the school has a corresponding receivable from or payable due to DEW based upon the accumulation of student FTE's throughout the year. This reconciliation is particularly complex for mobile students. It is critical that schools accurately and timely report their student data to DEW in order for this reconciliation to be performed. Schools should continue to evaluate whether these adjustments could result in a receivable, payable, or potential contingency footnote disclosure in their GAAP-basis annual financial statements.

Refer to the EMIS Manual Student Standing Record for guidance on: [EMIS 2.4]

1. Reporting student percent of time when a student is being educated by multiple school districts, career centers or ESCs, and post-secondary options.

| **In determining how the government ensures compliance, consider the following:** | **What control procedures address the compliance requirement?** | **W/P Ref.** |
|---|---|---|
| • Policies and Procedures Manuals,<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring and reconciliation<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | Request the client provide a document/ narrative describing/supporting how they operated during the school year.<br><br>For example the document/narrative should explain controls in place over student attendance for each learning model utilized (i.e. how attendance was taken, how learning opportunities were offered to students, how student engagement in online opportunities was measured (if applicable), how the district monitored missing students for truancy, etc.). Referencing to various sections of plans/policies is strongly encouraged within this narrative. | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

***Note****: For purposes of local school audits, the most effective audit procedures include a review and evaluation of school policies as well as verification that schools are maintaining the appropriate student enrollment, learning models, learning opportunities, attendance, and withdraw documentation. A school's timeliness of student enrollment and withdrawal dates is also a critical component in ensuring accurate FTE reporting to DEW.*

1. Obtain a copy of the school's policy and procedures and:

a. Determine the learning model(s) used during the engagement period (consider the document obtained in the controls box above, inquiries, etc.). Document and evaluate the related policies and procedures:

   i. If the district operated under Brick & Mortar (operating in a traditional in-person fashion):
      a) Select one week for one building & perform a walkthrough for one student. Based on documentation in controls box above & the school's policies and procedures, determine if documents exist to support such controls were in place.
      b) Determine if the district adopted the Online Make-up Hours plan required by Ohio Rev. Code § 3313.482 by August 1st. [15]
   ii. If the school used a Blended Learning Declaration, then complete the following document and add it to your working papers.
   iii. If the school used an Online Learning Model/School, then complete the following document and add it to your working papers.

   Issue a noncompliance citation if:
   i. The district operated remotely but was not an Online Learning Model/School (Ohio Rev. Code § 3302.42), and:
      1. did not have a Blended Learning Model (Ohio Rev. Code § 3302.41), or,
      2. operated outside their Ohio Rev. Code § 3313.482 Online Make-up Hours plan.
   ii. A Blended Learning Model (Ohio Admin. Code 3301-35-03) or Online Learning Model/ School (Ohio Rev. Code § 3302.42; Ohio Admin. Code 3301-35-16) was adopted but did not include all of the required items;
   iii. The district operated remotely under an Online Learning Model/School but did not have procedures in place to provide all students with a computer or access to the internet, at no cost, for instructional use (Ohio Rev. Code § 3302.42).
   iv. Lack of support or if it appears they are not following the policies/controls of model(s) chosen/utilized. (Ohio Rev. Code § 3302.41; Ohio Rev. Code § 3302.42; Ohio Admin. Code 3301-35-03; Ohio Admin. Code 3301-35-16).

b. **For ALL districts, regardless of the model(s) they operate under** (Traditional In-Person, Blended Learning Model, or Online Learning Model/School), determine if the school has enrollment, learning model, participation in learning opportunities, withdrawal and attendance policies and procedures. Document and evaluate the school's procedures and inquire with the EMIS Coordinator to gain an understanding for:
   i. Enrolling and withdrawing pupils timely;
   ii. Verification of student residence/address;
   iii. Setting up school calendars for students in EMIS;
   iv. Assigning students to instructional calendars;
   v. Documenting learning model(s);
   vi. Documenting participation in learning opportunities;
   vii. Monitoring and documenting student absences, including truant students;

[15] For Fy 2024, the budget bill made changes to Ohio's calamity day statute. The budget bill changes replace the use of blizzard bags starting Fy 2024. The budget bill changes were effective on Oct. 3, 2023. DEW encouraged school districts, community schools, chartered nonpublic schools and STEM schools to adopt or amend their calamity day plans by **Nov. 1, 2023**.

viii. Documenting student absence excuses; and

ix. Sufficient procedures for identifying and tracking all student for whom the district is financially responsible (i.e., some students may result in a district retaining truancy and missing child responsibilities for a student, even though it is no longer educating or receiving funding for that student):

a) students residing in and attending district schools,
b) students attending schools in other districts through open enrollment and contractual arrangements,
c) students placed by the courts in facilities outside the district,
d) students attending community schools, and
e) students attending non-public schools through one of the scholarship programs.

See additional guidance here.

2. Determine whether the Master Calendars ~~for Brick & Mortar (operating in a traditional in-person fashion) and Brick & Mortar using a Blended Learning Model~~ for each grade, and/or school building, etc. include at least the requisite minimum number of instructional hours and was approved by the board.

   a. At the end of the year, did the school meet the required minimum number of hours?

   b. If the school district was open for instruction for less than the required minimum number of hours, determine whether the school district received a written waiver from the director of education and workforce. *Authorized waivers are rare and should always be evidenced in writing.*

3. For students with a SSID with excused absences, select five[16] students and, request the representative building attendance officers or EMIS Coordinator to provide access to the students' attendance records, including the students' files, and determine whether the school maintained documentation to support excuses. This may require reviewing attendance data in the school district's electronic student information system (e.g., DASL, PowerSchool, Progress-Books, etc.). ***Note***: A call log might be sufficient documentation if it contains enough detail to justify an excused absence. For example, if excused for a medical reason, does the log document a conversation with a parent explaining the illness?

4. Select five[16] students with a SSID that were withdrawn during the school year. The withdrawal list may be obtained by the school through EMIS or the school's student attendance database.

   a. Identify when students were withdrawn and determine whether it was timely (e.g., waiting several weeks or more to withdrawal a student is not timely) based on evidence in the student's file.

   b. Determine whether the appropriate EMIS withdrawal code was used (refer to Chapter 2 of the EMIS Manual) to withdraw the student based on evidence in the student's file. Chapter 2 of the EMIS manual [EMIS 2.1.1 (beginning on pg. 4) and 2.4] provides examples of the types of documentation required to be obtained and maintained by the school for each type of withdrawal code.

[16] Identifying noncompliance during the test increases risk. If an attribute for one or more of the five students selected for testing fails consult with the Center for Audit Excellence to determine if testing should be expanded and/or if a noncompliance comment should be elevated.

c. Compare the dates determined in the steps above to EMIS or other student attendance database reports. Inquire with management about any significant differences or adjustments. Consider reporting noncompliance or other client communication for any significant unexplained variances.

   i. A school should not wait until March to remove a student from its enrollment if the student withdrew in October. Significant delays in reporting student withdrawals constitutes noncompliance. Likewise, a student with chronic absenteeism, excessive absences, or habitual truancy should have received multiple communications from the school. Schools should maintain a daily call log or obtain timely excuses from the parent, guardian, or adult-aged student), and/or if it escalates to the point that the student is withdrawn for failure to participate in learning opportunities documentation and reasoning should be made available.

5. Select five[16] students with a SSID that enrolled during the school year. The new enrollment list may be obtained by the school through EMIS or the school's student attendance database.

   a. Identify when students were enrolled and began participating in learning opportunities and determine whether it was timely (e.g., again, waiting several weeks or more is not timely) based on evidence in the student's file. Enrollment should not begin prior to the date a parent or guardian signs and approves a student's enrollment form unless the student is age 18 or older.

   b. Compare the dates determined in the steps above to EMIS or other student attendance database reports. Inquire with management about any significant differences or adjustments. Considering reporting noncompliance or other client communication for any significant unexplained variances.

6. Since schools are funded on an annualized basis, DEW must reconcile and make Final Foundation Funding payments after the fiscal year end close out is performed. These Final Payments occur no sooner than August and may span several months before DEW finalizes the Foundation Funding payments. Therefore, Auditors should consider whether their auditees should include a receivable, payable, or contingency footnote in accordance with GAAP related to Final Foundation Funding adjustments made by DEW after year end.

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

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**4A-5A Compliance Requirement:** Ohio Rev. Code §§ 3313.64, 3313.482, 3314.03, 3314.08, and 3317.022; Ohio Admin. Code 3301-102-02; 34 C.F.R. § 222.176 – Community School Funding (*Brick and Mortar only*).

**Community schools may operate as either:**

- **Brick & Mortar - In person as normal (4A-5A),**
- **Blended Learning Declaration (4A-5C– Ohio Rev. Code § 3302.41), or**
- **E-schools (Internet or Computer-based) (4A-5B - Ohio Rev. Code § 3314.02).**

**This section applies to community schools operating in person as normal.**

**Note: If a community school filed a blended learning declaration but did not implement and use the declaration, the school would be tested as a normal, in person brick and mortar community school in 4A-5A.**

***Alert: Beginning with Fy24, certain schools are moving to a 4-day week for students.***

- ***It is imperative that they are still complying with the minimum number of required hours, and learning model that they have in place.***
- ***For example, if they are utilizing a blended learning model, keep in mind that the definition of such has a required online component.***
- ***As another example, if they are operating as a traditional brick & mortar school, the only hours that count are those as described below.***
- ***Auditors should consult with the CFAE OCS Team via Spiceworks (AOS) or the IPAcorrespondence@ohioauditor.gov e-mail address (IPA) for any schools that do not appear to be operating as required.***

Brick and mortar community schools have a building / facility that students must attend the entire school day. These are similar to traditional school districts. As defined in DEW's FTE Review Manual, a brick-and-mortar facility is a school having a physical location specified in the contract with sponsor that students are expected to attend pursuant to the school calendar.

Brick & mortar schools may offer on-line learning opportunities within the building & credit flexibility.

A. Online learning opportunities occurring within the brick & mortar location are funded under the brick & mortar rules – meaning if a student is using an online instructional program while at the school building, the school would receive funding for the student's daily attendance and not have to report online participation time.
B. Credit flexibility is an option for high school students authorized by the State Board of Education under Alternative Pathway. If a Brick & Mortar utilizes credit flexibility, it is on a per student basis, and is not a requirement for all students. Additionally, credit flexibility students must have individual education plans. Credit flexibility can have an online component, or could be a reasonable explanation for the student spending part of their day outside the building (internship, post-secondary, etc.). However, time spent online or outside the building should be documented in the student's individual education plan[17].

[17] See exception for credit flexibility in the Attendance and Instruction section below.

**Summary of Requirements:**

Ohio Rev. Code § 3317.022 provides the formula by which Community Schools are funded. Community Schools receive funding from the state through the per-pupil foundation allocation through the community and STEM school funding unit. Unlike city, local, exempted village and joint vocational school districts, Community Schools have no tax base from which to draw funds for buildings and investment in infrastructure. Ohio Rev. Code § 3314.191 states that no payments will be made under Ohio Rev. Code § 3317.022 during the first year of operations unless certain conditions are met. Beginning with FY 2022, the ~~new~~ Fair School Funding formula requires state operating funding be paid *directly* to community schools for the students they are educating (but it excludes direct funding for contract career tech and special education co-op students), rather than being first paid to the traditional resident district, and then deducted and paid to the community school they are being educated at. Simply stated, DEW now funds students where they are educated, rather than where they live. For important definitions used in this section and additional guidance on the funding calculation, refer to Supplemental Information - Foundation Funding, Community School Payment Letters, and DEW's FY2024 School Finance Payment Report Line by Line Explanation. ~~For additional guidance on state funding refer to the information starting on page 146 of the LSC HB 110, 134th GA Analysis, 134th GA, HB 583, DEW's September 2023 Community School Payment Letter, and Supplemental Information on Foundation Funding.~~

Community schools must provide documentation that clearly demonstrates students have commenced participation in learning opportunities, through attendance records. See DEW's FTE Review Manual for further information.

Ohio Rev. Code § 3314.03, in part, requires the contract between a sponsor and the governing authority of a community school state the following:

A. That the governing authority will adopt an attendance policy that includes a procedure for automatically withdrawing a student from the school if the student, without a legitimate excuse, fails to participate in seventy-two (72) consecutive hours of the learning opportunities offered to the student.[18]

B. The school will provide learning opportunities to a minimum of twenty-five students for a *minimum* of nine hundred twenty (920) hours per school year.
   1. The ~~Ohio~~ department ~~of Education~~ shall determine each community school student's percentage of full-time equivalency based on the *percentage of learning opportunities* offered by the community school to that student, reported either as number of hours or number of days. Whether it reports hours or days of learning opportunities, each community school shall offer not less than nine hundred twenty hours of learning opportunities during the school year. [Ohio Rev. Code § 3314.08(H)(3)] *Note: While the statute mentions "days", DEW collects this information and calculates it in terms of hours. So schools must have a means of converting "days" to "hours" when reporting to DEW.*

C. That the governing authority will adopt a policy regarding the admission of students who reside outside the district in which the school is located;

D. A financial plan detailing an estimated school budget for each year of the period of the contract and specifying the total estimated per pupil expenditure amount of each such year.

[18] Valid legal reasons for non-attendance are set forth in Ohio Admin. Code 3301-69-02.

E. An addendum to the contract outlining the facilities to be used that contains at least the following information: (See additional information in OCS 4B-5)
   1. A detailed description of each facility used for instructional purposes;
   2. The annual costs associated with leasing each facility that are paid by or on behalf of the school;
   3. The annual mortgage principal and interest payments that are paid by the school;
   4. The name of the lender or landlord, identified as such, and the lender's or landlord's relationship to the operator, if any.

F. A provision requiring the governing authority to adopt an enrollment and attendance policy that requires a student's parent to notify the community school in which the student is enrolled when there is a change in the location of the parent's or student's primary residence.

G. A provision requiring the governing authority to adopt a student residence and address verification policy for students enrolling in or attending the school.

H. That the school's attendance and participation[19] records shall be made available to the Department ~~of Education~~, Auditor of State, and school's sponsor to the extent permitted under and in accordance with the "Family Educational Rights and Privacy Act of 1974," 88 Stat. 571, 20 U.S.C. § 1232g, as amended, and any regulations promulgated under that act, and section 3319.321 of the Revised Code.

I. A provision requiring that all moneys the school's operator loans to the school, including facilities loans or cash flow assistance, must be accounted for, documented, and bear interest at a fair market rate. (See OCS 4A-3 for testing such loans.)

J. Shall specify that the school will comply with numerous sections of the Ohio Rev. Code including section 149.43 [Ohio Rev. Code § 3314.03(A)(11)(d)]

Ohio Rev. Code § 149.43 defines public records as follows: records kept by any public office, including, but not limited to, state, county, city, village, township, and school district[20] units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section Ohio Rev. Code. § 3313.533. Medical records are excluded from this definition of public records, however Ohio Rev. Code § 149.43(A)(3) explains that medical record does not by definition include any documents related to birth and are therefore considered public record by AOS and DEW.

**Attendance and Instruction**

As permitted by Ohio Rev. Code § 3314.08(H)(2), DEW has established student participation criteria and documentation requirements for brick and mortar community schools in their FTE Review Manual. Participation in learning opportunities provided by a community school as defined in the brick & mortar community school's contract with its sponsor, is documented through daily attendance. It does not include

[19] Testing of records for purposes of determining funding does not require participation records in a brick and mortar school.

[20] We consider the reference to district/school district in Ohio Revised Code sections to also mean community schools, based on Ohio Rev. Code § 3314.03.

days on which only enrollment and or orientation activities occur, nor does it include calamity days[21]. Commencement of participation in learning opportunities is documented through attendance records.

Instructional hours in a community school are defined by learning opportunities provided to a student. As it pertains to Brick and Mortar schools, Ohio Admin. Code 3301-102-02(J) defines learning opportunity as classroom-based supervised instructional and educational activities that are defined in the community school's contract and are:

(1) Provided by or supervised by a licensed teacher[22];
(2) Goal-oriented; and
(3) Certified by a licensed teacher as meeting the criteria established for completing the learning opportunity.

As outlined in the Instructional Hours/Learning Opportunities section of the FTE Review manual, a community school is required to define learning opportunities in its contract with its sponsor:

A. For brick and mortar schools it would only include classroom based activities (see Credit Flexibility exception described below).
B. These activities have to be either directly provided by a teacher or supervised by a teacher; the school should be able to identify the teacher.
C. These activities have to be educational, instructional, and goal-oriented; there should be some school policy or guidance that in advance describes the goal. Reporting activities after-the-fact without prior goals, prior specification of activities, and/or teacher direction is not sufficient.

Instructional hours in a Brick and Mortar community school's day include time for changing classes, but not the recess, breakfast and lunch periods.

If a community school presents a computer printout of attendance, it must have original documents from which the computer printout, data was drawn, such as teachers' daily attendance and absence lists, teachers' grade books, and student sign-in sheets. If the school provides an absence only list to verify attendance, it must be accompanied by the total class list for that teacher. [DEW FTE Review Manual]

If the source of the computer printout data is a teacher personally entering data into the Student Information System, the computer printout itself is the original source document. In such a case, the community school must identify which staff members, including the teacher, have access to the attendance system to make data changes. The school must document in a separate log any changes made by staff members other than the classroom teacher. An example is an office clerk who changes an absence to a tardy based on a late sign-in sheet. [DEW FTE Review Manual]

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[21] Ohio Rev. Code § 3313.482 states not later than the first day of August of each school year, the governing body of each qualifying school shall adopt a plan to provide instruction via online delivery in order to make up hours in that school year for which it is necessary to close schools for disease epidemic, hazardous weather conditions, law enforcement emergencies, inoperability of school buses or other equipment necessary to the school's operation, damage to a school building, or other temporary circumstances due to utility failure rendering the school building unfit for use….A plan adopted under this section shall provide for making up….a maximum of the number of hours that are the equivalent of three school days.

[22] Teachers in community schools must hold a teaching license in accordance with Ohio Rev. Code § 3314.03(A)(10), except that a community school may engage noncertificated persons to teach up to 12 hours or 40 hours per week pursuant to Ohio Rev. Code § 3319.301. Appropriate teaching licenses include professional licenses, resident educator licenses, alternative licenses, supplemental licenses, and substitute licenses issued under Ohio Rev. Code § 3319.226 or long-term substitute licenses. In addition, pre-service teacher permits are issued under Ohio Rev. Code § 3319.0812, and alternative temporary substitute teacher licenses are issued under Ohio Rev. Code § 3319.102.

If an office staff member records attendance in a computer, the attendance record of the classroom teacher, which is sent to the office staff member, is the original source document and should be used by the auditor to verify attendance. [DEW FTE Review Manual]

All schools must adjust percent of time for students who are attending part time, participating in courses at a joint vocational school district or taking College Credit Plus courses. [DEW FTE Review Manual]

Exception for Credit Flexibility: Each school district is mandated to have a policy on credit flexibility, as required by Ohio Rev. Code § 3313.603(J). Students can engage in credit flexibility, which can include a non-classroom component. Participation results in an individual education plan (IEP) for each student approved to participate in credit flexibility. Participation in credit flexibility having a non-classroom component does not mean that school is operating in a blended environment, since all students would not be engaging in the activity. Engaging in credit flexibility does not exempt a school from complying with the minimum number of hours of instruction for each school year. If the student is not expected to be at the brick and mortar facility for the full school day, the community school may only receive a portion of the full-time equivalency funding for that student.[23]

**Funding and Reporting Attendance**

The community school's Foundation funding will be based on the annualized full-time equivalency (FTE) enrollment of each student. A student who enters at the beginning of a school year and receives instruction for the community school's total annual membership units will generate an FTE of 1.0. Students should never have an FTE greater than 1.0. Students who attend a community school for less than the entire year will have an FTE equal to the total hours of enrollment period divided by the number of hours in the school year calendar. Community schools can continuously update estimated student FTE information in DEW's Education Management Information System (EMIS), but must report actual FTE information no later than the end of the school year. A student's FTE will be determined based on the individualized calendar/class schedule each student is assigned to for the school year and his or her enrollment and withdrawal dates.

Pursuant to Ohio Rev. Code § 3314.03(A)(6)(b) & (A)(27-28) community schools must adopt attendance and participation policies for their students and attendance records shall be made available to the Department ~~of Education~~, Auditor of State and the school's sponsor. The contract between the community school and sponsor should include requirements for measuring and documenting student attendance.

Pursuant to Ohio Rev. Code § 3301.0714, schools must enter data concerning the enrollment and attendance of their students into EMIS, which is used by all schools to enter and review student enrollment and demographic data.

Ohio Compulsory Attendance and Truancy laws still require community schools to have policies concerning excused and unexcused absence as well as policies to guide employees in addressing attendance practices of any student who is a habitual truant. Further, community schools must maintain documentation to support any withdrawal code reported for a student. Information regarding the preferred documentation that community schools should maintain in student files for the different withdrawal codes varies. Also, in instances where community schools are unable to secure the preferred documents, other documentation may be considered acceptable alternatives to support the relevant withdrawal code. A table of the acceptable documentation can be found in the DEW EMIS Manual 2.1.1 - Required Documentation, and further guidance is available in DEW EMIS Manual 2.4.

[23] Any non-classroom time that is not included in the education plan as a part of meeting the 920 required hours would be considered homework, it cannot be used to meet the required school day hours. See DEW Guidance for Integrated Coursework -June 2018.

**Brick and mortar community schools receive funding regardless of student attendance (including excused and unexcused absences). However, brick and mortar students with *unexcused* absences will be funded only up until the student reaches 72 consecutive hours of non-attendance, at which point the student must be immediately withdrawn.** If a brick and mortar student is attending only on a part-time basis (e.g., a student is splitting his/her instructional time between the community school and a JVS), the community school should adjust the student's "Percent of Time Attended" factor in EMIS to reflect less than 1.0 FTE for the student. [DEW FTE Review Manual]

The following table assists in clarifying the difference between the following absentee categories. As noted in the DEW guide below, these categories indicate various steps schools must take to assist the student[24] and their family with an absentee issue. Students may not be suspended or expelled for truancy, and this does **not** indicate a student must be automatically withdrawn.

| | **Consecutive hours** | **Hours per school month** | **Hours per school year** |
|---|---|---|---|
| **Habitual Truancy** | **30** hours *without* a legitimate excuse for the consecutive absences | **42** hours *without* legitimate excuses for absences | **72** hours *without* legitimate excuses for absences |
| **Excessive Absences** | -- | **38** excused or unexcused hours absent *unless* the absence is medically excused | **65** excused or unexcused hours absent *unless* the absence is medically excused |
| **Chronic Absenteeism** | -- | -- | **10% of total hours either** *excused or unexcused* |

(Source: DEW's 'https://education.ohio.gov/Topics/Student-Supports/Attendance-Support/Ohio-Attendance-Laws-FAQs#FAQ4887')

Brick and mortar community schools must follow all requirements in the table above. Both truancy and excessive absences apply to all public schools. Brick and mortar community schools implement interventions for students who have not participated in instructional activities and thus meet the triggers for habitual truancy and/or excessive absences.

In addition, for community schools, Ohio Rev. Code Chapter 3314 does require the following, which is a separate law from the categories in the table above.

A. 3314.03(A)(6)(b): the governing authority must adopt an attendance policy that includes a procedure for **automatically withdrawing** a student from the school if the student without a

[24] If the student is no longer of compulsory school age (Ohio Rev. Code § 3321.01(A)(1)), while schools should perform their due diligence for absentee issues, they are not obligated to follow absence intervention plans.

legitimate excuse fails to participate in seventy-two (72) **consecutive** hours of the learning opportunities offered to the student.

B. 3314.08(H)(2): if the student without a legitimate excuse fails to participate in the first seventy-two (72) consecutive hours of learning opportunities offered to the student in that subsequent school year, the student shall be considered not to have re-enrolled in the school for that school year.

Ohio Rev. Code § 3313.64(J) states that the treasurer of each school district shall, by the fifteenth day of January and July, furnish the director of education and workforce ~~superintendent of public instruction~~ a report listing the names of each child in the permanent or legal custody of a government agency or person other than the child's parent and each child who resides in a home, who attended the district's schools during the preceding six calendar months. For each child, the report shall state the duration of attendance of that child, the school district responsible for tuition on behalf of the child, and any other information that the director ~~superintendent~~ requires. Upon receipt of this report, the director ~~superintendent~~ shall deduct each district's tuition obligations and pay to the district of attendance that amount plus any amount required to be paid by the state.

Ohio Rev. Code § 3314.08(B) requires the governing authority of each community school to annually report the number of students enrolled in the community school. For each student, the governing board of the community school must report the city, exempted village, or local school district in which the student is entitled to attend.

A. Ohio Rev. Code § 3313.672 specifies documentation that must be provided in the enrollment process and includes a birth record and any pertinent court orders. Proof of residency is also needed to establish where a student is entitled to attend school under Ohio Rev. Code § 3313.64 and 3313.65. However, see specific McKinney-Vento Homeless Assistance Act guidance in DEW FTE Review Manual if testing a homeless student.
B. Ohio Rev. Code § 3317.031 requires membership records be kept intact for at least 5 years.

DEW will continue to adjust the FTE used for the funding formula as the school updates its information throughout the year. At the close of the school's fiscal year end, DEW will reconcile the Final FTE Foundation payments and determine whether the school has a corresponding receivable from or payable due to DEW based upon the accumulation of student FTE's throughout the year. This reconciliation is particularly complex for mobile students. It is critical that schools accurately and timely report their student data to DEW in order for this reconciliation to be performed.

Community schools should continuously review FTE adjustments that impact their monthly foundation payments. All community schools have access to FTE Detail (FTED-001) and FTE Adjustments (FTED-003) reports in the Data Collector. These reports allow a community school to see the impact of all adjustments on FTEs. These reports are updated on a regular basis (by DEW). [DEW EMIS Manual, Section 1.3]

**DEW FTE Reviews**

Ohio Rev. Code § 3314.08(K) permits FTE reviews, which DEW performs to verify the accuracy of the enrollment and attendance data reported by community schools into EMIS, which sometimes result in FTE adjustments (errors identified by DEW and the community school adjusts their EMIS records), or can result in "clawbacks" (errors identified by DEW in the FTE Review but the community school does not adjust their EMIS records); both of which can be money due back to DEW. These FTE reviews occur at a minimum once every 5 years, but may occur more often. Schools should therefore continue to evaluate whether DEW's Final FTE Foundation adjustments, and FTE reviews, could result in a material receivable, payable, or potential contingency footnote disclosure in their GAAP-basis annual financial statements.

**Auditors should consider when testing controls and compliance whether or not:**

A. DEW conducted a FTE Review for the period under audit.
   1. Reliance on DEW's FTE Review is based on the following factors:
      a. DEW is the regulator and considered an expert in FTE reporting matters
      b. As permitted by Ohio Rev. Code § 3314.08(H)(2), DEW has established student participation criteria and documentation requirements for brick and mortar community schools in their FTE Review Manual.

B. Compare the community schools master calendar submitted to DEW in EMIS with the board approved school year calendar reflected in the minutes[25] and published on the school's webpage/or in the parent handbook (differences and their impact on reliance are considered in the steps below). If not in agreement consult with the CFAE Community School Specialist. See testing procedures step 3 below.

C. DEW's FTE review included a sample test of 25 or more students. If not, consult with the CFAE Community School Specialist. See footnote in step 7a below for further information.

D. The school had any contracts/agreements paid on a percentage/number of FTE (or anything that changes), and therefore whether a true-up was required, and properly reported on the financial statements/disclosed in footnotes (if necessary). Such payment terms are common in sponsor/authorizer, management company/operator, and some vendor agreements.
   1. A finding for recovery will likely be issued when the true-up calculation(s)/evaluation(s) have not been performed and the auditor determines an amount is due; or an unreasonable legal evaluation/determination has been relied on; or the amount due has not been repaid, or is not in the process of being repaid under the terms of a reasonable and enforceable repayment agreement.

E. The community school had appropriate policies and internal control procedures in place to ensure compliance with enrollment, student withdrawal and other requirements relevant to a community school's FTE reporting, and perform implementation tests.

**Note:** If in the normal course of performing the testing procedures below, information is obtained that you feel is relevant and DEW wouldn't have had available for their review, raising significant concerns on the reliance on DEW's FTE Review to satisfy the participation requirement, auditors should consult with the Center for Audit Excellence Community School Specialist to determine whether additional testing may be necessary.

[25] Minutes should include an exhibit of the calendar approved or document within the body of the minutes the details of the approved calendar. If this level of documentation is not available, the actual approval control process cannot be adequately verified.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals,<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | Request the client provide a document/narrative describing/ supporting how they operated during the year.<br><br>For example the document / narrative should explain controls in place over student attendance for each learning model utilized (i.e. how attendance was taken, how learning opportunities were offered to students, how the school monitored missing students for truancy, etc.). Referencing to various sections of plans/policies is strongly encouraged within this narrative. | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

**Auditors should refer to DEW's FTE Review Manual & section 1.3 of DEWs EMIS Manual for additional guidance about the compliance requirements described in this OCS Step. Reviewing and understanding the guidance in this Manual is a critical part of accurately testing student enrollment and attendance. The FTE Review Manual is available at the link above**.

***Note**: The most effective audit procedures include a review and evaluation of school policies as well as verification that schools are maintaining the appropriate student enrollment, learning models, learning opportunities, attendance, and withdrawal documentation. A school's timeliness of student enrollment and withdrawal dates is also a critical component in ensuring accurate FTE reporting to DEW.*

AOS provides DEW copies of all community school audit reports. As a result of issues identified and reported under audit, auditors should be aware that DEW may perform a FTE review in a subsequent fiscal year to assess compliance and determine the accuracy of the school's reported FTE. This could potentially impact future school funding.

**Procedures for Brick and Mortar Schools:**

1. Obtain a copy of the school's enrollment and attendance policies and procedures, and inquire with the EMIS Coordinator to gain an understanding. Document and evaluate the school's procedures for:
   a. Enrolling and withdrawing pupils timely;
   b. Verification of student residence/address
   c. Setting up school calendars for students in EMIS;
   d. Offering and documenting credit flexibility;
   e. Documenting attendance;
   f. Monitoring and documenting student absences; and
   g. Monitoring, withdrawing, and notifying the resident public school of withdrawn students or students truant for 72 or more consecutive hours. *Note: If the school has a stricter policy than 72*

*hours, consult with CFAE Community School Specialist.*
Determine if the school adopted the Online Make-up Hours plan required by Ohio Rev. Code § 3313.482 by August 1st . [26]

Issue a noncompliance citation if:

a. The school operated remotely, but was not an e-school, and:
   1. did not have a Blended Learning Model Declaration (Ohio Rev. Code § 3302.41), or
   2. operated outside their Ohio Rev. Code § 3313.482 Online Make-up Hours plan.
b. Lack of support or if it appears they are not following the policies/controls of model(s) chosen/utilized.

For items above not addressed in the schools written policies/procedures, consider whether an internal control comment is appropriate under AU-C 265.

2. As part of this evaluation, determine whether the Community School's policies and procedures are consistent with the Educational Plan in the Community School's Charter, as approved by the school's sponsor, and include sufficient procedures for identifying and tracking attendance for all students for whom the *community school* is responsible.

3. Inquire with community school management about the learning opportunities it offered as part of its operating standards during the audit period.
   a. Determine whether the community school offered the minimum 920 hours of learning opportunities by reviewing the master school calendar in EMIS and student attendance records (step 8 below)[27].
   b. Inquire with management to determine if school was canceled during the audit period due to weather or electrical outages and ensure the EMIS calendar included sufficient hours to meet the minimum 920 hours of learning opportunities despite these closures (i.e., the closures should be reflected in the final EMIS calendar for the school year).
   c. If the community school offered more or less than the required minimum, determine whether the community school reported the accurate number of learning opportunities to the Ohio Department of Education and Workforce (this will be the Master Calendar in EMIS).
   d. Compare the community schools master calendar submitted to DEW in EMIS with the board approved school year calendar reflected in the minutes and published on the school's webpage/or in the parent handbook. If not in agreement consult with the CFAE Community School Specialist.

4. Review Ohio Rev. Code § 3314.03, the charter, and the community school's policies and procedures, to determine what the sponsor requires for appropriate documentation of excused and unexcused absences. Select five[28] students with absences and review the student file or other documentation to verify the community school is gathering appropriate supporting documentation for excused absences. If the absence is unexcused, determine whether the community school is tracking the total unexcused absences for the student and following its truancy policies and procedures.

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[26] For Fy 2024, the budget bill made changes to Ohio's calamity day statute. The budget bill changes replace the use of blizzard bags starting Fy 2024. The budget bill changes were effective on Oct. 3, 2023. DEW encouraged school districts, community schools, chartered nonpublic schools and STEM schools to adopt or amend their calamity day plans by **Nov. 1, 2023**.

[27] Auditors should review the education plan and student handbook to see if there is an ala carte plan to "supplement" the required 920 hours of classroom time. If all classroom time the supplement is considered homework.

[28] Identifying noncompliance during the test increases risk. If an attribute for one or more of the five students selected for testing fails consult with the Center for Audit Excellence to determine if testing should be expanded and/or if a noncompliance comment should be elevated.

***Note**: If the charter does not address minimum documentation requirements, this would be a control deficiency. The EMIS Manual may be referenced as an additional basis for your control deficiency. [DEW EMIS Manual 2.1.1 - Required Documentation]*

5. Consider whether the community school should include a receivable, payable, or contingency footnote in accordance with the financial reporting framework requirements (i.e.. GAAP) related to Final Foundation Funding adjustments after year end and/or as a result of DEW FTE Reviews.

   ***Note**: Since community schools are funded on an annual basis, DEW must reconcile and make Final Foundation Funding payments after the fiscal year end close out is performed. These Final Payments occur no sooner than August and may span several months before DEW finalizes the Foundation Funding payments. Schools should evaluate each FTE Foundation adjustment at the time made, rather than waiting until all FTE Foundation adjustments have occurred for the fiscal year and just evaluating the net.* ~~We anticipate community school receivable amounts at year end would be less significant under the new funding model as compared to the old funding model.~~

   a. Also consider whether a true-up was required for any contracts/agreements paid on a percentage/number of FTE (or anything that changes), and if so, whether it was treated properly in accordance with the summary of audit requirements above. (AOS auditors see guidance in Teammate / IPA's see guidance above, and suggested steps in Community School Audit Programs for IPA's at https://ohioauditor.gov/references/guidance/communityschools.html ).

6. Perform the following procedures:
   a. Select a representative number of **newly enrolled** students during the school year (normally five[28] students is sufficient). The new enrollment list may be obtained by the community school through EMIS or other student attendance information system.
      i. Identify when students were enrolled and determine whether it was timely. Waiting several weeks or more from the date a parent or guardian signs the student enrollment form is not timely.
      ii. Determine whether the school maintained copies of the student's birth record[29], proof of residency, and parent/guardian signed enrollment forms in the student file to support enrollment and resident district determinations.

   b. Select a representative number of students from the community school's **withdrawal** list (normally five[28] students is sufficient). The withdrawal list may be obtained by the community school through EMIS or the community school's student information system.
      i. Identify when students were withdrawn and determine whether it was timely (e.g., waiting several weeks or more from withdrawal notification is not timely).
         a) For example: using grade records and/or attendance records, determine the last day students were reported as attending the community school. If a student was reported absent for 72 consecutive hours, determine the date the student should have been withdrawn and ascertain whether the school reported the withdrawal timely.
      ii. Determine whether the appropriate EMIS withdrawal code was used to withdraw the student based on evidence in the student's file. DEW EMIS Manual 2.1.1 & 2.4 provides examples of the types of documentation required to be obtained and maintained by the school for each type of withdrawal code.

      iii. Inquire with management about any significant differences or adjustments. Consider

[29] The original source document for a birth record may be a photocopy of a birth certificate or a properly attested documentation of birth. (DEW FTE Review Manual, p. 33 of FY 24 manual)

reporting noncompliance or other client communication for any significant unexplained variances.

*A community school should not wait until March to remove a student from its enrollment if the student withdrew in October. Significant delays in reporting student withdrawals constitute noncompliance. Likewise, a student with excessive truancy should have received multiple communications from the school to verify the student's absence during the 72-hour period. Community schools should maintain a daily call log, copies of written correspondence to parents/guardians, or obtain timely excuses from the parent, guardian, or adult-aged student for excessive absenteeism that does not result in removal of a student from enrollment.*

**When DEW <u>has conducted</u> a FTE review for the fiscal year:**

7. If DEW has conducted a FTE review for the fiscal year: (Note: if a FTE review **has not been conducted**, proceed to step 8)

   a. Obtain a copy of the written report[30] and review the results of procedures performed[31].

   b. If DEW reported an issue(s), auditors should assess materiality and consider reporting a similar finding(s) in the audit report or management letter based upon the results of DEW's FTE Review.

**When DEW <u>has not conducted</u> a FTE review for the fiscal year:**

8. Determine whether the school has support for meeting the 920 hours of learning opportunities and whether the school is following its policies for documenting and measuring student enrollment and attendance.

   a. Student file testing: Select a representative number of students enrolled for **any part of the school year** (normally five[28] students is sufficient and this is a separate sample from the step below; however, auditors should assess the risk of noncompliance for their particular school and increase this selection, if appropriate).

      Review the student files for the selected students and determine whether the school is following its policies for documenting and measuring student enrollment and attendance.

      i. Determine whether the school has birth record[29] and proof of residency documentation for the student contained in the student file.
      ii. Determine whether the school has completed/signed student enrollment forms contained in the student file.

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[30] AOS Auditors should check the community school master spreadsheet available on the Community School intranet page for the status of FTE reviews. If available, these letters can be obtained from *W:\~~Community~~ School FTE Review Letters & Other DEW Correspondence\Community Schools*. IPA's should check the same spreadsheet in the AOS IPA Portal, and obtain the report from the client, if one is noted.

[31] Auditors should determine if a sample size of at least 25 students was tested. If the size was less than 25 and there was not a valid reason evident for the reduction, the CFAE Community School Specialist should be contacted to see if the review can be relied upon or if step 8 will need to be performed. Be aware that some FTE letters indicate a 'modified' review/sample was performed (which typically concentrates on various areas of non-compliance noted in the schools prior year review). If the schools letter states such, review the modified protocol listing on the AOS Community School intranet page for details of the modified review. For items tested by DEW, as long as the number of students tested is greater than or equal to the number of students required by OCS 4A-5, DEW's review may be relied on *for the specific items the modified protocol listing/FTE review document mentions were tested* at the particular school. IPA's may request the modified protocol listing from CommunitySchoolQuestions@ohioauditor.gov.

iii. Determine whether the community school is retaining the membership record for at least five years.

iv. Determine whether the school has maintained a record of student tardiness and absences in the student file (or elsewhere) sufficient to enable the school to monitor its compliance with their policy/procedures on the 72 consecutive hour rule for withdrawal. If the student was reported absent for 72 consecutive hours, determine the date the student should have been withdrawn, ascertain whether the school reported it timely, and verify that less than 1 FTE was claimed for the student. You do not have to calculate the exact FTE. If you find the school claimed 1 FTE for a student that should have been withdrawn, consider that when selecting the number of students to test in step 8b.

a) When students are noted nearing the 72 consecutive hour withdrawal mark, and then attend for just a few days, determine if the school complied with Ohio Rev. Code § 3321.191 requirements & the schools truancy policy (send parent notices, maintain call logs, refer to court (if required), etc.). Also, look for proof of completed assignments for the few days the student was marked as attending to substantiate that they did attend. https://education.ohio.gov/Topics/Student-Supports/Attendance-Support/Ohio-Attendance-Laws-FAQs

b. Daily Attendance Testing: Select five[28] community school students that were enrolled for **any part of the school year** from the school's EMIS report.

Using the applicable student files, attendance records, and school calendar, determine if the student should have 1.0 or less than 1.0 FTE and compare to what the school reported to DEW in EMIS. If it is evident that a FTE should have been reduced and wasn't we would consider this an exception. You do not have to calculate the exact FTE. Exceptions should be discussed with the CFAE Community School Specialist.[32]

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

- Consider the results of all procedures in this Section when evaluating the school's compliance with FTE requirements.

- Evaluate whether the community school had appropriate policies and internal control procedures in place to ensure compliance with enrollment, student withdrawal and other requirements relevant to a community school's FTE reporting. Most likely non-compliance as well as missing or inadequate controls for FTE reporting is indicative of an AU-C 265 control comment.

[32] We will only test the Individual Student Education Plan and adherence to that plan if a student selected is participating in credit flexibility. Did the school have an approved IEP and was it completed according to DEW requirements. Also consider information contained in the guidance about credit flexibility if such a student is selected. If the student's 920 hours involves non-classroom time, the student will never have 1 FTE. As long as that student had less than 1 FTE, we would not take exception, but you should determine that the conditions of the IEP were met. Additional details can be found in section 4B-4 of Chapter 4.

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**4A-5B Compliance Requirement:** Ohio Rev. Code §§ 3313.64, 3314.02, 3314.03, 3314.08, 3314.086, 3314.26, 3314.261, 3314.262, 3314.27, 3317.022, 3317.22; Ohio Admin. Code 3301-102-02 –Community School Funding (*Electronic Schools (E-Schools) only*).

**This section only applies to actual 'e-schools' – meaning those that fall within the definition in Ohio Rev. Code § 3314.02(A)(7).**

- **If auditing an e-school that is not implementing a Dropout Prevention and Recovery (DOPR) program, complete the following document and add it to your working papers.** There are different student attendance requirements for such e-schools.

E-School students work from home via the computer and are not required to attend a school building. Per Ohio Rev. Code § 3314.02(A)(7) "Internet- or computer-based community school" means "a community school established under this chapter in which the enrolled students work primarily from their residences on assignments in nonclassroom-based learning opportunities provided via an internet- or other computer-based instructional method that does not rely on regular classroom instruction or via comprehensive instructional methods that include internet-based, other computer-based, and noncomputer-based learning opportunities unless a student receives career-technical education under section 3314.086 of the Revised Code." (Some career tech classes may be classroom-based so long as the remaining instruction is provided at home via the computer.)

**Summary of Requirements:**

Ohio Rev. Code § 3317.022 provides the formula by which Community Schools are funded. Community Schools receive funding from the state through the per-pupil foundation allocation through the community and STEM school funding unit. Unlike city, local, exempted village and joint vocational school districts, Community Schools have no tax base from which to draw funds for buildings and investment in infrastructure. Ohio Rev. Code § 3314.191 states that no payments will be made under Ohio Rev. Code § 3317.022 during the first year of operations unless certain conditions are met. Beginning with FY 2022, the ~~new~~ Fair School funding formula requires state operating funding be paid *directly* to community schools for the students they are educating (but it excludes direct funding for contract career tech and special education co-op students), rather than being first paid to the traditional resident district, and then deducted and paid to the community school they are being educated at. Simply stated, DEW now funds students where they are educated, rather than where they live. In some respects, e-school funding is different from funding of other community schools. E-school funding is based on Total Learning Opportunities, and consists only of the base cost (based on an accurate FTE calculation), the special education weighted funding, English Learners and career-technical education funding. There are no funds for economically disadvantaged students or transportation. In addition, effective during Fy 2024, a temporary pilot program was codified into Ohio Rev. Code § 3317.22 which provides additional funding for students enrolled in grades eight through twelve in eligible internet community schools. An eligible internet community school may choose to participate in the program by notifying the department not later than the first day of February of the school year in which the school will participate in the hybrid funding program. For important definitions used in this section and additional guidance on the funding calculation, refer to Supplemental Information - Foundation Funding, Community School Payment Letters, and DEW's FY2024 School Finance Payment Report Line by Line Explanation. ~~For additional guidance on state funding refer to the information starting on page 146 of the LSC HB 110, 134th GA Analysis, 134th GA, HB 583, DEW's September 2023 Community School Payment Letter and Supplemental Information on Foundation Funding.~~

Pursuant to Ohio Rev. Code § 3314.08(J)(1), "no student shall be considered enrolled in any internet- or computer-based community school or, if applicable to the student, in any community school that is required to provide the student with a computer pursuant to division (C) of section 3314.22 of the Revised Code, unless both of the following conditions are satisfied: (a) The student possesses or has been provided with all required hardware and software materials and all such materials are operational so that the student is capable of fully participating in the learning opportunities specified in the contract between the school and the school's sponsor as required by division (A)(23) of section 3314.03 of the Revised Code; (b) The school is in compliance with division (A) of section 3314.22 of the Revised Code, relative to such student."

Community schools must provide documentation that clearly demonstrates students have participated in learning opportunities. Participation in learning opportunities for e-schools is determined based upon durational time. See the "Learning Opportunity Documentation Requirements for E-schools" in DEW's FTE Review Manual for further information.

Ohio Rev. Code § 3314.03, in part, requires the contract between a sponsor and the governing authority of a community school state the following:

A. That the governing authority will adopt an attendance policy that includes a procedure for automatically withdrawing a student from the school if the student, without a legitimate excuse, fails to participate in seventy-two (72) consecutive hours of the learning opportunities offered to the student.[33]

B. The school will provide learning opportunities to a minimum of twenty-five students for a *minimum* of nine hundred twenty (920) hours per school year.
   1. The ~~Ohio~~ department ~~of Education~~ shall determine each community school student's percentage of full-time equivalency based on the *percentage of learning opportunities* offered by the community school to that student, reported either as number of hours or number of days. However, no E-School shall be credited for any time a student spends participating in learning opportunities beyond ten hours within any period of twenty-four consecutive hours. Whether it reports hours or days of learning opportunities, each community school shall offer not less than nine hundred twenty hours of learning opportunities during the school year. [Ohio Rev. Code § 3314.08(H)(3)] *Note: While the statute mentions "days", DEW collects this information and calculates it in terms of hours. So schools must have a means of converting "days" to "hours" when reporting to DEW.*

C. That the governing authority will adopt a policy regarding the admission of students who reside outside the district in which the school is located;

D. A financial plan detailing an estimated school budget for each year of the period of the contract and specifying the total estimated per pupil expenditure amount of each such year.

E. While it would be uncommon and optional depending on the facts and circumstances, if they have an instructional facility, an addendum to the contract outlining the facilities to be used containing at least a detailed description of each facility used for instructional purposes, the annual costs, annual mortgage, and name of lender or landlord including any such relationship to the operator. Auditors should evaluate the reasonableness of using an instructional building for an e-school environment, outside of a career tech scenario. If in question, auditors should contact the CFAE Community School Specialist. (See additional information in OCS 4B-5)

[33] Valid legal reasons for non-attendance are set forth in Ohio Admin. Code 3301-69-02.

F. A provision requiring the governing authority to adopt an enrollment and attendance policy that requires a student's parent to notify the community school in which the student is enrolled when there is a change in the location of the parent's or student's primary residence.

G. A provision requiring the governing authority to adopt a student residence and address verification policy for students enrolling in or attending the school.

H. That the school's attendance and participation records shall be made available to the Department ~~of Education~~, Auditor of State, and school's sponsor to the extent permitted under and in accordance with the "Family Educational Rights and Privacy Act of 1974," 88 Stat. 571, 20 U.S.C. § 1232g, as amended, and any regulations promulgated under that act, and section 3319.321 of the Revised Code.

I. A provision requiring that all moneys the school's operator loans to the school, including facilities loans or cash flow assistance, must be accounted for, documented, and bear interest at a fair market rate. (See OCS 4A-3 for testing such loans.)

J. Shall specify that the school will comply with numerous sections of the Ohio Rev. Code including section 149.43 [Ohio Rev. Code § 3314.03(A)(11)(d)]

Ohio Rev. Code § 149.43 defines public records as follows: records kept by any public office, including, but not limited to, state, county, city, village, township, and school district[34] units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section Ohio Rev. Code. § 3313.533 Medical records are excluded from this definition of public records, however Ohio Rev. Code § 149.43(A)(3), explains that medical record does not by definition include any documents related to birth and are therefore considered public record by AOS and DEW.

**Attendance and Instruction**

Pursuant to Ohio Rev. Code § 3314.03(A)(6)(b) & (A)(27-28), community schools must adopt attendance and participation policies for their students and attendance and participation records shall be made available to the Department ~~of Education~~, Auditor of State and the school's sponsor. The contract between the community school and sponsor should include requirements for measuring and documenting student attendance and participation.

In the case, *Electronic Classroom of Tomorrow v. Ohio Dept. of Edn*., Slip Opinion No. 2018-Ohio-3126, the Ohio Supreme Court ruled "Ohio Department of Education has authority under R.C. 3314.08 to base funding of an e-school on the duration of student participation."

A. DEW has established student participation criteria and documentation requirements for electronic community schools in their FTE Review Manual. Participation in learning opportunities provided by a community school is defined in the community school's contract with its sponsor. This would include documentation of learning opportunity participation by a student enrolled in an e-school (see DEW's FTE Review Manual, Learning Opportunity Documentation Requirements for E-schools). It does not include days on which only enrollment and/or orientation activities occur.

Instructional hours in a community school are defined by learning opportunities engaged in by a student. As it pertains to e-schools, Ohio Admin. Code 3301-102-02(J) defines learning opportunity as non-

[34] We consider the reference to district/school district in Ohio Revised Code sections to also mean community schools, based on Ohio Rev. Code § 3314.03.

classroom-based supervised instructional and educational activities that are defined in the community school's contract and are:

(1) Provided by or supervised by a licensed teacher[35];
(2) Goal-oriented; and
(3) Certified by a licensed teacher as meeting the criteria established for completing the learning opportunity.

As outlined in the Instructional Hours/Learning Opportunities section of DEW's FTE Review manual, a community school is required to define learning opportunities in its contract with its sponsor:

A. It may include both classroom-based and non-classroom-based activities. (In an e-school, classroom-based learning is taking place online from the student's home. Conversely, non-classroom-based learning is occurring off of the computer and away from home)
B. These activities have to be either directly provided by a teacher or supervised by a teacher; the school should be able to identify the teacher.
C. These activities have to be educational, instructional, and goal-oriented; there should be some school policy or guidance that in advance describes the goal, mainly of non-classroom-based activities. Reporting activities after-the-fact without prior goals, prior specification of activities, and/or teacher direction is not sufficient.

In an e-school, students can earn credit on evenings, weekends, and holidays.

**Funding and Reporting Attendance**

The community school's Foundation funding will be based on the annualized full-time equivalency (FTE) enrollment of each student. A student who enters at the beginning of a school year and receives instruction for the community school's total annual membership units will generate an FTE of 1.0. Students should never have an FTE greater than 1.0. Students who attend a community school for less than the entire year will have an FTE equal to the total hours of enrollment period divided by the number of hours in the school year calendar. Community schools can continuously update estimated student FTE information in DEW's Education Management Information System (EMIS), but must report actual FTE information no later than the end of the school year. A student's FTE will be determined based on the individualized calendar/class schedule each student is assigned to for the school year and his or her enrollment and withdrawal dates.

Pursuant to the Ohio Department of Education and Workforce's FTE Review Manual, e-schools are required to maintain durational evidence of online participation. Pursuant to Ohio Rev. Code § 3314.27, each internet- or computer-based community school (i.e., e-school) is also required to keep accurate records of each student's participation in daily learning opportunities. The records should be easily submitted to the Department of Education and Workforce upon request by the Department or the Auditor of State. No student enrolled in an e-school may participate in more than ten (10) hours of learning opportunities in any period of 24 consecutive hours. If a student participates beyond the 10 hour daily limit, the additional time does not count toward the annual minimum number of hours required to be provided to a student. If any internet- or computer-based community school requires its students to participate in learning opportunities on the basis of days rather than hours, one day shall consist of a minimum of five hours of such participation.

[35] Teachers in community schools must hold a teaching license in accordance with Ohio Rev. Code § 3314.03(A)(10), except that a community school may engage noncertificated persons to teach up to 12 hours or 40 hours per week pursuant to Ohio Rev. Code § 3319.301. Appropriate teaching licenses include professional licenses, resident educator licenses, alternative licenses, supplemental licenses, and substitute licenses issued under Ohio Rev. Code § 3319.226 or long-term substitute licenses. In addition, pre-service teacher permits are issued under Ohio Rev. Code § 3319.0812, and alternative temporary substitute teacher licenses are issued under Ohio Rev. Code § 3319.102.

While an E-school is not funded for student absences, Ohio Compulsory Attendance and Truancy laws still require E-schools to have policies concerning excused and unexcused absence as well as policies to guide employees in addressing attendance practices of any student who is a habitual truant. Further, community schools must maintain documentation to support any EMIS withdrawal code reported for a student. Information regarding the preferred documentation that community schools should maintain in student files for the different withdrawal codes varies. Also, in instances where schools are unable to secure the preferred documents, other documentation may be considered acceptable alternatives to support the relevant withdrawal code. A table of the acceptable documentation can be found in the DEW EMIS Manual2.1.1 Required Documentation section, and further guidance is available in DEW EMIS Manual 2.4.

The following table assists in clarifying the difference between the following absentee categories. As noted in the DEW guide below, these categories indicate various steps schools must take to assist the student[36] and their family with an absentee issue. Students may not be suspended or expelled for truancy, and this does **not** indicate a student must be automatically withdrawn.

| | **Consecutive hours** | **Hours per school month** | **Hours per school year** |
|---|---|---|---|
| **Habitual Truancy** | **30** hours *without* a legitimate excuse for the consecutive absences | **42** hours *without* legitimate excuses for absences | **72** hours *without* legitimate excuses for absences |
| **Excessive Absences** | -- | **38** excused or unexcused hours absent *unless* the absence is medically excused | **65** excused or unexcused hours absent *unless* the absence is medically excused |
| **Chronic Absenteeism** | -- | -- | **10% of total hours either** *excused or unexcused* |

(Source: DEW's 'https://education.ohio.gov/Topics/Student-Supports/Attendance-Support/Ohio-Attendance-Laws-FAQs#FAQ4887')

Community schools, e-schools, and dropout prevention and recovery schools must follow all requirements in the table above. Both truancy and excessive absences apply to all public schools, including e-schools. All public schools must implement interventions for students who have not participated in instructional activities and thus meet the triggers for habitual truancy and/or excessive absences. Students in a virtual environment are expected to participate in instructional activities on a consistent basis that conforms to the school calendar.

In addition, for community schools, Ohio Rev. Code Chapter 3314 does require the following, which are separate laws from the categories in the table above.

[36] If the student is no longer of compulsory school age (Ohio Rev. Code § 3321.01(A)(1)), while schools should perform their due diligence for absentee issues, they are not obligated to follow absence intervention plans.

A. 3314.03(A)(6)(b): the governing authority must adopt an attendance policy that includes a procedure for **automatically withdrawing** a student from the school if the student without a legitimate excuse fails to participate in seventy-two (72) **consecutive** hours of the learning opportunities offered to the student.
B. 3314.08(H)(2): if the student without a legitimate excuse fails to participate in the first seventy-two (72) consecutive hours of learning opportunities offered to the student in that subsequent school year, the student shall be considered not to have re-enrolled in the school for that school year.
C. 3314.26(A): Each internet- or computer-based community school **shall withdraw** from the school any student who, for two consecutive school years of enrollment in the school, has failed to participate in the spring administration of any assessment prescribed under section 3301.0710 or 3301.0712 of the Revised Code for the student's grade level and was not excused from the assessment pursuant to division (C)(1) or (3) of section 3301.0711 of the Revised Code, regardless of whether a waiver was granted for the student under division (L)(3) of section 3314.08 of the Revised Code. However, due to 3314.262, the 2021-2022 school year shall constitute the first year of the two consecutive years of enrollment.

An e-school may have a system that tracks learning opportunity participation within the school's online system. If an e-school's online system has this capability, the school must produce Excel spreadsheets showing the daily, weekly, and monthly accounting of learning opportunities and the final total of all online learning opportunities that the student participated in and the e-school's system tracked. The e-school may have more than one online system that tracks durational time. In these circumstances, an e-school may not overlap times or count times more than once. Time not on the computer (self-reported) may not overlap online time. (FTE Review Manual).

If the school's online system does not track the amount of time students participate in online learning opportunities, schools may alternatively follow the guidance for "Minimum Documentation Requirements for Non-Classroom, Non-Computer Based Learning Opportunities". It is recognized that schools may track learning opportunities in different ways due to different system capabilities. (FTE Review Manual).

**Excused and unexcused days of absence or assignments do not count as hours in e-schools. E-school students who are absent (i.e., do not log in on a designated school day or have documentation of participating in approved non-classroom based learning) are not funded.** That is to say, if an e-school student is not participating 100% of the time (based on the school's calendar in EMIS) but remains enrolled the entire school year (i.e., the student did not reach 72 consecutive hours of unexcused absence), the school should adjust the student's *Percent of Time Attended* factor in EMIS to reflect less than 1.0 FTE for the entire school year. A school has not provided a learning opportunity to an e-school student until the student either accesses the online educational system or completes documentation of non-computer-based learning opportunities. All e-schools must adjust the percent of time in EMIS for their students based on the documented learning opportunities. The Department recommends updating the percent of time in EMIS quarterly. All community schools must adjust the percent of time in EMIS for their students who are part time or participating in courses at joint vocational school districts or taking College Credit Plus courses. [FTE Review Manual, Regular and Year-End Percent of Time Adjustment for E-School and /or Non-Computer, Non-Classroom Based Students]

Pursuant to Ohio Rev. Code § 3301.0714, schools must enter data concerning the enrollment and attendance of their students into EMIS. The system is used by all schools to enter and review student enrollment and demographic data.

Ohio Rev. Code § 3313.64(J) states that the treasurer of each school district shall, by the fifteenth day of January and July, furnish the director of education and workforce ~~superintendent of public instruction~~ a report listing the names of each child in the permanent or legal custody of a government agency or person other than the child's parent and each child who resides in a home, who attended the district's schools

during the preceding six calendar months. For each child, the report shall state the duration of attendance of that child, the school district responsible for tuition on behalf of the child, and any other information that the director ~~superintendent~~ requires. Upon receipt of this report, the director ~~superintendent~~ shall deduct each district's tuition obligations and pay to the district of attendance that amount plus any amount required to be paid by the state.

Ohio Rev. Code § 3314.08(B) requires the governing authority of each community school to annually report the number of students enrolled in the community school. For each student, the governing board of the community school must report the city, exempted village, or local school district in which the student is entitled to attend.

A. Ohio Rev. Code § 3313.672 specifies documentation that must be provided in the enrollment process and includes a birth record and any pertinent court orders. Proof of residency is also needed to establish where a student is entitled to attend school under Ohio Rev. Code § 3313.64 and 3313.65. However, see specific McKinney-Vento Homeless Assistance Act guidance in DEW FTE Review Manual if testing a homeless student.
B. Ohio Rev. Code § 3317.031 requires membership records be kept intact for at least 5 years.

DEW will continue to adjust the FTE used for the funding formula as the school updates its information throughout the year. At the close of the school's fiscal year end, DEW will reconcile the Final FTE Foundation payments and determine whether the school has a corresponding receivable from or payable due to DEW based upon the accumulation of student FTE's throughout the year. This reconciliation is particularly complex for mobile students. It is critical that schools accurately and timely report their student data to DEW in order for this reconciliation to be performed.

Community schools should continuously review FTE adjustments that impact their monthly foundation payments. All community schools have access to FTE Detail (FTED-001) and FTE Adjustments (FTED-003) reports in the Data Collector. These reports allow a community school to see the impact of all adjustments on FTEs. These reports are updated on a regular basis (by DEW). [DEW EMIS Manual, Section 1.3]

**DEW FTE Reviews**

Ohio Rev. Code § 3314.08(K) permits FTE reviews, which DEW performs to verify the accuracy of the enrollment and attendance data reported by community schools into EMIS, which sometimes result in FTE adjustments (errors identified by DEW and the community school adjusts their EMIS records), or can result in "clawbacks" (errors identified by DEW FTE Reviews but the community school does not adjust their EMIS records); both of which can be money due back to DEW. These FTE reviews occur at a minimum once every 5 years, but may occur more often. Schools should therefore continue to evaluate whether DEW's Final FTE Foundation adjustments, and FTE reviews, could result in a material receivable, payable, or potential contingency footnote disclosure in their GAAP-basis annual financial statements.

**Tracking Student Participation for Learning Opportunities**

Inquire with management and document how the online educational system tracks student participation. The capabilities of online educational systems vary from e-school to e-school. Some e-schools can track log-ins and log-outs; however, the duration of time online may not equate to the hours a student actually spends learning. When evaluating student attendance and participation in an online system, it is important to understand how much reliance the school/auditor can place upon a student's time spent logged into the system as evidence of participation. If an e-school's online system is capable of tracking learning opportunity participation, the school must produce Excel spreadsheets showing the daily, weekly, and monthly accounting of learning opportunities. It also must be able to show the final total of all online learning opportunities that a student participated in. Where there can be little reliance on log reports, the

school may need to supplement online durational learning documentation with manually kept student activity logs certified by teachers. No e-school shall be credited for any time a student spends participating in learning opportunities beyond the ten hours within any twenty-four consecutive hours per Ohio Rev. Code § 3314.08(H)(3).

E-school's may offer learning opportunities that the school's online system does not track or that take place off-line or not on a computer. In addition, some e-schools' online systems may not be able to track and document a student's participation in the online system learning opportunities. E-schools that have these situations must use the following minimum documentation requirements and must be able to provide the needed information on request. (FTE Review Manual)

Documentation must exist for all learning opportunities and must be certified by a teacher. Hours spent on other learning opportunities should not include the online hours that the e-school already counted. Below are minimum requirements for "Other Learning Opportunities": (FTE Review Manual)

A. Student SSID;
B. Brief Description of learning opportunities (such as, class or course information);
C. Dates and times of actual learning opportunities;
D. Total of verified learning opportunities time
E. Teacher certification of the reported learning opportunities.

E-Schools may use DEW's "Alternative Learning Opportunity Documentation Log" to document these learning opportunities, but it is not required. The log is simply an example of how an e-school can track these learning opportunities. It is up to the school to decide how to meet the tracking requirements. (FTE Review Manual)

E-schools cannot use estimated or approximated times to calculate percent of time. For example, if a school estimates an assignment should take 15 hours to complete and a student took only 10 hours to complete it, that student would receive credit for 10 hours. (FTE Review Manual)

**Auditors should consider when testing controls and compliance whether or not:**

A. DEW conducted a FTE Review for the period under audit.
    1. Reliance on DEW's FTE Review is based on the following factors:
        a. DEW is the regulator and considered an expert in FTE reporting matters
        b. In the case, *Electronic Classroom of Tomorrow v. Ohio Dept. of Edn.*, Slip Opinion No. 2018-Ohio-3126, the Ohio Supreme Court ruled "Ohio Department of Education has authority under R.C. 3314.08 to base funding of an e-school on the duration of student participation." DEW has established student participation criteria and documentation requirements for electronic community schools in their FTE Review Manual.

B. Compare the community schools master calendar submitted to DEW in EMIS with the board approved school year calendar reflected in the minutes[37] and published on the school's webpage/or in the parent handbook (differences and their impact on reliance are considered in the steps below). If not in agreement consult with the CFAE Community School Specialist. See testing procedures step 3 below.

[37] Minutes should include an exhibit of the calendar approved or document within the body of the minutes the details of the approved calendar. If this level of documentation is not available, the actual approval control process cannot be adequately verified.

C. DEW's FTE review included a sample test of 25 or more students. If not, consult with the CFAE Community School Specialist. See footnote in step 6a below for further information.

D. The school had any contracts/agreements paid on a percentage/number of FTE (or anything that changes), and therefore whether a true-up was required, and properly reported on the financial statements/disclosed in footnotes (if necessary). Such payment terms are common in sponsor/authorizer, management company/operator, and some vendor agreements.
   1. A finding for recovery will likely be issued when the true-up calculation(s)/evaluation(s) have not been performed and the auditor determines an amount is due; or an unreasonable legal evaluation/determination has been relied on; or the amount due has not been repaid, or is not in the process of being repaid under the terms of a reasonable and enforceable repayment agreement.

E. The community school had appropriate policies and internal control procedures in place to ensure compliance with enrollment, durational participation, student withdrawal and other requirements relevant to a community school's FTE reporting, and perform implementation tests.

**Note:** If in the normal course of performing the testing procedures below, information is obtained that you feel is relevant and DEW wouldn't have had available for their review, raising significant concerns on the reliance on DEW's FTE Review to satisfy the participation requirement, auditors should consult with the Center for Audit Excellence Community School Specialist to determine whether additional testing may be necessary.

| **In determining how the government ensures compliance, consider the following:** | **What control procedures address the compliance requirement?** | **W/P Ref.** |
|---|---|---|
| • Policies and Procedures Manuals,<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | Request the client provide a document/narrative describing/ supporting how they operated during the year.<br><br>For example the document / narrative should explain controls in place over student attendance for the learning model utilized (i.e.. how attendance was taken, how learning opportunities were offered to students, how student engagement in remote or online opportunities were measured, how the school monitored missing students for truancy, etc.). Referencing to various sections of plans/policies is strongly encouraged within this narrative. | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

**Auditors should refer to DEW's FTE Review Manual & section 1.3 of DEWs EMIS Manual for additional guidance about the compliance requirements for E-schools described in this OCS Step. Reviewing and understanding the guidance in this Manual is a critical part of accurately testing student enrollment and attendance. The FTE Review Manual is available at the link above.**

***Note****: The most effective audit procedures include a review and evaluation of school policies as well as verification that schools are maintaining the appropriate student enrollment, learning models, learning opportunities participation, duration, and withdrawal documentation. A school's timeliness of student enrollment and withdrawal dates is also a critical component in ensuring accurate FTE reporting to DEW.*

AOS provides DEW copies of all community school audit reports. As a result of issues identified and reported under audit, auditors should be aware that DEW may perform a FTE review in a subsequent fiscal year to assess compliance and determine the accuracy of the school's reported FTE. This could potentially impact future school funding.

**Procedures for Electronic Community Schools:**

1. Obtain a copy of the school's enrollment and attendance policies and procedures and inquire with the EMIS Coordinator to gain an understanding. Document and evaluate the school's procedures for:
   a. Enrolling and withdrawing pupils timely;
   b. Verification of student residence/address;
   c. Setting up school calendars for students in EMIS;
   d. Offering and documenting credit flexibility
   e. Documenting participation in learning opportunities for both at home, online and off-line/non-classroom time, if applicable.
      i. **It is important that their policy/procedures address how they identify and monitor overlap/duplication of time between various online learning systems; as well as duplication of time between online learning systems, and online or other off-line/non-classroom. The school must have controls in place to ensure the same period of time does not overlap or be counted more than once**;
   f. Capturing and reporting idle time when calculating a student's participation;
   g. Monitoring and documenting student absences; and
   h. Monitoring, withdrawing, and notifying the resident public school of withdrawn students or students truant for 72 or more consecutive hours. *Note: If the school has a stricter policy than 72 hours, consult with CFAE Community School Specialist.*

   **If auditing an e-school that is not implementing a Dropout Prevention and Recovery (DOPR) program, complete the following document and add it to your working papers.** There are different student attendance requirements for such e-schools.

   For items above not addressed in the schools written policies/procedures, consider whether an internal control comment is appropriate under AU-C265.

2. As part of this evaluation, determine whether the Community School's policies and procedures are consistent with the Educational Plan in the Community School's Charter, as approved by the school's sponsor, and include sufficient procedures for identifying and tracking attendance and participation for all students for whom the *community school* is responsible.

3. Inquire with community school management about the learning opportunities it offered as part of its operating standards during the audit period.
   a. Determine whether the community school offered the minimum 920 hours of learning opportunities by reviewing the master school calendar in EMIS and student participation records (both online and off-line/non-classroom as applicable in step 7 below).
   b. If the community school offered more or less than the required minimum, determine whether the community school reported the accurate number of learning opportunities to the Ohio Department of Education and Workforce (this will be the Master Calendar in EMIS).
   c. Compare the community schools master calendar submitted to DEW in EMIS with the board

approved school year calendar reflected in the minutes and published on the school's webpage/or in the parent handbook (differences and their impact are considered in the steps below). If not in agreement consult with the CFAE Community School Specialist.

4. Consider whether the community school should include a receivable, payable, or contingency footnote in accordance with the financial reporting framework requirements (i.e. GAAP) related to Final Foundation Funding adjustments after year end and/or as a result of DEW FTE Reviews.

   ***Note****: Since community schools are funded on an annual basis, DEW must reconcile and make Final Foundation Funding payments after the fiscal year end close out is performed. These Final Payments occur no sooner than August and may span several months before DEW finalizes the Foundation Funding payments. Schools should evaluate each FTE Foundation adjustment at the time made, rather than waiting until all FTE Foundation adjustments have occurred for the fiscal year and just evaluating the net.* ~~*We anticipate community school receivable amounts at year-end would be less significant under the new funding model as compared to the old funding model.*~~

   a. Also consider whether a true-up was required for any contracts/agreements paid on a percentage/number of FTE (or anything that changes), and if so, whether it was treated properly in accordance with the summary of audit requirements above. (AOS auditors see guidance in Teammate / IPA's see guidance above, and suggested steps in Community School Audit Programs for IPA's at https://ohioauditor.gov/references/guidance/communityschools.html ).

5. Perform the following procedures:

   a. Select a representative number of **newly enrolled** students during the school year (normally five[38] students is sufficient). The new enrollment list may be obtained by the E-school through EMIS or other student attendance information system.
      i. Compare the reported enrollment date to the latter of the: (1) first login date, or (2) date the computer was received.[39]

         ***Note****: Students are not enrolled in an E-school until the latter of first login date or the date the computer was received. Students may waive the right to a computer; however, this documentation must be kept on file by the community school. The community school should be able to produce a report that documents login dates. Community schools should also maintain shipping logs (with tracking numbers) from the computer vendor. If the student's parent physically picked up the computer, the community school should have the parent's signature on file to support receipt of the computer or contained in the student's file.*

[38] Identifying noncompliance during the test increases risk. If an attribute for one or more of the five students selected for testing fails consult with the Center for Audit Excellence to determine if testing should be expanded and/or if a noncompliance comment should be elevated.

[39] For students who login from a different computer (while waiting to receive their issued computer), this login date may be considered the enrollment date even though it may not be the "latter" of these. In this case, auditors should still inspect support indicating the computer was received at a later date. In this case, determining compliance with Ohio Rev. Code § 3314.08(J)(2) should be on the date when the school hardware was provided with installation/access to school software.

ii. Determine whether the school maintained copies of the student's birth record[40], proof of residency, and parent/guardian signed enrollment forms in the student file to support enrollment and resident district determinations.

b. Select a representative number of students from the community school's **withdrawal** list (normally five[38] students is sufficient). The withdrawal list may be obtained by the community school through EMIS or the community school's student information system.

i. Identify when students were withdrawn and determine whether it was timely (e.g., waiting several weeks or more from withdrawal notification is not timely).

a) For example, using grade records and/or attendance records, determine the last day students were reported as attending the community school. If a student was reported absent for 72 consecutive hours, determine the date the student should have been withdrawn and ascertain whether the school reported the withdrawal timely.

ii. Determine whether the appropriate EMIS withdrawal code was used to withdraw the student based on evidence in the student's file. DEW EMIS Manual 2.1.1 & 2.4 provides examples of the types of documentation required to be obtained and maintained by the school for each type of withdrawal code.

iii. Inquire with management about any significant differences or adjustments. Consider reporting noncompliance or other client communication for any significant unexplained variances.

a) *A community school should not wait until March to remove a student from its enrollment if the student withdrew in October. Significant delays in reporting student withdrawals constitute noncompliance. Likewise, a student with excessive truancy should have received multiple communications from the school to verify the student's absence during the 72-hour period. Community schools should maintain a daily call log, copies of written correspondence to parents/guardians, or obtain timely excuses from the parent, guardian, or adult-aged student for excessive absenteeism that does not result in removal of a student from enrollment.*

**When DEW <u>has conducted</u> a FTE review for the fiscal year:**

6. If DEW has conducted a FTE review for the fiscal year: (Note: if a FTE review **has not been conducted**, proceed to step 7):
   a. Obtain a copy of the written report[41] and review the results of procedures performed[42].

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[40] The original source document for a birth record may be a photocopy of a birth certificate or a properly attested documentation of birth. (DEW FTE Review Manual, p. 33 of FY 24 manual)

[41] AOS Auditors should check the community school master spreadsheet available on the Community School intranet page for the status of FTE reviews. If available, these letters can be obtained from *W:\~~Community~~ School FTE Review Letters & Other DEW Correspondence\Community Schools*. IPA's should check the same spreadsheet in the AOS IPA Portal, and obtain the report from the client, if one is noted.

[42] Auditors should determine if a sample size of at least 25 students was tested. If the size was less than 25 and there was not a valid reason evident for the reduction, the CFAE Community School Specialist should be contacted to see if the review can be relied upon or if step 7 will need to be performed. Be aware that some FTE letters indicate a 'modified' review/sample was performed (which typically concentrates on various areas of non-compliance noted in the schools prior year review). If the schools letter states such, review the modified protocol listing on the AOS Community School intranet page for details of the modified review. For items tested by DEW, as long as the number of students tested is greater than or equal to the number of students required by OCS 4A-5, DEW's review may be relied on *for the specific items the modified protocol listing/FTE review document mentions were tested* at the

b. If DEW reported an issue(s), auditors should assess materiality and consider reporting a similar finding(s) in the audit report or management letter based upon the results of DEW's FTE Review.

**When DEW <u>has not conducted</u> a FTE review for the fiscal year:**

7. Determine whether the school has support for meeting the 920 hours of learning opportunities and whether the school is following its policies for documenting and measuring student enrollment and participation.

   a. Student file testing: Select a representative number of students enrolled for **any part of the school year** (normally five[38] students is sufficient and this is a separate sample from the step below; however, auditors should assess the risk of noncompliance for their particular school and increase this selection, if appropriate).

      Review the student files for the selected students and determine whether the school is following its policies for documenting and measuring student enrollment, attendance and participation.

      i. Determine whether the school has birth record[40] and proof of residency documentation for the student contained in the student file.
      ii. Determine whether the school has completed/signed student enrollment forms contained in the student file.
      iii. Determine whether the community school is retaining the membership record for at least five years.
      iv. Determine whether the school has maintained records of student absences in the student file (or elsewhere) sufficient to enable the school to monitor its compliance with their policy/procedures/education plan on the 72 consecutive hour rule for withdrawal. If the student was reported absent for 72 consecutive hours, determine the date the student should have been withdrawn, ascertain whether the school reported it timely, and verify that less than 1 FTE was claimed for the student. You do not have to calculate the exact FTE. If you find the school claimed 1 FTE for a student that should have been withdrawn, consider that when selecting the number of students to test in step 7c(ii).
         a) When students are noted nearing the 72 consecutive hour withdrawal mark, and then attend for just a few days, determine if the school complied with Ohio Rev. Code § 3321.191 requirements & the schools truancy policy (send parent notices, maintain call logs, refer to court (if required), etc.). Also, look for proof of completed assignments for the few days the student was marked as attending to substantiate that they did attend. https://education.ohio.gov/Topics/Student-Supports/Attendance-Support/Ohio-Attendance-Laws-FAQs

   b. Determine and document how the e-school's online educational learning system operates and how much reliance can be placed upon log in and log out times (i.e., duration of time) in the system as evidence of student participation (step c below). Consider utilizing the 'E-school and Blended School FTE Review Guiding Questions' appendix in the DEW FTE Review Manual.

   c. Participation testing: Select five[38] community school students that were **enrolled for any part of the school year** from the school's EMIS report.

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particular school. IPA's may request the modified protocol listing from CommunitySchoolQuestions@ohioauditor.gov.

i. For each student identified, select, 5 non-consecutive enrollment days under the audit period and determine whether the student participated[43] in and received credit for more than 10 hours of learning opportunities in any 24-hour period. Also determine whether overlap/duplication of time between various online learning systems; as well as duplication of time between online learning systems, and off-line/other non-classroom time exists. Finally, determine whether the school maintains log records or student-prepared participation logs that match the daily hours of instructions listed in the school's daily EMIS calendar for selected students. The total log time hours and off-line/non-classroom learning documentation for each student should match the hours reported in EMIS. If the student has non-computer learning opportunities, the school should maintain documentation in the student file to document participation and approval in writing by a teacher of such time. *Auditors should report noncompliance or other client communication where log and non-computer hours documented in the student files do not match EMIS and no other supporting documentation exists; as well if overlap/duplication of time is noted, or if students are receiving credit for more than 10 hours in a 24 hour period.*
***Note****: This is admittedly a difficult step; however, the total computer and non-computer-based learning opportunities must be adequately supported and be reasonably comparable to the total hours of instruction claimed by the school to be provided to the student based upon the FTE reported in EMIS.*

ii. Using the applicable student files, participation records and school calendar, determine if the student should have 1.0 or less than 1.0 FTE and compare to what the school reported to DEW in EMIS. For example, if the e-school's attendance policy requires the students to participate during certain hours/days, and a student is documented as being absent, whether excused or unexcused, the students FTE should not equal 1.0. If it is evident that a FTE should have been reduced and wasn't we would consider this an exception. You do not have to calculate the exact FTE. Exceptions should be discussed with the CFAE Community School Specialist.

d. If the school did not maintain durational participation data, determine whether or not the required standard contingency footnote for funding was reported by the school.

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

- Consider the results of all procedures in this Section when evaluating the school's compliance with FTE requirements.

- Evaluate whether the community school had appropriate policies and internal control procedures in place to ensure compliance with enrollment, durational participation, student withdrawal and other requirements relevant to a community school's FTE reporting. Most likely non-compliance as well as missing or inadequate controls for FTE reporting is indicative of an AU-C 265 control comment.

[43] While we do not expect credit flexibility to be something you will see in an e-school, we will only test the Individual Student Education Plan and adherence to that plan if a student selected is participating in credit flex. So durational support will not be needed to be tested for the credit flex portion of the student day. However, the remaining portion of the days learning opportunity (if any) will still be required to be tested. Additionally, there should not be overlap that results in more learning opportunity hours then what was actually participated in.

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**4A-5C Compliance Requirement:** Ohio Rev. Code §§ 3301.079, 3302.41, 3313.64, 3314.03, 3314.08, and 3317.022; Ohio Admin. Code 3301-102-02, 3301-35-01 – Community School Funding (*Blended only*).

**Community schools may operate as either:**

- **Brick & Mortar - In person as normal (4A-5A),**
- **Blended Learning Declaration (4A-5C – Ohio Rev. Code § 3302.41), or**
- **E-schools (Internet or Computer-based) (4A-5B - Ohio Rev. Code § 3314.02).**

**This section applies to community schools operating under blended learning declarations.**

A. A list of schools that filed a blended learning declaration form with DEW is available here.
B. Note: If a community school filed a blended learning declaration but did not implement and use the declaration, the school would be tested in 4A-5A.
C. Use of a blended learning model(s) must be part of an overall plan to provide instruction throughout the entire school year. A blended learning plan cannot be made on a contingent basis, but a blended learning plan can be adopted to permit online delivery based on contingent events. ~~During Fy 2023 and beyond - Blended learning is not to be used on an emergency or contingent basis including but not limited to the following reasons:~~
   ~~1. Temporary closure due to disease or sickness;~~
   ~~2. Weather-related closures;~~
   ~~3. Parent-teacher conferences, teacher workdays or other professional development;~~
   ~~4. Staffing shortages.~~
   ~~See DEW's Blended Learning Guidance.~~
D. For more information about blended learning in community schools, refer to DEW's Guidance for Blended Learning available at: Blended-Learning-Guidance.pdf.

***Alert: Beginning with Fy24, certain schools are moving to a 4-day week for students.***

- ***It is imperative that they are still complying with the minimum number of required hours, and learning model that they have in place.***
- ***For example, if they are utilizing a blended learning model, keep in mind that the definition of such has a required online component.***
- ***As another example, if they do not have a blended learning declaration, and are operating as a traditional brick & mortar school, the only hours that count are those as described below.***
- ***Auditors should consult with the CFAE OCS Team via Spiceworks (AOS) or the IPAcorrespondence@ohioauditor.gov e-mail address (IPA) for any schools that do not appear to be operating as required.***

Only brick and mortar community schools that meet certain statutory requirements may operate all or part of a school using one or more blended learning models (Ohio Rev. Code § 3302.41(A) & (C)).

Blended community school students work part of the time from home, and are required by the community school charter's Educational Plan and Student Policy Handbook to attend the school facility a majority of the time. There are several types of blended learning models. Ohio Rev. Code § 3301.079(J)(1) states "Blended learning" means the delivery of instruction in a combination of time primarily in a supervised physical location away from home and online delivery whereby the student has some element of control over time, place, path, or pace of learning and includes noncomputer-based learning opportunities. Ohio Admin. Code 3301-35-01 clarifies that for purposes of that definition, "primarily" means over the course

of the school year, a student works more than fifty per cent of the time from a supervised physical location away from home.

The key components of this include instruction in both a physical learning space away from home and online. The other components include some student choice of certain elements, like "time, place, path or pace of learning." All these elements must be present to be considered a blended learning environment.

To operate using a blended learning model for instruction in the community school, the school and sponsor should negotiate and agree in the community school contract to include the blended learning provisions. Specific information about how the school intends to implement blended learning must be included in the community school contract (Ohio Rev. Code § 3314.03(A)(29)(a)-(g)):

(a) what blended learning model(s) will be used,
(b) description of how student instructional needs will be determined and documented,
(c) the method to be used for determining competency, granting credit, and promoting students to a higher grade level,
(d) attendance requirements, including how the school will document participation in learning opportunities,
(e) a statement describing how student progress will be monitored,
(f) a statement describing how private student data will be protected,
(g) description of the professional development activities offered to teachers.

In addition to contract language, the community school also must notify the ~~Ohio Department of Education's Office of Community Schools~~ department of education and workforce, in writing, no later than July 1 preceding the school year if it wishes to begin or cease using a blended learning model, pursuant to Ohio Rev. Code § 3302.41(A). DEW's opening assurances, however, are required to be completed by the sponsor for the school's **first year** of operation, or if the school is not an e-school and it **changed buildings**, the first year operating from the new building, which include a section regarding whether the school will operate a blended learning model. Additional details can be found in section 4B-4 of Chapter 4.

**Summary of Requirements:**

Ohio Rev. Code § 3317.022 provides the formula by which Community Schools are funded. Community Schools receive funding from the state through the per-pupil foundation allocation through the community and STEM school funding unit. Unlike city, local, exempted village and joint vocational school districts, Community Schools have no tax base from which to draw funds for buildings and investment in infrastructure. Ohio Rev. Code § 3314.191 states that no payments will be made under Ohio Rev. Code § 3317.022 during the first year of operations unless certain conditions are met. Beginning with FY 2022, the ~~new~~ Fair School funding formula requires state operating funding be paid *directly* to community schools for the students they are educating (but it excludes direct funding for contract career tech and special education co-op students), rather than being first paid to the traditional resident district, and then deducted and paid to the community school they are being educated at. Simply stated, DEW now funds students where they are educated, rather than where they live. For important definitions used in this section and additional guidance on the funding calculation, refer to Supplemental Information - Foundation Funding, Community School Payment Letters, and DEW's FY2024 School Finance Payment Report Line by Line Explanation. ~~For additional guidance on state funding refer to the information starting on page 146 of the LSC HB 110, 134th GA Analysis, 134th GA, HB 583, DEW's September 2023 Community School Payment Letter and Supplemental Information on Foundation Funding.~~

Community schools must provide documentation that clearly demonstrates students have participated in learning opportunities. Community schools with blended learning environments (i.e. a mixture of both classroom and non-classroom/internet-based learning) have unique challenges in documenting and assessing student participation. Attendance requirements, including a majority of time required in the

school facility, should be detailed in each community school's education plan and student handbook. Appropriate documentation of student learning activities should include a combination of attendance in the school facility and documentation of online learning activities. See the "Learning Opportunity Documentation Requirements for Schools Using Blended Learning Models" in DEW's FTE Review Manual for further information.

Ohio Rev. Code § 3314.03, in part, requires the contract between a sponsor and the governing authority of a community school state the following:

A. That the governing authority will adopt an attendance policy that includes a procedure for automatically withdrawing a student from the school if the student, without a legitimate excuse, fails to participate in seventy-two (72) consecutive hours of the learning opportunities offered to the student.[44]

B. The school will provide learning opportunities to a minimum of twenty-five students for a *minimum* of nine hundred twenty (920) hours per school year.
   1. The ~~Ohio~~ department ~~of Education~~ shall determine each community school student's percentage of full-time equivalency based on the *percentage of learning opportunities* offered by the community school to that student, reported either as number of hours or number of days. Whether it reports hours or days of learning opportunities, each community school shall offer not less than nine hundred twenty hours of learning opportunities during the school year. [Ohio Rev. Code § 3314.08(H)(3)] *Note: While the statute mentions "days", DEW collects this information and calculates it in terms of hours. So schools must have a means of converting "days" to "hours" when reporting to DEW.*

C. That the governing authority will adopt a policy regarding the admission of students who reside outside the district in which the school is located;

D. A financial plan detailing an estimated school budget for each year of the period of the contract and specifying the total estimated per pupil expenditure amount of each such year.

E. An addendum to the contract outlining the facilities to be used containing at least the following information: (See additional information in OCS 4B-5)
   1. A detailed description of each facility used for instructional purposes;
   2. The annual costs associated with leasing each facility that are paid by or on behalf of the school;
   3. The annual mortgage principal and interest payments that are paid by the school;
   4. The name of the lender or landlord, identified as such, and the lender's or landlord's relationship to the operator, if any.

F. A provision requiring the governing authority to adopt an enrollment and attendance policy that requires a student's parent to notify the community school in which the student is enrolled when there is a change in the location of the parent's or student's primary residence.

G. A provision requiring the governing authority to adopt a student residence and address verification policy for students enrolling in or attending the school.

H. That the school's attendance and participation records shall be made available to the Department ~~of Education~~, Auditor of State, and school's sponsor to the extent permitted under and in accordance with the "Family Educational Rights and Privacy Act of 1974," 88 Stat. 571, 20 U.S.C. § 1232g, as

[44] Valid legal reasons for non-attendance are set forth in Ohio Admin. Code 3301-69-02.

amended, and any regulations promulgated under that act, and section 3319.321 of the Revised Code.

I. A provision requiring that all moneys the school's operator loans to the school, including facilities loans or cash flow assistance, must be accounted for, documented, and bear interest at a fair market rate. (See OCS 4A-3 for testing such loans.)

J. Shall specify that the school will comply with numerous sections of the Ohio Rev. Code including section 149.43 [Ohio Rev. Code § 3314.03(A)(11)(d)]

Ohio Rev. Code § 149.43 defines public records as follows: records kept by any public office, including, but not limited to, state, county, city, village, township, and school district[45] units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section Ohio Rev. Code. § 3313.533 Medical records are excluded from this definition of public records, however Ohio Rev. Code § 149.43(A)(3) explains that medical record does not by definition include any documents related to birth, and are therefore considered public record by AOS and DEW.

**Attendance and Instruction**

As permitted by Ohio Rev. Code § 3314.08(H)(2), DEW has established student participation criteria and documentation requirements for community schools with blended learning in their FTE Review Manual. Participation in learning opportunities provided by a community school as defined in the community school's contract with its sponsor and is documented through daily attendance for the brick and mortar portion and participation in durational learning opportunities for non-classroom time similar to an e-school. (See DEW's FTE Review Manual "Learning Opportunity Documentation Requirements for Schools using Blended Learning Models".) It does not include days on which only enrollment and/or orientation activities or calamity days occur.

Instructional hours in a community school are defined by learning opportunities provided to or engaged in by a student. As it pertains to blended learning models, Ohio Admin. Code 3301-102-02(J) defines learning opportunity as classroom-based or non-classroom-based supervised instructional and educational activities that are defined in the community school's contract and are:

(1) Provided by or supervised by a licensed teacher[46];
(2) Goal-oriented; and
(3) Certified by a licensed teacher as meeting the criteria established for completing the learning opportunity.

As outlined in the Instructional Hours/Learning Opportunities section of DEW's FTE Review manual, a community school is required to define learning opportunities in its contract with its sponsor:

A. It may include both classroom-based and non-classroom-based activities.
B. These activities have to be either directly provided by a teacher or supervised by a teacher; the school should be able to identify the teacher.

[45] We consider the reference to district/school district in Ohio Revised Code sections to also mean community schools, based on Ohio Rev. Code § 3314.03.

[46] Teachers in community schools must hold a teaching license in accordance with Ohio Rev. Code §3314.03(A)(10), except that a community school may engage noncertificated persons to teach up to 12 hours or 40 hours per week pursuant to Ohio Rev. Code § 3319.301. Appropriate teaching licenses include professional licenses, resident educator licenses, alternative licenses, supplemental licenses, and substitute licenses issued under Ohio Rev. Code § 3319.226 or long-term substitute licenses. In addition, pre-service teacher permits are issued under Ohio Rev. Code § 3319.0812, and alternative temporary substitute teacher licenses are issued under Ohio Rev. Code § 3319.102.

C. These activities have to be educational, instructional, and goal-oriented; there should be some school policy or guidance that in advance describes the goal, mainly of non-classroom-based activities. Reporting activities after-the-fact without prior goals, prior specification of activities, and/or teacher direction is not sufficient.

Instructional hours in a community school's day include time for changing classes, but not the recess, breakfast and lunch periods. In a blended school, students can earn credit on evenings, weekends, and holidays.

If a community school presents a computer printout of attendance, it must have original documents from which the computer printout, data was drawn, such as teachers' daily attendance and absence lists, teachers' grade books, and student sign-in sheets. If the school provides an absence only list to verify attendance, it must be accompanied by the total class list for that teacher. [DEW FTE Review Manual]

If the source of the computer printout data is a teacher personally entering data into the Student Information System, the computer printout itself is the original source document. In such a case, the community school must identify which staff members, including the teacher, have access to the attendance system to make data changes. The school must document in a separate log any changes made by staff members other than the classroom teacher. An example is an office clerk who changes an absence to a tardy based on a late sign-in sheet. [DEW FTE Review Manual]

If an office staff member records attendance in a computer, the attendance record of the classroom teacher, which is sent to the office staff member, is the original source document and should be used by the auditor to verify attendance. [DEW FTE Review Manual]

All schools must adjust percent of time for students who are attending part time, participating in courses at a joint vocational school district or taking College Credit Plus courses. [DEW FTE Review Manual]

Exception for Credit Flexibility: Each school district is mandated to have a policy on credit flexibility, as required by Ohio Rev. Code § 3313.603(J). Students can engage in credit flexibility, which can include a non-classroom component. Participation results in an individual education plan (IEP) for each student approved to participate in credit flexibility. Participation in credit flexibility having a non-classroom component does not mean that school is operating in a blended environment, since all students would not be engaging in the activity. Engaging in credit flexibility does not exempt a school from complying with the minimum number of hours of instruction for each school year.

**Funding and Reporting Attendance**

The community school's Foundation funding will be based on the annualized full-time equivalency (FTE) enrollment of each student. A student who enters at the beginning of a school year and receives instruction for the community school's total annual membership units will generate an FTE of 1.0. Students should never have an FTE greater than 1.0. Students who attend a community school for less than the entire year will have an FTE equal to the total hours of enrollment period divided by the number of hours in the school year calendar. Community schools can continuously update estimated student FTE information in DEW's Education Management Information System (EMIS), but must report actual FTE information no later than the end of the school year. A student's FTE will be determined based on the individualized calendar/class schedule each student is assigned to for the school year and his or her enrollment and withdrawal dates.

Pursuant to Ohio Rev. Code § 3314.03(A)(6)(b) & (A)(27-28) community schools must adopt attendance and participation policies for their students and attendance and participation records shall be made available to the Department ~~of Education~~, Auditor of State and the school's sponsor. The contract between the

community school and sponsor should include requirements for measuring and documenting student attendance and participation.

Community schools that offer blended learning are permissible under the law, subject to approval by their sponsor (Ohio Rev. Code §§ 3301.079(J)(1) and 3314.03). Correspondence courses are not a recognized blended learning model as they do not provide opportunities for both in-person and online learning; therefore, correspondence courses do not meet the definition of blended learning. Additionally, community schools offering blended learning opportunities are required to make a declaration of such to DEW, however Internet- or computer-based community schools are not blended learning schools under Ohio Law (Ohio Rev. Code § 3302.41(A) & (C)). In this model the actual number of hours the student participates in learning opportunities must be tracked and documented as required per DEW's FTE Review Manual. A student may combine hours from different learning modes, so total hours can be a combination of both classroom-based instruction and non-classroom hours. Students participating in classroom-based learning opportunities, with ***excused*** absences remain enrolled and will be funded since the school provided the learning opportunity. That is, a teacher provided instruction to the class even though the student was absent on a given day. However, students with ***unexcused*** absences will be funded only up until the student reaches 72 consecutive hours of non-attendance, at which point the student must be immediately withdrawn. If a student is attending only on a part-time basis (e.g., a student is splitting his/her instructional time between the community school and a JVS), the community school should adjust the student's "Percent of Time Attended" factor in EMIS to reflect less than 1.0 FTE for the student. Non-classroom learning opportunities are only credited for actual documented hours, missed days for those learning opportunities (both excused and unexcused absences) or assignments do not count as hours.

Blended learning models used by Ohio community schools must require that students spend the majority of their school year onsite at their school facility. Schools should include all classroom-based learning opportunities that the students were expected to attend. Provided the school requires the students to attend a majority of time on-site, the school may get credit for all those classroom-based learning opportunities even if the student was absent, either excused or unexcused. For funding, these days and hours are treated just like learning opportunities at a brick and mortar school. If the school does not require the students to attend a majority of time on-site, the school may receive funding for classroom-based learning opportunities, but the school may be referred to the Office of Community Schools for noncompliance. [FTE Review Manual]

Pursuant to Ohio Rev. Code § 3301.0714, schools must enter data concerning the enrollment and attendance of their students into EMIS, which is used by all schools to enter and review student enrollment and demographic data.

Ohio Compulsory Attendance and Truancy laws still require community schools to have policies concerning excused and unexcused absence as well as policies to guide employees in addressing attendance practices of any student who is a habitual truant. Further, community schools must maintain documentation to support any withdrawal code reported for a student. Information regarding the preferred documentation that community schools should maintain in student files for the different withdrawal codes varies. Also, in instances where districts are unable to secure the preferred documents, other documentation may be considered acceptable alternatives to support the relevant withdrawal code. A table of the acceptable documentation can be found in the DEW EMIS Manual 2.1.1 - Required Documentation and further guidance is available in DEW EMIS Manual 2.4.

The following table assists in clarifying the difference between the following absentee categories. As noted in the DEW guide below, these categories indicate various steps schools must take to assist the student[47]

[47] If the student is no longer of compulsory school age (Ohio Rev. Code § 3321.01(A)(1)), while schools should perform their due diligence for absentee issues, they are not obligated to follow absence intervention plans.

and their family with an absentee issue. Students may not be suspended or expelled for truancy, and this does **not** indicate a student must be automatically withdrawn.

| | **Consecutive hours** | **Hours per school month** | **Hours per school year** |
|---|---|---|---|
| **Habitual Truancy** | **30** hours *without* a legitimate excuse for the consecutive absences | **42** hours *without* legitimate excuses for absences | **72** hours *without* legitimate excuses for absences |
| **Excessive Absences** | -- | **38** excused or unexcused hours absent *unless* the absence is medically excused | **65** excused or unexcused hours absent *unless* the absence is medically excused |
| **Chronic Absenteeism** | -- | -- | **10% of total hours either** *excused or unexcused* |

(Source: DEW's 'https://education.ohio.gov/Topics/Student-Supports/Attendance-Support/Ohio-Attendance-Laws-FAQs#FAQ4887')

Brick and mortar community schools (including those using a blended learning model) must follow all requirements in the table above. Both truancy and excessive absences apply to all public schools, including e-schools. All public schools must implement interventions for students who have not participated in instructional activities and thus meet the triggers for habitual truancy and/or excessive absences. Students in a virtual environment are expected to participate in instructional activities on a consistent basis that conforms to the school calendar.

In addition, for community schools, Ohio Rev. Code Chapter 3314 does require the following, which is a separate law from the categories in the table above.

A. 3314.03(A)(6)(b): the governing authority must adopt an attendance policy that includes a procedure for **automatically withdrawing** a student from the school if the student without a legitimate excuse fails to participate in seventy-two (72) **consecutive** hours of the learning opportunities offered to the student.
B. 3314.08(H)(2): if the student without a legitimate excuse fails to participate in the first seventy-two (72) consecutive hours of learning opportunities offered to the student in that subsequent school year, the student shall be considered not to have re-enrolled in the school for that school year.

Ohio Rev. Code § 3313.64(J) states that the treasurer of each school district shall, by the fifteenth day of January and July, furnish the director of education and workforce ~~superintendent of public instruction~~ a report listing the names of each child in the permanent or legal custody of a government agency or person other than the child's parent and each child who resides in a home, who attended the district's schools during the preceding six calendar months. For each child, the report shall state the duration of attendance

of that child, the school district responsible for tuition on behalf of the child, and any other information that the director ~~superintendent~~ requires. Upon receipt of this report, the director ~~superintendent~~ shall deduct each district's tuition obligations and pay to the district of attendance that amount plus any amount required to be paid by the state.

Ohio Rev. Code § 3314.08(B) requires the governing authority of each community school to annually report the number of students enrolled in the community school. For each student, the governing board of the community school must report the city, exempted village, or local school district in which the student is entitled to attend.

A. Ohio Rev. Code § 3313.672 specifies documentation that must be provided in the enrollment process and includes a birth record and any pertinent court orders. Proof of residency is also needed to establish where a student is entitled to attend school under Ohio Rev. Code § 3313.64 and 3313.65. However, see specific McKinney-Vento Homeless Assistance Act guidance in DEW FTE Review Manual if testing a homeless student.
B. Ohio Rev. Code § 3317.031 requires membership records be kept intact for at least 5 years.

DEW will continue to adjust the FTE used for the funding formula as the school updates its information throughout the year. At the close of the school's fiscal year end, DEW will reconcile the Final FTE Foundation payments and determine whether the school has a corresponding receivable from or payable due to DEW based upon the accumulation of student FTE's throughout the year. This reconciliation is particularly complex for mobile students. It is critical that schools accurately and timely report their student data to DEW in order for this reconciliation to be performed.

Community schools should continuously review FTE adjustments that impact their monthly payments. All community schools have access to FTE Detail (FTED-001) and FTE Adjustments (FTED-003) reports in the Data Collector. These reports allow a community school to see the impact of all adjustments on FTEs. These reports are updated on a regular basis (by DEW). [DEW EMIS Manual, Section 1.3]

**DEW FTE Reviews**

Ohio Rev. Code § 3314.08(K) permits FTE reviews, which DEW performs to verify the accuracy of the enrollment and attendance data reported by community schools into EMIS, which sometimes result in FTE adjustments (errors identified by DEW and the community school adjusts their EMIS records), or can result in "clawbacks" (errors identified by DEW FTE Reviews but the community school does not adjust their EMIS records); both of which can be money due back to DEW. These FTE reviews occur at a minimum once every 5 years, but may occur more often. Schools should therefore continue to evaluate whether DEW's Final FTE Foundation adjustments and FTE reviews, could result in a material receivable, payable, or potential contingency footnote disclosure in their GAAP-basis annual financial statements.

**Tracking Student Participation for Non-Classroom Learning Opportunities**

For schools with blended learning opportunities that have an online component, inquire with management and document how the online educational system tracks student participation. The capabilities of online educational systems vary from school to school. Some schools can track log-ins and log-outs; however, the duration of time online may not equate to the hours a student actually spends learning. When evaluating student attendance and participation in non-classroom learning opportunities in a blended learning school, it is important to understand how much reliance the school/auditor can place upon a student's time spent logged into the system as evidence of participation. If an online system is capable of tracking learning opportunity participation, the school must produce Excel spreadsheets showing the daily, weekly, and monthly accounting of learning opportunities. It also must be able to show the final total of all online learning opportunities that a student participated in. The blended school may have more than one online system that tracks the duration of learning opportunities. In these circumstances, the times may not overlap

or be counted more than once. Time not on the computer (self-reported) may not overlap online time. Where there can be little reliance on log reports, the school may need to supplement online durational learning documentation with manually kept student activity logs certified by teachers. Blended learning schools might also maintain student activity grade books, which document assignments completed, and teacher grades throughout the year to help support participation. Such books should be maintained on a per student, per subject, per assignment basis.

If the blended learning school's online system does not track the amount of time students participate in online learning opportunities, schools may alternatively follow the guidance for "Minimum Documentation Requirements for Non-Classroom, Non-Computer Based Learning Opportunities" in DEW's FTE Review Manual. It is recognized that schools may track learning opportunities in different ways due to different system capabilities. [DEW FTE Review Manual]

Schools may have learning opportunities their online systems do not track and that take place offline or not on a computer. Also, some school's online systems may not be able to track and document a student's participation in online learning opportunities. These schools must use the documentation requirements for other learning opportunities and be able to provide the information on request. [DEW FTE Review Manual]

Documentation must exist for all learning opportunities and must be certified by a teacher. Other learning opportunity hours should not include the online hours that already have been counted. The following are minimum requirements for "Other Learning Opportunities": [DEW FTE Review Manual]

A. Student SSID;
B. Brief Description of learning opportunities (e.g. class or course information);
C. Dates and times of actual learning opportunities;
D. Total of verified learning opportunities time; and
E. Teacher certification of the reported learning opportunities.

Schools may use the "Alternative Learning Opportunity Documentation Log" to document these learning opportunities, but they are not required to. This is an example of how these learning opportunities can be tracked. It is up to the school to decide on how best to meet these requirements. [DEW FTE Review Manual]

**Auditors should consider when testing controls and compliance whether or not:**

A. The community school's Education Plan in its charter adequately describes the blended learning environment and how the school will capture attendance and participation.

B. The community school notified DEW as required of its intent to operate a blended learning model for the school year.
    1. As noted above the community school must notify the Ohio Department of Education and Workforce's Office of Community Schools, in writing, no later than July 1 preceding the school year if it wishes to begin or cease using a blended learning model, pursuant to Ohio Rev. Code § 3302.41(A). DEW's opening assurances, however, are required to be completed by the sponsor for the school's **first year** of operation, or if the school is not an e-school and it **changed buildings**, the first year operating from the new building, which include a section regarding whether the school will operate a blended learning model.

C. DEW conducted a FTE Review for the period under audit.
    1. Reliance on DEW's FTE Review is based on the following factors:
        a. DEW is the regulator and considered an expert in FTE reporting matters

b. As permitted by Ohio Rev. Code § 3314.08(H)(2), DEW has established student participation criteria and documentation requirements for community schools with blended learning in their FTE Review Manual.

D. Compare the community schools master calendar submitted to DEW in EMIS with the board approved school year calendar reflected in the minutes[48] and published on the school's webpage/or in the parent handbook (differences and their impact on reliance are considered in the steps below). If not in agreement consult with the CFAE Community School Specialist. See testing procedures step 3 below.

E. DEW's FTE review included a sample test of 25 or more students. If not, consult with the CFAE Community School Specialist. See footnote in step 7a below for further information.

F. The school had any contracts/agreements paid on a percentage/number of FTE (or anything that changes), and therefore whether a true-up was required, and properly reported on the financial statements/disclosed in footnotes (if necessary). Such payment terms are common in sponsor/authorizer, management company/operator, and some vendor agreements.
   1. A finding for recovery will likely be issued when the true-up calculation(s)/evaluation(s) have not been performed and the auditor determines an amount is due; or an unreasonable legal evaluation/determination has been relied on; or the amount due has not been repaid, or is not in the process of being repaid under the terms of a reasonable and enforceable repayment agreement.

G. The community school had appropriate policies and internal control procedures in place to ensure compliance with enrollment, durational participation, student withdrawal and other requirements relevant to a community school's FTE reporting, and perform implementation tests.

**Note:** If in the normal course of performing the testing procedures below, information is obtained that you feel is relevant and DEW wouldn't have had available for their review, raising significant concerns on the reliance on DEW's FTE Review to satisfy the participation requirement, auditors should consult with the Center for Audit Excellence Community School Specialist to determine whether additional testing may be necessary.

[48] Minutes should include an exhibit of the calendar approved or document within the body of the minutes the details of the approved calendar. If this level of documentation is not available, the actual approval control process cannot be adequately verified.

| In determining how the government ensures compliance, consider the following: | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|---|
| • Policies and Procedures Manuals,<br>• Knowledge and Training of personnel<br>• Checklists<br>• Legislative and Management Monitoring<br>• Management's identification of changes in laws and regulations<br>• Management's communication of changes in laws and regulations to employees | Request the client provide a document/narrative describing/ supporting how they operated during the year.<br><br>For example the document / narrative should explain controls in place over student attendance for each learning model utilized (i.e.. how attendance was taken, how learning opportunities were offered to students, how student engagement in remote or online opportunities were measured, how the school monitored missing students for truancy, etc.). Referencing to various sections of plans/policies is strongly encouraged within this narrative. | |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

**Auditors should refer to DEW's FTE Review Manual & section 1.3 of DEWs EMIS Manual for additional guidance about the Blended Learning compliance requirements described in this OCS Step. Reviewing and understanding the guidance in this Manual is a critical part of accurately testing student enrollment and attendance. The FTE Review Manual is available at the link above**.

***Note**: The most effective audit procedures include a review and evaluation of school policies as well as verification that schools are maintaining the appropriate student enrollment, learning models, learning opportunities, attendance, participation, duration and withdrawal documentation. A school's timeliness of student enrollment and withdrawal dates is also a critical component in ensuring accurate FTE reporting to DEW.*

AOS provides DEW copies of all community school audit reports. As a result of issues identified and reported under audit, auditors should be aware that DEW may perform a FTE review in a subsequent fiscal year to assess compliance and determine the accuracy of the school's reported FTE. This could potentially impact future school funding.

**Procedures for Blended Schools**

1. Obtain a copy of the school's enrollment and attendance policies and procedures and inquire with the EMIS Coordinator to gain an understanding. Document and evaluate the school's procedures for:
   a. Annually notifying DEW of its intent to operating a blended learning program;
   b. Enrolling and withdrawing pupils timely;
   c. Verification of student residence/address;
   d. Setting up school calendars for students in EMIS;

e. Offering and documenting credit flexibility[49];
f. Offering and documenting blended learning attendance and/or participation, for both classroom and non-classroom time, if applicable.
   i. **For blended schools, it is important that their policy/procedures address how they identify and monitor overlap/duplication of time between various online learning systems; as well as duplication of time between online learning systems, and classroom or other non-classroom/non-computer time. The school must have controls in place to ensure the same period of time does not overlap or be counted more than once**;
g. Monitoring and documenting student absences; and
h. Monitoring, withdrawing, and notifying the resident public school of withdrawn students or students truant for 72 or more consecutive hours. *Note: If the school has a stricter policy than* 72 *hours, consult with CFAE Community School Specialist.*

Issue a noncompliance citation if:
a. The school operated remotely but was not an e-school, and did not have a Blended Learning Model Declaration (Ohio Rev. Code § 3302.41)
b. Lack of support or if it appears they are not following the policies/controls of model(s) chosen/utilized.

For items above not addressed in the schools written policies/procedures, consider whether an internal control comment is appropriate under AU-C 265.

2. As part of this evaluation, determine whether the Community School's policies and procedures are consistent with the Educational Plan in the Community School's Charter, as approved by the school's sponsor, and include sufficient procedures for identifying and tracking attendance and participation for all students for whom the *community school* is responsible.

3. Inquire with community school management about the learning opportunities it offered as part of its operating standards during the audit period.
   a. Determine whether the community school offered the minimum 920 hours of learning opportunities by reviewing the master school calendar in EMIS and student participation records (both classroom and non-classroom as applicable in step 8 below).
   b. Inquire with management to determine if school was canceled during the audit period due to weather or electrical outages and ensure the EMIS calendar included sufficient hours to meet the minimum 920 hours of learning opportunities despite these closures (i.e., the closures should be reflected in the final EMIS calendar for the school year).
   c. If the community school offered more or less than the required minimum, determine whether the community school reported the accurate number of learning opportunities to the Ohio Department of Education and Workforce (this will be the Master Calendar in EMIS).
   d. Compare the community schools master calendar submitted to DEW in EMIS with the board approved school year calendar reflected in the minutes and published on the school's webpage/or in the parent handbook. If not in agreement consult with the CFAE Community School Specialist.

4. Review Ohio Rev. Code § 3314.03, the charter, and the community school's policies and procedures, to determine what the sponsor requires for appropriate documentation of excused and unexcused

[49] Each school using credit flexibility is mandated to have a policy on credit flexibility, as required by Ohio Rev. Code § 3313.603(J). Participation results in an individual education plan (IEP) for each student approved to participate in credit flexibility. Engaging in a credit flexibility activity may count in the instructional hours of a student if the student requests to use credit flexibility and the other procedures associated with credit flexibility, such as goal-setting, specification and completion of activities, and review by a licensed teacher, are in place.

absences. Select five[50] students with absences and review the student file or other documentation to verify the community school is gathering appropriate supporting documentation for excused absences. If the absence is unexcused, determine whether the community school is tracking the total unexcused absences for the student and following its truancy policies and procedures. (Note excused absences for the online/non-classroom portion will not count towards obtaining the required hours for FTE.)

***Note****: If the charter does not address minimum documentation requirements, this would be a control deficiency. The EMIS Manual may be referenced as an additional basis for your control deficiency. [DEW EMIS Manual 2.1.1 - Required Documentation]*

5. Consider whether the community school should include a receivable, payable, or contingency footnote in accordance with the financial reporting framework requirements (i.e.. GAAP) related to Final Foundation Funding adjustments after year end and/or as a result of DEW FTE Reviews.

   ***Note****: Since community schools are funded on an annual basis, DEW must reconcile and make Final Foundation Funding payments after the fiscal year end close out is performed. These Final Payments occur no sooner than August and may span several months before DEW finalizes the Foundation Funding payments. Schools should evaluate each FTE Foundation adjustment at the time made, rather than waiting until all FTE Foundation adjustments have occurred for the fiscal year and just evaluating the net. ~~We anticipate community school receivable amounts at year end would be less significant under the new funding model as compared to the old funding model~~.*

   a. Also consider whether a true-up was required for any contracts/agreements paid on a percentage/number of FTE (or anything that changes), and if so, whether it was treated properly in accordance with the summary of audit requirements above. (AOS auditors see guidance in Teammate / IPA's see guidance above, and suggested steps in Community School Audit Programs for IPA's at https://ohioauditor.gov/references/guidance/communityschools.html ).

6. Perform the following procedures:

   a. Select a representative number of **newly enrolled** students during the school year (normally five[50] students is sufficient). The new enrollment list may be obtained by the community school through EMIS or other student attendance information system.
      i. Identify when students were enrolled and began participating in learning opportunities (or for blended students, this could be their first log on date) and determine whether it was timely. Waiting several weeks or more from the date a parent or guardian signs the student enrollment form is not timely.
      ii. Determine whether the school maintained copies of the student's birth record[51], proof of residency, and parent/guardian signed enrollment forms in the student file to support enrollment and resident district determinations.

   b. Select a representative number of students from the community school's **withdrawal** list (normally five[50] students is sufficient). The withdrawal list may be obtained by the community school through EMIS or the community school's student information system.

[50] Identifying noncompliance during the test increases risk. If an attribute for one or more of the five students selected for testing fails consult with the Center for Audit Excellence to determine if testing should be expanded and/or if a noncompliance comment should be elevated.

[51] The original source document for a birth record may be a photocopy of a birth certificate or a properly attested documentation of birth. (DEW FTE Review Manual, p. 33 of FY 24 manual)

i. Identify when students were withdrawn and determine whether it was timely (e.g., waiting several weeks or more from withdrawal notification is not timely).
   a) For example: using grade records and/or attendance records, determine the last day students were reported as attending the community school. If a student was reported absent for 72 consecutive hours, determine the date the student should have been withdrawn and ascertain whether the school reported the withdrawal timely.

ii. Determine whether the appropriate EMIS withdrawal code was used to withdraw the student based on evidence in the student's file. DEW EMIS Manual 2.1.1 & 2.4 provides examples of the types of documentation required to be obtained and maintained by the school for each type of withdrawal code.

iii. Inquire with management about any significant differences or adjustments. Consider reporting noncompliance or other client communication for any significant unexplained variances.

*A community school should not wait until March to remove a student from its enrollment if the student withdrew in October. Significant delays in reporting student withdrawals constitute noncompliance. Likewise, a student with excessive truancy should have received multiple communications from the school to verify the student's absence during the 72-hour period. Community schools should maintain a daily call log, copies of written correspondence to parents/guardians, or obtain timely excuses from the parent, guardian, or adult-aged student for excessive absenteeism that does not result in removal of a student from enrollment.*

**When DEW <u>has conducted</u> a FTE review for the fiscal year:**

7. If DEW has conducted a FTE review for the fiscal year: (Note: if a FTE review **has not been conducted**, proceed to step 8):

   a. Obtain a copy of the written report[52] and review the results of procedures performed[53].
   b. If DEW reported an issue(s), auditors should assess materiality and consider reporting a similar finding(s) in the audit report or management letter based upon the results of DEW's FTE Review.

**When DEW <u>has not conducted</u> a FTE review for the fiscal year:**

8. Determine whether the school has support for meeting the 920 hours of learning opportunities and whether the school is following its policies for documenting and measuring student enrollment, attendance, participation and duration.

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[52] AOS Auditors should check the community school master spreadsheet available on the Community School intranet page for the status of FTE reviews. If available, these letters can be obtained from *W:\~~Community~~ School FTE Review Letters & Other DEW Correspondence\Community Schools*. IPA's should check the same spreadsheet in the AOS IPA Portal, and obtain the report from the client, if one is noted.

[53] Auditors should determine if a sample size of at least 25 students was tested. If the size was less than 25 and there was not a valid reason evident for the reduction, the CFAE Community School Specialist should be contacted to see if the review can be relied upon or if step 8 will need to be performed. Be aware that some FTE letters indicate a 'modified' review/sample was performed (which typically concentrates on various areas of non-compliance noted in the schools prior year review). If the schools letter states such, review the modified protocol listing on the AOS Community School intranet page for details of the modified review. For items tested by DEW, as long as the number of students tested is greater than or equal to the number of students required by OCS 4A-5, DEW's review may be relied on *for the specific items the modified protocol listing/FTE review document mentions were tested* at the particular school. IPA's may request the modified protocol listing from CommunitySchoolQuestions@ohioauditor.gov .

a. Student file testing: Select a representative number of students enrolled for **any part of the school year** (normally five[50] students is sufficient and this is a separate sample from the step below; however, auditors should assess the risk of noncompliance for their particular school and increase this selection, if appropriate)

Review the student files for the selected students and determine whether the school is following its policies for documenting and measuring student enrollment, attendance and participation:

i. Determine whether the school has birth record[51] and proof of residency documentation for the student contained in the student file.
ii. Determine whether the school has completed/signed student enrollment forms contained in the student file.
iii. Determine whether the community school is retaining the membership record for at least five years.
iv. Determine whether the school has maintained a record of student tardiness and absences in the student file (or elsewhere) sufficient to enable the school to monitor its compliance with their policy/procedures on the 72 consecutive hour rule for withdrawal. If the student was reported absent for 72 consecutive hours, determine the date the student should have been withdrawn, ascertain whether the school reported it timely, and verify that less than 1 FTE was claimed for the student. You do not have to calculate the exact FTE. If you find the school claimed 1 FTE for a student that should have been withdrawn, consider that when selecting the number of students to test in step 8 b(ii)(b).
    a) When students are noted nearing the 72 consecutive hour withdrawal mark, and then attend for just a few days, determine if the school complied with Ohio Rev. Code § 3321.191 requirements & the schools truancy policy (send parent notices, maintain call logs, refer to court (if required), etc.). Also, look for proof of completed assignments for the few days the student was marked as attending to substantiate that they did attend. https://education.ohio.gov/Topics/Student-Supports/Attendance-Support/Ohio-Attendance-Laws-FAQs

b. Non-classroom participation time testing (online duration or non-computer/non-classroom log documentation)

i. Determine and document how the schools online educational learning system operates and how much reliance can be placed upon log in and log out times (i.e., duration of time) in the system as evidence of student attendance and participation (step ii below). You should also review the school's Educational Plan approved by the sponsor and the schools contract to determine what type of blended learning model they have. Consider utilizing the 'E-school and Blended School FTE Review Guiding Questions' appendix in the DEW FTE Review Manual.

Examples:

a) If the brick & mortar school has a blended learning model that only requires students to attend 3 of 5 hours per day at the school location (classroom time), and the remaining 2 hours is non-classroom time - only the 2 hours of non-classroom time would need tracked / tested.
b) If the brick & mortar school has a blended learning model where the students spend all their time learning on a computer at their own pace, but it all takes place within the brick & mortar setting with a teacher on-site, there would be no 'non-classroom time' and therefore no time would be required to be tracked / tested. This is a blended learning educational model, but for FTE / funding purposes, not considered blended.

ii. Attendance / Durational Participation Testing: For all students participating in classroom time and online/non-classroom time, select five[50] community school students that were enrolled for **any part of the school year** from the school's EMIS report.

a) For each student select 5 non-consecutive enrollment days under the audit period and determine whether overlap/duplication of time between various online learning systems; as well as duplication of time between online learning systems, and classroom or other non-classroom/non-computer time exists. In addition, determine whether the school maintains log records or student-prepared participation logs that match the daily hours of instructions listed in the school's daily EMIS calendar for selected students. The total log time hours and non-classroom/non-computer learning documentation for each student should match the hours reported in EMIS. If the student has non-computer learning opportunities, the school should maintain documentation in the student file to document participation and approval in writing by a teacher of such time. *Auditors should report noncompliance or other client communication where log and non-computer hours documented in the student files do not match EMIS and no other supporting documentation exists, as well as if overlap/duplication of time is noted.*

***Note****: This is admittedly a difficult step; however, the total computer and non-computer-based learning opportunities must be adequately supported and be reasonably comparable to the total hours of instruction claimed by the school to be provided to the student based upon the FTE reported in EMIS. Also, the 10-hour cap in Ohio Rev. Code § 3314.08(H)(3) is specific to e-schools, and therefore is n/a to blended schools.*

b) Using the applicable student files, attendance and durational participation records, and the school calendar, determine if the student should have 1.0 or less than 1.0 FTE and compare to what the school reported to DEW in EMIS. For example, if the blended schools attendance policy requires the students non-classroom participation time to be during certain hours/days, and a student is documented as being absent, whether excused or unexcused, the students FTE should not equal 1.0. If it is evident that a FTE should have been reduced and wasn't we would consider this an exception. You do not have to calculate the exact FTE. Exceptions should be discussed with the CFAE Community School Specialist.[54]

c. If the school did not maintain durational participation data, determine whether or not the required standard contingency footnote for funding was reported by the school.

[54] We will only test the Individual Student Education Plan and adherence to that plan if a student selected is participating in credit flexibility. Did the school have an approved IEP and was it completed according to DEW requirements. Also consider information contained in the guidance about credit flexibility if such a student is selected. If the student's 920 hours involves non-classroom time, the student will never have 1 FTE. As long as that student had less than 1 FTE, we would not take exception, but you should determine that the conditions of the IEP were met. Additional details can be found in section 4B-4 of Chapter 4.

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

- Consider the results of all procedures in this Section when evaluating the school's compliance with FTE requirements.

- Evaluate whether the community school had appropriate policies and internal control procedures in place to ensure compliance with enrollment, durational participation, student withdrawal and other requirements relevant to a community school's FTE reporting. Most likely non-compliance as well as missing or inadequate controls for FTE reporting is indicative of an AU-C 265 control comment.

# *CHAPTER 4B – INDIRECT LAWS & CHAPTER 4C STATUTORILY MANDATED TESTS*

**AU-C 250.A13** Many laws and regulations relating principally to the operating aspects of the entity do not directly affect the financial statements (their financial statement effect is indirect) and are not captured by the entity's information systems relevant to financial reporting. Their indirect effect may result from the need to disclose a contingent liability because of the allegation or determination of identified or suspected noncompliance.

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

i. fundamental to the operating aspects of the business,

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

iii. necessary for the entity to avoid material penalties

Chapter 4B includes "indirect" laws. Chapter 4C includes laws that statutes mandate auditors to test during an audit.

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# CHAPTER 4B - INDIRECT LAWS

**4B-1 Compliance Requirement:** Ohio Rev. Code § 3314.24(A), 3314.02 - Internet- or computer-based community school cannot contract with a nonpublic school for instructional facility space.

Ohio Rev. Code § 3314.24 states no internet- or computer-based community school shall enter into a contract with a nonpublic school to use or rent any facility space at the nonpublic school for the provision of instructional services to students enrolled in the internet- or computer-based community school.

***Notes***:

(1) Violations require DEW to withhold foundation payments for any students using nonpublic school facilities. This is more in the nature of an indirect *penalty* per AU-C 250.06(b)(iii) than a direct effect, but we should report a finding in the GAGAS report because it could lead to the closing of the community school and therefore requires attention of those charged with governance.

(2) Ohio Rev. Code § 3314.02(A)(7) defines Internet- or computer-based community schools as those in which the enrolled students work primarily from their residences on assignments in nonclassroom-based learning opportunities provided via an internet- or other computer-based instructional method that does not rely on regular classroom instruction or via comprehensive instructional methods that include internet-based, other computer-based, and noncomputer-based learning opportunities. ***Note:*** If a community school operates mainly as an internet- or computer-based community school and provides career technical education under Ohio Rev. Code § 3314.086, the school shall be considered an internet- or computer-based school, even if it provides some classroom-based instruction.

(3) This section only applies to community schools which are classified as internet/e-schools. It does not apply to a brick & mortar or blended community school.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

Read internet schools' sponsor agreement for provisions regarding instructional space, and follow up with inquiry regarding if such space / contracts exists. If contracts for instructional space exist, determine if they were with nonpublic schools.

Any noncompliance should be sent to the CFAE Community School Specialist to discuss with the Department of Education and Workforce.

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

**4B-2 Compliance Requirement:** Ohio Rev. Code §§ 3314.024 and 3314.02(A)(8) – Accounting for management company expenses.

**Summary of Requirement**:

Ohio Rev. Code § 3314.024(A) requires a management company / operator to provide a detailed accounting including the nature and costs of goods and services it provides to the community school. AOS prescribed this detailed accounting to be in the form of a footnote in Bulletin 2004-009.

Ohio Rev. Code § 3314.02(A)(8) states an "Operator" or "management company" means either of the following: (a) An individual or organization that manages the daily operations of a community school pursuant to a contract between the operator or management company and the school's governing authority; or (b) A nonprofit organization that provides programmatic oversight and support to a community school under a contract with the school's governing authority and that retains the right to terminate its affiliation with the school if the school fails to meet the organization's quality standards.

- Therefore, the terms "operator" and "management company" are synonymous, and the detailed accounting required by Ohio Rev. Code § 3314.024 applies to any entity meeting the definition in Ohio Rev. Code § 3314.02(A)(8).
- An educational service center or school district who may or may not be a community school's sponsor, may also be 'operating' the community school pursuant to an agreement. In addition, certain community schools are the operator of other community schools. In these situations, Ohio Rev. Code § 3314.024 would be applicable.[55]

Ohio Rev. Code § 3314.024 states a management company that receives more than twenty percent of a community school's annual gross revenues[56] shall provide a detailed accounting, including the nature and costs of goods and services it provides to the community school. This information shall be reported using the categories and designations set forth below and be subject to verification through examination of community school records during the school's regular financial audit.

Detailed accounting shall include the following categories of expenses:

1. Aggregate salaries and wages;
2. Aggregate employee benefits;
3. Professional and technical services;
4. Property services;
5. Utilities;
6. Contracted craft or trade services;
7. Tuition paid to other districts;
8. Transportation;
9. Other purchased services;
10. Supplies;

[55] AOS Auditors should check the AOS community school master spreadsheet available on the Community School intranet page to determine if/what entity DEW lists as the operator. IPA's should check the same spreadsheet in the AOS IPA Portal. If the client disagrees with the entity listed as their operator, consult with the CFAE Community School Specialist.

[56] Since this legislation lacks specificity, the AOS is interpreting it to mean:

1. Receipts for this calculation include **any** money that is given from the community school
   a. to the management company, or
   b. to a third party vendor on behalf of the management company.
2. Auditors should accept reasonable calculations on cash or GAAP basis (as long as they are in accordance with established policies and are consistent from year to year).

11. Land;
12. Buildings;
13. Improvements other than buildings;
14. Equipment;
15. All other capital outlay;
16. Principal;
17. Interest;
18. Judgments;
19. Other direct and indirect costs.

These expenses shall be disaggregated as follows, as applicable:

1. Regular instruction;
2. Special instruction;
3. Vocational instruction;
4. Other instruction;
5. Support services;
6. Noninstructional activities.

Ohio Rev. Code § 3314.03(A)(8) includes the requirements of community schools to have financial audits by the Auditor of State. The contract between the sponsor and the governing authority shall require financial records of the school to be maintained in the same manner as are financial records of school districts, pursuant to rules of the Auditor of State, and the audits shall be conducted in accordance with Ohio Rev. Code § 117.10. This includes preparing the detailed accounting of management company expenses in Ohio Rev. Code § 3314.024.

Material misstatement or unaudited/omission of the community school financial statement detailed accounting footnote prescribed by Bulletin 2004-009 should be reported as GAGAS level, material noncompliance with Ohio Rev. Code § 3314.024. Because GAAP does not require this disclosure, do not modify the opinion; however the opinion may be impacted if necessary assurances related to pension and OPEB testing are not obtained.

***Note***: A SAMPLE detailed accounting presentation is available on the Auditor of State website at: https://ohioauditor.gov/references/guidance/communityschools.html.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

All community schools meeting the threshold in Ohio Rev. Code § 3314.024(A) must include the management company detailed accounting in the footnote prescribed by Bulletin 2004-009 in their annual financial statements. AOS, pursuant to Ohio Rev. Code § 3314.024(D) and AOS Bulletin 2004-009, verifies information contained in the detailed accounting footnote by examining community school records during the course of the regular financial audit. This verification occurs through one of the three options explained below.

*Audit Procedures*:

1. Determine whether the community school met the threshold in Ohio Rev. Code § 3314.024(A).
2. If so, inquire of client whether Option #1, #2, or #3 below was selected to satisfy the requirements described above.
3. Review information below related to the Option selected.
4. Review AOS Master Community School spreadsheet, 'OCS 4B-2 Mgmt. Co. AUP' column to determine whether such a report/testing has been submitted to/processed by CFAE.

a. If such has, AOS auditors obtain such report/testing from audit search on Intranet (Option #3), or by contacting CommunitySchoolQuestions@ohioauditor.gov (Options #1 or #2). (IPA auditors obtain from client.)
b. If client indicates such a report was prepared, but it is not on the AOS Master Community School spreadsheet, obtain from them and submit to CommunitySchoolQuestions@ohioauditor.gov for processing. (IPA auditors obtain from client.) While it is preferential for the reports to be submitted to CFAE by the firms preparing, if auditors find the report was not, they should obtain and submit (and ultimately use the file processed by CFAE, which will become available on the Intranet, and include a memo).

5. Consider results in report/testing over the management company footnote, and whether the management company had sufficient internal controls over compliance for the community school under audit.
6. Tie the community school's management company footnote from their financial statements under audit, as prescribed by Bulletin 2004-009, to the footnote contained in the report/testing above.

***Note***: Occasionally, these footnotes report more expenses than amounts the school paid to its management company. When this occurs, the management company is subsidizing (or loaning money to) the school. We believe the basic statements should report material amounts as revenue (Contributions from management company), and additional related expenses under GASB Statement No. 24 (GASB Cod. N50.128).

While some may view recording this entry as "merely" grossing up revenue and expense, we believe the school's true expenses are understated without this entry. Presenting the management company's willingness to subsidize operations in the statements is also important information for readers. Also, we are aware that some contracts specify these amounts are repayable loans from the management company, which would require crediting "loans payable to management company" in the statement of net position rather than "subsidy from management company" in the statement of revenues and expenses.

Auditors should obtain evidence supporting whether these amounts are subsidies or loans from the management company. Usually the contract with the management company will explain whether the school must repay the management company. We suggest representation letters include these amounts, and represent whether these amounts are contributions or repayable loans.

If these are repayable loans, the balance sheet should reflect them as such, and consider whether the opening equity is overstated based on prior year unrecorded loans.

See further information regarding loans from operator/management company to community school in Ohio Compliance Supplement, section 4A-3.

***Note***: The AUP guidance below assumes the school's auditor has sufficient evidence to support an opinion on the school's statements, and is using portions of the AUP, for the management company detailed accounting footnote prescribed by Bulletin 2004-009.

A school's auditor must judge whether deficiencies in an AUP report affect the management company disclosure sufficiently to require a GAGAS noncompliance finding in the community school's audit report. For example, completely omitting the detailed accounting footnote prescribed by Bulletin 2004-009 would require a GAGAS noncompliance finding in the school's audit report, citing Ohio Rev. Code § 3314.024.

In addition, AUP procedures #4 (step B) through #6 are included to provide necessary assurances related to the net pension and OPEB liabilities, deferred outflows of resources, deferred inflows of resources, and pension and OPEB expense reported in accordance with generally accepted accounting principles. Absent these assurances, the auditor's opinion on the financial statements will likely need to be modified.

**Option #1: AOS Audit of Management Company**
The management company may elect to have AOS (or an IPA contracted by AOS) audit this information centrally at the management company. AOS or the IPA will examine the books, records, and other supporting documentation prepared and maintained by the management company.

**Option #2: Management Company Contracts for Audit Report**
Alternatively, AOS will accept a management company's independently audited financial statements as meeting the requirements of Ohio Rev. Code § 3314.024, provided the audit meets the audit and disclosure requirements set forth in the following paragraph. (IPA's may elect to follow this guidance.):

- Where a management company manages more than one community school or has other "lines of business" in addition to managing a community school, AOS will require a statement showing direct and allocated indirect (e.g., overhead) expenses for each school. The company should present this statement in a combining or consolidating format (i.e., present a column for each school). Additionally, the American Institute of Certified Public Accountants' (AICPA) Audit and Accounting Guide, *Not-for-Profit Entities*, sections 14.16 ~~12~~ through 14.19 ~~14~~ permit not-for-profit management companies to present this as supplemental information. Notes to the supplemental information should briefly describe the method used to allocate overhead costs. Since overhead allocations require subjective judgment, their amounts and allocation method should be considered disclosures of higher inherent risk.

- Where a management company's sole business is providing services to one community school, the company's audited statements should suffice, if the statements classify expenses in substantial conformance with USAS object codes.

The management company's audit opinion must extend to the combining or consolidating columns. Auditors of community schools must set their materiality threshold to include assurance the supplemental information for each school is not materially misstated. Opinions that report only on the individual school statement's fair presentation in relation to the management company's basic financial statements do not provide sufficient audit assurance, unless accompanied with an agreed-upon procedures report related to the supplemental information.

**Option #3: Agreed Upon Procedures**

If a management company does not have audited financial statements or the audited financial statements do not present combining or consolidating columns for each of its schools, or if the management company's auditor does not provide opinion-level assurance on the combining or consolidating columns presenting

each school, the Auditor of State will accept an agreed-upon procedures (AUP) report per AICPA Clarified Attestation Standards Section 215. Additionally, unless the management company makes records available for audit pertaining to the community school's federal programs, AOS may require an AUP report if the community school is a Single Audit.

*Engagement Requirements:*

1. The engagement should follow AICPA Clarified Attestation Agreed Upon Procedures Standards.

2. The management company's practitioner auditor or engaging party should e-mail the draft (i.e. example) procedures to the schools and to AOS Center for Audit Excellence (CommunitySchoolQuestions@ohioauditor.gov). AOS will attest to the sufficiency of the procedures on behalf of the AOS, **prior to** the practitioner ("auditor") commencing the procedures. Each AUP Report and engagement letter should list the schools to which the agreed-upon procedures apply. Example required procedures follow these instructions. Community Schools should work with their management company on a timeline appropriate for their audit needs.

3. AOS requires the following, applicable to each Ohio school the company manages:
    a. The accountant may issue one AUP report covering all the company's Ohio schools.
    b. The report must explain that the accountant performed procedure #1 and 2 below for the compilation of the footnotes prescribed by Bulletin 2004-009 separately for each school.
    c. The report must explain that the accountant performed procedures #4 (step B) through 6 below to provide necessary assurances related to the pension and OPEB amounts in accordance with GASB Statement No. 68 (as amended) and No. 75.
    d. Regarding the individual expenditure transaction procedures below (procedures #3, 4 and 7), the accountant may select one sample from the population of all costs charged to the company's Ohio schools for each year ending June 30.

4. Ohio community schools' fiscal years end each June 30. If the management company is on a different fiscal year, the management company must compile the footnote prescribed by Bulletin 2004-009 for each Ohio school's June 30 fiscal year.

    For example, if the management company's fiscal year ended December 31, 20XX, each Ohio school's June 30, 20XX footnote would report expenses the management company incurred on a school's behalf for the first six months of calendar 20XX plus the last six months of calendar 20XX-1.

5. The accountant performing the AUP should describe the Ohio schools to which the AUP relate and should attach each of the community schools' footnotes to the AUP report.

6. As stated in the AICPA Attestation Agreed Upon Procedure Standards, auditors should report all exceptions, such as costs charged to a school where documentation does not support it directly benefited the school, or for which insufficient documentation exists.

7. Because the procedures relate to each school's footnote, the accountant performing the AUP should apply the procedures to footnotes compiled from the management company's accounting system, separately summarizing the expenses for each Ohio community school. This requires that the management company's accounting system include accounts summarizing direct expenses the company incurs for each school. It is permissible to charge / assign indirect costs to these schools, *if the notes disclose the method for charging those costs, and if the note separately identifies indirect costs*.

**If the management company's accounting system does not include separate accounts for direct expenses for each school, it is unlikely the management company can meet the requirements of Ohio Rev. Code § 3314.024. In this case, the management company or the firm completing the AUP should consult with the Auditor of State.**

8. Uniform Guidance (2 C.F.R. § 200.501) requires each school expending $750,000 or more of federal awards in its fiscal year to prepare a schedule of expenditures of federal awards.

**If the management company accounts for Ohio school's federal awards, we believe it is reasonable to expect the management company to compile this schedule for each school, and for the AUP to include a procedure testing this compilation.**

**Note that this requires that the management company's accounting system be capable of segregating receipts, disbursements and cash balances for each federal award program of each school.**

**Procedure 2 below applies if a school expended $750,000 or more of federal awards during its fiscal year.**

**The AUP report should list the following required procedures and the results relating to each Ohio school:**

1. Trace the management company expenses from each footnote by function / object / accounting code to the community school's accounts in the management company's accounting system.

2. If the engagement is a Federal Single Audit, trace each school's federal award expenditures, by ~~CFDA~~[57] Assistance Listing number, receipts (if presented) from its schedule of expenditures of federal awards to the community school's accounts in the management company's accounting system.

   ***Note***: Receipts are not required to be presented; however, this procedure should be performed for receipts included on the Federal Schedule.

3. Select 100 direct non-payroll expense transactions (checks, EFTs, etc.) the management company charged to its Ohio community schools. (One sample selected from all the management company's Ohio schools will suffice. If the management company accounts for only one Ohio school, you may reduce the sample size to 60.)

   Compare the amount charged to a school to supporting documentation, including a canceled check (or EFT documentation, etc.) and vendor invoice, supporting that the cost:
   a. Is a direct expense benefiting the school;
   b. Is recorded for the proper amount for the proper period in the accounting system; and

[57] ~~Effective for federal awards made after November 12, 2020, the terms "Catalog for Federal Domestic Assistance (CFDA) number" and "CFDA program title" have been changed to the terms "Assistance Listings number" and "Assistance Listings program title". Auditors may see either term being used interchangeably for a period of time.~~

c. Is charged to a proper Ohio Uniform School Accounting System (USAS) object / accounting code in accordance with Ohio Admin. Code 117-6-01(B).[58]

4. Select 100 direct payroll expense transactions, including salaries and benefits the management company charged to its Ohio community schools. (One sample selected from all the management company's Ohio schools will suffice. If the management company accounts for only one Ohio school, you may reduce the sample size to 60.)

   Step A: Compare the amount charged to a school to supporting documentation, including a canceled check and to personnel files supporting that the cost:
   a. Is a direct expense paid to an employee for services provided solely to the school;
   b. Is recorded for the proper amount for the proper period in the accounting system;
   c. The amount paid agreed to the salary schedule and/or to amounts withheld; and
   d. Is charged to a proper Uniform School Accounting System (USAS) object / accounting code as required by Ohio Admin. Code 117-6-01(B) and described more fully in the USAS Manual available at https://ohioauditor.gov/publications/docs/uniform_school_accounting_system_user_manual.pdf.[58]

   Step B: Determine whether employee retirement contributions:[59]
   a. Are withheld for the appropriate retirement system in accordance with the requirements of Ohio Rev. Code chapters 3307 and 3309, unless the exceptions described in Ohio Rev. Code § 3307.01(B)(2)(b) or (c) or Ohio Rev. Code § 3309.013 apply;
   b. Are withheld at the appropriate rates for the applicable retirement system as described in Ohio Rev. Code §§ 3307.26 and 3309.47.

   For exceptions reported, include the following information for each instance identified where employee contributions to STRS/SERS (if required) were not properly withheld in the related payroll transactions:

| Community School | Employee Name | Pay Period End | Retirement System (STRS / SERS) | Amount withheld | Amount School should have withheld |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |

5. Determine whether withheld employee contributions were remitted to each of the retirement systems for each of the schools operated by the management company:[59]
   a. Compare the total STRS and SERS withholdings for the year from the payroll records to documentation of amounts remitted to the appropriate retirement systems.

   For exceptions reported, include the following information:

[58] Some schools may not post daily transactions in accordance with USAS, but rather convert the information to be in accordance with USAS prior to reporting information to DEW and their annual financial statement reporting. For these engagements, the school should maintain a crosswalk or other documentation to show this conversion. Auditors should report non-compliance if presented expenses are not broken out by function and object.

[59] Community school auditors do not need to request to perform this procedure at the client site when the AUP includes them. However; these procedures will not replace Census Data Examinations the Retirement System auditors may require to support their opinions on the audited GASB Statement No. 68 Schedules of Employer Allocations and Pension Amounts and the audited GASB Statement No. 75 Schedule of Employer Allocations and OPEB Amounts.

| | Community School | Employee contribution amounts withheld per the payroll records | Employee contribution amounts remitted to the retirement system | Variance |
|---|---|---|---|---|
| State Teachers Retirement System (STRS) | | | | |
| School Employees Retirement System (SERS) | | | | |

6. For the prior fiscal year, calculate the employer contributions based on total employee contributions to each school (total employee contributions/employee contribution rate x employer contribution rate). (Note: employee contributions should include employee contributions for employees and third party contractors.)[59]
   a. Compare the results from calculation above to the employer contributions on the audited schedules of employer allocations separately for STRS and SERS; and

   For exceptions reported, include the following information:

| | Community School | Calculated "Employer Contributions" amount from step a. above | Employer contributions amount from the audited schedule of employer allocations | Variance |
|---|---|---|---|---|
| State Teachers Retirement System (STRS) | | | | |
| School Employees Retirement System (SERS) | | | | |

7. Select 100 expense transactions (e.g. checks) assigned to any indirect cost pool that include Ohio schools. (One sample from the pool(s) for Ohio schools will suffice. If the management company accounts for only one Ohio school, you may reduce the sample size to 60.)[60]

   a. Compare the transaction to source documentation, such as vendor invoice, personnel file, etc. supporting the cost indirectly benefits the schools or other activities to which it is allocated.
   b. Determine the transaction is recorded for the proper amount for the proper period in the accounting system.
   c. Obtain an understanding of the method the management company uses to pool and assign indirect costs to individual schools. Recompute selected allocations for conformity with the method.

[60] When developing these procedures, they may need tailored if the client adopted the 10% de minis rate for federal transactions. Auditors need to evaluate the allocation of transactions in these instances to ensure the client is not allocating Federal expenditures twice.

d. Compare the results from steps a through c with the overhead allocation disclosure in the footnote. Report any material departures from the footnote description in terms of the actual method used and any projected dollar effects of the departure.

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**4B-3 Compliance Requirement:** Ohio Rev. Code § 3314.04 – Community School contractually imposed deposit and investment requirements.

Pursuant to Ohio Rev. Code § 3314.04, Ohio Rev. Code Chapter 135 does not apply to community schools. However, other entities may impose restrictions on investments, collateral, etc. Such entities could be grantors, creditors, the sponsor, board policy, etc. Auditors should identify and list any applicable requirements below (by reviewing the charter, terms and conditions of grant agreements, loan documents, etc.):

*[Insert applicable depository and investment requirements*.]

**Suggested Audit Procedures – Compliance (Substantive) Tests:**

*[Insert applicable audit procedures. See other OCS Sections for example audit procedures.]*

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**4B-4 Compliance Requirement:** Ohio Rev. Code §§ 3314.011, 3314.016, 3314.019, 3314.02, 3314.023, 3314.03, 3314.036, 3314.19, 3314.46; Ohio Admin. Code 3301-102-02 - Sponsor monitoring of community schools

**Summary of Requirement:**
The sponsor may contract with the school to receive 3% or less of the amount ***the State pays to a school annually***, for the costs of its monitoring, oversight, and technical assistance. In other words, the total amount of such payments for monitoring, oversight, and technical assistance of the school shall not exceed 3% of the total amount of payments for ***operating expenses that the school receives from the State***[61]**.** [Ohio Rev. Code § 3314.03(C)] (Suggested Audit Procedure 3)

No sponsor shall sell any goods or services to a community school it sponsors, except in limited circumstances included in Ohio Rev. Code § 3314.46(B) a sponsor can earn more than 3% if it sells additional goods or services beyond sponsorship. These circumstances are limited to[62]:

(1) Contracts entered prior to 2/1/16 that involve the sale of goods or services to a community school it sponsors;
(2) If the sponsor of a community school is also the school district in which that community school is located, the sponsor may sell goods or services to that community school at no profit to the sponsor or
(3) If the sponsor of a community school is a state university, as defined in Ohio Rev. Code § 3345.011, the sponsor may sell services to that community school at no profit to the sponsor.

If none of these exceptions are met a sponsor should not receive more than the 3% mentioned above (there also is no legal authority for a school to simply pay unused funds to their sponsor beyond statutorily allowed amounts). A contract should specify these additional services, and should differentiate them from the services required of a sponsor. This prohibition is specific to a community school's sponsor. It does not, however, prevent a third party vendor that a sponsor contracts with from separately contracting with a community school to provide fiscal and instructional goods or services to a community school at a profit. Community schools cannot sponsor other community schools [Ohio Rev. Code § 3314.02(C)(1)(f)(iv)]. (Suggested Audit Procedures 3a & b)

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[61] AOS has determined that these monies would include Full-Time Equivalency (FTE is explained in step 4A-5), State grant, and Federal grant monies. *Grant monies that are restricted from general operations (such as capital grants or grants for limited operation programs like special education) should be excluded from calculations as these monies cannot be used for general operating expenses.*

[62] "Operator" or 'management company' means either of the following: (a) An individual or organization that manages the daily operations of a community school pursuant to a contract between the operator or management company and the school's governing authority; or (b) A nonprofit organization that provides programmatic oversight and support to a community school under a contract with the school's governing authority and that retains the right to terminate its affiliation with the school if the school fails to meet the organization's quality standards. [Ohio Rev. Code § 3314.02(A)(8)]

- Therefore, the terms "operator" and "management company" are synonymous, and sections 4B-2 & 4B-5 apply to any entity meeting the definition above.
- An educational service center or school district who is a community schools sponsor, may also be 'operating' the community school pursuant to an agreement. In addition, certain community schools are the operator of other community schools. In these situations, sections 4B-2 & 4B-5 would be applicable.

It should be noted that AOS defers to DEW's position that although Ohio Rev. Code § 3311.055 explains that the term 'school district' shall be construed to include educational service centers, this does not apply to Ohio Rev. Code § 3314.46(B)(2).

Each contract between the sponsor and the school must specify certain items [Ohio Rev. Code § 3314.03(A)][63]. While not all inclusive, the following items, if omitted from the contract or not sufficiently described therein, are those where noncompliance could indirectly and materially impact a community school's ability to continue operations under a valid charter contract: (Suggested Audit Procedure 1)

1. Each contract between a community school sponsor and governing authority must:
    a. contain performance standards, including all applicable report card measures;
    b. contain information regarding facilities costs and financing, attendance policies and records, and loans from the school's operator; and
    c. require that a community school's attendance and participation records be made available to the extent permitted by federal law.

2. A community school is required to define **learning opportunities** in its contract with its sponsor: [DEW FTE Review Manual & Ohio Admin. Code 3301-102-02(J)]
    a. It may include both classroom-based and non-classroom-based activities.
    b. These activities have to be either directly provided by a teacher or supervised by a teacher; the school should be able to identify the teacher.
    c. These activities have to be educational, instructional, and goal-oriented; there should be some school policy or guidance that in advance describes the goal, mainly of non-classroom-based activities. Just reporting activities after-the-fact without prior goals, prior specification of activities, and/or teacher direction is not sufficient.

    Instructional hours in a community school's day include time for changing classes, but not the recess, breakfast and lunch periods.

3. **Blended Learning**[64] – [Ohio Rev. Code § 3314.03(A)] If a school operates using a blended learning model the contract should describe the blended learning model(s).
    a. The statute also requires the sponsor of each community school that operates using the "blended learning" method to provide to the Ohio Department of Education and Workforce, not later than ten business days prior to the school's opening of their **first year** of operation, or if the school is not an e-school and it **changed buildings** that year, assurance that the sponsor has reviewed the following information submitted by the school [Ohio Rev. Code § 3314.19]:
        i. An indication of what blended learning model or models will be used;
        ii. A description of how student instructional needs will be determined and documented;
        iii. The method to be used for determining competency, granting credit, and promoting students to a higher grade level;
        iv. The school's attendance requirements, including how it will document participation in learning opportunities;
        v. A statement describing how student progress will be monitored;

[63] Per Ohio Rev. Code § 3314.03(A)(13), a contract should not exceed five years, unless renewed. The law appears to be silent on the number of renewals permitted.

[64] Blended learning is the delivery of instruction in a combination of time primarily in a supervised, physical location away from home and online delivery where the student has some element of control over time, place, path, or pace of learning and includes noncomputer-based learning opportunities [Ohio Rev. Code § 3301.079(J)(1)]. Admin. Code 3301-35-01 clarifies that for purposes of that definition, "primarily" means over the course of the school year, a student works more than fifty per cent of the time from a supervised physical location away from home.

vi. A statement describing how private student data will be protected; and
vii. A description of the professional development activities that will be offered to teachers.

More information about requirements for blended learning for community schools can be found on DEW's website at: https://education.ohio.gov/getattachment/Topics/Community-Schools/Sections/Schools/Blended-Learning-Guidance.pdf.aspx?lang=en-US.

4. **Attendance** - The contract should specify that the school create an attendance policy. Such should indicate how participation in learning opportunities provided will be measured by a community school and its sponsor. It is especially important that a community school's policy detail how, for example, the school will capture participation of students in e-schools and blended learning environments when attendance itself may not always be the important factor.

In addition, per DEW's FTE review manual:

1. Taking part in a **credit flexibility**[65] activity may count in the instructional hours of a student if the ***student(s)*** asks to use credit flexibility, and the other procedures associated with credit flexibility are in place, such as goal-setting, specification and completion of activities, and review by a licensed teacher.
2. **Instructional Day** – A school's contract with its sponsor defines its instructional day. The instructional day:
   a. May be the time between when students come in and when students leave, or when instruction begins and when instruction ends; or
   b. May be accomplishment of specified activities and completion of certain tasks by students who are doing assigned work that is individualized to a single student's program or curricular area of interest.
3. **Total Membership Unit** – The contract should specify the number of either days or hours of instruction the community school will provide during a school year.

The contract between the sponsor and the school shall specify the duties of the sponsor and shall include the following [Ohio Rev. Code § 3314.03(D)]: (Suggested Audit Procedure 4)

1. Monitor compliance with all laws applicable to the school and with the terms of the contract;
2. Monitor and evaluate the academic and fiscal performance and the organization and operation of the community school on an annual basis;
3. Report on an annual basis the results of the preceding evaluation to DEW and to the parents of students;
4. Provide technical assistance to the community school in complying with laws applicable to the school and terms of the contract;
5. Take steps to intervene in the school's operation to correct problems in the school's overall performance, declare the school to be on probationary status pursuant to Ohio Rev. Code § 3314.073, suspend the operation of the school pursuant to Ohio Rev. Code § 3314.072, or terminate the contract of the school pursuant to Ohio Rev. Code § 3314.07 as deemed necessary by the sponsor; (Suggested Audit Procedure 5)
6. Have in place a plan of action to be undertaken in the event the community school experiences financial difficulties or closes prior to the end of a school year; (Suggested Audit Procedure 5)

[65] Authorized by the Department of Education under the Alternative Pathways for high school students, Credit Flexibility permits students to meet core coursework requirements in four ways: Traditional, Integrated, Applied or Career-Technical. Students can earn credit through classroom instruction, demonstration of subject area competency, or a combination of both.

The community school shall submit to the sponsor a comprehensive plan for the school. The plan shall specify the following: [Ohio Rev. Code. § 3314.03(B)]

1. The process by which the governing authority of the school will be selected in the future;
2. The management and administration of the school;
3. If the community school is a currently existing public school or ESC building, alternative arrangements for current public school students who choose not to attend the converted school and for teachers who choose not to teach in the school or building after conversion;
4. The instructional program and educational philosophy of the school;
5. Internal financial controls.

When submitting the plan, the school shall also submit copies of all policies and procedures regarding internal financial controls adopted by the governing authority of the school.

Each community school sponsor shall annually verify that a finding for recovery has not been issued by the Auditor of State against any individual or individuals who propose to create a community school or any member of the governing authority, the operator, or any employee of each community school with responsibility for fiscal operations or authorization to expend money on behalf of the school. [Ohio Rev. Code § 3314.02(E)(2)(c)] Ohio Rev. Code § 9.24 defines a finding for recovery as "a determination issued by the AOS, contained in a report the AOS gives to the Attorney General pursuant to section 117.28 of the Revised Code, that public money has been illegally expended, public money has been collected but not been accounted for, public money is due but has not been collected, or public property has been converted or misappropriated." AOS Bulletins 2003-009 and 2004-006 provide more information about Unresolved Findings for Recovery and searching the database. Sponsors may review these bulletins and perform a certified search of the Unresolved Finding for Recovery database at the following link: http://ffr.ohioauditor.gov/. Sponsors should maintain documentation to support performance of their certified searches of the Finding for Recovery database. (Suggested Audit Procedure 9)

Opening Assurances - The sponsor of each community school shall provide assurances in writing to the Ohio Department of Education and Workforce, not later than ten business days prior to the opening of the school's **first year** of operation, or if the school is not an e-school and it **changed buildings**, the first year operating from the new building. [Ohio Rev. Code. § 3314.19] DEW's Opening Assurances are available at http://education.ohio.gov/Topics/Community-Schools/Guidance-Documents-Webinars-and-Presentations.

- Ohio Rev. Code. § 3314.19(I) requires the sponsors to attest in the opening assurances that the school has complied with sections 3319.39 and 3319.391 of the Revised Code with respect to all employees and that the school has conducted a criminal records check of each of its governing authority members. Ohio Rev. Code. § 3314.02(E)(2)(b) further states no person shall serve on the governing authority or engage in the financial day-to-day management of the community school under contract with the governing authority unless and until that person has submitted to a criminal records check in the manner prescribed by section 3319.39 of the Revised Code.

Ohio Rev. Code. § 3314.023(A) requires a sponsor to monitor the community school's compliance with all laws applicable to the school and with the terms of the contract. This includes, but is not limited to:

- Performing a criminal records check of certain employees, as described above.
- Ohio Rev. Code. § 3314.02(E)(2)(a)(iii) – No person shall serve on the governing authority or operate the community school if they have pleaded guilty to or been convicted of theft in office.
- Ohio Rev. Code. § 3314.02(E)(7) – Each member of the governing authority shall annually file a disclosure statement setting forth the names of any immediate relatives or business associates employed by the schools sponsor, operator, a school district/ESC contracted with the school, or a vendor that is or has engaged in business with the school.

The designated fiscal officer of a community school must be employed by or engaged under a contract with the school's governing authority (as opposed to the operator). However, the statute also permits a governing authority, for one year at a time, to waive the requirement to directly employ or engage the fiscal officer. To do so, the governing authority must adopt a resolution for each year it wishes to waive the requirement, which must be approved by the school's sponsor. If the governing authority adopts such a resolution, the school's fiscal officer must annually meet with the governing authority to review the school's financial status. A copy of each resolution must be submitted by the governing authority to the Ohio Department of Education and Workforce. The statute explicitly states that such a resolution does not waive the underlying requirement for a community school to have a designated fiscal officer. In addition the fiscal officer shall be licensed prior to assuming duties. [Ohio Rev. Code § 3314.011] (Suggested Audit Procedure 7)[66]

The governing authority of a community school must employ an attorney that is independent from the school's sponsor or operator, for any services related to the negotiation of the school's contract with the sponsor or operator. [Ohio Rev. Code § 3314.036] (Suggested Audit Procedure 8)

Each contract between a sponsor and governing authority shall contain a provision requiring that, if the governing authority contracts with an attorney, accountant, or entity specializing in audits, the attorney, accountant or entity shall be independent from the operator with which the school has contracted. [Ohio Rev. Code § 3314.03(A)(31)] (Suggested Audit Procedures 7 & 8)

The sponsor (through its contract) may mandate a community school to comply with competitive bidding procedures. (Suggested Audit Procedure 2) If so:

- **Auditors should carefully consider whether contract expenditures are direct and material to their audit. Among other federal assistance, schools are receiving the Education Stabilization Fund programs which can include significant construction-related projects. Contracts charged, in whole or in part, to federal programs may need to follow Federal Procurement Rules described in the Uniform Guidance. Auditors should refer to the terms and conditions of the federal program to determine if Procurement applies. If Federal Procurement rules apply, local governments must comply with Federal, state and local (including charter) requirements regarding contract procurement and bidding. Where conflicts exist, the most restrictive requirement prevails. See AOS COVID-19 FAQ's for additional procurement guidance related to certain COVID funding and the Federal Procurement guidance for clients listed on AOS's website. AOS auditors should consult with CFAE via the FACCR Specialty in Spiceworks if noncompliance with Federal procurement requirements is identified for a non-major program or a major program for which procurement is not tested in the FACCR.**

Ohio Rev. Code § 3314.023 requires a sponsor to provide monitoring, oversight, and technical assistance to each school that it sponsors. In order to provide monitoring, oversight, and technical assistance, a representative of the sponsor of a community school shall meet with the governing authority or fiscal officer of the school and shall review the financial and enrollment records of the school at least once every month. Not later than 10 days after each review, the sponsor shall provide the governing authority and fiscal officer with a written report regarding the review. Copies of those financial and enrollment records shall be furnished to the community school sponsor and operator, members of the governing authority, and the fiscal officer on a monthly basis. (Suggested Audit Procedure 6)

> ***Note***: Barring an egregious situation such as negligence or fraud, it is not the statutory intent to hold community school fiscal officers responsible for a community school's deficit financial position. Rather, this statute is designed to ensure that the sponsor can require the community school fiscal officer to turn over the enrollment and financial records to the sponsor upon closure.

[66] 2010 OP. Att'y. Gen No. 2010-020 includes additional applicable guidance to consider regarding Treasurer and Superintendent positions.

As required by Ohio Rev. Code § 3314.016(B), DEW developed and implemented an evaluation system that rates and assigns an overall rating to each sponsor. Depending on a sponsors past ratings, the evaluation will occur either annually or once every three years. This section further requires sponsors that receive an overall rating of "poor" to have all sponsorship authority revoked; and sponsors that receive an overall rating of "ineffective" on their 3 most recent ratings to have all sponsorship revoked. ~~***Note***: For ineffective ratings, the 3 most recent years begins with the 2015/2016 fiscal year; so the 2017/2018 year would be the first time this could occur.~~ DEW's sponsor rating and evaluation are available at http://education.ohio.gov/Topics/Community-Schools/Sponsor-Ratings-and-Tools/Overall-Sponsor-Ratings. The DEW sponsor ratings are released annually, by November 15th, related to the preceding school year. Therefore, a "poor" or "ineffective" rating could qualify as a subsequent event when it materially impacts a governmental sponsor or community school's financial statements or ability to continue. If the sponsor received an "ineffective" rating on their 3 most recent ratings, or received a "poor" rating, auditors need to consider:

- Whether the school anticipates remaining open after the school year and the potential impact that would have on the community school's financial statements. Ohio Rev. Code § 3314.016(D) requires DEW to take over sponsorship of the community school for the remainder of that school year (with the option of longer if DEW so chooses, and if a new sponsor has not yet been secured by the governing authority). This may result in going concern and note disclosures, including subsequent events, for both governmental sponsor and community school audits. Auditors should be alert to the potential for closing due to a poor or ineffective sponsor rating.
- This could impact the governmental sponsor's financial statements if DEW has taken action(s) against the sponsor to terminate their ability to sponsor and/or if DEW has assumed the role of interim sponsor. (This could be material to a governmental sponsor who is relying upon a material stream of sponsorship fees for healthy financial position).

The CFAE Community School Specialist analyzes the ratings/lists each year as they are released by DEW, and posts such to the AOS Community School intranet page.

**Note:**

- **Due to the COVID-19 pandemic, the 133rd GA, H.B. 164 Section 5 (which amends Section 17(F) of 133rd GA, H.B. 197) prohibits DEW from issuing any sponsor ratings for Fy 2020, and establishes safe harbor from penalties and sanctions for sponsors based on the absence of such ratings, in which only ratings from previous and subsequent years be considered.**
- **In addition, Section 6 of 133rd GA, HB 409, as amended by 134 GA, HB 67, sponsor ratings issued for Fy 2021 have no effect in determining sanctions or penalties; do not create a new starting point for determinations that are based on ratings over multiple years; and only certain components are rated.**
- **Per House Bill 583, Section 18 of the 134th GA, the Fy 2022 sponsor ratings have no effect in determining sanctions or penalties of a sponsor, do not create a new starting point for sanctions or penalties, and a sponsor remains eligible for any incentives in Fy 2023 that they were eligible for in Fy 2022. Fy 2022 sponsor ratings do not qualify a sponsor for any incentives they were not previously eligible for, unless they elect to have their rating count for incentives.**

Ohio Rev. Code § 3314.023 states if a community school closes or is permanently closed, the designated fiscal officer shall deliver all financial and enrollment records to the school's sponsor within thirty days of the school's closure. If the fiscal officer fails to provide the records in a timely manner, or fails to faithfully perform any of the fiscal officer's other duties, the sponsor has the right of action against the fiscal officer to compel delivery of all financial and enrollment records of the school and shall, if necessary, seek recovery of any funds owed as a result of any finding of recovery by the auditor of state against the fiscal officer. (Suggested Audit Procedure 10)

> ***Note***: Oftentimes, a community school closeout can take longer than 30 days to liquidate all obligations and assets. Therefore, AOS and IPA's should evaluate whether a sponsor has physically observed and ensured a community school's records are intact and approved an existing fiscal officer to maintain those records in the fiscal officer's possession beyond 30 days in order to facilitate the closeout process. Where this is the case, AOS and IPA's should not take exception so long as all of the requested records are made available timely to the sponsor, DEW and the auditors for review.

Closing Assurances – Under state law (Ohio Rev. Code § 3314.023), community school sponsors must monitor and oversee their schools' compliance with law, administrative rules and contract provisions, including requirements related to school closure. Specifically Ohio Rev. Code § 3314.023 requires having a plan of action to be undertaken in the event the community school experiences financial difficulties or closes prior to the end of a school year. Sponsors must submit a Suspension and Closing Assurance Form for each closed community school. By completing this assurance, sponsors attest that all necessary notifications and actions are completed. The Suspension and Closing Assurance Form shall be submitted to the Office of Community Schools quarterly, noting which activities are complete until all items are complete and closing assurances form is submitted. DEW's Suspension and/or Closing Procedures are available at http://education.ohio.gov/Topics/Community-Schools/Guidance-Documents-Webinars-and-Presentations. [DEW's School Suspension and/or Closure Procedures memo, updated April 2023]

The sponsor shall communicate with the auditor of state regarding an audit of the school or the condition of financial and enrollment records of the school, and shall maintain a presence at any and all meetings with the auditor of state regardless of whether the sponsor has entered into an agreement with another entity to perform all or part of the sponsor's oversight duties. [Ohio Rev. Code § 3314.019] In other words, a sponsor cannot delegate its responsibility to attend audit-related meetings, such as pre- and post- audit conferences, to a contracted third party vendor. The AOS interprets this requirement to extend to audits of community schools conducted by Independent Public Accountants (IPA) on the AOS's behalf. Meaning, the sponsor of a community school is also required to communicate with an IPA when the community school's audit is contracted to an IPA.

- Additionally, the auditor of state must provide written notice to the sponsor regarding any action taken against or upcoming audits of the community school. [Ohio Rev. Code § 117.105]

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

Note: The Ohio Rev. Code § 3314.50 requirement previously included in this section has been moved to 4E-4. If the community school meets any of the following criteria, then 4E-4 must be tested:

a. This is the community school's initial year of operations, or
b. The community school filed a bond with the Auditor of State, or
c. The community school initiated operations on or after February 1, 2016, and
    i. had a written guarantee by the sponsor or operator, and
    ii. the guaranteeing entity changed (i.e. the school changed sponsor or operator)

1. Examine the contract between the school and the sponsor. Determine if it includes sufficient information about the items Ohio Rev. Code § 3314.03(A) requires.

> ***Note***: Auditors should use professional judgment determining whether to issue noncompliance citations or internal control deficiencies depending upon the level of detail included within or omitted from the contract. While a contract may address a required item, auditors may find instances where the level of detail is not sufficient for a community school or sponsor to adequately determine or measure compliance over time. In these instances, the auditor should consider issuing an internal control deficiency at a minimum.

2. Determine if the contract requires competitive bidding procedures, and if so, the school has complied with those requirements.

3. Determine whether the contract provides payment to the sponsor for monitoring, oversight, and technical assistance.
    a. Trace actual payments to the sponsor to the accounting records to determine whether they were ≤ 3% of the school's State assistance (or met the terms of the contract if a lower amount was specified, or the sponsor provides additional services).
    b. Determine if the sponsor did not sell goods or services to the community school except under specific circumstances as described above.
    c. Determine whether the school had any FTE adjustments after year end, or an FTE review by DEW that resulted in a clawback or a settlement of monies payable to DEW. Consider if a true-up was required for sponsor payments. (See further information in OCS 4A-5. AOS auditors see guidance/steps in Teammate / IPA's see suggested steps in Community School Audit Programs for IPA's at https://ohioauditor.gov/references/guidance/communityschools.html.)

4. Inquire regarding the nature and extent of the sponsor's monitoring activities.
    a. Examine minutes, correspondence, reports[67] or other evidence supporting that the sponsor fulfilled its monitoring duties described above.
    b. Read the sponsor's annual report submitted to DEW during the audit period. Based on other audit procedures, judge whether that report suggests the sponsor is diligent in its monitoring and is frank in its reporting to DEW.[68]
    c. If this is the community schools first year of operations, or if the school changed buildings and this is the first year operating in the new building, determine whether the sponsor completed, signed, and submitted to DEW the opening assurances for the year under audit. Auditors should assess the risk of noncompliance due to a potential lack of appropriate sponsor oversight. Where this risk is elevated, auditors should consider selected tests of reperformance of the sponsor's opening assurances.

5. If based on other audit procedures, the school is experiencing financial or performance problems, judge whether the sponsor is taking the actions the Ohio Rev. Code prescribes above (e.g., declaring the school in probationary status, preparing an action plan to address financial difficulties.)

6. Assess whether the sponsor's overall monitoring generally fulfills the requirements above, including providing a written report on their monthly review of the financial and enrollment records to the school.

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[67] Ohio Revised Code § 3314.025 requires each sponsor of a community school to submit a report to the Ohio Department of Education and Workforce detailing expenditures made to provide oversight, monitoring and technical assistance to the community school(s) it sponsors (see also http://education.ohio.gov/getattachment/Topics/Community-Schools/Sections/Sponsors/Sponsor-Expenditure-Reporting.pdf.aspx)

[68] Staff should not spend significant time reviewing this report. We are not opining or providing any assurance on it. Consider tracing a "handful" of key financial amounts to current or prior audited statements or to accounting records we used in the audits. Read key passages to determine whether they are generally consistent with your understanding. If we find material misrepresentations in the report to DEW, we can report this as noncompliance by the sponsor. Our noncompliance finding should avoid imprecise statements such as "The sponsor's report was inaccurate." Instead, quote statements or amounts from the sponsor's report compared to quotes or amounts we obtained from other sources. List our source in the finding. Note: DEW does not require the sponsor's annual report be submitted for a close-out audit, so this step would be n/a in those situations.

7. Determine whether the community school's governing board (as opposed to the operator) contracted with an independent fiscal officer, or if a waiver was obtained. Also determine whether the fiscal officer was licensed prior to assuming duties.

8. Determine whether the community school's governing board has contracted with an attorney that is independent from the school's:
    a. sponsor - for any services related to negotiation of the school's contract with the sponsor;
    b. operator - for all services

9. Determine if the sponsor has annually verified that no findings for recovery have been issued against governing board members, individuals that propose to create the school, the operator, or any employee of the school with responsibility for fiscal operations or authorization to expend money on behalf of the school.

10. If the community school closed or is permanently closed, determine if the designated fiscal officer delivered all financial and enrollment records to the school's sponsor within thirty days of the school's closure, or if the sponsor physically inspected the records in lieu of taking possession of them from the fiscal officer in order to facilitate a fiscal officer's ability to complete the close out.[69]
    a. Determine if the Sponsor is in the process of completing, or has completed DEW's Suspension and/or Closing Procedures. Such procedures should be tested.

11. If the sponsor is an educational service center or school district, determine if they are also 'operating' the community school pursuant to an agreement. If so, test sections 4B-2 and 4B-5.

Report significant noncompliance as necessary in the school's audit report.

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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[69] AOS will accept documentation or other evidence that the sponsor performed a timely physical inspection of all records and mutually agreed to allow the fiscal officer to keep such records in his or her possession after 30 days from the date of closure and until all financial matters have been settled so long as the sponsor continues to monitor the activities of the fiscal officer until all matters are settled and the records are turned over. However, we believe the sponsor remains responsible for all financial and enrollment records after 30 days from the date of closure, regardless who has possession of these records.

**4B-5 Compliance Requirement:** Ohio Rev. Code §§ 3314.032, 3314.0210 - Operator relationship with community schools

**Summary of Requirement:**
Beginning February 1, 2016, new or renewed contracts between the governing authority of a community school and its operator[70] [71], shall include: [Ohio Rev. Code § 3314.032(A)]

- Criteria for early termination;
- Notification procedures and timeline for early termination or nonrenewal;
- Stipulations relating to ownership of facilities and property purchased by the governing authority or operator. Property includes but is not limited to, equipment, furniture, fixtures, instructional materials and supplies, computers, printers, and other digital devices.

An operator shall not lease any parcel of real property to the community school until an independent professional in the real estate field verifies via addendum that at the time the lease was agreed to, the lease was commercially reasonable. This independent professional is immune from civil liability for any decision rendered. [Ohio Rev. Code § 3314.032(B)]

Ohio Rev. Code §§ 3314.0210, 3314.015(E) and 3314.074 specify that furniture, computers, software, equipment, or other personal property purchased with state funds that were paid to an operator or management company for use in operating a community school is property of that school and is not property of the operator or management company. It also requires that such property must be distributed in accordance with continuing law whenever a community school closes and ceases its operation. That law prioritizes distribution of a school's remaining assets first to the state retirement systems, then to employees, and then other creditors. To the extent possible, state-purchased computers are to be turned over to the DEW for redistribution.

- ***Note***: Ohio Rev. Code § 3314.0210 was effective February 1, 2016. Therefore assets purchased by the management company for the school prior to this date still belong to the management company or as specified in the agreement.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. For new or renewed operator and community school contracts established on or after February 1, 2016, determine if the required items above were included in the contract.

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[70] "Operator" or 'management company' means either of the following: (a) An individual or organization that manages the daily operations of a community school pursuant to a contract between the operator or management company and the school's governing authority; or (b) A nonprofit organization that provides programmatic oversight and support to a community school under a contract with the school's governing authority and that retains the right to terminate its affiliation with the school if the school fails to meet the organization's quality standards. [Ohio Rev. Code § 3314.02(A)(8)]

- Therefore, the terms "operator" and "management company" are synonymous, and this OCS section applies to any entity meeting the definition above.
- An educational service center or school district who is a community schools sponsor, may also be 'operating' the community school pursuant to an agreement. In addition, certain community schools are the operator of other community schools. In these situations, this OCS section would be applicable.

[71] Ohio Rev. Code § 3314.031 requires DEW to publish an annual performance report for all operators of community schools by November 15th, which is available at http://education.ohio.gov/Topics/Community-Schools. Currently the law provides no direct consequences for negative performance reviews.

2. For personal property purchased after February 1, 2016 with state funds paid to an operator or management company for use in operating a community school, determine these capital assets are reported on the community school's financial statements, in their asset records, or they can otherwise demonstrate ownership[72].

3. If an operator has entered a lease for real property after February 1, 2016 to the community school, determine the lease was verified as commercially reasonable by an independent professional in the real estate field. ***Note***: The auditor is not testing the lease for reasonableness, but rather ensuring the operator obtained the required verification.

4. For schools that are closed, vouch that property purchased by operators with state funds that were paid to an operator or management company for use in operating the community school has been distributed according to the DEW Closing Procedures, or otherwise in accordance with State / Federal law.

| **Audit implications (the indirect and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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[72] Ohio Rev. Code § 3314.0210 requires ownership by the school, so any of these are acceptable methods. Some assets may fall under the capital asset threshold, or some schools may choose to report their financial statements on a basis other than GAAP, yet the assets are still required to be property of the school.

**4B-6 Compliance Requirement:** Ohio Rev. Code §§ 9.48, 125.04(C), 153.65-.71, 3313.46, 3313.533 and 3327.08 - Board of Education and Governing Board of Educational Service Centers procedures for bidding and letting of contracts.

**Note: Auditors should carefully consider whether contract expenditures are direct and material to their audit. Among other federal assistance, schools are receiving the Education Stabilization Fund programs which can include significant construction-related projects. Contracts charged, in whole or in part, to federal programs may need to follow Federal Procurement Rules described in the Uniform Guidance. Auditors should refer to the terms and conditions of the federal program to determine if Procurement applies. If Federal Procurement rules apply, local governments must comply with Federal, state and local (including charter) requirements regarding contract procurement and bidding. Where conflicts exist, the most restrictive requirement prevails. See AOS COVID-19 FAQ's for additional procurement guidance related to certain COVID funding and the Federal Procurement guidance for clients listed on AOS's website. AOS auditors should consult with CFAE via the FACCR Specialty in Spiceworks if noncompliance with Federal procurement requirements is identified for a non-major program or a major program for which procurement is not tested in the FACCR.**

**Summary of Requirements:**
When a Board of Education or a Governing Board of an Educational Service Center determines to purchase a bus pursuant to Ohio Rev. Code § 3327.08, or build, repair, enlarge, improve or demolish any school building[73] with a cost in excess of $50,000, the Board is required to:

- Prepare plans and specifications. [Ohio Rev. Code § 3313.46(A)(1)].

- Advertise for bids once a week for not less than two consecutive weeks, or as provided in Ohio Rev. Code § 7.16[74], in a newspaper of general circulation in the district before the date specified by the Board for receiving bids. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the school district, provided that the first notice published in such newspaper meets all of the following requirements: (a) It is published at least two weeks before the opening of bids; (b) It includes a statement that the notice is posted on the board of education's internet web site; (c) It includes the internet address of the board's internet web site; and (d) It includes instructions describing how the notice may be accessed on the board's internet web site.[ Ohio Rev. Code § 3313.46(A)(2)].

- Open the bids at the time and place specified by the Board in the advertisement for bids. [Ohio Rev. Code § 3313.46(A)(3)]

- When the work bid includes both labor and materials, the Board may require that each be separately bid or may require that they be bid as one. [Ohio Rev. Code § 3313.46(A)(5)]

[73] A school building is not limited to structures where instruction of students takes place. However, whether competitive bidding is required for building, repairing, enlarging, improving, or demolishing other types of structures is fact-specific and engagement auditors should discuss with their legal representatives.

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

- The award of the contract is to the lowest responsible bidder. [Ohio Rev. Code § 3313.46(A)(6)]

- The contract is between the board and the bidders. The board is required to approve and retain estimates and make them available to the Auditor of State upon request. [Ohio Rev. Code § 3313.46(A)(7)]

- If two or more bids are equal and are lower than any others, either may be accepted. However, the work is not to be divided among the bidders. [Ohio Rev. Code § 3313.46(A)(8)]

- When there is reason to suspect collusion among the bidders, those suspects are to be rejected. [Ohio Rev. Code § 3313.46(A)(9)]

The above requirements (Ohio Rev. Code § 3313.46(A)) do not apply to:

- an urgent necessity,[75] [Ohio Rev. Code § 3313.46 (A)]
- acquisition of educational materials used for teaching; [Ohio Rev. Code § 3313.46(B)(1)]
- any item which the Board, by a two-thirds vote, determines is available and can be obtained only through a single source; [Ohio Rev. Code § 3313.46(B)(2)]
- energy conservation measures, with the approval of two-thirds of the Board; [Ohio Rev. Code § 3313.46(B)(3)]
- acquisition of computer software or hardware for instructional purposes; [Ohio Rev. Code § 3313.46(B)(4)] or
- School districts that participate in a joint purchasing contract are exempt from using competitive bidding. [Ohio Rev. Code § 9.48(C)-(D)]

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

School districts procuring professional design services, over the competitive bidding threshold ~~over $25,000~~, do not need to follow the competitive bidding process. However, contracts for professional design services must adhere to the provisions of Ohio Rev. Code §§ 153.65 through 153.71 which require school districts to publicly announce and provide notice of the contract, rank firms on the basis of qualifications, and award the contract to the most qualified firm. "Professional design services" are defined as services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code. Ohio Rev. Code §§ 153.66 to 153.70 do not apply to any of the following:

- Any project with an estimated professional design fee of $25,000 or less;
- Any project with an estimated professional design fee of more than $25,000 but less than $50,000 if both of the conditions in Ohio Rev. Code § 153.71(B)(2)(a) and (b) are met;

[75] Defined in *Mueller v. Bd. of Educ.,* 25 Ohio Dec. 195(Com. Pl. 1911). "['Urgent necessity'] means more than convenience and more than ordinary necessity. It is something that requires immediate action and cannot wait. When pleaded as an excuse for failure to comply with any statutory requirement it must be decided by the circumstances of the particular case in which it arises." "Whether or not a case of urgent necessity exists so that a board of education may be enabled to build, alter or repair a school house or make other improvements without complying with the provisions of this section, as to competitive bidding is dependent upon the determination and declaration of the board itself and cannot be questioned for any reason other than fraud, collusion, absence of good faith or abuse of discretion." [1927 Op. Att'y. Gen. No. 27-0908]

- Any project determined in writing by the head of the public authority to be an emergency requiring immediate action including, but not limited to, any projects requiring multiple contracts let as part of a program requiring a large number of professional design firms of the same type;

[Ohio Rev. Code §§ 153.65 through 153.71]

Districts operating alternative schools which meet certain criteria are permitted to contract with a nonprofit or for profit entity to operate the alternative school, including the provision of personnel, supplies, equipment, or facilities. [Ohio Rev. Code § 3313.533(C)]

When a school board contracts with a nonprofit or for profit entity to run the school, the alternative school plan under 3313.533(B) must include the additional information 3313.533(G) describes. (See statute if this occurs.)

1. When a board of education determines to contract with a nonprofit or for-profit entity to operate an alternative school, the board shall:

    a. Publish a notice of request for proposal in a newspaper of general circulation once a week for at least two consecutive weeks, or as provided in Ohio Rev. Code § 7.16[76], prior to the date specified by the board for receiving proposals. [Ohio Rev. Code § 3313.533(H)(1)]

    b. After the date specified for receiving proposals, evaluate the submitted proposals (which may include discussions with respondents) to understand the proposal and the qualifications of respondents. The evaluation shall concern the entity's qualifications using factors the statute specifies. [Ohio Rev. Code § 3313.533(H)(2)]

2. The contract shall be awarded to the respondent the board considers to have the most merit, taking into consideration the scope, complexity, and nature of the services to be performed by the respondent under the contract. [Ohio Rev. Code § 3313.533(C), (G) and (H)(4)]

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Identify a few expenditures subject to contracting/competitive bidding requirements while reading the minutes, by inquiry of government personnel, and/or by scanning the disbursement records. Determine through inspection, vouching, or other means that payments exceeding $50,000 and contracts for the operation of alternative schools, were awarded using competitive bidding procedures. Be alert for indications of "bid-splitting" or deliberate attempts to evade bid limitations[77], such as successive contracts just under the bid amount. In selecting payments to test, consider selecting from higher-dollar payments and perhaps one or two smaller payments (i.e. payments slightly over the competitive bidding threshold).

2. Inspect bid files for documentation of:
    a. plans and specifications/RFP,
    b. bid/RFP advertising, and
    c. bid/proposal openings.

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

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

3. For contracts concerning the operation of alternative schools, review Ohio Rev. Code § 3313.533(H) and determine whether the district documented its evaluation of the respondent's qualifications.

4. For contracts exceeding $50,000 purporting to meet one or more of the exceptions indicated above (i.e., acquisition of educational materials used for teaching; any item which the Board determined was available and could be obtained only through a single source; certain energy conservation measures; acquisition of computer software or hardware for instructional purposes; and acquisitions pursuant to Section 125.04), determine documentation exists to support expenditures meeting those exceptions.

5. Document whether there is any apparent interest in the contract by a public official. Due to heightened public interest in these situations, we would often deem violations to be material noncompliance and could affect our assessment of the control environment and affect our fraud assessment.

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

# CHAPTER 4C - STATUTORILY MANDATED TESTS

**4C-1 Compliance Requirement:** Ohio Rev. Code §§ 117.53, 3313.666(A) - (C), and 3314.03(A)(11)(d), - Anti-Bullying Provisions

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| ***Note***: We are requiring staff to test this section as follows:<br>1. Anti-Bullying laws should be tested for all schools (traditional and community schools). Auditors must issue the AUP report (available on the Intranet) as part of the audit package each year until the school is in full compliance. Auditors should be alert that these requirements will need tested in the first audit of any new community school.<br>2. For existing traditional and community schools where these provisional compliance requirements were not previously tested, auditors need to perform the suggested audit procedures and issue the applicable AUP report. |

**Summary of Requirements:**
The board of education of each city, local, exempted village, and joint vocational school district and the governing authority of each community (charter) school must adopt an anti-bullying policy in consultation with parents, school employees, school volunteers, students, and community members.

Each policy must include the following items (Ohio Rev. Code §§ 3313.666(B), and 3314.03(A)(11)(d)):

1. A statement prohibiting the harassment, intimidation, or bullying of any student on school property, on a school bus, or at school-sponsored events. The policy must also expressly provide for the possibility of suspension of a student found responsible for harassment, intimidation, or bullying by an electronic act.[78]

2. It also must define the term "harassment, intimidation, or bullying" in a manner that includes the definition prescribed in Ohio Rev. Code § 3313.666(A). The act defines that term as "any intentional written, verbal, electronic or physical act that a student has exhibited toward another particular student more than once and the behavior both (1) causes mental or physical harm to the other student, (2) is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student," and violence within a dating relationship.

3. A procedure for reporting prohibited incidents;

4. A requirement that school personnel report prohibited incidents of which they are aware to the school principal or other administrator designated by the principal;

5. A requirement that the custodial parent or guardian of a student involved in a prohibited incident be notified and, to the extent permitted by state and federal law governing student privacy, have access to any written reports pertaining to the prohibited incident;

6. Procedures for documenting any prohibited incident that is reported;

7. Procedures for responding to and investigating any reported incident;

8. A strategy for protecting a victim from new or additional harassment, intimidation, or bullying, and

[78] "Electronic act' is defined by Ohio Rev. Code § 3313.666(A)(1) as an act committed through the use of a cellular telephone, computer, pager, personal communication device, or other electronic communication device.

from retaliation following a report, including a means by which a person may report an incident anonymously;

9. The disciplinary procedure for a student who is guilty of harassment, intimidation, or bullying, which shall not infringe on any student's rights under the first amendment to the Constitution of the United States;

10. A statement prohibiting students from deliberately making false reports of harassment, intimidation, or bullying and a disciplinary procedure for any student responsible for deliberately making a false report of that nature; and

11. A requirement that the administration provide semiannual written summaries of all reported incidents to the president of the district board of education or community school governing authority, and post them on the district's or school's website (if applicable) to the extent permitted by state and federal law governing student privacy.

These items form a framework for districts and community schools to use in developing their policies. The policy must be included in student handbooks and in publications that set forth the standards of conduct for schools and students. Employee training materials must also include information on the policy. [Ohio Rev. Code § 3313.666(C)]

***Auditor of State identification of harassment policy***
The act **requires** the Auditor of State (or contracting IPAs), when auditing a school district or community school, to identify whether the district or school has adopted an anti-harassment policy. This determination must be recorded in the audit report. The Auditor of State may not prescribe the content or operation of the policy. (Ohio Rev. Code § 117.53)

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

Inspect the anti-bullying policy the school adopted pursuant to Ohio Rev. Code § 3313.666(B) (for school districts) or § 3314.03(A)(11)(d) (community schools). To comply with this reporting obligation, the Auditor of State and contracting independent accountants must include an additional agreed-upon procedures report describing the procedures applied and the results, until compliance is obtained. This report should appear immediately after the schedule of findings or schedule of prior year audit findings, if applicable. The table of contents should separately list this report. (Because this report is a statutory requirement, we believe it is inappropriate to include it with a management letter.)

NOTE: The reporting process AOS and IPA's should use to satisfy these requirements is detailed in the appropriate AUP Report shell Anti-bullying found on the Intranet and AOS Internet.

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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**4C-2 Compliance Requirement:** Ohio Rev. Code § 5705.412 and Ohio Admin. Code 3301-92-05 - Restriction upon school district expenditures and certifying adequate revenues. Application: City, local, exempted village and joint vocational school districts.

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

*Term of certificate:*

A. The certificate attached to an appropriation measure covers only the fiscal year in which the appropriation measure is effective.

B. The certification must be attached to all appropriation measures *except* for temporary measures when the temporary measure (1) does not appropriate more than 25 percent of the total resources available last year for any fund, (2) the measure will not be in effect for more than thirty days after the earliest date the school district could pass an annual appropriation measure, and (3) an amended certificate of available revenues has not been certified to the school district under Ohio Rev. Code § 5705.36.

C. The certificate attached to a **qualifying contract** covers the term of the contract.

D. The certificate attached to a wage or salary schedule covers the term of the schedule.

E. A "*qualifying contract"* is ". . . any agreement for the expenditure of money under which aggregate payments from the funds included in the school district's five-year projection under section 5705.391 of the Ohio Rev. Code [see 4E-1] will exceed the lesser of the following amounts . . . ":

   1. $500,000;
   2. 1% of the general fund's total estimated revenues as certified in the school district's most recent certificate of estimated resources under Ohio Rev. Code § 5705.36 [see OPM Section O-1]

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

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

- for current payrolls of, or contracts of employment with, any employees or officers of the school district.[79]

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

- when increasing the wages or salaries enabling the school board to comply with division (B) of Ohio Rev. Code § 3317.13, which addresses the minimum salary schedule for teachers.

Section 5705.412 certificates *should* be executed for:

- appropriation measures (except certain temporary measures; see above)[80];
- increased salary or wage schedules[81] and
- any other "qualifying contracts", including, but not limited to: 1) negotiated agreements (e.g. professional association ["union"] contracts) and, 2) contracts for benefits (e.g., major health insurance contracts)

Qualifying contracts or wage or salary schedules that have not been certified as required are considered void.[82] No payments may be made on void obligations.

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

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

The Auditor of State is required to refer instances of noncompliance with any qualifying contract or wage or salary schedule to the school district's statutory legal counsel. [Ohio Rev. Code § 5705.412(E)]

School districts should maintain a continuing record of contracts which have been certified and adequate documentation to substantiate the certifications. [Ohio Admin. Code 3301-92-05(F)]

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

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

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

[82] Occasionally, school districts amend appropriations during the year without properly obtaining 412 certifications. AOS will not consider these appropriations to be "void". However, auditors should still cite school districts under Ohio Rev. Code § 5705.412 when a school does not prepare these certificates.

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

> (a) The contract is a multi-year contract for materials, equipment, or non-payroll services "essential to the education program of the district"; and
>
> (b) The multi-year contract demonstrates savings over the duration of the contract as compared to costs that otherwise would have been demonstrated in a single year contract, and the terms will allow the district to reduce the deficit it is currently facing in future years as demonstrated in its five-year forecast.

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

2. Select a few appropriation measures, increased salary or wage schedules, and a few qualifying contracts for which "412" or "alternative" certificates should have been ~~were not~~ executed during the fiscal year.

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

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

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

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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# CHAPTER 4D – STEWARDSHIP

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

***Important:***
The following sections should be performed ***ANNUALLY*** if applicable to your entity***:***

- ***Dropout Prevention and Recovery School Eligibility Requirements –Section 4D-1***
- ***School District Transportation T-1 and T-2 Forms – Section 4D-2***
- ***College Credit Plus (CCP) – Section 4D-3***

This *Ohio Compliance Supplement* section of Chapter 4 provides a simplified process for assessing the government's compliance with these requirements. Auditors can generally complete these tests using inquiry, observation and, occasionally, certain other limited substantive procedures, such as inspection of documents or limited vouching.

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

*Compliance Requirements……...Page*

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4D-1 Compliance Requirement: Ohio Rev. Code §§ 3301.0710, 3301.0712, 3314.017, 3314.034, 3314.38; Ohio Admin. Code 3301-102-10 - Dropout Prevention and Recovery School Eligibility Requirements..... 109

4D-2 Compliance Requirement: Ohio Rev. Code §§ 3317.0212 & 3314.091; Ohio Admin. Code 3301-83-01 - Transportation T-1 and T-2 Forms – All Traditional School Districts and Certain Community Schools ..... 110

4D-3 Compliance Requirement: Ohio Rev. Code § 3365.04 – College Credit Plus Program (CCP) ..... 115

**4D-1 Compliance Requirement:** Ohio Rev. Code §§ 3301.0710, 3301.0712, 3314.017, 3314.034, 3314.38; Ohio Admin. Code 3301-102-10 - Dropout Prevention and Recovery School Eligibility Requirements

**Testing of this section is suspended for Fy 2024 for the following reasons:**

- HB 33 of the 135th GA, effective October 3, 2023, revised Ohio Rev. Code § 3314.36 and it no longer syncs up with Ohio Admin. Code 3301-102-10, which is where the items tested in this section come from.
- HB 33 also created a Dropout Recovery Advisory Council in Ohio Rev. Code § 3314.381 that is charged with reviewing all existing rules (i.e. Ohio Admin. Code) and guidance previously developed or adopted by the department that applies to dropout prevention and recovery community schools. The Council's first meeting was March 26, 2024. https://education.ohio.gov/Topics/Community-Schools/Drop-Out-Prevention-and-Recovery/Dropout-Prevention-and-Recovery-Advisory-Committee
- In addition, HB 33 enacted Ohio Rev. Code § 3314.382 which states, in part, that any guidance document previously developed by the department that establishes general and uniform operations regarding a dropout recovery community school in effect on the effective date of this section is void after that date.
- Testing of this section is expected to be reinstated in the 2025 OCS, once the Council has reviewed/updated Ohio Admin. Code 3301-102-10.

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**4D-2 Compliance Requirement:** Ohio Rev. Code §§ 3317.0212 & 3314.091; Ohio Admin. Code 3301-83-01 - Transportation T-1 and T-2 Forms – All Traditional School Districts and Certain Community Schools

**Note: As stated on pg. 1 of Chapter 4D, this section should be performed *ANNUALLY* if applicable to your school or community school. See further guidance on pg. 1 of Section 4D.**

**Summary of Requirements:**

Ohio Rev. Code § 3317.0212 & Ohio Admin. Code 3301-83-01 detail the transportation component of the school funding formula ~~(which was modified by HB 110, 134 GA, effective September 30, 2021, HB 583, 134 GA, Section 13, effective September 23, 2022, and HB 45, 134 GA, effective April 7, 2023)~~. Ohio Rev. Code § 3314.091 explains that community schools may assume ~~elect~~ responsibility for transportation of their own students[83].. **Therefore, while this section will be applicable at all traditional schools, it will only apply to community schools which assume transportation responsibility for students attending their schools ~~made such election~~**.

1. The T-1 report is provided annually for the use of each city, local, and exempted village school district, county board of developmental disabilities, community schools providing service under Ohio Rev. Code § 3314.091, and Educational Service Centers certifying to the Ohio Department of Education and Workforce (DEW) the actual number of pupils transported and total daily miles traveled. This data is then used for calculation of the pupil transportation payment pursuant to Ohio Rev. Code § 3317.0212.
2. T-2 Form is provided for use by each school superintendent and treasurer to certify to the Ohio Department of Education and Workforce the actual expenses incurred in the transportation of eligible pupils reported on corresponding Form T-1 during the preceding fiscal year.
    a. This includes Traditional Schools and Community Schools as well as County Board of Developmental Disabilities and Educational Service Centers if they provide special education transportation.
3. Refer to DEW's Community School Transportation Funding guidance for additional information if the community school assumes ~~relinquishes~~ transportation responsibility for students attending their schools. Community School Transportation Funding.pdf

**Refer to DEW's Overview of Transportation Finance at:** Financial Reporting and Data Collection-09-29-2022

**Pupil Transportations Services Types included on T-1 and T-2 Forms**
(T1-Instructions-Revised-9-2023.pdf ):

- Type I - Board-owned, leased, and operated school buses
- Type 1A - Students transported by school bus service contracted from another school. This may also include students transported in a consortium arrangement on buses managed and reported by another district or entity.

[83] Community schools may own and operate their own yellow school buses or may contract for yellow school buses.

- Type II - Contractor-owned, leased, and operated school buses assigned exclusively to a given district.
- Type III - Public utility
- Type IV - Payment made to parent or guardian in lieu of transportation (Special education services or contracted parental service contracts are not type IV service.)
- Type V - Board-owned vehicles other than school buses (9 passengers or less)
- Type VI - Privately-owned vehicles other than school buses (9 passengers or less) (Includes contracts with parents for special education transportation)
- Type VII - Community school students who are transported by the community school in accordance with Ohio Rev. Code § 3314.091

**T-1 Forms:**

Data for T-1 reports shall be an average of resident pupils enrolled and regularly transported using the greater of the average counted in the morning or counted in the afternoon by individual bus[84] during the designated count week, the first full week of October, that school is in session. This report shall also include the average daily miles traveled for pupil transportation, excluding non-routine and extra-curricular miles. Special education students and average daily miles will also be reported on the T-1.

For regular education riders, students must be reported according to the type of school they attend (public, nonpublic, or community school) and must be separated based upon how far they live from the school.

For special education students, **both** of the following must be applicable in order for a student to be reported as a student with a disability:

1. Students with disabilities must represent 50% or more of the ridership of the bus on a given trip; **and**
2. The student has an IEP that requires transportation as a related service.

For additional information on T-1 forms refer to:

- T1-Instruction-Revised-9-2023
- T-Report-Instructions-Worksheets

T-1 Forms must be completed by the first full week in October, filed by November 1, and may be amended by January 31. See Calendar of Form deadlines here.

**T-2 Forms:**

T-2 Form includes expenses for all transportation and buses on inventory from July 1 - June 30.

[84] The greater average of the morning or afternoon ridership is by individual bus. For example:

- If bus 1 for the count week has an average morning ridership of 40 resident pupils and an average afternoon ridership of 55 resident pupils, then the school would report 55 in the T-1 Report for bus 1;
- If bus 2 for the count week has an average morning ridership of 45 resident pupils and an average afternoon ridership of 30 resident pupils, then the school would report 45 in the T-1 Report for bus 2.
(Source: DEW's Video: T-1 Updates and Training dated 9/29/2022)

Each district shall retain a copy of all transportation reports and supporting documentation for 5 years and must be made available to the department ~~State Board of Education or its representatives~~ for audit purposes. (Ohio Rev. Code § 3317.031)

T-2 Forms shall reflect:

1. Expenses for cost of services and for items invoiced and installed on all school transportation vehicles
2. Transportation expenses only for pupils transported on a regular basis
3. Eligible special education transportation costs shall be submitted on the T-2 report in the sections identified for special education reporting. Failure to identify appropriate special education costs on this report can result in a loss of funding for special education transportation. (see instructions regarding special education accounting)
4. Annual miles for non-routine trips

The T-2 Form shall **not** include:

1. Expenditures for capital outlay and items placed in inventory.
2. Expenses for students reported by other school agencies.
3. Expenditures (including operational and labor) for non-routine use of school buses. Trips such as summer school, after school events, athletic trips, and educational field trips are examples of expenditures that shall not be reported on the T-2 form.

For additional information on T-2 forms refer to:

- T2-instructions
- T-Report-Instructions-Worksheets

T-2 Forms must be completed by the end of the fiscal year, and filed by August 31st. See Calendar of Form deadlines here.

**Sample Questions and Procedures:**

1. Document the policy and procedures over the T-1 forms?

2. Did the school district complete the T-1 forms correctly?

    a. Select **one** specific transportation type listed below on the T-1 Report for the count week and determine if key data for the transportation type agrees to underlying support:
    (**Note: Type 1 or 2 would typically be selected.** Types 1a, 5 and 7 are expected to be lower risk; however, auditors should use judgment on whether those Types should be selected for testing. For example, if a school has a low number for Type 1 and 2 and an unusually larger number for Type 5, auditors should take this into consideration when determining which type to test.)

        i. Type 1- board owned/leased and operated yellow bus
        ii. Type 1a- transported by school bus service contracted from another school
        iii. Type 2- contractor owned, leased and operated school buses assigned exclusively to the district

iv. Type 5 - board owned vehicles other than buses, 9 or fewer passengers
v. Type 7- community school students who are transported by the community school.

b. Select one bus/transportation vehicle from the transportation type selected above on the T-1 form and determine if the student numbers agree to the daily count sheets during count week. (**Note: Type 1 or 2 would typically be selected.** Types 1a, 5 and 7 are expected to be lower risk; however, auditors should use judgment on whether those Types should be selected for testing. For example, if a school has a low number for Type 1 and 2 and an unusually larger number for Type 5, auditors should take this into consideration when determining which type to test.)
   i. Using the daily count sheets for the one transportation type, (i.e. Type 1, bus #1 for all of the days during count week) selected during count week determine:

      a) The amount recorded for students equals the greater average of **ALL** AM head counts by bus or **ALL** PM head counts by bus (AM head count by bus divided by the number of days in the count week or PM head count by bus divided by the number of days in the count week.)
      b) The mileage recorded for that same selection equals the total routes driven each day totaled for the number of days the school is in session for the count week divided by the number of days the school is in session for the count week. (For example, if the school was in session for 5 days during count week, the mileage recorded equals the total routes driven each day totaled for 5 days and divided by 5.)
      c) If students were counted as special needs determine that the number of students recorded were at least 50% or more of ridership and each student had an IEP.

         Examples:

         i.) If there were 11 riders in the AM and 5 are regular students and 6 are special needs students, then it meets the 50% test and the special needs students are allowed to be counted as special needs as long as they also have IEPs.

         ii.) If there were 11 riders in the AM and 10 are recorded as regular students (no special needs) and 1 student is recorded as special needs, usually this would be unallowable. However, if the bus was running tiered routes and transported 10 high school students and then ran a second route picking up one special needs student that had an IEP this would be allowable to record the special needs student as special needs on the count.
      d) Auditors should verify that open enrolled students were not included on the count sheets for reimbursement.

3. If Type 3 for Public Transport was used (e.g., Metro, COTA, TARTA, etc.) for students that were in kindergarten to 8th grade, then determine if the district is maintaining agreements for allowing the student to use public transportation. Determine if the agreements were approved by the district and community school or chartered nonpublic school and if they were executed prior to count week. (Ohio Rev. Code § 3327.017(B))

4. Determine if an explanation has been provided for large variances (over 50%) on the T-1 Audit report.

5. Did the school district submit the form to DEW by the deadline?

**If T-2 forms are material,[85] test the following steps:**

1. Document the policy and procedures over the T-2 forms?

2. Select three line items on the T-2 form and agree them to supporting documentation.

3. Did the school district submit the form to DEW by the deadline?

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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[85] Materiality for testing T-2 forms is dependent on auditor judgement, but the overall goal is to determine that the forms are reporting proper amounts, so if only amounts being reported are coming from one or two funds but the evaluation of materiality is being based at an entity wide level, you will need to determine if that is a truly representative determination. A better representative determination for T-2 form materiality would be based on cash activity into the funds reported on the T-2 forms.

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**4D-3 Compliance Requirement:** Ohio Rev. Code § 3365.04 – College Credit Plus Program (CCP)

**Note: As stated on pg. 1 of Chapter 4D, this section should be performed *ANNUALLY* if applicable to your school. See further guidance on pg. 1 of Section 4D.**

**Summary of Requirements:**

The College Credit Plus program functions as a collaborative effort with the Ohio Department of Higher Education and Ohio Department of Education and Workforce providing funding and general oversight of high schools, colleges, and universities responsible for the education of students. In August 2022, an Ohio Auditor of State (AOS) Performance Audit of the CCP program identified key areas where school districts fail to comply with CCP requirements. These failures can directly impact Ohio students and their families. Ohio benefits from a well-educated workforce and identifying ways to increase participation in CCP can help give graduating seniors a competitive edge. For this reason, AOS requires auditors annually test this Stewardship requirement. In addition, Ohio House Bill 33 of the 135th GA, Section 381.720(A) states the Chancellor of Higher Education…may take action as necessary to ensure that….school districts are fully engaging and participating in the College Credit Plus Program as required by Chapter 3365 of the Revised Code.

A school MUST be compliant with Ohio Rev. Code § 3365.04(E) to be eligible for an AOS Award. ~~Schools that self-correct CCP noncompliance with Ohio Rev. Code § 3365.04(E) prior to the start of their 2022-23 school year audits will remain eligible for an AOS award if award criteria are otherwise met.~~

**Ohio Rev. Code § 3365.04** states, in part, each public and participating nonpublic secondary school[86]shall do all of the following with respect to the college credit plus program:

(A) Provide information about the program prior to the first day of February of each year to all students enrolled in grades six through eleven;

(B) Provide counseling services to students in grades six through eleven and to their parents before the students participate in the program under this chapter to ensure that students and parents are fully aware of the possible consequences and benefits of participation. Counseling information shall include:

(1) Program eligibility;
(2) The process for granting academic credits;
(3) Any necessary financial arrangements for tuition, textbooks, and fees;
(4) Criteria for any transportation aid;
(5) Available support services;
(6) Scheduling;
(7) Communicating the possible consequences and benefits of participation, including all of the following:
(a) The consequences of failing or not completing a course under the program, including the effect on the student's ability to complete the secondary school's graduation requirements;
(b) The effect of the grade attained in a course under the program being included in the student's grade point average, as applicable;

[86] These requirements apply to joint vocational school districts or career centers and STEM schools that are educating students that belong to other resident/educating districts. [see definition of a "secondary school" in Ohio Admin. Code 3333-1-65 & 3333-1-65.1]

(c) The benefits to the student for successfully completing a course under the program, including the ability to reduce the overall costs of, and the amount of time required for, a college education.

(8) The academic and social responsibilities of students and parents under the program;

(9) Information about and encouragement to use the counseling services of the college in which the student intends to enroll;

(10) The standard packet of information for the program developed by the chancellor of higher education pursuant to section 3365.15 of the Revised Code;

For a participating nonpublic secondary school, counseling information shall also include an explanation that funding may be limited and that not all students who wish to participate may be able to do so.

(11) Information about the potential for mature subject matter, as defined in section 3365.035 of the Revised Code, in courses in which the student intends to enroll through the program and notification that courses will not be modified based upon program enrollee participation regardless of where course instruction occurs. The information shall include the permission slip described in division (B) of section 3365.035 of the Revised Code.

(C) Promote the program on the school's web site, including the details of the school's current agreements with partnering colleges;

(D) Schedule at least one informational session per school year to allow each participating college that is located within thirty miles of the school to meet with interested students and parents. The session shall include the benefits and consequences of participation and shall outline any changes or additions to the requirements of the program. If there are no participating colleges located within thirty miles of the school, the school shall coordinate with the closest participating college to offer an informational session.

For the purposes of division (D) of this section, "participating college" shall include both of the following:

(1) A partnering college;

(2) Any public college, private college, or eligible out-of-state college to which both of the following apply:

(a) The college participates in the college credit plus program.

(b) The college submits to the public or participating nonpublic secondary school a request to attend an informational session.

(E) Implement a policy for the awarding of grades and the calculation of class standing for courses taken under division (A)(2) or (B) of section 3365.06 of the Revised Code. The policy adopted under this division shall be equivalent to the school's policy for courses taken under the advanced standing programs described in divisions (A)(2) and (3) of section 3313.6013 of the Revised Code or for other courses designated as Advanced Placement or Honors courses by the school. If the policy includes awarding a weighted grade or enhancing a student's class standing for these types of courses, the policy adopted under this section shall also provide for these procedures to be applied to any courses taken under the college credit plus program. DEW and ODHE provided joint guidance on Weighting CCP Courses available at QA Weighting CCP Courses final September 20 2018.pdf (ohio.gov).

(F) Develop model course pathways, pursuant to section 3365.13 of the Revised Code, and publish the course pathways among the school's official list of course offerings for the program.

(G) Annually collect, report, and track specified data related to the program according to data reporting guidelines adopted by the chancellor and the ~~superintendent of public instruction~~ department of education and workforce pursuant to section 3365.15 of the Revised Code.

The data/guidelines required in Ohio Rev. Code § 3365.04(G) are detailed on DEW's website at - https://education.ohio.gov/Topics/Data/EMIS/EMIS-Documentation/FY16-EMIS-Validation-and-Report-

Explanation-Docume ~~the Department of Higher Education's website at - https://highered.ohio.gov/data-reports/hei-system/hei-file-doc/hei-ccp/hei-file-documentation-college-credit-plus-ccp~~. Note: The colleges report enrollment information using the HEI system and the CCP data portal. The school districts (secondary schools) submit their enrollment data through EMIS. HEI and EMIS "talk" to one another through the Ohio District Data Exchange (ODDEX). Both the colleges and the secondary schools then have the ability to access ODDEX to ensure the CCP students are coded correctly (PS – post secondary), and payment is occurring at the accurate rate.

Additional resources:

- Department of Higher Education's website – for schools/administrators - https://highered.ohio.gov/initiatives/access-acceleration/college-credit-plus and FAQs for Secondary School Districts | The Ohio Department of Higher Education
- Ohio Department of Education and Workforce's (DEW) website – for students - https://education.ohio.gov/Topics/Ohio-Education-Options/College-Credit-Plus

**Sample Questions and Procedures:**

1. Obtain a copy of the school's CCP and Grading Policies as well as any CCP promotional or marketing communication for students and families.
2. Evaluate whether the school complied with Ohio Rev. Code § 3365.04 by assessing whether the school has documentation showing ~~to support~~ it:
   a. Provided information about the program prior to the first day of February of each year to students enrolled in grades six through eleven;
   b. Provided *policy/process/procedures* for the requirements of Ohio Rev. Code § 3365.04(B)(1) - (11) and document who or which groups within the school are responsible for providing counseling services to CCP students. *(In many schools, this responsibility falls upon the school counselors. The law does not require a written policy or process; however, counseling services must be made available. Therefore, auditors will have to test this step relying predominantly on inquiry of those responsible for providing the services.) (Note: auditors are not expected to test the sufficiency of each item, just that each item was addressed)*;
   c. Promotes the program on the school's web site, including the details of the school's current agreements with partnering colleges *(note: Auditors should be alert for promotional or other communication that might deliberately discourage participation. Consult with CFAE for further evaluation, if needed)*;
   d. Scheduled at least one informational session per school year; and the session included the benefits and consequences of participation and outlined any changes or additions to the requirements of the program;
   e. Has a policy for ~~the~~ awarding grades and calculating class standing for CCP courses that does not assign weight differently to CCP courses and non-CCP courses. [*Note: The school can have a policy that addresses awarding grades and calculation of class standing for CCP courses and a policy that addresses awarding grades and calculation of class standing for non-CCP courses. Alternatively, the school can have a single policy that addresses awarding grades and calculation of class standing without differentiating between CCP and non-CCP courses. However, if the school provides weighting or enhancing a student's class standing in two policies (one for CCP courses and a separate policy for non-CCP courses), the policy for CCP courses must be equivalent to the policy for the advanced standing program or honors courses in the same subject area. The law is intended to ensure that the school does not place CCP students taking courses in the same subject area as an advanced standing course or program (Advance Placement (AP) or*

*International Baccalaureate (IB)) or honors course at a disadvantage to other students when weighting for courses are assigned or class standing is calculated. If the school has a grading policy that weights or enhances class standing for advanced standing courses or programs (AP or IB) or honors courses in a subject area, then the school's grading policy must weight or enhance class standing for a CCP course in that same subject area. If the school has an honors, AP or IB course in a subject area and does not weight or enhance class standing for that course, then the school's grading policy cannot weight or enhance class standing for CCP courses in that same subject area. If the school has no honors, AP, or IB courses in a subject area, then the school's grading policy may choose to or choose not to weight or enhance class standing for CCP courses in that subject area. To determine whether a course is the same subject area, consult the course substitution crosswalk available here:* https://highered.ohio.gov/initiatives/access-acceleration/college-credit-plus/ccp-resources-secondary-schools/ccp-secondary-crosswalk/ccp-hs-graduation-course-substitution-crosswalk. *For additional explanation, consult* https://dam.assets.ohio.gov/image/upload/highered.ohio.gov/ccp/QA-Weighting-CCP-Courses.pdf.]~~of grades and the calculation of class standing for CCP courses taken that includes equal grade point average weighting for any CCP, Advanced Placement (AP), or Honors coursework; *[Note: Auditors should look at the Grading Policy to see if they are weighted equally. If a district has a weighted policy for any AP or Honors course, the district must also weight any CCP courses, even if the CCP course(s) is different from the AP or Honors course(s).]***~~

f. Developed model course pathways, and published such among the school's official list of course offerings for the program;

g. Collected, reported, and tracked specified data related to the program according to data reporting guidelines adopted by the chancellor and DEW (see website above). *Note: Auditors are only expected to scan to see if such guidelines were complied with. To test this, auditors should request the CCP Projected Payment Report (or similar report) from the EMIS Coordinator, and scan that data fields are completed.*

| **Conclusion: (effects on the audit opinions and/or footnote disclosures, significant deficiencies/material weaknesses, and management letter comments):** |
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# CHAPTER 4E – SCHOOL OPTIONAL PROCEDURES

**The Ohio Compliance Supplement School Optional Procedures**

*The Auditor of State selects a few audits randomly each year, to test requirements listed in this School Optional Procedures Chapter. These requirements represent additional tests of compliance which are not included in Chapters 4A through 4D of the Ohio Compliance Supplement. However, the omission of these requirements from the Supplement does not lessen a government's responsibility for compliance and for instituting controls it believes are necessary to assure compliance with any laws and regulations that apply to the government. See the OCS Implementation Guide for more information about the Auditor of State's compliance testing requirements.*

*Tests of the compliance requirements included in this Chapter will help ensure public officials entrusted with public resources are meeting their responsibility for complying with these laws and regulations.*

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4E-1 Compliance Requirement: Ohio Rev. Code §§ 3316.043, 5705.391 and Ohio Admin. Code 3301-92-04: School districts and community schools per Ohio Rev. Code § 3314.03(A)(11)(d) must prepare five-year projections. ..... 120

4E-2 Compliance Requirements: Ohio Rev. Code §§ 3315.18 and .181 (capital); 3317.02; Ohio Admin. Code 3301-92-02; (defines statewide average base cost per pupil) – Capital and maintenance reserve account. ..... 123

4E-3 Compliance Requirements: Ohio Rev. Code § 3314.032 - Community school budget requirements. ..... 133

4E-4 Compliance Requirement: Ohio Rev. Code § 3314.50- Community School Audit Fee Bond. ..... 134

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**4E-1 Compliance Requirement:** Ohio Rev. Code §§ 3316.043, 5705.391 and Ohio Admin. Code 3301-92-04: School districts and community schools per Ohio Rev. Code § 3314.03(A)(11)(d) must prepare five-year projections.

**Summary of Requirements:**

***Traditional School Districts[87]:***
School boards must prepare five-year projection of operational revenues and expenditures. Most of the guidance on how to prepare these projections is found in Ohio Admin. Code 3301-92-04.

The Ohio Department of Education and Workforce (DEW) and Auditor of State shall not require a board of education to submit its five-year projection of operational revenues and expenditures prior to November 30th of any fiscal year. [Ohio Rev. Code § 5705.391(A) and (C)]

**Submission Dates:**

- No later than November 30th of each fiscal year, a board of education must submit to DEW a board of education approved five-year projection of operational revenues and expenditures for the current fiscal year and the ensuing four fiscal years. A board of education may approve and submit its five-year projection to DEW up to sixty days in advance of this due date. [Ohio Admin. Code 3301-92-04(B)(1)]

- By May 31st of each fiscal year, a board of education must submit to DEW a board of education approved update of its five-year projection. A board of education may approve and submit the update of its five-year projection up to sixty days in advance of this due date. [Ohio Admin. Code 3301-92-04(B)(2)]

- Nothing precludes a board of education from filing other updates to its five-year projection at any time in addition to the filings required by paragraphs (B)(1) and (B)(2) of Ohio Admin. Code 3301-92-04 [Ohio Admin. Code 3301-92-04(B)(3)]

**Submission Requirements -All five-year forecast must** [Ohio Admin. Code 3301-92-04(C)]**:**

- Use the known operational revenues, expenditures, and resulting cash balance of the district as the basis for projections;
- Include accompanying notes for each reported line item that describe the assumptions used to develop the projected amounts;
- Contain all required information and be in the format prescribed by the department and auditor;
- Be approved by the board of education; and
- Be submitted to the department through the education management information system (EMIS).

[87] Prior to December 1, 2022, Ohio Admin. Code 3301-92-04 was applicable to Traditional Schools and Community Schools. On December 1, 2022, Ohio Admin. Code 3301-92-04 was updated, but the updates do not apply to Community Schools or STEM schools. The Ohio Department of Education and Workforce is in process of creating a new rule for Community Schools and STEM schools.

The Ohio Department of Education and Workforce or Auditor of State may require historical financial information.

In addition, a board of education notified under division (A) of section 5705.391 of the Ohio Rev. Code shall submit a board of education approved written plan to DEW to eliminate any current fiscal year deficits and avoid the projected future deficits. [Ohio Admin. Code 3301-92-04(E)]

The rules allow the Auditor of State and the Ohio Department of Education & Workforce to jointly prescribe the format and content of the five-year projection. See the DEW site for guidance: http://education.ohio.gov/Topics/Finance-and-Funding/Five-Year-Forecasts/Five-Year-Forecast-Traditional-Districts/Helpful-Links-for-Treasurers-Five-Year-Forecast. The Auditor of State and the Ohio Department of Education & Workforce generally are responsible for reviewing these projections (and related assumptions) for conformity with the requirements. The independent auditor is expected to evaluate whether the data in the projections for the current period are reasonably supported by the client's documentation.

The board of education of a school district that is in fiscal watch must have the respective plan approved by the director of education and workforce ~~Superintendent of Public Instruction~~. The board of education of the school district for which the plan was approved shall revise the district's five-year projection of revenues and expenditures so that the five-year project is consistent with the financial recovery plan. The financial planning and supervision commission for a school district in fiscal emergency must revise the school district's five-year projection of revenues and expenditures so that the projection is consistent with the financial plan or financial recovery plan. [Ohio Rev. Code § 3316.043]

The following website contains the five-year projections for City, Local, Exempted Village and Joint Vocational School Districts filed with DEW: Five-year Forecast Submissions of Traditional and Joint Vocational Districts | Ohio Department of Education & Workforce

***Community Schools [Ohio Rev. Code § 3314.03(A)(11)(d)]:***
Five-year forecasts[88] for community schools can be found at the following site: http://education.ohio.gov/Topics/Finance-and-Funding/School-Payment-Reports/State-Funding-For-Schools/Community-School-Funding/Five-Year-Forecasts.

**POSSIBLE NONCOMPLIANCE RISK FACTORS:**

***Note*: In assessing the risk of noncompliance, auditors should consider whether the school district has factored in recent changes in Ohio School Funding and Taxation laws into their projections.**

[88] DEW refers to these as forecasts on their website. The Ohio Revised Code refers to them as projections. For this compliance requirement we consider them one in the same.

**Suggested Audit Procedures - Compliance (Substantive) Tests[89]:**

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

2. Compare actual revenues and expenditures to projections. Inspect documentation to determine if the board updated its projections in accordance with the requirements in Ohio Admin. Code 3301-92-04(B)(2)-(3).

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

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

5. Consider if the projections indicate any possible "going concern" conditions [AU-C 570] or fiscal distress conditions.

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

| **Audit Procedures, Government Personnel Interviewed and Dates:** |
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| **Conclusion (management letter comments):** |
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[89] Prior to testing this section, consult with the Center for Audit Excellence on the effective dates required to file the 5-year forecasts due to changes in Ohio Admin. Code 3301-92-04 effective on December 1, 2022.

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**4E-2 Compliance Requirements:** Ohio Rev. Code §§ 3315.18 and .181 (capital); 3317.02; Ohio Admin. Code 3301-92-02; (defines statewide average base cost per pupil) – Capital and maintenance reserve account.

**Summary of Requirements:** These laws and regulations require every city, local, exempted village and joint vocational school district, to establish a capital (acquisition) and maintenance reserve.

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

- The reserve must be calculated and set-aside annually (Ohio Rev. Code § 3315.18(A)).
- If the set-aside amount is not spent in one year it is carried forward to the next year (Ohio Rev. Code § 3315.18(A)).
- The reserve must be represented by (restricted) cash at year-end.
- The reserve is calculated by multiplying the base amount by a percentage.
- The base represents three percent of the statewide average base cost per pupil for the preceding year multiplied by the school district's student population or the sum of certain specific prior fiscal year receipts. (Ohio Rev. Code § 3315.18(A))
- The amount of the required reserve may be reduced (offset)[90] by resources received during the fiscal year whose use is restricted to the purpose of one of the reserves.
- School districts must be able to provide a list of qualified expenditures for audit purposes.
- School districts must be able to document calculation of fiscal year-end reserve balances.
- Each school district's annual report must include a schedule showing the balance of the set-aside carried forward from the previous year, the current year set-aside, contributions in excess of the current year set aside,[91] qualifying expenditures,[92] any reductions (offsets) to the required amount from receipts similarly restricted, any reductions from certain debt proceeds, the fiscal year-end balance of the set aside, the amount to be reserved, the balance that may be carried forward to the next fiscal year, and if a district did not set aside the funds described in paragraph (B) or (C) of Ohio Admin. Code 3301-92-02, a statement indicating the statutory authority on which it relied.

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[90] "Offsets" are certain revenues recorded to other funds as defined in Ohio Rev. Code § 3315.181. The revenue in excess of the set aside and qualified expenditures does not accumulate or carry forward to the next fiscal year. Real (homestead and rollbacks) and personal property tax replacement payments received by school districts should be considered part of the levy proceeds when calculating allowable offsets for capital reserves. See below for additional guidance.

[91] A board may withdraw cash contributions exceeding statutory minimums from these reserves by resolution. Excess contributions may be deducted from future years' required set aside amount. Report any excess contributions in external financial reports as *committed, assigned, or restricted* governmental fund balance as appropriate under the circumstances described in GASB 54 [GASB Statement No. 54, ¶ 8 --- 16].

[92] "Qualifying expenditures" are expenditures from the general fund and a capital projects fund created under Ohio Rev. Code § 5705.13(C) that meet the definitions in the Ohio Admin. Code 3301-92-02.

**Annual Set-Aside Calculation:**

- The annual set aside is calculated by multiplying a percentage of the **"statewide average base cost per pupil"** [93] by the school district's "**student population**".[94] The **preceding year's** "statewide average base cost per pupil" and "student population" are used for the calculation. The percentage is set at 3% by statute, though the Auditor of State has been given some discretion to establish alternative percentages.[95] The formula is:

  [(% x Statewide Average Base Cost Per Pupil) x Student Population]

- A school district may annually elect under Ohio Rev. Code § 3315.19 to follow the former provisions of law existing prior to July 1, 2001 for capital set-aside. In lieu of following the amended requirements, the board of education *annually* may elect (by resolution) to follow the capital set-aside requirements (from the Ohio Rev. Code provisions) as they existed prior to July 1, 2001. (Audit programs A and B follow this OCS Section, and describe both options.) This election must be made within 90 days after the beginning of the fiscal year for which the election is to apply.

**Waivers of the Annual Set Aside Requirements:**

School districts in fiscal emergency may deposit an amount less than the required annual set aside, or make no deposit into the school district capital and maintenance funds (Ohio Rev. Code § 3315.18(D)). As good practice, while not specifically included in statute, the school district board of education should document this decision annually in a separate resolution. A board of education's approval of a five-year projection including the waiver of the set aside is not considered approval of the set aside waiver.

School districts in fiscal watch or caution may apply to the director of education and workforce ~~superintendent of public instruction~~ for a waiver[96] from the annual set aside requirement. The waiver may permit the school district to deposit an amount less than the annual set aside requirement or make no deposit into the school district capital and maintenance funds for that year. The director ~~superintendent~~ may grant a waiver, if the school district demonstrates to the satisfaction of the director ~~superintendent of public instruction~~ that compliance with the annual set aside requirement for that year will create an undue financial hardship on the school district (Ohio Rev. Code § 3315.18(D)).

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[93] "Statewide average base cost per pupil" is determined by Ohio Rev. Code § 3317.02(FF). For FY 2023 ~~2022~~ the amount is $7,351.71 ~~$7,349.22~~

[94] "Student population" is a defined term. The Ohio Department of Education and Workforce is responsible for calculating the student population based on information the school district submits (Ohio Rev. Code § 3315.18(F).

[95] No alternative percentages have been established as of the date of this document.

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

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

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

**Other capital and maintenance provisions established July 1, 2001:**

- Funds deposited into the separate account and interest on those funds may only be used for the school district's share of basic project costs for any project undertaken in accordance with Ohio Rev. Code Chapter 3318 (School Facilities). (See OCS Chapter 4A for a discussion of certain Ohio Rev. Code Chapter 3318 programs.)

**Sample Note Disclosure Table**[97]
Below is a current sample table for the set aside disclosure and the order in which items should be presented:

| | Capital Improvements |
|---|---|
| Set Aside Balance June 30, 20XX-1 | $0 |
| Current Year Set Aside Requirement | 500,000 |
| Contributions in Excess of the Current Fiscal Year Set Aside Requirement | 0 |
| Current Year Qualifying Expenditures | (50,000) |
| Excess Qualified Expenditures from Prior Years | 0 |
| Current Year Offsets | (100,000) |
| Waiver Granted by the Department of Education and Workforce | |
| Prior Year Offset from Bond Proceeds | (350,000) |
| Total | $0 |
| | |
| Balance Carried Forward to Fiscal Year 20XX | 0 |

[97] If a district did not set aside the funds described in paragraph (B) or (C) of Ohio Admin. Code 3301-92-02, a statement indicating the statutory authority on which it relied should be included in the schedule. [Ohio Admin. Code 3301-92-02(E)(6)]

| | |
|---|---|
| Set Aside Balance June 30, 20XX | $0 |

Excess qualified expenditures for capital improvements do not carry forward.

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

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

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

**Audit Procedures, Government Personnel Interviewed and Dates:**

**Conclusion (management letter comments):**

## *Audit Program – A*
## AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE

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

| Step No. | Procedure for Consideration | Done By or N/A | Date Comp | X-Ref |
|---|---|---|---|---|
| **1.** | Testing note accuracy. | | | |
| **a.** | Obtain the school district's draft set aside note and supporting documentation. | | | |
| **b.** | Foot and crossfoot the note | | | |
| **c.** | Foot and crossfoot the client's underlying calculations (if any). | | | |
| **2.** | Trace beginning of the year balance to prior audited financial statements or working papers. | | | |
| **3.** | Test the annual reserve calculation by multiplying the **percentage**[98] by the "**statewide average base cost per pupil**"[93] and multiplying the result by the school district's "**student population**".[94] The **preceding year's** "statewide average base cost per pupil" and "student population" should be used for this calculation:<br>[(% x statewide average base cost per pupil) x Student Population] | | | |
| **a.** | This information is available for each school district and joint vocational school district on the Ohio Department of Education and Workforce's website:<br>https://education.ohio.gov/Topics/Finance-and-Funding/Finance-Data-and-Information/Set-asides | | | |
| **4.** | Vouch selected qualifying[92] expenditures charged to the Reserve during the year for compliance with Ohio Admin. Code 3301-92-02 (G): | | | |
| **a.** | Allowable: acquisition price; direct materials; labor and overhead for a qualifying project; project professional fees; site prep; demolition\removal of existing assets; freight and handling; capital lease principal. | | | |
| **b.** | Unallowable: expenditures not for acquisition, replacement, enhancement, maintenance and repair of permanent improvements (property, asset, or improvements with a useful life of 5 years or more). | | | |
| **5.** | Trace "offsets"[90] to appropriate documentation supporting the client's calculations and assertions and to and from the current year's working papers (excess offsets do not carry forward): | | | |

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

| *Audit Program – A*<br>**AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE** | | | | |
|---|---|---|---|---|
| **a.** | Permanent improvement levy authorized by Ohio Rev. Code § 5705.21 to the extent the proceeds are restricted by the school district Board to expenditure for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements.[99] | | | |
| **b.** | Proceeds of securities whose use is restricted to expenditures for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements (Ohio Rev. Code § 3315.181(A)[100]. | | | |
| **c.** | Insurance proceeds received as a result of the damage to or theft or destruction of a permanent improvement to the extent a Board of Education places the proceeds in a separate fund for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements (Ohio Rev. Code § 3315.181(B). | | | |
| **d.** | Proceeds received from the sale of a permanent improvement to the extent the proceeds are paid into a separate fund for the construction or acquisition of permanent improvements (Ohio Rev. Code § 3315.181(C). | | | |
| **e.** | Proceeds received from a tax levy authorized by Ohio Rev. Code § 3318.06 to the extent the proceeds are available to be used for the maintenance of capital facilities. (Classroom facilities fund 034) (Ohio Rev. Code § 3315.181(D).[101] | | | |
| **f.** | Proceeds of certificates of participation issued as a part of a lease-purchase agreement entered into under Ohio Rev. Code § 3313.375 (Ohio Rev. Code § 3315.181(E). | | | |

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

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

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

| *Audit Program – A*<br>**AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE** | | | | |
|---|---|---|---|---|
| **g.** | Proceeds of any school district income tax levied under Ohio Rev. Code Chapter 5748 to the extent the proceeds are available for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements (Ohio Rev. Code § 3315.181(F). | | | |
| **h.** | Money transferred from the general fund (USAS 001) to the permanent improvement fund (USAS 003) is an offset for the current year. If the amount transferred is returned to the general fund, the set aside reserve should be recalculated, taking into account the amount of the transfers returned to the general fund. The amounts transferred required a court order. **This should be reported as a change in the set aside for the current year and not a restatement.** | | | |
| **i.** | Other revenue sources identified by the Auditor of State, in consultation with the Department of Education and Workforce, in rules adopted by the Auditor of State (Ohio Rev. Code § 3315.181(G).[102] | | | |
| **6.** | Read any other information included in the report (e.g., the introductory and statistical sections of an Annual Comprehensive Financial Report (ACFR)), and determine whether it is consistent with the note. If the information is materially inconsistent or misstated, consult with Center for Audit Excellence if the client refuses to make necessary changes. | | | |
| **7.** | Prepare a brief narrative for the working papers that describes the nature, timing, and extent of our tests of the note. | | | |

[102] As of the date of this audit program, the AOS has identified no such revenues.

## *Audit Program – B*
## AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE

**Use this audit program if the school district has elected to apply the pre-July 1, 2001 base calculation as discussed previously in this section.**

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

| *Audit Program – B*<br>**AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE** | | | | |
|---|---|---|---|---|
| **a.** | This information is available for each school district and joint vocational school district on the Ohio Department of Education and Workforce's website: http://education.ohio.gov/Topics/Finance-and-Funding/State-Funding-For-Schools/Traditional-Public-School-Funding | | | |
| **b.** | For "guarantee" school districts use the amount from the Summary School Finance Payment Report (SFPR) ~~Summary~~.[103] http://education.ohio.gov/Topics/Finance-and-Funding/School-Payment-Reports/State-Funding-For-Schools/Traditional-School-Districts (under Foundation Payment ~~Funding~~ Reports) | | | |
| **6.** | Vouch selected expenditures charged to the Reserve during the year for compliance with Ohio Admin. Code 3301-92-02(G): | | | |
| **a.** | Allowable: acquisition price; direct materials; labor and overhead for a qualifying project; project professional fees; site prep; demolition or removal of existing assets; freight and handling; capital lease principal. | | | |
| **b.** | Unallowable: expenditures not for acquisition, replacement, enhancement, maintenance and repair of permanent improvements (property, asset, or improvements with a useful life of 5 years or more). | | | |
| **7.** | Trace "offsets"[90] to appropriate documentation supporting the client's calculations and assertions and to and from the current year's working papers: | | | |
| **a.** | Permanent improvement levy authorized by Ohio Rev. Code § 5705.21 to the extent the proceeds are restricted by the school district Board to expenditure for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements. [99] | | | |
| **b.** | Proceeds of securities whose use is restricted to expenditures for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements (Ohio Rev. Code § 3315.181(A).[100] | | | |
| **c.** | Insurance proceeds received as a result of the damage to or theft or destruction of a permanent improvement to the extent a Board of Education places the proceeds in a separate fund for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements (Ohio Rev. Code § 3315.181(B). | | | |

[103] This amount is included in a separate ~~column~~ row on DEW's ~~web site~~ SFPR. It is referred to as the Temporary Transitional Aid Guarantee. For additional guidance see DEW's School Finance Payment Report Line by Line Explanation: Traditional School Districts Funding | Ohio Department of Education and Workforce

| *Audit Program – B*<br>**AUDITING THE CAPITAL IMPROVEMENTS AND MAINTENANCE RESERVE** | | | | |
|---|---|---|---|---|
| **d.** | Proceeds received from the sale of a permanent improvement to the extent the proceeds are paid into a separate fund for the construction or acquisition of permanent improvements (Ohio Rev. Code § 3315.181(C). | | | |
| **e.** | Proceeds received from a tax levy authorized by Ohio Rev. Code § 3318.06 to the extent the proceeds are available to be used for the maintenance of capital facilities. (Classroom facilities) (Ohio Rev. Code § 3315.181(D). | | | |
| **f.** | Proceeds of certificates of participation issued as a part of a lease-purchase agreement entered into under Ohio Rev. Code § 3313.375. (Ohio Rev. Code § 3315.181(E). | | | |
| **g.** | Proceeds of any school district income tax levied under Ohio Rev. Code Chapter 5748 to the extent the proceeds are available for the acquisition, replacement, enhancement, maintenance, or repair of permanent improvements. (Ohio Rev. Code § 3315.181(F). | | | |
| **h.** | Money transferred from the general fund (USAS 001) to the permanent improvement fund (USAS 003) is an offset for the current year. If the amount transferred is returned to the general fund, the set aside reserve should be recalculated, taking into account the amount of the transfers returned to the general fund. The amounts transferred required a court order. **This should be reported as a change in the set aside for the current year and not a restatement.** | | | |
| **i.** | Other revenue source identified by the Auditor of State, in consultation with the Department of Education and Workforce, in rules adopted by the Auditor of State (Ohio Rev. Code § 3315.181(G).[104] | | | |
| **8.** | Read any other information included in the report (e.g., the introductory and statistical sections of an Annual Comprehensive Financial Report (ACFR)), and determine whether it is consistent with the note. If the information is materially inconsistent or misstated, consult with the Center for Audit Excellence if the client refuses to make necessary changes. | | | |
| **9.** | Prepare a brief narrative for the working papers that describes the nature, timing, and extent of our tests of the note. | | | |

[104] As of the date of this issuance, the AOS has identified no such revenues.

**4E-3 Compliance Requirements:** Ohio Rev. Code § 3314.032 - Community school budget requirements.

**Summary of Requirements:** [105]
Each community school governing authority is required to adopt an annual budget by October 31st. DEW is required to develop a format for annual budgets of community schools and must include at least: [Ohio Rev. Code § 3314.032(C)]

- Administrative costs for the community school as a whole;
- Instructional services costs for each category of service provided directly to students, compiled and reported in terms of average expenditure per pupil receiving the service;
- The cost of instructional support services, such as services provided by a speech-language pathologist, classroom aide, multimedia aide or librarian, provided directly to students;
- The cost of administrative support services, such as the cost of personnel that develop the curriculum and the cost of personnel supervising or coordinating the delivery of the instructional services;
- The cost of support or extracurricular services costs for services directly provided to students;
- The cost of services provided directly to students by a non-licensed employee related to support or extracurricular services, such as janitorial services, cafeteria services or services of a sports trainer;
- The cost of administrative services related to support or extracurricular services, such as the cost of any licensed or unlicensed employees that develop, supervise, coordinate or otherwise are involved in administrating or aiding the delivery of services.

Although the budget is developed with the fiscal officer's assistance, the statute specifies that the governing authority is the sole entity responsible for the adoption of the budget.

DEW's community school budget Microsoft Excel template is available at: https://education.ohio.gov/Topics/Community-Schools .

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

Obtain and review the annual budget to confirm the required costs are included.

| **Audit Procedures, Government Personnel Interviewed and Dates:** |
| --- |
| |

| **Conclusion (management letter comments):** |
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| |

[105] Although this is a legal requirement to enhance budgetary control, it does not impact financial reporting since the enterprise fund presentation does not require a budgetary statement (see GASB Cod. Sp20.113). Therefore, we do not anticipate noncompliance to rise to report level.

**Revised: HB 33, 135 GA**
**Effective: October 3, 2023**

**4E-4 Compliance Requirement:** Ohio Rev. Code § 3314.50- Community School Audit Fee Bond.

**Summary of Requirements**: For community schools initiating operations on or after February 1, 2016, Ohio Rev. Code § 3314.50 requires they shall not initiate operation, unless the governing authority has posted a **bond** in the amount of $50,000 with the Auditor of State.[106] The bond shall be used, in the event the school closes, to pay the Auditor of State any moneys owed or that become owed by the school for the costs of audits conducted by the auditor of state or a public accountant under Ohio Rev. Code § 117.

A. ~~In lieu of the bond, the governing authority of the school, the school's sponsor or an operator that has a contract with the school may deposit with the Auditor of State, **cash** in the amount of $50,000 as guarantee of payment.~~

B. In lieu of a bond ~~or a cash deposit,~~ the school's sponsor or an operator that has a contract with the school, may provide a **written guarantee** of payment, which shall obligate the school's sponsor or the operator that provides the written guarantee to pay the cost of audits of the school under this section up to the amount of $50,000.

   1. Any such written guarantee shall be binding upon any successor entity that enters into a contract to sponsor or to operate the school, and any such entity, as a condition of its undertaking shall acknowledge and accept such obligation.

C. Community schools which initiate operation on or after February 1, 2016 shall not maintain or continue its operations absent the ongoing provision of a bond~~, a cash deposit,~~ or a written guarantee.

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

1. Test step 2 below if:
   a. This is the community school's initial year of operations, or
   b. The community school filed a bond with the Auditor of State, or
   c. The community school initiated operations on or after February 1, 2016, and
      i. had a written guarantee by the sponsor or operator, and
      ii. the guaranteeing entity changed during the audit period (i.e. the school changed sponsor or operator)

2. Verify[107] that a bond~~, cash deposit~~ or written guarantee was posted to the Auditor of State in the amount of $50,000.

[106] A ~~check or~~ bond should be sent to the Auditor of State of Ohio, Attn: Finance Department at 65 East State Street, Suite 1400 ~~88 E. Broad St., 4th Floor~~, Columbus, OH 43215. The finance department will receipt the ~~deposit/~~bond ~~and transfer to the Treasurer of State~~. A written guarantee should be e-mailed to CommunitySchoolQuestions@ohioauditor.gov .

[107] AOS employees can verify by reviewing the community school master spreadsheets located at CFAE Community Schools.aspx. IPA's can verify by reviewing the AOS master community school spreadsheet in the AOS IPA Portal. Any questions may be directed to CommunitySchoolQuestions@ohioauditor.gov.

a. If the community school filed a bond with the Auditor of State, determine if it was renewed, etc. for the period under audit.
b. If the guaranteeing entity changed, determine if the new sponsor/operator acknowledged and accepted such obligation.

| **Audit Procedures, Government Personnel Interviewed and Dates:** |
| --- |
| |

| **Conclusion (management letter comments):** |
| --- |
| |