

below the amount threshold, will be reported in the Management Letter as non-compliance citations (not findings for recovery).

- If a government identifies a finding for recovery *before* the auditors do and the entity or individual repays the money before the audit report is issued, the auditor should not report the matter as a Finding for Recovery. If the amount is unpaid or only partially repaid, a Finding for Recovery is reported for the full amount and the amount that was repaid is listed. However, the auditor should evaluate the issue for other possible matters of audit interest, such as the possibility of fraud or reportable internal control weaknesses. Also, the matter might be a citation for an illegal expenditure of money or other violation of law. Conversely, the entity's identification and resolution of the matter may indicate the internal control structure is properly detecting and correcting errors, in which case the auditor might determine not to report the matter.
- The auditor should determine the amount of a finding for recovery during audit field work. The method used to calculate the amount must be clearly set forth in the working papers. Any partial payment or reimbursement made prior to completing the audit should be noted in the audit report with appropriate credit given when calculating the amount.
- If a finding for recovery is issued because public property has been converted or misappropriated, the amount of the finding should reflect the fair market value of the property at the time that it was discovered to be missing. The basis for determining this amount must be disclosed in the working papers.

Finding for Recovery Procedures for Independent Public Accountants (IPA)

Note: This section has been re-written for clarity; therefore, the changes are not marked.

Ohio Rev. Code §117.12 prohibits IPAs from issuing Findings for Recovery. IPAs should report these matters exceeding \$500 (and any alcohol purchase¹⁶ and other findings for recovery determined by the Auditor of State, regardless of amount) as noncompliance findings, but they should not label them as *finding for recovery* and the finding should not state: "In accordance with the forgoing facts, and pursuant to Ohio Rev. Code §117.28, a Finding for Recovery for public money collected but not accounted for (or illegally expended, etc.) is hereby issued against . . ." ¹⁷

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

- An IPA should NOT inform anyone other than the Auditor of State of possible Findings for Recovery either orally or in writing.
- As soon as the IPA has an indication there could be any Findings for Recovery, regardless of the amount, the IPA should contact the regional chief auditor.

¹⁶ Except when all of the requirements in AOS Bulletins 2014-002 and 2014-003 are met regarding the re-sale of alcohol.

¹⁷ This is to comply with Ohio Rev. Code §117.12 which states, "IPAs have no authority to make formal findings of illegality, malfeasance, or gross neglect under this division or section 117.23 of the Revised Code."

- The IPA should provide the regional chief auditor with all relevant factual information, including supporting documentation and any repayment information for the Finding.
 - For example, it is not sufficient to send AOS a testing spreadsheet alone. IPA's need to also submit copies of the relevant client records that support the IPA's testing spreadsheet.
- All potential Findings for Recovery, regardless of the amount, are required to be reviewed by the AOS Legal Division and the Center for Audit Excellence.
- The regional chief auditor or designee should notify the Chief of Quality Assurance that a Finding for Recovery may be issued via ipareport@ohioauditor.gov. The Center for Audit Excellence will put a hold on the report until the finding is approved.
- The regional chief auditor or designee will prepare a preliminary Finding, along with any needed supportive documentation, and submit to the AOS Legal Division for approval.
- The Legal Division will approve the potential Finding as is, approve with modifications, disapprove, or request more information be submitted to evaluate the proposed finding.
- Once approved by the Chief Legal Counsel or designee, the regional chief auditor or designee should send the finding to the Center of Audit Excellence via the IPA specialty in Spiceworks for consultation.
- Once approved by the Legal Division and the Center for Audit Excellence, the regional chief auditor or designee will submit the *Notice of Proposed Findings* letters to the Legal Division for approval.
- After the Legal Division has approved the *Notice of Proposed Findings* letters, the regional chief auditor or his/her designee will obtain the limited waiver from the IPA¹⁸ and except for special audits conducted by the Public Integrity Assurance Team (PIAT) send the *Notice of Proposed Finding* to each individual named in the Finding for Recovery and the bonding company(ies).
 - In the case of a special audit conducted by PIAT, it may be necessary to delay notice to individuals about proposed findings until law enforcement or prosecuting officials approve release of this information.
- The applicable parties are normally given five days to respond. If they respond, the regional chief auditor should evaluate the response along with the Legal Division and decide whether to withdraw or modify the Finding.
- The regional chief auditor will send a copy of Legal Division's final approved finding to the Chief of Quality Assurance via ipareport@ohioauditor.gov for inclusion with the Acceptance Letter. The Chief of Quality Assurance, or designee, certifies the report with the Clerk of the Bureau.

¹⁸ NOTE: Ohio Rev. Code § 4701.19 provides that an IPA's audit documentation remains the property of the IPA, even in the possession of the Auditor of State's office, and states that these materials are not public records available for public disclosure. However, we will request a limited waiver of this statutory provision after the AOS Legal Division has approved the proposed finding for recovery. This limited waiver will request the IPA to make audit documentation supporting the proposed finding for recovery available for inspection by the person named in the finding and legal counsel. This waiver will include only documentation directly related to the finding for recovery. Documents subject to the waiver will also become subject to public records disclosure.

- The regional chief auditor or designee will prepare and send the *Notice of Proposed Finding* and *Notice of Finding* letters to applicable parties, and any rebuttal or response correspondence to these letters via certified mail return and maintain receipt cards to/from the subject(s) of the finding.
- The regional chief auditor or designee will send the *Notice of Finding* to each individual named in the Finding for Recovery and the bonding company(ies) upon releasing the report.
- AOS Legal Division will send both the statutory legal counsel letters and, if necessary, the Attorney General letters.

IPAs should refer any matters involving possible criminal activities to the regional chief auditor and to the Chief of the Auditor of State’s Public Integrity Assurance Team, who is a law enforcement officer.

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

Example Findings for Recovery

An example *finding for recovery* is included below:

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

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

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

Responsibility for Paying Findings for Recovery: Strict Liability Laws

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

Thus, public officials (including fiscal officers) must be aware of their role in approving expenditures and safeguarding amounts collected, and take steps to prevent mistakes, errors or omissions resulting in the loss of public funds. In the context of an AOS audit, both the supervising/approving officer or employee and the fiscal officer may be liable for such losses, and may therefore be included as a party liable for repaying a *finding for recovery*, even if they did not personally account for the transaction. The Auditor of State issued Bulletin 2010-001 clarifying this policy for county officials. However, general concepts included in the Bulletin apply to all public offices.

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

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

In accordance with the forgoing facts, and pursuant to Ohio Rev. Code §117.28, a Finding for Recovery for public money illegally expended is hereby issued against Joe's Service Business, Inc. and in favor of the City of Anyplace, in the amount of \$125,000. (~~←Regardless whether the finding was paid or not, this language must be included.~~)

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

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

Jim Smith and Bill Wilson and their bonding company Ace Insurance Corp. will be jointly and severally liable in the amount of \$15,000 and \$110,000, respectively, and in favor of the City of Anyplace. (~~←Remove this paragraph if the finding was repaid under audit.~~)

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