

CHAPTER 6

OTHER POTENTIALLY DIRECT AND MATERIAL LAWS AND REGULATIONS

The Auditor of State has identified the following laws and regulations not elsewhere classified that could directly and materially affect an entity’s financial statements in certain circumstances.

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Section A: Various Entity Types

Revised: HB 153, 129th GA
Effective: 6/30/11

6-1 Compliance Requirement: Ohio Rev. Code §9.833, §2744.08 and §305.172 - Health Care Self Insurance^{1 2}

Summary of Requirement: Ohio Rev. Code §9.833 requires individual, self-insured governments or joint self-insured health-care programs to calculate (i.e., reserve³) 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, within 90 days after the fiscal year-end, reflecting those reserves (i.e., liabilities) and the disbursements made to pay self-insured claims, legal and consultant costs during the preceding fiscal year. This report is not filed with any office, including the Auditor of State; the government should make it available upon request. Programs must prepare (i.e. obtain) and maintain a certified audited 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. 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.

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 an internal service fund to account for this activity.

¹ FYI: Ohio Rev. Code §9.833(D) also permits subdivisions 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.)

² Ohio Rev. Code §305.172 and Ohio Rev. Code §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.

³ "Reserve" in this context means liabilities measured in accordance with accepted actuarial principles.

Per Ohio Rev. Code §9.833(E), some of the aforementioned requirements do not apply to ~~counties, townships, and~~ municipalities. See the matrix appended to Auditor of State Bulletin 2001-05 regarding which provisions apply to various government types. Ohio Rev. Code §9.833 applies to school districts. Note: Auditors should refer to Auditor of State Bulletin 2001-05 for additional guidance.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Subdivisions⁴ (except municipalities, townships, and counties) must establish an internal service fund to account for health self-insurance activity. Determine if the subdivision established the required fund.

~~Determine whether the subdivision (except municipalities, townships, and counties) obtained a report presenting the actuarially measured liabilities and disbursements.~~

Inspect the actuary’s certificate (i.e. opinion) that the amounts reserved conform to accepted loss reserving standards. (This requirement does not apply to municipalities, townships or counties.)

Test information the subdivision submitted **to the actuary** to determine this information is supported by the client’s accounting or other applicable records. Testing information the client provides to the actuary is necessary to comply with SAS No. 73, *Using the Work of a Specialist*. SAS 73 (AU 336.12(b)) applies when the actuary’s liability calculation is accrued as a GAAP liability⁵ or presented in a cash-basis entity’s notes.

Determine whether the actuary’s opinion language (including the scope of the work) generally complied with the example described in the “Actuarial Opinions” section of Auditor of State Bulletin 2001-05.

⁴ Ohio Rev. Code §9.833 and §2744.01 define a subdivision 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. As used in Ohio Rev. Code §9.833, a “political subdivision” also includes the entity types described in Ohio Rev. Code §3905.36.

⁵ As Bulletin 2001-005 describes, actuarial principles for measuring these liabilities are similar but not identical to GAAP requirements per GASB 10. A government can use the actuarially-computed liability in its financial statements if it does not materially differ from GAAP measurement requirements.

Consider whether any qualification in the actuary's report affects the financial statement opinion or indicates noncompliance with 2744.081.

Determine if a cash-basis (or AOS basis) government's audited statements disclose self insurance activity based on the example disclosure in Bulletin 2001-05. (For cash-basis entities, an inability to adequately calculate and present the liability may constitute a qualification related to the adequacy of disclosure.)

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):

6-2 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 reserve⁶ amounts to cover potential costs. It also requires the program to prepare a report, within 90 days after the program’s fiscal year-end, reflecting those reserves (i.e., liabilities) and the disbursements made to pay self-insured claims, legal and consultant costs during the preceding fiscal year. This report is not filed with any office, including the Auditor of State; it should be retained by the government and 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 Auditor of State Bulletin 2001-05 for additional guidance.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Determine whether a report presenting the actuarially-measured liabilities and disbursements during the year was obtained.

Inspect the actuary’s certificate that the amounts reserved conform to accepted loss reserving standards.

Test information the client submitted to the actuary to determine this information is supported by the client’s accounting or other applicable records. Testing information the client provides to the actuary is necessary to comply per No. 73, *Using the Work of a Specialist*. SAS 73 (AU 336.12(b))

⁶ “Reserve” means liabilities measured in accordance with accepted actuarial principles.

when the actuary’s liability calculation is accrued as a GAAP liability⁷ or presented in a cash-basis entity’s notes.

Determine whether the actuary’s opinion language (including the scope of the work) generally complied with the example described in the “Actuarial Opinions” section of Auditor of State Bulletin 2001-05.

Consider whether any qualification in the actuary’s report affects the financial statement opinion or indicates noncompliance with 2744.081.

Determine if a cash-basis (or AOS basis) government’s audited statements disclose self insurance activity based on the example disclosure in Bulletin 2001-05. (For cash-basis entities, an inability to adequately calculate and present the liability may constitute a qualification related to the adequacy of disclosure.)

<p>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):</p>

⁷ As Bulletin 2001-005 describes, actuarial principles for measuring these liabilities are similar but not identical to GAAP requirements per GASB 10. A government can use the actuarially-computed liability in its financial statements if it does not materially differ from GAAP measurement.

6-3 Compliance Requirement: Ohio Admin Code Sections 3745-27-15 through 18 Landfill Financial Responsibility and Certifications

The following is only a summary. When auditing a government managing a landfill, auditors should obtain and read copies of the applicable OAC sections.

Governments owning or managing landfills must annually certify financial information related to their ability to finance closure and postclosure liabilities to the OEPA. These reports are due within 180 days of fiscal year end.

An index to the relevant OAC requirement 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 or scrap tire transporter final postclosure 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 OEPA).
 - 3745-27-18: Only applies when OEPA director mandates corrective action, such as to remediate landfill groundwater contamination described in 3745-27-10. (Section (M) describes the local government requirements, if applicable.)
- I. The Federal EPA adopted a regulation (40 CFR 258.74(f)) allowing governmental solid waste landfills (GSWLFs) to avoid acquiring third-party financial instruments (such as letters of credit, insurance or establishing trust funds) to assure current final closure, postclosure and/or corrective measure 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 a regulation that parallels the Federal regulation in most aspects.
 - II. A GSWLF need not obtain third-party instruments for amounts up to 43% of the local government's **total revenue**,⁸ *provided* that it meets the tests described in **III** below. A GSWLF must obtain a third-party instrument (e.g., insurance, trust fund, bond) for all current final closure, postclosure and/or corrective measure cost estimates and any other environmental obligations, exceeding 43% of total revenue.
 - III. There are two alternatives to the third-party financial instruments nongovernments must have for (closure + postclosure + mandated corrective care costs). Governments do not need these instruments (for up to 43% of total annual revenue), if:

Alternative I

- a. The GSWLF issues GAAP financial statements.

⁸ 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. The GSWLF has not:
1. Defaulted on GO bonds, or has not issued GO bonds of less than investment grade per Moody's or S&P.

Local governments issuing bonds secured by collateral or a guarantee (e.g. AMBAC insurance) must meet the minimum rating without that security. (This means consider the *government's* debt rating, not the rating of a particular insured or collateralized *issue*.)
 2. Has not operated at a deficit of greater than or equal to (5% x annual revenue) in either of the past two fiscal years. (The federal rule defines a deficit as total revenue minus **total expenditures**);
 3. Received a qualified opinion.

Also, either condition c. or d. must be met:

- c. All GO bonds must be of investment grade, rated by either Moody's or S&P.

OR:

Alternative II:

- d. The GSWLF must have:
1. **(Cash + marketable securities)** / total expenditures \geq 5%, AND
 2. **Debt service** / total expenditures \leq 20%, AND
 3. **Ratio of long term debt issued & outstanding / capital expenditures** must be \leq 2.0.

(Based on the federal regulation, we believe that the reference to "outstanding" debt immediately above only refers to debt issued in the current year that is still outstanding at year end.)

IV. Reporting requirements:

- a. The GAAP statements must comply with GASB 18 disclosures (this requirement does not appear in the OAC, but is included in the Federal regulation.) However, OAC 3745-27-15(C)(1)(a) requires the final closure financial assurance instrument for a sanitary landfill facility, solid waste transfer facility, solid waste incinerator, or Class I composting facility to contain an itemized written estimate, in current dollars, of the cost of final closure. The final closure cost estimate shall be based on the final closure costs at the point in the operating life of the facility when the extent and manner of its operation would make the final closure the most expensive, and shall be based on a third party conducting the final closure activities.
- b. The CFO must prepare a letter listing current final closure, postclosure and/or corrective measure cost estimates and any other environmental obligations, and certify whether the government meets III.a.-d. (above), and also certify that the government is assuring a liability \leq 43% of annual operating revenues.
- c. Audited financial statements must be kept as part of the "facility's operating record."

- d. Accountants must also issue an agreed-upon procedures report. The procedures must note whether amounts used for the ratios Alternative II above in the CFO’s letter agree to the audited GAAP statements.

V. 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 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.

VI. Other

1. 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 18 prohibits discounting.
2. Both the Federal and State regulations refer to governmental financial statements as *Comprehensive Annual Financial Reports*. However, while the Federal and State rules require GAAP reporting, there appears to be no explicit requirement to prepare a CAFR. In the Auditor of State’s opinion, basic financial statements complying with GASB 18 and including segment information (if applicable) for the landfill operation are sufficient.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, including copies of updated Ohio Admin. Code Sections 3745-27-15 through 18. • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

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 OAC 3745-27 requirements and design appropriate tests and reports.

For AOS staff: If the reporting differs from the example AUP available to AOS staff in the Briefcase, you must submit your draft report to Accounting & Auditing Support for review.

Determine whether the estimate of closure, postclosure 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 SAS 73, *Using the Work of a Specialist*.)

Compare the format of the CFO's letter to the EPA with the example included in Ohio Admin. Code §3745-27-17(H).

Prepare the agreed-upon procedures report required by the Federal EPA. An example report is available to AOS staff in the Audit Briefcase under "Shells".

If the government cannot meet the government test, or has 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 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.

GASB 18, paragraph 7(e) requires disclosing the methods /instruments used to finance closure and postclosure care. (AOS omitted this sentence because the local government requirements in OAC 3745-27-15, 16, 17, and 18 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.

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):

Section B: School Districts

Revised: HB 153, 129th GA
Effective: 6/30/11

6-4 Compliance Requirement: Ohio Rev. Code Sections 3317.01, 3317.02, 3317.03 (E), 3313.981 (F), 3313.48, and 3321.04; Ohio Admin. Code Section 3301-35-06 - School District Average Daily Membership.

Summary of Requirements: Average Daily Membership (ADM) is a material variable used to compute school districts' funding, pursuant to Ohio Rev. Code §3317.022(A). Ohio Rev. Code §3317.03 defines ADM.

A school district's calendar is also an important component in school funding. Ohio Rev. Code §3317.01 requires a school district to meet the minimum number of days or hours for a school to be open for instruction in order to be eligible for foundation payments. Ohio Rev. Code §3313.48 provides that each school shall be open for instruction with pupils in attendance for not less than one hundred eighty-two (182) days in each school year, which may include the following⁹

- Up to four school days per year in which classes are dismissed one-half day early or the equivalent amount of time during a different number of days (i.e., 2 full school days) for the purpose of individualized parent-teacher conferences and reporting periods;
- Up to two days for professional meetings of teachers when such days occur during a regular school week and schools are not in session;
- The number of days the school is closed as a result of public calamity, as provided in Ohio Rev. Code §3317.01¹⁰.

In accordance with Ohio Administrative Code section 3301-35-06, the required number of instructional hours in a school day are as follows:

- Students in kindergarten shall be offered at least two and one-half hours per day of classes, supervised activities or approved educational options, excluding the lunch period. [Ohio Admin. Code §3301-35-06(C)];
 - Districts that receive Disadvantaged Pupil Impact Aid funds for all-day kindergarten shall offer five hours per day, excluding the lunch period. [Ohio Admin. Code §3301-35-06(C)]
- The school day for students in grades one through six shall include scheduled classes, supervised activities, or approved educational options for at least five hours, excluding the lunch period. [Ohio Admin. Code §3301-35-06(D)]
- The school day for students in grades seven and eight shall consist of scheduled classes, supervised activities (excluding interscholastic athletics), or approved educational options for at least five and one-half hours, excluding the lunch period. [Ohio Admin. Code §3301-35-06(E)]
- The school day for students in grades nine through twelve shall consist of scheduled classes, supervised activities (excluding interscholastic athletics), or approved educational options for at least five and one-half hours excluding the lunch period. [Ohio Admin. Code §3301-35-06(F)]

Under limited circumstances, the superintendent of public instruction may provide a written waiver to waive the required minimum number of days or hours for a school district to be open

for instruction. [Ohio Rev. Code §3317.01(B)]

Ohio Rev. Code §3317.03 (E) requires a school district to accurately show, for each day the school is in session, the actual membership enrolled in regular day classes. This code provision further delineates which students should and should not be included in a school district's ADM count on the basis of residency, school attendance, and proficiency testing attendance.

Each school district is responsible for accurately reporting statistics to the Ohio Department of Education's Educational Management Information System (EMIS), which uses the statistics to compute the school district's ADM. Of the many statistics required to be reported, one of the most important is the determination of school attendance. Pursuant to Ohio Rev. Code §3317.03 (E), a school district's attendance for ADM purposes is arrived at by determining the number of students *enrolled* during the applicable count week. The law requires each district to certify its formula ADM once annually (~~see the new "evidence-based model" requirements below~~), for the first full week of October. (Ohio Rev. Code 3317.01, 3317.02, and 3317.03). Ohio Rev. Code §3317.03 (E) also defines *enrolled* to include students with disabilities currently receiving home instruction, in attendance, or not attending but having an excused absence for a valid legal reason.

When counting the number of students enrolled for ADM purposes, Ohio Rev. Code §3313.981 sets the requirements for the inclusion and exclusion of students who live in one district but who are paying "tuition" (i.e. *formula funding* defined in Ohio Rev. Code 3317.08) and enrolled in another district. A student should be included in the ADM count of the district in which he/she resides and not the district in which he/she pays tuition to attend.⁹

Valid legal reasons for not attending Ohio public schools are set forth in Ohio Rev. Code §3321.04. Any reason not delineated in this code provision shall be deemed unexcused and the pupil should not be reported as enrolled for that day for ADM purposes.

Average daily membership (ADM) measures the number of students in each district. ~~Under prior law and continuing in the current budget, a~~All students are counted in the ADM of the district in which they reside. ~~HB 153 discontinued the practice of using the prior year's October student count to derive most districts' formula ADM. Instead, it requires use of the current-year October count to derive the formula ADM for all districts. Two changes were made to the calculation of ADM for districts in the HB 1 Evidence Based Model school funding formula. Previously, there were two ADM counts each fiscal year, the first in October and the second in February. HB 1 eliminated the February count, using only the October count from the *previous* fiscal year. This count is generally finalized by the time the next fiscal year begins, giving districts greater predictability in their state aid. An exception to this provision is given to districts for which the October count in the current fiscal year is more than 2% greater than the October count in the previous fiscal year. For these districts, ADM is based on the October count of the current fiscal year.~~

⁹ NOTE: HB 4 153 continues the practice of counting students who enroll in community schools and STEM schools in the average daily memberships of their resident school districts, crediting those districts with state funds for those students, and deducting from those districts and paying to the respective community school or STEM school a per pupil amount attributable to each individual student. ~~In doing so, HB 1 retains, largely unchanged, the codified law on payments to community schools and STEM schools. But the evidence-based funding model for school districts does not provide for a per pupil amount of funding to each district, like the prior district funding model did; therefore, the act specifies certain per pupil amounts to be deducted from districts and paid to community schools and STEM schools based on the amounts computed for fiscal year 2009 under prior law. (R.C. 3314.088 and 3326.39)~~

Note: AOS expects to expand and modify its testing procedures over Average Daily Membership for fiscal year 2011 and subsequent school district audits. However, we have revised ADM testing only minimally for the fiscal year ending June 30, 2010. Under the provisions of HB 1, the State Superintendent must also develop new expenditure and reporting rules for the new Evidence Based Model (EBM) funding components. The rules for reporting standards cannot be effective before FY 2011, and the rules for expenditure standards cannot be effective before FY 2012. Rules for spending and reporting gifted funding will both be effective FY 2012.

EBM components must be classified into three categories for expenditure and reporting:

- **Core academic strategy components** – Districts will be given flexibility regarding expenditure of these components depending on the district’s performance rating.
- **Academic improvement components** – Districts in academic watch or emergency for two or more consecutive years will be subject to the expenditure standards for these components.
- **Other components** – Not subject to expenditure standards.

All EBM funding components will be subject to reporting standards.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: In assessing the risk of noncompliance, auditors should consider using the district-wide Enrollment trend analysis available on the Ohio General Assembly’s website [access the *School Funding by District* page by clicking on the following link: <http://ode.legislature.state.oh.us>. Then, select the county, school district, and “Enrollment” option under *Chart Type*] to analyze and evaluate the changes in average daily membership (ADM) over the past ten years. Recent significant fluctuations in enrollment may signify a need to test ADM for the compliance requirements below during the current audit period. However, slight variations in recent enrollment figures may further substantiate that the risk of material noncompliance is lessened.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring and reconciliation • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Document and evaluate procedures for determining the school district's instructional calendar. As part of this evaluation, determine whether:

- the school district was open for instruction for a minimum of 182 days during the school year *minus* up to the equivalent of 2 full school days for individualized parent-teacher conferences, 2 days for professional development, and a maximum of five¹⁰ calamity days.
- the days during the school year represented "full days" of pupil instruction (e.g., a full day for students in grades one through six constitutes a minimum of 5 instructional hours, in grades 7-12 a minimum of 5.5 instructional hours constitutes a full day).

If the school district was open for instruction for less than the required minimum number of days or hours, determine whether the school district received a written waiver from the superintendent of public instruction. *Authorized waivers are rare and should always be evidenced in writing.*

Document and evaluate procedures for enrolling and withdrawing pupils, and for processing excused student absences. As part of this evaluation, determine whether the district's policies include sufficient procedures for identifying and tracking all student for whom the district is financially responsible; (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.

Compare final counts per the EMIS system with the count sheets during the October ADM count week. Seek explanations for any significant differences or adjustments.

Perform Analytical Procedures such as:

- Comparing the number of students enrolled as of October to the prior two years. Investigate any unusual or significant changes. All material changes should relate to events such as increased housing in an area, large businesses moving in or out of a school district, and any other major event that may affect enrollment.
- ~~Compare counts the week before, the week of, and the week after, the October ADM count week. Note any apparent significant differences and seek explanations from management.~~
- Compare this year's counts for selected building with previous periods. Ask for management's explanation for any significant differences.
- Determine if other student headcount lists exist that were prepared independently from those responsible for preparing the ADM counts. (Corroborating evidence from independent sources is sometimes more reliable.) Compare these counts to the ADM count for reasonableness. If independently prepared counts are not available, determine

¹⁰ ~~Effective for school year 2010-2011 only, HB 1 reduced the number of calamity days from five to three days for school districts.~~ Calamity days are days a school is closed due to: (1) disease epidemic, (2) hazardous weather conditions, (3) inoperability of school buses or other necessary equipment, (4) damage to a school building, or (5) other temporary circumstances because of a utility failure that renders a building unfit for use. School districts are permitted to shorten any number of school days by up to two hours due to hazardous weather conditions and may pay teachers when schools are closed due to hazardous weather or other calamity.

if the school district maintained counts from other weeks during the school year. If so, haphazardly select another count to compare to the October count week for reasonableness.

Where the number of students paying tuition under Ohio Rev. Code 3317.08 is expected to be significant, inspect documentation that indicates students who are paying tuition to attend are excluded from the school district's ADM (consider using analytical procedures).

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):

Section C: Community Schools

6-5 Compliance Requirement: Ohio Rev. Code Sections 3313.64, 3314.03, and 3314.08 – Community School Funding.

Summary of Requirements:

Ohio Rev. Code §3314.08 provides the formula by which Community Schools are funded. Community Schools receive funding from the state through the per-pupil foundation allocation. 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.

Full-Time Equivalence (FTE)

A full-time student is one who attends the entire school day and entire school year; that will result with the student having a FTE of 1.00. Students who attend a Community School for less than the entire year will have an FTE equal to the total days/hours attended divided by the number of days/hours in the school year. Community Schools are funded on a per-pupil FTE basis.

School Options Enrollment System (SOES)

SOES (~~effective with fiscal year 2009, ODE renamed the CSADM system as SOES~~) is the EMIS subsystem that drives funding for community schools. It is a Web application administered by the Ohio Department of Education and used by community schools and traditional public schools to enter and review data used to flow funds to community schools. Community school personnel enter data in the SOES system and traditional public school personnel review, verify or challenge that data.

Reporting Attendance in SOES

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 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 superintendent requires. Upon receipt of this report, the 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 requires the board of education of each school district to annually report the number of students entitled to attend school in the district that are actually enrolled in community schools. This section also 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.

Based on these reported numbers, the state Department of Education shall calculate and subtract the appropriate amount of state aid from each school district. The amount subtracted shall be paid to the corresponding community school or to the internet or computer-based community school entitled to receive those funds. When calculating and subtracting the appropriate amount of state aid, the department should take into consideration any enrollment of students in community schools for less than the equivalent of a full school year.

Ohio Rev. Code §3314.03 requires that the contract entered into between a sponsor and the governing authority of a community school state the following:

- 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 one hundred five consecutive hours of the learning opportunities offered to the student;¹¹
- that 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; the school is required to meet the minimum 25 student count prior to September 30th and may fall below that count throughout the year.
 - ~~Note: HB 119 of the 127th General Assembly, effective for fiscal year 2008 audit periods, modified the calculation of the community school FTE funding formula contained in Ohio Rev. Code §3314.08(L)(3).—~~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. A student must attend the community school for the entire school year. However, no internet- or computer-based community 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(L)(3)]
- that the governing authority will adopt a policy regarding the admission of students who reside outside the district in which the school is located; and
- 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.

POSSIBLE NONCOMPLIANCE RISK FACTORS:

Note: In assessing the risk of noncompliance, auditors should consider the risk of a community school reporting “ghost” students. If this risk factor is believed to be present, auditors should consider comparing students included on ADM reports during count weeks to the applicable seating charts and final grades given to students. A student that is not present on a seating chart or that did not receive a final grade may be improperly included in the community school’s ADM reports. Where discrepancies are identified, auditors must determine the date the student left the community school. If the student left after the count week, then the student was properly included in the ADM count. However, if the student actually left prior to the count week, the community school should have withdrawn the student from its enrollment and excluded the student from the ADM count.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel 		

¹¹ Valid legal reasons for non-attendance are set forth in Ohio Admin. Code §3301-69-02.

<ul style="list-style-type: none"> • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests

Document and evaluate the school’s procedures for:

- Enrolling and withdrawing pupils timely;
- Documenting student absences; and
- Notifying the resident public school of withdrawn students or students truant for more than 105 or more consecutive hours.

As part of this evaluation, determine whether the Community School’s policies include sufficient procedures for identifying and tracking all students for whom the *community school* is responsible. These students include those: (a) residing and attending public schools (b) over the age of 18 that are not residing with a guardian (c) placed by the courts in facilities outside the district, (d) attending other community schools, and (e) that have been absent due to truancy for 105 consecutive hours or greater.

Inquire with community school management about the learning opportunities it offered as part of its operating standards during the audit period. Determine whether the community school offered the minimum 920 hours of learning opportunities. 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.

Perform the following analytical procedures:

For Brick & Mortar Schools (non-electronic schools)

- Select a representative number of students from the community school’s withdrawal list. The withdrawal list may be obtained by the community school through SOES or the community school’s student management database.
 - Identify when students were withdrawn and determine whether it was timely.
 - 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 105 consecutive hours, determine the date the student should have been withdrawn.
 - Compare the dates determined in the steps above to the SOES or other student management database reports. Inquire with management about any significant differences or adjustments. Considering 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 constitutes noncompliance. Likewise, a student with excessive truancy should have received multiple*

communications from the school to verify the student's absence during the 105-hour period. Community schools should maintain a daily call log 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.

- Consider whether the number of reported students is reasonable considering the size of the facility.
- Determine if other student headcount lists exist that were prepared independently from those responsible for preparing the ADM counts. (Corroborating evidence from independent sources is sometimes more reliable.) Compare these counts to the ADM count for reasonableness.
- Based on assessed risk, **consider** visiting school facilities and “informally” counting students on site. (This count must be informal. In other words, do not line up the students and ask them to count off – your count should not intrude on school activities. We realize this will not provide an exact count. Instead you are looking for evidence of obviously material overstatements of ADM.)

For E-schools

- In addition, select multiple students from the E-school's SOES or other student management database and compare the reported enrollment date to the latter of the: (1) login date, or (2) date the computer was received.

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.

- Obtain the number of hours reported on the E-school's system (*this is a custom report that the community school will have to generate from their online learning portal or whatever system they use to store student hours*) for login times and non-login hours (e.g., field trips) for selected students. Compare these hours to FTEs reported in SOES for each selected students for the entire year. Inquire with management about any significant differences or adjustments. Considering reporting noncompliance or other client communication for any significant unexplained variances.

Note: This is admittedly a difficult step; however, similar to login sheets, the community school should be able to produce a report of total hours the student claimed as learning time during the year. These hours should include all learning opportunities, not just “seat time”.

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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6-6 Compliance Requirement: Ohio Rev. Code §3314.03(A)(11)(b) — Liability insurance.

Summary of Requirement: The governing authority of each community school must purchase liability insurance, or otherwise provide for the potential liability of the school.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals; • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring and reconciliation • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

Secure a copy of the school’s insurance policy. Note: We can very briefly scan the policy to assess the reasonableness of coverage, but we should not spend time “testing” the policy, because we are not insurance experts. We can issue a management letter comment if evidence strongly suggests the coverage is improper.

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):

6-6 Compliance Requirement: Ohio Rev. Code §3314.08(I) - Tuition.

Summary of Requirement: No community school is permitted to charge tuition to any student.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

Obtain a copy of the school’s enrollment application and scan the receipts journal or ledger for evidence of tuition charges.

Inquire of the treasurer regarding any tuition charges.

<p>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):</p>

Revised: HB 153, 129th GA
Effective: 9/29/11

6-7 Compliance Requirement: : Ohio Rev. Code §3314.02, §3314.023, §3314.03, §3314.07, §3314.072, §3314.073 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*, solely for the costs of its oversight and monitoring activities.¹² In other words, the total amount of such payments for oversight and monitoring of the school shall not exceed 3% of the total amount of payments for *operating expenses that the school receives from the State*¹³. [3314.03(C)]
- The contract between the sponsor and the school must require the sponsor to monitor the following [3314.03(D)]:
 - Compliance with laws the contract specifies
 - At least annually, monitor and evaluate the academic and fiscal performance and the organization and operation of the community school
 - Report the results of the preceding evaluation to ODE and to the students’ parents.
 - Provide technical assistance to the school in complying with applicable laws and terms of the contract;
 - 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 §3314.073 of the Revised Code,
 - Suspend the operation of the school pursuant to §3314.072 of the Revised Code,
 - Terminate the contract of the school pursuant to §3314.07
 - 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.
- Ohio Rev. Code § 3314.023 requires that in order to provide monitoring and technical assistance, a representative of the sponsor of a community school shall meet with the governing authority or treasurer of the school and shall review the financial and enrollment records of the school at least once every month.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel 		

¹² A sponsor can earn more than 3% if it provides additional services beyond sponsorship. A contract should specify these additional services, and should differentiate them from the services required of a sponsor. Effective 3/30/06, community schools cannot sponsor other community schools [Ohio Rev. Code §3314.02(C)(1)(f)].

¹³ AOS has determined that these monies would include Full-Time Equivalency (FTE is explained in section 6-4), 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.*

<ul style="list-style-type: none"> • Tickler Files/Checklists • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

Examine the contract between the school and the sponsor. Determine if it provides payment to the sponsor for monitoring activities.

- 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 of the sponsor provides additional services).

Inquire regarding the nature and extent of the sponsor’s monitoring activities.

- Examine minutes, correspondence, reports or other evidence supporting that the sponsor fulfilled its monitoring duties described above.
- Read the sponsor’s annual report to ODE. Based on other audit procedures, judge whether that report suggests the sponsor is diligent in its monitoring and is frank in its reporting to ODE.¹⁴

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.)

Assess whether the sponsor’s overall monitoring generally fulfills the requirements above. Report significant noncompliance as necessary.

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):

¹⁴ 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 ODE, 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.

Section D: Townships

Revised: HB 153, 129th GA
Effective: 9/29/11

6-8 Compliance Requirement: Ohio Rev. Code Sections 507.09 and 505.24(C) Allocating township trustee ~~per diem costs or salaries to funds~~ and fiscal officer compensation. (~~Amplified by Ohio Attorney General Opinion 2004-036~~)

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

- (1) **Trustees receiving per diem compensation:** 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.¹⁵ 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 limits the number of days a trustee can be compensated to 200.

However, for *salaries not* paid from the general fund, 2004 OAG Opinion 2004-036 established the following documentation requirements:

As noted above, however, a board of trustees is authorized by R.C. 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 proviso in R.C. 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.

¹⁵ 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 OAG Opinion 2004-036. If a Township has a duly enacted policy defining what constitutes a "day" in compliance with OAG Opinion 2004-036, we will audit in accordance with that policy. If the Township has not adopted a policy, we will audit proportionately as indicated above.

In other words, 2004 OAG Opinion 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, in a manner similar to trustees paid per diem compensation. If per diem trustees do not document their time, then no part of salaries may be paid from the restricted funds.

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, ~~regardless of whether the township uses the “per diem” or “salary” method~~, 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 R.C. 505.84 was the focus of OAG Opinion 2004-036, the ruling also applies to funds for the motor vehicle license tax pursuant to R.C. 4504.18 and 4504.19; motor vehicle tax pursuant to R.C. 4503.02; gasoline tax pursuant to R.C. 5735.27(A)(5)(d); the cemetery fund pursuant to R.C. 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 performed¹⁶ 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.**

Important note: ~~Prior to this OAG Opinion, regarding (2) above, the AOS accepted resolutions that specified percentages of salaries to allocate to various funds, as complying with Ohio Rev. Code §505.24(C). This OAG Opinion alters that conclusion.~~ Resolutions to pay trustees by salary should specify that a township will allocate salaries based on **documentation** the trustees submit, not based on percentages a **resolution specifies**.

For example, ~~subsequent to the OAG Opinion~~, it is **not** acceptable for a township to resolve that they will “charge 50% of trustee salaries and benefits to the general fund and 50% of this compensation to the road & bridge fund.”

- (2) **Trustees receiving compensation by annual salary:** 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 (ORC 505.24(C)). These proportions are a guide for use throughout the year; however, total payment for the fiscal

¹⁶ A sufficient description of tasks performed during a calendar day, with a percentage of total time worked during that day attributed to each task, may be a reasonable substitute for logging the actual hours and minutes to perform such task(s).

year must be based on the cumulative *actual* service efforts¹⁷ during the fiscal year on restricted fund¹⁸ activity. 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 is attached to AOS bulletin 2011-07. If 100% of the compensation of the township trustee is to be paid from the general fund, no certification is required.

~~and are paid solely from the general fund, the only required documentation is a unanimously approved resolution. Ohio Rev. Code §505.24(C) does not prescribe “documentation of time spent”.~~

- (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 is attached to AOS bulletin 2011-07. If 100% of the compensation of the township fiscal officer is to be paid from the general fund, no certification is required.

~~The Auditor of State has included this documentation requirement in the *Ohio Compliance Supplement* since 2006. Uncertified annual salaries for salaried-trustees/fiscal officer, for 2009 and subsequent years where the trustees/fiscal 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. 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.~~

¹⁷ Townships should use a reasonable method to document and allocate Per Diem Township Trustee compensation to the appropriate funds. As an example, assume the Board of Trustees passes a Resolution at the beginning of the year dividing the Trustees' compensation evenly between the General Fund and Road and Bridge Fund, The Township Fiscal Officer uses the amounts specified within the Resolution to allocate the Trustee compensation payments evenly to the appropriate funds throughout the year. However, at year end, the Township Fiscal Officer should reconcile the fund allocations to time and effort records, maintained by the Trustees, documenting the actual cumulative service effort for the year. If necessary, the Township Fiscal Officer should adjust the fund allocations according to the actual cumulative service effort. If, however, the fund allocation was reasonably close to the actual cumulative service effort (e.g., 52/48 split vs. 50/50), no adjustment is necessary. Another example would be to allocate each month according to actual time spent, if the cumulative allocation doesn't match the resolution at the beginning of the year, no need to go back and change the resolution.

¹⁸ Regarding this Ohio Compliance Supplement step, a *restricted fund* is any fund other than the general fund.

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.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Time summaries / timecards • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures - Compliance (Substantive) Tests:

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

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

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

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

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

Note: A failure to document the time spent on township tasks would constitute a scope restriction on the allocation of trustee salaries. This could affect our financial statement opinion, if the undocumented allocation is material to the financial statements.

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):

Section E: Counties and Law Libraries

~~**6-10 Compliance Requirement:** Ohio Rev. Code §315.12 Allocating motor vehicle license and fuel tax receipts to support the county engineer (*County Only*)(*Moved to Chapter 7*)~~

Summary of Requirement:

Two thirds of the cost of operation of the county engineer’s office, including all salaries and maintenance costs of the engineer’s office as provided by the annual appropriation made by the board of county commissioners, shall be paid out of the county’s share of the funds derived from:

- ~~Motor vehicle licenses receipts as distributed under §4501.04 of the Revised Code~~
- ~~Motor vehicle fuel tax receipts as distributed under §5735.27 of the Revised Code~~

[Ohio Rev. Code §315.12(A)]

Where employees of the county engineer are temporarily assigned to perform engineering and plan preparation work on a bond-financed project, their salaries and expenses for such work may be paid from the proceeds from the sale of such bonds, instead of from the motor vehicle license and fuel tax receipts, throughout the duration of work performed by county engineer’s office employees on such projects. [Ohio Rev. Code §315.12(B)]

POSSIBLE NONCOMPLIANCE RISK FACTORS:

~~**Note:** While this is not new law, it is a new test that first appeared in the December 2008 OCS. In assessing the risk of noncompliance, auditors should consider whether this compliance requirement has been tested in previous audits. If not, auditors should test this step as part of the current audit.~~

~~**In subsequent audits, assuming you did not detect noncompliance, and have assessed the control environment favorably, you might reduce this testing to an analytical comparison of current year and prior year(s) motor vehicle license and fuel tax receipt allocations in the County Engineer’s Fund.**~~

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals; • Knowledge and Training of personnel • Time summaries / timecards • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

~~**Suggested Audit Procedures – Compliance (Substantive) Tests:**~~

~~Document how the county allocates motor vehicle license and fuel tax receipts to the county engineer's office.~~

~~Recompute two thirds of the total appropriated cost of operation of the county engineer's office, including all salaries and maintenance costs, for the audit period. Determine whether motor vehicle license and fuel tax receipts were used to support these costs. *Note: The use of bond proceeds to pay for a portion of the appropriated salaries and expenses of county engineer employees assigned to temporarily perform engineering and plan preparation work on a bond-financed project is an allowable exception to this requirement.*~~

~~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):~~

6-11 Compliance Requirement: Ohio Rev. Code §§3375.48-53, 307.51, 307.511-513—Statutory Funding for County Law Library Resource Fund Counties and County Law Library Associations (LLA's)

Summary of Requirements:

HB 420 reformed the county law library structure. Beginning in 2010, the local County Law Library Resources Boards, which are new public agencies established under ORC §307.51 and §307.511-516, will manage the legal resource needs of the county law library. However, these boards are not legally separate from the county (i.e., they are a part of the county's primary government under GASB Statement 14). The county boards will submit and have its budget approved by the commissioners. A component of this budget will be the appropriation of the fine and penalty money which will be deposited in the county law library resources fund, a special revenue fund within the county treasury.

County Law Library Resources Boards (LLRB)

The act creates a LLRB in each county to replace each county's law library association. Beginning on January 1, 2010, subject to appropriations made by the board of county commissioners, each library resources board must provide legal research, reference, and library services to the county and to the municipal corporations, townships, and courts within the county and managing the coordination, acquisition, and utilization of legal resources. [ORC §307.51(B)]

The LLRB is comprised of five members who must be residents of the county, must be appointed by July 1, 2009 [ORC §307.511(D)], and are appointed as follows [ORC §307.511(A)]:

- The prosecuting attorney of the county appoints one member. The administrative judges or presiding judges of all municipal courts and county courts within the county shall meet to appoint one member. The person must be an attorney licensed to practice law in Ohio and in good standing before the Supreme Court of Ohio;
- The administrative judge or presiding judge of the court of common pleas of the county shall appoint one member. The person must be an attorney licensed to practice law in Ohio and in good standing before the Supreme Court of Ohio;
- The board of county commissioners appoints two members.

NOTE: During the period of July 1, 2009, through December 31, 2010, the LLRB consists of seven members—the five appointed members and two members who are residents of the county appointed by the board of trustees of the LLA [ORC §307.511(C)]

NOTE: A member of the board of trustees of a LLA may serve as a member of the LLRB if they disclose each membership to both the board of trustees of the LLA and the LLRB [ORC §307.511(F)]

Employees of the LLRB

The LLRB must employ a county law librarian who is the chief administrator of the LLRB. The LLRB may also employ additional staff to perform any functions as determined by the LLRB. The LLRB shall fix the compensation for the county law librarian and any additional employees who shall all be in the unclassified civil service of the county [ORC §307.51(C)].

WHAT HAPPENS IN 2009—The Year of Transition

HB 420 of the 127th General Assembly repealed the 5-year phase out schedules for county obligations to the LLA regarding the payment of compensation and provision of space. As

described in the Time Line below, during calendar year 2009 the county is responsible for paying 100% of staff compensation for the law librarian and up to two assistants and providing space and utilities for the LLA for what is the association's final year of operating the county law library. Also during 2009, the LLA becomes responsible for 100% of the costs of any furniture or fixtures they acquire. [ORC §3375.49, as amended by the Act] Although the LLRB does not assume management of the county law library until January 1, 2010, the board appointments are to be completed by July 1st, and its first meeting must be held by July 15, 2009. During the transition (i.e., January 1, 2009 through December 31, 2009), the LLA Board of Trustees will also serve as a "Transition Advisory Council" to the LLRB and the LLRB will initially be comprised of seven members—the 5 appointed members and 2 additional members appointed by the LLA Board of Trustees.

Transfer of Assets and Cash

Uncodified provisions of the Bill provide that each LLA will transfer both of the following to the LLRB on or before January 1, 2010:

1. All "unspent fines and penalties" in the LLA's general fund and retained moneys fund collected pursuant to ORC §§ 3375.50 to 3375.53.
 - a. Therefore, the cash payment to a county should equal the sum of the cash balances in its general and retained monies fund as of the transfer date. When the LLA transfers its cash to the county, it should also send unpaid invoices to the county auditor for encumbering and payment.
 - b. The County should record these amounts in the LLRF.
 - i. Subsequent to the transfer, all public money due to the LLA or LLRB should be deposited into the LLRF and not paid to the LLA.
 - ii. (Otherwise, the LLA would have public money still in its possession after January 1, 2010, contrary to the intent of the law.)
 - c. LLA need not pay its private money to the county. LLAs may continue to exist as either private associations or nonprofit corporations, and may spend their private money for any purpose consistent with its tax exemption.
 - i. Private monies include: membership dues, overdue book charges and photocopying charges. Fees the Library collects for the use of books and copiers remain private even though the books and copiers may have been purchased with public funds.
 - ii. This is not public money and will not be subject to audit by the Auditor of State.
 - d. Per Auditor of State Bulletin 2004-007, a LLA's accounting records should segregate private money in a fund separate from the general and retained monies.
 - i. Bulletin 2004-007 described how law libraries should identify and segregate general and retained monies funds vs. private funds if they had not previously segregated them. The Auditor of State believes this Bulletin has provided LLA sufficient time to identify and segregate any private money.
 - ii. If a LLA has not yet segregated public and private funds, it must determine the amounts it deems private vs. public prior to transferring its cash to the county.
 1. The Auditor of State (and contracting IPAs) will accept reasonable determinations / measurements of public vs. private monies. When an LLA makes this determination after the issuance of AOS Bulletin 2009-009, auditors should document their assessment of the reasonableness of the determination, and

- ~~should recompute or otherwise briefly test the public vs. private fund calculation as part of their 2009 financial statement audit.~~
- ~~2. If an LLA does not determine the amounts of its private funds, it should transfer all its cash to the county for deposit into the LLRF.~~
- ~~2. All personal property the association can reasonably identify as having been purchased by the fines and penalties in the LLA's general fund or retained moneys fund collected pursuant to ORC §§ 3375.50 to 3375.53.~~
- ~~a. The Auditor of State and contracting IPA's should inquire regarding the method the library's management used to differentiate property purchased from the general and retained funds vs. private funds. Audit documentation should include the results of these inquiries, and the results of other limited procedures (observation, examination of records, etc) supporting:~~
- ~~i. Whether management's method of determining the assets to transfer is reasonable.~~
- ~~ii. That the property transfer actually occurred and complied with the method management prescribed.~~
- ~~b. We will not report noncompliance for reasonable, good faith efforts to identify and transfer to the county the property purchased from the general and retained funds.~~
- ~~c. Consistent with the guidance in 1.d.ii.2 above, if an LLA cannot reasonably determine personal property purchased with private funds, it should transfer all its personal property to the LLRB.~~

IMPORTANT DATES — TIME LINE:

January 1, 2008 through December 31, 2008 — For 2008, pursuant to House Bills 363 and 66 then in effect, law libraries must pay 40% of the compensation for their librarian and up to two assistants from their own funds and the county pays 60%. For 2008, counties pay 80% of the cost of space, utilities and fixtures. [R.C. §3375.49(B)(2)(a)(ii) and §3375.49(B)(2)(b)(i)]

January 1, 2009 through December 31, 2009 — County pays the full compensation of the law librarian and up to two assistants and pays the cost of space and utilities for the law library [furniture and fixtures are responsibility of County Law Library Association].

July 1, 2009 — the members of the County Law Library Resources Board must be appointed by this date. [R.C. §307.511(D)]

July 1, 2009 through December 31, 2010

- Two additional persons appointed by the Trustees of the LLA serve as members of the County Law Library Resources Board [the Board is comprised of seven members during this time]. [R.C. §307.511(C)]
- Transition Advisory Council exists — members are the board of trustees of the County Law Library Association. [R.C. §307.51(E)]

July 15, 2009 — County Law Library Resources Board must hold its initial meeting on or before this date. [R.C. §307.512]

County Commissioner's budget process for calendar year 2010 — County Law Library Resources Board submits budget request and has its 2010 budget approved by the board of county commissioners. [R.C. §307.513(A)]

December 31, 2009

- ~~County Law Library Association's responsibility for management of the county law library ends.~~
- ~~Last day County Law Library Association receives fine and penalty money.~~
- ~~County obligations to County Law Library Association end.~~

January 1, 2010

- ~~County Law Library Resources Board begins management of legal resources needs of the county and the county law library.~~
- ~~County Law Library Resources Fund is effective—exists as a special revenue fund within the county treasury into which is deposited all fine and penalty money allocated to the County Law Library Resources Board and any appropriations permissively made to the Law Library Resources Fund from the general fund by the commissioners. [R.C. §307.513(B)]¹⁹~~
- ~~Fine and penalty money now directed to the county. [R.C. §307.514]~~

On or before January 1, 2010—~~County Law Library Association is to transfer to the county both of the following:~~

- ~~All unspent fines and penalties in the law library's general fund and retained moneys collected pursuant to ORC Sections 3375.50 to 3375.53. [R.C. §307.515(A)]~~
- ~~All personal property that the association can reasonably identify as having been purchased by the fines and penalties in the law library's general fund or retained moneys fund collected pursuant to ORC Sections 3375.50 to 3375.53.~~

July 1, 2010—~~The County Commissioner's Association must make the initial appointments of two members to the Statewide Consortium of County Law Library Resources Boards by this date—one appointment must be a chief administrator of a County Law Library Resources Board. [R.C. §3375.481(C)]~~

January 1, 2011

- ~~Statewide Consortium of County Law Library Resources Boards is effective. [R.C. §3375.481(A)]~~
- ~~Statewide Consortium of County Law Library Resources Boards Fund is established within the state treasury—the annual county assessments for the Statewide Consortium are deposited into this fund. [R.C. §3375.481(E)(1)]~~
- ~~County Law Library Resources Board may, at their discretion, create and appoint an Advisory Council—members appointed to the Advisory Council must be persons engaged in the private practice of law and have experience in the operation and funding of law libraries. [R.C. §3375.481(F)]~~

On or before February 15, 2011 and each year thereafter—~~county treasurers' are to have deposited their County Law Library Resources Board's annual assessment for the Statewide Consortium.~~

Refer to AOS Bulletin 2009-009 for additional information on implementing HB 420.

¹⁹ ~~Note: Interest earned on the Law Library Resources Fund is payable to the county's general fund.~~

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 has been amended several times over recent years. As a result, there is an increased risk of noncompliance, especially during the transition period.~~

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Time summaries / timecards • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		

Suggested Audit Procedures – Compliance (Substantive) Tests:

~~Step 1 below applies to 2009 county audits, not to audits of a law library. The remaining steps apply to 2008 or 2009 law library audits, as indicated.~~

1. ~~**For 2009 county audits:** Please show me documentation that the County Law Library Resources Fund was adopted and in effect as a county special revenue fund during fiscal year 2010. For example, please show me documentation supporting that fine and penalty money collected by the various courts within the county was deposited into the Law Library Resources Fund.~~
2. ~~**For 2009 law library audits:** Please show me documentation supporting whether the LLA transferred both of the following to the LLRB on or before January 1, 2010:

 - All “unspent fines and penalties” in the LLA’s general fund and retained moneys fund collected pursuant to ORC §§ 3375.50 to 3375.53.
 - All personal property the association can reasonably identify as having been purchased by the fines and penalties in the LLA’s general fund or retained moneys fund collected pursuant to ORC §§ 3375.50 to 3375.53.~~
3. ~~**For 2009 law library audits:** If the county did not pay 100% during fiscal year 2009, including fringe benefits, for the law librarian and up to two assistants, determine whether the county encumbered the unpaid portion as an expenditure and remitted it to the law library resources fund within a reasonable time subsequent to year end. If not, consider appropriate findings for adjustment between the new county law library resources fund and the county general fund.~~
4. ~~**For 2009 law library audits:** Please show me documentation supporting that the county paid 100% of the space, utilities, and fixtures for the law library resources board during fiscal year 2009.~~

- 5. ~~For 2008 law library audits:~~ If the law library association did not pay 20% of the cost of space, utilities, and fixtures during fiscal year 2008, determine whether the law library encumbered the unpaid portion as a 2008 expenditure and remitted it to the county within a reasonable time subsequent to December 31, 2008. If not, consider appropriate findings for recovery.
- 6. ~~For 2008 law library audits:~~ If the law library association did not pay 20% of the cost of space, utilities, and fixtures during fiscal year 2008, determine whether the law library encumbered the unpaid portion as a 2008 expenditure and remitted it to the county within a reasonable time subsequent to December 31, 2008. If not, consider appropriate findings for recovery.

~~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):~~

Section E: Tax and Pension Withholdings

Revised: Section 2043 of the Small Business Jobs and Credit Act of 2010 (Public Law No. 111-240) Effective: Tax Years beginning after December 31, 2009

If the compliance attributes listed in 6-9 below were tested during payroll substantive testing, no additional tests needed.

6-9 Compliance Requirements: Internal Revenue Code (IRC) Chapter 26 [26 U.S.C.] - Collection of Income Tax at Source on Wages; 26 U.S.C. §3401 through §3406:

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

- 26 U.S.C. §3102(a): Deduction of [Medicare] tax from wages;
- 26 U.S.C. §132: Exclusion of certain fringe benefits from gross income;
- Internal Revenue Regulations (26 C.F.R.):
 - §1.61-21: Taxation of fringe benefits;
 - §1.6041-1: Reporting of income aggregating \$600 or more [i.e., 1099s-MISC]²⁰;
 - §1.6041-2: Reporting of wage income aggregating \$600 or more [i.e., W-2s];
 - §1.6041-3: Various exclusions;
 - §1.6041-6: Time and place for filing forms 1099 and 1096;
 - §1.6050E-1: Income tax refund reporting.
- Ohio Rev. Code §5747.06 - Collection of Ohio income tax at source.
- 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 those tax matters to the appropriate tax authorities and to the recipients. Certain of these sections require consideration of whether employer-provided “fringe” benefits,

²⁰ 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 on form 1099-MISC.

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 new legislation removes the special record-keeping requirements of listed property. However, employers still should have a policy prohibiting any more than a de minimus 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. In these circumstances auditors should not rotate this test, and should determine whether the government is remitting withholdings when due.

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

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Time summaries / timecards • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • 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.
2. Inquire 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

- allowance²¹? If so, inquire how they compute the benefit amounts reflected in the affected employees' Forms W-2? Review 1 or 2 employees' W-2s that include these amounts.
3. Inquire if the government paid any independent contractor (other than a corporation) \$600 or more during this year? If so, review a few issued Forms 1099s.
 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):

²¹ 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. In private letter* ruling 201005014, the IRS determined employer-provided clothing is a nontaxable benefit for employees of a political subdivision of a state. However, the IRS cautioned us that the private letter ruling applied only to the narrow circumstances described therein and ought to not be construed to mean government-provided clothing is generally nontaxable. Therefore, governments should obtain IRS publications or advice from a qualified tax practitioner in determining whether benefits are taxable. It is impractical to include this guidance in the Ohio Compliance Supplement.

* Letter Rulings may not be cited as a precedent by any government other than the one which requested the ruling; however, your legal advisor might find it useful to review.

If the compliance attributes listed in 6-10 below were tested during payroll substantive testing, no additional tests needed.

6-10 Compliance Requirement:

- Ohio Rev. Code Sections 145.01, 145.02, 145.03, 145.47, and 145.48 - **Public Employees Retirement System (PERS)**, definitions, exclusions, exemptions and rates of contributions.
- Ohio Rev. Code Sections 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 Sections 3307.01, 3307.35, 3307.51, 3307.53, 3307.56, and 3307.691 - **State Teachers Retirement System (STRS)**, definitions, employment of retired members, contribution rates. (These sections also apply to community school employees.)
- Ohio Rev. Code Sections 3309.23, 3309.341, 3309.47, 3309.49 and 3309.51²² - 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.)

Summary of Requirement: These sections require governments to enroll most of their employees²³ 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.

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 these circumstances auditors should not rotate this test, and should determine whether the government is remitting withholdings when due.

In determining how the government ensures compliance, consider the following:	What control procedures address the compliance requirement?	W/P Ref.
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²² The Secretary of SERS certifies to ODE amounts ODE is to withhold from community school foundation payments for pension costs.

²³ Independent contractors performing the same duties as school employees as defined in Ohio Rev. Code §3307.01, such as contract teachers teaching in a classroom, may also be subject to membership in the STRS retirement system.

<ul style="list-style-type: none"> • Policies and Procedures Manuals, • Knowledge and Training of personnel • Time summaries / timecards • Legislative and Management Monitoring • Management’s identification of changes in laws and regulations • Management’s communication of changes in laws and regulations to employees 		
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Suggested Audit Procedures - Compliance (Substantive) Tests:

1. When testing payroll transactions, determine if the government withheld pension amounts at the proper rate.²⁴
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.
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.**)

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):

²⁴ Pursuant to IRC Section 3121(b)(7), AOS considers employees of community school management companies who perform teaching and administrative services to be members of STRS or SERS. Therefore, the mandatory employee and employer contributions must be paid into the appropriate State retirement systems. 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.***