Responsibilities of the Auditor

- Ohio Revised Code (ORC) Chapter 117 governs powers and duties of the auditor of state (AOS)
  - The Auditor “shall audit all public offices.” (ORC 117.10)
  - Under certain conditions, the Auditor may also audit the accounts of private institutions, associations, boards, and corporations receiving public money.
  - Regular audits occur at least once every two fiscal years (ORC 117.11)
- Special audits may also occur if requested by the public office or upon the auditor of state’s initiative under certain circumstances
Statutory Framework

A “Finding for Recovery” (FFR) is a written report issued by the Auditor of State detailing an illegal expenditure of public monies for purposes of ORC 117.28.

- An unresolved finding prevents a person from receiving public contracts. (ORC 9.24(A))
- A finding for recovery is listed on the Auditor of State database available to the public
  - Includes all persons against whom a finding is issued and the amount of money identified as owed

Statutory Framework, continued

- A state agency or political subdivision is required to verify that no unresolved findings for recovery are issued against the person before awarding a contract. (ORC 9.24(E))
- ORC 9.24(B) sets forth the circumstances under which a finding is “resolved.”
- Attorney General is required to report to Auditor the status of whether resolved

When there is a finding...

- Audit staff sends a “notice of proposed finding” to the debtor.
- The debtor has an opportunity to contest the finding during the audit.
- Audit staff sends a “notice of finding” when a final decision is made to issue the finding.
When there is a finding, continued

• A certified copy of the audit report is the final report filed with the public officer (ORC 117.27) and the Attorney General is notified. (ORC 117.28)
• The officer receiving the audit report may, within 120 days after receipt, institute legal action. ORC 117.28. This is a pre-collection or “monitor phase” for the Attorney General’s Office (AGO).

AGO “Monitor Phase”

• During this 120 day period, AGO monitors the status of all findings
• AGO sends letters to the political subdivision, statutory legal counsel for the political subdivision, and debtors requesting information pursuant to ORC 117.28
  – Follow up communications occur when necessary
• AGO waits to see what action, if any, is taken at the local level

Monitor Phase, continued

• When a debtor agrees to pay, payments need to be promptly reported to AGO along with proof of payment.
  – Note: payments may include payroll deductions, but salary reduction is not an appropriate form of payment.
• AGO will review any disputes when documentation to support the dispute is provided
• AGO must approve any abatement, compromise, or settlement (ORC 117.33)
• AGO determines a finding to be resolved when paid
Monitor Phase, continued

FindingsForRecovery@OhioAttorneyGeneral.Gov

We encourage the use of this email address for reporting any of the following:
• Status updates and general questions;
• Reporting of payments;
• Reporting of defaulted payment arrangements;
• Notification of whether any legal action has occurred;
• Notification of when the AGO should proceed with collection activity; and
• Dispute of the finding for recovery, with supporting documentation.

Collections Phase

• The officer receiving the audit shall notify the AGO in writing of the reason why no legal action was taken.
• If legal counsel does not initiate a civil action or the political subdivision does not otherwise secure repayment within 120 days, the AGO begins collections.
• Collection costs and interest are added (ORC 109.081)

Collections Phase, continued

• AGO may offset Ohio income tax refunds, lottery winnings, and unclaimed funds.
• AGO skip traces to verify debtor address and telephone number.
• Collection notices mailed at intervals (30 days; 60 days; 90 days).
• Collection calls are made.
• Disputes with supporting documentation are reviewed.
Collections Phase, continued

• Generally, AGO does not approve payment plans.
  – If debtor cannot pay in full, AGO will accept partial payments.

• Payments must be made directly to AGO.
  – If political subdivision receives payment, payment must be forwarded to the AGO.
  – Debtors are encouraged to pay by cashier’s check or money order.
    • Other methods of payment

Collections Phase, continued

  – AGO reports payments to local entity.
  • Entity will be made whole once collection costs are recouped.

  • If voluntary payment is not made, the debt is assigned to an attorney.

  • AGO may appoint special counsel (ORC 109.08)
    – Counsel may file suit against debtors with AGO approval
      • Surety may be sued in same action (ORC 117.32)
      • May utilize a judgment, liens, wage garnishment, bank attachment

Joint and Several Liability

• The AOS frequently issues findings jointly and severally against
  – Person who received the money (primary)
  – Surety
  – Public official(s) who approved payment (secondary)

• During the monitor phase, repayment focuses on debtors who are primarily liable.
• During the collection phase, repayment focuses equally on primarily and secondarily liable debtors
• Strict liability for public officials concerning money “received or collected” (ORC 9.24)
  – Who is a public official?
    • “any officer, employee, or duly authorized representative of a public office” (ORC 9.38)
  – What is a public office?
    • “Any state agency, public institution, political subdivision, other organized body, … or entity established by the laws of this state for the exercise of any function of government.” (ORC 9.38)

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**Case Development**

• Work Papers
  • “Permanent File” – content varies among audits and field offices. E.g. policies, ordinances, employee personnel handbooks
• Witnesses —
  – AOS staff
  – Public officials
  – Debtors

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**Case Development, continued**

• Coordination with
  – Prosecutors
    • What action have they already taken?
    • What is their position on the subject?
  – Public entity
    • What action has the solicitor taken?
    • What is their position?
    • Do they have more information?
Resolving Findings

• A resolved finding occurs upon:
  – Payment in full
  – Repayment plan approved by the AGO and political subdivision (recoupment and setoff may be appropriate)
  – Abatement (waiver of repayment)
  – Repayment plan approved by political subdivision as part of a binding settlement agreement (subject to ORC 117.33)
  – Essential contractor (AGO and political subdivision consent)

Resolving Findings, continued

– Debtor has sued to dispute the finding

Abatement (ORC 117.33)
– Abatement or compromise requires AGO written approval.

Resolving Findings, continued

• Reporting resolutions – AGO is required to report on resolved findings to the Auditor, per ORC 9.24
  – January 1st, April 1st, July 1st, October 1st
  – AOS database updated by the following 15th of the month
• Note: Resolved findings are not “removed” from the AOS database. Their status is reflected as “resolved” vs. “unresolved”
Common FFR Issues
• What does NOT resolve a finding?
  – A letter “disputing” the finding
  – Any kind of local action that does not reflect an
    abatement or settlement approved in writing by the
    AGO, such as:
    • Resolution to “forgive” the finding
    • Retroactive legislation
    • Retroactive amendments to minutes (to reflect approval)
  – The political subdivision should not pay a FFR for the
    debtor (or reimburse the debtor). This could result in a
    new finding.

Common FFR Issues, continued
• Unauthorized settlements
  – Outside of a Judgment: if the political subdivision
    claims that a finding was settled out of court, and the
    AGO did not approve the settlement, the settlement can
    be treated as void under ORC 117.33.
  – As part of a Judgment or Dismissal with Prejudice: if a
    finding is “settled” after court action, and the court
    enters the settlement as part of a judgment, or dismisses
    the case with prejudice following settlement, then we
    have a bootstrap problem.

Common FFR Issues, continued
• Public funds must be expended for public purposes
  – Purpose depends on entity
  – Amount must be reasonable
  – Some purposes not proper as a matter of law, e.g.,
    purchase of alcohol
• Debtor not limited to records in audit (“new”
  evidence to support the payment may appear)
Statute of Limitations

- A cause of action accrues when “the report is filed with the officer or legal counsel whose duty it is to institute civil actions for enforcement.” ORC 117.34.
- A certified copy of the report must be filed with legal counsel. ORC 117.27.
- The statute of limitations for statutory liability is six years. ORC 2305.07; see State ex rel Holcomb v. Walton, (12th Dist. 1990), 66 Ohio App. 3d 751.
- Expiration of the statute of limitations does not resolve debt.

Statutory framework, continued

- Interest
  - Accrues for claims of state creditors from date payment is “due.” ORC 131.02
  - For bonds or instruments in writing, interest accrues when money is payable on the bond or instrument. ORC 1343.03

Statutory framework, continued

- Criminal restitution orders
  - Criminal financial sanction operates as a civil judgment in favor of the state or political subdivision in which the court is located. ORC 2929.18(D) (felonies); ORC 2929.28(D) (misdemeanors).
  - If judgment is “dormant,” may have to revive it. See generally ORC 2329.07, ORC 2325.15
Statutory framework, continued

• Forfeiture
  – Retirement funds can be forfeited to pay restitution for theft in office or other offenses. See ORC 145.57, 2907.15, 2921.41
  – Same with deferred compensation. ORC 148.10

The AOS database

• https://ohioauditor.gov/findings.html