

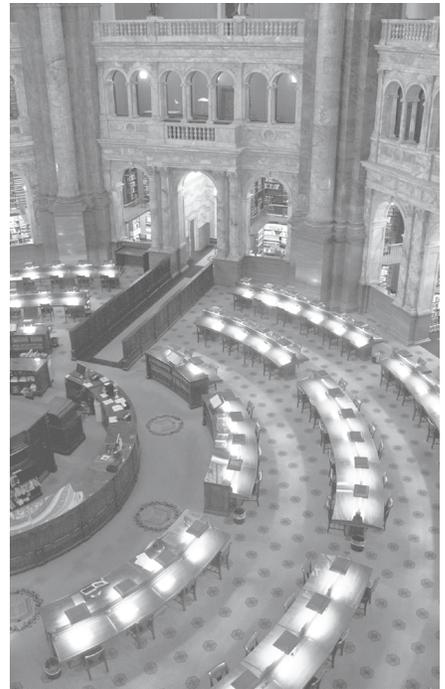
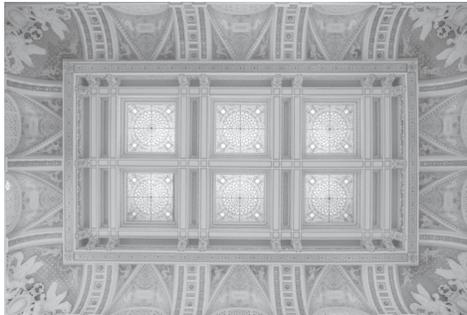


# Statutory Licensing Fiduciary Assets Financial Statements and Independent Auditors' Report

FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2017

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**FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2017**

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## Results of the Library of Congress' FY 2017 Fiduciary Fund Financial Statements Audit



Office of the Inspector General

### MEMORANDUM

**DATE** June 26, 2018

**TO** Dr. Carla Hayden  
Librarian of Congress

**FROM** Kurt W. Hyde *KWH*  
Inspector General

**SUBJECT** Results of the Library of Congress' *FY 2017 Fiduciary Fund Financial Statement Audit*

The attached report present the results of the audit of the fiscal year (FY) 2017 statement of fiduciary net assets and statement of fiduciary activity of the Library of Congress (Library).

We contracted with the independent public accounting firm of Cotton & Company LLP (Cotton) to audit the financial statements of the Library's fiduciary fund as of and for the FY ended September 30, 2017, and to provide a report on internal control over financial reporting and compliance with laws and regulations. The contract required that the audit be performed in accordance with *Government Auditing Standards*, Office of Management and Budget audit guidance, and the GAO/PCIE *Financial Audit Manual*.

#### Results of Independent Audit

In its audit of the Library's fiduciary fund, Cotton reported:

- the financial statements were fairly presented, in all material respects, in accordance with U.S. generally accepted accounting principles;
- no material or significant weaknesses in internal control over financial reporting;<sup>1</sup> and
- no reportable noncompliance with provisions of laws and regulations.

#### Office of the Inspector General Oversight of Cotton

In connection with the contract, we reviewed Cotton's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with *Government Auditing Standards*, was not intended to enable us to express, and we do not express, opinions on the Library's financial statements, conclusions about the effectiveness of internal controls, or conclusions on compliance with laws and regulations. Cotton is responsible for the attached auditor's report dated May

<sup>1</sup> A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Library's financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis.

30, 2018, and the conclusions expressed in the report. However, our review disclosed no instances where Cotton did not comply, in all material respects, with *Government Auditing Standards*.

cc: Principal Deputy Librarian  
Register of Copyrights  
Chief Operating Officer  
Chief Financial Officer  
General Counsel

## Financial Statements

### STATEMENT OF FIDUCIARY NET ASSETS

AS OF SEPTEMBER 30, 2017

	<i>(in thousands)</i>
Investments in U.S. Treasury securities, net (Note 2)	\$ 1,175,083
Fund Balance with Treasury	2,727
Interest receivable	68
Accrued liabilities	(119)
<b>TOTAL FIDUCIARY NET ASSETS (Note 3)</b>	<b>\$ 1,177,759</b>

*The accompanying notes are an integral part of the financial statements.*

### STATEMENT OF FIDUCIARY ACTIVITY

FOR THE YEAR ENDED SEPTEMBER 30, 2017

	<i>(in thousands)</i>
<b>Beginning Fiduciary Net Assets</b>	<b>\$ 1,103,819</b>
Royalty fees received (Note 4)	217,838
Investment earnings	7,197
<b>Total Inflows to Fiduciary Net Assets</b>	<b>225,035</b>
Distributions to copyright owners (Note 5)	(148,642)
Refunds of royalty fees	(407)
Net royalty fees retained for administrative costs (Note 7)	(2,046)
<b>Total Outflows from Fiduciary Net Assets</b>	<b>(151,095)</b>
<b>Increase in Fiduciary Net Assets</b>	<b>73,940</b>
<b>ENDING FIDUCIARY NET ASSETS</b>	<b>\$ 1,177,759</b>

*The accompanying notes are an integral part of the financial statements.*

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## Notes to the Financial Statements

SEPTEMBER 30, 2017

### (1) SIGNIFICANT ACCOUNTING POLICIES

#### ***(a) Description of Reporting Entity***

The Library of Congress (“the Library”) is responsible for the fiduciary activities related to the collection or receipt, and the subsequent management, protection, accounting, investment and disposition of certain statutory royalty fees to which copyright owners have an ownership interest under the Copyright Act (Title 17 of the U.S. Code, “the Act”). As a department within the Library, and under the direction of the Register of Copyrights, the U.S. Copyright Office (USCO) administers the Nation’s copyright laws and provides expert advice and guidance to Congress, Executive Branch agencies, and the courts, on matters of copyright law and policy. The USCO provides for a centralized system of copyright registration and deposit, and works to expand and protect the role of copyright in the advancement of the public good and in support of vital segments of the U.S. economy.

Through the administration of the statutory licensing provisions of the Act, the USCO collects royalty fees due to copyright owners from cable operators for the retransmission of over-the-air television and radio broadcast stations to subscribers (17 U.S.C. §111), from satellite carriers for the retransmission of distant over-the-air television broadcast stations for private home viewing (17 U.S.C. §119), and from importers or manufacturers for distributing products that employ Digital Audio Recording Technologies (DART) (17 U.S.C. §1003).

In addition to royalty fees collected, the Act provides that the Copyright Office’s Licensing Division may charge cable operators and satellite carriers fees for the filing of statements of account (SOA) under sections 111, 119, and 122. In addition to the SOA filing fees, the Copyright Royalty Judges (CRJs), <https://www.crb.gov>, also charge a filing fee for participation in a CRJ proceeding. See (f) Amounts Collected and Offset for Administrative Costs, below.

The USCO deducts certain reasonable costs of the Licensing Division and of the CRJs from the SOA filing, CRJ filing, and royalty fees collected for administering the statutory licensing provisions. The amount deducted is limited to the appropriated authority provided by Congress. The remaining royalty fees for each license type and filing year are then invested on behalf of copyright owners until they are disbursed to qualifying copyright owners based on orders issued by the CRJs, who are appointed by the Librarian of Congress. Controversies regarding the distribution of the royalties are resolved by the CRJs, who have jurisdiction over setting royalty rates and terms and determining distributions. Determinations of the CRJs may be appealed to the United States Court of Appeals for the District of Columbia Circuit.

#### ***(b) Basis of Accounting and Presentation***

The accompanying financial statements report the fiduciary net assets and changes in the fiduciary net assets as of and for the period ended September 30, 2017. The statements were prepared from the Library’s financial management system in accordance with Generally Accepted Accounting Principles (GAAP).

As a legislative branch agency, the Library is not required to follow the executive agency accounting principles established by the Comptroller General under 31 U.S.C. §3511 or the standards developed by the Federal Accounting Standards Advisory Board (FASAB). Nor is the Library required to prepare general purpose financial statements or follow FASAB GAAP. Nevertheless, pursuant to 2 U.S.C. 136, the Library has issued Library of Congress Regulation (LCR) 6-110, Financial Management, which adopts FASAB standards for financial reporting and internal controls in a manner consistent with a legislative agency, and insofar as practical, conforms to GAAP for federal agencies.

The Library has not adopted the Federal Financial Management Improvement Act of 1996, the Federal Managers' Financial Integrity Act, the Government Performance and Results Act (GPRA), and the GPRA Modernization Act, as these authorities are not applicable to the Library. However, the Library uses these sources as guidance and reference in its operations.

Fiduciary assets are not assets of the Library of Congress and are not recognized on the balance sheet of the Library of Congress.

***(c) Fund Balance with Treasury***

The amount shown as Fund Balance with Treasury represents the balance of uninvested royalty fees on deposit with the U.S. Treasury, and filing fees on deposit with the U.S. Treasury that are not part of the net fiduciary assets, but are pending offset against administrative costs of the Licensing Division and of the CRJs. See (e) Accrued Liabilities, below.

***(d) Investments, net***

Treasury securities are intended to be held to maturity, are valued at cost and are adjusted for the amortization of discounts and premiums. Discounts and premiums are amortized over the term of the security using the effective interest method for all long term securities and the straight line method for short term securities. Interest earned is computed using the straight-line method, which approximates the effective interest method.

***(e) Accrued Liabilities***

Accrued liabilities consist of \$119 thousand in cable license filing fees used to cover administrative costs. Copyright owners do not have rights to USCO or CRJ filing fees, which are collected solely to offset certain costs of administering the statutory licensing provisions of the Act.

***(f) Amounts Collected and Offset for Administrative Costs***

The USCO's Licensing Division and the CRJs receive annual, appropriated authority to expend for certain costs related to their respective duties regarding the statutory licensing provisions of the Act, including costs of collection and administration of licensee statements of account and administration and distribution of any royalty fees deposited with such statements. Under the appropriations, authority is provided for funding administrative costs through fees collected (offsetting collections), and the Library of Congress retains filing, royalty, and CRJ participation fees collected in amounts necessary to fund the costs as stipulated under the authority. In accordance with Library procedures, fees are initially retained in amounts to provide for the full fiscal year authority for the offsetting collections of the Division and of the CRJs. The offsetting collection authority under the relevant appropriations expires at the end of the associated fiscal year, but remains available for adjustments of obligations for a five-year period, after which the authority is cancelled.

Filing fees collected by the USCO from licensees required to file statements of account under the statutory licensing provisions of the Act or to participate in proceedings of the CRJs are not part of the fiduciary balances administered by the USCO. Filing fees collected reduce the amount of royalty fees retained for administrative costs of the Licensing Division and of the CRJs.

Section 708(a) of the Act provides that filing fees established for the filing of statements of account for the cable or satellite statutory licenses may not exceed one-half of the cost necessary to cover reasonable expenses incurred by the USCO for collection and administration of statements of account and any royalty fees deposited with such statements. The USCO evaluates these fees as part of recurring fee studies conducted for these and other fees established under Section 708.

**(g) Investments**

In accordance with the statutory licensing provisions of the Act, royalty fees collected for each license type and filing year are invested on behalf of copyright owners, net of reasonable costs incurred by the USCO, in U.S. Treasury securities. All interest income accrues to the copyright owners. The Treasury notes and bills are issued to governmental accounts and are not traded on any securities exchange, but mirror the prices of marketable securities with similar terms.

To ensure liquidity for distributions, new royalty fees received are generally invested in U.S. Treasury notes with maturities of approximately one year. If funds are not immediately needed to fulfill a distribution order issued by the CRJs, funds from maturing securities are generally reinvested in U.S. Treasury bills with maturities of six to eight weeks. Fiduciary funds investment maturity dates range from October 3, 2017, to September 3, 2018 with interest rates that range from 0.19 percent to 1.93 percent.

**(h) Refunds and Underpayments**

Refunds may arise when a cable, satellite, or DART licensee inadvertently overpays or is otherwise entitled to a refund. Additional royalty fees may also be requested from the licensee to resolve underpayments, including underpayments of interest associated with a late filing.

**(2) INVESTMENTS, NET**

Invested royalty fees by license type as of September 30, 2017 are as follows:

*(in thousands)*

License Type	Face Value	Unamortized Discount	Total
Cable	\$ 873,552	\$ (729)	\$ 872,823
Satellite	301,908	(141)	301,767
DART	493	–	493
<b>INVESTMENTS, NET</b>	<b>\$ 1,175,953</b>	<b>\$ (870)</b>	<b>\$ 1,175,083</b>

**(3) FIDUCIARY NET ASSETS**

Fiduciary net assets are maintained in separate investment “pools” by license type and by the calendar filing year for which the royalty fees were due from licensees subject to the statutory licensing provisions of the Act. Fiduciary net assets by license type and filing year as of September 30, 2017 are as follows:

*(in thousands)*

<b>Calendar License Filing Year</b>	<b>Total</b>	<b>Cable</b>	<b>Satellite</b>	<b>DART</b>
2017	\$ 105,620	\$ 99,389	\$ 6,231	\$ –
2016	214,543	201,414	13,129	–
2015	146,494	85,550	60,889	55
2014	127,528	94,132	33,326	70
2013	123,508	88,416	35,081	11
2012	121,570	85,336	36,201	33
2011	149,472	101,801	47,598	73
2010	144,297	97,036	47,057	204
2009	4,336	2,325	1,975	36
2008	3,762	3,192	563	7
2007	5,161	3,134	2,023	4
2006	5,185	3,164	2,021	–
2005	5,126	3,128	1,998	–
2004	5,063	3,096	1,967	–
2003	3,322	621	2,701	–
2002	3,575	815	2,760	–
2001	3,686	786	2,900	–
2000	4,969	1,891	3,078	–
1999	542	1	541	–
<b>TOTAL FIDUCIARY NET ASSETS</b>	<b>\$ 1,177,759</b>	<b>\$ 875,227</b>	<b>\$ 302,039</b>	<b>\$ 493</b>

#### (4) ROYALTY FEES RECEIVED

Cable and satellite licensees subject to the statutory licensing provisions of the Act are required to file a statement of account and submit royalty fee payments on a semi-annual basis each calendar year. DART licensees file quarterly and annual statements of account based upon the remitter's fiscal year, and submit royalty fee payments as part of those filings. Royalty fees received in fiscal year 2017 by license type and filing year are as follows:

*(in thousands)*

Calendar License Filing Year	Total	Cable	Satellite	DART
2017	\$ 107,803	\$ 101,444	\$ 6,355	\$ 4
2016	109,816	103,439	6,373	4
2015	29	29	—	—
2014	136	136	—	—
2013	46	46	—	—
2012	8	8	—	—
<b>TOTAL ROYALTY FEES RECEIVED</b>	<b>\$ 217,838</b>	<b>\$ 205,102</b>	<b>\$ 12,728</b>	<b>\$ 8</b>

#### (5) DISTRIBUTIONS TO COPYRIGHT OWNERS

The CRJs have jurisdiction over determinations concerning adjustments and determinations of copyright royalty rates and terms, the distribution of copyright royalties, and other determinations relating to statutory licensing as set forth in Chapter 8 of the Act. Distributions of fiduciary assets to copyright owners are made by the USCO in accordance with the CRJ distribution orders.

In fiscal year 2017, the USCO distributed the following amounts to copyright owners:

*(in thousands)*

Calendar License Filing Year	Total	Cable	Satellite	DART
2015	\$ 128,042	\$ 128,041	\$ —	\$ 1
2013	4,432	3,019	1,207	206
2012	4,732	2,912	1,246	574
2011	5,177	3,511	1,666	—
2010	4,992	3,347	1,645	—
2009	81	81	—	—
2008	75	75	—	—
2007	69	69	—	—
2006	70	70	—	—
2005	72	72	—	—
2004	69	69	—	—
1999	831	831	—	—
<b>TOTAL DISTRIBUTIONS TO COPYRIGHT OWNERS</b>	<b>\$ 148,642</b>	<b>\$ 142,097</b>	<b>\$ 5,764</b>	<b>\$ 781</b>

**(6) AMOUNTS COLLECTED AND OFFSET FOR ADMINISTRATIVE COSTS**

For fiscal year 2017, offsetting collection authority for the Licensing Division and the CRJ totaled \$5.531 million and \$.398 million, respectively, for a combined total of \$5.929 million. For the period ended September 30, 2017, filing and royalty fees available for offset of fiscal year 2017 administrative costs (offsetting collections) are as follows:

*(in thousands)*

Description	Total	USCO Licensing Division	CRJs
Filing fees	\$ 2,054	\$ 2,053	\$ 1
License filing year 2017 royalty fees	\$ 2,375	\$ 2,078	\$ 297
License filing year 2016 royalty fees	1,500	1,400	100
<b>FEES COLLECTED TO OFFSET ADMINISTRATIVE COSTS</b>	<b>\$ 5,929</b>	<b>\$ 5,531</b>	<b>\$ 398</b>

**(7) NET ROYALTY FEES RETAINED FOR ADMINISTRATIVE COSTS**

Royalty fees are collected on a calendar year basis, so amounts retained for any given fiscal year are deducted from royalties collected for periods that span two calendar years (the current and previous calendar year). In subsequent fiscal years, the Library's upward and downward adjustments of obligated balances may cause adjustments in the balances of royalties retained. Upon the cancellation of the authority for offsetting collections, all residual balances are refunded to the royalty accounts affected.

For the fiscal year ended September 30, 2017, the net royalty fees retained for administrative costs consisted of the following:

*(in thousands)*

Description	Total	USCO Licensing Division	CRJs
2017 royalty fees retained	\$ 2,375	\$ 2,078	\$ 297
2016 royalty fees retained	1,500	1,400	100
2016 royalty fees refunded	(1,425)	(1,400)	(25)
2015 royalty fees refunded	(390)	(390)	-
2012 royalty fees refunded	(14)	(14)	-
<b>NET ROYALTY FEES RETAINED FOR ADMINISTRATIVE COSTS</b>	<b>\$ 2,046</b>	<b>\$ 1,674</b>	<b>\$ 372</b>

## Independent Auditor's Report



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### INDEPENDENT AUDITORS' REPORT

To the Inspector General  
Library of Congress

In our audit of the fiscal year 2017 statement of fiduciary net assets and statement of fiduciary activity (the fiduciary financial statements) of the Library of Congress we found:

- The fiduciary financial statements as of and for the fiscal year ended September 30, 2017, are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America
- No material weaknesses in internal control over financial reporting as of September 30, 2017; and
- No reportable noncompliance in fiscal year 2017 with the provisions of applicable laws and regulations that we tested.

The following sections contain:

1. Our report on the fiduciary financial statements referred to above; and
2. Other reporting required by *Government Auditing Standards*, which includes: a) our report on the Library of Congress' internal control over financial reporting, and b) our conclusions on the Library of Congress' compliance with laws and regulations.

#### REPORT ON THE FIDUCIARY FINANCIAL STATEMENTS

We have audited the accompanying financial statements of the Library of Congress, which comprise the statement of fiduciary net assets as of September 30, 2017, the related statement of fiduciary activity for the year then ended, and the related notes to the financial statements (the fiduciary financial statements).

#### Management's Responsibility for the Fiduciary Financial Statements

Management is responsible for the preparation and fair presentation of these fiduciary financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of fiduciary financial statements that are free from material misstatement, whether due to fraud or error.

#### Auditors' Responsibility

Our responsibility is to express an opinion on these fiduciary financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and standards applicable to financial statement audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan

and perform the audit to obtain reasonable assurance about whether the fiduciary financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the fiduciary financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the fiduciary financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the fiduciary financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the fiduciary financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the fiduciary financial statements referred to above present fairly, in all material respects, the fiduciary net assets of the Library of Congress as of September 30, 2017, and its fiduciary activity for the year then ended, in accordance with accounting principles generally accepted in the United States of America.

**Emphasis of Matter**

As discussed in Note 1(b) to the fiduciary financial statements, fiduciary assets are not assets of the Library of Congress and are not recognized on the balance sheet of the Library of Congress. Our opinion is not modified with respect to this matter.

**OTHER REPORTING REQUIRED BY *GOVERNMENT AUDITING STANDARDS***

**Report on Internal Control Over Financial Reporting and on Compliance with Laws and Regulations**

***Internal Control Over Financial Reporting***

In planning and performing our audit of the fiduciary financial statements, we considered the Library of Congress' internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the fiduciary financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Library of Congress' internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Library of Congress' internal control over financial reporting.

A *deficiency in internal control over financial reporting* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

We will issue a separate letter to management, which will describe certain other deficiencies that are less important than material weaknesses or significant deficiencies.

**Limitations of Internal Control**

Because of inherent limitations in internal control, misstatements due to error or fraud, losses, or noncompliance may nevertheless occur and not be detected. We also caution that projecting our evaluation to future periods is subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with controls may deteriorate.

**Compliance with Laws and Regulations**

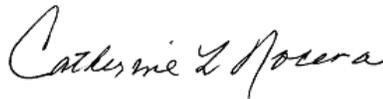
As part of obtaining reasonable assurance about whether the Library of Congress' fiduciary financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of fiduciary financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion.

We did not test compliance with all laws and regulations applicable to the Library of Congress. We limited our tests of compliance to those provisions of laws and regulations that we deemed applicable to the fiduciary financial statements for the fiscal year ended September 30, 2017. We caution that noncompliance may have occurred and may not have been detected by these tests, and that such testing may not be sufficient for other purposes. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

**Purpose of the Other Reporting Required by Government Auditing Standards**

The purpose of the "Other Reporting Required by *Government Auditing Standards*" is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This other reporting is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this other reporting is not suitable for any other purpose.

COTTON & COMPANY LLP



Catherine L. Nocera, CPA, CISA  
Partner  
Alexandria, VA  
May 30, 2018



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