



Town of Ogden

Financial Management and Justice Court

Report of Examination

Period Covered:

January 1, 2012 — June 5, 2014

2014M-234



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

October 2014

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Ogden, entitled Financial Management and Justice Court. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

The Town of Ogden (Town) is located in Monroe County and is governed by an elected Town Board (Board), which consists of the Town Supervisor (Supervisor) and four Board members. The Board is responsible for the general management and control of Town operations. The Supervisor is the Town's chief executive officer and chief fiscal officer. The Supervisor has appointed a Director of Finance who is responsible for the Town's daily operations, including maintaining accounting records and preparing various financial reports for the Board. The Town's 2014 budgeted appropriations for the major operating funds¹ totaled approximately \$9.7 million.

The Town's Justice Court (Court) operates with two Town Justices (Justices) and two Court clerks. The Justices' principal duties involve adjudicating legal matters within the Court's jurisdiction and administering moneys collected from bails, fines, surcharges, civil fees and restitutions, with the assistance of the Court clerks. The Board is charged with overseeing the Court's financial activity.

Scope and Objectives

The objectives of our audit were to assess the Town's internal controls over the Town's financial and Court operations for the period January 1, 2012 through June 5, 2014. We extended the scope of our audit back to January 1, 2009 to review prior years' financial trends, and to January 1, 2007 for reconciliations of Justice Murante's bank accounts. Our audit addressed the following related questions:

- Did the Board provide adequate oversight of the Town's budgeting and financial management to ensure Town resources are used effectively?
- Are internal controls over Court operations properly designed and operating effectively to allow for the complete and accurate accounting of all financial activity?

Audit Results

The Town's internal controls over financial management and Court operations are not adequate. As a result, the Town has accumulated over \$4 million in unexpended surplus funds² within its town-

¹ Town-wide general, town-outside-village general and highway, and the town-wide drainage fund

² The Governmental Accounting Standards Board (GASB) issued Statement 54, which replaces the fund balance classifications of reserved and unreserved with new classifications: nonspendable, restricted and unrestricted (composed of committed, assigned and unassigned funds). The requirements of Statement 54 are effective for fiscal years ending June 30, 2011 and beyond. To ease comparability between fiscal years ending before and after the implementation of Statement 54, we will use the term "unexpended surplus funds" to refer to that portion of fund balance that was classified as unreserved, unappropriated (prior to Statement 54), and is now classified as unrestricted, minus appropriated fund balance, amounts reserved for insurance recovery and tax reduction, and encumbrances included in committed and assigned fund balance (post-Statement 54).

outside-village (TOV) funds and town-wide drainage fund as well as \$1 million in TOV reserve funds, which should be used for authorized purposes or to reduce property taxes. In addition, the Board and Justices have failed to provide adequate oversight and controls of Court operations causing numerous errors to occur and go undetected and uncorrected for several years resulting in unreconciled accounts.

The Board did not have adequate financial plans, budgeting policies or procedures to govern the amount of unreserved fund balance to be maintained. Generally, in recent years, the Board has adopted TOV general and highway fund budgets that underestimated sales tax revenues, overestimated expenditures, and did not result in the use of the surplus fund balances that were included as funding sources. These poor budgeting practices have resulted in excessive fund balances in the TOV general fund totaling \$2.26 million and TOV highway fund totaling \$1.51 million. The Board also overestimated expenditures in the town-wide drainage fund which has resulted in an excessive fund balance of more than \$300,000 as of December 31, 2013. During this time, the Board also maintained \$1.15 million in TOV general and highway fund reserves, with no long-term plans to address the use of these funds. Collectively, these factors have contributed to the Town levying more property taxes than necessary to fund operations and provide for contingencies.

The Board and Justices did not provide adequate oversight of the Court's financial activity. For instance, the Justices did not ensure that the Court clerks prepared accurate monthly bank reconciliations and accountability analyses, and did not ensure that deposits were made within the required 72 hours of collection. In addition, the Board failed to ensure that corrective action was taken on annual audit findings identified during the last two years. As a result, the Court was unaware of numerous errors that occurred over many years that, once corrected, will reduce the total unreconciled balance to \$473.

Comments of Local Officials

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our findings and recommendations and indicated that they plan to implement corrective action.

Introduction

Background

The Town of Ogden (Town) is located in Monroe County, covers an area of about 37 square miles, including the Village of Spencerport (Village), and serves approximately 20,000 residents. The Town is governed by the Town Board (Board), which comprises five elected members: the Town Supervisor (Supervisor) and four Board members. The Board, as the legislative body responsible for the general management and control of the Town's financial affairs, provides guidance through the enactment of laws, policies and procedures. The Supervisor serves as the chief fiscal officer and is responsible for receiving, disbursing and maintaining custody of Town moneys; maintaining accounting records; and providing financial reports to the Board. The Supervisor has delegated the majority of these duties to the appointed Director of Finance, who oversees the Town's daily financial operations and reports on those operations to the Board.

The Town provides various services to its residents including road maintenance, snow removal, parks and recreation, public safety, drainage, lighting, sewer and general government support. These services are financed primarily through real property taxes, sales tax, fees and State aid. The Town accounts for most of its financial activity in the town-wide (TW) general fund, the town-outside-village (TOV) general and highway funds and other special district funds. The TW funds have tax bases that encompass the entire Town, including the Village. The TOV funds have tax bases that encompass only the portion of the Town that lies outside of the Village. The Town's 2014 budgeted appropriations for the Town's major operating funds³ totaled approximately \$9.7 million.

The Town operates a Justice Court (Court) with two independently elected Justices and two Court clerks. The Court has jurisdiction over vehicle and traffic, criminal, civil and small claims cases brought before the Court. The Justices' principal duties involve adjudicating legal matters within the Court's jurisdiction and administering moneys received from fines, bails, surcharges and civil fees. Two Court clerks are responsible for receiving and disbursing cash and maintaining the Court's records on behalf of the Justices. The Justices are required to report financial activities monthly to the Office of the State Comptroller's Justice Court Fund (JCF). The Court collected fines totaling \$294,958 during the 2013 fiscal year.

³ TW general, TOV general and highway, and the TW drainage fund

Objectives

The objectives of our audit were to evaluate internal controls over the Town's financial and Court operations. Our audit addressed the following related questions:

- Did the Board provide adequate oversight of the Town's budgeting and financial management to ensure Town resources are used effectively?
- Are internal controls over Court operations properly designed and operating effectively to allow for the complete and accurate accounting of all financial activity?

Scope and Methodology

We assessed the Board's financial management and Court operations for the period January 1, 2012 through June 5, 2014. We extended the scope of our audit back to January 1, 2009 to review prior years' financial trends, and to January 1, 2007 for reconciliations of Justice Murante's bank accounts.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

Comments of Local Officials and Corrective Action

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our findings and recommendations and indicated that they plan to implement corrective action.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the New York State General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Town Board to make this plan available for public review in the Town Clerk's office.

Financial Management

The Board is responsible for making sound financial decisions that balance the level of services desired and expected by the Town's residents with the ability and willingness of the residents to pay for such services. It is important that the Board adopt long-term plans that set forth the Town's financial objectives and goals, as well as written policies and procedures to govern budgeting practices and the level of fund balance⁴ to maintain in each fund as well as established reserves.⁵ The Board should adopt budgets that include realistic estimates of revenues, expenditures and the amount of surplus fund balance that will be used as a funding source, when appropriate. The Board may retain a reasonable portion of unexpended surplus funds⁶ to be available in the event of unforeseen circumstances. The Board's responsibility to effectively manage the Town's finances includes monitoring the Town's bank accounts and developing adequate controls over cash to ensure that it is properly safeguarded. Additionally, the Board should ensure that the Supervisor properly accounts for and reports all Town financial activity.

The Board and Town officials have not developed adequate policies, procedures or financial plans to govern budgeting practices and the amount of unexpended surplus funds to maintain. Lacking established budgetary guidance, the Board has repeatedly adopted budgets with unrealistic estimates of revenues, expenditures and the amount of fund balance that would be used. Therefore, the Town has levied more real property taxes than necessary and accumulated a significant amount of unexpended surplus funds in the TOV funds. Had the Board budgeted more realistically and appropriately allocated sales tax among the TOV funds, it could have eliminated the tax levy in the TOV general

⁴ Fund balance represents the resources remaining from prior fiscal years that can be used as funding sources in the next year's budget to reduce the amount of revenues needed to be raised from other sources.

⁵ The Board may establish and place moneys into reserve funds to finance the future costs of a variety of items or purposes. The Board is responsible for ensuring that reserve funds are maintained in accordance with statutory requirements and are in the Town's best interest.

⁶ The Governmental Accounting Standards Board (GASB) issued Statement 54, which replaces the fund balance classifications of reserved and unreserved with new classifications: nonspendable, restricted and unrestricted (comprising committed, assigned and unassigned funds). The requirements of Statement 54 are effective for fiscal years ending June 30, 2011 and beyond. To ease comparability between fiscal years ending before and after the implementation of Statement 54, we will use the term "unexpended surplus funds" to refer to that portion of fund balance that was classified as unreserved, unappropriated (prior to Statement 54) and is now classified as unrestricted, less any amounts appropriated for the ensuing year's budget (after Statement 54).

fund and reduced the levy in the TOV highway and drainage funds. In addition, Town officials could not provide adequate evidence to support the establishment of reserve funds. Finally, the Board did not receive monthly reports from the Supervisor to monitor financial activity.

Budgeting Practices

It is important for the Board to implement policies and procedures and long-term financial plans to assist in the development and monitoring of accurate and realistic annual budgets. The Board should develop budget estimates based on the most accurate and up-to-date financial information available, including prior years' operating results, past expenditure trends and anticipated future needs and available information from outside sources related to projected changes in significant revenues or commodity prices. Expenditures must be funded by budgeted revenues, including the calculated real property tax levy necessary to close projected gaps. The Board must ensure that appropriations are not significantly overestimated and revenues are not significantly underestimated, because this can cause the calculation of the real property tax levy to exceed the amount actually necessary to provide Town services. Another basic component of budgeting is the appropriation of surplus fund balance to reduce the real property tax levy required to finance operations. However, it is not a sound practice to routinely adopt annual budgets that appropriate fund balance that will not actually be used. This practice is misleading to taxpayers and often results in excessive tax levies.

The Board and Town officials did not adopt detailed policies and procedures or long-term financial plans to govern the budget process or the appropriate level of fund balance to be maintained in each fund. Because the Town lacked comprehensive budgeting guidance, the Board adopted annual budgets with unrealistic estimates for revenues, specifically sales tax, and the amount of fund balance that would be used to balance the budget in the TOV funds. These practices resulted in the accumulation of excess funds which could have been put to productive use in the interest of Town taxpayers, including real property tax reductions.

The Board estimated sales tax revenue too conservatively in the TOV general and highway funds. Over the last five years, the Board underestimated sales tax by a combined total of over \$1.8 million for the two funds. Therefore, sales tax revenues exceeded budget estimates by over 60 percent (Figure 1).

Figure 1: Sales Tax Revenues

Year	TOV General Fund			TOV Highway Fund			Total Budgeted	Total Variance
	Budget	Actual	Variance	Budget	Actual	Variance		
2009	\$217,215	\$439,769	\$222,554	\$300,000	\$312,042	\$12,042	\$517,215	\$234,596
2010	\$212,445	\$217,463	\$5,018	\$315,040	\$598,624	\$283,584	\$527,485	\$288,602
2011	\$212,765	\$662,294	\$449,529	\$336,000	\$336,003	\$3	\$548,765	\$449,532
2012	\$212,765	\$312,765	\$100,000	\$436,000	\$734,936	\$298,936	\$648,765	\$398,936
2013	\$143,610	\$525,743	\$382,133	\$580,495	\$629,516	\$49,021	\$724,105	\$431,154
Totals	\$998,800	\$2,158,034	\$1,159,234	\$1,967,535	\$2,611,121	\$643,586	\$2,966,335	\$1,802,820

In addition, due to the inaccurate sales tax revenue estimates, the Board had been calculating and levying more property taxes than necessary in the TOV funds. For example, the tax levies in the TOV general fund were \$61,995 for 2013 and \$43,393 for 2014. The Board could have eliminated the property tax levy in this fund, which would have been covered by sales tax revenue, with excess available for both years. Additionally, the Board could have allocated more of its annual sales tax revenue to the TOV highway fund⁷ to eliminate a portion of the highway tax levy, which was \$1.88 million for 2013 and \$1.76 million for 2014.

By not estimating sales tax revenues more accurately in its adopted budgets, the Board has contributed to the sizeable fund balances maintained by the Town. The Board appropriated fund balance in both the TOV general and highway funds over the last five years, which should have resulted in planned operating deficits and declining fund balances. In reality, as shown in Figures 2 and 3, the budgets resulted in operating surpluses⁸ in four out of five years, which increased fund balances to levels which exceed any appropriate, conservative financial cushion the Board should maintain for the ensuing fiscal year.

TOV General Fund – In total, the revenues in the TOV general fund were underestimated in its adopted budgets for the last five years (2009 through 2013) by a total of \$1.4 million, which generated significant budgetary surpluses and operating surpluses for four of the last five years totaling \$1.05 million. As a result, the fund did not use 96 percent of the fund balance appropriated as a revenue source. Instead, fund balance increased four out of the five years and at December 31, 2013 amounted to 311 percent of 2013 expenditures.

⁷ Because the Town and Village both receive sales tax revenue, New York State Tax Law requires the Town to use the sales tax to reduce real property taxes for the TOV funds.

Figure 2: Operating Surplus - TOV General Fund						
	2009	2010	2011	2012	2013	Total
Revenues	\$925,026	\$868,122	\$1,063,011	\$806,643	\$975,778	\$4,638,580
Expenditures	\$588,165	\$671,416	\$783,122	\$818,151	\$725,904	\$3,586,758
Operating Surplus/ (Deficit)	\$336,861	\$196,706	\$279,889	(\$11,508)	\$249,874	\$1,051,822
Appropriated Fund Balance	\$51,380	\$0	\$0	\$81,155	\$168,297	\$300,832
Unused Appropriated Fund Balance	\$51,380	\$0	\$0	\$69,647	\$168,297	\$289,324
Unexpended Surplus Funds ^a	\$1,732,175	\$1,682,988	\$1,936,348	\$1,833,163	\$2,255,725	
Percentage of Expenditures	295%	251%	247%	224%	311%	

^a Total fund balance reduced by the amounts that are appropriated or reserved

TOV Highway Fund – Over the five year period, the Board underestimated revenues by \$2.6 million and overestimated expenditures by \$813,323, for a total positive budget variance of over \$3.4 million. As a result, the fund had operating surpluses totaling \$1.7 million, instead of planned operating deficits which should have resulted from the appropriation of \$1.7 million in fund balance in the adopted budget. Consequently, fund balance increased four out of the five years and amounted to 49 percent of 2013 expenditures as of December 31, 2013.

Figure 3: Operating Surplus - TOV Highway Fund						
	2009	2010	2011	2012	2013	Total
Revenues	\$3,169,473	\$3,371,093	\$3,316,446	\$3,674,449	\$3,539,620	\$17,071,081
Expenditures	\$2,557,637	\$2,571,469	\$3,612,537	\$3,537,870	\$3,108,303	\$15,387,816
Operating Surplus/ (Deficit)	\$611,836	\$799,624	(\$296,091)	\$136,579	\$431,317	\$1,683,265
Appropriated Fund Balance	\$0	\$0	\$721,911	\$672,956	\$302,511	\$1,697,378
Unused Appropriated Fund Balance	\$0	\$0	\$425,820	\$672,956	\$302,511	\$1,401,287
Unexpended Surplus Funds ^a	\$1,150,956	\$866,348	\$619,481	\$1,109,385	\$1,513,029	
Percentage of Expenditures	45%	34%	17%	31%	49%	

^a Total fund balance reduced by the amounts that are appropriated or reserved

Because the TOV general and highway funds cover the same areas of the Town and therefore have the same tax base, Town officials can consider them on a combined basis⁹ as part of their financial condition analysis and budgeting and financial planning. As of December 31, 2013, the combined unexpended surplus funds of the TOV general and highway funds totaled \$3.77 million, nearly 100 percent of the funds' combined 2013 expenditures (\$3.83 million). Due to the consistent inaccurate budgeting of sales tax revenues and fund balance usage, the Board has levied unnecessarily high taxes on the Town residents that live outside of the Village.

⁹ The Board may, by resolution, authorize the transfer of surplus moneys from the general fund to the highway fund, within the same tax base. However, it cannot transfer moneys from the highway fund to the general fund.

Drainage Fund – The TW drainage fund is financed primarily with real property taxes. In the last four fiscal years (2010 through 2013), the Board has adopted drainage fund budgets that overestimated expenditures by a total of \$138,083 (26 percent of total expenditures), which has resulted in fund balance growth each year. As of December 31, 2013, the unexpended surplus funds had grown to \$302,441 or 365 percent¹⁰ of the 2013 expenditures (\$82,880). Town officials stated that they may use these excess funds to finance a culvert project in coming years, in conjunction with the fund’s repair reserve which totaled \$28,032 at December 31, 2013.

We reviewed the Town’s 2014 budget¹¹ and it appears that the Town will end the year with operating surpluses and increased fund balances in the TOV general and highway funds and in the drainage fund. The Board did not appropriate fund balance in the TOV general fund for 2014, but also did not adjust the sales tax estimate. The Board again appropriated fund balance of \$309,081 in the TOV highway fund which will not likely be used due to underestimated sales tax and overestimated expenditures. Finally, while the Board appropriated \$5,130 of fund balance in the drainage fund in 2014, it also further increased appropriations by \$5,500 which will likely not be needed and, therefore, will offset the planned use of fund balance. It is prudent to provide a cushion against fluctuations in operations and unforeseen events by keeping a reasonable amount of fund balance available. However, keeping such large amounts of fund balance and continuing to accumulate additional balances by raising more taxes than needed is unfair to taxpayers. If the Board improved its budgeting and financial monitoring practices, it could adopt more realistic budgets and reduce tax levies to amounts necessary to fund Town operations and still maintain sound fiscal health.

Reserve Funds

Reserve funds may be established, by Board action, to provide financing for specific purposes, after complying with specific statutory requirements.¹² A governing board that is planning to establish and finance reserve funds should develop a written policy and procedures that communicate to taxpayers why the money is being set aside, the financial objectives for the reserves, the optimal funding levels and the conditions under which the reserves will be used. The Board is responsible for continually monitoring the need for reserve funds and for periodically assessing the reasonableness of the amounts accumulated in those reserves to ensure that they are maintained in

¹⁰ Unexpended surplus funds grew from \$145,715, or 95 percent of expenditures at the end of 2009, which was already excessive.

¹¹ We also reviewed year-to-date budget-to-actual reports for revenues and expenditures as of September 3, 2014.

¹² The statutes under which reserve funds are established determine how they may be funded, expended and discontinued.

accordance with statutory requirements and in the best interest of the taxpayers.

The Board has not adopted a policy or procedures to guide Town officials in establishing, using and maintaining records for reserve funds.¹³ We identified two reserves, capital and repair, reported in the TOV funds in which the Town had accumulated \$1.15 million as of December 31, 2013 with no documented plan for maintaining them at their current level. In addition, Town officials could not provide evidence that either reserve was officially created pursuant to General Municipal Law (GML). Depending on the purpose of the capital reserve, different rules would apply for public approval of expenditures made from it.

- The Town reported a capital reserve in the TOV general fund totaling \$600,000. The reserve has not been funded or used in the last four years. Town officials indicated that they are considering using this reserve for the installation of security systems at the Town parks.
- The Town reported a repair reserve in the TOV highway fund totaling \$550,114. This reserve has not been funded or used in the last five years. Town officials indicated they are currently researching the legality of using these funds for the construction of a salt barn.¹⁴

Carrying reserve balances with no clear plan for their use, or the failure to use reserve funds for their intended purpose, and instead budgeting for these expenditures through the tax levy, places an unnecessary burden on taxpayers. Furthermore, the potential for unofficial or unsubstantiated reserves in the TOV funds would, in effect, further increase the excessive fund balances and unwarranted tax levies in the TOV funds.

Financial Reports

Town Law requires the Supervisor to submit to the Board, at the end of each month, a detailed report of all moneys received and disbursed during the month. Although not required by law, these reports are more valuable when they include detailed monthly and year-to-date budget and actual comparisons of revenues and expenditures, fund balance amounts and reconciled cash balances for each fund

¹³ Guidance is available in the OSC publication entitled *Local Government Management Guide, Reserve Funds* found at <http://www.osc.state.ny.us/localgov/pubs/lmgm/reservefunds.pdf>.

¹⁴ The construction of a Town building, even if used for highway purposes, is generally considered a TW general fund charge, according to New York State Highway Law and Town Law. Therefore, this proposed use of TOV funds may not be allowable.

and special district. Complete and accurate monthly reports provide essential financial information which the Board should use to monitor the Town's financial condition.

The Supervisor did not provide the Board with required monthly financial reports. While the Director of Finance prepared monthly financial reports for the Supervisor's review and signature, the Supervisor did not provide the reports to the Board. Board members confirmed that they only receive financial reports around budget development time. Because the Board did not require the Supervisor to provide the statutorily required monthly financial reports, Board members were not in a position to adequately monitor the Town's financial affairs, evaluate the Town's financial condition and take timely corrective action, if needed.

Recommendations

1. The Board and Town officials should develop long-term financial plans and policies and procedures to govern developing and monitoring the budget estimates and the amount of unexpended surplus funds to maintain.

The Board should:

2. Use the unexpended surplus fund balance in a manner that benefits taxpayers. Such uses could include, but are not limited to: increasing necessary reserves, paying off debt, financing one-time expenses or reducing property taxes.
3. Develop and adopt more accurate budget estimates of revenues, particularly for sales tax revenues.
4. Research the origin of the existing capital and repair reserves, and if unsuccessful in locating documentation, formally establish the reserves in conformance with GML.
5. Establish formal plans for the funding and use of reserves.
6. Ensure that the Supervisor provides all Board members with accurate and complete monthly financial reports, and use the reports to monitor the Town's financial position and budget status throughout the fiscal year.

Justice Court

Town Justices are responsible for adjudicating cases brought before them and accounting for and reporting Court-related financial activities. Justices are required to report Court transactions to the JCF in a timely manner. They are also responsible for implementing effective internal controls to oversee operations and ensure that the appointed Court clerks maintain complete and accurate accounting records on their behalf and safeguard all moneys collected. Justices must actively ensure that the clerks deposit all moneys collected within 72 hours of receipt, accurately record all transactions in the Court's accounting records and reconcile all collections and cash balances to corresponding liabilities on a monthly basis. Routine reconciliation of bank accounts enables the Court to verify the accuracy of its financial records.

Justices are responsible and accountable for all moneys received by their Courts. At any point in time, the recorded liabilities of the Court, such as bail held on pending cases and unremitted fines and fees, should equal the Justices' available cash. Any unclaimed exonerated bail¹⁵ should be turned over to the Town pending a claim. Any other unidentified moneys should be reported and paid to the JCF. The Board also must exercise oversight of the Court's operations through its statutory responsibility to audit the Justices' records.

The Justices did not establish adequate internal controls over the Court's financial operations. Specifically, we found that both Justices did not ensure that all cash receipts were deposited in a timely manner and did not complete or ensure that their clerks completed adequate monthly bank reconciliations and accountability analyses, which resulted in multiple errors remaining undetected for long periods of time. Further, the Justices failed to implement corrective action to address deficiencies identified by the external auditor during the annual audit of Court operations for the last two years. As a result, Town officials have limited assurance that all moneys collected were properly recorded and accounted for, which increases the risk that Court funds could be misappropriated without detection or correction.

Accountability and Bank Reconciliations

Justices are required to account for cash receipts and disbursements and determine accountability of available cash as of the end of each month. Each month, Court personnel should compare information from their accounting records with the information shown in their bank account statements. Each Justice's account should be zeroed out

¹⁵ Exonerated bail is bail awaiting return to the individual who posted it for the defendant.

at the end of the month, and, if not, the balance should reconcile to any outstanding checks and any fines received after the end of the month. Further, any unclaimed exonerated bail should be remitted to the Supervisor pending a claim. Cash bail still unclaimed six years after exoneration of the bail becomes the property of the Town. Bank reconciliations and accountability analyses are critical procedures to document the status of moneys held by the Court at any point in time.

The Court has four bank accounts, comprising one fine and one bail account for each Justice.¹⁶ Both Justices acknowledged that they do not perform or require their clerks to perform monthly accountability analyses. The clerks provided us with the bank reconciliations that they prepare monthly. However, these reconciliations were inadequate because they did not include a comparison of bank account balances to the accounting records, or a reconciliation of bank balances on hand to recorded Court liabilities. Due to these deficiencies, we performed reconciliations of the Justices' accounts. We found numerous errors that would have been identified more timely by the Justices and Court clerks had they performed an accountability analysis each month.

- We reconciled Justice Schiano's accounts for the period January 1, 2013 through April 30, 2014. We identified an unreconciled balance of \$237 in the fine account. We identified multiple minor errors, which included a \$57 net adjustment from five credit card transactions posted to the wrong Justice's account,¹⁷ and a \$180 bail receipt deposited to the fine account (instead of the bail account) in error prior to January 2013. After the Clerk corrected the errors we identified during our reconciliation, the fine account zeroed out as of April 30, 2014.

We reconciled the bail account for the same period which had an unreconciled balance of \$1,664, resulting from errors that occurred prior to January 1, 2013. In April 2013, the Clerk identified and corrected a \$1,500 bail recording error. We identified a \$250 bail receipt from April 2009 that was incorrectly recorded in the accounting system under the other Justice, and a \$170 bail receipt from June 2008 that was incorrectly deposited in the other Justice's bank account, which then¹⁸ resulted in an unreconciled balance of \$264 (see Figure 4). We also found that the bank was charging fees against

¹⁶ Prior to September 2011, the Justices each had one combined fine and bail bank account. Some errors identified in our testing (i.e., unresolved fines in the current bail account) occurred when the Justices used a combined account, and thus still affect the bail account balance even if they were related to fines.

¹⁷ These errors occurred between July and December 2013 but were not caught and corrected until April 2014.

¹⁸ In addition to the previously mentioned \$180 transferred from the fine account

both Justices' bank accounts. While Town officials have been working with the bank to recover all fees, as of April 30, 2014 the bail account was waiting for a reimbursement of \$246. This amount was taken into account during our accountability analysis.

Figure 4: Court Accountability Analysis - Justice Schiano

Assets as of April 30, 2014	
Justice Bank Account Balances (Fine and Bail) as of April 30, 2014	\$34,685
Deposits in Transit	\$1,345
Credit Card Payments (subsequently posted to bank account)	\$290
Bail Receipt Incorrectly Deposited in Justice Murante's Account	\$170
Bank Fees – Awaiting Reimbursement	\$246
Total Court Assets	\$36,736
Liabilities as of April 30, 2014	
Monthly Check for April Submitted to Supervisor May 2014	\$7,495
Outstanding Bail	\$28,977
Total Known Liabilities	\$36,472
Unreconciled Balance	\$264

- We reconciled Justice Murante's accounts for January 1, 2013 through April 30, 2014. After the Clerk made the corrections for amounts deposited in the wrong Justice's account for credit card transactions, the fine account zeroed out as of April 30, 2014.

We reconciled the bail account for the same period and identified a negative unreconciled balance of \$3,953. Due to the large negative balance, we reviewed activity from prior years to ensure no fraud had occurred. We extended our testing back to January 2007, at which point the account had a positive unreconciled balance of \$209. We reconciled to this amount (see Figure 5). Through our analysis, we identified five bail accounting errors totaling \$2,180 which occurred between April 2009 and March 2011.¹⁹ For four of the bail errors which totaled \$1,930, the clerk sent the check to return the bail, but did not record the payment in the accounting software to remove the liability from the bail listing.²⁰ We also identified three outstanding checks, totaling \$328²¹ that the clerk was unaware of. The clerk corrected these errors, which reduced the negative balance to \$1,446. The remainder of this negative balance consisted of:

¹⁹ The two oldest errors, totaling \$1,250, were made by the former clerk. The current clerk was hired in August 2010.

²⁰ The fifth error was the \$250 bail recorded under Justice Schiano.

²¹ Written and outstanding since April (two checks) and September 2010.

- o A County probation check for \$1,190 which the clerk received but never deposited. The former clerk had received a bail check from the County in October 2008, and recorded the bail, but erroneously forwarded the check to the JCF instead of depositing and holding it. The County reissued a new check on July 25, 2012, which we found, undeposited, while conducting a cash count on April 2, 2014.²² The clerk contacted the County²³ and expected the check to be reissued again for deposit in May 2014.
- o A \$690 fine that was included on the December 2007 report to JCF as paid but was never deposited and was still recorded as unpaid in the accounting system, with documentation that a judgment²⁴ was issued by the Assistant District Attorney for non-payment in August 2007.
- o A \$170 bail payment that was deposited in the Justice's bank account in June 2008, but recorded in the other Justice's accounting records. As of April 30, 2014, this amount had not yet been transferred to the other Justice's bank account.
- o A \$75 bail poundage receipt in October 2009 that was deposited but incorrectly recorded in the accounting system, and thus never reported to JCF.
- o A remaining deposit shortage of \$20, which is the net total of five deposit discrepancies we identified between April 2007 and April 2009.²⁵

In addition, as of April 30, 2014, the Court was still waiting for reimbursement for bank fees totaling \$1,140 in the bail account. Due to continual activity and new deposits in the bail account, these errors and fees never caused a negative balance in the bank account. However, it is essential that the Justices and clerks perform timely accountability analyses and identify and resolve all errors on a monthly basis.

²² The clerk said she did not know what the check was for or how to handle it so she did not deposit it, and instead, held onto it for more than a year.

²³ At our suggestion, after we identified and discussed the error

²⁴ A Town Justice may file an order of civil judgment with the County Clerk for unpaid fines and surcharges.

²⁵ Three discrepancies totaling \$50 for deposits that were less than recorded receipts, and two totaling \$30 for deposits that exceeded recorded receipts.

Figure 5: Court Accountability Analysis - Justice Murante

Assets as of April 30, 2014	
Justice Bank Account Balances (Fine and Bail) as of April 30, 2014	\$26,548
Deposits in Transit	\$615
Credit Card Payments (subsequently posted to bank account)	\$393
Overpayments to the JCF	\$690
Undeposited Probation Check	\$1,190
Bank Fees – Awaiting Reimbursement	\$1,140
Net Deposit Shortage	\$20
Total Court Assets	\$30,596
Liabilities as of April 30, 2014	
Outstanding Checks	\$624
Monthly Check for April Submitted to Supervisor May 2014	\$11,187
Outstanding Bail	\$18,331
Bail Poundage Never Reported to JCF	\$75
Bail Receipt Deposited but Recorded Under Justice Schiano	\$170
Total Known Liabilities	\$30,387
Unreconciled Balance	\$209

The failure to reconcile bank accounts and liabilities significantly increases the risk of unauthorized use or disposition of cash and makes it more likely that Town officials will not detect cash shortages, errors or irregularities in a timely manner. In addition, without sufficient controls and monitoring of all bail money received and an accurate pending bail list, the Justices are not aware of their current liabilities and are at risk of making errors in the disbursement of bail moneys.

Timely and Intact Deposits

State regulation²⁶ requires Court personnel to deposit all moneys received into the Justices' official bank accounts as soon as possible, but no later than 72 hours after receipt, excluding Sundays and holidays. Moneys received must be deposited intact (not split or grouped into lump-sum amounts, but deposited in the same amounts and composition, or form, as received). The timely and intact depositing of receipts helps prevent errors and irregularities. To properly account for moneys received and deposited, it is essential that Justices establish control procedures that require accurate identification of the type of remittances received (cash, check, money order or credit card) so that collections can be easily traced to cash receipt and deposit records.

To determine whether moneys were deposited intact and in a timely manner, we tested receipts collected²⁷ for each of the Justices during

²⁶ The New York State Uniform Civil Rules for Justice Courts

²⁷ We excluded credit card transactions which cleared the bank typically two to four days after processing.

four randomly selected months.²⁸ Of the 255 receipts reviewed for Justice Schiano, 194 (76 percent), totaling \$27,502, were deposited from one to 19 days later than the 72-hour maximum. Of the 221 cash receipts for Justice Murante, 179 (81 percent), totaling \$31,134, were deposited from one to 19 days late. Further, we identified four instances netting to \$110 for these months where credit card deposits were deposited into the wrong Justice's account. In addition, the clerks did not always clearly record the form of payment (i.e., cash, money order or credit card) for each receipt, which makes it difficult to verify that deposits were made intact.²⁹

The failure to deposit Court receipts intact in the correct accounts within the prescribed time limit increases the risk that Court personnel will not properly account for all moneys received and that moneys could be lost or stolen. Had the Justices required their clerks to perform a timely and accurate accountability analysis each month, these discrepancies could have been identified and corrected timely.

Annual Audit

According to the Uniform Justice Court Act and Town Law, Justices are required to present their records and dockets to the Board for audit at least once each year. The Board must audit the records or engage an independent public accountant to do so. The Town Clerk must document in the Board minutes that an audit was performed and should indicate the results of the audit.

The Board contracts with an external auditor annually which includes a review of the Court's financial records. The external audit identified Court deficiencies for both 2012 and 2013³⁰ similar to those identified in our audit. However, the Justices failed to implement corrective action to address the issues identified. The failure to implement adequate corrective action to address these deficiencies allowed errors to occur and remain uncorrected and resulted in the poor accountability practices continuing unabated.

Recommendations

The Justices should:

7. Require the Court clerks to prepare proper bank reconciliations and accountability analyses on a monthly basis, review them in detail to ensure that the total of all cash on hand, and on deposit in the bank, reconciles to a complete and accurate listing of Court liabilities and investigate and correct differences promptly.

²⁸ January 2013, July 2013, November 2013 and March 2014

²⁹ The clerks did not record form of payment for 20 of 352 receipts (6 percent) for Justice Schiano and for 10 of 319 receipts (3 percent) for Justice Murante.

³⁰ The external auditor cited apparent shortages with the outstanding bail list exceeding the bank account balances for 2012 and 2013, and the failure to perform monthly accountability analyses in 2013.

8. Review their records in detail to verify their Court liabilities, and resolve any unreconciled balances and remit all unidentified moneys to the Supervisor or JCF, as appropriate.
9. Ensure that the Court clerks clearly record all receipts and deposit all moneys received intact within 72 business hours after receipt.
10. Implement timely corrective action to remedy any deficiencies identified by the required annual audits of the Court records.

The Board should:

11. Follow up on corrective action of Court findings included in its annual external audit report. If the Justices do not correct identified deficiencies, the Board can inform the Supervising Judge of the Judicial District, the Office of Court Administration, or the Commission on Judicial Conduct.

APPENDIX A
RESPONSE FROM LOCAL OFFICIALS

The local officials' response to this audit can be found on the following pages.



TOWN OF
Ogden

COUNTY OF MONROE
STATE OF NEW YORK
October 20, 2014

Mr. Edward V. Grant, Jr.
Chief Examiner
Office of the State Comptroller
The Powers Building
16 W. Main Street, Suite 522
Rochester, NY 14614

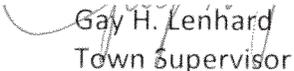
RE: Town of Ogden
Fiscal Management and Justice Court
Report of Examination
Period covered: January 1, 2012 – June 15, 2014
2014M-234

Dear Chief Examiner Grant:

This letter is in response to the above referenced examination of the Town of Ogden. I would like to take just a moment to thank both [REDACTED] and [REDACTED] from your office. They conducted the audit in a professional, courteous manner and answered questions with thorough explanations and information.

Upon reviewing the audit findings with the local examiners, [REDACTED] and [REDACTED] the Board does agree with the findings and we have developed our Corrective Action Plan which follows. As of today, we have ready addressed some of the issues and are implementing the remainder of the action plan beginning with our 2015 Town Budget. We are also working with our elected Court Justices to ensure that all the deficiencies in the Court are resolved.

Sincerely,


Gay H. Lenhard
Town Supervisor

Unit Name: Town of Ogden
Audit Report Title: Financial Management and Justice Court
Audit Report Number: 2014M-234

For each recommendation included in the audit report, the following is our corrective actions taken or proposed. For recommendations where corrective action has not been taken or proposed, we have included the following explanations.

Audit Recommendation:

1. The Board and Town officials should develop long-term financial plans, and policies and procedures, to govern developing and monitoring the budget estimates and the amount of unexpended surplus funds to maintain.

Implementation Plan of Action:

The Supervisor and the Finance Director, with input from the appropriate Town officials, will develop written policy and procedure guidelines to outline and define the budget process. This policy will outline the annual budget process and criteria to be utilized for the department heads to follow during the development of their respective budgets. This policy will also contain the guidelines for maintaining and utilizing surplus fund balances.

This policy finalized and implemented on or before the Town's next budget cycle (Summer of 2015).

Audit Recommendation:

2. Use the unexpended surplus fund balance in a manner that benefits taxpayers. Such uses could include, but are not limited to: increasing necessary reserves, paying off debt, financing one-time expenses or reducing property taxes.

Implementation Plan of Action:

This has been implemented. For the 2015 budget year, the Town Board is eliminating the amount of taxes levied in the TOV fund and significantly reducing the taxes levied in the Highway Fund. Further, capital reserves are being utilized to purchase planned equipment in both funds. Once the Budgeting Policy and Procedure Guidelines are developed and adopted, they will be utilized by all Town officials to assure continued compliance.

Audit Recommendation:

3. Develop and adopt more accurate budget estimates of revenues, particularly for sales tax revenues.

Implementation Plan of Action:

This has been implemented. For the 2015 budget year, the estimate and apportionment of the sales tax has been corrected. The sales tax has been trended over the last five years and for the 2015 budget it has been estimated utilizing those trends. Since sales tax is also impacted by economic condition, consideration will be given to those economic influences as well. Again, this guidance will be outlined in the Budgeting Policy and Procedure Guidelines.

Audit Recommendation:

4. Research the origin of the existing capital and repair reserves, and if unsuccessful in locating documentation, formally establish the reserves in conformance with GML.

Implementation Plan of Action:

Many of the resolutions for the establishment of Town's reserves have been located. However, they were developed many years ago and are all in need of updating. All the reserves the Town has will be reviewed by the Supervisor and the Town Board. New resolutions for all of the Town's reserve funds will be developed in compliance with the GML utilizing the guidance provided by the Comptroller's Office. The Supervisor and the Finance Director, with assistance from the Town Attorney will develop these new resolutions and present them to the Town Board for final adoption. This project will be completed by the end of 2014.

Audit Recommendation:

5. Establish formal plans for the funding and use of reserves.

Implementation Plan of Action:

In conjunction with recommendation 4 above, the Supervisor will work with all Town officials and Town Board members to establish a more formalized plan for both the funding and usage of the reserves. This plan will be reviewed annually during the budget process and updated as needed. The plan will be developed to speak to the specific needs of each reserve. This plan will be developed and implemented on or before the Town's next budget cycle (summer of 2015) and will be reviewed and updated at least annually during the budget cycle.

Audit Recommendation:

6. Ensure that the Supervisor provides all Board members with accurate and complete monthly financial reports, and use the reports to monitor the Town's financial position

Implementation Plan of Action:

This has been corrected. Each Board prior to the first meeting of each month (or as soon as practical when the month is closed) will receive a copy of the monthly financial reports both electronically via email and if requested, via hardcopy. In addition a copy is being provided in both paper and electronic format to the Town Clerk to be maintained on file. The new Finance Director put the practice in place at the beginning of 2014.

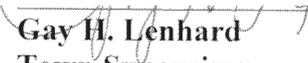
Audit Recommendation: Justice Court

11. The Board should follow up on corrective action of Court findings included in its annual external audit report. If the Justices do not correct identified deficiencies, the Board can inform the Supervising Justice of the Judicial District, the Office of Court Administration, and/or the Commission of Judicial Conduct.

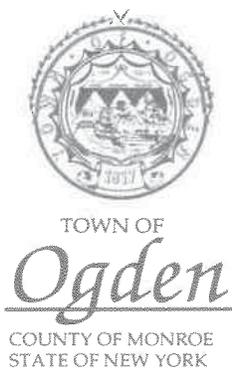
Implementation Plan of Action:

Recommendations 7 through 10 will be addressed under a separate Corrective Action Plan that will be submitted by the Town elected Justices. The Finance Department will work with the Supervisor and the Town's external auditors to follow up on and monitor any deficiencies in the Court. The staff in the Finance department will be available to the Court Clerks to assist them when and if necessary. This has been implemented.

Signed:


Gay H. Lenhard
Town Supervisor
Town of Ogden

October 20, 2014
Date



October 20, 2014

Ogden Town Court Department

Mr. Edward V. Grant, Jr.
Chief Examiner
Office of the State Comptroller
The Powers Building
16 W. Main Street, Suite 522
Rochester, NY 14614

RE: Town of Ogden
Fiscal Management and Justice Court
Report of Examination
Period covered: January 1, 2012 – June 15, 2014
2014M-234

Dear Chief Examiner Grant:

The Town of Ogden Town Court Justices and Court clerks would like to express their thanks to [REDACTED] for his assistance and guidance with respect to the audit of the Justice Court. [REDACTED] conducted himself in a most professional manner and was extremely helpful with providing guidance to the Court Clerks with the development of some tools to implement our Correction Action Plan.

Upon reviewing the audit findings with your local auditors, [REDACTED] and [REDACTED] the Court Justices along with the Town Board agrees with the findings of this audit. We have already implemented our Corrective Action Plan as indicated on the pages that follow.

Sincerely,

David A. Murante
Town Court Justice

Michael P. Schiano
Town Court Justice

Unit Name: Town of Ogden
Audit Report Title: Financial Management and Justice Court
Audit Report Number: 2014M-234

For each recommendation included in the audit report, the following is our corrective actions taken or proposed. For recommendations where corrective action has not been taken or proposed, we have included the following explanations.

Audit Recommendation:

7. Require the Court clerks to prepare proper bank reconciliations and accountability analysis on a monthly basis, review them in detail to ensure that the total of all cash on hand, and on deposit in the bank, reconciles to a complete and accurate listing of Court liabilities and investigate and correct differences promptly.

Implementation Plan of Action:

This has been implemented. Each Court Clerk is reconciling the bank accounts monthly using the reconciling tool developed during the actual audit. Balances are being reviewed along with the monthly bank statements which are available online making the process timelier. Each Justice will review these reconciliations on a consistent basis as well ensuring continued compliance.

Audit Recommendation:

8. Review their records in detail to verify their Court liabilities, and resolve any unreconciled balance and remit all unidentified moneys to the Town Supervisor or JCF, as appropriate.

Implementation Plan of Action:

This has been implemented. All accounts have been reconciled. All bank fees and questionable balances have been reviewed and resolved. Since the Court clerks are reconciling all accounts on a monthly basis, any discrepancies will be easily identified and the appropriate action will be taken on a timely basis. Each Court Justice will review any inaccuracies and authorize funds to be turned over to the Town Supervisor or JCF, as appropriate.

Audit Recommendation:

9. Ensure that the Court clerks clearly record all receipts and deposit all moneys received intact within 72 business hours after receipt.

Implementation Plan of Action:

This has been implemented. A deposit schedule has been set up by the Court clerks. All funds will be deposited on Wednesday and Friday afternoons. This schedule will allow for the Court funds to be deposited within 72 hours of receipt and verification. Also, as a contingency plan, the Town Clerk and the Director of Finance (both bonded by the Town of Ogden) can be available to make any deposit should a scheduling conflict arise (ie. Illness, vacations...etc.).

Audit Recommendation:

10. Implement timely corrective action to remedy any deficiencies identified by the required annual audits of the Court records.

Implementation Plan of Action:

This implementation will be on going. The Town of Ogden's independent auditors will continue to assist the Town Board with the annual audit of the Court records. Each Justice and their Clerks are committed to working with the Town's independent auditors for continued compliance and success. The Town Supervisor and the Director of Finance will also be available on a continued basis to monitor and assist the Court clerks and the Justices should any assistance be needed.

Signed:

David A. Murante
Town Justice
Dated: October 20, 2014

Michael P. Schiano
Town Justice
Dated: October 20, 2014

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard Town assets. To accomplish this, we performed an initial assessment of the Town's internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: Board oversight, financial management, cash receipts and disbursements, purchasing, payroll, departmental operations (Justice Court, Town Clerk, Recreation, etc.) and information technology. During the initial assessment, we interviewed appropriate Town officials, performed limited tests of transactions and reviewed pertinent documents, such as policies, Board minutes and financial records and reports.

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed and evaluated those weaknesses for the risk of potential fraud, theft or professional misconduct. We then decided upon the reported objectives and scope by selecting for audit those areas most at risk. We selected financial management and Court operations for further audit testing.

To accomplish our objective, we reviewed the Board's financial management and the Court's records and reports for the period January 1, 2012 through June 5, 2014. We extended our scope back to January 1, 2009, to review prior years' fund balance levels and budgeting trends, and January 1, 2007 to review Justice Murante's financial records and bank reconciliations.

To achieve the objectives of this audit and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed Town and Court officials and employees to gain an understanding of Town processes and operations and to determine the internal controls in place.
- We interviewed the Town Board members and reviewed the monthly financial reports prepared by the Director of Finance.
- We reviewed Town policies, the employee handbook and Board minutes.
- We analyzed fund balance for the period 2009 through 2013. We also compared budgeted revenues and appropriations to actual operating results for 2009 through 2013 for the major operating funds.
- We reviewed total annual revenues and expenditures to determine the operating deficits or surpluses for each fund. We also reviewed budgets for 2009 through 2014 to determine the amount of appropriated fund balance for each fund each year.
- We reviewed individual line item budget-to-actual results for 2013 and compared the results to the 2014 budget.

- We performed a budget-to-actual analysis of sales tax revenues for TOV funds for 2009 through 2013.
- We reviewed the Town's audited financial statements and management letters for 2011, 2012 and 2013 and any corrective action plans initiated by the Town.
- We reviewed and analyzed liabilities and receivables reported as of December 31, 2012 and December 31, 2013.
- We reviewed bank reconciliations for the months of January and February 2014.
- We reviewed documentation for establishing, funding and using reserve funds.

For the Court:

- We performed a cash count for each Justice on April 2, 2014.
- We performed monthly bank reconciliations for Justice Schiano's bail and fine accounts for the period January 1, 2013 through April 30, 2014.
- We performed monthly bank reconciliations for Justice Murante's bail and fine accounts for the period January 1, 2013 through April 30, 2014. Due to the discrepancies identified, we extended our review back to January 1, 2007.
- We examined financial and other records relating to the collection and subsequent dispositions of fines and bail. These records included bank statements, monthly reports to the JCF, case files, and cash receipt and disbursement records.
- We compared manual cash receipts with bank deposits to determine timeliness of deposits.
- We reviewed the Town's audited financial statements and management letters for 2011, 2012 and 2013 and any corrective action plans initiated for issues related to Court operations.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX C

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