



Audit of the Fraud Prevention Fund

March 12, 2013

Audit Team:

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A Report by the Office of the D.C. Auditor
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Acknowledgements

We wish to thank the staff at the following agencies for their time, information, insight, and cooperation during the review process: Office of the City Administrator (OCA), Office of the Chief Financial Officer (OCFO) and Office of the Attorney General for the District of Columbia (OAG).

Summary

This review of the Fraud Prevention Fund (Fund) was conducted pursuant to the “Telephone Fraud Amendment Act of 2000” (the Act)¹. The Act requires the Office of the District of Columbia Auditor (ODCA) to perform an annual audit of the Fraud Prevention Fund (the Fund).²

The review objectives were to determine whether the:

- District established the Fraud Prevention Fund as required by the Act;
- District deposited funds resulting from fines imposed on telephone solicitors into the Fund as required by the Act;
- District made expenditures from the Fund as specified in the Act; and
- Mayor established the Task Force to Combat Fraud as required by the Act.

The Auditor identified the following two findings:

1. The Mayor failed to establish the Fraud Prevention Fund.
2. The Mayor failed to establish the Task Force to Combat Fraud.

To correct the deficiencies identified during the review, the Auditor directed the Mayor to implement the following recommendations:

1. Establish the Fraud Prevention Fund.
2. Form a Task Force to Combat Fraud to comply with the requirements of the Telephone Fraud Amendment Act of 2000.

¹ D.C. Code § 22-3226.01 (2001), et.seq

² D.C. Code § 22-3226.14 (d) (2001)

Introduction

The Act provides that ODCA shall perform an annual audit of the Fund.³ According to the Act, telephone solicitors who engaged in telephone solicitation fraud were subject to civil and/or criminal penalties including fines and/or imprisonment.⁴ Fines resulting from penalties imposed upon fraudulent telephone solicitors were to be deposited into the Fund. The Fund was to be used to educate the public regarding fraud prevention, support the work of the Task Force to Combat Fraud (Task Force) and to enforce the Act. However, we found that the Office of the Mayor did not establish the Task Force.

³ D.C. Code § 22-3226.14 (d) (2001)

⁴ D.C. Code §22-3226.06 (2001)

Objectives, Scope and Methodology

The review objectives were to determine whether the:

- District established the Fraud Prevention Fund as required by the Act;
- District deposited funds resulting from fines imposed on telephone solicitors in the Fund as required by the Act;
- District made expenditures from the Fund as specified in the Act;
- Mayor established the Task Force to Combat Fraud as required by the Act; and
- Scope of the review covered fiscal year (FY) 2002 through FY 2011. We did not conduct the review as an audit as defined by the Government Accountability Office's Government Auditing Standards.

To accomplish the review objectives we interviewed the staff of the Office of the City Administrator (OCA), the Office of the Chief Financial Officer (OCFO) and the Office of the Attorney General for the District of Columbia (OAG). Additionally, we reviewed relevant laws and regulations pertaining to telephone solicitation fraud.

Previous ODCA Fraud Prevention Fund Report

On September 23, 2002, the Auditor issued a report titled *Executive Branch Fails to Implement the Telephone Fraud Amendment Act*. The Auditor found that the Fraud Prevention Fund and the Task Force to Combat Fraud were not established. To address these findings, the Auditor directed the Office of the Mayor to implement the following recommendations:⁵

1. The Mayor should designate a specific agency within to establish the Fraud Prevention Fund.

⁵ Audit findings noted in the ODCA audit report entitled *Executive Branch Fails to Implement the Telephone Fraud Amendment Act* issued September 23, 2002.

2. The Mayor should designate a specific agency manager the responsibility of coordinating and administering the work of the Task Force to Combat Fraud.
3. The Mayor should establish the Task Force to Combat Fraud and require the Chief of the Metropolitan Police Department, the Corporation Counsel (now the Office of the Attorney General for the District of Columbia), and the Director of the Department of Consumer and Regulatory Affairs to designate one or more individuals to work on the Task Force to Combat Fraud. Additionally, representatives from other District government agencies and the federal and business sectors should be encouraged to participate on the Task Force to Combat Fraud.

Background

According to the Federal Trade Commission, telemarketing fraud is a multi-billion dollar business in the United States. Every year, due to fraudulent telephone solicitors,⁶ thousands of consumers lose money ranging from a few dollars to their life savings.

Telephone Fraud Act Establishment - To protect citizens from telephone fraud the Council of the District of Columbia (Council) enacted the “Telephone Fraud Amendment Act of 2000” (the Act). Specifically, the Act (1) imposed numerous regulatory requirements and standards on telephone solicitors; (2) detailed unlawful, deceptive and abusive telemarketing acts and practices; and (3) enumerated the civil and criminal penalties that may be imposed on telephone solicitors who violate the provisions of the Act. Additionally, the Act established the Fraud Prevention Fund (the Fund) comprised of fines resulting from criminal and civil penalties imposed on telephone solicitors.⁷

Civil and Criminal Penalties - The Act permits the District to seek both civil and criminal penalties on telephone solicitors that commit unlawful, deceptive and/or abusive telemarketing acts or practices. Specifically, the Act provides the following civil penalties:⁸

1. A fine of up to \$1,000 per violation.
2. A permit or license shall be revoked or suspended if the telephone solicitor fails to comply with registration requirements.
3. A judge may impose treble damages against any telephone solicitor who knowingly targets elderly persons or persons with disabilities.

⁶ Noted on the Federal Trade Commission website, article titled *Putting Telephone Scams on Hold* September 2008.

⁷ D.C. Code § 22-3226.14 (2001)

⁸ D.C. Code § 22-3226.09 (2001)

The Act further provides that a telephone solicitor, who engages in unlawful practices and obtains property, shall be guilty of telemarketing fraud. The Act provides the following criminal penalties for telemarketing fraud:⁹

1. If the amount of the transaction is valued at \$20,000 or more, the telephone solicitor shall, upon conviction, be guilty of a felony and shall be subject to a fine of not more than \$10,000 or imprisonment for not more than 4 years, or both.
2. If the amount of the transaction is valued at less than \$20,000 but more than \$5,000, the telephone solicitor shall upon conviction be guilty of a felony and shall be subject to a fine of not more than \$5,000 or imprisonment for not more than 3 years, or both.
3. If the amount of the transaction is valued at \$5,000 or less, the telephone solicitor shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine of not more than \$500 or imprisonment for not more than 6 months, or both.

Fraud Prevention Fund – The Act provides that the Fraud Prevention Fund should be a non-lapsing fund. Additionally, the Fraud Prevention Fund cannot be commingled with the General Fund of the District. The Fraud Prevention Fund is to be used to educate the public regarding fraud prevention, support work of the Task Force and to enforce the Act.

Fraud Prevention Task Force - The Act provides that the Mayor shall form a Task Force for the purposes of: (1) collecting information on telephone fraud; (2) educating the public about fraud, including telephone fraud; (3) sharing information related to telephone fraud with District government agencies; (4) sharing information related to telephone fraud with other state and federal law enforcement agencies; and (5) advising the Mayor on enforcement of the Telephone Fraud Act.¹⁰ The Task Force may include representatives from the following agencies: Metropolitan Police Department, Department of Consumer and Regulatory Affairs, Office of Corporation Counsel (now the Office of the Attorney General for the District of Columbia), and any other agency deemed appropriate by the Mayor.

⁹ D.C. Code § 22-3226.10 (2001)

¹⁰ D.C. Code § 22-3226.13 (2001)

Findings and Recommendations

1. The Office of the Mayor failed to establish the Fraud Prevention Fund

The Act requires the Office of the Mayor to establish the Fraud Prevention Fund.¹¹ We found that the Office of the Mayor failed to establish the Fund.

As part of the review, we requested that the Office of the City Administrator and the Chief Financial Officer provide information regarding the Fund. According to OCA and the OCFO, the Fund was not established.

It is particularly troubling that the Fund was not established in light of the fact that the Act, mandating the establishment of the Fraud Prevention Fund, was enacted in 2000. Additionally, in 2002 the Auditor issued a report recommending that the Mayor designate a specific agency to establish the Fund. Despite the passage of 12 years since enactment of the Act and the passage of 10 years since the issuance of an audit recommendation to designate an agency to establish the Fund, the Office of the Mayor did not ensure that the Fund was established. A change in administrations during the 12 year period since the enactment of the Act did not eliminate the responsibility of the Office of the Mayor to establish the Fund.

As a result of the failure of the Office of the Mayor to establish the Fraud Prevention Fund, residents of the District did not receive the full benefits and protections enacted by the Council in the Telephone Fraud Amendment Act of 2000.

Recommendation:

We recommend that the Office of the Mayor:

1. Establish the Fraud Prevention Fund.

¹¹ D.C. Code § 22-3226.14 (2001)

2. The Office of the Mayor failed to establish the Task Force to Combat Fraud

The Act provides that the Mayor shall form the Task Force to Combat Fraud (Task Force) for the purposes of: (1) collecting information on telephone fraud; (2) educating the public about fraud, including telephone fraud; (3) sharing information related to telephone fraud with District government agencies; (4) sharing information related to telephone fraud with other state and federal law enforcement agencies; and (5) advising the Mayor on enforcement of the Telephone Fraud Act.¹²

According to the Office of the City Administrator, the District did not establish the Task Force to Combat Fraud.

The Act requires the Mayor to establish the Task Force. However, the Mayor did not form the Task Force or designate an agency to be responsible for administering the work of the Task Force to Combat Fraud. Additionally, it is important to note that on September 23, 2002, the Auditor issued a report recommending that the Mayor designate a specific agency to coordinate and administer the work of the Task Force.

As with the failure of the Office of the Mayor to establish the Fraud Prevention Fund, despite the passage of 12 years since enactment of the Act and the passage of 10 years since the issuance of an audit recommendation to establish the Task Force and designate an agency to administer the work of the Task Force, the Office of the Mayor did not establish the Task Force to Combat Fraud or designate an agency to administer the work of the Task Force. A change in administrations during the 12 year period since enactment of the Act did not eliminate the responsibility of the Office of the Mayor to establish the Task Force to Combat Fraud or designate an agency to administer the work of the Task Force.

The Task Force to Combat Fraud should be promptly established so the District will have an entity that meets the requirements of the Act and shares information regarding telephone solicitation fraud with residents, District agencies and law enforcement agencies.

Recommendation:

We recommend that that the Office of the Mayor:

¹² D.C. Code § 22-3226.13 (2001)

- 2. Form a Task Force to Combat Fraud to comply with the requirements of the Telephone Fraud Amendment Act of 2000.**

Conclusion

Telemarketing fraud is a multi-billion dollar business in the United States. Every year, due to fraudulent telephone solicitors, thousands of consumers lose money ranging from a few dollars to their life savings.

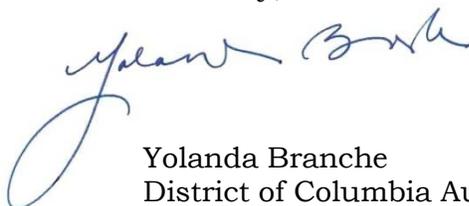
While telemarketing fraud is a multi-billion dollar business, more than 12 year have passed since the Council enacted the, "Telephone Fraud Amendment Act of 2000 (Act)". The purpose of the Act was to protect District residents from unlawful, deceptive and abusive telemarketing practices.

The Act required the establishment of a Fraud Prevention Fund to educate residents about fraud prevention. The Act also established a specific District agency to coordinate and administer the work of the Task Force to Combat Fraud. Despite the importance of protecting residents from telemarketing fraud, during the 12 years since enactment of the Act, the Office of the Mayor has not established the Fraud Prevention Fund or designated an agency to administer the work of the Task Force to Combat Fraud.

It is particularly troubling that in 2002, the Auditor issued a report recommending that the Office of the Mayor establish the Fraud Prevention Fund. The Auditor also recommended that the Office of the Mayor designate an agency to administer the work of the Task Force to Combat Fraud. Today we reiterate the same recommendations that were issued in 2002.

To continue to ignore the requirements of the Telephone Fraud Amendment Act and the Auditor's repeated recommendations, needlessly exposes District residents to possible telemarketing fraud. The Fraud Prevention Fund, the Task Force to Combat Fraud and the designation of an agency to administer the Task Force to Combat Fraud must be established immediately.

Sincerely,



Yolanda Branche
District of Columbia Auditor

Agency Response

On January 22, 2013, the Office of the District of Columbia Auditor submitted the draft report titled, "Review of the Fraud Prevention Fund" for review and comment to the District of Columbia City Administrator. The Auditor received no comments.