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Executive Branch Fails To Implement The Telephone Fraud Amendment Act

September 23, 2002

PURPOSE

Pursuant to Section 126n of D.C. Law 13-301, the District of Columbia Auditor attempted to conduct an audit of the Fraud Prevention Fund (Fund) for the period October 1, 2001 through August 31, 2002.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the planned audit were to determine whether:

1. the Fund was established and functioning as intended;
2. expenditures from the Fund were authorized and for allowable activities as specified in the law; and
3. the Task Force to Combat Fraud was established and performed required tasks as specified by law.

The Auditor reviewed applicable laws and regulations to identify the funding mechanism, allowable costs and activities, and administrative requirements of the Fraud Prevention Fund. Additionally, the Auditor made inquiries to the District of Columbia Office of the City Administrator, Metropolitan Police Department, Office of the Corporation Counsel, and Office of Documents to identify the administering agency of the Fraud Prevention Fund, the composition of the Task Force to Combat Fraud, and to determine key business processes and activities underway related to the administration of the Fund.

BACKGROUND

D.C. Law 13-301, entitled the “Telephone Fraud Amendment Act of 2000,” was enacted by the Council of the District of Columbia to protect citizens from telecommunications fraud by placing stringent requirements on telephone solicitors conducting solicitation activities in the District of Columbia, and establishing civil and criminal penalties for violators. In accordance with D.C. Law 13-301, solicitors must obtain a certificate of registration, post a \$50,000 surety bond, and retain a registered agent for service of process prior to operating in the District of Columbia. Persons engaged in telephone fraud, misrepresentation, or any other deceptive telemarketing practices are subject to civil and/or criminal penalties that can result in fines and/or imprisonment.

Section 102 of D.C. Law 13-301 established the Fraud Prevention Fund. The Fund is to consist of fines paid as a result of telephone solicitors' failure to comply with the Telephone Fraud Amendment Act of 2000. As mandated by law, the Fund is nonlapsing and cannot be commingled with the General Fund. Section 126n of D.C. Law 13-301 specifies that the Fund may be used for the following purposes:

1. educating the public regarding fraud and crime prevention;
2. supporting the Task Force to Combat Fraud; and
3. enforcing the Telephone Fraud Amendment Act of 2000.

The law establishes both civil and criminal penalties for deceptive practices and unlawful acts related to telephone fraud. All fines are payable to the Fraud Prevention Fund. Section 126f of D.C. Law 13-301 establishes the following civil penalties to be assessed against telephone solicitors that violate the law:

- # a fine of up to \$1,000;
- # license revocation or suspension if the seller or telephone solicitor fails to comply with registration requirements; and
- # treble damages against any telephone solicitor who knowingly targets the elderly or the disabled.

Section 126j of D.C. Law 13-301 establishes the following criminal penalties:

- (1) If the amount of the transaction is valued at \$20,000 or more, the seller or 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 seller or 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 seller or 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.

Section 126m of D.C. Law 13-301 requires the Mayor to establish the Task Force to Combat Fraud to assist in addressing fraud in the District. Membership on the Task Force may include representatives of the Metropolitan Police Department, Department of Consumer and Regulatory Affairs, Office of the Corporation Counsel, and other agencies deemed appropriate by the Mayor. Section 126m sets forth the following responsibilities for the Task Force:

1. collecting information on telephone fraud;
2. taking steps to educate the public about fraud, including telephone fraud;
3. sharing information related to telephone fraud with District government agencies; and
4. advising the Mayor on enforcement of the provisions of the Telephone Fraud Amendment Act of 2000.

FINDINGS

THE FRAUD PREVENTION FUND AND THE TASK FORCE TO COMBAT FRAUD WERE NEVER ESTABLISHED

The Auditor inquired of the Office of the City Administrator, which contacted the Metropolitan Police Department, the Department of Consumer and Regulatory Affairs, and the Office of the Corporation Counsel, to identify the administering agency of the Fraud Prevention Fund. Additionally, the Auditor contacted the Office of Documents to determine if any Mayor's Orders or Mayor's Memoranda had been issued regarding the establishment of the Fund or the Task Force to Combat Fraud. The Office of the City Administrator was unable to locate the Fraud Prevention Fund within the operations of the aforementioned city agencies. Similarly, the Office of Documents was unable to locate any directives from the Mayor's Office in the past two years establishing either the Fraud Prevention Fund or the Task Force.

The results of our inquiry indicated that no District agency within the Office of the Mayor spearheaded the effort to establish the Fraud Prevention Fund or the Task Force. As a result, neither initiative was implemented.

The law places the primary responsibility for establishing the Fraud Prevention Fund and the Task Force to Combat Fraud on the Mayor. The specific purpose of both is to assist the District of Columbia in addressing the serious issue of telephone fraud that tends to plague the District's most vulnerable citizens, the elderly. Currently, investigations of telephone fraud and other activities prohibited by the law are performed by the Metropolitan Police Department.

Federal, state and local governments have sought to jointly address the problem of telephone fraud. Particularly, many state and local governments have developed partnerships with federal and local law enforcement agencies, security professionals, and local prosecutors to develop a holistic, systematic approach to addressing the issue of telephone fraud. For example, in 1995 the state of Virginia's Office of the Attorney General joined a "Triad," which is an organization created by a cooperative agreement between the American Association of Retired Persons, the International Association of Chiefs of Police, and the National Sheriffs Association. The purpose of the Triad is to develop, expand, and implement effective crime prevention and education programs for the protection of senior citizens. The mission of the

Triad in Virginia, which is carried out by the Office of the Attorney General with assistance from volunteers and local law enforcement agencies, is to address crimes that typically target the elderly, including telecommunications fraud. Likewise, the Southern California Regional High Tech Fraud Crime Task Force, which is comprised of representatives from law enforcement agencies in Los Angeles, Orange, and Ventura counties, and staffed with investigators from federal, state, county, and city government agencies, investigates high tech crime, including telecommunications fraud. Additionally, the Sacramento Valley Hi-Tech Crime Task Force, which is comprised of 32 law enforcement and prosecutorial agencies covering a nine county area, conducts multi-jurisdictional investigations of alleged high tech crimes including telecommunications fraud.

In the District, the enactment of the Telephone Fraud Amendment Act of 2000 effectively establishes punitive measures, including financial and criminal penalties, for violators of the law. The expected work of the Task Force to Combat Fraud is critical to the development and implementation of a coordinated effort to ferret out and combat telephone fraud activities within the District, and to educate District residents on ways to protect their financial resources from the fraudulent schemes of unscrupulous telemarketers and criminals who use the telephone for fraudulent purposes.

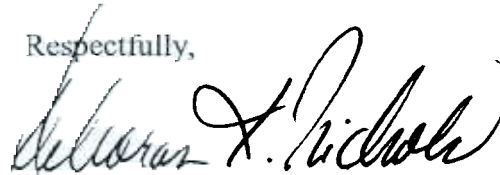
RECOMMENDATIONS

1. The Mayor designate a specific agency within which to establish the Fraud Prevention Fund.
2. The Mayor designate a specific agency manager the responsibility for coordinating and administering the work of the Task Force to Combat Fraud.
3. The Mayor establish the Task Force to Combat Fraud and require the Chief of the Metropolitan Police Department, the Corporation Counsel, 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.

CONCLUSION

The Auditor's examination revealed that the Mayor has not taken any action to implement the provisions of the Telephone Fraud Amendment Act of 2000. Neither the Fraud Prevention Fund nor the Task Force to Combat Fraud has been established as required by the law. Consequently, the District of Columbia has not implemented the regulatory requirements for telemarketers set forth in the law, developed a concerted, systematic approach to exposing and investigating telephone fraud, or a program for educating District residents, especially our most vulnerable citizens, about the potentially devastating financial impact of telephone fraud. Telemarketing fraud continues to need greater oversight and enforcement, and the establishment of the Fund and Task Force are necessary steps toward accomplishing the goals and objectives of the legislation and reducing the opportunities for such fraud to occur. The continued failure to implement the provisions of the law will leave District residents without the measure of protection contemplated. Action should be taken immediately to remedy this deficiency and achieve full compliance with the law.

Respectfully,

A handwritten signature in dark ink, appearing to read "Deborah K. Nichols", written in a cursive style.

Deborah K. Nichols

District of Columbia Auditor