



COLORADO

**Department of
Regulatory Agencies**

**2015 Sunset Review:
Identity Theft and Financial Fraud
Deterrence Act**

*Office of Policy, Research and Regulatory Reform
October 15, 2015*



COLORADO

Department of
Regulatory Agencies

Executive Director's Office

October 15, 2015

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

Programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.colorado.gov/opr.

DORA has completed the evaluation of the Identity Theft and Financial Fraud Deterrence Act. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2016 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the program provided under Part 17 of Article 33.5, Title 24, C.R.S. The report also discusses the effectiveness of the staff of the Colorado Bureau of Investigation in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joe Neguse
Executive Director





COLORADO

Department of Regulatory Agencies

2015 Sunset Review Identity Theft and Financial Fraud Deterrence Act

SUMMARY

What Is Identity Theft and Financial Fraud?

Identity theft occurs when an individual's personal identifying information is taken and used without permission. Fraud takes place when a criminal deceives a person to get money, personal information, or something else of value.

How Is the Problem Managed?

The General Assembly created the Identity Theft and Financial Fraud Board (Board) and the Fraud Investigators Unit (Unit) to augment the investigation and prosecution of identity theft and financial fraud crimes. The Unit is housed in the Colorado Bureau of Investigation. The Unit is an information source for law enforcement agencies, members of the financial industry, and the public. The Board is a 10-member, Type 2 entity consisting of individual stakeholders from the private sector and various governmental entities, to advise and oversee Unit activities.

Why Are Identity Theft and Financial Fraud Issues in Colorado?

The Unit reports that in 2014, among the 50 states, Colorado ranked 13th in number of reported identity theft victims and 10th in number of reported fraud victims.

What Activity Is There?

Activities tracked for this sunset review show that the Unit assisted more than 6,000 victims, executed more than 350 outreach contacts, and participated in 73 arrests.

What Does It Cost?

Unit activities are funded through gifts, grants, and donations, and surcharges on specified services provided by multiple state agencies. For fiscal year 13-14, Unit expenditures were \$332,506. The Unit was allotted 7.0 full-time equivalent (FTE) employees by the General Assembly, 2.5 FTE were funded from surcharges; 2.5 FTE were funded from gifts, grants, and donations; and 2.0 FTE were not funded, as a result the positions were vacant.

KEY RECOMMENDATIONS

Continue the Identity Theft and Financial Fraud Deterrence Act for nine years, until 2025.

The Unit performs several important functions. Among them are helping victims negotiate bureaucracies in both the public and private sectors; working as a go-between among government agencies during investigations; providing educational sessions and informational materials to prevent crimes from occurring; and gathering data to forecast the trends of identity theft and financial fraud crimes.

The Board is formed with the intent that it can connect the Unit with members of the private sector and other arms of government. The underlying idea is that stakeholders will meet with the Unit and information will flow in multiple directions.

The amount of identity theft and financial fraud in Colorado indicates a need for both the educative and the service-related functions delivered under the Identity Theft and Financial Fraud Deterrence Act.

Appropriate the necessary General Fund dollars to augment cash fund dollars and fully staff Unit operations.

The Unit is funded through gifts, grants, and donations, and fees from specified governmental filings. Funding has been erratic during the period examined for this sunset review. The number of identity theft and financial fraud crimes in Colorado has continued to increase during that time and the Unit has not been fully staffed.

Cash- or fee-based funding is typically used in conjunction with demand for a state government service. The fee is set by approximating the direct and indirect costs of providing that service. In this case there is no direct or indirect correlation between funding and demand for Unit services. The demand is based on the presence of crime that the indicators illustrate is increasing at a rapid pace.

METHODOLOGY

As part of this review, Department of Regulatory Agencies staff performed a literature review; met with and interviewed members of the Board, Unit staff, and officials with state and national stakeholder associations; reviewed national and Unit records; and reviewed federal laws, Colorado laws, and the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

AARP
Colorado Bankers Association
Colorado Bureau of Investigation
Colorado District Attorneys' Council
Office of the Colorado Attorney General
VISA

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.colorado.gov/opr.

The functions of the Identity Theft and Financial Fraud Board (Board) and the Colorado Fraud Investigators Unit (Unit) as enumerated in Part 17 of Article 33.5, Title 24, Colorado Revised Statutes (C.R.S.) shall terminate on September 1, 2016, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to supplement the existing law enforcement and prosecution system and provide greater flexibility to respond to the shifting aspects of identity theft and financial fraud crimes should be continued and to evaluate program performance. During this review, the Board and Unit must demonstrate that the program serves the public interest. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff performed a literature review; met with and interviewed members of the Board, Unit staff, and officials with state and national stakeholder associations; reviewed national and Unit records; and reviewed federal laws, Colorado laws, and the laws of other states.

Profile of Identity Theft and Financial Fraud

Identity theft topped the Federal Trade Commission's (FTC) national ranking of consumer complaints for the 15th consecutive year during 2014.² The District Attorney for Colorado's First Judicial District (Gilpin and Jefferson Counties) claims that, "The information age is also the identity theft age."³ Identity theft and financial fraud create confusion and can devastate finances, credit history, and reputation. It may take large outlays of time and financial resources to resolve associated problems. Identity theft occurs when an individual's personal identifying information is taken and used without permission. Fraud takes place when a criminal deceives a person to get money, personal information, or something else of value.

Identity theft takes many forms. The FTC lists three specific types of identity theft on its consumer information website: tax-related, child, and medical.⁴

- *Tax-related identity theft* occurs when a thief uses a stolen social security number to obtain a tax refund or a job.⁵
- *Child identity theft* may occur when school forms that contain sensitive information are collected, used or thrown away without having safeguards in place. Children's social security numbers have been used to apply for government benefits, open bank and credit card accounts, apply for loans or utility services, and rent places to live.⁶
- *Medical identity theft* occurs when a thief uses a name or health insurance number to see a doctor, obtain prescription drugs, file claims with insurance providers, or obtain other care. The thief's health information is mixed with the victim's treatment, insurance, and payment records. Subsequently, credit reports may be affected.⁷

² Federal Trade Commission. *Identity Theft Tops FTC's Consumer Complaint Categories Again in 2014*. Retrieved June 17, 2015 from <https://www.ftc.gov/news-events/press-releases/2015/02/identity-theft-tops-ftcs-consumer-complaint-categories-again-2014>

³ First Judicial District. *How Can You Recover From Identity Theft?*

⁴ Federal Trade Commission. *Identity Theft*. Retrieved August 27, 2015 from <http://www.consumer.ftc.gov/topics/identity-theft>

⁵ Federal Trade Commission. *Tax-Related Identity Theft*. Retrieved February 5, 2015 from <http://www.consumer.ftc.gov/articles/0008-tax-related-identity-theft>

⁶ Federal Trade Commission. *Child Identity Theft*. Retrieved February 5, 2015 from <http://www.consumer.ftc.gov/articles/0040-child-identity-theft>

⁷ Federal Trade Commission. *Medical Identity Theft* Retrieved February 5, 2015 from <http://www.consumer.ftc.gov/articles/0171-medical-identity-theft>

The Unit recognizes additional forms of identity theft on its website:⁸

- *Criminal identity theft* occurs when someone is accused of a crime and uses another person's identity when arrested or cited.
- *At-risk adult identity theft* happens when the thief uses the identity of an older adult or a person with a disability.
- *Domestic violence/stalking identity theft* is committed as part of a domestic violence or stalking incident. This form is used to intimidate and control victims.
- *Business identity theft* occurs when a thief changes a business's listings with the Secretary of State. This form of identity theft is committed to obtain credit, sell the business or set up fraudulent websites to divert business and online payments or to obtain personal information from customers.

The Unit also identifies multiple types of financial fraud. Among those:⁹

- *Money Wiring Scams* occur when the perpetrator attempts to persuade a person to send money through a wire service, an electronic funds transfer, or through the purchase of a pre-paid credit card. The methods of persuasion may include pretending to be a loved one, claiming to be collecting a fine or debt, or through online sales or offers of jobs.
- *Romance Scams* occur when a criminal poses as a love match which is followed by appeals for help with a financial emergency.
- *Lottery Scams* follow claims that a person has won a prize but in order to collect he or she must pay taxes and fees.

Every U.S. state has a law making identity theft or impersonation a crime. Twenty-nine states, plus Guam, Puerto Rico and the District of Columbia, have specific restitution provisions for identity theft. Colorado is included in this list. Five states have forfeiture provisions for identity theft crimes. Eleven states have created identity theft passport programs to assist victims of identity theft.¹⁰

Identity theft passport programs are typically statewide systems accessed by law enforcement and state departments of motor vehicles to identify and document victims of identity theft. The passport is an identification card intended to help financial identity fraud victims. A passport may prevent a victim's arrest for offenses committed by an identity thief and help victims reestablish themselves. Colorado does not currently have a passport program.

⁸ Colorado Bureau of Investigation. *Types of Identity Theft and Fraud*. Retrieved February 5, 2015 from <https://www.colorado.gov/pacific/cbi/types-identity-theft-and-fraud>

⁹ *ibid.*

¹⁰ National Conference of State Legislatures. *Identity Theft*. Retrieved March 4, 2015 from <http://www.ncsl.org/research/financial-services-and-commerce/identity-theft-state-statutes.aspx>

The nature of these crimes and the manner in which the perpetrators operate has formed the way law enforcement performs its functions. Generally speaking, these criminals are intelligent and technologically savvy. They operate on low levels in multiple jurisdictions so they tend to not draw too much attention. Felony theft in Colorado begins with amounts over \$2,000¹¹ and felony possession of a financial device begins with the criminal possession of two or more devices.¹² Thieves are largely careful not to cross these lines.

For example, if a credit card thief uses a stolen number three times in small amounts, say \$75, he or she will not draw too much attention. With a low level crime, local police may not take a statement from or investigate on behalf of the victim. Typically, the victim is reimbursed by the credit card company. The merchant will be paid by the credit card company and may never know what has occurred. The credit card company commonly prefers to pay the bills rather than expend more resources pursuing the matter. If it chooses to pursue, there is only a remote possibility that it will recover a small amount. Therefore, there is little motivation by any party to pursue the matter.

In general, the thieves understand the tolerances of the various targets. In this case, the card holder, the merchant, and the credit card company are all targets. Thieves are careful not to cross thresholds and draw attention to their operations. In the above scenario, if a person accesses 10 numbers in a week, he or she can easily steal \$2,250, equating to nearly \$120,000 per year. This can be accomplished before anyone notices.

While credit card theft is widespread, it is one small portion of the identity theft and financial fraud universe. Moreover, the areas of criminal activity are constantly changing and becoming more sophisticated.

¹¹ § 18-4-401(1.5)(f), C.R.S.

¹² § 18-5-903(2)(b), C.R.S.

Legal Framework

History of Regulation

In 2006, the Colorado Bankers Association and state law enforcement agencies brought concerns to the Colorado General Assembly regarding increases in identity theft and fraud in Colorado. The General Assembly passed legislation that created the Colorado Fraud Investigators Unit (Unit) and the Colorado Identity Theft and Financial Fraud Board (Board), both of which are housed in the Colorado Bureau of Investigation (CBI). This specialized unit of the CBI was to be devoted to preventing, investigating, and prosecuting crimes associated with identity theft.¹³ The Unit was specifically intended to support local efforts rather than replace them.¹⁴

During 2014, the General Assembly added cybercrimes to the responsibilities of the CBI. Those responsibilities are housed administratively with the Unit.¹⁵ However, this sunset review does not cover those responsibilities. The purpose of this review is to analyze the provisions and the implementation of the Identity Theft and Financial Fraud Deterrence Act (Act).

Federal Identity Theft Laws¹⁶

Before “identity theft” became a term of art, crimes that are now considered identity theft were pursued under “false personation” statutes that originated in the late 1800s. False personation was defined as “the crime of falsely assuming the identity of another to gain a benefit or avoid an expense.”

When Congress passed the Identity Theft and Assumption Deterrence Act of 1998, identity theft was listed as a federal crime.

The Identity Theft and Assumption Deterrence Act of 1998 did four things:

- It made it a crime to steal another person’s personal identifying information.
- It recognized identity theft as a crime against the individual whose identity was stolen. Previously, victims had been defined solely by financial loss and often the emphasis was on banks and other financial institutions rather than on individuals.
- It established the Identity Theft Data Clearinghouse for reporting instances of identity theft and installed the Federal Trade Commission (FTC) as the federal point of contact.
- It increased criminal penalties for identity theft and fraud.

¹³ Colorado Bureau of Investigation, Department of Public Safety. *Identity Theft/Fraud and Cyber Crimes Unit Role*. Retrieved March 2, 2015, from <https://www.colorado.gov/pacific/cbi/identity-theftfraud-and-cyber-crimes-unit-role>

¹⁴ § 24-33.5-1702(3), C.R.S.

¹⁵ *ibid.*

¹⁶ Department of Justice, Office of Justice Programs. *Expanding Services to Reach Victims of Identity Theft and Financial Fraud*. Retrieved February 18, 2015, from http://ojp.gov/ovc/pubs/ID_theft/idtheftlaws.html

Other federal laws address the complexities surrounding identity theft and fraud. The Identity Theft Penalty Enhancement Act of 2004 establishes penalties for “aggravated” identity theft. Identity theft is aggravated when using the identity of another person to commit felonies. The Identity Theft Enforcement and Restitution Act of 2008 clarifies that restitution may also include an amount equal to the value of the victim’s time spent remedying the harm of the identity theft. It also allows federal courts to prosecute when the criminal and the victim live in the same state, rather than federal jurisdiction applying only if the thief used interstate communication to access victim information. In addition to these laws, the U.S. Congress has passed several privacy laws to protect personal driver’s license, educational, financial, and medical records.

Colorado Law

The Act is created by Part 17 of Article 33.5, Title 24, Colorado Revised Statutes (C.R.S.).¹⁷

Recognizing the costs associated with crimes relating to identity theft and financial fraud, the General Assembly passed the Act to supplement the limited resources of existing law enforcement and prosecution efforts.¹⁸ To realize those goals, the Act created the Board and the Unit.¹⁹

Identity Theft and Financial Fraud Board

The Board is established as an advisory-like Type 2 entity. A Type 2 board exists within a principal department, in this case the Department of Public Safety (DPS),

...its statutory authority, powers, duties, and functions, records, personnel, property, ...including the functions of budgeting, purchasing, and planning, are transferred to the principal department.²⁰

Notwithstanding its Type 2 designation, the Act designates specific management or supervisory duties to the Board. The Act directs the Board to:

- Oversee the Unit;²¹
- Revise and approve the Unit’s comprehensive plan;²²
- Review the Unit’s quarterly reports and provide input about each to the Unit;²³
- Comment on the draft budget for the Unit prior to submission to DPS;²⁴

¹⁷ § 24-33.5-1701, C.R.S.

¹⁸ § 24-33.5-1702, C.R.S.

¹⁹ §§ 24-33.5-1703, and 1704, C.R.S.

²⁰ § 24-1-105(2), C.R.S.

²¹ § 24-33.5-1703(1)(a), C.R.S.

²² §§ 24-33.5-1706(1)(a), 1704(2), and 1705(1)(a), C.R.S.

²³ § 24-33.5-1705(1)(c), C.R.S.

²⁴ § 24-33.5-1705(1)(d), C.R.S.

- Identify performance data to be contained in the public disclosures of the Unit's work so the Colorado Attorney General (AG), sheriffs, police, district attorneys, depository institutions, and the public can review the Unit's efforts;²⁵
- Collect from any source, aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the Act;²⁶ and
- Exercise all powers necessary and requisite for the implementation of the Act.²⁷

The remaining Board duties entail more advisory- and policy-oriented tasks:

- Determine the criminal activities on which the Unit should focus its efforts and establish priorities among those crimes considering the different regions of the state;²⁸
- Interact with local authorities and constituent groups to increase awareness of the Board and the Unit and to further the Act's goals, as well as those of law enforcement and prosecutors;²⁹
- Create general categories of information to be distributed by the Unit to various groups;³⁰
- Create guidelines for Unit consultation on local investigations;³¹
- Determine processes for measuring the Unit's success;³² and
- Report on the implementation of the Act and results, on or before October 1 of each even-numbered year, to the judiciary committees of the Senate and the House of Representatives.³³

The Board consists of 10 members. Seven members are appointed by the Governor, including:³⁴

- A representative of a police department;
- A representative of a sheriff's department;
- Three representatives of depository institutions operating within the state, at least two of whom must be from a state or national bank;
- A representative of a payment processor; and
- A representative of a consumer or victim advocacy organization.

The remaining three members are the Executive Director of DPS, the AG, and the Executive Director of the Colorado District Attorneys' Council, or each may appoint a designee.

²⁵ § 24-33.5-1705(1)(e), C.R.S.

²⁶ § 24-33.5-1705(1)(k), C.R.S.

²⁷ § 24-33.5-1705(1)(j), C.R.S.

²⁸ § 24-33.5-1705(1)(b), C.R.S.

²⁹ § 24-33.5-1703(5), C.R.S.

³⁰ § 24-33.5-1705(1)(b), C.R.S.

³¹ *Ibid.*

³² § 24-33.5-1705(1)(f), C.R.S.

³³ § 24-33.5-1703(8), C.R.S.

³⁴ § 24-33.5-1703(2), C.R.S.

Colorado Fraud Investigators Unit

The Unit is housed in the CBI. Its statutory charge is to assist the AG, county sheriffs, police, and district attorneys in investigating and in prosecuting those who commit identity theft and financial fraud. The Unit is also an information source for law enforcement agencies, members of the financial industry, and the public regarding identity theft and financial fraud crimes and tactics for prevention.³⁵ Unit resources are intended to supplement, not replace, existing law enforcement and prosecution efforts.³⁶ To fulfill its statutory obligation, the Unit is specifically directed to:³⁷

- Collect information regarding identity theft and financial fraud, analyze the information, and determine significant activities, patterns, and trends throughout the state;
- Determine the forms of identity theft and financial fraud on which to expend Unit resources and efforts;
- Distribute information concerning existing and expected crimes to the public, local law enforcement agencies, prosecutors, depository institutions, and other businesses;
- Recommend steps to prevent identity theft and financial fraud crimes;
- Prepare and present classes, briefings, and materials, to assist local law enforcement agencies, district attorneys, and the AG in investigations and prosecutions;
- Consult on individual cases upon the request of a local law enforcement agency, a local district attorney, or the AG; and
- Submit quarterly reports to the Board.³⁸

³⁵ §§ 24-33.5-1704(1), and 1704(2), C.R.S.

³⁶ § 24-33.5-1704(4), C.R.S.

³⁷ § 24-33.5-1704(3), C.R.S.

³⁸ § 24-33.5-1706(2), C.R.S.

Colorado has multiple statutes addressing crimes associated with identity theft. Table 1 lists Colorado’s identity theft statutes.³⁹

**Table 1
Colorado Criminal Laws
Pertaining to Identity Theft**

Law	Subject	Penalty
§ 18-5-113, C.R.S.	Criminal impersonation	Class 6 felony
§ 18-5-901, <i>et seq.</i> C.R.S.	Identity theft	Class 4 felony
§ 18-5-903, C.R.S.	Criminal possession of a financial device	<ul style="list-style-type: none"> • Criminal possession of one financial device is a Class 1 misdemeanor. • Criminal possession of two or more financial devices is a Class 6 felony. • Criminal possession of four or more financial devices, of which at least two are issued to different account holders, is a Class 5 felony.
§ 18-5-903.5, C.R.S.	Criminal possession of an identification document	<ul style="list-style-type: none"> • Criminal possession of one or more identification documents issued to the same person is a Class 1 misdemeanor. • Criminal possession of two or more identification documents, of which at least two are issued to different persons, is a Class 6 felony.
§ 18-5-904, C.R.S.	Gathering identity information by deception	Class 5 felony
§ 18-5-905, C.R.S.	Possession of identity theft tools	Class 5 felony
§ 18-1.3-603(7), C.R.S.	Restitution	Following a conviction, the sentencing court may issue orders to correct a public record that contains false information resulting from the crime. In addition, the restitution order shall include any costs incurred by the victim.

The Unit’s investigation efforts are conducted on a much higher plane than the individual case. The Unit reports to the Board to keep it informed of trends and patterns of criminal activity evolving around the state. The reports are to be supported by data on arrests, investigations, and prosecutions, contain any recommendations for prevention and deterrence, and recount classes and consultations provided by the Unit. They should also contain any recommendations for legislative changes.⁴⁰ In addition to these duties, the Unit supplies clerical and technical assistance to the Board.⁴¹

³⁹ National Conference of State Legislatures. *Identity Theft*. Retrieved March 4, 2015, from <http://www.ncsl.org/research/financial-services-and-commerce/identity-theft-state-statutes.aspx>

⁴⁰ § 24-33.5-1706(2), C.R.S.

⁴¹ § 24-33.5-1704(6), C.R.S.

The Unit is cash-funded by the Colorado Identity Theft and Financial Fraud Cash Fund (Fund).⁴² The Fund is supported via multiple avenues. Each Uniform Commercial Code filing made with the Colorado Secretary of State carries a surcharge that is transferred into the Fund. Each supervised lender license issued or renewed by the AG carries a surcharge that is transferred into the Fund. Each money transmitter license issued or renewed by Department of Regulatory Agencies carries a surcharge that is transferred into the Fund.⁴³ DPS is also authorized to accept gifts, grants, or donations, including in-kind donations from private or public sources, but it is not required to do so.⁴⁴

⁴² § 24-33.5-1707(1)(a), C.R.S.

⁴³ § 24-33.5-1707(2), C.R.S.

⁴⁴ § 24-33.5-1707(1), C.R.S.

Program Description and Administration

The General Assembly established the Colorado Fraud Investigators Unit (Unit) in the Colorado Bureau of Investigation (CBI), to supplement existing law enforcement and prosecution efforts concerning identity theft and financial fraud.⁴⁵

To implement its directive, the General Assembly established a cash fund financed through gifts, grants, and donations, and surcharges on services provided by specific state agencies. The surcharges are levied on business services frequently targeted with identity theft and financial fraud crimes. The applicable surcharges and services include:⁴⁶

- \$4 on Uniform Commercial Code filings made with the office of the Secretary of State. This surcharge is scheduled to drop to \$3 on July 1, 2017;
- \$100 on licenses and renewals for each supervised lender license issued by the Uniform Consumer Credit Office of the Colorado Attorney General (AG); and
- \$500 on licenses and renewals for each money transmitter license issued by the Division of Banking in the Department of Regulatory Agencies (DORA).

Table 2 enumerates the revenues generated through the various funding sources during the period examined for this sunset review.

Table 2
Source and Revenue
Fiscal Years 09-10 through 13-14

Revenue Source	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	Total
Gifts and Donations*	\$0	\$50	\$100	\$400	\$1,466	\$2,016
Interest	\$5,990	\$2,555	\$987	\$1,678	\$2,167	\$13,377
AG	\$105,800	\$86,400	\$84,800	\$80,400	\$80,800	\$438,200
DORA	\$27,750	\$30,500	\$27,500	\$33,000	\$34,500	\$153,250
Secretary of State	\$242,361	\$249,624	\$247,204	\$282,792	\$293,757	\$1,315,738
Total	\$381,901	\$369,129	\$360,591	\$398,270	\$412,690	X

*Grants are not included in this amount. They are itemized in Table 4.

⁴⁵ § 24-33.5-1702(3), C.R.S.

⁴⁶ § 24-33.5-1707, C.R.S.

Table 2 notes that the majority of Unit revenues during the period under sunset review were generated from the surcharge on Uniform Commercial Code filings made with the Secretary of State while gifts and donations contributed little to the total. Notice that the revenues dropped during the period examined for this sunset review. This is due to a drop in surcharges collected when Colorado's economy was undergoing a downturn. The economic downturn was not mirrored by a similar drop in criminal activity as illustrated in Table 5.

Table 3 enumerates the monetary and human resource expenditures made by the Unit during the period under sunset review.

**Table 3
Unit Expenditures
Fiscal Years 09-10 through 13-14**

Fiscal Year	Expenditures	Appropriated FTE	Cash-Funded FTE
09-10	\$499,075	7.0	5.0
10-11	\$442,595	7.0	3.0
11-12	\$346,624	7.0	3.0
12-13	\$351,675	7.0	2.9
13-14	\$332,506	7.0	2.5

In each of the years under review, the General Assembly appropriated 7.0 full-time equivalent (FTE) employees for the Unit. The statutory, cash-based revenue sources allowed for less than half of those positions to be filled during the period. However, the Unit was able to staff itself at the 5.0 FTE level because of grants received.

Table 4 notes the grant revenues obtained during the period under review.

**Table 4
Grants Received and FTE Funded By Them
Fiscal Years 09-10 through 13-14**

Grant Source	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	Total	FTE
ID Theft Victims Grant 1	\$24,576	\$68,683	\$3,945	\$0	\$0	\$97,204	1.0
Mortgage Fraud Grant	\$0	\$138,113	\$450,193	\$548,602	\$563,592	\$1,700,500	4.0
ID Theft Victims Grant 2	\$0	\$0	\$47,517	\$39,967	\$0	\$87,484	1.0
Maryland ID Theft Grant	\$0	\$0	\$14,339	\$35,661	\$0	\$50,000	0.0
ID Theft 2013 Victims Grant	\$0	\$0	\$0	\$41,161	\$25,765	\$66,926	1.0
ID Theft 2014 Victims Grant	\$0	\$0	\$0	\$0	\$25,097	\$25,097	0.5
Total	\$24,576	\$206,796	\$515,994	\$665,391	\$614,454	\$2,027,211	X

The “FTE” column in Table 4, enumerates the total FTE that the Unit was able to finance through each grant during its existence. It must also be noted that the largest of these grants, the Mortgage Fraud Grant, terminated during September of fiscal year 14-15, which is outside of the period recounted in Table 4.

Unit Activities

The Unit is mostly made up of CBI investigators and its mission is to assist law enforcement and victims in cases of identity theft and financial fraud. The way it accomplishes its duty is by helping victims steer their way through the maze of steps and organizations when they become victimized; by acting as a conduit among the many levels of government; and by educating individuals, businesses, and agencies on crime trends, how to avoid them, and how to proceed post-occurrence. While most of its investigations take place at a macro level, analyzing trends and new developments, occasionally it works cases in tandem with other law enforcement agencies.

The Unit reports that among the 50 states, Colorado ranked 13th in number of reported identity theft victims and 10th in number of reported fraud victims in 2014. Table 5, reports that 36,639 Coloradans were victims of identity theft or fraud during that year. The Unit responds to victims in multiple ways but the primary tactic is by supplying victim advocates.

Table 5 relates the instances of identity theft and financial fraud in Colorado, as reported by the Consumer Sentinel Network.⁴⁷

Table 5
Colorado Identity Theft and Fraud Victims
Calendar Years 2010 through 2014

Calendar Year	Identity Theft Victims	Fraud Victims
2010	3,961	21,012
2011	4,156	28,854
2012	4,864	28,285
2013	4,195	26,039
2014	4,579	32,060

⁴⁷Consumer Sentinel Network is established by the Federal Trade Commission. It is a cyber-tool that provides access to millions of consumer complaints available to any federal, state or local law enforcement agency. Federal Trade Commission. *Consumer Sentinel Network*. Retrieved on March 12, 2015, from <https://www.ftc.gov/enforcement/consumer-sentinel-network>

Table 5 documents that the number of victims increased by nearly half (47 percent) during the period under sunset review. As noted above, this large increase occurred while the program’s revenues and the personnel expenditures were both erratic.

The Unit’s victim advocates provide immediate assistance on matters which victims must confront. These matters can range from everyday issues, like termination of utilities, to the extremely serious, such as being placed on a Transportation Security Administration watch list or being arrested for a crime an identity thief committed using a stolen identity. The Unit also operates the Colorado 24-Hour Identity Theft Hotline and Fraud Hotline. Victims have an advocate available 24 hours a day, every day. These advocates are able to address immediate needs of victims. The services are available in multiple languages and to the deaf and hard of hearing.

Table 6 enumerates the victims assisted by the Unit’s advocacy access efforts.

**Table 6
Victim Advocacy
Fiscal Years 10-11 through 13-14**

Fiscal Year	Victims’ Advocate	Victims Hotline	Total Victims Assisted
10-11	1,402	171	1,573
11-12	1,419	308	1,727
12-13	1,092	264	1,356
13-14	1,231	267	1,498
Totals	5,144	1,010	6,154

*No victim advocacy information is available prior to fiscal year 10-11.

The victim outreach efforts assisted more than 6,000 people since fiscal year 10-11.

Educational outreach involves crafting the message for the audience, whether it is another government agency or the private sector. The Unit works with agencies to understand the constantly evolving criminal domain. The Unit reaches other agencies often through training. Its trainings deal with handling victims, investigations, types of fraud, prevention, and even how to perform outreach efforts to different constituencies.

Community outreach efforts educate people to reduce the likelihood that they too may become victims. The community outreach may be through an employer, a membership organization, community events, or through different media. The Unit has made presentations on television news shows and has a social media presence. The use of each medium is designed to deliver the message to the broadest audience possible.

Table 7 shows Unit outreach and media exchanges during the course of the sunset review period.

Table 7
Educational Interactions
Fiscal Years 09-10 through 13-14

Fiscal Year	Outreach & Training	Media
09-10	30	Not tracked
10-11	60	8
11-12	77	3
12-13	86	3
13-14	85	6
Totals	338	20

Note that while outreach and training interactions increased 25 percent during the period under sunset review, media contacts are more sporadic. The variability in the number of media contacts is likely due to the perceptions of those making decisions concerning what is salient among any given medium’s audience. News distribution is driven by audience share, rather than crime- or victim-based, factual indicators.

The Unit surveys the financial fraud landscape to determine trends in crimes and works with those jurisdictions/stakeholders that are involved. The stakeholder may be the local police or sheriff, a federal agency such as the Internal Revenue Service or the Social Security Administration, private sector entities such as banks, the victim, or any combination of these. The Unit analyzes the criminal environment and orchestrates a response. It selects areas to expand knowledge and assists as needed. The response can vary from educating law enforcement and industry groups about trends and circumstances surrounding the trends, to assisting district attorneys and the AG in prosecutions.

Table 8 shows the number of victims and arrests in which the Unit assisted other Colorado law enforcement agencies with investigations during the period under sunset review.

**Table 8
Victims and Arrests
Fiscal Years 09-10 through 13-14**

	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	Total
Victims	201	274	460	82	30	1,047
Arrests	21	25	5	3	19	73
Estimated Dollar Loss	\$184,430	\$650,000	\$1,483,500	\$4,331,000	\$6,022,000	\$12,670,930

The numbers for fiscal year 13-14, include July, August, and September of fiscal year 14-15. These figures are included because September of 2014 marked the end of a major grant to investigate mortgage fraud.

Identity Theft and Financial Fraud Board

The Act also creates the Board to provide some oversight on Unit activities. However, because it is a Type 2 board most of its duties are advisory. The implied major purpose is to have formal collaboration among the stakeholders affected by identity theft and fraud.

The Board consists of 10 members. Seven members are appointed by the Governor, including:⁴⁸

- A representative of a police department;
- A representative of a sheriff's department;
- Three representatives of depository institutions operating within the state, at least two of whom must be from a state or national bank;
- A representative of a payment processor; and
- A representative of a consumer or victim advocacy organization.

The remaining three members are the Executive Director of the Department of Public Safety (DPS), the AG, and the Executive Director of the Colorado District Attorneys' Council, or each may appoint a designee.

⁴⁸ § 24-33.5-1703(2), C.R.S.

The Board is scheduled to meet quarterly. There are no resource expenditures associated with the Board. Table 9 shows the Board meetings held from the fall of 2011 through the spring of 2015.

Table 9
Board Meetings and Member Attendance

Meeting Dates	Members Present
10/26/2011	5
12/21/2011	6
2/22/2012	9
5/9/2012	9
8/8/2012	9
11/14/2012	8
2/13/2013	7
5/15/2013	9
8/14/2013	6
11/13/2013	7
2/19/2014	6
5/28/2014	9
8/20/2014	8
11/12/2014	cancelled because of weather
2/11/2015	6
5/6/2015	4

Table 9 notes that the average attendance at the meetings was under 70 percent and one meeting, May 6, 2015, had only four of 10 members present.

Collateral Consequences – Criminal Convictions

Section 24-34-104(9)(b)(VIII.5), Colorado Revised Statutes, requires DORA to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or licensees based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

There is no licensure of any type associated with this program. Therefore, this criterion does not apply to this sunset review.

Analysis and Recommendations

Recommendation 1 – Continue the Identity Theft and Financial Fraud Deterrence Act for nine years, until 2025.

In 2006, when the General Assembly passed the Identity Theft and Financial Fraud Deterrence Act (Act), it stated that the intent was to establish a statewide resource to alleviate the consequences of identity theft and financial fraud crimes on the state's citizens and businesses; supplement existing state and local legal systems; and provide information to the public about financial fraud.⁴⁹

The Colorado Fraud Investigators Unit (Unit) in the Colorado Bureau of Investigation (CBI) performs several associated functions. The operationalized goals are assisting victims with negotiating bureaucracies in both the public and private sectors; working as a go-between among government players during investigations; providing educational sessions and informational materials to prevent crimes from occurring; and gathering data to forecast the trends of identity theft and financial fraud crimes.

The Act also creates the Identity Theft and Financial Fraud Board (Board).⁵⁰ The Board is a Type 2 body formed inside the CBI with the intent that it connect the Unit with members of the private sector and other arms of government. The underlying idea is that stakeholders will consult with the Unit and that information will flow in multiple directions.

During the years examined for this sunset review, the ranking of Colorado among all 50 states concerning fraud, dropped from 1st to 10th and the ranking for identity theft, moved from 11th to 13th. While this sunset review cannot attribute the success to the program, the data show improvement. However, the analytical reality is that while there was some improvement in the national rankings, the actual number of victims per 100,000 Colorado residents increased for both measures. Table 5 on page 17 illustrates that the victims of fraud increased 52.6 percent. The victims of identity theft increased 15.6 percent and that increase was as high as 19 percent in 2012. These numbers indicate that if a state drops in national rankings while still radically increasing the number of victims, identity theft and financial fraud crimes are increasing at a dramatic rate nationwide.

These data illustrate the need for both the educative and the service-related functions the Unit delivers. The service-related functions—assisting victims, law enforcement, and prosecutors—and the educative functions—researching trends and providing trainings—establish the statewide resource that the General Assembly envisioned in the Act. The statewide perspective is vital to seeing things from a high level, in gathering data from around both the state and the nation, and in coordinating public and private stakeholders to advance public protection. The alternative to a statewide presence would be piecemeal and undoubtedly disordered.

⁴⁹ § 24-33.5-1702, C.R.S.

⁵⁰ § 24-33.5-1703(1)(a), C.R.S.

There does not appear to be any reduction in the demand for Unit services or change in the organizational setting in the foreseeable future. Therefore, the General Assembly should continue the Act for nine years, until 2025.

Recommendation 2 - Appropriate the necessary General Fund dollars to augment cash fund dollars and fully staff Unit operations.

Sunset reviews do not often opine on funding or funding sources for programs under sunset review. However, in conjunction with the 2010 sunset review conducted on this program, the Department of Regulatory Agencies (DORA) noted that funding for the program was erratic because it is a cash-funded program and its sources were affected by a downturn in the economy. The sunset review recommended that the Unit continue to seek gifts, grants, and donations to fund the Unit. Since that review, even though the economy has improved, funding has remained unstable. As noted on page 15, the Unit has raised more than \$2 million in grants but the major grant funding sources have either ended or are scheduled to end soon.

The Unit is funded through four basic sources: gifts, grants, donations, and specified filings with the office of the Secretary of State, the Colorado Attorney General's office, and DORA. Additionally, under provisions of the Act, the proceeds from the Secretary of State filings will be lowered by 25 percent beginning July 1, 2017.⁵¹ While experiencing this period of erratic, decreasing funding, the number of identity theft and financial fraud crimes on Colorado continued to increase.

During the period covered for this review, the selected fees have not fully funded staff operations. The General Assembly allocates 7.0 full-time equivalent (FTE) employees to the Unit. During the first fiscal year of the cohort, fiscal year 09-10, 5.0 FTE were employed using fee-based funding. During the remaining years the fee-based funding accounted for only an average of 2.85 FTE per year. The major grants added additional staff but only to the 5.0 FTE level. The Unit was never staffed at the 7.0 FTE level the General Assembly assumed because the funding was not available.

DORA has recommended that the General Assembly continue this program because it is necessary to protect Colorado citizens. Nonetheless, funding is an ongoing problem associated with implementation of this program. The General Assembly could increase the existing fees or consider imposing fees on other sources. Still, it is problematic using cash funding for a law enforcement/prevention program.

⁵¹ § 24-33.5-1707(2)(a)(I)(B), C.R.S.

Cash-, or fee-based funding is typically used in conjunction with demand for a benefit, such as a license, an inspection, or entrance into a state operated facility. The fee for the benefit is set by approximating the direct and indirect costs of providing that benefit. In this case there is no direct or indirect correlation between funding and demand for Unit services. The demand for the Unit's services is based on the presence or absence of crime, a crime that the indicators illustrate is increasing at a rapid pace. No long-term planning can take place without stability.

The third criterion the General Assembly directs DORA to employ when conducting sunset reviews asks, in part, whether agency operations are impeded by existing circumstances which include budget and resource matters.⁵² Unit operations are clearly impeded by its funding mechanism. To stabilize implementation of the Act, the General Assembly should appropriate the necessary General Fund dollars to augment cash fund dollars to fully staff Unit operations.

⁵² § 24-34-104(9)(b)(III), C.R.S.