Nassau County

Office of the Comptroller

Limited Review of the Nassau County Office of Consumer Affairs Operations and Revenues

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Comptroller

September 6, 2017

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Purpose:

The purpose of the review was to ensure the Nassau County Office of Consumer Affairs is performing the many functions of their mission, and to evaluate the controls over the department's operations, revenues and to follow up on prior audit recommendations.

Key Findings:

- A lack of item pricing accuracy inspections reduced the incentive for big box stores to enroll in the Item Pricing Waiver Program. Item Pricing Waivers allow businesses that meet certain standards to apply for a waiver to avoid the expense of having to individually price every item for sale as otherwise required. Auditors estimated that the lack of these inspections resulted in potential missed violations and a loss of approximately $1.5 Million in Fees.

- Consumer Affairs does not verify the accuracy of retail square footage entered by business establishments on the voluntary Item Pricing Waiver applications. Auditors noted that the lack of verification led to $10,000 in lost revenue at one location.

- Consumer Affairs does not have an adequate proactive process to identify the businesses impacted by the Consumer Protection Laws implemented since 2012. Consumer Affairs primarily becomes aware of a business's existence when the business applies for a license or through consumer complaints. Auditors found that 80% of the businesses selected for testing were not licensed, resulting in $36,000 of lost revenue

- The Weights & Measures Division of Consumer Affairs did not always perform the annual inspections mandated by NYS regulations for all commercially used weighing and measuring devices. Our review revealed 15% of the establishments tested were not inspected annually. Uninspected scales throughout the County result in consumers not being adequately protected from being overcharged.

- Pre-numbered invoice books were not issued sequentially, and were haphazardly selected by Weights & Measures Inspectors, causing irreconcilable gaps in sequences issued. Auditors found that 9,423 Weights & Measures Invoices had not been accounted for as either paid, lost or voided. Based on a three year average invoice amount prorated by category, the potential loss of revenue was estimated at $940,000.

- Annual logs created by Consumer Affairs to track violations were inaccurate and did not provide enough updated information to determine the latest status of unpaid violations without manually reviewing each individual violation case folder. Payments were not always entered in the logs and final dispositions were not recorded to identify the current status of unpaid violations. Auditors estimated that 31% or $393,147 of total violations assessed appeared unresolved.

- Auditors concluded that Consumer Affairs is operating in a very poor internal control environment due to increasing demands from new laws and a lack of adequate and qualified staff resources. Inadequate financial controls and oversight increased the risk for waste, fraud and abuse and decreased Consumer Protection. Auditors estimated that this resulted in $2.9 million of lost County revenue opportunities.

- Consumer Affairs does not fingerprint Home Improvement contractors as required by the County's Administrative Code. In addition, Consumer Affairs has been lax in their oversight of the Home Improvement Industry Board and has not instituted the Board of Consumer Affairs and the Invasive Species Committee as required by County's Administrative Code.

Key Recommendations:

- Weights & Measures' Inspectors should begin performing item price accuracy testing at all locations required to follow the item pricing requirements. Further, a strategy should be initiated to ensure preventative measurement testing occurs routinely throughout the County.

- Weights & Measures' Inspectors should be required to measure an establishment's retail square footage while performing all initial inspections for Item Pricing Waiver applications and verify the accuracy of the fee. Re-measurements should also be required for re-applicants that report a change in retail square footage resulting in a fee reduction

- Consumer Affairs should follow up with the 76 locations identified in the report to ensure they are properly licensed and the associated fees are paid. A process should be implemented to proactively monitor the internet and other marketing avenues to identify companies operating in Nassau County without proper licenses.

- Procedures should be revised to require that when Inspectors are in the field they document establishments not on their inspection list and determine whether the establishments require an inspection and/or when an inspection was last performed.

- Inspectors should follow up with establishments that had exceptions to inspect their scales, issue violations and if applicable, ensure they are properly licensed.

- Consumer Affairs should review its annual inspection plan to ensure that all potential establishments with measuring devices are visited and inspected; and proactively contact businesses that require licenses and ensure those operating within Nassau County are properly licensed.

- Consumer Affairs should establish internal controls to correlate inspection reports, invoice numbers and/or establishment codes to enable proper management oversight. Further, the multiple Weights & Measures databases currently in use should be consolidated into one comprehensive database to ensure that all invoice and DIS numbers are recorded and accounted for.

- Consumer Affairs should take the necessary steps to ensure violation logs are accurately updated to reflect the current status of unpaid violations and the reasons why violations were dismissed, withdrawn or suspended. The violation logs should be reconciled to the receipts posted to NIFS and used to create an aging report of outstanding violations for use by management to effectively monitor the status of violations and the timely collection and recording of assessed violation dollars.

- Consumer Affairs should work with the Office of Management & Budget to obtain the appropriate resources necessary to ensure that the required day to day accounting, financial, operational and management functions are assigned to qualified individuals so that a proper segregation of duties exists. This will help ensure that Consumer Affairs has the ability to properly enforce laws, provide adequate consumer protection, reduce the risk of fraud and maximize revenue.

- A formal policy and procedure manual that documents the operating procedures and internal controls for each division in Consumer Affairs should be developed and disseminated to all employees, along with individual job functions, responsibilities and deadlines. The manual should also cover high level workflows, segregation of duties, internal controls and managerial reviews, with copies of key documents and report titles.

- Consumer Affairs should take the necessary steps to comply with County's Administrative Code regarding fingerprinting Home Improvement contractors, and the establishment of a Board on Consumer Affairs and an Invasive Species Committee. Further, the Home Improvement Industry Board should hold regular bi-monthly meetings supported by minutes as required.

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The matters covered in this report have been discussed with the officials of the Office of Consumer Affairs. On April 25, 2017 we submitted a draft report to the Office of Consumer Affairs for their review. An Exit Conference was held on June 13 and 14, 2017 and the resulting changes to the draft report were communicated to Consumer Affairs on June 15, 19 and 27. Consumer Affairs provided their response on June 29, 2017; however, it included responses to matters already removed or revised from the original draft report. On July 3, 2017, we provided the complete revised draft report to Consumer Affairs allowing them until July 7, 2017 to adjust their response. Later, in the afternoon of July 3, 2017, Consumer Affairs forwarded their final response which was not adjusted to reflect all of the changes to the original draft. Their July 7, 2017 response and our follow up to their response are included in Appendices C and D, respectively, at the end of this report.

Table of Contents

Table of Exhibits

Page

Background

The Nassau County Office of Consumer Affairs ("Consumer Affairs") is a Nassau County ("County") department established by the Nassau County Charter[1] ("Charter") and Administrative Code[2], to provide consumer protection services to County residents and other business patrons located in the County. State and County laws, regulations, and ordinances regulate the responsibilities of the office.

The department's mission is "…to protect consumers and businesses from fraudulent enterprises and business practices, enhance consumer safety, strictly enforce consumer legislation, support competitive business practices, improve internal service delivery, provide consumer education and information, and strengthen the consumer voice."[3]

In order to support their mission, Consumer Affairs is organized into five main areas:

Consumer Protection:
The Commissioner's Office manages the office staff's investigative activities, carries out civil remedies and penalties, and pursues criminal prosecution through the District Attorney's office.

Weights & Measures:
Mandated by New York State Agriculture and Market Laws, the goal of the Weights & Measures Division is to ensure accuracy in weighing and measuring devices, gas pumps, price scanners, and other equipment by testing and performing inspections.

Investigations, Complaints and Enforcement:
This Division reviews, investigates, mediates, and resolves consumer complaints. Consumer Affairs enforces over 27 consumer protection and licensing laws that regulate business establishments in Nassau County. The Division protects consumers from unfair, deceptive, and unconscionable trade practices. If a violation of the law occurs, the Division conducts a hearing with the business.

Licensing Division:
The Licensing Division accepts and reviews applications for businesses that the law requires be licensed. This Division is responsible for ensuring that applicants have the requisite experience, required insurance, and financial stability and are of good moral character.

[1] County Government Law of Nassau County: The Nassau County Charter – Issued March 31, 2015. https://www.nassaucountyny.gov/DocumentCenter/View/1721

[2] Nassau County Administrative Code §21-10.0 to §21-10.2 (Chapter XXI – Miscellaneous Officers – Title D Consumer Affairs). – Issued January 1, 2016. https://www.nassaucountyny.gov/DocumentCenter/View/1720

[3] 2016 Adopted Budget Summary of Fiscal 2016 (p. 132), https://www.nassaucountyny.gov/DocumentCenter/View/15198

Some of these businesses include:

- ATM Machines
- Dry Cleaners and Laundromats
- Electronics or Home Appliance Repair Dealers
- Environmental Hazard Remediation Providers and Technicians
- Home Improvement Contractors
- Home Service Contractors
- Pet Stores and Pet Dealers
- Scrap Metal Processors, Vehicle Dismantlers, and Junk Dealers
- Second-Hand Precious Metal and Gem Dealers
- Storage Warehouses

Information and Education:

This Division develops and conducts consumer awareness programs for schools and community groups in addition to developing and distributing consumer education booklets and brochures. As mandated by the New York State Freedom of Information Law, this Division responds to inquiries regarding the historical recording of complaints made against a vendor.

Exhibit I below details Consumer Affairs' revenue by type for 2013 through 2015.

Exhibit I

Office of Consumer Affairs
Revenues by Type
2013 - 2015

Revenue Description	2013	2014	2015	Total
Home Improvement Licensing	$ 3,025,730	$ 2,198,425	$ 2,852,150	$ 8,076,305
Weights & Measures	1,090,650	1,065,710	1,226,170	3,382,530
Fines	610,950	305,500	425,697	1,342,147
Taxi & Limo Registration	306,351	273,905	303,065	883,321
ATM Registration	108,960	95,500	96,150	300,610
Licensing - All Other (Note 1)	-	171,200	53,400	224,600
State Reimbursements	15,463	62,397	53,414	131,274
Miscellaneous Receipts	301	219	508	1,028
Total Revenues	**$ 5,158,405**	**$ 4,172,856**	**$ 5,010,554**	**$ 14,341,815**

Source of Data: Nassau County Intergrated Financial System (NIFS)

Note 1: Licensing - All Other includes new bi-annual license fees approved by the Legislature after 2013. Examples include dry cleaners and laundromats, storage warehouses, locksmiths, etc.

Exhibit II below details Consumer Affairs' performance metric for 2013 through 2015.

Exhibit II

Office of Consumer Affairs
Annual Performance and Staff Counts and 3 Year Averages
2013- 2015

	Annual Counts			Average
Performance or Staff Metric	**2013**	**2014**	**2015**	**3 Years**
Home Improvement Applications Processed *	6,016	4,368	5,686	5,357
Weights & Measures Inspections Performed	3,601	3,477	3,762	3,613
Complaints Received	2,112	1,651	1,763	1,842
Violations Issued	1,490	1,156	1,281	1,309
ATM Applications Processed *	994	923	912	943
Staff per Annual Adopted Budget	28	28	25	27

Source of Data: Monthly Office of Consumer Affairs Tracking Reports
***** Includes New and Renewal Applications

Taxi and Limousine represented a sixth Responsibility Center/Division of the Office of Consumer Affairs. However, Local Law 18-2014 amended the County Charter and Administrative Code to remove the Taxi and Limousine Division from Consumer Affairs and establish an independent Taxi and Limousine Commission.[4]

Audit Scope, Objectives and Methodology

Our review focused on evaluating Consumer Affairs' operational processes and internal controls over Revenue Collections during the period January 1, 2013 through December 31, 2015.

We reviewed applicable New York State and County laws, ordinances, resolutions, and directives and interviewed key employees of Consumer Affairs to obtain an understanding of the revenue collection process. We examined the various categories of cash receipts to determine if revenue records were reconciled to NIFS[5]. The department's staffing in relation to revenues was assessed as well as key statistics, such as the number of Weights & Measures inspections and consumer complaints handled and resolved. In addition, auditors followed up on recommendations made in the 2008 Comptroller's Limited Review of the Office of Consumer Affairs[6] to determine if appropriate corrective action was taken.

[4] Local Law 18-2014 took effect on December 2, 2014.
[5] Nassau County's Financial Accounting System is called the Nassau Integrated Financial System.
[6] https://www.nassaucountyny.gov/DocumentCenter/View/3619

We believe our review provides a reasonable basis for the findings and recommendations contained herein.

Audit Finding:

(1) Lack of Item Pricing Accuracy Inspections Reduced Incentive For Enrollment in the Pricing Waiver Program Which Could Have Generated Approximately $1.5 Million in Fees and Improved Consumer Protection

Auditor testing revealed that a lack of item pricing accuracy inspections reduced the incentive for big box store participation in the voluntary Item Pricing Waivers[7] program and resulted in potential missed violations and a loss of significant fee revenues to the County.

The Nassau County Administrative Code states that:

> "…*consumer goods offered for sale in the County of Nassau are clearly, accurately and adequately marked as to selling price."*[8]
>
> *"…every person who sells, offers for sale or exposes for sale in a retail store a stock keeping unit that bears a universal product code shall disclose to the consumer the item price of each stock keeping item."* [9]

Item Pricing Waivers allow businesses that meet certain standards to apply for a waiver to avoid the expense of having to individually price every item for sale as otherwise required.[10]

The auditors noted that a number of big box stores have yet to apply for the voluntary waiver and identified a minimum of 72 locations, from 12 major businesses operating in Nassau County, that could qualify for Item Pricing Waivers.

Exhibit III below shows the lost revenue opportunities from failing to encourage Item Pricing Waivers amounted to approximately $1.5 million over the three year period 2013 - 2015.

[7] In order to obtain an Item Price Waiver, applicants must pass two item pricing accuracy inspections with an average error rating below 2%, as well as have the required amount of item price scanners which can be used by customers to verify the price of items prior to arriving at the counter.
[8] County Administrative Code §21-18.0.
[9] County Administrative Code §21-18.2.
[10] County Administrative Code §21-18.3.

Exhibit III

Office of Consumer Affairs
Lost Revenue Opportunities From Additional Item Pricing Waivers
2013 - 2015

Business Names (Protected)	# of Stores in Nassau County	Estimated IP Waiver Fees Per Store* (Per Year)	Potential Revenues (Per Year)
A	8	$ 15,000	$ 120,000
B	6	15,000	90,000
C	5	15,000	75,000
D	3	15,000	45,000
E	13	3,000	39,000
F	12	3,000	36,000
G	6	5,000	30,000
H	7	3,000	21,000
I	4	3,000	12,000
J	4	3,000	12,000
K	2	3,000	6,000
L	2	3,000	6,000
Additional Stores	**72**	**Lost Annual Revenue Opportunities**	**$ 492,000**
		Lost Revenue Opportunities 3 Years	**$ 1,476,000**

***** The estimated application fee is based on similar competing companies with existing Item Pricing Waivers.

Consumer Affairs management noted that a lack of staff forces them to address NY State mandated functions such as scale inspections[11]; therefore, they are not performing routine price checks at these other locations or soliciting stores to apply for waivers. By not performing preventative measure testing and identifying associated violations, Consumer Affairs has not motivated

[11] As prescribed by New York State Weights & Measures Regulations 1 NYCRR Part 220.5.

establishments to apply for Item Pricing Waivers. Consumer Affairs management also acknowledged that staff limitations have prevented them from performing other preventative measure testing such as package weight checking, expiration date inspections and item price inspections. Staff limitations have also precluded Consumer Affairs from approaching big box stores to apply for Item Pricing Waivers.

Failure to perform item price inspections and preventative measure testing such as package weight checking and expiration date inspections provides no assurance for consumers that laws are being followed. It reduces revenue collecting opportunities in that violations and corresponding fines will not be assessed, nor will stores be encouraged to apply for Item Pricing Waivers.

Audit Recommendation(s):

We recommend:

a) Weights & Measures' Inspectors immediately begin performing item price accuracy testing at all locations which must follow the item pricing requirements set forth in the Administrative Code; and
b) Consumer Affairs initiate a strategy to ensure preventative measure testing, such as package weight checking and expiration date inspections, routinely occurs throughout the County to ensure consumers are adequately protected.

Audit Finding:

(2) Lack of Verification of Retail Square Footage Reported on Item Pricing Waiver Applications Led to $10,000 in Lost Revenue at One Location

Consumer Affairs does not verify the accuracy of retail square footage entered by business establishments on the voluntary Item Pricing Waiver applications. Instead, they rely on legal language[12] in the application that attests to its accuracy and warns that "falsification of a government document is punishable to the fullest extent of the law".

Our review revealed that Consumer Affairs has the opportunity to verify the square footage when its Inspectors perform the required two physical inspections[13] needed to obtain the Item Pricing

[12] Consumer Affair's 2015 Item Pricing Waiver Applications contain the following statement which must be signed by the applicant, "I have read the above requirements and agree to abide by them. I acknowledge that the above information is correct. Also, I declare that to the best of my knowledge the retail square footage of this store, as listed above, is accurate."
[13] Applicants for an Item Pricing Waiver must pass two item pricing accuracy inspections with an average error rating below 2%, as well as have the required amount of item price scanners which can be used by customers to verify the price of items prior to arriving at the counter

Waiver, but does not take the extra step to do it. During our testing, we noted one incident where the Consumer Affairs Inspector realized that the business establishment falsified the retail square footage on its application resulting in an underpayment of $10,000 by the business for that year's Item Pricing Waiver. Although Consumer Affairs was aware of the issue, no legal action was pursued to collect the underpaid amount.

As shown in Exhibit IV, the accuracy of the square footage is important because it determines the applicable waiver fee due the County.

Exhibit IV

Office of Consumer Affairs
Item Pricing Waiver Fee
Based on Store Size

Retail Square Feet		Waiver Fee
Under	3,000	$ 500
Between	3,001 and 10,000	$ 1,000
Between	10,001 and 30,000	$ 3,000
Between	30,001 and 90,000	$ 5,000
Over	90,000	$ 15,000

Source: Nassau County Administrative Code §21-18.3.1 (a), Waiver From Item Pricing

<u>Summary of Testing</u>

Auditors compared the Item Pricing Waiver fee payments recorded in the Consumer Affairs database from 2013-2015, totaling $2,621,500 to the 668 applications submitted by the business establishments and determined that based on the retail square footage reported by the vendor on the applications, the proper fee amounts were paid. Auditors identified data entry errors in the database that had no financial impact.

During the aforementioned review, the auditors also noticed that the retail square footage for 12 of the establishments changed enough from a prior year to trigger an adjustment in the fee. Further review of the related applications revealed the following issue for one of the 12 establishments:

- The establishment had falsely reported square footage of 89,000 when the actual square footage was obviously well over the 90,000 threshold (which increased the fee from $5,000 to $15,000).
- Although this error was identified by Consumer Affairs during an item pricing waiver inspection, it was only because it was very obvious to the Inspector that the square footage reported on the form was too low.

- When the discrepancy was pointed out, the establishment would not agree to pay the additional $10,000 it owed for that year's waiver and instead, withdrew from the voluntary Item Pricing Waiver program.
- Consumer Affairs did not actively pursue collection of the $10,000 and has yet to revisit the establishment to ensure that it is properly pricing all items in accordance with the Administrative Code.[14]

Audit Recommendation(s):

We recommend that:

a) the Weights & Measures Inspectors:
    1. verify the accuracy of all Item Pricing Waiver applications to ensure the fee submitted for payment aligns with the appropriate application fee;
    2. be required to measure an establishment's retail square footage while performing all initial inspections for Item Pricing Waiver applications; and
    3. be required to perform re-measurements for re-applicants that report a change in retail square footage resulting in a fee reduction.

Audit Finding:

(3) County Consumer Protection Laws Implemented in 2012 are Not Being Fully Enforced; 80% of Businesses Tested Were Not Licensed, Resulting in $36,000 of Lost Revenue

Since 2012, the Nassau County Legislature has enacted many new laws which require licensing fees. The auditors determined that Consumer Affairs does not have an adequate proactive process to identify the businesses impacted by the new laws. Consumer Affairs primarily becomes aware of a business's existence when the business applies for a license or through consumer complaints.

The auditors selected four of the eight new licensing laws (Drycleaners & Laundromats, Locksmiths, Scrap Metal Processors and Storage Warehouses) and identified 95 businesses from the internet that would require licensing under these laws. A comparison of the 95 businesses to the Consumer Affair's online database revealed that 76 or 80% were not appropriately licensed. The lost revenue from these unlicensed businesses amounted to approximately $36,000 in the three year period 2013 to 2015. See Exhibit V below for a summary of our analysis.

[14] County Administrative Code §21-18.2 (a).

Exhibit V

Office of Consumer Affairs
Lost Licensing Revenues from Unlicensed Businesses
2013 - 2015

License Type	Quantity Not Licensed	2015 Bi-Annual Fees	Annualized Fee (Note 1)	3 Year Total 2013-2015
Self-Storage - Initial Locations	21	$ 500	$ 5,250	$ 15,750
Self-Storage - Additional Locations	29	$ 100	1,450	4,350
Locksmith (effective 2014)	10	$ 400	2,000	4,000
Dry Cleaner/Laundry	8	$ 500	2,000	6,000
Scrap Dealer	8	$ 500	2,000	6,000
Totals	**76**		**$ 12,700**	**$ 36,100**

Source of 2015 Bi-Annual Fees: Nassau County Local Law No's. 19-2012, 19-2007, 17-2012 and 15-2012

Note 1: The Annualized Fee shown for each License Type was calculated by dividing the applicable 2015 Bi-Annual Fees by 2 years and multiplying the result by the Quantity Not Licensed.

In addition, part of the County's increased revenue budgeted for 2017 is based on additional laws expected to go into effect this year. Many of these new laws (including licenses for health clubs and pet groomers) will be overseen by Consumer Affairs. We anticipate the new 2017 laws will experience a time lag in their implementation since a similar time lag took place when Consumer Affairs implemented the 2012 laws. As a result, it does not appear feasible that all vendors will be compliant with the new laws in their initial year, and that accordingly, Consumer Affairs will be unable to enforce and collect all of these additional fees this year.

Audit Recommendation(s):

We recommend that Consumer Affairs:

a) follow up with these 76 locations to ensure they are properly licensed and the associated fees are paid; and
b) proactively monitor the internet and other marketing avenues to identify companies operating in Nassau County without proper licenses.

Audit Finding:

(4) Consumer Affairs Failed to Inspect 15% of the Establishments Visited by Auditors Violating NYS Regulations and Providing Inadequate Consumer Protection

Our review found that the Weights & Measures Division of Consumer Affairs did not always perform the annual inspections mandated for all commercially used weighing and measuring devices[15]. While performing the annual inspections, Consumer Affairs' Inspectors bypass nearby establishments not on their inspection list. Consumer Affairs primarily becomes aware that an establishment has a scale that needs to be inspected if/when the business requests an inspection or through consumer complaints. This reactive, instead of proactive, approach to identifying establishments requiring inspection, allows for businesses to operate with uninspected devices until caught. Uninspected scales throughout the County result in consumers not being adequately protected from being overcharged.

Auditors selected 33 of 1,743[16] establishments from the Weights & Measures database that were shown as having 119 devices inspected in 2015 and performed field observations to verify the accuracy of the data and compliance with the annual inspection requirement. We observed the following notable discrepancies at 3 of 33 locations:

- Fabric Vendor – This establishment had not been inspected at all during 2015 as indicated in the database. The database noted three devices to be at this location.
- Deli – The scale being used did not have a Consumer Affairs inspections sticker. The auditors were then shown another scale which had a 2015 inspection sticker; however, this device was located on a table behind the counter and was not being used.
- Supermarket – An additional scale was found and the establishment owner had not yet notified Consumer Affairs that it needed to be inspected, as required.

When performing the physical observations of the 33 establishments noted above, the auditors identified an additional six establishments, utilizing a total of nine uninspected commercial scales.

These six establishments had no indication of a 2015 inspection in the Weights & Measures database. These establishments would typically be bypassed by Consumer Affairs' Inspectors because they were not included on the inspection list. The establishments included two food stores, one laundromat/dry cleaner and three jewelry stores.

Our physical observation found that:

[15] Article 16 of the NYS Agriculture & Markets Law
[16] This figure represents all establishments from the Weights & Measures Stores database that were inspected in 2015 and invoiced for the inspection. This figure does not include establishments from Weights & Measures Gasoline or Oil databases.

- All nine scales were not inspected in 2015.
- Seven scales had no inspection sticker. One contained a sticker dating back to 2010 and another back to 1992.
- One jeweler[17] and one dry cleaner[18] that are both subject to special licensing regulations, **were not licensed** at the time of our visit. This indicates that Consumer Affairs is not adequately enforcing these licensing requirement and collecting the associated licensing fee.

In total, for the 39 physically observed locations, 7 establishments were never inspected in 2015. Of the 129 devices the auditors observed, 14 were found to not have been inspected.

Audit Recommendation(s):

We recommend that Consumer Affairs:

a) review its annual inspection plan to ensure that all potential establishments with measuring devices are visited and inspected;
b) revise its procedures to require that Inspectors document establishments not on their list to determine whether the establishment requires an inspection and/or when it was last performed;
c) follow up with establishments that had exceptions to inspect their scales, issue violations and if applicable, ensure they are properly licensed; and
d) proactively contact businesses that require licenses and ensure those operating within Nassau County are properly licensed.

Audit Finding:

(5) Improper Use of Pre-Numbered Documents Led to 9,423 Unaccounted For Weights & Measures Invoices Totaling $940,000 Increasing Risk for Fraud and Abuse

Our review found that 9,423 Weights and Measures invoice numbers were not recorded in Consumer Affairs' Access Databases from 2013-2015 and Consumer Affairs was unable to substantiate them as either lost, paid or voided. Therefore, these invoices could have been issued and paid, but the associated monies did not get properly recorded in the County's records. Pre-numbered invoice books are not issued sequentially, and are haphazardly selected by Weights & Measures Inspectors, causing irreconcilable gaps in sequences issued. This is especially concerning as Weights & Measures only issued approximately 8,000 invoices between 2013 and 2015.

[17] Requires license per Local Law No. 21-2012 (Second Hand Precious Metal & Gem Dealers).
[18] Requires license per Local Law No. 17-2012 (Dry Cleaners & Laundromats).

Based on a three year average invoice prorated by category, the potential loss of revenue would be approximately $940,000[19].

The 2008 audit identified similar Internal Control Weaknesses in the Weights & Measures area that could lead to misappropriated funds, many of them still remain. For example, management still does not have the ability to efficiently or effectively correlate inspection reports, invoices and/or establishment codes for general management oversight which has led to 9,423 unsubstantiated invoices.

Upon completion of a scale inspection, the Weights & Measures Inspector issues a Device Inspection Sheet and a corresponding invoice to the business. Although a control over pre-numbered invoices and pre-numbered inspection sheets was set up, the documents are not properly distributed, tracked or utilized. Additionally, businesses are haphazardly issued non-unique establishment codes, eliminating the ability to track or analyze related information from year to year.

There is no exception based management reporting to effectively supervise the area. Patterns of errors, omissions or fraud could easily go undetected and only be found via a thorough manual review on a file by file basis. In addition, with Consumer Affairs' improper use of the pre-numbered documents, even if a review was conducted by another person, there is no way to determine if all documentation produced during any given time period was included.

Our review uncovered the following deficiencies regarding Weights & Measures Invoices, Device Inspection Sheets and the randomly assigned Establishment Codes:

<u>Weights & Measures Invoices</u>:
Management is not properly accounting for invoices. Invoice number sequences are not reconciled to physical inventory to ensure all invoices are either used or voided. We noted the following:

- Pre-numbered invoice books are not issued sequentially, and are haphazardly selected by Weights & Measures Inspectors causing irreconcilable gaps in sequences issued.
- Weights & Measures Inspectors are also interchangeably using multiple invoice books resulting in invoices being issued out of sequence, leaving no ability to reconcile groups of invoices to specific dates.
- Multiple Inspectors are sharing the same invoice books, thus, nullifying the ability to track invoices properly by the Inspector (i.e. invoice books left in gas trucks to be shared).

[19] Average Gas, Oil and Stores invoices were $272, $122 and $55, respectively. Stores invoices accounted for 69% of the total invoices issued from 2013 to 2015 while Gas and Oil accounted for 16% and 15%, respectively. By applying these average amounts and percentages to the population of missing invoices we calculate an approximate value of $940,000.

- Consumer Affairs does not adequately track their remaining supply of undistributed invoice books by number.
- Weights & Measures inspection data is unnecessarily recorded in four separate Access Databases by type (Stores, Gas, Oil and Item Pricing Waivers), breaking up the digital invoice and inspection report sequences.
- Weights & Measures paper invoices are unnecessarily filed by type (Stores and Gas/Oil) breaking up the invoice sequences.
- Invoice logs used to track distribution of invoice books contained information that did not correlate with column titles, information was handwritten and sometimes illegible. Dates the invoice books were taken by Inspectors were not recorded until 2014.
- Voided invoices are not filed separately from paid invoices; instead, they are filed within four separate inspection type areas that share the same invoice sequence numbers making them difficult to monitor.

<u>Weights & Measures Device Inspection Sheets</u>:
Device Inspection Sheets ("DIS") record the results of Weights & Measures inspections and are used to generate invoices, if applicable. All invoices must cross-reference to a DIS Number and vice-versa if a fee is generated. This control can be utilized to ensure all inspections are entered into the system and all inspection revenue is accounted for. However, Consumer Affairs does not track the sequence of used or unused DIS. During our review, we noted the following deficiencies:

- Although each inspection sheet is pre-numbered, they are not bound in numerical order and as a result, are haphazardly retrieved as needed by Weights & Measures Inspectors, causing irreconcilable gaps in sequences issued.
- No log exists to identify which Weights & Measures Inspector took which DIS sequences.
- DIS numbers are not recorded in Weights & Measures databases, the number is only written on the actual corresponding paper invoice. Consumer Affairs' management stated that the DIS "Numbers are not used for anything" defeating the purpose of the form and the expense of pre-printing numbers.
- DIS numbers are not being analyzed and reconciled to identify gaps in sequences to prevent possible misappropriation.

<u>Establishment Codes Randomly Assigned:</u>
There is no standard process for issuing new Establishment Codes. Physical business locations are tracked by Establishment Code which are randomly generated and are not assigned in any particular order. Establishment contact information is not sufficiently retained from year to year. If a business changes, for instance the business closes or moves, the Establishment Code associated with that business becomes available and may be used again. As a result, historical information is lost. It is impossible to track the number of businesses opened or closed within any given year if Establishment Codes are not sequentially assigned and are able to be reassigned. As a result, it is

very difficult to track performance and verify the accuracy and completeness of the system information, including receivables. The receivables issue is discussed in Finding 7.

Audit Recommendation(s):

We recommend that the Office of Consumer Affairs:

a) establish internal controls to correlate inspection reports, invoice numbers and/or establishment codes to enable proper management oversight. The controls should include developing exception based management reports, assigning Invoice Books and pre-bound DIS books in sequential order, creating standardized logs to track invoices and DIS's, and periodically reconciling the inventory of these documents; and
b) consolidate the multiple databases into one comprehensive Weights & Measures Database and ensure all invoice numbers and DIS numbers are recorded.

More detailed recommendations can be found in Appendix A.

Audit Finding:

(6) Violation Logs are Not Accurate, Approximately 31% or $393,147 of Total Violations Assessed Appear Unresolved Due to Inaccuracies and Lack of Oversight

Our review found that the annual logs created by Consumer Affairs to track violations were inaccurate and did not provide enough information to determine the latest status of unpaid violations without manually reviewing each violation case folder. We found that payments were not always entered in the logs and final dispositions were not recorded to identify if unpaid fines were withdrawn, suspended or dismissed. We also found that violations are not reconciled, or written off if determined to be uncollectible.

The Office of Consumer Affairs issues violations to home improvement contractors, retail merchants, weights & measures establishments and various other licensed business for numerous reasons. Some examples of violations include the use of a condemned weight/measuring device, operating a business without the applicable license(s) and deceptive trade practices.

The auditors reviewed logs for three violation categories (home improvement, retail, and new laws) for 2013 through 2015. Eighty percent of the home improvement violation fines assessed were due to contractors not having a license, while eighty-four percent of the retail violation fines assessed were due to unfair or deceptive trade practices. Exhibit VI below presents a summary of the number of violations issued in these categories, and the amounts assessed and paid according to Consumer Affairs' logs for the scope period (2013-2015). The Exhibit shows that approximately 31% of the total amounts assessed remain unpaid.

Exhibit VI

Consumer Affairs
Assessed and Paid Violations
2013 - 2015

Violation Category	Number of Violations	Total Amounts Assessed	Total Amounts Paid	Total Amounts Unresolved
Home Improvement	1,854	$ 1,038,447	$ 704,575	$ 333,872
Retail	416	208,200	161,675	46,525
New Laws (2015 Only)	27	25,850	13,100	12,750
Total	**2,297**	**$ 1,272,497**	**$ 879,350**	**$ 393,147**

Source of Data: OCA Violation Logs for Home Improvement, Retail and New Laws

Audit analysis of the logs revealed the following data anomalies:

- Violations were paid when an assessed fee was never recorded on the log. For example 762 of 1,854 home improvement violations were never assessed a fee; however, payments of $116,450 associated with these violations were received.
- Multiple violation numbers appear on the log with no associated data such as issue date, amount assessed, due date, date paid and receipt number.
- Some violations appear on the logs with no associated reasons.
- A reconciliation was not performed to identify and resolve differences between the fines assessed and fines paid according to the logs and the receipts posted to NIFS. For the fine categories reviewed, Exhibit VII identifies differences between the fines assessed and collected per the logs and the receipts recorded in NIFS each year of the audit period. Unresolved differences increase the risk that errors or irregularities may occur and not be detected and resolved.

Exhibit VII

Consumer Affairs
Fines Assessed and Collected Per Logs vs NIFS
2013 - 2015

Year	Total Assessed Per Logs	Total Collected Per Logs	Total Collected Per NIFS	Log Collections Over (Under) NIFS
2013	$ 545,622	$ 377,325	$ 465,525	$ (88,200)
2014	247,275	176,975	195,100	(18,125)
2015	479,600	325,050	293,925	31,125
Total	**$ 1,272,497**	**$ 879,350**	**$ 954,550**	**$ (75,200)**

Source of Data: OCA Violation Logs for Home Improvement, Retail and New Laws and NIFS.

Audit Testing of Violation Logs

The auditors selected 47 unpaid items from the 2,297 violations summarized in Exhibit VI for further review (30 home improvement violations, 15 retail violations and 2 violations pertaining to new laws) and requested their current status. When the auditors inquired as to how the responses were determined, they were told that each violation folder had to be pulled and manually reviewed.

The responses provided revealed the following:

- 7 of the 47 (or 15%) unresolved violations selected had been paid, but not updated in the logs.
- 3 of the 47 (or 6%) unresolved violations selected had been either dismissed or withdrawn by Consumer Affairs, but not updated as such in the log.
- 37 of the 47 (or 79%) unresolved violations selected will remain on the log indefinitely and the auditors could not determine if any follow up action was taken by Consumer Affairs.

Audit Recommendation(s):

We recommend that Consumer Affairs takes the necessary steps to ensure that the violation logs are:

a) accurately updated with sufficient information to reflect the current status of unpaid violations and the reasons why violations were dismissed, withdrawn or suspended;

b) reconciled to the receipts posted to NIFS; and
c) used to create an aging report of outstanding violations. This level of reporting is necessary for proper monitoring and collection of violations assessed.

Audit Finding:

(7) Inadequate Financial Controls and Oversight Resulted in Potential Losses of $2.9 Million and Decreased Consumer Protection

Our review found that Consumer Affairs is operating in a very poor internal control environment due to a lack of adequate and qualified resources. The passage of laws since 2012 made the situation worse by increasing responsibilities to an already overburdened department. As a result, consumers are not being adequately protected from unfair trade practices and unlicensed businesses. Further, as described in Findings 1, 2, 3, 5, and 6, the lack of resources and poor control environment resulted in a combined total estimate of $2.9 million of lost opportunities to maximize County revenue and increased the risk for waste, fraud and abuse. This $2.9 million of combined lost revenue is a significant amount, equivalent to 20% of the $14.3 million gross revenue[20] already collected between 2013 and 2015.

Exhibit VIII shows that staffing decreased from a high of 33 employees in 2012 to 25 employees at the end of 2016. Of the 25 employees, no one possessed the accounting or financial job title needed to properly manage its $4.5 million in average annual gross revenues. We found that the majority of the accounting functions are being performed by just one Clerk Typist. Our review uncovered numerous segregation of duties and internal control weaknesses associated with inadequate financial and operational oversight and an elevated risk for errors or irregularities to occur and go undetected.

[20] Revenues for 2013 through 2015 as extracted from Exhibit VIII.

Exhibit VIII

Office of Consumer Affairs
Actual Revenues, Expenses and Staffing
2012-2016

	in Thousands (000)						
	2012	**2013**	**2014**	**2015**	**2016 ***	**Total**	**Five Year Average**
Revenues & Expenses							
Revenues	$4,052	$5,158	$4,173	$5,011	$4,418	$ 22,812	$ 4,562
Expenses	1,703	1,617	1,672	1,665	1,731	8,388	$ 1,678
Revenues Less Expenses	**$2,349**	**$3,541**	**$2,501**	**$3,346**	**$2,687**	**$ 14,424**	**$ 2,884**
Staffing Levels							
# of Employees Requested	37	28	43	25	25		
# of Employees Per Adopted Budget	33	28	28	25	25		
Over/(Under) Requested	(4)	0	(15)	0	0		

Source of Data: Revenues and Expenses were taken from NIFS FAML 6450 Organization Summary. The staffing levels were taken from the Nassau County Adopted Budgets.

* The information for 2016 is as of 1/19/17, prior to the close of 2016's books.

Lack of Adequate and Qualified Resources

Despite our 2008 audit recommendation for an Accountant, the majority of the accounting functions within Consumer Affairs are being performed by just one Clerk Typist, outside of her Civil Service title. The typical duties, knowledge, skills, and abilities associated with properly monitoring accounting functions are different from those of a Clerk Typist title. Further, with the exception of one Assistant Director, **no middle management exists**. The department's management only consists of the Commissioner, a Community Services Representative, and an Assistant Director of Weights & Measures. All other staff are Clerks, Inspectors or Investigators.

Cost Benefit Analysis

As noted in Exhibit VIII, Consumer Affairs' revenues have consistently exceeded their expenses. From 2012-2016, this excess revenue averaged $2.9 million per year. We determined that Consumer Affairs' existing annual surplus well exceeds the cost to hire at least one to two accountants. Based on the CSEA Salary Charts for employees hired after March 31, 2014, an Accountant II would earn $46,882 plus benefit costs of approximately $19,690 (42%) for a total cost of $66,572. The cost for two Accountant II's would total $133,144 which represents only 2.92% of annual average gross revenues.

Consumer Affairs repeatedly stated that more inspections and increased revenue could be obtainable with more staff. Consumer Affairs senior staff noted that numerous requests to hire additional staff have not been granted, although the department oversaw the implementation of eight new laws between 2012 and 2014 and is currently being tasked with even more new laws per the 2017 budget. The implementation and enforcement of these laws requires additional resources and despite this significant increase in responsibility, staffing levels have decreased by 24% (from 33 to 25 employees) during the period 2012-2016. Based on this analysis and Consumer Affairs' repeated surpluses, it would not be unreasonable for Consumer Affairs to hire additional staff to implement new laws, improve consumer protection and increase revenues.

General Management and Internal Control Weaknesses

Audit identified the following general management and internal control weaknesses that could be avoided with adequate qualified resources:

Inadequate Segregation of Duties

The Comptroller's Cash Receipts Control Directive[21] states, "It is important to spread cash receipt and processing duties among several employees to reduce the risk of fraudulent activity. No one employee should have full control over the receipt of cash and/or checks, preparation and reconciliation of daily summaries, depositing of the cash and/or checks, recording the transaction on NIFS and reconciling NIFS account balances to bank statements".

- A Clerk Typist I is solely responsible for the majority of the accounting functions within the Weights & Measures revenue collections area. **This individual** opens the mail, enters the payments into multiple Access Databases, prepares the daily deposits, enters revenue entries into NIFS (the County's financial system) and reconciles the daily deposit.
- At least two employees, including the Clerk Typist I above, have the independent ability to both initiate and approve financial transactions in NIFS. The department's process/procedures should not allow the same individual to both initiate and approve the transaction.
- Four individuals have unlimited access and ability to change one another's work in the Access Invoicing and Payments Databases.
- We found several instances of checks being received on the same date as the inspection, indicating that inspectors are potentially receiving payment at the actual time of inspection. Inspectors should not be accepting payments, as it may appear that inspection results are being compromised.
- Evidence of management review of financial transactions is lacking. For instance, our testing found obvious data entry errors that would likely have been caught and corrected had a supervisory review been performed.

[21] Nassau County Office of the Comptroller Control Directive 3: Cash Receipts (p. 2).

Inadequate Cash Receipts Controls

- No department-wide cash receipts log is maintained and restrictive endorsements are not consistently used.
- Check receipts are not always deposited within seven days, as mandated by County Charter. Testing revealed that 1,449 out of 7,432 (or 19.5%) of checks received were not deposited within seven days.
- A manual date stamp which can be manipulated was used instead of an automated time stamp to document the receipt of payment.

Inadequate Accounts Receivable Controls:

- Weights & Measures is not adequately monitoring their Accounts Receivable from retail scale inspections due to numerous operational and internal control deficiencies. The Accounts receivable is not adequately monitored nor is there an accounts receivable aging schedule.
- Business names are not electronically associated with the receivable. System issues with establishment codes[22] make it impossible to determine if monies owed for a location relate to the current business or a business that had previously used that code. In order to track receivables, Consumer Affairs would need to manually search through paper files to associate the business name with their list of outstanding invoice numbers.
- Despite NYS Agriculture & Markets Law providing guidelines for late fees, no late payment violations were issued to delinquent Weights & Measures' payees for the entire audit period.
- Consumer Affairs was unable to provide historical evidence of collection notices sent, making it difficult to determine how many, if any, collections attempts occurred.

Information Technology Weaknesses

- The main database ("CARAS") does not contain all financial records and cannot be reconciled to NIFS. Cash receipts related to licenses, registrations and inspection fees cannot be recorded in CARAS and receipts for payments cannot be automatically generated);
- CARAS does not interface with the Microsoft applications (Word, Excel, Access and data is not integrated among the divisions into one program or software suite;
- Weights & Measures utilizes four separate Microsoft Access Databases for payments and inspection record keeping purposes presenting the following issues:
    - The databases are not password protected;
    - Establishment Codes are not issued in sequential order;
    - Previously deleted Establishment Codes are being reused for new businesses;
    - Establishment Codes do not track the history of the physical location they represent;

[22] Establishment Codes are used to track businesses operating in Nassau County by their physical location. For details regarding deficiencies with Establishment Codes see Findings 7 and 9.

- Pre-Numbered Device Inspection Sheets are not being recorded in the Access Databases to cross-reference Invoices to Inspections;
- Item Pricing Waiver expiration dates are being recorded as the Date Paid for record keeping purposes; and
- A listing of all Establishments and the total number of scales/measuring devices located at each Establishment are not included in the databases

- The ATM database is not password protected and is not backed up.

Policy and Procedures

- Consumer Affairs does not have formal policy and procedure manuals for any of its divisions to document internal controls, activities, policies, and responsibilities.
- There are no written procedures for any processes performed regarding cash receipts, making it difficult to identify and test internal controls. This weakness was previously noted in our 2008 report.
- There are no standard written procedures for handling unpaid invoices, nor a timeline of collection actions.

Regulatory

- Consumer Affairs consistently failed to submit its required Annual Report of the Director of Weights & Measures (WM-14e) on time to NYS.

Unnecessary delays in depositing revenue, combined with the other internal control and segregation of duty issues identified in this report, leaves the revenue collection process vulnerable to fraud including, but not limited to, activities such as skimming[23] and lapping[24] that are not easily identified or detectable.

Audit Recommendation(s):

We recommend that the Office of Consumer Affairs:

a) work with the Office of Management & Budget to obtain the appropriate resources necessary to ensure that the required day to day accounting, financial, operational and management functions are assigned to qualified individuals so that a proper segregation of duties exists. This will help ensure that Consumer Affairs has the necessary resources to

[23] "Skimming is sometimes called front-end fraud, as funds are stolen before a booking entry is made."
Singleton, Tommie W., and Aaron J. Singleton. Fraud Auditing and Forensic Accounting. Vol. 11. Hoboken, NJ: John Wiley & Sons, 2010. Print. Wiley Corporate F&A.
[24] "Lapping is skimming accounts receivable (AR) payments before they are posted."
Singleton, Tommie W., and Aaron J. Singleton. Fraud Auditing and Forensic Accounting. Vol. 11. Hoboken, NJ: John Wiley & Sons, 2010. Print. Wiley Corporate F&A.

properly enforce laws, provide adequate consumer protection, reduce the risk of fraud and maximize revenue;

b) develop and disseminate to all employees a formal policy and procedure manual that documents the operating procedures and internal controls for each division in Consumer Affairs, along with individual job functions, responsibilities and deadlines. The manual should also cover high level workflows, internal controls and managerial reviews, with copies of key documents and report titles; and

c) utilize Appendix A and B of this report to assist in implementing recommendations a) and b) above. These appendices provide more specific recommendations regarding segregation of duties and internal controls.

Audit Finding:

(8) Consumer Affairs Does Not Fingerprint Home Improvement Contractors as Required by the County's Administrative Code

Our audit found Consumer Affairs is not in compliance with a fingerprinting requirement for Home Improvement contractors. In addition, Consumer Affairs has been lax in their oversight of the Home Improvement Industry Board. Further, they have not instituted the Board of Consumer Affairs and the Invasive Species Committee as required by Nassau County's Administrative Code.

Home Improvement License Fingerprinting (Prior Audit Issue):

Fingerprinting of Home Improvement contractors is a safety step to help mitigate the exposure of consumers to potentially dangerous individuals during home construction. Our 2008 audit identified Consumer Affairs' lack of compliance with the Administrative Code §21-11.4 (2) (b) which states, "**All applicants for a home improvement license shall be fingerprinted by the Nassau County Police Department.**" Fingerprints would be used as part of the background check for each application. Eight years later, Consumer Affairs is still out of compliance with this legislative requirement.

Board of Consumer Affairs (Prior Audit Issue):

The 2008 audit determined that the Board of Consumer Affairs[25] (established by Administrative Code §21-10.1) did not exist and recommended a Board of Consumer Affairs be appointed by the County Executive. Consumer Affairs' 2008 audit response noted that amendments to remove the Board on Consumer Affairs from the Administrative Code were being proposed.

Our current review notes that Consumer Affairs is still not compliant as this Board is not active, yet continues to remain included in the County's Administrative Code.

[25] County Administrative Code §21-10.1 states "The Board shall assist and advise the Commissioner in his duties and functions under this title."

The Home Improvement Industry Board (Prior Audit Issues):
The 2008 audit determined the Home Improvement Industry Board (established by Administrative Code §21-11.14) did not exist and recommended a board be appointed by the Commissioner. The 2008 audit response from Consumer Affairs noted amendments to remove the Home Improvement Industry Board from the Administrative Code would be proposed.

Our current review noted that Consumer Affairs kept the Home Improvement Industry Board instead of removing it as previously planned. The auditors asked Consumer Affairs to provide all the meeting minutes from 2013 through 2016; however, they only provided one set of minutes. The Administrative Code requires the Board keep the minutes of all their bi-monthly meetings. The minutes provided to the auditors showed evidence that meetings may only be occurring quarterly.

Invasive Species Committee:
Per Nassau County Administrative Code §21-24.3, a committee shall be established to advise the Commissioner on matters affecting the County relating to invasive species. The County Executive shall appoint the members of such committee, including the Commissioner of Consumer Affairs, or his or her designee. According to Local Law 24-2007, "...invasive species can displace native species and alter natural ecosystems, and are considered to be the second leading cause of species extinction and endangerment worldwide. Such invasive species can negatively impact agriculture, industry and human health".

The intent of Local Law 24-2007 "...is to protect the ecology of Nassau County by preventing the introduction of any waste containing invasive species in any ecosystem in Nassau County, and to prohibit the sale of such species in the County". According to Consumer Affairs, an Invasive Species Committee has not been established.

Audit Recommendation(s):

We recommend that the Office of Consumer Affairs:

a) pursue implementing a Home Improvement contractor fingerprinting process and institute such procedures in accordance with the law;
b) pursue revisions to the Administrative Code to remove §21-10.1 requiring a Board on Consumer Affairs;
c) ensure the Home Improvement Industry Board holds bi-monthly meetings as required in the Administrative Code and that minutes be prepared and retained; and
d) discuss the establishment of the Invasive Species Committee with the Office of the County Executive.

Detailed Recommendation to Finding 5:

Improper Use of Pre-numbered Documents Led to 9,423 Unaccounted For Invoices Totaling $940,000 Increasing the Risk for Fraud and Abuse

We recommend:

a) Weights & Measures management assign Invoice books and Device Inspections Sheet books to individual Weights & Measures Inspectors in sequential order, to be used by Inspectors in sequential order. Inspectors should not share Invoice or Device Inspection Sheet books;

b) Device Inspection Sheets be bound sequentially in books. These books should be inventoried, logged, tracked and reconciled;

c) Consumer Affairs utilize two standardized logs to separately track the Invoices and Device Inspections Sheets which have been assigned to Weights & Measures Inspectors by Weights & Measures management. These logs must contain:
   i. the numerical sequence of the Invoice book or Device Inspection Sheet book,
   ii. the type of inspection they are pre-assigned for (Store, Gas, Oil Item Pricing Waiver),
   iii. the date the invoice books or Device Inspection Sheet books were assigned/received,
   iv. the printed name of the manager which assigned the sequence to the Inspector,
   v. the printed name of the receiving Inspector,
   vi. signature lines for both the Manager and Inspector,
   vii. an additional comments section for any significant notes.

d) Weights & Measures management analyze and reconcile all Invoice and Device Inspection Sheet numbers on a monthly basis to identify any gaps in sequence and prevent potential misappropriation;

e) Weights & Measures add a line to the preprinted invoice to enable the inspector to check off the type of inspection performed and begin filing all invoices together in one file system by invoice number to eliminate unnecessary filing processes;

f) all issued Invoice numbers and Device Inspections Sheet numbers be recorded in Weights & Measures' databases;

g) Weights & Measures combine all four databases into one all-encompassing database, adding two fields to help differentiate the type of inspection and the year, enabling all inspection numbers and invoice numbers to be housed in one area for easy review and reconciliation;

h) Weights & Measures adopt a practice of assigning the next consecutive Establishment Code number to new establishments and discontinue reassigning old numbers. Weights & Measures Establishment Code nomenclature should be updated to include a secondary number to track Establishment Code history keeping the same location but changing the secondary code as ownership changes (i.e. Changing from 12345 to 12345-01 then 12345-02);

i) the Weights & Measures' databases be updated to track business information associated with an Establishment Code by year.

Detailed Recommendations to Finding 7:

Inadequate Financial Controls and Oversight Resulted in Potential Losses of $2.9 Million and Decreased Consumer Protection

In regard to Segregation of Duties, we recommend that Consumer Affairs:

a) implement an appropriate level of segregated duties so that the same employee is not opening the mail, entering payments, preparing daily deposits, entering revenue entries into NIFS and reconciling daily deposits;
b) review and segregate the ability to initiate and approve the same transaction in NIFS;
c) properly segregate the functionality levels within the Access Databases;
d) instruct Inspectors to refrain from accepting payments in the field;
e) obtain and utilize an automated time stamping unit to document receipt of checks; and
f) establish procedures for the overall revenue collection process, including documenting management's review of daily receipts and processing.

In regard to Inadequate Cash Receipts Controls, we recommend that Consumer Affairs:

a) maintain a complete cash receipts log of all payments received, reconcile this log to NIFS deposits and restrictively endorse all forms of payment when initially received; and
b) deposit all checks received with the Treasurer's Office within seven days as required by the Nassau County Charter.

In regard to Accounts Receivables, we recommend that Consumer Affairs:

a) create written procedures for Accounts Receivable tracking, collections and write-offs;
b) monitor Accounts Receivables and follow-up with establishments to collect payments;
c) issue late and failure to pay violations in accordance with NYS Agriculture & Markets Law;
d) ensure that Weights & Measures maintains a detailed log of all mailings/notices sent to establishments requesting payment; and
e) periodically write off Weights & Measures invoices deemed to be uncollectable.

In regard to IT Weaknesses, we recommend that Consumer Affairs:

a) ensure that all aspects of its operations (the tracking of scale and measuring device testing, Item Pricing Waivers and related fees by Weights & Measures, ATM registrations, consumer complaints, violations, and a multitude of licenses) be included in one comprehensive system and that the system addresses all weaknesses that are noted within this report, including the inability of the current systems and processes to:
    a) obtain real time data;

b) track consumer complaints;
c) identify time frames for the processing of complaints;
d) scan and electronically store documents;
e) record all financial activity, including the collection of cash receipts and reconciliations to NIFS;
f) produce receipts for customers; and
g) interface information amongst all Consumer Affairs divisions.

While researching a new case management system, the current systems must be updated.

b) <u>make improvements to the Weights & Measures Access Databases, including the following</u>:

a) A password system be implemented to gain initial entry into the databases and establish a hierarchy of appropriate system access for users;
b) Weights & Measures reassign all 5-digit Establishment Codes so they are in sequential order and create a master list of all previously used and newly assigned Establishment Codes to be used as a reassignment legend;
c) All new Establishment Codes must be issued in sequential order. Establishment Codes which have been deleted from the database due to inactivity must not be reissued for new businesses located at a different address;
d) Establishment Codes be restructured to include a secondary number to track the history of businesses which have required Weights & Measures inspections at that location (i.e. Est. Code: 12345-01, 12345-02);
e) All Weights & Measures Access databases must record inspections, payments and Establishment Code information by year;
f) In the Item Pricing Waiver database, an Establishment's retail square footage as reported on their application must be recorded. Data verification requirements should be applied to the database, resulting in the program itself checking if the fee being paid is appropriate. A separate field for failed inspection re-applicants should be added to the database to distinguish a re-application inspection/payment from an initial application inspection/payment;
g) The actual date an application fee is received must be entered into the "Date Paid" column within the Item Pricing Waiver database. Waiver Expiration dates should be recorded in a separate field;
h) A master list of all Establishments, the quantity of scales/measuring devices requiring inspection and the type of device must be created. Data verification requirements should be applied to the database, resulting in the program verifying the total number of devices at an Establishment are inspected; and
i) Additional fields must be created to facilitate the inclusion of all Device Inspection Sheet numbers in the Access databases.

c) <u>make improvements to the ATM Registration Access Database, including the following</u>:
   a) A password system be implemented to gain initial entry into the database and establish a hierarchy of appropriate system access for users;
   b) The database be stored on the Office of Consumer Affairs server instead of an individual computer so it is included in the County’s routine backup procedures to prevent data loss;
   c) The information in the ATM database be entered and reviewed by separate individuals to ensure proper segregation of duties; and
   d) The ATM database be restructured to account for data on an annual basis, separating data by years instead of overwriting a prior year's information.

<u>In regard to Policies and Procedures, we recommend that Consumer Affairs</u>:

a) create and promulgate policy and procedure manuals for each division outlining all functions, policies and responsibilities;
b) periodically review and update, as required, all policies and procedures outlined in the manuals, and
c) develop standard checklists for Weights & Measures Inspectors to use at each location to determine if additional Consumer Affairs regulations are being properly enforced.

<u>In regard to Regulatory matters, we recommend that Consumer Affairs</u>:

a) submit the annually required NYS WM-14e report on time; and
b) develop more efficient data extraction methods to capture existing totals from the Access Database to streamline WM-14e report preparation time.

NASSAU COUNTY
OFFICE OF CONSUMER AFFAIRS

RESPONSE TO LIMITED REVIEW OF
THE OFFICE OF CONSUMER AFFAIRS
BY NASSAU COUNTY COMPTROLLER'S OFFICE
DATED JULY 3, 2017

Madalyn Farley
Commissioner
July 3, 2017

Introduction

The Office of Consumer Affairs currently enforces 28 different laws. Each of these laws have multiple violation capabilities. The duties of the Commissioner are to protect the public by enforcing the laws under the jurisdiction of the Office of Consumer Affairs. We also aim to level the playing field for the legitimate business against those breaking the law.

Considering the size of Nassau County, the amount of businesses located in this county and the number of laws under Consumer Affairs jurisdiction, the Commissioner, in an exercise of discretion, has to assess and prioritize where enforcement is required to best serve the public and provide the utmost protection to the consumers of Nassau County at any given time.

During the audit period in question (2013-2015), our priority was recovery from the effects of Superstorm Sandy, a storm that destroyed a vast amount of homes and businesses. Consumers lost their homes, vehicles, clothing etc. Many people were harmed and displaced by this event. Many businesses tried, despite the challenges presented, to continue their businesses, but only in a substandard fashion (e.g., sale of contaminated gasoline). Our priority during this period was to ensure additional protection of consumers by investigating unscrupulous and/or unlicensed contractors, gas station tanks were not permeated with water and ensuring businesses were not price gouging consumers. The storm disrupted the normal operations of Consumer Affairs for over a year.

In addition, the Office of Consumer Affairs had to relocate at very short notice to a new location that was still under construction. We were given 6 new laws to implement and enforce. This does not include moving within the new office space to allow necessary renovations to that space.

Given these extraordinary circumstances, Consumer Affairs utilized its resources where they were most needed, as determined by the Commissioner, according to the authority granted under the Administrative Code. Consumer safety was paramount in the decisions made during this time regarding the allocation of scarce resources.

Even with the limitations imposed by staffing, computer software of limited utility and difficulties with supervisors, every consumer complaint received by the Office, within the office's jurisdiction, was investigated.

Consumer Affairs representatives met with the auditors for an exit conference on June 13 and 14, 2017. During those conferences, various changes to the report were discussed and, in the estimation of Consumer Affairs, agreed upon. However, when requested to be supplied with an amended draft of the audit report, Consumer Affairs was advised that no amended report was necessary. Thus, this response is written based upon the findings found in the original draft and not on any changes that may have been made.

It must be noted that in the "Background" section of the Limited Review, the Auditors state that the Office of Consumer Affairs "pursues criminal prosecution through the District Attorney's office. This is not accurate. If the Office of Consumer Affairs has a matter which requires referral to the Office of the District Attorney, such a referral is made. It is the duty of the District Attorney's Office, in its sole discretion, to decide whether prosecution is warranted or not. It is thus the Office of the District Attorney, and not of Consumer Affairs, to "pursue" criminal prosecutions. Even when a referred matter is prosecuted, Consumer Affairs representatives are merely witnesses, it is the People of the State of New York, through their representative, the District Attorney, that pursues the prosecution.

Response to Audit Finding (1)

As a result of the exit conference between representatives of Consumer Affairs and the auditors, Consumer Affairs has been advised that the title of Audit Finding (1) was to be changed to reflect that more fees could be realized by the County is there were more Item Pricing Accuracy Inspections. The Office of Consumer Affairs agrees with the audit findings to the extent that a greater number of inspections would provide greater assurances that retailers were complying with the law, but disagree that increased inspections would result in more retailers voluntarily participating in the waiver program. Moreover, there is simply no evidence to suggest that more inspections would result in "Improved Consumer Protection."

Nassau County Administrative Code §21-18.2(a) requires every person who sells, offers for sale or exposes for sale in a retail store a stock keeping unit that bears a universal product code shall disclose to the consumer the item price of each stock keeping item as defined in section §21-18.1(g). To avoid the consequences of having to the item prince of each item, one offering such items for sale may apply for a waiver of the requirement. NCAC §21-18.3.1.

The Item Pricing Waiver Program affords merchants the opportunity to utilize electronic price scanners upon meeting the requirements of the waiver program, the granting of the waiver and the payment of the appropriate fee. Obtaining a waiver is entirely voluntary on behalf of the merchant. NCAC §21-18.3.1. There is no legal requirement to obtain waivers regardless of the size of the merchant or the amount of sales of the merchant.[1]

The Office of Consumer Affairs therefore takes issue with the Auditors' findings that there was a loss of "Item Pricing Revenue" from a "failure" to conduct inspections and issue fines.

In support of the Auditors' conclusion that "nearly" $1.5 million in waiver "revenues"[2] was lost, the auditors relied on what appear to be erroneous premises. (See, Exhibit III). These inaccurate premises include:

[1] Although stores with gross sales of less than three million dollars and are not a part of a network of stores are not considered "Retail Stores" subject to the item pricing requirement. NCAC §§ 21-18.1(i).

[2] Care should be taken in using the word "revenue" under these circumstances. Where a fee is imposed under the power to regulate, the amount charged cannot be greater than a sum reasonably necessary to cover the costs of issuance, inspection and enforcement. To the extent that fees charged are exacted for revenue purposes or to offset the cost of general governmental functions they are invalid as an unauthorized tax. *ATM One L.L.C. v Inc. Vil. of Freeport*, 276 AD2d 573, 574 (2d Dept 2000).

The 1.5m figure assumes that each of the retailers referred to would have voluntarily applied for item pricing waivers if they were actively solicited[3];

The 1.5m figure assumes that each of the retailers referred to are not presently complying with the Item Pricing Law;

That each of the retailers has made the necessary capital expenditures to purchase and install both the hardware and software necessary to participate in the waiver program;[4]

The conclusion that 1.5m in revenues was lost presupposes that each and every retailer that "could" qualify for waivers would participate in the waiver program.

Moreover, the Office of Consumer Affairs does not view the fines authorized by § 21-18.4(h) to be intended by the legislature as an incentive for retailers to participate in the waiver program. Rather, the fines that could be imposed are intended, in the view of Consumer Affairs, as a disincentive against violating any of the provisions of Title D-8. Stated differently, the fines that can be imposed are for failing to separate price items on display, not to compel stores to apply for waivers. It is up to the individual retailer to determine whether the cost of complying with the law justifies the capital costs and waiver fees for inclusion in the waiver program.

Moreover, the fact that the auditors have found a "number of big box stores [that] have yet to apply for the voluntary waiver and identified a minimum of 72 locations, from 12 major businesses operating in Nassau County, that could qualify for Item Pricing Waivers"[5] does not even consider whether such stores have applied for waivers, have been inspected and found to be complying with the law or have been issued for violations relating to violations of Title D-8.

Response to Recommendation(s)

a) The auditors' first recommendation, suggests that Weights & Measures Inspectors immediately begin performing itemprice accuracy testing. For a merchant to qualify for an annual item pricing waiver, two separate item pricing accuracy inspections must be conducted (and passed by the merchant) before a waiver is granted. NCAC §21-18.3.1(c). A consumer complaint would generate yet another inspection.

As regards stores that do not or have not applied for waivers, inspections of item price accuracy are performed at least annually during the mandatory yearly inspection of the store's weighing devices pursuant to Article 16 of the Agriculture and Markets Law. Again, a consumer

[3] The retailers that were unidentified in the original draft of the Comptroller's report were identified at the exit conference. Many of the stores identified are of the kind whose products are already marked with a price (clothing, for example) and would not have to remark the price on those items. Also discussed at the exit conference is the fact that Home Depot has applied for waivers from the Item Pricing Program.

[4] For instance, one chain store with 39 separate locations in the County has applied for but has not been granted waivers because it will not purchase in-store consumer scanners. Another chain store, with 13 separate stores in the County also applied for, but was not granted waivers for lack of the required in-store scanners.

[5] Draft Limited Review, p. 5.

complaint would be cause for another inspection. If a store has no items requiring annual inspections, Item Pricing Inspections are conducted when practicable. However, to conduct such inspections as an incentive to apply for Item Pricing Waivers and in an attempt to generate more "fee revenue" is not, in the opinion of the Commissioner, a proper governmental function.

b) The second recommendation regarding preventative measure testing, package testing and expiration date inspections does not relate to the allegedly lost revenue from not soliciting item pricing waivers. While the Office of Consumer Affairs disagrees with this finding (a strategy for such testing exists) the lack of any factual basis for this finding and the fact that it is beyond the scope of Audit Finding 1, there does not appear to be a reason for a more detailed response.

Response to Audit Finding 2

Audit Finding 2 found that "lack of verification of Retail Square Footage Reported on Item Pricing Waiver Applications led to at least $10k in lost "revenue."[6] Here, again, the auditors have not fully investigated the factual basis of their premises before drawing their conclusion, which Consumer Affairs believes to be erroneous. In this instance, however, since the identity of the merchant in question is readily identifiable to Consumer Affairs[7], the erroneous conclusions drawn by the auditors can be adequately addressed.

In 2011, the maximum fee for waivers based on store size was $5,000[8] and that calculation was based upon "gross store size".[9] The company in question paid the maximum based upon its stated 45,000 ft^2 store size. In 2012, the law was changed, the maximum fee for waivers was increased to $15,000 and the scheme was changed from the gross square footage of the premises to the retail footage of the space.[10]

The store was inspected at the time of the initial inspection and it was found that it had the size stated in the application. However, the store in question was unusual to the extent that it sub-leased various portions of its premises, thereby changing the amount of its gross retail space. Thus, in 2012, 76k ft^2 was reported and verified and $5,000 was paid. In 2013, 85k ft^2 was reported and again $5,000 was paid in accordance with the fee schedule. In 2014, 89 ft^2 was reported and $5,000 was paid. There were, however, several difficulties with the merchant that year. The first floor of the premises was unused, it claimed it was filing for bankruptcy and violations were issued for scanner violations.

In 2015, the merchant again reported 89k ft^2 of retail space in support of its annual application for waivers. It submitted $5,000 with its application. Upon inspection, however, it was found that its available retail space exceeded 90k ft^2, which would raise the fee for the waiver to $15,000. Upon being advised of this finding, the merchant refused to tender the

[6] See, Footnote 2 from Response to Audit Finding 1.
[7] Unlike the unidentified merchants purportedly "could qualify" for waiver application.
[8] Local Law 20-2002.
[9] *Id.*
[10] NCAC §21-18.3.1.

increased amount for the waiver. The $5,000 application was forfeited and the store lost its waiver.

In April 2015, inspectors conducted an item pricing accuracy check on the merchant. Items were being priced appropriately and no violations were issued. The merchant has not re-applied for a waiver from the item pricing law.

Based upon the foregoing, the Office of Consumer Affairs cannot agree with the auditors' conclusion that "it "did not actively pursue collection of the $10,000. . . .[11] for their Item Pricing Waiver. Such a finding simply ignores The particular applicant chose not to apply for a waiver and no waiver granted that year. Therefore, there was no underpayment. Given that there was no underpayment, any collection action by the County would be inappropriate.

Response to Recommendation(s)

a) Each application for Item Pricing Waivers is checked by inspectors to insure its accuracy. Again, while this process is completed and verified when the application for waivers is being considered, once the waivers are granted and the fee paid, particularly where there is sub-let space, there is the possibility that a retailer could increase its retail footage in the period between inspections.

Response to Audit Finding 3

Audit Finding 3 finds that Consumer Protection Law Implemented in 2012 are not Being Fully Enforced, 80% tested were not licensed, resulting in $36,000 in lost "Revenue."[12] The auditors determined that Consumer Affairs does not have an adequate proactive process to identify businesses impacted by the new laws.

With the passage of the eight new laws, Consumer Affairs researched those companies that would be subject to the new licensing requirements and hand prepared (there being no database from which mailings could be prepared) over 2600 license application packages, which varied from license to license. 628 of these applications were returned by the merchants and the appropriate licenses issued.

Of the 76 entities listed in Exhibit V, 50 (76%) of them fall into the category of "self-storage" facilities. There are real and significant questions as to whether Title D-17 of the NCAC even applies to such facilities. Under NCAC § 21-26.2, a license is required to operate a "storage warehouse."

The self-storage industry has taken the position that their members only rent space to consumers and the consumers can place in the unit anything they want. The consumer, and not the facility, are responsible for what goes in, when the unit is accessed and when anything is removed. The consumer is able to secure (lock) the unit and the owner of the premises cannot,

[11] Draft Limited Review, p. 8.

[12] See Footnote 2, *infra*.

without unlawfully cutting the lock, access the items stored in the unit. It is for this reason that the self-storage industry claims it does not operate "storage warehouses"[13] since consumer household goods are not "received" by the operator for storage. When this argument was presented to Consumer Affairs, both the administration and the Office of the County Attorney were advised of the argument.

This interpretation seems to be correct based on the other provisions of Title D-17. For instance, under § 21-26.9, a "warehouse operator" is responsible for providing estimates for services provided. Owners of self-storage facilities provide no such services. Under § 21-26.10, the warehouse operator is to provide a schedule of rates, to include "charges for the storage and handling of property in the warehouse… .". That section also provides that "[p]rior to accepting any goods for storage, the schedule of all rates and charges must be presented to the individual requesting the goods to be stored." Again, the operators of self-storage facilities do not accept requests that identified goods be stored; rather, they merely rent the space into which the consumer can place any item they want. The distinction lies with in whose possession the goods are considered. Since the consumer, in a self-storage situation, is not reliant upon the owner to retrieve the stored goods. Hence the owners of such facilities have never "received" goods for storage.

The industry's interpretation is supported by the statement of legislative intent that the law is to protect "who have entrusted their belongings to third-parties."[14] With regard to self-storage situations, goods are never "entrusted" to the warehouse operator.

The NCAC therefore needs to be amended if the provisions of Title D-17 are to apply to self-service storage facilities. However, under the present wording of the law, it does not appear that it was intended to apply to self-storage facilities.

Regarding the remaining 24% of the companies found by the auditors to be operating without a license, Consumer Affairs takes exception to the auditors' use of the "internet" to determine which business could presently require a license and then extrapolate the number back over the past three years to come to the conclusion that those companies have been in business without a license for those three years. When these laws were passed, Consumer Affairs performed the daunting task of identifying companies in the County which would be subject to these eight new licensing schemes. With Nassau County's developed infrastructure, it is unlikely that a new drycleaner or a new scrap dealer will spring up where none existed before. Here, 628 licenses have been issued by Consumer Affairs under these new licensing programs. While 24% of your internet sample of 95 may not have licenses, there are any number of reasons the name on the internet does not match that on Consumer Affairs database. In any event, the sample is only 15% of the licenses that have been issued.

Response to Recommendation(s)

a) Consumer Affairs will follow-up with the twenty-six businesses (not the seventy-six mentioned in the Recommendation) to ascertain whether there is unlicensed operation of a

[13] NCAC § 21-26.1

[14] NCAC § 21-26.0

business requiring a license under the given licensing schemes. Additionally, it should be noted that if there were a consumer complaint of unlicensed operation, an investigation would be undertaken.

b) Consumer Affairs agrees that proactive monitoring of the internet would be desirable and useful manner in investigating compliance with licensing requirements. It is a question of the allocation of scarce resources falling to the Commissioner's discretion as to how such resources should be allocated.

Response to Audit Finding 4

Consumer Affairs Failed to Inspect 15%
Of the Establishments Visited by Auditors

In this finding, the auditors find that the Weights and Measures Inspectors (the "Inspectors") "did not always perform the annual inspections mandated for all commercially used weighing and measuring devices as specified under Article 16 of the Agriculture and Markets Law. Consumer Affairs takes exception to the auditors' conclusion that this led to "inadequate consumer protection." This conclusion would be much the same as the auditors concluding that since not everyone who violates the Vehicle and Traffic Law is not ticketed by the police, the police are responsible for decreased traffic safety.

Moreover, the auditors unfairly and improperly place the burden on the Inspectors to inspect each and every weighing or measuring device, both known and unknown, upon the Inspectors. This is not the way the Agriculture and Markets Law is structured. It is incumbent on any person using a device to weigh, quantity or price of any commodity sold or offered for sale to, before the device is used, to notify Consumer Affairs and arrange for an inspection.[15]

Additionally, while a commercial establishment may have scales and measuring devices on premises, inspection and sealing are only required only if the devices are used in determining the weight, measure, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or count or in computing the basic charge or payment for services rendered on the basis of weight, measure, or count.[16] Thus, an establishment may lawfully use a scale that has not been inspected for other purposes. For example, if a store may use an uninspected scale to determine portions, if the portions are not sold by weight, measure or count. Stated differently, just because there are several scales in a commercial establishment does not necessarily mean there is a violation of the Agriculture and Markets law. In such a case, an Inspector would have to actually witness the scale's improper operation before a violation could be issued. A consumer complaint would generally be the method that Consumer Affairs would be notified of such a violation.

[15] AGRI & MKTS § 182
[16] *Id.*

In a similar vein, it should be noted that while device inspections are to be conducted annually[17], there is nothing, absent a consumer complaint, that would be cause for additional scale inspections during the year. If a merchant were therefore intent on breaking the law, an inspected scale could be replaced with an uninspected scale the moment the Inspector left the premises. A violation of the provisions of the Agriculture and Markets Law, unless otherwise specified, is a misdemeanor.[18]

Based upon the foregoing, the mere fact that the auditors found uninspected scales at a business premises is insufficient, from probable cause standpoint, to issue a violation for a violation of the Agriculture and Markets Law. It is only when such scales are actually used in determining the weight, measure, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or count or in computing the basic charge or payment for services rendered on the basis of weight, measure, or count. Nowhere in the report do the auditors state that they observed a violation.

It is to be noted that Consumer Affairs has six Weights and Measures Inspectors for a County having a population of approximately 1.359 million. For the audit period (2013-2015), these Inspectors had an average of 6,411 store devices to inspect, 8,952 gas meters and 530 oil meters. Additionally, there are other state-mandated duties on the inspectors not mentioned in the report including, inspecting credit card readers to detect "skimmers," inspecting propane stations as well as item pricing and package inspections and calibrations on various grades of gasoline and kerosene. The Inspectors are Peace Officers and as such are expected to work with local, state and federal agencies in all aspects of consumer protection.

Additionally, the audit timeframe includes 2013, during which the Weights and Measures Inspectors had a number of additional Sandy-related duties assigned to them. These additional responsibilities included inspections of underground gasoline storage tanks for the purpose of determining whether there was any water contamination, investigating price gouging complaints and inspecting gas stations to determine whether they were in compliance with new state regulations regarding emergency power transfer switches.

Response to Recommendation(s)

a) Consumer Affairs agrees that an inspection plan is necessary and desirable to accomplish compliance with the Administrative Code. Of course, there is no way to determine each and every instance of violations, but it is a goal.

b) Procedures are being revised that would require Inspectors to document establishments that have not been inspected for compliance to determine whether they require inspection, but again, this is a question of the allocation of scarce resources.

c) Multiple inspections of establishments over the course of a year would, of course, be a desirable goal, in terms of protecting the consumer, even if scale inspections are only required to be conducted annually. However, given the question of the allocation of resources,

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[17] 1 NYCRR 220.5

[18] AGRI & MKTS § 41

such spot inspections would necessarily interfere with the inspections required under the Weights & Measures Law. Nevertheless, Consumer Affairs will endeavor to develop a plan that would permit such spot inspections while otherwise complying with its state-mandated inspections.

d) Consumer Affairs Inspectors as well as Consumer Affairs Investigators already perform proactive enforcement operations to ensure vendors comply with the licensing laws.

Response to Audit Finding 5

The auditors were correct in their finding that the Weights and Measures Inspectors have been using receipts from non-sequential receipt books in issuing receipts for the inspections performed. While this resulted from a number of circumstances, including moving from County Seat Drive to 240 Old Country Road and the failure of the Acting Assistant Director to properly reorganize the pre-numbered books, the issues regarding the receipt books have been addressed as discussed in greater detail herein.

However, it was the use of non-sequential receipt books that resulted in the auditors' findings that there were 9423 missing receipts from Consumer Affairs' records. As a result of the proposed finding, further research was performed and it was determined that 9287 of the "missing" invoices were actually issued in 2012, prior to the audit period. However, there are still 136 invoices that have not been accounted that remain unaccounted for and it is presumed that these represent improperly voided invoices. A review of the reports from the years in question does not show any discrepancies in the number of devices inspected during those years.

As regards the Device Inspection Sheets ("DIS"), while sequentially numbered, are not used for tracking purposes. That is to say, these inspection sheets are not used to separately track an inspection, but rather are part of the package resulting from an inspection. They are an integral part of the package, but the package is referenced by the invoice, not the DIS, number. The DIS numbers are not entered into the database. Moreover, frequently more than one DIS is used for a particular inspection. This renders the use of its pre-printed number ineffective.

Turning to Establishment Codes, the best answer is that the system in place for tracking business establishments is the best that can be done with the current antiquated software. There have been repeated efforts to have the County's Information Technology Department alter the system to allow more flexibility with the system (e.g., to permit the issuance of identification numbers that are unique not only to the location but also to the company operating the business at that location) but these efforts have not been successful. The present system cannot be changed to accommodate these additional criteria. Consumer Affairs has also been informed that it the system is converted to one that would permit assignment of establishment codes as suggested in the Auditors' Findings, there will be a loss of historic data caused by the switch. In additional to the capital expenditure for new software, the entire system would then need to be revised to accommodate the new system's capabilities.

Response to Recommendation(s)

a) Consumer Affairs is undertaking the establishment of internal controls to correlate inspection reports and invoice numbers so as to establish greater management oversight. A system of tracking invoice books and their assignment is also being undertaken. However, in order to correlate such reports and invoices with a given establishment would require new software. As discussed, the present system for tracking businesses and business premises is inadequate and cannot be modernized to accommodate the changes necessary for tracking purposes.

b) Consumer Affairs welcomes the consolidation of its databases into a unified system. It would be willing to work with the Office of the Comptroller and Information Technology to develop a system that meets not only its needs, but also the managerial reporting requirements suggested by the Audit.

Response to Audit Finding 6

Audit Finding 7 finds that Violations Logs are not accurate and approximately 31% of total violations assessed appear unresolved due to inaccuracies and lack of oversight. While the auditors find that the "annual logs created by Consumer Affairs to track violations were inaccurate and did not provide enough information to determine the latest status of unpaid violations without manually reviewing each violation case folder." Based upon this statement alone, the auditors' conclusions are inaccurate, since information is only recorded in the log, while the official record of the violation is the violation case folder. Thus, were the auditors to have looked at the official record of the violation, they would have seen that that there were no violations that appear unresolved.

Consumer Affairs, in response to the 2008 audit by the Comptroller, tried to institute, on commercially available software, a mechanism with which reports and spreadsheets could be readily produced. This was in response to the Comptroller's suggestion that the Consumer Affairs maintain a log of consumer complaints and resolutions.

"Violation Logs" was a spreadsheet program initiated by Consumer Affairs after a Comptroller review dated July 2, 2008. It was intended to be in a format from which information could be accessed for reporting purposes. However, information is only recorded onto the "violation log" from the official record of the violation, the violation folder. It is the violation folder that tracks the violation from its issuance to its resolution. A physical folder is necessary, absent an integrated software program, to retain documents related to the investigation, the violation notice itself, with the necessary proofs of mailing, correspondence, the hearing officer's findings and any document or stipulation relating to the disposition of the violation, including payment.

Moreover, all information is first recorded on CARAS, the database used by Consumer Affairs to maintain records related to licensees. CARAS does not, however, have report writing or spreadsheet capabilities. The suggested "violations logs" simply have not become a substitute for the official documents and CARAS entries. While some employees may maintain such records for a matter of personal reference, as with the one reviewed here, these are not the official records of the office and even if the employee maintains an informal record or log, they are still required to maintain the official database.

The final suggestion by the auditors that violation logs are necessary for the purpose of monitoring and collection of violations assessed does not take into account the provisions of the NCAC. For instance, under Title D-1, for Home Improvement licenses, licenses are only valid, and must be renewed, every two years.[19] The failure to satisfy a fine, an order of the Commissioner[20] is a reason not to permit the renewal of the license.[21] Moreover, interest is charged on a fine from the assessment date.[22]

Therefore, a contractor that has not paid a fine immediately will normally seek to resolve the open violation when renewing the two-year license. Indeed, it is required before a license is renewed. It simply does not make sense to retain, at a cost of a percentage of the amounts due, to retain a collection agency. An operating business will routinely pay its past-due fines so as to stay licensed and doing business.

Response to Recommendation(s)

a) As discussed at the exit conference, while the auditors' findings are inaccurate since accurate records of all violations and resolutions are kept by Consumer Affairs (just not on an integrated, comprehensive system, Consumer Affairs would again welcome more detailed recommendations and assistance from both the Comptroller and Information Technology to develop a system to allow its current CARAS system to property track information regarding violations, amounts due, deposits and the ability for management supervision. The "violation logs" are redundant information and require repetitive data entry (after the data is entered into CARAS). Again, scarce resources prohibit utilizing a system simply to make the information more retrievable.

b) As regards a method, other than manual entries as presently used, to reconcile receipts posted to NIFS, Consumer Affairs welcomes more detailed recommendations and assistance in establishing such a system.

c) It is only in the rarest of cases that those found guilty of violations are not present licensees of the County. As such, most of those found responsible will seek to have their license renewed within two years (at a maximum) of the violation. Since it is the policy of this office not to renew licenses when there is an outstanding violation,[23] the contractor is compelled to pay any fine if the license is to be renewed. Moreover, interest at the legal rate is charged from the date of the assessment to the date of payment. In this fashion, the County actually saves the cost of a contingent fee collection referral.

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[19] NCAC § 21-11.5(1).
[20] NCAC § 21-11.9(9).
[21] NCAC § 21-11.8(9).
[22] CPLR §5001.
[23] *See, e.g.*, NCAC § 21-11.8(9), NCAC § 21-11.9(9).

Response to Audit Finding 7

While the Office of Consumer Affairs agrees that there is a lack of adequate and qualified resources, it cannot agree with the auditors' findings that the internal control environment is "very poor." Given that the conclusions made in Findings 1,2,3,6 and 7 are erroneous, as discussed in the responses to those Findings, it simply cannot be said that the "total estimate of $2.9 million of lost opportunities to maximize County "revenue" and increased the risk for waste, fraud and abuse" is accurate. (quotations supplied).

As regards alleged deficiencies regarding Establishment Codes (p. 23), we refer you to the response Audit Finding 6. Regarding that the specific software databases are not password protected, there is no access to such databases except for the authorized user's logged-in access on an official County terminal. There is no off-site access to these databases requiring a separate password. The same applies to the ATM database, which, being on a County server, is protected by back-up.

Moreover, we believe that there is no factual predicate to the conclusion that "Consumer Affairs consistently failed to submit its required Annual Report of the Director of Weights & Measures."

Response to Recommendation(s)

a) The Commissioner agrees with this Recommendation.

b) The Commissioner agrees for the need of a formal policy and procedure manual that documents the operating procedures and internal controls for each division in Consumer Affairs, along with individual job functions, responsibilities and deadlines and agrees to take such corrective action as may be necessary.

c) Appendices A and B provide useful information in creating the systems mentioned, Consumer Affairs is willing to work with the Office of the Comptroller to implement such systems.

Response to Audit Finding 8

Item Number 8 states that "Consumer Affairs Does Not Fingerprint Home Improvement Contractors as Required by the County's Administrative Code. Nassau County Administrative Code §21-114(b) requires that applicants for a home improvement license shall be fingerprinted.

The auditors have made a number of errors in their assessment. First, while applicants for Home Improvement Licenses are supposed to be fingerprinted, they are to be fingerprinted by the Nassau County Police Department and not the Office of Consumer Affairs.[24]

Even assuming that the obligation to fingerprint fell on the Office of Consumer Affairs, this finding does not take into account that to fingerprint applicants under the current provision

[24] NCAC §21-11.4(b).

of the Administrative Code would violate New York State law. Given principles of preemption, the provisions of the Administrative Code requiring fingerprinting are likely invalid under state law.

In order to obtain permission from New York State Division of Criminal Justice Services (DCJS) to submit fingerprints to and obtain criminal history records from DCJS. To enter into a Use and Dissemination Agreement with DCJS, a local law authorizing fingerprinting must contain:

- The specific license type/job title for which fingerprinting is required;
- A provision stating that fingerprints and any applicable fees must be submitted to DCJS in the form and manner prescribed by DCJS;
- The municipal agency and the title of the staff that will be responsible for reviewing the criminal history record information; and
- A provision stating that if a prospective applicant has been convicted of a crime, any decision regarding such prospective applicant's fitness for a license must be made upon consideration of New York State Correction Law §§701-703-b and §§751-753. Correction Law §§701-703-b provides for certificates of relief from disability and certificates of good conduct, and §§751-753 sets forth New York's public policy to encourage the licensure and employment of persons previously convicted of one or more criminal offenses and factors that should be considered in making hiring determinations.

See, Executive Law §837.

Here, the provisions of the NCAC (as added by Local Law 19-2007) do not contain the provisions required by (that conviction of a crime or of an offense specified in a certificate of relief from disabilities shall not cause automatic forfeiture of any license) Correction Law § 701; that no license held by an individual shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses (Correction Law § 752) and that any decision regarding such prospective applicant's fitness for a license must be made upon consideration.

In the absence of those necessary provisions in the local law authorizing fingerprinting, DCJS will not permit a local government access the criminal records system to the submit fingerprints to and obtain criminal history records from DCJS.

Without amendment to the NCAC, the Commissioner cannot legally have applicants "fingerprinted for the purpose of securing criminal history records from the state division of criminal justice services."

Finally, it should be noted that even if the police were to fingerprint applicants for Home Improvement licenses, it would not be of any assistance to the Office of Consumer Affairs since the standard Use and Dissemination Agreement with the NYS Department of Criminal Justice Services [25]prohibits the secondary dissemination of the information in any way.

Miscellaneous

While the Limited Review discusses in its various Findings items that are not necessarily within the purview of the Finding's stated purpose, Finding 8 mentions three "prior audit issues" that do not relate to Home Improvement Contractor Fingerprinting. Those separate issues are discussed herein.

Board of Consumer Affairs

A reading of the NCAC relating to this Board demonstrates that it is anomalous since the Board was established to assist the County is creating the Office of Consumer Affairs. Now that the Office of Consumer Affairs has been established and is operational, there is no need for such a Board. This office can only propose amendments to laws, not present such proposals to the legislature.

Home Improvement Industry Board

There is a Home Improvement Industry Board with members appointed by the Commissioner. This Board meets every other month as scheduled by the Board itself. General issues regarding the Home Improvement Industry are discussed at such meetings.

Invasive Species Committee

As indicated in the Findings, it is the task of the County Executive to appoint an Invasive Species Committee. There is no such Committee. In the absence of a Committee to suggest enforcement mechanisms, there is simply no way for the Office of Consumer Affairs, absent the appointment of a botanist, to enforce the provisions of the NCAC.

Response to Recommendation(s)

a) It is not Consumer Affairs procedures that are not in order, but rather the authorizing legislation itself. Stated differently, Consumer Affairs present procedures are in "accordance with law." It is the Auditors' recommendations that would be contrary to law. Not only does the present law not authorize Consumer Affairs to fingerprint in order to obtain criminal histories, even if that were the case, the present law does not comply with the requirements of the DCJS to permit access to its system.

b) NCAC §21-10.1, requiring a Board on Consumer Affairs should be removed from the Code. The Board is no longer necessary. Consumer Affairs will forward its recommendation to the County Attorney for suggested legislative action.

c) The Home Improvement Industry Board holds meetings as practicable.

[25] NYS Department of Criminal Justice Services Use and Dissemination Agreement, p.2.

d) As indicated in the Findings, it is the task of the County Executive to appoint an Invasive Species Committee. There is no such Committee. In the absence of a Committee to suggest enforcement mechanisms, there is simply no way for the Office of Consumer Affairs, absent the appointment of a botanist, to enforce the provisions of the NCAC.

Audit provided a draft report to Consumer Affairs on April 25, 2017. After granting multiple extensions, an exit conference was held on June 13 and 14, 2017. Consumer Affairs requested various report changes during these meetings. Auditors advised Consumer Affairs that changes could only be made provided adequate documentation substantiating such changes were received by June 20. Consumer Affairs provided Auditors with various additional documents. Upon review, Auditors notified Consumer Affairs of the resulting changes to the draft on June 15, 19 and 27. On June 29, Audit received a response from Consumer Affairs that still addressed items which Audit had already removed from the original draft report. On July 3, 2017, Audit provided a complete revised draft report allowing Consumer Affairs until July 7 to respond. Later in the afternoon of July 3, Consumer Affairs forwarded their final response which was not adjusted to reflect all of Audits changes.

Consumer Affairs' Response Introduction states the report Background "is not accurate", specifically, "that the Office of Consumer Affairs pursues criminal prosecution through the District Attorney's Office." However, this statement is made in both Nassau County's 2017[26] and 2016[27] Adopted Budget Summaries under the Office of Consumer Affairs' (Consumer Protection responsibility center). As found on the County website for the Office of Management and Budget, it reads;

> *"The Commissioner's Office manages and monitors the Office's operations, gives guidance to the Office staff, supports investigative activities, carries out civil penalties, and* ***pursues criminal prosecution through the District Attorney's Office."***

If Consumer Affairs believes this is not accurate, they should contact the Office of Management and Budget to change their section of the Nassau County Adopted Budget.

Audit Finding:

(1) Lack of Item Pricing Accuracy Inspections Reduced Incentive For Enrollment in the Pricing Waiver Program Which Could Have Generated Approximately $1.5 Million in Fees and Improved Consumer Protection

Audit Recommendation(s):

a) Weights & Measures' Inspectors immediately begin performing item price accuracy testing at all locations which must follow the item pricing requirements set forth in the Administrative Code; and
b) Consumer Affairs initiate a strategy to ensure preventative measure testing, such as package weight checking and expiration date inspections, routinely occurs throughout the County to ensure consumers are adequately protected.

[26] https://www.nassaucountyny.gov/DocumentCenter/View/18443 (See page 147)
[27] https://www.nassaucountyny.gov/DocumentCenter/View/15198 (See page 133)

<u>Consumer Affairs Response:</u>

a) The auditors' first recommendation, suggests that Weights & Measures Inspectors immediately begin performing item price accuracy testing. For a merchant to qualify for an annual item pricing waiver, two separate item pricing accuracy inspections must be conducted (and passed by the merchant) before a waiver is granted. NCAC §21-18.3.1(c). A consumer complaint would generate yet another inspection.

As regards stores that do not or have not applied for waivers, inspections of item price accuracy are performed at least annually during the mandatory yearly inspection of the store's weighing devices pursuant to Article 16 of the Agriculture and Markets Law. Again, a consumer complaint would be cause for another inspection. If a store has no items requiring annual inspections, Item Pricing Inspections are conducted when practicable. However, to conduct such inspections as an incentive to apply for Item Pricing Waivers and in an attempt to generate more "fee revenue" is not, in the opinion of the Commissioner, a proper governmental function.

b) The second recommendation regarding preventative measure testing, package testing and expiration date inspections does not relate to the allegedly lost revenue from not soliciting item pricing waivers. While the Office of Consumer Affairs disagrees with this finding (a strategy for such testing exists) the lack of any factual basis for this finding and the fact that it is beyond the scope of Audit Finding 1, there does not appear to be a reason for a more detailed response.

<u>Auditor's Follow Up:</u>

a) *We reiterate the need to perform <u>item price accuracy testing</u> inspections outside of those performed for locations receiving waivers or mandatory scale inspections. <u>During the Audit, Consumer Affairs staff acknowledged these types of inspections rarely occurred as there were staffing limitations and they are not mandatory</u>. Consumer Affairs' response states that some inspections of item price accuracy are performed annually if the mandatory weighing device inspection is being performed. However, Consumer Affairs provided no proof this was performed (documentation, such as a Pricing Accuracy Inspection Sheet).*

Item pricing accuracy inspections are not meant to generate more fee revenues but are meant to monitor vendor compliance with the requirements of the Administrative Code. A lack of item pricing accuracy inspections provides little incentive for establishments to adhere to the item pricing laws and/or apply for Item Pricing Waivers which are both designed to protect consumers.

b) *We do not agree that a strategy exists for package weight testing and expiration date inspections. <u>During the review, auditors were told these tests had not been performed in years as there are insufficient departmental resources.</u>*

We provided Consumer Affairs with a list of the 72 locations, in Exhibit III, that could have qualified for Item Pricing Waivers. During the exit conference, we asked for evidence that these locations received item price accuracy testing inspections. Consumer Affairs was unable to provide proof to the auditors to verify that these inspections took place.

Audit Finding:

(2) Lack of Verification of Retail Square Footage Reported on Item Pricing Waiver Applications Led to $10,000 in Lost Revenue at One Location

Audit Recommendation(s):

We recommend that:

a) the Weights & Measures Inspectors:
    1. verify the accuracy of all Item Pricing Waiver applications to ensure the fee submitted for payment aligns with the appropriate application fee;
    2. be required to measure an establishment's retail square footage while performing all initial inspections for Item Pricing Waiver applications; and
    3. be required to perform re-measurements for re-applicants that report a change in retail square footage resulting in a fee reduction.

Consumer Affairs Response:

a) Each application for Item Pricing Waivers is checked by inspectors to insure its accuracy. Again, while this process is completed and verified when the application for waivers is being considered, once the waivers are granted and the fee paid, particularly where there is sub-let space, there is the possibility that a retailer could increase its retail footage in the period between inspections.

Auditor's Follow Up:

a) We reiterate that Weights & Measures Inspectors should verify the accuracy of all item pricing waiver applications.

Consumer Affairs' response did not specifically address Audit Recommendations a) 2 and 3. We reiterate that the Inspector should be required to measure an establishment's retail square footage while performing all initial inspections and perform re-measurements for re-applicants that report a change in retail square footage, especially when resulting in a fee reduction.

We stand by our finding. The initial draft of this report contained a higher dollar value of lost revenue. As a result of exit conference discussions, Consumer Affairs subsequently provided *additional documentation that upon review enabled audit to justify reducing, but not eliminating, lost revenue.*

The additional documentation provided further substantiates an issue with a specific vendor's 2014 Item Pricing Waiver application. In 2014, the vendor reported 89,000 square feet of retail space on their waiver application. On their second item pricing waiver inspection, dated December 6, 2014, the Weights & Measures' Inspector noted the following: "The square footage of this store was incorrectly figured for the 2014 Item Pricing Waiver Inspection. The combined retail sales area for the three floors is well in excess of 90,000 square feet, and will be charged accordingly in 2015. In addition, the store will be required to add a third customer test scanner to accommodate the larger retail sales area." Based on the Inspector's note, the application fee for 2014 should have been $15,000 not $5,000. Consumer Affairs only collected $5,000 for the vendor's 2014 Item Pricing Waiver while clearly noting that the increased fee would be charged the following year. The vendor received the benefit of having a waiver for the entire year even though Consumer Affairs never pursued the additional $10,000 charge. Although this information is not reflected in Consumer Affairs response, the matter was discussed with the Commissioner on June 15, 2017, who concurred with our final conclusion and further stated that the 2014 waiver should not have been granted.

Audit Finding:

(3) County Consumer Protection Laws Implemented in 2012 are Not Being Fully Enforced; 80% of Businesses Tested Were Not Licensed, Resulting in $36,000 of Lost Revenue
Audit Recommendation(s):

We recommend that Consumer Affairs:

a) follow up with these 76 locations to ensure they are properly licensed and the associated fees are paid; and
b) proactively monitor the internet and other marketing avenues to identify companies operating in Nassau County without proper licenses.

Consumer Affairs Response:

a) Consumer Affairs will follow-up with the twenty-six businesses (not the seventy- six mentioned in the Recommendation) to ascertain whether there is unlicensed operation of a business requiring a license under the given licensing schemes. Additionally, it should be noted that if there were a consumer complaint of unlicensed operation, an investigation would be undertaken.

b) Consumer Affairs agrees that proactive monitoring of the internet would be desirable and useful manner in investigating compliance with licensing requirements. It is a question of the allocation of scarce resources falling to the Commissioner's discretion as to how such resources should be allocated.

Auditor's Follow Up:

a) We reiterate our original recommendation for Consumer Affairs to follow up with all 76 locations to ensure they are properly licensed and the associated fees are paid.

b) We are satisfied that Consumer Affairs is in agreement that proactive monitoring of the internet would be a desirable and useful manner in investigating compliance with licensing requirements if they had appropriate resources. We encourage Consumer Affairs to seek these resources.

We stand by our finding that 80% of the businesses tested were unlicensed. In its response, Consumer Affairs states that "it does not appear that" self-storage facilities were intended to be part of the Nassau County Administrative Code requiring storage warehouses to have a license, however there is no evidence that legislative intent was to exclude these facilities. Further, during the exit conference, the Commissioner conceded that Consumer Affairs initially believed the law applied to Self-Storage facilities and noted that its attempts to enforce the law were hampered by Self-Storage Lobbyists. Consumer Affairs states that the Nassau County Administrative Code "needs to be amended if the provisions of Title D-17 are to apply to self-storage facilities". A formal opinion from the County Attorney should be obtained to clarify the Legislature's intent and to determine if self-storage facilities are included in this section of the Administrative Code.

Consumer Affairs states they performed the daunting task of identifying companies which would be subject to these eight new licensing regulations and hand prepared licensing application packages for 2,600 businesses, since there was no database from which mailings could be prepared. Although they do not state how this was accomplished, they criticize the auditors for identifying the same types of businesses through the use of internet searches.

Additionally, Consumer Affairs states they only received applications for 628 of the 2,600 applications mailed out, representing a return of only 24%. This raises the question as to the status of the remaining 1,972 businesses (76%) which Consumer Affairs identified as requiring a license and did not return their application.

We recommend that Consumer Affairs follow up with the applications referred to in their response to Finding 3, which were sent out and not returned, to determine if these vendors are still in business and are licensed.

Audit Finding:

(4) Consumer Affairs Failed to Inspect 15% of the Establishments Visited by Auditors Violating NYS Regulations and Providing Inadequate Consumer Protection

Audit Recommendation(s):

We recommend that Consumer Affairs:

a) review its annual inspection plan to ensure that all potential establishments with measuring devices are visited and inspected;

b) revise its procedures to require that Inspectors document establishments not on their list to determine whether the establishment requires an inspection and/or when it was last performed;
c) follow up with establishments that had exceptions to inspect their scales, issue violations and if applicable, ensure they are properly licensed; and
d) proactively contact businesses that require licenses and ensure those operating within Nassau County are properly licensed.

<u>Consumer Affairs Response</u>*:*

a) Consumer Affairs agrees that an inspection plan is necessary and desirable to accomplish compliance with the Administrative Code. Of course, there is no way to determine each and every instance of violations, but it is a goal.
b) Procedures are being revised that would require Inspectors to document establishments that have not been inspected for compliance to determine whether they require inspection, but again, this is a question of the allocation of scarce resources.
c) Multiple inspections of establishments over the course of a year would, of course, be a desirable goal, in terms of protecting the consumer, even if scale inspections are only required to be conducted annually. However, given the question of the allocation of resources, such spot inspections would necessarily interfere with the inspections required under the Weights & Measures Law. Nevertheless, Consumer Affairs will endeavor to develop a plan that would permit such spot inspections while otherwise complying with its state-mandated inspections.
d) Consumer Affairs Inspectors as well as Consumer Affairs Investigators already perform proactive enforcement operations to ensure vendors comply with the licensing laws.

<u>Auditor's Follow Up:</u>

a) We are satisfied with Consumer Affairs response that an inspection plan is necessary. We reiterate that the plan should be reviewed to ensure that all establishments with measuring and weighing devices requiring inspection are visited and inspected.

b) We concur with Consumer Affair's plan to revise its procedures to require Inspectors to document establishments that have not been inspected to determine whether they require inspection. Consumer Affairs states that scarcity of resources is an issue which we believe reinforces the need for Consumer Affairs inspectors to be pro-active while in the field by identifying and documenting establishments that have not been inspected for follow up.

c) We concur with Consumer Affairs response to develop a plan that would permit spot check inspections while also complying with their state mandated inspections.

d) Consumer Affairs contends that they already are performing pro-active enforcement, however, during the auditors' field work, 76 unlicensed businesses were identified.

We stand by our recommendations. Consumer Affairs' response to the Finding states that the auditors unfairly and improperly placed the burden on the Inspectors to inspect each and every weighing or measuring device. We reiterate that while inspecting locations indicated on their list, inspectors should identify those locations they observe that are not listed for any type of inspection.

Audit Finding:

(5) Improper Use of Pre-Numbered Documents Led to 9,423 Unaccounted For Weights & Measures Invoices Totaling $940,000 Increasing Risk for Fraud and Abuse

We recommend that the Office of Consumer Affairs:

a) establish internal controls to correlate inspection reports, invoice numbers and/or establishment codes to enable proper management oversight. The controls should include developing exception based management reports, assigning Invoice Books and pre-bound DIS books in sequential order, creating standardized logs to track invoices and DIS's, and periodically reconciling the inventory of these documents; and
b) consolidate the multiple databases into one comprehensive Weights & Measures Database and ensure all invoice numbers and DIS numbers are recorded.

More detailed recommendations can be found in Appendix A.

Consumer Affairs Response:

a) Consumer Affairs is undertaking the establishment of internal controls to correlate inspection reports and invoice numbers so as to establish greater management oversight. A system of tracking invoice books and their assignment is also being undertaken. However, in order to correlate such reports and invoices with a given establishment would require new software. As discussed, the present system for tracking businesses and business premises is inadequate and cannot be modernized to accommodate the changes necessary for tracking purposes.
b) Consumer Affairs welcomes the consolidation of its databases into a unified system. It would be willing to work with the Office of the Comptroller and Information Technology to develop a system that meets not only its needs, but also the managerial reporting requirements suggested by the Audit.

Auditor's Follow Up:

a) We concur with Consumer Affairs' undertaking to establish internal controls to correlate inspection reports, invoice numbers and establishment codes to achieve greater management oversight. We also concur with their plans to implement a system of tracking invoice books and their assignment.

b) *We reiterate that Consumer Affairs should work with the County I.T. department to develop a system where the multiple databases that currently exist are merged into one Weights and Measures database and all invoice numbers and device inspection reports are recorded. We have provided multiple suggestions for achieving these goals as noted in Appendix A and strongly encourage their incorporation into the development of a new system.*

During the exit conference and as noted in their response to the finding, Consumer Affairs stated the unaccounted for invoices had all been identified and were from 2012. At the exit conference, it was agreed that the auditors would be provided with a detailed list of the 9,423 invoices. After several delays, the auditors were given a data dump of 19,788 invoices to review, but were never provided with the individual list of 9,423 invoices or the dollar value of those invoices as previously discussed. Auditors performed detailed analysis to identify and isolate which invoices in the 19,788 pertained to the 9,423. This analysis revealed the following:

- *8,968 of 9,423 invoices were issued between 2009 and 2012 and some were issued in 2016. The assessed value of these invoices was $837,870.*
- *150 of 9,423 invoices worth $8,480 remain unpaid.*
- *15 of 9,423 invoices were issued with no fee.*
- *133 of 9,423 invoices were identified as voided.*
- *307 of 9,423 invoices are still unaccounted for (as opposed to the 136 Consumer Affairs claims might have been improperly voided). The estimated value of these invoices is $30,629, based on the same methodology used in Footnote 19 of Finding 5.*

<u>The results of this additional analysis further substantiates the need for Consumer Affairs to establish better controls and consolidate databases as outlined in our recommendations.</u>

<u>Audit Finding:</u>

<u>(6) Violation Logs are Not Accurate, Approximately 31% or $393,147 of Total Violations Assessed Appear Unresolved Due to Inaccuracies and Lack of Oversight</u>

<u>Audit Recommendation(s):</u>

We recommend that Consumer Affairs takes the necessary steps to ensure that the violation logs are:

a) accurately updated with sufficient information to reflect the current status of unpaid violations and the reasons why violations were dismissed, withdrawn or suspended;
b) reconciled to the receipts posted to NIFS; and
c) used to create an aging report of outstanding violations. This level of reporting is necessary for proper monitoring and collection of violations assessed.

Consumer Affairs Response*:*

a) As discussed at the exit conference, while the auditors' findings are inaccurate since accurate records of all violations and resolutions are kept by Consumer Affairs (just not on an integrated, comprehensive system, Consumer Affairs would again welcome more detailed recommendations and assistance from both the Comptroller and Information Technology to develop a system to allow its current CARAS system to property track information regarding violations, amounts due, deposits and the ability for management supervision. The "violation logs" are redundant information and require repetitive data entry (after the data is entered into CARAS). Again, scarce resources prohibit utilizing a system simply to make the information more retrievable.

b) As regards a method, other than manual entries as presently used, to reconcile receipts posted to NIFS, Consumer Affairs welcomes more detailed recommendations and assistance in establishing such a system.

c) It is only in the rarest of cases that those found guilty of violations are not present licensees of the County. As such, most of those found responsible will seek to have their license renewed within two years (at a maximum) of the violation. Since it is the policy of this office not to renew licenses when there is an outstanding violation, (see, e.g., NCAC § 21-11.8(9), NCAC § 21-11.9(9)), the contractor is compelled to pay any fine if the license is to be renewed. Moreover, interest at the legal rate is charged from the date of the assessment to the date of payment. In this fashion, the County actually saves the cost of a contingent fee collection referral.

Auditor's Follow Up:

a) We disagree with Consumer Affairs that an accurate record of all violations and resolutions is maintained. Consumer Affairs provided the Auditors with Excel spreadsheets as the official record of violations. We disagree with Consumer Affairs' explanation which now states the case folders serve as the official violation file, since Consumer Affairs is still unable to provide a listing of all open violations with their status at any given point in time. An integrated comprehensive tracking system does not exist and a manual system of pulling individual case folders to determine the actual dollar amount of an outstanding violation and its status, is not an efficient or effective way to manage violations.

At the exit conference, we stated we would be willing to attend a meeting with Consumer Affairs and I.T. and provide more detailed recommendations for developing an integrated comprehensive system to track violations.

b) We reiterate the need for a mechanism to verify all violation monies received are appropriately posted to NIFS.

c) We disagree with Consumer Affairs methodology that the collection of outstanding violations can be handled by waiting until the contractor is ready to renew their license and then request the violation be paid. This does not take into consideration instances *where vendors do not reapply for their licenses. Further, this allows violators to continue operating for upwards of two years before accepting the consequence of their actions. Consumer Affairs should be more pro-active in attempting to collect outstanding violations.*

Audit Finding:

(7) Inadequate Financial Controls and Oversight Resulted in Potential Losses of $2.9 Million and Decreased Consumer Protection

Audit Recommendation(s):

We recommend that the Office of Consumer Affairs:

a) work with the Office of Management & Budget to obtain the appropriate resources necessary to ensure that the required day to day accounting, financial, operational and management functions are assigned to qualified individuals so that a proper segregation of duties exists. This will help ensure that Consumer Affairs has the necessary resources to properly enforce laws, provide adequate consumer protection, reduce the risk of fraud and maximize revenue;
b) develop and disseminate to all employees a formal policy and procedure manual that documents the operating procedures and internal controls for each division in Consumer Affairs, along with individual job functions, responsibilities and deadlines. The manual should also cover high level workflows, internal controls and managerial reviews, with copies of key documents and report titles; and
c) utilize Appendix A and B of this report to assist in implementing recommendations a) and b) above. These appendices provide more specific recommendations regarding segregation of duties and internal controls.

Consumer Affairs Response*:*

a) The Commissioner agrees with this Recommendation.

b) The Commissioner agrees for the need of a formal policy and procedure manual that documents the operating procedures and internal controls for each division in Consumer Affairs, along with individual job functions, responsibilities and deadlines and agrees to take such corrective action as may be necessary.

c) Appendices A and B provide useful information in creating the systems mentioned, Consumer Affairs is willing to work with the Office of the Comptroller to implement such systems.

Auditor's Follow up:

a) *We concur with Consumer Affairs plan to take steps to obtain the necessary and appropriate resources to ensure the day to day accounting, financial, operational and management functions are assigned to qualified individuals so that a proper segregation of duties exists.*
b) *We concur with Consumer Affairs response to take corrective action to address the need for a formal policy and procedure manual that documents the operating procedures and internal controls in place for each division within Consumer Affairs.*
c) *We concur with Consumer Affairs' response and encourage them to contact the auditors if they need assistance regarding the specific recommendations in Appendices A and B which address segregation of duties, cash receipt controls, accounts receivable tracking and information technology improvements.*

We believe that the very nature and number of controls that were found to be lacking during our review adequately supports our conclusion that Consumer Affairs is operating in a "very poor" internal control environment.

In Consumer's Affairs response to the finding that their ATM database was not password protected or backed up, Consumer Affairs stated that the ATM database is protected because it is on the County server. However, at the time of the audit, the ATM Database was not on the County server and not protected by a back-up system. It was only after the auditors brought this to management's attention that the ATM database was loaded onto the County server. Furthermore, the use of passwords on all databases and electronic systems is a best practice, regardless of where housed to safeguard against unauthorized access and manipulation of data, not only from outside sources but within Consumer Affairs and the County. We reiterate that a hierarchy of user privileges should be established to ensure only authorized users can access the database as well as prevent authorized users from having the ability to edit or manipulate each other's work.

We stand by our finding that Consumer Affairs failed to submit the "Annual Report of the Director of Weights and Measures" on time to New York State for three consecutive years. Although Consumer Affairs' response states there is no predicate for the finding, this is not true as the annual report is due to New York State on February 1 of the following year and for 2013-2015 it was submitted on 5/6/14, 4/9/15, and 2/2/16 respectively.

Audit Finding:

(8) Consumer Affairs Does Not Fingerprint Home Improvement Contractors as Required by the County's Administrative Code

Audit Recommendation(s):

We recommend that the Office of Consumer Affairs:

a) pursue implementing a Home Improvement contractor fingerprinting process and institute such procedures in accordance with the law;

b) pursue revisions to the Administrative Code to remove §21-10.1 requiring a Board on Consumer Affairs;
c) ensure the Home Improvement Industry Board holds bi-monthly meetings as required in the Administrative Code and that minutes be prepared and retained; and
d) discuss the establishment of the Invasive Species Committee with the Office of the County Executive.

<u>Consumer Affairs Response:</u>

a) It is not Consumer Affairs procedures that are not in order, but rather the authorizing legislation itself. Stated differently, Consumer Affairs present procedures are in "accordance with law." It is the Auditors' recommendations that would be contrary to law. Not only does the present law not authorize Consumer Affairs to fingerprint in order to obtain criminal histories, even if that were the case, the present law does not comply with the requirements of the DCJS to permit access to its system.

b) NCAC §21-10.1, requiring a Board on Consumer Affairs should be removed from the Code. The Board is no longer necessary. Consumer Affairs will forward its recommendation to the County Attorney for suggested legislative action.

c) The Home Improvement Industry Board holds meetings as practicable.

d) As indicated in the Findings, it is the task of the County Executive to appoint an Invasive Species Committee. There is no such Committee. In the absence of a Committee to suggest enforcement mechanisms, there is simply no way for the Office of Consumer Affairs, absent the appointment of a botanist, to enforce the provisions of the NCAC.

<u>Auditor's Follow Up:</u>

a) We concur with Consumer Affairs that as the law is presently written, the fingerprinting of home improvement contractors would need to be conducted by the Police Department. The Administrative Code should be amended to authorize Consumer Affairs to perform this function in accordance with the requirements of the DCJS as written for Locksmiths, Scrap Metal Dealers and other licenses.

b) We concur with Consumer Affairs' decision to submit a recommendation to the County Attorney to revise the Administrative Code to remove the requirement for a Board of Consumer Affairs.

c) We requested evidence of bi-monthly meetings for the entire scope period covered by the audit and were only given one set of meeting minutes. We reiterate our recommendation that bi-monthly meetings be held and minutes be prepared and retained as required by the Administrative Code.

d) We reiterate that Consumer Affairs should work with the County Attorney to address the *need for establishing the Invasive Species Committee. If the Invasive Species Committee is deemed unnecessary, steps should be taken to amend the Administrative Code to remove this requirement.*