

Financial Fraud and Identity Theft Investigation and Prosecution Program



Progress Report on Task Force and Recommendations Pursuant to
RCW 43.330.300(1)(c)

December 2019

REPORT TO THE LEGISLATURE

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Executive Summary

Overview

The Legislature created the Financial Fraud and Identity Theft Crime Investigation and Prosecution Program (FFIT) in 2008 at the Department of Commerce (Commerce). The program strengthens cooperation between law enforcement and financial industry investigators to increase the capacity to respond to financial fraud and identity theft crimes. This report meets the statutory requirements in RCW 43.330.300(1)(c):

"By December 31 of each year submit a report to the appropriate committees of the legislature and the governor regarding the progress of the program and task forces. The report must include recommendations on changes to the program, including expansion."

Financial fraud and identity theft crimes are defined in RCW 43.330.300(4) as check fraud, chronic unlawful issuance of bank checks, embezzlement, credit and debit card fraud, identity theft, forgery, counterfeit instruments (such as checks or documents), organized counterfeit check rings, and organized identity theft rings.

Identity theft and related fraud increased by 0.7% between 2015 and 2016, and by 0.3% between 2016 and 2017. Statistical analysis is not yet available for 2018 or 2019, but all national studies report that the rate of identity theft and fraud is increasing.

In 2008, Commerce established two regional FFIT task forces consisting of the three largest counties in the state. Those task forces are the Greater Puget Sound (GPS) Task Force that included King and Pierce counties, and the Spokane County Task Force. At the end of the State Fiscal Year (SFY) 2015, Snohomish County joined the Greater Puget Sound Task Force and began working as part of that group in January 2016. Each task force includes representatives from the following stakeholder groups:

- Local law enforcement
- County prosecutors
- The state Office of the Attorney General
- Financial institutions
- Other state, local, and federal law enforcement and investigative agencies

Both task forces direct grant funds to law enforcement investigations and forensic analysis, as well as to prosecutorial staff dedicated to financial fraud and identity theft cases generated by the investigations.

Fees on Uniform Commercial Code (UCC) filings fund the FFIT program. The Department of Licensing collects and deposits the UCC fees into a dedicated FFIT account. More detail on program funding is in the Task Force Funding section.

Key Findings

State Fiscal Year 2019 Key Findings

- There were 913 investigations conducted between July 1, 2018, and June 30, 2019, 87 less than in the previous state fiscal year period.
- The task forces charged 440 cases involving 1,393 counts, 22% fewer than the previous year. This reduction reflects an increase in case complexity and the number of offenders per case (see the Task Force Performance section).
- There were 688 convictions, a 13% increase, or 80 more convictions than achieved in the previous year.
- Task forces are identifying and prosecuting significantly more sophisticated multi-person criminal organizations spanning multiple jurisdictions.

Cumulative Findings since Program Inception

The task forces report performance quarterly to Commerce. In the eight state fiscal years of active investigatory work (SFY 2011 through 2019) the task forces have:

- Conducted 6,940 investigations
- Charged 5,041 cases
- Charged 15,460 counts
- Achieved 4,733 convictions

Summary of Recommendations

Commerce worked with both task forces to develop the recommendations in this report, which include:

- Extending the authorizing legislation for five years
- Increasing filing fees from \$10 to \$15
- Making several changes to laws governing identity theft
- Making possession of a skimming device a felony offense
- Penalty enhancements for FFIT crimes where a victim is a vulnerable person.

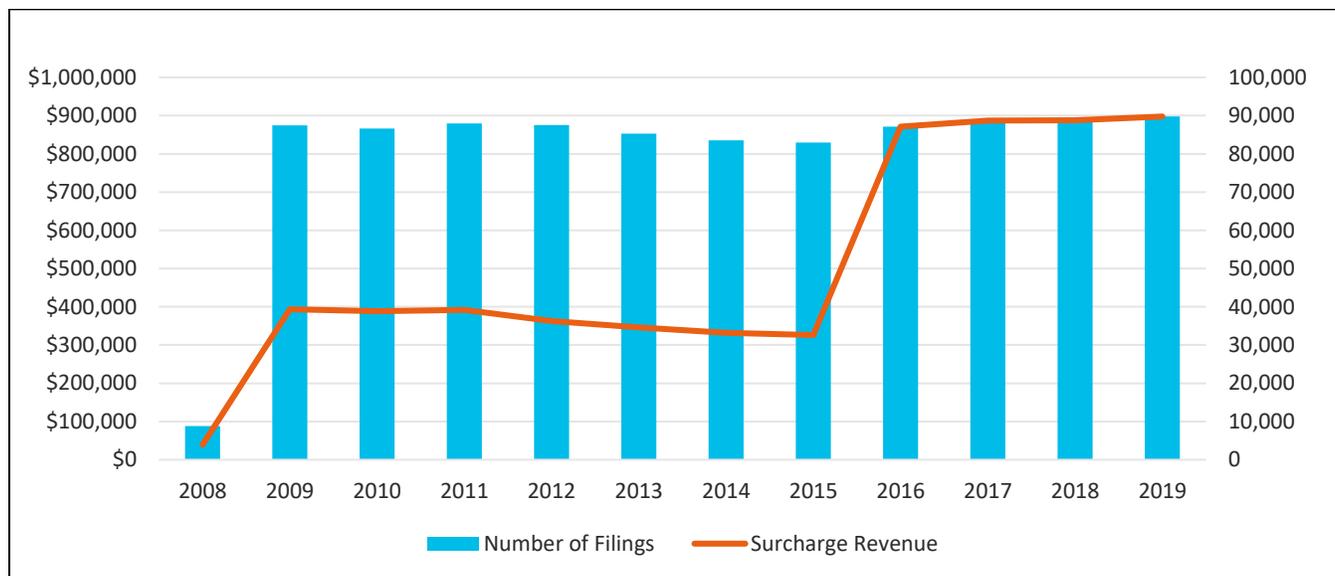
See the Recommendations section for more details.

Task Force Funding

Program Surcharge Transfers

The Department of Licensing (DOL) collects program funding from surcharges on personal and corporate Uniform Commercial Code-1 (UCC) filings. DOL transfers collected funds monthly to Commerce for the exclusive support of the activities of the Financial Fraud and Identity Theft (FFIT) program.

Figure 1: Uniform Commercial Code-1 Collections, SFY 2008 - 2019

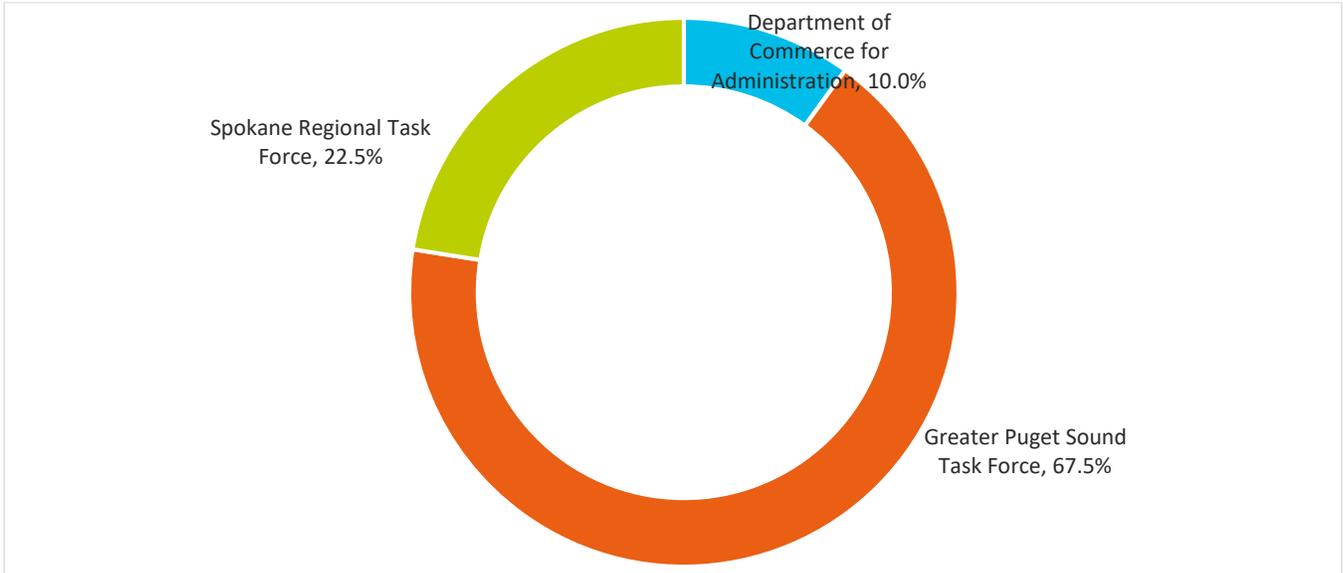


Source: Washington State Department of Licensing Monthly UCC-1 Surcharge Reports

Program Revenue Allocation

The Department of Commerce retains 10% of program revenue for administration. The remaining 90% of funding is split evenly among the counties, as agreed upon by the program partners and Commerce. The Greater Puget Sound Task Force includes three counties, and the Spokane Regional Task Force includes only Spokane County, resulting in a 3-to-1 ratio between the two task forces. After the 10% for administration, 67.5% of program funding goes to the Greater Puget Sound Task Force, and 22.5% goes to the Spokane Regional Task Force. Figure 1 shows the allocation of the total funding.

Figure 2: Program Revenue Allocation



Background on Program Revenue

UCC-1 collections began in August 2008. The FFIT program originally had three UCC surcharge fees:

- \$8 for paper filings
- \$3 for individual web-based filings
- \$3 for batch web-based filings

The program saved collected fees for a year to fund the task forces. During the next two years, the task forces organized, hired and trained staff before becoming operational. The three-year ramp-up period explains why investigation and prosecution data began in 2011.

The Legislature raised all fees to \$10 beginning July 1, 2015.

Task Force Goals and Performance

Overview

The FFIT program is required to report on task force activity performance and new methods of cooperation. The task forces submit quarterly performance reports to Commerce and then follow up with two semi-annual narrative reports of ongoing operational successes and accomplishments. These reports describe the planning and staffing of investigations, apprehension and prosecution of financial fraud and identity theft crimes, and new and best practices.

The FFIT program continues to make improvements in identifying, arresting, and prosecuting individuals and groups engaged in the criminal enterprise of financial fraud and identity theft. Each year, both task forces have incrementally increased the scope of their investigations, going after larger and more complex criminal enterprises.

In the criminal justice system, law enforcement investigations are half of the process of bringing criminal enterprises to justice. Prosecution and sentencing are the culmination of that process and constitute a measurable outcome for the program.

Statewide Performance Goals

Statewide, the performance goal of the task forces is 92 convictions per quarter. Since establishing this performance measure in 2011, the task forces achieved an average of 131 convictions each quarter over 36 quarters for a total of 4,733 individuals convicted. The data shows the task forces are far exceeding their original goal. Commerce and the task forces will review the performance measure goals to determine if increasing the performance goals for convictions per quarter for state fiscal year 2020 is warranted.

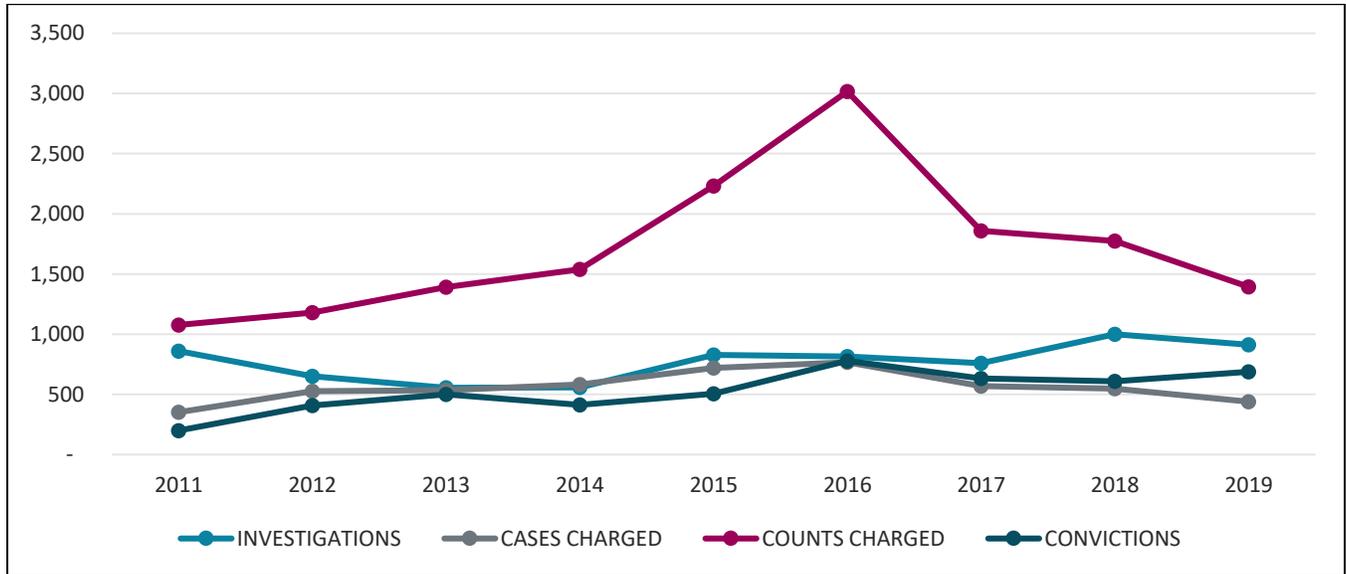
Note on Change in Data Collection for Counts Charged

Beginning in SFY 2017, prosecutors began reporting all counts-charged data. Previously, law enforcement reported some of the counts-charged data. Since prosecutors do not always prosecute every charge identified by law enforcement, this change results in more accurate data for state fiscal year 2017. It also accounts for the reduced number of counts charged for both task forces in 2017 (Figure 3 and Figure 4).

Task Force Performance

Combined task force performance from state fiscal year 2011 through 2019 is presented in Figure 3. Data for the two task forces are presented separately in Figure 4 and Figure 5.

Figure 3: Statewide FFIT Performance, SFY 2011 - 2019

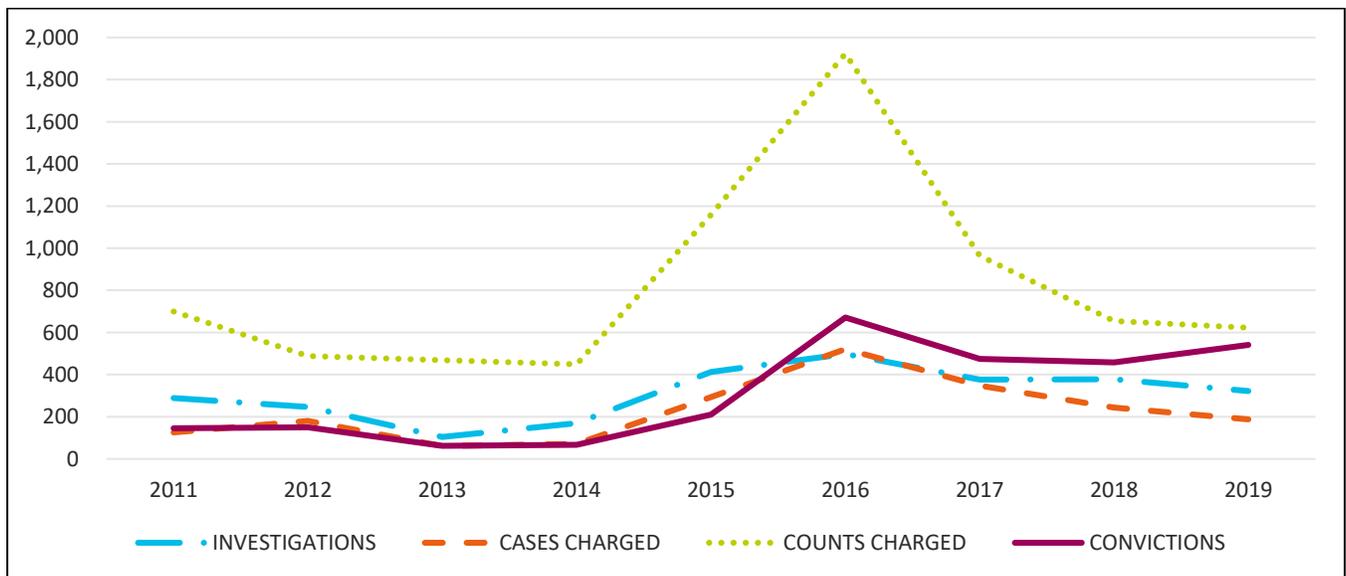


Source: FFIT Task Force Quarterly Reports

Greater Puget Sound FFIT Task Force Performance

During SFY 2019, the Greater Puget Sound Task Force conducted 322 investigations, prosecuted 188 cases involving 623 counts, and received 541 convictions on cases prosecuted.

Figure 4: Greater Puget Sound Task Force Performance, SFY 2011 - 2019

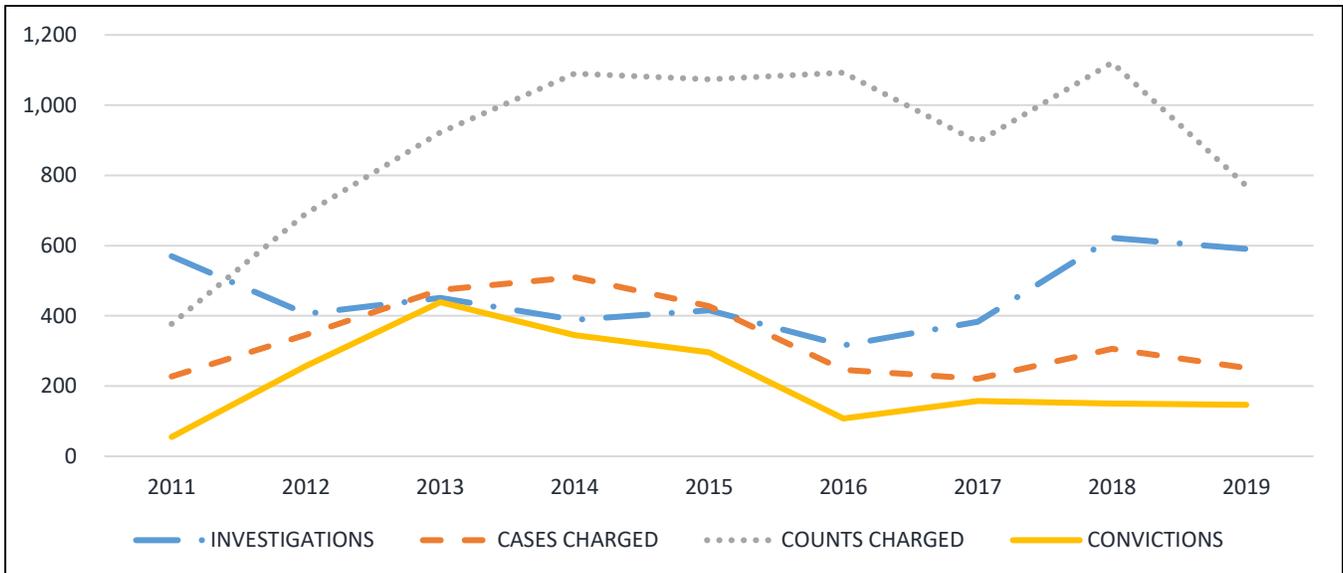


Source: Greater Puget Sound FFIT Task Force Quarterly Reports

Spokane Regional FFIT Task Force Performance

In SFY 2019, the Spokane County Task Force conducted 591 investigations, prosecuted 252 cases involving 770 counts, and received 147 convictions.

Figure 5: Spokane Area FFIT Task Force Performance by SFY 2011 - 2019



Source: Spokane Area FFIT Task Force Quarterly Reports

Recommendations

Commerce worked with both task forces to develop the recommendations in this report. The recommendations are organized into two categories:

1. Recommendations directly related to improving the FFIT program
2. Changes in criminal statutes to strengthen the law enforcement and criminal justice response to financial fraud and identity theft crimes

Program-Specific Recommendations

The following recommendations relate directly to the functioning of the FFIT program.

Reauthorize the FFIT Program

The FFIT program will expire on July 1, 2020 (RCW 43.330.300). The task forces recommend extending the authorizing and funding legislation for five years.

Despite the accomplishments of the task forces in investigating and prosecuting financial fraud and identity theft crimes, Washington ranks among the top states for the number of victims of identity

theft.¹ The number of investigations shown in Figure 2 is evidence of the prevalence of financial fraud and identity theft in Washington, especially considering the program covers only the four counties designated by the Legislature out of the 39 counties in the state.

Increasing the UCC-1 Filing Fees

The task forces recommend increasing the fees that fund the program from \$10 per UCC filing to 15\$ to address increased costs of operations.

Recommended Changes to Criminal Statutes

The task forces offer the following recommendations to strengthen the law enforcement and criminal justice response to financial fraud and identity theft.

Elevate Non-Financially Motivated Identity Theft to a First-Degree Charge

The task forces recommend elevating identity theft that is motivated by the intent to avoid apprehension by law enforcement to a first-degree charge. Currently, it is charged as Identity Theft in the Second Degree under RCW 9.35.020. The increased penalty for this charge may deter individuals from using stolen identities to avoid arrest for other, currently more serious crimes.

A suspect will sometimes give an identity theft victim's name to police in an attempt to avoid arrest. Unless law enforcement books the defendant into jail where jail booking staff use fingerprints to identify them, the victim – rather than the defendant – may receive a criminal citation. This could result in an arrest warrant, which would create a criminal history for the victim of identity theft. However, because the “loss” is under \$1,500, only a charge of Identity Theft in the Second Degree under RCW 9.35.020 is currently allowable.

Take into Account Prior Identity Theft Convictions in Determining Subsequent Charges

The task forces recommend the Legislature make all cases of identity theft chargeable as Identity Theft in the First Degree if the defendant has already been convicted twice or more for identity theft in the past seven years.

Create Penalty Enhancements when a Victim is a Vulnerable Person

The task forces recommend the Legislature create penalty enhancements that may be added for financial fraud and identity theft crimes when a victim is a vulnerable person (including minors, elderly and dependents).

¹ USA Today, States with the most identity theft complaints, (2015), <https://www.usatoday.com/story/money/personalfinance/2015/04/28/24-7-wall-st-identity-theft-complaints/26498265/>

Elevate the Charge when Identity Thieves Steal Multiple Victims' Identities

The task forces recommend making the possession of more than five separate identities while committing identity theft chargeable as Identity Theft in the First Degree under RCW 9.35.020. The increased penalty for this charge may deter individuals from obtaining and using the identities of large numbers of victims.

Base the Financial Threshold for First-Degree Identity Theft on the Amount the Defendant Attempted To Obtain

The task forces recommend the Legislature change the financial threshold for Identity Theft in the First Degree. The threshold is currently \$1,500 obtained from identity theft. The task forces recommend basing a first-degree charge on what the defendant attempted to obtain by misusing the victim's identity rather than what they obtained. Currently, a defendant who uses a stolen identity to attempt a high dollar value crime but is unsuccessful may only be charged with Identity Theft in the Second Degree. Basing the level of identity theft on the amount the defendant attempted to obtain, rather than on the amount the defendant obtained, avoids giving a windfall to criminals who use stolen identities to attempt to commit the most serious crimes and are unsuccessful only because they are caught or because their plans otherwise fail.

Make Possession of a Skimming Device a Felony

The task forces recommend making possession of a skimming device with criminal intent to commit identity theft a felony under RCW 9.35.020. This statutory change will strengthen prosecutorial tools in all jurisdictions in Washington.

Skimming has increasingly become a problem in identity theft cases. Skimming devices allow a person to obtain financial and personal information directly from credit and debit card magnetic stripes. There are legitimate reasons to use skimmers, such as when small businesses use such devices on mobile phones to sell goods and services. However, identity thieves also use skimming devices in conjunction with card re-encoders to retrieve an individual's financial information to make counterfeit credit cards. Currently, the only charge available for possessing a skimmer with intent to commit a crime is Attempted Identity Theft in the Second Degree, a gross misdemeanor. The task forces believe this is an inadequate charge for such a sophisticated crime.

Appendix A: FFIT Task Force Executive Boards

Table 1: Greater Puget Sound FFIT Task Force Members

Entity	Representative
King County Prosecuting Attorney's Office	Patrick Hinds, senior deputy prosecuting attorney GPS-FFIT Executive Board Co-Chair, <i>Grantee Representative</i>
Boeing Employees Credit Union	Mitch Mondala, BECU Security - Financial Crimes Unit GPS-FFIT Executive Board Co-Chair
Redmond Police Department	Lieutenant Tim Gately GPS-FFIT Executive Board Secretary
Pierce County Sheriff's Office	Teresa Burg, sergeant
Pierce County Prosecuting Attorney's Office	Brook Burbank, deputy prosecuting attorney/assistant chief criminal deputy
Columbia Bank	John Fick, vice president/fraud investigations unit manager
Snohomish County Prosecutor's Office	Michael Held, deputy prosecuting attorney/chief of staff
SeaTac Police Department	Jon Mattsen, chief of police
Sound Credit Union	Angie May, senior fraud investigator
Washington State Attorney General's Office	Michael Stanley, assistant attorney general
JP Morgan Chase	Barbara Tainter, JPMC Security - National Vulnerable Adult Investigations
Bank of America	Tim Whitesitt, vice president/senior investigator
United States Attorney's Office	Vacant (TBD)
Local law enforcement	Vacant (TBD)
Federal law enforcement	Vacant (TBD)

Table 2: Spokane Regional FFIT Task Force Members

Entity	Representative
Spokane County Sheriff's Office	Rob Sherar, inspector
Spokane County Prosecutor's Office	Steve Garvin, senior prosecutor
Spokane Police Department	Brad Arleth, captain
Spokane Teachers Credit Union	Jim Fuher, fraud prevention manager
WA State Attorney General's Office	Mark Porter, investigator
Small Towns and Cities Representative	Vacant (TBD)