COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE

FY 2009-10 STAFF BUDGET BRIEFING

DEPARTMENT OF REGULATORY AGENCIES

JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision

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December 8, 2008

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FY 2009-10 BUDGET BRIEFING
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE

DEPARTMENT OF REGULATORY AGENCIES

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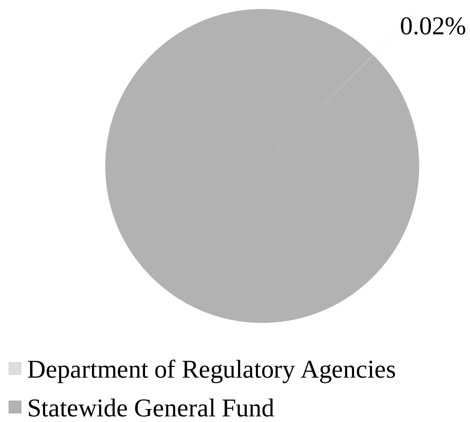

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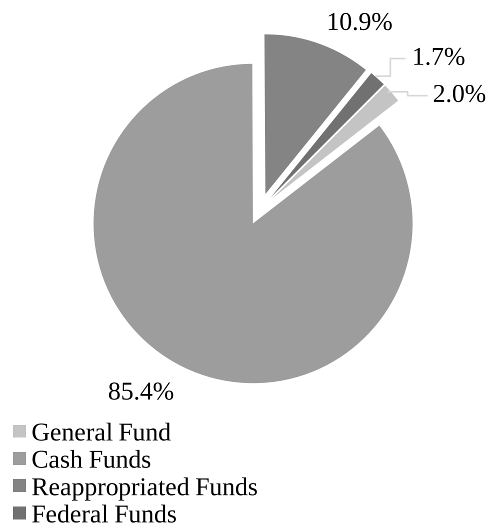

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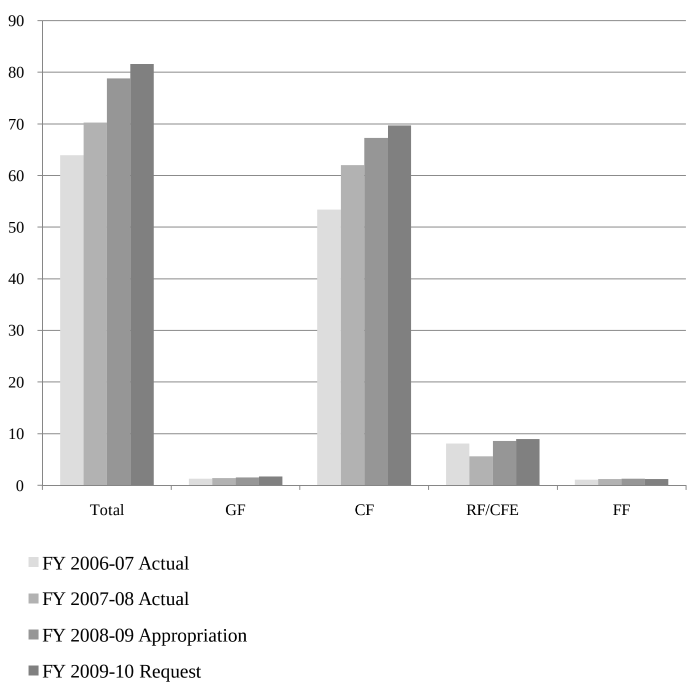

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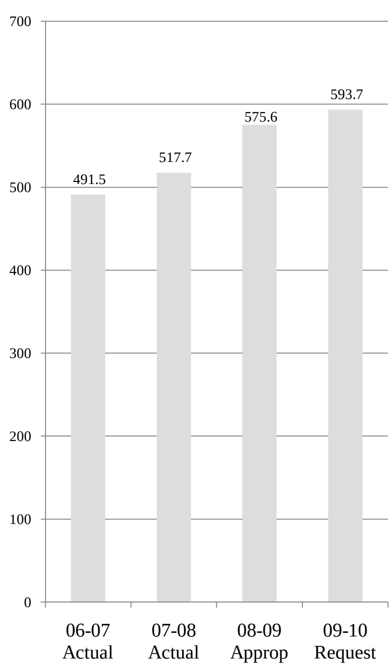
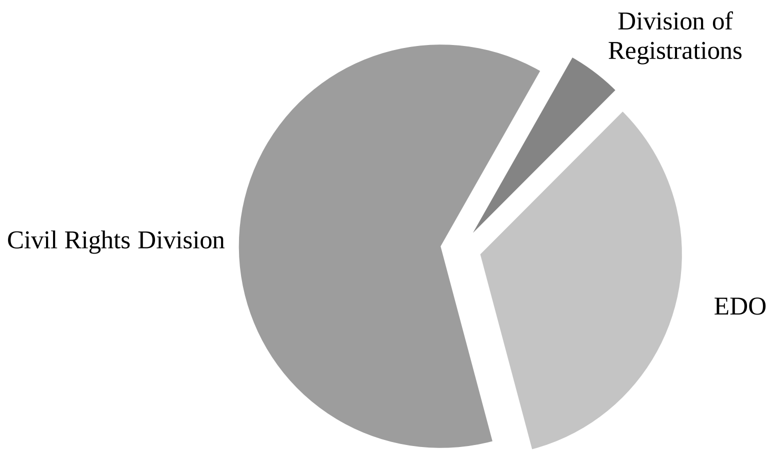


Unless otherwise noted, all charts are based on the FY 2008-09 appropriation.

Distribution of General Fund by Division



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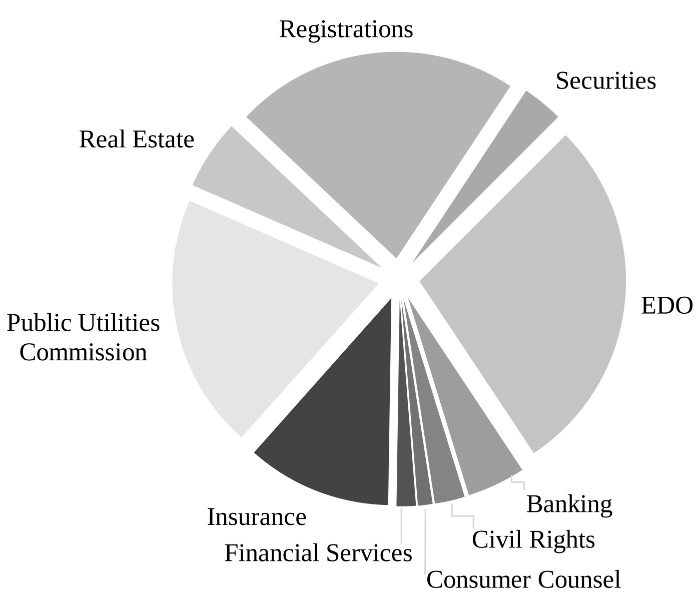

DEPARTMENT OVERVIEW

Key Responsibilities

- ❑ Protect the public from fraudulent, dangerous, incompetent, discriminatory, and unsafe professionals and businesses. Ensure adequate choices in the market and reasonably priced services and products by regulating 522,000 active licenses.
  - **Divisions of Banking and Financial Services** regulate state-charted financial institutions including: banks, trust companies, credit unions and money transmitters.
  - **Division of Insurance** regulates providers of automobile, homeowners, life, health and other types of insurance providers.
  - **Public Utilities Commission** regulates public utilities such as electricity, gas and telecommunications.
  - **Divisions of Registration, Real Estate and Securities** regulate more than thirty occupations including: accountants, barbers, mortgage brokers, nurses, physicians, stockbrokers and real estate agents and appraisers.
  - **Civil Rights Division** administers and enforces Colorado's civil rights laws.
- ❑ Conduct sunset reviews of state-run programs, and sunrise reviews of proposed programs and analyze the economic impact of proposed rules by state agencies.

Factors Driving the Budget

Legal Services

The Department purchases more legal services from the Department of Law than any other state agency. Given the stakes involved in many of the Department's regulatory decisions, legal services will continue to be a driving factor. The following table shows that DORA has accounted for nearly a third of the State's legal services over the past five years.

State Agency	FY 04-05 Actual	FY 05-06 Actual	FY 06-07 Actual	FY 07-08 Actual	FY 08-09 Approp.
Regulatory Agencies	$5,075,682	$5,310,731	$5,761,082	$6,544,571	$7,121,534
Number of Hours	82,438	82,401	85,009	90,859	94,827
Percent of Department Approp.	8.7%	8.9%	9.0%	9.3%	9.0%
Percent of Total	28.2%	27.5%	28.4%	29.2%	30.2%
State Total Legal Services	**$18,016,250**	**$19,293,281**	**$20,253,769**	**$22,378,413**	**$23,597,678**

Source: 2008 Department of Law Briefing.

Legislation

During the 2008 session, the General Assembly passed 18 bills appropriating $2.1 million and 18.6 FTE to the Department. Over the past two sessions, 2007 and 2008, the General Assembly has passed 40 bills appropriating 34.3 FTE and $5.1 million to the Department. The following table provides an overview of the Divisions affected by the 2008 legislation.

2008 Special Bills Impacting DORA					
Division	**Number of Bills**	**Appropriation from Special Bills**	**Increase in Spending Authority from 2008 Long Bill**	**FTE Authority from Bills**	**Increase in FTE Authority from 2008 Long Bill**
Division of Insurance	6	$386,740	4.3%	4.7	5.4%
Div. of Registrations	6	535,150	3.0%	6.3	3.5%
PUC	1	354,225	2.3%	4.0	4.0%
Div. of Real Estate	1	256,326	5.9%	3.6	7.2%
EDO	9	572,342	2.6%	0.0	0.0%
Total		**$2,104,783**	**2.7%**	**18.6**	**3.2%**

Source: 2008 Appropriations Report, Department of Regulatory Agencies

Population Growth

From 2004 to 2009 the population of Colorado is expected to grow by 6.9%, and the number of licenses issued by the Divisions of Insurance, Registrations, Real Estate and Securities are expected to grow by 14.6%. As the number of licensees increases, so does the required regulation of individuals and businesses by the Department, and the Department has been working to implement consumer education programs.

5 Year History of DORA Licenses						
Division	**FY 2004-05 Actual**	**FY 2005-06 Actual**	**FY 2006-07 Actual**	**FY 2007-08 Actual**	**FY 2008-09 Estimate**	**5 Year Growth**
Div. of Insurance	94,179	110,911	109,705	115,229	116,000	23.2%
Div. of Registrations	277,928	282,521	295,281	292,584	307,126	10.5%
Div. of Real Estate	52,563	58,540	54,837	52,019	54,500	3.7%
Div. of Securities	168,893	177,519	190,269	201,947	202,512	19.9%
Total	**593,563**	**629,491**	**650,092**	**661,779**	**680,138**	**14.6%**
Colorado Population	**4,609,264**	**4,673,724**	**4,766,248**	**4,861,515**	**4,928,021**	**6.9%**

Source: FY 2009-10 Department of Regulatory Agencies Budget Request, and U.S. Census Bureau.

Impact of the Economy

During economic growth Department workload increases due to an increase in the number of license applications, and during an economic downturn, license applications tend to decline, but the Department will be required to increase enforcement actions to ensure a fair marketplace.

DECISION ITEM PRIORITY LIST

Decision Item	GF	CF	RF	FF	Total	FTE
1	0	0	66,955	0	66,955	0.0
Funding for Contract Security Officer						
Executive Director's Office. The Department is requesting $66,955 in reappropriated funds to hire a full time contract security officer for DORA's headquarters at 1550 Broadway, Denver Colorado. The security officer would provide security for the Executive Director's Office as well as Board and Commission meetings. *Statutory authority: Section 24-34-104, C.R.S.*						
2	0	110,815	0	0	110,815	2.0
Increased Resources for Office of Expedited Settlement						
Division of Registrations. The Department is requesting 2.0 FTE and $110,815 cash funds from the Division of Registration cash fund to increase resources for the Office of Expedited Settlement. The 2.0 FTE would enable the Office of Expedited Settlement to achieve optimum case referral levels and maximize the conservation of the Division's legal services. *Statutory authority: Section 24-34-102, C.R.S.*						
3	0	148,982	0	0	148,982	2.0
Increased Securities Field Examiners						
Division of Securities. In order for the Division of Securities to maintain regulation of the increased number of licensed investment advisory firms, the Department is requesting 2.0 FTE and $148,982 from the Division of Securities Cash Fund. The addition of 2.0 FTE would enable the Division of Securities to maintain a minimum examination cycle of investment advisory firms. *Statutory authority: Sections 11-51-101, 11-59-104, and 11-53-201, C.R.S.*						
4	140,396	0	0	0	140,396	1.4
Restore Civil Rights Regional Office in Northern Colorado						
Civil Rights Division. The Department is requesting 1.4 FTE and $140,396 General Fund dollars to reopen the Colorado Civil Rights Division Regional Office in Greeley Colorado. The Department believes reopening this regional office will enable the Civil Rights Division to better address ongoing civil rights issues in this area of the state. *Statutory authority: Section 24-34-305, C.R.S.*						
5	0	266,789	0	0	266,789	2.0
Increase Resources for Division of Financial Services						
Division of Financial Services. The Division of Financial Services needs to maintain staffing levels commensurate with regulated assets and is requesting 2.0 FTE and $266,789 from the Division of Financial Services Cash Fund. $59,785 of these funds will be used for salary adjustments for current Financial Services examiners. *Statutory authority: Sections 11-30-101, 11-40-101, and 11-47-101 C.R.S.*						

Decision Item	GF	CF	RF	FF	Total	FTE
6	0	707,579	0	0	707,579	6.0
Increase Resources for Division of Banking						
Division of Banking. In order to meet the growth of the Colorado banking industry the Department is requesting 6.0 FTE for the Division of Banking and $707,579 from the Division of Banking Cash Fund. $52,144 of the requested funds will be used to for salary adjustments for current banking examiners. *Statutory authority: Sections 11-102-101, 11-102-301 C.R.S.*						
7	0	221,658	0	0	221,658	2.0
PUC Electric Transmission Planning						
Public Utilities Commission. The Department is requesting 2.0 FTE and $221,658 to enable the Public Utilities Commission to represent Colorado's interest in regional, national, and local efforts on planning for electricity transmission. *Statutory authority: Sections 40-2-115, 40-2-123, 40-2-126, and 40-3-101 C.R.S.*						
NP-1	0	59,610	0	0	59,610	0.0
Vehicle Lease Payments						
Executive Director's Office. This non-prioritized decision item reflects assumed changes in billing for central services. Common policy for centralized services will be considered in separate staff briefings.						
NP-2	0	106,086	0	0	106,086	0.0
Fleet Fuel						
Various. This non-prioritized decision item reflects assumed changes in billing for central services. Common policy for centralized services will be considered in separate staff briefings.						
NP-3	6	133	16	3	158	0.0
Workers' Compensation						
Executive Director's Office. This non-prioritized decision item reflects assumed changes in billing for central services. Common policy for centralized services will be considered in separate staff briefings.						
NP-4	2,234	42,260	2,347	0	46,841	0.0
Postage Increase and Mail Equipment Upgrade						
All Divisions. This non-prioritized decision item reflects assumed changes in billing for central services. Common policy for centralized services will be considered in separate staff briefings.						
NP-5	594	12,291	0	0	12,885	0.0
Administrative Law Judges						
Executive Director's Office. This non-prioritized decision item reflects assumed changes in billing for central services. Common policy for centralized services will be considered in separate staff briefings.						
Total	**143,230**	**1,676,203**	**69,318**	**3**	**1,888,754**	**15.4**

OVERVIEW OF NUMBERS PAGES

The following table summarizes the total change, in dollars and as a percentage, between the Department's FY 2008-09 appropriation and its FY 2009-10 request.

Total Requested Change, FY 2008-09 to FY 2009-10 (millions of dollars)

Category	GF	CF	RF	FF	Total	FTE
FY 2008-09 Appropriation	$1.6	$67.3	$8.6	$1.3	$78.8	575.6
FY 2009-10 Request	1.7	69.7	9.0	1.2	81.6	593.7
Increase / (Decrease)	$0.1	$2.4	$0.4	($0.1)	$2.8	18.1
Percentage Change	8.7%	3.6%	4.6%	-7.7%	3.6%	3.1%

The following table highlights the individual changes contained in the Department's FY 2009-10 budget request, as compared with the FY 2008-09 appropriation. For additional detail, see the numbers pages in Appendix A.

Requested Changes, FY 2008-09 to FY 2009-10

Category	GF	CF	RF	FF	Total	FTE
Benefits	$21,212	$607,207	$134,297	$9,894	$772,610	0.0
Division of Banking Resources (DI #6)	0	707,579	0	0	707,579	6.0
PUC Personal Services - Excluding DI #7	0	352,511	0	0	352,511	3.8
Increase Financial Services Resources (DI #5)	0	266,789	0	0	266,789	2.0
PUC Electric Transmission Planning (DI #7)	0	221,658	0	0	221,658	2.0
Insurance - Personal Services	0	179,643	0	0	179,643	(0.2)
Increase Securities Examiners (DI #3)	0	148,982	0	0	148,982	2.0
Northern Civil Rights Office (DI #4)	140,396	0	0	0	140,396	1.4
Office of Expedited Settlement (DI #2)	0	110,815	0	0	110,815	2.0
Security Officer (DI #1)	0	0	66,955	0	66,955	0.0
Real Estate - Personal Services	0	59,078	0	0	59,078	(1.0)
Performance-based Pay	(21,972)	(426,446)	(81,725)	0	(530,143)	0.0

Category	GF	CF	RF	FF	Total	FTE
Salary Survey	(21,141)	(345,127)	(70,520)	0	(436,788)	0.0
Registrations - CBI/FBI Background Checks	0	(236,205)	0	0	(236,205)	0.0
Hardware / Software Maintenance	0	(211,150)	0	0	(211,150)	0.0
Total Change	**$118,495**	**$1,435,334**	**$49,007**	**$9,894**	**$1,612,730**	**18.0**

BRIEFING ISSUE

ISSUE: Subprime and Predatory Mortgage Lending

The Civil Rights Division received a grant to study predatory lending through data analysis of subprime lending in Colorado. The preliminary report concluded that African American and Hispanic borrowers were twice as likely as Whites to get a subprime loan. The top three Colorado counties with a disproportionate ratio of subprime loans to housing units were Adams, Weld and Pueblo.

SUMMARY:

- ❑ In July 2007 the Civil Rights Division (CRD) received a grant for $299,600 from the U.S. Department of Housing and Urban Development (HUD) to study predatory lending through data analysis of subprime lending in Colorado. A preliminary study was published February 29, 2008. The final report is scheduled to be published in May 2009.

- ❑ There is no statutory definition of predatory lending, leaving each Department and State Office that is involved with predatory lending to develop unique definitions of predatory lending.

- ❑ Based on data from the Home Mortgage Disclosure Act (HMDA), the study concludes that African Americans and Hispanics were twice as likely as Whites to receive a subprime loan. Additionally, subprime lending was more active in high minority and/or lower-income areas of the state.

RECOMMENDATION:

Staff recommends the Committee ask the Divisions of Real Estate, Insurance and Civil Rights whether or not a statutory definition of predatory lending would be beneficial to the Department as a whole and to individual Divisions? Why or why not?

DISCUSSION:

Objectives of the federal grant. In July 2007 the CRD received a federal grant for $299,600 from the HUD to study subprime and predatory lending in Colorado. The three primary goals of this grant are:

- Understand the scope of predatory lending in Colorado through data analysis of subprime lending. CRD has contracted with BBC Research and Consulting, and the University of Colorado to complete the study.

- Educate Colorado residents about discriminatory, predatory loans and what their rights are if they believe they have been subject to such a loan.
- Enforce Colorado's Fair Housing Act to address predatory lending.

Why CRD received the grant and not the Division of Real Estate. CRD received this grant because the funds were made available by HUD only to agencies that have a Fair Housing Assistance Program (FHAP). CRD has an FHAP and the Division of Real Estate does not.

Multiple definitions of predatory lending at the state level. One of the biggest challenges of addressing and preventing future predatory lending is the lack of a statutory definition. The lack of statutory definition means that each Department and Office associated with predatory lending have developed unique definitions.

- The Colorado Attorney General has defined predatory lending as, "mortgage brokers and lenders who place consumers in loan products with significantly worse terms and/or higher costs than loans offered to similarly qualified consumers."
- The Department of Revenue definition notes that predatory includes but is not limited to:
  - Targeting subprime loans to borrowers who qualify for traditional lower interest rate loans
  - Making a loan with any of the following conditions:
  - a prepayment penalty which exceeds 3% of the loan value
  - balloon payment due less than 15 years from the start of the loan
  - financing of points and fees in excess of 5% of the total loan amount
  - flipping where loans are refinanced with high closing costs and no demonstrable net benefit to the borrower
- CRD has defined predatory lending as "imposing unfair and abusive loan terms on borrowers, often through aggressive sales tactics, taking advantage of borrowers' lack of understanding of extremely complicated transactions, and outright deception."

Types of borrowers.[1] There are three different classes of borrowers. Prime borrowers are those borrowers deemed by lenders to be the most qualified for loans based on credit worthiness and income. Prime borrowers tend to receive loans with the lowest interest rates. Alternative-A borrowers are those who have unstable or unreliable incomes. These borrowers tend to receive loans that carry a higher interest rate than prime borrowers. Subprime borrowers have a poor credit history and/or low incomes, and receive loans that carry high interest rates and fees.

Subprime loans.[2] The term subprime loan refers not to the loan, but to the borrower. Not all subprime loans are predatory, but predatory lending most often occurs when subprime loans are issued. The following is a brief discussion of the different types of subprime loans that can be predatory in nature.

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1. Pierce, Stephanie Casey and Kheng Mei Tan. "State Strategies to Address Foreclosures." NGA Center for Best Practices. 19 Sept. 2007.
2. Information on subprime loans comes from: BBC Research & Consulting. Discriminatory Predatory Lending in Colorado. 29 Feb 2008. Pierce, Stephanie Casey and Kheng Mei Tan. "State Strategies to Address Foreclosures." NGA Center for Best Practices. 19 Sept. 2007.

Adjustable rate loans. Adjustable rate loans have an interest that changes to reflect current market interest rates. Many adjustable rate loans will have an introductory period of two to five years with a low interest rate, after the introductory period, interest rates reset to match the market rate. After the reset, borrowers tend to see a substantial increase in monthly payments. The table below shows the percent of 2006 loans with adjustable rates in five different states and the 2008 rank for the number of foreclosure fillings.

Percent of Adjustable Rate Loans and Foreclosure Fillings		
State	Percent of loans with adjustable rates	Rank - number of foreclosure fillings
Nation	22.0%	
Colorado	28.0%	7th
California	46.0%	2nd
Nevada	42.0%	1st
Oklahoma	5.0%	29th
Alaska	3.0%	33rd

Adjustable rate loans have the following benefits:

- Low initial interest rate and monthly payment, enabling borrowers to believe they will be able to either save money for future higher payments, or be able to refinance the mortgage.
- For some it is the only option to get into a home because of the minimal down payment, and low monthly payments. During the housing boom, it was common to find adjustable rate loans with low or no money down.
- Subprime loans can allow a qualified borrower to get a larger home then with a traditional loan.

Potential problems for borrowers who get adjustable rate loans:

- risk that interest rates will increase after the introductory period is up,
- escalating payments after the reset which the borrower is unable to afford,
- some of these loans contained clauses that prohibit the borrower from refinancing into a fixed rate loan or clauses that charged the borrower large fees in order to refinance, and
- loan terms may not contain a clause which caps the amount interest rates and fees could increase too.

Interest-only loans. Interest-only loans are those where the borrower repays only the accrued interest on their loans for a fixed period, enabling the borrower to have, at least initially, low monthly payments. The problem arises after the grace period when the monthly payment increases in order to account for the repayment of the loan principle and interest.

Negative amortization loans. Negative amortization loans allow the borrower to pay less than the interest accrued and principle during the grace period. What this means is that the borrower is either adding or reducing the principal balance of the loan, depending on how interest rates are changing.

The borrower takes a risk with this loan, because if the interest rate increases during the grace period, the size of the loan will grow and result in larger monthly payments after the grace period expires.

Common elements of predatory loans. Predatory lending and loans look different for each case, but there are some common elements to every predatory loan. Differences in predatory loans include elements which are built into the loan and the tactics used by a lender to convince a borrower to take the loan. The following is a list of common elements in predatory loans:

- Excessive fees - unreasonable, unjustified fees that are inadequately explained.
- Prepayment penalties - fees that penalize the borrower for refinancing at a lower or fixed interest rate.
- Balloon payments - large payment that is due at the end of loan, and is used in order to reduce monthly payments. Many times a borrower will believe they can save up for the balloon payment, but once that balloon payment hits, borrowers are unable to make monthly payments.
- Debt packaging - trading short-term debt for greater long-term debt, includes packing outstanding credit card debt into the loan.
- Yield spread premiums - kickbacks to mortgage brokers by lenders for securing a loan with interest rates higher than what the borrower could have qualified for.
- Unnecessary products - lenders will try to package in life insurance or homeowner's insurance into a mortgage, because lenders will be compensated additional products.
- A mandatory arbitration clause - this clause prevents a borrower from seeking the conventional legal remedy in court if they wish to dispute the mortgage contract.
- Loan flipping - repeated refinancing of a loan in a short period of time, which often causes a borrower to pay fees or prepayment penalties.
- Steering - when borrowers are steered into the subprime market even if they qualify for a conventional, often a fix interest rate loan.

Study Limitations. Data limitations from the HMDA analysis of subprime lending include the lack of information on: borrowers' credit scores, a debt-to-income ratio of the borrower, employment and bankruptcy history. The HMDA data did not include information on specific loan terms like prepayment penalties, interest rate adjustments, or balloon payments. Finally HMDA only collects information from lending institutions that have annually adjusted assets above $36 million, and have offices in metropolitan areas. The study did not specifically look at predatory lending because no data is available on that (i.e., lack of loan terms), but looked at subprime loans in association with foreclosures, and drew conclusions based on that information.

Subprime Lenders in Colorado. Only loans made for owner-occupied homes, and home purchase or refinancing was included in the data analysis. There were 236,848 such loans made in Colorado in 2006. The study excluded loans made for second properties, home improvements, and loans that were denied, withdrawn or closed. The table below shows the top ten 2006 Colorado lenders.

Top Ten Lenders in Colorado During 2006		
Lender	**2006 Loans**	**Percent of Colorado Loan Market**
Wells Fargo Bank	17,820	7.5%
Countrywide Home Loans	17,130	7.2%
National City Bank	6,124	2.6%
Homecoming Financial Network	6,096	2.6%
JP Morgan Chase Bank	5,740	2.4%
Taylor, Bean and Whitaker	5,634	2.4%
American Home Mortgage Corp.	4,670	2.0%
New Century Mortgage Corp.	4,407	1.9%
First Magnus Financial Corp.	4,190	1.8%
Bank of America	3,998	1.7%

BBC Research & Consulting. "Discriminatory Predatory Lending in Colorado." Section 3, page 27

The top ten subprime lenders in Colorado are listed below in the table. The study defined subprime loans as loans with interest rates three percentage points higher than the Treasuries, and super-subprime loans, as loans with interest rates nine percentage points higher than the Treasuries.

Top Subprime Lenders in Colorado by Volume of Subprime Loans, 2006						
		Subprime		**Super-Subprime**		
Lender	**Total Loans**	**Loans**	**Percent**	**Loans**	**Percent**	**Percent of CO subprime market**
National City Bank	6,124	3,217	52.5%	19	0.3%	1.8%
Countrywide Home Loans	17,130	3,124	18.2%	237	1.4%	1.8%
New Century Mortgage Corp.	4,407	2,681	60.8%	60	1.4%	1.5%
Option One Mortgage Corp.	2,154	2,077	96.4%	159	7.4%	1.2%
Long Beach Mortgage Co.	2,072	1,946	93.9%	28	1.4%	1.1%
Homecoming Financial Network	6,069	1,917	31.6%	123	2.0%	1.1%
Fremont Investment & Loan	2,123	1,905	89.7%	125	5.9%	1.1%
Decision One Mortgage	1,979	1,822	92.1%	257	13.0%	1.0%
Wells Fargo Bank	17,820	1,604	9.0%	35	0.2%	0.9%
Argent Mortgage Company	1,687	1,505	89.2%	2	0.1%	0.9%

BBC Research & Consulting. "Discriminatory Predatory Lending in Colorado." Section 3, page 27

It should be noted that because of the number lenders in Colorado during 2006, the top subprime lenders represent no more than 2% of the subprime market. There are three predominately subprime lenders in Colorado: Option One Mortgage Corp., Long Beach Mortgage Co., and Decision One Mortgage.

Preliminary conclusions based on the borrower characteristics. The study concluded that there were significant disparities among ethnic/racial groups of borrowers regardless of income:

- 1 in 5 white borrowers got a subprime loan
- 1 in 2.3 African American borrowers got a subprime loan
- 1 in 2.23 Hispanic borrowers got a subprime loan
- 1 in 3.5 multi racial borrowers got a subprime loan

This disparity was carried across income levels as well, but the study concludes the "the relationship between income and subprime lending is not as striking as that between race/ethnicity and subprime lending." Seventeen percent of Whites earning $100,000+ received subprime loans, compared to 39% of African Americas, and 34% of Hispanics at the same income level.

2006 Subprime Origination Disparities by Income		
Income	**Black-White disparity**	**Hispanic-White disparity**
< $25K	1.31	2.03
$25K - $49K	2.15	2.18
$50K - $74k	2.06	2.06
$75K - $99K	2.24	1.88
$100k +	2.37	2.04
All Incomes	2.14	2.12

Additionally, the study concluded that high-income borrowers represent a significant segment of the subprime market. Borrowers earning more than $100,000 represented approximately 22% of the subprime market, compared to 31% of the non-subprime market.

Preliminary conclusions based on geographic locations. The study concluded that eastern and south-central Colorado has the highest rates of subprime lending. On a county level Adams, Weld and Pueblo counties account for a disproportionally higher rate of subprime lending in relation to those counties' number of households. Areas with a high minority population and/or a lower-income are more likely to have active subprime lending markets.

Consequences of subprime and predatory lending. Many victims of predatory lending are able to stay in their homes during the introductory period. Once interest rates reset and the monthly payment increases, so does the borrower's inability to stay current on their mortgage, often resulting in foreclosure. The study did a comparison of Denver neighborhoods and found that neighborhoods with high numbers of foreclosures also had high number of subprime loans.

BRIEFING ISSUE

ISSUE: Insurance Ombudsman for the Uninsured

On September 15, 2008 in accord with HB 08-1216 the Division of Insurance submitted a report, recommending the development of an Office of Insurance Ombudsman for the Uninsured to be located within the Division of Insurance.

SUMMARY:

❏ On September 15, 2008, the Division of Insurance (Division) in accord with HB 08-1216 submitted a report, recommending the development of an Office of Insurance Ombudsman for the Uninsured (Ombudsman).

❏ Eight other states have some form of Insurance Ombudsman. Five of those states have placed the Ombudsman with the Division, while three states have placed the Ombudsman outside the Division. There are benefits to both options, but the Division feels Colorado would be best suited to place the Ombudsman within the Division.

❏ Funding for the Ombudsman is not outlined in the Division's report. It is important for the Division and General Assembly to determine what the appropriate funding source would be.

RECOMMENDATION: Staff recommends the Joint Budget Committee ask the Division the following questions in order to better understand the issue and what funding sources are available to fund the Ombudsman:

1. What does the Division think would be the best funding source for the Ombudsman and why? Which would be the least favorable funding source and why?
2. What are the IT costs and associated staff hours required to collect the fee? What type of IT modifications would be required and who would do the modifications?

DISCUSSION:

History of legislation. The revised verison of HB 08-1216 added the Ombudsman the Insurance Ombudsman Cash Fund funded by a five-cent fee on each insurance policy that is issued or renewed after June 3, 2008. The 2nd rerevised verison of the bill removed the Ombudsman and the cash fund, and instead required a report be submitted to the Joint Budget Committee on or before September 15, 2008. The final act only required the Division submit a report, and did not create an Insurance Ombudsman Office.

Comparison of the fiscal note and the expenditures in the Division's report. The main difference between the fiscal note for HB 08-1216 and the Division's report is that the Division's calculation included 4.0 FTE and the fiscal note only calculated 3.0 The table below shows the differences between the fiscal note and the Division's Report.

Expenditures Differences Between Fiscal Note and Division Report			
Year	**Fiscal Note***	**Report**	**Difference (fiscal - report)**
FY 2008-09	$304,296	$327,504	($23,208)
FTE	3.0	4.0	(1.0)
FY 2009-10	$294,396	$327,504	($33,108)
FTE	3.0	4.0	(1.0)

* Indirect Costs were included in the total for the fiscal note.

Report summary and recommendation. The recommendation made by the Division is that the General Assembly considers developing an Ombudsman and place it in the Division. The Division does believe that the Ombudsman should be separate from current Division functions, Financial Services and Consumer Affairs. The report states, **"after careful consideration of the research, the Commissioner of Insurance recommends that the legislature consider developing an Office of the Insurance Ombudsman for the Uninsured."**

Division justification for recommendation. Currently there are approximately 772,000 people in Colorado without health insurance (uninsured), and their needs are not being addressed. Of the total uninsured in the state, 85,000 people or 11% are eligible for Medicaid, Child Health Plus, or Colorado Indigent Care Program, but are not currently enrolled and the Ombudsman would be able to connect these people with the proper government insurance program. The Ombudsman would be required to have specific knowledge about the insurance industry, which is already present in the Division and may not be available to other Department staff. The Ombudsman needs to be a separate office because there is a significant difference between talking to a consumer who has a problem with their insurance company and talking to a consumer who does not know where to look for health insurance.

Current Structure of the Division. There is a total of 84.0 FTE divided between Financial Services and Consumer Affairs. Financial Services has 54.0 FTE and works to ensure that the Colorado insurance industry is financially sound, and regulates licenced insurance providers. The Consumer Affairs section has 30.0 FTE, nine of which work on consumer assistance and enforcement of regulations. The other 21.0 FTE investigate insurance complaints and work with consumers and providers to ensure regulatory compliance.

Ideal Ombudsman structure. The Division believes that Ombudsman staff needs to be able to inform the consumer of their rights in a manner the consumer can understand, as well as provide warnings of known insurance fraud, refer callers to state and federal programs to check eligibility requirements, and assist callers with finding free or discount insurance programs. The Division does not believe the staff should recommend specific companies, but should assist callers in determining appropriate insurance coverage.

Proposed Ombudsman Staff Structure. The report outlined an office with 4.0 FTE, an Ombudsman, two research assistants, and a program assistant. The Ombudsman would supervise the staff, provide information to the legislature, collaborate with other agencies, and work to generate a public dialog about the uninsured. The two research staff would answer calls, and create and maintain a database of insurance information. The program assistant would oversee the administration of the office, assist with public relations, marketing and community outreach efforts.

Other States Ombudsman. There are eight other states Arizona, California, Connecticut, Illinois, Louisiana, Michigan, New Jersey and Vermont that have some type of Ombudsman. It should be noted that some of these Ombudsmen are not at all similar to what the Division is proposing but are merely a resource for consumers to file complaints against the Division.

Comparison of State Insurance Ombudsman						
State	Independent?	Ombudsman FTE	Ombudsman Budget	Number of Cases	Insurance Budget (mil)	Insurance FTE
Arizona		1.0	n/a	n/a	18.3	142.0
California		4.0	312,000	1,428	209.0	1,337.5
Colorado - proposed		4.0	327,504		9.2	81.0
Connecticut	X	7.0	1,000,000	1,988	23.0	142.0
Illinois		5.0	n/a	1,135	21.6	264.0
Louisiana		6.0	447,351	n/a	30.8	269.0
Michigan	X	4.0	603,002	n/a	61.9	129.5
New Jersey		7.0	800,000	3,200	30.0	362.5
Vermont	X	5.5	497,116	2,563	7.0	61.0

Source: Division of Insurance, Insurance Ombudsman Programs

The following table shows each of the nine states population, population rank, percent of uninsured and rank of uninsured. It is important to note, that having the smallest population does not mean that the state will have a low percentage of uninsured. For example, California has the largest population, but has the 7th highest percent of uninsured. While Louisiana has the 25th largest population, but the 5th highest percent of uninsured.

State Populations and Percent Uninsured for 2007				
State	Population	Population Rank	Percent Uninsured	Uninsured rank
Arizona	6,338,755	16	19.6%	4
California	36,553,215	1	18.6%	7
Colorado	4,861,515	22	16.7%	14

State Populations and Percent Uninsured for 2007				
State	**Population**	**Population Rank**	**Percent Uninsured**	**Uninsured rank**
Connecticut	3,502,309	29	9.9%	44
Illinois	12,852,548	5	13.7%	26
Louisiana	4,293,204	25	19.4%	5
Michigan	10,071,822	8	10.8%	41
New Jersey	8,685,920	11	15.2%	19
Vermont	621,254	49	11.0%	40

Source: U.S. Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2007." Population as of July 1, 2007, U.S. Census Bureau.

Why the Ombudsman should be in the Division. Five states have placed the Ombudsman in the Division. This has been done for a variety of reasons, including:

- The Ombudsman staff must have access to insurance information and knowledge of how the insurance industry works.
- Placing the Ombudsman in the Division prevents duplication of services.
- The Division is a logical place for consumers to go when they have questions about insurance.
- The Division is able to use and developing networking tools to spread the word about the services of Ombudsman to those who would benefit.

The benefits to placing the Ombudsman outside of the Division. Three states have the Ombudsman as a separate office because: the Ombudsman is able to focus exclusively on the needs of the consumer and does not have to balance the interests of the insurance industry with the interests of the consumer, and is able to speak openly on issues with a voice that is independent of the state's regulatory agency. The Division feels it would be more appropriate for the Ombudsman to be an informational only office rather than a driver of policy.

Funding sources for the Ombudsman. The table below illustrates the projected revenue from a five cent fee on insurance policies and projected expenditures from the Division's report. Health insurance policies are not included in the fiscal note calculation, and in order for the Division to get a realistic number of health insurance policies they would have to survey all of the health insurance providers in the state. This was not done when the fiscal note was calculated, therefore it is unclear how much revenue would be generated by any type of fee on health insurance policies.

Projected Ombudsman Expenditures and Revenue				
Revenue From Five Cent*	**Ombudsman Expenditures**	**Difference**	**Difference in terms of number of policies**	**Percent of total policies**
$343,693	$327,504	$16,189	323,780	4.7%

*Five cent fee is applied to auto, home, life and annuities policies totaling 6,873,856.

BRIEFING ISSUE

ISSUE: Office of Expedited Settlement Funding

The Department is requesting additional staff and funding for the Office of Expedited Settlement which oversees the Expedited Settlement Process (ESP). Legal costs for the Division of Registrations have not declined since FY 2004-05, the first year ESP was in place.

SUMMARY:

- ❑ ESP was implemented in order to reduce the amount of legal services used by the Division of Registrations. ESP was started in 2004 and additional funding and FTE are being requested for FY 2009-10.

- ❑ The Department accounts for 30 percent of the State's legal services. The Division of Registration accounts for 44 percent of the Department's legal services. Over four years the average daily cost per case in ESP has increased by $21.35 or 12.1 percent.

- ❑ The most expensive boards in terms of legal services are Medical and Nursing, making up 52 percent of the Division's legal services. Combined these two boards have referred only 37 out of 1,718 cases to ESP.

DISCUSSION:

Department legal expenditures. The Department is the largest consumer of legal services among state agencies. The table below outlines legal services of the Department as compared to the rest of the State.

Legal Services for the Department, FY 04-05 to FY 08-09					
	FY 04-05 Actual	**FY 05-06 Actual**	**FY 06-07 Actual**	**FY 07-08 Actual**	**FY 08-09 Approp.**
Regulatory Agencies	$5,075,682	$5,310,731	$5,761,082	$6,544,571	$7,121,534
Number of Hours	82,438	82,401	85,009	90,859	94,827
Percent of Department Appropriation	8.7%	8.9%	9.0%	9.3%	9.0%
Percent of Total State Legal Services	28.2%	27.5%	28.4%	29.2%	30.2%
Total	**$18,016,250**	**$19,293,281**	**$20,253,769**	**$22,378,413**	**$23,597,678**

Legal Expenses by Division. The Division of Registrations (Division) accounts for 44.2 percent Department's legal service expenditures. Since ESP is only applied within the Division, the majority of the Department's legal expenditures, 55.8 percent, are not mitigated by means of ESP.

Legal Service Expenditures By Division, FY 03-04 to FY 08-09						
Division	**FY 03-04**	**FY 04-05**	**FY 05-06**	**FY 06-07**	**FY 07-08**	**FY 08-09**
EDO	$12,124	$9,852	$10,742	$3,408	$3,837	$48,815
Banking	17,853	6,693	29,046	25,494	52,030	60,081
Civil Rights	133,330	161,067	104,375	131,660	235,741	285,917
OCC	364,182	370,093	386,813	406,707	437,653	450,600
Financial Services	9,044	14,160	5,894	8,246	8,363	11,265
Insurance	485,401	524,972	547,425	399,766	506,698	638,350
PUC	1,001,785	1,068,697	1,060,217	1,128,434	1,236,014	1,323,586
Real Estate	281,332	241,163	300,085	464,722	756,633	874,716
Registrations	2,430,481	2,381,264	2,545,172	2,789,426	2,965,421	3,281,134
Registrations Percent of Department Total	47.9%	46.6%	47.6%	47.9%	45.1%	44.2%
Registrations Legal Services Increase	n/a	($49,217)	$163,908	$244,254	$175,995	$315,713
Securities	335,025	330,562	357,850	464,434	370,091	450,599
Total	**$5,070,557**	**$5,108,523**	**$5,347,619**	**$5,822,297**	**$6,572,481**	**$7,425,063**

The primary reason given by the Department for not applying ESP in other divisions is that cases are not as frequent, but when they do occur they are very complex. As an example, the Public Utilities Commission (PUC) is the second biggest user of legal services. PUC cases are often highly contested by large public utility organizations, involving many iterations of litigation with a multitude of co-respondents, and as such are too complex, making the various disciplinary sanctions utilized by the ESP not applicable.

Legal service expenditures are not decreasing. Across the entire Department expenditures for legal services has increased each year, including those years, with the exception of one year, since the Division of Registrations implemented ESP. Since FY 2003-04, legal service expenditures for the Department has increased by 51.4 percent or $2.6 million. The Division has not reduced it's legal services, except for the year it implemented ESP, and since FY 2004-05 has increased its legal service expenditures by $899,870 or by 37.8 percent.

The ESP Process. ESP was created in order to stem the Department's rising legal costs and enable resolution of complaints in a quicker time frame. See Appendix E for a diagram of how ESP works. After the Board or Director determines a complaint is legally sufficient, ESP staff will work to settle the case within the Board or Director's initial guidance. If a respondent agrees to the settlement terms, or the Board/Director agrees to a proposed counter offer, then an Office of Attorney General

(OAG)-approved stipulation and final agency order is drafted by the ESP staff and signed by respondent. In the event the case is not resolved, ESP staff will send the case back to the Board staff for transmittal to the OAG for initiation of formal disciplinary proceedings.

ESP staff are not negotiators. ESP Staff make verbal or written contact with the respondent to ascertain whether the respondent desires to resolve the case on the conditions set forth based on factual admissions and legal citations. ESP staff do not negotiate the terms of the stipulation but may accept modifications requested by the respondent or respondent's counsel that fall within the Board's or Director's guidance.

Case Time Limits in ESP. It is the goal of ESP to resolve cases within 90 days of referral, but is flexible depending on the Board's meeting schedule. However, it is preferable for no case to remain open in ESP for more than 120 days.

ESP program strengths.

- **Cost-avoidance.** By resolving more cases within the Division, the OAG is available to handle more complex, contested cases that require legal counsel and expertise.
- **Quick Resolution.** By providing a quicker resolution to disciplinary action respondents are brought to justice without delay, and consumer complaints are acted upon quickly.
- **Increased Latitude in Sanctions.** ESP provides a broad range of sanctions (probation, practice limitations, fines, letters of admonition, etc.) which facilitates settlements by providing greater latitude for both parties in disciplinary proceedings.

Program Funding.

- In 2004, the General Assembly appropriated $147,133 cash funds and 2.0 FTE for the creation of OES within the Division. This was FY 2004-05 Decision Item #2.
- In 2007, the General Assembly approved funding for 1.0 FTE in OES funded with $75,360 cash funds transferred from the Department's legal services appropriation to the Division. This was the Department's FY 07-08 Decision Item #3.
- For FY 2009-10, the Department is requesting an additional 2.0 FTE and $110,815, from the Division of Registration Cash Fund for OES in Decision Item #2.

ESP Cost Per Case. The Department reported that ESP staff spend an average of 10.7 hours on one case. The estimated yearly average for the cost per case in ESP since FY 2004-05 is $792, compared to the estimated OAG average cost per case of $665, over the same time period. ESP staff will use the OAG staff assigned to a particular Board when addressing technical aspects of the stipulations for any given case and not include these costs in the ESP program's expenditures. This is referred to as "conferring" costs. Conferring costs underestimate the cost of OES and over estimate the cost of OAG. These costs should be included for informational purposes within the program's expenditures to present a more realistic cost of administering the program.

Calculations of the Daily Cost per Case in ESP					
Item	**FY 04-05 Actual**	**FY 05-06 Actual**	**FY 06-07 Actual**	**FY 07-08 Actual**	**Yearly Average**
Program Expenditures	$138,592	$156,549	$188,008	$273,909	$189,265
ESP Cost per Day (8 hours per day)	$533	$602	$723	$1,053	$728
Cases Opened in ESP	682	752	682	779	703
ESP Staff	2.0	2.0	3.0	4.0	2.8
ESP Staff Hours	4,160	4,160	6,240	8,320	5,720
Average ESP Hours to Resolve a Case	6.1	5.5	10.4	10.7	8.2
ESP Est. Cost per Case	**$407**	**$414**	**$940**	**$1,409**	**$792**

* Resolving a case can either be settling and closing the case in ESP, or closing the case in ESP and referring to the OAG.

Comparison of OAG estimated cost per case and ESP estimated cost per case. The table below provides a comparison of the estimated OAG cost per case and the estimated ESP cost per case. The first two years of the ESP program did provide the Division with legal services cost avoidance. Over the past two years, sending cases through ESP has cost more than sending cases directly to the OAG.

Comparison of OAG Estimated Cost per Case and ESP Estimated Cost Per Case				
	FY 04-05	**FY 05-06**	**FY 06-07**	**FY 07-08**
OAG Est. Cost Per Case	$616	$645	$678	$720
ESP Est. Cost Per Case	$407	$414	$940	$1,409
Difference	$209	$231	($262)	($689)

There are several possible reasons for an increase in ESP's cost per case. During FY 2005-06 there were numerous citations given to barbers and cosmetologists. In response, the Department implemented a citation program to resolve cases without going through ESP, therefore reducing the number of cases referred to ESP. The Department established a policy that requires all cases must go to ESP before being sent to the OAG, meaning that the ESP program is attempting to resolve cases that are more complex and time consuming, then the cases were when Board and Commission attorneys were able to select which cases to send to ESP. The table below highlights the Boards and Commissions which have an ESP settlement rate less than 70.8 percent. For FY 2007-08 the settlement rate for ESP cases averaged 79.3 percent.

Top Seven Boards with Settlement Rates Below Average Settlement Rate						
Board	**Phase**	**Cases Referred**	**Total Cost of Referred Cases***	**Settlement Rate**	**Cases Not Settled in ESP**	**Cost of Unsettled Cases**
Chiropractic	1	17	$7,365	52.9%	8	$3,466
Dental	3	59	$25,562	40.7%	35	$15,164
Mental Health	1	60	$25,996	60.0%	24	$10,398
Nursing	3	137	$42,026	70.8%	40	$17,330
Nursing Home Administrators	2	8	$3,466	12.5%	7	$3,033
Physical Therapy	1	10	$4,333	40.0%	6	$2,600
Veterinarians	3	9	$3,899	44.4%	5	$2,166
Total/Average 7 Boards		300	$16,093	45.9%	125	$7,737
Total/Average All Boards		779	$337,510	79.3%	161	$69,755

The phase column refers to what phase that Board or Commission is in, in terms of the Department policy to send all cases to ESP. Phase one and two Boards and Commissions must send all cases to ESP. Phase three Boards are the only ones with the ability to selectively send cases to ESP first. Currently of the six phase three Boards and Commissions, only nursing and medical selectively choose which cases to send to ESP. Staff is concerned with the number of cases that are going through ESP and then to the OAG. Staff is also concerned that the ideal efficiency of sending all cases through ESP is not being realized as a result of the Department's policy mandating all cases must first go to ESP.

Medical and Nursing Board legal costs. The Medical and Nursing Boards make up 52 percent of the Division's legal service expenditures. On average, the Division states that 70 percent of these cases are ineligible for ESP, but as the table below shows, both of these board's percent ineligible cases are well above that. Only 10 percent of medical complaints are eligible, and of those only 1.7 percent or 2 cases were attempted in ESP. For nursing complaints, 25.6 percent of cases were eligible, but only 35 were attempted in ESP.

FY 2007-08 Medical and Nursing Board Costs and ESP Ineligible Cases					
Board	**Cost***	**Percent of Total Costs**	**Number of Complaints**	**Number ESP Ineligible Cases**	**Percent Ineligible**
Medical	$814,687	27.5%	1,133	1,020	90.0%
Nursing	727,026	24.5%	585	435	74.4%
All Boards Average	$87,170	3.0%	147	107	69.0%

* Costs are adjusted from FY 2006-07 because Department did not provide FY 2007-08 legal costs.

Staff concerns with the ESP program. Staff has the following concerns regarding the ESP program.

- The number of cases that are assigned to ESP, but eventually referred to the OAG is increasing. Sixty-six percent of boards have cases being referred to the OAG after going through ESP. By mis-assigning these cases to ESP, these cases not only require ESP resources, but those of OAG.
- ESP should include the costs of conferring with OAG in its operations for informational purposes. This factors into the costs associated with the program and its inclusion would provide a clear indicator of the program's efficacy in mitigating legal expenses.
- The lack of data on the length of time that a complaint is in ESP either before it is resolved or referred on to the OAG, because the Department's request is based on the assumption that it takes ten hours of legal services in the OAG, but does not track the number of hours in ESP. Cost savings could be mitigated if the number of hours is ESP is more than double the number of hours billed by the OAG.
- The Department policy to send all cases for certain Boards and Commissions through ESP. Similar to the PUC certain Boards and Commissions have cases that are complex and would be better served to go directly to the OAG.
- The significant difference between staff calculated expenditures per case and the Department reported expenditures of the ESP program.

APPENDIX A: NUMBERS PAGES

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes

DEPARTMENT OF REGULATORY AGENCIES
Rico Munn, Executive Director

(1) EXECUTIVE DIRECTOR'S OFFICE

Primary Function: conducting sunrise and sunset evaluations of divisions, commissions, and boards; promoting divisional efficiency and effectiveness; departmental administrative functions including accounting, budgeting, data processing, personnel, purchasing, facilities planning, and management reporting. The primary source of funding is from indirect cost recoveries that upon a variety of cash funds within the department.

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Personal Services	3,550,333	3,841,576	3,961,046	4,230,416	DI #1
FTE	49.1	51.0	52.3	52.3	
General Fund	0	56,450	24,936	16,100	
Cash Funds	0	19,000	36,310	26,200	
Reappropriated Funds / Cash Funds Exempt	3,550,333	3,766,126	3,899,800	4,188,116	
FTE	49.1	51.0	52.3	52.3	
Health, Life, and Dental	1,591,518	2,139,892	2,477,430	2,922,197	
General Fund	59,376	72,405	78,208	92,248	
Cash Funds	1,387,954	1,757,098	1,902,287	2,243,800	
Reappropriated Funds / Cash Funds Exempt	144,188	285,937	460,167	542,780	
Federal Funds	0	24,452	36,768	43,369	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Short-Term Disability	33,490	41,654	47,155	47,184	
General Fund	878	1,397	1,074	1,075	
Cash Funds	29,137	33,698	38,181	38,204	
Reappropriated Funds / Cash Funds Exempt	3,475	6,279	7,427	7,432	
Federal Funds	0	280	473	473	
SB 04-257 Amortization Equalization Disbursement	224,701	380,297	580,087	725,909	
General Fund	5,503	10,620	12,938	16,191	
Cash Funds	195,947	303,792	469,915	588,042	
Reappropriated Funds / Cash Funds Exempt	23,251	62,968	91,409	114,387	
Federal Funds	0	2,917	5,825	7,289	
SB 06-235 Supplemental Amortization Equalization Disbursement Equalization Distribution	0	79,587	271,701	453,693	
General Fund	0	1,896	5,850	9,768	
Cash Funds	0	63,888	220,272	367,816	
Reappropriated Funds / Cash Funds Exempt	0	13,193	42,848	71,549	
Federal Funds	0	610	2,731	4,560	
Salary Survey and Senior Executive Service	899,451	1,008,654	1,325,901	889,113	
General Fund	29,611	36,244	64,174	43,033	
Cash Funds	770,276	821,846	1,047,658	702,531	
Reappropriated Funds / Cash Funds Exempt	99,564	150,564	214,069	143,549	
Performance-based Pay Awards	0	475,057	530,143	0	
General Fund	0	13,741	21,972	0	
Cash Funds	0	393,951	426,446	0	
Reappropriated Funds / Cash Funds Exempt	0	67,365	81,725	0	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Workers' Compensation	89,243	81,605	104,352	104,510	NP-2
General Fund	3,254	2,922	3,667	3,673	
Cash Funds	74,744	69,020	88,149	88,282	
Reappropriated Funds / Cash Funds Exempt	10,160	8,472	10,771	10,787	
Federal Funds	1,085	1,191	1,765	1,768	
Operating Expenses	142,341	148,692	209,671	212,018	
General Fund	0	0	3,689	3,689	
Cash Funds	0	0	95,427	95,427	
Reappropriated Funds / Cash Funds Exempt	142,341	148,692	110,555	112,902	NP-4
Legal Services	5,822,297	6,572,481	7,618,538	7,677,024	
Hours Equivalent	*85,913*	*91,246*	*101,445*	*102,224*	
General Fund	48,654	90,140	204,013	234,053	DI #4
Cash Funds	5,596,773	6,121,858	7,134,037	7,162,483	
Reappropriated Funds / Cash Funds Exempt	93,864	214,882	138,511	138,511	
Federal Funds	83,006	145,601	141,977	141,977	
Administrative Law Judges	214,701	228,903	239,949	252,834	NP-5
General Fund	8,413	4,834	11,054	11,648	
Cash Funds	204,879	222,323	228,895	241,186	
Reappropriated Funds / Cash Funds Exempt	1,409	1,746	0	0	
Purchase of Services from Computer Center	1,237	5,896	51,060	51,060	
General Fund	13	0	0	0	
Cash Funds	1,020	0	0	0	
Reappropriated Funds / Cash Funds Exempt	204	5,896	51,060	51,060	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Payment to Risk Management Fund	81,141	69,173	85,486	85,486	
General Fund	3,073	2,555	3,148	3,148	
Cash Funds	65,466	55,194	67,971	67,971	
Reappropriated Funds / Cash Funds Exempt	11,218	10,018	12,322	12,322	
Federal Funds	1,384	1,406	2,045	2,045	
Vehicle Lease Payments - CF	163,193	157,653	130,536	190,146	NP-1
Information Technology Asset Maintenance	462,591	560,743	671,403	671,403	
General Fund	3,801	0	0	0	
Cash Funds	235,985	251,152	354,412	480,646	
Reappropriated Funds / Cash Funds Exempt	222,805	309,591	190,757	190,757	
Federal Funds	0	0	126,234	0	
Leased Space	2,268,234	2,551,186	2,805,617	3,220,577	
General Fund	81,986	87,222	91,259	132,146	DI #4
Cash Funds	1,762,989	1,994,783	2,266,613	2,580,318	DI #2, 3, 5, 6, 7
Reappropriated Funds / Cash Funds Exempt	385,475	442,961	420,490	466,206	
Federal Funds	37,784	26,220	27,255	41,907	
Capital Complex Leased Space - CF	1,112	1,307	1,284	1,284	
Hardware / Software Maintenance	657,699	678,715	883,465	672,315	
General Fund	800	0	800	800	DI #4
Cash Funds	323,863	358,881	624,063	412,913	DI #2, 3, 5, 6, 7
Reappropriated Funds / Cash Funds Exempt	333,036	319,834	258,602	258,602	
Consumer Outreach / Education Program - CF	0	0	200,000	200,000	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
					Request vs. Appropriation
TOTAL - (1) EXECUTIVE DIRECTOR	**16,203,282**	**19,023,071**	**22,194,824**	**22,607,169**	**1.9%**
FTE	**49.1**	**51.0**	**52.3**	**52.3**	**0.0%**
General Fund	245,362	380,426	526,782	567,572	7.7%
Cash Funds	10,813,338	12,625,444	15,332,456	15,487,249	1.0%
Reappropriated Funds / Cash Funds Exempt	5,021,323	5,814,524	5,990,513	6,308,960	5.3%
FTE	49.1	51.0	52.3	52.3	0.0%
Federal Funds	123,259	202,677	345,073	243,388	(29.5%)

(2) DIVISION OF BANKING

Primary Function: regulates state-chartered commercial and industrial banks, trust companies, debt adjusters, and money order companies. Staff conducts examinations and enforces compliance related to the Public Deposit Proctection Act, trust department operates money order companies. The funding source is the Division of Banking Cash Fund.

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Personal Services - CF	2,608,428	2,749,125	2,810,567	3,484,857	DI #6
FTE - CF	34.0	36.2	38.5	44.5	DI #6
Operating Expenses - CF	270,726	284,470	279,905	441,464	DI #6, NP-4
Board Meetings - CF	11,500	23,500	23,500	23,500	
Indirect Cost Assessments - CF	422,728	453,080	473,214	461,561	
					Request vs. Appropriation
TOTAL - (2) BANKING - CF	**3,313,382**	**3,510,175**	**3,587,186**	**4,411,382**	**23.0%**
FTE - CF	**34.0**	**36.2**	**38.5**	**44.5**	**15.6%**

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
(3) DIVISION OF CIVIL RIGHTS					
Primary Function: enforces state laws that prohibit discrimination in employment, housing, and public accommodations on the basis of race, sex, national origin, ancestry, physical or mental disablity, religion, color, marital status, or sexual orientation					
Personal Services	1,561,336	1,615,800	1,678,996	1,829,223	DI #4
FTE	25.9	24.7	32.4	33.8	DI #4
General Fund	957,585	952,863	900,893	1,051,120	
FTE	16.4	15.5	19.4	20.8	
Reappropriated Funds / Cash Funds Exempt	234,347	311,532	419,067	419,067	
FTE	2.0	2.0	2.0	2.0	
Federal Funds	369,404	351,405	359,036	359,036	
FTE	7.5	7.2	11.0	11.0	
Operating Expenses	131,792	143,277	102,498	117,066	
General Fund	65,381	60,534	61,378	75,946	DI #4, NP-4
Federal Funds	66,411	82,743	41,120	41,120	
Hearings Puruant to Complaint	0	3,057	18,000	18,000	
General Fund	0	3,057	17,000	17,000	
Federal Funds	0	0	1,000	1,000	
Commission Meetings Costs	12,363	12,367	12,374	12,374	
General Fund	5,163	5,167	5,174	5,174	
Federal Funds	7,200	7,200	7,200	7,200	
Indirect Cost Assessment - FF	81,765	0	35,916	36,509	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
					Request vs. Appropriation
TOTAL - (3) CIVIL RIGHTS	**1,787,256**	**1,774,501**	**1,847,784**	**2,013,172**	**9.0%**
FTE	**25.9**	**24.7**	**32.4**	**33.8**	**4.3%**
General Fund	1,028,129	1,021,621	984,445	1,149,240	16.7%
FTE	16.4	15.5	19.4	20.8	7.2%
Reappropriated Funds / Cash Funds Exempt	234,347	311,532	419,067	419,067	0.0%
FTE	2.0	2.0	2.0	2.0	0.0%
Federal Funds	524,780	441,348	444,272	444,865	0.1%
FTE	7.5	7.2	11.0	11.0	0.0%

(4) OFFICE OF CONSUMER COUNSEL

Primary Function: representing interests of residential, agricultural and small business consumers in electric, gas, telecommunications utility rate and service proceedings before the Public Utility Commission (PUC). The funding source is the PUC Fixed Utility fund.

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Personal Services - CF	614,166	687,847	773,249	805,893	
FTE - CF	6.3	6.9	7.0	7.0	
Operating Expenses - CF	32,233	47,506	55,572	56,322	NP-4
Indirect Cost Assessments - CF	76,859	82,378	86,039	83,920	
					Request vs. Appropriation
TOTAL - (4) CONSUMER COUNSEL - CF	**723,258**	**817,731**	**914,860**	**946,135**	**3.4%**
FTE - CF	**6.3**	**6.9**	**7.0**	**7.0**	**0.0%**

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
(5) DIVISION OF FINANCIAL SERVICES					
Primary Function: regulating state-chartered savings and loan associations and credit unions; and financial oversight of life care institutions. The funding source is the Division of Financial Services Cash Fund.					
Personal Services - CF	795,112	835,607	956,351	1,212,004	DI #5
FTE - CF	10.6	11.2	13.0	15.0	DI #5
Operating Expenses - CF	64,148	86,988	81,671	127,632	DI #5, NP-4
Indirect Cost Assessments - CF	120,780	152,988	159,787	155,852	
					Request vs. Appropriation
TOTAL - (5) FINANCIAL SERVICES - CF	**980,040**	**1,075,583**	**1,197,809**	**1,495,488**	**24.9%**
FTE - CF	**10.6**	**11.2**	**13.0**	**15.0**	**15.4%**
(6) DIVISION OF INSURANCE					
Primary Function: regulating insurance companies doing business and/or domiciled in Colorado; licensing insurance agents and adjusters; regulating non-profit hospital and health service corporations, prepaid dental plans, health maintenance organizations, self-insurance pools for workers' compensation, fraternal benefit societies, bail bondsmen, and pre-need funeral contracts. Unless otherwise indicated, the funding source is the Division of Insurance Cash Fund.					
Personal Services - CF	5,105,947	5,264,633	6,171,046	6,350,689	
FTE - CF	71.4	76.1	84.9	84.7	
Operating Expenses - CF	286,532	284,179	404,340	410,358	NP-4
Senior Health Counseling Program - FF	463,453	574,951	509,000	509,000	
FTE - FF	1.5	2.0	2.0	2.0	
PIP Exam Program - CF	16,157	0	0	0	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Insurance Fraud Prosecution - CF	585,868	766,261	845,305	845,305	
Indirect Cost Assessments	878,838	924,096	999,006	974,950	
Cash Funds	850,848	924,096	985,760	961,485	
Federal Funds	27,990	0	13,246	13,465	
					Request vs. Appropriation
TOTAL - (6) INSURANCE	**7,336,795**	**7,814,120**	**8,928,697**	**9,090,302**	**1.8%**
FTE	**72.9**	**78.1**	**86.9**	**86.7**	**(0.2%)**
Cash Funds	6,845,352	7,239,169	8,406,451	8,567,837	1.9%
FTE	71.4	76.1	84.9	84.7	(0.2%)
Federal Funds	491,443	574,951	522,246	522,465	0.0%
FTE	1.5	2.0	2.0	2.0	0.0%

(7) PUBLIC UTILITIES COMMISSION

Primary Function: regulates the rates and services of fixed utilities and transportation utilities located in the state and administers the Colorado Telecommunications High Cost Program, the Low-Income Telephone Assistance Program, the Highway Crossing Protection Program, and the Disabled Telephone Users Program. Approximately half of the Division's funding is from the PUC Fixed Utility Fund, with the remainder coming from cash fund sources indicated in the letternotes.

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Personal Services	7,533,834	7,747,183	8,475,608	8,989,921	
FTE	87.3	88.8	97.1	102.9	
Cash Funds	7,198,084	7,747,183	8,475,608	8,989,921	DI #7
FTE	87.3	88.8	97.1	102.9	DI #7
Reappropriated Funds / Cash Funds Exempt	335,750	0	0	0	
Operating Expenses - CF	409,512	392,124	418,099	467,741	DI #7, NP-2,4

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Expert Testimony - CF	14,000	23,500	25,000	25,000	
Highway Crossing Payments - RF/CFE	240,031	59,765	0	0	
Disabled Telephone Users Payment - CF	1,847,019	1,844,739	2,439,591	2,439,591	
Transfer to Reading Services for the Blind Cash Fund - CF	200,000	200,000	200,000	200,000	
Commission for the Deaf and Hard of Hearing Cash Fund - CF	222,282	641,318	654,756	654,756	
Commission for the Blind or Visually Impaired Cash Fund - CF	0	23,448	112,067	112,067	
Low Income Telephone Assistance - CF	1,779,665	2,135,674	2,143,752	2,143,752	
Colorado Bureau of Investigation Background Checks Pass-through - CF	0	112,427	67,128	67,128	
Indirect Cost Assessments - CF	1,026,621	1,100,797	1,193,483	1,164,093	
					Request vs. Appropriation
TOTAL - (7) PUBLIC UTILITIES COMM.	**13,272,964**	**14,280,975**	**15,729,484**	**16,264,049**	**3.4%**
FTE	**87.3**	**88.8**	**97.1**	**102.9**	**6.0%**
Cash Funds	12,697,183	14,221,210	15,729,484	16,264,049	3.4%
FTE	87.3	88.8	97.1	102.9	6.0%
Reappropriated Funds / Cash Funds Exempt	575,781	59,765	0	0	n/a

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes

(8) DIVISION OF REAL ESTATE

Primary Function: licenses real estate brokers, real estate appraisal professionals, mortgage brokers, analyzes subdivision offerings on undeveloped land, and administers an enforcementprogram that is responsive to the needs of the industry and the consumer. The funding source is the Division of Real Estate Cash Fund unless otherwise indicated.

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Personal Services - CF	2,295,406	2,592,385	3,171,812	3,230,890	
FTE - CF	28.7	38.8	50.1	49.1	
Operating Expenses - CF	176,162	211,722	209,630	210,081	NP-2, NP-4
Commission Meetings - CF	21,666	20,425	38,836	38,836	
Hearings Pursuant to Complaint - CF	150	3,997	4,000	4,000	
Payments from Real Estate Recovery	17,277	49,601	0	0	
Cash Funds	5,567	49,601	0	0	
Reappropriated Funds / Cash Funds Exempt	11,710	0	0	0	
Mortgage Broker Consumer Protection - CF	0	131,178	309,495	309,495	
Indirect Cost Assessment - CF	406,257	476,822	571,544	557,469	
					Request vs. Appropriation
TOTAL - (8) REAL ESTATE	**2,916,918**	**3,486,130**	**4,305,317**	**4,350,771**	**1.1%**
FTE	**28.7**	**38.8**	**50.1**	**49.1**	**(2.0%)**
Cash Funds	2,905,208	3,486,130	4,305,317	4,350,771	1.1%
FTE	28.7	38.8	50.1	49.1	(2.0%)
Reappropriated Funds / Cash Funds Exempt	11,710	0	0	0	n/a

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes

(9) DIVISION OF REGISTRATIONS

Primary Function: regulates over 295,000 licensees in more than 42 professions and occupations. Its boards and licensing programs ensure a minimum level of competency among the practitioners, facilities, programs, and equipment that it licenses. The primary funding source is the Division of Registrations Cash Fund.

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Personal Services	9,947,867	10,847,467	11,431,315	11,799,352	
FTE	157.3	162.2	178.3	180.4	
General Funds	0	0	67,400	0	
Cash Funds	8,196,728	9,073,262	9,176,108	9,534,511	DI #2
FTE	134.9	142.3	155.8	157.9	
Reappropriated Funds / Cash Funds Exempt	1,751,139	1,774,205	2,181,315	2,258,349	
FTE	22.4	19.9	22.5	22.5	
Federal Funds	0	0	6,492	6,492	
Operating Expenses	1,310,501	1,313,306	1,424,330	1,486,080	
Cash Funds	1,180,678	1,174,215	1,424,330	1,486,080	DI #2, NP-4
Reappropriated Funds / Cash Funds Exempt	129,823	139,091	0	0	
Hearings Pursuant to Complaint	236,900	215,123	307,075	307,075	
Cash Funds	230,097	205,736	307,075	307,075	
Reappropriated Funds / Cash Funds Exempt	6,803	9,387	0	0	
Payments to Department of Health Care Policy and Financing	154,383	14,652	14,652	14,652	
Cash Funds	0	14,652	14,652	14,652	
Reappropriated Funds / Cash Funds Exempt	154,383	0	0	0	
CBI/FBI Backround Checks - CF	0	0	243,768	7,563	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Indirect Cost Assessment	3,460,849	3,756,951	4,122,091	4,070,137	
Cash Funds	3,223,445	3,518,356	4,122,091	4,070,030	
Reappropriated Funds / Cash Funds Exempt	237,404	238,595	0	0	
Federal Funds	0	0	0	107	
					Request vs. Appropriation
TOTAL - (9) REGISTRATIONS	**15,110,500**	**16,147,499**	**17,543,231**	**17,684,859**	**0.8%**
FTE	**157.3**	**162.2**	**178.3**	**180.4**	**1.2%**
General Funds	0	0	67,400	0	**(100.0%)**
Cash Funds	12,830,948	13,986,221	15,288,024	15,419,911	0.9%
FTE	134.9	142.3	155.8	157.9	1.3%
Reappropriated Funds / Cash Funds Exempt	2,279,552	2,161,278	2,181,315	2,258,349	3.5%
FTE	22.4	19.9	22.5	22.5	0.0%
Federal Funds	0	0	6,492	6,599	1.6%

(10) DIVISION OF SECURITIES

Primary Function: monitors the conduct of broker-dealers and sales representatives throughout Colorado and investigates citizen complaints and other indications of investment fraud. The funding source is the Division of Securities Cash Fund.

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Personal Services - CF	1,595,217	1,575,541	1,731,241	1,936,967	DI #3
FTE - CF	19.4	19.8	20.0	22.0	DI #3
Operating Expenses - CF	45,970	56,460	47,816	62,732	DI #3, NP-2,4
Hearings Puruant to Complaint - CF	19,317	19,438	19,594	19,594	
Board Meeting Costs - CF	2,936	2,448	4,500	4,500	
Securities Fraud Prosecution - CF	407,797	441,794	473,014	473,014	

	FY 2006-07 Actual	FY 2007-08 Actual	FY 2008-09 Appropriation	FY 2009-10 Request	DI/Notes
Indirect Cost Assessment - CF	219,597	235,467	245,825	239,771	
					Request vs. Appropriation
TOTAL - (10) SECURITIES - CF	**2,290,834**	**2,331,168**	**2,522,010**	**2,736,600**	**8.5%**
FTE - CF	**19.4**	**19.8**	**20.0**	**22.0**	**10.0%**

					Request vs. Appropriation
DEPARTMENT OF REGULATORY AGENCIES					
TOTALS	**63,935,229**	**70,260,953**	**78,771,202**	**81,599,927**	**3.6%**
FTE	**491.5**	**517.7**	**575.6**	**593.7**	**3.1%**
General Fund	1,273,491	1,402,047	1,578,627	1,716,812	8.8%
FTE	16.4	15.5	19.4	20.8	7.2%
Cash Funds	53,399,543	59,292,831	67,283,597	69,679,422	3.6%
FTE	392.6	420.1	466.4	483.1	3.6%
Reappropriated Funds / Cash Funds Exempt	8,122,713	8,347,099	8,590,895	8,986,376	4.6%
FTE	73.5	72.9	76.8	76.8	0.0%
Federal Funds	1,139,482	1,218,976	1,318,083	1,217,317	(7.6%)
FTE	9.0	9.2	13.0	13.0	0.0%

APPENDIX B: SUMMARY OF MAJOR LEGISLATION

- ❑ **S.B. 08-11 (Morse/Massey): Trauma Care Funding.** Requires insurance companies to include medical payments coverage of at least $5,000 on motor vehicle policies beginning January 1, 2009. Appropriates $10,848 cash funds and 0.2 FTE to the Division of Insurance for FY 2008-09.

- ❑ **S.B. 08-29 (Groff/Balmer): Continuing Education Architects.** Requires architects to complete continuing education and to participate in a continuing competency program in order to renew their licenses. Appropriates $44,534 cash funds to the Department, of which $35,530 and 0.5 FTE is appropriated to the Division of Registrations and $9,004 is appropriated to the Executive Director's Office, for legal service for FY 2008-09. Appropriates $9,004 reappropriated funds to the Department of Law for provision of legal services.

- ❑ **S.B. 08-135 (Mitchell S./Gagliardi): Health Insurance Standardized Benefits Card.** Requires state regulated health insurance carriers to issue to their new and renewing members, a standardized, printed card containing benefit information by July 1, 2009, and by July 1, 2010, for all plan members. Private health plans covered by the Employee Retirement Security Act are not subject to S.B. 08-135. Appropriates $12,928 cash funds to the Division of Insurance for FY 2008-09.

- ❑ **S.B. 08-152 (Tochtrop/Gagliardi): Require Motor Vehicle Dealer Education.** Requires occupational therapists to be registered and establishes a registration program in the Division of Registrations. Appropriates $107,116 cash funds to the Department, of which $96,311 and 1.2 FTE in appropriated to the Division fo Registrations and $10,805 is appropriated to the Executive Director's Office, for legal services for FY 2008-09. Appropriates $10,805 reappropriated funds to the Department of Law for the provision of legal services.

- ❑ **S.B. 08-155 (Cadman/Kerr A.): Centralize IT Management In OIT.** Consolidates the responsibility for information technology oversight for most of the State's executive branch in the Governor's Office of Information Technology. Reduces appropriations to the Department of Regulatory Agencies by 1.7 FTE.

- ❑ **S.B. 08-188 (Boyd/Pommer): Pilot Program For Direct Care Nurses.** Establishes a 14-member committee to develop and implement a pilot program to model the effective participation of direct care nurses in decision-making processes in hospitals in the Division of Registrations. Appropriates $67,400 General Fund to the Division of Registrations. Provides a reduction of $67,400 General Fund to the FY 2008-09 Long Bill appropriation to the Controlled Maintenance Trust Fund.

- ❏ **S.B. 08-200 (Veiga/Judd): Expand Discrimination Prohibitions.** This bill adds the prohibition of discrimination based on sexual orientation to non-discrimination statutes affecting housing, employment not covered by H.B. 07-25, education, public accommodations and health care. Appropriates $81,805 General Fund to the Department, of which $21,732 and 9.4 FTE is appropriated to the Division of Civil Rights and $60,073 is appropriated to the Executive Director's Office, for legal services, for FY 2008-09. Appropriates $60,073 reappropriated funds and 0.5 FTE to the Department of Law for the provision of legal services. Provides an associated reduction of $81,805 General Fund to the FY 2008-09 Long Bill appropriation to the Controlled Maintenance Trust Fund.

- ❏ **S.B. 08-217 (Hagedorn/McGihon): Centennial Care Choices.** Requires the Department of Health Care Policy and Financing, in coordination with the Division of Insurance and a panel of experts, to prepare a request for information from health insurance carriers and other interested parties. Appropriates $29,500 cash funds to the Division of Insurance to provide approximately 700 hours of health insurance and actuarial expertise.

- ❏ **S.B. 08-219 (Romer/McFadyen): Licensure of Massage Therapists.** Requires massage therapists to be registered and establishes a registration program in the Division of Registrations. Appropriates $516,359 cash funds to the Department of Regulatory Agencies. Of this amount, $254,583 and 3.5 FTE is appropriated to the Division of Registrations, and $18,008 is appropriated to the Executive Director's Office, for legal services, for FY 2008-09. Appropriates $243,768 reappropriated funds to the Department of Public Safety. Of this amount, $131,643 and 1.2 FTE is appropriated to the Colorado Bureau of Investigations and $112,125 is for pass-through to the Federal Bureau of Investigation to perform criminal history background checks. Appropriates $10,805 reappropriated funds to the Department of Law for the provision of legal services.

- ❏ **H.B. 08-1058 (McGihon/Gordon): Uniform Athlete Agents Act.** Requires athlete agents to register with the Division of Registrations if they intent to represent a college athlete in the pursuit of commercial or professional interests. Appropriates $56,749 cash funds to the Department, of which $46,665 and 0.6 FTE is appropriated to the Division of Registrations and $10,084 is appropriated to the Executive Director's Office, for legal services and leased space, for FY 2008-09. Appropriates $7,564 reappropriated funds to the Department of Law for the provision of legal services.

- ❏ **H.B. 08-1216 (Ferrandino/Romer): Consumer Outreach and Education Program.** Creates the Consumer Outreach and Education Program and requires the Division of Insurance to present a plan to the Joint Budget Committee regarding the establishment of an Office of Insurance Ombudsman by September 15, 2008. Creates the Consumer Outreach and Education Cash Fund comprised of surcharges on fines collected by the Department related to professions and occupations, up to $200,000 per year. Appropriates $200,000 cash funds to the Executive Director's Office for FY 2008-09.

- ❑ **H.B. 08-1226 (May M./Veiga): Mobility Of Practice Non-Colorado CPAs.** Permits a certified public accountant (CPA) or registered public accountant from another state for foreign country to practice in Colorado without registering with the Department of Regulatory Agencies, State Board of Public Accountancy. Appropriates $3,602 to the Executive Director's Office, for legal services, to update its rules related to non-resident CPAs. Appropriates $3,602 reappropriated funds to the Department of Law for the provision of legal services.

- ❑ **H.B. 08-1227 (Madden/Tapia): Sunset Continue of Public Utilities Commission.** Continues the Public Utilities Commission (PUC) until 2019 and permits basic residential telephone service providers to apply to the PUC for permission to increase the price of service. Appropriates $397,473 cash funds to the Department, of which $354,255 and 4.0 FTE is appropriated to the Public Utilities Commission and $43,218 is appropriated to the Executive Director's Office, for legal services, for FY 2008-09. Appropriates $43,218 reappropriated funds and 0.3 FTE to the Department of Law for the provision of legal services. Appropriates $15,578 cash funds and 0.2 FTE to the Department of Human Services to harmonize eligibility for the Low-Income Energy Assistance Program and the Low-Income Telephone Assistance Programs at 185 percent of the federal poverty level.

- ❑ **H.B. 08-1298 (Buescher/Keller): Supplemental Appropriation Department of Regulatory Agencies.** Supplemental FY 2007-08 appropriation for the Department. Also includes supplemental adjustments to further modify FY 2006-07 appropriations to the Division of Real Estate included in H.B. 07-203 and H.B. 07-1322.

- ❑ **H.B. 08-1353 (Madden/Isgar): Verify Conservation Easement Tax Credits.** Adds requirements to verify the validity of a state income tax credit claimed by a taxpayer for donating a conservation easement. Appropriates $473,874 to the Department, of which $256,326 and 3.6 FTE is appropriated to the Division of Real Estate to review conservation easement appraisals and establish a conservation easement holder certification program; and $217,548 is allocated to the Executive Director's Office for information technology costs and leased space. Appropriates $92,818 General Fund and 2.0 FTE to the Department of Revenue for the review of gross conservation easements. Provides an associated reduction of $92,818 General Fund to the FY 2008-09 Long Bill appropriation to the Controlled Maintenance Trust Fund.

- ❑ **H.B. 08-1375 (Buescher/Keller): Long Appropriations Bill.** General appropriations act for FY 2008-09. Also includes supplemental adjustments to further modify appropriations to the Division of Real Estate included in the FY 2007-08 Long Bill.

- ❑ **H.B. 08-1383 (Roberts/Tochtrop): Nursing License Inactive Status.** Creates an inactive status for professional and practical nursing licenses and requires that a nurse demonstrate continued competency as part of the reactivation process. Appropriates $34,688 cash funds and 0.5 FTE to the Division of Registrations for FY 2008-09.

- ❑ **H.B. 08-1385 (Primavera/Schwartz): Increased Health Insurance Transparency.** Requires the Insurance Commissioner to implement and maintain a consumer guide to health benefits coverage on the Division of Insurance website. Appropriates $8,774 cash funds to the Division of Insurance for FY 2008-09.

- ❑ **H.B. 08-1389 (Carroll M./Sandoval): Fair Accountable Insurance Rates.** Creates the Fair Accountable Insurance Rates Act for health insurance rates that take effect on or after January 1, 2009. Requires insurance companies to seek preapproval for rate increases and to file complete and detailed descriptions of their rating and renewal underwriting practices with the Commissioner of Insurance. Appropriates $309,985 cash funds and 4.5 FTE to the Division of Insurance for FY 2008-09.

- ❑ **H.B. 08-1393 (Stephens/Morse): Consumer Health Care Transparency Act.** Requires health insurance carriers to submit certain information to the Division of Insurance, including a list of the average reimbursement rates for the 25 most common inpatient procedures and producer compensation schedules; the Commissioner may post this information on the division's website. Directs the Health Care Task Force to study the feasibility of ambulatory surgical centers reporting information on their charges for inclusion on the Colorado Hospital Association website. Appropriates $14,705 cash funds to the Division of Insurance for FY 2008-09.

APPENDIX C: UPDATE OF FY 2008-09 LONG BILL FOOTNOTES AND REQUESTS FOR INFORMATION

Long Bill Footnotes

The Department of Regulatory Agencies had no Footnotes in the 2008 Long Bill.

Requests for Information

1 **All Departments, Totals** -- Every department is requested to submit to the Joint Budget Committee information on the number of additional federal and cash funds FTE associated with any federal grants or private donations that are applied for or received during FY 2008-09. The information should include the number of FTE, the associated costs (such as workers' compensation, health and life benefits, need for additional space, etc.) that are related to the additional FTE, the direct and indirect matching requirements associated with the federal grant or donated funds, the duration of the grant, and a brief description of the program and its goals and objectives.

Request for Information / Department Response. The Department of Regulatory Agencies is adding no new FTE during FY 2008-09 using Federal Funds or private donations. For informational purposes, however, the Department also wishes to furnish the following information regarding existing federal grants or private donations that support FTE.

Aside from a few individual programs, the Department does not have a significant amount of federal or privately funded grants. For the grants and contracts that are received, no direct and indirect matching requirements occur prior to receipt of federal funds. However, the two Civil Rights agreements are based on maintenance of effort with the federal government given the cost-sharing nature of these two specific awards.

The Department has the following grants that support Department FTE:

- The U.S. Housing and Urban Development Office (HUD). This grant is a contract agreement that supports a portion of the costs of investigating and adjudicating housing discrimination complaints, which are subject to both federal and state discrimination laws. **No new FTE have been added for FY 2008-09 associated with this grant.** In combination with the EEOC grant below, these funds support a maximum of 11.0 FTE in the Division of Civil Rights per the Long Bill. The contract is annual and recurs each year, with the ultimate award is dependent on case completion. In the most recent fiscal year, the Department spent $367,498 in HUD funding.

- The Equal Employment Opportunity Commission (EEOC). This grant is a contract agreement that supports a portion of the costs of investigating and adjudicating employment discrimination complaints, which are subject to both federal and state discrimination laws. **No new FTE have been added for FY 2008-09 associated with this grant.** In combination with the HUD grant above, these funds support a maximum of 11.0 FTE in the Division of Civil Rights per the Long Bill. The contract is annual and recurs each year, with the ultimate award is dependent on case completion. In the most recent fiscal year, the Department spent $269,465 in EEOC funding.

- State Health Insurance Assistance (SHIP) program funding received through the federal Centers for Medicare & Medicaid Services (CMS) and the Administration on Aging. This grant supports the Division of Insurance's continuing program to train older adult volunteers and aging network agency staff about Medicare and related health insurances to assist older adults having inquiries. The SHIP program was originally created under the Omnibus Budget Reconciliation Act of 1990, and the grant constitutes basic support of the program offered by Centers for Medicare & Medicaid Services. **No new FTE have been added for FY 2008-09 associated with this grant.** While the majority of grant revenue is distributed to sub-recipient organizations and agencies, these funds also support 2.0 FTE in the Division of Insurance. The grant is annual and recurs each year. In the most recent fiscal year, the Department spent $574,951 in SHIP funding.

- Prescription Drug Monitoring Grant, U.S. Department of Justice, Bureau of Justice Assistance. This $400,000 grant was applied for pursuant to HB 05-1130, which required the Pharmacy Board to develop, operate, and maintain a prescription drug monitoring program via grant funding, and specifically prohibited using state moneys and license fees to support the system, authorizing gifts, grants, and donations instead. This grant was received in October of 2006. Subsequently, SB 07-204 modified requirements of the program such that the State Board is permitted to collect an annual fee from licensed professionals who prescribe controlled substances. **No new FTE have been added for FY 2008-09 associated with this grant.** In combination with cash fees, the federal funds support 1.0 FTE in the Division of Registrations. From the original grant, $20,651 was spent in the first fiscal year, $254,818 spent last fiscal year, and $124,531 remains to be spent in the current fiscal year. The Board recently learned that a second $400,000 grant has been approved. In the absence of future federal grants, the FTE will be funded via cash funds per the requirements in SB 07-204.

APPENDIX D: SUMMARY OF PREDATORY LENDING LEGISLATION

Home Equity Protection Act (HOEPA) - enacted in 1994 as an amendment to Truth in Lending Act. HOEPA applies to very high-interest (greater than 8% for primary, and 10% for second loans), high-fee loans (greater than 8% of total loan amount) and prohibits a number of potential predatory practices including: flipping of a loan in the a borrower's interest, large balloon payments, negative amortization, default interest rates higher than pre-default rates and prepayment penalties in the first five years of the loan. Of the mortgage loans originated in Colorado in 2006, HOEPA only applied to less than .1% of all loans.

Colorado predatory lending legislation:

- ❑ HB 02-1259: Colorado Consumer Equity Protection Act - regulates high-cost finance loans made in COLORADO and lowers some of the triggers placed under HOEPA

- ❑ HB 03-1298: Limit Mortgage Unconsciounability Claims - clarifies conditions under which a court may find a mortgage unconscionable

- ❑ SB 07-85 - Protect Consumer Real Estate Transaction - Prohibits a mortgage broker from improperly influencing a real estate appraisal and makes such improper influencing a deceptive trade practice; specifies criminal penalties for improperly influencing a real estate appraisal; and modifies the powers and duties of the director of the Division of Real Estate.

- ❑ SB 07-249 - Real Estate Title Escrow Settlement - Requires the Division of Insurance to perform an annual market analysis of the title insurance industry in the state and investigate and enforce title insurance laws.

- ❑ SB 07-216: Mortgage Loan Acts Practices - Creates a duty of good faith and fair dealing for mortgage brokers in their communications and transactions with borrowers; requires refinancing transactions to have a reasonable, tangible net benefit to borrowers; and requires the Director of the Division of Real Estate to promulgate rules governing the marketing of nontraditional mortgages by mortgage brokers.

- ❑ SB 07-203 - Mortgage Brokers Licensing Act - Changes the regulatory framework for mortgage brokers from registration to licensing; makes errors and omissions insurance a licensing requirement; establishes education, testing, and continuing education requirements for mortgage brokers; defines grounds for disciplinary action.

- ❑ HB 07-1322 - Measures to Prevent Mortgage Fraud - Expands the Mortgage Broker Registration Act by defining prohibited conduct regarding fraud, misrepresentation, and conflict of interest, and requires disclosures specific to fees, costs, and lock-in agreement terms.

APPENDIX E: EXPEDITED SETTLEMENT PROCESS

Expedited Settlement Process		
Process Step	**Action Taken**	
1. Complaint of Professional misconduct received by the Board.	go to step 2.	
2. Board Staff investigates the legal sufficiency of the Complaint.	Case is legally sufficient. Go to step 3.	Case is not legally sufficient. Case dismissed.
3. The case is heard before the Board. Are the allegations of the complaint identified as a violation of the practice act?	Yes. Determine the case complexity. Go to step 4.	No. Case dismissed.
4. Is the case complex (highly contested, has correspondents, companion criminal/civil cases)?	Yes. Case referred to the OAG. ESP case closed.	No. Initiate ESP. Go to step 5.
5. Board Staff attempts to settle in accordance with Board's initial settlement guidance.	Respondent agrees to settlement. Case Settled. Go to step 8.	Respondent provides a counter offer. Need Board approval. Go to step 6.
6. Board receives a counter offer from the respondent for a case in ESP.	Board accepts counter offer. Go to step 8.	Board rejects counter offer. Go to step 7.
7. Board staff attempts to settle in accordance with the Board's initial settlement guidance.	Respondent agrees to settlement. Case settled. Go to step 8.	Respondent rejects settlement offer. Case referred to OAG. ESP case closed.
8. Form stipulation and Final Agency Order drafted and signed by respondent.	Completed. Case settled and closed.	Not completed. Case referred to OAG. ESP case closed.

APPENDIX F: DEPARTMENT OF LAW
DECISION ITEM #1 AND BRIEFING ISSUE

Decision Item	GF	CF	RF	FF	Total	FTE
	0	**0**	**0**	**0**	**0**	**0.0**
Consolidation of the Special Prosecutions Unit **Criminal Justice and Appellate Division.** The Department requests that the currently separate Long Bill appropriations to four units within the Criminal Justice and Appellate Division be consolidated into a single appropriation. There will be no change in the overall level or mix of funding. These appropriations fund the Special Prosecution Unit, the Insurance Fraud Unit, the Securities Fraud Unit, and the Capital Crime Prosecution Unit. The Department believes that the additional flexibility resulting from consolidation, which will allow the Department to move staff among programs and a sign them to the cases for which they are best suited, will increase the efficiency and effectiveness of its investigations and prosecutions. The Department also requests that The current two-step funding arrangement in the Long Bill, in which funds for The Securities and Insurance Fraud units are first appropriated in The Divisions of Insurance and Securities in The Department of Regulatory Agencies and are then reappropriated to The two fraud programs, be replaced with a direct appropriation to The fraud programs. *Statutory authority: Sections 24-31-101, 10-1-129 and 11-51-603, C.R.S.*						
Total						

FY 2009-10 Joint Budget Committee Staff Budget Briefing
Department of Law

BRIEFING ISSUE
PRESENTED BY STEPHEN ALLEN, JBC ANALYST
NOVEMBER 19, 2008

ISSUE: Consolidation of The Special Prosecutions Unit

Recounts the history of the four units that would be consolidated by Decision Item number 1, pointing out that this decision item would reverse a FY 2005-06 decision of the General Assembly. Discusses recent opposition to consolidation by the Department of Regulatory Agencies.

SUMMARY:

❏ The Department of Law's number one Decision Item requests that its Insurance Fraud Unit, Securities Fraud Unit, and Capital Crimes Prosecution Unit be consolidated with its Special Prosecution Unit and be appropriated on a single line of the Long Bill.

- ❏ The Decision Item also requests that its Insurance and Securities Fraud Units receive direct appropriations from the Division of Insurance Cash Fund and from the Division of Securities Cash Fund.

- ❏ This briefing issue reviews the history of these programs, noting that they have, in recent years, been consolidated, split, and now would be joined again. It discusses possible opposition from the Department of Regulatory Agencies and suggests questions that the Committee may wish to ask of each agency.

RECOMMENDATION:

Staff recommends that the Committee ask the following questions of the Department of Law at its hearing:

- ☐ Explain the benefits that the Department expects to derive from consolidation and comment on the Department's experience with consolidation during FY 2002-03, 2003-04 and 2004-05, the years when the program was consolidated.

- ☐ Why did the Department of Law exclude the Capital Crimes Prosecution Unit from its FY 2002-03 consolidation plan but include it in this plan? Would the Department want to proceed with Decision Item number 1 if the Capital Crimes Prosecution Unit was excluded from the consolidation?

- ☐ How will the Department assure that each funding agency receives an amount of investigatory and prosecutorial support commensurate with that agency's financial contribution to the combined unit?

Staff also recommends that the Committee ask the Department of Regulatory Agencies to respond to the following questions at its hearing:

- ☐ **What is DORA's position on the Department of Law's request to consolidate the Securities and Insurance Fraud Units with the Special Prosecutions Unit?**

- ☐ **What is DORA's position on the Department of Law's request for a direct appropriation to the Securities Fraud and Insurance Fraud Units from the Division of Securities Cash Fund and from the Division of Insurance Cash Fund?**

DISCUSSION:

The Department of Law has had a separately appropriated unit that specializes in the investigation and prosecution of workers' compensation fraud since the latter1980's. The Department's Securities Fraud Unit dates from FY 1996-97, when the Joint Budget Committee approved a decision item that provided 2.5 FTE for securities fraud investigation and prosecution. The Department asked that the new program not be created within the Legal Services to State Agencies division, which supplies legal services to other agencies on a fee-for-service basis, to eliminate the appearance of a attorney-client relationship. The Department's Insurance Fraud Unit dates from FY 1997-98 when H.B. 97-1346 granted the Attorney General's Office the authority to investigate and prosecute insurance fraud. The bill also created a $120 fee in Section 10-3-207 (1)(e), C.R.S., to provide funding for the unit and provided 2.5 FTE to the Department to staff the program. In FY 1998-99, this program joined the Workers' Compensation Fraud Unit and the Securities Fraud Unit in the "Special Purpose" division of the Department's Long Bill. Each unit had its own separate appropriation and the three together were staffed by 8.0 FTE. The units differed in one regard, however, the Workers' Compensation Fraud program was funded by a cash funds appropriation that allowed it to expend funds received from the Colorado Compensation Insurance Authority (Pinnacol Assurance) while the Securities and Insurance fraud programs were both funded by two-part appropriations that first appropriated cash funds from the Division of Securities Cash Fund to the Division of Securities and from the Division of Insurance Cash Fund to the Division of Insurance (both in the Department of Regulatory Agencies) and then reappropriated these funds to the Department of Law's Securities and Insurance fraud units. The reappropriations were at that time classified as cash funds exempt. Given the independent status of Pinnacol Assurance, a two-step appropriation within Pinnacol Assurance followed by an appropriation transferring the funding to the Department of Law was not possible.

The Department's Capital Crimes Prosecution Unit dates from 1994-95, when the 4.0 FTE unit was added to the Long Bill in the Department's General Enforcement and Appellate Division. It has, since it's exception, been supported by a General Fund appropriation.

In FY 2002-03, the Department of Law requested, and the Joint Budget Committee approved, a plan that consolidated the workers' compensation, securities and insurance fraud programs with other specialized enforcement programs into a new Long Bill line titled the Special Prosecutions Unit. The Capital Crimes Prosecution Unit was not included in this combined unit. This new unit was comprised of 16.8 FTE who were supported directly by payments from the Colorado Compensation Insurance Authority, indirectly by appropriations from the Division of Insurance Cash Fund and the Division of Securities Cash Fund, and by appropriations from the General Fund. The Attorney General's Office requested this change, which had no net effect on the Department's appropriation of dollars or FTE, because it provided increased flexibility with regard to both funding and staffing.

In March of 2005, the Department of Regulatory Agencies (DORA) sent a letter to the Joint Budget Committee requesting that the appropriations to the Securities Fraud Unit and the Insurance Fraud Unit for FY 2006-06 and subsequent years be presented separately in the Long Bill, as they had been prior to FY 2002-03. DORA also asserted that the Department of Law should account for the expenditures of the Insurance and Securities Fraud units in a manner similar to the accounting provided by the Department of Law's Legal Services to State Agencies program for its client agencies. The Committee responded sympathetically to DORA's request, and agreed to split the Securities Fraud and Insurance Fraud Programs from the Special Prosecutions program and present their appropriations separately in the Long Bill.

Now, three and a half years after the split, the Department of Law is requesting that the Committee revisit its 2005 decision. If the Committee approve this request, then over the 9-year period from FY 2001-02 to FY 2009-10, these Units will have been separate and consolidated.