

**DEPARTMENT OF REGULATORY AGENCIES
FY 2011-12 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Wednesday, December 8, 2010
3:00 pm – 4:30 pm**

3:00-3:10 INTRODUCTIONS AND OPENING COMMENTS

I. Introduction

Good afternoon, Madame Chair, members of the Joint Budget Committee and other members of the legislature. I am Barbara Kelley, Executive Director of the Department of Regulatory Agencies. Thank you for the opportunity to speak with you today about the Department's budget request, as well as our programs and operations.

DORA is one of the most uniquely structured departments in state government. We have 9 discrete program oriented divisions, including:

Banking; Civil Rights; Office of Consumer Counsel; Financial Services; Insurance; Public Utilities Commission; Real estate; Registrations; and Securities

You are also likely familiar with our Office of Policy, Research & Regulatory Reform, in the Executive Director's office, which submitted 16 sunset and sunrise reports for the Legislature's consideration.

However, the unifying thread across the divisions is the common mission of consumer protection. For the Department, the professionals and businesses we regulate are as much consumers as other members of the general public. We are committed to preserving the integrity of the marketplace, for the benefit of businesses as well as their customers.

As you know, DORA's \$70.9 million budget for the current fiscal year is over 96% cash-funded, received from licensing fees and assessments. The levels of those fees are periodically adjusted to ensure sufficient revenue to cover program costs appropriated by the General Assembly each year. Only one of the Department's division, Civil Rights, is funded primarily through statewide general funds.

The Civil Rights Division has been part of the Governor's efforts to balance the state's budget for the last 3 years. As noted in the JBC's staff briefing, Civil Rights continues to contribute in that effort, to the extent of a 2% across the board reduction in personal services. As also noted in the briefing paper, the reduction in the current fiscal year has reached a point of jeopardizing federal funds the Division receives, an issue I will address in more detail a little later.

Although a challenge, we are committed to maintaining within the Division an effective and responsive level of service and protection to Coloradoans from discrimination in housing,

employment and public accommodations statewide.

II. Budget Priorities

DORA's budget priorities for FY 201-12 request are two-fold. First we are requesting an increase of \$364,276 in cash funds for the Division of Banking Cash Fund and 3.0 FTE to perform an increased number of bank examinations due to the continued deterioration of the ratings of state chartered banks. The increased level of examination is in large part a function of federal requirements in connection with the continued availability of federal deposit insurance for our state banks. Secondly, we are requesting an increase of \$212,155 in cash funds from the Division of Securities Cash Fund and 3.0 FTE to perform oversight and examination of an increased number of investment advisory firms as required under the recent DODD-Frank reform bill.

I am always mindful to acknowledge that although cash-funded agencies are not operated using taxpayer dollars, the fee-payer dollars that support DORA appropriations are every bit as precious as tax dollars, and that fee impacts create very real consequences for the professionals and businesses we regulate. We fully understand and remain committed to our obligation for the wise and efficient use of fee payer resources.

Thank you.

3:10-3:20 QUESTIONS COMMON TO ALL DEPARTMENTS

1. Please identify your department's three most effective programs and your department's three least effective programs, and explain why you identified them as such. How do your most effective programs further the department's goals? What recommendations would you make to increase the effectiveness of the three least effective programs?

Respectfully, the Department is unable to identify most or least effective programs in this way. The Department is comprised of over 50 programs ranging from small-scale professional licensing programs to rate regulation over utilities and insurance. Each program in the Department proceeds from a specific statutory mandate, and no program is administered with more or less priority than any other program. Department goals in implementing these programs are best summarized in its strategic plan, which lays out the Department's mission of consumer protection and its goal-oriented approach of consumer and professional outreach, complaint resolution and program enforcement, timely access to the regulatory process, qualified professionals, and improvements to Colorado's economic environment.

Importantly, all Department programs, as well as other state regulatory activities undergo periodic reviews in the form of the statutorily mandated sunset review process. This process examines the historical roots of a statutorily created program, analyzes its operations, evaluates the rationale for its adoption, its effectiveness and recommends potential legislative changes and/or whether the program should continue. A report is prepared for consideration by the General Assembly on every program that is reviewed.

While the Department is happy to provide any and all information that will help lawmakers in policy deliberations, prioritizing the Department's programs here would be a policy judgment that is at odds with each statutory mandate and the statutory sunset process. As such, this is a judgment best rendered by policymakers in the General Assembly.

2. For the three most effective and the three least effective programs identified above, please provide the following information:
 - a. A statement listing any other state, federal, or local agencies that administer similar or cooperating programs, and outline the interaction among such agencies for each program;
 - b. A statement of the statutory authority for these programs and a description of the need for these programs;
 - c. A description of the activities which are intended to accomplish each objective of the programs, as well as, quantified measures of effectiveness and efficiency of performance of such activities;
 - d. A ranking of the activities necessary to achieve the objectives of each program by priority of the activities; and,
 - e. The level of effort required to accomplish each activity associated with these programs in terms of funds and personnel.

Respectfully, the Department is unable to identify most or least effective programs in this way. While the Department is happy to provide any and all information that will help lawmakers in policy deliberations, for the reasons just outlined, prioritizing these programs in the manner prescribed would be a policy judgment that is at odds with the statutory sunset process. As such, this is a judgment best rendered by policymakers in the General Assembly.

3. Detail what could be accomplished by your Department if funding for the department is maintained at the fiscal year 2009-10 level.

If funding is maintained at the fiscal year 2009-10 level, implementation of new programs added by the General Assembly during the 2009 and 2010 sessions could be compromised due to a lack of sufficient resources. Specifically, this includes a number of important programs such as modifications to the Skolnick Medical Transparency Act, the regulation of mortgage companies, and as well as others illustrated in the following table. Alternatively, the legislature would have a decision to make in terms of legislatively prioritizing existing Department programs as well.

Program/Bill	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
2010 Session						
SB 10-109 <i>Medical Marijuana Regulation</i>	\$593,333	1.2	\$0	\$0	\$593,333	\$0
SB 10-124 <i>Skolnick Medical Transparency Act Revisions</i>	\$98,873	1.0	\$0	\$98,873	\$0	\$0
HB 10-1001 <i>Increase Renewable Energy Targets</i>	\$51,440	0.5	\$0	\$51,440	\$0	\$0
HB 10-1114 <i>Money Transmitters</i>	\$23,124	0.5	\$0	\$23,124	\$0	\$0
HB 10-1141 <i>Mortgage Company Registrations</i>	\$15,782	0.0	\$0	\$15,782	\$0	\$0
HB 10-1197 <i>Conservation Easement Tax Credit Cap</i>	\$9,028	0.2	\$0	\$9,028	\$0	\$0
HB 10-1224 <i>Continuation of Podiatry Regulation</i>	\$3,149	0.0	\$0	\$3,149	\$0	\$0
HB 10-1260 <i>Continuation of Medical Examiners Board</i>	\$29,686	0.0	\$0	\$29,686	\$0	\$0
HB 10-1278 <i>HOA Information and Resource Center</i>	\$205,828	2.0	\$0	\$205,828	\$0	\$0
HB 10-1365 <i>Clean Air Clean Jobs Act</i>	\$74,115	0.6	\$0	\$74,115	\$0	\$0
HB 10-1415 <i>Registration of Surgical Assistants</i>	\$43,414	0.4	\$0	\$43,414	\$0	\$0
Total Funding	\$1,147,772	6.4	\$0	\$554,439	\$593,333	\$0
2009 Session						
SB 09-26 <i>Athletic Trainer Practice Act</i>	\$130,740	1.3	\$0	\$130,740	\$0	\$0
SB 09-138 <i>Continuation of Certified Nurse Aides</i>	\$17,055	0.0	\$0	\$17,055	\$0	\$0
SB 09-167 <i>Continuation of Chiropractic Examiners</i>	\$14,057	0.0	\$0	\$14,057	\$0	\$0
SB 09-239 <i>Continuation of State Board of Nursing</i>	\$259,881	2.7	\$0	\$259,881	\$0	\$0
HB 09-1085 <i>Mortgage Loan Originator Licensing Act</i>	\$202,636	1.0	\$0	\$202,636	\$0	\$0
HB 09-1086 <i>Continuing Professional Competency of Mental Health Professionals</i>	\$134,123	1.0	\$0	\$134,123	\$0	\$0
HB 09-1136 <i>Competency to Perform Electrical Work</i>	\$99,894	1.0	\$0	\$99,894	\$0	\$0
HB 09-1202 <i>Regulation of Disposition of Dead Human Bodies (BYOB)</i>	\$158,614	1.4	\$0	\$158,614	\$0	\$0
Total Funding	\$1,017,000	8.4	\$0	\$1,017,000	\$0	\$0

Additionally, Department oversight of the financial sector will be compromised and certain overhead costs that are centrally administered by the Department of Personnel and Administration may be unfunded.

First, the Department is highly selective in the amounts of new funding it chooses to request, and only seeks budget increases if the need is significant. Accordingly, if funding is maintained at the fiscal year 2009-10 level, requested FY 11-12 Decision Items in the Divisions of Banking and Securities would go unfunded, which will compromise the Department's oversight of the financial sector as follows:

- With regard to the Division of Banking request for 3.0 examiner FTE, sufficient resources for banking regulation are urgently needed due to the present economic climate. Additionally, sufficient resources for the State's bank examination program are also urgently needed in order to maintain federal deposit insurance through the Federal Deposit Insurance Corporation (FDIC) for customer accounts in state chartered banks. In essence, the FDIC is an insurance company for the Colorado state chartered banking system. Just like any other insurance entity, the FDIC does not want to pay insurance claims which occur when a bank is closed by a regulatory body. Therefore, the FDIC and the Division of Banking work with the bank to improve its

risk management practices so that they stay in business and the FDIC is not required to pay out funds. A state regulatory program and in particular a state examination program must be adequate to protect the interests of both the state regulatory agency as well as the FDIC so that the institution's deposits are insured and Colorado consumers and businesses are protected. Due to deteriorating bank ratings, projected examinations are expected to sharply increase in FY 10-11 and FY 11-12. Sufficient regulation of financial institutions has never been more critical than it is now, and without additional resources, the Division will not be able to complete required examinations, elevating the risk of bank failures and heightening the potential damage in the event of a failure precisely when effective oversight is urgently needed.

- With regard to the Division of Securities request for 3.0 examiner FTE, given the vast potential for public harm the Division believes that no investment advisory firm should operate without being examined at least once every 5-6 years, similar to examination cycle of the US Securities and Exchange Commission. This view is consistent with the enhanced oversight of investment adviser firms required with the recent passage of the Dodd-Frank financial reform legislation. Dodd-Frank requires regulators to improve the information they gather about the size and type of funds, as well as information about auditors, prime brokers, marketers, administrators and custodians of the funds. The enhanced information will better enable both regulators and the investing public to assess the risk profile of an investment adviser and its funds. These requirements are done with a view to prevent future losses to investors of the sort caused by the Bernie Madoffs of the world. Colorado is not immune from such losses as is seen from the recent conviction and sentencing of Sean Mueller, whose investment advisory firm caused losses to Colorado investors that exceed \$60 million. Serious violations are found in almost half of all examinations conducted by the Division, and the Dodd-Frank legislation increased the number of investment advisory firms under Division regulation by 100 (15%). Adding 3.0 full-time examiners pursuant to this request would increase capacity to 175 per year – sufficient to examine all 739 firms within 5-6 years and achieve protection of Colorado consumers. If this staff is not added, 75 less firms will be examined per year on this cycle.

Additionally, all common policy items for which the Department of Personnel and Administration is responsible (benefit costs, risk insurance premiums, etc.) require adjustment annually and the Department must receive sufficient funding to support these actual costs each year.

4. How much does the department spend, both in terms of personnel time and/or money, dealing with Colorado WINs or any other employee partnership group? Has the level of resources dedicated to this effort changed in the past five years?

The Department's involvement with Colorado WINs has not driven any spending, and the level of resources dedicated to this effort has consisted of several meetings with WINs representatives who were seeking to establish open channels of communication, ask questions, and suggest improvements. Additionally, a few employees have brought WINs representatives to personnel-related meetings. None of these issues has created the need for any specific expenditures.

The Human Resources Director was appointed to a partnership working group, tasked with identifying and addressing various workplace issues, including but not limited to proposed changes to Chapter 4 of the State Personnel Board Rules. This required her involvement and attendance at approximately 80 hours of meetings between June 2009 and November 2010, as well as completing associated projects and assignments.

3:20-3:40 HIGH COST SUPPORT MECHANISM

Overview of the Operation of the High Cost Support Mechanism

1. Please discuss how the High Cost Support Mechanism operates. Please address the following questions in the response:

Overview. The Colorado High Cost Support Mechanism (CHCSM) was created to provide financial assistance to local exchange providers to help make basic local exchange service affordable, and to allow such providers to be fully reimbursed for the difference between the reasonable costs incurred in making basic service available to their customers within a rural, high cost geographic support area and the price charged for such service. Telecommunications customers support the cost of the program via a percentage rate element, currently 2.2%, that is assessed monthly intrastate service charges on a customer's bill. Telecom providers may apply to the PUC and become eligible for reimbursement of such costs of providing basic service "within a rural high cost geographic support area". The CHCSM receives and distributes between \$50-\$60 million annually.

To understand how the mechanism is administered, there are several terms that require definition:

- High Cost Area: This means a defined geographic area of the state generally equivalent to an incumbent wireline carrier's high cost exchange
- Affordability Component: The Commission approves cost-based rates as fair, just and reasonable, and a significant factor in this component is the fact that the imposition of the actual costs of providing basic local

exchange services in high cost areas would in effect preclude availability of such service to significant portions of the populations in these areas

- Eligible Cost: Eligible costs are any valid intrastate costs associated with the provision of telecommunications services as prescribed by FCC Part 36 regulations

A telecom provider who has applied and been granted eligible provider status by the PUC may be eligible to receive reimbursement from the CHCSM fund. Eligible provider status and receipt of funding is contingent on demonstration of the provider's costs exceeding its revenues.

The telecom provider is required to file an application for initial or increased funding, which application contains supporting data for the request. A PUC decision is made regarding the request based on either the application's own merits being sufficient or after an evidentiary hearing is held if the matter is contested. Upon approval of an application CHCSM funds are calculated and distributed quarterly by PUC Staff to the providers.

All these processes exist to carry out the statutory requirements to properly reimburse carriers for "the difference between the reasonable costs incurred in making basic service available to their customers within a rural high cost geographic support area and the price charged for such service..." (§40-15-208, C.R.S.).

- a. What is the role of the High Cost Mechanism in ensuring telephone access is provided to rural and high cost areas of the state.

The Colorado High Cost Support Mechanism (CHCSM) was created to aid in accomplishing the federal and state mandated goals of universal basic service and the affordability of basic service through financial assistance for providing such services in high cost areas of the state. The CHCSM together with the federal Universal Service Fund currently provides approximately \$133M to support universal service in rural areas of Colorado.

The CHCSM is a neutral assessment applied monthly to intrastate telecommunications services charges on a customer's bill. Each telecom provider then remits quarterly the revenue to the CHCSM account. Telecom providers of basic local exchange service may apply to the PUC and become eligible to request reimbursement under §40-15-208, C.R.S., for, "the difference between the reasonable costs incurred in making basic service available to their customers within a rural high cost geographic support area and the price charged for such service, after taking into account any amounts received by the provider under price support mechanisms established by the federal and state government". Reimbursement from the CHCSM fund is provided quarterly to eligible telecom providers upon submittal and review by the PUC CHCSM administrator of information required under PUC rules.

The CHCSM currently distributes approximately \$57M to 11 telecom providers serving high cost rural areas of Colorado. The federal Universal Service Fund (USF) currently provides \$73M to 30 providers serving high cost rural areas of Colorado. Together these funds are used to defray capital and operating expenses for loops, switching, and trunking necessary to provide basic service in high cost areas.

Further discussion of the CHCSM can be found in the 2010 Annual Report of the Colorado High Cost Support Mechanism dated December 1st, 2010, has been submitted to all members of the General Assembly.

- b. Does the High Cost Support Mechanism assist with connectivity between landlines and cellular? If so, how?

The CHCSM provides funding to support the existence of wireline and wireless basic local exchange service to high cost rural areas of the state. To the extent that the existence of such service allows a wireline phone to call and connect to a wireless phone and vice versa, it could be construed as providing support with connectivity between landlines and cellular service.

- c. What is the role of the Office of Consumer Council in determining which utilities receive funds from the High Cost Support Mechanism?

The basic function of the OCC is defined in § 40-6.5-104 (1), C.R.S., as follows:

The consumer counsel shall represent the public interest and, to the extent consistent therewith, the specific interests of residential consumers, agricultural consumers, and small business consumers ... in matters which involve proposed changes in a public utility's rates and charges, in matters involving rule-making which have an impact on the charges, the provision of services, or the rates to consumers...

Each telecommunications provider that seeks to be designated as an Eligible Provider to receive CHCSM support must file an application with the PUC requesting such. Upon such filing, the PUC provides notice of the application. PUC procedures at 4 CCR723-1-1401 allow parties, including the OCC, to file a motion to intervene in the proceeding within 30 days of the Commission's notice of the proceeding. Per §40-6.5-106, C.R.S., the OCC shall have leave to intervene in all cases where such request is made in conformance with the rules of the Commission. Parties including the OCC, in the alternative to intervention, have the opportunity to file comments in the proceeding. If the OCC intervenes in the proceeding, their role in the proceeding is similar to that of any other intervening party which is to create a record that represents their constituent's interests in the matter.

2. Why is the surcharge projected to increase from 2.2 percent in the first quarter of 2011 to 2.9 percent in the second quarter of 2011?

The PUC is required per C.R.S. 40-15-208(2) and PUC rules to determine the maximum rate element that will be established each year. This rate is not the absolute rate that will be charged but sets the cap under which the PUC may adjust the rate as needed. The PUC uses its expertise in past administration of the fund as well as its knowledge of and best estimates of potential impacts to the fund in order to estimate the cap rate. The PUC did **not** factor in any transfer of funds from the CHCSM to the general fund when estimating and approving the maximum surcharge of 2.9% for 2011. Potential impacts to the fund in 2011 included a decline in contributions, pending and/or anticipated requests for distributions, changes to the federal universal service fund programs and amounts, and the administration costs of the fund including a reserve balance to manage the flow of the funds. The PUC currently projects a minimum of \$1.5M additional funds to be requested by telecom providers.

High Cost Support Mechanism Distributions

3. Please explain how the distribution process works and address the following points in the response:
 - a. Why distributions are made on a quarterly basis;

Disbursements are made on a quarterly basis pursuant to PUC rules defined at 4 CCR 723-2-2846 through 2848. The PUC rules specifically require PUC staff (which functions as the CHCSM's administrator) to review the assessment quarterly and determine if the assessment needs to be revised. Payments made quarterly are most consistent in making a determination of a needed adjustment to the assessment as well as provides for the most rational balance between the cost and frequency of administration, the payment of funds and maintaining a reasonable fund balance.

- b. The Public Utilities Commission's role in determining which costs are subsidized and the amount of the subsidy. If the Public Utilities Commission does not make these determinations, please identify who does.

A telecom provider who has applied and been granted eligible provider status by the PUC may be eligible to receive reimbursement from the CHCSM fund. Eligible provider status and receipt of funding is contingent on demonstration of the provider's costs exceeding its revenues.

The telecom provider is required to file an application for initial or increased funding, which application contains supporting data for the request. A PUC decision is made regarding the request based on either the application’s own merits being sufficient or after an evidentiary hearing is held if the matter is contested. Upon approval of an application CHCSM funds are calculated and distributed quarterly by PUC Staff to the providers.

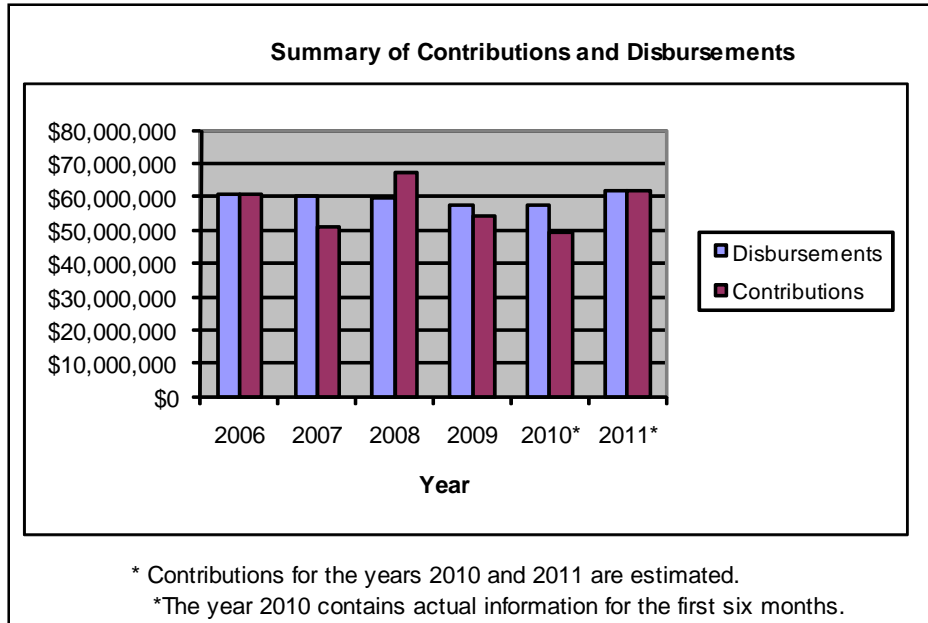
All these processes exist to carry out the statutory requirements to properly reimburse carriers for “the difference between the reasonable costs incurred in making basic service available to their customers within a rural high cost geographic support area and the price charged for such service...” (§40-15-208, C.R.S.).

- c. Why the distributions to certain utilities, as outlined in the chart on page 20 of the FY 2011-12 staff briefing document, increased from calendar year 2008 to calendar year 2009.

Company	2008 Actual	2009 Actual
Agate Mutual	\$14,361	\$16,941
Nucla-Naturita	\$221,852	\$242,020
Nunn	\$22,482	\$58,540
Phillips County	\$168	\$30,847
Roggen	\$35,345	\$51,614
Northeast Cellular	\$2,026,785	\$2,409,718

The distributions to the utilities increased from 2008 to 2009 due to applications filed by rural providers and approved by the Commission. In order to receive CHCSM support, a rural provider must provide documentation that shows its revenue requirement needed to cover its reasonable costs of providing basic local exchange service to customers. Competitive providers, such as Northeast Colorado Cellular receive CHCSM support based on the number of lines it serves in high cost areas multiplied by the amount of support per access lines for that high cost area. The increased distribution in this situation was due to additional areas of the state in which the service was provided, an increase in the number of lines in its previously existing service area, and the any changes in the corresponding per line amount in a specific service area.

Generally speaking, overall revenues from intrastate telecommunications services are declining and the PUC must adjust the CHCSM rate element accordingly as illustrated in the following table:



There are several issues that can account for reduced revenue. These reasons include but are not limited to the following:

- A decline in intrastate long distance minutes;
- Market competition, which can result in less costly intrastate service;
- A decline in the number of landlines;
- Telecom providers exiting the Colorado market.

Overall disbursements have remained fairly steady as the rural wireline carriers currently continue to receive significant federal high cost funding

4. Are cellular providers eligible to receive funds from the High Cost Support Mechanism? If so, which cellular providers are currently receiving funds from the High Cost Support Mechanism and why are they eligible to receive these funds?

As providers of telecommunications service, wireless companies are allowed to file an application to become an “Eligible Provider” (EP) and receive CHCSM funding pursuant to § 40-15-208, and § 40-15-502, C.R.S, and Commission rules. The Commission first determined that Wireless companies were eligible to receive support initially in 2001 when they approved the application of Western Wireless to receive Eligible Provider designation. The PUC citing §§ 40-15-501 *et seq.*, C.R.S., noted that, “ the Colorado legislature has established the policy of encouraging competition in telecommunications markets, including the basic local exchange market, to ensure that all consumers benefit from such increased competition.” The PUC also referenced § 40-15-502(2), C.R.S. which mandates that funds from these mechanisms "shall be distributed equitably and on a nondiscriminatory, competitively neutral basis" in its decision.

To receive EP designation and funding, the wireless provider must demonstrate that its costs exceed its revenues and meet other requirements. A wireless provider is only eligible to receive support if the underlying wireline carrier in that exchange area receives support. The wireless carrier only receives support for the number of lines it has in service not the entire cost of its network. The wireless provider must offer service to the entire exchange area as well as offer a “basic local exchange service” comparable to the rate charged by the underlying wireline provider. There are currently three wireless providers certified as eligible providers in Colorado including Northeast Colorado Cellular, Inc.,(dba Viaero Wireless), Commnet Four Corners, and Elbert County Wireless.

5. Are the costs incurred in providing voice over internet protocol (VoIP) to high cost areas eligible for High Cost Support Mechanism funds? If so, why? If not, why not?

To date the PUC has not received an application from a VoIP provider or made a ruling regarding the receipt of CHCSM funds by a VoIP provider.

For the last several years the regulatory treatment of VoIP services, both nomadic and fixed, interconnected and computer to computer, has been the subject of much debate and litigation at the federal level and in the courts. The FCC has made limited determinations regarding VoIP using its ancillary authorities and has for example, required VoIP to provide 911 capabilities, has allowed states to require providers assess 911 charges, and has required VoIP providers to contribute to the federal Universal Service Fund (USF). As noted previously, the PUC currently has a pending CHCSM rulemaking in which comments have been filed regarding VoIP.

High Cost Support Mechanism and Broadband

6. How has the laying of high fiber lines impacted the High Cost Support Mechanism subsidy? Has the expansion of connectivity due to these high fiber lines impacted the subsidy amount received by providers? If so, how?

Fiber deployment has been occurring in many parts of the wireline network for several decades and continues to expand its reach further out in the network to the business and home. Neither the USF nor the CHCSM have ever excluded costs based on the type of technology deployed. To the extent that such costs are incurred in making basic local exchange service available to the high cost area, they are not excluded from the CHCSM. However, no CHCSM subsidy amount was applied for and received in support of strictly broadband service.

7. Should the High Cost Support Mechanism be adapted to pay for rural broadband? If so, how would the Public Utilities Commission recommend this occur? If not, why not?

The PUC acknowledges the importance of broadband in rural high cost areas of the state. The Public Utilities Commission is currently engaged in a rulemaking that could change the

Colorado High Cost Support Mechanism (CHCSM). On April 7, 2010 the Commission opened Docket No. 10R-191T Notice of Proposed Rulemaking to address proposed changes to the CHCSM. Among other changes, the proposed rules address the areas of which lines should be supported, whether interconnected VoIP providers should contribute, the benchmark rate and annual reporting. Comments were filed August 2, 2010, Reply Comments September 10, 2010 and Closing Comments October 18, 2010. A hearing was held on September 27, 2010. The Commission has not made a final decision.

Additionally, multiple complex intersecting issues including but not limited to the impact on affordable rates for basic voice service, regulatory authority over broadband, and intercarrier compensation and universal service fund reform as part of the National Broadband Plan all directly impact the need for and timing of funding in high cost areas of the state. Additionally, the Governor has tasked the Governor's Office of Information Technology (OIT) with the role of developing a statewide broadband map which effort is currently in progress but not complete.

Both this review and the pending PUC docket will establish more concrete information that policymakers can use to further deliberate any adaptations of the CHCSM.

8. How are rural communities transitioning to broadband, and what is the role of the High Cost Support Mechanism in this transition? What are the future plans of how rural communities will transition to broadband and how will these plans impact the High Cost Support Mechanism.

Providers in rural communities in Colorado are using a variety of wireline technologies including copper, fiber, coax, fixed and mobile wireless, microwave and satellite technologies to address broadband build-out needs. Funding for the broadband deployment also varies and may come from loans, grants, available cash for capital deployment etc. As previously stated in the answer to #6 above, the CHCSM only plays an indirect role in this deployment. The PUC does not have detail on how communities will transition to broadband and recommends that the JBC consult with the Governor's Office of Information Technology which is currently addressing broadband planning with various regional councils in the state.

\$20.0 Million Requested Transfer in FY 2011-12

9. Since the Public Utilities Commission is aware of the proposed transfer:
 - a. Will the Public Utilities Commission approve the next quarterly distributions, or postpone the distributions until the General Assembly has acted on the proposed transfer?

Yes the PUC will continue to administer the CHCSM based on current statutory and rule requirements and will approve the next quarterly and ongoing distributions accordingly. The PUC has not made and will not make any assumptions or adjustments to the CHCSM funds prior to legislation being passed and signed by the Governor.

- b. What are impacts to future distributions if the Public Utilities Commission makes the next quarterly distributions and the General Assembly transfers the \$20.0 million from the High Cost Support Mechanism?

Unless otherwise modified by the legislature, the PUC would continue to follow current statutes, rules and CHCSM administration processes regarding CHCSM distribution obligations and pay the telecom providers. The PUC will assess future funding requirements and possible fee adjustments

- c. Will the Public Utilities Commission adjust the next quarterly distributions to keep the surcharge at the same level in anticipation of the General Assembly possibility transferring \$20.0 million to the General Fund?

No. The PUC will pay the quarterly distribution obligations as required under current statutes and rules.

10. What will the surcharge be, if the General Assembly transfers \$20.0 million from the High Cost Support Mechanism?

Assuming the current fund balance, contribution and distribution requirements, the surcharge would need to be increased to 4.1% in order to generate the \$20 million to transfer to the General Fund and still meet the payment obligations to the providers.

Ultimately this impact would depend on how the General Assembly chooses to craft any legislation and whether contribution or distribution requirements are changed in statute. For instance, the General Assembly could seek to legislatively limit expenditures from the fund, could seek an alternative dollar amount to transfer from the fund.

11. How did the Department and the Governor's Office determine that \$20.0 million is available to transfer from the High Cost Support Mechanism?

The request is an Executive Branch proposal with involvement from both the Office of State Planning and Budgeting as well as DORA. In light of the fact that this strategy was already pursued once for \$15.0 million during FY 2009-10, it would be expected that the General Assembly would again consider a cash fund transfer as a policy option for the legislature in tumultuous budget times. However, it is ultimately up to the General Assembly whether it wished to pursue a transfer of \$20 million or any other amount from the High Cost Support Mechanism as a means of helping balance the FY 2011-12 Budget.

A determination that there was \$20.0 million available to transfer was not made. Instead, the Executive Branch has proposed and submitted for consideration whether the General Assembly should draft legislation that makes this amount available, either by legislatively increasing revenue or by legislatively reducing eligibility.

3:40-3:50 CONSERVATION EASEMENT HOLDER CERTIFICATION FEE

12. If the two conservation easement cash funds are combined, how will the Department ensure that the appraisal fee is not used to subsidize the certification holder program?

The Department recently carried out its annual fee setting for this program and believes that current revenue and expenditure projections for the fund will be sufficient and the fund balances will no longer be in deficit as soon as June 2011, as represented in the following tables. Upon further review of this item, the Department does not support consolidating the funds.

Conservation Easement Appraisal Fund	Actual	Projected	Projected
	FY 09-10	FY 10-11	FY 11-12
Beginning Fund Balance	\$79,220	\$122,761	\$64,255
Revenues	\$144,200	\$54,250	\$54,250
Expenditures	\$100,659	\$112,756	\$112,756
Ending Fund Balance	\$122,761	\$64,255	\$5,749

Conservation Easement Holder Certification Fund	Actual	Projected	Projected
	FY 09-10	FY 10-11	FY 11-12
Beginning Fund Balance	(\$9,302)	(\$63,122)	\$10,287
Revenues	\$93,000	\$200,350	\$141,050
Expenditures	\$146,820	\$126,941	\$126,941
Ending Fund Balance	(\$63,122)	\$10,287	\$24,396

It should be noted that the Department keeps fees for separate programs completely segregated with budget and accounting code structures. The Department would not propose subsidizing one fee program with revenues from another, which would not conform to the statutory requirements for each of these programs.

13. How does the Department propose to fully fund the conservation easement holder certification program if the two cash funds are not combined?

As mentioned above, the Department believes the 2011 fee schedule will generate sufficient support for program costs.

14. What, if any, possible legal issues are there in regards to current legal challenges of denied conservation easement tax credits if the conservation easement holder fee is increased?

We are not aware of any legal issues involving DORA and the fee level for this program. Legal challenges of denied tax credits are typically between the Taxpayer (Landowner) and the Dept or Revenue or IRS. In addition, many of the current legal challenges are on conservation easements donated to conservation easement holders before state certification became a requirement on January 1, 2010.

15. How soon after the purchase of land being claimed for a conservation easement tax credit do conservation easement holders have to be certified by the Division of Real Estate?

A conservation holder must be certified by the Division of Real Estate **before** they accept a conservation easement donation involving a state tax credit. If a conservation easement was donated to an organization (land trust or government entity) that was **not** certified, then the conservation easement would not be eligible for a state tax credit. The parties involved would be out of compliance with numerous statutes regarding conservation easements.

16. Note: This question will be addressed during the Department of Revenue hearing. Is there a time limit after the date of purchase to claim the conservation easement tax credit? Is it possible for a conservation easement holder to retroactively claim a conservation easement tax credit? If so, why is this possible?

3:50-4:15 LOW INCOME TELEPHONE ASSISTANCE PROGRAM

Low Income Telephone Assistance Program Questions for the Public Utilities Commission

17. How does the Public Utilities Commission determine what lines are subject to the monthly fee? Please provide a five year history of the number of lines subject to the monthly fee.

The PUC is authorized and required under §40-3.4-108 (1), C.R.S., to “determine and impose a uniform charge on each business and residential access line in an amount sufficient to reimburse each provider of basic local exchange services for its provision of low-income telephone assistance and to reimburse the department of human services for administrative expenses incurred under this article.” The PUC has promulgated rules for the LITAP program and has specified at 4 CCR 723-2-2805 that the uniform charge shall be billed to each access line of each provider of basic local exchange telecommunications service. Basic local exchange telecommunications service is defined in §40-15-102 (3), C.R.S., as telecommunications service which provides a local dial tone line and local usage necessary to place or receive a call within an exchange area and any other services or features that may be added by the commission under service in § 40-15-502(2), C.R.S. The PUC has implemented rules further detailing the definition of basic local exchange service at 4 CCR 723-2-2308. The providers of basic local exchange

service are required to abide by these statutes and rules and file tariffs indicating their offering of basic local exchange service along with language indicating the assessment of the LITAP fee.

Year	2005	2006	2007	2008	2009	2010 YTD
Total Access Lines Subject To Surcharge	2,808,933	2,296,340	NA*	NA*	2,292,555	2,249,661
* Carriers not required to report access lines in 2007 and 2008 due to \$0 charge on lines						

18. Should the Public Utilities Commission be responsible for program outreach? Why or why not? If not, why should the Department of Human Services be responsible for program outreach?

The PUC believes that, based on its long standing interpretation of statute, outreach for this program is not contemplated. The legislature has not directed or appropriated funds to the Commission to conduct outreach for the LITAP program. To the extent that a broader statutory interpretation of the policy concerning the PUC’s role in the program is requested by the General Assembly, the PUC, subject to additional resources and funding, could develop and implement an outreach plan. However, the PUC believes that DHS through its LITAP Task Force may be the appropriate collaborative group to develop an outreach plan if funds are made available. The PUC could then in a cooperative manner team with the Department and telephone carriers to clearly define each entity’s outreach efforts for the LITAP program.

19. What is the Public Utilities Commission’s position on the possible elimination of the program?

First, the PUC does not think the General Assembly should eliminate the LITAP program before the Commission has determined, following a formal hearing involving interested parties (including representatives of low income consumers as well as telecommunications carriers) what would be the impact on telephone subscribership.

Second, due to the interaction of the LITAP program with the Federal Lifeline program, the PUC believes that it is more prudent to monitor the efforts and results of several federal regulatory dockets currently underway. These may materially impact the Lifeline program and change the need for LITAP support. For example, on November 4, 2010 the State and Federal Universal Service Joint Board issued its recommendations to the FCC on the Lifeline program regarding the issues of automatic enrollment, verification procedures, outreach requirements, and also recommended that further comment be sought on the costs and benefits of raising the eligibility requirement to 150% of the federal poverty guidelines, minimum uniform eligibility requirements, database certification and how the potential expansion of the current program to include broadband services as outlined in the National Broadband Plan might impact the

recommendations. The next step is for the FCC to consider and act on these recommendations.

Finally, the PUC is currently engaged in a rulemaking that could change the CHCSM. One potential outcome of the rulemaking would be an increase in rates for basic telephone service, at least for some carriers. The PUC suggest that it would be prudent to finish the CHCSM rulemaking and assess its impact on subscribership before considering whether to eliminate the LITAP program.

Low Income Telephone Assistance Program Questions for the Department of Human Services

20. Please provide a five year history of the expenditures and associated FTE for the Low Income Telephone Assistance Program.
21. What criteria are used by the Department of Human Services to determine which lines are eligible for the subsidy? Is the criteria used by the Department of Human Services established by state or federal law?
22. Please provide a breakdown, by county, of Low Income Telephone Program participants since FY 2007-08.
23. Should the Department of Human Services be responsible for program outreach? If so, why? If not, why should the Public Utilities Commission be responsible for program outreach?
24. What is the position of Department of Human Services on the possible elimination of the program?

4:15-4:30 GENERAL DEPARTMENT QUESTIONS

Civil Rights Division

25. Please provide Civil Rights Division caseload numbers since FY 2008-09. Please include information on the backlog during this time and how the Division is addressing the backlog.

The following table shows caseload over this period:

Charges-Cases Filed with CCRD				
Fiscal Year	Employment	Housing	Public Accommodation	Total
FY08-09	712	103	72	887
FY09-10	599	89	46	734

Although the Civil Rights Division does not have a backlog of investigations, part of the reason the “case filed” numbers decreased in FY 2009-10 was because of a shortage of personnel in the Complaint Intake unit who could process complaint intakes, thereby slowing down and pushing out the dates that complaints were filed. Despite all of its challenges, however, the Division has greatly improved the timeliness and quality of the complaint intake

process, and by calendar year end, all complaints filed will be processed within the Division's standards of quality and timeliness.

26. What has been the impact of the General Fund reductions on the amount of federal funds received by the Division since FY 2007-08?

Recent General Fund reductions have resulted in the Colorado Civil Rights Division (CCRD) struggling to maintain the prior years' level of number of investigations completed. CCRD has contracts with the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Housing and Urban Development (HUD) agencies to conduct investigations on their behalf. EEOC and HUD negotiate with CCRD at the beginning of a contract year the number of cases that CCRD will investigate on their behalf, based on CCRD's performance in the prior contract year. There is also an expectation from EEOC and HUD that the State of Colorado participate in the funding of these investigations since Colorado has employment and housing anti-discrimination laws similar to EEOC and HUD. Funds from the Federal contracts average about 23% of the Division's total budget. As a result of the budget reductions CCRD investigated 117 fewer cases under the federal contracts during FY 2008-2009, which resulted in a loss of approximately \$110,000 from EEOC and HUD. Also as a result of the budget reductions, CCRD investigated 71 fewer cases under the federal contracts during FY 2009-2010 with a loss of approximately \$82,000 from EEOC and HUD. Due to the hard work of its staff however the Division was able to maintain an outstanding level of quality and quantity of cases investigated. As a result of this hard work, the Division was in a position to renegotiate its contract with the EEOC in Federal fiscal year 2009-10 by 57 additional cases. This allows the Division to earn approximately \$31,000 more federal dollars from EEOC that it will be able to utilize in FY 2010-2011.

Despite budget cuts, however, the Division has improved its complaint intake process and investigations to a maximum level of its capacity. Through its successful management of problems faced and the hard work of its staff, the Division is in a very good position to begin to reverse the decreasing number of investigations, thereby improving the ability to earn additional federal funds. This spiral (which is currently on the upswing) is entirely dependent on the Division maintaining its current level of funding, without further cuts.

Department FTE Levels

27. When FTE are added to the Department through legislation, are the new FTE transferred from other positions in the Department? If not, how does the Department add FTE authorized through legislation?

The process of filling newly created FTE is the same as filling any other FTE – after legislative authority is given for a position, a position description is written, the position is created and posted, qualified applicants are tested, top candidates are interviewed, and ultimately a person is hired. All job opportunities are limited to Colorado residents pursuant to statute. Although FTE are not transferred from other positions in the Department by design, job postings are publicly available on the web and existing state employees at DORA

and other agencies are fully eligible to apply.

28. Has the number of FTE in the Division of Real Estate dropped as a result of the decrease in the number of licenses? If not, why not?

Licensee populations routinely fluctuate and this sometimes occurs more abruptly at any given time based on economic trends or industry circumstances, but there is not a correlation between changes in population and structural costs of a regulatory program. In the case of the Division of Real Estate, licensee populations are presently more stable than was the case when new applicants for licensure encountered a marked decrease several years ago. However, regardless of micro trends, regulatory programs must still conduct rulemaking, process applications, test for competency, carry out investigations, carry out enforcement and disciplinary actions, and proceed to litigation when necessary. In particular, the enforcement side of the equation does not experience change based on short-term population fluctuations. In fact, in turbulent economic times there is greater pressure on a regulatory program to protect consumers when the need for protection is at its highest.

29. Are any positions in the Department classified as lifetime positions? If so, which positions are classified as such and why?

The state personnel system does not contemplate or authorize “lifetime” positions in the Constitution nor in statute, and no such position exists at DORA.

30. What are the responsibilities of the 5.0 FTE being hired by the Division of Insurance with federal grant funds from the Patient Protection and Affordable Care Act?

Section 1003 of the Affordable Care Act requires the Department of Health and Human Services (HHS) in conjunction with States to establish a process for the annual review of health insurance premiums to protect consumers from unreasonable, unjustified, and/or excessive rate increases. A federal grant program was established to enable states to improve their health insurance rate review and reporting processes. While some states have no existing review process set up to review rates, the Division already reviews rates as well as any health premium rate increases. Any health insurance rate increase requires prior approval from the Division before it can become effective under state law. Therefore, the federal grant requires Colorado’s review of health rates to be expanded and enhanced with regard to PPACA requirements as well. This is expected to include improving the quality of information used in rate reviews, streamlining the amount of time needed to complete them, enhancing consumer outreach and education, and providing grant reporting to HHS. In order to fund this work, for this purpose the Division was provided with a grant from the federal government (specifically the Department of Health and Human Services) for \$1 million, which is expected to cover 5 full-time positions and contractual work for Federal Fiscal Year 2010 (October 2010 to September 2011).

More specifically, the activities of grant-funded positions are as follows:

- The two rate analysts review, analyze, refer, and/or prepare recommendations on approval of health insurance rates in relation to new federal requirements related to medical ratios, unreasonableness of rates, and other requirements. They will also enter data into the current database. The analysts will update the current procedures manual with new federal requirements. These contractors report to the supervisor of the Rates and Forms Section.
- The administrative assistant processes the substantial increase in the number of filings submitted as a result of new federal requirements and assists the rate analysts. This administrative assistant also reports to the Supervisor of Rates and Forms.
- The consumer complaint analyst analyzes and responds to consumer health insurance **rate** complaints related to the Affordable Health Care mandates and changes. This contractor will train DOI staff on changes required under new federal laws and enters complaint information into the data base. This analyst reports to the supervisor of the Life and Health Consumer Affairs Section.
- The actuary reviews filings in greater depth, reviews filings that were not previously reviewed by actuarial staff, develops enhanced analysis of various rating factors, and plans to create an accurate benchmarking tool for various rate factors to further enhance the review process. The actuary reports to the Chief Actuary.

This group of temporary staff resources functions as an intact, grant-funded unit of staff that will be available for only such time as grant funding exists to support these positions. Although they are not part of the Division's permanent, base FTE authorized by the General Assembly, coordination exists with key permanent staff of the Division and this work is properly supervised by permanent staff.

Division Questions

31. What recommendations have been made in banking examinations that have improved the health of the banking institution? What indicators are used to measure the effectiveness of the recommendations made in examination in improving the health of the bank?

The Colorado Legislature has assigned the administrative responsibility to the Division of Banking for the following four (4) programs:

1. Safety & Soundness (Bank Examinations)
2. Public Deposit Protection Act ("PDPA")
3. Colorado Trust Companies
4. Colorado Money Transmitters

A bank examination provides the bank's board of directors and management with an independent 3rd party review of the organizations risk practices, which is very different from an independent audit by a CPA firm. In addition to reviewing risk management practices for both loans and deposits, a bank examination may identify areas where the bank is not complying with either state or federal banking laws, which could negatively impact the bank's

ability to retain its FDIC insurance. If a bank's risk management practices are particularly weak and/or there is an extraordinary number of banking law violations, some type of written agreement is placed on the bank, which provides an outline for how the bank may improve its performance.

It is important to observe that the state banking examination is not a surface level audit. Rather, it is the principal method for the State to safeguard consumer and business depositors with any state-chartered banking institution. It is an in-depth and intensive process that typically takes weeks and involves on-site examiners with expertise in all areas of financial transactions undertaken by the institutions. Without such an examination, the Division is unable to effectively monitor the solvency of institutions and therefore would be unable to achieve its critically important mission of consumer protection.

More importantly, the frequency and intensity of banking examinations is directly related to the health of an institution. Banks are rated using the CAMELS scale, which stands for Capital adequacy, Asset management, Earnings, Liquidity, and Sensitivity to economic environment (CAMELS). Under federal and state regulatory procedures, adversely rated institutions must be examined more frequently (once every 12 months rather than alternating 18 month cycles with federal regulators such as FDIC). The higher the CAMELS score (1-5), the worse the condition of the institution. The viability and financial condition of a banking institution closely correlates with their ranking on the CAMELS scale, and this is an important tool for state and national bank regulators. As such, deteriorating CAMELS ratings for Colorado state chartered banks have the direct result of significantly increasing examination workload of the Division's examiners due to the increased number of examinations required. More significantly, lower rated institutions require even more senior level examiner experience, placing progressively more pressure on limited resources. The number of examinations is expected to increase 40-50% above FY 2009-10 levels by FY 2011-12.

The range of disciplinary actions that can be taken by the Division as a result of examination findings includes minor administrative violations that should be corrected to major and significant findings, and can manifest as anything from non-public written Banking board resolutions to detailed and prescriptive "Consent Order" documents. After a written agreement is negotiated with a bank, the Division receives quarterly reports outlining the bank's progress. The Division's goal for all disciplinary actions is to assist the bank with the improvement of their institution as quickly as possible so regulatory examinations can once again become more routine and less labor intensive. However, it typically takes two to three years or eight to twelve quarters of reporting (at a minimum) for a bank to achieve sufficient progress that it can be released from a written agreement. The bank and the division's goals are aligned (removal from a written agreement) since it creates extraordinary work for both the bank and the division. From the division's perspective, the increase in work load is roughly 400% when a bank becomes subject to a written agreement.

Improvement in a bank's CAMELS Rating is the most objective measure of the improvement in the health of the bank. All other measurements would be highly subjective. Unfortunately, by federal law the release of the CAMELS Ratings for banks is considered a violation of law

with significant potential consequences for those that release CAMELS Ratings. Consumers who are concerned about the health of their particular banking institution can reference materials available on the web, for instance the FDIC website.

32. Is there an organization that oversees the decisions made by the Public Utilities Commission? If so, what measurements are used to determine the effectiveness of this organization? If not, why is there no oversight organization?

There is no entity that oversees PUC decisions, which are subject to review upon application to state district court. Article XXV of the Colorado Constitution mandates that the regulation of public utilities is the province of the General Assembly and that unless that body should otherwise designate, the PUC is mandated with the authority to provide this regulation. Title 40, Colorado Revised Statutes, provides legislative policy direction to the PUC as to how utility regulation is to be conducted in Colorado. The PUC derives its authority wholly from constitutional and statutory provisions.

Pursuant to statute, the 3-member Commission functions as a governor-appointed autonomous regulatory and policymaking board, and as such is the highest administrative authority on rate case decisions. PUC decisions are arrived at via litigated administrative law proceedings, and they are subject to review upon application to State district court.

However, there is an agency whose role it is to represent the interest of consumers before the PUC, the General Assembly, federal agencies and in court – this entity is known as the Office of the Consumer Counsel (OCC). It is a separately appropriated Division within DORA.

The General Assembly created the OCC in 1984 as a type I agency to represent the public interest and specifically the interests of residential, small business and agricultural consumers in electric, gas and telephone proceedings before the Public Utilities Commission (PUC). §§40-6.5-101,102(2)(a) & 104 and §24-1-122(2)(a.5). The OCC intervenes in energy and telecommunication proceedings before the PUC as a matter of right. §§40-6.5-104(1) &106(1)(b). The Governor appoints the 11 members of the Utilities Consumers' Board (UCB) (also created by statute) to staggered four year terms to give general policy guidance to the OCC and Consumer Counsel. §40-6.5-102(3).

The OCC is empowered to appeal decisions of the PUC to court and submit comments to relevant federal agencies such as the Federal Communications Commission, Federal Energy Regulation Commission, and U.S. Department of Energy. §§40-6.5-104(1) &106(2.5). The Consumer Counsel testifies before the General Assembly on issues within its expertise. The OCC appears on energy and telecom issues (and sometimes disagrees with the PUC) and is a member of the Smart Grid Task Force, created by SB10-180.

It is important to note that the OCC is specifically prohibited by statute [C.R.S. §40-6.5-106(2)] from representing individual complainants before the PUC. Rather, the statutory role of the OCC is to represent the interests of all residential, small business, and agricultural consumers.

33. What amount of legal fees was incurred by the Department as a result of the dismissal of Erin Toll? What line item were these fees spent from?

The Department of Law spent a total of \$4,066 to date on this matter, almost all of which was during FY 2009-10 from the Department's Legal Services line item. However, the Department of Personnel and Administration (DPA)'s Risk Management program hired outside counsel to represent the Department in these matters, and these costs were approximately \$23,000.

34. Does the Department support the JBC staff recommendation to eliminate the divisional indirect costs in the Division of Registrations? Why or why not?

The Department does not object to this recommendation, as divisional indirects are not typically a cost that require legislative control via long bill appropriation. As a result, the legislative appropriation for the Division can be expected to decrease by over \$1 million reappropriated funds, with no adverse consequence on the Division's ability to spend.

35. Has the Board of Medical Examiners seen an increase in their workload due to changes in statute governing medical marijuana? If so, how has workload increased?

First, it is important to observe that the responsibility to regulate medical marijuana dispensaries rests with the Department of Revenue as authorized by SB10-109. The Colorado Department of Public Health and Environment (CDPHE) is responsible for the medical marijuana registry program which was authorized in the November 2000 general election under Amendment 20. The role of DORA is merely to regulate the conduct of its existing medical licensees (including all medical professions and not simply physicians) with respect to the provisions of the new medical marijuana statute and the existing Medical Practices Act.

During the first part of the current fiscal year CDPHE focused on reducing the backlog of medical marijuana registry applications. Additionally, CDPHE has been thoughtful in its approach to the crafting of rules concerning the registry as evidenced by the work that the Medical Marijuana Advisory Committee has produced. The Colorado Medical Board (CMB) and CDPHE have been meeting to coordinate complaint referrals. The CMB anticipates receiving the first referrals from CDPHE in the early part of 2011.

In the interim, CMB and staff of other Boards and Programs have been responding to many questions from licensees, consumers, associations and other state government entities regarding medical marijuana. The CMB is already addressing complaints concerning medical marijuana that originated from consumers, rather than CDPHE at this point in time. It must also be noted that the issue of professionals who use medical marijuana impacts not just the physician community but all licensed, registered and certified professionals who include this

approach in their medical care. As such we are seeing and continue to anticipate an increase in complaints related to this subject. Our projections concerning the resources needed have not changed. Rather, we are anticipating more legal services being required deriving from complaints coming from consumers in addition to the CDPHE referral source.

36. Please provide information on the number of licenses and associated fee level issued by the Division of Real Estate and the Division of Securities since FY 2008-09 through FY 2010-11. Please include the total amount of revenue generated by these fees for each license type.

By way of background, during the FY 2010-11 Joint Budget Committee Hearing (December 2009), information was requested by the Department relative to an increase in fees by the Division of Real Estate. The Department had increased fees for the Division of Real Estate during FY 2008-09 in order to meet its statutory obligation to generate sufficient revenue to cover program costs appropriated by the General Assembly each year and maintain positive balance in its cash fund. This action occurred as a response to insufficient revenue from prior fee levels. During FY 2007-08, fee revenue was only \$2.7 million compared to program costs of \$4.1 million, or roughly 66% of the revenue needed to support the program on an annual basis. This deficit continued into the first half of the next fiscal year, ultimately requiring that fees be doubled. At last year's JBC Hearing the Department reported that its plan to resolve this situation was to eliminate the deficit fund balance in FY 09-10 without generating excessive revenues thereafter.

The Department's plan to swiftly resolve its deficit fund balance succeeded, achieving a positive fund balance of \$70,329 as of June 30, 2010 exactly one year after having a deficit of \$1.1 million as of June 30, 2009. Most importantly, the second part of this plan is being followed with significant reductions to fees beginning in FY 2009-10. This important follow-up is driven by the same statutory obligations that resulted in the fee increase, specifically the statutory mandate to ensure sufficient but not excessive revenues to support the General Assembly's appropriations while protecting consumers and the public at large in accordance with our mission. The tables on the following pages show fee levels and licensee populations for the Divisions of Real Estate and Securities, respectively:

Division of Real Estate

Name of License Type	Number of Licensees	Current Fees	Revenue	Number of Active Licenses (6/30/09)	Number of Licensees	Current Fees	Revenue	Number of Active Licenses (6/30/10)	Projected Number of Licensees	Projected Fees	Revenue
	FY 2008-09	FY 2008-09	FY 2008-09		FY 2009-10	FY 2009-10	FY 2009-10		FY 2010-11	FY 2010-11	FY 10-11
Original License Application Fee											
Broker	1809	\$500	\$725,015		1810	\$500	\$905,217		1712	\$200	N/A
Registered Appraiser	56	\$250	\$12,125		59	\$250	\$14,750		44	\$75	N/A
Certified Residential Appraiser	57	\$250	\$11,775		106	\$250	\$26,450		82	\$75	N/A
Licensed Appraiser	18	\$250	\$3,600		30	\$250	\$7,475		15	\$75	N/A
Certified General Appraiser	77	\$250	\$13,725		55	\$250	\$13,800		35	\$75	N/A
Subdivision	8	\$4,000	\$18,000		9	\$4,000	\$36,000		8	\$1,000	N/A
Supplemental Subdivision	53	\$1,000	\$33,821		15	\$1,000	\$15,000		15	\$243	N/A
Change of Entity	494	\$1,000	\$321,520		357	\$1,000	\$357,495		350	\$200	N/A
Mortgage Broker	602	\$200	\$120,400		715	\$350	\$250,500		200	\$375	N/A
Renewal License Application Fee											
Broker	11503	\$300	\$2,992,302	31,460	10862	\$195	\$2,453,212	30,392	13,701	\$60	N/A
Registered Appraiser	177	\$330	\$58,245	759	151	\$195	\$29,753	545	198	\$48	N/A
Certified Residential Appraiser	494	\$420	\$207,175	1447	449	\$285	\$128,100	1404	372	\$75	N/A
Licensed Appraiser	175	\$420	\$73,135	634	142	\$285	\$40,530	518	174	\$75	N/A
Certified General Appraiser	262	\$420	\$108,780	1151	426	\$285	\$121,410	1131	449	\$75	N/A
Subdivision	150	\$302	\$45,150	152	129	\$287	\$37,083	133	133	\$136	N/A
Mortgage Broker	N/A	N/A	N/A	8681	1035	\$245	\$253,575	5238	4300	\$305	N/A

Division of Securities

Name of License Type	Number of Licensees	Current Fees	Revenue	Number of Active Licenses (6/30/09)	Number of Licensees	Current Fees	Revenue	Number of Active Licenses (6/30/10)	Projected Number of Licensees	Projected Fees	Revenue
	FY 2008-09	FY 2008-09	FY 2008-09		FY 2009-10	FY 2009-10	FY 2009-10		FY 2010-11	FY 2010-11	FY 10-11
Original License Application Fee											
Initial- Stockbrokerage Firm (July-Oct)	57	\$50	\$2,850	N/A	74	\$65	\$4,810	N/A	55	65	N/A
Initial- Stockbrokerage Firm (Nov-June)	114	\$65	\$7,430	2335	91	\$69	\$6,279	2300	120	60	N/A
Initial-Colorado Broker Dealer	2	\$65	\$130	10	2	\$69	\$130	10	5	60	N/A
Initial-CRD Rep-Stockbroker (July-Oct)	6723	\$8	\$53,784	N/A	10,978	\$14	\$153,692	N/A	11,300	14	N/A
Initial-CRD Rep-Stockbroker (Nov-June)	30,283	\$14	\$423,962	152,736	25,362	\$14	\$355,068	159,953	27,000	10	N/A
Initial-Colorado Representative	1	\$14	\$14	12	2	\$14	\$28	12	6	10	N/A
Initial-Investment Adviser Firm (July-Oct)	67	\$50	\$3,350	N/A	67	\$65	\$4,355	N/A	65	65	N/A
Initial-Investment Adviser Firm (Nov-June)	184	\$65	\$11,985	2211	181	\$69	\$12,489	2225	235	60	N/A
Initial-Investment Adviser Representative (July-Oct)	641	\$8	\$5,128		725	\$14	\$10,150		700	14	N/A
Initial-Investment Adviser Representative (Nov-June)	1614	\$14	\$22,598	9427	1415	\$14	\$19,810	9719	1700	10	N/A
Renewal License Application Fee											
CRD Broker-Dealer	2292	\$65	\$148,980	2350	2245	\$69	\$154,901	2334	2240	60	N/A
Colorado Broker-Dealer	5	\$65	\$325	10	5	\$69	\$345	10	10	60	N/A
CRD Representative-Stockbroker	145,353	\$14	\$2,034,942	148,000	145,514	\$14	\$2,037,196	155,145	145,504	10	N/A
Colorado Representative	8	\$14	\$112	12	5	\$14	\$70	7	10	10	N/A
Investment Adviser Firm	2070	\$65	\$134,550	2100	2091	\$69	\$144,279	2231	2087	60	N/A
Investment Adviser Representative	8913	\$14	\$124,782	9000	9234	\$14	\$129,276	9618	9231	10	N/A

37. Questions related to the numbers pages. Please provide information related to why these numbers changed:

- a. Executive Director's Office, Payment to Risk Management Fund which increased from \$28,080 total funds in FY 2010-11 to a request of \$133,493 total funds in FY 2011-12;

This request represents the centralized statewide request administered by the Department of Personnel and Administration (DPA) and results from a net change in the statewide premium negotiated by DPA.

- b. Executive Director's Office, leased space which has continually increased from FY 2008-09; and,

Leased space increases fund two principal components: the base rate escalations for each year of the lease, and the estimated operating expenses that are due per terms in the lease. The Department's ten-year master lease requires increases each year based on the terms agreed to in 2006, which was the year the lease was signed. This lease has been reviewed by both OSPB and JBC staff in recent years. While rate escalations can be expected to routinely recur for the same space each budget year based on original lease terms, square footage is not increased or expanded without a decision item request to the legislature for this purpose.

- c. Public Utilities Commission, Colorado Bureau of Investigation Background Checks Pass-through, which increased from \$46,649 cash funds in FY 2009-10 to \$67,128 cash funds in FY 2010-11.

This line item was added pursuant to special bill and merely represents the amount of pass-through background checks funding that is required. This is in turn dependent on the number of applications that come in the door each year.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

5. Please provide a table comparing the actual number of department FTEs in FY 2000-01 and the requested number of department FTEs in FY 2011-12, by division or program.

Division	FY 2000-01 Appropriated	FY 2000-01 Actual	FY 2011-12 Request
Executive Director's Office	51.0	49.3	27.5
Division of Banking	38.5	34.8	47.5
Colorado Civil Rights Division	35.0	32.3	31.4
Office of Consumer Counsel	8.0	6.2	7.0
Division of Financial Services	11.0	10.9	15.0
Division of Insurance	90.1	84.5	86.7
Public Utilities Commission	91.7	87.7	101.1
Division of Real Estate	37.0	35.3	52.3
Division of Registrations	151.4	151.8	192.4
Division of Securities	20.0	20.0	26.0
	533.7	512.8	586.9

Over this time period, while some FTE has been added via Decision Item requests of the Department; the majority of FTE has been added by the General Assembly via the enactment of new programs that require additional resources. If you would like further information on this we would be happy to provide it.

6. Please provide a table comparing the actual number of FTEs in FY 2008-09 and FY 2009-10 to the appropriated level of FTE for each of those fiscal years, by division or program. If there is a discrepancy of 5.0 percent or more between your FY 2009-10 FTE appropriation and actual usage for that year, please describe the impact of adjusting the FY 2011-12 FTE appropriation to align with actual usage from FY 2009-10.

Division	FY 08-09 Appropriated	FY 08-09 Actual	FY 09-10 Appropriated	FY 09-10 Actual
Executive Director's Office	52.3	50.8	52.3	49.0
Division of Banking	38.5	35.6	44.0	34.5
Colorado Civil Rights Division	32.4	26.4	32.4	23.6
Office of Consumer Counsel	7.0	6.9	7.0	7.0
Division of Financial Services	13.0	12.3	15.0	13.2
Division of Insurance	86.9	82.3	86.7	81.7

Division	FY 08-09 Appropriated	FY 08-09 Actual	FY 09-10 Appropriated	FY 09-10 Actual
Public Utilities Commission	101.1	87.3	100.5	86.3
Division of Real Estate	50.1	42.7	50.1	43.1
Division of Registrations	178.3	164.8	186.4	172.5
Division of Securities	20.0	19.7	22.0	21.0
	579.6	528.8	596.4	531.9

Reverted FTE occur for two primary reasons. First, the General Assembly does not appropriate a separate or centralized funding source for retirement and leave payouts, and so FTE must remain vacant to cover these costs each year. This automatically creates the environment for FTE reversions in order to respect legislative FTE limits. Second, turnover and attrition recur each year. This requires time to be spent filling positions upon a departure, which also leads to FTE reversions. In some cases time spent searching for qualified candidates can be significant.

The differential in most areas for FY 09-10 was greater than 5%. However, these reversions are partially attributable to the previous hiring freeze, internal efforts to be diligent stewards of state resources by carefully reviewing staffing plans in all areas of the Department, and also for reasons of recruitment difficulty. Through attrition, positions are regularly filled and become vacant, and this creates unused increments of FTE each year. However, it would not be feasible to adjust Department appropriations to align with FY 09-10 actual FTE, because it would require the elimination of needed positions to perform the Department's statutory mission. Given the fact that there is no separate funding source for retirement and leave payouts, the Department would have to reduce not simply the number of positions created, but the actual usage of those positions as well in order to fund non-FTE related personal services costs.