

DEPARTMENT OF LAW
FY 2020-21 JOINT BUDGET COMMITTEE HEARING AGENDA

Wednesday, December 4, 2019
1:30 pm – 3:30 pm

1:30-1:45 INTRODUCTIONS AND OPENING COMMENTS

Presenter: Philip J. Weiser, Attorney General

1:45-2:30 ADMINISTRATION

Main Presenters:

- Phillip J. Weiser, Attorney General
- Natalie Hanlon-Leh, Chief Deputy Attorney General

Supporting Presenters:

- Eric Meyer, Chief Operating Officer
- Jon Reitan, Budget Director
- Kurt Morrison, Deputy Attorney General for Intergovernmental Affairs

Topics:

- General Questions (Billing, Appellate, District Attorneys): Questions and Responses pages 2-3.
- Safe2Tell: Questions and Responses pages 3-5.
- Custodial and Continuously Appropriated Funds: Questions and Responses pages 5-8.

2:30-3:30 LITIGATION

** The Committee may go into Executive Session to discuss any ongoing litigation*

Main Presenters:

- Phillip J. Weiser, Attorney General
- Natalie Hanlon-Leh, Chief Deputy Attorney General

Supporting Presenters:

- Eric Meyer, Chief Operating Office

Topics:

- Opioids: Question and Response page 8.
- Tobacco Master Settlement Agreement: Questions and Responses pages 8-10.
- Major Litigation: Questions and Responses pages 10-13.

Administration

- 1. In 2018, the Department of Law conducted a survey measuring satisfaction with the new billing methodology. 69.0 percent of departments responded that the change in billing methodology has had a positive, or no, impact in ensuring legal advice and representation needs were met, and that budget management decisions are more predictable. For those departments that were not positive about the new billing methodology, please describe the issues that were raised. Were the concerns largely similar? What has the Department done to address these concerns?*

Response: The previous administration of the Department of Law (“DOL”) submitted a FY 2017-18 budget request proposing changing the legal allocation and billing methodology. During the budget process, each state agency and institution of higher education was provided an opportunity to express their thoughts on the new methodology during the Budget Hearing process. Additionally, the DOL surveyed all client agencies after one year of implementation.

The data collected shows that a majority of client agencies support the change in budget methodology because, as acknowledged in the survey feedback: it provides a known budget to plan against; minimizes variables in fee setting; ensures that the client agency timely receives the legal counsel and representation needed; and is clear, simple, and predictable.

Those agencies that expressed concerns during the Budget Hearing process, expressed similar concerns in the follow-up survey.

Issues raised include:

- Agencies did not see a need to change the legal budgeting methodology;
- Agencies expressed concerns that the new methodology incentivizes attorneys to bill more than necessary;
- Agencies expressed a concern that the new methodology gives the DOL the ability to perform work that the client doesn’t want or hasn’t requested; and
- Some agencies expressed concerns with how to allocate their legal costs internally across all their relevant fund sources.

Although the budget allocation methodology changed, the DOL’s reporting to each client agency has not changed. The DOL continues to send each client agency, monthly, the detail of each DOL employee’s time worked on each legal matter and a brief description of the work being performed. Additionally, the DOL sends the costs that the DOL incurs on behalf of each particular legal matter associated with litigation. Such costs include, among other things, any expert witnesses who were engaged, court reporting costs, and deposition transcripts. This reporting provides the data for the client agency to rationalize where to book legal expenses based on the program that benefitted from the work. It also provides insight into the work being performed, enabling the client agency to engage with the DOL in the event concerns with the type of work or amount of work emerge.

In short, most of the concerns raised with the current methodology are not focused on the three-year averaging methodology per se. The relevant concerns would be issues for discussion under any methodology and are generally regarding the attorney/client relationship. Notably, the budget

methodology for legal services neither changes this relationship nor does it change how these relationships are collectively managed. Both the client agency and the DOL are interested in minimizing risk to the State and advocating the State's interests. How to do that and at what level is a continual and ongoing conversation between a program and its attorneys. The DOL provides that data, regularly, to help facilitate these robust conversations.

2. Please provide an update on the appellate backlog, including the impact of the new FTE approved in FY 2019-20. Have the new FTE contributed to the anticipated decline in FY 2019-20?

Response: During the first four months of FY 2019-20, the Criminal Appeals Section achieved a modest reduction in the appellate backlog. During that four-month period, the Section opened 336 new cases and closed 357 cases. The result was a backlog reduction of 21 cases, from 463 at the end of June 2019 to 442 at the end of October 2019. Although the backlog decreased during the first four months of FY 2020, that decrease cannot be attributed to the recently approved funding for additional full-time employees ("FTE"). The attorneys hired through this appropriation did not begin their employment until mid-October 2020, and it takes time for new attorneys to develop the skills and knowledge to work efficiently. It is hoped that the new FTE will have demonstrated some impact on the backlog by the end of June 2020.

3. Please provide a table showing District Attorney salaries by Judicial District, including the amount that is above the statutory minimum.

Response: The statutory minimum salary for elected District Attorneys is \$130,000 per year. This amount was established in 2012 and was intended to mirror the salary of a district court judge as a minimum benchmark. The minimum statutory salary has not been increased since that time. County Commissioners may elect to pay their respective DA more than the mandatory minimum.

1 st JD - \$231,800	2 nd JD - \$224,000
3 rd JD - \$130,000	4 th JD - \$215,000
5 th JD - \$130,000	6 th JD - \$130,000
7 th JD - \$160,000	8 th JD - \$216,000
9 th JD - \$134,030	10 th JD - \$158,000
11 th JD - \$130,000	12 th JD - \$130,000
13 th JD - \$130,000	14 th JD - \$130,000
15 th JD - \$130,000	16 th JD - \$130,000
17 th JD - \$225,000	18 th JD - \$205,000
19 th JD - \$194,000	20 th JD - \$208,236
21 st JD - \$189,458	22 nd JD - \$130,000

Safe2Tell

4. How is the Department coordinating with and monitoring the work of the School Safety Interim Committee in order to ensure that budget requests do not work at cross-purposes with any potential legislation that committee will introduce?

Response: The DOL was an active participant with the School Safety Interim Committee, specifically in presenting during Committee hearings, answering member questions, and individually supporting members on legislative concepts and responding to their inquiries about the Safe2Tell program. The Department also collaborated with legislators and stakeholders on proposed Committee legislation and actively monitored Committee hearings and deliberations in its mission to promote school safety. There are no budget requests submitted by the Department that are at cross-purposes with the Safe2Tell-related legislation approved by the Committee.

5. The School Safety Interim Committee discussed efforts to do a better transfer/hand-off for behavioral health related calls to Safe2Tell. How does the Department work with other state agencies (e.g. Department of Public Health and Environment, Department of Human Service, Department of Public Safety) regarding Safe2Tell and behavioral-health related calls? Are you working together to address the overlap of existing programs, as well as potential changes sought by the School Safety Interim Committee?

Response: In school year 2018 – 2019, of the 19,861 total school-related tips Safe2Tell received, 70 (0.4 percent of all tips) were *self-reported* tips in which the reporting party was in need of assistance for themselves, rather than calling to express concern for a peer/friend/community member. Of those 70 self-reported tips, 30 callers expressed the need for mental health/crisis counseling services. In those instances, Safe2Tell directly patched the reporting party over to the Department of Human Services (“DHS”), Office of Behavioral Health’s Colorado Crisis Services (“CCS”) line, whose operators provide counseling services and/or mental health referral options. Safe2Tell understands that CCS would like to explore receiving referrals in other contexts, and Safe2Tell is evaluating that possibility with CCS both in anticipation of possible legislative changes and to best serve Coloradans in need of mental health services.

Overlap between Safe2Tell and CCS program services is relatively minimal due to collaborative efforts and differences in program missions:

- **Safe2Tell** is an anonymous reporting tool, established in statute, for youth and community members to report *any* concerns of safety for themselves or others. Safe2Tell is not a crisis counseling service, nor a mobile response unit, but instead serves as a conduit of information between reporting parties and schools, local law enforcement, and/or mental health partners (when counseling services are needed) regarding imminent issues for early intervention purposes.
- **Colorado Crisis Services** serves as a resource for mental health, substance use or emotional crisis help, information, and referral in order to provide greater access to mental health services throughout Colorado. All CCS calls and texts are connected to: (1) crisis counselors, who have obtained advanced education in behavioral health, or (2) trained peer specialist, who offer support to callers on a variety of mental health topics.

Safe2Tell does not provide training on mental health issues (or other youth issues/trends), but instead solicits assistance from our partners to provide that subject matter expertise. The DOL partners with CDPHE on its program with Sources of Strength to provide teen mental health support in schools across Colorado. To ensure effective coordination, the DOL will continue

working with our partners at DHS and CDPHE, both addressing any gaps and preventing any unnecessary overlap.

Where Safe2Tell *does* engage on mental health issues is when another individual reports a threat of an imminent suicide. In such cases, Safe2Tell works with our law enforcement partners to respond. In collaboration with DHS, Safe2Tell produced and is working on the distribution of a PSA related to suicide awareness and prevention.

Continuously Appropriated Funds

6. For the Student Loan Ombudsperson and Student Loan Servicing Cash Fund created in Section 5-20-104 (3), C.R.S., please indicate whether the Department believes continuous spending authority is necessary, and if so, why. What consequences or challenges would the Department expect if the fund were annually appropriated rather than continuously appropriated?

Response: The Student Ombudsperson and Student Service Licensing Fund was established by Senate Bill 19-002 (“SB 19-002”). License fees are due each year by January 31. This program, in addition to establishing a new regulatory program, provides various support services to student loan borrowers. Such services include: addressing complaints, data analysis, and generally providing assistance, education, and information to student loan borrowers.

As this is a new program, the DOL is currently building its expertise in this area. Additionally, given the recent enactment of SB 19-002, the DOL expects to have data in the near future regarding the nature and number of complaints and requests for assistance that student loan borrowers who contact the DOL may require. As such, the DOL recommends that the existing continuous spending authority provided by the General Assembly in SB 19-002 is appropriate, in the near term, to ensure, within revenue forecasts, that the DOL can effectively and efficiently meet the business needs of the program.

Custodial Funds

7. Please provide the following items related to the Department’s custodial funds:

- *A list of settlements for which dollars are deposited into custodial funds administered by the Department of Law from FYs 2015-16 through 2019-20*
- *Requirements for the use of funds (e.g. court orders)*
- *Fund balance of custodial funds*
- *Programmatic uses for the funds, related expenditures, and whether these funds are used in combination with other appropriated funds (i.e. General Fund)*

Response: Please find below a list of legal settlements by fiscal year. The DOL chose a minimum threshold of \$50K for presentation purposes. Additionally, below, please find the FY 2019 end-of-year fund balances for Fund #1460: The Consumer Protection Fund and Fund 14D0: the Mortgage Settlement Fund.

Each court order directs the purpose of the particular settlement funds. In many cases, the courts provide that “[a]ll payments..... are to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General’s sole discretion for reimbursement of the State’s actual costs and attorneys’ fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.” In others, the funds are more specifically limited to certain purposes.

The DOL uses custodial funds to support Consumer Protection efforts by paying the salaries, state paid benefits, and associated operating expenses of the classified staff (non-attorneys) funded through the Consumer Protection Antitrust Long Bill Line Item. The DOL uses this fund to support other centrally appropriated line items such as rent for the Ralph Carr Judicial Center, Risk Management Insurance payments, Workers’ Compensation payments, and other department wide costs. Additionally, the DOL will use these funds to hire temporary attorneys to help in particular consumer protection matters and various contracts to support the consumer protection and public welfare interests of the State, as is the case in the ongoing investigation of pharmaceutical companies responsible for contributing to the opioid epidemic. Moreover, these funds are used in valuable consumer protection education efforts, including the AARP’s ElderWatch initiative, the Department of Education’s support for financial literacy content and design efforts, the Colorado Council on Economic Education for economic literacy services, and the Department of Public Health and Environment’s support of the Sources of Strength program.

Fiscal Year	Fund	Settlement	Amount (\$)
2020	1460	2017LWCP115107 EQUIFAX INC Final Judgment & Consent Decree Case #2019CV32795	(3,298,382)
2019	1460	CAREER EDUCATION CORPORATION SETTLEMENT	(50,000)
2019	1460	2016LWRF109466 SUNBELT PORTFOLIOS LLC DAVID SUDDUTH KENNETH GOMEZ	(110,000)
2019	1460	2015LWCP107006 SIERRA FINANCIAL SVCS INC SETTLEMENT	(200,000)
2019	1460	Provigil Settlement	(698,185)
2019	1460	2018LWCP116508 UBER TECHNOLOGIES INC	(2,104,567)
2019	1460	MEDICAL DEVICE BUSINESS SERVICES INC CASE NUMBER:2019CV30240 CONSENT JUDGMENT	(2,159,573)
2019	1460	2014LWRF078695 WELLS FARGO BANK NA	(7,550,569)
2018	1460	2017LWCP113356 LENOVO UNITED STATES INC CHECK #40929	(76,554)
2018	19A0	UNITED DEBT HOLDING LLC STIP & FINAL AGCY ORDER CHECK #2905	(77,125)
2018	1460	2010LWAT063873 MUNICIPAL BONDS BID RIGGING MULTISTATE LIT CHECK #75027	(131,865)

2018	16B0	2014LWCP102534 BOEHRINGER INGELHEIM PHARMACEUTICALS INC CHECK #4001679	(223,283)
2018	1460	2014LWRF078695 PHH MORTGAGE CORPORATION	(390,000)
2018	1460	2010LWCP061346 JOHNSON & JOHNSON MULTI STATE WORKING GRP CONSENT JUDGMENT	(623,021)
2018	1460	2014LWCP100210 GEN MOTORS CO CHECK #10058481	(1,905,880)
2017	1460	- WESTERN UNION COMPANY CHECK #20001824	(64,680)
2017	1460	TARGET CORP SETTLEMENT CHECK #3201191	(278,915)
2017	1460	2015LWCP103480 HIGHLANDS RESORTS AT CHRISTIE LODGE LLC	(365,000)
2017	1460	2009LWCP057629 BRISTOL-MYERS SQUIBB CO CHECK #7043	(471,548)
2017	1460	E-BOOKS ANTITRUST LITIGATION SETTLEMENT CHECK #20137067	(701,745)
2017	1460	2016LWCP107580 HYUNDAI MOTOR AMERICA WIRE TRANSFER 12/06/2016	(892,889)
2016	1460	2015LWCP105122 HIGHLANDS RESORTS AT CHRISTIE LODGE LLC	(81,000)
2016	1460	SPRINGLEAF HOLDINGS INC STATE OF CO 2015LWAT104181 CHECK #6200 33420	(94,277)
2016	16B0	CLASS ACTION ADMIN INC OUTSTANDING RESTITUTION FUNDS WIRE TRANSFER 03/21/2016	(218,825)
2016	1460	CONSENT JUDGMENT LYNN M JANEWAY CHECK #4582	(325,000)
2016	1460	AT&T MOBILITY LLC SETTLEMENT CASE #14CV3227	(415,965)
2016	1460	MICHAEL P MEDVED CONSENT JUDGMENT CHECK #0477703264	(500,000)
2016	1460	CONSENT JUDGMENT AMGEN INC CASE #2015CV32939 WIRE TRANSFER	(1,191,407)
2016	19A0	CHASE BANK N.A & CHASE BANKCARD SVCS INC ASSURANCE OF VOLUNTARY DISCONTINUANCE	(1,962,325)

Fund	1460	14D0
FY 19 FB	36,867,647	3,427,771

Opioids

8. *Which custodial fund is funding the Director of Opioid Strategy position and what are the requirements for use of those funds? In other words, how do the Department’s opioid efforts fit within the required use of the custodial funds?*

Response: The Director of Opioid Strategy position is currently unfilled. Like the hiring of temporary attorneys to work on opioid-related litigation, the DOL will fund this position through the Consumer Protection Custodial Fund. This role will be responsible for: providing fiscal oversight and coordination of settlement dollars; ensuring all settlement dollars are expended in accordance with settlement agreements and applicable court orders; collaborating with the General Assembly, Executive Branch partners, local government officials, and stakeholder organizations to ensure settlement dollars are prioritized appropriately within the terms of the court order; and convening and coordinating with the Opioid Crisis Recovery Funds Advisory Committee established by the General Assembly under House Bill 19-1009 to work with the DOL in expending settlement dollars.

As articulated above, many court orders provide that “[a]ll payments.....are to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General’s sole discretion for reimbursement of the State’s actual costs and attorneys’ fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.” Like the use of temporary attorneys working on the opioid litigation, this position’s responsibilities fit within the purpose of standard court ordered settlement language. In short, this position will serve a critical stewardship role in ensuring settlement dollars are expended in accordance with the court’s directives and to most effectively address the opioid crisis.

Tobacco Master Settlement Agreement

9. *Please provide background and context around the 1998 Tobacco Master Settlement Agreement (MSA). How was that case similar or dissimilar to opioid litigation?*

Response: On their face, both the tobacco litigation and settlement and the opioid litigation involve public health crises. In that sense, the cases are similar insofar as they place blame on the size and scope of those crises on manufacturers of those products, relying on state law claims for false advertising, racketeering, etc. However, there are many significant differences, including:

- tobacco is a legal product that, at the time of the MSA, was not regulated by federal or state statutes (other than labeling and youth access) whereas opioids are highly regulated and scheduled controlled substances with extensive federal and state oversight and regulation;
- unlike the tobacco litigation, opioid misuse, abuse, and addiction potentially involves numerous players in the supply chain, from the manufactures of active pharmaceutical ingredients, drug manufacturers, distributors, dispensers, and prescribers;

- the vast majority of plaintiffs in the tobacco litigation were states, represented by their attorneys general (as opposed to thousands of other lawsuits brought by a range of entities from county governments to hospitals to Indian tribes); and
- illness and death related to smoking remain significantly higher than similar metrics related to opioid misuse and abuse (for example, the U.S. Centers for Disease Control and Prevention places the annual deaths from smoking-related illnesses at around 500,000, while the total of overdose deaths from any drug in 2017 was just over 70,000).

10. Please explain why MSA dollars did not go into custodial funds, and how the existing allocation structure came to be.

Response: The MSA court order expressly directed that the General Assembly have a role in determining how settlement dollars are expended. The attorney general at that time, in acknowledgement that the trial judge signaled a preference for the funds to be delivered to the general fund, worked with the General Assembly to create the basic structure for the expenditure of MSA funds to improve the health of Colorado residents.

11. The General Assembly is built to react to community needs, such as the opioid epidemic. What prevents an opioid settlement structure similar to the structure of the Tobacco Master Settlement Agreement, in which funds are allocated by the General Assembly, rather than placed in custodial funds?

Response: The terms of any eventual negotiated opioid settlements will be negotiated with multiple defendants and in cooperation with numerous state and local governments and other interested parties. Any such final agreement may expressly designate funds as custodial in nature and, thus, potentially outside the authority of the General assembly to appropriate. In such a scenario, the DOL would work collaboratively with the General Assembly and all partners to ensure the court's orders are followed and in how such funds are expended.

12. The JBC Staff briefing includes the following information regarding non-participating manufacturer (NPM) requirements:

To ensure states enforced NPM statutes, which protected PM interests, the MSA included a Non-Participating Manufacturer adjustment clause to reduce manufacturer payments to states when three conditions are met in a given calendar year:

- *The market share of Participating Manufacturers declines by 2.0 percent or more relative to the market share prior to the enactment of the MSA;*
- *An independent economic consultant finds that the Tobacco Master Settlement Agreement significantly contributed to the market share decline; and*
- *An arbitration panel finds that a given state failed to diligently enforce the Non-Participating Manufacturer statute.*

Please provide the following in relation to the text above:

- *How often are these conditions met?*
- *What is the balance and status of the escrow accounts that hold the NPM payments?*

Response: The first condition, the decline in PM market share, has occurred in every year since the enactment of the Master Settlement Agreement and will likely occur in every year into the future.

The second condition, a finding that the MSA significantly contributed to the PM market share loss (known as the Significant Factor Determination), occurred in 2003-2007. These four proceedings cost the MSA states more than \$15 million to contest. Since 2007, the MSA states have entered into settlements conceding the determination that the MSA was a significant factor in the PMs market share decline.

The third condition, the finding of non-diligence by states in enforcing the Tobacco Escrow Funds Act has only occurred once, in 2013 when five states were found non-diligent for enforcement in 2003. Colorado was found to have diligently enforced in that arbitration. In 2018, Colorado settled the diligent enforcement disputes for 2004-2017.

More than \$7 million is held in escrow for the benefit of Colorado in the escrow accounts of more than 80 Non-Participating Manufacturers that have sold cigarettes in Colorado since the enactment of the Tobacco Escrow Funds Act. Unless the escrowed funds are used to pay a released claim to the State, the funds are released back to the Non-Participating Manufacturer 25 years after the date the funds were placed into escrow

Major Litigation

13. *The Governor’s budget request includes a reduction in funding for Hepatitis C treatment in the Department of Corrections. How might this impact litigation concerning Hepatitis C?*

Response: The DOL recommends that this subject be addressed in Executive Session.

14. *Please describe the impact to the state of the settlement of the Oracle Corp. & Subsidiaries v. Department of Revenue (Denver District Court, Case No. 2015CV31175) case, including revenue impacts and operational impacts.*

Response: The Department of Revenue (“DOR”) is likely to have more updated information for the Joint Budget Committee (“JBC”) on this question on a prospective basis. The *Oracle Corporation and Subsidiaries* Case (Colorado Supreme Court Case No. 2018SC3 – the case number listed in the question is for the underlying District Court case) and the closely associated *Agilent Technologies, Inc.* Case (Colorado Supreme Court Case No. 2017SC840) were resolved by the Colorado Supreme Court earlier this year with a ruling against the DOR. Senate Bill 19-233 (“SB 19-233”) further provided that the position advocated by the DOR in the *Oracle* and *Agilent* cases in interpreting the Colorado Combined Corporate Return statutes was a prospective change in the law rather than a clarification of existing law. Senate Bill 19-233 and the *Agilent* and *Oracle* decisions had the impact of voiding prior DOR assessments of prior corporate returns that previously employed a methodology that allowed domestic holding companies to exclude income from Colorado taxation. The prospective changes of SB 19-233 close this loophole, but the fiscal impact of the voided assessments was projected to be as high as \$250 million. The DOR

has acted to mitigate the impacts since the passage of SB 19-233. The most recent data the DOR has on the relevant fiscal impacts are \$35,466,120.62 in forgone assessments (representing dollars that are not coming into the State) and \$34,787,629.50 in refunds (dollars collected that are likely to have to issue absent other tax issues that may impact those same dollars).

15. Please discuss the State's financial risk for each of the cases listed in the "Major Litigation" briefing issue (derived from the Controller's Report).

Response: The DOL recommends that this subject be addressed in Executive Session.

16. The JBC denied the Department's FY 2019-20 General Fund request for a director of opioid outreach efforts based on the JBC staff recommendation. That recommendation outlined concerns that the Department does not have the statutory authority for such a program, that operating opioid outreach programs out of the Department of Law is duplicative to the efforts of other state agencies, and that this is not a core function of the Department of Law. Please explain:

- *Where the Department has identified statutory authority to operate an opioid outreach program, and*
- *Why the Department believes these programs are appropriately housed in the Department of Law.*

Response: Through enforcement of the consumer protection statutes and the implementation of previous custodial court orders, the DOL has both statutory and professional obligations to protect consumers and ensure that settlement funds provided to the State are expended within the directives of applicable court orders. In response to the JBC's questions: (1) the DOL does not have statutory authority to operate specific addiction treatment or prevention programs, nor has it sought the ability to operate such programs; and (2) the DOL does not believe such programs are appropriately housed in the DOL. Rather, prior requests were designed to stand up the DOL's capacity to both meet its obligation under any court orders to provide fiduciary accountability for settlement dollars, and ensure that it had the proper personnel to work with external partners with missions that support public health. This role at DOL is particularly important as the magnitude of funds the State may receive requires dedicated and significant oversight.

To meet the DOL's fiduciary duty to ensure all funds are expended in accordance with court orders, the DOL will partner with other Executive Branch departments that focus on public health, the General Assembly, local government public health agencies, and non-profit and stakeholder organizations. In doing so, the DOL will ensure that all settlement dollars from opioid-related litigation go to the intended beneficiaries and purposes laid out in any court order directives. Given the anticipated magnitude of settlement funds and the importance of this issue, it is absolutely essential that a dedicated coordinator be available on staff for accountability to the court as well as ensuring proper outreach and collaboration in how the funds are expended. By establishing this position, the DOL will, among other things, be able to: (1) ensure that settlement dollars are spent strictly in accordance with court orders; (2) facilitate robust outreach to all partners occurs to guarantee that any expenditures go to opioid addiction prevention and treatment; and (3) convene and coordinate with the House Bill 19-1009 Opioid Crisis Recovery Funds Advisory Committee as directed by the General Assembly.

17. Please provide an update on all opioid litigation efforts, including any likely settlements. Please address expected revenue from potential settlements, including expectations as to how those funds will be distributed.

Response: Here is a brief update:

- On September 6, 2018, the Colorado Attorney General filed a civil lawsuit against Purdue Pharma L.P. and Purdue Pharma Inc. (Case No 2018CV033300, Denver District Court). On July 1, 2019, the AG filed an amended complaint adding claims and naming additional defendants, including members of the Sackler family, several current and former officers of Purdue, and additional corporations believed to be responsible for violations of Colorado law.
- On September 15, 2019, Purdue and numerous related entities filed a voluntary Chapter 11 bankruptcy petition (Civil Action 19-23649, S.D.N.Y.). Since that time, the Colorado Attorney General joined with 23 other states, and the District of Columbia, in an unofficial ad hoc committee in the Purdue bankruptcy to, among other purposes, oppose any injunction against the states proceeding with litigation against Purdue and related parties, and to seek full and complete discovery of any and all information necessary to evaluate a proposed summary term sheet (settlement) involving Purdue and the Sacklers. Colorado's lawsuit is currently in a voluntary standstill at least until December 19, 2019, and is likely to be extended into 2020, as these bankruptcy issues are worked out.
- The Colorado Attorney General independently, and in cooperation with numerous other states, continues to engage in active investigations of, and settlement negotiations with, other opioid manufacturers, distributors, dispensers, and other parties.
- The media has reported on a potential settlement framework with three large distributors (Cardinal Health, McKesson, AmersourceBergen), and manufacturers, Janssen Pharmaceuticals (Johnson & Johnson) and Teva Pharmaceuticals. None of those potential settlements have been finalized and are the subject of intensive, on-going negotiations. It is premature to discuss the timing or amount of potential revenues from any settlements or how those funds will be distributed.
- For further information on this topic, the DOL recommends that this subject be addressed in Executive Session.

18. What is the Attorney General's role (or the Office's role) in determining how settlement funds may be distributed? Please address both the process of finalizing the settlement and post-settlement.

Response: It is premature to know if or when any settlement will be finalized or how funds from any opioid litigation settlement will be distributed. Distribution metrics and methodologies are the subject of intensive discussion and negotiations by and among all state attorneys general, counsel for local government plaintiffs, Indian tribes, and numerous other interested parties. For further information on this topic, the DOL recommends that this subject be addressed in Executive Session.

19. Have the terms for the \$48.0 billion framework settlement with Cardinal Health, McKesson, AmersourceBergen, Johnson & Johnson, and Teva already been determined?

Response: The media has reported on a potential settlement framework with three large distributors (Cardinal Health, McKesson, AmersourceBergen), and manufacturers, Janssen Pharmaceuticals (Johnson & Johnson) and Teva Pharmaceuticals. None of those potential settlements have been finalized and are the subject of intensive, on-going negotiations. It is premature to discuss the timing or amount of potential revenues from any settlements or how those funds will be distributed. For further information on this topic, the DOL recommends that this subject be addressed in Executive Session.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED.
PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

- 1 *Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.*

Response: The Department of Law is not aware of any compliance issues with legislation or other statutory requirements.

- 2 *Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2019 (link below)? What is the Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations? Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.*

<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2019>

Response: The Department of Law does not have any outstanding high priority audit recommendations.

- 3 *If the Department receives federal funds of any type, please respond to the following:*
 - a. *Are you expecting any changes in federal funding with the passage of the FFY 2020-21 federal budget? If yes, in which programs, and what is the match requirement for each program?*
 - b. *Does the Department have a contingency plan if federal funds are eliminated?*
 - c. *Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a*

detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2019-20 or 2020-21.

- d. Compared to other states, Colorado ranks low in receipt of federal dollars. How can the Department increase the amount of federal money received?*
- e. What state funds are currently utilized to draw down (or match) federal dollars? What state funding would be required to increase the amount of federal funding received?*

Response: The DOL receives one federal grant to support the Medicaid Fraud Control Unit. The federal award supports 75 percent of the program with the State using General Fund monies as the 25 percent match.

The DOL does not anticipate changes to this grant that will impact the ability of the DOL to meet the grant and statutory requirements. Additionally, the DOL is not aware of any current sanctions or future sanctions that would impact this award.

The DOL is required to meet program requirements within the federal award and the General Fund match. The DOL annually and on a monthly variance analysis tracks the expenditures of the program against the allowable quarterly draw. If the grant award does not allow the DOL to meet current operating levels, the DOL will reduce costs to stay within the federal award amount, while minimizing impact to service delivery.

The DOL is in periodic contact with federal partners and analyzes potential grant opportunities that fit within the mission of the DOL. With the exception of the Medicaid Fraud Grant, the only other federal award the DOL received was for the Colorado Justice Review Project, funded by the U.S. Department of Justice. This cooperative agreement funded case review, location of evidence, and DNA analysis of biological evidence that might demonstrate the actual innocence of a person previously convicted. This agreement was in place from November, 2011 through SFY 2013-14.

- 4** *Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?*

Response: The DOL engages in a number of public awareness campaign, primarily to support our Safe2Tell and Consumer Protection efforts. Strategies employed by Safe2Tell include:

- Training law enforcement, dispatch centers, school districts, individuals, etc. about the Safe2Tell and promoting proper use of the program
 - In 2018-2019 school year, Safe2Tell conducted:
 - 14 primary student presentations reaching 1039 students
 - 75 secondary student presentations reaching 10114 students
 - 31 school staff presentations for 447 attendees

- 3 Law Enforcement presentations for 33 attendees
 - 9 Conference Presentations for 185 attendees
 - 11 Parent Presentations for 415 attendees
 - 6 Community Partner Presentations for 490 attendees
 - 1 Train the Trainer for 17 attendees
 - 17 sessions taught by Trained Trainers for 500 attendees
 - 183 Total Trainings for 14912 attendees
- Provide education and awareness materials to preschools, elementary, middle and high schools as well as 4H extension offices and Boys & Girls Clubs, at no charge by June 30 annually.
 - **2019 fiscal year:**
 - Delivered Safe2Tell stickers and posters to all above listed entities, as part of our annual marketing campaign. The actual cost of materials was \$882 for posters, \$30,100 for stickers, \$125 on intent letters and \$23,795 for banners. Related shipping costs for these materials was \$8,150. This campaign totaled \$63,052.
 - Materials purchased for distribution at training events at schools and other student-based events totaled \$3,343 which included stickers, rack cards, posters and magnets.
 - Promotional items were purchased for distribution while hosting booth events at conferences. Promotional materials included lip balm, power banks, tumblers and webcam covers totaling \$2,340.
 - **2018 fiscal year:**
 - Purchased vinyl banners and delivered to all above listed entities totaling \$54,895 and \$12,625 in related shipping expenses. This campaign totaled \$67,520.
 - Student-based training materials such as bookmarks, phone cards and posters were printed at a cost of \$14,754.
 - \$7,809 was spent on wristbands, carabineers and pens for promotional tables/booths at conferences.
- Develop curriculum and teaching materials for Train the Trainer program.
 - Train the Trainer expenses totaled \$7,979 which covered printed materials, publications, mileage reimbursement, and food/beverage.
- Teen Suicide Prevention Awareness Public Service Announcement (PSA) campaign of 2019
 - Safe2Tell's highest volume tip category for over 3 years has been suicide threats. This campaign is designed to help raise awareness about teen suicide prevention and awareness by focusing on teen messaging to other teens and parents about this issue.
 - DOL/S2T contributed \$12,500 to develop teen-to-teen and teen-to-parent PSAs.
 - Collaborated with Janicek Media, Colorado Film Commission, and Colorado Department of Human Services, Office of Behavior Health/Colorado Crisis Services.

- Starting in December 2019, Safe2Tell made an estimated \$31K, media buy for a pilot program to help disseminate these PSAs.
 - This media buy will target teen social media outlets (YouTube, Snapchat); Geo- and Behavioral-Targeting; and movie theaters airing teen movies.
 - The contractor will assist in setting metrics for this pilot, as well as track data and recommend changes to the pilot's direction, as needed, based on data collected.
- Social media and web advertising that is conducted on a regular basis by Safe2Tell's Marketing and Communications Specialist (using internal program funding)
 - This effort is focused on reaching teens in order to raise awareness of the Safe2Tell program and how to effectively use the Safe2Tell system.
 - Twitter, Facebook, and Instagram – daily posts. Followers and views are monitored for effectiveness.
 - Work in collaboration with Colorado Department of Homeland Security and Emergency Management's public information officer on content and reposting on their DHSEM social media outlets.
- Overall Safe2Tell program effectiveness metrics (Sources: [2018-19 S2T Annual Report](#), [September 2019 Data Report](#)):
 - During the 2018-19 school year:
 - Safe2Tell received 22,332 total tips, a 28% increase from the 2017-18 school year
 - Safe2Tell received 1,730 duplicate reports (an 872% increase from the 2017-18 school year)
 - The percentage of false tips was 2.4% (541 tips), a decrease from 3.3% during the 2017-18 school year
 - During the current school year (2019-20):
 - In September 2019, S2T received 2,664 tips, a 45% increase from September 2018
 - From August 1 through September 30, 2019, S2T received 4,167 tips, a 58% increase compared to the 2017-18 school year
- Earned media
 - Safe2Tell staff conducts digital, print, and video media interviews regularly, based on requests from local and national media outlets.
 - Safe2Tell press releases as well as monthly and annual reports regularly generate media attention.
 - Print and video media often reference Safe2Tell in school safety segments and articles.

5 *Based on the Department's most recent available record, what is the FTE vacancy and turnover rate: (1) by department; (2) by division; (3) by program for programs with at least 20 FTE; and (4) by occupational class for classes that are located within a larger occupational group containing at least 20 FTE. To what does the Department attribute this turnover/vacancy experience? Do the statewide compensation policies or practices administered by the Department of Personnel help or hinder the department in addressing vacancy or turnover issues?*

Response: The Department of Law’s total vacancy rate was 3.3 percent for FY 19. (See chart below). The vacancy rate is a calculation of total hours paid by position divided by the total annual hours for each position. The FTE count is then subtracted against the total appropriated FTE in each line item. The vacancy rate is also reflective of the time it takes to fill positions. In some instances, the DOL did not staff up to appropriated FTE in a particular line item. In other instances, the DOL staffed above the FTE provided in the Long Bill and special bills to meet increasing workload. This is the case for the Legal Services to State Agencies Line Item.

Line Item	FY 19 FTE Vacancy Rate	Total Vacant FTE
Administration	12.6%	(5.8)
Office of Community Engagement	24.4%	(2.1)
Legal Services to State Agencies	-2.5%	6.2
Special Prosecution	8.0%	(3.1)
Appellate Unit	1.1%	(0.4)
Medicaid Fraud Control Unit	15.3%	(2.6)
POST	20.7%	(2.9)
Auto Theft Prevention Grant	0.0%	0.0
Federal and Interstate Water Unit	18.2%	(1.0)
CERCLA	25.7%	(0.9)
Consumer Protection and Antitrust	5.4%	(1.8)
Consumer Credit Unit	7.0%	(1.4)
CORA and OML Attorney	30.0%	(0.3)
CO River	0.0%	0.0
DOL Total	3.3%	(16.1)

Additionally, the DOL’s turnover rate averaged 16 percent for FY 19 (this rate is calculated differently than past years in an effort to reflect turnover more accurately – we have excluded positions where there is an expectation for turnover, such as interns, temporary attorneys and employees and fellows). The turnover rate for FY 2018 was 19 percent and 15 percent for FY 2017 and FY 2016. The turnover remains highest in critical positions such as Assistant Attorneys General (line attorneys), Criminal Investigators, and administrative support. While the turnover rate reflects some typical reasons such as retirements and opportunities at private law firms (for attorneys and paralegals), the DOL experienced turnover attributed to higher salaries being offered for both public and private sector employment opportunities. Further, the DOL is experiencing its most difficulty in recent history with recruiting and hiring new employees in these critical areas, due to the strong economy and higher salaries at other public and private sector employers. Generally, the number of interested candidates, as well as quality candidates applying for positions is down over past years and often when a recruitment is completed, candidates report that the salary offered would require them to take a cut in pay for similar work.

- 6 *Please identify how many rules you have promulgated in the past two years (FYs 2017-18 and 2018-19). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.*

Response: C.R.S. § 24-4-103(2.5)(a), specifies the process whereby any person may request that DORA require any agency proposing a rule to conduct a cost-benefit analysis. Additionally, C.R.S. §24-4-103(4.5)(a), allows any person to request that a state agency conduct a regulatory analysis of proposed rule changes. Each of these analyses have specified statutory requirements. The DOL has neither been requested to conduct a cost benefit or a regulatory analysis by the Department of Regulatory Agencies (DORA) nor by any member of the public.

During CY 2019, the Peace Officers Standards and Training Board modified various aspects of twelve rules. During CY 2018, this Board modified nine rules.

The Consumer Credit Unit promulgated three rules for the Colorado Student Loan Servicer Act, created by SB19-002. These rules address annual licensing and investigation fees and establishing procedures for federal student loan servicing contractors to obtain an exemption from the license application procedures. This Unit did not promulgate or modify any rules during CY 2018.

- 7 *What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.*

Response: The DOL is not a major goods buyer; as such, changes due to inflation and the CPI are not major factors contributing to any cost increases for the department.

The primary cost drivers for the DOL are salaries and associated state paid benefits and the costs associated with expert witnesses hired to support specific litigation efforts. The DOL is in constant competition with the private sector and other public sector attorney organizations. The DOL is making a Salary Survey and Merit Pay budget request, to help maintain the salary competitiveness. Based on our most recent Attorney Compensation Survey, the DOL is requesting the below salary changes by attorney classification.

	Recommended Total Pay Adjustment	Suggested Salary Survey	Suggested Merit
Deputies	5.1%	4.0%	1.1%
Firsts AAGs	3.6%	2.5%	1.1%
Senior AAGs	3.6%	2.5%	1.1%
AAGs	3.6%	2.5%	1.1%

The DOL pays for all litigation costs on behalf of the client agencies. These costs are one of the factors associated with the Legal Allocations to each state agency. In some instances, the DOL must hire expert witnesses such as medical professionals, scientists, or other specialized disciplines to help best support the State's legal positions. The hourly rates charged by these disciplines are factored into the monthly spending projections to help ensure the DOL is most effectively meeting its obligations within spending authorities provided by the General Assembly.

Furthermore, the DOL is assessing various technology solutions to support the provision of legal services to state, client agencies and Consumer Protection and Criminal Justice efforts. Depending on the business direction of the organization, the DOL may submit future budget requests to address these potentially emerging needs.

8 *How is the Department's caseload changing and how does it impact the Department's budget? Are there specific population changes, demographic changes, or service needs (e.g. aging population) that are different from general population growth?*

Response: Based on the three-year average allocation for the client agencies, the DOL estimated the FY 2018-19 hours at 376,987. The actual FY 19 hours worked on behalf of the client agencies was 405,713, demonstrating increased demand for legal services by other state agencies. The DOL opened 5,088 new legal matters in FY 19 and 4,830 new legal matters in FY 18.

Specific areas of growth in DOL workload include:

- **Department of Corrections** – This agency experienced a notable surge in new cases. As of this month, the DOL opened 646 new cases during the calendar year, 2019. The total number of new cases for FY 2018-2019 was 498, and in the first half of FY 2019-2020 313 new cases have been opened.
- **Division of Insurance** – This agency saw a substantial growth in new matters during 2019, and is on pace to see at least a 22 percent increase in number of hours incurred for legal services for FY 2019-20. This growth in legal work is a direct result of increased regulatory focus on the health insurance field, as well as regulatory activity related to prescription drug costs, in addition to growing litigation in the bail bonds sector as a result of enforcement activity involving immigration bonding companies.
- **Public Utilities Commission** – This agency's workload, and its resulting consumption of legal services, surged as a result of regulatory issues related to the energy sector, with the utilities work on track to see a 9.3 percent increase in hours incurred (and a parallel 13.7% increase in billed dollars) for FY 2019-20 based on the current utilization for the first third of the fiscal year.

- ***Division of Professions and Occupations: Nursing Programs*** – The nursing licensure programs (the Board of Nursing and the Nurse Aide Licensure Program) were already surging, with a 20 percent growth in active matters between FY 2016-17 to FY 2018-19, and the flow of new cases generated during the first third of FY 2019-20 indicates that the current fiscal year will again see substantial growth – in just the first third of the current fiscal year, the Board of Nursing already generated nearly 60 percent of the active matters that were handled in all of the last fiscal year.

Consumer Protection Section – The DOL Consumer Protection Section saw an expansion and growth in high tech antitrust investigations as markets related to technology platforms have become more concentrated. Similarly, the Consumer Protection Section’s antitrust unit expanded its enforcement efforts in the healthcare and pharmaceutical industries, which have seen an increase in concentration and rising rates over the last several years. Furthermore, the Consumer Protection Section experienced dramatic growth in complaints related to data privacy and associated with reportable data breaches. As an example, the DOL received notice of more than 100 security breaches affecting more than 1.4 million Coloradans in the first year that companies and government entities began reporting security breaches to the DOL. Lastly, consumer complaints increased in 2019 again. Complaints are on pace to increase by 900 or 12 percent growth. This accelerates the trend from prior years where complaints for 2018 totaled 7,682 (a 2 percent increase from 2017) and complaints for 2017 totaled 7,509 (a 7 percent increase from 2016). In addition, this Unit is responsible for Spanish language outreach and efforts relating to that project have increased, including launch of a No Mas Fraud website. Similarly, the number of multistate consumer cases has increased.

Medicaid Fraud Control Unit - The changing state population is impacting the DOL Medicaid Fraud Control Unit (“MFCU”). The MFCU ended Federal FY 2017 with 268 open cases, Federal FY 2018 with 333 open cases, and Federal FY 2019 with 444 open cases. The number of open cases is a reflection of the fact that more and more cases are coming in. The MFCU received additional resources from the General Assembly and JBC in 2019 to address this issue for the FY 2019-20 budget year.

- 9 ***Please provide an overview of the Department’s current and future strategies for the use of outward facing technology (e.g. websites, apps), the role of these technologies in the Department’s interactions with the public and other state agencies, the Department’s total spending on these efforts in FY 2018-19, and expected spending in FYs 2019-20 and 2020-21.***

Response: The DOL’s outward facing technology efforts are focused on consumer protection, constituent outreach, and outside agency interaction. Agency websites (including coag.gov, stopfraudcolorado.gov, Safe-2-Tell.org, and colorado.gov/post) provide the public and state agencies a variety of information, resources and services. Currently, the Information Technology Unit dedicates 0.5 FTE and \$5,000 external support for maintenance and issue resolution. In FY19-20, projects to update and modernize the DOL’s internet presence (coag.gov), and to streamline and automate the Department’s oversight and management of the Police Officer Standardized Training (“POST”) grants programs were completed. Currently, FY 20-21 projects are in progress to solicit, manage, and act upon

consumer complaints and to facilitate Consumer Credit business license applications, issuance, and management.

FY 18-19	
POST Grants management system deployment	\$40,000
COAG.GOV website update	\$24,886
POST certification system subscription fees	
½ IT FTE website support	
FY 19-20 (estimated)	
CCU License Management system deployment	\$600,000
Complaint Intake and Management system deployment	\$400,000
POST certification system deployment and subscription fees	\$85,104 has been expended on this effort in FY 2019-20 to date. POST is currently in the procurement process for a new database. Preliminary estimates range from \$250K to \$400K annually, based on the determination of what system provides the highest value to the state.
POST grant management license fees	\$15,000
0.5 FTE website support	
External website maintenance and issue resolution	\$5,000
FY 20-21 (estimated)	
CCU license management system license fees	\$75,000
Complaint intake and management system license fees	\$48,000
POST certification system deployment and subscription fees	
POST grant management license fees	
StopFraudColorado.gov rehosting and upgrade	\$75,000
0.5 FTE website support	
External website maintenance and issue resolution	\$20,000

10 There are many ways in which the Department may interact with internal or external customers, including the public and other departments. How is the Department gathering feedback and evaluating customer experience? Please address all interactions, e.g. technology, in-person, call centers, as well as total spending on these efforts in FY 2018-19 and expected spending in FYs 2019-20 and 2020-21.

Response: The IT Help Desk provides a means for internal department users to request assistance for technical issues and building needs. The team includes 2 FTE providing tier I assistance who are accessed via walk-in, internal intranet, telephone, and email. Feedback is requested via the Spiceworks helpdesk ticketing system which randomly selects 20% of the service requests for feedback on satisfaction in the resolution of issues and timeliness of service.

IT Help Desk

FY18-19	
2 IT FTE	
Spiceworks help desk application	\$495.00
FY19-20 (estimated)	
2 IT FTE	
Spiceworks help desk application	\$495.00
FY20-21 (estimated)	
2 IT FTE	
Spiceworks help desk application	\$495.00

POST interacts with customers through the POST website and social media platforms, which allows external users the ability to view upcoming training, certification procedures, grant funding and overall rules of POST. We have quarterly POST Board meetings and SME meeting (at minimum quarterly), which are open to the public. The Grant Unit holds quarterly meetings for our Grant Training Regions stakeholders. The Compliance Unit also has two meetings with the Academy Directors once in spring and again in fall. The POST director has held multiple town hall meeting throughout the state. All law enforcement in the state has access to the POST Portal which allows them to view their overall training and certification records and with permission some users can enter training and maintain their roster for their agency

The DOL Consumer Protection Section developed brochures and social media efforts to further the mission of the DOL. Such efforts include:

- ~\$11K on English and Spanish brochures for target audiences in schools, the elderly, and various, local community gatherings, and;
- \$24,000 for social media efforts.

Lastly, the DOL has established internal, DOL employee focus groups to analyze, provide input, and make recommendations on a variety of important issues including, in part:

- Attorney evaluation processes;
- Performance measures and metrics and potential funding models;
- Consumer complaint an inquiry processes and tools, and;
- Analyzing and implement learning and professional development tools for attorneys providing general counsel to client agencies.

11 Please highlight the long-term financial challenges of fulfilling the mission of the Department with particular attention to any scenarios identified in the Department's Long Range Financial Plan involving an economic downturn, department-specific contingencies, emerging trends, or major anticipated expenses (Subsections 3-6 of Section 4 of the Long Range Financial Plan submitted pursuant to H.B. 18-1430).

Response: Roughly 75 percent of the DOL appropriated budget is funded through cash funds for which the DOL is responsible for annual revenue settings, including the Legal Services to State Agencies cash fund. The DOL is not anticipating any significant changes in the numbers of businesses with licenses or registrations that would impact DOL revenues. If, however,

this were to occur, the DOL would adjust spending patterns in a particular cash fund to ensure the DOL operated within any revenue or spending authority limitations, while maximizing program effectiveness.

Lastly, the DOL is not aware of any potential federal fund reductions associated with the Medicaid Fraud Control Unit. This unit is funded on a 25 percent General Fund/75 percent federal fund split. The DOL and the U.S. Department of Health and Human Services, has a fully executed agreement for October 1, 2019, through September 30, 2020. Again, if federal funds were reduced, the DOL would analyze program efforts against available resources to ensure the most effective program delivery within available resources.

- 12 In some cases, the roles and duties of existing FTE may have changed over time. For all FY 2020-21 budget requests that include an increase in FTE:*
- a. Specify whether existing staff will be trained to assume these roles or these duties, and if not, why;*
 - b. Specify why additional FTE are necessary; and*
 - c. Describe the evaluation process you used to determine the number of FTE requested.*

Response: The Department of Law has two budget requests that include additional FTE: R-2 “Administration Section Support of the DOL” is requesting 3.0 FTE and R-3 “Data Security and Privacy” is requesting 2.0 additional FTE.

Should these requests be approved, the DOL, in all instances, will post these positions for competitive selection. The DOL intends to ensure that it hires the best candidates possible for a particular skill need. Currently, internal staff is always encouraged to apply for positions within the organization that fit their professional interests and professional growth goals. The DOL will assess the talent pool that applies for each position and offer a particular position to the individual that is best qualified.

With respect to each additional FTE request, the DOL assessed the workload needs of the organization and any gaps in effectively and efficiently meeting those needs. The DOL has provided workload data in each request to forecast the need for additional resources as well as providing a reasonable and defensible business need assessment.

Specifically, in R-2, the DOL requests funding for a Purchasing Agent V, a Budget Analyst III, and an HR Specialist V. The budget request provides a variety of data points justifying the need for these resources. Generally, due to several major new legislative enactments in recent years, the DOL’s programmatic efforts, funding, and FTE has grown substantially over the past 8 years, with no additional investment in the back-office efforts like HR, budget, and procurement to support. These roles are critical in ensuring proper stewardship of resources, compliance with state procurement laws, and proper support for personnel.

In R-3, the DOL is requesting funding for a Senior Assistant Attorney General and an IT Professional. These positions will address the responsibilities of the DOL associated with data breach reporting and investigation of actionable cases.

- 13 *Please describe the impact of Colorado’s low unemployment rate on the Department’s efforts to recruit and retain employees.*

Response: As articulated in the DOL response to Common Hearing Question #4, the DOL continues to lose staff due to higher salaries offered by other organizations outside State government. This is likely, in part, the result of low unemployment. However, the DOL annually conducts a salary survey for our attorney classifications to help ensure we stay competitive with our primary market. The DOL’s primary market is generally the public law offices (cities and counties) along the I-25 corridor.

- 14 *NOTE: An example template for providing data for this question will be provided by the JBC Staff.*

State revenues are projected to exceed the TABOR limit in each of the next two fiscal years. Thus, increases in cash fund revenues that are subject to TABOR will require an equivalent amount of General Fund for taxpayer refunds. Please:

- a. List each source of non-tax revenue (e.g., fees, fines, parking revenue, etc.) collected by your department that is subject to TABOR and that exceeds \$100,000 annually. Describe the nature of the revenue, what drives the amount collected each year, and the associated fund where these revenues are deposited.*
- b. For each source, list actual revenues collected in FY 2018-19, and projected revenue collections for FY 2019-20 and FY 2020-21.*
- c. List each decision item that your department has submitted that, if approved, would increase revenues subject to TABOR collected in FY 2020-21*

Response:

Non-Tax Revenues Collected by Department That Are Subject to TABOR (excluding sources that amount to less than \$100,000/year)				
		Revenues Collected Annually		
Revenue Source	Associated Cash Fund	FY 2018-19 Actual	FY 2019-20 Projection	FY 2020-21 Projection
Business Registrations	Fund #1500: Collection Agency Board Cash fund	\$923,000	\$844,000	\$1,019,000
Business Registrations	Fund #1510 : Uniform Consumer Credit	1,389,764	1,531,057	1,910,000
Business Registrations	Fund#1511: Student Loan Ombudsperson and Student Loan Servicer Licensing Fund		186,772	312,478
Business Registrations	Fun #16Z0: Insurance Fraud Cash Fund	2,145,273	2,140,678	2,250,000

Certification Fees	Fund #2960: Peace Officers Standards and Training	148,719	150,000	150,000
TOTALS		\$4,606,756	\$4,852,507	\$5,641,478

The DOL requests 3.0 FTE in BR-2. This request is specifically for an HR Specialist, a Budget Analyst, and a Purchasing Agent. As these positions support the entire DOL staff and programs, the DOL requests these positions to be housed in the Administration Line Item and funded entirely from Indirect Recoveries. The funds listed above, along with a number of other cash funds, reappropriated funds, and our federal grant all contribute to the Indirect pool. This budget request will increase costs and will marginally impact the expenses of each of these funds.

- 15 *Please describe the Department’s current practice regarding employee parking and other transportation options (i.e. EcoPass). Please address the following:*
- a. *Does the Department have adequate parking for all employees at all locations?*
 - b. *If parking is limited, how are available spaces allocated?*
 - c. *If free parking is not available, how is parking paid for, and who pays (employee or Department)? (e.g. stipends, subsidized parking, eco passes)*
 - d. *If employees pay fees for parking, where is the revenue credited and how is it spent, and is it subject to TABOR?*
 - e. *Do parking and/or transportation benefits factor into Department compensation and/or retention efforts?*

Response: The DOL participates in the EcoPass program. Each DOL employee utilizing the EcoPass contributes \$60/month for this benefit. The CY 19 DOL EcoPass total payable is \$165,350. This is made up, in part, with state resources and the balance coming from the \$60/month for those DOL employees participating in the program.

The DOL is a tenant in the Ralph L. Carr Judicial Center at 1300 Broadway. All DOL employees are generally housed at this address. The Judicial Department, through its building management, owns and operates a parking garage at 1255 Broadway for tenants of the building. All DOL employees who have an assigned parking space pay \$135/month to the building management. There is currently a two-year wait list for each new employee wishing to park in the garage. Building management maintains that list.

All other employees who drive to work must pay for parking at surface lots or other privately run parking garages.

Employees who have left the employment of the DOL have generally not identified parking or public transportation as factors in their decision to leave the DOL for other opportunities.

- 16 Please identify all continuously appropriated funds within the Department's purview with a fund balance or annual revenue of \$5.0 million or more. Please indicate if these funds are reflected in the FY 2019-20 Long Bill.*

Response: The Student Loan Ombudsperson and Student Loan Servicing Cash Fund is the only continuously appropriated cash fund administered by the DOL. This fund was created for FY 2019-20, through SB 19-002. This fund does not have a current fund balance. The DOL anticipates revenue to be generated in the fund starting January, 2020, in line with the licensing terms established by statute.