

**COLORADO GENERAL ASSEMBLY  
JOINT BUDGET COMMITTEE**



**FY 2015-16 STAFF BUDGET BRIEFING  
DEPARTMENT OF REGULATORY AGENCIES**

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

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December 18, 2014**

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## DEPARTMENT OF REGULATORY AGENCIES

### Department Overview

The Department's mission is broadly defined as consumer protection, which is carried out through regulatory programs that license, establish standards, approve rates, investigate complaints, and conduct enforcement through 41 boards, commissions, and advisory committees across more than 50 professions, occupations, programs, and institutions. The Department is organized in 10 predominantly cash-funded divisions as follows:

- The **Divisions of Banking, Financial Services and Securities** regulate state-chartered financial services institutions including banks, trust companies, credit unions and money transmitters, investment advisers, securities broker-dealers, and sales representatives.
- The **Civil Rights Division** administers and enforces Colorado's civil rights laws and is the only non-cash-funded division, relying on General Fund and Federal Funds.
- The **Division of Insurance** regulates and licenses life, health, property and casualty, and other types of insurance companies and agents.
- The **Public Utilities Commission (PUC)** regulates the providers of public utilities in energy and telecommunications and specified industries that provide transportation for hire directly to consumers. The **Office of Consumer Counsel (OCC)**, structured as a separate division but funded by PUC cash funds, represents the interests of residential, small business, and agricultural consumers on utility matters before the PUC.
- The **Division of Real Estate** licenses real estate agents, appraisers, and mortgage loan originators, registers mortgage companies and homeowners associations, and administers the conservation easement tax credit certification programs.
- The **Division of Professions and Occupations** oversees regulation of over 697,000 licensees in over 50 professions, occupations, and entities.
- Additionally, the **Office of Policy and Research (OPR)** in the **Executive Director's Office (EDO)** provides sunset and sunrise regulatory evaluations and policy recommendations to the General Assembly and is cash funded by the programs reviewed.

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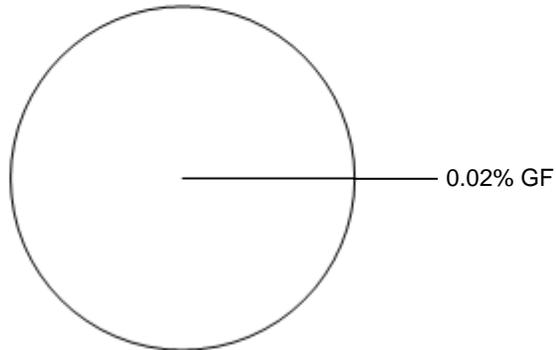
## Department Budget: Recent Appropriations

<b>Funding Source</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16 *</b>
General Fund	\$1,715,818	\$1,703,494	\$1,882,646	\$1,988,568
Cash Funds	71,586,905	73,652,864	78,674,683	79,129,408
Reappropriated Funds	4,267,189	4,504,371	4,722,507	4,750,297
Federal Funds	<u>1,315,200</u>	<u>1,323,983</u>	<u>1,386,984</u>	<u>1,422,929</u>
<b>Total Funds</b>	<b>\$78,885,112</b>	<b>\$81,184,712</b>	<b>\$86,666,820</b>	<b>\$87,291,202</b>
Full Time Equiv. Staff	559.9	572.7	587.6	583.6

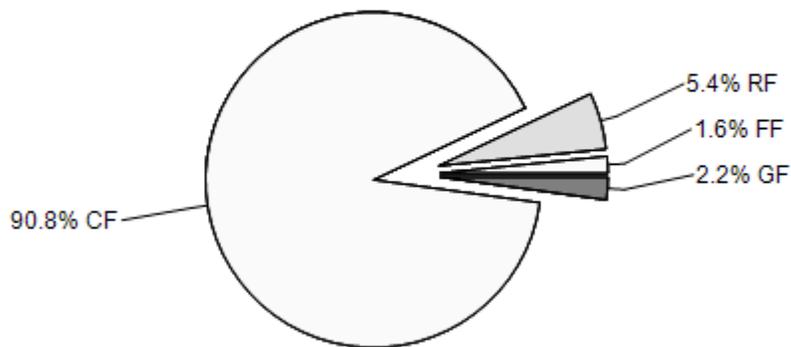
\*Requested appropriation.

## Department Budget: Graphic Overview

**Department's Share of Statewide  
General Fund**

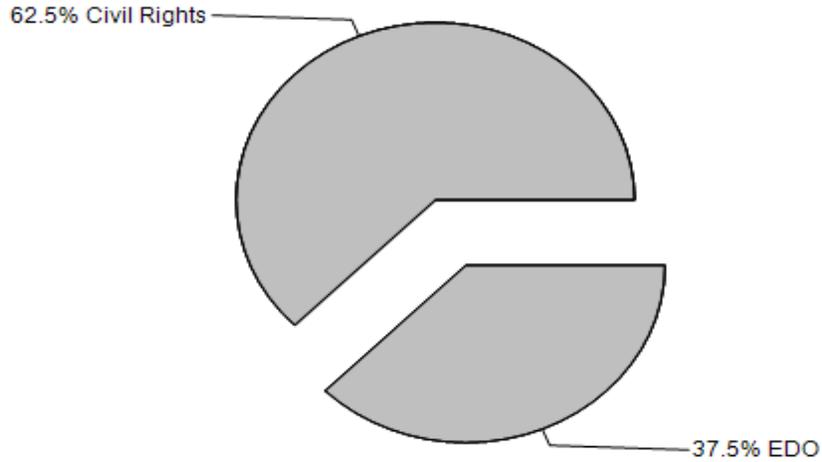


**Department Funding Sources**

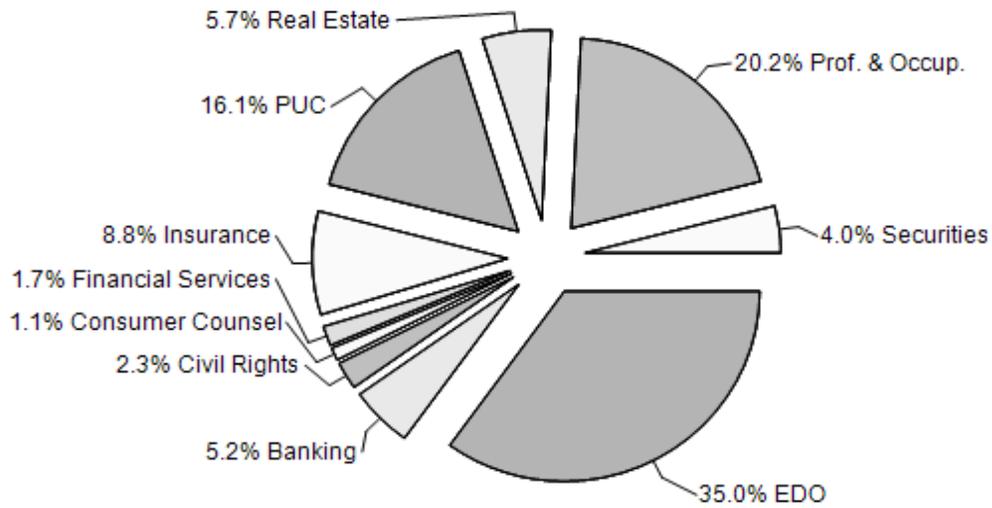


All charts are based on FY 2014-15 appropriation.

**Distribution of General Fund by Division**



**Distribution of Total Funds by Division**



All charts are based on FY 2014-15 appropriation.

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## General Factors Driving the Budget

The Department's FY 2015-16 budget request consists of 2.3 percent General Fund, 90.6 percent cash funds, 5.4 percent reappropriated funds, and 1.6 percent federal funds. Some of the major factors driving the Department's budget are discussed below.

### Legal Services

Due to the impact on parties involved in many of the Department's regulatory decisions, legal services has been, and will continue to be, a driving factor of the Department's budget. Legal services account for 12.7 percent of the Department's FY 2014-15 total appropriation and 27.6 percent of the total legal services provided to all state agencies by the Department of Law.

<b>Department of Regulatory Agencies Legal Services Expenditures</b>						
	<b>FY 09-10 Actual</b>	<b>FY 10-11 Actual</b>	<b>FY 11-12 Actual</b>	<b>FY 12-13 Actual</b>	<b>FY 13-14 Actual</b>	<b>FY 14-15 Approp.</b>
Legal Services	\$7,546,070	\$7,485,354	\$7,359,709	\$7,383,603	\$9,767,656	\$11,020,252
Legal Services Hours	100,107	102,022	106,835	104,884	107,566	108,364
Change in Hours	1,614	1,915	4,813	(1,951)	2,682	798
Percent Change in Hours	1.6%	1.9%	4.7%	(1.8%)	2.6%	0.7%
Percent of Department Total	9.4%	9.6%	9.6%	9.4%	12.0%	12.7%
Dept. of Law Blended Legal Rate	\$75.38	\$73.37	\$75.71	\$77.25	\$91.08	\$94.51
Dept. of Law Total Legal Services to State Agencies	\$24,886,703	\$25,810,341	\$27,109,549	\$26,489,283	\$36,165,569	\$39,921,767
DORA Percent of State Agencies Total	29.0%	30.3%	29.0%	29.5%	27.3%	27.8%

From FY 2009-10 through FY 2013-14, five divisions accounted for 82.2 to 91.1 percent of the Department's legal services.

<b>Legal Services Expenditures by Five Divisions</b>					
	<b>FY 09-10 Actual</b>	<b>FY 10-11 Actual</b>	<b>FY 11-12 Actual</b>	<b>FY 12-13 Actual</b>	<b>FY 13-14 Actual</b>
Professions & Occupations	\$3,515,106	\$3,286,424	\$3,336,464	\$3,426,052	\$3,806,424
PUC + OCC	1,692,850	1,664,076	1,835,306	1,759,139	2,358,562
Real Estate	906,652	781,201	743,813	594,427	918,930
Insurance	<u>671,086</u>	<u>890,231</u>	<u>787,757</u>	<u>837,152</u>	<u>942,438</u>
<b>Top Five Subtotal</b>	<b>6,785,694</b>	<b>6,621,932</b>	<b>6,703,340</b>	<b>6,616,770</b>	<b>8,026,354</b>
Department Total	\$7,546,070	\$7,485,354	\$7,359,709	\$7,383,603	\$9,767,656
Top Five Percent of Total	89.9%	88.5%	91.1%	89.6%	82.2%

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**Other Legislation**

The General Assembly has passed an average of 13 bills per session over the last nine sessions that increased the Department's regulatory responsibilities. The 2014 Session had a lower-than-average 10 bills that include an additional 7.0 FTE while totaling a below average amount appropriated over that period. The following table shows the impact of other legislation on the Department's budget.

<b>Impact of Other Legislation on the DORA Budget</b>						
<b>Session</b>	<b>No. of Bills</b>	<b>General Fund</b>	<b>Cash Funds</b>	<b>Reapprop. Funds</b>	<b>Total</b>	<b>FTE</b>
2006	11	\$0	\$1,088,461	\$194,600	\$1,283,061	7.2
2007	22	42,290	2,670,098	66,962	2,737,060	15.3
2008	19	149,205	2,233,416	0	2,233,416	17.3
2009	10	0	947,305	0	947,305	7.5
2010	13	0	507,245	593,333	1,100,578	6.4
2011	11	0	954,420	0	954,420	6.8
2012	5	0	378,246	0	378,246	2.0
2013	16	0	334,518	0	334,518	12.8
2014	10	0	802,770	0	802,770	7.0
<b>Average</b>	<b>13</b>	<b>\$21,277</b>	<b>\$1,101,831</b>	<b>\$94,988</b>	<b>\$1,196,819</b>	<b>9.1</b>

The impact of these bills by division is outlined in the following table.

<b>Divisions Impacted by Bills by Legislative Session</b>										
	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>Total</b>
Professions and Occupations	3	5	7	7	7	8	4	11	3	55
Insurance	3	5	6	0	0	2	1	2	1	20
Public Utilities Commission	2	6	1	1	2	0	0	1	4	17
Real Estate	1	4	1	1	2	1	0	1	0	11
All Other Divisions	<u>2</u>	<u>2</u>	<u>4</u>	<u>1</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>2</u>	<u>14</u>
<b>Total</b>	<b>11</b>	<b>22</b>	<b>19</b>	<b>10</b>	<b>13</b>	<b>11</b>	<b>5</b>	<b>16</b>	<b>10</b>	<b>107</b>

**Licenses Issued**

The Department is responsible for consumer protection and licenses professionals in various industries as part of this mission. The Divisions of Insurance, Real Estate, Professions and Occupations, and Securities issue the majority of individual licenses. Budgets in these divisions are driven primarily by the number of individuals requiring licensure. The following table outlines the number of licenses regulated by these divisions.

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<b>Number of Licenses Regulated by the Divisions of Insurance, Real Estate, Registrations, and Securities</b>						
	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
<b>Div. of Insurance Producer Licenses</b>						
New Licenses	29,070	25,699	29,789	30,556	30,900	31,603
Active Licenses	118,783	123,204	129,559	128,710	134,951	142,105
<b>Div. of Real Estate</b>						
Broker & Salesperson	11,820	10,662	10,660	10,777	9,950	10,519
Mortgage Loan Originators	8,729	4,690	5,013	5,443	7,182	6,847
Appraisers	4,006	3,597	3,365	3,209	3,068	853
<b>Div. of Professions and Occupations</b>						
New Licenses	38,900	33,194	34,431	35,210	36,152	35,793
Active Licenses	315,147	324,271	345,026	347,285	366,402	368,851
<b>Div. of Securities</b>						
Sales Representative License Renewals	145,347	145,504	153,576	163,818	165,433	171,999
Investment Advisor License Renewals	8,913	9,231	9,522	9,743	10,297	11,103

**Number of Examinations by the Divisions of Banking and Securities**

The deterioration of the financial sector in 2008 increased the workload of the examination sections of the Divisions of Banking, Financial Services, and Securities which have since decreased for the Banking and Financial Services Divisions. Securities examinations increased in FY 2011-12 due to additional oversight requirements in federal law. The following table outlines the changes in the number of examinations conducted by these three divisions since FY 2008-09.

<b>Examinations Conducted by the Divisions of Banking, Financial Services, and Securities</b>							
	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	Change Since FY 08-09
Banking Examinations	164	154	195	171	180	141	-14.0%
Credit Union Examinations	33	38	39	34	31	34	3.0%
Securities Examination	50	66	65	110	175	138	176.0%

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**Summary: FY 2014-15 Appropriation & FY 2015-16 Request**

<b>Department of Regulatory Agencies</b>						
	<b>Total Funds</b>	<b>General Fund</b>	<b>Cash Funds</b>	<b>Reappropriated Funds</b>	<b>Federal Funds</b>	<b>FTE</b>
<b>FY 2014-15 Appropriation</b>						
H.B. 14-1336 (Long Bill)	\$85,864,050	\$1,882,646	\$77,871,913	\$4,722,507	\$1,386,984	580.6
Other legislation	<u>802,770</u>	<u>0</u>	<u>802,770</u>	<u>0</u>	<u>0</u>	<u>7.0</u>
<b>TOTAL</b>	<b>\$86,666,820</b>	<b>\$1,882,646</b>	<b>\$78,674,683</b>	<b>\$4,722,507</b>	<b>\$1,386,984</b>	<b>587.6</b>
<b>FY 2015-16 Requested Appropriation</b>						
FY 2014-15 Appropriation	\$86,666,820	1,882,646	\$78,674,683	\$4,722,507	\$1,386,984	587.6
R1 DPO personal services reduction	(250,000)	0	(250,000)	0	0	(3.5)
NP1 Annual fleet vehicle request	1,445	0	1,445	0	0	0.0
Centrally appropriated line items	1,144,756	102,648	971,621	37,637	32,850	0.0
Indirect cost assessment	59,684	0	52,945	3,868	2,871	0.0
Technical changes	0	5,800	(3,660)	(2,140)	0	0.0
Annualize prior year legislation	(259,018)	0	(259,018)	0	0	(0.5)
Annualize prior year funding	<u>(72,485)</u>	<u>(2,526)</u>	<u>(58,608)</u>	<u>(11,575)</u>	<u>224</u>	<u>0.0</u>
<b>TOTAL</b>	<b>\$87,291,202</b>	<b>\$1,988,568</b>	<b>\$79,129,408</b>	<b>\$4,750,297</b>	<b>\$1,422,929</b>	<b>583.6</b>
<b>Increase/(Decrease)</b>	<b>\$624,382</b>	<b>\$105,922</b>	<b>\$454,725</b>	<b>\$27,790</b>	<b>\$35,945</b>	<b>(4.0)</b>
Percentage Change	0.7%	5.6%	0.6%	0.6%	2.6%	(0.7%)

**Description of Requested Changes**

**R1 DPO personal services reduction:** The Division of Professions and Occupations (DPO) proposes to reduce its FY 2015-16 Personal Services Cash Fund and FTE appropriations. This reduction would be ongoing.

**NP1 Annual fleet vehicle request:** The request includes the annual fleet vehicle change from the Department of Personnel. *This request item will be addressed in separate staff briefings for the Department of Personnel and Administration.*

**Centrally appropriated line items:** The request includes adjustments to centrally appropriated line items for the following: state contributions for health, life, and dental benefits; merit pay; salary survey; short-term disability; supplemental state contributions to the Public Employees' Retirement Association (PERA) pension fund; workers' compensation; administrative law judges; payment to risk management and property funds; and leased space and Capitol complex

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leased space. *This request item will be addressed in separate staff briefings for the Department of Personnel and Administration.*

**Indirect cost assessment adjustments:** The request includes a \$59,684 increase in total funds that reflects adjustments to indirect cost assessment lines as a result of the Statewide Indirect Cost Plan.

**Technical changes:** The request includes a budget neutral adjustment to the Sunset Fund split.

**Annualize prior year legislation:** The request includes adjustments related to prior year legislation.

**Annualize prior year funding:** The request includes adjustments related to prior year budget actions.

## **Issue: Department's Lease Expiration**

The Department of Regulatory Agencies is currently pursuing lease options because their lease for the 1560 Broadway office space expires June 30, 2016.

### **SUMMARY:**

- The Department currently leases 159,916 square feet of office space at 1560 Broadway in Denver.
- The Department anticipates that the timing of lease negotiations will not allow for extended consideration on the budgetary issues involved and would like to address any Committee concerns in advance of the need to sign a lease.
- Assuming a potential lease increase of \$25 per square foot and that the Department maintains its current square footage, the new lease would cost approximately \$4 million annually. That represents an increase of a little more than \$1.1 million from its current lease.

### **RECOMMENDATION:**

Staff recommends that the Committee request the Department provide the following information:

- An update on their pursuit of a new lease; and
- An update on the impact of the State's Master Plan on their lease negotiations.

### **DISCUSSION:**

The Department occupies consolidated space at 1560 Broadway in Denver with a present total of 159,916 square feet. The Department no longer utilizes satellite locations throughout the state, with the exception of Capitol Complex space in Grand Junction and a small amount of federally funded satellite space that exists in Pueblo for the Division of Civil Rights. The Department is presently in the ninth year of a 10-year contract for this lease, which will expire June 30, 2016. Planning efforts to determine options for future space are presently underway in concert with statewide master planning, which are overseen by the Department of Personnel and Administration's State Buildings and Real Estate Programs.

The current lease was a partial renewal and partial new lease due to the consolidation of divisions from other buildings into the 1560 Broadway property. At the time the current lease was signed in 2006, the Department already occupied a large portion of the building's leasable space. The consolidation brought the Division of Real Estate, the Division of Securities, and the Public Utilities Commission and the Office of Consumer Counsel to the Department's current premises. This was the result of years of planning in order to terminate the necessary leases and procure the needed space in the current building.

The Department's utilization of 159,916 square feet of office space amounts to approximately 272 square feet per employee. Pursuant to space standards set by the Office of the State

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Architect, the current lease is classified as Category 3. Category 3 leases are those leases where the amount of square feet leased is more than 232 rentable square feet per office worker but less than the private sector average of 291 rentable square feet per office worker. Leases in this category require approval of the requesting agency’s division director. The Department is awaiting the release of draft materials for the ongoing State master planning process. This material may, or may not, provide the Department with specific costs minimums or maximums for leased space.

An issue the Department anticipates is that the timing of lease negotiations will not allow for extended consideration on the budgetary issues involved. The lease cannot be signed without having approval of and commitment on the necessary funding from the legislature. However, the Department will likely need to sign a lease outside of the normal timing set forth in the state budget process. The specifics of any current offers are confidential while lease negotiations are on-going. Nevertheless, the Department has informed staff that it is considering both short-term (2-4 years) and long-term (4-10 years) lease contracts. It should be noted that while the Department was able to lock in very favorable rates on their prior lease, in the 10 years since then the market has changed considerably.

***Leased Space Specifications and Costs***

The Department presently pays different annual rates for different portions of its space. The largest portion, 149,127 square feet, costs \$17.85 per square foot. Additionally, the Department pays \$21.51 per square foot for 5,710 square feet, \$17.63 per square foot for 4,781 square feet, and a flat rate of \$3,576 for 298 square feet of incidental storage space. The Department is paying an average rate per square foot of \$17.96, with a total annual lease cost of \$2,872,604. The Department has conducted site visits to various office spaces in the Denver Metro area, receiving quotes for these spaces ranging from the mid-\$20s to the low-\$30s.

The FY 2014-15 appropriations for the Leased Space line item was \$3,150,891. The Department’s FY 2015-16 appropriations request for this line item is \$3,193,641. Assuming a minimum of \$25 per square foot for the potential lease increase and that the Department maintains its current leased square footage, the new lease would cost approximately \$4 million annually. That represents an increase of a little more than \$1.1 million.

<b>DORA: 1560 Broadway Leased Square Footage and Cost</b>			
	<b>Square Feet</b>	<b>Rate per square foot</b>	<b>Total Cost per Year</b>
<b>Current</b>	149,127	\$17.85	\$2,661,917
	5,710	21.51	122,822
	4,781	17.63	84,289
	298	Flat Rate	3,576
<b>Total</b>	<b>159,916</b>	<b>\$17.96</b>	<b>\$2,872,604</b>
<b>Potential Future Cost</b>			
<b>Minimum</b>	159,916	\$25.00	\$3,997,900
<b>Maximum</b>	159,916	\$33.00	\$5,277,228

## **Issue: Colorado Credit Unions Serving the Marijuana Industry**

The Department of Regulatory Agencies' Division of Financial Services has oversight of credit unions, as well as several other types of financial institutions, and is currently addressing the issue of access to financial institutions by the state's marijuana industry.

### **SUMMARY:**

- The Commissioner of Financial Services is required by statute to consider the economic advisability of approving charters for credit unions.
- In November, the Commissioner of Financial Services issued an unconditional charter to The Fourth Corner Credit Union (4<sup>th</sup> Corner), pursuant to Section 11-30-101 (3) (a) and Section 11-30-117.5 (3), C.R.S.
- The Division of Financial Services and its Commissioner have the statutory authority to provide the regulatory framework that will allow the marijuana industry access to in-state banking services.
- There is significant risk to financial institutions and the marijuana industry because of federal law and enforcement priorities.

### **DISCUSSION:**

The Division of Financial Services and its Commissioner have the statutory authority to provide the regulatory framework that will allow the marijuana industry access to in-state banking services. However, the requirements of deposit insurance and access to the Federal Reserve, as well as federal law, provide significant barriers and risks in trying to meet that need. To date, the Division of Financial Services has taken all necessary and required steps to ensure fair and equal treatment under state law for those seeking to provide essential banking services to the state's growing marijuana industry. In recent years, there has also been a loosening of federal enforcement policy for the Controlled Substance Act (CSA) in regards to marijuana, but this shift can easily be reversed under a new administration. The only way to alleviate the risks associated with federal law and enforcement priorities is for Congress to pass legislation that changes the CSA scheduling of marijuana.

### ***Background***

Access to regulated banking services by the marijuana industry, both medical and recreational, has been a persistent issue that existed prior to the legalization of recreational sales. The risks associated with providing banking services to this industry are significant and have proven to be a deterrent. Banks that decide to serve marijuana-related businesses face the risk of federal prosecution. The Colorado Bankers Association, a state industry association, released a statement in November 2014 outlining the risks to banks choosing to provide these services. It

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also expressed concern regarding the ability of 4<sup>th</sup> Corner to conduct normal banking business. Other banks may not accept checks or drafts drawn on the credit union's accounts because those funds are associated with a federally illegal activity, which they are required to report under the federal Bank Secrecy Act (BSA).

The marijuana industry is facing competing risks. The utilization of a single financial institution makes it easier for the federal government to freeze or seize assets, creating the potential for the entire industry to be shut down. This fear creates reluctance to bank and mistrust among many businesses in the marijuana industry. However, holding onto significant amounts of cash exposes individual businesses and their employees to increased risk from organized crime, which is a substantial public safety concern. Anecdotal evidence suggests that millions of dollars from the sale of marijuana are being stored outside of the banking system. Instead, these businesses are relying on private security firms, in the best of circumstances, or private storage spaces to hold the money. 4<sup>th</sup> Corner could help alleviate the latter risk in the short-term. However, alleviating the former risk requires the participation of many financial institutions and a concrete shift in federal policy regarding marijuana.

***Statutory Authority for State Chartered Credit Unions***

In November of this year, the Commissioner of Financial Services issued an unconditional charter to 4<sup>th</sup> Corner, pursuant to Section 11-30-101 (3) (a) and Section 11-30-117.5 (3), C.R.S. It should be noted that the charter was applied for under Title 11, Article 30, which regulates credit unions, rather than Title 11, Article 33, which regulates marijuana financial services co-operatives. There is a greater interest from the private sector and the marijuana industry for access to traditional financial services, instead of co-operatives.

There is a clear economic need for granting the marijuana industry access to regulated banking services. Pursuant to Section 11-30-101 (3) (a), C.R.S., the Commissioner of Financial Services must consider “whether such a credit union would benefit the members and proposed members thereof...and the economic advisability of establishing” the credit union. The Department of Revenue (DOR) reports that the number of businesses operating has slowly increased each month this year, a trend that is expected to continue. At the end of October, there were 381 retail marijuana businesses that had filed tax returns with DOR. As the industry grows, the need for access to banking services becomes greater. This economic need for access was a significant factor in the decision to grant 4<sup>th</sup> Corner a charter.

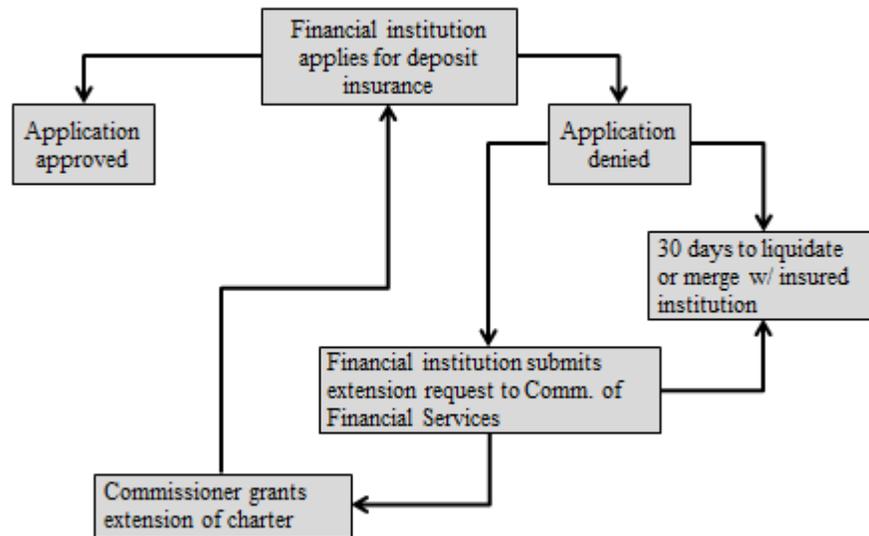
While 4<sup>th</sup> Corner has been granted a state charter, they must still be granted access to the Federal Reserve System (Federal Reserve) and obtain deposit insurance in order to begin operating. These two requirements must be met; however, there is uncertainty regarding the credit union's current applications to both the Federal Reserve and the National Credit Union Administration (NCUA). Currently, 4<sup>th</sup> Corner is awaiting application decisions from the Federal Reserve and the NCUA. The NCUA estimated that the review and processing of the application would take about two years, while the Federal Reserve has not provided an estimate on timing. It should be noted that the normal NCUA review and processing time for deposit insurance is approximately three months.

***Access to Deposit Insurance***

By statute, state-chartered credit unions are required to have access to deposit insurance, whether that is through the NCUA, which provides coverage through the National Credit Union Share Insurance Fund, or a private provider. Section 11-30-117.5 (1), C.R.S., requires that a credit union apply for insurance on its shares and deposits from the NCUA “or a comparable insurance approved by the commissioner.” By policy, state-chartered credit unions must be insured through the NCUA; to date, there are no credit unions in Colorado that are privately insured. A March 2003 study conducted by the Division of Financial Services found that, at the time, there were no private insurers of shares and deposits that were comparable to the NCUA. The NCUA’s size and federal backing makes it a superior option to any private insurance.

In limited circumstances, credit unions can temporarily operate without insurance, as long as they have applied for coverage. Section 11-30-117.5 (3), C.R.S., allows the Commissioner to grant a charter to a credit union that “has applied for insurance on its shares and deposits.” If a credit union’s application for insurance is denied, Section 11-30-117.5 (2), C.R.S., stipulates that the credit union must apply “to the commissioner for an extension of time to obtain an insurance commitment” or begin the process of liquidating or merging with an insured credit union. If the financial institution chooses the latter of the two options, they have 30 days to complete the liquidation or merger. It should be noted that Section 11-30-117.5 (2), C.R.S., does not put a limit on the number of extensions the Commissioner may grant a credit union, as long as it “is making a substantial effort to satisfy the conditions” required to gain insurance.

**Section 11-30-117.5 (2), C.R.S., Process Flow**



***Access to Federal Reserve***

Access to the Federal Reserve is critical and necessary for the operation of any financial institution. For depository institutions, the Federal Reserve acts as a clearinghouse by providing various payment services, including: collecting checks, electronically transferring funds, and the distribution and receipt of currency and coin. Access to the Federal Reserve allows a depository

institution to minimize the amount of cash it stores in its on-site vaults (a.k.a., vault cash) by allowing that institution to hold their reserves directly with their Federal Reserve Bank. The Federal Reserve also provides intermediary clearing and settling services for interbank payments. Access to these services by the marijuana industry would greatly reduce the risks associated with operating cash-heavy businesses.

In order to utilize the Federal Reserve System, a financial institution must have a master account. A master account is used to settle debit and credit transaction activities that are conducted with or through any Reserve Bank. A financial institution must authorize specific individuals to conduct business on its behalf and must submit a complete Master Account Agreement. This form must be approved by the institution's Administrative Reserve Bank, which in the case of financial institutions in Colorado is the Federal Reserve Bank of Kansas. Upon approval, the financial institution is assigned a master account. The Federal Reserve stipulates that opening and maintaining a master account binds a financial institution to all provisions in Operating Circular No. 1 and all other Federal Reserve Bank operating circulars that cover services obtained from any Reserve Bank.

### ***Federal Guidance to Banking Industry***

The federal Department of Justice and Department of the Treasury have separately released guidance to the banking industry on how to provide services to marijuana related-businesses. This guidance does not remove the liability financial institutions accept by providing these services, but the guidance does suggest a softening of federal marijuana enforcement priorities. Deputy Attorney General James M. Cole released a memo on August 29, 2013, often referred to as the "Cole Memo," (see Appendix F) instructing federal prosecutors and law enforcement to focus their enforcement of the Controlled Substance Act against marijuana-related conduct on eight priorities. These priorities included preventing the distribution of the drug to minors, preventing revenue from the sales of marijuana from going to organized crime, and preventing the cultivation of the plant on public land.

The Department of the Treasury's Financial Crimes Enforcement Network followed the Cole Memo in publishing guidance on BSA expectations regarding marijuana-related businesses (see Appendix G). The guidance focuses on financial institutions' BSA obligations and aligns the information provided by those institutions in their reports with federal and state law enforcement priorities. The document emphasizes thorough customer due diligence, prompt filing of the appropriate Suspicious Activity Reports (SARs), and the filing of currency transaction reports. The guidance further establishes a three-tiered SARs reporting methodology for identifying marijuana-related businesses: Limited, which indicates that the business does not violate state law or does not fall under one of the Cole Memo priorities; Priority, which indicates that the business violates state law or does fall under one of the Cole Memo priorities; and Termination, which is filed by a financial institution in the case they terminate a relationship with a marijuana-related business. This guidance also emphasizes that financial institutions are not released from any liability of federal prosecution for providing services to marijuana-related businesses.

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**Appendix A: Number Pages**

	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
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**DEPARTMENT OF REGULATORY AGENCIES**  
**Barbara Kelley, Executive Director**

**(1) EXECUTIVE DIRECTOR'S OFFICE AND ADMINISTRATIVE SERVICES**

The Executive Director's Office performs department-wide administrative functions including accounting, budgeting, and purchasing. The Office of Policy and Research conducts sunrise and sunset evaluations pursuant to section 24-34-104 (8), C.R.S.

Personal Services	<u>2,151,832</u>	<u>2,184,005</u>	<u>2,312,290</u>	<u>2,385,638</u>
FTE	27.5	28.0	29.5	29.5
General Fund	0	3,363	3,000	8,800
Cash Funds	37,360	44,020	70,660	67,000
Reappropriated Funds	2,114,472	2,136,622	2,238,630	2,309,838
Health, Life, and Dental	<u>3,231,165</u>	<u>3,716,294</u>	<u>3,699,832</u>	<u>3,904,343</u>
General Fund	115,010	133,384	96,445	136,296
Cash Funds	2,904,637	3,360,040	3,364,783	3,527,788
Reappropriated Funds	161,581	178,707	210,172	196,297
Federal Funds	49,937	44,163	28,432	43,962
Short-term Disability	<u>54,323</u>	<u>61,865</u>	<u>79,402</u>	<u>81,112</u>
General Fund	1,917	2,267	2,456	2,987
Cash Funds	48,874	55,204	71,414	72,507
Reappropriated Funds	3,136	3,796	4,925	4,666
Federal Funds	396	598	607	952

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	<b>FY 2012-13 Actual</b>	<b>FY 2013-14 Actual</b>	<b>FY 2014-15 Appropriation</b>	<b>FY 2015-16 Request</b>	<b>Request vs. Appropriation</b>
S.B. 04-257 Amortization Equalization Disbursement	<u>1,038,756</u>	<u>1,172,505</u>	<u>1,472,905</u>	<u>1,644,105</u>	
General Fund	34,627	42,994	45,576	60,568	
Cash Funds	936,163	1,045,741	1,324,603	1,469,588	
Reappropriated Funds	55,693	72,112	91,453	94,629	
Federal Funds	12,273	11,658	11,273	19,320	
S.B. 06-235 Supplemental Amortization Equalization Disbursement	<u>892,635</u>	<u>1,058,510</u>	<u>1,380,848</u>	<u>1,588,056</u>	
General Fund	29,615	38,677	42,727	58,503	
Cash Funds	804,564	944,208	1,241,815	1,419,489	
Reappropriated Funds	47,909	65,101	85,737	91,403	
Federal Funds	10,547	10,524	10,569	18,661	
Salary Survey	<u>0</u>	<u>1,026,723</u>	<u>994,154</u>	<u>414,720</u>	
General Fund	0	35,734	30,751	15,067	
Cash Funds	0	929,071	894,137	370,833	
Reappropriated Funds	0	45,397	61,665	23,539	
Federal Funds	0	16,521	7,601	5,281	
Merit Pay	<u>0</u>	<u>509,586</u>	<u>333,820</u>	<u>363,212</u>	
General Fund	0	18,413	10,803	14,390	
Cash Funds	0	450,310	296,843	321,658	
Reappropriated Funds	0	35,392	23,258	22,737	
Federal Funds	0	5,471	2,916	4,427	

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	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
Workers' Compensation	<u>70,200</u>	<u>60,949</u>	<u>76,885</u>	<u>84,140</u>	
General Fund	2,236	1,941	2,600	2,845	
Cash Funds	64,251	55,784	70,485	77,137	
Reappropriated Funds	2,407	2,090	2,644	2,893	
Federal Funds	1,306	1,134	1,156	1,265	
Operating Expenses	<u>152,561</u>	<u>98,602</u>	<u>210,344</u>	<u>210,344</u>	
General Fund	3,689	0	3,689	3,689	
Cash Funds	66,100	10,621	95,427	95,427	
Reappropriated Funds	82,772	87,981	111,228	111,228	
Legal Services	<u>8,013,885</u>	<u>9,610,693</u>	<u>10,992,928</u>	<u>10,377,594</u>	
General Fund	156,586	186,557	216,752	206,901	
Cash Funds	7,693,292	9,106,714	10,481,271	9,889,192	
Reappropriated Funds	19,086	144,762	106,439	101,601	
Federal Funds	144,921	172,660	188,466	179,900	
Administrative Law Judge Services	<u>297,213</u>	<u>243,353</u>	<u>269,692</u>	<u>358,689</u>	
General Fund	13,441	11,005	12,197	16,222	
Cash Funds	283,772	232,348	257,495	342,467	
Payment to Risk Management and Property Funds	<u>183,033</u>	<u>199,878</u>	<u>258,515</u>	<u>169,677</u>	
General Fund	5,829	6,366	8,740	5,737	
Cash Funds	167,525	182,942	236,997	155,553	
Reappropriated Funds	6,276	6,854	8,891	5,836	
Federal Funds	3,403	3,716	3,887	2,551	
Vehicle Lease Payments	<u>221,253</u>	<u>203,988</u>	<u>224,605</u>	<u>226,050</u> *	
Cash Funds	221,253	203,988	224,605	226,050	

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	<b>FY 2012-13 Actual</b>	<b>FY 2013-14 Actual</b>	<b>FY 2014-15 Appropriation</b>	<b>FY 2015-16 Request</b>	<b>Request vs. Appropriation</b>
Information Technology Asset Maintenance	<u>616,274</u>	<u>657,161</u>	<u>678,903</u>	<u>671,403</u>	
Cash Funds	437,171	466,404	488,146	480,646	
Reappropriated Funds	179,103	190,757	190,757	190,757	
Hardware/Software Maintenance	<u>634,633</u>	<u>578,590</u>	<u>729,218</u>	<u>729,218</u>	
General Fund	800	800	800	800	
Cash Funds	375,231	319,188	469,816	469,816	
Reappropriated Funds	258,602	258,602	258,602	258,602	
Leased Space	<u>2,997,721</u>	<u>3,004,990</u>	<u>3,150,891</u>	<u>3,193,641</u>	
General Fund	106,866	93,609	96,244	97,721	
Cash Funds	2,530,690	2,548,585	2,617,827	2,653,882	
Reappropriated Funds	320,725	294,727	367,091	371,388	
Federal Funds	39,440	68,069	69,729	70,650	
Capitol Complex Leased Space	<u>4,787</u>	<u>5,339</u>	<u>3,975</u>	<u>5,995</u>	
Cash Funds	4,787	5,339	3,975	5,995	
Payments to OIT	<u>0</u>	<u>0</u>	<u>3,093,171</u>	<u>3,310,821</u>	
General Fund	0	0	130,015	139,163	
Cash Funds	0	0	2,963,156	3,171,658	
COFRS Modernization	<u>144,426</u>	<u>142,463</u>	<u>144,466</u>	<u>144,466</u>	
General Fund	3,016	3,016	3,016	3,016	
Cash Funds	131,452	131,452	131,452	131,452	
Reappropriated Funds	7,995	7,995	7,995	7,995	
Federal Funds	1,963	0	2,003	2,003	

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	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
Consumer Outreach/Education Program	<u>193,494</u>	<u>136,367</u>	<u>205,000</u>	<u>205,000</u>	
Cash Funds	193,494	136,367	205,000	205,000	
Purchase of Services from Computer Center	<u>1,883,611</u>	<u>1,642,373</u>	<u>0</u>	<u>0</u>	
General Fund	70,270	63,346	0	0	
Cash Funds	1,813,341	1,579,027	0	0	
Management and Administration of OIT	<u>136,785</u>	<u>144,258</u>	<u>0</u>	<u>0</u>	
General Fund	5,389	5,626	0	0	
Cash Funds	131,396	138,632	0	0	
Reappropriated Funds	0	0	0	0	
Colorado State Network	<u>348,448</u>	<u>203,964</u>	<u>0</u>	<u>0</u>	
General Fund	13,728	7,954	0	0	
Cash Funds	334,720	196,010	0	0	
Reappropriated Funds	0	0	0	0	
Information Technology Security	<u>0</u>	<u>20,702</u>	<u>0</u>	<u>0</u>	
General Fund	0	807	0	0	
Cash Funds	0	19,895	0	0	
<b>TOTAL - (1) Executive Director's Office and Administrative Services</b>	23,267,035	26,683,158	30,311,844	30,068,224	(0.8%)
<i>FTE</i>	<u>27.5</u>	<u>28.0</u>	<u>29.5</u>	<u>29.5</u>	0.0%
General Fund	563,019	655,859	705,811	772,705	9.5%
Cash Funds	19,180,073	22,161,890	25,509,907	25,153,138	(1.4%)
Reappropriated Funds	3,259,757	3,530,895	3,769,487	3,793,409	0.6%
Federal Funds	264,186	334,514	326,639	348,972	6.8%

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	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
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**(2) DIVISION OF BANKING**

The Division of Banking regulates state-chartered commercial and industrial banks, trust companies, debt adjusters, and money order companies; and conducts examinations of institutions and ensures institutions comply with the Public Deposit Protection Act. The Division is entirely cash funded by the Division of Banking Cash Fund, pursuant to section 11-102-403, C.R.S.

Personal Services	<u>3,239,966</u>	<u>2,829,779</u>	<u>3,675,282</u>	<u>3,775,541</u>	
FTE	41.1	36.4	40.0	40.0	
Cash Funds	3,239,966	2,829,779	3,675,282	3,775,541	
Operating Expenses	<u>489,328</u>	<u>458,867</u>	<u>490,703</u>	<u>490,703</u>	
Cash Funds	489,328	458,867	490,703	490,703	
Board Meeting Costs	<u>15,771</u>	<u>22,181</u>	<u>23,500</u>	<u>23,500</u>	
Cash Funds	15,771	22,181	23,500	23,500	
Indirect Cost Assessment	<u>261,032</u>	<u>288,212</u>	<u>309,653</u>	<u>314,963</u>	
General Fund	0	0	0	0	
Cash Funds	261,032	288,212	309,653	314,963	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

<b>TOTAL - (2) Division of Banking</b>	4,006,097	3,599,039	4,499,138	4,604,707	2.3%
FTE	<u>41.1</u>	<u>36.4</u>	<u>40.0</u>	<u>40.0</u>	<u>0.0%</u>
General Fund	0	0	0	0	0.0%
Cash Funds	4,006,097	3,599,039	4,499,138	4,604,707	2.3%
Reappropriated Funds	0	0	0	0	0.0%
Federal Funds	0	0	0	0	0.0%

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	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
<b>(3) CIVIL RIGHTS DIVISION</b>					
The Civil Rights Division enforces state laws that prohibit discrimination in employment, housing, and public accommodations on the basis of race, sex (gender), national origin, ancestry, physical or mental disability, religion, color, marital status, or sexual orientation.					
Personal Services	<u>1,593,380</u>	<u>1,543,233</u>	<u>1,854,264</u>	<u>1,907,901</u>	
FTE	24.3	23.5	27.2	27.2	
General Fund	1,068,671	912,290	1,092,377	1,131,405	
Reappropriated Funds	174,930	281,164	357,238	361,106	
Federal Funds	349,779	349,779	404,649	415,390	
Operating Expenses	<u>100,427</u>	<u>90,951</u>	<u>105,460</u>	<u>105,460</u>	
General Fund	59,307	59,318	62,284	62,284	
Federal Funds	41,120	31,633	43,176	43,176	
Hearings Pursuant to Complaint	<u>17,000</u>	<u>16,955</u>	<u>18,000</u>	<u>18,000</u>	
General Fund	17,000	16,955	17,000	17,000	
Federal Funds	0	0	1,000	1,000	
Commission Meeting Costs	<u>5,113</u>	<u>5,163</u>	<u>12,374</u>	<u>12,374</u>	
General Fund	5,113	5,163	5,174	5,174	
Federal Funds	0	0	7,200	7,200	
Indirect Cost Assessment	<u>58,107</u>	<u>30,672</u>	<u>36,014</u>	<u>37,194</u>	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	58,107	30,672	36,014	37,194	
<b>TOTAL - (3) Civil Rights Division</b>	1,774,027	1,686,974	2,026,112	2,080,929	2.7%
FTE	<u>24.3</u>	<u>23.5</u>	<u>27.2</u>	<u>27.2</u>	(0.0%)
General Fund	1,150,091	993,726	1,176,835	1,215,863	3.3%
Cash Funds	0	0	0	0	0.0%
Reappropriated Funds	174,930	281,164	357,238	361,106	1.1%
Federal Funds	449,006	412,084	492,039	503,960	2.4%

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**(4) OFFICE OF CONSUMER COUNSEL**

The Office of Consumer Counsel represents the interests of residential, agricultural and small business consumers at electric, gas, and telecommunications utility rate and service proceedings before the Public Utility Commission. The Division is cash funded by the Public Utilities Commission Fixed Utility Fund pursuant to section 40-2-114, C.R.S.

Personal Services	<u>742,106</u>	<u>692,177</u>	<u>816,711</u>	<u>838,235</u>	
FTE	6.7	7.0	7.0	7.0	
Cash Funds	742,106	692,177	816,711	838,235	
Operating Expenses	<u>39,964</u>	<u>39,956</u>	<u>55,787</u>	<u>55,787</u>	
Cash Funds	39,964	39,956	55,787	55,787	
Indirect Cost Assessment	<u>45,681</u>	<u>50,437</u>	<u>54,189</u>	<u>55,107</u>	
General Fund	0	0	0	0	
Cash Funds	45,681	50,437	54,189	55,107	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

<b>TOTAL - (4) Office of Consumer Counsel</b>	827,751	782,570	926,687	949,129	2.4%
FTE	<u>6.7</u>	<u>7.0</u>	<u>7.0</u>	<u>7.0</u>	0.0%
General Fund	0	0	0	0	0.0%
Cash Funds	827,751	782,570	926,687	949,129	2.4%
Reappropriated Funds	0	0	0	0	0.0%
Federal Funds	0	0	0	0	0.0%

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	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
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**(5) DIVISION OF FINANCIAL SERVICES**

The Division of Financial Services regulates state-chartered credit unions, savings and loans, and life care institutions; and conducts examinations of institutions to ensure continued compliance with regulatory standards. The Division is entirely cash funded by the Division of Financial Services Cash Fund pursuant to section 11-40-106 (2), C.R.S.

Personal Services	<u>970,272</u>	<u>1,066,115</u>	<u>1,169,941</u>	<u>1,382,357</u>	
FTE	12.1	13.5	13.0	15.6	
Cash Funds	970,272	1,066,115	1,169,941	1,382,357	
Operating Expenses	<u>108,149</u>	<u>124,075</u>	<u>167,215</u>	<u>145,921</u>	
Cash Funds	108,149	124,075	167,215	145,921	
Indirect Cost Assessment	<u>84,836</u>	<u>93,669</u>	<u>100,637</u>	<u>102,342</u>	
General Fund	0	0	0	0	
Cash Funds	84,836	93,669	100,637	102,342	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

<b>TOTAL - (5) Division of Financial Services</b>	1,163,257	1,283,859	1,437,793	1,630,620	13.4%
<i>FTE</i>	<u>12.1</u>	<u>13.5</u>	<u>13.0</u>	<u>15.6</u>	<u>20.0%</u>
General Fund	0	0	0	0	0.0%
Cash Funds	1,163,257	1,283,859	1,437,793	1,630,620	13.4%
Reappropriated Funds	0	0	0	0	0.0%
Federal Funds	0	0	0	0	0.0%

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	FY 2012-13 Actual	FY 2013-14 Actual	FY 2014-15 Appropriation	FY 2015-16 Request	Request vs. Appropriation
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**(6) DIVISION OF INSURANCE**

The Division of Insurance is responsible for licensing insurance agents and adjusters; and regulating insurance companies, non-profit hospitals, prepaid dental plans, health maintenance organizations, self-insurance pools for workers' compensation, bail bondsmen, and pre-need funeral contracts. Unless otherwise indicated, the Division is funded by the Division of Insurance Cash Fund pursuant to section 10-1-103 (3), C.R.S.

Personal Services	<u>5,602,942</u>	<u>5,171,361</u>	<u>5,937,545</u>	<u>6,129,123</u>	
FTE	76.4	76.3	83.1	83.2	
Cash Funds	5,602,942	5,171,361	5,937,545	6,129,123	
Operating Expenses	<u>253,115</u>	<u>254,747</u>	<u>291,716</u>	<u>291,716</u>	
Cash Funds	253,115	254,747	291,716	291,716	
Out-of-State Travel Expenses	<u>2,390</u>	<u>7,627</u>	<u>100,000</u>	<u>100,000</u>	
Cash Funds	2,390	7,627	100,000	100,000	
Senior Health Counseling Program	<u>509,000</u>	<u>509,000</u>	<u>517,794</u>	<u>517,794</u>	
FTE	4.0	0.0	2.0	2.0	
Federal Funds	509,000	509,000	517,794	517,794	
Transfer to CAPCO Administration	<u>80,281</u>	<u>79,468</u>	<u>81,852</u>	<u>81,852</u>	
Cash Funds	80,281	79,468	81,852	81,852	
Indirect Cost Assessment	<u>541,641</u>	<u>629,297</u>	<u>674,707</u>	<u>687,268</u>	
General Fund	0	0	0	0	
Cash Funds	541,641	597,322	641,756	652,626	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	31,975	32,951	34,642	
<b>TOTAL - (6) Division of Insurance</b>	6,989,369	6,651,500	7,603,614	7,807,753	2.7%
<b>FTE</b>	<u>80.4</u>	<u>76.3</u>	<u>85.1</u>	<u>85.2</u>	<u>0.1%</u>
General Fund	0	0	0	0	0.0%
Cash Funds	6,480,369	6,110,525	7,052,869	7,255,317	2.9%
Reappropriated Funds	0	0	0	0	0.0%
Federal Funds	509,000	540,975	550,745	552,436	0.3%

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**(7) PUBLIC UTILITIES COMMISSION**

The Public Utilities Commission regulates the rates and services of fixed and transportation utilities in Colorado; and administers the Colorado Telecommunications High Cost Program, the Low-Income Telephone Assistance Program, and the Disabled Telephone Users Program.

Personal Services	<u>7,906,391</u>	<u>8,296,067</u>	<u>9,163,326</u>	<u>9,219,825</u>	
FTE	88.1	92.1	98.0	95.2	
Cash Funds	7,906,391	8,296,067	9,163,326	9,219,825	
Operating Expenses	<u>432,529</u>	<u>392,016</u>	<u>455,346</u>	<u>438,672</u>	
Cash Funds	432,529	392,016	455,346	438,672	
Transportation Network Companies	<u>0</u>	<u>0</u>	<u>170,669</u>	<u>131,472</u>	
FTE	0.0	0.0	2.5	2.1	
Cash Funds	0	0	170,669	131,472	
Expert Testimony	<u>25,000</u>	<u>0</u>	<u>25,000</u>	<u>25,000</u>	
Cash Funds	25,000	0	25,000	25,000	
Disabled Telephone Users Fund Payments	<u>1,787,555</u>	<u>1,492,934</u>	<u>1,900,542</u>	<u>1,900,542</u>	
Cash Funds	1,787,555	1,492,934	1,900,542	1,900,542	
Transfer to Reading Services for the Blind Cash Fund	<u>350,000</u>	<u>350,000</u>	<u>360,000</u>	<u>360,000</u>	
Cash Funds	350,000	350,000	360,000	360,000	
Commission for the Deaf and Hard of Hearing Cash Fund	<u>986,251</u>	<u>966,150</u>	<u>1,012,818</u>	<u>1,012,818</u>	
Cash Funds	986,251	966,150	1,012,818	1,012,818	

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Low Income Telephone Assistance	<u>541,674</u>	<u>0</u>	<u>0</u>	<u>0</u>	
Cash Funds	541,674	0	0	0	
Colorado Bureau of Investigation Background Checks					
Pass-through	<u>78,052</u>	<u>72,325</u>	<u>104,377</u>	<u>104,377</u>	
Cash Funds	78,052	72,325	104,377	104,377	
Indirect Cost Assessment	<u>648,936</u>	<u>684,507</u>	<u>752,987</u>	<u>765,443</u>	
General Fund	0	0	0	0	
Cash Funds	648,936	684,507	735,426	747,882	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	17,561	17,561	
Legislation Appropriated at the Division Level	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	0	0	0	0	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
<b>TOTAL - (7) Public Utilities Commission</b>	12,756,388	12,253,999	13,945,065	13,958,149	0.1%
FTE	<u>88.1</u>	<u>92.1</u>	<u>100.5</u>	<u>97.3</u>	<u>(3.2%)</u>
General Fund	0	0	0	0	0.0%
Cash Funds	12,756,388	12,253,999	13,927,504	13,940,588	0.1%
Reappropriated Funds	0	0	0	0	0.0%
Federal Funds	0	0	17,561	17,561	0.0%

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**(8) DIVISION OF REAL ESTATE**

The Division of Real Estate licenses real estate brokers, real estate appraisers, and mortgage brokers; and administers enforcement programs to ensure compliance with state and federal regulatory laws.

Personal Services	<u>2,893,806</u>	<u>2,973,001</u>	<u>3,844,328</u>	<u>3,938,037</u>	
FTE	45.2	47.7	55.9	55.9	
Cash Funds	2,893,806	2,973,001	3,844,328	3,938,037	
Operating Expenses	<u>177,836</u>	<u>154,049</u>	<u>244,557</u>	<u>244,557</u>	
Cash Funds	177,836	154,049	244,557	244,557	
Commission Meeting Costs	<u>23,885</u>	<u>20,576</u>	<u>38,836</u>	<u>38,836</u>	
Cash Funds	23,885	20,576	38,836	38,836	
Hearings Pursuant to Complaint	<u>799</u>	<u>0</u>	<u>4,000</u>	<u>4,000</u>	
Cash Funds	799	0	4,000	4,000	
Mortgage Broker Consumer Protection	<u>304,216</u>	<u>343,692</u>	<u>363,149</u>	<u>363,149</u>	
Cash Funds	304,216	343,692	363,149	363,149	
Indirect Cost Assessment	<u>306,060</u>	<u>352,341</u>	<u>432,740</u>	<u>439,151</u>	
General Fund	0	0	0	0	
Cash Funds	306,060	352,341	432,740	439,151	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

<b>TOTAL - (8) Division of Real Estate</b>	3,706,602	3,843,659	4,927,610	5,027,730	2.0%
FTE	<u>45.2</u>	<u>47.7</u>	<u>55.9</u>	<u>55.9</u>	0.0%
General Fund	0	0	0	0	0.0%
Cash Funds	3,706,602	3,843,659	4,927,610	5,027,730	2.0%
Reappropriated Funds	0	0	0	0	0.0%
Federal Funds	0	0	0	0	0.0%

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**(9) DIVISION OF PROFESSIONS AND OCCUPATIONS**

The Division of Professions and Occupations oversees boards and commissions that promulgate rules to ensure continued competency of regulated professionals; enforces laws; and takes action against individuals failing to follow laws and regulations.

Personal Services	<u>11,665,788</u>	<u>12,075,526</u>	<u>13,777,859</u>	<u>13,886,461</u>	*
FTE	179.0	188.1	200.4	196.9	
Cash Funds	11,070,006	11,479,744	13,182,077	13,290,679	
Reappropriated Funds	595,782	595,782	595,782	595,782	
Operating Expenses	<u>1,204,798</u>	<u>1,169,205</u>	<u>1,490,542</u>	<u>1,475,649</u>	
Cash Funds	1,204,798	1,169,205	1,490,542	1,475,649	
Reappropriated Funds	0	0	0	0	
Office of Expedited Settlement Program Costs	<u>355,565</u>	<u>336,256</u>	<u>379,120</u>	<u>392,549</u>	
FTE	5.0	0.0	5.0	5.0	
Cash Funds	355,565	336,256	379,120	392,549	
Hearings Pursuant to Complaint	<u>236,926</u>	<u>237,476</u>	<u>307,075</u>	<u>307,075</u>	
Cash Funds	236,926	237,476	307,075	307,075	
Payments to Department of Health Care Policy and Financing	<u>14,652</u>	<u>14,652</u>	<u>14,652</u>	<u>14,652</u>	
Cash Funds	14,652	14,652	14,652	14,652	
Indirect Cost Assessment	<u>1,230,109</u>	<u>1,373,339</u>	<u>1,580,005</u>	<u>1,592,133</u>	
General Fund	0	0	0	0	
Cash Funds	1,230,109	1,373,339	1,580,005	1,592,133	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
<b>TOTAL - (9) Division of Professions and Occupations</b>	<b>14,707,838</b>	<b>15,206,454</b>	<b>17,549,253</b>	<b>17,668,519</b>	<b>0.7%</b>
FTE	<u>184.0</u>	<u>188.1</u>	<u>205.4</u>	<u>201.9</u>	<b>(1.7%)</b>
General Fund	0	0	0	0	<b>0.0%</b>
Cash Funds	14,112,056	14,610,672	16,953,471	17,072,737	<b>0.7%</b>
Reappropriated Funds	595,782	595,782	595,782	595,782	<b>0.0%</b>
Federal Funds	0	0	0	0	<b>0.0%</b>

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**(10) DIVISION OF SECURITIES**

The Division of Securities monitors the conduct of Colorado broker-dealers and sales representatives; and investigates citizen complaints and other indications of investment fraud. The Division is funded by the Division of Securities Cash Fund pursuant to section 11-51-707 (2), C.R.S.

Personal Services	<u>2,021,493</u>	<u>1,819,442</u>	<u>2,202,907</u>	<u>2,255,498</u>	
FTE	24.3	22.9	24.0	24.0	
Cash Funds	2,021,493	1,819,442	2,202,907	2,255,498	
Operating Expenses	<u>44,925</u>	<u>56,253</u>	<u>58,999</u>	<u>58,999</u>	
Cash Funds	44,925	56,253	58,999	58,999	
Hearings Pursuant to Complaint	<u>15,844</u>	<u>14,512</u>	<u>19,594</u>	<u>19,594</u>	
Cash Funds	15,844	14,512	19,594	19,594	
Board Meeting Costs	<u>1,828</u>	<u>820</u>	<u>4,500</u>	<u>4,500</u>	
Cash Funds	1,828	820	4,500	4,500	
Securities Fraud Prosecution	<u>718,835</u>	<u>878,410</u>	<u>967,912</u>	<u>967,912</u>	
Cash Funds	718,835	878,410	967,912	967,912	
Indirect Cost Assessment	<u>156,619</u>	<u>172,223</u>	<u>185,792</u>	<u>188,939</u>	
General Fund	0	0	0	0	
Cash Funds	156,619	172,223	185,792	188,939	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

<b>TOTAL - (10) Division of Securities</b>	2,959,544	2,941,660	3,439,704	3,495,442	1.6%
FTE	<u>24.3</u>	<u>22.9</u>	<u>24.0</u>	<u>24.0</u>	0.0%
General Fund	0	0	0	0	0.0%
Cash Funds	2,959,544	2,941,660	3,439,704	3,495,442	1.6%
Reappropriated Funds	0	0	0	0	0.0%
Federal Funds	0	0	0	0	0.0%

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<b>TOTAL - Department of Regulatory Agencies</b>	72,157,908	74,932,872	86,666,820	87,291,202	0.7%
<i>FTE</i>	<u>533.7</u>	<u>535.5</u>	<u>587.6</u>	<u>583.6</u>	<u>(0.7%)</u>
General Fund	1,713,110	1,649,585	1,882,646	1,988,568	5.6%
Cash Funds	65,192,137	67,587,873	78,674,683	79,129,408	0.6%
Reappropriated Funds	4,030,469	4,407,841	4,722,507	4,750,297	0.6%
Federal Funds	1,222,192	1,287,573	1,386,984	1,422,929	2.6%

## **Appendix B:** **Recent Legislation Affecting Department Budget**

### **2013 Session Bills**

**S.B. 13-014:** Provides immunity to a person other than a health care provider or a health care facility who acts in good faith to administer an opiate antagonist to another person whom the person believes to be suffering an opiate-related drug overdose event; appropriates \$8,318 cash funds from the Division of Professions and Occupations Cash Fund for rule-making in FY 2013-14.

**S.B. 13-026:** Modifies the Michael Skolnik Medical Transparency Act by requiring compliance from additional health care providers; appropriates \$146,353 cash funds and 2.0 FTE from the Division of Professions and Occupations Cash Fund in FY 2013-14.

**S.B. 13-039:** Reauthorizes the Division of Professions and Occupations to regulate audiologists. Appropriates \$58,966 and 0.6 FTE from the Division of Professions and Occupations Cash Fund in FY 2013-14.

**S.B. 13-102:** Supplemental appropriation to the Department of Regulatory Agencies for FY 2012-13.

**S.B. 13-125:** Modifies the regulation of preneed funeral contracts by the Commissioner of Insurance; reduces the cash funds appropriation from the Division of Insurance Cash Fund by \$2,400 in FY 2013-14.

**S.B. 13-151:** Continues and modifies the regulation of massage therapists; appropriates an additional \$149,691 cash funds and 1.9 FTE from the Division of Professions and Occupations Cash Fund in FY 2013-14.

**S.B. 13-162:** Continues and modifies the Examining Board of Plumbers and the regulation of plumbers; appropriates an additional \$259,175 cash funds and 3.6 FTE from the Division of Professions and Occupations Cash Fund in FY 2013-14.

**S.B. 13-172:** Continues and modifies the regulation of acupuncturists; appropriates an additional \$5,021 cash funds from the Division of Professions and Occupations Cash Fund for legal services related to rule-making in FY 2013-14.

**S.B. 13-180:** Continues and modifies the regulation of occupational therapists; appropriates an additional \$37,737 cash funds and 0.2 FTE from the Division of Professions and Occupations Cash Fund in FY 2013-14.

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**S.B. 13-189:** Creates the Moving Outreach Fund to be used to educate consumers about their rights and the responsibilities of movers and allocates half the civil penalties collected by the Public Utilities Commission from movers of household goods; appropriates \$5,000 cash funds from the Moving Outreach Fund to the Executive Director's Office and Administrative Services in FY 2013-14.

**S.B. 13-194:** Repeals the Low Income Telephone Assistance Program (Program), reduces by \$725,548 the informational cash funds appropriation from the Low-Income Telephone Assistance Fund (Fund) for the Public Utilities Commission, and decreases by \$118,272 cash funds and 1.5 FTE, the appropriation from the Fund to the Department of Human Services for administration of the Program in FY 2013-14.

**S.B. 13-204:** Increases the number of members on the Colorado State Board of Chiropractic Examiners to seven. Appropriates an additional \$2,100 cash funds from the Division of Professions and Occupations Cash Fund for board member expenses in FY 2013-14.

**S.B. 13-207:** Allows a licensed or certified mental health care professional with appropriate training to perform auricular acudetox, defined as the subcutaneous insertion of sterile, disposable acupuncture needles on five specific locations of a person's ear, and appropriates an additional \$10,020 cash funds from the Division of Professions and Occupations Cash Fund in FY 2013-14.

**S.B. 13-221:** Provides a conservation easement tax credit pre-approval process for tax years beginning January 1, 2014, and creates the Conservation Easement Tax Credit Certificate Review Fund (Fund); appropriates \$275,046 cash funds and 3.5 FTE from the Fund to the Division of Real Estate, reappropriates \$69,525 and 0.5 FTE to the Department of Law for the provision of legal services, and appropriates \$48,000 General Fund to the Department of Revenue in FY 2013-14. Provides a General Fund loan to the Department of Regulatory Agencies beginning July 1, 2013 for implementation of the process.

**S.B. 13-230:** General appropriations act for FY 2013-14.

**S.B. 13-238:** Regulates hearing aid providers by the Division of Professions and Occupations and appropriates \$5,794 cash funds to the Executive Director's Office and Administrative Services from the Division of Professions and Occupations Cash Fund for legal services and reappropriates that amount to the Department of Law in FY 2013-14.

**S.B. 13-277:** Requires the Commissioner of Insurance to develop, by July 31, 2014, and prescribing providers, carriers, and, pharmacy benefit management firms to use, by January 1, 2015, a uniform prior authorization process for purposes of submitting and receiving requests for prior coverage approval of a drug benefit; appropriates \$8,756 cash funds and 0.1 FTE to the Division of Insurance from the Division of Insurance Cash Fund in FY 2013-14.

**H.B. 13-1111:** Regulates naturopathic doctors by the Division of Professions and Occupations; appropriates \$90,489 cash funds and 0.9 FTE to the Division of Professions and Occupations from the Division of Professions and Occupations Cash Fund in FY 2013-14.

**H.B. 13-1183:** Imposes an aggregate annual cap of \$45.0 million for Conservation Easement Tax Credit Certificates issued by the Division of Real Estate beginning in calendar year 2014. Credits that exceed the limit are placed on a wait list for a future year; limits the ongoing wait list to \$15.0 million for the following calendar year.

**H.B. 13-1277:** Requires any person who manages the affairs of a common interest community on behalf of a homeowner association (HOA) for compensation, on or after July 1, 2015, to meet minimum qualifications and obtain a license from the Division of Real Estate and creates the Community Association Manager Licensing Cash Fund (Fund) in Section 12-61-1012, C.R.S.

## **2014 Session Bills**

**S.B. 14-099:** Allows the Physical Therapy Board to issue provisional physical therapy licenses to applicants who submit an application, pay the required fee, and successfully complete a qualified physical therapy program.

**S.B. 14-125:** Creates a limited regulatory structure for transportation network companies that use digital networks to connect riders to drivers who provide transportation in their personal vehicles.

**S.B. 14-133:** Repeals the existing voluntary licensure program for private investigators and replaces it with a mandatory licensure program.

**H.B. 14-1199:** Provides for the limited regulation of consumer goods service contracts, in which a consumer pays a premium for the repair, replacement, or maintenance of, or indemnification for, a tangible product with a value of at least \$100.

**H.B. 14-1227:** Continues the State Board of Dental Examiners (board) until September 1, 2025, renames the board as the Colorado Dental Board, and implements the recommendations of the board's sunset review and report.

**H.B. 14-1283:** Requires that no later than January 1, 2015, every practitioner in the state who is registered to prescribe controlled substances, as well as every pharmacist, register and maintain a user account with the Prescription Drug Monitoring Program.

**H.B. 14-1328:** Creates the 16-member Broadband Deployment Board (BDB) with statutory sunset on July 1, 2024. The BDB administers the newly created Broadband Fund (BDF), from which grants are awarded for broadband development in unserved areas of the state.

**H.B. 14-1329:** Deregulates certain telecommunication products, services, and providers.

**H.B. 14-1331:** Limits, but retains, authority for the Colorado Public Utilities Commission to regulate basic emergency service and the providers of basic local exchange service.

**H.B. 14-1336:** General appropriations act for FY 2014-15.

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**H.B. 14-1398:** Allows for the creation and regulation of marijuana financial services cooperatives referred to as "cannabis credit co-ops" or CCCs, a new type of financial services entity with membership restricted to licensed marijuana businesses, industrial hemp businesses, and other entities providing goods and services to licensed marijuana businesses that can document the inability to get comparable services from a bank or credit union

## **Appendix C: Update on Long Bill Footnotes & Requests for Information**

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### **Long Bill Footnotes**

There were no Long Bill footnotes for FY 2014-15 for the Department of Regulatory Agencies.

### **Requests for Information**

There were no Long Bill requests for information for FY 2014-15 for the Department of Regulatory Agencies.

## Appendix D: Indirect Cost Assessment Methodology

### Description of Indirect Cost Assessment Methodology

The Department of Regulatory Agencies indirect cost assessment methodology is calculated based on four steps or components:

1. The *Indirect Cost Assessment Percentage by Division FTE*;
2. The *Federal Funded Share of Indirects*;
3. The *Indirect Cost Recovery Pool* (indirect costs to recover); and
4. The *Indirect Cost Assessment Base* (indirect cost assessments by division and fund source).

The following tables outline the indirect cost assessment calculations for FY 2014-15.

1. The *Indirect Cost Assessment Percentage by Division FTE* is the proportion of indirect cost assessments paid by each division based on FTE. Proportions are defined separately for statewide indirects and departmental indirects because the Civil Rights Division is General Funded and therefore not included for payment of statewide indirects, and federal funded FTE in the Divisions of Civil Rights and Insurance are calculated for the federal fund share of indirect cost assessments based on the federal fund indirect collectible rate. **Table 1** summarizes the department's *Indirect Cost Assessment Percentage by Division FTE* for statewide and departmental indirects.

<b>Table 1: Calculation of FTE Percentage by Division</b>				
<b>Division</b>	<b>Statewide</b>		<b>Departmental</b>	
	<b>FTE</b>	<b>Percentage</b>	<b>FTE</b>	<b>Percentage</b>
Banking	40.0	7.7%	40.0	7.4%
Civil Rights	0.0	0.0%	20.4	3.8%
Office of Consumer Counsel	7.0	1.3%	7.0	1.3%
Financial Services	13.0	2.5%	13.0	2.4%
Insurance	82.9	15.9%	82.9	15.3%
Professions and Occupations	204.1	39.1%	204.1	37.6%
Public Utilities Commission	95.0	18.2%	95.0	17.5%
Real Estate	55.9	10.7%	55.9	10.3%
Securities	24.0	4.6%	24.0	4.6%
<b>FTE assessed indirects</b>	<b>521.9</b>	<b>100.0%</b>	<b>542.5</b>	<b>100.0%</b>
<b>FTE not assessed indirects</b>				
Civil Rights - GF	20.6		0.0	
Civil Rights - FF	6.6		6.6	
Insurance - FF	2.0		2.0	
Executive Director's Office	<u>29.5</u>	-	<u>29.5</u>	
<b>Department Total FTE</b>	<b>580.6</b>		<b>580.6</b>	

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2. The *Federal Funded Share of Indirects* is the calculation of the federal funded share based on the Department's, federally-allowed, indirect collectible rate of 15.6 percent. The statewide share is calculated as the proportion of the statewide indirect total relative to the sum of statewide indirects and the Executive Director's Office (EDO) personal services. **Table 2** summarizes the department's *Federal Funded Share of Indirects* for statewide and departmental indirects.

<b>Table 2: Calculation of Federal Funded Share of Indirects</b>						
		<b>Division</b>	<b>Personal Services</b>	<b>Indirects Collectible</b>	<b>Statewide Share</b>	<b>Departmental Share</b>
Indirect Collectible Rate*	8.9%					
Statewide Indirects Total	\$357,238	Civil Rights	\$404,649	\$36,014	\$4,819	\$31,194
EDO Personal Services	2,312,290	Insurance	370,234	32,951	4,410	28,541
Statewide Indirects plus EDO PS	\$2,669,528	PUC	197,316	<u>17,561</u>	<u>2,350</u>	<u>15,211</u>
Statewide Indirects Share Percentage**	13.4%	<b>Total</b>		<b>\$86,526</b>	<b>\$11,579</b>	<b>\$74,947</b>

\*Indirect Collectible Rate is calculated on base personal services.

\*\*Calculated using only base personal services of departmental indirects.

3. The *Indirect Cost Recovery Pool* (indirect costs to recover) are indirect costs to be recovered by the Department and is comprised of statewide indirects and departmental indirects from the EDO excluding cash-funded Sunset Office appropriations. The Department calculates the departmental indirect costs to recover using same budget year appropriations for the EDO that include personal services and the EDO share of common policy line items and operating expenses. **Table 3a** summarizes the *Departmental Indirect Cost Recovery Pool*, and **Table 3b** summarizes the *Cash Funded Share of Indirects*.

<b>Table 3a: Departmental Indirect Costs to Recover</b>	
Executive Director's Office	
Personal Services	\$2,312,290
Health, Life and Dental	210,172
Short-term Disability	4,915
AED	91,420
SAED	85,706
Salary Survey	73,998
Merit Pay	34,744
Workers' Compensation	2,644
Operating Expenses	111,228
Legal Services	106,439
Payments to OIT	-
COFRS Modernization	-
Risk Management	8,891
IT Asset Maintenance	190,757
Leased Space	367,091
Hardware/Software Maintenance	<u>258,602</u>
EDO Subtotal	3,858,897

**JBC Staff Budget Briefing: FY 2015-16**  
**Staff Working Document – Does Not Represent Committee Decision**

Sunset Office (non-DORA overhead)	(48,536)
<b>Total Departmental Indirect Costs to Recover</b>	<b>\$3,810,361</b>

<b>Table 3b: Calculation of Cash Funded Indirects</b>			
	Indirect Costs	Federal Share	CF Indirects Remaining
Statewide	\$357,238	\$11,579	\$345,659
Departmental	<u>3,810,361</u>	<u>74,947</u>	<u>3,753,414</u>
<b>Total</b>	<b>\$4,167,599</b>	<b>\$86,526</b>	<b>\$4,081,073</b>

4. The *Indirect Cost Assessment Base* is the calculation of indirect assessments by division and fund source and is based on the federal shares calculated in Table 2 and the product of the percentages by division FTE calculated in Table 1 and the cash fund indirects remaining in Table 3b. **Table 4** summarizes the department's *Indirect Cost Assessment Base*.

<b>Table 4: Calculation of Indirect Assessments by Division and Fund Source</b>							
Division	Statewide		Departmental		Subtotal by Fund		Total
	CF	FF	CF	FF	CF	FF	
Banking	\$26,492	\$0	\$286,293	\$0	\$312,786	\$0	\$312,786
Civil Rights	-	4,819	-	31,194	-	36,014	36,014
OCC	4,636	0	50,101	0	54,738	-	54,738
Fin Svcs	8,610	0	93,045	0	101,655	-	101,655
Insurance	54,905	4,410	593,343	28,541	648,249	32,951	681,199
Prof and Occ	135,177	0	1,460,812	0	1,595,990	-	1,595,990
PUC	62,919	2,350	679,947	15,211	742,866	17,561	760,427
Real Estate	37,023	0	400,095	0	437,118	-	437,118
Securities	15,895	0	171,776	0	187,672	-	187,672
<b>Total</b>	<b>\$345,659</b>	<b>\$11,579</b>	<b>\$3,735,414</b>	<b>\$74,947</b>	<b>\$4,081,073</b>	<b>\$86,526</b>	<b>\$4,167,599</b>

**FY 2014-15 Indirect Cost Assessment Request**

For FY 2014-15 the Department's budget request included adjustments based on the statewide indirect cost plan, but does not include adjustments for departmental indirects, therefore a table showing the FY 2014-15 indirect cost assessment adjustments based on the November 1 request is not included.

## **Appendix E: SMART Act Annual Performance Report**

Pursuant to Section 2-7-205 (1) (a) (I), C.R.S., the Department of Regulatory Agencies is required to publish an Annual Performance Report by November 1 of each year. This report is to include a summary of the Department's performance plan and most recent performance evaluation. The report dated November 2, 2014 is attached for consideration by the Joint Budget Committee in prioritizing the Department's budget requests.



## Department of Regulatory Agencies Annual Performance Report

### Strategic Policy Initiatives

The Department of Regulatory Agencies has identified several strategic initiatives for FY 2014-15 and beyond. For this evaluation report, the Department selected a few initiatives that best capture some of the Department's strategic and operational priorities and reflect the overall direction as identified by Department leadership. The initiatives also provide context for much of the day-to-day work, which is highlighted in the measures section of the report. Additional detail for these, and other, strategic policy initiatives is available in the Department's Performance Plan, which may be accessed [here](#).

**Public Trust and Confidence is Increased – DORA provides reasonable and conscientious regulation. The Department is a recognized leader in the creation and sustainment of a fair, competitive and business friendly regulatory environment, including acting in the public interest in and for Colorado.**

Goals include engaging stakeholders to achieve reduced regulatory burdens; transparent regulatory and legislative agendas; fees that are the minimum necessary and understandable; a customer centric, easily navigable web-site that enables on-line transactions and is built with customer input; and savings and efficiencies that are recognized by a positive impact on customers, including regulated professionals and businesses.

**Public Protection is Enforced – DORA brings value to the marketplace, and regulatory program processes are streamline, standardized, consistently improve, and leverage technology.**

Goals aim to shift mind-sets away from rigid "discipline and enforcement" including development of collaborative, cross-division "core" best practices, resources and training for investigation and inspection functions; reduced complaint response and resolution times; attainment of high profile expectations, with confidence; more efficient investigation, inspection and institutional examination processes; broadened use of automation and enterprise solutions for departmental licensing, renewals and registrations functions; and expanded use of internal, expedited settlement processes to reduce time and expenses of enforcement programs.

**Regulatory Activities and Economic Development are Connected – The Department builds professional partnerships, and conducts outreach to create relationships that enable government to positively influence the Colorado economy.**

Goals include demonstrating clear, institutionalized mechanisms for rules reviews and utilization of customer feedback and stakeholder involvement in decision making processes. A common sense regulatory model exists, comprised of analyses, reviews and actions resulting in reliable and reasonable rates, fees, and fines, recognizing reductions and savings when possible; reflecting the department's commitment to providing tangible economic benefits to the marketplace in relation to investments made to support the regulatory programs managed by DORA.

**Government is Accessible and Responsive – DORA enhances professional development for a high quality, customer centric workforce by creating a robust workforce development and engagement foundation to maximize employee success, department efficiencies and access, and ultimately, the customer experience.**



# Department of Regulatory Agencies Annual Performance Report

DORA consistently utilizes Lean and customer feedback in attaining its goals, that include defining, establishing and sustaining a “platinum level” customer experience; creating the DORA Supervisor Leadership Academy for all department supervisors; and ensuring employees have the resources to improve their careers, thereby increasing department accessibility and responsiveness, establishing a culture of service, and increasing employee accountability, that ultimately equates to high performance.

**Consumer Rights are Protected – DORA provides comprehensive, unified, mission driven outreach to the citizens of Colorado; working with public and appropriate private organizations in educating citizens to be informed of their rights, and to know where to go with issues, concerns or complaints.**

DORA recognizes and leverages the value of preventative measures by providing training, educational materials and information regarding laws, trending issues and timely matters including consumer choices and rights, and avoiding scams, fraud and wrongdoing. DORA works closely with federal and local agencies and community based, non-profit organizations, utilizing a variety of compliance assistance tools and pro-active education and communications campaigns.

## Operational Measures

**Major Program Area – Economic Regulation: The Department analyzes the rates, terms and conditions of service offerings to grant or change existing authorities or certifications, and to determine compliance with state regulations.**

**Process – The Department receives requests to analyze and/or change rates, staff analyzes the rate filings, and presents analyses for decision.**

Measure	FY12 Actual	FY13 Actual	FY14 Actual	1-Year Goal	3-Year Goal
Insurance – Rate cases finalized within 90 days	7,043	7,948	9,420	10,000	10,000
Public Utilities Commission – Rate cases finalized within 14 or 30 days (tariff filings allowed to become effective without a hearing)	539	578	463	400	350

Colorado citizens must have just, reasonable, and fair rates for adequate, reliable, responsive, safe and timely utilities such as electricity, gas, water, common carrier transportation services, and insurance options that are not excessive, inadequate or unfairly discriminatory. These measures support DORA’s mission by assuring rates are timely reviewed, and as low as possible and in the public interest, without compromising the economic viability and sustainability of service providers. Consumers save money, and are further assured that providers comply with applicable laws, rules and regulations, and meet standards of safety, competence and quality of service.



## Department of Regulatory Agencies Annual Performance Report

**Major Program Area – Institutional Examinations:** The Department protects consumers by conducting examinations of all state-chartered financial institutions and insurance companies under its supervision to preserve public trust in the regulated financial industries.

**Process – The Department establishes institutional examination schedules and reviews records, documentation, systems and processes; conducts interviews; communicates results and completes the examination.**

Measure	FY12 Actual	FY13 Actual	FY14 Actual	1-Year Goal	3-Year Goal
Banking – Percentage of examinations completed within 12 or 18 months	100%	100%	100%	100%	100%
Securities – Percentage of examinations completed within 270 days	100%	100%	100%	100%	100%

These are two examples of several measures, illustrative of DORA’s commitment to assuring the financial viability of Colorado’s state chartered financial institutions. Through these examinations, DORA verifies compliance with state and federal laws, rules and regulations, and sound operating practices across a wide variety of fiduciary services. Statutes dictate the completion time for examinations, depending on the financial institution and industry. Institutional examinations, completed within the statutorily mandated timeframes, contribute to greater trust and protection from making uninformed decisions, wrong-doing, scams and fraud.

**Major Program Area – Licensing/Permitting:** The Department processes applications for licensure for more than 50 professions, including individuals and businesses/companies.

**Process – Divisions receive an application, conduct a quality and substance review, in some cases provide industry notice and responses, and issue the permit/license.**

Measure	FY12 Actual	FY13 Actual	FY14 Actual	1-Year Goal	3-Year Goal
Professions and Occupations – Number of licenses issued within 14 days	33,004	27,614	30,691	35,249	46,494
Real Estate – Number of licenses issued within 3 days	4,076	5,647	6,600	5,820	5,820
Securities – Number of licenses issued within 30 days	38,103	35,950	36,023	36,750	36,750

DORA’s licensing function touches over 740,000 licensees including individuals, businesses and institutions. These measures are a mere sample, and include newly issued licenses only, not renewals. The selected Divisions are those that either are or will soon be using e-License, an enterprise solution that provides more expedient and readily accessible, on-line licensing transactions, and greater direct access to our licensed population. In further support of this measure, DORA has established a more stable license fee structure and increased consumer awareness about the importance of checking the status of licensed professionals.

**Major Program Area – Outreach, Education, and Training:** The Department engages in efforts to proactively inform consumers of their rights regarding regulated occupations and professions in order to serve a more informed consumer base, decreasing regulatory violations and ensuring public awareness.

**Process – The Department identifies the issues/topics to communicate, the audience, and message; responds to specific requests for information or training; delivers the message through a maximized method and then evaluates the process outcome.**

Measure	FY12 Actual	FY13 Actual	FY14 Actual	1-Year Goal	3-Year Goal
Executive Director’s Office – Number of DORA staff participating in DORA’s formal training courses	464	414	468	475	475
DORA - Percent outreach scheduled/delivered within 3 days of request	100%	100%	100%	100%	100%



## Department of Regulatory Agencies Annual Performance Report

DORA’s invests in its workforce, to ensure employees are knowledgeable, engaged, and resourced to elevate each customer experience to a platinum level of service. The comprehensive training program includes a specialized, DORA Supervisory Leadership Academy. Through formal and informal means, the culture of talent extends to consumers through both general and requested/specialized training or outreach activities. This outreach measure is one example, representing partnering across programs, divisions, departments, jurisdictions and states on a variety of issues, including The Marijuana Financial Services Cooperative Act, the Affordable Care Act, and assuring anti-discriminatory business practices. DORA continues to maximize use of the Consumer Outreach Fund to ensure consumers are aware of and reminded of their rights.

**Major Program Area – Regulatory Program Administration: The Department resolves complaints/charges received and conducts proactive enforcement/compliance oriented investigations and other resolution processes that do not necessitate an investigation.**

**Process – Divisions gather information on complaints/allegations, determine jurisdiction, open a case file, conduct the investigation, make a determination and issue a formal decision.**

Measure	FY12 Actual	FY13 Actual	FY14 Actual	1-Year Goal	3-Year Goal
Real Estate – Investigations dismissed because of pre-analysis	192	282	476	500	500
Professions and Occupations – Percentage of cases resolved internally from total caseload	91.4%	91.5%	93.6%	95.0%	95.0%
Civil Rights – Percentage of cases resolved internally from total caseload	84.0%	84.0%	83.0%	90.0%	100%
Insurance – Number of complaints or inquiries processed within 90 days	2,730	2,714	2,490	3,000	3,100

DORA’s commitment to continuous improvement and customer service includes multiple Lean initiatives, focused on investigations and complaint processing, and a major cross-division project to develop a collaborative “best practices” investigatory model, with a companion training program. These measures are examples of investigations and formal complaint resolution processes that are resolved not only well within the prescribed statutory timeframes, but quicker, by conducting an early, pre-analysis of the case to expedite processing or resolution; or internally utilizing an Expedited Settlement (or similar) Program.

**Major Program Area – Consumer Representation with Utility Rate Approvals: Through the Office of Consumer Counsel (OCC), the Department intervenes in rate increase requests submitted by the utilities and participates in administrative hearings which ultimately lead to approval of rates charged to consumers.**

**Process – The Department receives and reviews rate request**

Measure	FY12 Actual	FY13 Actual	FY14 Actual	1-Year Goal	3-Year Goal
Office of Consumer Counsel – Percentage of rate increases avoided due to OCC involvement	60.0%	60.0%	60.0%	30.0%	30.0%

When requests for rate increases are submitted by the utilities and evaluated by the PUC, the OCC helps consumers by providing representing residential, small business and agricultural consumers, to lower or eliminate utility rate increases; and to the ensure that utility rates, regulations and policies are more equitable for represented entities.

## **Appendix F: Federal Department of Justice: Memo from Deputy Attorney General**

Attached are copies of the August 29, 2013 and the February 14, 2014 memorandums from Deputy Attorney General James M. Cole providing guidance regarding marijuana related enforcement.



The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole   
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.<sup>1</sup>

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

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<sup>1</sup> These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman  
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch  
United States Attorney  
Eastern District of New York  
Chair, Attorney General's Advisory Committee

Michele M. Leonhart  
Administrator  
Drug Enforcement Administration

H. Marshall Jarrett  
Director  
Executive Office for United States Attorneys

Ronald T. Hosko  
Assistant Director  
Criminal Investigative Division  
Federal Bureau of Investigation



**U.S. Department of Justice**  
**Office of the Deputy Attorney General**

*The Deputy Attorney General*

*Washington, D.C. 20530*

February 14, 2014

**MEMORANDUM FOR ALL UNITED STATES ATTORNEYS**

**FROM:** James M. Cole   
Deputy Attorney General

**SUBJECT:** Guidance Regarding Marijuana Related Financial Crimes

On August 29, 2013, the Department issued guidance (August 29 guidance) to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). The August 29 guidance reiterated the Department's commitment to enforcing the CSA consistent with Congress' determination that marijuana is a dangerous drug that serves as a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. In furtherance of that commitment, the August 29 guidance instructed Department attorneys and law enforcement to focus on the following eight priorities in enforcing the CSA against marijuana-related conduct:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Under the August 29 guidance, whether marijuana-related conduct implicates one or more of these enforcement priorities should be the primary question in considering prosecution

under the CSA. Although the August 29 guidance was issued in response to recent marijuana legalization initiatives in certain states, it applies to all Department marijuana enforcement nationwide. The guidance, however, did not specifically address what, if any, impact it would have on certain financial crimes for which marijuana-related conduct is a predicate.

The provisions of the money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act (BSA) remain in effect with respect to marijuana-related conduct. Financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under the money laundering statutes (18 U.S.C. §§ 1956 and 1957), the unlicensed money transmitter statute (18 U.S.C. § 1960), and the BSA. Sections 1956 and 1957 of Title 18 make it a criminal offense to engage in certain financial and monetary transactions with the proceeds of a “specified unlawful activity,” including proceeds from marijuana-related violations of the CSA. Transactions by or through a money transmitting business involving funds “derived from” marijuana-related conduct can also serve as a predicate for prosecution under 18 U.S.C. § 1960. Additionally, financial institutions that conduct transactions with money generated by marijuana-related conduct could face criminal liability under the BSA for, among other things, failing to identify or report financial transactions that involved the proceeds of marijuana-related violations of the CSA. *See, e.g.*, 31 U.S.C. § 5318(g). Notably for these purposes, prosecution under these offenses based on transactions involving marijuana proceeds does not require an underlying marijuana-related conviction under federal or state law.

As noted in the August 29 guidance, the Department is committed to using its limited investigative and prosecutorial resources to address the most significant marijuana-related cases in an effective and consistent way. Investigations and prosecutions of the offenses enumerated above based upon marijuana-related activity should be subject to the same consideration and prioritization. Therefore, in determining whether to charge individuals or institutions with any of these offenses based on marijuana-related violations of the CSA, prosecutors should apply the eight enforcement priorities described in the August 29 guidance and reiterated above.<sup>1</sup> For example, if a financial institution or individual provides banking services to a marijuana-related business knowing that the business is diverting marijuana from a state where marijuana sales are regulated to ones where such sales are illegal under state law, or is being used by a criminal organization to conduct financial transactions for its criminal goals, such as the concealment of funds derived from other illegal activity or the use of marijuana proceeds to support other illegal activity, prosecution for violations of 18 U.S.C. §§ 1956, 1957, 1960 or the BSA might be appropriate. Similarly, if the financial institution or individual is willfully blind to such activity by, for example, failing to conduct appropriate due diligence of the customers’ activities, such prosecution might be appropriate. Conversely, if a financial institution or individual offers

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<sup>1</sup> The Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) is issuing concurrent guidance to clarify BSA expectations for financial institutions seeking to provide services to marijuana-related businesses. The FinCEN guidance addresses the filing of Suspicious Activity Reports (SAR) with respect to marijuana-related businesses, and in particular the importance of considering the eight federal enforcement priorities mentioned above, as well as state law. As discussed in FinCEN’s guidance, a financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the federal enforcement priorities or violate state law, would file a “Marijuana Limited” SAR, which would include streamlined information. Conversely, a financial institution filing a SAR on a marijuana-related business it reasonably believes, based on its customer due diligence, implicates one of the federal priorities or violates state law, would label the SAR “Marijuana Priority,” and the content of the SAR would include comprehensive details in accordance with existing regulations and guidance.

services to a marijuana-related business whose activities do not implicate any of the eight priority factors, prosecution for these offenses may not be appropriate.

The August 29 guidance rested on the expectation that states that have enacted laws authorizing marijuana-related conduct will implement clear, strong and effective regulatory and enforcement systems in order to minimize the threat posed to federal enforcement priorities. Consequently, financial institutions and individuals choosing to service marijuana-related businesses that are not compliant with such state regulatory and enforcement systems, or that operate in states lacking a clear and robust regulatory scheme, are more likely to risk entanglement with conduct that implicates the eight federal enforcement priorities.<sup>2</sup> In addition, because financial institutions are in a position to facilitate transactions by marijuana-related businesses that could implicate one or more of the priority factors, financial institutions must continue to apply appropriate risk-based anti-money laundering policies, procedures, and controls sufficient to address the risks posed by these customers, including by conducting customer due diligence designed to identify conduct that relates to any of the eight priority factors. Moreover, as the Department's and FinCEN's guidance are designed to complement each other, it is essential that financial institutions adhere to FinCEN's guidance.<sup>3</sup> Prosecutors should continue to review marijuana-related prosecutions on a case-by-case basis and weigh all available information and evidence in determining whether particular conduct falls within the identified priorities.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA, the money laundering and unlicensed money transmitter statutes, or the BSA, including the obligation of financial institutions to conduct customer due diligence. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct of a person or entity threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

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<sup>2</sup> For example, financial institutions should recognize that a marijuana-related business operating in a state that has not legalized marijuana would likely result in the proceeds going to a criminal organization.

<sup>3</sup> Under FinCEN's guidance, for instance, a marijuana-related business that is not appropriately licensed or is operating in violation of state law presents red flags that would justify the filing of a Marijuana Priority SAR.

## **Appendix G: Department of the Treasury: Financial Crimes Enforcement Network Guidance Document**

Attached is a copy of the February 14, 2014 guidance document released by the Department of the Treasury's Financial Crimes Enforcement Network.



# Department of the Treasury Financial Crimes Enforcement Network

## Guidance

**FIN-2014-G001**

**Issued: February 14, 2014**

**Subject: BSA Expectations Regarding Marijuana-Related Businesses**

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The Financial Crimes Enforcement Network (“FinCEN”) is issuing guidance to clarify Bank Secrecy Act (“BSA”) expectations for financial institutions seeking to provide services to marijuana-related businesses. FinCEN is issuing this guidance in light of recent state initiatives to legalize certain marijuana-related activity and related guidance by the U.S. Department of Justice (“DOJ”) concerning marijuana-related enforcement priorities. This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.

### **Marijuana Laws and Law Enforcement Priorities**

The Controlled Substances Act (“CSA”) makes it illegal under federal law to manufacture, distribute, or dispense marijuana.<sup>1</sup> Many states impose and enforce similar prohibitions. Notwithstanding the federal ban, as of the date of this guidance, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of these developments, U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum (the “Cole Memo”) to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA.<sup>2</sup> The Cole Memo guidance applies to all of DOJ’s federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

The Cole Memo reiterates Congress’s determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Cole Memo notes that DOJ is committed to enforcement of the CSA consistent with those determinations. It also notes that DOJ is committed to using its investigative and prosecutorial resources to address the most

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<sup>1</sup> Controlled Substances Act, 21 U.S.C. § 801, *et seq.*

<sup>2</sup> James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement* (August 29, 2013), available at <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, the Cole Memo provides guidance to DOJ attorneys and law enforcement to focus their enforcement resources on persons or organizations whose conduct interferes with any one or more of the following important priorities (the “Cole Memo priorities”):<sup>3</sup>

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Concurrently with this FinCEN guidance, Deputy Attorney General Cole is issuing supplemental guidance directing that prosecutors also consider these enforcement priorities with respect to federal money laundering, unlicensed money transmitter, and BSA offenses predicated on marijuana-related violations of the CSA.<sup>4</sup>

### **Providing Financial Services to Marijuana-Related Businesses**

This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations. In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include its particular business objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. Thorough customer due diligence is a critical aspect of making this assessment.

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of

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<sup>3</sup> The Cole Memo notes that these enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA.

<sup>4</sup> James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes* (February 14, 2014).

products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk. With respect to information regarding state licensure obtained in connection with such customer due diligence, a financial institution may reasonably rely on the accuracy of information provided by state licensing authorities, where states make such information available.

As part of its customer due diligence, a financial institution should consider whether a marijuana-related business implicates one of the Cole Memo priorities or violates state law. This is a particularly important factor for a financial institution to consider when assessing the risk of providing financial services to a marijuana-related business. Considering this factor also enables the financial institution to provide information in BSA reports pertinent to law enforcement's priorities. A financial institution that decides to provide financial services to a marijuana-related business would be required to file suspicious activity reports ("SARs") as described below.

### **Filing Suspicious Activity Reports on Marijuana-Related Businesses**

The obligation to file a SAR is unaffected by any state law that legalizes marijuana-related activity. A financial institution is required to file a SAR if, consistent with FinCEN regulations, the financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution: (i) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA, or (iii) lacks a business or apparent lawful purpose.<sup>5</sup> Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law), in accordance with this guidance and FinCEN's suspicious activity reporting requirements and related thresholds.

One of the BSA's purposes is to require financial institutions to file reports that are highly useful in criminal investigations and proceedings. The guidance below furthers this objective by assisting financial institutions in determining how to file a SAR that facilitates law enforcement's access to information pertinent to a priority.

#### **"Marijuana Limited" SAR Filings**

A financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the Cole Memo priorities or violate state law should file a "Marijuana Limited" SAR. The content of this

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<sup>5</sup> See, e.g., 31 CFR § 1020.320. Financial institutions shall file with FinCEN, to the extent and in the manner required, a report of any suspicious transaction relevant to a possible violation of law or regulation. A financial institution may also file with FinCEN a SAR with respect to any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations.

SAR should be limited to the following information: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) the fact that the filing institution is filing the SAR solely because the subject is engaged in a marijuana-related business; and (iv) the fact that no additional suspicious activity has been identified. Financial institutions should use the term “MARIJUANA LIMITED” in the narrative section.

A financial institution should follow FinCEN’s existing guidance on the timing of filing continuing activity reports for the same activity initially reported on a “Marijuana Limited” SAR.<sup>6</sup> The continuing activity report may contain the same limited content as the initial SAR, plus details about the amount of deposits, withdrawals, and transfers in the account since the last SAR. However, if, in the course of conducting customer due diligence (including ongoing monitoring for red flags), the financial institution detects changes in activity that potentially implicate one of the Cole Memo priorities or violate state law, the financial institution should file a “Marijuana Priority” SAR.

#### “Marijuana Priority” SAR Filings

A financial institution filing a SAR on a marijuana-related business that it reasonably believes, based on its customer due diligence, implicates one of the Cole Memo priorities or violates state law should file a “Marijuana Priority” SAR. The content of this SAR should include comprehensive detail in accordance with existing regulations and guidance. Details particularly relevant to law enforcement in this context include: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) details regarding the enforcement priorities the financial institution believes have been implicated; and (iv) dates, amounts, and other relevant details of financial transactions involved in the suspicious activity. Financial institutions should use the term “MARIJUANA PRIORITY” in the narrative section to help law enforcement distinguish these SARs.<sup>7</sup>

#### “Marijuana Termination” SAR Filings

If a financial institution deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program, it should

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<sup>6</sup> Frequently Asked Questions Regarding the FinCEN Suspicious Activity Report (Question #16), *available at*: [http://fincen.gov/whatsnew/html/sar\\_faqs.html](http://fincen.gov/whatsnew/html/sar_faqs.html) (providing guidance on the filing timeframe for submitting a continuing activity report).

<sup>7</sup> FinCEN recognizes that a financial institution filing a SAR on a marijuana-related business may not always be well-positioned to determine whether the business implicates one of the Cole Memo priorities or violates state law, and thus which terms would be most appropriate to include (i.e., “Marijuana Limited” or “Marijuana Priority”). For example, a financial institution could be providing services to another domestic financial institution that, in turn, provides financial services to a marijuana-related business. Similarly, a financial institution could be providing services to a non-financial customer that provides goods or services to a marijuana-related business (e.g., a commercial landlord that leases property to a marijuana-related business). In such circumstances where services are being provided indirectly, the financial institution may file SARs based on existing regulations and guidance without distinguishing between “Marijuana Limited” and “Marijuana Priority.” Whether the financial institution decides to provide indirect services to a marijuana-related business is a risk-based decision that depends on a number of factors specific to that institution and the relevant circumstances. In making this decision, the institution should consider the Cole Memo priorities, to the extent applicable.

file a SAR and note in the narrative the basis for the termination. Financial institutions should use the term “MARIJUANA TERMINATION” in the narrative section. To the extent the financial institution becomes aware that the marijuana-related business seeks to move to a second financial institution, FinCEN urges the first institution to use Section 314(b) voluntary information sharing (if it qualifies) to alert the second financial institution of potential illegal activity. See *Section 314(b) Fact Sheet* for more information.<sup>8</sup>

### Red Flags to Distinguish Priority SARs

The following red flags indicate that a marijuana-related business may be engaged in activity that implicates one of the Cole Memo priorities or violates state law. These red flags indicate only possible signs of such activity, and also do not constitute an exhaustive list. It is thus important to view any red flag(s) in the context of other indicators and facts, such as the financial institution’s knowledge about the underlying parties obtained through its customer due diligence. Further, the presence of any of these red flags in a given transaction or business arrangement may indicate a need for additional due diligence, which could include seeking information from other involved financial institutions under Section 314(b). These red flags are based primarily upon schemes and typologies described in SARs or identified by our law enforcement and regulatory partners, and may be updated in future guidance.

- A customer appears to be using a state-licensed marijuana-related business as a front or pretext to launder money derived from other criminal activity (i.e., not related to marijuana) or derived from marijuana-related activity not permitted under state law. Relevant indicia could include:
  - The business receives substantially more revenue than may reasonably be expected given the relevant limitations imposed by the state in which it operates.
  - The business receives substantially more revenue than its local competitors or than might be expected given the population demographics.
  - The business is depositing more cash than is commensurate with the amount of marijuana-related revenue it is reporting for federal and state tax purposes.
  - The business is unable to demonstrate that its revenue is derived exclusively from the sale of marijuana in compliance with state law, as opposed to revenue derived from (i) the sale of other illicit drugs, (ii) the sale of marijuana not in compliance with state law, or (iii) other illegal activity.
  - The business makes cash deposits or withdrawals over a short period of time that are excessive relative to local competitors or the expected activity of the business.

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<sup>8</sup> Information Sharing Between Financial Institutions: Section 314(b) Fact Sheet, *available at*: [http://fincen.gov/statutes\\_regs/patriot/pdf/314bfactsheet.pdf](http://fincen.gov/statutes_regs/patriot/pdf/314bfactsheet.pdf).

- Deposits apparently structured to avoid Currency Transaction Report (“CTR”) requirements.
  - Rapid movement of funds, such as cash deposits followed by immediate cash withdrawals.
  - Deposits by third parties with no apparent connection to the accountholder.
  - Excessive commingling of funds with the personal account of the business’s owner(s) or manager(s), or with accounts of seemingly unrelated businesses.
  - Individuals conducting transactions for the business appear to be acting on behalf of other, undisclosed parties of interest.
  - Financial statements provided by the business to the financial institution are inconsistent with actual account activity.
  - A surge in activity by third parties offering goods or services to marijuana-related businesses, such as equipment suppliers or shipping servicers.
- The business is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law.
  - The business is unable to demonstrate the legitimate source of significant outside investments.
  - A customer seeks to conceal or disguise involvement in marijuana-related business activity. For example, the customer may be using a business with a non-descript name (e.g., a “consulting,” “holding,” or “management” company) that purports to engage in commercial activity unrelated to marijuana, but is depositing cash that smells like marijuana.
  - Review of publicly available sources and databases about the business, its owner(s), manager(s), or other related parties, reveal negative information, such as a criminal record, involvement in the illegal purchase or sale of drugs, violence, or other potential connections to illicit activity.
  - The business, its owner(s), manager(s), or other related parties are, or have been, subject to an enforcement action by the state or local authorities responsible for administering or enforcing marijuana-related laws or regulations.
  - A marijuana-related business engages in international or interstate activity, including by receiving cash deposits from locations outside the state in which the business operates, making or receiving frequent or large interstate transfers, or otherwise transacting with persons or entities located in different states or countries.

- The owner(s) or manager(s) of a marijuana-related business reside outside the state in which the business is located.
- A marijuana-related business is located on federal property or the marijuana sold by the business was grown on federal property.
- A marijuana-related business's proximity to a school is not compliant with state law.
- A marijuana-related business purporting to be a "non-profit" is engaged in commercial activity inconsistent with that classification, or is making excessive payments to its manager(s) or employee(s).

### **Currency Transaction Reports and Form 8300's**

Financial institutions and other persons subject to FinCEN's regulations must report currency transactions in connection with marijuana-related businesses the same as they would in any other context, consistent with existing regulations and with the same thresholds that apply. For example, banks and money services businesses would need to file CTRs on the receipt or withdrawal by any person of more than \$10,000 in cash per day. Similarly, any person or entity engaged in a non-financial trade or business would need to report transactions in which they receive more than \$10,000 in cash and other monetary instruments for the purchase of goods or services on FinCEN Form 8300 (Report of Cash Payments Over \$10,000 Received in a Trade or Business). A business engaged in marijuana-related activity may not be treated as a non-listed business under 31 C.F.R. § 1020.315(e)(8), and therefore, is not eligible for consideration for an exemption with respect to a bank's CTR obligations under 31 C.F.R. § 1020.315(b)(6).

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FinCEN's enforcement priorities in connection with this guidance will focus on matters of systemic or significant failures, and not isolated lapses in technical compliance. Financial institutions with questions about this guidance are encouraged to contact FinCEN's Resource Center at (800) 767-2825, where industry questions can be addressed and monitored for the purpose of providing any necessary additional guidance.