

**Department of Law
Schedule 10
FY 2015-16 Budget Request**

Priority	Number	Division	Request	FTE	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
Decision Items									
	1	Criminal Justice and Appellate	Violent Crimes Assistance Team FTE	1.8	\$266,520	\$266,520	\$0	\$0	\$0
	2	Administration	CORA and OML Attorney	0.9	\$109,631	\$0	\$0	\$109,631	\$0
	3	Consumer Protection	Tobacco Litigation Legal Assistant	1.0	\$80,389	\$0	\$80,389	\$0	\$0
	4	Administration	1/2 FTE Contract Administrator	0.0	\$55,114	\$0	\$0	\$55,114	\$0
	5	Consumer Protection	CP and Antitrust Operating & Litigation	0.0	\$167,823	\$64,547	\$83,911	\$19,365	\$0
Total - Decision Items				3.7	\$679,477	\$331,067	\$164,300	\$184,110	\$0
Base Reduction Items									
Total - Base Reduction Items				0.0	\$0	\$0	\$0	\$0	\$0
Non-Prioritized Items									
	Non	Administration	Vehicle Lease Payments DI		\$12,694	\$17,039	(\$9,842)	\$2,198	\$3,299
					\$0				
					\$0	\$0	\$0		\$0
Total Non Prioritized Items				0.0	\$12,694	\$17,039	(\$9,842)	\$2,198	\$3,299
Grand Total November 1, 2014				3.7	\$692,171	\$348,106	\$154,458	\$186,308	\$3,299

Schedule 13 Funding Request for the 2015-16 Budget Cycle

Department: Department of Law
Request Title: Violent Crimes Assistance Team FTE
Priority Number: #1

Dept. Approval by:  10/15/14
Date

OSPB Approval by: _____
Date

Decision Item FY 2015-16
 Base Reduction Item FY 2015-16
 Supplemental FY 2014-15
 Budget Amendment FY 2015-16

Line Item Information		FY 2014-15		FY 2015-16		FY 2016-17
		1	2	3	4	6
	Fund	Appropriation FY 2014-15	Supplemental Request FY 2014-15	Base Request FY 2015-16	Funding Change Request FY 2015-16	Continuation Amount FY 2016-17
Total of All Line Items		Total	-			
	FTE	4,115,956	-	4,204,018	266,520	264,835
	GF	37.8	-	37.8	1.8	2.0
	GFE	1,832,354	-	1,871,430	266,520	264,835
	CF	-	-	-	-	-
	RF	1,619,523	-	1,641,126	-	-
	FF	664,079	-	691,462	-	-
	FF	-	-	-	-	-
(3) Criminal Justice and Appellate: Special Prosecutions Unit		Total	-			
	FTE	4,115,956	-	4,204,018	266,520	264,835
	GF	37.8	-	37.8	1.8	2.0
	GFE	1,832,354	-	1,871,430	266,520	264,835
	CF	-	-	-	-	-
	RF	1,619,523	-	1,641,126	-	-
	FF	664,079	-	691,462	-	-
	FF	-	-	-	-	-

Letternote Text Revision Required? Yes: No: If yes, describe the Letternote Text Revision:

Cash or Federal Fund Name and COFRS Fund Number: Cash Funds #: NA

Reappropriated Funds Source, by Department and Line Item Name:

Approval by OIT? Yes: No: **Not Required: X**

Schedule 13s from Affected Departments: NA

Other Information:



DEPARTMENT OF LAW

*FY 2015-16 Funding Request
November 1, 2014*

*John W. Suthers
Attorney General*

*Cynthia Coffman
Chief Deputy Attorney General*

Department Priority: 1
Request Title Violent Crimes Assistance Team FTE

Summary of Incremental Funding Change for FY 2015-16	Total Funds	GF	CF	RF	FTE
Total	\$266,520	\$266,520	\$0	\$0	1.8
Special Prosecution Unit	\$266,520	\$266,520	\$0	\$0	1.8

Summary of Incremental Funding Change for FY 2016-17	Total Funds	GF	CF	RF	FTE
Total	\$264,835	\$264,835	\$0	\$0	2.0
Special Prosecution Unit	\$264,835	\$264,835	\$0	\$0	2.0

Request Summary:

The Department of Law is requesting 1.8 FTE and \$266,520 in FY 2015-16 annualized to \$264,835 and 2.0 FTE spending authority to support the efforts and workload needs of the Special Prosecution Unit, specifically the Violent Crimes Assistance Team (VCAT). This request is for two experienced Assistant Attorney General with prosecutorial experience to assist this agency in its support of the 22 District Attorney's and their needs for this specialized expertise.

Background:

The Attorney General's law enforcement efforts are focused in multiple areas: 1) Complex Crimes, 2) Environmental Crimes, 3) Gang Prosecution, 4) Foreign Prosecutions, (5) Auto Theft and 6) the Violent Crime Assistance Team (VCAT).

VCAT is a two-attorney, one-investigator unit. VCAT was created by the Legislature in fiscal year 1994-1995 to assist District Attorneys by providing additional investigative and prosecutorial resources in major violent crime

matters, with an emphasis primarily being on homicide cases. These homicide investigations may include cold-cases, and death-penalty-eligible homicides. VCAT is uniquely designed to assist all of the state's District Attorneys to effectively analyze and prosecute these significant cases. Along with providing legal assistance in the prosecution of cases, the Unit has provided investigator assistance as well. VCAT's workload is dictated by the incidence of homicides, as well as District Attorney requests for assistance in other, complex violent crime cases.

The VCAT attorneys and investigator only become involved in a case upon the request of the local District Attorney and the approval of the Attorney General. During the Department's FY 15 Budget Hearing, the Joint Budget Committee requested the Department assemble estimates and rationale for an increase to this unit to better support local district attorneys. Specifically, the Department of Law was asked to make budgetary estimates to triple the size of the 3.0 FTE (2 attorneys and 1 Criminal Investigator) that currently support District Attorney Offices on request. The Department could not rationalize such a significant increase based on current workload and anticipated workload moving forward. However, the Department did suggest a more modest resource request. The Committee did not choose to act on the information provided.

Issue:

Before 2005, the team handled no more than 5 cases in any given year. In 2013 alone, the team assisted in 25 separate homicide cases. To gain a greater appreciation of this growth in the demand for VCAT assistance it is important to examine the genesis and evolution of VCAT. The original version of VCAT was when the Attorney General's Capital Crimes Unit (CCU) was formed in 1994 for the purpose of assisting local prosecutors to manage and prosecute their capital (death penalty) cases. From 1994 through 2005 the CCU had no more than five cases per year where one or both of the assigned Assistant Attorney Generals (AAG) would have been

sworn in as Special Deputy District Attorneys and to serve as full members of the trial team. The vast majority of these cases during this time period were generally located in the Denver metropolitan area. As discussed above in 2013-14, VCAT's two attorneys were involved in 25 different homicide cases. Amongst this group of 25 homicide cases the VCAT attorneys handled 11 capital (death penalty) cases including 1 capital (death penalty) case where the AAG served as a Special Deputy District Attorney and was a full member of the trial team; 5 capital (death penalty) cases where the Special Deputy District Attorney was responsible for complex issues concerning jury selection, motions, and jury instructions; and 5 additional cases where the AAGs consulted with the elected DA but where the AAG attorney was not sworn in as a Special Deputy District Attorney. The Team also was appointed as special deputies on 10 other homicides and served as consultants in 4 additional cases. In contrast to the earlier years (as late as 2007) when the majority of cases were in the Denver metropolitan area, in 2013-14 the 25 separate cases were spread across the State of Colorado from Cortez in the Four Corners to Lamar in the eastern part of the Arkansas Valley and from Walsenburg in Southern Colorado to Fort Collins in the North. Last year alone the Team provided actual and meaningful case assistance in 13 of the 22 Judicial Districts.

The Team has had to call on the assistance of other attorneys in the office to cover the requests that could be handled. For example the First Assistant Attorney General of the Special Prosecutions Unit is augmenting the two VCAT attorneys by supplementing his own full caseload by taking on a murder case from Cortez and is now serving as the lead attorney in that matter. Additionally, another Senior Assistant Attorney General who is also assigned to the Special Prosecutions Unit as the Human Trafficking and Gang prosecutor has also assumed the duties of the lead attorney in another homicide case from Durango that usually would be handled by one of the two VCAT attorneys. As a result of this rapid growth in terms of caseload for the first

time since the team's founding 1994 the Attorney General's Office has reached maximum capacity for VCAT and is now required to triage each case with a greater level of scrutiny with some requests for assistance now actually being turned away, including in situations where the requesting elected District Attorney who sought VCAT's assistance lacks sufficient staff resources and/or staff experience to successfully investigate and prosecute these important cases.

Since the formation of the unit, the number of motions that are now filed in capital (death penalty) cases has exponentially grown by four fold. In a particular death penalty case in 1985,¹ the public defenders filed 107 motions. In the Sir Mario Owens² death penalty case through 2009, 318 motions were filed during the pretrial period. In the Edward Montour³ death penalty case through 2014, the defense filed 471 motions. As a result of this evolving legal tactic by the defense bar VCAT has been called upon to provide motions support by researching and preparing legal responses in 11 separate capital cases during the 2013-14 fiscal year.

A primary issue for the elected District Attorneys in rural jurisdictions is recruiting and retaining Deputy District Attorneys. In many jurisdictions, the elected District Attorney and perhaps one or two of the deputies will have some level of prosecutorial experience. The reality is that the other Deputy DAs will have little or no experience. Over the last several years, rural prosecutors have placed more reliance on the Team to provide experienced case assistance and consultation. One rural jurisdiction has called upon the assistance of the Team because no prosecutor, including the elected District Attorney, possesses any homicide experience at all. In another rural jurisdiction assistance has been requested in homicide cases when none of

the deputies in the Judicial District had more than one year experience as a prosecutor.

In addition to the above significant case involvement, last year alone the VCAT provided consultation 86 times to prosecutors in 17 judicial districts. Last year the attorneys and investigators on the Team also gave 25 lectures to approximately 569 prosecutors and law enforcement officers.

Anticipated Outcomes:

With the additional resources the unit will be better equipped to assess local District Attorneys' requests for assistance and staff appropriately, thereby better ensuring justice is served in each case.

Assumptions for Calculations:

The department is assuming that the Assistant Attorney General Position will be fill at 75% quartile of the range. As mentioned above, the cases within this area of law and regulation are complex and will require independent and experienced analysis advice and effort. The current two attorneys working in this unit are a Senior Assistant Attorney General and an AAG whose salary is almost at the top of the range.

Consequences if not Funded:

If this request is not funded, the unit will continue to prioritize and manage the workload of this unit within existing spending and FTE authority. However, the prioritization will come at the expense of best serving local district attorney needs, as requests for assistance will continue to grow and some requests going unfilled.

Impact to Other State Government Agency:

This request will have no direct impact on other state agencies. There may be a tangential impact to the Public Defender's Office. Often times, the Public Defender is the representation for the defendant on cases that the Attorney General is asked to assist a Local District Attorney.

¹ *People v. Raymond Baca*, 1985 CR290, 10th Judicial District, Pueblo County.

² *People v. Sir Mario Owens*, 2006CR705, 18th Judicial District, Arapahoe County.

³ *People v. Edward Montour*, 2002CR782, 18th Judicial District, Douglas County.

Current Statutory Authority or Needed Statutory Change:

No statutory changes needed. 24-31-105. C.R.S. states, "There is hereby established, within the department of law and under the control of the attorney general, a criminal enforcement section. The criminal enforcement section or any attorney

in the department of law authorized by the attorney general shall prosecute all criminal cases for the attorney general and shall perform other functions as may be required by the attorney general."

Attorney Salary Ranges FY15

Position	Ranges			Ranges Annualized		
Attorney I	\$5,095	to	\$6,125	\$61,142	to	\$73,502
Assistant AG	\$5,650	to	\$8,249	\$67,800	to	\$98,989
Senior Assist AG	\$7,314	to	\$10,678	\$87,767	to	\$128,140
1St Assist AG	\$8,443	to	\$12,326	\$101,311	to	\$147,915
Deputies	\$9,556	to	\$13,951	\$114,666	to	\$167,414

Calculations for 2.0 Assistant Attorney Generals**FY 16****FY 17**

Supplies @ \$500/\$500	\$1,000	\$1,000
Computer @ \$900/\$0	\$1,800	\$0
Office Suite Software @ \$330/\$0	\$660	\$0
Office Equipment @ \$8,767/\$0 (includes office furniture, chair, bookcase)	\$17,534	\$0
Telephone Base @ \$450/\$450	\$900	\$900
Mileage use on state vehicle (assume 12,000miles at \$.212/mile)	\$2,544	\$2,544
Assume 4 overnight stays in hotel per month at \$75/night	\$3,600	\$3,600
Assume avg per diem at \$66 per day for 4 nights each month	\$3,168	\$3,168
Est Litigation Expenses at \$5,000 per Attorney	\$10,000	\$10,000
Cell phone at \$80/month	\$1,920	\$1,920
Total Operating	\$43,126	\$23,132

Monthly Salary Senior Attorney General (75% quartile)	\$7,599	\$7,599
Annual Salary 2 AAG, 11 months FY 16 and 12 months FY 17	\$167,178	\$182,376
PERA at 10.15%	\$16,969	\$18,511
Medicare at 1.45%	\$2,424	\$2,644
AED @ 4.4%	\$7,356	\$8,025
SAED @ 4.25%	\$7,105	\$7,751
STD @ .022%	\$368	\$401
Est HLD at Employee + Spouse	\$21,995	\$21,995
Total PS	\$223,394	\$241,703

Total 2 Senior Attorney Generals	\$266,520	\$264,835
GF	\$266,520	\$264,835

Schedule 13 Funding Request for the 2015-16 Budget Cycle

Department: Department of Law
Request Title: Colorado Open Records Act and Open Meetings Attorney
Priority Number: #2

Dept. Approval by: *Jan Peter* 10/15/14
Date

Decision Item FY 2015-16
 Base Reduction Item FY 2015-16
 Supplemental FY 2014-15
 Budget Amendment FY 2015-16

OSPB Approval by: _____
Date

Line Item Information		FY 2014-15		FY 2015-16		FY 2016-17
		1	2	3	4	6
	Fund	Appropriation FY 2014-15	Supplemental Request FY 2014-15	Base Request FY 2015-16	Funding Change Request FY 2015-16	Continuation Amount FY 2016-17
Total of All Line Items	Total	-	-	-	109,631	107,520
	FTE	0.0	0.0	0.0	0.9	1.0
	GF	-	-	-	-	-
	GFE	-	-	-	-	-
	CF	-	-	-	-	-
	RF	-	-	-	109,631	107,520
	FF	-	-	-	-	-

(6) Special Purpose: CORA and OML Expert	Total	-	-	-	109,631	107,520
	FTE	-	-	-	0.9	1.0
	GF	-	-	-	-	-
	GFE	-	-	-	-	-
	CF	-	-	-	-	-
	RF	-	-	-	109,631	107,520
	FF	-	-	-	-	-

Letternote Text Revision Required? Yes: No: If yes, describe the Letternote Text Revision:
Cash or Federal Fund Name and COFRS Fund Number: NA
Reappropriated Funds Source, by Department and Line Item Name: NA
Approval by OIT? Yes: No: Not Required: x
Schedule 13s from Affected Departments:
Other Information:



DEPARTMENT OF LAW

*FY 2015-16 Funding Request
November 1, 2014*

*John W. Suthers
Attorney General*

*Cynthia Coffman
Chief Deputy Attorney General*

Department Priority: 2

Request Title: Colorado Open Records Act and Open Meetings Law Attorney

Summary of Incremental Funding Change for FY 2015-16	Total Funds	FTE	GF	RF
Total	\$109,631	0.9	\$109,631	
Special Purpose (New Line Item)				
CORA/OML Expert				

Summary of Incremental Funding Change for FY 2016-17	Total Funds	FTE	GF	RF
Total	\$107,520	1.0	\$107,520	
Special Purpose				
CORA/OML Expert				

Request Summary:

The Department of Law is requesting \$109,631 in General Fund spending authority and 0.9 attorney FTE to help meet the workload demand from Colorado Open Records Act requests and Open Meetings Law (OML) expertise. These calculations annualize in out years to \$107,520 and 1.0 FTE.

Background Information:

In July of 2013, a frequent CORA requester, issued a mass CORA request to at least eleven state agencies, which sought production of the following: (1) a written copy of the state agency's requirements and procedures for CORA requests, including any fees associated with transmission, duplication, transportation, or hourly expense of compiling and

releasing requested documents; (2) any organizational charts for the state agency, as well as divisions or subdivisions therein, if available; and (3) an employee phone directory, if available. Although each state agency received the same CORA request, the state agencies' responses differed markedly, such as in the following ways: (1) one agency's CORA policy charged a copying fee of \$1.25/page, but CORA only allows a maximum \$0.25/page copy fee; (2) some CORA policies identified reasons why documents would not be subject to production, while other policies were very general; (3) some policies addressed requests for manipulation of databases or creations of new records, while others did not; (4) one agency required requesters to certify that they would not use the requested documents for pecuniary gain;

(5) hourly charges for research and retrieval of responsive documents varied from \$15/hour to \$20/hour; (6) some agencies explained why requested information was unavailable or not in a readily producible format, while other agencies invoked CORA's allowable seven-working day extension of time without any explanation, or simply denied the request because it was too voluminous; (7) some agencies did not explain why certain documents could not be produced in the requested format, while other agencies provided an explanation; (8) at least one agency only partially responded to the CORA request and did not address why the other requested documents were not produced; and (9) at least one agency produced more information than was requested (e.g., it produced its strategic plan, which included the requested organizational charts).

Soon after the Governor's Office became aware of the inconsistent CORA policies and CORA responses, the Governor's Chief Legal Counsel, asked the Department of Law (DOL) to: spearhead coordination among state agencies for mass CORA requests; ensure consistency within the DOL regarding interpretation of CORA and analysis of CORA issues; and encourage state agencies to seek counsel from their assigned DOL attorneys when dealing with difficult, unusual, or high-profile CORA requests, as well as CORA requests that will likely lead to litigation.

Problem:

Over the last couple of years, the DOL has noticed an increase in the number of CORA requests submitted to this office; anecdotally, state agencies have also received an increasing number of CORA requests. The nature of the CORA requests suggests that some requesters are using CORA as a political weapon or a litigation tool. Given the increasing number of CORA requests and requesters' increasing savviness, several complex, novel, or unique CORA issues have arisen, several of which may require development of office-wide policy positions. The issues that have arisen include:

- Requesters' use of CORA in ongoing litigation against the State or a state agency;
- Requesters' use of CORA as a pre-litigation tool;
- Requests for discovery responses that have been furnished in ongoing or concluded litigation;
- Extent to which privilege review or legal research performed in connection with a CORA request constitutes "research and retrieval";

- Whether metadata may or must be redacted from electronically-produced documents;
- Who is the actual custodian of a record that is in the possession of multiple people;
- Interpretation and application of the elected official work product doctrine or the deliberative process privilege;
- Custodian's duty or discretion to redact certain information;
- Use of CORA for business-solicitation purposes;
- Custodian's duty or discretion to perform database searches or manipulation in response to CORA requests;
- Production of databases in native format;
- Requests for academic research information;
- Requests for grant applications;
- Requests for pre-settlement communications;
- Requests for bids submitted in connection with requests for proposals;
- Requests for contract negotiation communications;
- Requests for e-mails that state agencies have deleted, but may still exist on OIT's or service provider's back-up servers;
- Fees for electronic production of documents; and
- Requests for e-mails in personal e-mail accounts.

Not only have the volume of CORA requests and the complexity of the issues increased, the average scope of CORA requests appears to have increased. Within the 2014 calendar year, the DOL has seen an increase in the number of broad-scope CORA requests. (e.g., request for approximately 35-search term CORA request to Department of Law most recently).

Further, as a result of a recent Colorado Supreme Court decision, *Benefield v. Colo. Republican Party*, No. 11SC935, 2014 CO 57 (Colo. 2014), any CORA requester or party that obtains a court order directing production of any withheld document is a prevailing party for purposes of CORA and, therefore, is entitled to an award of fees and costs associated with the requester's attempt to obtain the wrongfully withheld document(s). Accordingly, the devoted attention to CORA/OML issues may help to protect DOL and client agencies from, or minimize exposure to, fees and costs judgments arising from a court's determination that requested documents were improperly withheld.

Currently, the Department does not have a designated CORA/OML attorney and instead has relied upon existing staff; however this area of law is not their primary responsibility as attorneys in the Public

Officials Unit. Their primary responsibilities have rendered them unable to devote the time and attention needed to sufficiently assist the DOL and client agencies and to work with DOL management to shape CORA policies.

Anticipated Outcomes:

A dedicated Colorado Open Records Act/Open Meetings Law (CORA/OML) expert is needed to: (a) help the Department of Law and its client agencies handle the increasing number of CORA requests; (b) coordinate responses to mass CORA requests sent to multiple agencies; (c) develop office policy, research and analyze the complex, novel, or unique legal and policy issues implicated by the increasingly sophisticated CORA requests; (d) monitor developments in CORA/OML law, including case law and proposed and enacted legislation; and (e) serve as an educational and training resource for the DOL and its client agencies, which would include providing periodic in-house continuing legal education presentations, monitoring, and responding to queries submitted to CORA and develop, managing, and maintaining a CORA/OML-focused web site on DOL's intranet.

This attorney will work to ensure legal compliance for CORA requests to the Department of Law and assist other state agencies. This position will serve as the State's expert in CORA/OML.

Assumptions for Calculations:

This position will serve as the Department of Law's expert on CORA/OML law and assist in the processing of CORA requests. The position will also advise client agencies on CORA/OML matters that affect them. However, it is not known how much time will be spent assisting specific client request as the current attorneys advising clients in the past on this matter were doing so on a time available basis. Therefore, the Department is proposing that a separate special purpose line item be established for this position and funded from the General Fund for FY16 and FY17. The Department will track hours billed to clients for CORA/OML related work and then recommend refinancing of this position based on how much client related work vs DOL related work. The FY18 budget request will then move a portion of this position to the Legal Services to State Agencies appropriation if there are enough client billable hours to warrant that move. The remaining portion of the

position will continue to be funded from the General Fund to meet Department of Law CORA/OML needs. This position will be a three to four year attorney with a salary of \$6,600/month. Since this is a new line item appropriation the Department is requesting full funding of Health/Life/Dental premiums, Short term Disability, A.E.D. and S.A.E.D. as there is no base budget to absorb these costs.

Consequences if not funded:

The inconsistencies in responses to CORA requests by various state agencies will likely continue. Based on the *Benefield v. Colo. Republican Party* decision, there will likely be a financial cost to the state with the payment of attorney's fees and costs required on a percentage of these open records requests for the failure to produce all required documents. Funding this position will help mitigate some of those costs by helping to ensure that inadvertent document holdbacks are minimized and helping clients comply correctly to CORA requests.

Impacts to Other State Agencies:

Undetermined at this time but anticipated to be significant. This position will bill client agencies for legal work performed on their behalf, but it is difficult to predict the estimated number of hours at this time.

Current Statutory Authority or Needed Statutory Change:

No statutory changes needed.

Decision Item Calculations:

Calculations for an Assistant Attorney General 4 Years

Experience	FY 16	FY 17
Supplies @ \$500/\$500	\$500	\$500
Computer @ \$900/\$0	\$900	\$0
Office Suite Software @ \$395/\$0	\$395	\$0
Office Equipment @ \$8,767/\$0 (includes office furniture, chair, bookcase)	\$8,767	\$0
Telephone Base @ \$450/\$450	\$450	\$450
Cell phone at \$80/month	\$160	\$160
Total Operating	\$11,172	\$1,110

Monthly Salary 4 year Assistant Attorney General	\$6,600	\$6,600
Annual Salary 2AAG, 11 months FY 16 and 12 months FY 17	\$72,600	\$79,200
PERA at 10.15%	\$7,369	\$8,039
Medicare at 1.45%	\$1,053	\$1,148
AED @ 4.4%	\$3,194	\$3,485
SAED @ 4.25%	\$3,086	\$3,366
STD @ .022%	\$160	\$174
Est HLD at Employee + Spouse	\$10,997	\$10,997
Total PS	\$98,459	\$106,410

Total 1.0 Assistant Attorney General	\$109,631	\$107,520
GF	\$109,631	\$107,520

Schedule 13

Funding Request for the 2015-16 Budget Cycle

Department: Department of Law
Request Title: Tobacco Litigation Legal Assistant
Priority Number: #3

Dept. Approval by: Jan Peter 10/15/14
Date

OSPB Approval by: _____
Date

x Decision Item FY 2015-16
 Base Reduction Item FY 2015-16
 Supplemental FY 2014-15
 Budget Amendment FY 2015-16

Line Item Information		FY 2014-15		FY 2015-16		FY 2016-17
		1	2	3	4	6
	Fund	Appropriation FY 2014-15	Supplemental Request FY 2014-15	Base Request FY 2015-16	Funding Change Request FY 2015-16	Continuation Amount FY 2016-17
Total of All Line Items		Total	-			
		2,328,660	-	2,398,519	80,389	79,159
		FTE 26.0	-	26.0	1.0	1.0
		GF 1,106,670	-	1,143,542	-	-
		GFE -	-	-	-	-
		CF 961,411	-	988,016	80,389	79,159
		RF 260,579	-	266,961	-	-
		FF -	-	-	-	-
(5) Consumer Protection: Consumer Protection and Antitrust						
		Total 2,328,660	-	2,398,519	80,389	79,159
		FTE 26.0	-	26.0	1.0	1.0
		GF 1,106,670	-	1,143,542	-	-
		GFE -	-	-	-	-
		CF 961,411	-	988,016	80,389	79,159
		RF 260,579	-	266,961	-	-
		FF -	-	-	-	-

Letternote Text Revision Required? Yes: No: If yes, describe the Letternote Text Revision:

Cash or Federal Fund Name and COFRS Fund Number: Fund #1000 Tobacco Litigation Defense Account

Reappropriated Funds Source, by Department and Line Item Name:

Approval by OIT? Yes: No: Not Required: x

Schedule 13s from Affected Departments: NA

Other Information:



DEPARTMENT OF LAW

*FY 2015-16 Funding Request
November 1, 2014*

*John W. Suthers
Attorney General*

*Cynthia Coffman
Chief Deputy Attorney General*

Department Priority: 3
Request Title Tobacco Litigation Legal Assistant

Summary of Incremental Funding Change for FY 2015-16	Total Funds	CF	FTE
Consumer Fraud Unit/Antitrust Tobacco and Consumer Protection Unit	\$80,389	\$80,389	1.0

Summary of Incremental Funding Change for FY 2016-17	Total Funds	CF	FTE
Consumer Fraud Unit/Antitrust Tobacco and Consumer Protection Unit	\$79,159	\$79,159	1.0

Request Summary:

The Department of Law is requesting 1.0 FTE and \$80,389 in Tobacco Defense Account spending authority to support the efforts and workload needs for Tobacco Litigation support. This request is for one Legal Assistant II to allow the Department of Law, Department, to better protect Colorado interests with Tobacco Litigation negotiations and settlements.

Tobacco Settlement Enforcement

Since the State's settlement of the tobacco litigation against the major domestic tobacco companies in 1998, this unit has monitored compliance with the numerous injunctive terms and payment obligations under the Master Settlement Agreement ("MSA") and the Smokeless Tobacco Master Settlement Agreement ("STMSA"). Under these agreements the companies have agreed to a host of marketing restrictions, including a prohibition on youth marketing. Also under these agreements, the companies pay anywhere from \$80.0 - \$100.0 Million to the general fund of the State of Colorado each year. The fluctuations in payments depend on various complex adjustments provided for under the MSA which relate to sales volume by the participating companies and market share loss to manufacturers that are not part of the MSA (so called, "nonparticipating manufacturers" or "NPMs").

This unit monitors compliance with the settlement and ensures Colorado's interests are protected in the MSA's payment calculations. This unit also enforces statutes that require NPMs to pay an escrow on their sales that approximates what they would owe under the settlement. The Colorado Department of Revenue (DOR) also has enforcement responsibilities with regard to these escrow requirements, and this unit works closely with DOR on this enforcement. The Antitrust, Tobacco and Consumer Protection Unit has one full-time lawyer who is funded out the tobacco settlement funds to handle these functions.

The “diligent enforcement” arbitration proceedings provided for under the MSA has occupied a significant amount of time for this unit since 2006. Through this arbitration, the tobacco companies can challenge the State’s enforcement of the NPM escrow obligations. If it is determined through this arbitration that our enforcement was not diligent, the payment Colorado receives under the settlement can be reduced significantly. After nearly seven years of litigation, Colorado recently received a determination that it diligently enforced the tobacco escrow laws against NPMs. This determination, however, only applies to enforcement undertaken in 2003. While this favorable resolution will likely influence arbitrations for years 2004 – 2012, these proceedings still need to be undertaken to determine the diligence of our enforcement efforts during these years. Work on the arbitrations for these latter years continues and will continue in FY 14-15.

Purpose of this Request:

This request is due to increased workload as a result of ongoing diligent enforcement arbitrations. Each calendar year is projected to have its own arbitration in which the Participating Manufacturers seek to establish that Colorado did not diligently enforce its Tobacco Escrow Funds Act. The first of these arbitrations, for the calendar year 2003, took more than three years of planning and three years of hearings to complete. The arbitration for 2004 will commence in 2015, and while expected to move more quickly, the arbitration will most likely take another three years to complete.

While the State has outside counsel representing Colorado in the arbitration, a number of tasks related to the arbitration are handled in house, as well as working with other states on related issues. As a result, this work has impacted the day-to-day enforcement work under the Master Settlement Agreement and Tobacco Escrow Funds Act. Every tobacco product manufacturer must file an annual certification with the Unit for review, and several will file additional supplemental certifications throughout the year. In addition, Non-Participating Manufacturers also file certifications verifying compliance with the Escrow Funds Act. Review of more than 45 annual manufacturer certifications and 20 escrow certifications can take months under normal circumstances. With increased demands in other areas, this annual review is often extended for a greater amount of time. A full-time Legal Assistant

for tobacco would alleviate this problem and allow for a more efficient review process.

Further work on multi-state level, or with state and federal government agencies also require action in a timely fashion. These requests for information, multi-state actions against tobacco companies, working groups on issues related to cigarettes and tobacco products, are impacted by time constraints and expanding diligent enforcement related work.

Tobacco Settlement Enforcement currently consists of one Assistant Attorney General and partial support from a Legal Assistant supporting the Consumer Protection program. In the past, a temporary legal assistant has been engaged to provide short-term assistance in review of certifications and escrow compliance. With the assistance of a full time Legal Assistant II, more tasks would be handled in a timely and efficient manner and potentially new investigations, multi-state activities, and assistance to other agencies would not be delayed or hindered. A full-time Legal Assistant II would help alleviate backlogged projects and allow for more review, analysis and outreach on issues related to cigarette and tobacco control.

Anticipated Outcomes:

With the additional resources this Unit will be able to more effectively and efficiently handle the complex needs and workload efforts of the muti-state Master Tobacco Settlement and Colorado Tobacco Escrow Funds Act, including certification review, Certified Brand Directory management, and requests for information and assistance from other government agencies, including the Department of Revenue, the Bureau of Alcohol, Tobacco, and Firearms, and the U.S. Treasury’s Tobacco Tax and Trade Bureau.

Assumptions for Calculations:

The department is assuming that this position will be filled at the mid-range for the classification. As mentioned above, this area of law is complex and almost exclusively litigious. As such, the program requires that the requested Legal Assistant have more experience, in order to best serve Colorado consumers.

Consequences if not Funded:

If this request is not funded, the department will continue to prioritize and manage the workload efforts within existing spending and FTE authority.

Impact to Other State Government Agency:

This decision item will not have a fiscal or workload impact on other state agencies. This request will impact the draw on the Tobacco Defense Account. This account currently funds 1.0 FTE, associated operating expenses, and outside counsel and litigation efforts.

No statutory changes needed, currently. HB 13-1180 provides the mechanism to fund the Tobacco Settlement Defense account with roughly \$1.8M going into the account in FY 13 and \$1M in FY 14, FY 15, and FY 16. As funds in the Tobacco Defense Account, from which this decision hits, new legislation will need to be initiated to continue transfers into the account to support litigation efforts.

Current Statutory Authority or Needed Statutory Change:**Tobacco Defense Account Estimates:**

FY 15 Starting Balance	\$2,355,974
FY 15 Est Interest	\$14,462
FY 15 \$1M deposit	\$1,000,000
FY 15 Total Revenue	\$3,370,436
FY 15 Est Expenses by Line Item	
Consumer Protection	\$176,596
Carr Bldg Lease	\$6,602
Workers' Compensation	\$231
OIT Payments	\$744
Continuing Legal Educaiton	\$475
Tobacco Litigation Expenses	\$1,250,000
Asset Maintenance	\$1,469
Total Potential Expenses	\$1,436,117
Est FY 15 ending balance	\$1,934,319

FY 16 Estimated Starting Balance	\$1,934,319
FY 16 Est Interest	\$14,462
FY 16 \$1M deposit	\$1,000,000
FY 16 Total Revenue	\$2,948,781
FY 16 Est Expenses by Line Item	
Consumer Protection with Decision Item	\$243,798
Carr Bldg Lease	\$6,599
Workers' Compensation	\$184
OIT Payments	\$2,175
Continuing Legal Educaiton	\$475
Asset Maintenance	\$1,469
Tobacco Litigation Expenses	\$1,250,000
Total Potential Expenses	\$1,504,700
Est FY 16 ending balance	\$1,444,081

FY 16 is the last year for the \$1M transfer into the Tobacco Defense Account. The above charts depict the worst case assumptions on cost impacts to the account. However, the Department believes this is a conservative assumption. Regardless, a bill will most likely need to be sponsored to provide funding for the Tobacco Defense Account in FY 18. However, if estimates provided above are on target, then a bill would need to be addressed impacting FY 17.

Class Code	Class Title	Pay Grade	Minimum	Midpoint	Maximum
H5E2	LEGAL ASSISTANT II	T15	\$4,914	\$5,840	\$6,766

Legal Asst II Calculations	FY 16	FY 17
Supplies @ \$500/\$500	\$500	\$500
Computer @ 900/\$0	\$900	\$0
Office Suite Software @ \$395/\$0	\$330	\$0
Telephone Base @ \$450/\$450	\$450	\$450
Office Equipment @ \$8,767/\$0 (includes office furniture, chair, bookcase)	\$8,767	
Total Operating	\$2,180	\$950

Monthly Salary Legal Assistant II (mid point)	\$5,840	\$5,840
Annual Salary	\$70,080	\$70,080
PERA at 10.15%	\$7,113	\$7,113
Medicare at 1.45%	\$1,016	\$1,016
Total PS General Prof II	\$78,209	\$78,209
Total Decision Item	\$80,389	\$79,159
CF	\$80,389	\$79,159

Schedule 13 Funding Request for the 2015-16 Budget Cycle

Department: Department of Law
Request Title: 1/2 Time Contract Administrator
Priority Number: #4

Dept. Approval by:  - 10/15/14
Date

OSPB Approval by: _____
Date

Decision Item FY 2015-16
 Base Reduction Item FY 2015-16
 Supplemental FY 2014-15
 Budget Amendment FY 2015-16

Line Item Information		FY 2014-15		FY 2015-16		FY 2016-17
		1	2	3	4	6
		Appropriation FY 2014-15	Supplemental Request FY 2014-15	Base Request FY 2015-16	Funding Change Request FY 2015-16	Continuation Amount FY 2016-17
	Fund					
Total of All Line Items	Total	3,652,491	-	3,743,741	55,114	45,117
	FTE	44.1	0.0	44.1	0.0	0.0
	GF	-	-	-	-	-
	GFE	-	-	-	-	-
	CF	46,935	-	-	-	-
	RF	3,605,556	-	3,743,741	55,114	45,117
	FF	-	-	-	-	-
(1) Administration :						
Personal Services	Total	3,454,299	-	3,550,252	44,167	44,167
	FTE	44.1	-	44.1	-	-
	GF	-	-	-	-	-
	GFE	-	-	-	-	-
	CF	45,985	-	-	-	-
	RF	3,408,314	-	3,550,252	44,167	44,167
	FF	-	-	-	-	-
(1) Administration:						
Operating Expenses	Total	198,192	-	193,489	10,947	950
	FTE	-	-	-	-	-
	GF	-	-	-	-	-
	GFE	-	-	-	-	-
	CF	950	-	-	-	-
	RF	197,242	-	193,489	10,947	950
	FF	-	-	-	-	-

Letternote Text Revision Required? Yes: No: If yes, describe the Letternote Text Revision:
 Cash or Federal Fund Name and COFRS Fund Number:
 Reappropriated Funds Source, by Department and Line Item Name:
 Approval by OIT? Yes: No: Not Required: x
 Schedule 13s from Affected Departments:
 Other Information:



DEPARTMENT OF LAW

*FY 2015-16 Funding Request
November 1, 2014*

*John W. Suthers
Attorney General*

*Cynthia Coffman
Chief Deputy Attorney General*

**Department Priority: 4
Request Title Contract Administrator 1/2 FTE**

Summary of Incremental Funding Change for FY 2015-16	Total Funds	RF	FTE
Total Request	\$55,114	\$55,114	0.0
Administration Personal Services	\$44,167	\$44,167	0.0
Administration Operating Expenses	\$10,947	\$10,947	0.0

Summary of Incremental Funding Change for FY 2016-17	Total Funds	RF	FTE
Total Request	\$45,117	\$45,117	0.0
Administration Personal Services	\$44,167	\$44,167	0.0
Administration Operating Expenses	\$950	\$950	0.0

Request Summary:

The Department of Law (DOL) is requesting the money associated with a half time contract administrator within the Administration Section of the agency. This position is a General Professional VI handling, contract and purchase order development; contract monitoring and related vendor oversight and programmatic support.

This request will allow the Department of Law to better mitigate risk to state resources through dedicated resources and expertise.

Background:

The Administration Section is funded with departmental indirect cost assessments (from revenue funded and federal sources to replace the General Fund) that are collected from the Department's various divisions and transferred as

reappropriated funds to the Administration appropriation. The largest source of indirect cost recoveries are assessments within the Department's largest appropriation: Legal Services to State Agencies.

The Administration Division includes the following sections:

- *Office of the Attorney General*, which includes the Attorney General, Chief Deputy Attorney General, Solicitor General, Director of Legal Policy and Federal-State Issues, and associated administrative staff;
- *Human Resources*, which hires new employees, manages employee benefits, and consults with employees and managers

regarding applicable state and federal personnel laws and regulations;

- *Financial Services*, which includes accounting, financial reporting, and payroll.
- *Budgeting*: Prepares the Department's budget and monitors expenditures and budget implementation
-
- *Information Technology Services*, which handles the Department's computer, network, and security needs.

Business Operations and Litigation Support Unit (BOLS), provides litigation support including data and document handling. Additionally, this unit provides office wide support to space planning, workspace preparation, facility and security issues, small move assistance, fleet vehicle coordination, archive and destruction, court and courier service.

Problem or Opportunity:

The DOL, due to its representation of state agency business and its' investigation and prosecution efforts in insurance, securities, criminal and Medicaid fraud and general consumer protection investigations and prosecutions, possesses, analyzes and retains various protected information. The DOL has legal responsibilities to safeguard the confidentiality of this information obtained and used in the course of its representation of State interests and instrumentalities and agencies of the State.

Many of the DOL's contracts have the potential for a particular vendor to view, process, or manipulate protected information and work product. Such contracts may address network security and backup, investigation or prosecution data management, or other data retention, such as the anonymous reporting that the Safe2Tell program manages. As such, the DOL must insure its contractors maintain the security,

confidentiality, and auditing requirements that our partners require. These include regulations and guidelines issued by the Federal Bureau of Investigation (FBI), the U.S. Department of Homeland Security (U.S. DHS), the Governor's Office of Homeland Security (DHS), the Colorado Bureau of Investigation (CBI), the Colorado Chief Information Security Officer (CISO), the Health Insurance Portability and Accountability Act (HIPPA), the Health Information Technology for Economic and Clinical Health Act (HITECH), and the Family Educational Rights and Privacy Act (FERPA).

Due to the increasing sophistication of the DOL's contracts based on the continuing need to protect state information, the DOL is spending increasing time on contract negotiations and vendor monitoring to ensure deliverables are being met within the terms of the contract and that state data is protected through contract language and contractor performance.

The Administration section serves the procurement and contract negotiation needs of the entire agency. However, over the past year, the agency has had to rely on the expertise of an individual that serves the CERCLA program and the Natural Resource agencies within the legal Services to State Agencies long bill group. This short term solution has enabled the agency to maintain contract protections and oversight, while maintaining contractor relationships, but is neither the most appropriate use of this individual's effort nor the most appropriate allocation of costs.

The Department of Law is requesting the resources associated with ½ time General Prof VI FTE to be housed with the Administration section of the Long Bill, thereby being paid from indirect costs from all appropriate agency fund sources. This position will manage the contract development of department procurements and help oversee contract delivery.

The Administration section currently can utilize only 40.5 of the 43.7 allocated FTE, due to the

current funding of the Long Bill Line Item. The department is not requesting the FTE due to the current unutilized FTE, but needs the dollar appropriation to accommodate this position.

Anticipated Outcomes:

The DOL has not witnessed any failure or shortcoming by a contracted vendor to meet contract deliverables within the terms of the contract and has not had any data breaches. However, the Department believes it would be better served by an employee that can specifically dedicate time to this effort, thereby improving the internal controls on state resources, improve overall vendor oversight, and better accounting for the costs associated with this department wide effort.

Assumptions for Calculations:

The Department is using the minimum of the General Prof VI range. Additionally, the Department is assuming general operating costs for each position, with the exception of office furniture. For office furniture, the Department is using the furniture costs associated with small offices, to ensure consistency of furniture in the building.

Consequences if not Funded:

If this request is not funded, the department will continue to best meet workload needs while attempting to best meet procurement protocols and contract oversight efforts.

Impact to Other State Government Agency:

Based on FY 16 budget submission, roughly 75% of indirect recoveries are recovered from the Legal Services to State Agencies Line Item. $75\% * \$55,114 = \$41,335$. $\$41,335 / 403,272 \text{ hours (FY 15 Long Bill hours plus special bills)} = \0.10 impact on legal rate. Please note the legal rate will go down in FY 16, due to the roughly \$1.6M that was included in the legal rate for FY 15 to cover the compensated absences calculation requirements for an internal service fund. The JBC allowed the Department to build in this amount to accommodate this fund balance requirement. This amount will not be needed in

FY 16, thereby reducing the total amount the fund will need to cover.

Current Statutory Authority or Needed Statutory Change:

24-31-101(3) C.R.S. states, “The attorney general may appoint such deputies and assistants as are necessary for the efficient operation of his office within the limitations of appropriations made therefor by the general assembly.” There is no statutory modification necessary to implement this request.

Decision Item Calculations:

Gen Prof VI	FY 16	FY 17
Supplies @ \$500/\$500	\$500	\$500
Computer @ 900/\$0	\$900	\$0
Office Suite Software @ \$395/\$0	\$330	\$0
Telephone Base @ \$450/\$450	\$450	\$450
Office Equipment @ \$8,767/\$0 (includes office furniture, chair, bookcase)	\$8,767	
Total Operating	\$10,947	\$950

Monthly Salary General Prof VI	\$6,596	\$6,596
Annual Salary	\$79,152	\$79,152
0.5 FTE	\$39,576	\$39,576
PERA at 10.15%	\$4,017	\$4,017
Medicare at 1.45%	\$574	\$574
Total PS General Prof VI	\$44,167	\$44,167
Total Decision Item	\$55,114	\$45,117
RF	\$55,114	\$45,117

Schedule 13 Funding Request for the 2015-16 Budget Cycle

Department: Department of Law
Request Title: Consumer Protection and Antitrust Operating and Litigation Decision Item
Priority Number: #5

Dept. Approval by:  10/15/14
Date

x Decision Item FY 2015-16
 Base Reduction Item FY 2015-16
 Supplemental FY 2014-15
 Budget Amendment FY 2015-16

OSPB Approval by: _____
Date

Line Item Information		FY 2014-15		FY 2015-16		FY 2016-17
		1	2	3	4	6
	Fund	Appropriation FY 2014-15	Supplemental Request FY 2014-15	Base Request FY 2015-16	Funding Change Request FY 2015-16	Continuation Amount FY 2016-17
Total of All Line Items	Total	2,328,660	-	2,398,519	167,823	167,823
	FTE	26.0	0.0	26.0	0.0	0.0
	GF	1,106,670	-	1,143,542	64,547	64,547
	GFE	-	-	-	-	-
	CF	961,411	-	988,016	83,911	83,911
	RF	260,579	-	266,961	19,365	19,365
	FF	-	-	-	-	-

(5) Consumer Protection:	Total	2,328,660	-	2,398,519	167,823	167,823
Consumer Protection and Antitrust	FTE	26.0	-	26.0	-	-
	GF	1,106,670	-	1,143,542	64,547	64,547
	GFE	-	-	-	-	-
	CF	961,411	-	988,016	83,911	83,911
	RF	260,579	-	266,961	19,365	19,365
	FF	-	-	-	-	-

Letternote Text Revision Required? **Yes:** **No:** **If yes, describe the Letternote Text Revision:**
Cash or Federal Fund Name and COFRS Fund Number: #1460 CP Custodial
Reappropriated Funds Source, by Department and Line Item Name: Fund
Approval by OIT? **Yes:** **No:** **Not Required:**
Schedule 13s from Affected Departments: NA
Other Information:



DEPARTMENT OF LAW

*FY 2015-16 Funding Request
November 1, 2014*

*John W. Suthers
Attorney General*

*Cynthia Coffman
Chief Deputy Attorney General*

Department Priority: 5
Request Title Consumer Protection and Antitrust Operating and Litigation Decision Item

Summary of Incremental Funding Change for FY 2015-16	Total Funds	GF	CF	RF
Consumer Fraud Unit/Antitrust Tobacco and Consumer Protection Unit	\$167,823	\$64,547	\$83,911	\$19,365

Summary of Incremental Funding Change for FY 2016-17	Total Funds	GF	CF	RF
Consumer Fraud Unit/Antitrust Tobacco and Consumer Protection Unit	\$167,823	\$64,547	\$83,911	\$19,365

Request Summary:

The Department of Law is requesting \$167,823 in Total Fund spending authority to support the litigation expenses and annual operating expenses of the Consumer Protection and Antitrust Line Item.

Background Information:

There are two units that enforce the provisions of the Colorado Consumer Protection Act ("CCPA") (Colo. Rev. Stat. §§ 6-1-101, *et seq.*). The Consumer Fraud Unit handles traditional consumer protection matters such as false advertising, Internet marketing scams and charitable fraud cases.

The Antitrust, Tobacco and Consumer Protection Unit handles the Colorado Antitrust Act ("Antitrust Act") (Colo. Rev. Stat. §§ 6-4-101, *et seq.*), several specialized consumer protection statutes, such as the No-Call List Act (Colo. Rev. Stat. §§ 6-1-901, *et seq.*)

and all of the consumer protection laws designed to address mortgage fraud and foreclosure rescue schemes. *See, e.g.*, Colo. Rev. Stat. § 12-61-904.5, 12-61-911 and § 38-40-105 (governing mortgage loan originator conduct), Colo. Rev. Stat. § 6-1-717, (governing appraisal fraud) and Colo. Rev. Stat. § 6-1-1100, *et seq.*, (Colorado Foreclosure Protection Act). This unit also enforces the Tobacco Master Settlement Agreement and related tobacco laws (Colo. Rev. Stat. §§ 39-28-201, *et seq.* – Tobacco Escrow Funds Act; and Colo. Rev. Stat. §§ 39-28-301, *et seq.* – Certified Brands Directory Act). Below is a description of how these units handle their enforcement efforts under their statutory provisions.

Consumer Fraud

Consumer fraud investigations and prosecutions are handled by a variety of attorneys, investigators, and

support staff through both Units. While most cases are brought under the Colorado Consumer Protection Act, these Units also bring cases under the Charitable Solicitations Act and the Motor Vehicle Repair Act. In addition to purely local cases, attorneys and staff periodically participate in national or multi-state enforcement activities with their counterparts in the Attorney General Offices of other states and with the Federal Trade Commission.

Antitrust

The Attorney General's antitrust enforcement efforts are directed at protecting consumers and legitimate competitors from a whole range of anticompetitive conduct, including price fixing, conspiracies to suppress competition and mergers that will unreasonably restrain fair competition. The Attorney General has exclusive jurisdiction to enforce the civil and criminal provisions of the Colorado Antitrust Act. The Attorney General also participates in merger reviews in conjunction with the FTC and DOJ where the industry at issue implicates statewide interests of concern in Colorado.

The Antitrust, Tobacco and Consumer Protection Unit has one full-time lawyer who enforces the Colorado Antitrust Act and the federal antitrust laws. This lawyer is also responsible for enforcement of the no-call laws, discussed below. This position is funded from the general fund.

Tobacco Settlement Enforcement

Since the State's settlement of the tobacco litigation against the major domestic tobacco companies in 1998, this unit has monitored compliance with the numerous injunctive terms and payment obligations under the Master Settlement Agreement ("MSA") and the Smokeless Tobacco Master Settlement Agreement ("STMSA"). Under these agreements the companies have agreed to a host of marketing restrictions, including a prohibition on youth marketing. Also under these agreements, the companies pay anywhere from \$80.0 - \$100.0 Million to the general fund of the State of Colorado each year. The fluctuations in payments depend on various complex adjustments provided for under the MSA which relate to sales volume by the participating companies and market share loss to manufacturers that are not part of the MSA (so called, "nonparticipating manufacturers" or "NPMs").

This unit monitors compliance with the settlement and ensures Colorado's interests are protected in the MSA's payment calculations. This unit also enforces statutes that require NPMs to pay an escrow on their sales that approximates what they would owe under the settlement. The Colorado Department of Revenue (DOR) also has enforcement responsibilities with regard to these escrow requirements, and this unit works closely with DOR on this enforcement. The Antitrust, Tobacco and Consumer Protection Unit has one full-time lawyer who is funded out the tobacco settlement funds to handle these functions.

The "diligent enforcement" arbitration proceedings provided for under the MSA has occupied a significant amount of time for this unit since 2006. Through this arbitration, the tobacco companies can challenge the State's enforcement of the NPM escrow obligations. If it is determined through this arbitration that our enforcement was not diligent, the payment Colorado receives under the settlement can be reduced significantly. After nearly seven years of litigation, Colorado recently received a determination that it diligently enforced the tobacco escrow laws against NPMs. This determination, however, only applies to enforcement undertaken in 2003. While this favorable resolution will likely influence arbitrations for years 2004 - 2012, these proceedings still need to be undertaken to determine the diligence of our enforcement efforts during these years. Work on the arbitrations for these latter years continues and will continue in FY 14-15.

No-Call Enforcement

The No-Call List Act was enacted in 2002. Since that time over 3.4 Million residential phone numbers have been registered on the no-call list. The no-call list and other procedural aspects of the no-call program are administered by the Public Utilities Commission ("PUC"). However, enforcement of violations are handled by one investigator and one lawyer within the Antitrust, Tobacco and Consumer Protection Unit. The lawyer splits his time between this work and antitrust enforcement. The investigator position is funded in part through the fees generated by telemarketers who buy the no-call lists each quarter. The attorney position is funded through general funds.

The Attorney General investigates complaints that are reported to the PUC of suspected no-call violations. These investigations involve some detailed work to ensure that the jurisdictional elements of the No-Call

List Act are satisfied. They also involve extensive investigation to identify the suspects or telemarketers involved in the violation. As discussed below, these investigations are labor intensive because violators use calling technologies that make it difficult to trace the calls back to them.

Mortgage Fraud and Foreclosure Prevention

To address the rise in mortgage fraud and foreclosure rescue fraud, the General Assembly passed the Foreclosure Protection Act in 2006 and four mortgage fraud bills in 2007. Also, as part of the 2007 mortgage fraud bills the Antitrust, Tobacco and Consumer Protection Unit was staffed with one lawyer FTE and two investigator FTEs to enforce these new laws and the Foreclosure Protection Act. These three new positions are funded through the licensing fees that are paid by mortgage originators to get licensed with the Division of Real Estate's Mortgage Loan Originator Program.

During FY 13-14, significant resources have been devoted to implementing and monitoring the historic \$25.0 billion settlement with the five major mortgage servicing companies, Bank of America, Wells Fargo, JP Morgan Chase, Citibank and Ally/GMAC ("the National Mortgage Settlement"). This settlement resolved several state and federal claims related to the banks' foreclosure and loan servicing practices. It was the largest settlement reached in a joint federal – state investigation. The federal agencies participating in this settlement were the U.S. Department of Justice, the U.S. Department of Housing and Urban Development, the Consumer Protection Financial Bureau and the U.S. Department of Treasury. Forty-nine state Attorneys General and state banking departments participated in this settlement.

As a result of this settlement the servicing companies agreed to provide at least \$20.0 billion in loan relief to homeowners who are struggling to pay their mortgages. This loan relief can come in the form of reducing the principal balance of the loan in conjunction with a loan modification that will allow a borrower to have an affordable monthly payment. It can also come in the form of refinancing a borrower who is current on the loan, but who has been unable to take advantage of the historically low interest rates during FY 12-13. Credit can also be earned for granting relief that avoids a foreclosure and gets the home back on the market, such as a short sale. The

banks also agreed to a detailed 42-page injunction and monitoring plan which regulates the way they conduct foreclosures and handle loan modification requests. One lawyer from this unit serves on the monitoring committee for this nationwide settlement. This activity consumes a significant amount of time and it is expected that this will continue to be the case through FY 14-15 when the settlement expires. Additionally, two lawyers from the unit are engaged in settlements being negotiated with second-tier servicers and monitoring of those settlements.

In addition to this relief, \$51.17 Million in custodial funds were paid to Colorado under the National Mortgage Settlement to help prevent foreclosures and stabilize the housing market. During FY 11-12 this office worked with the Governor's Office, the Division of Housing, the leadership in both the state House and Senate and the housing community to devise a plan to spend this money in a way that will prevent foreclosures and stabilize housing. After holding public hearings and soliciting comments from numerous interested stakeholders this office announced the following funding for existing and new foreclosure prevention and housing stabilization programs:

- ▶ \$24.0 Million for supplemental loan mod programs
- ▶ \$18.196 Million for affordable housing programs
- ▶ \$5.625 Million for housing counseling support over three years
- ▶ \$1.5 Million for Colorado Legal Services over three years
- ▶ \$1.1 Million to the Colorado Foreclosure Hotline for an additional three years of operation and funding for marketing and outreach to distressed homeowners
- ▶ \$750,000 for Colorado Attorney General's Office enforcement and monitoring support

The funding for these programs will continue for three years through FY 14-15. As a result of this settlement this unit has added two contract lawyers, both of whom are funded through the custodial funds recovered in National Mortgage Settlement. One of these lawyers has primary responsibility for monitoring the programs that have been established with the custodial funds. This position will continue through FY 14-15.

Problem:

These program areas are primarily funded by four sources: General Fund, The Consumer Protection Custodial Fund, Tobacco Litigation dollars, and moneys provided by the Department of Regulatory Affairs Division of Real Estate's Mortgage Loan Originator Program. Additionally, small revenue streams from No Call dollars are included to help bolster Consumer Protection and Antitrust Efforts.

This request is exclusively focusing on the operating dollar needs supported by the General Fund, the Consumer Protection Custodial Fund, and the Mortgage Fraud dollars provided as Reappropriated Dollars from the Department of Regulatory Agencies.

Generally, The Department of Law has had a growing issue with available and appropriate operating dollars for the programmatic needs within this line item. Please see Chart #1 and Chart #2 below. These charts demonstrate that only a few operating expenses can be housed within this line item, leaving no resources within the line item to cover any litigation expenses, in-state or out-of-state travel and per diems to effectively investigate and potentially prosecute various fraud complaints, and general costs to support and follow up on consumer fraud tips provided by the public and any educational resources provided by this office.

The Department has been able to absorb these costs by two means in the past.

First, the Department of Law had the unusual flexibility to move operating POTS from the centrally appropriated lines to programmatic lines like the Consumer Protection and Antitrust Line Item. Such operating POTS included: Capitol Complex and now Carr Bldg Lease Costs, Building Security in the old building, Workers Compensation expenses, Information Technology Asset expenses, etc.. This flexibility allowed the Department to move budgets to various lines to accommodate some operating expenses, when available resources from POT moves to other lines were not necessary to help cover the costs of that particular line item. In short, the Department could move operating POTS to a line item in excess of the expenses incurred in that line item for a particular expense, if base dollar were available to cover these like expenses in another line item. This flexibility is no longer available in the new, state accounting system: CORE, which has replaced

COFRS. All of the operating centrally appropriated lines will have their costs accounted for in each operating "POTTED" line item for FY 15 and out years, thereby completely eliminating this flexibility.

Secondly, the Department of Law's Consumer Protection and Antitrust efforts periodically receive custodial dollars from court awards and other settlements to be used within the specific direction of the settlement or award. Often times, the direction provided in these awards include language stating, "...to be held along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud or antitrust enforcement actions." This language has allowed the Department to move operating expenses incurred due to the normal course of providing consumer fraud and antitrust enforcement and education efforts to moneys that are outside of the appropriated line.

The Department of Law provides the General Assembly each award letter and, through the annual budget request, demonstrates the use of each custodial fund by object code each year. The Department maintains transparency by paying for all state employee salary and benefits incurred by the custodial fund within the Consumer Protection and Antitrust line item. However, the Department cannot house all relevant operating expenses in the line item, due to insufficient spending authority.

This request is attempting to right size the spending authority within the line item by fund source to better reflect annual anticipated costs.

Anticipated Outcomes:

Although this request has a General Fund impact, it ultimately will better reflect costs by activity and appropriate fund source, thereby minimizing the Custodial Fund's supplementing of other resources. Additionally, this request will better align needed dollars thereby producing a better demonstration of all costs needed to support the state employees and their operating expenses within an appropriated line item.

Assumptions for Calculations:

3 year average on operating expenses not associated with Centrally Appropriated Operating "POTTED" lines.

Consequences if not Funded:

If this request is not funded, the department will continue to prioritize and manage the workload efforts

and funding needs within existing and available resources.

Impacts to Other State Agencies:

This request, if approved, will increase the reappropriated dollars that are transferred from the Department of Regulatory Affairs by roughly \$19,000.

Current Statutory Authority or Needed Statutory Change:

No statutory changes needed.

C.R.S. 24-31-108(3), “If all or a portion of moneys received by the attorney general and paid to the department of treasury pursuant to section 24-31-101(1)(d) are custodial moneys, the attorney general shall direct the state treasurer in writing to place such custodial moneys in a separate account. Any custodial moneys placed in a separate account pursuant to this subsection (3) shall not be subject to annual appropriation by the general assembly. A copy of the written direction to the state treasurer shall be delivered to the joint budget committee...”

Chart 1: Estimated Personal Service Expenses FY 15

	GF	CF	RF	Total
Est FY 15 Salaries by Fund	991,188	882,569	226,956	2,100,713
PERA	100,606	89,581	23,036	213,222
Medicare	14,372	12,797	3,291	30,460
STD	2,181	1,942	499	4,622
AED	39,648	35,303	9,078	84,029
SAED	37,170	33,096	8,511	78,777
HLD	68773	95613	10932	175,318
Other Employee Benefits	2950	2000	250	5,200
Contracts	2500			2,500
Estimated Totals	1,259,386	1,152,901	282,553	2,694,840
Total Appropriation	1,290,274	1,165,523	294,358	2,750,155
Difference/Available for Operating	30,888	12,622	11,805	55,315

Chart 2:

3 Year Average on Certain Object Codes in Consumer Protection and Antitrust Line Item and Costs absorbed within the Consumer Protection Custodial Fund #1460:

2630	COMM SVCS FROM DIV OF TELECOM	12,799
2631	COMM SVCS FROM OUTSIDE SOURCES	4,344
2680	PRINTING/REPRODUCTION SERVICES	13,170
3121	OFFICE SUPPLIES	9,853
3123	POSTAGE	5,766
2252	RENTAL/MOTOR POOL MILE CHARGE	1,347
2258	PARKING FEES	2,570
Est FY 15 Expenses new Contract	CLEAR Subscription Est based on new contract	6,533
	Total	56,383

Chart 3:
Estimated FY 15 Budget with POTS moves into Line Item:

	GF	CF	CF	CF	RF	
		Tobacco	No Call	146 Custodial	Real Estate	Total
FY15 Appropriation	1,106,670	161,860	25,719	773,832	260,579	2,328,660
Classified SS				19,908	3,510	23,418
Non Classified SS	24,576	1,549			1,256	27,381
Classified Perf				6,378	772	7,150
Non Classified Perf	12,296				844	13,140
Health/Life/Dental	68,773	5,625		89,676	10,932	175,006
Short Term Disability	2,895	209		2,701	455	6,260
AED	38,743	3,795		39,443	8,263	90,244
SAED	36,321	3,558		31,270	7,747	78,896
Total by Fund Type						
	1,290,274	176,596	25,719	963,208	294,358	

Chart 4: Calculations for Request:

A	FY 12, 13, 14 Avg CP Operating	163,175
B	FY 12, 13, 14 Avg Operating moved to CP Custodial Fund	59,963
C= A+B	Total	223,137
D = Total Difference in Chart 1 - C	Difference/Need	(167,823)
E =D*(10GF FTE/26 Total FTE)	Need by Fund Source GF Based on FTE % in Line Item	64,547
F = D*(13 CF FTE/26 Total FTE)	Need by Fund Source CF Based on FTE % in Line Item	83,911
G = D*(3 RF FTE/26 Total FTE)	Need by Fund Source RF Based on FTE % in Line Item	19,365

Schedule 13
Funding Request for the 2015-16 Budget Cycle

Department: Department of Law
 Request Title: Vehicle Lease Payments Decision Item
 Priority Number: Non Priority

Dept. Approval by: *Jan Peta* 10/15/14
 Date

x Decision Item FY 2015-16
Base Reduction Item FY 2015-16
Supplemental FY 2014-15
Budget Amendment FY 2015-16

OSPB Approval by: _____
 Date

Line Item Information		FY 2014-15		FY 2015-16		FY 2016-17
		1	2	3	4	6
	Fund	Appropriation FY 2014-15	Supplemental Request FY 2014-15	Base Request FY 2015-16	Funding Change Request FY 2015-16	Continuation Amount FY 2016-17
Total of All Line Items	Total	58,588	-	58,588	12,694	-
	FTE	-	-	-	-	-
	GF	17,630	-	17,630	17,039	-
	GFE	-	-	-	-	-
	CF	17,097	-	17,097	(9,842)	-
	RF	21,382	-	21,382	2,198	-
	FF	2,479	-	2,479	3,299	-

(1) Administration:						
Vehicle Lease Payments	Total	58,588	-	58,588	12,694	-
	FTE	-	-	-	-	-
	GF	17,630	-	17,630	17,039	-
	GFE	-	-	-	-	-
	CF	17,097	-	17,097	(9,842)	-
	RF	21,382	-	21,382	2,198	-
	FF	2,479	-	2,479	3,299	-

Letternote Text Revision Required? Yes: No: If yes, describe the Letternote Text Revision:

Cash or Federal Fund Name and COFRS Fund Number: #1510 UCCC, #2960 POST, #16Z0 Insurance Fraud

Reappropriated Funds Source, by Department and Line Item Name: #26Q0 LSSA

Approval by OIT? Yes: No: Not Required: x

Schedule 13s from Affected Departments:

Other Information: