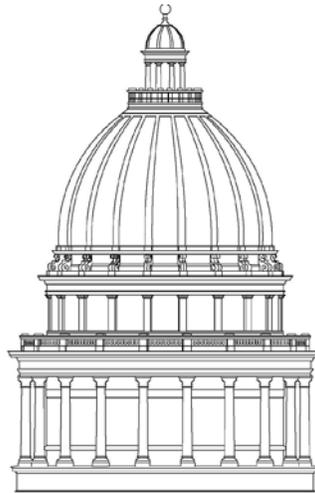


REPORT TO THE  
**UTAH LEGISLATURE**

Number 2015-06



**An In-Depth Budget Review of the  
Office of the Utah Attorney General**

June 2015

Office of the  
LEGISLATIVE AUDITOR GENERAL  
State of Utah





STATE OF UTAH

# Office of the Legislative Auditor General

315 HOUSE BUILDING • PO BOX 145315 • SALT LAKE CITY, UT 84114-5315  
(801) 538-1033 • FAX (801) 538-1063

## Audit Subcommittee of the Legislative Management Committee

President Wayne L. Niederhauser, Co-Chair • Speaker Gregory H. Hughes, Co-Chair  
Senator Gene Davis • Representative Brian S. King

JOHN M. SCHAFF, CIA  
AUDITOR GENERAL

June 23, 2015

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **An In-Depth Budget Review of the Office of the Utah Attorney General** (Report #2015-06). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "John M. Schaff" with a stylized flourish at the end.

John M. Schaff, CIA  
Auditor General

JMS/lm



# **Digest of an In-Depth Budget Review Of the Office of the Utah Attorney General**

The Utah Attorney General (AG) is the constitutionally mandated legal adviser to the state. Our office was asked to conduct two audits of the Office of the Utah Attorney General (OAG). This audit addresses issues dealing with budgetary controls, appropriateness of spending, issues with compensation, and use of contract attorneys. The other audit, titled *A Performance Audit of the Office of the Utah Attorney General 2015-05*, addresses improving performance management, increasing public transparency and accountability, ethics processes, individual accountability, and office efficiency and effectiveness. Controlling for settlement payments and litigation costs, the OAG's budget has increased 31 percent since 2007, from \$42.8 million to \$56.1 million. While the General Fund is the primary funding source for the OAG (averaging about 52 percent), the office also receives dedicated credits revenue from other entities for legal services averaging about 34 percent since fiscal year 2007. Other sources of revenue make up the other 14 percent, primarily from non-lapsing balances, federal funds, restricted revenue, and transfers from multiple sources. OAG staff and management were cooperative throughout our audit which helped enable a thorough review. Many of the concerns addressed in this report are long standing issues that precede the current AG.

## **Chapter II Improved Budgetary and Accounting Controls Necessary for Legal Services**

The OAG does not have adequate processes in place to contract, fund, and track legal services to state agencies. More than \$17 million of the OAG's budget consists of state agency payments (dedicated credits) for its legal services. Appropriating state agency payments for legal services as dedicated credits in the OAG's budget has been a long standing practice, but is not consistent with statute and also reduces transparency during the budgeting process. A complex system of legal services agreements has developed over time between the OAG and state agencies that lacks uniformity. This lack of uniformity in providing legal services contributes to inconsistent tracking of legal services costs with little or no legislative oversight of millions of dollars of incoming revenue. Implementing legislative compensation increases is complicated with the current dedicated credits process, and certain federal revenue could be at risk. Because the OAG receives more than \$17 million in legal services payments (dedicated credits) from state agencies per year, with about \$5.9 million from federal funds, we believe the Legislature should consider establishing an Internal Service Fund (ISF). We also found reporting and oversight of other funds is needed.

### **Chapter III**

## **Spending of Building Block Appropriations Generally Meets Intent**

Building block appropriations are spending items approved by the Legislature that constitute new money in an agency's budget. In general, building block expenditures by the OAG appear consistent with their stated legislative purposes. We were able to validate 50 of 53 building blocks received by the OAG since fiscal year 2010. However, we were not able to verify spending for two building blocks because of insufficient accounting in the division overseeing them. In addition, questions remain with another building block that will require follow-up from the Legislature to ensure adequate tracking. We also noted that, while two other building blocks were spent in accordance with their intended purposes, concerns exist that will require further legislative action to resolve. For example, the OAG hired full-time employees with a one-time appropriation intended to be spent over multiple years. Finally, appropriations from a restricted account far exceed the account's revenues, leaving the OAG in a position to subsidize the full-time attorneys hired with other funds.

### **Chapter IV**

## **Compensation on Low End but Turnover Rates Are Favorable**

The use of dedicated credits to partially cover salary increases for Utah's Assistant Attorneys General (assistant AGs) is challenging because the dedicated credits must be collected from other state agencies receiving legal services. These state agencies must pay for the increases out of their own budgets if able, and this process limits the OAG's ability to cover all salary increases. As discussed in Chapter II of this report, the creation of an Internal Service Fund would help address this problem. Our review of compensation found that entry-level salaries for assistant AGs compare well on a national survey for public attorneys, but assistant AG salaries fail to keep up over time. Our survey of local public attorney salaries found that assistant AGs appear on the lower end of all years of service categories. However, assistant AG turnover rates compare favorably and retention of attorneys is similar to the Salt Lake County District Attorney's Office. While turnover rates do not appear high in comparison to other offices we reviewed, we recommend the office monitor turnover rates and document reasons for employees leaving in the future to help guide management decisions.

## **Chapter V**

### **Isolated Events Increased Attorney Contracting Costs**

The contract attorneys line item in the OAG's budget has been a concern to the Legislature because of the large increases in the past few years. Much of the increase is due to the Legislature's use of this line item to appropriate and account for the state's settlement costs, which are largely pass-through funds not used in the OAG's operating budget, but this appropriations issue was recently addressed. While we did not identify concerns with the use of contract attorneys, we do recommend a more transparent accounting of settlement costs by including them in the other charges/pass-through expenditure category instead of current expenses. After removing settlement costs from the contract attorneys line item, highway projects make up the bulk of the activities in the line item. The Utah Department of Transportation (UDOT) reimburses the OAG for these costs and the majority of attorney contracting is used for condemnation cases that occur with large highway projects. Two recent Utah Supreme Court cases may further increase these condemnation costs in the future.

Other reviewed states use attorney contracting for similar reasons, but also contract out services that Utah's OAG provides in-house. OAG management uses attorney contracting for large temporary caseloads and specialty cases when no in-house expertise exists. It appears that the OAG has adequate controls in place to monitor the quality of contracted attorney services.

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# REPORT TO THE UTAH LEGISLATURE

Report No. 2015-06

## **An In-Depth Budget Review of the Office of the Utah Attorney General**

June 2015

Audit Performed By:

Audit Manager	Darin Underwood
Audit Supervisor	Brian Dean
Audit Staff	August Lehman Zackery King Matthew Harvey



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# Chapter I

## Introduction

The Utah Attorney General (AG) is the constitutionally mandated legal adviser to the state. Our office was asked to conduct two audits of the Office of the Utah Attorney General (OAG). This audit addresses issues dealing with budgetary controls, appropriateness of spending, issues with compensation, and use of contract attorneys. The other audit, titled *A Performance Audit of the Office of the Utah Attorney General, 2015-05*, addresses improving performance management, increasing public transparency and accountability, ethics processes, individual accountability, and office efficiency and effectiveness. The OAG staff and management were cooperative throughout our audit which helped enable a thorough review. Many of the concerns addressed in this report are long standing issues that precede the current AG. This chapter discusses primarily the OAG's sources of funding and expenditures.

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**This audit addresses issues dealing with budgetary controls, appropriateness of spending, issues with compensation, and use of contract attorneys.**

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### Attorney General Primary Funding Source Is the General Fund

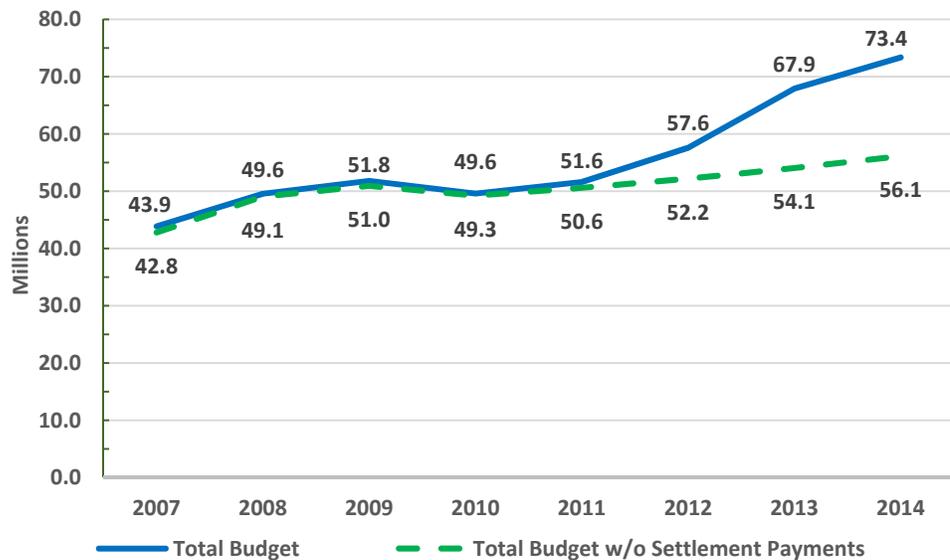
The primary funding source for the OAG is the General Fund. Dedicated credits account for about one-third of funding for the OAG. The remaining revenue sources for the OAG are federal funds, restricted revenues, and transfers. Controlling for settlement payments and litigation costs, the OAG's budget has increased about 31 percent since 2007, from \$42.8 million to \$56.1 million, as illustrated in Figure 1.1.<sup>1</sup> Settlement payments and litigation costs are controlled for because these revenues are primarily pass-through funds or reimbursements. As shown in Figure 1.1, the large increases in the total budget beginning in fiscal year 2011 result from multiple settlement payments each fiscal year.

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<sup>1</sup> Settlement payments and litigation costs are not typically part of the OAG's operating budget. Instead, they are funds appropriated by the Legislature to the OAG that; (1) get passed through to whomever the recipient of the settlement payment is, or (2) reimburse the OAG for its costs of defending the state or litigating on its behalf. Because these appropriations are essentially pass-through funds or reimbursements, we have excluded them from our analysis of the OAG's budget throughout this review.

Typically, the state pays court-ordered settlement payments and/or litigation costs each fiscal year. However, because of large payments for the Pelt Settlement, these appropriations were abnormally large from fiscal years 2011 to 2014. The average settlement payment from fiscal years 2007 to 2014 (including Pelt Settlement payments), was about \$5 million, with a range between \$322,600 and about \$14.2 million. Excluding Pelt Settlement payments, the average was about \$698,200, with a range between \$0 and about \$3.7 million. Settlement payments and litigation costs are discussed in more detail in Chapter V of this report.

**Figure 1.1 Attorney General Total Budget.** Total budget includes settlement payments and litigation costs as well as the Attorney General’s operating budget. The OAG’s operating budget minus settlement payments and litigation costs is represented with the dotted line.



Source: Legislative Fiscal Analyst and Appropriations Reports from General Sessions 2006 - 2014

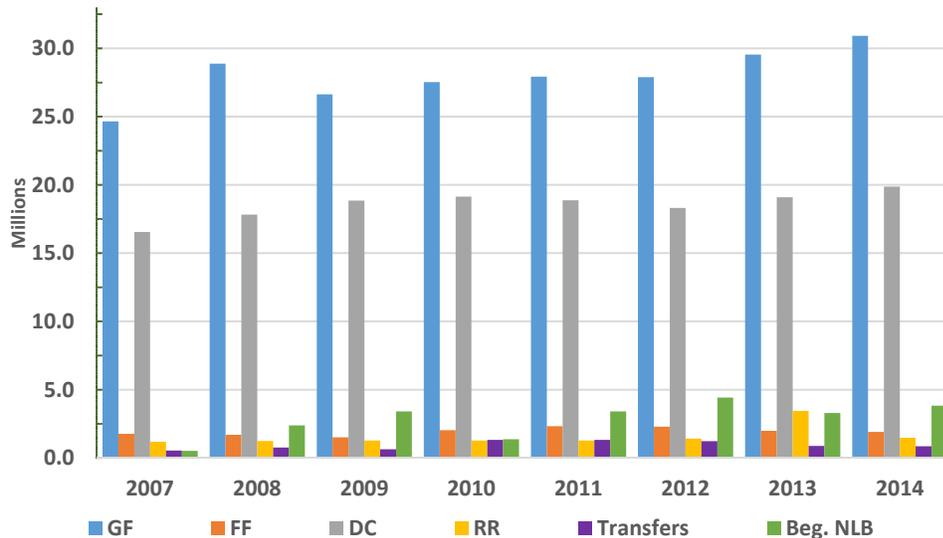
Figure 1.2 charts the main sources of revenue in the OAG’s operating budget for fiscal years 2007 through 2014. Of available funding shown in Figure 1.2, General Fund appropriations averaged about 52 percent of the OAG’s total revenue sources with dedicated credits revenue averaging about 34 percent since fiscal year 2007.

Other sources of revenue include non-lapsing balances averaging 5 percent, federal funds averaging 4 percent, restricted revenue from multiple sources averaging 3 percent, and transfers from multiple

**About 52 percent of OAG funding comes from the General Fund and about 34 percent comes from dedicated credits.**

sources averaging 2 percent. Additional detail on the make-up of these revenue sources is included in Appendix A of this report.

**Figure 1.2 OAG Funding Sources for Operating Budget.** This figure shows sources of funding but does not include settlement payments or litigation costs.



GF – General Fund; FF – Federal Funds; DC – Dedicated Credits; RR – Restricted Revenue; Transfers – Transfers; Beg. NLB – Beginning Nonlapsing Balances  
 Source: Legislative Fiscal Analyst

Adjusting for settlement payments and litigation costs, the OAG’s General Fund appropriations grew an average of 5 percent from fiscal years 2007 through 2014; the range of growth was between about -8.0 percent and 19 percent. The large jump in fiscal year 2008 was caused by about \$4.5 million and \$1.9 million in ongoing and one-time appropriations, respectively. One funding item in question from fiscal year 2008 is a \$322,600 General Fund ongoing appropriation for litigation of the Pelt case. The litigation of this case is now over and the settlement payments have been made, yet it appears the ongoing appropriation is still being made. OAG staff indicated that they do not know how the \$322,600 is being spent, but also stated that the cuts the OAG received in subsequent years were far in excess of this appropriation.

As exhibited in Figure 1.2, dedicated credits revenue is a major source of funding for OAG operations, averaging about \$17.3 million per year in fiscal years 2007 through 2014. On average, about 94 percent of this dedicated credits revenue was realized from billing state agencies for legal/professional services, which equaled about one-

**Adjusting for settlement payments and litigation costs, the OAG’s General Fund appropriations grew an average of 5 percent from fiscal years 2007 through 2014.**

third of the OAG's overall revenue each year. We discuss needed controls over this revenue source in more detail in Chapter II of this report.

## **OAG Expenditures Show Modest Growth**

OAG expenditures have shown modest growth over the years. Personnel costs make up about 85 percent of all annual expenditures for the office. We found that, while the OAG's average annual fulltime equivalent employees (FTE) total has increased by about 8 percent since 2007, salaries and wages have increased by about 24 percent for the same period.

### **Adjusting for Settlement Payments and Litigation Costs Reveals Modest Growth in OAG Expenditures**

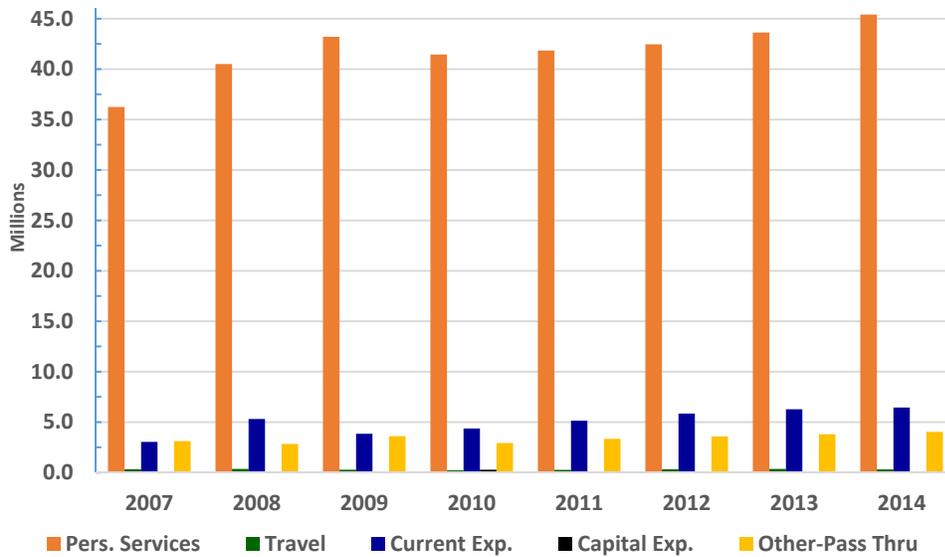
Figure 1.3 provides a historical trend of OAG expenditures by spending category, from fiscal years 2007 through 2014. Historically, the OAG has accounted for settlement payments and litigation costs in the current expense category. To show the OAG's operating budget, Figure 1.3 does not include settlement payments or litigation costs, which would increase current expenses by about \$5 million on average from fiscal years 2007 through 2014, the range being \$322,600 and about \$14.2 million.

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**While the OAG's average annual fulltime equivalent employees (FTE) total has increased by about 8 percent since 2007, salaries and wages have increased by about 24 percent for the same period.**

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**Figure 1.3 OAG Expenditures by Category.** Personnel services makes up the majority of annual expenditures by the OAG. This chart does not include settlement payments or litigation costs.



Source: Division of Finance – Data warehouse. See Appendix B for further explanation of expenditure categories.

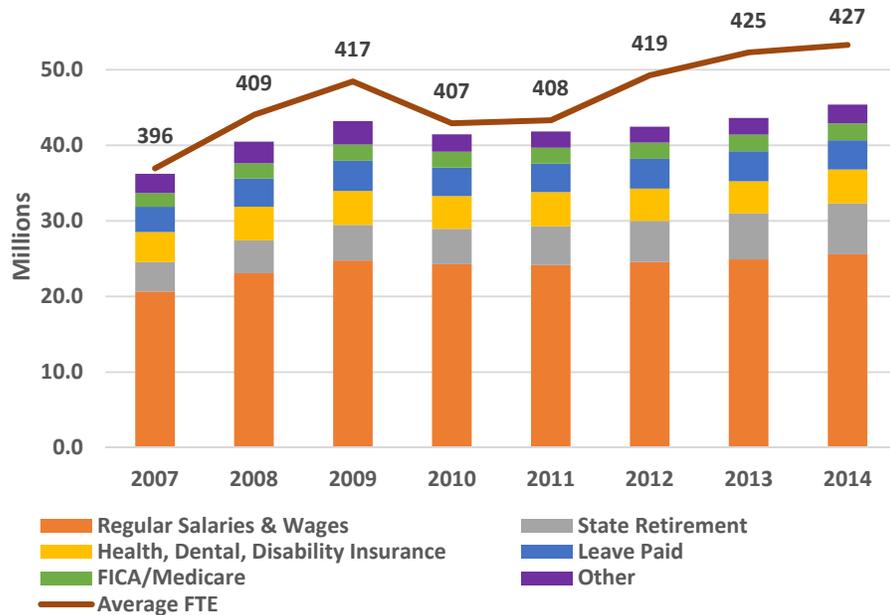
Adjusting for settlement payments and litigation costs, current expenses for the OAG increased by an average of 9 percent per year, with a range of -28 percent and 75 percent. Although spending on attorneys fees or outside counsel fluctuates from year to year, payments in this spending category are a major contributor to the growth in current expenses each fiscal year. For example, in fiscal year 2008, the increase in this spending category was almost \$1 million from fiscal year 2007. Additionally, from fiscal year 2010 to fiscal year 2014 the spending in current expenses for attorney fees increased from about \$435,700 to about \$2.1 million. Other spending categories that show a trend of increases are payments for professional and technical services and operating supplies and maintenance repairs for buildings.

### Personnel Costs Make Up About 85 Percent of Annual Expenditures

Figure 1.4 focuses on the personnel services element of the OAG’s expenditures. It exhibits the top five contributing costs to the OAG’s personnel expenditures and groups the rest into the “other” category. The figure also charts the average FTE for each fiscal year; the average FTE is shown to reflect the fact that employees come and go, making the total FTE count a fluid number throughout the fiscal year.

**Personnel costs make up about 85 percent of annual expenditures for the OAG.**

**Figure 1.4 Personnel Services Breakdown Compared to Average FTEs.** The personnel services breakdown is shown for fiscal years 2007 through 2014. The FTE number represents the average number of FTEs for the entire fiscal year.



Source: Data Warehouse

The average annual FTE total for the OAG increased from 396 in fiscal year 2007 to 427 in fiscal year 2014, representing a 7.8 percent increase. Salaries and wages have increased by about \$4.9 million in that same period, representing about a 24 percent increase. Compensation for the OAG is discussed in more detail in Chapter IV of this report.

### OAG Administers Several Off-Budget Funds

Off-budget funds are those funds administered by an agency that do not receive legislative oversight through the normal budgeting process. Typically, these funds are special revenue funds, trust funds, agency funds, or other fund types that do not require a legislative appropriation for the agency to spend their balances. However, these funds are generally set up for specific purposes and can have other oversight mechanisms in place; they may be created through statute and may even be set up administratively by the Division of Finance in cooperation with an agency. Each fund is unique in purpose and

**The OAG also administers the Attorney General Litigation Fund and three off budget funds.**

function, and, unless required by statute, reporting on each fund is usually done only upon request by the Legislature.

The OAG administers the Attorney General Litigation Fund and three off-budget funds. As an expendable special revenue fund, the Attorney General Litigation Fund fits the description of an off-budget fund, however, the OAG receives a direct appropriation from it, which is not typical for an off-budget fund. The Attorney General Consumer Programs Fund, Attorney General Crime & Violence Prevention Fund, and the Attorney General Financial Crimes Fund are the three off-budget funds administered by the OAG. In addition to these off-budget funds, we have included detail about the General Fund Restricted - Abortion Litigation Account in this report. Statute limits the expenditure of its funds, until fiscal year 2015, to AG costs for the defense of specific laws that might be passed. Because of this and other language in statute regarding the account, we have included detail about it in this report. All these funds are discussed in greater detail in Chapter II and Appendix D.

## **Audit Scope and Objectives**

Our office conducted a performance audit and an in-depth budget review of the Attorney General's Office. The results of the performance audit are found in a separate report (*A Performance Audit of the Office of the Utah Attorney General 2015-05*). That report addressed improving performance management and accountability, ethics processes, individual accountability, and office efficiency and effectiveness, and increasing public transparency.

This report addresses the in-depth budget review of the Office of the Attorney General. Chapter I addresses the services and funding/expenditure levels of the Office of the Attorney General. The remaining chapters of this report address the following issues:

- Chapter II – Increased accounting and budgetary controls necessary for legal services
- Chapter III – Spending of building block appropriations appears to meet intended purposes
- Chapter IV – Compensation on low end, but turnover rates are favorable
- Chapter V – Use of contract attorneys

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## Chapter II

# Improved Budgetary and Accounting Controls Necessary for Legal Services

The Office of the Utah Attorney General (OAG) does not have adequate processes in place to contract, fund, and track legal services to state agencies. More than \$17 million of the OAG's budget consists of state agency payments (dedicated credits) for its legal services. Appropriating state agency payments for legal services as dedicated credits in the OAG's budget has been a long standing practice, but is not consistent with statute and also reduces transparency during the budgeting process. A complex system of legal services agreements has developed over time between the OAG and state agencies that lacks uniformity. This lack of uniformity in providing legal services contributes to inconsistent tracking of legal services costs with little or no legislative oversight for millions of dollars of revenue. Implementing legislative compensation increases is complicated with the current dedicated credits approach and certain federal revenue could be at risk. Because the OAG receives more than \$17 million in legal services payments (dedicated credits) from state agencies per year, with about \$5.9 million from federal funds; we believe the Legislature should consider establishing an Internal Service Fund (ISF). We also found reporting and oversight of other funds is needed.

### Long Standing Use of Dedicated Credits Is Not Consistent With Statute and Lacks Transparency

The OAG categorizes its legal services to state agencies as dedicated credits. This use of dedicated credits has been a long standing practice that was inherited by the current AG, but this usage does not fit the statutory description of a dedicated credits program. Additionally, this categorization is not consistent with statute. Instead, the revenue should be accounted and budgeted for as transfers. *Utah Code* 63J-2-102 defines dedicated credits as "...revenues from collections by an agency that are deposited directly into an account for expenditure on a separate line item and program." Applying this definition, the collection of fees, fines, and/or other revenue-generating transactions outside of General Fund appropriations can be

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**The OAG does not have adequate processes in place to contract, fund, and track legal services to state agencies. Improved budgetary and accounting controls would address the issues identified in this chapter.**

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**The OAG's dedicated credits are largely comprised of transfers received from state agencies for the legal/professional services it provides. Dedicated credits make up about a third of the OAG's budget and its use is not consistent with statute.**

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categorized as dedicated credits revenue in budgeting. However, the OAG's "dedicated credits" are largely comprised of transfers received from state agencies for the legal/professional services it provides. Thus, the OAG's "dedicated credits" are not new revenues coming into state coffers, but consist largely of General Fund, restricted revenue, and/or federal fund appropriations to state agencies that are being transferred to the OAG.

### **Use of Dedicated Credits Is Not Consistent With Statute**

While statute allows the OAG to bill agencies for legal services, defining state agency payments to the OAG for legal/professional services as dedicated credits is expressly forbidden by statute. *Utah Code* 63J-2-102 states:

Dedicated credits does not mean:

- (i) federal revenues and the related pass through or the related state match paid by one agency to another;
- (ii) revenues that are not deposited in governmental funds;
- (iii) revenues from any contracts; and
- (iv) revenues received by the Attorney General's Office from billings for professional services.

Appropriating state agency payments for legal services as dedicated credits does not only create these statutory issues in the OAG's budget, but lack of transparency is a challenge with the current process.

### **Use of Dedicated Credits Limits Transparency**

The OAG's use of dedicated credits also limits transparency. For example, the Legislature is not privy to the negotiations between the OAG and the agencies for additional legal services but is asked to approve them after the fact. Additionally, a hire-first, ask-later approach may be enabled in the application of the 125 percent rule for dedicated credits revenue. The 125 percent rule allows an agency to spend up to 25 percent more in dedicated credits revenue than it is appropriated from the Legislature.

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**Appropriating legal services as dedicated credits is expressly forbidden by statute.**

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**Dedicated credits budgeting rules create an environment where the OAG can add additional attorneys to meet agency demands and then ask for permanent funding after the fact.**

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While statute does exclude hiring permanent employees “...unless approved by the Legislature...” in the application of this rule, the language is vague enough that it could open the door for the OAG to add attorneys without legislative approval, then request funding after the fact. This situation took place in fiscal year 2013. In need of additional legal services, the Department of Natural Resources (DNR) paid for an attorney with one-time money from its own budget because the OAG did not have the resources available. This arrangement was made without legislative approval for a new FTE. During the 2013 General Session, the Attorney General (AG) requested, and the Legislature funded, a \$100,000 General Fund ongoing request for DNR Fire/Forestry/State Lands Legal Support after the fact.

Another transparency issue with using dedicated credits is the backdoor appropriation that indirectly increases the OAG’s dedicated credits amount. The OAG’s dedicated credits appropriation can increase indirectly when agencies are approved funding for legal services in their own budgets through their respective appropriations subcommittees.

For example, during the 2015 General Session, the Department of Environmental Quality (DEQ) received a \$135,000 General Fund ongoing appropriation from the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee for air quality attorney general support. According to DEQ testimony, this attorney will be hired by the OAG to provide legal services. If the OAG’s current practices are applied to this new DEQ funding, in subsequent budgets, DEQ will transfer this General Fund appropriation to the OAG, which will recognize the transfer as dedicated credits revenue in its budget and incorporate it into its future budget requests. This attorney was not a direct appropriation to the OAG from its own appropriations subcommittee (Executive Offices and Criminal Justice or EOCJ), but EOCJ will have to approve it going forward in the OAG’s catch-all dedicated credits appropriation.

Another issue with appropriating legal services as dedicated credits is that of double counting. The Legislature appropriates General Fund, federal funds, restricted funds, and even other dedicated credits revenue to state agencies. State agencies then use their own appropriations to pay the OAG for legal services. Making a dedicated credits appropriation in the OAG’s budget for the same funds that are

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**Making direct appropriations to state agencies for legal services from the OAG indirectly increases the OAG’s budget.**

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**Appropriating legal services payments to the OAG as dedicated credits double counts them in the annual state budget roll-up.**

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also appropriated to state agencies results in the dedicated credits being double counted in the budget roll up each year.

## **Budgeting and Accounting for Legal Services Needs Improvement**

In the 2001 General Session, the then AG explained his priority to combine all state-agency attorneys into the OAG. This centralization of attorneys was carried out over many years and the issue of how legal services would be paid for was worked out with each agency individually. This has led to a complex system of agreements for providing legal services that lacks uniformity and that continues to grow with little legislative oversight. This system contributes to inconsistent methods of tracking hours and other cost variables for legal services that may put some federal funds at risk. Managing compensation increases approved by the Legislature is complicated by the current processes as well. We therefore recommend that the Legislature consider accounting for selected OAG legal services in an Internal Service Fund (ISF).

An ISF can be used when an agency provides goods or services to other state agencies, like the OAG's legal services. Accounting for ISFs is done on a cost reimbursement basis, which would mitigate many of these concerns. If an ISF is not preferred, this report offers the Legislature other options:

- Require that legal services be accounted for in a cost allocation plan (CAP)
- Legislate a billing change for legal services

While we recognize that the accounting and budgetary concerns for legal services discussed in this chapter can be addressed in several different ways, we recommend that the OAG work with the Legislature through the Legislative Fiscal Analyst (LFA) to address them.

### **OAG Lacks Uniformity and Consistency in Providing Legal Services and Tracking Costs**

Legal services are funded through both the OAG's operating budget and, as previously discussed, through state agency budgets that

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**The OAG's system for providing legal services to state agencies lacks uniformity. The OAG does not track costs of legal services consistently.**

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pay the OAG for its legal services. More than \$17 million is negotiated between the OAG and state agencies for legal services each year, which the OAG recognizes as dedicated credits revenue in its budget. The OAG does not have a uniform system for providing legal services. In addition to lacking uniformity, the OAG does not have an adequate agency-wide data system to track legal services costs consistently. Instead, multiple data systems are used that differ depending on the OAG division and the agency that is receiving legal services.

Each year after the general session, the OAG holds negotiations with state agencies to determine what legal services will be provided and how agencies will pay for them. Over the years, these negotiations have resulted in a variety of agreements between the OAG and state agencies that range from memorandums of agreement (MOA) or memorandums of understanding (MOU) to verbal agreements. Reviewing source documentation, we were able to identify 33 written OAG agreements with 21 different agencies. According to OAG management, it also has verbal agreements to provide legal services to 6 other agencies, for a total of 39 different agreements that lack uniformity.

Some of these legal services agreements contain language requiring a report to track the level of service by attorney, by hour, by case, or other means. However, we found that reporting requirements differ depending on the agreement. Some agreements do not mention reporting at all, implicitly leaving it up to the agency and/or OAG to track attorney time and services provided.

As reported in our other audit, *A Performance Audit of the Office of the Utah Attorney General 2015-05*, the OAG does not have an effective performance management system applied throughout the agency; instead, division directors are left to carry out any reporting and/or performance measurement activities. Similarly, the OAG's current practices for tracking costs do not include an agency-wide system where hours and services provided by attorneys are tracked.

The current approach to providing legal services and tracking their associated costs makes it difficult to determine if services provided to some agencies are in accordance with their respective agreements. This leads to the question of whether the OAG is overbilling or underbilling agencies for legal services. For example, in some cases, OAG General Fund appropriations may subsidize work that exceeds

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**Some agreements between the OAG and state agencies to provide and pay for legal services range from memorandums of understanding to verbal agreements.**

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**The OAG does not have an agency-wide system to track costs of legal services. Instead, multiple tracking systems are used and they differ depending on the OAG division providing legal services and the agency receiving them.**

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agreed upon amounts in agencies that pay through the dedicated credits process. On the other hand, some agencies may be paying more for legal services than they receive, and if they use their own federal funds as payment for legal services, these federal funds could be at risk.

### **Current Accounting of Legal Services Could Put Federal Funds at Risk**

Although OAG legal services are not currently accounted for in an Internal Service Fund (ISF), the federal government treats the OAG as an ISF because it provides centralized legal services to state agencies, some of which are partially funded by federal funds. Approximately one-third of legal services revenue transferred to the OAG by agencies comes from federal funds; the fiscal year 2016 estimate is about \$5.9 million. For this reason, the federal government requires the Division of Finance to file a Form 87 for OAG services. This form originates from the federal Office of Management and Budget as an accounting control to keep track of the services federal grants pay for; submission of Form 87 is required for all ISFs. Because the OAG does not track its legal services costs as an ISF would, the Division of Finance is not able to provide the level of detail required on the federal Form 87.

The federal government has already taken some action in Utah. For example, it has required reimbursement from DTS for overbilling in the past and has recently contacted the Department of Human Resource Management (DHRM) to inquire about its billing for legal services. Our concern is that, if the federal government were to inquire further into the OAG's operations, the OAG could be expected to reimburse the federal government for any amount a federally funded agency has been overbilled. By better tracking its legal services to state agencies by units (hours, cases, legal counsel, and so on) and by standardizing billing, the OAG would be in a better position to avoid this risk.

### **Pay Increases Are Constrained By Current Funding System**

In the 2014 General Session, the Legislature approved a \$2,381,800 appropriation to the OAG for salary parity increases. The funding for this appropriation came from the General Fund (\$1 million), dedicated credits (\$1.2 million) and federal funds (\$138,200). Because dedicated credits appropriations are essentially

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**The OAG currently operates like an ISF and is accounted for as an ISF by the Division of Finance and the federal government.**

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**By better tracking its legal services to state agencies by units (hours, cases, legal counsel, and so on) and by standardizing billing, the OAG would be in a better position to avoid the risk of paying back federal funds.**

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authorized spending limits, and the OAG's dedicated credits appropriations consist of fund transfers from state agencies for legal services, the OAG was dependent upon state agencies to cover over half of this salary increase from their operating budgets.

In cases like this, agencies also need to receive additional appropriations to cover the OAG's salary increases; if added funds are not appropriated, agencies have to find the extra funds in their own budgets. This same problem occurs when the Legislature approves compensation increases, like a cost-of-living adjustment. Intuitively, collecting the full amount of an appropriated increase of dedicated credits is not always possible for the OAG, and in this case, the OAG could not distribute the full amount of the salary parity increases appropriated by the Legislature. Funding OAG legal services as an ISF or a similar method could alleviate this problem.

### **Additional Controls for Legal Services Necessary**

To encourage uniformity in the delivery and billing of OAG legal services, we recommend that the Legislature consider an Internal Service Fund (ISF). This recommendation is supported by the Legislative Fiscal Analyst. If an ISF is not preferred by the Legislature, then we recommend it consider either a cost allocation plan (CAP) or a new line item for legal services. To ensure accountability and transparency, each alternative would need accompanying statutory language to require ISF-like reporting.

**We Recommend the Legislature Consider Creating an Internal Service Fund (ISF) for Selected Legal Services.** According to the *Governmental Accounting, Auditing, and Financial Reporting: Blue Book* and Generally Accepted Accounting Principles (GAAP), internal service funds are utilized "...to report any activity that provides goods or services to other funds, departments, or agencies of the primary government and its component units, or to other governments on a cost-reimbursement basis." Further, the Blue Book says that the use of an ISF is limited to services where the government is the predominant participant, and that an ISF must "function on...a break-even basis over time." An example is DHRM, which provides human resource services to state agencies that are accounted and budgeted for as an ISF. According to this definition, since the OAG

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**The current processes for budgeting and accounting for legal services leaves the OAG underfunded when compensation increases are approved by the Legislature.**

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**We recommend the Legislature consider implementing an Internal Service Fund to encourage uniformity in the delivery and billing of OAG legal services.**

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provides legal services primarily to government agencies, it currently operates as an ISF.

An ISF is required to report to a rate committee, and/or to the executive directors of the Division of Finance and the Governor's Office of Management and Budget each fiscal year to set the rates it charges to agencies for its services. The Legislature approves these rates during the budgeting process. By operating as an ISF on a cost-reimbursement basis and setting rates, the OAG would establish more standard billing procedures and be able to include salary increases in rates when approved by the Legislature. Because of an ISF's more extensive reporting requirements, the OAG would also be able to provide more detailed justification of costs to meet federal requirements, provide more budget transparency, and be subject to more legislative oversight of its legal services.

The OAG already bills some agencies on a rate-per-service basis and the new case management system being implemented could help facilitate the move to an ISF. For these reasons, we recommend that selected OAG legal services be accounted for as an ISF in a separate line item. In our interviews with national consultants that work with other state AGs on these issues, they were not aware of other states using an ISF to address these concerns. While this may be the case, the Legislative Fiscal Analyst (LFA) agrees that an ISF would be the best option for selected OAG legal services in Utah. If the Legislature decides to approve an ISF for OAG legal services, we recommend that the OAG work with LFA to determine the best manner to facilitate this change. If the Legislature does not want to consider an ISF, then it could consider a cost allocation plan.

**A Cost Allocation Plan (CAP) Is an Alternative to an ISF.** The national consultants we interviewed said that their recommendations to other state AGs usually center on a CAP or a revolving fund to account for legal services. Alaska, Nevada, Texas, and Oklahoma are state AGs these consultants have worked with. A CAP uses a weighted average to charge agencies statewide for the total costs of providing legal services. The weighted average is based upon the units (hours) of services agencies receive/use in legal services, and the total costs for the OAG to provide those services. As a result, the OAG's costs are allocated across all agencies and other governmental entities. This approach would provide the OAG a mechanism to budget for legal services on the front end by charging each state agency a budgeted

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**If the Legislature does not prefer an internal service fund, we recommend a cost allocation plan with accompanying statutory language requiring ISF-like reporting.**

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amount in the legislative general session and would enable the OAG to reconcile its agency billings at the end of each fiscal year, accounting for actual usage. According to the consultants, this model takes care of the federal government's concerns about billing for services.

A CAP would require the OAG to track hours spent providing legal services to agencies. This method would help the OAG establish more standard billing procedures, include salary increases in rates, as well as provide more detailed justification for use of federal funds. However, it would not necessarily lead to more transparency and legislative oversight of its budget. So, if a CAP becomes the Legislature's preferred option, we recommend that statutory language requiring ISF-like reporting should accompany a CAP for the OAG's legal services. This ensures that budgeting and reporting on the front end is accompanied by sufficient controls and reporting on the back end of the process.

**A New Line Item for Legal Services Is Also a Legislative Alternative to an ISF.** The Legislature could create a line item called Legal Services and make all operations that provide legal services part of it. The Legislature could also create statutory requirements for ISF-like tracking and reporting of legal services to agencies. This option would expand the OAG's currently limited system for tracking attorney time and other cost variables by agency, case, and service type, to an agency-wide system that financial staff and upper-management could use for internal decision making and providing reports to the Legislature and other stakeholders.

### **Additional Reporting and Oversight Of Other Funds Needed**

The Attorney General Litigation Fund is an expendable special revenue fund by statute that does not require a legislative appropriation for the OAG to spend its balances. However, the OAG currently receives a direct appropriation from the fund that can be eliminated without altering the OAG's operations. Additionally, the Attorney General Litigation Fund's balances have been on a downward trend since fiscal year 2012 and the potential exists for the Legislature to see building block requests to backfill the OAG's spending from this fund if this trend continues. While the OAG did report on this and three off-budget funds in fiscal year 2014, reporting

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**The Legislature could create a new line item with accompanying statutory language that requires ISF-like reporting to mitigate the budgeting, accounting, and transparency issues in the OAG's budget.**

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**We recommend additional reporting and oversight for the Attorney General Litigation Fund and the other off-budget funds administered by the OAG.**

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for previous years was lacking. We recommend more transparent and consistent reporting each year.

### **Attorney General Litigation Fund Needs Additional Oversight**

Because of the materiality of the Attorney General Litigation Fund, the fact that an appropriation is made from it to the OAG, and its significant contributions to the OAG's operational budget, it is treated separately in this report from the other funds administered by the OAG. The Attorney General Litigation Fund is an expendable special revenue fund, which normally would exclude it from the budgeting process. As it currently exists, the fund's purpose is to provide

...funds to pay for any costs and expenses incurred by the state attorney general in relation to actions under state or federal antitrust, criminal laws, or civil proceedings under Title 13, Chapter 44, Protection of Personal Information Act...

The fund has a \$2 million cap and the OAG relies on it to support several FTEs in its operating budget. Revenue to this fund comes from proceeds related to settlements and judgements of actions taken by the AG. Additional legislative oversight of the fund is needed, due to the fact that its balances have been decreasing, which could result in a future building block request from the OAG to the Legislature if the downward trend in fund balances continues.

According to personnel data submitted by the OAG, the Attorney General Litigation Fund pays for six FTEs in its office. One attorney, two paralegals, and a special investigator are paid for with fund balances. The other two FTEs have a \$300,000 appropriation earmarked from the fund to the OAG's operational budget each year. However, because the Attorney General Litigation Fund is an expendable special revenue fund, the OAG is permitted to expend fund balances consistent with the fund's purposes without an appropriation. As a result, this \$300,000 annual appropriation is not necessary and can be eliminated. OAG staff informed us that eliminating this appropriation will not change their operations.

Whether or not this change is made, it would be prudent to treat the fund as other expendable special revenue funds are treated. This

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**The Attorney General Litigation Fund contributes significantly to the OAG's operating budget and needs additional reporting and oversight to the Legislature.**

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**The current appropriation from the Attorney General Litigation Fund to the OAG's budget can be eliminated without altering OAG operations.**

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approach would require including it in the appropriations acts for legislative review each year and require a report to the Legislature on fund balances, revenue, and expenditures to the fund each year. Additional details of the fund are available in Appendix D of this report.

### **Annual Legislative Reporting on All Other Off-Budget Funds Would Increase Accountability of Fund Activities**

The OAG administers three other off-budget funds: the Crime & Violence Prevention Fund, the Consumer Programs Fund, and the Financial Crimes Fund. Each fund has a unique purpose and further detail for each is contained in Appendix D. In its 2014 in-depth budget review, the Legislative Fiscal Analyst recommended additional oversight and reporting to the Legislature for these funds. Overall, it appears that the reporting for all three of these funds was carried out in fiscal year 2014, at least verbally, but did not occur in any previous years. To increase accountability, the reporting of these funds should include a descriptive report of each fund in the future. The OAG should submit this report to the Executive Office and Criminal Justice Appropriations Subcommittee (EOCJ) at the end of each fiscal year and before the ensuing general session, and consider linking these reports to its website for public access.

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**The off-budget funds administered by the OAG need consistent reporting to enhance oversight from the Legislature.**

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## **Recommendations**

1. We recommend that the Legislature work with the OAG to establish an Internal Service Fund (ISF) for selected legal services for accounting purposes and separate them into their own line item for budgeting purposes. If the Legislature does not prefer an ISF, then we recommend one of the following:
  - Require that legal services be accounted for in a Cost Allocation Plan (CAP) and include statutory language requiring ISF-like accounting and reporting; create a separate line item for legal services for budgeting purposes
  - Legislate a billing change for legal services by:

- Creating a new line item called Legal Services and placing selected operations that provide legal services to state agencies in it
  - Including statutory language requiring ISF-like accounting and reporting requirements
2. We recommend that the Legislature appropriate legal services revenue to the OAG as transfers instead of dedicated credits to comply with statute.
  3. We recommend that the Legislature consider including the Attorney General Litigation Fund in the appropriations acts and eliminate the appropriation from the fund to the OAG's budget. We further recommend that the Legislature consider annual reporting requirements that describe the fund's balance, revenue, and expenditures each year.
  4. We recommend that the OAG annually issue a report that outlines all three off-budget fund balances, revenues, expenditures, and activities to the Executive Office and Criminal Justice Appropriations Subcommittee and link it to the OAG's website.

## **Chapter III**

# **Spending of Building Block Appropriations Generally Meets Intent**

In general, building block expenditures by the Office of the Utah Attorney General (OAG) appear consistent with their stated legislative purposes, we were able to validate 50 of 53 building blocks received by the OAG since fiscal year 2010. However, we were not able to verify spending for two building blocks because of insufficient accounting in the division overseeing them. In addition, questions remain with another building block that will require follow-up from the Legislature to ensure adequate tracking. We also noted that, while two other building blocks were spent in accordance with their intended purposes, concerns exist that will require further legislative action to resolve. For example, the OAG hired full-time employees with a one-time appropriation intended to be spent over multiple years. Finally, appropriations from a restricted account far exceed the account's revenues, leaving the OAG in a position to subsidize the full-time attorneys hired with other funds.

Building block appropriations are spending items approved by the Legislature that constitute new money in an agency's budget. When an agency makes a building block request for new funding, it is asked to provide data and analysis to justify the request. We followed up on each building block appropriation the Legislature made to the OAG for the five most recently completed fiscal years and have provided analysis that breaks down the OAG's spending of its building block appropriations.

Throughout this process, OAG financial management and staff were very cooperative in providing the information and documentation we requested, even when these requests did not necessarily produce a favorable result for the OAG. Not only did this process reveal a few areas of concern in the OAG's budget, but it revealed that the OAG's office has spent legislative appropriations according to their stated purposes in nearly every case. Adjusting for settlement payments and litigation costs, the OAG's building block appropriations total approximately \$10.3 million over the five years included in our analysis, an average of about \$2 million in increased appropriations per year. See Appendix C.1 for more details.

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**With only a few exceptions, building block expenditures by the OAG appear consistent with the stated legislative purposes of each respective item.**

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**Throughout this process, OAG financial management and staff were very cooperative in providing the information and documentation we requested, even when these requests did not necessarily produce a favorable result for the OAG.**

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## Building Block Expenditures Appear Consistent with Stated Purpose

In general, the OAG’s spending of its building block appropriations from the Legislature appear to be meeting their intended purposes. We reviewed the OAG’s building block appropriations from fiscal years 2010 to 2014 and were unable to verify spending on 2 of 53 building blocks because of inadequate accounting. One other building block became effective beginning July 1, 2014 and does not yet have a complete year of data. Additionally, this review identified issues within the OAG’s budget that will require legislative action to resolve.

Figure 3.1 breaks down the number of OAG building blocks funded by the Legislature by fiscal year. It contains a scale indicating the degree to which the OAG’s building block appropriations appear to have been spent according to their stated purposes. Three different designations are used in the scale: Yes, Partial, and No. In our review, zero building blocks received a designation of No. This table is derived from detailed tables found in appendices C.2 - C.6 that contain additional information about each individual building block.

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Since fiscal year 2010, the OAG has received 53 building blocks and none were found to be spent contrary to their intended purposes, but three were partial. Two were partial because of inadequate accounting and one was partial because of insufficient documentation related to a delayed implementation.

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**Figure 3.1 Degree to Which OAG Spending of Building Block Appropriations Meets Its Stated Purpose.** Five-year analysis of the OAG’s spending of its building block appropriations.

Fiscal Year	Yes	Partial	No	Total
2014	9	1	0	10
2013	11	0	0	11
2012	11	1	0	12
2011	9	1	0	10
2010	10	0	0	10
<b>Total</b>	<b>50</b>	<b>3</b>	<b>0</b>	<b>53</b>

*Source: Appropriations Reports from 2009 through 2014 General Sessions, meeting minutes and audio recordings of Legislative Committee Meetings, and Attorney General staff.*

Overall, for fiscal years 2010 through 2014, 53 new building block appropriations were made to the OAG, an average of about eleven per year. Fifty of the 53 appear to have been spent according to their stated purpose and were given a designation of Yes. Three appear to have been spent according to their stated purpose, but concerns about their spending remain, so are classified as Partial. Regardless of the

three Partial designations in our review, no building block appropriations appeared to be spent contrary to their purposes.

### **Insufficient Accounting Results In Unverifiable Spending**

We were unable to verify the spending of appropriations for two of the three building blocks designated Partial in Figure 3.1, specifically, the SECURE Strike Force and the Internet Crimes Against Children (ICAC) programs in the OAG's Investigations Division. These programs investigate criminal activity in areas of identity theft and abusive treatment of children.

The SECURE Strike Force received appropriations in fiscal years 2010, 2012, and 2013, both one-time and ongoing. General Fund ongoing appropriations totaled more than \$1 million for the program but we were unable to verify its expenditures during our review. The ICAC program received appropriations in fiscal years 2010, 2011, and 2012, again, both one-time and ongoing. We were unable to determine a purpose for a \$125,000 General Fund ongoing appropriation to the ICAC program in fiscal year 2011, other than it was a transfer from the Commission on Criminal and Juvenile Justice. Because the ICAC program was funded through federal grants until this \$125,000 appropriation in fiscal year 2011, and because of accounting issues discussed next, we were not able to verify expenditures for the ICAC program as a whole during our review.

In general, we found that the accounting for these programs has been inadequate because Investigations Division employees have not charged their time appropriately. Because of the adverse psychological impact of the work on Investigations Division employees, it has been a policy of past and current management to move investigators between programs regularly. For example, an investigator might work on the SECURE Strike Force for six months, then be moved to the ICAC program for the remaining six months of a fiscal year. To provide accountability, this regular job re-assignment means that employees must be disciplined in charging their time appropriately. However, according to division management, because of the sensitive nature of the division's work, previous management did not want to reveal program details, which was cited as a reason for division management's lack of oversight. We note that, if time is not charged appropriately, accounting of employee time will be insufficient and spending data will be unreliable.

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**Because of insufficient time-accounting we were unable to verify spending for multiple building blocks related to the SECURE Strike Force and the Internet Crimes Against Children programs.**

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As a result, determining how much spending can be attributed to the SECURE Strike Force, ICAC, and the other programs in the Investigations Division at the time of our review was not possible. Instead, we could only verify spending for the Investigations Division as a whole. OAG management says this issue has been fixed internally and they do not anticipate any issues going forward. However, neither fluid re-assignments between jobs, nor fear of transparency in reporting program expenditures to the public justify the errant charging of employee time to their proper job codes and programs in the Investigations Division. This issue could indicate lack of strong overall management of these programs, and is a concern that needs to be addressed in the future.

The third building block that received a designation of Partial in Figure 3.1 was Senate Bill (S.B.) 49, Child Welfare Modifications, 2013 General Session. The bill impacts multiple agencies and delays the implementation of certain provisions until fiscal year 2015. Without a complete fiscal year, certain data is unavailable to verify. However, when we asked OAG management if performance metrics or data tracking were occurring to measure the impact of this bill on the OAG, management indicated that nothing was currently being done on this front. Without data and performance tracking, the impacts of this bill to the OAG will be difficult to determine. We recommend that the Executive Offices and Criminal Justice Appropriations Subcommittee follow up on this item to make sure processes for data tracking and validation are in place.

### **Additional Spending And Budgeting Concerns**

In addition to the insufficient accounting in two programs, our review of the OAG's spending of building block appropriations raised questions and concerns about other budget items that will require further legislative action and oversight to resolve.

For example, a building block appropriation that received a designation of Yes in Figure 3.1 will require further legislative action to resolve an issue. S.B. 281, Mortgage and Financial Fraud Investigators, passed in the 2012 General Session, was appropriated \$2 million General Fund one-time for the investigation and prosecution of mortgage and other financial fraud and created a restricted account to hold the funds. The provisions of this bill were discussed in the Executive Offices and Criminal Justice Appropriations

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**Because of a delayed implementation, we were unable to verify spending for one building block, but are concerned about a potential lack of documentation.**

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Subcommittee (EOCJ) in the 2012 General Session. EOCJ understood then that it was appropriating one-time funding that would be spent over the course of multiple fiscal years and that it would potentially have to make a decision about ongoing funding in a future general session. It is likely that EOCJ will see a building block request in the 2016 General Session for ongoing funding because the OAG has hired full-time people with one-time appropriations. The cost of current operations is approximately \$700,000 per year.

Another building block appropriation with concerns in need of legislative action is H.B. 76, Federal Law Evaluation and Response, 2011 General Session. The Legislature appropriated \$350,000 from the Constitutional Defense Restricted Account (CDRA) to hire attorneys and clerical staff. Funds available in the account do not cover the costs of the attorneys hired or the clerical staff position, which puts the OAG in a position of subsidizing these positions with other funds in its budget.

In summary, the OAG appears to have spent its building block appropriations according to their stated purposes in almost every case. Insufficient charging of employee time and accounting of program expenditures was found in two programs' building block appropriations in multiple fiscal years; we recommend these programs be followed up on. In addition to the insufficient accounting of these programs, two other building block appropriations from previous fiscal years need legislative action to resolve identified issues.

## Recommendations

1. We recommend that the Executive Offices and Criminal Justice Appropriations Subcommittee require the OAG to follow up on the programs in the Investigations Division to ensure accounting of program expenditures is accurate and verifiable.
2. We recommend that the Executive Offices and Criminal Justice Appropriations Subcommittee follow up on the implementation of S.B. 49, Child Welfare Modifications, 2013 General Session, to ensure processes for data tracking and validation are in place.

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**On-going spending with one-time funds is an issue the Legislature will need to address. Restricted revenue to one account is insufficient for its appropriated amount in the OAG's budget.**

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## **Chapter IV**

### **Compensation on Low End but Turnover Rates Are Favorable**

The use of dedicated credits to partially cover salary increases for Utah's Assistant Attorneys General (assistant AGs) is challenging because the dedicated credits must be collected from other state agencies receiving legal services. These state agencies must pay for the increases out of their own budgets if able, and this process limits the ability of the Office of the Utah Attorney General (OAG) to cover all salary increases. Our review of compensation found that entry-level salaries for assistant AGs compare well on a national survey for public attorneys, but assistant AG salaries fail to keep up over time (see Figure 4.1). Our survey of local public attorney salaries found that assistant AGs appear on the lower end of all years of service categories (see Figure 4.2). However, assistant AG turnover rates compare favorably and retention of attorneys is similar to the Salt Lake County District Attorney's Office. While turnover rates do not appear high in comparison to other offices we reviewed, we recommend the office monitor turnover rates and document reasons for employees leaving in the future to help guide management decisions.

#### **Dedicated Credits Limit the OAG's Ability To Cover All Salary Increases**

As discussed in Chapter II of this report, the use of dedicated credits is not in line with statute. When dedicated credits are used to cover salary increases for assistant AGs, administrative difficulties are created that can reduce the effect of salary increases. Because dedicated credits have to be collected from other agencies, the ability of the OAG to collect appropriated increases when tied to dedicated credits is affected by agency budgetary constraints. Chapter II of this report addressed concerns with the use of dedicated credits; compensation increases tied to dedicated credits was one of those concerns.

In the 2014 General Session, the OAG asked the Legislature for salary increases. The office received \$2.4 million for fiscal year 2015, consisting of \$1 million in General Fund, \$1.2 million in dedicated credits, and \$138,200 in federal funds. The OAG has estimated that it may not be able to collect all dedicated credits appropriations allocated

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**While assistant AG salaries compare on the low end, turnover rates compare favorably both locally and with other reviewed states.**

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**The OAG will probably not be able to collect all dedicated credits appropriations allocated for salary increases.**

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for these increases. With about \$1.2 million of the salary increases coming from dedicated credits, the office estimates that they may not be able to distribute about \$700,000 in dedicated credits appropriations, or about 31 percent of the \$2.4 million in salary increases appropriated by the Legislature for fiscal year 2015.

In the 2015 General Session, the OAG also received \$1.2 million beginning in fiscal year 2016, consisting of \$750,000 in General Fund and \$500,000 in dedicated credits for salary parity increases. During the 2015 General Session, the Legislature appropriated funds to relevant agencies to cover their increased costs resulting from the OAG's salary parity increase. Appropriations from both the 2014 and 2015 General Sessions totaled about \$3.6 million for salary parity increases and, as will be explained later in this chapter, these salary increases should help keep turnover at comparable levels.

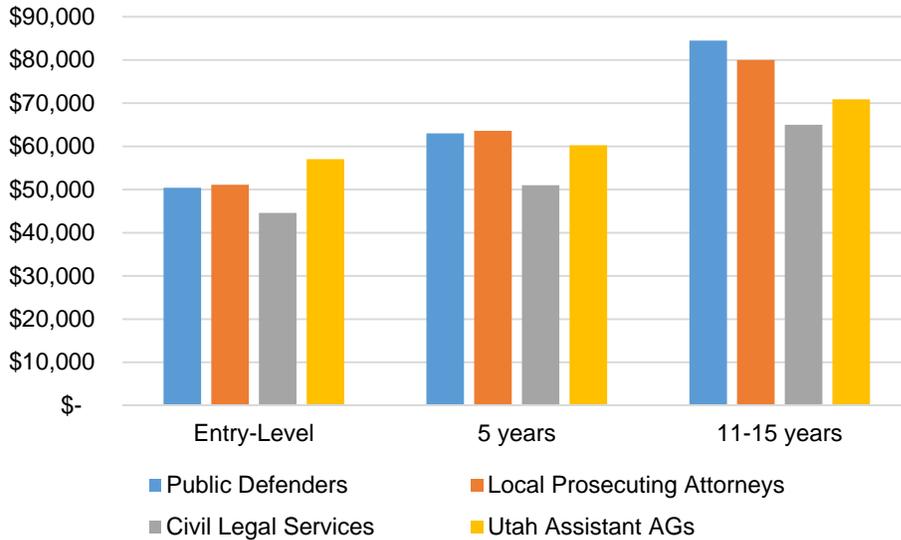
## **Attorney Compensation Comparatively Low**

A national survey conducted by the National Association of Law Placement (NALP) shows that, while Utah assistant AGs are paid better than the national median at entry level, their salaries fail to keep up with increases thereafter. Since local salaries can provide a more likely comparison, we also surveyed comparable public attorney organizations, including the Salt Lake County District Attorney's Office (SLCO), the Office of Legislative Research and General Counsel (LRGC), and the Guardian Ad Litem (GAL). Our local public attorney survey showed that assistant AG salaries are on the low end of the sample for all years-of-experience categories.

### **Assistant AGs Salaries Fail to Keep Up with National Medians Over Time**

NALP has been conducting public attorney salary surveys every two years since 2004 as an attorney placement tool for law schools. In 2014, a total of 362 organizations completed the salary survey. Because the Utah OAG does not participate in the NALP survey, we added Utah assistant AG salaries for comparison purposes. Results of their salary survey work are shown in Figure 4.1.

**Figure 4.1 2014 NALP Survey of Public Attorney Median Salaries and 2015 Utah Assistant AG Salaries.** Utah assistant AG salaries start out slightly higher but do not increase at the same rate compared to the national median salaries. Recent 2016 salary increases could not be included in this chart.



Source: NALP and Utah OAG- Findings in figure are based on a nationwide survey conducted by NALP of civil legal services organizations, offices of public defenders, local prosecuting attorneys, and public interest organizations.

\*The previously mentioned 2016 salary increases and the estimated portions of dedicated credits that, to date, have not been applied to salaries are not included here, but will help decrease the difference between the OAG and others.

Figure 4.1 shows that, compared to the national median salaries for public defenders, civil legal services, and local prosecutors, Utah assistant AGs’ 2015 median income compares favorably for entry level, but does not keep up by 11 to 15 years of experience. For Utah assistant AGs, the median salaries were based on number of years since the incumbent passed the bar, because OAG salaries are generally based on bar date. With little prior experience, Utah assistant AGs’ entry-level salaries are the highest for the group at \$57,054, nearly \$6,000 more than the median salary for local prosecuting attorneys. By 11 to 15 years of experience, Utah assistant AG salaries fail to keep up with comparable group increases and are about \$9,000 lower than the median salary for local prosecuting attorneys.

**Assistant AG Salaries Compare On the Lower End of Local Survey**

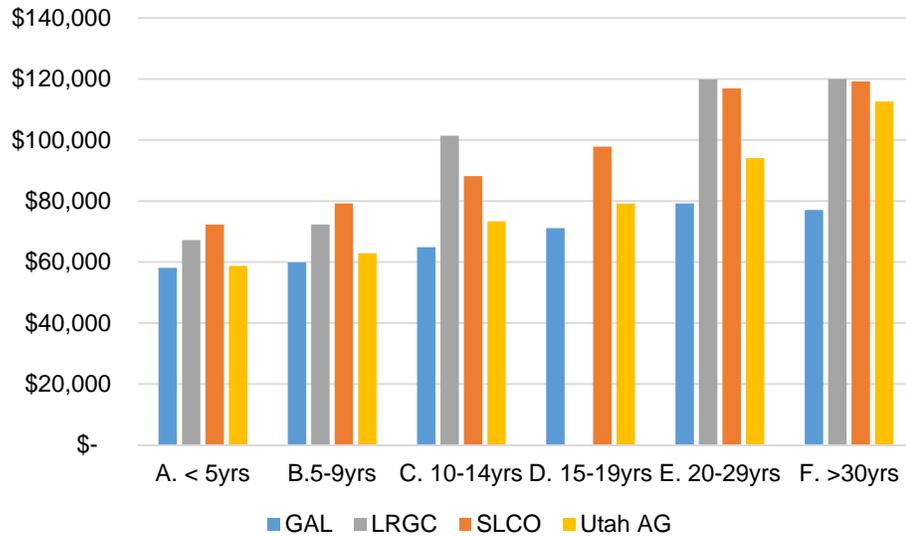
While national salary surveys can give one perspective, local salaries have a greater impact on the ability to recruit and retain employees and may be the better of the two comparisons. Figure 4.2 shows the

**While entry level salaries for Utah Assistant AGs compare well nationally, it fails to keep up with years of experience.**

result of our survey of three local public attorney organizations, the GAL, LRG, and SLCO. In this local survey, OAG salaries do not fare as well.

**Figure 4.2 Average Attorney Salaries for Local Government.**

Assistant AG salaries are lower than most other comparable groups for each years of experience group since passing the bar exam. Recent 2016 salary increases could not be included in this chart.



Source: GAL, LRG, SLCO February 2015 data, and Utah OAG November 2014 data  
 \*The previously mentioned 2016 salary increases and the estimated portions of dedicated credits that have not yet been applied to salaries are not included here, but will help decrease the difference between the OAG and others.

**Utah Assistant AG salaries compare on the lower end of all experience years when comparing them locally.**

SLCO is one organization to which assistant AGs reportedly have gone for more pay. There is over a \$13,500 difference between the SLCO and OAG average pay for attorneys with less than five years' experience, and this difference increases to \$22,800 for attorneys with 20 to 29 years of experience. LRG has a higher average salary for several groups, which in part is skewed by fewer attorneys in each category. Further, officials from LRG report that higher salaries are also due to the fact that their attorneys are paid for performance, not merit (based on years of service) and for the challenges of dealing with legislative sessions. Assistant AG salaries fall on the lower end in the local comparison, with GALs having the lowest average salaries for all experience groups. Note that the recent 2016 legislative salary increases and portions of salary increases tied to dedicated credits from 2015 for the OAG could not be included in this analysis, but despite lower salaries, the OAG has maintained a relatively low turnover rate.

## **Assistant AG Turnover and Retention Rates Are Reasonable**

Utah's assistant AGs 5.3 percent turnover rate is good compared to some other states' AG offices and local comparable attorney offices. The number of attorneys leaving the OAG each year has not been increasing. Recent legislative increases in salaries should help keep attorney turnover rates low, but turnover rates should be monitored.

### **Assistant AG Turnover Rates Compare Favorably to Other States and Locally**

High turnover rates can prompt an organization to increase salaries to retain employees and save on training costs. This increase in salaries has occurred in Washington's AG office, which is experiencing 30 percent turnover in attorneys. Utah's Guardian Ad Litem Office also has problems with high attorney turnover caused by lower salaries. As Figure 4.3 shows, Utah's assistant AGs have a 5.3 percent turnover rate, which does not appear high in comparison to the other offices shown. This turnover rate is similar to attorney turnover rates in the Colorado and Idaho AG offices and better than turnover rates in Oregon and Washington.

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**Utah's assistant AGs have a 5.3 percent turnover rate, which does not appear high in comparison to other offices reviewed.**

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**Figure 4.3 Other State and Local Employee Turnover Rates.** The Utah assistant AG 2014 turnover rate is comparable or lower than other state AG offices and lower than most other reviewed organizations.

	<u>Turnover Rate</u>
Utah Assistant Attorney General	5.3 %
<u>State Comparables</u>	
Washington Asst. AG	30.0
Oregon Asst. AG	9.0
Colorado Asst. AG	5.7
Idaho Asst. AG	4.1
<u>Local Comparables</u>	
LRGC Attorneys	5.1 *
SLCO District Attorneys	3.0
Utah GALs	18.3
<u>State and Professional Comparables</u>	
All Utah State Employees	17.1
Utah State Engineers	5.4
Utah State Medical Professionals	7.8

*Sources: Respective state AG offices, SLCO, Utah OAG, DHRM and LRG*  
*\*LRGC turnover rate is a 6-year average due to the small size of the office; all others are the 2014 turnover rate.*

Utah’s assistant AG turnover has been below 7 percent for the past five years and appears in line with turnover rates of other state professionals such as state engineers and medical professionals. Though overall assistant AG salaries may be lower than other local comparable entities, the difference in salaries has not increased turnover rates. Some reasons given for the low turnover despite lower salaries are that the specialized nature of some of the work is more fulfilling and not having to track work in six-minute increments as in the private sector.

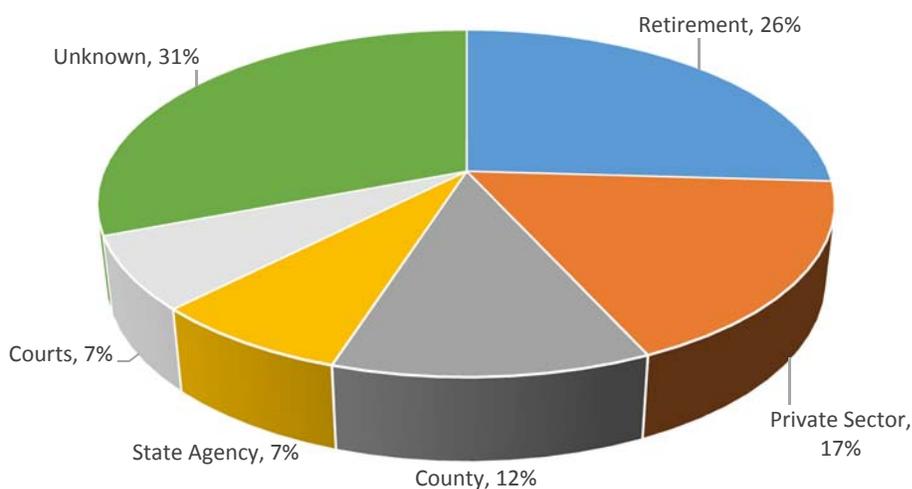
**Most Attorneys Who Leave the OAG Leave For Retirement or Other Public Sector Jobs**

Despite low turnover rates, we wanted to examine the reasons attorneys gave for leaving the OAG. Since 2002, over 162 assistant AGs have left for reasons shown in Figure 4.4. Twenty-six percent of attorneys left for retirement, 17 percent went to the private sector, 12 percent moved to the counties, 7 percent went to either the Utah Courts or state agencies, and 31 percent left for unknown

**Utah’s assistant AG turnover rate has been below 7 percent for five years and is in line with turnover rates of other comparables.**

(undocumented) reasons. While OAG exit data often showed where attorneys went, it often lacked information on reasons for leaving.

**Figure 4.4 Reasons for Assistant AG Leaving Since 2002.** A quarter of assistant AG turnover since 2002 is attributed to retirement.



Source: OAG exit interview data

Over the last five, years the number of attorneys retiring from the OAG has increased, but the total number of attorneys leaving each year has remained from 9 to 16 out of nearly 250 total attorneys. Though public attorney salaries may be higher elsewhere in the state, the number of attorneys leaving the OAG each year has not been increasing. Because the OAG has not maintained documentation on the reasons employees left, we were not able to determine cause.

### **The OAG Hires and Retains Newer, Less-Experienced Attorneys**

The OAG tends to recruit attorneys with little prior experience. As shown in Figure 4.5, 43 percent (104 of 243) of all attorneys in the OAG were hired when they had less than five years' experience since passing the bar exam. This is similar to the Salt Lake County DA's office. Figure 4.5 shows all current assistant AGs years of experience since passing the bar exam when hired by the Utah Attorney General.

**The number of attorneys leaving the OAG each year has not been increasing.**

**Figure 4.5 Current Assistant AGs’ Years of Experience Prior to Joining the OAG and Years in the Office.** Forty-three percent of assistant AGs have less than five years of prior experience with another organization when hired.

Years in Office	Attorneys Prior Years of Experience Before Joining the OAG Based on Bar Date			Total	% of Total
	0-4 yrs	5-14 yrs	>15 yrs		
0-4 yrs	31	24	20	75	31%
5-14 yrs	26	31	26	83	34%
>15 yrs	47	31	7	85	35%
Total	104	86	53	243	100%
<b>% of Total</b>	<b>43%</b>	<b>35%</b>	<b>22%</b>	<b>100%</b>	

*Source: Auditor analysis of OAG-supplied salary and experience data*

As Figure 4.5 shows, 31 percent (75 out of 243) of all assistant AG’s have been with the office for less than five years. Having nearly one-third of assistant AGs, who are new to the office, may seem to be a disadvantage, but this is similar to the Salt Lake County DA’s Office, where 28 percent of attorneys have been with the office less than five years. Thirty-one assistant AG’s are actually new to the legal profession, having been with the office less than five years and less than five years’ prior experience. Among those assistant AGs who are new to the office, the OAG has been able to recruit 24 attorneys with 5-14 years of experience, and 20 attorneys with more than 15 years of experience.

In sum, the use of dedicated credits has limited the OAG’s ability to issue all appropriated salary increases. But, generally, the office appears effective at retaining employees, despite challenges with lower salaries. Improved documentation of employees’ reasons for leaving will aid the OAG in management decisions moving forward.

## Recommendation

1. We recommend that the OAG monitor and document employee turnover rates and employee reasons for leaving to improve management decisions in the future.

**Thirty-one percent of assistant AGs have less than five years in the office, which is similar to Salt Lake County DA’s Office.**

## **Chapter V**

# **Isolated Events Increased Attorney Contracting Costs**

The contract attorneys line item in the Office of the Utah Attorney General (OAG) budget has been a concern to the Legislature because of the large increases in the past few years. Much of the increase was caused by the Legislature's use of this line item to appropriate and account for the state's settlement costs, which are largely pass-through funds not used in the OAG's operating budget, but this appropriations issue has recently been resolved. While we did not identify concerns with the use of contract attorneys, we do recommend a more transparent accounting of settlement costs by including them in the other charges/pass-through expenditure category instead of in current expenses. Adjusting for settlement costs in the contract attorneys line item, highway projects make up the bulk of the activities in the line item. The Utah Department of Transportation (UDOT) reimburses the OAG for these costs and the majority of attorney contracting is used for condemnation cases that occur with large highway projects. Two recent Utah Supreme Court cases may further increase these condemnation costs in the future.

Other reviewed states use attorney contracting for similar reasons, but also contract out services that OAG provides in-house. OAG management uses attorney contracting for large temporary caseloads and specialty cases where no in-house expertise exists. It appears that the OAG has adequate controls in place to monitor the quality of contracted attorney services.

### **Settlement Costs and Increased Workload Inflate Contract Attorneys Line Item**

The contract attorneys line item increased by \$13.5 million dollars in 2013 because of the Pelt settlement that resulted from the state's fiduciary role in administering the Utah Navajo Trust Fund. These settlement payments are passed through the OAG to the settlement recipient and the funds are not used by the OAG in its day-to-day operations. Beginning in fiscal year 2014, settlement payments have been removed from the contract attorneys line item and placed in their own line item called state settlement agreements. Even without

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**Much of the increase in the contract attorneys line item was due to settlement costs.**

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**The majority of attorney contracting is used for condemnation cases that occur with large highway projects.**

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settlement costs, contract attorney expenses have gone up because of litigation of highway projects and recent Utah Supreme Court decisions.

### **Pelt Settlement Greatly Inflated Contract Attorneys Line Item**

The Pelt settlement resulted from the state being sued for alleged violation of its fiduciary role in administering the Utah Navajo Trust Fund. The Pelt settlement required the state to pay \$1 million in fiscal year 2011, \$5 million in fiscal year 2012, and \$13.5 million in both fiscal years 2013 and 2014. These and other pass-through settlement payments greatly inflated the contract attorneys line item, which could lead some to believe contract attorney costs had increased dramatically. Therefore, beginning with fiscal year 2014, all settlement payments are no longer included in the contract attorneys line item, but are in a separate new line item called state settlement agreements.

In addition to the Pelt settlement, there have been three other settlement payments, totaling about \$962,100, since fiscal year 2012 that the OAG has included in its current expenses category. Accounting for settlement payments in the other charges/pass-through expenditure category rather than current expenses, would be more reflective of their true nature and allow for a more transparent accounting of them going forward. The Legislature has already created a new line item in 2014 called state settlement agreements to separate settlement payments that pass through the OAG from its operational budget. Accounting for settlement payments in the other charges/pass-through expenditure category would be a simple accounting change.

### **Large Highway Projects Increase Contract Attorney Expenses and Condemnation Caseloads**

In some cases where the OAG lacks expertise, it contracts with private law firms to conduct legal business on the part of the office or a state agency, such as the Utah Department of Transportation (UDOT). The OAG then monitors the services provided by the contractor. As Figure 5.1 shows, contract attorney expenses have increased since fiscal year 2010 by 388 percent, a \$1.7 million increase from fiscal year 2010 through fiscal year 2014.

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**Beginning with fiscal year 2014 all settlement payments were included in a separate line item called state settlement agreements.**

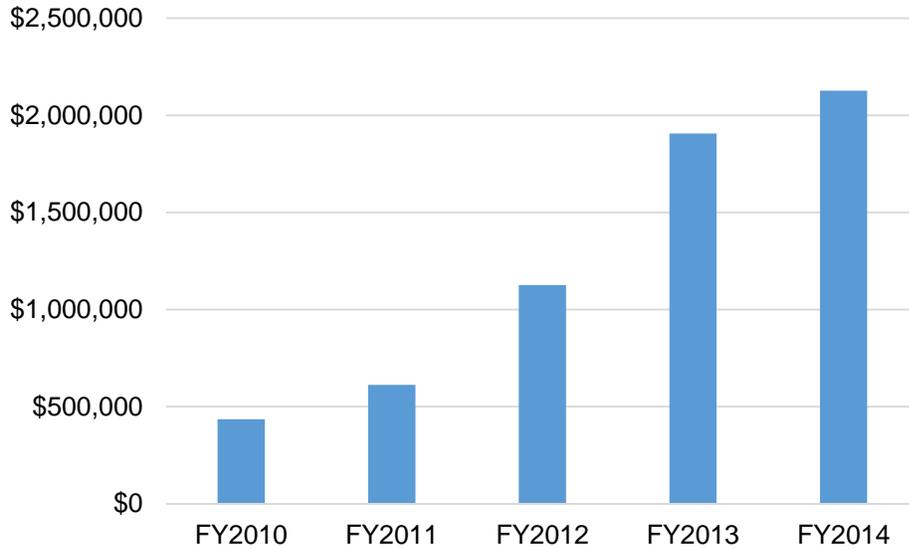
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**Settlement costs would be better accounted for in the other charges/pass-through expenditure category rather than as a current expense.**

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**Figure 5.1 Contract Attorney Expenses Increased from Fiscal Year 2010 to 2014.** Contract attorney costs have increased by 388 percent since fiscal year 2010, much of the increase is due to highway-related projects.



Source: Auditor analysis of OAG data, pass-through funds excluded.

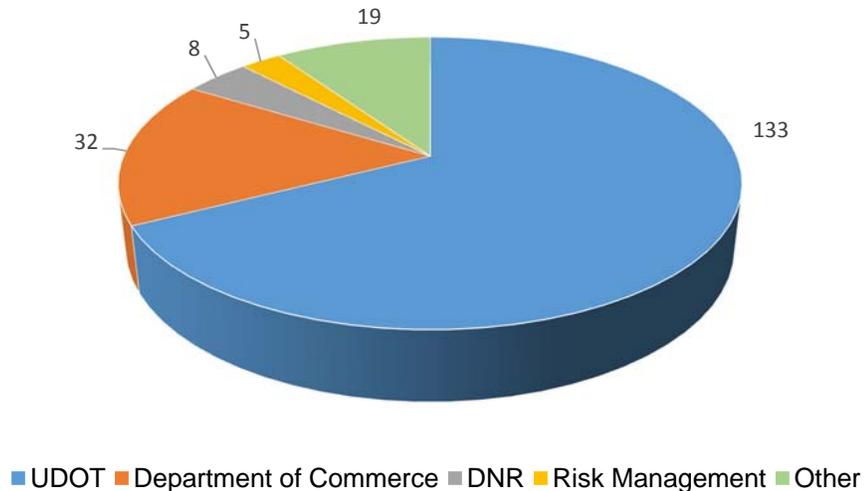
Much of the increase in the contract attorneys line item was caused by two UDOT cases, which account for \$1.16 million in fiscal year 2013 and \$1.8 million in fiscal year 2014.<sup>2</sup>

The increases in condemnation cases related to highway construction projects also contributed to the increase in the contract attorneys line item. The I-15 core construction and the Mountain View corridor projects increased the number of condemnation cases the past few years. In fiscal years 2010 and 2011 combined, there were 19 active cases, but by fiscal year 2012 that number increased to 78 active cases, of which 60 were related to UDOT. The OAG tried to settle the condemnation cases quickly, but because such a large number of properties were affected in these cases, they could not be settled in a timely manner and were contracted out. These cases can take two years to resolve. Figure 5.2 shows that just over two-thirds of contracted cases from fiscal 2010 through fiscal year 2014 were related to UDOT projects.

**Much of the increase in the contract attorney expense in 2013 and 2014 was due to two cases.**

<sup>2</sup> Build Inc v. UDOT and UDOT v. Parsons Brinkerhoff

**Figure 5.2 The Number of Contracted Cases by Division for Fiscal Years 2010 through 2014.** Most contracted cases were condemnation cases for UDOT.



Source: Auditor analysis of Attorney General data  
 Other: Cases for other agencies include the Department of Health, Department of Agriculture, Tax Commission, GOPB, and GOED.

Except for constitutional challenges, most contract attorney costs are paid for by the corresponding agency. For the same four-year period illustrated in Figure 5.2, UDOT was billed for 133 cases which was 83 percent of the contract attorney expenses.

The OAG’s Highways and Utility Division reports that they now have only three cases on contract because the large highway construction projects have ended. It is expected that contract attorney expenses should decrease in fiscal year 2015.

**Recent Utah Supreme Court Decisions Increase Condemnation Costs**

Two recent Utah Supreme Court cases discussed here have the potential to make condemnation cases more complex and longer and increase future condemnation costs. These are the Admiral Beverage Case and the FPA West Point Case.

**The Admiral Beverage Case Allowed Property Owners to Be Compensated More for Visibility Changes from the Road.** This 2011 Utah Supreme Court decision reversed a previous ruling that limited compensation for the loss of visibility of property from a road. Business property owners could always receive compensation for a

**The OAG’s Highways and Utility Division reports they now have only three cases on contract because large highway construction projects have ended.**

change in view from their property, but now they can receive compensation if the view from the road to their property is lessened.

**The FPA West Point Case Allowed Property Owners to Receive Individual Assessments and Individually Contest Findings.** This 2012 Utah Supreme Court decision required the aggregate-of-interest approach in condemnation cases. Prior to this, the value of the property would be determined and then split among owners. With this decision, all parties involved, such as tenants, must have their separate property values assessed, which could be worth more than the whole. They could also be litigated separately, thus possibly compounding, lengthening, and making such cases more costly.

### **Other States Use Contract Attorneys for Similar Reasons**

Interviews with other state AG offices revealed that they use attorney contracting for similar reasons as the OAG, such as temporary caseload increases and addressing specialty areas of law. As shown, the OAG usually uses attorney contracting for agencies such as UDOT, Risk Management, and the Division of Securities. The office spends anywhere from \$0.6 million to \$2.4 million, depending on the caseload need. However, other state AG Offices also contract out services that the OAG provides in-house. For example:

- Idaho: \$10 million on attorney contracting. Child support services, large caseloads, and specialty law areas are contracted out.
- Oregon: \$900,000 on attorney contracting. Specialty law areas are contracted out.
- Colorado: Cost unknown due to direct billing to agencies. The office contracts out for specialty law, conflicts of interest, and large temporary caseloads.
- Nevada: Less than \$500,000/year on attorney contracting. Attorney contracting is used for some consumer protection cases and specialty law, high profile cases and conflicts of interests. State divisions and boards also hire outside counsel

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**Other state AG Offices contract out services that the OAG provides in-house.**

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for specialty areas that are not reflected in the OAG's attorney contracting costs.

## **OAG Monitors Attorney Contracting Needs and Quality of Services**

Our review of attorney contracting found that OAG management uses attorney contracting when caseloads temporarily increase, when a legal specialty is lacking in-house, or sometimes when a particular case will occupy too much time of in-house attorneys. The increases in caseloads for the recent large highway construction projects and the decrease in the number of contracted cases afterwards seem to be in line with this practice.

The quality of attorney contracting is assessed by controls that appear adequate. First, the OAG uses a contract that caps costs and maintains control of scope. Second, for more basic condemnation cases, all contractor billing is reviewed using a standardized billing approval form by an assistant AG assigned to monitor that case. Any question on cost, timeliness, or status of the case is investigated by the assigned assistant AG.

Additionally, for more complex cases, all document drafts to be submitted to the courts are reviewed by the assistant AGs assigned to the case. They monitor the progress, timeliness, and quality of the contractor's work. If the assistant AGs assigned to the case do not like the direction or arguments in the case, they may take over the case. Contractors who have not performed acceptably are no longer used by the OAG.

## **Recommendations**

1. We recommend that the OAG categorize settlement payments in the other charges/pass-through expenditure category for clarity and transparency purposes instead of using the current expenses category to account for settlement payments.

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**All contractor billing is monitored by an assistant AG and reviewed using a standardized billing approval form.**

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# Appendices

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## **Appendix A**

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## Appendix A

### Figure 1.2 Detail

**General Fund** – this chart combines one-time appropriations with ongoing appropriations for each respective fiscal year.

**Federal Funds** – the Office of the Utah Attorney General (OAG) receives federal funds from a small number of grants that support ongoing programs funded by the state. Some of these programs include the Medicaid Fraud Unit, Children’s Justice Centers, the Prosecution Council, and the Internet Crimes Against Children (ICAC) program. Between fiscal years 2007 and 2014, federal funds spending has ranged from about \$1.5 million to about \$2.3 million.

**Dedicated Credits** – the major contributor to the OAG’s dedicated credits revenue is from billing state agencies for legal/professional services. Other sources include billing for contract attorneys, registration fees for conferences, and fees for Government Records Access and Management Act requests. As of fiscal year 2014, dedicated credits revenue has increased by about \$3.3 million since fiscal year 2007, or about 20 percent.

**Restricted Revenue** - the OAG is appropriated funds from the Victims of Domestic Violence Services Account, the Public Safety Support Account, the Tobacco Settlement Restricted Account, and the Constitutional Defense Restricted Account. In addition to these restricted accounts, the Mortgage & Financial Fraud Investigation & Prosecution Restricted Account was enacted in fiscal year 2013. It was appropriated \$2.0 million General Fund (GF) one-time, which the OAG is using to support approximately four full-time equivalent (FTE) positions until the funds run out.

Additionally, for simplicity, we have included in this total the Attorney General Litigation Fund appropriation the OAG receives each year for its operations. The Attorney General Litigation Fund is not technically a General Fund restricted account, but because the OAG receives an appropriation from the fund each fiscal year, we have included it in the restricted revenue total for this report.

Between fiscal years 2007 and 2014, restricted revenue appropriations have ranged from about \$1.2 million to \$4.5 million. Ongoing appropriations are currently about \$1.5 million. The large range results from 1) the fiscal year 2013 \$2.0 million one-time appropriation from the Mortgage Fraud account, and 2) a one-time appropriation of about \$2.9 million from the General Fund Budget Reserve Account for the fiscal year 2014 Deep Creek Case settlement payment.

**Transfers** – transfers to the OAG’s budget have ranged between about \$500,000 and \$1.3 million for fiscal years 2007 through 2014. The OAG receives transfers each year, mainly from the Commission on Criminal and Juvenile Justice (CCJJ) and the Department of

Public Safety (DPS). Typically, these transfers are from federal grants that CCJJ and DPS receive, for which the OAG qualifies because of certain activities it carries out. An example is the SECURE Strike Force administered by the OAG and various other programs for which the OAG provides investigative services that cross into CCJJ and DPS areas of interest.

**Beginning Nonlapsing Balances** – these funds are carried forward from the previous fiscal year, and are available to the OAG to use at its discretion, unless the Legislature has specified a use for them.

## **Appendix B**

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## **Appendix B**

### **Figure 1.3 Detail**

**Pers. Services.** Personnel Services; includes all normal personnel costs.

**Travel.** Includes In-state and Out-of-state Travel.

**Current Exp.** Current Expenses; includes both Current Expenses and Data Processing Current Expenses.

**Capital Exp.** Capital Expenditures; includes Capital Expenditures and Data Processing Capital Expenditures.

**Other-Pass Thru.** Other Charges/Pass-through; includes all normal OAG expenditures in this category.

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## **Appendix C**

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## Appendix C Five-Year Roll-Up of OAG Legislative Appropriations

This section provides a five-year history of items for which the OAG received new funding from fiscal years 2010 to 2014. New funding is typically appropriated in the general session prior to the beginning of a fiscal year, and then again during the general session midway through a fiscal year. Table C.1 shows total new appropriations to the OAG by fiscal year; it is a summary of the detail tables provided later in this appendix. The GF column includes both ongoing and one-time general fund appropriations by fiscal year. The Other column includes all other sources of funding, that is, federal, American Recovery and Reinvestment Act (ARRA), dedicated credits, and restricted funds; ongoing and one-time amounts are combined. Totals in this table do not include appropriations for settlement payments or payments to outside counsel.

**Table C.1 Sum of Building Block Appropriations by Fiscal Year.** The OAG received, on average, about \$2.0 million in building block appropriations from fiscal year 2010 to fiscal year 2014.

<b>Fiscal Year</b>	<b>GF</b>	<b>Other</b>	<b>Total</b>
2014	\$ 673,300	\$ 211,000	<b>\$ 884,300</b>
2013	3,652,800	11,100	<b>3,663,900</b>
2012	59,700	701,100	<b>760,800</b>
2011	2,258,300	617,600	<b>2,875,900</b>
2010	417,800	1,730,200	<b>2,148,000</b>
<b>Total</b>	<b>\$ 7,061,900</b>	<b>\$ 3,271,000</b>	<b>\$ 10,332,900</b>

*Source: Appropriations Reports from General Sessions 2009 to 2014 and the OAG*

## **Detailed List of Building Block Appropriations by Fiscal Year (2010 – 2014)**

Five separate sections (C.2 – C.6), one for each respective fiscal year, from fiscal years 2010 to 2014, are included in this section of the appendix. The title, amount, and stated purpose for each appropriation is taken from appropriations reports published by the Office of the Legislative Fiscal Analyst in fiscal years 2009 through 2014, and meeting minutes and audio recordings of the Executive Offices and Criminal Justice Appropriations Subcommittee (EOCJ) and the Executive Appropriations Committee (EAC). The OAG provided input and detail on the building blocks in each of the appendices as well.

In addition to this information, a brief status update of each item's spending is included; this column is a result of auditor efforts to follow up with OAG management and personnel to determine spending and implementation status.

The final column is an indication of whether the OAG appears to have met the stated purpose in its expenditure of the new funding items or not. A designation of Yes means that the OAG's response was satisfactory and documentation, when requested, was provided to validate that the stated purpose of the building block has been met. A designation of Partial indicates that spending of the building block has met its stated purpose, but its implementation is not complete, funding was only partially spent in the fiscal year for which it was appropriated, or documentation was insufficient to verify it. A designation of No indicates that the building block appropriation was either not spent or not spent according to its stated purpose (Note: The OAG received no No designations).

**C.2 Fiscal Year 2014 Building Block Analysis.** We reviewed a total of 10 building block appropriations in the 2013 and 2014 General Sessions. Nine building blocks received a designation of Yes, one building block received a designation of Partial, and zero received a designation of No.

FY 2014	Amount	Purpose	Status	Met Stated Purpose
Attorney General Federal Fund	\$165,400	Added to federal grants (see attached sheet)	Verified the request with the AG's request documents, and the appropriation with pertinent appropriations act and appropriations report.	Yes
Amendment Three Defense	\$550,000	Pay outside legal counsel for the State's Amendment Three defense	\$543,000 was paid to outside counsel in fiscal years 2014 and 2015 for Amendment Three Defense	Yes
United Effort Plan Trust Management Settlement	\$224,000	Make the AG whole after its court ordered payment of \$275,000 to the trustee of the United Effort Plan Trust Management	Contract Attorneys line item is no longer in the red	Yes
S.B. 49, Child Welfare Modifications	\$7,500 GF and (\$7,500) GF 1x	Increase in the estimated number guardianship hearings	No tracking being done on guardianship hearings; unable to determine at this time	Partial
Child Protection Caseload Increases (Uintah Basin)	\$155,000 GF; \$45,000 DC	Add one attorney and one paralegal to the AG's office for child protection caseload increases in the Uintah Basin.	Added one attorney and one paralegal	Yes
Citizens Communication Portal	\$200,000 GF	Extend contract with Public Engines for website maintenance.	Payment = \$163,960	Yes
DNR/Forestry/State Lands Legal Support	\$100,000 GF	Add one attorney to the AG's Office to meet demand of legal support services in the Department of Natural Resources	This appropriation made funding permanent in the AG's budget, versus temporarily funded through DNR's budget	Yes
Netsmartz	\$400,000 GF 1x	\$200,000 to Expand Boys & Girls Club contract; ICAC \$100,000; IRIS \$100,000	Netsmartz has an existing \$375,000 ongoing appropriation, making this appropriation a supplemental amount. Of this \$400,000, about \$376,000 was spent.	Yes
Pelt Settlement Final Payment	\$13.5 million GF 1x	Make the final payment of the Pelt Settlement	Payment verified	Yes
Children's Justice Centers	\$18,300 GF	Cost of living increase for providers associated with CJC's	Added to CJC contracts	Yes

Source: Appropriations Reports from General Sessions 2009 to 2014 and the OAG

**C.3 Fiscal Year 2013 Building Block Analysis.** We reviewed a total of 11 building block appropriations in the 2012 and 2013 General Sessions. All 11 building blocks in this fiscal year received a designation of **Yes**.

FY 2013	Amount	Purpose	Status	Met Stated Purpose
Federal Funds	\$220,800 FF	AG requested an increased appropriation for two federal grants for which it had previous approval	Verified the request with the AG's request documents, and the appropriation with pertinent appropriations act and appropriations report.	Yes
King's English Settlement	\$350,000 GF 1x	Payment of the King's English settlement	Verified the payment with AG records, appropriations report, and appropriations act.	Yes
Attorney General	\$300,000 GF	Add attorneys to the OAG to meet demand of criminal appeals caseloads	Hired two attorneys.	Yes
Citizens Communication Portal	\$200,000 GF	Extended contract with Public Engines for website maintenance	Payments \$177,089	Yes
Criminal Nonsupport Program	\$131,200 GF	Continuation of a program ORS would have eliminated due to their GF cuts. This amount is the 1/3 state match required for the federal program.	Retained two attorneys, two paralegals, and one secretary that would have otherwise been cut.	Yes
SECURE Strike Force	\$860,400 GF	Continuation of STRIKE Force, previously funded with a federal grant	Retained six special agents and one attorney in FY 2013. In FY 2015 there are seven investigators and one attorney.	Yes
Tobacco Settlement Adjustment	(\$209,700) Restricted	Appropriation adjusted down based on lower actual revenue	This is the ongoing adjustment made in conjunction with the FY 2012 supplemental adjustment in the 2012 General Session (see FY 2012 explanation in appendix C.4).	Yes
S.B. 66, Alcohol Beverage Control Related Amendments	\$71,200 GF	Added attorney to work with DPS	One attorney added. DPS pays half of the attorney costs. Total costs for the FTE are \$72,800.	Yes
S.B. 281, Mortgage and Financial Fraud Investigators	\$2.0 million Restricted 1x	Add one FTE to the AG's office to investigate and prosecute mortgage and financial fraud	Added one attorney, one auditor, two investigators (to be used over three to four years).	Yes
Children's Justice Centers	\$90,000 GF	Amount of fiscal note for S.B. 167, Children's Justice Center Program Amendments, 2012 General Session. The bill did not pass but this amount was included in the appropriations act.	\$80,000 went to expand Sanpete and Sevier counties' contracts w/CJCs and to start Summit County's contract. \$10,000 was used to expand medical coverage to certain CJCs.	Yes
PELT Settlement	\$13.5 million GF 1x	Make the third payment of four for the PELT settlement.	Verified the payment with AG records, appropriations report, and appropriations act.	Yes

Source: Appropriations Reports from General Sessions 2009 to 2014 and the OAG

**C.4 Fiscal Year 2012 Building Block Analysis.** We reviewed a total of 12 building block appropriations in the 2011 and 2012 General Sessions. Eleven building blocks received a designation of Yes and one building block received a designation of Partial in this fiscal year.

FY 2012	Amount	Purpose	Status	Met Stated Purpose
Tobacco Settlement Adjustment	(\$209,700) Restricted	Appropriation adjusted down based on lower actual revenue	Replaced with General Fund (see below)	Yes
Highway Patrol Crosses Settlement	\$388,100 GF 1x	Settlement Payment to Williams & Hunt	Expenses incurred February 2012	Yes
H.B. 76, Federal Law Evaluation and Response	\$350,000 Constitutional Defense Restricted Account	Two additional attorneys	Added two attorneys (not enough money for clerical position). Revenue to the account does not cover the costs of the attorneys, GF is most likely subsidizing these positions.	Yes
Citizens Communication Portal	\$200,000 GF 1x	Extend Public Engines contract	Payments = \$192,480	Yes
Internet Crimes Against Children	\$77,600 ARRA	Bring the appropriation in line with the actual grant amount	Temporarily covered the costs of an investigator that would have been cut.	Yes
Mortgage Fraud	\$483,200 ARRA	New grant to investigate mortgage fraud.	Temporarily covered the costs of two investigators and one attorney that would have been cut.	Yes
SECURE Strike Force	\$350,000 GF 1x	Affiliate contracts with local police departments	About \$80,000 of the total appropriation was spent in FY 2012. The remainder was reported to have been carried over to FY 2013 in nonlapsing balances to be used for subsequent affiliate contracts. However, this was not verifiable at the time of review.	Partial
Staff Funding	(\$1,753,100) GF, \$953,100 GF	Seven percent base cut which was partially restored	Hiring freeze to eliminate staff	Yes
Tobacco Settlement Enforcement	\$209,700 GF	Replacement funding for restricted revenue reduction above	One attorney and one paralegal were retained for litigation of the tobacco settlement agreement who would otherwise have been cut	Yes
Children's Justice Centers	(\$201,500) GF, \$201,500 GF	Seven percent base cut which was later restored	CJCs that would have been closed, remained open	Yes
S.B. 39, Children's Justice Center Program Amendments	\$100,000 GF	Added to CJC contracts for Sanpete and Sevier centers	To open CJC operations in Sevier and Sanpete counties	Yes
PELT Settlement	\$5.0 million GF 1x	Make the second payment of the PELT settlement	Verified the payment with AG records, appropriations report, and appropriations act	Yes

Source: Appropriations Reports from General Sessions 2009 to 2014 and the OAG

**C.5 Fiscal Year 2011 Building Block Analysis.** We reviewed a total of 10 building block appropriations in the 2010 and 2011 General Sessions. Nine building blocks received a designation of Yes and one building block received a designation of Partial in this fiscal year.

FY 2011	Amount	Purpose	Status	Met Stated Purpose
Internet Crimes Against Children	\$82,400 ARRA	Adjustment (supplemental) to grant	Temporarily funded one position that was slated to be cut	Yes
Mortgage Fraud	\$267,000 ARRA	Adjustment (supplemental) to grant	Temporarily funded two positions that were slated to be cut	Yes
Children's Justice Centers	\$268,200 DC	Adjustment (supplemental) to grant	This appropriation brings into alignment the appropriation and the actual revenue received. It is the amount over the original estimate. The money was passed through to CJsCs or used for the annual CJC conference in Utah.	Yes
Internet Crimes Against Children	\$125,000 GF, (\$221,300) FF, \$221,300 ARRA	Not able to determine what the \$125,000 GF was for. Technical change to classify ARRA funds separately from federal funds	Not able to determine what the \$125,000 GF was used for. No change in operations with the technical fix.	Partial
Mortgage Fraud	(\$216,200) FF, \$216,200 ARRA	Technical change to classify ARRA funds separately from federal funds	No change in operations with the technical fix	Yes
Personnel Staff Reduction	\$1,750,000 GF	Partial restoration of \$2.4 million base cut from earlier in the year	Hiring freeze to eliminate staff	Yes
Transfer to DHRM	(\$100,000) GF	Transfer to DHRM to defend the state in front of the Career Service Review Office	Reduced the complexity of the AG's billing for legal services related to the Career Services Review Office. No change in operations was made.	Yes
Litigation Settlements (PELT)	\$1,000,000 GF 1x	Make the first payment of the PELT settlement	AG says payment has been made	Yes
Children's Justice Centers	\$431,900 GF	Pass-through to local CJsCs. Ongoing restoration of base cut from FY 2010	Restored ongoing funding to CJsCs that was replaced with one-time in FY 2010. No changes required, continuation of current operations.	Yes
S.B. 43, Post-retirement Employment	\$3,000 GF	Increase in the retirement contribution rates for public safety personnel	Not a complete year of data due to delayed implementation of certain provisions in the bill. Lack of documentation as a result.	Yes

Source: Appropriations Reports from General Sessions 2009 to 2014 and the OAG

**C.6 Fiscal Year 2010 Building Block Analysis.** We reviewed a total of 10 building block appropriations in the 2009 and 2010 General Sessions. All 10 building blocks received a designation of Yes in this fiscal year.

FY 2010	Amount	Purpose	Status	Met Stated Purpose
Internet Crimes Against Children	\$221,300 ARRA	ARRA grants to cover cuts	Temporarily funded one FTE that was slated to be cut	Yes
Mortgage Fraud	\$198,300 ARRA	ARRA grants to cover cuts	Temporarily funded two FTEs that were slated to be cut	Yes
Staff Reduction	(\$633,300) GF 1x	Staffing cuts done supplementally	Hiring freeze to eliminate staff	Yes
Transfer to CCJJ for SEoC program	(\$480,000) GF	To absorb across the board cuts being made in response to the recession	AG no longer administered the contract to the Boys and Girls Club	Yes
H.B. 64, Deterring Illegal Immigration, 2009 General Session	\$891,000 ARRA Transfer from CCJJ	SECURE task force created by the Legislature (initially using federal ARRA funding)	Hired six special agents and one attorney	Yes
CJCs Adjustment	(\$431,900) GF, \$431,900 GF 1x	Ongoing reduction to the program with a one-time offset to hold it harmless through FY 2010	No change to operations for one year	Yes
AG Line Item Adjustment	(\$1,412,900) GF, \$2,404,000 GF 1x	Ongoing reduction to the line item with a one-time offset to hold it harmless through FY 2010 and to offset other reductions made to the line item	Hiring freeze to eliminate staff	Yes
Citizens Communication Protocol Crime Reports Website	\$140,000 GF 1x	Subcontract to Public Engineers	Spent over two years: \$7,495 in FY 2010, \$115,800 in FY 2011	Yes
Methamphetamine Detoxification	\$100,000 GF 1x	Provide alternatives for law enforcement officers dealing with addictions or other health problems from handling meth products during investigations	FY 2009 = \$77,200 was paid in FY 2009 to begin the program, this appropriation reimbursed the AG for FY 2009 costs  FY 2010 = \$22,800 to complete the program	Yes
S.B. 81, Illegal Immigration, 2008 General Session	\$238,000 GF, \$62,000 GF 1x	Hiring investigators for the investigation and verification activities required by the bill	SECURE Task Force	Yes

Source: Appropriations Reports from General Sessions 2009 to 2014 and the OAG

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## **Appendix D**

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## Appendix D Other Funds Detail

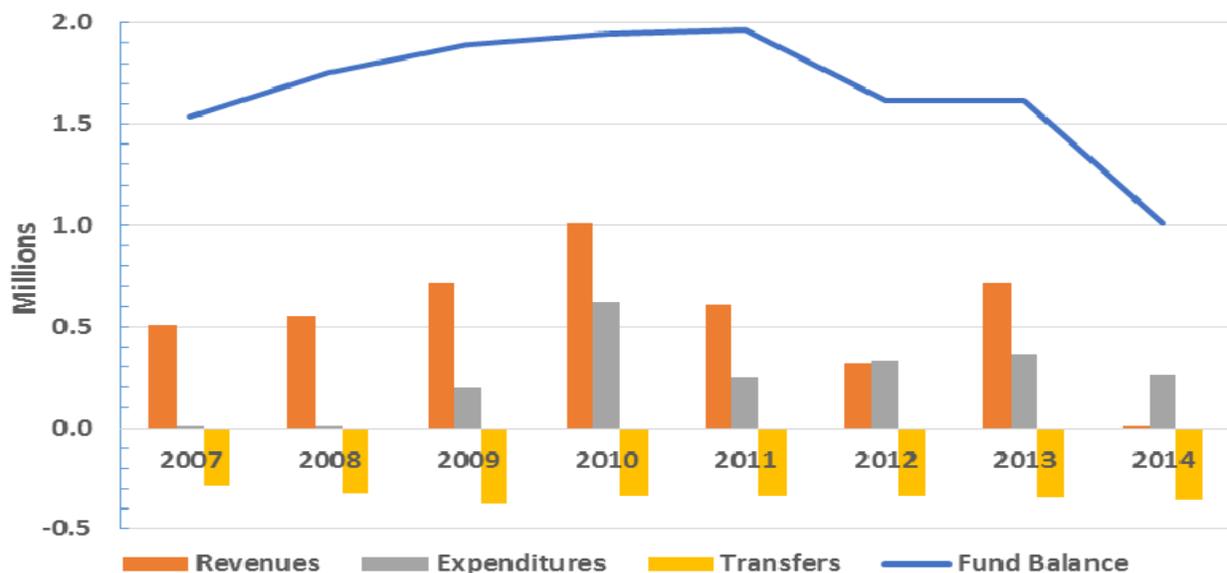
Appendix D contains detailed information for each of the other funds discussed in Chapter II of this report. The fund balance, revenues to, and expenditures from each fund are represented graphically for fiscal years 2007 to 2014.

### Attorney General Litigation Fund (2005)

The Attorney General Litigation fund is authorized in *Utah Code* 76-10-3114. Substantive changes were made to the fund during the 2002 General Session and multiple minor changes have been made to it since then. As it currently exists, the fund’s purpose is to provide “...funds to pay for any costs and expenses incurred by the state attorney general in relation to actions under state or federal antitrust, criminal laws, or civil proceedings under Title 13, Chapter 44, Protection of Personal Information Act...”

The OAG also receives an appropriation from the fund each year to use in its operating budget; this appropriation is represented in the figure by the yellow Transfers bar in the chart. As an expendable special revenue fund, this appropriation is not necessary for the AG to spend from it, however, and recommendations in Chapter II of this report address the treatment of the appropriation.

**Attorney General Litigation Fund (2005).** This chart shows the history of revenue, expenditures, and fund balances for the fund from fiscal year 2007 to fiscal year 2014.



Source: Data Warehouse and Utah Division of Finance

## Attorney General Consumer Programs Fund (2000)

The Attorney General Consumer Programs Fund was originally set up to hold a settlement payment from a specific bankruptcy case in the mid-1990s. Since then, the fund has been used to track settlement payments from similar types of consumer-related cases. The AG is tasked with overseeing fund balances and distributing them for the specific purposes of “...investigation and litigation costs, consumer education, or consumer aid.”

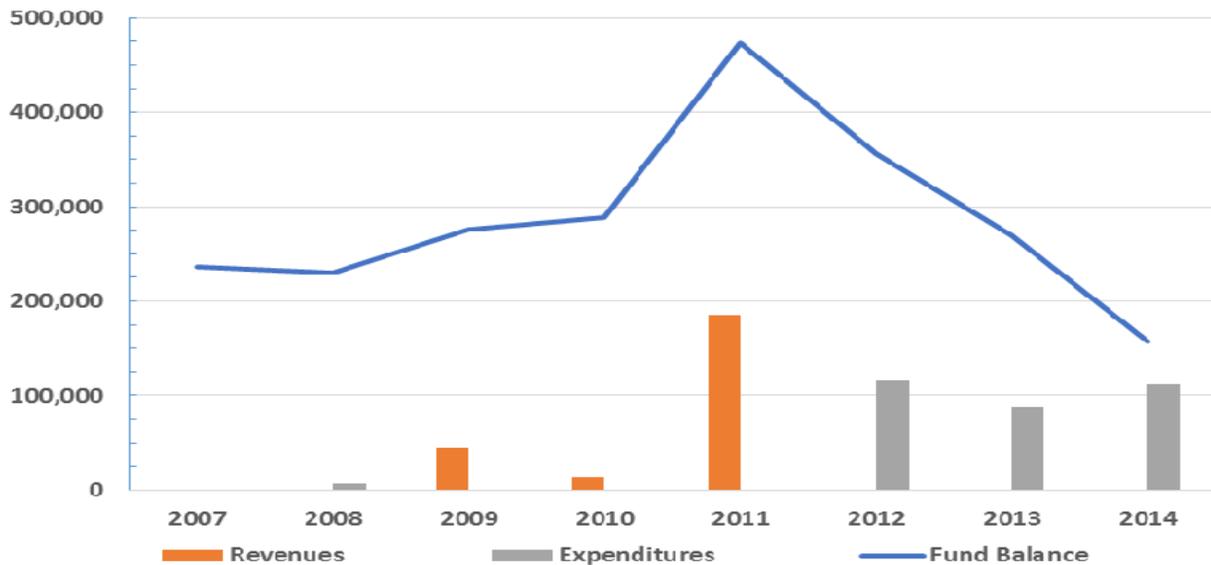
In its fiscal year 2014 in-depth budget review of off-budget funds, the Legislative Fiscal Analyst (LFA) recommended that this fund be re-categorized as a restricted account within the General Fund, and that the Legislature pass legislation that would explicitly authorize the fund in statute and create reporting requirements for it. Further, EOCJ discussed this fund in its August 5, 2014 meeting. In that meeting, EOCJ took no action on the fund but discussed the most prudent way to provide oversight and accountability without inhibiting its functionality.

In our review of this fund, LFA stated that EOCJ and the Legislature have not taken any further action on it since EOCJ’s August 5, 2014 meeting.

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**Attorney General Consumer Programs Fund (2000).** This chart shows the history of revenues, expenditures, and fund balances for the fund from fiscal year 2007 to fiscal year 2014.

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Source: Data Warehouse and Utah Division of Finance.

## Attorney General Crime & Violence Prevention Fund (2010)

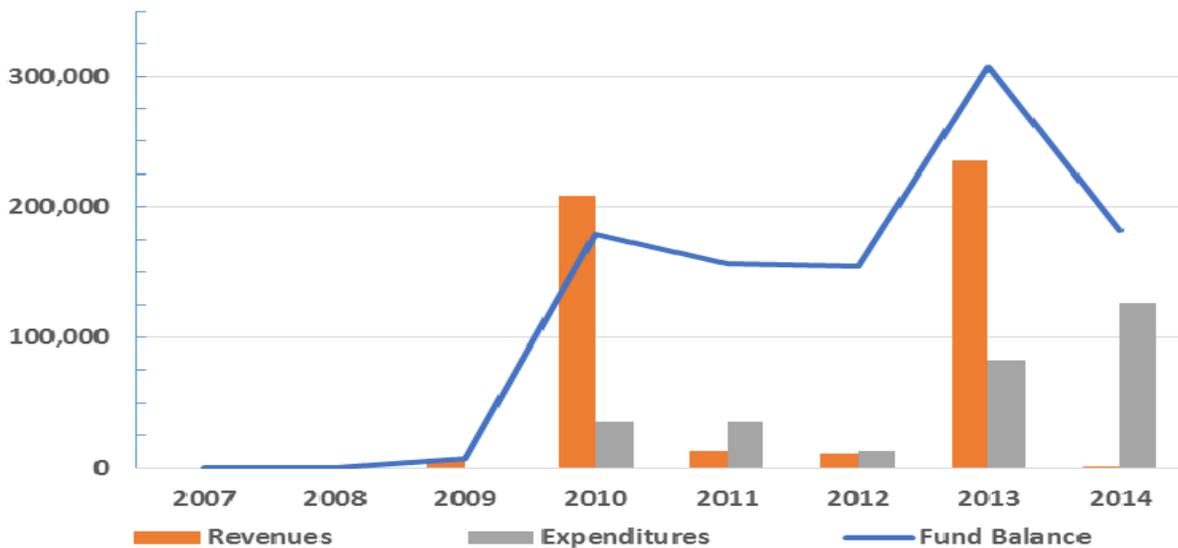
The Attorney General Crime & Violence Prevention Fund is authorized in *Utah Code 67-5-24*. Authorized revenue to the fund consists of various forms of donations and interest income from the investment of fund balances. Expenditures from the fund are restricted to the specific purposes stipulated by each respective donor, restrictions imposed by federal law, if any, and a list of prevention programs in the event that neither condition previously referenced is met. The AG is explicitly forbidden from using fund balances for administrative purposes and is also required to provide a report to the Legislature outlining fund activities each fiscal year.

In its fiscal year 2014 in-depth budget review of off-budget funds, the LFA found that the statutorily required report had not been submitted by the AG to the Legislature and recommended that a specific legislative committee be assigned to which the AG’s report would be given and that a date be specified by which the report would be due to the Legislature. We followed up with LFA concerning the status of these recommendations and they provided a fund report that they received from the AG.

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**Attorney General Crime & Violence Prevention Fund (2010).** This chart shows the history of revenue, expenditures, and fund balances for the fund from fiscal years 2007 to 2014.

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Source: Data Warehouse and Utah Division of Finance.

## Attorney General Financial Crimes Fund (8060)

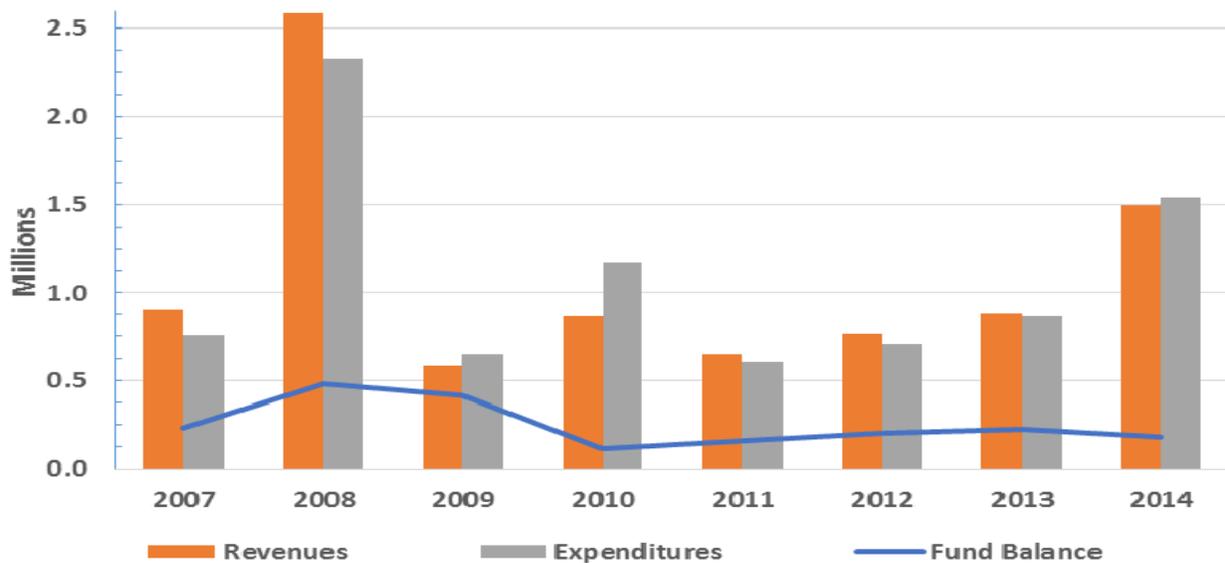
This fund was created administratively in October of 2001 at the request of the OAG. The purpose of the fund is to separately track court-ordered settlement payments awarded to victims of financial crimes.

In its fiscal year 2014 in-depth budget review of off-budget funds, the LFA found that two employees administer this fund and their personnel services are paid for through a federal grant. LFA recommended that an annual report be established and presented to the Legislature for this fund, in which the AG would provide details on fund activities, including revenues, expenditures, and performance data. The OAG submitted this report upon our request.

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**Attorney General Financial Crimes Fund (8060).** This chart shows the history of revenue, expenditures, and fund balances for the fund from fiscal years 2007 to 2014.

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Source: Data Warehouse and Utah Division of Finance.

## Abortion Litigation Account (1520)

The Abortion Litigation Account is not an off-budget fund, but a General Fund Restricted Account authorized in *Utah Code* 76-7-317.1. Statute limits any expenditures from the fund to “...costs, expenses, and attorney fees connected with the defense of an abortion law...” that restricts abortion rights or “...challenges the legal concept that a woman has a constitutional right to an abortion...” prior to July 1, 2014. Authorized revenue to the fund consists of donations in various forms.

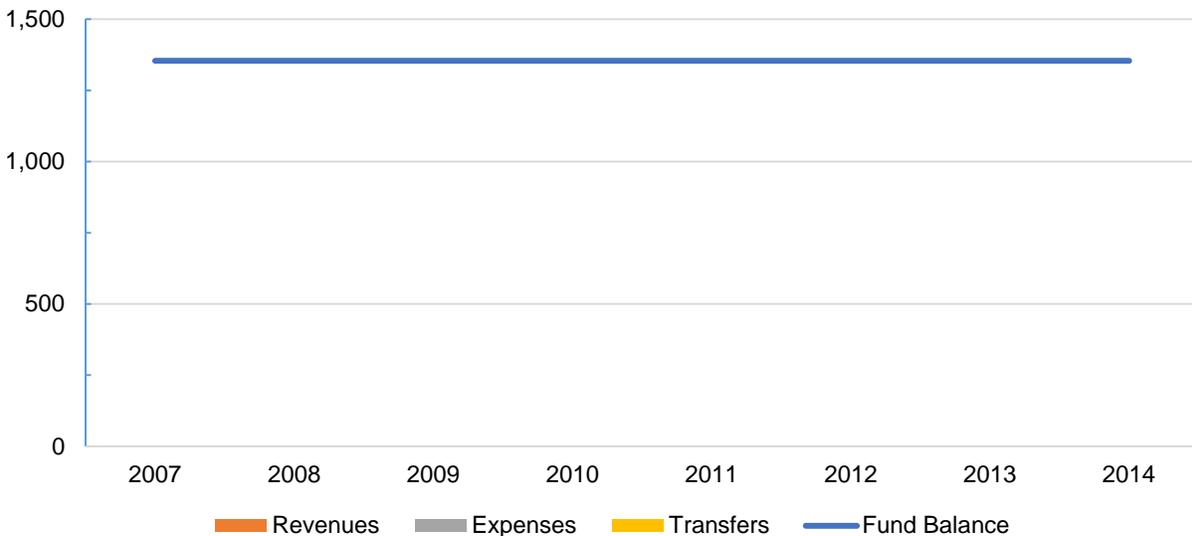
Language in the authorizing statute states that, after July 1, 2014, any unspent funds in the account are to be used by the Division of Child and Family Services (DCFS) for adoption assistance. The only restriction to this provision is that, if the Legislature passed a law prior to July 1, 2014, the funds be used for the purposes described previously in the OAG.

According to data received from the Division of Finance, the account has a balance of about \$1,400 and has not had any activity for more than eight years. Because July 1, 2014 has passed, and because the Legislature has not passed a law that challenges the legal concept that a woman has a constitutional right to an abortion or restricts abortion rights, the AG no longer is able to use account balances for its operations; these funds are now available to DCFS for adoption assistance purposes.

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**Abortion Litigation Account (1520).** This chart shows the history of revenue, expenditures, and fund balances for the fund from fiscal years 2007 to 2014.

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Source: Data Warehouse and Utah Division of Finance.

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## **Agency Response**

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STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES  
ATTORNEY GENERAL

SPENCER E. AUSTIN  
Chief Criminal Deputy

PARKER DOUGLAS  
Federal Solicitor & Chief of Staff

BRIDGET K. ROMANO  
Solicitor General

BRIAN L. TARBET  
Chief Civil Deputy

Monday, June 15, 2015

Mr. John M. Schaff, CIA  
Auditor General  
State of Utah - Office of the Legislative Auditor General  
W315 Utah State Capitol Complex  
Salt Lake City, UT 84114-5315

**RE: Report No. 2015-06**

Dear Mr. Schaff:

Thank you for the tremendous work of your office. I appreciate your acknowledging that the issues identified in this audit were inherited, and also that the Office had already identified and was in the process of correcting many of these issues. I also appreciate your staff's professionalism throughout this audit.

Please communicate my personal thanks to each member of the Office of the Legislative Auditor General team ("Auditor Team") for their professionalism and many long hours dedicated to this process. As you noted in the reports, the OAG recognized before this audit, and continues to acknowledge, that outside review is essential and we are continuing to make day-to-day changes towards many of your recommendations.

The following are Office of the Attorney General's (OAG) responses to the individual recommendations of Legislative Audit No. 2015-06 "An In-Depth Budget Review of The Office of the Attorney General."

## RESPONSE

### CHAPTER II

#### Recommendation 1

We recommend that the Legislature work with the OAG to establish an internal service fund (ISF) for selected legal services for accounting purposes and separate them into their own line item for budgeting purposes. If the Legislature does not prefer an ISF, then we recommend one of the following:

- Require that legal services be accounted for in a Cost Allocation Plan (CAP) and include statutory language requiring ISF-like accounting and reporting; create a separate line item for legal services for budgeting purposes
- Legislate a billing change for legal services by:
  - Creating a new line item called Legal Services and placing selected operations that provide legal services to state agencies in it
  - Include statutory language requiring ISF-like accounting and reporting requirements

#### Response:

The OAG has worked diligently over the last several years to make consistent its billing methods and systems, but still has a way to go. This recommendation to move to an Internal Service Fund (ISF), Cost Allocation Plan (CAP), or some other, more consistent method recognizes the work that remains. The OAG will continue its efforts to regularize its billing, which will include a thorough exploration of the methods suggested in the audit. In doing so the OAG intends to work with the Legislature and their staff to make changes as needed, recognizing there may be substantial financial impacts to the OAG as well as to the client agencies which will be billed.

#### Recommendation 2

We recommend that the Legislature appropriate legal services revenue to the OAG as transfers instead of dedicated credits to comply with statute.

**Response:**

The OAG also agrees with this recommendation, and will fully comply. In fact, the OAG's financial management identified this issue prior to this audit, and appreciates the auditors' support of the Office's position on this matter.

**Recommendation 3**

We recommend that the Legislature consider including the Attorney General Litigation Fund in the appropriations acts and eliminate the appropriation from the fund to the OAG's budget. We further recommend that the Legislature consider annual reporting requirements that describe the fund's balance, revenue, and expenditures each year.

**Response:**

The OAG will fully comply with any legislatively mandated reporting requirement with regard to this fund.

**Recommendation 4**

We recommend that the OAG annually issue a report that outlines all three off-budget fund balances, revenues, expenditures, and activities to the Executive Office and Criminal Justice Appropriations Subcommittee and link it to the AG's website.

**Response:**

As noted in the audit, the OAG produced reports last year on all three of these funds, and will continue to do so in the future, as we are provided an opportunity to report by the Legislature.

**Chapter III**

**Recommendation 1**

We recommend that the Executive Offices and Criminal Justice Appropriations Subcommittee require the OAG to follow up on the programs in the Investigations Division to ensure accounting for program expenditures is accurate and verifiable.

**Response:**

The OAG agrees as well with this recommendation, and will comply in full. Again, the Office appreciate the auditors' recognition that even prior to this audit, the OAG identified and implemented corrective action regarding this issue.

## Recommendation 2

We recommend that the Executive Office and Criminal Justice Appropriations Subcommittee follow up on the implementation of S.B. 49, Child Welfare Modifications, 2013 General Session, to ensure processes for data tracking and validation are in place.

### Response:

The OAG will fully comply with any legislatively mandated reporting requirement with regard to this additional appropriation.

## Chapter IV

### Recommendation 1

We recommend that the Attorney General's Office monitor and document employee turnover rates and employee reasons for leaving to improve management decisions in the future.

### Response:

The OAG agrees with this recommendation, and will comply in full.

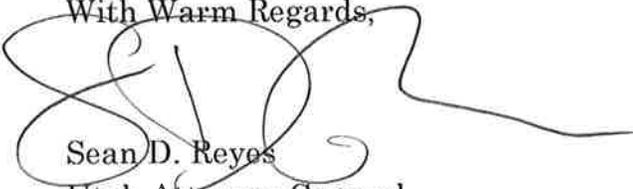
## Chapter V

### Recommendation 1

We recommend that the AG categorize settlement payments in the other charges/pass-through expenditure category for clarity and transparency purposes instead of using the current expenses category to account for settlement payments.

### Response:

The OAG agrees with this recommendation, and will fully comply.

With Warm Regards,  
  
Sean D. Reyes  
Utah Attorney General