MARYLAND OFFICE OF THE ATTORNEY GENERAL

Fiscal Year 2018 Budget Testimony

Brian E. Frosh, Attorney General

Senate Budget and Taxation Committee
Senator Edward J. Kasemeyer, Chair

Senate Budget and Taxation Committee
Public Safety, Transportation, and Environment Subcommittee
Senator James E. DeGrange, Sr., Chair

House Appropriations
Delegate Maggie McIntosh, Chair

House Appropriations
Subcommittee on Public Safety and Administration
Delegate Keith E. Haynes, Chair

3/6/2017

Thank you for the opportunity to respond to the Department of Legislative Services' Fiscal Year 2018 Budget Analysis, and for your committees' work on the FY 18 budget plan.

DLS RECOMMENDED ACTIONS: DLS recommends that a provision be included in the BRFA of 2017 to credit $11 million of the Moody's Corporation settlement to the General Fund. DLS recommends that the Committees include additional language in the BRFA 2017 that establishes an appropriate budgeted special fund within OAG for consumer protection recoveries, directs 70% of funds received from eligible settlements be deposited in the General Fund with the remainder directed to the consumer recoveries special fund, places a cap of $10M on the special fund balance, and directs balances in excess of that cap to the General Fund.

RESPONSE:

OAG opposes the proposal to divert consumer protection recoveries from the Consumer Protection Division. The proposal, in effect, would punish the CPD for its success.

No general funds are provided for the operation of the Consumer Protection Division. Consumer protection recoveries have historically been safeguarded for use by the Division to provide funding for the protection of seniors, veterans, and our most vulnerable citizens from predatory actions, and a departure from this longstanding practice would harm Marylanders.

The Consumer Protection Division has a far-reaching impact on the lives of Marylanders throughout the State, promoting honest competition in the marketplace and providing assistance to tens of thousands of consumers every year who encounter a wide variety of problems. For example, during the last two fiscal years, the Division received 21,000 consumer complaints, handled 90,000 inquiries through its toll-free hotline, and obtained almost $28 million in restitution for consumers, not including settlements with the national mortgage servicers. The mortgage servicer settlements have provided more than $1.5 billion in benefits to Maryland consumers. In addition, only four months into this fiscal year, the Division had already obtained over $10 million in debt relief for consumers victimized by USA Discounters.

These numbers reflect financial remediation for what consumers have already lost; however, they convey only part of the story. What cannot be measured as easily is the Division's enormous impact in preventing loss and continued harm to countless Marylanders who would otherwise have fallen prey to unfair or deceptive trade practices which are shut down or deterred by the Division's enforcement actions, consumer education, and advocacy.

A few examples over the past few months:

- The Division obtained a temporary restraining order to prevent 140 families from being locked out of their homes.
- The Division corrected the erroneous cancellation of a consumer's health insurance to enable his transplant surgery to go forward as needed.
- The Division obtained a temporary restraining order against a moving company that had taken a woman's entire possessions, including the medical devices designed to help her daughter, who suffers from a severe form of cerebral palsy, and scoliosis, walk and hear. A subsequent investigation revealed that the same company had misled and overcharged hundreds of other consumers.

Unfortunately, the Division's resources do not reflect the scope and importance of its mission and fall short of enabling it to meet the expanding and increasingly complex needs of Maryland consumers. First, the number of consumer protection laws the Division must enforce has grown exponentially, with the passage of the Personal Information Protection Act and the Protection of Homeowners in Foreclosure Act as just two recent examples. Yet despite these broader enforcement responsibilities, and the increased complexity of both the marketplace and the investigations required to prosecute cases, the Division's enforcement resources have not increased since the late 1980s. With the addition of several new programs, including a variety of registration programs, there has been limited growth in personnel required to staff them, but there has been no corresponding increase in resources devoted to enforcing the Consumer Protection Act or the new statutory protections enacted over the last three decades.

This static funding in the face of increased demand and responsibility means that fewer resources are available for the mission of the Division. For example, while a major investigation in the late 1980s might have involved dozens of boxes of documents, the Division must now grapple with investigations involving terabytes of data. Yet, the Division has roughly the same number of enforcement attorneys and fewer than half the investigators it had thirty years ago, when the Division was funded through General Fund appropriations.

The lack of resources makes it difficult for the Division to maintain its traditional functions, and forces it to forgo investigations that might well have resulted in both substantial restitution and other payments that would have far exceeded the costs invested. In addition, as the State becomes more diverse, the Division must engage non-English speaking consumers, but it does not have the multi-lingual investigative staff required to undertake critical investigations involving vulnerable immigrant populations.

Marylanders have benefited tremendously on the few occasions the Division has been able to devote increased enforcement resources to a specific problem. For example, a few additional attorneys and an investigator resulted in the significant recoveries against the mortgage servicers and others, providing more than $12 million in refunds to Maryland consumers as well as substantial other relief. Even where defendants lacked assets for restitution, the team has shut down loan modification and other predatory scams targeted at vulnerable homeowners, thereby protecting new consumers from continuing harm.

Historically, the Consumer Protection Division was funded both through general funds and through Consumer Protection settlement recoveries, which remained in a dedicated fund to support the Division. In recent years, however, the Attorney General's Office has received no general funds to support the Division's critical functions and has had to fund the work of the Consumer Protection Division exclusively through settlement recoveries.[1] Now it faces the prospect of both receiving no general funds, and having its settlement recoveries diverted from their intended purposes.

Enforcement efforts seeking consumer protection recoveries cannot and should not be driven by the funding needs of the Division, and the amounts recovered necessarily fluctuate from year to year based on the particular cases that are pursued. In some years, recoveries cover the immediate funding needs of the Division; in other years, they do not. The Division cannot reasonably be expected to meet the long term funding needs of the Division and the increasing needs of consumers through its recoveries if the majority of those recoveries are diverted elsewhere.

It has been suggested that the State can safeguard against these risks by providing general funds in the future if the Consumer Protection Division's dedicated fund is depleted. There is a problem with this approach. Difficult budget years for the State often occur at the same time as difficult economic times for Marylanders. When the State's General Fund is reduced, the same economic forces often work to increase exponentially the needs of consumers, and thus the demands on the Division. As such, it is often just when consumer protection activities are most

[1] Consumer Protection recoveries are used to fund the operations of the unit, including salaries and expenses necessary to assist individual consumers with their complaints, conduct investigations and bring lawsuits to stop unfair or deceptive trade practices and to obtain relief for injured groups of consumers, and provide outreach and education to prevent problems in the marketplace

needed that pressure on the General Fund is highest. To protect against this cycle, the Consumer Protection Division must have a sustainable source of funding now and in the future, and Consumer Protection recoveries have helped to provide that source.

Many of the Attorney General's recoveries do help augment the General Fund of the State, including recoveries from lawsuits brought by our environmental, securities, and antitrust lawyers. But Consumer Protection recoveries have always been treated differently from other recoveries, remaining with the Consumer Protection Division to ensure that there are adequate resources available to help those most in need in the short and long term.[2]

OAG understands the need to contribute when general fund revenue is down, particularly in a year in which its recoveries are unusually high. The Office has consistently engaged in its own cost containment, and is willing to work with DLS to help the General Fund while ensuring the long-term sustainability of the Consumer Protection Division. In fact, half of the Moody's settlement ($6M of $12M) is already going to the General Fund because it is attributable to the securities theories in the case. The remaining $6M should go to the Consumer Protection Division to support current and future work.

In conclusion, the proposed diversion of the bulk of the Moody's recovery from the Consumer Protection Division and the proposed formula for future diversion of recoveries from the Consumer Protection Fund is bad policy that would fall on the backs of our most vulnerable Marylanders. We ask the Committees to reject the recommendations.

ISSUE: DLS recommends that the OAG comment on staffing levels across the agency and what, if anything, can be done to increase support for critical functions. DLS further requests that the agency comment on how it will manage any additional work created by the passage of SJ5 until there is funding in place to support additional staff.

COMMENT: At the outset, it is important to note that DBM has treated OAG fairly in the budget process in the context of the State's overall fiscal challenges. After many years of cuts to the OAG budget, however, the Office does not have sufficient funding to meet the constantly increasing demands upon it. OAG appreciates that DLS recognizes this problem and spent considerable time speaking with OAG personnel about it.

Many of our divisions have declined in size, including our nationally respected antitrust and securities divisions. These divisions bring cases to protect consumers, but those cases also happen to bring in significant revenue to the State. Their decline in size therefore not only hurts consumers, but also reduces State revenue.

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[2] Although the Division relies upon multistate recoveries to fund its operation, those recoveries are merely a byproduct of cases brought to stop unfair or deceptive trade practices. The Division's priorities remain (1) stopping unfair or deceptive trade practices and (2) obtaining relief for injured consumers.

OAG continues to hold positions vacant for budget reasons in our criminal, civil, administrative, and executive divisions. The Office has eliminated its Honors program, which used to bring in three entry-level attorneys a year to work in the office for two years and then transition into permanent roles within units. These were among the best and brightest attorneys graduating from law school who wanted a career in public service.

Every legislative session, the Office is asked to absorb additional work. This is important work—but work for which there are additional resources—ranging from cybersecurity to reporting on the sexual assault kit backlog to working on legislation to protect against the antitrust concerns presented by the Supreme Court's decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.

The Office is obligated to represent all State agencies and officials, even when it does not have pins for that purpose. Two particular concerns are representation of State's Attorneys and representation of the State Board of Elections. DBM is working with OAG toward a permanent solution to these two problems, but the Office will continue to struggle to meet increased demand with limited resources in other areas.

OAG also is working to create efficiencies where those opportunities exist, including the procurement of a new case management system. This system will allow attorneys to better access and learn from the work of their colleagues, and for OAG leaders to manage the workload of their staff.

Finally, the Office will continue to prioritize the greatest needs and to produce excellent work for the State. This includes the work encompassed within SJ5. The policies of the federal government impact directly the lives of Maryland citizens, and the threats from the current Administration to the rights of Marylanders are serious ones. The Attorney General has an obligation to pursue justice, and cannot and will not be silent in the face of these threats. Our lawyers and staff will simply work longer hours, and more nights and weekends, to do the needed work. We will also capitalize on the *pro bono* resources that are available to support our efforts.