Schedule 13
Change Request for FY 11-12 Budget Request Cycle

Decision Item FY 11-12 ☑ Base Reduction Item FY 11-12 ☐ Supplemental FY 10-11 ☐ Budget Request Amendment FY 11-12 ☐

Request Title: Increase Resources for Division of Banking
Department: Regulatory Agencies
Dept. Approval by: **Date:** 10/13/10
Priority Number: DI-1
OSPB Approval: **Date:** 10-13-10

	Fund	1 Prior-Year Actual FY 09-10	2 Appropriation FY 10-11	3 Supplemental Request FY 10-11	4 Total Revised Request FY 10-11	5 Base Request FY 11-12	6 Decision/ Base Reduction FY 11-12	7 November 1 Request FY 11-12	8 Budget Amendment FY 11-12	9 Total Revised Request FY 11-12	10 Change from Base (Column 5) FY 12-13
Total of All Line Items	Total	3,375,034	3,703,884	0	3,703,884	3,759,397	364,276	4,123,673	0	4,123,673	348,592
	FTE	34.5	44.5	0.0	44.5	44.5	3.0	47.5	0.0	47.5	3.0
	GF	0	0	0	0	0	0	0	0	0	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	3,375,034	3,703,884	0	3,703,884	3,759,397	364,276	4,123,673	0	4,123,673	348,592
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0
(2) Division of Banking, Personal Services	Total	2,959,494	3,313,571	0	3,313,571	3,373,874	295,742	3,669,616	0	3,669,616	295,742
	FTE	34.5	44.5	0.0	44.5	44.5	3.0	47.5	0.0	47.5	3.0
	GF	0	0	0	0	0	0	0	0	0	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	2,959,494	3,313,571	0	3,313,571	3,373,874	295,742	3,669,616	0	3,669,616	295,742
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0
(2) Division of Banking, Operating Expenses	Total	415,540	390,313	0	390,313	385,523	68,534	454,057	0	454,057	52,850
	FTE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	GF	0	0	0	0	0	0	0	0	0	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	415,540	390,313	0	390,313	385,523	68,534	454,057	0	454,057	52,850
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0

Non-Line Item Request: None
Letternote Revised Text: None
Cash or Federal Fund Name and COFRS Fund Number: Division of Banking Cash Fund #244
Reappropriated Funds Source, by Department and Line Item Name:
Approval by OIT? Yes: ☐ No: ☐ N/A: ☑
Schedule 13s from Affected Departments:

CHANGE REQUEST for FY 2011-12 BUDGET REQUEST CYCLE

Department:	Department of Regulatory Agencies
Priority Number:	DI-1
Change Request Title:	Increase Resources For Division of Banking

SELECT ONE:

☒Decision Item FY 2011-12
☐Base Reduction Item FY 2011-12
☐Supplemental Request FY 2010-11
☐Budget Request Amendment FY 2011-12

SELECT ONE:

Supplemental or Budget Request Amendment Criterion:
☒Not a Supplemental or Budget Request Amendment
☐An emergency
☐A technical error which has a substantial effect on the operation of the program
☐New data resulting in substantial changes in funding needs
☐Unforeseen contingency such as a significant workload change

Short Summary of Request:

The Division of Banking requests an increase of $364,276 cash funds from the Division of Banking Cash Fund and 3.0 FTE in order to carry out its statutory obligations to perform mandated bank examinations in response to deteriorating bank ratings for Colorado state chartered banks. Specifically, the Division requests $314,276 for new bank examiners, and $50,000, amounts which are cash funds, for training of existing and requested new FTE.

General Description of Request:

The Department requests $364,276 Cash Funds (Division of Banking Cash Fund) and 3.0 FTE in the Personal Services and Operating expense (additional training related expenses) line items. However, the request is intended to annualize for only three years in order to provide resources during a time of heightened economic problems.

The ability of the Division of Banking (Division) to advance the mission of consumer protection and maintain public confidence in Colorado financial intuitions is largely dependent upon its ability to fulfill its Colorado mandated banking examination schedule each year. The most severe deterioration in the Colorado economy since the Great Depression of 1929 has severely weakened the financial condition of the Colorado banking industry. In order for the Division to fulfill its regulatory mandate during FY 11-

12, the requested funds and personnel are necessary. If sufficient funding is not allocated, the Division will not be able to fulfill its mandated bank examination schedule and will become increasingly at risk of not having its bank examination reports being accepted by the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (FRB). If the FDIC and the FRB no longer accept the quality and timeliness of Colorado state bank examination reports, the actual cost to the State of Colorado will eventually increase above the current expenses of the examination process.

Division Staffing Primarily Consists of Examiner Positions. The Division's present organizational structure is represented in the following chart:

Division of Banking Staffing	FY 2007-08 Actual	FY 2008-09 Actual	FY 2009-10 Actual*	FY 2010-11 Appropriation	FY 11-12 Request
Office of Commissioner	2.0	1.0	1.3	2.0	2.0
Examiners	27.7	29.1	28.1	36.5	39.5
Administration	6.5	5.5	5.1	5.5	5.5
Total	36.2	35.6	34.5	44.0	47.0
Percent Examiners	76.5%	81.7%	81.4%	83.0%	84.0%

** FY 09-10 examiner vacancies are higher than would otherwise be the case based on a vacancy at the Commissioner level and challenges in recruiting qualified staff at range minimum salaries to fill 6.0 positions provided via a FY 09-10 Decision Item. The Division is pleased to report that vacancies have since been filled, and actual FTE use in FY 10-11 is expected to be much closer to appropriated levels.*

As the table shows, staffing in the Division is weighted heavily towards examiners at 83% of total staff. Of these, presently 59% are entry-level, 22% are intermediate, and 19% are senior examiners. It is important to acknowledge the critical role played by senior level examiners in any robust examination program. On average, it takes at least five years to bring a new hire, even one with strong industry and/or auditing experience, fully up to speed as a fully productive senior examiner. As such, no matter how many examiners are staffed, senior positions are needed to bring the requisite level of expertise to bear in regulating any institution. Therefore, hiring and retention of examiners is critical to the long term objectives of the Division of Banking. It is simply not possible to perform this highly specialized work without having the requisite breadth of expertise. But, there are obstacles to developing this expertise. In any discussion of state bank examiners, it is important to note that recruitment of qualified staff is challenging and the Division must compete for qualified professionals. The FDIC offers regional pay differential of approximately 22.5% and a more clearly regimented career advancement schedule.

Deterioration of Bank Ratings Leads to Increased Workload. Banks are rated using the CAMELS scale, which stands for Capital adequacy, Asset management, Earnings, Liquidity, and Sensitivity to economic environment. Under federal and state regulatory procedures, adversely rated institutions must be examined more frequently (once every 12 months rather than alternating 18 month cycles with FDIC/FRB). As such, deteriorating CAMELS ratings for Colorado state chartered banks have the direct result of significantly increasing examination workload of the Division's examiners due to the increased number of examinations required. More significantly, lower rated institutions require even more senior level examiner experience, placing progressively more pressure on limited resources.

Due to limitations on staffing, the Division's examination function is and must be risk-based. At the commencement of each fiscal year an examination schedule is estimated in accordance with risk-based criteria. This estimate changes during the year based on changes in the risk-based criteria, such as improvement in the financial conditions/ratings of a financial services institution, as well as other factors such as industry consolidation, charter conversions, and new charters/licensees. At the conclusion of the fiscal year, the Division is able to determine the actual number of examinations required as a result of these changes. The following table shows the number of examinations conducted by fiscal year:

Examinations by Fiscal Year	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Projected	FY 11-12 Projected
Examinations	164	154	223*	245*
Percent Increase over prior year		-6.5%	44.8%	10.0%

*Due to deteriorating bank ratings, projected examinations are expected to sharply increase in FY 10-11 and FY 11-12. That is the primary basis for the request.

It is not possible to condense staff examinations capacity to a single metric given the tremendous variables in complexity, frequency, examiner experience, and the fact that examinations require groups of examiners and not single examiners. For instance, the most recent history suggests an average of 5.5 examinations per examiner on average. This metric would suggest that the Division's appropriated budget of 36.5 examiners would be insufficient to support 223 examinations by at least 3.0 FTE. However, it does not account for numerous variables or increasing complexity of exams.

As indicated above, the required examinations are steeply increasing, with a projected increase of 44.8% for the current fiscal year, and an additional 10% for FY 11-12. These increases are directly attributable to decreases in CAMELS ratings prompting more required risk-based examinations from the Division's staff of 36.5 examiners. As of June 2008, only 9 percent of institutions had an adverse CAMELS rating. This percentage has increased to 33% as of 2010. The following table illustrates this change:

	As of June 30 2008	As of June 30 2009	As of June 30 2010
CAMELS Rating System Distribution (5 point scale)	**Percent**	**Percent**	**Percent**
Percent of institutions without adverse rating (CAMELS 1-2)	88.1%	72.0%	66.4%
Percent of institutions adversely rated (CAMELS 3-5)	9.2%	25.2%	33.6%

In order to accommodate this increase, the General Assembly appropriated 6 additional FTE for FY 09-10, which was a 20% increase in appropriated examination staff from 30.5 to 36.5 FTE. Presently the Division is faced with a 44.8% increase for FY 10-11 and a cumulative increase of 54.8% by FY 11-12. The Division is therefore requesting 3.0 new examiners (an 8.2% increase over appropriated levels) to 39.5 FTE in order to meet the additional need. Although delays were experienced in filling all these positions, the successful FY 09-10 request has positioned the Division to make up a good portion of this ground, and as such permits the current request to be made conservatively at 3.0

FTE. Although the Division cautions that no single metric can capture the examinations need, it is worth noting that the most recent averages of 5.5 examinations per examiner also support a need of 3.0 FTE, as 39.5 FTE would be sufficient for roughly 220 examinations. However, the cumulative percentage increases in adversely rated institutions is thought to be a more reliable indicator of the need given the additional workload these examinations create.

Without additional resources, the Division will not be able to complete required examinations. Under the status quo all efforts to operate efficiently have already been undertaken. It is not possible to dedicate less staff per examination, as this strategy would only result in an examination taking more time. Case managers are already going out and performing examinations themselves, and any part of the examination process that can be automated to conserve staff hours has already been automated.

Training Resources Strained by Increased Examinations Workload. In concert with experience, training is also extremely important element of a qualified examination staff. In light of the 5-year period required to develop examiners having industry experience, training is instrumental to the development of Division expertise by building on in-house resources. As previously mentioned, examining a financial institution in a way that realizes actual protection of consumers and depositors cannot be done with only lower-level examiners. Senior examiners are essential to providing minimum examination due diligence and resulting public protection, and the Division is therefore compelled to focus on maintaining training resources in all budget climates. Unfortunately, deterioration in bank ratings and more frequent examinations result in increased travel expenses, and this places strain on operating expenses available for training.

In order to fund the travel expenses for mandated bank examinations, the Division must reduce dollars allocated to training. Although Division has sought to reserve $45,000 from its operating budget for training during FY 10-11, due to projected examination travel needs in FY 10-11 and FY 11-12, it is unlikely that the Division will be able to spend any significant amount of funds on training without additional resources. The request for $50,000 of additional training dollars within this Decision Item is a minimal request to provide the ongoing training needed in an increasingly complex bank regulatory environment. As a benchmark, the Conference of State Bank Supervisors (CSBS) nationwide industry standard for a minimal satisfactory level of state bank examiner training is 2% of total personnel expense, which for the Division of Banking for the FY 10-11 is approximately $72,000 ($3,600,901 in estimated spending x 2% equals $72,018).

One issue that reinforces the critical nature of the need for training is the recent enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, which is estimated to result in between 5,000 to 20,000 pages of additional banking regulations being promulgated. As yet, an undetermined amount of these new regulations will have an impact on the regulation of Colorado State chartered banks over the next 6 to 18 months. But it is certain that the examination staff must stay abreast of all applicable regulations.

Training expenditures for the Division represent a very efficient and effective means to build expertise because the Division takes advantage of low-cost opportunities. Because the Division has developed and maintained close working relationships with the FRB and the Federal Financial Institutional Council (who have more resources for training class development), the majority of the training is through these organizations, who frequently permit Division examiners to attend tuition-free. The cost to the Division is generally expenses of travel, lodging, and meals while in attendance at these training programs. Similarly, the Division also benefits from FRB and FDIC training programs on a tuition free basis, but again, the Division must pay for the expenses of travel, lodging and meals.

Sufficient Resources for Banking Regulation Urgently Needed Due to Economic Climate. Sufficient regulation of financial institutions has never been more critical than it is now; accordingly, this request is structured to be in place for only three years. As previously mentioned, the Colorado economy is in the midst of its most severe deterioration since the Great Depression of 1929, severely weakening the financial condition of the Colorado banking industry. While the Division must always characterize its protection of consumers and depositors in terms of risk (because it is not possible to know in advance when the next bank failure will occur), the Division believes that the risk now is as high as it has ever been.

The possibility of future bank failures can never be ruled out. But it is critically important to observe that even though bank failures can occur in any climate, sufficient oversight has a positive affect on potential problems 100% of the time, whether this is to prevent a failure through swift intervention, or to minimize the damage caused by a developing failure. So it stands to reason that while no guarantee exists against bank failure, in tumultuous times such as these the need for sufficient staff is at its highest but also at its greatest potential to protect the public.

Consequences if Not Funded:

The following is a general summary of additional consequences of the request not being funded:

- The Division of Banking will fail to fulfill its mandated bank examination schedule.
- Public protection provided via the State regulatory process will be severely compromised. Without resources to perform examinations, public protection is compromised and the risk of bank failure is higher.
- The State bank examination program would run the risk of not being certified by the Conference of State Bank Supervisors (CSBS). This could prompt federal authorities to decline a joint examination cycle arrangement. This in turn would create a requirement for a state to conduct all exams of state-chartered institutions and require significant increases in state regulatory staff.

Calculations for Request:

Summary of Request FY 2011-12	**Total Funds**	**General Fund**	**Cash Funds**	**Reappropriated Funds**	**Federal Funds**	**FTE**
Total Request	$364,276	$0	$364,276	$0	$0	3.0
Division of Banking Personal Services	$295,742	$0	$295,742	$0	$0	3.0
Operating Expenses	$68,534	$0	$68,534	$0	$0	0.0

Summary of Request FY 2012-13	**Total Funds**	**General Fund**	**Cash Funds**	**Reappropriated Funds**	**Federal Funds**	**FTE**
Total Request	$348,592	$0	$348,592	$0	$0	3.0
Division of Banking Personal Services	$295,742	$0	$295,742	$0	$0	3.0
Operating Expenses	$52,850	$0	$52,850	$0	$0	0.0

Cash Funds Projections:

Cash Fund Name*	**Cash Fund Number**	**FY 2009-10 Expenditures**	**FY 2009-10 End of Year Cash Balance**	**FY 2010-11 End of Year Cash Balance Estimate**	**FY 2011-12 End of Year Cash Balance Estimate**	**FY 2012-13 End of Year Cash Balance Estimate**
Division of Banking Cash Fund	244	4,199,871	560,360	513,962	242,475	241,715

**The Division expects sufficient fund balance to support this request based on the fact that it levies annual assessments in response to appropriations made from the fund by the General Assembly. Out-year fund balances are estimated.*

<u>Assumptions for Calculations</u>:

There are two components to the request: $314,276 for 3.0 FTE for new bank examiners, and $50,000 for training of existing and requested new FTE. The following table summarizes the calculations for those requested amounts:

FTE and Operating Costs						***Grand Total***	
Fiscal Year(s) of Request		**FY 11-12**	**FY 12-13**	**FY 13-14**	**FY 11-12**	**FY 12-13**	**FY 13-14**
PERSONAL SERVICES	**Title:**	**Financial Credit Examiner III**					
Number of PERSONS / class title		1	1	1			
Number of months working in FY 11-12, FY 12-13, and FY 13-14		12	12	12			
Number months paid in FY 11-12, FY 12-13, and FY 13-14		12	12	12			
Calculated FTE per classification		**1.0**	**1.0**	**1.0**	**1.0**	**1.0**	**1.0**
Annual base salary		$78,558	$78,558	$78,558			
Salary		$78,558	$78,558	$78,558	$78,558	$78,558	$78,558
PERA	**10.15%**	$7,974	$7,974	$7,974	$7,974	$7,974	$7,974
Medicare	**1.45%**	$1,139	$1,139	$1,139	$1,139	$1,139	$1,139
Subtotal Personal Services		**$87,671**	**$87,671**	**$87,671**	**$87,671**	**$87,671**	**$87,671**
PERSONAL SERVICES	**Title:**	**Financial Credit Examiner IV**					
Number of PERSONS / class title		1	1	1			
Number of months working in FY 11-12, FY 12-13, and FY 13-14		12	12	12			
Number months paid in FY 11-12, FY 12-13, and FY 13-14		12	12	12			
Calculated FTE per classification		**1.0**	**1.0**	**1.0**	**1.0**	**1.0**	**1.0**
Annual base salary		$90,954	$90,954	$90,954			
Salary		$90,954	$90,954	$90,954	$90,954	$90,954	$90,954
PERA	**10.15%**	$9,232	$9,232	$9,232	$9,232	$9,232	$9,232
Medicare	**1.45%**	$1,319	$1,319	$1,319	$1,319	$1,319	$1,319
Subtotal Personal Services		**$101,505**	**$101,505**	**$101,505**	**$101,505**	**$101,505**	**$101,505**

PERSONAL SERVICES	**Title:**	**Financial Credit Examiner V**					
Number of PERSONS / class title		1	1	1			
Number of months working in FY 11-12, FY 12-13, and FY 13-14		12	12	12			
Number months paid in FY 11-12, FY 12-13, and FY 13-14		12	12	12			
Calculated FTE per classification		**1.0**	**1.0**	**1.0**	**1.0**	**1.0**	**1.0**
Annual base salary		$95,490	$95,490	$95,490			
Salary		$95,490	$95,490	$95,490	$95,490	$95,490	$95,490
PERA	**10.15%**	$9,692	$9,692	$9,692	$9,692	$9,692	$9,692
Medicare	**1.45%**	$1,385	$1,385	$1,385	$1,385	$1,385	$1,385
Subtotal Personal Services		**$106,567**	**$106,567**	**$106,567**	**$106,567**	**$106,567**	**$106,567**
Subtotal All Personal Services		**$295,742**	**$295,742**	**$295,742**	**$295,742**	**$295,742**	**$295,742**
OPERATING EXPENSES							
Supplies @ $500/$500[2]	**$500**	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500
Computer @ $900/$0	**$900**	$2,700			$2,700	$0	$0
Office Suite Software @ $330/$0	**$330**	$990	$0	$0	$990	$0	$0
Office Equipment @ $3,998/$0 (includes cubicle and chair)	**$3,998**	$11,994	$0	$0	$11,994	$0	$0
Telephone Base @ $450/$450[2]	**$450**	$1,350	$1,350	$1,350	$1,350	$1,350	$1,350
Leased Space (150 SF/FTE estimated at $25.00/SF)					$0	$0	$0
Hardware/Software Maintenance ($155/FTE)					$0	$0	$0
Training*		$50,000	$50,000	$50,000	$50,000	$50,000	$50,000
Subtotal Operating Expenses		**$68,534**	**$52,850**	**$52,850**	**$68,534**	**$52,850**	**$52,850**
GRAND TOTAL ALL COSTS		**$364,276**	**$348,592**	**$348,592**	**$364,276**	**$348,592**	**$348,592**

*As noted on pages 5 and 6, in order to fund the travel expenses for mandated bank examinations, the Division must reduce dollars allocated to training. Although Division has sought to reserve $45,000 from its operating budget for training during FY 10-11, due to projected examination travel needs in FY 10-11 and FY 11-12, it is unlikely that the Division will be able to spend any significant amount of funds on training without additional resources. The request for $50,000 of additional training dollars within this Decision Item is a minimal request to provide the ongoing training needed in an increasingly complex bank regulatory environment. As a benchmark, the Conference of State Bank Supervisors (CSBS) nationwide industry standard for a minimal satisfactory level of state bank examiner training is 2% of total personnel expense, which for the Division of Banking for the FY 10-11 is approximately $72,000 ($3,600,901 in estimated spending x 2% equals $72,018). Because exact travel costs cannot be projected more accurately, this benchmark was used to conservatively identify a sufficient amount. This training is 100% travel costs to leverage free training opportunities given by other entities including federal regulatory bodies.

Impact on Other Government Agencies: The Division of Banking has signed Cooperative Agreements with the FDIC and the Federal Reserve. If the Division has insufficient staff to complete examinations, or assist in joint examinations, the agreements, by their termination, become void. As a result, the FDIC, the Federal Reserve, and the Division of Banking, would each have to complete their own examination, which would result in increased costs for all agencies involved.

Cost Benefit Analysis: The costs associated with this request are expected to provide sufficient resources to ensure the Division of Banking is able to complete its legislative agenda as outlined in 11-102-301, C.R.S. (2008), and adequately examine financial institutions. These costs represent the costs of public protection in ensuring the solvency and stability of state-chartered banks, and of taking action to minimize losses in the event of a failure. Colorado banks hold assets ranging between $14 million to $2.6 billion for a single institution and $8 billion for a banking organization having multiple institutions. In the event of a failure, losses can exceed 50% of a bank's assets, which would translate to between roughly $7 million and $4 billion, depending on the institution. So any bank failure as a result of inadequate examination – even of the smallest state-chartered bank – would result in losses that far outweigh the $364,276 cost of this request. While a bank failure is not certain as a result of inadequate examination, the consequences of inadequate examinations increase the risk of a failure.

Furthermore, as previously stated it is the policy of the Division of Banking to protect the public interest by regulating the business of state chartered and/or licensed financial institutions under its supervision in such a manner as to preserve and promote sound and constructive competition among financial services institutions; a dual federal and state banking system; the security of deposits; the safe and sound conduct of the business of state chartered/licensed financial institutions; and a statewide safe and sound banking system.

Implementation Schedule:

Task	**Month/Year**
Increase Operating line item-training	July 2011
Increase in Personal Services line item	July 2011

Statutory and Federal Authority: Section **11-102-101, C.R.S. (2010) as follows:**

Division of banking - creation - subject to termination - repeal of article. (1) There is hereby created a division of banking within the department of regulatory agencies. The division shall be charged with functions provided by law. Whenever any law of this state refers to the banking department, said law shall be construed as referring to the division of banking. (2) The administrative head of the division shall be the commissioner of banking, who shall be the state bank commissioner appointed and serving as provided by law, and the deputies and employees of the commissioner shall also be deputies and employees of the division of banking hereby created. The bank commissioner, at the time of his or her appointment, shall be experienced in the theory and practice of the business and regulation of financial services institutions under the jurisdiction of the banking board. (3) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of banking created by this section.

(b) This article is repealed, effective July 1, 2013.

11-102-301. Examinations and examiner's reports. (1) The commissioner shall examine the books and records of every state bank as often as deemed advisable and to the extent required by the banking board, shall make and file in his or her office a correct report in detail disclosing the results of such examination, and shall mail a copy of such report to the bank examined.

(2) The commissioner shall examine, as often as deemed advisable and to the extent required by the banking board, any electronic data processing centers of a state bank or any electronic data processing centers that serve a state bank, without regard to the location of the electronic data processing center; shall make and file in his or her office a correct report in detail disclosing the results of such examination; and shall mail a copy of such report to the data processing centers examined and the state bank that they serve.

(3)(a) The commissioner, if he or she deems it necessary or if required by the banking board, may examine the books and records of the controlling shareholder of a state bank and any affiliated entities of the controlling shareholder, as well as any relationship among the controlling shareholder and its affiliated entities, for the purpose of determining the safety and soundness of the state bank.

(b) If the controlling shareholder or affiliate's records are located outside this state, the controlling shareholder or affiliate shall either make them available to the commissioner at a convenient location within this state or pay the reasonable and necessary expenses for the commissioner or the commissioner's representative to examine the records at the place where they are located.

(c) The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect the records on the commissioner's behalf.

(d) If a controlling shareholder or affiliate refuses to permit the commissioner to make an examination, the banking board may fine such controlling shareholder or affiliate an amount not to exceed one thousand dollars for each day any such refusal continues.

(e) In lieu of any examination required by this subsection (3), the commissioner may accept an audit for the previous fiscal year prepared by an independent certified public accountant, independent registered accountant, or other independent qualified person. If the commissioner accepts an audit prepared by such independent person, no costs of the audit shall be borne by the commissioner and all costs of such audit shall remain the obligation of the controlling shareholder or affiliate.

(f) For purposes of this subsection (3):

(I) "Affiliated entity" or "affiliate" means an entity in control of a controlling shareholder or an entity controlled by a controlling shareholder.

(II) "Controlling shareholder" means a shareholder in control of a state bank.

(III) "In control of" means that an entity or shareholder meets the same criteria for acquiring control as is set forth in section 11-102-303 for acquiring control of a state bank.

(4) If the commissioner deems necessary, the commissioner may examine any corporation the majority of the stock of which is owned by a state bank or which corporation is found by the banking board to be controlled by a state bank, but the provisions of this subsection (4) shall not apply when such stock is held in a fiduciary capacity by the bank.

(5) If the banking board finds any officer, director, or employee of any state bank to be dishonest, reckless, incompetent, or acting in violation of this code, it shall, in writing, report the facts regarding such officer, director, or employee to the board of directors of the state bank, and, if the directors of the state bank fail or refuse to take action on such report within ten days, the banking board may, if it deems it advisable, send a copy of such report to the surety on the bond of said officer.

Performance Measures:

Division of Banking’s 2010/2011 Strategic Plan – The Division protects consumers by conducting examinations of all state-charter or licensed financial institutions under it supervision to preserve public trust in the Colorado banking industry.

Reasons to Believe:

- Accessible Government
- Qualified Professionals
- Fair Standards

Strategic Results:

- Professional Outreach
- Economic Environment

Measures:

- Division annually coveys key regulatory issues and guidelines to 80 percent of bank officers/directors
- 78 percent of Colorado banks are state chartered and 95 percent of new charters are state chartered

Consumer Protection

Schedule 13
Change Request for FY 11-12 Budget Request Cycle

Decision Item FY 11-12 ☑ Base Reduction Item FY 11-12 ☐ Supplemental FY 10-11 ☐ Budget Request Amendment FY 11-12 ☐

Request Title: Increase Funding for Securities Field Examiners
Department: Regulatory Agencies **Dept. Approval by:** Date: 10/12/10
Priority Number: DI-2 **OSPB Approval:** Date: 10-21-10

		1	2	3	4	5	6	7	8	9	10
	Fund	Prior-Year Actual FY 09-10	Appropriation FY 10-11	Supplemental Request FY 10-11	Total Revised Request FY 10-11	Base Request FY 11-12	Decision/ Base Reduction FY 11-12	November 1 Request FY 11-12	Budget Amendment FY 11-12	Total Revised Request FY 11-12	Change from Base (Column 5) FY 12-13
Total of All Line Items	Total	1,927,059	2,012,682	0	2,012,682	2,029,518	212,155	2,241,673	0	2,241,673	198,145
	FTE	21.0	23.0	0.0	23.0	23.0	3.0	26.0	0.0	26.0	3.0
	GF	0	0	0	0	0	0	0	0	0	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	1,927,059	2,012,682	0	2,012,682	2,029,518	212,155	2,241,673	0	2,241,673	198,145
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0
(10) Division of Securities, Personal Services	Total	1,856,638	1,956,533	0	1,956,533	1,978,597	195,295	2,173,892	0	2,173,892	195,295
	FTE	21.0	23.0	0.0	23.0	23.0	3.0	26.0	0.0	26.0	3.0
	GF	0	0	0	0	0	0	0	0	0	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	1,856,638	1,956,533	0	1,956,533	1,978,597	195,295	2,173,892	0	2,173,892	195,295
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0
(10) Division of Securities, Operating Expenses	Total	70,421	56,149	0	56,149	50,921	16,860	67,781	0	67,781	2,850
	FTE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	GF	0	0	0	0	0	0	0	0	0	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	70,421	56,149	0	56,149	50,921	16,860	67,781	0	67,781	2,850
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0

Non-Line Item Request: None
Letternote Revised Text: None
Cash or Federal Fund Name and COFRS Fund Number: Division of Securities Cash Fund #213
Reappropriated Funds Source, by Department and Line Item Name:
Approval by OIT? Yes: ☐ No: ☐ N/A: ☑
Schedule 13s from Affected Departments:

CHANGE REQUEST for FY 2011-12 BUDGET REQUEST CYCLE

Department:	Department of Regulatory Agencies
Priority Number:	DI-2
Change Request Title:	Increase Funding for Securities Field Examiners

SELECT ONE (click on box):

☒Decision Item FY 2011-12
☐Base Reduction Item FY 2011-12
☐Supplemental Request FY 2010-11
☐Budget Request Amendment FY 2011-12

SELECT ONE (click on box):

Supplemental or Budget Request Amendment Criterion:
☒Not a Supplemental or Budget Request Amendment
☐An emergency
☐A technical error which has a substantial effect on the operation of the program
☐New data resulting in substantial changes in funding needs
☐Unforeseen contingency such as a significant workload change

Short Summary of Request:

This is a request for an additional $212,155 cash funds spending authority and 3.0 FTE in FY 2011-12 for Financial/Credit Examiners II to address a substantial increase in the number of licensees of investment advisory firms due primarily to recent federal legislation and to achieve necessary staffing ratios to complete minimum examination cycles. This will enable the Division to meet its strategic result of protecting investors by ensuring brokerage and investment adviser firms are complying with the law to prevent dishonest and unethical sales practices. This request annualizes to $198,145 cash funds and 3.0 FTE in FY 2012-13.

General Description of Request:

The Division requests 3 additional FTE Financial/Credit Examiners II to address the increase in the size and number of licensees of investment advisory firms, and to achieve necessary staffing ratios to maintain effective consumer protection and complete minimum examination cycles.

The strategic goal of the Examination Section of the Division of Securities is to serve as an early warning system for investors by ensuring that securities firms are complying within the law and to prevent dishonest and unethical sales practices. The Division accomplishes this mission through the licensing and examination of securities professionals, and the investigation and prosecution of securities fraud claims. Specifically, the Examination Section activities include the licensure of securities broker-dealers, investment advisers, investment adviser representatives, and sales representatives, and conducting on-site examinations of broker-dealers and investment advisers.

Broker-dealers are securities firms who buy and sell securities for investors. **Investment Advisers** are firms who manage and invest funds for investors. Like financial institutions, broker-dealers and investment advisers control and have access to investor funds.

Regulatory responsibility over the industry includes the Division at the state level, the federal Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority ("FINRA") (formerly known as the NASD), a self-regulatory organization. The Division coordinates its examination activities with these organizations to capture the entities not examined by SEC and FINRA.

Investment Adviser Firms and the federal Dodd-Frank Wall Street Reform and Consumer Protection Act Reform Act. Prior to the passage of this Act, regulatory oversight of Investment Adviser firms was divided between the states and the SEC. Only the SEC regulated Investment Advisory firms with assets over $25 million. Only the states (including the Division) regulated Investment Advisory firms having assets under $25 million. After passage of the Dodd-Frank Act, and commencing in mid-2011, states will have sole regulatory authority over Investment Advisory firms with assets under $100 million, with the SEC having sole regulatory oversight of firms with assets over $100 million. Raising the demarcation line from $25 million to $100 million will increase the number of Investment Advisory firms over which the Division has sole regulatory oversight by approximately 100 firms. Not only will the number of firms increase, but the size of the firms will increase from small firms with less than $25 million to large firms with $100 million in assets. The Division anticipates that the examination of firms with $100 million in assets will inherently be more complex, and require additional staff time than examining a firm with $25 million is assets. As such, the Division will be the sole regulator with oversight of approximately 100 additional Investment Advisory firms with assets under management less than $100 million.

Broker-Dealers. The primary duty of the FINRA is to make scheduled examinations of the *home* offices of broker-dealers; however, broker-dealers also have *branch* offices. Branch office examinations by FINRA are rare, and examinations of the branches are left largely to states. The Division of Securities must therefore examine branches based on its overall statutory charge of protecting Colorado consumers. (FINRA has no regulatory authority over Investment Advisers)

Licensee Volume. Prior to 1999, the Division was not responsible for regulating Investment Advisers. On December 31, 2009, it regulated 639 Investment Advisory firms located in Colorado. Now, after passage of the Dodd-Frank Act, it will regulate 739 Investment Advisory firms, all located in Colorado. Further, there has been an overall increase in the number of broker-dealer branches located in Colorado. As an illustration, in 2004, there were 1,803 broker dealer branches located in Colorado, and 1,975 in 2005. Now there are 5,655 branches. While the definition of "branch office" was revised by FINRA, and accounts for part of the increase, industry business models appear to be contributing to a higher concentration of branches in Colorado.

A branch office is an organization's place of business other than its headquarters, or home office. The branch office is the marketing arm of the firm where sales personnel are located. The size of a branch can range from one person to hundreds of people. The headquarters are where policy decisions are made, business operations conducted and supervision of sales personnel.

In Colorado, the current total number of licensed firms is as follows:

▪ State-registered investment advisory firms based in Colorado:	739
▪ Colorado headquartered broker-dealers (“BDs):	101
▪ 2,300 out-of-state BDs with branches located in Colorado:	5,655
Total:	6,495

Given the substantial number of licensees, and current staffing levels, only a small percentage of licensees can be examined in any sort of realistic time frame. Correspondingly, a large percentage of firms, including Investment Advisory firms, currently go unexamined by any regulatory authority for extended periods of time.

Insufficient Examination Frequency for Investment Advisor Firms. Of greatest concern to the Division is the number of Investment Advisory firms over which the Division has sole regulatory oversight. Investment Advisers manage and invest funds for investors. The potential for public harm is immense, as these firms control large amounts of uninsured financial resources on behalf of consumers. In order to protect consumers, the Division must ensure that these firms are in compliance with statutory requirements ranging from violations of record-keeping requirements to outright fraud. A notorious recent example of the need for proper oversight is the case of Bernie Madoff. His firm, Bernie Madoff Investment Securities, was an investment adviser firm solely regulated by the SEC. Investors suffered catastrophic losses, and many blame the lack of proper oversight by the SEC. In Colorado, an examination of a Colorado based IA firm disclosed a ponzi scheme where the principal of the firm illegally paid himself $1.2 million out of total investor funds of $6 million. As a result of the exam, the remaining investor funds were safely placed with a court appointed receiver, a restitution order for $1.2 million was entered against the principal of the firm, and he was permanently barred from the securities industry. With $100 million firms now under the Division's purview, the potential for harm has significantly increased.

Given the vast potential for public harm, the Division believes that all firms must be examined regularly, and that no firm should operate without being examined at least once in every 5-6 years. With the addition of 2 field examiners in 2009-10, the Division is part way to achieving necessary staffing ratios to meet its examine cycle goal of once every 5 years. As a comparison, the SEC -- which has oversight of the federally licensed Investment Advisory firms -- conducted examinations of 18% of federally licensed Investment Advisory firms during FY 2004-05. This SEC benchmark translates to examining 90 percent of all firms within 5 years.

When compared with other states, Colorado's ratio of examiners to number of licensed Investment Advisers is significantly higher than other states within the western region. The following chart reflects how other regional states regulate Investment Advisers, and the judgments made by those states in determining the appropriate number of examiners per the number of licensed Investment Advisory firms. Further, Colorado is ranked 9th in the nation in terms of the number of licensed Investment Advisory firms located within the state. The Division does not have an explanation as to why Colorado has such a high number of licensed Investment Advisory firms located in Colorado relative to its population numbers.

Western Regional States

State	Number of Examiners	Number of state IA's Located within the state	Ratio of state IA's Per Each Examiner
Arizona	3	370	123
Colorado	4	739	185
Kansas	7	161	23
Missouri	7	277	40
Nebraska	1	74	74
New Mexico	1	73	73
Nevada	4	196	36
Oregon	4	196	49
Utah	5	179	36
Washington	7	486	69

The table above reflects what other states in the western region and/or with similar population numbers have in terms of number of examiners relative to the number of licensed Investment Advisory firms. As can be seen from both graphs, Colorado's ratio of examiners to number of firms is higher than some other states. The addition of three examiners would bring Colorado's ratio down to one examiner per 105 firms. While that ratio is still higher than some other states, the number would put Colorado more in alignment with other states than the status quo.

Even as Colorado cannot keep pace with other states and does not have sufficient resources for its intended benchmark, recent examinations illustrate a potential for harm in that violations occurs in more than half of all examinations. The following table summarizes the types of violations identified in the 240 examinations conducted by the Division in the last five years (across all categories).

Violation Category	Description	Frequency	Percent of Total
Books and Records Violations	Technical violations of record-keeping requirements	123	51.25%
Supervision	Inadequate supervision of sales representatives	4	1.7%
Unlicensed Activity	Selling a security/being an investment advisor with no license. This is a class 6 felony	5	2.0%
Fraud and Prohibited Conduct	A class 3 felony punishable by 8-12 years in prison	11	4.6%
Sales of Unregistered Securities	Failing to register a security prevents full disclosure. This is a class 6 felony	1	0.5%
Statutory Disqualifications	Failing to inform of prior injunctions or orders from other states	7	2.95%
Dishonest and Unethical Practices	Dishonest practices.	23	9.5%
No Violations		66	27.5%
Total		240	100.0%

*** Only the most serious violation was counted for each examination. There are no duplicate counts.**

The largest category is technical violations. These are violations of rules that generally require licensees to engage in best sales practices, to keep their customers' interest ahead of theirs, and establish minimum financial safety standards and prudent recordkeeping. An example of a technical violation occurs when a firm does not have a procedure in place for dual control over check processing, or procedures are not in place for supervisory review of all advertisements for accuracy and truthfulness. These technical violations usually result in the firm being sent a corrective action letter, although some warrant more severe sanctions.

Only 66 firms had no violations – 27.5 percent. And while a high percentage of violations were technical, felony violations were identified in approximately 5 percent of these examinations, with another 11.2 percent of licensed brokers and advisors not having adequately supervised their licensed sales representatives. If these statistics are applicable to all unexamined investment advisor firms (without considering the Division's risk-based approach), this would mean that felony violations are occurring at roughly 37 of the 739 investment advisory firms – many of which are presently unexamined.

The 240 exams conducted by the Division in five years represent approximately 6% of the securities firms subject to examination, or less than 1% of firms on an annual basis. Compared to federal counterpart agencies, this percentage is extremely low, and increased growth in licensee population will progressively worsen the situation.

To address this problem, the Division shifted its original 4.0 FTE and will shift the FY 2011-12 New Hires to focus on Investment Advisor firms. Since each examiner is capable of 25 examinations per year, an additional 3 FTE will facilitate in total examinations of 175 firms each year. It is anticipated that the examination of the additional 100 Investment Adviser firms with assets of $100 million may require significant additional time for the staff, and the measure of 25 exams per year may need adjustment. But adding 3.0 full-time examiners pursuant to this request would increase by 42 % the number of examiners, and increase the Division's capacity to 175 exams per year. This level will be sufficient to perform 875 exams in five years, and would enable the Division to meet its goal of examining all 739 Investment Advisory firms within 5-6 years. Keep in mind that the Division also examines broker-dealer branches located in Colorado on a risk based priority approach.

COST TO THE INDUSTRY

The Division of Securities is entirely cash funded, assessing primarily licensing fees annually on the firms and individuals it regulates. The rapid growth of the number of licensed professionals has had a positive effect on the amount of fees charged in recent years. The Division currently charges securities sales representatives and investment adviser representatives an annual fee of $14, which is the lowest of any state in the country. In 1991, the fee was $20. Firms are charged an annual licensing fee of $69, one of the lowest in the nation. In 1991, firms were charged $145. The Division licenses approximately 168,000 individuals and 4,500 firms for a total of 172,500 licensees. So, raising fees by $1 to each licensee will fund $172,500 of the cost of three additional FTEs. The total increase in licensing fees to each licensee to cover the costs of 3 additional FTEs is around $2. The timing is favorable for the Division to add field examiners as costs can still be reasonably absorbed by the industry.

SUMMARY

The foremost objective of the Examination Section is prevention. By ensuring that the investment advisers and broker-dealers comply with the rules and regulations under which they operate, the section attempts to prevent dishonest and unethical sales practices before they occur. On-site examinations also bring to light investment scams that are perpetrated upon the public.

In light of the passage of the Dodd-Frank Act, and the transfer of 100 Investment Advisory firms for the Division's oversight, the current field exam staff level is not sufficient for the Division to reach its strategic goal of examining every Investment Advisory firm within a 5-6 year examination schedule. As such, this increase and the growth of this industry have outpaced the Examination Section's ability to work Investment Advisers into a reasonable long term examination schedule. While the Division examines less than 4% of these firms annually, the SEC examines approximately 18% of federally licensed firms. The ratio of examiners to firms in other states is also much lower than currently exists in Colorado. The addition of three field examiners with a focus on Investment Advisory firms is an important first step that will begin to bring these firms under proper regulatory oversight.

State securities regulators are closest to investors: in other words the first line of defense in protecting investors from financial fraud and abuse. The Division can be compared to the "cops on the beat" and the securities market's early warning system. In order to maintain high standards in investor protection, the Division must have additional FTE that will be dedicated to fulfill the Field Examiner duties.

Consequences if Not Funded:

If this request is not funded, there are insufficient resources available to conduct an effective examination program of detection and prevention, especially for Investment Advisory firms. As this growth trend continues, fewer than 5% of Colorado firms and branches will be examined over the next 5 year period. The Division is the only regulator for the 739 Investment Advisory firms present in Colorado, and the only agency that examines the 5,655 branch offices of out-of-state broker-dealers. As the number of firms increase without oversight, so does the potential for harm to Colorado investors. Given these percentages, the perception and the reality in the industry will be one of little oversight, which only creates a lax regulatory environment that will be prone to abusive practices towards investors.

The Division currently schedules exams on a risk based approach. Given its small staff size, it is unrealistic for the Division to engage in any long term examination scheduling method. The Division will be unable to devote any resources to low risk examinations, and will be able to devote fewer resources to high risk examinations. This will create an environment that is unfavorable to Colorado investors.

Calculations for Request:

Summary of Request FY 2011-12	**Total Funds**	**General Fund**	**Cash Funds**	**Reappropriated Funds**	**Federal Funds**	**FTE**
Total Request	$212,155	$0	$212,155	$0	$0	3.0
Division of Securities Personal Services	$195,295	$0	$195,295	$0	$0	3.0
Operating Expenses	$16,860	$0	$16,860	$0	$0	3.0

Summary of Request FY 2012-13	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
Total Request	$198,145	$0	$198,145	$0	$0	3.0
Division of Securities Personal Services	$195,295	$0	$195,295	$0	$0	3.0
Operating Expenses	$2,850	$0	$2,850	$0	$0	3.0

Assumptions for Calculations:

FTE and Operating Costs					*Grand Total*		
Fiscal Year(s) of Request		**FY 11-12**	**FY 12-13**	**FY 13-14**	**FY 11-12**	**FY 12-13**	**FY 13-14**
PERSONAL SERVICES	**Title:**	**Financial/Credit Examiner II**					
Number of PERSONS / class title		3	3	3			
Number of months working in FY 09-10, FY 10-11 and FY 11-12		12	12	12			
Number months paid in FY 09-10, FY 10-11 and FY 11-12[1]		12	12	12			
Calculated FTE per classification		**3.0**	**3.0**	**3.0**	**3.0**	**3.0**	**3.0**
Annual base salary		$174,996	$174,996	$174,996			
Salary		$174,996	$174,996	$174,996	$174,996	$174,996	$174,996
PERA	**10.15%**	$17,762	$17,762	$17,762	$17,762	$17,762	$17,762
Medicare	**1.45%**	$2,537	$2,537	$2,537	$2,537	$2,537	$2,537
Subtotal Personal Services at Division Level		**$195,295**	**$195,295**	**$195,295**	**$195,295**	**$195,295**	**$195,295**
OPERATING EXPENSES							
Supplies @ $500/$500[2]	**$500**	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500
Computer @ $900/$0	**$900**	$2,700	$0	$0	$2,700	$0	$0
Office Suite Software @ $330/$0	**$330**	$990	$0	$0	$990	$0	$0
Office Equipment @ $3,440/$0 (includes cubicle and chair)	**$3,440**	$10,320	$0	$0	$10,320	$0	$0

FTE and Operating Costs						*Grand Total*	
Fiscal Year(s) of Request		**FY 11-12**	**FY 12-13**	**FY 13-14**	**FY 11-12**	**FY 12-13**	**FY 13-14**
Telephone Base @ $450/$450[2]	**$450**	$1,350	$1,350	$1,350	$1,350	$1,350	$1,350
Leased Space (150 SF/FTE estimated at $25.00/SF)		$0	$0	$0	$0	$0	$0
Hardware/Software Maintenance ($155/FTE)					$0	$0	$0
					$0	$0	$0
Subtotal Operating Expenses		**$16,860**	**$2,850**	**$2,850**	**$16,860**	**$2,850**	**$2,850**
GRAND TOTAL ALL COSTS		**$212,155**	**$198,145**	**$198,145**	**$212,155**	**$198,145**	**$198,145**

Cash Funds Projections:

Cash Fund Name*	**Cash Fund Number**	**FY 2009-10 Expenditures**	**FY 2009-10 End of Year Cash Balance**	**FY 2010-11 End of Year Cash Balance Estimate**	**FY 2011-12 End of Year Cash Balance Estimate**	**FY 2012-13 End of Year Cash Balance Estimate**
Division of Securities	213	$3,229,008	$617,992	$268,541	$333,863	$346,179

*Fund balance projections include an increase in projected revenue to support increased appropriations.

More specific detail on cash fund projections can be found in the following table:

	Estimate FY 2010-11	Request FY 2011-12
Division of Securities		
Projected Cash Fund Balance With FY 11-12 Decision Item		
Beginning Fund Balance	617,992	268,541
Base Appropriation/Request without Decision Item	3,558,683	3,530,719
Decision Item Funding (Personal Services and Operating)		212,155
Projected Fee Revenue	3,209,232	3,808,196
Projected Ending Fund Balance	268,541	333,863
Projected Cash Fund Balance Without FY 11-12 Decision Item		
Beginning Fund Balance	617,992	268,541
Base Appropriation/Request without Decision Item	3,558,683	3,530,719
Decision Item Funding (Personal Services and Operating)		
Projected Fee Revenue	3,209,232	3,596,041
Projected Ending Fund Balance	268,541	333,863

Fees are set in response to legislative appropriations. If the Decision Item is approved, $212,155 will be added to fee calculations, which will result in fees being higher by approximately $2 as noted on page 8 of the request narrative.

Impact on Other Government Agencies: None.

Cost Benefit Analysis: The fundamental philosophy behind securities regulation is the goal of investor protection and establishing the "rules of the game" so as to maintain the integrity of the market. When the rules are obeyed, the securities markets work and drive investment in the economy. When rules are disobeyed, the markets lose credibility and people stop investing.

Simply stated, the benefit of hiring three field examiners is increasing the number of the current number of field exams conducted per year from 100 to 175. Increasing the number of field exams will in turn increase the number of broker-dealer and investment adviser violations that are discovered through the examination process. Since 1999, the number of Investment Advisory firms licensed with the state has grown from zero to 739 firms. The addition of three field examiners assigned to conduct examinations of Investment Advisory firms will be an important first step in proper oversight of these firms.

Currently, violations are found in over 50% of firms examined. Increasing the number of firms examined will result in bringing at least half of those firms in full compliance with the securities regulations, thereby enhancing investor protection and investor confidence. The additional presence of having more "cops on the beat" in the regulated community will foster a heightened awareness by the firms to ensure compliance.

When a firm "turns bad" a criminal enforcement is required. Over the past two years, restitution to investor values per enforcement action, on average, has been $12,910,268. This average includes over $900 million in restitution obtained by the Division in its settlement of Auction Rate Securities ("ARS") cases. Because the Division does not anticipate these elevated numbers to continue, the restitution values without the ARS settlements per enforcement action, on average, have been $210,630 over the past two years. If increasing the number of firm examinations prevents even two firms from "turning bad", the cost benefit of the additional three examiners is positive. The following table illustrates this cost benefit calculation:

When a firm "turns bad" a criminal enforcement is required. Restitution values per enforcement action, on average, have been $210,630 over the past two years. If adding 75 firm examinations prevents even two firms from "turning bad", the cost benefit of the additional three examiners is positive.

Benefit	Dollars	Cost	Net Savings	Ratio
Fraud avoided per 3.0 Examiners added	$421,260	$212,155	$209,105	49.0%
Average per Colorado Citizen				

The costs are justified and can be reasonably absorbed by the industry. Phenomenal growth in the industry has lead to very low fees in Colorado, and the Division presently has the lowest fees in the nation. A one dollar increase in fees can fund $172,500. The Division can meet its priorities and still limit the cost of regulation.

Implementation Schedule:

Task	Month/Year
FTE Hired	July 1, 2011, or as soon as possible thereafter

Statutory and Federal Authority:

Colorado Securities Act 11-51-101 through 908 (includes the Local Government Investment Pool Trust Fund Administration and Enforcement Act); the Colorado Municipal Bond Supervision Act 11-59-101 through 120; and the Colorado Commodity Code 11-53-101 through 210

11-51-101, C.R.S.: (1) This article shall be known and may be cited as the "Colorado Securities Act". (2) The purposes of this article are to protect investors and maintain public confidence in securities markets while avoiding unreasonable burdens on participants in capital markets. This article is remedial in nature and is to be broadly construed to effectuate its purposes. (3) The provisions of this article and rules made under this article shall be coordinated with the federal acts and statutes to which references are made in this article and rules and regulations promulgated under those federal acts and statutes, to the extent coordination is consistent with both the purposes and the provisions of this article.

11-59-104, C.R.S.: (1) The securities commissioner is hereby empowered to administer and enforce all provisions of this article and to provide the division with such books, records, files, and printing and other supplies and such officers and clerical and other assistance as may be necessary in the commissioner's discretion to perform the duties required of the securities commissioner under this article, subject to appropriations made by the general assembly.

11-53-201, C.R.S.: (1) The commissioner in his discretion may make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated any provision of this article or any rule or order under this article or to aid in the enforcement of this article, or, in the prescribing of rules and forms under this article, the commissioner may require or permit any person to file a statement as to all the facts and circumstances concerning the matter to be investigated and may publish information concerning any proceeding brought under this article or any rule or order issued under this article.

Performance Measures:

One of the Division's Strategic Results for the Examination section is to serve as an early warning system for investors by ensuring that brokerage and investment advisory firms are complying with the law to prevent dishonest and unethical sales practices. The performance measure for this result has been to annually examine 125 Investment Adviser and brokerage firms in Colorado; however, based on the addition of 100 firms the measure is being increased to 145 (100 firms every five years = 20 per year). The additional examiners are necessary for the Division to begin to meet this performance measure. The addition of three FTE field examiners will have a measurable impact as it will increase the number of exams conducted by the Division (by a ratio of approximately 105 investment advisory firms per examiner), and move the Division closer to the goal of meeting its strategic results.