



AUDITOR GENERAL

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DEPARTMENT OF LEGAL AFFAIRS SELECTED ADMINISTRATIVE FUNCTIONS AND FOLLOW-UP ON SELECTED PRIOR AUDIT FINDINGS

Operational Audit

SUMMARY

This operational audit of the Department of Legal Affairs (Department) for the period July 2005 through February 2007, and selected actions taken through June 14, 2007, focused on selected administrative functions and follow-up on selected prior audit findings. As summarized below, our audit disclosed that controls could be improved in various administrative areas.

LEGAL SERVICES

Finding No. 1: The Department did not have records supporting the basis for the calculation of hourly rates used for billing legal services to State agencies.

Finding No. 2: Application Development and Administration programming staff were assigned incompatible system-related duties.

Finding No. 3: The Department did not obtain appropriate approval from the Executive Office of the Governor for a temporary transfer of moneys. Additionally, the Department did not properly account for interfund transfers made to offset temporary operating resource deficiencies in the Legal Services Trust Fund.

CASH RECEIPTS AND RECEIVABLES

Finding No. 4: The Department did not ensure proper controls were in place for cash collections.

Finding No. 5: Program areas did not always timely provide to Finance and Accounting documentation concerning the establishment of accounts receivable.

Finding No. 6: Department accounting processes for the write-off of receivables did not provide for the separation of incompatible duties. Additionally, Department accounting policies and procedures did not provide for sufficient supervisory approval of receivable write-offs.

OTHER ADMINISTRATIVE FUNCTIONS

Finding No. 7: The Legislature should consider amending or repealing provisions of Section 16.58, Florida Statutes, related to the Statewide legal research bank.

Finding No. 8: The Department did not consistently ensure that all employees affirmed the Department's Code of Ethics for Public Officers and State Employees upon hire and annually thereafter.

Finding No. 9: The Department did not always ensure compliance with established policies and procedures for the use of cellular telephones. Additionally, policies and procedures for the use of wireless communication devices should be enhanced to include independent or supervisory review of usage.

Finding No. 10: The Department did not obtain appropriate approvals for changes to the Purchasing Card Agency Plan and did not maintain a current Plan. Furthermore, some single transaction limits appeared to be higher than necessary.

Finding No. 11: The Department had not obtained legislative clarification regarding the statutory maximum fund balance allowable in the Legal Affairs Revolving Trust Fund.

Finding No. 12: Improvements in internal controls related to revolving fund subaccounts were needed.

OTHER MATTERS:

The Department, in response to prior audit findings, made substantial progress in implementing control policies and procedures for settling cases, processing the resulting payment distributions, and addressing statutory responsibilities relating to controlled substances.

BACKGROUND

The Department of Legal Affairs, also known as the Office of the Attorney General, represents the Governor and agencies of the executive branch in legal matters. The Department has established the Division of Administrative Services to support Department programs and activities, although some administrative functions, such as revenue collection, are also performed by program personnel. For the 2006-07 fiscal year, the Department administered a budget of approximately \$173.8 million and had 1,354 authorized positions. The Department has a central office in Tallahassee and field offices in 15 other cities throughout the State.

The Department of Legal Affairs is headed by the Attorney General. The Honorable Charlie Crist served as Attorney General through January 1, 2007. The Honorable Bill McCollum began service as the Attorney General on January 2, 2007.

Legal Services

Among other functions, the Department represents the State and its officials in any civil action affecting the State’s interests. Florida law¹ authorizes the Department to provide legal services to requesting State agencies at a cost pursuant to mutual agreement. The Legal Services Trust Fund was created to account for moneys associated with the provision of these contractual legal services.

Finding No. 1: Legal Services Billing Rates

In April 2002, the Office of Program Policy Analysis and Government Accountability (OPPAGA) reported that the Department had not settled on a fixed hourly billing protocol to more accurately account for the costs of legal services provided and that the true cost of the Department’s provision of legal services was unknown.² In 2004, Department staff developed the following standard hourly billing rates that were reflected in interagency retainer agreements and charged to contracting State agencies, unless otherwise modified by mutual agreement:

**Table 1
Standard Hourly Billing Rate by Level**

Classification Level	Hourly Rate
Senior Assistant Attorneys General and Special Counsels	\$70
Assistant Attorneys General	\$65
Entry Level Attorneys	\$55
Paralegals / Law Clerks / Investigators	\$25

Source: Departmental Standard Interagency Retainer Agreement

In addition to the hourly rates shown in Table 1, the Department applied a five-percent overhead rate to fees and other charges for services rendered under agreements. According to Department billing records, over \$9 million was billed and collected for legal services provided under interagency retainer agreements during the audit period.

Although the Department had established a fixed hourly billing protocol for services provided under interagency retainer agreements, our audit disclosed that the Department did not have records supporting the basis for the calculation of the hourly rates. Also, the hourly rates had not been updated since 2004. Without a current and documented basis for the hourly billing rates, the Department cannot demonstrate that the rates reflect the cost of legal services. In response to audit inquiry, Department management stated that the 2004 rates are now understated and that new rates are currently being developed.

¹ Section 287.059(3), Florida Statutes.

² Progress Report No. 02-24.

Recommendation: The Department should continue current efforts to establish billing rates that reflect the current cost of services. We also recommend that the sufficiency of the rates be evaluated on an annual basis and that documentation be maintained to demonstrate that rates are consistent with costs.

Finding No. 2: Data Integrity

An appropriate division of roles and responsibilities can assist in the detection of errors or fraud. In the information technology environment, access controls can be used to reasonably ensure an appropriate division of roles and responsibilities. Such controls work by limiting system access privileges to only what is needed to perform assigned duties and by avoiding the assignment to one employee incompatible duties, such as programming, moving programs into production, and modifying production data. The failure to appropriately separate incompatible duties increases the risk that the integrity of critical production data will be compromised.

Our review of access capabilities and system development responsibilities of the Department's Application Development and Administration (ADA) staff disclosed that incompatible duties had been assigned to some employees. Specifically, we noted that all six ADA staff programmers were able to move modified programs into the production environment of the Department's Time Tracking and Caseload Databases. The time data stored in the Time Tracking Database was, among other things, used to generate monthly billings for legal services provided under interagency retainer agreements.

Additionally, staff programmers had unlimited access privileges to the Time Tracking Database production environment, giving them the capability to input, edit, and delete production data. In response to audit inquiries, Department management indicated that this ongoing access to production data was necessary to assist users.

During the audit period, the Department did have limited compensating controls in place to track program changes through assignment documents, manual revision logs, and the completion of help desk

tickets when ADA staff assisted with document editing and deleting. However, even with these limited compensating controls, the excessive access privileges assigned to ADA staff programmers increased the risk that unauthorized disclosure, modification, or destruction of data could occur, thus potentially reducing the reliability of time data used to generate legal services billings.

Recommendation: The Department should review ADA staff access privileges to ensure access is limited to that needed for their areas of responsibility. Specifically, ADA programming staff should not be able to move programs into production and should not have ongoing access allowing the update of production data.

Finding No. 3: Interfund Transfers and the Legal Services Trust Fund

During the audit period, the Department made temporary interfund transfers of salary-related expenditures totaling over \$2.7 million. These temporary transfers reduced the recorded salaries and benefits in the transferring fund, thereby increasing the available budget balance. Temporary transfers of approximately \$2 million were made from the Legal Services Trust Fund (Trust Fund).

Our review of the temporary transfers from the Trust Fund disclosed the following concerns:

- Section 215.18, Florida Statutes, authorizes the Governor to order a temporary transfer of moneys from one fund to another in order to meet temporary deficiencies in a particular fund. While the Department did not transfer moneys, the Department did transfer expenditures which increased the available budget to meet temporary operating deficiencies of the Trust Fund. Department management stated that due to the urgency involved in making such transfers to meet payroll, approval of the Executive Office of the Governor (EOG) for a temporary transfer of moneys was not sought or obtained. It is not clear that the authority for the transfers of expenditures existed or that the EOG was made fully aware of the operating deficiencies and the temporary transfers of expenditures.

➤ Interfund payables and receivables were not recorded in Department accounting records to account for the temporary transfers between funds as required by generally accepted accounting principles.³

In response to audit inquiry, Department management stated that, compared to other funds, the Trust Fund had the least cash balance available to pay operating expenses, and until agencies paid the Department for legal services provided, it was necessary to cover expenses temporarily from another account.

We also noted that the Trust Fund has continued to have a deficit net asset balance for the last five fiscal years and, at the end of the 2005-06 fiscal year, had a net asset deficit of approximately \$2.9 million.

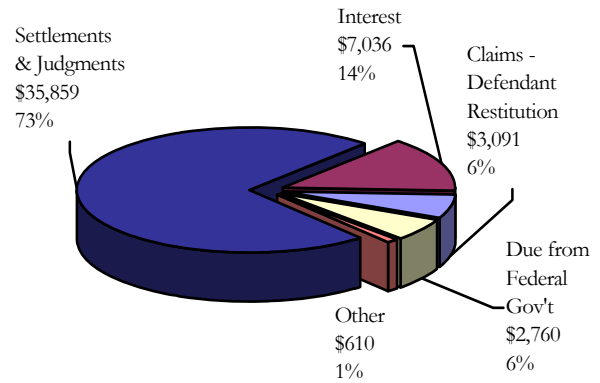
Recommendation: The Department should ensure that, in instances in which temporary transfers are necessary to meet operating requirements, appropriate prior approval from the Executive Office of the Governor is obtained and interfund receivables and payables are properly recorded in the accounting records. Furthermore, the Department should assess current funding and collection processes for legal services and determine a long-term solution to address the funding needs of the Trust Fund.

Cash Receipts and Receivables

The collection and tracking of case-related receivables and related cash⁴ collections are performed by applicable program offices. During the audit period, the Department recorded revenues totaling over \$104 million for fines and judgments, representing 39 percent of the Department’s approximately \$265 million operating revenues.

In addition, as shown in Chart 1 below, 73 percent of the Department’s approximately \$49 million in gross receivables reported at June 30, 2006, were for settlements and judgments. A related uncollectible allowance of over \$31 million was also reported.

Chart 1
Receivables by Source
(in thousands)



Source: Florida Accounting Information Resource Subsystem (FLAIR).

Finding No. 4: Cash Receipts

In response to recommendations made in audit report No. 2006-025, the Department improved internal controls over some areas of the cash collection process. However, our review of cash collection procedures within the Department’s mailroom, Finance and Accounting, and Offices of the Antitrust, Medicaid Fraud Control, and Economic Crimes Programs disclosed the following control deficiencies:

- Contrary to Department accounting policy, a control listing of employees responsible for cash collections in field offices was not maintained. Absent such a listing, the Department may be unable to affix responsibility should a loss of collections occur.
- Of the 485 employees in the Department’s central office, 130 (28 percent) were authorized to receive checks. In response to audit inquiry, Department management indicated that some program areas had authorization to receive checks, though checks were not typically received. Department management also indicated that multiple authorizations were needed in case of employee absence. Notwithstanding the need for back-up personnel, limiting the number of employees authorized to collect cash to only those essential to the various collection functions, may lessen the risk that funds may be lost or misappropriated.

³ Section 1300.120, Codification of Governmental Accounting and Financial Reporting Standards.

⁴ When used in this report, the term cash means cash and cash equivalents, such as checks and money orders.

- One employee in the Economic Crimes Program Division Director's Office performed incompatible duties. Specifically, the employee had the authority to create check logs (listings of checks received), handle cash, and had sole authority to maintain the Office's receivables database that is used to track amounts due to the Department. The failure to separate the custody and recording of cash and accounts receivable increases the risk that errors or fraud may occur and not be timely detected.
- When transmitting checks to Finance and Accounting, the employee noted above replaced check logs submitted by field offices with new check logs and discarded the original check logs. Although our tests, which included a comparison of a sample of the new logs to copies of logs maintained by some field offices, did not identify any omitted checks or other errors, the preparation of the new logs and the discard of Finance and Accounting's copy of the field office logs introduced an opportunity for the concealment of errors or fraud and may impair the Department's ability to affix responsibility for losses, should they occur.
- For 16 of 30 check logs reviewed, contrary to Department procedure, there was no evidence that check logs were verified by a second person within the applicable program area before forwarding to Finance and Accounting. Independent verification of cash collections provides additional accountability over cash receipts.
- Contrary to Department procedures, staff in the Antitrust Program Division Director's Office did not always restrictively endorse checks upon receipt. The restrictive endorsement of checks at the point of collection limits the negotiability of checks should they become lost or diverted and helps to deter theft.

Recommendation: The Department should ensure that an appropriate separation of duties is established and maintained for all cash collection functions, checks are restrictively endorsed upon receipt, and original check logs are verified and retained. Additionally, the Department should limit the employees authorized to collect cash to only those essential to the various collection functions and maintain a control listing of those employees for both central and field offices.

Finding No. 5: Unrecorded Receivables

Consistent with generally accepted accounting principles, Department policies required that when a determination was made that an entity owed the Department money through a court order, judgment, settlement, Assurance of Voluntary Compliance, or any other written promise to pay, and payment had not been received, an accounts receivable was to be established in the Department's accounting records. Policies further required that when a document was signed by all parties involved, the completed document must be submitted to Finance and Accounting to facilitate the recording of the receivable in the Department's accounting records.

We reviewed a total of 34 case files where judgments were rendered for monetary damages or settlement agreements were negotiated and moneys were to be collected by the Department. For the purposes of our audit, we considered 30 days to be a reasonable time period within which to record the related receivable, with that 30-day period beginning on the date a measurable and enforceable claim was established via a plea agreement, final judgment, or other official document. For the case files reviewed, we noted that contrary to Department policies, receivables were not always appropriately recorded as described below:

- For three of the nine Economic Crimes cases reviewed, the Department had not, as of March 26, 2007, recorded accounts receivable totaling approximately \$1.2 million for claims established in August 2006.

- For 8 of the 18 Medicaid Fraud Control cases reviewed, the Department had not appropriately established accounts receivable totaling approximately \$10.5 million. In response to audit inquiry, Finance and Accounting management stated that for 5 of the 8 cases, legal staff did not provide necessary documents until payments were remitted for deposit, in some instances over six months after the date a measurable and legally enforceable claim had been established. For the remaining 3 cases, as of April 5, 2007, full payment had not been received and documents necessary for recording receivables had not been submitted to Finance and Accounting.
- For two of the seven Antitrust cases reviewed, the Department had not timely recorded accounts receivable totaling \$690,679. For these two cases, the period between the claim date and the receipt of moneys was 41 and 69 days, respectively.

The timely recording of accounts receivable in accounting records establishes a basis for accurate and complete financial reporting and a control point against which program area records may be periodically verified.

Recommendation: The Department should take necessary action to ensure that accounts receivable are properly recorded in accounting records and accounting records are periodically reconciled to subsidiary records maintained by the program areas.

Finding No. 6: Receivable Write-Offs

Pursuant to Department of Financial Services (DFS) rules,⁵ each agency is responsible for exercising due diligence in securing full payment of all accounts receivable and other claims due to the State. Within six months after the date on which an account was due and payable, unless another period is approved, and after exhausting other lawful measures, the delinquent accounts receivable is to be reported to DFS for further action, including possible assignment to a collection agency unless exempted by request, and for

adjusting accounting records⁶ under the authority provided by Section 17.04, Florida Statutes.

Department accounting policies and procedures provided that the attorney handling a particular case was responsible for the collection of payments relative to the case. Additionally, if a receivable was deemed to be uncollectible, the attorney handling the case was to provide sufficient justification to Finance and Accounting as to why the account was deemed to be uncollectible and an assertion that all lawful means to collect the receivable had been exhausted. Finance and Accounting was then to submit the delinquent accounts receivable and the justification for write-off to DFS.

During the audit period, Finance and Accounting staff submitted one listing of uncollectible receivables to DFS for write-off, and on July 19, 2006, DFS approved the elimination of 109 receivables totaling over \$17 million from Department accounts. Our audit tests of a sample of these uncollectible receivables disclosed the following:

- Attorneys were required to perform incompatible duties of collecting cash and submitting uncollectible receivables to Finance and Accounting for write-off. Without compensating controls, these incompatible duties increase the risk that errors or fraud would not be timely detected should they occur. Our review disclosed that written Department accounting policies and procedures did not prescribe a program-level compensating control, such as supervisory approval of attorney write-off requests.
- The Finance and Accounting employee who submitted the receivables write-off request to DFS did not always follow accounting policies and procedures that require support in the form of attorney justifications prior to the submission of write-off requests. Specifically:

⁵ Rules 69I-21.003 and 69I-21.005(1), Florida Administrative Code.

⁶ The administrative act of adjusting accounting records for amounts determined to be uncollectible does not extinguish the Department's legal right to recover.

- A total of \$174,289 was written off for 40 accounts receivable of the Crimes Compensation Program. In response to audit inquiry, Program management stated that they had not requested any accounts be written off during the audit period.
- A total of \$13,902,119 was written off for the ten receivables of the Economic Crimes Program selected for review. In response to audit inquiry, Program employees provided documents related to the collectible status of some of these accounts, although the documents provided in some cases were unsigned and undated handwritten notes recommending write-off. In one instance, a Program employee stated that the Program office did not request the write-off, was unaware the case had been written off, and hoped to collect the debt. In another instance, Program management indicated that the Department was still collecting on the receivable.

- The Finance and Accounting employee who requested write-offs also had responsibilities for collecting cash and updating accounting records, duties that are considered incompatible. We also found that existing procedures did not require supervisory approval of write-offs submitted by Finance and Accounting.
- Department records indicated that the write-off request to DFS did not include exempting assignment of accounts to a collection agency. As program employees were, in some instances, still collecting on accounts that had been written off, the Department may be at risk of duplicating DFS collection efforts.

The failure to adequately separate incompatible duties and enforce existing control policies, and the absence of a compensating control, such as supervisory approvals of all write-off submissions, increase the risk that errors or fraud may not be prevented or timely detected should they occur.

Recommendation: The Department should take necessary action to ensure appropriate justifications for write-offs are obtained from attorneys prior to submitting accounts to DFS for further action. Additionally, policies and procedures should be enhanced to require program-level supervisory approval for receivable write-offs as a means to reduce the risk of loss. Such approvals should be documented on all write-off justifications provided to Finance and Accounting. Furthermore, the Department should ensure that an appropriate separation of duties or an adequate compensating control is established for the receivables write-off process within Finance and Accounting. The Department should also ensure that it is not duplicating DFS collection efforts on any account.

Other Administrative Functions

Finding No. 7: Florida Legal Resource Center

Section 16.58, Florida Statutes,⁷ creates within the Department, the Florida Legal Resource Center (Center) for facilitating interagency legal information sharing and communications, and for establishing and maintaining a Statewide legal research bank. The Statute also requires that the Department adopt a procedure for State agencies, special districts, and universities, community colleges, and junior colleges to submit legal information to include memoranda, briefs, and opinions, for deposit into the research bank and that all resources of the Center be made equally available to various governmental entities. The Statute further requires that on or before January 1 of each year, the Department must prepare and transmit to the Governor and the Legislature a report of Center activities for the preceding fiscal year.

In response to audit inquiry, Department management stated that early attempts to obtain and deposit memoranda, briefs, and opinions into a research bank were unsuccessful due to technological incompatibility issues and the reluctance of legal staff of governmental entities to submit materials. As a result, the Center was disbanded by the Department in 1997, and a report of Center program activities had not been provided to the Governor and the Legislature since

⁷ Enacted by Chapter 93-161, Laws of Florida.

1996. The Department has continued to provide resources, such as appellate alerts, to certain entities via electronic communication and a Web site separate from the Department's home page. The Department has also provided limited access to a contracted vendor's on-line legal research service through the assignment of no more than 30 passwords to State agencies determined eligible by the Department.

Department management also stated that the growth of the internet has made Section 16.58, Florida Statutes, largely obsolete in that agencies now have the wherewithal to share, purchase, and access research materials.

Recommendation: Given the current technological environment and availability of Web-based resources, as well as the expressed difficulty of obtaining research materials from governmental entities, the Legislature should consider amending or repealing those provisions of Section 16.58, Florida Statutes, related to the Statewide legal research bank.

Finding No. 8: Code of Ethics

In order to encourage ethical behavior and integrity of employees, the Department developed and implemented a Code of Ethics for Public Officers and State Employees (Code) that summarized provisions of Florida law⁸ relating to the standards of conduct for public officers and State employees. Department policy required that each employee review the Code, upon hire and annually thereafter, and electronically verify a statement acknowledging that the employee has read the Code and will comply with provisions contained therein. According to Department Human Resources management, the annual verification requirement was typically posted through the Department's network in or around June of each year to prompt employees to verify the statement.

Our review of Department records disclosed that the Department did not consistently ensure that all employees completed the new hire or annual verification. For 8 of 30 employee records reviewed (27 percent), the Department did not have record of

all new hire or annual verifications that were required by policy during the audit period.

In response to audit inquiry, Department management stated that the annual requirement for verifying the Code was not posted through the Department's network in 2005 due to a reduction in Human Resources staff and other work priorities; however, new employees would have been required to comply with the verification.

The Department has established an adequate means to communicate standards of ethical behavior to employees. However, sufficiently ensuring those standards have been acknowledged by all Department employees may provide the Department greater assurance that the standards have been effectively communicated.

Recommendation: The Department should ensure that each employee, upon hire and annually thereafter, acknowledge the review of and intended compliance with the Code.

Finding No. 9: Wireless Communication

In response to recommendations made in audit report No. 2006-025, the Department reevaluated wireless communication plans and, in May 2005, implemented a more economical plan for cellular telephones (cell phones). The Department effectively reduced expenditures for cell phones and other wireless communication devices from \$105,636 in the 2004-05 fiscal year to \$86,264 in the 2005-06 fiscal year.

Department accounting policies and procedures provided that the personal use of State cell phones was discouraged and State cell phones should only be used for the conduct of official State business when a conventional telephone was not readily available. Pursuant to Department procedure, Finance and Accounting disseminated monthly invoices to users and required that each user certify the business and personal use, as applicable, of calls shown on the invoice.

Our review of 30 monthly wireless communication invoices disclosed that the Department did not always ensure compliance with established policies and procedures, as described below:

⁸ Chapter 112, Part III, Florida Statutes.

- For 6 of 30 invoices (20 percent), users did not identify all personal calls on the invoices as required by procedure and as needed to substantiate business use.
- For 8 of 30 invoices (27 percent), contrary to procedure, users did not return reviewed and certified invoices to Finance and Accounting within two weeks of dissemination. Of those not returned timely, the number of working days late ranged from 5 to 160 days, with an average of 45 days. Additionally, for 15 of the 30 invoices (50 percent), the Department could not determine the timeliness of certification as applicable documents were not dated.
- For 2 of the 30 monthly invoices reviewed, we noted substantial personal use of State cell phones, with certified personal usage of 161 of 228 total minutes invoiced (48 percent) and 663 of 900 total minutes invoiced (74 percent). This level of personal usage was contrary to Department policy which discouraged personal use of State cell phones and provided that cell phones should be used only for the conduct of official State business.

We also noted that Department accounting policies and procedures did not require that someone, other than the user, review wireless communication invoices to ascertain personal calls made. Without independent or supervisory review of invoices on at least a sample basis and timely user certification of invoices, the Department has less assurance that all personal use was accurately reported and reimbursed.

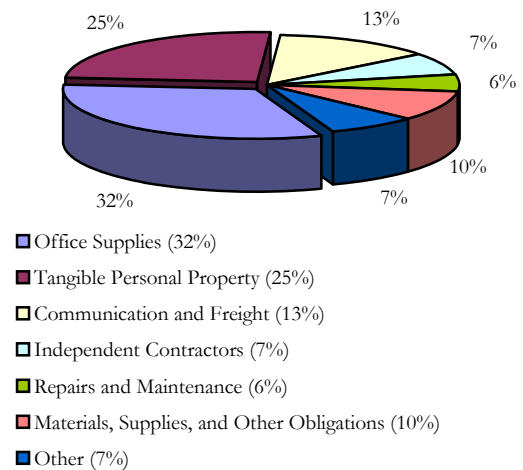
Recommendation: The Department should continue efforts to discourage personal use of State wireless communication devices, ensure Department policies and procedures are followed, and establish and implement procedures to require independent or supervisory reviews of samples of cell phone invoices.

Finding No. 10: Purchasing Card Administration

To provide State agencies the opportunity to streamline the purchasing process, improve management reporting, and reduce the cost of making small-dollar purchases, DFS and the Department of Management Services (DMS), working together with the Bank of America, created the State’s Purchasing Card Program. Prior to implementing the Purchasing Card Program, agencies were to submit a Purchasing Card Agency Plan (Plan) to DFS and DMS for review. The Plan was to contain the minimum key internal controls that must exist in an agency’s Purchasing Card Program.

During the audit period, purchasing card transactions of the Department’s 69 cardholders totaled over \$3 million. Chart 2 depicts the Department’s purchasing card transactions during the audit period classified by the type of item purchased:

**Chart 2
Purchasing Card Transactions by Category**



Source: FLAIR.

A chronology of events regarding the Department’s Plan is shown in Table 2 below:

Table 2
Chronology of Plan Events

Date	Event
June 4, 1999	DFS delegates establishment of cardholder single transaction limits to agencies; requires agencies amend Plans to state that single transaction limits above \$1,000 are approved by the agency head and to describe the agency's approval process and criteria for establishing single transaction limits greater than \$1,000.
July 8, 1999	Department implements new Plan that states agency head has approval authority for cardholders with single transaction limits greater than \$1,000.
June 30, 2005	DFS audit report states that Department's Plan should be updated to reflect current procedures.
August 2, 2005	Director of Administration approves increases to single transaction limits for all Department cardholders to \$2,500 and above, with \$25,000 as the largest single transaction limit.
February 22, 2007	Subsequent to audit inquiry, the Department inquires of DFS as to whether changes to the Plan should be submitted to DFS for approval. DFS states that Plan should be amended for all changes to the Department's Purchasing Card Program and submitted to DFS for review and approval prior to implementing changes.
May 1, 2007	Department submits a request to DFS to approve increased limits; request does not include criteria used to establish the limits.
May 7, 2007	DFS approves the single transaction limit increases and confirms the Director of Administration as an agency head designee.

Source: Department records.

As shown above, nearly two years after the Director of Administration approved the increased single transaction limits, the Department submitted a request to DFS to approve the increased limit for each cardholder. The request did not include criteria used to establish the increased limit for each cardholder, such as consideration of the employee's job responsibilities, previous transaction history, or purchasing needs. While DFS approved the increase and provided instructions to submit an amended Plan, as of June 14, 2007, the written Plan had not been revised to describe criteria for establishing single transaction limits greater than \$1,000 or reflect the delegation of limit approval.

To determine whether the increased transaction limits were reasonable or necessary, we compared the highest single transaction charge incurred during the audit period for each cardholder to the cardholder's single transaction limit. As shown in Table 3, we noted that for nearly half of the cardholders, the highest single transaction charge incurred during the audit period was less than 50 percent of the cardholder's single transaction limit, indicating the magnitude of the transaction limit increases may have been unnecessary:

Table 3
Transaction Limit Analysis

Single Transaction Limit	No. of Cardholders	No. of Cardholders with Highest Charge Less than 50 Percent of Limit
\$2,500	53	28
\$7,000	2	0
\$10,000	10	3
\$15,000	2	2
\$25,000	2	1
Total	69	34

Source: FLAIR and FLAIR Purchasing Card Module Cardholder Profiles.

A current and approved Plan that clearly establishes the criteria used to determine single transaction limits and the delegation of limit approval allows agencies to take full advantage of the convenience afforded by the Purchasing Card Program while maintaining accountability and limiting risk exposure.

Recommendation: To reduce the risk of purchasing card misuse and to strengthen key Purchasing Card Program controls, the Department should review cardholder transactions and limits for reasonableness and consider reducing transaction limits, as appropriate. Additionally, the Department should maintain a current, approved Plan and obtain DFS approval for changes to the Plan prior to implementing such changes.

Finding No. 11: Trust Fund Maximum

Florida law⁹ provides that the Legal Affairs Revolving Trust Fund is to account for moneys associated with activities of the Attorney General under provisions of

⁹ Section 16.53, Florida Statutes.

the Racketeer Influenced and Corrupt Organization (RICO) Act, the Florida Deceptive and Unfair Trade Practices Act, the Florida False Claims Act, and State or Federal antitrust laws. The law also provides that at the end of each fiscal year, any moneys remaining in the Legal Affairs Revolving Trust Fund in excess of three times the amount of the forthcoming year's combined budgets for the antitrust and racketeering sections of the Department are to be transferred to the General Revenue Fund.

As previously addressed in audit report No. 2006-025, the Department's determination of statutory compliance with the maximum fund balance of the Legal Affairs Revolving Trust Fund was based on the combined budgets of the Antitrust and Economic Crimes Programs. However, as enforcement of the civil provisions of the RICO Act is but one of various functions of the Economic Crimes Program, the methodology employed by the Department may result in the overstatement of the statutory maximum and inappropriately prevent the required transfer of excess moneys to the General Revenue Fund.

In response to findings included in audit report No. 2006-025, Department management expressed the intention to seek legislative clarification regarding the intent of the law in relation to the Economic Crimes Program activities; however, the Department could not provide evidence that clarification has been sought.

Recommendation: The Department should pursue legislative clarification regarding the statutory maximum fund balance allowable in the Legal Affairs Revolving Trust Fund.

Finding No. 12: Revolving Funds

During the audit period, the Department utilized seven authorized revolving fund subaccounts¹⁰ that had a total approved imprest amount of \$106,500, disbursement activity of approximately \$1.3 million, and interest earnings in excess of \$8,400. Our tests of Department records and accounting policies and procedures for the seven subaccounts disclosed

¹⁰ Within the Treasury's Consolidated Revolving Account maintained outside the State Treasury.

internal control deficiencies that could allow errors or misappropriation of Department resources to occur without timely detection. Specifically:

- Reconciliations between bank statements and Department transaction records were not always performed in a timely manner. In some instances, bank reconciliations were not performed until over six months after the end of the bank statement period.
- Incompatible duties were sometimes performed by fund custodians and other employees who were responsible for maintaining security over check stock, signing checks, performing reconciliations, or making deposits to and processing disbursements from the bank subaccounts. In some instances, reconciliations were not signed by the preparer or a reviewer to demonstrate that reconciliations were not performed by custodians.
- Interest earnings on revolving fund subaccounts were not deposited to source funds¹¹ in the State Treasury within 30 days of receipt, as required by DFS Rules.¹²

In addition to the deficiencies described above, we also found that the Department did not have current written procedures relating to the operation of Department revolving funds. Such procedures would further serve to communicate management's commitment to internal controls and help to ensure consistency in the application thereof.

Recommendation: The Department should take steps to ensure that revolving fund subaccount transaction records are timely reconciled to bank statements and that interest earnings are deposited to the State Treasury within 30 days of receipt. Additionally, the Department should develop and implement written policies and procedures for all revolving funds that will incorporate the internal controls necessary to ensure proper separation of duties and independent verification of bank account activities.

¹¹ Rule 69I-23.002, Florida Administrative Code, defines source funds as the State fund from which the monies were used to establish the revolving fund.

¹² Rule 69I-23.004, Florida Administrative Code.

OTHER MATTERS

The Attorney General is responsible for the enforcement of State consumer protection and antitrust laws, as well as civil prosecution of criminal racketeering.¹³ Upon acceptance of a settlement agreement, assurance of voluntary compliance agreement, or plea agreement, the Attorney General, through negotiations with a party under investigation, may settle a case and then terminate the investigation or action. In audit report No. 2006-050, we concluded that improvements were needed regarding Department policies and procedures for settling cases and processing the resulting payment distributions. We also noted in audit report No. 2006-050, that the Department did not have formal procedures to address its statutory responsibility regarding the scheduling of controlled substances.¹⁴

Our follow-up of the status of corrective action for these findings focused on the design of Department control policies and procedures for settlement agreements, Assurance of Voluntary Compliance agreements, and plea agreements. Generally, we found that the Department had made substantial progress in implementing reinforced control policies and procedures to address our findings and recommendations in audit report No. 2006-050.

Additionally, in response to our findings and recommendations regarding scheduling of controlled substances, we found that the Department had implemented written policies and procedures to address its statutory responsibility to notify the Legislature of rules adopted for the identification and classification of controlled substances that had a potential for abuse.

OBJECTIVES, SCOPE, AND METHODOLOGY

This operational audit focused on internal controls over selected administrative functions of the Department, including purchasing cards, cellular telephones, revenues and cash receipts, accounts receivable, trust funds, revolving funds, legal services billing practices, and cost allocation methodology. Our objectives were to:

- Follow up on findings noted in audit report Nos. 2006-025 and 2006-050 related to cash receipts, accounts receivable, cellular telephones, allocations, and settlements;
- Determine whether the Department had established, and consistently applied, a cost-based billing methodology for legal services provided to State agencies;
- Determine whether certain accounting records of the Department were accurate, complete, and managed in compliance with governing laws, accounting rules, and other guidelines; and
- Determine whether Department policies and procedures sufficiently established effective internal controls over administrative functions.

In conducting our audit, we interviewed Department personnel, obtained an understanding of internal controls, observed and documented key processes and procedures, examined selected transactions, and performed various other audit procedures as necessary to accomplish the objectives of the audit. Further details regarding the methodology applied in this audit are addressed in preceding paragraphs of this report. Our audit included examinations of various transactions (as well as events and conditions) occurring during the period July 2005 through February 2007, and selected actions taken through June 14, 2007.

¹³ Section 16.53(1), Florida Statutes.

¹⁴ Sections 893.035 and 893.0355, Florida Statutes.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT RESPONSE

In a letter dated September 28, 2007, the Attorney General provided a response to our preliminary and tentative audit findings. The letter is included at the end of this report as **APPENDIX A**.

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. This operational audit was conducted in accordance with applicable *Generally Accepted Government Auditing Standards*. This audit was conducted by Marcia C. Bremer, CPA, and supervised by Nancy C. Tucker, CPA. Please address inquiries regarding this report to Nancy C. Tucker, CPA, Audit Manager, by e-mail (nancytucker@aud.state.fl.us) or by telephone (850-487-4370).

This report and other audit reports prepared by the Auditor General can be obtained on our Web site (<http://www.myflorida.com/audgen>); telephone (850-487-9024); or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

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MEMORANDUM

TO: William Monroe, Auditor General, Office of the Auditor General

FROM: James D. Varnado, Inspector General, OIG 

CC: Nancy C. Tucker, CPA, Audit Manager, Office of the Auditor General

DATE: September 28, 2007

SUBJECT: Operational Audit of the Department of Legal Affairs

Below are the Department's responses to the preliminary and tentative audit findings and recommendations in connection with your *Operational Audit of Selected Administrative Functions and Follow-Up on Selected Prior Audit Findings, for the period July 2005 through February 2007, and selected action taken through June 14, 2007.*

Finding No. 1: The Department did not have records supporting the basis for the calculation of hourly rates used for billing legal services to State agencies.

Recommendation: The Department should continue current efforts to establish billing rates that reflect the current cost of services. We also recommend that the sufficiency of the rates be evaluated on an annual basis and that documentation be maintained to demonstrate that rates are consistent with costs.

Response: The Department concurs with the finding. As noted in the audit report, the Department analyzed the rate structure and has developed new rates reflecting the current cost of providing services. These new rates were implemented on July 1, 2007. The Department will evaluate these rates on an annual basis and will continue to develop the review process.

Finding No. 2: Application Development and Administration programming staff were assigned incompatible system-related duties.

Recommendation: The Department should review ADA staff access privileges to ensure access is limited to that needed for their areas of responsibility. Specifically, ADA programming staff should not be able to move programs into production and should not have ongoing access allowing the update of production data.

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Response: Complete separation of duties in the Lotus Notes environment is more difficult and costly than in most application environments, due to the fact that the database and application design are stored in the same structure as the data itself. Because of this, the access that Notes System Administrators must have in order to perform duties such as backup/recovery also gives them access to modify the application and data. Similarly, the access that Notes Application Developers must have to be able to modify the application design also gives them access to modify the data. The agency has mitigated the risks by instilling the following controls to augment the agency's ability to detect, deter, and correct any inappropriate use of the applications and data; review and oversight of the time tracking and caseload data within the program areas; oversight of agency billing by the Division of Administration; as well as restricting information technology access only as needed to appropriate technical staff.

Finding No. 3: The Department did not obtain appropriate approval from the Executive Office of the Governor for a temporary transfer of moneys. Additionally, the Department did not properly account for interfund transfers made to offset temporary operating resource deficiencies in the Legal Services Trust Fund.

Recommendation: The Department should ensure that, in instances in which temporary transfers are necessary to meet operating requirements, appropriate prior approval from the Executive Office of the Governor is obtained and interfund receivables and payables are properly recorded in the accounting records. Furthermore, the Department should assess current funding and collection processes for legal services and determine a long-term solution to address the funding needs of the Trust Fund.

Response: The Department concurs and has obtained authorization from the Governor for temporary transfers to cover the temporary deficiencies for the current fiscal year. As noted in Finding 1 above, the Department has completed an assessment of funding for legal services and has increased fees for service. This should help maintain the balance of the Legal Services Trust Fund. The Department will continue to seek a long-term solution to the recurring problem of beginning each year with limited cash in the fund until agencies have paid for legal services.

Finding No. 4: The Department did not ensure proper controls were in place for cash collections.

Recommendation: The Department should ensure that an appropriate separation of duties is established and maintained for all cash collection functions, checks are restrictively endorsed upon receipt, and original check logs are verified and retained. Additionally, the Department should limit the employees authorized to collect cash to only those essential to the various collection functions and maintain a control listing of those employees for both central and field offices.

Response: Although the Department has had to rely on several levels of staff to assist in the collection of cash receipts due to limited resources, the Department agrees that employees authorized to collect cash receipts should be limited to key personnel. Accordingly, the Department will work with Division Directors to ensure that a complete list of staff responsible for cash collections

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is maintained and regularly updated for all programs. It is significant to note that the audit revealed no omitted checks or errors. In addition, the Economic Crimes program has instituted procedures to review and maintain the original check listings from the field offices and the Antitrust program has obtained an endorsement stamp and has instituted procedures to restrictively endorse checks as they are received within the program.

Updated policies and procedures related to cash collections will be disseminated to ensure that staff in all programs are knowledgeable of the responsibilities associated with such collections, i.e. maintaining field office submissions, and secondary review of listings prior to submission to Finance and Accounting.

Finding No. 5: Program areas did not always timely provide to Finance and Accounting documentation concerning the establishment of accounts receivable.

Recommendation: The Department should take necessary action to ensure that accounts receivable are properly recorded in accounting records and accounting records are periodically reconciled to subsidiary records maintained by the program areas.

Response: The Department will review, update and implement revised procedures for recording accounts receivable to ensure the timely and accurate submission of documentation to Finance and Accounting relating to the establishment of accounts receivable and will work to establish a process by which programs' internal receivables are reconciled to the accounting records.

Finding No. 6: Department accounting processes for the write-off of receivables did not provide for the separation of incompatible duties. Additionally, Department accounting policies and procedures did not provide for sufficient supervisory approval of receivable write-offs.

Recommendation: The Department should take necessary action to ensure appropriate justifications for write-offs are obtained from attorneys prior to submitting accounts to DFS for further action. Additionally, policies and procedures should be enhanced to require program-level supervisory approval for receivable write-offs as a means to reduce the risk of loss. Such approvals should be documented on all write-off justifications provided to Finance and Accounting. Furthermore, the Department should ensure that an appropriate separation of duties or an adequate compensating control is established for the receivables write-off process within Finance and Accounting. The Department should also ensure that it is not duplicating DFS collection efforts on any account.

Response: The Department will review the procedures for write-offs of accounts receivable. The limitation of staff authorized to collect cash receipts, as referred to in our response to Finding 4, will help alleviate incompatible duties. The Department will establish additional procedures which include higher levels of approval for the write-off of accounts receivable and will include program-level involvement. Final Department approval will rest with Finance and Accounting which will ensure sufficient documentation and justification is received prior to making a write-off request.

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Finding No. 7: The Legislature should consider amending or repealing provisions of Section 16.58, Florida Statutes, related to the Statewide Legal Research Bank.

Recommendation: Given the current technological environment and availability of Web-based resources, as well as the expressed difficulty of obtaining research materials from governmental entities, the Legislature should consider amending or repealing those provisions of Section 16.58, Florida Statutes, related to the Statewide Legal Research Bank.

Response: We concur. The Department will continue to provide General Counsels for all State Agencies with legal resources via email and internet publications.

Finding No. 8: The Department did not consistently ensure that all employees affirmed the Department's Code of Ethics for Public Officers and State Employees upon hire and annually thereafter.

Recommendation: The Department should ensure that each employee, upon hire and annually thereafter, acknowledge the review of and intended compliance with the Code.

Response: The Department concurs and has already taken action to ensure that each employee, upon hire and annually thereafter, acknowledges the review of and intended compliance with the Code.

Finding No. 9: The Department did not always ensure compliance with established policies and procedures for the use of cellular telephones. Additionally, policies and procedures for the use of wireless communication devices should be enhanced to include independent or supervisory review of usage.

Recommendation: The Department should continue efforts to discourage personal use of State wireless communication devices, ensure Department policies and procedures are followed, and establish and implement procedures to require independent or supervisory reviews of samples of cell phone invoices.

Response: The Department will continue to examine refinements to its procedures regarding the review and approval of wireless communication invoices. The Department has made improvement in this area, but will continue its efforts to ensure compliance with timely review and establish a procedure which includes periodic review by supervisors.

Finding No. 10: The Department did not obtain appropriate approvals for changes to the Purchasing Card Agency Plan and did not maintain a current Plan. Furthermore, some single transaction limits appeared to be higher than necessary.

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Recommendation: To reduce the risk of purchasing card misuse and to strengthen key Purchasing Card Program controls, the Department should review cardholder transactions and limits for reasonableness and consider reducing transaction limits, as appropriate. Additionally, the Department should maintain a current, approved Plan and obtain DFS approval for changes to the Plan prior to implementing such changes.

Response: - The Department has revised its Purchasing Card plan and procedures and received approval from the Department of Financial Services for the revisions. In addition, Finance and Accounting will make periodic reviews of cardholder activity to ensure single transaction and credit limits are properly supported.

Finding No. 11: The Department had not obtained legislative clarification regarding the statutory maximum fund balance allowable in the Legal Affairs Revolving Trust Fund.

Recommendation: The Department should pursue legislative clarification regarding the statutory maximum fund balance allowable in the Legal Affairs Revolving Trust Fund.

Response: The Department agrees that the legislation needs clarification and will seek legislation to clarify this point in the 2008 legislative session. Each fiscal year at the close of the financial statement process an analysis is done of the Legal Affairs Revolving Trust Fund balance to ensure that the balance does not exceed the statutory maximum.

Finding No. 12: Improvements in internal controls related to revolving fund subaccounts were needed.

Recommendation: The Department should take steps to ensure that revolving fund subaccount transaction records are timely reconciled to bank statements and that interest earnings are deposited to the State Treasury within 30 days of receipt. Additionally, the Department should develop and implement written policies and procedures for all revolving funds that will incorporate the internal controls necessary to ensure proper separation of duties and independent verification of bank account activities.

Response: Finance and Accounting experienced a number of vacancies during this audit period which resulted in the assignment of some incompatible duties and negatively impacted the timeliness of some completed tasks. The Department will work to establish written procedures for the revolving funds, including a separation of duties and independent verification of bank account activities.

If you have any questions or would like further information, please feel free to contact me at 850-414-3456.

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