

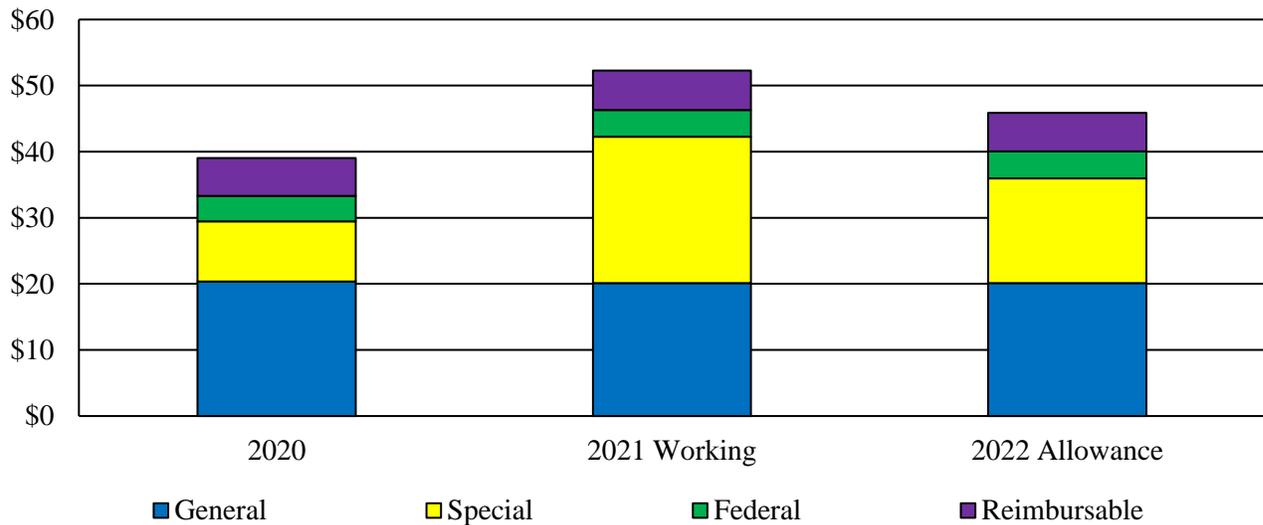
C81C Office of the Attorney General

Program Description

The Attorney General acts as legal counsel to the Governor; the General Assembly; the Judiciary; and all departments, boards, and commissions (except the Maryland Commission on Civil Rights, the Public Service Commission, and the State Ethics Commission). The Office of the Attorney General (OAG) represents the State in all matters of interest to the State, including civil litigation and criminal appeals in all State and federal courts. The office also reviews legislation passed by the General Assembly prior to consideration by the Governor and oversees the expenditures of the Mortgage Loan Servicing Practices Settlement Fund. The office is currently supported by 13 divisions: Legal Counsel and Advice; Securities; Consumer Protection; Antitrust; Medicaid Fraud Control; Civil Litigation; Criminal Appeals; Criminal Investigation; Educational Affairs; Correctional Litigation; Contract Litigation; People’s Insurance Counsel; and the Juvenile Justice Monitoring Unit.

Operating Budget Summary

Fiscal 2022 Budget Decreases \$6.4 Million, or 12.2%, to \$45.9 Million (\$ in Millions)



Note: Numbers may not sum due to rounding. The fiscal 2021 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2022 allowance includes contingent reductions and annualization of the fiscal 2021 general salary increases.

- The decrease in the adjusted allowance for OAG is largely attributable to the one-time use of \$8.7 million from the Mortgage Loan Servicing Practices Settlement Fund for eviction assistance during the COVID-19 pandemic.

Fiscal 2021

Cost Containment

Four actions approved by the Board of Public Works (BPW) on July 1, 2020, reduced OAG’s fiscal 2021 appropriation by \$4,218,288 (\$4,190,759 in general funds, \$21,390 in special funds, and \$6,139 in federal funds).

- **Securities Division:** The fiscal 2021 appropriation for this division was reduced by \$900,000 in general funds. The agency was directed to utilize special fund balances to support positions.
- **Consumer Protection Division:** The fiscal 2021 appropriation for this division was reduced by \$700,000 in general funds. The agency was directed to utilize special fund balances to support operations and contractual positions.
- **Baltimore City Violent Crime Prosecution Division:** The fiscal 2021 budget established the Baltimore City Violent Crime Prosecution Division to investigate and prosecute violent crimes, crimes related to firearms, and organized crime in Baltimore City. The action approved by BPW eliminated operating costs and abolished the 25 positions associated with the division. The fiscal 2021 appropriation was reduced \$2,547,873 from general funds.
- **Statewide Reductions:** OAG’s fiscal 2021 appropriation was reduced by \$70,415 (\$42,886 in general funds, \$21,390 in special funds, and \$6,139 in federal funds) as a result of an across-the-board action that reduced unemployment compensation contributions by State agencies.

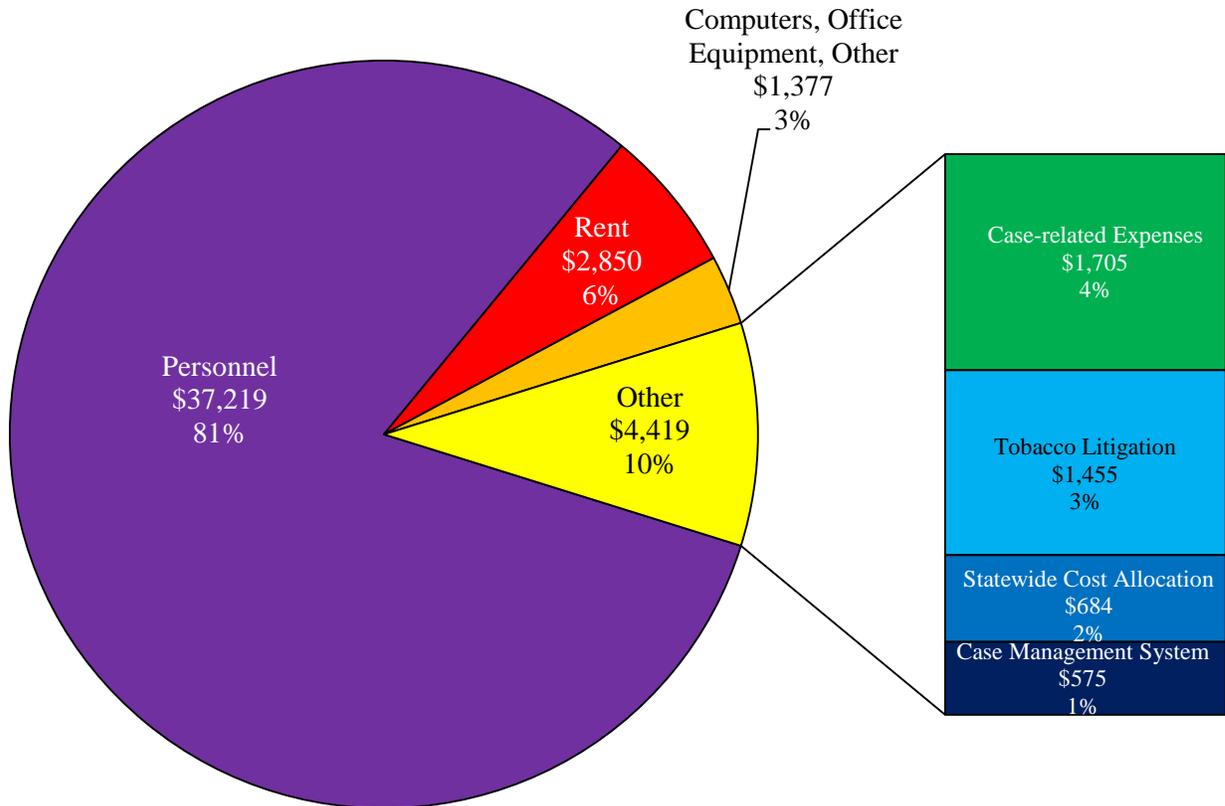
SB 407 of 2020

The fiscal 2021 budget restricted funds to implement a Senior and Vulnerable Adult Asset Recovery Unit in OAG, based on SB 407 of 2020. This legislation was vetoed by the Governor on May 7, 2020, which calls into question the establishment of the unit in fiscal 2021. Though there is \$250,000 in restricted funds for fiscal 2021, no funding is provided in the fiscal 2022 allowance for such a unit. **The agency should comment on the extent to which it could establish the unit in fiscal 2021 if the legislature were to override the Governor’s veto.**

Fiscal 2022 Overview of Agency Spending

The OAG budget and funding streams are complex compared to the relatively small size of the agency. There are 11 separate special fund accounts with various revenue sources in the fiscal 2022 allowance as well as reimbursable funds from 7 separate agency accounts for specified purposes. Despite the complexity in funding, the agency budget by expenditure is straightforward with 81% allocated for personnel. **Exhibit 1** illustrates how the agency’s \$45.9 million allowance is allocated.

Exhibit 1
Overview of Agency Spending
Fiscal 2022 Allowance
(\$ in Thousands)



Source: Department of Legislative Services

The other 19% of the OAG budget is split between essentials (rent and computer/office expenditures), case-related expenses, required State fees, and the new case management system. The fiscal 2022 allowance contains no money for grants to nongovernmental entities, which made up approximately 17% of the fiscal 2021 working appropriation.

Proposed Budget Change

As illustrated in **Exhibit 2**, the adjusted fiscal 2022 allowance for OAG decreases by nearly \$6.4 million, or 12.2%, over the fiscal 2021 working appropriation. This decrease is largely attributable to the reduced allowance for grants to nongovernmental entities. Other significant changes include position reclassifications, statewide personnel actions, and 6 new regular positions. Section 1 of the Budget Reconciliation and Financing Act (BRFA) of 2021 alters the \$700,000 general fund mandate as required by Chapters 731 and 732 of the 2018 Financial Consumer Protection Act to provide funding for OAG’s Consumer Protection Division (CPD) through the use of special funds rather than general funds. As part of cost containment actions approved by BPW in July 2020, the fiscal 2021 budget was identically impacted.

Exhibit 2
Proposed Budget
Office of the Attorney General
(\$ in Thousands)

How Much It Grows:	General Fund	Special Fund	Federal Fund	Reimb. Fund	Total
Fiscal 2020 Actual	\$20,362	\$9,113	\$3,822	\$5,748	\$39,045
Fiscal 2021 Working Appropriation	20,102	22,144	4,086	5,928	52,259
Fiscal 2022 Allowance	<u>20,142</u>	<u>15,798</u>	<u>4,099</u>	<u>5,826</u>	<u>45,866</u>
Fiscal 2021-2022 Amount Change	\$40	-\$6,345	\$13	-\$102	-\$6,394
Fiscal 2021-2022 Percent Change	0.2%	-28.7%	0.3%	-1.7%	-12.2%

Where It Goes:	Change
Personnel Expenses	
Restoration of one-time fiscal 2021 cost containment actions.....	\$1,882
Annualize fiscal 2021 2% cost-of-living adjustment.....	337
6 new positions	475
Employee and retiree health insurance	256
Unemployment compensation	66
Regular employee compensation	24
Fiscal 2022 annual salary review	9
Social Security contributions	2
Employees’ retirement system.....	-38
Workers’ compensation premium assessment	-109
Turnover expectancy.....	-959
Contractual employment.....	372
Microsoft software licenses, technology, equipment and supplies	255
Headquarters maintenance costs	50

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Where It Goes:	<u>Change</u>
Payments to the Office of Administrative Hearings	24
Miscellaneous	12
Operational travel and motor vehicles	-10
Professional development (<i>e.g.</i> , education/training contracts and conferences).....	-28
Non-DGS rent	-95
Outside consulting services.....	-211
Fiscal 2021 grant to MLSC and grants to government programs/agencies	-8,708
Total	-\$6,394

DGS: Department of General Services

MLSC: Maryland Legal Services Corporation

Note: Numbers may not sum due to rounding. The fiscal 2021 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2022 allowance includes contingent reductions and annualization of the fiscal 2021 general salary increases.

Maryland Legal Services Corporation Grant

Maryland Legal Services Corporation (MLSC) is a nonprofit corporation that was established by the Maryland General Assembly. Its mission, as stated on its website, is to “ensure low-income Marylanders have access to stable, efficient and effective civil legal assistance through the distribution of funds to nonprofit legal services organizations.” State funding for MLSC is budgeted within the Judiciary’s Administrative Office of the Courts. OAG processed a budget amendment in fiscal 2021 to give an additional \$8.7 million grant to MLSC to pay for the services provided by nonprofit civil legal aid organizations for legal services to families and individuals facing eviction and other housing-related security issues. Funds were available through the OAG Securities Division from a 2017 settlement with Deutsche Bank for unlawful conduct during the last financial crisis; those funds may only be used for housing-related purposes. Eviction and housing-related security issues are particularly important to low-income Marylanders given the COVID-19 pandemic and its health and economic consequences. This reduction accounts for the majority of the change in the OAG budget in fiscal 2022. MLSC operations and use of the funds are discussed further in the fiscal 2022 budget analysis for the Judiciary.

General Salary Increase

The fiscal 2022 allowance includes funds to annualize a 2% general salary increase for all State employees, provided on January 1, 2021. These funds are budgeted in the Department of Budget and Management’s statewide program and will be distributed to agencies during the fiscal year. The full year cost of OAG’s share of the general salary increase is \$290,396 in general funds, \$150,125 in special funds, \$54,351 in federal funds, and \$75,696 in reimbursable funds.

New Personnel, Technology, and Communication Expenditures Increase Costs

The decrease from the fiscal 2021 budget is also partially offset due to budget growth in the allowance for personnel, technology, and communication expenditures. A total of 6 new regular positions were added across three divisions, though 2 contractual full-time equivalents were abolished and another 2.5 contractual positions will not be funded in fiscal 2022. The COVID-19 pandemic shifted where OAG could operate – many employees have been teleworking – and OAG has had a greater need for technology spending. Approximately \$160,297 more will be spent in fiscal 2022 to purchase software licenses, and communication expenses will increase by \$37,800, or 12.7%. Aside from these expenditures, OAG’s major spending categories are level funded or nearly level funded in only these areas: motor vehicles; additional and replacement equipment; and the new case management system. More information about the new case management system can be found in **Appendix 2**.

Opioid Marketing Settlement Not Yet Reflected in the Operating Budget

On February 4, 2021, the Attorney General announced a settlement against consulting firm McKinsey & Company for unfair opioid marketing. Maryland will receive more than \$12 million from the settlement which will be deposited into the Opioid Restitution Fund in accordance with § 7-331 of the State Finance & Procurement Article. The article requires that the funds be used “to the extent practicable, to remediate the harms caused to the Settling States and their citizens by the opioid epidemic.” These funds are not yet reflected in the budget. McKinsey will pay \$10,016,056.63 within two months after the Consent Order is entered by the Circuit Court for Frederick County. McKinsey is then required to make four payments of \$517,018.21 each year for four years beginning late in fiscal 2022 and ending in fiscal 2025.

Personnel Data

	<u>FY 20</u> <u>Actual</u>	<u>FY 21</u> <u>Working</u>	<u>FY 22</u> <u>Allowance</u>	<u>FY 21-22</u> <u>Change</u>
Regular Positions	275.50	270.50	276.50	6.00
Contractual FTEs	<u>18.40</u>	<u>51.90</u>	<u>47.40</u>	<u>-4.50</u>
Total Personnel	293.90	322.40	323.90	1.50

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	24.72	9.14%
Positions and Percentage Vacant as of 12/31/20	28.70	10.61%
Vacancies Above Turnover	3.98	

Personnel Changes

In fiscal 2022, the budget provides for a net increase of 6 positions as follows:

- 1 administrator and 1 assistant Attorney General for the Securities Division;
- 1 administrator and 2 assistant Attorneys General for the Consumer Protection Division; and
- 1 assistant Attorney General for the Civil Litigation Division.

Though the fiscal 2022 budget also has a net reduction of 4.5 contractual positions, these personnel changes do not include any contractual conversions; OAG reports that it had difficulty hiring for the 2 contractual positions that were abolished. Funding for the new position in the Civil Litigation Division does not reflect the standard 25% turnover rate typically applied to account for time to hire new staff. **Therefore, the Department of Legislative Services (DLS) recommends increasing turnover expectancy for 1 position to 25%.**

Key Observations

1. Hiring in Securities and Consumer Protection Divisions Remains Complex

As mentioned in previous analyses, OAG has noted that it needs more employees to handle its increasing responsibilities and workloads. Hiring for contractual positions has been particularly difficult for the Securities and Consumer Protection Divisions, where the majority of the agency’s contractual positions are placed, as shown in **Exhibit 3**. This issue is being partially addressed in the fiscal 2022 budget with the combined addition of 5 positions for these divisions, the abolishment of 2 contractual positions, and the non-funding of 2.5 contractual positions.

Exhibit 3
Contractual Positions by Division
Fiscal 2020-2022

<u>Division</u>	<u>Actual 2020</u>	<u>Working Appropriation 2021</u>	<u>Allowance 2022</u>
Legal Counsel and Advice	2.4	6.4	6.4
Securities	1.7	15.3	13.8
Consumer Protection	8.8	23.2	19.2
Criminal Appeals	1	0	1
Criminal Investigation	4	2	2
Correctional Litigation	0.5	0	0

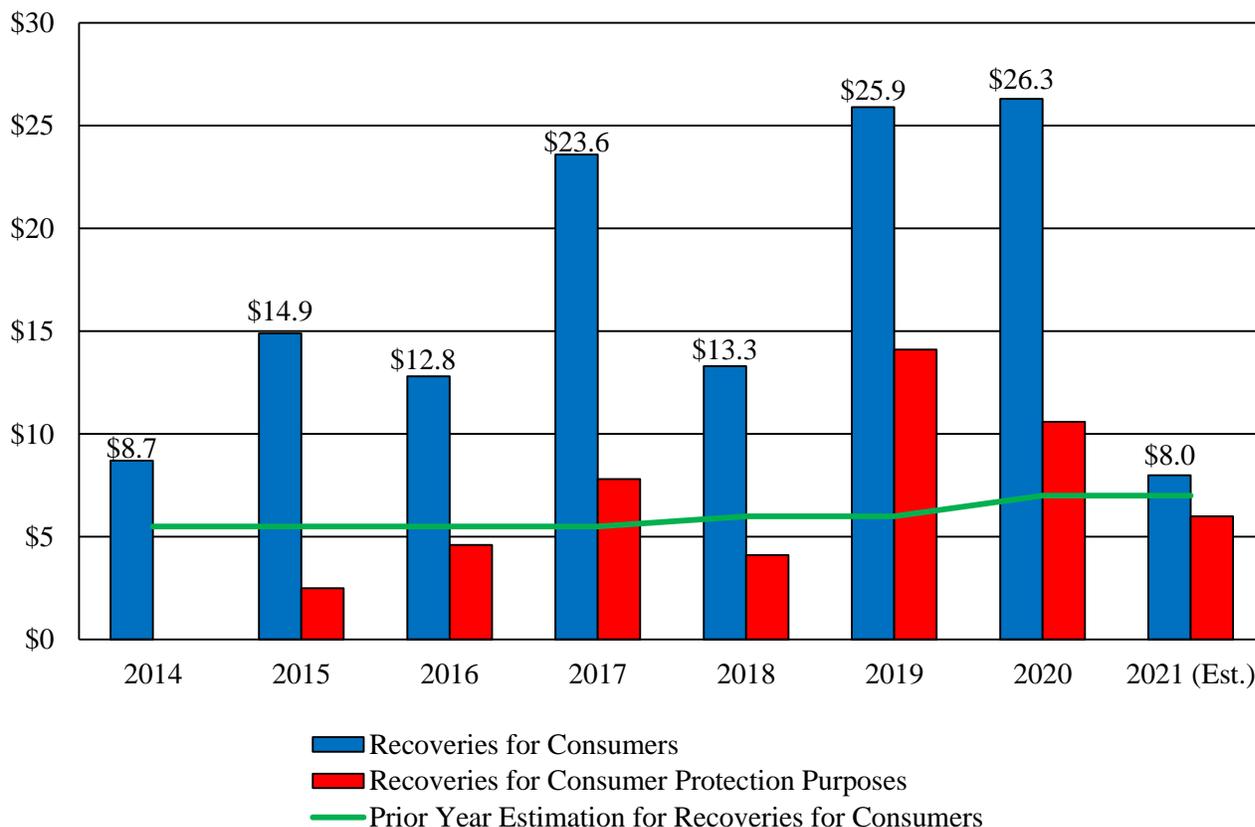
Source: Department of Legislative Services

Though the fiscal 2022 allowance gives the agency additional regular positions, vacancies for regular positions in the Securities and Consumer Protection Divisions are also a concern. There have been 7.7 vacant regular positions – 3 in the Securities Division and 4.7 in CPD – since June 2020. Close to a third of all vacant positions as of December 2020 were also in these divisions. The same 3 positions in the Securities Division have been vacant for over 12 months, and 2.7 positions have also been vacant in CPD for over 12 months. This is also true as the number of vacancies above turnover is at 3.98, lower than it has been for an operating budget analysis since December 2010.

2. Consumer Recoveries Exceed Expectations

CPD within OAG assists citizens by providing mediation and arbitration services to consumers to help resolve complaints against businesses and health insurance carriers. As shown in **Exhibit 4**, OAG recovered \$25.9 million in restitution in fiscal 2019, a number that is expected to be volatile from year to year due to the varied caseload. The agency sets conservative goals for the amounts that it hopes to recover for consumers but has increased its goals for the future year from \$5.5 million in 2017. The monies OAG recovers for consumers are not always linked to the monies that it receives for consumer protection purposes, also shown below.

Exhibit 4
Consumer Protection Division – Consumer and Consumer Protection Recoveries
Fiscal 2014-2021 Est.
(\$ in Millions)



Note: Fiscal 2020 figure does not include Marylanders’ recoveries from a \$425 million Equifax fund.

Source: Office of the Attorney General; Department of Legislative Services

3. CPD Recoveries Special Fund Balance

The monies that OAG receives for consumer protection purposes enter a nonbudgeted special fund account that OAG maintains: CPD Recoveries. It is one of several nonbudgeted special fund accounts that OAG maintains, each with specific authorized uses. From the monies considered available, OAG calculates the fund's ending balance for each fiscal year by subtracting the disbursements made for consumer protection-related purposes. Occasionally, the General Assembly will authorize transfers from CPD Recoveries to the General Fund for use in balancing the budget. **Exhibit 5** highlights recent and proposed actions from the fund. The BRFA of 2021 includes two proposed provisions: a proposal to fund the \$700,000 CPD funding mandate with special funds instead of general funds; and a \$10 million fund balance transfer from the CPD Recoveries fund.

Exhibit 5
Recent Past and Possible Reductions to the Consumer Protection Division
Recoveries Special Fund
Fiscal 2017-2022

- **BRFA of 2017:** The BRFA of 2017 (Chapter 23) authorized two fund balance transfers between CPD Recoveries and the General Fund. The Comptroller was required to transfer up to \$12 million from CPD Recoveries to the General Fund from the recovery from the Volkswagen Clean Diesel settlement if OAG did not transfer that amount by May 1, 2017. Chapter 23 also required the Comptroller to transfer up to \$12 million from the fund from the Moody's Corporation settlement if OAG did not transfer that amount from CPD Recoveries by the same date.
- **BPW Cost Containment:** On July 1, BPW approved an action to reduce the fiscal 2021 general fund appropriation for the Consumer Protection Division by \$700,000. The agency was directed to utilize special fund balances to support operations and contractual positions.
- **BRFA of 2021:** One provision of the BRFA of 2021 alters the mandate to provide funding for the OAG financial CPD through the use of special funds instead of general funds. It allows the Governor to appropriate at least \$700,000 in special funds instead of general funds beginning in fiscal 2022 and each fiscal year thereafter. Because the provision does not identify a specific source for the special funds to be used in fulfilling the mandate, this money may or may not affect the future of the nonbudgeted CPD Recoveries fund. Another provision of the BRFA of 2021 would require the Comptroller to transfer \$10 million from CPD Recoveries to the General Fund if OAG does not transfer that amount to the General Fund on or before May 1, 2022.

BPW: Board of Public Works

BRFA: Budget Reconciliation and Financing Act

CPD: Consumer Protection Division

OAG: Office of the Attorney General

Source: Department of Legislative Services

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OAG reports that the CPD Recoveries fund closed with a balance of \$19.2 million in fiscal 2020 and is projecting a closing balance of \$17.8 million in fiscal 2021. Prior to the proposed BRFA actions, the agency is estimating a fiscal 2022 closing balance of \$10.9 million. However, that assumption is based on estimated fiscal 2022 recoveries that are \$7.2 million below the average recoveries collected over the past five years.

There is currently no clear reporting mechanism for the balances of these off-budget funds. With the increased use of special funds to balance the budget and support OAG operations, a more complete understanding of the funds maintained by the office would be beneficial. **DLS recommends the adoption of committee narrative requesting a report on fund balances for off-budget accounts maintained by OAG.**

Operating Budget Recommended Actions

- | | <u>Amount
Reduction</u> | |
|---|-----------------------------|----|
| 1. Increase turnover on new position to 25% to allow time for hiring process. This reduction may be allocated across divisions, as necessary. | \$ 22,127 | GF |
| 2. Adopt the following narrative: | | |

Nonbudgeted Fund Balances Report: The Office of the Attorney General (OAG) maintains several special fund accounts off-budget for a variety of purposes and in accordance with various spending restrictions. There is no clear reporting to the legislature what the balances of these off-budget funds are from year to year. With the increased use of special funds to balance the budget and support OAG operations, a more complete understanding of the funds maintained by the office is necessary.

The budget committees direct OAG to submit a report on the status of its nonbudgeted special fund accounts, including the actual and projected fund balances for all special funds that OAG maintains for fiscal 2020 through 2022. The report shall be submitted not later than September 30, 2021.

Information Request	Author	Due Date
Nonbudgeted fund balances report	OAG	September 30, 2021
Total General Fund Reductions		\$ 22,127

Updates

- ***Sexual Assault Evidence Kit Policy and Funding Committee:*** The Sexual Assault Evidence Kit (SAEK) Policy and Funding Committee recently submitted its 2021 annual report, which includes guidance to law enforcement agencies on documenting a victim’s request to suspend or limit an investigation, new testing orders and protocols, and an update on its activities in the past year. In calendar 2020, SAEK-supported legislation (1) ensured that health care providers are reimbursed for services provided to victims up to 15 days after the sexual assault and expanded privacy protections for victims of sexual assault and (2) prohibited law enforcement from presenting victims with forms that purport to limit the scope or of prevent an investigation or prosecution. Finally, SAEK continued the implementation of \$2.6 million in federal grants by conducting an inventory of unsubmitted kits, beginning to send kits for testing, finalizing notification protocols, and working with the Department of Information Technology to identify a platform for system tracking.

Appendix 1
2020 Joint Chairmen’s Report Responses from Agency

The 2020 *Joint Chairmen’s Report* (JCR) requested that the Office of the Attorney General (OAG) prepare three reports. Electronic copies of the full JCR responses can be found on the Department of Legislative Services Library website.

- ***Baltimore City Violent Crime Prosecution Division Memo of Understanding:*** This memo of understanding was meant to codify the operational relationship between the division and the Baltimore City State’s Attorney’s Office (SAO). The Board of Public Works (BPW) cut funding for the division on July 1, 2020.

- ***Baltimore City Violent Crime Prosecution Division Activity Report:*** This report was meant to include the total number of matters litigated, the total numbers of filed and assigned cases, cases by crimes committed, the total number of indictments along with conviction rates and any other relevant performance measures, and complete information on specific OAG and SAO activities. BPW cut funding for the division on July 1, 2020.

- ***Report on State Policy Recommendations to Increase Electronic Advance Directive Registrations:*** Advanced directives are a form of advance care planning that allow declarants to communicate their medical treatment preferences in emergency or near end of life situations. Following legislation passed in 2016, Marylanders can complete electronic advance directives without two witness signatures. This report was written by OAG and the State Advisory Council on Quality Care at the End of Life. It includes recommendations for increasing the number of Maryland residents who complete advance directives and the number who electronically register their advance directives. These recommendations are to mandate carrier participation; embed advance care planning into health system workflows; make completing, uploading and retrieving electronic advance directives easier; and improve public awareness and engagement.

Appendix 2
Case Management and Document Management
Major Information Technology Project
Office of the Attorney General

New/Ongoing: Ongoing								
Start Date: Fiscal 2019					Est. Completion Date: Fiscal 2022			
Implementation Strategy: Waterfall								
(\$ in Millions)	Prior Years	2021	2022	2023	2024	2025	Remainder	Total
GF	\$0.325	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.325
RF	\$1.775	\$0.575	\$0.575	\$0.000	\$0.000	\$0.000	\$0.000	3.500
Total	\$2.100	\$0.575	\$0.575	\$0.000	\$0.000	\$0.000	\$0.000	\$3.825

- **Project Summary:** The Office of the Attorney General (OAG)’s new case management project is a web-based information technology system that will provide multiple ways for OAG to track case information, manage legal cases, determine legal conflicts, and exchange data with its current slate of applications.
- **Need:** This project replaces the agency’s 15-year-old case management system. The current system is inefficient and cannot be accessed outside of the OAG office by its attorneys. Additionally, the new system will enable OAG to simplify its business processes, conduct real-time data exchanges, track physical files, improve document management, and enable employees to connect remotely and will also help OAG expand its services to external customers and consumers of Maryland.
- **Observations and Milestones:** The project is live with the Civil Litigation Division, the Higher Education Division, and the Criminal Division, and functionality is rolling out to the remaining divisions. OAG is currently working on the Consumer Protection Division and expects the Medicaid Fraud Control Unit to be complete before 2022. It is expected that all divisions will be live by fiscal 2022.
- **Changes:** Some schedule delays have arisen from staffing and issues related with the COVID-19 pandemic.
- **Other Comments:** OAG continues to seek full-time State resources to assist with project management and help desk activities. The hiring process is ongoing.

**Appendix 3
Object/Fund Difference Report
Office of the Attorney General**

<u>Object/Fund</u>	<u>FY 20 Actual</u>	<u>FY 21 Working Appropriation</u>	<u>FY 22 Allowance</u>	<u>FY 21 - FY 22 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	275.50	270.50	276.50	6.00	2.2%
02 Contractual	67.80	51.90	47.40	-4.50	-8.7%
Total Positions	343.30	322.40	323.90	1.50	0.5%
Objects					
01 Salaries and Wages	\$ 30,907,873	\$ 31,661,880	\$ 33,260,486	\$ 1,598,606	5.0%
02 Technical and Spec. Fees	1,295,202	3,007,192	3,379,123	371,931	12.4%
03 Communication	395,559	297,596	335,396	37,800	12.7%
04 Travel	138,648	136,138	121,374	-14,764	-10.8%
07 Motor Vehicles	163,944	157,895	156,495	-1,400	-0.9%
08 Contractual Services	2,309,677	3,973,875	3,973,915	40	0%
09 Supplies and Materials	410,081	381,777	431,577	49,800	13.0%
11 Equipment – Additional	131,001	93,201	93,201	0	0%
12 Grants, Subsidies, and Contributions	671,497	9,369,119	684,441	-8,684,678	-92.7%
13 Fixed Charges	2,621,519	2,947,133	2,850,250	-96,883	-3.3%
Total Objects	\$ 39,045,001	\$ 52,025,806	\$ 45,286,258	-\$ 6,739,548	-13.0%
Funds					
01 General Fund	\$ 20,362,384	\$ 19,952,596	\$ 20,547,693	\$ 595,097	3.0%
03 Special Fund	9,113,130	22,084,404	14,948,216	-7,136,188	-32.3%
05 Federal Fund	3,821,529	4,060,717	4,040,661	-20,056	-0.5%
09 Reimbursable Fund	5,747,958	5,928,089	5,749,688	-178,401	-3.0%
Total Funds	\$ 39,045,001	\$ 52,025,806	\$ 45,286,258	-\$ 6,739,548	-13.0%

Note: The fiscal 2021 appropriation does not include deficiencies, targeted revenues, or across-the-board reductions. The fiscal 2022 allowance does not include contingent reductions or cost-of-living adjustments.