

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

Fiscal Year 2016-17	Business Unit 0845	Department California Department of Insurance	Priority No. 2
Budget Request Name 0845-002-BCP-DP-2016-A1		Program 0530 - Fraud Control	Subprogram 0530064 - Enhanced Fraud - Legal Branch

Budget Request Description
 Enhanced Fraud Investigation eDiscovery

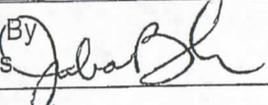
Budget Request Summary

The California Department of Insurance (CDI) is requesting a General Fund (GF) appropriation, consistent with California Insurance Code (CIC) Section 1871.7 (g)(1)(A)(iv), of \$626,000 in Fiscal Year (FY) 2016-17 and \$184,000 in FY 2017-18, to purchase and maintain a computer litigation software program, similar to those used by law firms in large-scale litigation. The software will be capable of handling extensive document research, analysis, and retention to be used for enhanced fraud investigation and prevention efforts in civil whistle-blower cases associated with California's False and Fraudulent Claims Act, Insurance Code Section 1871.7 et seq.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO David Noronha 	Date 2/10/2016

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.
 FSR SPR Project No. 0845-048 Date:

If proposal affects another department, does other department concur with proposal? Yes No
 Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Mariah Kirk	Date 2/10/2016	Reviewed By Julia Cross 	Date 2/10/2016
Department Director Erika Sperbeck 	Date 2/10/2016	Agency Secretary N/A	Date

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA Original signed by **Jeff Carosone** Date submitted to the Legislature **4-1-16**

BCP Fiscal Detail Sheet

BCP Title: Enhanced Fraud Investigation eDiscovery (Civil Litigation Software)

DP Name: 0845-002-BCP-DP-2016-A1

Budget Request Summary

		FY16				
	CY	BY	BY+1	BY+2	BY+3	BY+4
Operating Expenses and Equipment	0	626	184	0	0	0
5346 - Information Technology	0	626	184	0	0	0
Total Operating Expenses and Equipment	\$0	\$626	\$184	\$0	\$0	\$0
Total Budget Request	\$0	\$626	\$184	\$0	\$0	\$0

Fund Summary

Fund Source - State Operations	0	626	184	0	0	0
0001 - General Fund	0	626	184	0	0	0
Total State Operations Expenditures	\$0	\$626	\$184	\$0	\$0	\$0
Total All Funds	\$0	\$626	\$184	\$0	\$0	\$0

Program Summary

Program Funding	0	626	184	0	0	0
0530064 - Enhanced Fraud - Legal Branch	0	626	184	0	0	0
Total All Programs	\$0	\$626	\$184	\$0	\$0	\$0

A. Budget Request Summary

The California Department of Insurance (CDI) is requesting a General Fund (GF) appropriation, consistent with California Insurance Code (CIC) Section 1871.7 (g)(1)(A)(iv), of \$626,000 in Fiscal Year (FY) 2016-17 and \$184,000 in FY 2017-18, to purchase and maintain a computer litigation software program, similar to those used by law firms in large-scale litigation. The software will be capable of handling extensive document research, analysis, and retention to be used for enhanced fraud investigation and prevention efforts in civil whistle-blower cases associated with California's False and Fraudulent Claims Act, Insurance Code Section 1871.7 et seq..

B. Background/History

On November 4, 2013 Commissioner Dave Jones announced a \$46,000,000 settlement with Sutter Health to settle a 2011 whistle-blower lawsuit. The State's share of the settlement was \$20,613,000, which was paid to the GF in accordance with CIC Section 1871.7 (g)(1)(A)(iv). This statute also provides for the Legislature to appropriate these funds for enhanced fraud investigation and prevention efforts.

To date, the Legislature has approved a total of \$19,867,000 in GF appropriation to CDI. In FY 2014-15, a Spring Finance Letter (SFL) was approved appropriating \$18,340,000 (\$4,585,000 annually for four years) for Enhanced Fraud Investigation and Prevention, and in FY 2015-16, \$1,527,000 was appropriated as part of the CDI Menu Modernization Project Year 2, specifically for CDI's Fraud Investigation Database (FIDB). Additionally, due to funds not being fully expended in Year 1 of the Department's Enhanced Fraud Investigation and Prevention efforts, an additional \$1,249,000 is available. As a result, the remaining GF balance available for appropriation is \$1,995,000. Thus, CDI is requesting an additional GF appropriation of \$626,000 in FY 2016-17 and \$184,000 in FY 2017-18, to purchase and support a computer litigation software program.

**Legal Branch - Fraud Liaison Bureau
Resource History
(Dollars in thousands)**

Program Budget	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16 (Projected)
Authorized Expenditures ^{1/4/5/}	\$666	\$803	\$806	\$1,257	\$1,166
Actual Expenditures ^{2/}	\$689	\$574	\$655	\$731	\$1,166
Authorized Positions ^{3/}	5.0	5.0	5.0	8.0	8.0
Filled Positions ^{3/}	4.4	4.0	4.0	4.8	8.0
Vacancies ^{3/}	0.6	1.0	1.0	3.2	0.0

^{1/} Based on allotment.

^{2/} Based on FM 13 year-end budget reports.

^{3/} Based on Salaries & Wages (7A).

^{4/} FY 2014-15 Authorized Expenditures Includes \$525 GF from Year 1 Enhanced Fraud Investigation and Prevention SFL.

^{5/} FY 2015-16 Authorized Expenditures Includes \$422 GF from Year 2 Enhanced Fraud Investigation and Prevention SFL.

C. State Level Considerations

This request is consistent with applicable State law and policies. Law does not need to be added, amended, or repealed in order to implement this request. Because the State received this funding as a result of CDI's enforcement efforts, the funds should be appropriated to CDI for enhanced fraud investigation and prevention efforts consistent with State law. If the Budget does not appropriate these funds for the purpose stipulated in statute, it may be seen as a waste of targeted resources to be used in the fight against insurance fraud.

This proposal aligns with the goals of the Commissioner in the fight against insurance fraud in California. One of the Commissioner's highest priorities has been to reduce insurance fraud, as the cost of fraud is ultimately passed on to consumers in the form of higher insurance premiums. Insurance Fraud costs every household

between \$700 and \$1,000 each year. This proposal will expand the Legal Branch - Fraud Liaison Bureau (FLB) capacity to intervene in and prosecute more whistle-blower litigation, which can serve as a significant deterrent to fraudulent claims activity and result in additional funds for the State through these types of settlements. This request benefits the insurance-consuming public by protecting them from losses in premium dollars from inappropriate and illegal practices.

D. Justification

The FLB has seen a substantial increase in the number of whistle-blower cases during the past three years. In the late 1990s and through the early 2000s, it was typical for the Commissioner to receive 4 or 5 whistle-blower cases a year. Over the last six years cases received annually has doubled, and at times even tripled as compared to referrals received in the early 2000s. The number of new cases received by year is as follows:

Year	New Cases Received
2010	11
2011	12
2012	23
2013	14
2014	15
2015	21

The Department is currently monitoring 66 whistle-blower cases pending in the State and federal courts. Each case is reviewed by a staff attorney to recommend a course of action. The options are to continue to monitor the cases or in appropriate cases eventually to fully intervene and actively participate in litigation and eventual resolution.

Present day civil litigation requires computer-based, state-of-the-art programs to service and handle the large number of paper and electronic documents that are produced during the discovery and trial stage of these cases. These are standard tools used by attorneys in large-scale litigation. Large civil whistle-blower cases are document intensive and can easily involve 2-5 million documents or more per case. They require hours of review, research, organization and analysis by FLB attorneys in preparation for trial. The FLB's current content management system is incapable of handling such large documentation and lacks the ability to conduct pattern searches through millions of documents thus manual processes are used to analyze data and evidence. This is a time-consuming and labor-intensive process that thwarts investigation efforts while creating a significant advantage for the opposing counsel. This proposal would level the playing field.

CDI's enhanced whistle-blower efforts, as a result of the GF appropriation approved in FY 2014-15, have resulted in additional settlements. On December 18, 2015, Insurance Commissioner Dave Jones announced that a \$23.2 million settlement had been reached by the CDI and whistle-blowers with pharmaceutical company Warner Chilcott to resolve a lawsuit alleging drug marketing fraud in violation of state law. Additionally, the CDI has been engaged in aggressive litigation against Bristol-Myers Squibb and is on the verge of a large settlement, and monitoring additional whistle-blower cases. These additional cases are pending in various State and federal courts. Often the defendants in these cases are large pharmaceutical companies, hospital chains, medical device manufacturers, or other healthcare providers, suppliers, or billing services that are represented by the largest law firms in the country who utilize litigation software resources. These cases are typically document-intensive matters which require extensive review, analysis, and meetings with the whistle-blower and his or her attorneys just to determine an initial recommendation on whether to intervene. Without litigation software, the Commissioner's ability to prosecute these cases is severely restricted and the effectiveness of the Commissioner's counsel is substantially reduced.

If the Commissioner intervenes, time-consuming civil discovery, law and motion practice, research, and legal memoranda are required during the pendency of these cases. They are major cases, involving large volumes of documents. As an example, in 2011 the Commissioner intervened in a case against Sutter Health (Sutter)

alleging false and fraudulent billing practices for services not rendered or double billed. During discovery, Sutter produced approximately 2 million pages of documents. Additionally, 58 depositions were taken over a two-year period and 17 law and motion hearings were held. From March 2009 to November 2013, when the case ended, the FLB attorneys had recorded 4,388.75 hours on the matter. Just before trial, Sutter settled the case for \$46,000,000, of which \$20,613,000 was deposited into the State's GF to address enhanced fraud investigation and prevention efforts.

Insurance fraud has a major impact upon insurance premiums. Any business operation can be a target of a whistle-blower case alleging the fraudulent submission of insurance claims for payment by insurance companies, or their insureds. This is why it is critical that these resources be appropriated to CDI, consistent with State law, for their intended purpose – enhanced fraud investigation and prevention efforts. Handling these cases effectively and efficiently requires updated, state-of-the-art computer litigation software, as well as a server that will retain, organize, and search this data in support of aggressive litigation. The litigation software will create efficiencies which in turn will allow the Commissioner to successfully intervene and prosecute more whistle-blower cases. Some of the efficiencies that will be gained with the utilization of litigation software include:

- Improving the quality of information extracted from the documentation, allowing the Legal team to prioritize the documents and data it reviews. Currently, approximately 60 percent of an FLB attorney's time is spent monitoring and reviewing the litigation files. The software will reduce the time attorneys spend reviewing the large case documentation by 25 percent, thus increasing the CDI's capacity to intervene in more cases.
- Providing CDI with the ability to digitize, track, collect, extract, index, catalog and analyze high volumes of litigation documents and data, as well as the ability to identify, collect and produce electronically stored information in response to a request for production in a lawsuit or investigation. This will give CDI's Legal counsel a tremendous advantage they currently don't have and increase the likelihood of successful prosecution.

Note: A Stage 1 Business Analysis (Enhanced Fraud Investigation eDiscovery) was submitted to the California Department of Technology (CDT) on April 20, 2015. CDI was notified on August 28, 2015 that the project has been conditionally approved. CDI has been working with CDT to address the conditions of project approval and anticipates a formal approval on April 1, 2016.

E. Outcomes and Accountability

Approval of these resources will ensure that CDI has the litigation software necessary to handle the volumes of documents that are generated as a result of litigation. This software will create efficiencies that will enhance CDI's fraud and prevention efforts. Additionally, these efficiencies will allow CDI to intervene and prosecute more cases. Improvements in FLB can be measured by comparison of existing whistle-blower caseload. Additionally, case time reporting will be monitored to ensure that case activity goals are met.

F. Analysis of All Feasible Alternatives

Alternative 1 – Approve the requested GF appropriation of \$626,000 in FY 2016-17 and \$184,000 in FY 2017-18 to purchase and support a computer litigation software program to enhance CDI's fraud investigation and prevention efforts.

Pros:

- CDI's practices for reviewing litigation files will be more efficient, reducing the amount of casework time by CDI attorneys, improving the quality of information extracted and ultimately leading to intervening in more cases.
- CDI will have the tools necessary to handle large volumes of litigation documents in the most effective and efficient manner.
- Settlement funds paid to the GF would be used for their statutory purpose.
- May result in additional funds paid to the State's GF through whistle-blower settlements.

Cons:

- GF resources will be impacted; however, as a result of a whistle-blower settlement these monies were deposited in the GF for this purpose and should be available for appropriation.

Alternative 2 – Use Insurance Fund to support CDI's request for resources for enhanced investigation and prevention efforts.

Pros:

- GF resources will not be impacted.
- Computer litigation software would still be available for enhanced investigation and prevention efforts.

Cons:

- Settlement funds paid to the GF would not be used for their statutory purpose.
- Additional expenditures to the Insurance Fund that would put pressure on the Fees & License sub-account of the Insurance Fund.

Alternative 3 – Provide GF funding of \$313,000 in FY 2016-17 and \$92,000 in FY 2017-16, or half the requested amount, and use Insurance Fund funding for the other half.

Pros:

- There would be less cost to the GF.
- Computer litigation software would still be available for enhanced investigation and prevention efforts.

Cons:

- Settlement funds paid to the GF would not be fully utilized for their statutory purpose.
- Additional expenditures to the Insurance Fund that would put pressure on the Fees & License sub-account of the Insurance Fund.

Alternative 4 – Deny request.

Pros:

- GF resources will not be impacted.

Cons:

- Settlement funds paid to the GF would not be used for their statutory purpose.

- FLB will continue to use the current content management system which is incapable of handling large volumes of documentation arising from each case.
- CDI's practices for reviewing litigation files will continue to be inefficient, wasting countless attorney hours as a result of not having computer litigation software.
- CDI will not be able to intervene in additional whistle-blower cases due to inefficiencies related to the Department's inability to effectively review case documents.

G. Implementation Plan

CDI will use resources available July 1, 2016 to purchase a computer litigation software program capable of handling extensive document research, analysis, and retention to be used for enhanced fraud investigation and prevention efforts in whistle-blower cases.

H. Supplemental Information

Civil Litigation Software Proposed Cost Breakdown

Item	FY 2016-17	FY 2017-18
Consulting & Professional Services - External		
<ul style="list-style-type: none"> • Project Manager • Business Analyst • Application Training for FLB staff 	\$112,000	
Data Center Services – Network Bandwidth	\$58,000	\$54,000
Information Technology		
Hardware	\$264,000	
Software	\$192,000	\$130,000
Total	\$626,000	\$184,000

I. Recommendation

Alternative 1 – This is the only alternative that will allow CDI to purchase and maintain litigation software, utilizing the funds deposited in the GF for enhanced fraud investigation and prevention efforts which in turn will increase CDI's capacity to intervene in and prosecute more whistle-blower cases.

Denial of this proposal will not provide the tools necessary to handle large volumes of litigation documents which would prohibit intervening in additional whistle-blower cases due to inefficiencies related to the CDI's inability to effectively review case documents. As a result investigative efforts will continue to be hindered and opposing counsel that utilizes this type of software will have an advantage.

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DEPARTMENT OF FINANCE
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