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# **DEPARTMENT OF JUSTICE**

## **PRESENTATION TO JUSTICE SYSTEMS APPROPRIATIONS SUBCOMMITTEE**

**February 26, 2008**

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**Budget Request #1**  
**Homeowners' Consumer Protection Fund**  
**HSB 594 – House Commerce Committee**  
**SSB 3107 - Senate Local Government Committee**

**Background.** The mortgage market has undergone tremendous change in the last decade. What used to be a simple choice between a fixed rate loan and an adjustable rate loan has been replaced by an explosion of complex and risky products. While these new products have certainly increased opportunities for borrowers, they have also greatly increased the opportunity for fraud.

**Growing Number of Iowans Need Help on Mortgage Issues.** The Iowa Attorney General's Office has made fighting predatory mortgage lending its top enforcement priority for the past several years. Additionally, the Office recently established the Iowa Foreclosure Hotline and is working with industry officials to address the avalanche of mortgage foreclosures in Iowa.

But, it is clear that the Office could use additional resources to effectively serve Iowans impacted by mortgage fraud and questionable industry practices. *First*, the need in this area has increased dramatically: The number of mortgage-related consumer complaints received by the Office went from a handful in a year to 299 in 2007 (the second largest category of consumer complaints). *Second*, there is a critical need for the Office to help Iowans who are currently facing the possibility of mortgage foreclosure. The Iowa Foreclosure Hotline (run by the Iowa Mediation Service) has received over 6000 calls and has opened 628 cases. *Third*, the Office believes Iowa consumers will continue to be subjected to fraudulent mortgage lending practices in coming years.

With additional resources, the Office could ramp up its efforts to protect Iowa homeowners through investigation, prosecution, foreclosure prevention, and educational efforts.

**Request.** The Office is asking the Legislature to impose a \$2.00 surcharge on every mortgage filed in the state. (5% of the surcharge would be retained by the county recorder for administrative costs.)

The Office estimates that approximately 150,000 mortgages will be recorded in FY09. So, the surcharge would generate an estimated \$300,000 that would be placed in a Homeowners' Consumer Protection Fund. The Office would use monies from the Fund to hire attorneys, investigators, and support staff. There also would be travel, litigation, foreclosure prevention, and consumer education expenses. Depending on how the program developed, there may be a need to reimburse the Division of Banking and the Appraiser Board for their work in litigation. The resources would be devoted to civil and criminal prosecution involving mortgage fraud and related foreclosure prevention and consumer education initiatives.

**Sunset Provision.** The surcharge and fund would sunset in 5 years when, hopefully, the current mortgage crisis has ended.

**Other States.** Indiana and Washington have enacted similar proposals.

**Budget Request #2**  
**Nonprofit/Charities Oversight Unit**  
**HSB 656 — House Judiciary Committee**  
**SF 2194 — Passed Senate State Government Committee**

**Background.** The Iowa Attorney General's Office has statutory and common law authority to oversee nonprofit corporations and charitable trusts. The primary responsibility of the Attorney General is to ensure that nonprofit organizations carry out their charitable mission and use their charitable assets in an appropriate manner.

The Office receives a steady stream of calls, letters and emails from the public concerning charitable trusts and nonprofit corporations. Complaints from the public involve a wide variety of issues, such as whether members can attend meetings, whether records are public, what obligation board members have to ensure the financial viability of the organization, what can be done about expenditures that don't seem consistent with the public purpose of the organization, etc.

The Office does not have the resources to assign an attorney to these issues on a full-time basis. The result is that the Office rarely initiates any inquiry regarding these complaints, not wanting to mislead people into assuming the matter will be handled by the Office. Instead, most public complaints are referred to the Internal Revenue Service or the University of Iowa Nonprofit Resource Center.

The Office has initiated investigations into major nonprofit issues, including allegations of conflicts-of-interest, self-dealing, and excessive executive compensation.

**Request.** The Office is asking the Legislature to establish a Nonprofit/Charities Oversight Fund that would be used to hire an attorney and a support staff person to work on nonprofit and charitable trust issues. The proposal would —

- a. Place a small fee on the biennial reports currently filed by nonprofit corporations - \$25 if filed electronically and \$30 if filed on paper.
- b. Exempt small nonprofits and mutual benefit corporations (such as trade associations and coops) from the fee.
- c. Generate approximately \$125,000, annually, that would be deposited in the Nonprofit/Charities Oversight Fund. Monies in the Fund would be available to the attorney general, subject to annual appropriations.
- d. Include a statement that the authority of the attorney general is not being expanded.

**CRIME VICTIM COMPENSATION FUND**

**BASED ON STATUS QUO RECEIPTS WITH A 3% INCREASE IN EXPENDITURE  
PLUS A \$400,000 INCREASE IN EXPENSE TO CONTINUE VICTIM NOTIFICATION PROJECT BEGINNING FY2009**

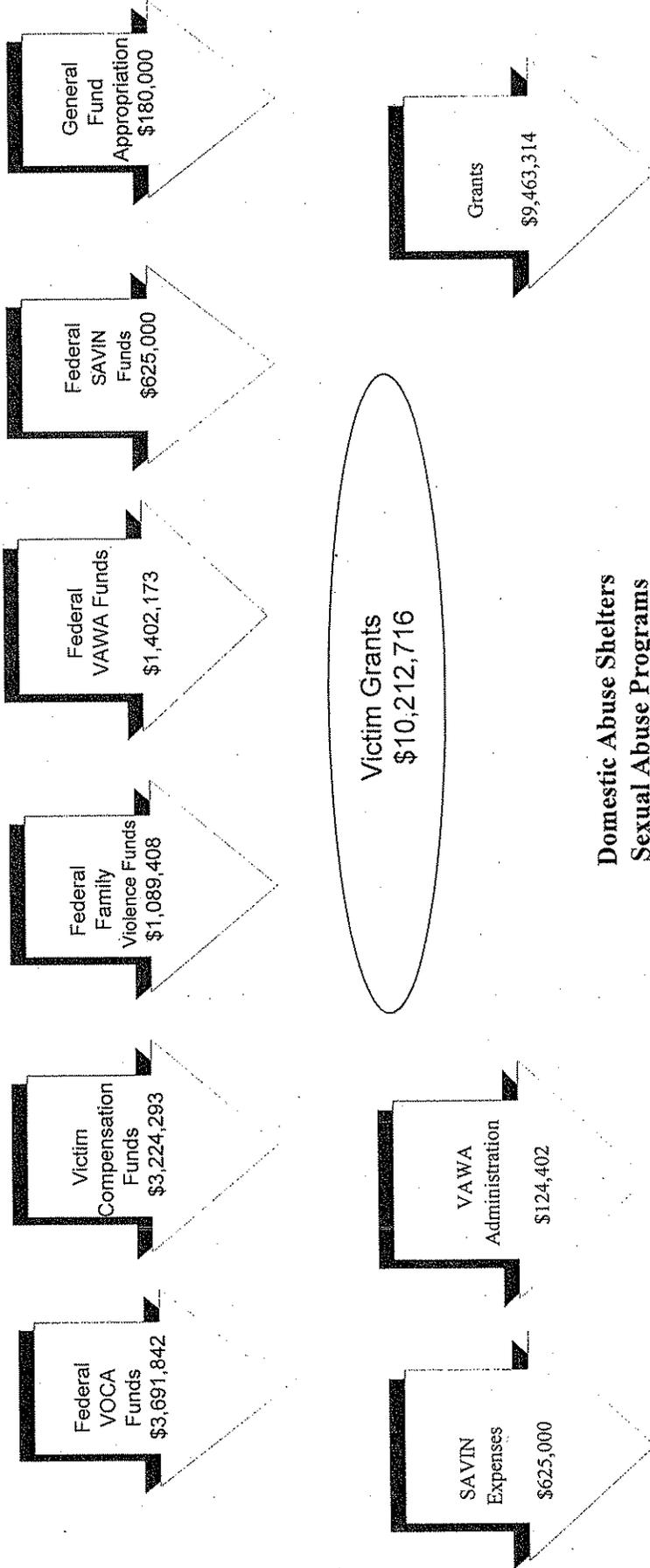
FY	Forward From Previous Fiscal Year	Receipts	Available Funds	Expenses	Comp Funds to Grants	Total Spent	Difference
1999		4,939,479	7,414,621	4,821,556	250,000	5,071,556	2,343,065 Actual
2000	2,475,142	6,249,641	8,592,706	5,142,579	250,000	5,392,579	3,200,127 Actual
2001	3,200,127	6,718,631	9,918,758	5,397,504	650,000	6,047,504	3,871,254 Actual
2002	3,871,254	7,785,874	11,657,128	5,579,914	712,319	6,292,233	5,364,895 Actual (includes legislative reduction of 1,000,000)
2003	4,366,235	8,577,241	12,943,476	6,521,776	2,189,816	8,711,592	4,231,884 Actual
2004	4,235,000	8,412,454	12,647,454	6,671,478	2,251,273	8,922,751	3,724,703 Actual
2005	3,728,922	9,749,947	13,478,869	7,393,731	2,240,780	9,634,511	3,844,358 Actual
2006	3,844,358	10,373,127	14,217,485	7,969,214	2,444,230	10,413,444	3,804,041 Actual
2007	3,806,158	10,613,632	14,419,790	7,779,844	3,176,789	10,956,633	3,463,157 Actual
2008	3,463,157	10,832,215	14,295,372	8,219,874	3,200,000	11,419,874	2,875,498 Budget
2009	2,875,498	10,832,215	13,707,713	8,866,470	3,200,000	12,066,470	1,641,243 Projected
2010	1,641,243	10,832,215	12,473,458	9,132,464	3,200,000	12,332,464	140,993 Projected
2011	140,993	10,832,215	10,973,208	9,406,438	3,200,000	12,606,438	(1,633,230) Projected
2012	(1,633,230)	10,832,215	9,198,985	9,688,631	3,200,000	12,888,631	(3,689,646) Projected
2013	(3,689,646)	10,832,215	7,142,569	9,979,290	3,200,000	13,179,290	(6,036,722) Projected

**BASED ON STATUS QUO RECEIPTS WITH A 3% INCREASE IN EXPENDITURE  
PLUS A \$400,000 INCREASE IN EXPENSE TO CONTINUE VICTIM NOTIFICATION PROJECT BEGINNING FY2009  
ALSO INCLUDES A \$780,000 INCREASE IN COMP FUND TRANSFER TO GRANTS TO OFFSET REDUCTION IN FEDERAL FUNDS IN FY2009**

FY	Forward From Previous Fiscal Year	Receipts	Available Funds	Expenses	Comp Funds to Grants	Total Spent	Difference
1999		4,939,479	7,414,621	4,821,556	250,000	5,071,556	2,343,065 Actual
2000	2,475,142	6,249,641	8,592,706	5,142,579	250,000	5,392,579	3,200,127 Actual
2001	3,200,127	6,718,631	9,918,758	5,397,504	650,000	6,047,504	3,871,254 Actual
2002	3,871,254	7,785,874	11,657,128	5,579,914	712,319	6,292,233	5,364,895 Actual (includes legislative reduction of 1,000,000)
2003	4,366,235	8,577,241	12,943,476	6,521,776	2,189,816	8,711,592	4,231,884 Actual
2004	4,235,000	8,412,454	12,647,454	6,671,478	2,251,273	8,922,751	3,724,703 Actual
2005	3,728,922	9,749,947	13,478,869	7,393,731	2,240,780	9,634,511	3,844,358 Actual
2006	3,844,358	10,373,127	14,217,485	7,969,214	2,444,230	10,413,444	3,804,041 Actual
2007	3,806,158	10,613,632	14,419,790	7,779,844	3,176,789	10,956,633	3,463,157 Actual
2008	3,463,157	10,832,215	14,295,372	8,219,874	3,200,000	11,419,874	2,875,498 Budget
2009	2,875,498	10,832,215	13,707,713	8,866,470	3,980,000	12,846,470	861,243 Projected
2010	861,243	10,832,215	11,693,458	9,132,464	3,980,000	13,112,464	(1,419,007) Projected
2011	(1,419,007)	10,832,215	9,413,208	9,406,438	3,980,000	13,386,438	(3,973,230) Projected
2012	(3,973,230)	10,832,215	6,858,985	9,688,631	3,980,000	13,668,631	(6,809,646) Projected
2013	(6,809,646)	10,832,215	4,022,569	9,979,290	3,980,000	13,959,290	(9,936,722) Projected

# VICTIM GRANTS

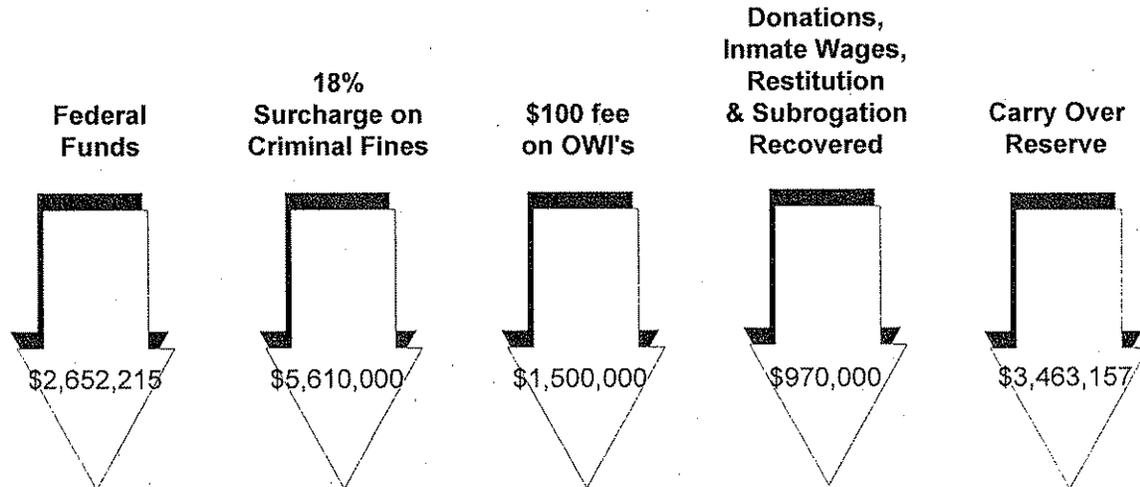
Attorney General's Office  
Projected FY 2008



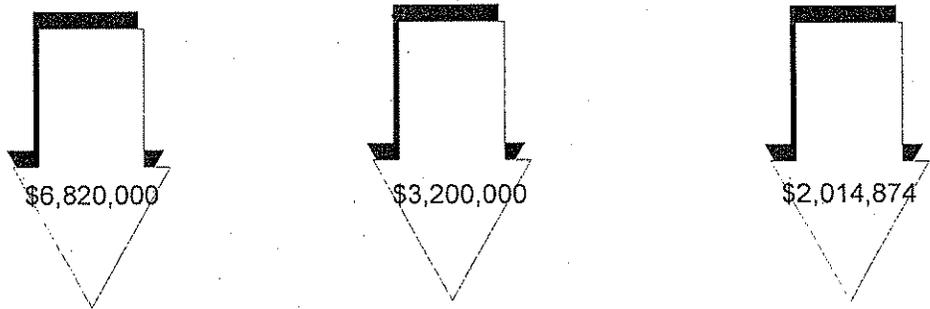
Domestic Abuse Shelters  
Sexual Abuse Programs  
Iowa Domestic Abuse and Sexual Abuse Hotline  
and  
Other Violent Crime Programs

# VICTIM COMPENSATION

## Attorney General's Office Projected FY 2008



Victim Compensation Fund  
\$14,195,372



**Eligible  
Victims**

**Victim  
Service  
Grants**

**Crime Victim  
Assistance Division  
Operations**

Total Expenses from Fund  
\$12,034,874

Reserve  
\$2,160,498

## **Recent Antitrust Activities Iowa Attorney General's Office**

The Attorney General's Office has approximately 1.5 attorney FTEs devoted to enforcing the Iowa Competition Law, Iowa Code chapter 553. Following is a description of recent case activities that can be discussed publicly.

### **Monsanto Company.**

The Office was involved in the investigation of the Monsanto acquisition of Delta and Pine Land Cotton Company. The interest there was whether the merger of Monsanto, the largest controller of transgenic traits for corn, and soybeans, would be able to adversely affect the trait development market if it also controlled the largest independent body of cotton germplasm. The State of Iowa is interested because traits designed for corn and soy are also generally easily adapted for cotton, so large developers (such as Pioneer, Syngenta, BayerCrop Service, Dow) are interested in the additional commercial opportunity before they enter into the very long, expensive task of developing a transgenic trait. The United States Department of Justice (USDOJ) required certain divestitures of Monsanto cotton assets in order to approve the acquisition.

The Office is currently involved in an investigation of Monsanto practices involving seeds, traits, and chemical.

### **Remeron.**

In 2007, over \$78,000 was paid out last year to Iowa consumers as the result of a settlement the Office entered into in 2006. State attorneys general, including Attorney General Tom Miller, alleged that the drug company, Organon USA Inc., abused the regulatory scheme to stifle competition and prevent consumers from having access to low-cost, generic equivalents of Remeron, a prescription antidepressant drug.

### **DRAM (Dynamic Random Access Memory).**

In 2007, Iowa and 33 other states settled with Samsung and Winbond for claims of price fixing DRAM chips—which are the memory component in every desktop computer, notebook, printer, phone, virtually anything that has memory. The lawsuit was a follow-up to a federal criminal case against Samsung, Micron, Hynix, and others who make those chips. Several company employees plead guilty and some are currently doing prison time. It has not yet been determined how much the State of Iowa will receive. Litigation is ongoing against the other makers of the chip in the United States District Court for the Northern District of California.

### **Ovcon.**

In 2005, Iowa and 21 other states and the District of Columbia sued Warner Chilcott, Inc. and Barr Pharmaceuticals, Inc. alleging that Warner Chilcott paid Barr \$20 million to keep Barr from marketing a generic version of Ovcon, an oral contraceptive. The states settled in 2007 – an injunction stopped the anti-competitive activities and the State of Iowa received \$101,370.

**Microsoft, Inc.**

A group of state attorneys general, including Attorney General Miller, recently convinced a judge to extend parts of the 2002 decree against Microsoft because Microsoft had failed to follow through and provide documentation for communication protocols in a manner that was adequate under the decree. As a result, the court found that the rest of the provisions of the decree, which would have expired in November 2007, would continue for two years so that they would be present to protect new competitive software develop by using the protocols, as the decree provided. USDOJ did not request that these provisions carry forward and opposed state efforts in spite of the fact that the court found that Microsoft had never been in compliance with the decree.

**XM-Serius.**

The Office is monitoring discussions concerning the merger of the only two satellite radio providers. The merger is currently being looked at by USDOJ and the Federal Communications Commission, in addition to a group of state attorneys general

**Airline Mergers.**

The Office is monitoring discussions concerning the possible mergers of Northwest Airlines and Delta Airlines and United Airlines and Continental Airlines. All these airlines serve Iowa.

## **Recent Consumer Protection Activities Iowa Attorney General's Office**

During 2007, Attorney General Miller and his Consumer Protection Division continued to work to protect Iowa consumers by focusing on enforcement actions, policy advocacy, consumer education and by opening 4262 files on written consumer complaints. The Division's top priorities included the following:

### **Predatory Mortgage Lending.**

a. The office worked to distribute \$2.62 million to nearly 3000 Iowa homeowners in our settlement with Ameriquest. This is the largest consumer restitution settlement in the history of the Iowa Attorney General's Office.

b. The office set up and publicized a significant mortgage foreclosure mediation program and hotline to help consumers avoid foreclosure and otherwise seek assistance with mortgage lending problems. The work of the Iowa Mediation Service in this effort has been extraordinary. The toll free number is 877-622-4866.

c. The office filled an open credit investigator position by converting the position to focus solely on mortgage lending - our new investigator worked on scores of complaints and recovered thousands for consumers in rewritten mortgages and refunds.

d. The office offered state legislation to address mortgage lending problems and worked successfully to see legislation enacted to address deceptive and unfair real estate appraisal practices that contributed to predatory mortgage lending practices.

e. Attorney General Miller testified before the U.S. House Committee on Financial Services regarding subprime lending and other financial regulatory matters and commented to the Federal Reserve Board regarding mortgage lending regulations.

### **Fighting Scams Against Older Iowans.**

a. The Consumer Protection Division continued to work to protect Iowa's senior citizens by pursuing and resolving further concerns about the sweepstakes solicitations of Publisher's Clearinghouse, recovering \$60,000 for Iowans and greatly strengthening provisions requiring the company to take vulnerable consumers off of its mailing lists.

b. The Division continued its our efforts against those who facilitate telemarketing fraud by filing a lawsuit with the Federal Trade Commission against company that we allege processed payments from the accounts of senior citizens from Iowa and other states on behalf of fraudulent telemarketing, direct mail, and Internet-based schemes.

### **Protecting Younger Consumers.**

a. The Division continued its ongoing efforts to protect consumers in the early years of life by leading a multistate settlement with Kroger to ensure it reduces as much as possible sales of tobacco products to minors.

b. The Division issued a written Advisory warning college students about the dangers of giving in to credit card solicitations that target them.

c. Attorney General Miller joined other attorneys general in a letter to federal officials encouraging they join with us to deter the sales of energy drinks containing alcohol to minors.

### **Pursuing Health Care Fraud.**

a. The Attorney General's Office also continued its ongoing efforts to deter medical care fraud through a settlement with Bayer regarding allegations that Bayer failed to adequately disclose safety risks associated with "Baycol," a cholesterol-lowering drug.

### **Used Car Sales Fraud.**

a. The Consumer Protection Division filed a lawsuit with the Iowa DOT against what we allege was a major used car scam being perpetrated by a Davenport dealer alleging violations by the dealer of the Consumer Fraud Act, the Consumer Credit Code, and Iowa laws regulating licensed motor vehicle dealers..

b. The Division also continued to pursue and settle cases allege consumer overcharges by used car dealers for certain finance charges. The cases have resulted in consumer refunds.

### **Warning Consumers About Financial Scams.**

a. The Division worked to warn consumers against several scams, including:

- 1) solicitations using counterfeit checks;
- 2) scams targeting victims of spring storms; and,
- 3) a scam telling consumers they'd been chosen for federal jury duty, but culminating in an effort to get them to disclose private financial account information.

### **Helping Agricultural Producers.**

a. The office assisted agricultural producers through a settlement with a Canadian firm that solicited Iowans to invest in pigeon breeding operations.

## Consumer Complaint Data

Below is a list of the 20 most frequent complaint categories received in 2007. It was gleaned from the Attorney General's data base. The numbers below, and the 4262 figure provided above, do not include written complaints which were inserted into general investigative files kept on particular companies or individuals or written complaints which were referred to other Iowa state agencies. There is no reasonable way to include those complaints in the below figures. The below figures also do not include statistics regarding complaints over the telephone in that the Division requires all complaints be made in writing to be pursued and, therefore, does not keep statistics on complaints received only over the telephone but does provide substantial assistance to consumers who call the Division.

### Top 20 Complaint Categories for Calendar Year 2007

1. Debt Collection	426
2. Home Mortgages	299
3. Cell Phones	233
4. Home Improvements	198
5. Used Car Sales	194
6. Motor Vehicle Credit and Lease Terms	143
7. Sales of Promotional Ads	132
8. Satellite TV Services	115
9. Auto Repairs	89
10. Coupons & Rebates	85
11. Computers & Software	72
12. Internet Service Providers	62
13. Buyer's Clubs	61
14. Business Equipment	58
15. Business Services	52
16. Loanfinders/Loanbrokers	49
17. Personal Data	45
18. Discount Cards/Coupon Books	43
19. Contests, Games and Sweepstakes	41
20. Work at Home	40

## **Office of Consumer Advocate Iowa Department of Justice**

The Consumer Advocate is appointed by the attorney general for a four-year term, subject to the confirmation of the Iowa Senate. The Office of Consumer Advocate (OCA) represents all consumers generally and the public generally in all proceedings before the Iowa Utilities Board (IUB). The IUB administers Iowa's public utility regulation statutes in Iowa Code chapters 476 and 476A. The OCA is also independently authorized to investigate the legality of all rates, charges, rules, regulations and practices of all persons under the jurisdiction of the Board, and may institute proceedings before the Board or court to correct any illegality.

Given the small size of OCA's technical staff (12 positions), it does not assign specific staff to work only on the economic/financial aspects of electric generation and transmission. OCA's electrical engineer does spend the majority of his time on these areas but he also covers the engineering aspects of pipelines. If OCA didn't have a well educated staff (three Ph. D.'s, one M.A., and the rest B.A.'s) with a lot of experience (averages over 20 years), it probably would not be able to operate in this fashion.

The same is true for the seven attorneys at OCA. Four of them work on electric and gas matters, two work basically on telephones, and one works on customer complaints. They also on average have more than 20 years of experience.