

STATE SECURITIES DEPARTMENT

Enabling Laws

Act 52 of 2010
A.C.A. §20-17-1001 et seq.
A.C.A. §23-35-101 et seq.
A.C.A. §23-37-101 et seq.
A.C.A. §23-39-501 et seq.
A.C.A. §23-42-101 et seq.
A.C.A. §23-55-101 et seq.

History and Organization

The Arkansas Securities Department has legislated responsibilities to protect the monetary interests of Arkansas residents by providing administration, regulation, and enforcement of the various Acts.

Act 254 of 1959 placed responsibility for the "sale of securities" under the jurisdiction of the State Bank Department, and provided for a State Securities Commissioner. The Securities Commissioner was to be appointed by the Governor and subject to the supervision of the State Bank Commissioner, and the Securities Department was operated as a division of the State Bank Department. Act 38 of 1971 transferred both the State Bank Department and the State Securities Department to the Department of Commerce. Each division continued to function independently of the Commerce Department with regard to the prescribed statutory powers, authorities, duties, and rulemaking responsibilities they had prior to the transfer. Act 471 of 1973 amended Act 254 of 1959 to provide that the Securities Division was no longer a part of the State Bank Department and the Securities Commissioner was no longer subject to the supervision of the State Bank Commissioner. The Act further provided that the Securities Division be renamed the Arkansas Securities Department and that all Acts previously regulated by the Securities Division be transferred to the new agency effective July 1, 1973.

In early 1975 it became apparent that the special revenue fund balances transferred to the Department by the Bank Department pursuant to Act 471 of 1973 would not be sufficient to continue operation of the Department at its then current level. Act 863 of 1975 amended all Acts administered by the Department to reclassify all revenues received by the Department as general revenues. Thus, effective July 1, 1975, the Department ceased being a special revenue agency and became a general revenue agency with all expenditures paid from the general revenues of the State.

Act 691 of 1983 abolished the Department of Commerce. Section 3 of the Act directed that the State Securities Department shall function as an independent agency. The Securities Commissioner is appointed by the Governor and serves at the pleasure of the Governor.

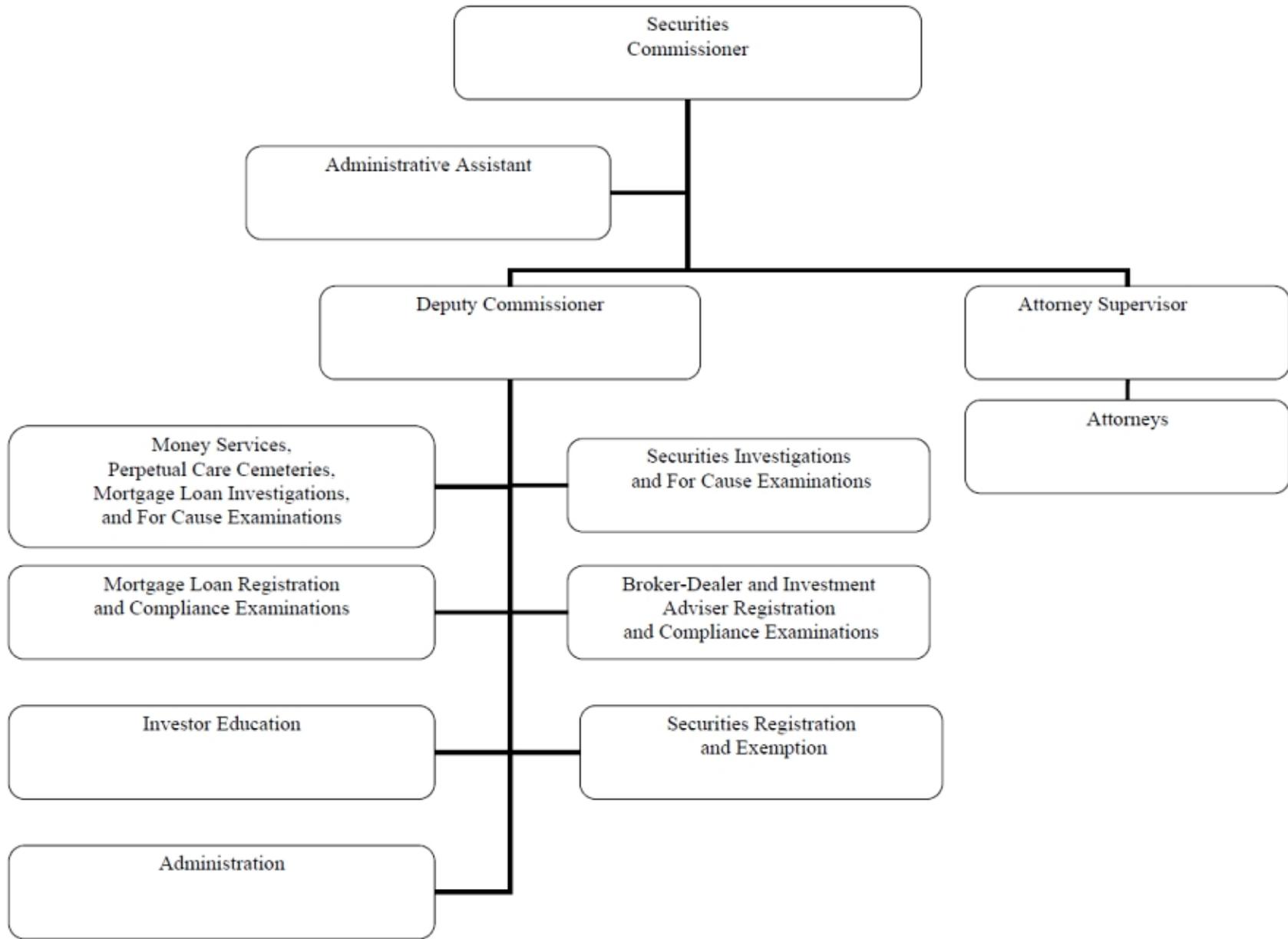
Act 42 of the First Extraordinary Session of 1989 appropriated funds to the Arkansas Securities Department, up to a maximum of \$200,000 in each fiscal year, to be used to contract for legal, accounting, and other appropriate assistance in addition to that available from the Department's regular staff, in specific cases and situations as deemed necessary by the Securities Commissioner. Act 207 of 1993 provided that all revenues received from administrative fines shall be deposited into the fund account from which the Arkansas Securities Department receives its maintenance and support as special revenues and used only for the stated purposes. Act 66 of 1997 provides in the event specific cases, situations, or programs make it necessary that the State Securities Department receives additional appropriations to carry out the objectives of the agency, the Securities Commissioner is hereby authorized to request the approval of the Governor and the Chief Fiscal Officer of the State for transfer of the appropriations provided in the Contingency line item (\$200,000). In no event shall the transfer in any fiscal year exceed the appropriations provided in the Contingency line item. The Governor may approve or modify such request for transfer of appropriations as in his judgment he deems necessary, and shall inform the Chief Fiscal Officer of the State. Upon notification, the Chief Fiscal Officer of the State shall direct the State Auditor to process said transfer upon his books.

Act 659 of 1993 created on the books of the Chief Fiscal Officer of the State and those of the State Treasurer a fund to be known as the "Securities Department Fund". Such fund is to be used for the maintenance, operation, support and improvement of the State Securities Department in carrying out its functions, powers, and duties as set out by law and by rule and regulation not inconsistent with law. Filing fees for initial or renewal registration of agent of a broker-dealer and investment adviser were increased to Seventy-five (\$75), of which twenty-five dollars (\$25) shall be designated as special revenue and shall be deposited in the Securities Department Fund. Also, the filing fee for the filing of a registration statement was increased to a maximum filing fee of no more than two thousand dollars (\$2,000). Any portion of the fee in excess of one thousand (\$1,000) shall be designated as special revenues and shall be deposited in the Securities Department Fund.

The Securities Department's operating appropriation is funded from special revenues deposited with the State Treasurer in the Securities Department Fund. The Securities Department Fund consists of portions of certain filing fees received by the Securities Department. Act 759 of 2003 created the Investor Education Fund. The Investor Education Program is funded from administrative fines received by the Department. The fines deposited into the Investor Education Fund are limited to \$150,000 each fiscal year. Fines received in excess of \$150,000 are deposited into the Securities Department Fund. The remaining fees and funds received by the Securities Department are turned over to the State Treasurer as general revenues.

Pursuant to the Savings and Loan Association Act, Act 227 of 1963, as amended, the Securities Commissioner acts as the Supervisor of savings and loan associations. In 1997 the Savings and Loan Association Act was amended to do away with the Savings and Loan Association Board and transferred the Board's power and authority to the Savings and Loan Supervisor.

Pursuant to the Cemetery Act, Act 352 of 1977, as amended, the Securities Commissioner serves as a voting member of the Cemetery Board.



Agency Commentary

The Arkansas Securities Department is responsible for protecting the financial well being of Arkansas citizens and promoting an environment where the financial and capital markets function efficiently and without unnecessary regulatory impediments. The operations of the Department are funded from the receipt of fees collected by the Department. Change Level requests include the following items:

Regular Salaries: The Department is requesting two new positions without increasing fees charged to registrants. The Department is requesting a Securities Examiner in the Securities Registration/Exemption Section. Although there has been a downturn in the economy, the Department has not seen a downturn in the number of fraudulent securities offerings that are being marketed to Arkansas investors. If anything, the opposite is true. Investors have grown distrustful of the stock market and traditional investments, but they still have money to invest. Fraudsters create offerings with promises of no risk and guaranteed returns and prey on investor fears in selling these investments. A robust review of these offering materials by the Department is essential in protecting Arkansas investors.

The Department also requests a Senior Securities Examiner in the Broker-Dealer/Investment Adviser Registration/Examination Section. The Department has regulatory authority over all state-registered investment advisers, which are investment adviser firms with \$25 million or less under management. This level will rise to \$100 million with the passage of the Dodd-Frank Act, signed into law on July 21, 2010. This action will increase the number of investor adviser firms and representatives that will be subject to regulation by the Department. Arkansas-registered investment advisers are not regulated by any other regulatory agency other than the Department. It is imperative that the Department have sufficient qualified personnel to regularly examine state-registered investment advisers, as well as broker-dealer firms and their branches.

Capital Outlay: The Department is requesting \$13,500 in Capital Outlay in each fiscal year for replacement of obsolete equipment, file servers and other technology equipment as set forth in the Department's Information Technology Plan.

Audit Findings

DIVISION OF LEGISLATIVE AUDIT
AUDIT OF :
STATE SECURITIES DEPARTMENT

Findings

A separate report for this Agency was not issued. However, financial activity for the Agency was included in the audit of the State's CAFR for the year ended June 30, 2009.

Recommendations

Employment Summary

	Male	Female	Total	%
White Employees	10	26	36	95 %
Black Employees	1	1	2	5 %
Other Racial Minorities	0	0	0	0 %
Total Minorities			2	5 %
Total Employees			38	100 %

Publications

A.C.A. 25-1-204

Name	Statutory Authorization	Required for		# of Copies	Reason(s) for Continued Publication and Distribution
		Governor	General Assembly		
None	None	N	N	0	None

Department Appropriation Summary

Historical Data

Agency Request and Executive Recommendation

Appropriation	2009-2010		2010-2011		2010-2011		2011-2012						2012-2013					
	Actual	Pos	Budget	Pos	Authorized	Pos	Base Level	Pos	Agency	Pos	Executive	Pos	Base Level	Pos	Agency	Pos	Executive	Pos
027 State Operations	3,124,155	38	2,985,476	38	3,195,480	38	3,210,746	38	3,325,792	40	3,325,792	40	3,210,746	38	3,325,792	40	3,325,792	40
1MV Investor Education	67,591	0	78,500	0	78,500	0	78,500	0	78,500	0	78,500	0	78,500	0	78,500	0	78,500	0
867 Refunds and Transfers	0	0	17,500,000	0	17,500,000	0	17,500,000	0	17,500,000	0	17,500,000	0	17,500,000	0	17,500,000	0	17,500,000	0
Total	3,191,746	38	20,563,976	38	20,773,980	38	20,789,246	38	20,904,292	40	20,904,292	40	20,789,246	38	20,904,292	40	20,904,292	40

Funding Sources		%		%		%		%		%		%		%		%	
Fund Balance	4000005	8,280,394	87.7	6,252,004	25.1	4,338,028	16.7	4,338,028	16.7	4,338,028	18.1	5,198,782	19.4	5,083,736	19.0	3,083,736	13.6
Special Revenue	4000030	1,163,356	12.3	1,150,000	4.6	4,150,000	16.0	4,150,000	16.0	2,150,000	9.0	4,150,000	15.5	4,150,000	15.5	2,150,000	9.5
Cash Fund	4000045	0	0.0	17,500,000	70.3	17,500,000	67.3	17,500,000	67.3	17,500,000	73.0	17,500,000	65.2	17,500,000	65.5	17,500,000	77.0
Total Funds		9,443,750	100.0	24,902,004	100.0	25,988,028	100.0	25,988,028	100.0	23,988,028	100.0	26,848,782	100.0	26,733,736	100.0	22,733,736	100.0
Excess Appropriation/(Funding)		(6,252,004)		(4,338,028)		(5,198,782)		(5,083,736)		(3,083,736)		(6,059,536)		(5,829,444)		(1,829,444)	
Grand Total		3,191,746		20,563,976		20,789,246		20,904,292		20,904,292		20,789,246		20,904,292		20,904,292	

Agency Position Usage Report

FY2008 - 2009						FY2009 - 2010						FY2010 - 2011					
Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused
	Filled	Unfilled	Total	Total			Filled	Unfilled	Total	Total			Filled	Unfilled	Total	Total	
38	38	0	38	0	0.00 %	38	37	1	38	0	2.63 %	38	38	0	38	0	0.00 %

Analysis of Budget Request

Appropriation: 027 - State Operations

Funding Sources: SDH - Securities Department Fund

The State Operations appropriation is funded by special revenue fees that are authorized by A.C.A. §19-6-475. Administrative fines collected by the Agency are also designated as special revenues. Base Level is \$3,210,746 each year, with 38 positions authorized and budgeted.

Base Level salaries and matching do not include appropriation for a Cost of Living Adjustment or Career Service Payments. The Base Level salary of the unclassified position reflects the FY11 line item maximum.

In addition to Base Level, the Department is requesting 2 new positions: A Securities Examiner to assist with the number of fraudulent offerings that are increasing along side less attractive legitimate investments available in the current market and a Senior Securities Examiner to assist with an anticipated increase in the number of state-registered investment advisors resulting from passage of the Dodd-Frank Act that raises state jurisdiction limits from \$25 million of assets under management to \$100 million. Total salary and matching costs are \$101,546 each year.

Also requested is Capital Outlay of \$13,500 each year for upgrading and replacement of technology equipment as indicated in the Department's Information Technology Plan.

The Executive Recommendation provides for the following:

Appropriation and positions recommended at Agency Request.

New special language amending Arkansas Code §19-6-475 and §23-42-211(a)(4) to provide special revenue funding of \$2,000,000 each year until July 1, 2013.

Appropriation Summary

Appropriation: 027 - State Operations

Funding Sources: SDH - Securities Department Fund

Historical Data

Agency Request and Executive Recommendation

Commitment Item		Historical Data			Agency Request and Executive Recommendation			Agency Request and Executive Recommendation		
		2009-2010 Actual	2010-2011 Budget	2010-2011 Authorized	2011-2012			2012-2013		
					Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	1,910,569	1,932,401	1,906,680	1,920,893	1,997,606	1,997,606	1,920,893	1,997,606	1,997,606
#Positions		38	38	38	38	40	40	38	40	40
Extra Help	5010001	6,806	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
#Extra Help		2	2	2	2	2	2	2	2	2
Personal Services Matching	5010003	489,566	515,931	551,656	566,209	591,042	591,042	566,209	591,042	591,042
Operating Expenses	5020002	661,774	447,160	447,160	447,160	447,160	447,160	447,160	447,160	447,160
Conference & Travel Expenses	5050009	19,682	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000
Professional Fees	5060010	0	14,484	14,484	14,484	14,484	14,484	14,484	14,484	14,484
Data Processing	5090012	0	0	0	0	0	0	0	0	0
Capital Outlay	5120011	25,600	13,500	13,500	0	13,500	13,500	0	13,500	13,500
Contingency	5130018	0	0	200,000	200,000	200,000	200,000	200,000	200,000	200,000
Examination Travel	5900046	10,158	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
Total		3,124,155	2,985,476	3,195,480	3,210,746	3,325,792	3,325,792	3,210,746	3,325,792	3,325,792
Funding Sources										
Fund Balance	4000005	7,914,005	5,803,206		3,817,730	3,817,730	3,817,730	4,606,984	4,491,938	2,491,938
Special Revenue	4000030	1,013,356	1,000,000		4,000,000	4,000,000	2,000,000	4,000,000	4,000,000	2,000,000
Total Funding		8,927,361	6,803,206		7,817,730	7,817,730	5,817,730	8,606,984	8,491,938	4,491,938
Excess Appropriation/(Funding)		(5,803,206)	(3,817,730)		(4,606,984)	(4,491,938)	(2,491,938)	(5,396,238)	(5,166,146)	(1,166,146)
Grand Total		3,124,155	2,985,476		3,210,746	3,325,792	3,325,792	3,210,746	3,325,792	3,325,792

The FY11 Budget amount in Regular Salaries exceeds the Authorized amount due to salary adjustments during the 2009-2011 biennium.

Change Level by Appropriation

Appropriation: 027 - State Operations
Funding Sources: SDH - Securities Department Fund

Agency Request

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
BL	Base Level	3,210,746	38	3,210,746	100.0	3,210,746	38	3,210,746	100.0
C01	Existing Program	101,546	2	3,312,292	103.2	101,546	2	3,312,292	103.2
C08	Technology	13,500	0	3,325,792	103.6	13,500	0	3,325,792	103.6

Executive Recommendation

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
BL	Base Level	3,210,746	38	3,210,746	100.0	3,210,746	38	3,210,746	100.0
C01	Existing Program	101,546	2	3,312,292	103.2	101,546	2	3,312,292	103.2
C08	Technology	13,500	0	3,325,792	103.6	13,500	0	3,325,792	103.6

Justification

C01	The Department is requesting 2 new positions: A Securities Examiner, Grade C119, to assist with an increasing number of fraudulent offerings resulting from a growing mistrust of the stock market and traditional investments in the current economic climate. A Senior Securities Examiner, Grade C122, to assist with the anticipated surge in the number of state-registered investment advisers resulting from the passage of the Dodd-Frank Act, signed into law on July 21, 2010, that would raise the states' jurisdiction limit from \$25 million of assets under management to \$100 million.
C08	Capital Outlay of \$13,500 each year is requested for replacement of obsolete equipment, file servers, and other technology equipment as set forth in the Department's Information Technology Plan. Replacement items are listed under the Hardware Tab in the Plan.

Analysis of Budget Request

Appropriation: 1MV - Investor Education

Funding Sources: SDH - Investor Education Fund

The Securities Department's Investor Education Program was established by Act 759 of 2003 (A.C.A. §23-42-213) and is funded by administrative fines levied by the Department. The Program is designed to work in conjunction with various non-profit economic education, religious, civic, and community groups to provide economic and financial education primarily to junior high through first year college students and senior citizen groups and to inform the investing public of investment schemes and unlawful, fraudulent conduct.

Base Level is \$78,500 each year and reflects the Department's request.

The Executive Recommendation provides for the Agency Request.

Appropriation Summary

Appropriation: 1MV - Investor Education

Funding Sources: SDH - Investor Education Fund

Historical Data

Agency Request and Executive Recommendation

Commitment Item		Historical Data			Agency Request and Executive Recommendation			Agency Request and Executive Recommendation		
		2009-2010 Actual	2010-2011 Budget	2010-2011 Authorized	2011-2012			2012-2013		
					Base Level	Agency	Executive	Base Level	Agency	Executive
Operating Expenses	5020002	60,232	71,000	71,000	71,000	71,000	71,000	71,000	71,000	71,000
Conference & Travel Expenses	5050009	0	0	0	0	0	0	0	0	0
Professional Fees	5060010	0	0	0	0	0	0	0	0	0
Data Processing	5090012	0	0	0	0	0	0	0	0	0
Promotional Items	5090028	7,359	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500
Capital Outlay	5120011	0	0	0	0	0	0	0	0	0
Total		67,591	78,500	78,500	78,500	78,500	78,500	78,500	78,500	78,500
Funding Sources										
Fund Balance	4000005	366,389	448,798		520,298	520,298	520,298	591,798	591,798	591,798
Special Revenue	4000030	150,000	150,000		150,000	150,000	150,000	150,000	150,000	150,000
Total Funding		516,389	598,798		670,298	670,298	670,298	741,798	741,798	741,798
Excess Appropriation/(Funding)		(448,798)	(520,298)		(591,798)	(591,798)	(591,798)	(663,298)	(663,298)	(663,298)
Grand Total		67,591	78,500		78,500	78,500	78,500	78,500	78,500	78,500

Analysis of Budget Request

Appropriation: 867 - Refunds and Transfers

Funding Sources: NSD - Securities Department - Cash in Treasury

The Securities Department's Overpayments/Transfer to Treasury appropriation is a Cash in Treasury account that is used for transfer of fee collections to other State Treasury fund accounts after necessary refunds have been made. The Department indicates that the current Base Level of \$17,500,000 each year will be sufficient to cover all transfers and refunds anticipated in the 2011-2013 biennium. Accordingly, the Department is requesting Base Level for this program.

The Executive Recommendation provides for the Agency Request. Expenditure of appropriation is contingent upon available funding.

Appropriation Summary

Appropriation: 867 - Refunds and Transfers
Funding Sources: NSD - Securities Department - Cash in Treasury

Historical Data

Agency Request and Executive Recommendation

Commitment Item	Historical Data			2011-2012			2012-2013		
	2009-2010 Actual	2010-2011 Budget	2010-2011 Authorized	Base Level	Agency	Executive	Base Level	Agency	Executive
Refunds/Reimbursements 5110014	0	17,500,000	17,500,000	17,500,000	17,500,000	17,500,000	17,500,000	17,500,000	17,500,000
Total	0	17,500,000	17,500,000	17,500,000	17,500,000	17,500,000	17,500,000	17,500,000	17,500,000
Funding Sources									
Cash Fund 4000045	0	17,500,000		17,500,000	17,500,000	17,500,000	17,500,000	17,500,000	17,500,000
Total Funding	0	17,500,000		17,500,000	17,500,000	17,500,000	17,500,000	17,500,000	17,500,000
Excess Appropriation/(Funding)	0	0		0	0	0	0	0	0
Grand Total	0	17,500,000		17,500,000	17,500,000	17,500,000	17,500,000	17,500,000	17,500,000