

Attorney General's Office Anti-racketeering Revolving Fund

Biennial Review

July 1, 2016 through
June 30, 2018
Report 19-303



A Report to the Arizona Legislature

Lindsey A. Perry
Auditor General





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March 26, 2019

The Honorable Karen Fann, President of the Senate

The Honorable Russell "Rusty" Bowers, Speaker of the House of Representatives

The Honorable Eddie Farnsworth, Chairperson
Senate Judiciary Committee

The Honorable John Allen, Chairperson
House of Representatives Judiciary Committee

The Honorable Kevin Payne, Chairperson
House of Representatives Public Safety Committee

The Honorable Mark Brnovich, Attorney General
Office of the Attorney General

Transmitted herewith is a report of the Auditor General, *Attorney General's Office Anti-racketeering Revolving Fund*, for fiscal years 2017 and 2018. This review was conducted pursuant to Arizona Revised Statutes §13-2314.01(L). I am also transmitting within this report a copy of the Report Highlights for this review to provide a quick summary for your convenience.

As outlined in its response, the Attorney General's Office agrees with the finding and plans to implement the recommendation.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

Lindsey Perry, CPA, CFE
Auditor General



Attorney General's Office Anti-racketeering Revolving Fund

CONCLUSION: As required by law, we conducted a review of the Attorney General's Office use of anti-racketeering monies deposited in the Anti-racketeering Revolving Fund in fiscal years 2017 and 2018. We did not identify any improper use of monies spent from the Revolving Fund. However, our review of disbursements made to law enforcement agencies found that the Attorney General's Office did not follow its procedures for monitoring the use of monies advanced to law enforcement agencies.

Attorney General's Office administers State anti-racketeering monies

Anti-racketeering monies are awarded through court order to law-enforcement agencies that performed investigations of racketeering crimes or crimes committed for financial gain. Federal guidelines and State laws define permissible uses of anti-racketeering monies. State law also requires the Attorney General's Office to administer State anti-racketeering monies, and it administers them through its Revolving Fund. The Revolving Fund is composed of three component funds. The cases fund holds all case-specific forfeited anti-racketeering monies pending distribution as directed by an order of forfeiture; the operating fund holds monies awarded to the Attorney General's Office that may be used for its case-related, operating, and community-based program expenditures; and the pass-through fund holds monies that have been awarded to other law enforcement agencies responsible for the seizure until they are requested by those agencies for permissible expenditures. The Attorney General's Office has developed a policies and procedures manual that guides its staff on how to process and monitor Revolving Fund expenditures.

Attorney General's Office anti-racketeering monies have decreased

Our review found that the Attorney General's Office's fund balance of its operating fund, which holds its anti-racketeering monies, decreased by \$5.5 million in fiscal year 2017 and \$1.1 million in fiscal year 2018. According to the Attorney General's Office, the decrease in fiscal year 2017 was primarily due to a 1-time transfer of \$3.9 million to fund the Attorney General's Office's participation in the Arizona Financial Crimes Task Force for a 3-year period.¹

During our review, we found the Attorney General's Office spent the majority of its anti-racketeering monies on payroll expenses for various personnel to administer, investigate, and prosecute anti-racketeering cases. Its remaining expenditures were for general operations; it did not make any expenditures to community-based programs.

Attorney General's Office should follow its policies and procedures for monies advanced to law enforcement agencies

The Attorney General's Office is responsible for ensuring that anti-racketeering monies are expended in accordance with federal guidelines and State laws. This includes monies held on behalf of other law enforcement agencies in the pass-through fund. Law enforcement agencies may request monies to be reimbursed for actual expenditures or may request monies in advance to pay for expenditures that will be incurred in the near future. The Attorney General's Office policies and procedures manual establishes requirements for handling law enforcement agencies' requests for and expenditure of their monies from the Revolving Fund. We found that the Attorney General's Office did not follow these policies and procedures to help ensure that law enforcement agencies spent advanced anti-racketeering monies for the requested purposes. Specifically, the Attorney General's Office did not verify advanced anti-racketeering monies were expended for

¹ The Arizona Financial Crimes Task Force was established to investigate and interdict the money laundering activities of complex national and international organized crime and to mitigate the violence associated with the smuggling activities that fund these organizations.

**Attorney General’s Office administration of law enforcement agencies’ requests of anti-racketeering monies for 19 sampled requests
Fiscal years 2017 and 2018**

	13 Reimbursement requests \$2.6 million	6 Advance requests \$5.0 million
Verified request met the permissible uses criteria	✓	✓
Verified actual expenditures were permissible	✓	X
Required unspent advanced monies be returned	Not applicable	X

permissible purposes or require law enforcement agencies to remit to the Attorney General’s Office any unspent anti-racketeering monies from the advance request to be redeposited into the Revolving Fund. Because the Attorney General’s Office’s did not follow its policies and procedures, it could not determine that local law enforcement agencies spent advanced anti-racketeering monies for permissible purposes. This

increases the risk that anti-racketeering monies may have been spent for impermissible purposes.

Recommendation

The Attorney General’s Office should follow its policies and procedures to ensure law enforcement agencies are spending advanced anti-racketeering monies for requested purposes and unspent monies are returned and redeposited into the Revolving Fund.



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Anti-racketeering laws enacted to deter crime

Federal and State anti-racketeering laws were enacted to deter racketeering crimes or crimes committed for financial gain (see textbox for key terms). In 1970, the U.S. Racketeer Influenced and Corrupt Organizations Act criminalized a pattern of racketeering activity under a list of federal crimes and provided for criminal prosecution and penalties,¹ and in 1977, Arizona enacted State anti-racketeering laws.²

Federal and State anti-racketeering laws allow for the seizure of assets

Federal and State laws allow assets, such as firearms, vehicles, and monies, derived from or involved in racketeering crimes to be seized during racketeering investigations. Seized property is held in storage and seized monies are held in a suspense account until the court either orders the assets returned to the defendant or issues an order of forfeiture. If an order of forfeiture is issued, the assets are forfeited, and the Attorney General's Office and law enforcement agencies that performed the investigation are entitled to a portion of those assets. Forfeited property, such as vehicles, can be disposed of in various ways including by auction or use by law enforcement agencies involved in the investigation. Further, law enforcement agencies may receive federal anti-racketeering equitable sharing assets, property, and monies when they participate in a multi-agency task force with a federal agency, such as the United States Customs and Border Patrol, and the investigation results in the assets being seized and forfeited.

Key terms

Racketeering—Arizona's laws define racketeering as any chargeable or indictable act that involves 1 or more of 34 different crimes committed for financial gain, including but not limited to homicide, robbery, kidnapping, bribery, gambling, extortion, and terrorism.

Order of forfeiture (forfeiture)—Upon an entry of judgment in favor of the State, the assets are forfeited and become government property. Forfeited property may be disposed of in various ways, including law enforcement activity uses and auction.

Anti-racketeering monies—Monies that have been forfeited to the State, including forfeited cash and proceeds from auctioning forfeited property.

Source: Auditor General staff analysis of Arizona anti-racketeering laws and review of several orders of forfeiture.

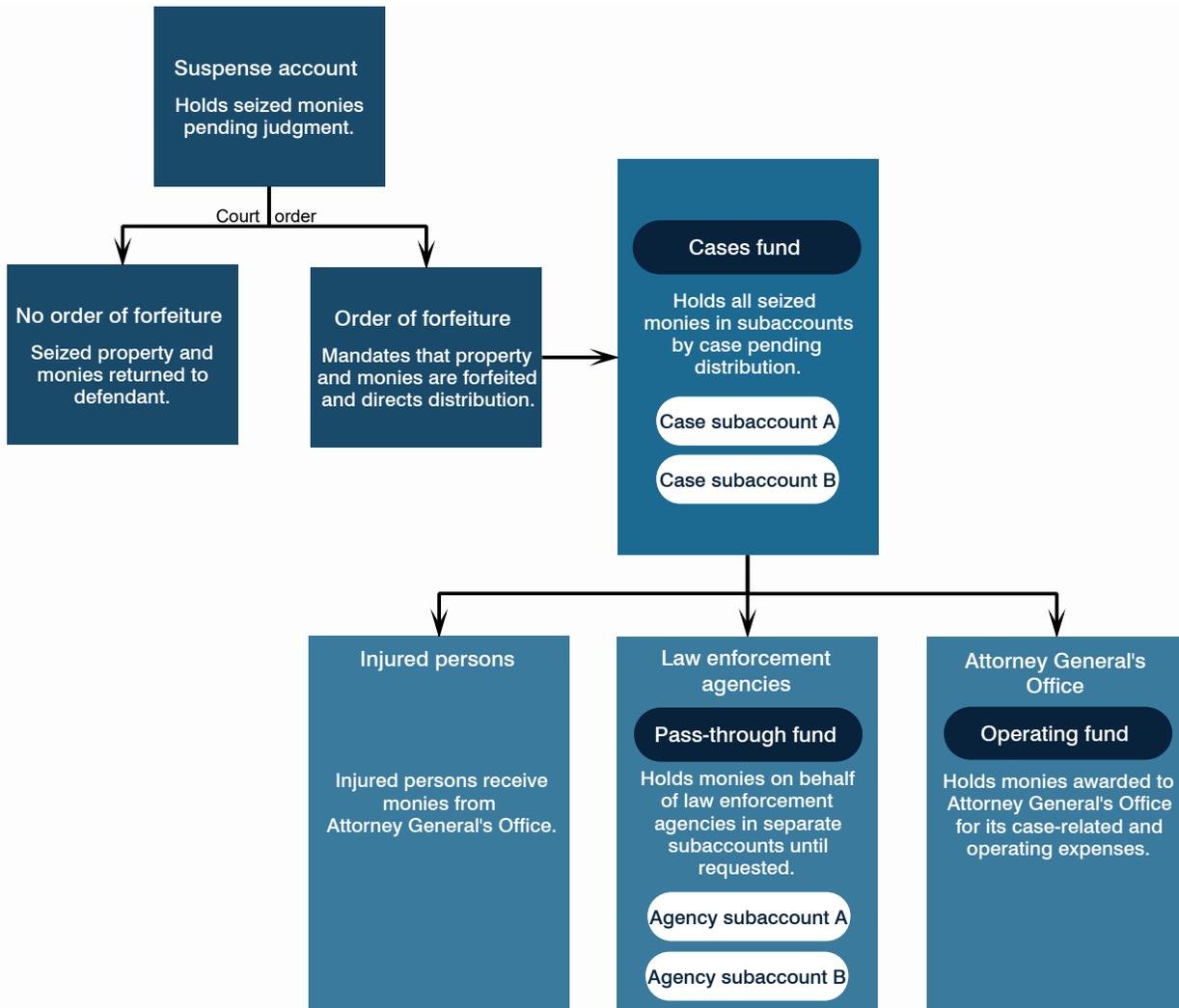
Anti-racketeering Revolving Fund established to maintain anti-racketeering monies

The State's Anti-racketeering Revolving Fund (Revolving Fund) was established by Arizona Revised Statutes (A.R.S.) §13-2314.01. As shown in Figure 1 (see page 2), the Revolving Fund is composed of 3 component funds: cases, pass-through, and operating. The cases fund holds all case-specific forfeited monies pending distribution as directed by the order of forfeiture. Subaccounts are established under the cases fund for each forfeiture case, and each case's monies are maintained in separate subaccounts. Monies are distributed to injured persons, the Attorney General's Office, and other law enforcement agencies. The pass-through fund holds monies that have been awarded by court order to other law enforcement agencies responsible for the seizure. Lastly, the operating fund holds monies that have been awarded by court order to the Attorney General's Office for its case-

¹ 18 United States Code §§1961 through 1968.

² Arizona Laws 1977, Ch. 142.

Figure 1
Revolving Fund process
 As of June 30, 2018



Source: Auditor General staff analysis of A.R.S. §13-2314.01 and the Attorney General's Office policies and procedures manual.

related, operating, and community-based program expenditures. During fiscal years 2017 and 2018, the Attorney General's Office did not make any expenditures to community-based programs.

Attorney General's Office administers State anti-racketeering monies

State law requires the Attorney General's Office to administer the entire Revolving Fund, including the anti-racketeering monies held for the Attorney General's Office in the operating fund as well as monies held in the pass-through fund on behalf of law enforcement agencies. The Attorney General's Office has established procedures that include criteria to ensure monies law enforcement agencies request are spent for allowable purposes under federal guidelines and State laws. The law enforcement agencies must request the Attorney General's Office to distribute anti-racketeering monies to them on an as-needed basis. The Attorney General's Office policies and procedures manual guides its staff on how to process and monitor Revolving Fund expenditures and requires the Attorney General's Office to:

- Review expenditure requests received from law enforcement agencies to ensure the requests meet requirements, including an authorized signature on the form certifying that expenditures were made for eligible

purposes, and supporting documentation that indicates the expenditures meet eligibility requirements under federal guidelines and State laws.

- Distribute monies to law enforcement agencies that meet the expenditure request requirements.
- Monitor the use of monies advanced to law enforcement agencies to ensure expenditures adhere to federal guidelines and State laws.
- Review its own expenditures paid with anti-racketeering monies annually to ensure they adhere to federal guidelines and State laws.

Further, according to A.R.S. §13-2314.01(H), the Attorney General is required to submit quarterly expenditure reports to the Arizona Criminal Justice Commission, outlining the acquisition and expenditures of anti-racketeering monies from the Revolving Fund. The Attorney General's Office submitted all the quarterly reports for the operating and pass-through monies for fiscal years 2017 and 2018 as required by State law.³

Anti-racketeering guidelines and laws define permissible uses for anti-racketeering monies

Monies law enforcement agencies receive through the forfeiture process may be spent only in accordance with federal guidelines and State laws, depending upon which jurisdiction the prosecution occurred within. Specifically:

- **Federal guidelines**—The *U.S. Department of Justice's Guide to Equitable Sharing for State and Local Law Enforcement Agencies* (Guide) provides guidance regarding how law enforcement agencies may use shared federal monies. The Guide outlines the permissible uses, which include but are not limited to law enforcement operations and investigations; law enforcement training and education; law enforcement, public safety, and detention facilities; and drug and gang education and other awareness programs. The Guide has historically included some limitations on the use of anti-racketeering monies to support nonprofit, community-based programs. For example, in July 2017, the Guide limited the amount of support to \$25,000 per year.

The Guide also outlines impermissible uses, which include but are not limited to any purpose that constitutes an improper use of State or local law enforcement monies, personal or political use, and the purchase of food and beverages unrelated to operations or per diem.⁴

- **State laws**—A.R.S. §§13-2314.01 and 13-4315 outline permissible uses of anti-racketeering monies⁵, including investigating and prosecuting racketeering-related offenses, witness protection, gang prevention, substance abuse prevention, and substance abuse education programs or any other purpose permitted by federal guidelines. Unlike federal guidelines, State laws do not outline impermissible use or limit the amount of local anti-racketeering monies that can be used for specific authorized programs.

Attorney General's Office anti-racketeering monies have decreased

As shown in Figure 2 (see page 4), the Attorney General's Office's fund balance of its operating fund, which holds its anti-racketeering monies, decreased by \$5,461,873 in fiscal year 2017 and \$1,124,171 in fiscal year 2018. According to the Attorney General's Office, the operating fund's fund balance decreased in fiscal year 2017 primarily because of a 1-time \$3.9 million transfer for the Attorney General's Office's participation in the Arizona Financial Crimes Task Force for a 3-year period.⁶ The Attorney General's Office has been working through the

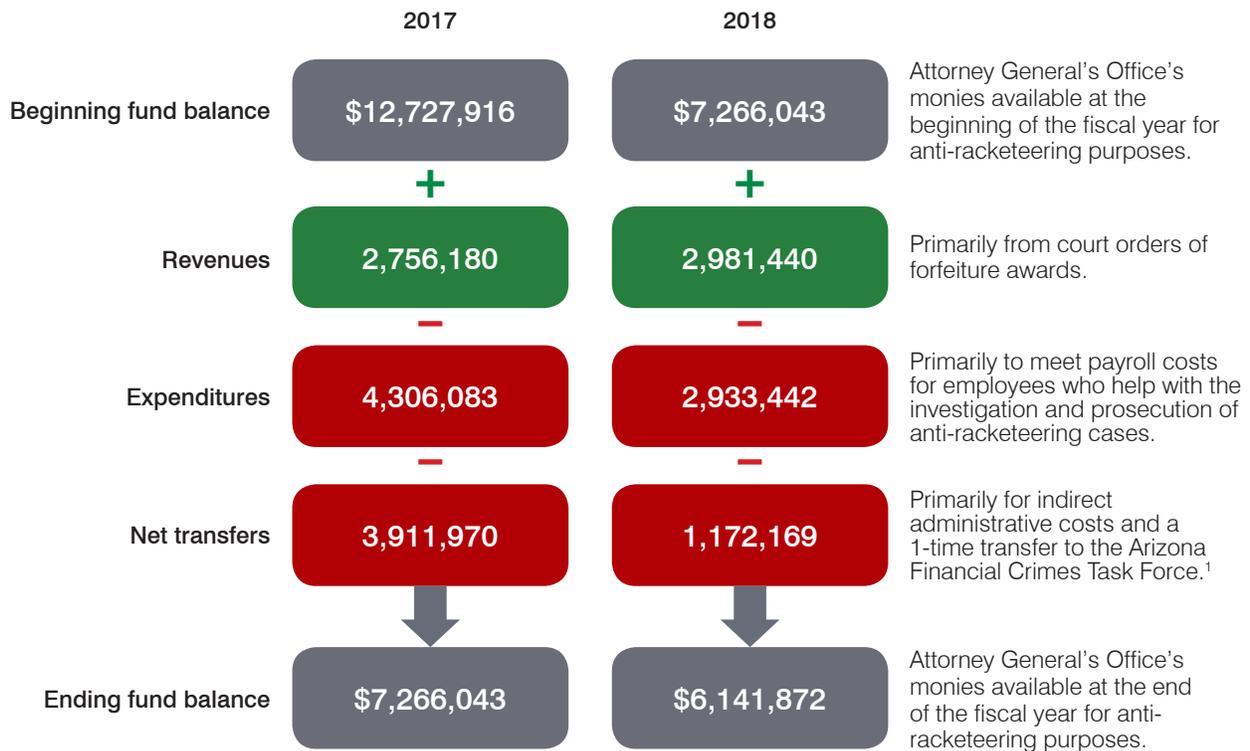
³ Auditor General staff review of the Arizona Criminal Justice Commission website at www.AZCJC.gov/finance.

⁴ Auditor General staff cited the federal Guide to Equitable Sharing downloaded from the U.S. Department of Justice's website in July 2017, which applies to our review period. The U.S. Department of Justice subsequently modified the Guide in July 2018.

⁵ For the purposes of this audit, anti-racketeering monies are administered by the Attorney General's Office.

⁶ The Arizona Financial Crimes Task Force was established to investigate and interdict the money laundering activities of complex national and international organized crime and to mitigate the violence associated with the smuggling activities that fund these organizations.

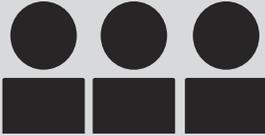
Figure 2
Operating fund activity
Fiscal years 2017 and 2018



¹ The Arizona Financial Crimes Task Force was established to investigate and interdict the money laundering activities of complex national and international organized crime and to mitigate the violence associated with the smuggling activities that fund these organizations.

Source: Auditor General staff review of the Attorney General's Office policies and procedures and review of fiscal years 2017 and 2018 transactions processed through the Arizona Financial Information System.

budget process to reduce expenditures and to identify alternative sources to ensure that it has sufficient monies to cover its operating costs.



Operating fund payroll costs decreased over \$1 million from FY17 to FY18 due to a reduction in the number of FTEs from 40 in FY17 to 25 in FY18.

During fiscal years 2017 and 2018, the Attorney General's Office spent the majority of its operating fund anti-racketeering monies on payroll expenses, \$3.6 million (83.2 percent) for 40 full-time equivalent employees and \$2.6 million (87.2 percent) for 25 full-time equivalent employees, respectively. Payroll expenses were paid to various personnel to administer, investigate, and prosecute anti-racketeering cases. The remaining operating fund expenditures were for general operations.

We did not identify any improper expenditures from the Revolving Fund's operating fund for the sample items tested. However, when we examined disbursements made to law enforcement agencies as described in Finding 1 on pages 5 and 6, we found that the Attorney General's Office did not follow its procedures for monitoring monies advanced to law enforcement agencies.

As of June 30, 2018, the Attorney General's Office held \$14,920,542 of anti-racketeering monies in the pass-through fund that was available to law enforcement agencies for case-related expenditures.



Attorney General's Office should ensure law enforcement agencies are spending advanced anti-racketeering monies for requested purposes and unspent monies are returned and redeposited into Revolving Fund

Attorney General's Office policy requires it to ensure anti-racketeering expenditures are permissible with State laws and federal guidelines

As part of its responsibilities for administering the Revolving Fund, the Attorney General's Office is responsible for ensuring that anti-racketeering monies are expended in accordance with federal guidelines and State laws. This includes monies held on behalf of other law enforcement agencies in the pass-through fund, a component fund of the Revolving Fund. Law enforcement agencies may request monies to be reimbursed for actual expenditures or may request monies in advance to pay for expenditures that will be incurred in the near future (see textbox for key terms). The Attorney General's Office has developed a policies and procedures manual that requires law enforcement agencies requesting monies from the Revolving Fund to do the following:

Key terms

Reimbursement—Request submitted to the Attorney General's Office to pay for permissible and actual incurred expenditures. Must be supported by copies of paid invoices.

Advance—Request submitted to the Attorney General's Office to make direct payment of permissible expenditures. Must be supported by documentation of proposed expenditures.

Source: Attorney General's Office Procedure 18.3-1.

- Submit to the Attorney General's Office an authorized expenditure request containing a description of planned or incurred expenditures of anti-racketeering monies.
- For reimbursement requests, the requesting agency must submit copies of invoices documenting the agency's actual incurred expenditures with the initial expenditure request.
- For advance requests, the requesting agency must:
 - Submit, subsequent to expenditure, copies of invoices to confirm the expenditures were made for allowable purposes.
 - Remit back to the Attorney General's Office any monies not expended so that the monies can be redeposited into the Revolving Fund.

These requirements provide the Attorney General's Office with information it needs to assess and verify that expenditures are consistent with federal guidelines and State laws that outline permissible uses of anti-racketeering monies (see Introduction, page 3).

Attorney General’s Office did not ensure law enforcement agencies spent advanced anti-racketeering monies for requested purposes or require unspent monies to be returned

We reviewed a sample of 19 of 256 Revolving Fund pass-through fund, nonpayroll expenditure and transfer transactions—13 reimbursement requests and 6 advance requests—for the period of July 1, 2016 through June 30, 2018 (see Table 1). For all 19 requests, the Attorney General’s Office verified that the law enforcement agency’s request met the permissible uses criteria outlined in federal guidelines and State laws. For the 13 reimbursement requests, we also verified that the reimbursements were for permissible expenditures. However, for all 6 of the advance requests, the Attorney General’s Office did not follow its own procedures to ensure the law enforcement agencies spent advanced anti-racketeering monies for the requested purposes by requiring them to provide invoices or other appropriate documentation subsequent to expenditure. Therefore, the Attorney General’s Office could not determine and we could not verify that these advanced anti-racketeering monies were expended for permissible purposes. The 6 advances totaled \$5 million and represented 66 percent of the total requests we sampled from law enforcement agencies during the review period. Further, for the 6 advance requests, the Attorney General’s Office did not follow its own policy that requires the law enforcement agencies to remit to the Attorney General’s Office any unspent anti-racketeering monies from the advance request to be redeposited into the Revolving Fund. Instead, the Attorney General’s Office deducted unspent monies from future requests.

Table 1
Attorney General’s Office administration of law enforcement agencies’ requests of anti-racketeering monies for 19 sampled requests
Fiscal years 2017 and 2018

	13 Reimbursement requests \$2.6 million	6 Advance requests \$5.0 million
Verified request met the permissible uses criteria	✓	✓
Verified actual expenditures were permissible	✓	X
Required unspent advanced monies be returned	Not applicable	X

Insufficient oversight increases the risk for impermissible use of anti-racketeering monies

Because the Attorney General’s Office did not monitor anti-racketeering monies advanced to law enforcement agencies or require unspent anti-racketeering monies be remitted back, it could not determine that local law enforcement agencies spent advanced anti-racketeering monies for permissible purposes. This increases the risk that anti-racketeering monies may have been spent for impermissible purposes that violate federal guidelines and State laws.

Recommendation

1. The Attorney General’s Office should follow its policies and procedures to ensure law enforcement agencies are spending advanced anti-racketeering monies for requested permissible purposes and unspent monies are returned and redeposited into the Revolving Fund.

Agency response: As outlined in its [response](#), the Attorney General’s Office agrees with the finding and will implement the recommendation.



SUMMARY OF RECOMMENDATIONS

Auditor General makes 1 recommendation to the Attorney General's Office

1. The Attorney General's Office should follow its policies and procedures to ensure law enforcement agencies are spending advanced anti-racketeering monies for requested permissible purposes and unspent monies are returned and redeposited into the Revolving Fund.



Objectives, scope, and methodology

Pursuant to A.R.S. §13-2314.01(L), the Office of the Auditor General has conducted a review of the Attorney General's Office's use of anti-racketeering monies deposited into the Revolving Fund. This report focuses on all expenditures made by the Attorney General's Office from the Revolving Fund during fiscal years 2017 and 2018.

We used various methods to examine expenditures and reports of the Revolving Fund. These methods included reviewing agency statutes and policies and procedures, reviewing fiscal years 2017 and 2018 transactions processed through the Arizona Financial Information System, interviewing Attorney General's Office staff, and reviewing information from the Attorney General's Office's website. We used the following specific methods to meet the review's objectives:

- To determine whether the Attorney General's Office expended anti-racketeering monies from the Revolving Fund's operating fund in accordance with federal guidelines and State laws, we:
 - Performed an analysis of all salaries paid during fiscal years 2017 and 2018, representing \$6.1 million, or 47.9 percent of all operating fund disbursements and randomly selected 3 employees to verify whether the Attorney General's Office maintained appropriate documentation to ensure personnel paid from the Revolving Fund's operating fund performed duties that were consistent with permissible uses under federal guidelines and State laws.
 - Randomly selected 11 of 2,192 disbursements, representing \$4.2 million, or 32.8 percent, of all Revolving Fund operating fund disbursements ensuring they were supported by invoices or other appropriate documentation. We also ensured sampled disbursements were in accordance with the Attorney General's Office policies and procedures.
- To determine whether the Attorney General's Office disbursed monies to law enforcement agencies from the Revolving Fund's pass-through fund in accordance with federal guidelines and State laws, we:
 - Randomly selected 19 of 256 disbursements, representing \$7.6 million, or 59.9 percent, of all Revolving Fund pass-through fund disbursements to verify whether they were supported by invoices or other appropriate documentation. We also verified whether sampled disbursements were in accordance with the Attorney General's Office policies and procedures.
- To determine whether the Attorney General's Office submitted reports in a timely manner and as required by the Arizona Criminal Justice Commission, we reviewed a random sample of 6 of the 12 required reports for fiscal years 2017 and 2018. Auditors evaluated the reports against applicable statutes, information on the Arizona Criminal Justice Commission's website, and the Attorney General's Office procedures.
- To obtain information for the Introduction, we reviewed federal guidelines, State laws, and Attorney General's Office policies and procedures. In addition, we compiled and analyzed unaudited Revolving Fund information from the Arizona Financial Information System for fiscal years 2017 and 2018.
- Our testwork on internal controls included reviewing the Attorney General's Office policies and procedures for ensuring compliance with federal guidelines and State laws and, where applicable, testing its compliance with these policies and procedures. Specifically, we interviewed Attorney General's Office staff, evaluated Attorney General's Office policies and procedures, and compared information to transactions sampled.

Through this work, we determined that the Attorney General's Office internal controls were sufficiently reliable for audit purposes

We express our appreciation to the Attorney General and his staff for their cooperation and assistance throughout the review.

AGENCY RESPONSE



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL

BUDGET AND FINANCE
SECTION

March 26, 2019

Lindsey A. Perry, Auditor General
Arizona Office of the Auditor General
2910 N. 44th Street Suite 410
Phoenix, AZ 85018

RE: Attorney General's Office Anti-Racketeering Revolving Fund Biennial Review July 1, 2016 through June 30, 2018

Dear Ms. Perry:

The Arizona Attorney General's Office appreciates the opportunity to respond to the report of the Auditor General. Additionally, we would like to thank your staff for the review conducted of the Anti-Racketeering Revolving Fund. Below please find our agency's response to your noted finding in the report.

Finding 1: Attorney General's Office should ensure law enforcement agencies are spending advanced anti-racketeering monies for requested purposes and unspent monies are returned and redeposited into Revolving Fund.

Recommendation 1: The Attorney General's Office should follow its policies and procedures to ensure law enforcement agencies are spending advanced anti-racketeering monies for requested permissible purposes and unspent monies are returned and redeposited into the Revolving Fund.

Department Response: The Auditor General's finding is agreed to, and the audit recommendation will be implemented.

It is important to note the requirement for a legal review and determination by both the Financial Remedies Section Chief and the Criminal Division Chief of both reimbursement and advance expenditure requests for eligibility under State and Federal Guidelines has always existed and been conducted. This audit recognizes that the Attorney General is conducting legal review and determinations for allowability and eligibility under State and Federal Guidelines for all expenditure requests. Agencies provided an expenditure request and expenditure amount, included a detailed explanation of their needs and the specific program or items upon which the funds would be expended. The expenditure request certified the funds would be expended as presented, and funds were provided to them based on determined allowability and eligibility with State and Federal Guidelines.

During the audit, Attorney General (AGO) staff requested backup and supporting documentation from all

agencies that had received advances and had not provided the required follow-up documentation. Prior to the conclusion of the audit, most of those had been received and since that time the remaining documentation has been received and reviewed accordingly. All agency expenditures were found to be compliant with appropriate Anti-Racketeering State and Federal Guidelines.

This new procedure has proved to be administratively challenging in certain circumstances and has resulted in an undue administrative burden both on the AGO and the law enforcement agency receiving the advance. Due to the complexity of the agency's reporting and the number of transactions processed, the AGO is considering a change to the policy for advanced funds.

The change being considered would enable an agency making frequent and substantive advance requests provide to the AGO a detailed transaction listing of all expenditures. From this list, the AGO will select a sampling of items and audit those transactions to ensure compliance with State and Federal allowability and eligibility requirements for the use of the funds. The AGO will provide the Auditor General a copy of the revised procedure when it is fully developed.

The AGO now has a staff member to coordinate the tracking and processing of all Anti-Racketeering Revolving Fund related transactions to further enhance compliance with AGO policy.

Thank you for your consideration.

Sincerely,

Lizette Samson
Chief Financial Officer
Office of the Arizona Attorney General

