

Industrial Special Indemnity Fund (ISIF)

Fiscal Year 2016 Annual Report

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INTRODUCTION TO ISIF

The Industrial Special Indemnity Fund (ISIF) was adopted in 1927 by the Idaho State Legislature as part of the state's comprehensive workers' compensation system. The ISIF is more commonly referred to as the "second injury fund." Its general purpose when enacted was to encourage employers to hire previously injured workers by offering the employer relief from full liability for lifetime income benefits, if the injured worker became totally and permanently disabled following a second or subsequent injury at work.

The purpose and management of the ISIF was created in Sections 72-323, 324, 331 and 334, Idaho Code.

Funding for the ISIF is provided by an annual assessment. The assessment is calculated by ISIF to be an amount which is two times (2x) all its expenses during the immediately preceding fiscal year less (-) the cash balance at the end of that fiscal year. That figure is then pro-rated among the State Insurance Fund, self-insured employers, and other sureties based on each entity's proportionate share of total indemnity (income) benefits paid on workers' compensation claims during the reporting period. The pro-rated amount is calculated by the Idaho Industrial Commission for each responsible entity. Additionally, the Commission invoices each entity for the assessment and collects the funds on behalf of the ISIF. Those services by the Commission are performed through a separate inter-agency contract with the ISIF.

ISIF is liable for lifetime total and permanent disability benefits only. All other benefits within the workers' compensation program are the responsibility of the last injury employer and surety. Examples of these types of benefits would include retraining, medical care, vocational placement, physical loss of functional, partial disability, etc. Allocation of liability for total and permanent disability between the employer/surety and the ISIF is apportioned under what is called the "Carey formula." Cited in the case of *Carey v. Clearwater*.

Claims for benefits from ISIF are started by filing a Notice of Intent to File a Complaint Against the ISIF (NOI). Such notices are usually filed by attorneys representing claimants, self-insured employers and insurance entities seeking ISIF contribution for total disability benefits. The notices are filed with ISIF under what is commonly called the "60-day rule." Section 72-334, Idaho Code. During the 60 days, the ISIF will undertake an in-house review of the claim for liability and will either resolve or deny the claim. Following the conclusion of 60 days if the claim is not resolved, the party filing the NOI can elect to file a formal Complaint against the ISIF or forego further proceedings against ISIF. Upon receipt of a Complaint, the ISIF will retain outside legal counsel and commence formal litigation of the claim for lifetime benefits.

Resolution of claims can be accomplished through a contested hearing process, one-time lump sum payment, periodic monthly payments, deferred lump sum or periodic payment, or any combination of these options with the approval of the Industrial Commission.

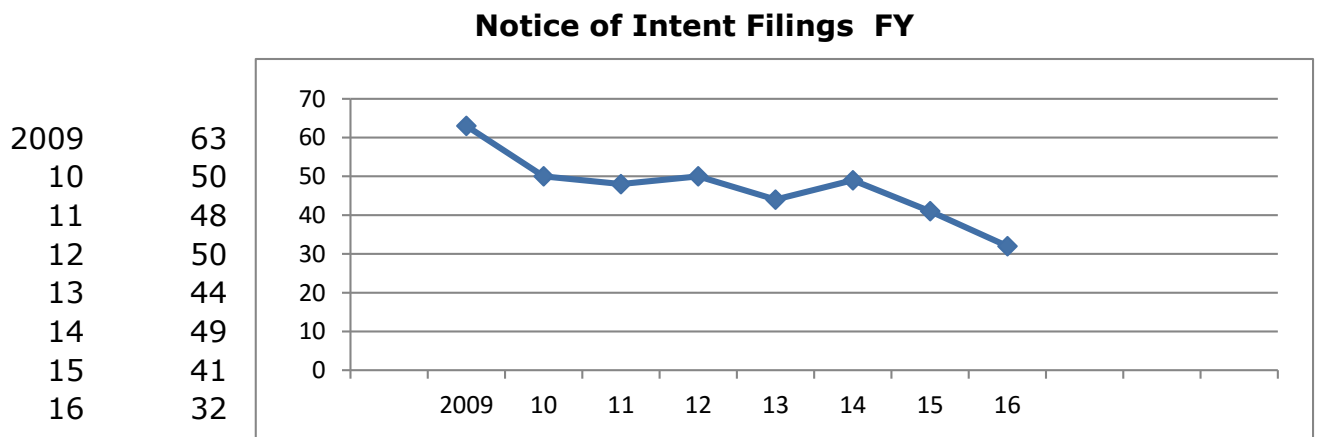
Benefit rates for total and permanent disability, and hence ISIF liability, are part of a statutory system too complicated to explain in this Introduction. In general, the benefits are based on the average weekly wage of the injured worker compared to the average weekly state wage (ASW) of all workers in Idaho. The comparison falls into categories of 45%, 60% or 67% of the ASW. Benefits are then paid depending on the particular category of wage. Benefits may change from year-to-year as the average state weekly wage may change with inflationary factors.

OPERATIONS

Claims Management

Managing claims is a major function of this agency. Management takes the form of initially evaluating the NOIs in-house and responding within the statutory time period of 60 days. If the claim proceeds to a formal Complaint filed with the Industrial Commission, then ISIF takes a more formal approach to managing and adjudicating the claim with the assistance of outside legal counsel. In either situation, ISIF personnel are actively involved in all phases of the claim from initial filing of the NOI to final resolution.

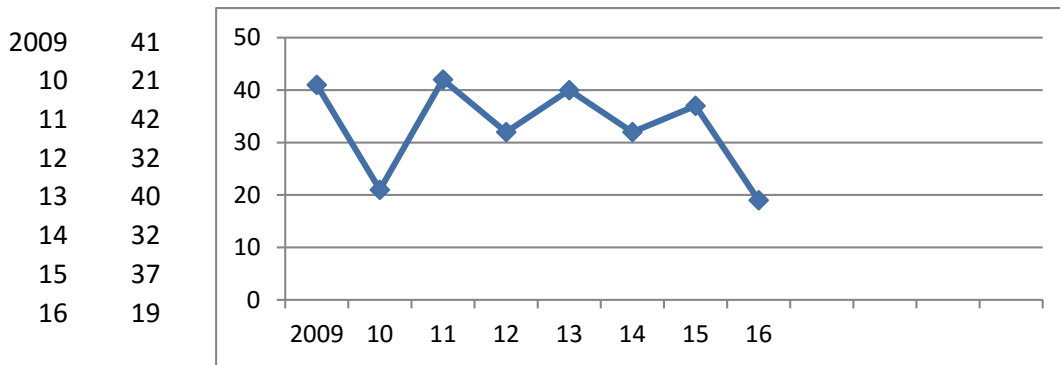
The information throughout this report is based on fiscal year (FY) statistics, which end on June 30 of each year.



The number of NOIs submitted has steadily declined over the past several years. This trend may be due to the complexity of ISIF claims compared with the level of benefits awarded in successful cases.

The number of formal complaints filed against ISIF is not as predictable as the NOIs, largely due to the fact that a complaint does not have to be filed within any certain time period following a denial of the NOI. However, during the past few years, the ISIF has experienced a “teeter-totter” affect in the slight decline in the number of complaints filed with the Industrial Commission. However, last fiscal year saw quite a noticeable drop off. This trend may be due to the aggressive defense of claims by ISIF, and the realization that attempting to receive lifetime benefits from ISIF and approval by the Commission is not an easy task.

Complaint Filings FY



Even though the preceding numbers show a downward trend in the claims and complaints filed, the ISIF has been facing an ever increasing challenge in the last few years in controlling the rising cost of benefits awarded to injured workers. Due to economic changes in the workplace, a precipitous drop in available jobs has caused a decrease in available opportunities for injured workers to reenter the job market and maintain an active employment status. Thus, it has become more difficult for the ISIF to find an actual job, which is open and available, that fits the physical restrictions of the injured worker. If such employment cannot be specifically located within the worker’s geographic area, ISIF is faced with paying lifetime income benefits to that worker.

Additional changes at the federal level have created an attractive atmosphere, in lieu of continued employment, for injured workers to receive long-term disability benefits with relative ease that were not previously so easily available. Thus, injured workers have in many instances determined to forego regular employment or part-time employment. Instead, many injured workers now leave the work force and obtain federal benefits, usually Social Security Disability, even if those benefits are less than working an actual job. Sometime thereafter, these workers then apply to the ISIF for

lifetime benefits. If awarded, ISIF benefits really should be considered as a pension since the “working life” of the claimant is over.

The ages of injured workers seeking benefits from ISIF have expanded greatly over the past few years and now range from the mid-30’s to the mid-70’s. This spread is growing further apart each year. It is especially alarming to ISIF to see the number of “retired” people who go back to work in their 70’s, get injured, and then seek lifetime benefits from ISIF.

ISIF is proactive in bringing claims to final resolution. The manner in which the claims are closely monitored and vigorously defended may be one reason for the downward trend in filings. By actively managing the claims and working closely with outside legal counsel, benefit payments, litigation costs, liability exposure, and operational costs are held to acceptable levels. Needless to say, however, ISIF cases have become more complex and more difficult to easily resolve. Thus, costs have increased even with the best efforts to keep total expenditures from rising too rapidly.

Benefits Administration

Claim Evaluation

The relative costs and time delays associated with the litigation process are now a natural occurrence with complex work injury litigation and have been a long standing concern to the ISIF. Since judicial review of an injured worker’s potential disability is not conducted until the hearing stage of a claim, as many as 7-15 years may pass from the time of the last injury to the hearing date. With injured workers having a deteriorating physical condition, any prolonged delay will be detrimental to ISIF in challenging a claim for total and permanent disability. Put another way, any long-term delay in the judicial process will more-than-likely diminish the already poor physical and general health condition of the injured worker. As a result, the likelihood of establishing ISIF liability is increased. Such factors precipitated the ISIF in proposing and receiving adoption of critical legislation in 1997 commonly known as the “60-day rule” in filing NOIs. This procedure allows the ISIF 60 days to review, evaluate and possibly settle claims without involving extensive use of outside legal counsel and the time consuming judicial process.

Even without resolution of the claim during the 60-day period, the legislation has permitted ISIF to better manage overall litigation expenses with an initial in-house evaluation of the claim. In addition, the legislation sought to bring faster relief and a less complicated litigation process to claimants, sureties and self-insured employers. In some claims, the legislation has met its expectations. However, in far too many claims, the material submitted to ISIF for review is not entirely relevant and contains many extraneous documents having no bearing on ISIF liability. This creates a frustrating

process leading to denial of a claim, which then leads to formal litigation necessitating a more complex process. This situation results in more costs and expense for all litigants. When this occurs, the intent of the 60-day rule cannot be achieved.

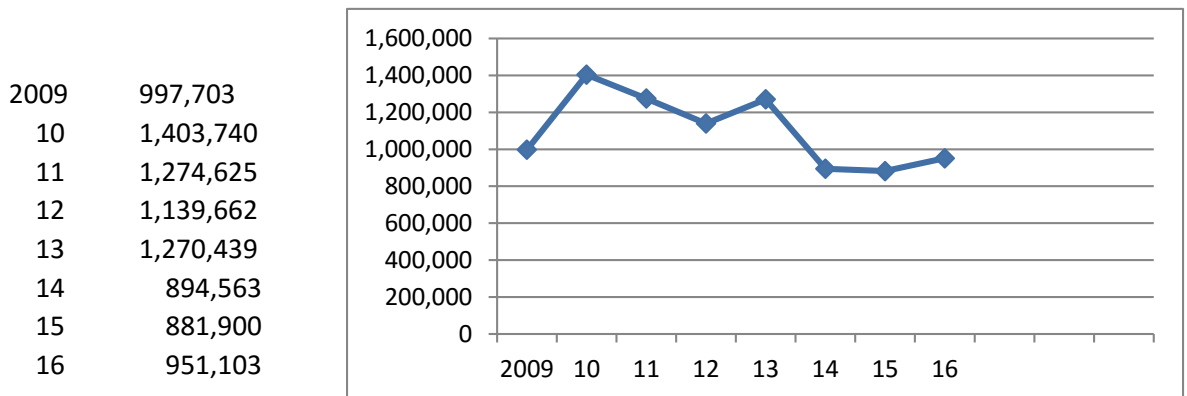
Settlement Process

As previously mentioned, one way to bring cases to final resolution is through the settlement process. A final agreement to resolve the issues in a claim can be accomplished through private negotiation or a mediation process conducted by a mediator provided by the Industrial Commission. A settlement can be structured in a number of ways, including a one-time lump sum payment, periodic monthly payments, deferred lump sum or periodic payments, or any combination of these options with the approval of the Industrial Commission.

In 2009, Idaho case law significantly changed the settlement process and made it more complicated for ISIF. Several case decisions set fundamental standards for ISIF in bringing settlement proposals to the attention of the Industrial Commission. In essence, the ISIF must now concede all issues of liability before a settlement can be negotiated, prepared and delivered to the Commission for review and ultimate approval. This process has necessarily resulted in more complex procedures. These procedures include a longer pre-hearing investigation process, which is then followed by a full evaluation of all issues and aspects of liability on the part of ISIF. If liability is clearly established, then settlement negotiation can go forward. Following a successful private negotiation or Commission mediation, the settlement document is prepared and presented to the Commissioners for final approval.

Set out below is the annual amount of one-time payments for lump sum settlements since 2009.

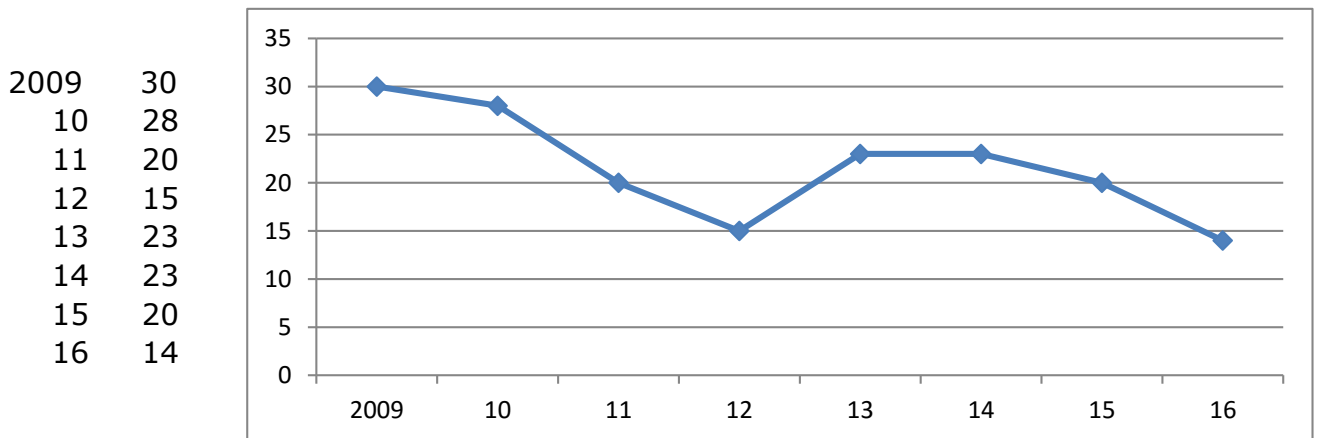
Lump Sum Settlements FY



While the total amount seems significantly smaller than in prior years, recent settlements often contain various alternatives to simply the traditional one-time cash payment to fully settle a claim. These options include, for example, cash plus monthly benefits; or cash plus another deferred payment of cash; or cash plus monthly benefits with a future payment of a lump sum in cash. Whichever option is ultimately chosen for settlement, it is tailored to best suit the parties' needs to resolve the claim. One of the biggest factors impacting the alternative option to a one-time cash payment is the effect of an off-set from Social Security Disability (SSD) benefits that may be created by the type or amount of the final settlement structure. Typically, any other disability benefits paid to a claimant already receiving SSD benefits will result in reduction in SSD benefits. In some cases, if the parties are not careful to recognize this impact, a large portion will be reduced or even the entire amount of SSD benefit can be eliminated.

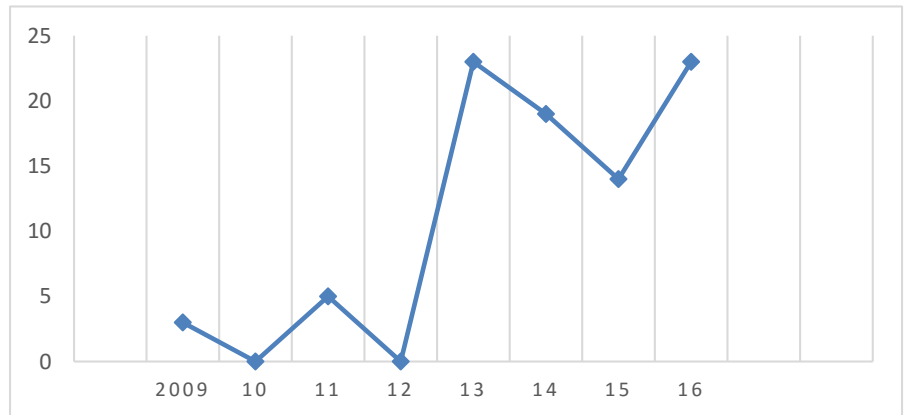
With fewer opportunities to fully resolve and settle contested cases, more innovative ways to resolve complex cases have been implemented by ISIF, which fortunately have gained approval from the Industrial Commission. Such efforts have increased the potential closure of cases from simply a one-time payment of cash. The chart below represents cases closed by way of an approved settlement agreement either by private negotiation or mediated process through the Industrial Commission without the need for an adversary hearing to determine the final resolution.

Cases Closed by Settlement Agreement FY



Administrative Closure of Cases FY

2009	3
10	0
11	5
12	0
13	23
14	19
15	14
16	23



For cases filed with the Industrial Commission, ISIF seeks closure through a number of administrative avenues, as well as, the negotiated settlement process. As the above chart indicates, a noticeable increase in closures has taken place since 2009. Such closures (dismissal of ISIF) have come about from cases not actively prosecuted for a long period of time, cases settled with other parties and the remaining party does not desire to go forward against ISIF, cases coming to hearing with ISIF that a party voluntarily dismisses, and cases that have gone to hearing that ISIF has been judicially dismissed from liability.

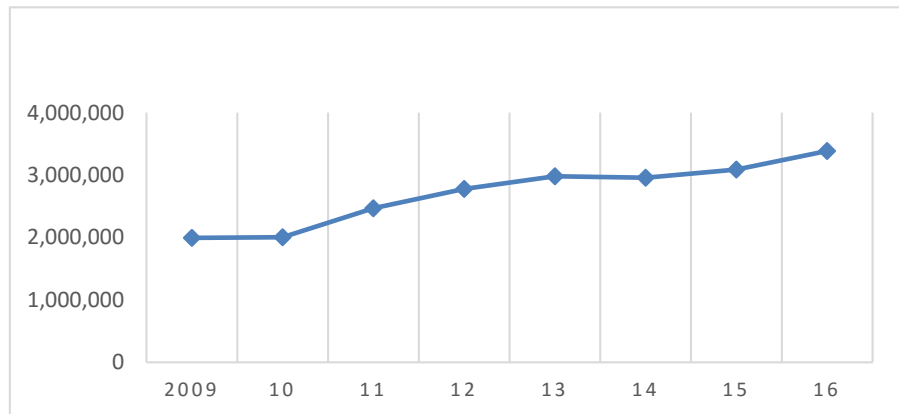
Judicial Process

Another avenue in resolving cases is through the judicial hearing process, in which the parties actively litigate the liability of the ISIF before the Industrial Commission. Should the ISIF be held liable, then monthly statutory benefits are paid during the lifetime of the disabled worker. Since 2009, 38 lifetime beneficiaries have been added to the rolls. During that same time, 34 have passed away. However, since the new beneficiaries are coming in at a higher wage rate than their earlier counterparts, the overall cost for this administration has increasing dramatically. Further, regular inflationary increases based on the average state wage (ASW) have added to the overall cost of this benefit. This past year the ASW increased over 4.6%. As a result of the compounding effect, the monthly payouts increased 9.6% from last year. Since 2009, the monthly payments have increased 70% over this time frame, which is an

average of 10% per year. This trend is clearly of great concern to the ISIF. Should this trend continue, the payments for monthly annuitants would double every 7.2 years. The chart below illustrates this trend.

Monthly Annuitant Payments FY

2009	1,995,050
10	2,003,744
11	2,467,159
12	2,779,163
13	2,980,264
14	2,958,617
15	3,088,681
16	3,386,007



Litigation Costs

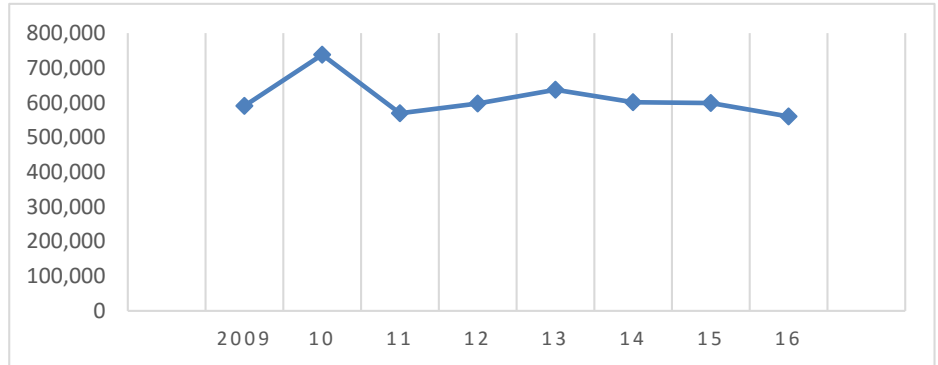
Another cost for ISIF is the need to retain outside legal counsel to represent ISIF in contested cases before the Industrial Commission. The annual cost of these well-experienced attorneys is set out below. Such costs include initial evaluation of the claim, receipt and review of extensive medical records, pre-hearing depositions, travel, review pertinent employment and vocational information, analyze potential issues and defense strategies, furnish written summaries of the analysis, preparation and attendance at evidentiary hearings, post-hearing depositions, and formal legal briefing to the Industrial Commission and, in selected cases, the Idaho Supreme Court.

In the past several years, the ISIF added one more attorney to its staff of outside legal counsel due to an increase in caseloads. We also experienced the untimely passing of two of our most experienced attorneys. That void has recently been filled making the total number of attorneys now eight. The attorneys are located across the state to handle claims and cases in their respective areas. All ISIF attorneys are well-experienced in the workers' compensation industry with levels of significant competence ranging from 10 to over 30 years. Such experience adds to the increased professional stature and ability to resolve complex claims of this agency.

Over the past several years, litigation costs have somewhat stabilized even though the caseloads for each attorney have become increasingly more complex. The chart below illustrates the fairly steady level of annual fees and costs for legal representation of the ISIF.

Legal Costs FY

2009	590,741
10	737,962
11	569,539
12	597,633
13	636,907
14	601,036
15	598,690
16	559,989

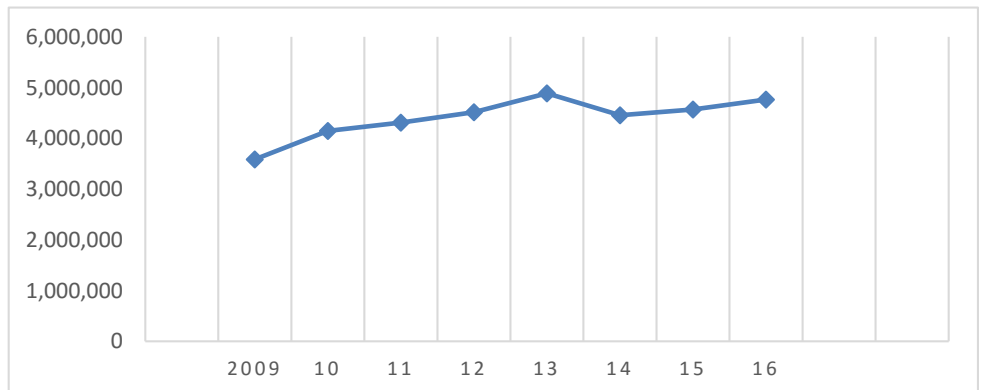


Such a trend is largely due to the active participation by ISIF staff in all phases of each case with the attorney assigned to represent the ISIF. This active involvement has led to more efficient representation by outside counsel directing resources to meaningful defense strategies and more successful outcomes in litigation and/or settlements.

Thus, total litigation costs composed of attorney fees and costs, monthly beneficiary payments, and final settlement payments have experienced a modest upward trend in the past few years. With all factors being considered, an overall increase of 33% during this period is acceptable with an average of 4.7% each year. An illustration of these costs is set out below:

Total Litigation Costs FY

2009	3,584,315
10	4,145,446
11	4,311,323
12	4,516,458
13	4,887,609
14	4,454,215
15	4,569,271
16	4,765,996

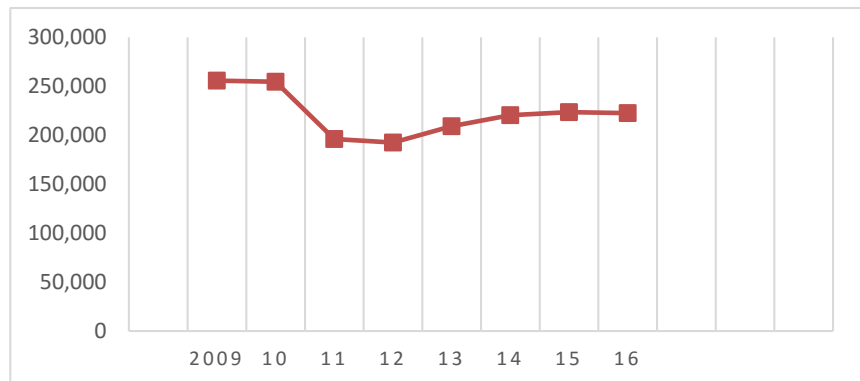


Office Administration

The final piece to the expense-side of ISIF operation is the cost of maintaining an administrative office. This is rather a small percentage compared to the other major expenses in managing the ISIF. In 2010, the staff was cut from 3 to 2. As a result, the current expenses include two full time employees and general office expenses such as office rent, copy/fax/email machine rental, supplies, and travel, as well as, general support services from the main office of the Department of Administration. These costs have been fairly stable over the past few years but show a modest increase due to moving to a larger office in 2011, rent, file storage, and salaries. Overall, however, the administrative costs have decreased 13% over this time period.

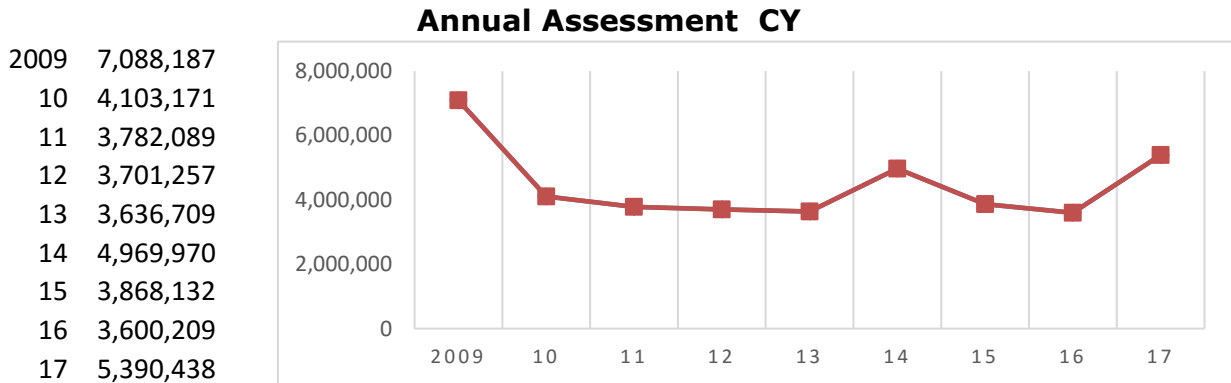
Office/Administrative Costs FY

2009	255,812
10	254,653
11	196,050
12	192,473
13	209,175
14	220,408
15	223,602
16	222,516



ASSESSMENT

The ISIF is funded through an annual assessment to sureties, self-insured employers, and the State Insurance Fund. It is calculated by a rather simple method of taking two times (2x) the total expenses of ISIF for the most recent fiscal year minus (-) ending cash from that same fiscal year. This calculation is then pro-rated by the Industrial Commission for the insurance entity's share of total indemnity (income) benefits paid on workers' compensation claims during the reporting period. The assessment is then billed to the sureties semi-annually. Individual employers probably do not see this specific assessment, because it is part of their overall insurance premium for workers' compensation coverage. Below is an illustration of Assessments from 2009 to the anticipated Assessment in calendar year 2017.



The expense-side of the Assessment is broken into four main categories: settlement payments, monthly income and disability payments, attorney fees and costs, and office expenses. These costs have been detailed in previous parts of this Report. Generally, expenses have been more predictable in recent years due to their relative stability. The cash-side of the Assessment, however, is more variable each year. As cash is used to a greater extent, the Assessment fluctuates more. For example, when a greater use of cash takes place, it necessarily creates a higher percentage of expenses compared to the ending cash sum. With this scenario, an increase in the annual assessment will take place. That situation created the basis for the significant rise of 37% in the Assessment for 2014. The opposite effect occurred in the next two calendar years with a total decrease of 28%. However, fiscal year 2016 required greater expenses for ISIF in payment of claims resulting in a substantial increase of 50% for the assessment in calendar year 2017.