

2016 Explanatory Notes
Office of the General Counsel

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OFFICE OF THE GENERAL COUNSEL

Purpose Statement

By General Order of June 17, 1905, the Secretary of Agriculture established the position of Solicitor, thereby consolidating the legal activities of the Department. In 1956, Congress established the position of General Counsel of the Department of Agriculture as a Presidential appointee confirmed by the Senate (70 Stat. 742) (7 U.S.C. 2214). The Office of the General Counsel (OGC) provides legal services and legal oversight required by the Secretary of Agriculture and USDA to achieve the Department's mission and deliver programs and services to the American people. OGC serves as the law office of USDA and provides legal services to officials at all levels of USDA, as well as technical support to members of Congress concerning the programs and activities carried out by USDA.

Description of Programs:

OGC determines legal policy and directs the performance of all legal work conducted for USDA. All Department legal services are centralized within OGC and the General Counsel reports directly to the Secretary. The General Counsel is the chief law officer of USDA and is responsible for providing legal services for all programs, operations, and activities of USDA. Two Deputy General Counsels, five Associate General Counsels, and four Regional Attorneys assist the General Counsel in managing the work of the office.

The headquarters legal staff is divided into five divisions: (1) Marketing, Regulatory, and Food Safety Programs; (2) International Affairs, Food Assistance, and Farm and Rural Programs; (3) Natural Resources and Environment; (4) General Law and Research; and (5) Civil Rights, Labor and Employment Law. The field-based staff is organized into four regions (Eastern, Central, Mountain and Pacific) with 12 offices across the country.

Legal Advice. OGC provides both oral and written legal advice to all USDA officials. OGC also reviews administrative rules, regulations and final agency decisions for legal sufficiency; agency agreements and contracts; and provides counsel about other agency activities.

Legislation and Document Preparation. OGC prepares draft legislation, patent applications arising out of inventions by USDA employees, contracts, agreements, mortgages, leases, deeds and any other legal documents required by USDA agencies.

Administrative Proceedings. OGC represents USDA in administrative proceedings for the enforcement of rules having the force and effect of law and in quasi-judicial hearings held in connection with the administration of various USDA programs.

Federal and State Court Litigation. OGC works with the Department of Justice (DOJ) in all Departmental civil litigation. The bulk of this litigation involves the defense of claims brought against the USDA. OGC serves as USDA's liaison with DOJ and assists in the preparation of all aspects of the government's case. OGC refers matters involving allegations of criminal conduct and assists DOJ in preparation and prosecution of criminal cases. In some instances, OGC attorneys represent USDA as Special Assistant United States Attorneys, both in civil and criminal matters. By delegation, the Associate General Counsel for General Law and Research represents USDA in certain classes of cases before the United States Courts of Appeals.

Law Library. OGC maintains the USDA Law Library, which, prior to 1982, was housed at the National Agricultural Library.

Geographic Location. The work of OGC is carried out in Washington, D.C., and four regions which include 12 offices as follows:

Eastern Region:

Atlanta, Georgia
Harrisburg, Pennsylvania
Milwaukee, Wisconsin

Central Region:

Kansas City, Missouri
Little Rock, Arkansas
Temple, Texas

Mountain Region:

Denver, Colorado
Albuquerque, New Mexico
Missoula, Montana

Pacific Region:

San Francisco, California
Juneau, Alaska
Portland, Oregon

As of September 30, 2014, the Office of the General Counsel had 242 permanent full-time employees of which 125 were located in Washington, D.C. and 117 in the field.

OGC did not have any Office of Inspector General or Government Accountability Office evaluation reports during the past year.

OFFICE OF THE GENERAL COUNSEL

Available Funds and Staff Years (SYs)

(Dollars in thousands)

Item	2013 Actual		2014 Actuals		2015 Enacted		2016 Estimate	
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs
Salaries and Expenses:								
Discretionary Appropriations.....	\$45,074	244	\$41,202	219	\$44,383	245	\$48,075	264
Sequestration.....	-1,979	-	-	-	-	-	-	-
Rescission.....	-1,221	-	-	-	-	-	-	-
Transfer Out.....	-875	-	-1,550	-	-	-	-	-
Total Available.....	40,999	244	39,652	219	44,383	245	48,075	264
Lapsing Balances.....	-173	-	-163	-	-	-	-	-
Obligations.....	40,826	244	39,489	219	44,383	245	48,075	264
Obligations under other USDA appropriations:								
Hazardous Materials Management								
Program.....	1,280	8	1,207	8	1,207	8	1,207	8
FS Non-Litigation Travel.....	30	-	30	-	50	-	50	-
CCC/Farm Bill.....	585	5	433	4	433	4	433	4
OCFO WCF.....	16	-	-	-	20	-	20	-
Detail Support.....	-	-	127	1	91	-	-	-
Ombudsperson.....	-	-	54	1	231	1	231	1
Civil Rights Reimbursable.....	665	5	585	4	1,015	7	1,015	7
AMS User Fees.....	663	5	648	5	653	5	653	5
APHIS User Fees.....	238	1	100	1	100	1	100	1
GIPSA User Fees.....	5	-	9	-	34	-	34	-
FSA User Fees.....	-	-	1	-	1	-	1	-
FSIS User Fees.....	21	-	15	-	15	-	15	-
Total, Agriculture Appropriations..	3,503	24	3,209	24	3,850	26	3,759	26
Total, OGC.....	44,329	268	42,698	243	48,233	271	51,834	290

OFFICE OF THE GENERAL COUNSEL

Permanent Positions by Grade and Staff Year Summary

Item	2013 Actual			2014 Actual			2015 Enacted			2016 Estimate		
	Wash.			Wash.			Wash.			Wash.		
	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total
ES.....	1	-	1	1	-	1	1	-	1	1	-	1
SES.....	14	4	18	14	4	18	14	4	18	14	4	18
GS-15.....	35	24	59	33	22	55	38	26	64	38	26	64
GS-14.....	63	61	124	62	58	120	56	53	109	60	52	112
GS-13.....	6	1	7	6	-	6	7	-	7	11	4	15
GS-12.....	3	-	3	3	-	3	6	4	10	9	10	19
GS-11.....	5	13	18	12	17	29	9	14	23	7	15	22
GS-10.....	2	-	2	3	-	3	2	-	2	3	-	3
GS-9.....	5	9	14	5	7	12	8	7	15	8	6	14
GS-8.....	7	16	23	7	7	14	5	7	12	5	7	12
GS-7.....	1	11	12	1	7	8	1	7	8	1	7	8
GS-6.....	1	-	1	1	-	1	1	-	1	1	-	1
GS-5.....	1	-	1	1	-	1	1	-	1	1	-	1
Total Perm. Positions.....	144	139	283	149	122	271	149	122	271	159	131	290
Unfilled, EOY.....	-23	-2	-25	-20	-8	-28	-	-	-	-	-	-
Total, Perm. Full-Time Employment, EOY.....	121	137	258	129	114	243	149	122	271	159	131	290
Staff Year Est.....	131	137	268	126	117	243	149	122	271	159	131	290

OFFICE OF THE GENERAL COUNSEL

The estimates include appropriation language for this item as follows (new Language underscored; deleted matter enclosed in brackets):

Salaries and Expenses:

For necessary expenses of the Office of the General Counsel, [~~\$44,383,000~~]\$48,075,000.

Lead-Off Tabular Statement
Current Law

Budget Estimate, 2016.....	\$48,075,000
2015 Enacted.....	<u>44,383,000</u>
Change in Appropriation.....	<u>+ 3,692,000</u>

Summary of Increases and Decreases
(Dollars in thousands)

	<u>2013</u> <u>Actual</u>	<u>2014</u> <u>Change</u>	<u>2015</u> <u>Change</u>	<u>2016</u> <u>Change</u>	<u>2016</u> <u>Estimate</u>
Discretionary Appropriations:					
Office of the General Counsel.....	\$41,874	-\$672	+\$3,181	+\$3,692	\$48,075

OFFICE OF THE GENERAL COUNSEL

Project Statement

Appropriations Detail and Staff Years (SYs)
(Dollars in thousands)

Program	2013 Actual		2014 Actual		2015 Enacted		Inc. or Dec.		2016 Estimate		
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	
Discretionary Appropriations:											
Legal Services.....	\$45,074	244	\$41,202	219	\$44,383	245	+\$3,692	(1)	+19	\$48,075	264
Total Appropriation.....	45,074	244	41,202	219	44,383	245	+3,692		+19	48,075	264
Rescission.....	-1,221		-	-	-		-			-	
Sequestration.....	-1,979		-	-	-		-			-	
Total Available.....	41,874	244	41,202	219	44,383	245	+3,692		+19	48,075	264
Transfer Out: WCF.....	-875		-1,550		-		-			-	
Lapsing Balances.....	-173		-163		-		-			-	
Total Obligations.....	40,826	244	39,489	219	44,383	245	+3,692		+19	48,075	264

Project Statement

Obligation Detail and Staff Years (SYs)
(Dollars in thousands)

Program	2013 Actual		2014 Actual		2015 Enacted		Inc. or Dec.		2016 Estimate		
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	
Discretionary Obligations:											
Legal Services.....	\$40,826	244	\$39,489	219	\$44,383	245	+\$3,692		+19	\$48,075	264
Total Obligations.....	40,826	244	39,489	219	44,383	245	+3,692		-	48,075	264
Lapsing Balances.....	173	-	163	-	-	-	-		-	-	-
Total Available.....	40,999	244	39,652	219	44,383	245	+3,692		+19	48,075	264
Transfer Out.....	875		1,550		-		-			-	
Rescission.....	1,221		-		-		-			-	
Sequestration.....	1,979		-		-		-			-	
Total Appropriation.....	45,074	244	41,202	219	44,383	245	+3,692		+19	48,075	264

Justification of Increases and Decreases

- (1) An increase of \$3,692,000 and 19 staff years (\$44,383,000 and 271 staff years available in 2015).

Base funds will allow the Office of the General Counsel to continue to provide legal oversight, appropriately serve legal needs, and support all activities of the Department. In addition to the activities and functions specifically described in the budget request, current year and budget year base funds will be used to carry out activities and functions consistent with the full range of authorities and activities delegated to the office. In addition to Departmental Administration funding used for human resources operational services, current year and budget year base funds will also be used to support expedited and enhanced classification, staffing and processing efforts.

The funding change is requested for the following items:

- (a) An increase of \$506,000 for pay costs, (\$94,000 for annualization of the fiscal year 2015 pay raise and \$414,000 for the anticipated fiscal year 2016 pay raise.) Approximately 91 percent of OGC's budget is expended in support of personnel salaries and benefits, and the remaining 9 percent is comprised of rent, and other necessary expenses such as travel, training, equipment, maintenance of equipment, law library purchases, and supplies that leaves little flexibility for absorbing increased costs for pay or any other salary adjustments. OGC can absorb cost increases by reducing staff or reassessing important operating requirements to sustain OGC's level of service to clients. A staff reduction or change in level of service would result in backlogs and delays in the defense of critical litigation, in reviewing and clearing agency rulemaking and correspondence, and in providing legal advice and services within requested time frames.
- (b) An increase of \$2,018,000 and 19 staff years for increased legal services.

Civil Rights, Labor and Employment Law Division (1 staff year): This Division seeks to add one attorney to its Litigation Section due to an increase in workload, and continued national practice for defending Secretary in cases meeting newly revised criteria. CRLELD defends the Secretary in cases naming managers in all 19 subcomponent USDA agencies and staff offices. The Litigation Section needs an attorney with significant experience in Merit Systems Protection Board cases such as prohibited personnel practice and whistleblower cases, given the recent enactment of the Whistleblower Protection Enhancement Act.

International Affairs, Food Assistance, and Farm and Rural Programs Division (1 staff year): This Division seeks to add one attorney to support the Department's international programs, food assistance programs, farm programs and crop insurance, and rural utilities programs. Specific programs include: export credit guarantee program; international grants and cooperative agreements; Supplemental Nutrition Assistance Program (SNAP); the Special Supplemental Nutrition Program for Women, Infants and Children (WIC); the School Lunch Program; grants related to disaster assistance; disaster assistance programs; crop insurance; Rural Business Cooperative Service programs; Rural Utilities Service electric program; and the expansion of the broadband and water program loan portfolios. All of these programs involve complicated legal issues with significant fiscal implications for the Department and taxpayers.

General Law and Research Division (3 staff years): This Division seeks to add two attorneys and one paralegal to provide litigation support. The attorneys will assist in responding to increased demands in suspension and debarment matters, contractor compliance requirements, and procurement litigation before GAO and the Federal courts, as well as the burgeoning intellectual property and security demands facing the Department. The two attorney positions will be responsible for necessary succession planning required for the Division to keep pace in the area of intellectual property.

Marketing, Regulatory, and Food Safety Programs Division (3 staff years): The MRFSP Division is seeking two additional attorneys and one paralegal. The Division has experienced significant increases in

its rulemaking dockets and anticipates similar demands in the future. The Division maintains a large litigation workload that has continued to increase over the last several fiscal years. As an example, the Division handled 335 more legal reviews in FY 2014, supported more district court cases, and received and processed 135 more referrals for administrative action than in FY 2013. Recent changes to FSIS regulations and the APHIS' streamlined process regarding deregulation of genetically engineered (GE) crops are generating significant new demands for legal support. Additionally, the Agricultural Marketing Service supports approximately 30 Marketing Orders and Agreements and 20 Research and Promotion Programs that generates regular rulemaking activities. The Division's limited resources require additional attorneys to ensure timely and effective legal support.

Natural Resources and Environment Division (2 staff years): This Division seeks to add one attorney and one paralegal position to provide legal services to the Forest Service (FS) and the Natural Resources Conservation Service (NRCS). OGC is currently short-staffed to provide the needed legal support for FS programs. These additional employees will support the Division's efforts to meet increases in NRCS regulatory workload, including work associated with the Agricultural Act of 2014.

Eastern Region

Harrisburg (1 staff year): The Harrisburg office seeks to add one attorney. The Harrisburg office handles legal matters for all USDA mission areas and agencies operating in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia, and the District of Columbia, excluding the FS. Because of the recent OGC reorganization, the Harrisburg office is providing legal services to Ohio. The work is heavily weighted in commercial transactions and the office averages over 2,000 new matters each year. Adding an attorney to handle loan-servicing activities, Farm Service Agency and Rural Development transactional matters, as well as FS work and NRCS easement acquisition work, will help ensure the continued ability to provide the necessary legal services.

Milwaukee (1 staff year): The Milwaukee office seeks to add one attorney. This Milwaukee office provides legal services to the FS's Eastern Region and covers all NRCS matters in Illinois, Michigan and Wisconsin, in addition to providing support for commercial transactions. The office has historically performed mostly environmental litigation, and the addition of an attorney will handle the significant increase of legal work in recent years due to more environmental matters in the region.

Central Region

Kansas City (3 staff years): The Kansas City office seeks three additional attorneys. These additions are needed to meet increased legal needs and responsibilities and to replace employees who have retired and whose positions have not been filled. With seven States now in its service area, the Kansas City office is experiencing an increase in demand for legal service in all its areas. This includes all Rural Development areas: housing, water and environmental, utilities and business development programs; NRCS conservation programs related to an increase in enforcement actions; an increase in SNAP litigation to combat programmatic abuses; and loan servicing demands in its loan programs such as bankruptcy and foreclosures. Lastly, the Kansas City office handles a significant amount of employment litigation arising from the large installations of USDA employees in its service area at facilities in St. Louis and Kansas City.

Temple (1 staff year): The Temple office seeks to add one attorney. This office serves USDA agencies in Texas and Oklahoma, a vast area of land and diverse agricultural demands. The new attorney would provide necessary additional legal support for USDA's conservation programs, disaster relief programs, loan programs (which includes loan making and loan servicing activities such as collections, bankruptcy actions and foreclosures), the SNAP program, and the management of National Forests. Legal work associated with Farm Service Agency loan servicing activities is expected to increase, while other agencies are anticipated to make steady demands on legal resources.

Mountain Region

Denver Office (1 staff year): Due to retirements, the Denver office has been understaffed for several years. As a result of last year's field office reorganization, the Denver office took responsibility for providing legal services to an additional FS region (Region 4, based in Ogden, Utah), in addition to Region 2, based in Denver. Previously, three attorneys in Ogden had serviced Region 4, but only two of those attorneys relocated to Denver as a result of the reorganization. In addition, nearly all of the attorneys in the Denver office either are or will be eligible for retirement are expected within the next three years, and we expect numerous attorney retirements within the next three to four years. For continuity of service, the office needs to hire new attorneys who can begin to develop relevant expertise before current attorneys retire.

Albuquerque Office (1 staff year): The Albuquerque office seeks to add one attorney to provide legal services to Rural Development, the Farm Service Agency, the NRCS and other USDA agencies in Arizona and New Mexico. The Albuquerque Office already handles virtually all of the legal work for the FS in Arizona and New Mexico, as well as for the Farm Service Agency in New Mexico.

Pacific Region

Portland Office (1 staff year): The Portland office seeks to add an attorney. The Portland Office handles legal matters for all USDA agencies in Oregon and Washington and for all agencies in Idaho except the FS. Among other responsibilities, the new attorney will help the Portland office respond to increased demands for legal services related to agricultural programs and natural resource management. For example, the attorney will provide legal services that allow the Rural Development mission area and the Farm Service Agency to issue loans and/or grants that help fund critical housing and community facility projects in rural areas. The attorney will also provide legal services that will help the FS and the NRCS further their missions by obtaining easements and other interests in real property.

(c) **An increase of \$883,000 to maintain and improve effectiveness of current staff.**

This increase will enable OGC to increase funding for litigation travel, computerized legal research, training, and contractual support to include human resources services for all OGC personnel actions. OGC attorneys handle litigation in Federal courts and before administrative bodies. Travel to conduct depositions, interview witnesses, and attend trials/hearings is critical for OGC to provide effective legal service. OGC's Library must continue to invest in on-line legal research services. These services allow OGC attorneys to stay abreast of new developments in their respective areas of expertise. On-line legal research tools (Westlaw) have provided OGC attorneys electronic access to legal resources that are not affordable to purchase or maintain in hard copy. Additionally, OGC just recently began to fund a training program for its legal and support staff. In our view, without such a program, OGC professionals cannot be expected to develop and maintain, in the long term, the skills and expertise required to ensure that all USDA programs are conducted in compliance with all applicable law and regulations; and to ensure adequate knowledge transfer as long term employees retire.

(d) **An increase of \$285,000 for information technology and telecommunications.**

Additional funding is needed to maintain OGC's current information technology and telecommunications infrastructure in Washington, D.C., and OGC's field locations. OGC will increase the bandwidth in the rest of OGC's 12 field locations, which allows for faster internet connectivity. This increase is intended to cover the annual costs of maintaining this infrastructure. This improvement will increase OGC's efficiency and responsiveness to its clients. Additional funds are also requested for discovery software and/or services to assist with OGC document review in complex litigation, and help OGC assist the Department in keeping pace with its electronic discovery obligations and increase transparency through more accurate aggregate reports.

OFFICE OF THE GENERAL COUNSEL

Geographic Breakdown of Obligations and Staff Years
(Dollars in thousands and Staff Years (SYs))

State/Territory	2013 Actual		2014 Actual		2015 Enacted		2016 Estimate	
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs
Alabama.....	\$509	3	-	-	-	-	-	-
Alaska.....	588	4	\$416	3	\$605	4	\$728	4
Arkansas.....	799	7	852	7	1,042	8	1,302	8
California.....	2,293	15	2,412	16	3,472	16	3,738	17
Colorado.....	1,655	9	2,007	10	2,194	11	2,293	12
Georgia.....	2,179	17	2,474	17	2,571	17	2,712	17
Illinois.....	1,070	6	-	-	-	-	-	-
Minnesota.....	670	5	-	-	-	-	-	-
Missouri.....	910	7	1,147	8	1,459	9	1,853	9
Montana.....	1,006	7	1,198	9	1,366	9	1,445	9
New Mexico.....	712	6	730	6	879	7	1,013	8
Ohio.....	363	3	-	-	-	-	-	-
Oregon.....	1,629	12	1,511	10	1,606	11	1,927	11
Pennsylvania.....	1,117	10	947	8	1,133	8	1,254	9
Texas.....	850	8	734	6	947	6	1,053	7
Utah.....	705	4	-	-	-	-	-	-
Wisconsin.....	915	7	1,003	8	1,335	10	1,579	10
District of Columbia.....	22,785	113	24,058	111	25,774	129	27,178	143
Puerto Rico.....	71	1	-	-	-	-	-	-
Obligations.....	40,826	244	39,489	219	44,383	245	48,075	264
Lapsing Balances.....	173	-	163	-	-	-	-	-
Total, Available.....	40,999	244	39,652	219	44,383	245	48,075	264

OFFICE OF THE GENERAL COUNSEL

Classification by Objects

(Dollars in thousands)

	2013	2014	2015	2016
	<u>Actual</u>	<u>Actual</u>	<u>Enacted</u>	<u>Estimate</u>
Personnel Compensation:				
Washington D.C.....	\$14,830	\$14,705	\$15,477	\$16,632
Field.....	14,248	12,527	14,288	15,353
11 Total personnel compensation.....	29,078	27,232	29,765	31,985
12 Personnel benefits.....	8,097	7,598	8,443	9,142
13.0 Benefits for former personnel.....	14	147	14	14
Total, personnel comp. and benefits.....	37,189	34,977	38,222	41,141
Other Objects:				
21.0 Travel and transportation of persons.....	628	283	220	283
22.0 Transportation of things.....	5	3	8	8
23.1 Rental payments to GSA.....	0	0	1,698	1,698
23.3 Communications, utilities, and misc. charges...	492	700	678	713
24.0 Printing and reproduction.....	49	55	96	96
25.2 Other services	1,561	2,111	2,230	2,669
26.0 Supplies and materials.....	694	618	826	900
31.0 Equipment.....	208	742	405	567
Total, Other Objects.....	3,637	4,512	6,161	6,934
99.9 Total, new obligations.....	40,826	39,489	44,383	48,075

Position Data:

Average Salary (dollars), ES Position.....	\$165,599	\$168,571	\$172,008	\$175,964
Average Salary (dollars), GS Position.....	\$111,564	\$108,117	\$112,279	\$116,579
Average Grade, GS Position.....	14.3	14.2	14.3	14.4

OFFICE OF THE GENERAL COUNSEL
Shared Funding Projects
(Dollars in thousands)

	2013	2014	2015	2016
	<u>Actual</u>	<u>Actual</u>	<u>Enacted</u>	<u>Estimate</u>
Working Capital Fund:				
Administration:				
Procurement Operations.....	\$1	\$1	\$24	\$32
Material Management Service Center.....	31	26	51	50
Mail and Reproduction Management.....	165	177	232	232
Integrated Procurement System.....	5	5	7	7
Subtotal.....	202	209	314	321
Communications:				
Creative Media & Broadcast Center.....	18	10	17	16
Finance and Management:				
NFC/USDA.....	63	77	79	77
Controller Operations.....	106	59	55	57
Financial Systems.....	104	99	101	98
Subtotal.....	273	235	235	232
Information Technology:				
NITC/USDA.....	39	37	43	55
International Technology Services.....	13	14	5	5
Telecommunications Services.....	188	341	128	132
Subtotal.....	240	392	176	192
Correspondence Management.....	16	14	22	23
Total, Working Capital Fund.....	749	860	764	784
Department Shared Cost Programs:				
1890's USDA Initiatives.....	9	8	8	8
Classified National Security Information.....	-	-	3	3
Continuity of Operations Planning.....	6	6	6	6
Emergency Operations Center.....	7	7	7	7
Facility and Infrastructure Review and Assessment.....	1	1	1	1
Faith-Based Initiatives and Neighborhood Partnerships.....	1	1	1	1
Federal Biobased Products Preferred Procurement Program.....	1	1	-	-
Hispanic-Serving Institutions National Program.....	6	6	6	6
Human Resources Transformation.....	5	5	5	5
Identity & Access Management (HSPD-12).....	19	19	19	19
Medical Services.....	6	6	15	16
People's Garden.....	2	2	2	2
Personnel Security Branch.....	4	4	3	3
Pre-authorizing Funding.....	10	10	10	10
Retirement Processor/Web Application.....	2	2	2	2
Sign Language Interpreter Services.....	16	9	-	-
TARGET Center.....	3	6	4	4
USDA 1994 Program.....	2	2	2	2
Virtual University.....	6	6	6	6
Visitor Information Center.....	1	1	-	-
Total, Departmental shared Cost Programs.....	107	102	100	101

OFFICE OF THE GENERAL COUNSEL

Shared Funding Projects

(Dollars in thousands)

	2013	2014	2015	2016
	<u>Actual</u>	<u>Actual</u>	<u>Enacted</u>	<u>Estimate</u>
E-Gov:				
Enterprise Human Resources Intigration.....	9	6	6	6
E-Rulemaking.....	-	3	2	1
E-Training.....	7	8	8	8
Financial Management Line of Business.....	-	1	-	-
Human Resources Line of Business.....	1	1	1	1
Integrated Acquisition Environment - Loans and Grants.....	4	5	5	5
Integrated Acquisition Environment.....	2	2	2	2
Total, E-Gov.....	<u>23</u>	<u>26</u>	<u>24</u>	<u>23</u>
Agency Total.....	<u>879</u>	<u>988</u>	<u>888</u>	<u>908</u>

OFFICE OF THE GENERAL COUNSEL

Status of Programs

Current Activities: The Office of the General Counsel (OGC) provides legal services and oversight required by the Secretary and USDA to achieve the Department's mission and deliver programs and services to the American People. OGC supports USDA's efforts to help rural America thrive, reduce hunger in the U.S. and abroad, promote agricultural production, and preserve our Nation's natural resources by providing proactive, accurate, creative and prompt legal services. OGC is committed to developing its employees and to serving its clients in a way that is inclusive, collaborative, transparent, innovative, knowledge-driven and technology-enabled.

USDA's lawyers are involved in almost every Departmental activity. They provide day-to-day advice on a broad range of legal issues, including personnel, procurement, fiscal, cyber and physical security, and privacy matters. On the programmatic side, they do everything from assisting in the development of complex regulations, to serving as counsel for high-value business transactions such as those funded by the Rural Utilities Service. OGC attorneys also provide extensive drafting and technical assistance to the Department and Congress on legislative proposals, assist the Department in briefing Congress in response to inquiries, and assist the Department in the development of both internal and external policies. OGC's practice is also litigation intensive. OGC represents or assists in the representation of USDA in disputes in every conceivable tribunal, including administrative bodies, the Federal and state courts and the World Trade Organization.

OGC's services also include responding to legal inquiries and preparing formal legal opinions on a broad range of issues relating to the Department's authorizing statutes, as well as laws of general applicability, and constitutional and fiscal law matters. OGC prepares or interprets contracts, mortgages, leases, deeds, and other legal documents and prepares briefs and collaborates with the Department of Justice (DOJ) in trial and appellate litigation.

Selected Examples of Recent Progress:

- Perishable Agricultural Commodities Act (PACA) - OGC drafted or reviewed 172 orders in PACA reparation cases that resulted in awards of over \$3.5 million.
- Packers and Stockyards Act (P&S Act) - OGC worked with the Grain Inspection Packers and Stockyards Administration to enforce the P&S Act. Approximately \$1.3 million in civil penalties were assessed.
- Commodity Credit Corporation (CCC) - OGC played a significant role in recovering over \$138 million from a major tobacco product manufacturer in connection with the Tobacco Transition Payment Program.
- Foreign Agricultural Service (FAS) - OGC played a significant role in recovering \$80 million in a civil frauds claim related to fraudulent activity that had occurred under the Supplier Credit Guarantee Program.
- Forest Management – OGC helped to defend against lawsuits collectively seeking over \$105 million for alleged takings of private property related to wildfire suppression and other land management activities.
- Pollution Control - OGC represented the Forest Service (FS) and the Department in Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) enforcement matters that resulted in cost recovery from responsible parties at contaminated waste sites on USDA-managed land of more than \$106 million, including funds recovered and the value of cleanup work performed.
- Employment Discrimination Class Actions - The Equal Employment Opportunity Commission's (EEOC) decertification of the *Sedillo* employment discrimination class action saved the Department an estimated \$8 million.
- Training - OGC provided more than 50 training sessions for over 3,000 USDA employees during the fiscal year and across all agencies and staff offices.

ADMINISTRATION AND RESOURCES MANAGEMENT

To enable knowledge transfer and management productivity, OGC implemented *SharePoint*® training for all OGC employees nationwide. *SharePoint* is a collaboration tool and document management system accessible by all employees that allows users to collaborate, analyze and exchange information and documents inside OGC and with other USDA agencies. OGC purchased laptop computers, scanners, and printers to replace obsolete equipment. In addition, OGC made additional enhancements to its network infrastructure to increase bandwidth in six OGC field offices. This will result in increased work productivity for OGC's employees within those offices by allowing all networked IT equipment in those offices to efficiently and securely connect to USDA's internal network and the internet. OGC purchased Video Teleconference (VTC) equipment and Smart Boards for all OGC field locations to enhance collaboration between offices. To align with OMB and USDA's Blueprint for Stronger Services initiative, OGC fully migrated OGC's General Support System to Enterprise Active Directory and contracted for USDA's Tier One Help Desk Support to consolidate IT services. OGC has made additional enhancements to the Electronic Case Management system that was developed in 2012.

MARKETING, REGULATORY AND FOOD SAFETY PROGRAMS

Marketing Agreements and Orders and Research and Promotion Programs: OGC provides the Agricultural Marketing Service (AMS) with legal support for marketing orders and research and promotion programs, to include formal and informal rulemaking, and enforcement and defense of these programs. The number of informal rulemaking actions provided to OGC for review more than doubled from 32 to 71 in FY 2014. In addition to review and clearance of these actions, OGC provided legal review of numerous policy and other documents, as well as daily informal legal advice relating to these programs. OGC also provided support to formal rulemaking hearings pertaining to the Florida Citrus Marketing Order. In 2014, OGC attorneys assisted the DOJ's Civil Division with a case remanded by the U.S. Supreme Court back to the U.S. Court of Appeals for the Ninth Circuit relating to the Marketing Order Regulating the Handling of Raisins Produced from Grapes Grown in California. The Circuit Court ruled in the government's favor on remand and a petition for certiorari is currently pending before the Supreme Court.

Perishable Agricultural Commodities Act (PACA): OGC supports AMS in its enforcement of PACA. These efforts can result in the assessment of civil penalties or suspension or revocation of licenses, and the termination of employment with any PACA licensee of individuals found to be responsibly connected to a violating entity. OGC received 26 new referrals and filed 21 new administrative enforcement complaints alleging violations of the fair trade requirements of PACA. OGC helped AMS investigate whether several responsibly-connected individuals were affiliated with PACA licensees in violation of their employment sanctions and filed administrative complaints against the individuals and licensees. One particularly contentious matter was finally settled by consent this fiscal year. OGC resolved and closed a total of 42 PACA enforcement actions, resulting in the assessment of \$77,500 in civil penalties. PACA also provides an administrative forum for USDA's Judicial Officer to resolve disputes among private parties relating to produce transactions in reparation cases. In the role of presiding officers, OGC attorneys drafted numerous orders and reviewed draft decisions and orders prepared by AMS staff. In total, OGC drafted or reviewed 172 orders in PACA reparation cases that resulted in awards of over \$3.5 million.

Animal and Plant Health Laws and Wildlife Services: In FY 2014, OGC reviewed and approved for legal sufficiency 95 proposed rules, final rules and notices for publication in the Federal Register, in support of the Animal and Plant Health Inspection Service (APHIS). This number is more than two and a half times the 39 documents provided for review in the previous year. OGC assisted APHIS in the development, drafting and issuance of several significant regulations, including regulations to: (1) update APHIS' plant pest regulations; (2) modify APHIS' user fee regulations for agricultural quarantine and inspection services; (3) allow the importation of beef from a region in Argentina; (4) provide for the importation of beef from certain states in Brazil; and (5) establish requirements for the importation of sheep, goats, and wild ruminants with respect to Bovine spongiform encephalopathy and Scrapie. OGC provided significant legal services to APHIS regarding its biotechnology regulatory program activities by reviewing the petitions and environmental documents for 9 petitions for non-regulated status for various genetically engineered crops including its review and editing of the Final Environmental Impact Statement for three corn and soybean products genetically engineered to be resistant to various herbicides including 2,4-dichlorophenoxyacetic acid. OGC assisted APHIS in successfully developing, negotiating and

establishing a new crucially needed trilateral agreement among the Governments of the United States, Mexico and Guatemala for the eradication of Mediterranean fruit flies and other fruit flies that can cause significant damage to citrus and other fruits and vegetables in the United States. This program is a critical component of APHIS' mission to protect over 100 plant commodities at risk of direct harm by the fruit flies and that could result in estimated agricultural losses into the billions of dollars if not averted. OGC also provided critical legal advice and guidance with respect to high level negotiations with the Government of Mexico to successfully conclude over 10 years of ongoing negotiations to allow expanded market access for potatoes from the United States. In addition, OGC assisted DOJ in connection with two cases involving Wildlife Services' activities to reduce hazards associated with wild birds in close proximity to airports. Finally, OGC provided considerable assistance to APHIS in developing and drafting a Federal Order to address several emerging novel swine diseases.

Animal Welfare Act and Horse Protection Act: OGC supports APHIS in its administrative enforcement actions under the Animal Welfare Act (AWA) and the Horse Protection Act (HPA). In 2014, OGC attorneys helped APHIS secure \$620,611 in civil penalties under those statutes; filed administrative complaints against 53 alleged violators of the statutes; and obtained decisions and orders involving 79 respondents in ongoing enforcement cases. OGC obtained orders assessing penalties against 5 dealers and exhibitors of animals regulated under the AWA. OGC also secured 10 orders revoking or suspending AWA licenses. APHIS also issued decisions in non-penal AWA license denial and termination cases. OGC assisted DOJ in successfully defending the HPA minimum penalty protocol rule, which is now on appeal before the U.S. Court of Appeals for the Fifth Circuit, and in defending 3 significant challenges under the AWA in Federal district court.

Packers and Stockyards Act (P&S Act): OGC works with the Grain Inspection Packers and Stockyards Administration to enforce the P&S Act. In FY 2014, OGC filed 62 administrative complaints to enforce the requirements of the P&S Act. These complaints generally seek the imposition of cease and desist orders and civil penalties. OGC closed approximately 120 administrative cases. In addition, OGC referred 7 cases to the DOJ for violations of a Secretary's order or failure to file annual reports. Based on OGC referrals, the DOJ assessed penalties of approximately \$53,000 in various P&S cases. OGC also provided important legal advice and guidance to the Packers and Stockyards Program in updating and expanding several Memoranda of Understanding with multiple States relating to sharing information on registrants and bond information.

Food Safety: OGC reviewed and cleared for legal sufficiency over 65 proposed rules, final rules and notices for publication in the Federal Register for the Food Safety and Inspection Service (FSIS) during FY 2014, a significant increase over the 47 Federal Register documents FSIS submitted for review in FY 2013. OGC assisted FSIS with the development and clearance of several significant rules, including: (1) a final rule to modernize poultry slaughter inspection; (2) a final rule to implement a mandatory inspection program for fish of the order Siluriformes (catfish); (3) changes to the *Salmonella* and *Campylobacter* verification testing program and (4) proposed new performance standards for *Salmonella* and *Campylobacter* in not-ready-to-eat contaminated chicken and turkey products and raw chicken parts. In addition, OGC provided valuable legal advice and guidance to FSIS in meeting its Farm Bill mandate to enter into a Memorandum of Understanding with the Food and Drug Administration to reduce duplication and make better use of available resources in implementing the new catfish inspection program. OGC expended considerable resources in assisting DOJ in successfully defending FSIS in a lawsuit brought by several animal rights groups to require FSIS to conduct a full environmental analysis prior to issuing a grant of inspection to a commercial horse slaughter facility. The district court issued a favorable ruling and plaintiffs have now appealed to the U.S. Court of Appeals for the Tenth Circuit. OGC also defended FSIS in two lawsuits brought by consumer advocacy groups challenging FSIS' denial of rulemaking petitions to declare certain strains of *Salmonella* as an adulterant in raw products and to label eggs to disclose the conditions in which the chickens were raised.

INTERNATIONAL AFFAIRS, FOOD ASSISTANCE, AND FARM AND RURAL PROGRAMS

CCC, Farm Service Agency (FSA), and Domestic Commodity-Related Activities: OGC provided extensive technical assistance on the commodity and credit titles to Congressional staff and Administration officials during Congress' consideration of the Agricultural Act of 2014 (2014 Farm Bill) which was enacted on February 7, 2014. OGC provided extensive legal assistance in the development of regulations, notices, and other legal documents required

for the implementation of the commodity and credit titles of the 2014 Farm Bill, especially concerning commodity, livestock, and farm loan programs.

Foreign Agricultural Service (FAS): OGC assisted in development of the resolution of the World Trade Organization (WTO) Cotton dispute brought by Brazil and with presentation of the U.S. case at the WTO hearing in the beef dispute brought by Argentina. OGC provided extensive technical assistance on the trade title to Congressional staff and Administration officials during Congress' consideration of the 2014 Farm Bill which was enacted on February 7, 2014. OGC provided extensive legal assistance in the development of regulations, notices, and other legal documents required for the implementation of the trade titles of the 2014 Farm Bill.

Risk Management Agency (RMA) and the Federal Crop Insurance Corporation (FCIC): OGC provided extensive technical assistance on the crop insurance title to Congressional staff and Administration officials during Congress' consideration of the 2014 Farm Bill. OGC provided extensive legal assistance in the development of regulations, notices, and other legal documents required for the implementation of the crop insurance title of the 2014 Farm Bill, especially the supplemental coverage option and whole farm provisions.

Food, Nutrition and Consumer Services (FNCS): OGC provided extensive technical assistance on the nutrition title to Congressional staff and Administration officials during Congress' consideration of the 2014 Farm Bill. OGC provided extensive legal assistance in the development of regulations, notices, and other legal documents required for the implementation of the nutrition title of the 2014 Farm Bill, especially the Education and Training Pilot Program.

Rural Development (RD): OGC provided extensive technical assistance on the RDF and bioenergy titles to Congressional staff and Administration officials during Congress' consideration of the 2014 Farm Bill. OGC provided extensive legal assistance in the development of regulations, notices, and other legal documents required for the implementation of RD and bioenergy titles of the 2014 Farm Bill, especially the Rural Energy for America Program and the Rural Business Development Grants authorities. OGC worked with DOJ in the favorable resolution of two major cases involving the Rural Utility Service's broadband program: *G4S* and *UTOPIA*.

NATURAL RESOURCES AND ENVIRONMENT

Forest Service (FS): OGC advised the FS on compliance with Federal environmental and administrative laws governing management of the 193 million-acre National Forest System (NFS). OGC counsels the FS on legal issues arising under laws such as the Administrative Procedures Act (APA), the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Endangered Species Act (ESA). In addition, OGC provided support to State and Private Forestry, International Forestry, and a myriad of other conservation programs. In the past year, OGC provided legal services to the FS for a wide range of agency activities:

Planning: OGC provided legal research and informal advice on objections and administrative appeals of Forest Service land and resource management plans.

Litigation: OGC coordinated litigation strategy and assisted in the defense of cases involving emerging legal issues concerning roadless areas, energy exploration, fuels reduction, timber salvage, forest planning, and wilderness use. OGC assisted in the defense of regulations, policies, programmatic forest plans, and most commonly, resource management projects involving vegetation management, livestock grazing, and mining.

Forest Management Program: OGC helped to defend against a lawsuit seeking a nation-wide temporary restraining order aimed at preventing suspension of more than 1,100 timber sale and stewardship contracts resulting from the government shutdown in October 2013. OGC also provided advice and represented the agency in various administrative forums, including suspension and debarment proceedings, bid protests before the General Accounting Office (GAO), small business set-aside appeals, and export sourcing area proceedings. OGC assisted with drafting of regulations governing stewardship contracts and agreements.

Recreation: OGC provided advice to the FS on cost recovery, recreation fees, recreation residences, special use administration, travel management and numerous other issues arising from recreational use of NFS lands. OGC also assisted in the drafting of key notices, directives, and policies concerning NFS recreation programs, including: 1) a *Federal Register* notice and final directive governing four-season operations at ski areas on NFS lands under the Ski Area Recreational Opportunity Enhancement Act; 2) revisions to 36 CFR 212 regulations governing management of over-snow vehicle use; and 3) a *Federal Register* notice and proposed rule concerning water rights and ski area permits.

Lands, Energy, Wilderness and Treaty Rights: OGC is actively engaged in assisting the agency in resolving land adjustment issues by providing legal advice concerning disposal of real property (administrative sites and easements), land exchanges, and acquisition of rights of way and other real property interests. OGC provided significant legal assistance to the FS in its review of energy development projects involving hydroelectric licensing, wind energy, and electric transmission lines. OGC likewise provided substantial program assistance to the FS with regard to federal coal leasing and implementation of oil and gas leasing procedures. OGC also provided advice to the agency regarding historic structures in wilderness, and activities such as grazing and fire suppression in designated wilderness areas. OGC continued its legal assistance and litigation support concerning complex issues associated with American Indian treaty rights and religious freedom, and historic and archaeological resource protection, *e.g.*, tribal issues arising from the Snowbowl Ski Area development.

OGC provided assistance to the FS and other USDA offices in drafting legislation, reviewed a significant amount of pending legislation, reviewed and assisted in drafting legislative reports, and reviewed testimony for congressional hearings. OGC also provided legal advice to the FS regarding the Secure Rural Schools Act payments.

Natural Resources Conservation Service (NRCS): OGC provided support for natural resource conservation on private or non-Federal lands, including programs authorized by the Food Security Act of 1985. OGC assisted in the administration of numerous programs, including the Conservation Stewardship Program, the Environmental Quality Incentives Program, the Farm and Ranch Lands Protection Program, the Grassland Reserve Program, the Wetland Reserve Program, the Wildlife Habitat Incentives Program, and the Healthy Forest Reserve Program. In addition, OGC provided significant legal services related to implementation of the 2014 Farm Bill, including development of new programs such as the Agricultural Conservation Easement Program and the Regional Conservation Partnership Program. OGC also provided support to NRCS related to programs under the Soil Conservation and Domestic Allotment Act of 1936, the Watershed Protection and Flood Prevention Act and the Flood Control Act of 1944.

Examples of work in support of NRCS programs include: 1) preparing title opinions for conservation easement acquisitions related to NRCS conservation programs exceeding five million acres; 2) aggressively defending NRCS in litigation before the U.S. Court of Appeals for the Federal Circuit on a claim of breach of contract and uncompensated takings under the Conservation Security Program; 3) providing assistance to NRCS in addressing violation of deed terms on easements held in the name of the United States, under various NRCS easement programs, including successfully defending NRCS in litigation before the U.S. District Court for the District of Nebraska on a quiet title action on a Wetland Reserve Program easement; 4) expediting review and clearance of five interim rules implementing the 2014 Farm Bill; 5) providing training to NRCS on conservation easement title issues and review; 6) advising NRCS on easement acquisitions related to outstanding mineral rights, limitations on access, flowage easements and undefined, blanket rights of way; 7) advising NRCS on Emergency Watershed Program-Floodplain Easement projects selected to receive up to \$99 million in Hurricane Sandy relief funds; 8) defending NRCS before the United States Court of Appeals for the Sixth Circuit and the United States Court of Appeals for the Fourth Circuit against APA challenges to the NRCS activities under the technical assistance and wetland conservation compliance provisions; 9) assisting with modification requests for easements enrolled under the Wetland Reserve, Grassland Reserve, and Farm and Ranch Lands Protection Programs; and 10) advising NRCS on matters related to open government and information security, including compliance with the Freedom of Information Act and the Privacy Act.

Pollution Control: The OGC Pollution Control Team, in support of the Hazardous Materials Management Program, provided legal services for all USDA agency matters related to CERCLA and the Resource Conservation and Recovery Act (RCRA). OGC also advised and represented the Department and individual agencies regarding

compliance with pollution control standards and continued to provide advice on hazardous materials liability arising out of real property transactions.

Examples of OGC's accomplishments include: 1) finalizing and implementing an agreement with the Air Force whereby the Air Force remediated contamination it caused at the Duncan Canal Site on the Tongass National Forest in Alaska (total site costs are likely to exceed \$8 million); 2) successfully defending a lawsuit filed against the FS under RCRA seeking to ban the use of lead ammunition by hunters on NFS land; 3) assisting the CCC's efforts to address contaminated waste sites resulting from its prior use of the fumigant carbon tetrachloride at numerous former CCC grain storage facilities in the Midwest; and 4) advising the Department's Environmental Management Division with respect to an investigation by GAO of USDA's contaminated waste sites cleanup programs. OGC also negotiated CERCLA agreements with responsible parties that required them to undertake site work and/or reimburse USDA oversight costs at other contaminated waste sites, including the Former Blaine Naval Ammo Depot, Georgetown Railroad-Site, Holden Mine Site, Georgetown Canyon Site, Ruth/Morning Star Mine Site, and Magmont Mine and Mill Site.

Deepwater Horizon Oil Spill: OGC continued to advise and represent USDA in connection with the Deepwater Horizon oil spill, the largest offshore oil spill in U.S. history. OGC actively assisted the Department on a wide variety of Deepwater-related issues, including the development of the Treasury Department's regulations implementing the RESTORE Act. Despite opposition from other federal agencies, the final Treasury rule was highly favorable to USDA's longstanding goal of implementing hypoxia-reduction and other water quality restoration projects throughout the broader Gulf of Mexico ecosystem, rather than limiting eligible projects to a relatively small geographic area.

Real Property Matters: OGC worked closely with USDA agencies that manage real property assets on a variety of legal issues relating to land ownership transactions and stewardship responsibilities, including the FS, NRCS, and the Agricultural Research Service. OGC provided legal services regarding access and rights of way to public lands, title claims and disputes, treaty rights, land appraisal and survey, and other issues incident to the ownership and management of real property assets of the government.

GENERAL LAW AND RESEARCH

Appellate Litigation: The General Law and Research Division (GLRD), in coordination with attorneys from DOJ and other divisions within OGC, is responsible for presenting USDA's legal position in cases on appeal. During 2014, GLRD handled approximately 120 such appellate matters, including 44 new matters opened during this period.

GLRD's responsibilities include reviewing briefs and advising DOJ in cases affecting USDA programs before the United States Supreme Court, Federal circuit courts, and State appellate courts. In 2014, GLRD assisted DOJ prepare the brief filed on behalf of the United States, and prepare for oral argument, in *American Meat Institute v. USDA*, in which the Court of Appeals for the District of Columbia Circuit sitting *en banc* considered whether the AMS' regulation implementing country-of-origin labeling requirements for muscle cuts of meat violates the First Amendment. In *Nez Perce Tribe v. USFS*, GLRD is assisting DOJ before the Ninth Circuit mediator in a case that would consider whether the FS has the authority to close a segment of U.S. Highway 12 to certain mega-load shipments until the FS conducts a review of the impacts of such shipments on the highway corridor and consults with the Nez Perce Tribe. In addition, GLRD recently assisted DOJ with briefing and preparing for oral argument before the Tenth Circuit in *Front Range Equine Rescue v. Vilsack*, in which the court is considering whether NEPA applies to FSIS's decisions to grant inspections to slaughter facilities that meet the requirements of the Federal Meat Inspection Act. GLRD successfully recommended filing an amicus in the Eleventh Circuit in *Davis v. Producers Agric. Ins. Co.*, which involved a claim for indemnity under an FCIC reinsured crop insurance policy, and assisted DOJ in preparing the brief. The Eleventh Circuit accepted USDA's argument and reversed the district court's order. GLRD also is assisting DOJ in *Swanson v. Salazar*, in which the D.C. Circuit is considering, among other issues, whether the Owl Estimation Methodology that is used by the Fish and Wildlife Service, the FS, and Bureau of Land Management to estimate northern spotted owl take in certain ESA consultations is a substantive rule requiring notice and comment.

GLRD defends all USDA Judicial Officer decisions that enforce P&S Act, PACA, AWA, and HPA, and that are appealed to the federal courts of appeals. OGC attorneys brief and argue these cases before the Courts of Appeals. During 2014, GLRD handled three such cases, obtaining a favorable result on the merits in two; one case remains pending. In *Lanzie Horton v. USDA*, the Court of Appeals for the Sixth Circuit affirmed the Secretary's finding that Mr. Horton violated the AWA by buying and selling hundreds of dogs in interstate commerce without a license, and upheld the Secretary's imposition of a significant monetary penalty. In *Greenly v. U.S. Dep't of Agric.*, the Eighth Circuit upheld an order of the Secretary revoking an AWA license based on numerous violations of AWA regulations, including violations that put animals and the public in danger.

GLRD also is responsible for preparing USDA's official recommendations to DOJ on whether to appeal adverse decisions of various lower courts or to participate as amicus in Supreme Court or other appellate cases. In 2014, GLRD prepared 28 such recommendations.

Fiscal/Contract and Research: GLRD is responsible for handling issues that cut across the Department and its agencies; for example, GLRD advises the agencies and offices of the Department on legal issues and litigation relating to the Farm Bill, procurements, and fiscal law. GLRD assisted the Research, Education, and Economics (REE) mission area and Departmental Management in implementing section 7601 of the Farm Bill and to establish a new Foundation for Food and Agriculture Research (FFAR). GLRD, REE, and the Office of Budget and Program Analysis worked successfully to incorporate the FFAR and obtain an apportionment from OMB, resulting in the transfer of \$200 million to the FFAR. With its ability to leverage private funds, the FFAR will assist REE in increasing the depth and breadth of agricultural extramural research. GLRD assistance to REE also included guidance on classifying capacity and infrastructure programs and administering certain extension programs, and advising on the \$100 million Food Insecurity Nutrition Incentive program. GLRD provided technical assistance with language in Section 9002 of the Farm Bill regarding the inclusion of mature market products in the BioPreferred program, and advised Departmental Management on program administration.

In supporting Departmental and agency procurement actions, GLRD defended or assisted in numerous proceedings before the Civilian Board of Contract Appeals, the Court of Appeals for the Federal Circuit (CAFC), the Court of Federal Claims (COFC), District Courts, and GAO. For example, GLRD worked with DOJ in defending the FS in appeals filed at COFC after protests at the agency and the GAO. This defense protected the Virtual Incident Procurement system, which allows the FS to expedite its procurement of incident resources during national emergencies. GLRD provided guidance to the Office of the Chief Financial Officer to help improve its compliance with the Debt Collection Improvement Act. It also supported improved fiscal law compliance by the Department by drafting the course materials and examination questions for a new Department-wide appropriations law training course on AgLearn, and helping to revise and implement a new Departmental Regulation on interagency transactions.

GLRD assisted agencies in their program efforts as well. GLRD helped implement the Secretary's goal of increasing the efficiency of agency rulemaking through the revocation of the long-standing "Hardin Memorandum," providing additional regulatory options to all agencies. GLRD provided guidance supporting agency discussions with stakeholders and implementation of new guidance, averting potential litigation from interested parties. GLRD also assisted Departmental Management with its implementation of the new Pathways Program and adapting its internship and scholarship programs to comply with Pathways requirements. Support for the FS includes continuing advice on the administration of the NextGen airtanker contracts and support of the FS Large Airtanker Modernization Strategy. GLRD assisted the MRFSP Division with the Moscamed program related to eradicating fruit flies, culminating in a new international trilateral cooperative agreement among the United States, Guatemala, and Mexico.

GLRD also supported increased Departmental use of social media tools to disseminate information to the public. GLRD reviewed multiple terms of service for new social media tools, including Instagram, Thunderclap, and Yonder. This guidance included both legal and practical advice on issues that may arise when the agencies uses these tools in support of programs and activities of the Department.

FTCA/FOIA and eDiscovery: OGC also handles on behalf of the Department's agencies and offices the legal work and litigation that arises under the Federal Tort Claims Act (FTCA), the Freedom of Information Act (FOIA), the Privacy Act (PA) and the Federal Advisory Committee Act (FACA). Significant legal resources continue to be expended on the defense of the tort claims and suits that have been filed against the FS as a result of the June 2010 flash flood at the Albert Pike Recreation Area in Arkansas, in addition to other major claims and suits against the Department under the FTCA, valued at over a half-billion dollars.

OGC handled a large number of FOIA cases, some of which involved 89,000 pages of records or were complicated because they involved third party notice and rights to confidential business information under Exemption 4: *e.g.*, *Physicians Committee on Responsible Medicine v. USDA (AMS)*, further complicated by the unique structure of Dairy Programs, which is staffed with independent contractors that challenge the applicability of FOIA to their records.; and *Calderon v. USDA (FAS)*, further complicated by complex shipping arrangements within the Export Credit Guarantee (GSM) program; and *Argus Leader v. USDA (FNS)* dealing with records of numerous retailers containing confidential business information relative to SNAP.

OGC also spent significant time and effort coordinating and leading the review of a large number of documents responsive to a third party request for documents in the matter of *Sherrod v. Breitbart*. GLRD also continued providing legal oversight in the development of the Department's cybersecurity, defensive counterintelligence, and insider threat detection initiatives, in order to ensure consistency with the intelligence community's standards. In addition, OGC provided input and guidance on FOIA improvement legislation.

Intellectual Property Practice: OGC provided legal services in patent, trademark, and copyright law for a variety of programs throughout the Department. These services included: advice in the transfer of Departmental technologies to the private sector, namely, advice in the patenting and licensing of Departmental inventions; advice in other programs and transactions, *e.g.*, procurement contracts, research agreements, assistance agreements, *etc.*; and, advice in the protection of Department insignia, symbols, and characters. OGC also provided advice and assistance to DOJ in intellectual property litigation. Noteworthy litigation included: *Online Tools v. Vilsack* (a successful defense of *ChooseMyPlate*, the Department's new nutrition program symbol, against a charge of trademark infringement) and *Delano Farms Company v. California Table Grape Comm'n* (plaintiffs seeking invalidation of two Departmental plant patents).

CIVIL RIGHTS, LABOR AND EMPLOYMENT LAW

OGC represents the USDA's interests in issues involving civil rights and employment, human resources, labor relations, and employee relationship, including litigation and policy work. OGC defends USDA in individual cases and class actions filed pursuant to equal employment opportunity laws, the Equal Credit Opportunity Act, and other Federal statutory and regulatory authorizes. OGC defends the Secretary's interests before the U.S. EEOC, the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority, the U.S. Office of Special Counsel, in Federal district and appellate courts, and before numerous administrative tribunals referenced earlier. The Civil Rights, Labor and Employment Law Division (CRLELD) performs the litigation work and policy work in these subject areas, subject to certain criteria.

CRLELD Litigation Section: CRLELD's Litigation Section defends USDA in individual cases and class actions filed pursuant to equal employment opportunity laws, the Equal Credit Opportunity Act, and other federal statutory and regulatory authorities. CRLELD was responsible for handling over 180 complaints of employment and program discrimination, and complaints related to labor and employee relations, in various forums across the country, including successfully absorbing cases filed by RD employees and applicants, which resulted in an increase of 64 cases into the Division. CRLELD also represented the Secretary's interests in resolutions of Office of Special Counsel complaints filed by employees and former employees alleging whistleblower allegations. The Litigation Section also participated in a Treasury offset hearing related to salary overpayments to an employee on foreign travel. The Litigation Section was also responsible for promoting a national practice of civil rights litigation throughout the Department to ensure consistency and best practices. A summary of some of the major work of the Litigation Section is summarized below.

Employment Discrimination Class Actions: The Litigation Section successfully concluded the defense of the long-standing pending employment discrimination class action of *Joseph Sedillo, et al. v. Vilsack* (allegation that FS discriminated employees nation-wide on the basis of Hispanic national origin in selections, promotions, and the existence of a hostile work environment). The *Sedillo* administrative class action had been pending a decision for twelve (12) years, after provisional certification by the EEOC in 2002. Ruling on the Agency's motion for decertification and the class agents' opposition, the EEOC found that the class agents failed to establish the class certification prerequisite of commonality with regard to claims of discrimination in selections, promotions and the existence of a hostile work environment. In the *Sedillo* case, the EEOC found that, despite extensive discovery on the merits, the class agents were unable to identify a specific employment practice that tied together all of the class members' complaints, the EEOC found that the class failed to meet the prerequisites to proceed forward as an administrative class complaint.

The Litigation Section successfully sought the dismissal of the nation-wide employment discrimination class action of *Al Gibbons, et al. v. Vilsack* (allegations that class agent and other Christian employees were discriminated against based on their religion because USDA's policies and actions are "contra to congressionally passed laws establishing Christmas, Thanksgiving and Martin Luther King Day"). After an EEOC Administrative Judge dismissed the purported class complaint for failure to establish the prerequisites for moving forward, the lead class agent appealed to the EEOC's Office of Federal Operations. This appellate body affirmed the dismissal of this class action.

The Litigation Section is representing USDA in a formal class complaint filed by a group of USDA employees alleging that the Agency discriminated against deaf and hard of hearing employees Department-wide based on physical disability when on May 19, 2014, the sign language interpreting services for deaf and hard of hearing in USDA's National Capital Region were decentralized. CRLELD appropriately analyzed the complaint and anticipates responding to the EEOC's schedule for briefing the issue of certification when it is received.

Program Discrimination Individual Federal District Court Cases: The Litigation Section continued to coordinate the defense of USDA with DOJ in numerous program individual cases brought by plaintiffs who allege discrimination in the delivery of USDA direct loan and other programs. The Litigation Section assisted DOJ in the successful dismissal of several such long-standing cases, for example -- *Eddie Wise v. Vilsack* and *Roosevelt Guy v. Vilsack*.

Program Discrimination Group and Class Action Cases: OGC worked daily on implementation issues involved in two former class action complaints and two group complaints of program discrimination:

1. *Garcia, et al. v. Vilsack, and Love, et al. v. Vilsack* - Cases alleged discrimination by FSA against Hispanic and Women farmers and ranchers in loan making and loan servicing, respectively. The U.S. Supreme Court denied the petitions for writ of certiorari challenging the D.C. Circuit Court of Appeals and the District Court decisions regarding the denial of class certification. USDA established a voluntary non-judicial adjudicative claims process to address the decades old allegations of discrimination against women and Hispanics as an alternative for individual plaintiffs to litigate their cases in Federal court. Over 50,000 claims were filed by individuals participating in the non-judicial process. OGC provided continual updates on the progress of adjudications to senior leadership and DOJ. The Litigation Section also monitored over 7,000 claims that raised concerns about suspicious activity and was the primary legal contact for all questions raised by the Claims Administrator. The Litigation Section continues to monitor all aspects of this voluntary claims process, including responses to Congressional and other stakeholder inquiries;

2. *Keepseagle et al. v. Vilsack* - In November 1999, Native American farmers and ranchers filed a class action suit alleging discriminatory treatment in USDA loan programs and a systematic failure to investigate civil rights complaints. In *Keepseagle*, the district court certified the case as a class action for injunctive relief purposes. After many years of litigation, plaintiffs and the United States achieved a comprehensive and historic settlement which the court approved on April 28, 2011. All payments have been made and all debt relief provided to prevailing class members. OGC assisted in the establishment of the new Office of the Ombudsperson that was required by the *Keepseagle* settlement agreement. The Litigation Section also participated directly in negotiations with Class Counsel and DOJ to create a 501(c) (3) trust that would select beneficiaries and disburse remaining settlement funds

over a period of no more than 20 years. OGC continues to monitor the implementation of the settlement agreement, including difficult decisions concerning the funds remaining after distribution to successful claimants, delivery of programmatic relief, and responses to Congressional and other stakeholder inquiries;

3. *Pigford I* – OGC is completing implementation of the April 14, 1999, consent decree in *Pigford/Brewington, et al.*, the class action filed on behalf of African American farmers alleging race discrimination in farm loan and benefits programs. The Litigation Section continues to handle numerous Pigford cases involving disputed debt relief, defensive litigation from a prevailing Track A claimant to proceed under Track B, finalizing a wind down stipulation, and coordinating with the Claims Administrator on transferring records to permanent archives. To date, the Government paid \$1,016,328,416 to prevailing Track A claimants, including \$44,598,941 in debt relief and related expenses. In addition, it paid \$34,739,783 for 162 Track B claims that were adjudicated or settled; and

4. *Pigford II* - The settlement agreement in *In Re Black Farmers Litigation (Pigford II)*, a consolidation of lawsuits with approximately 35,000 plaintiffs, was approved by the court on October 27, 2011. The lawsuits were in response to the 2008 Farm Bill which authorizes individuals who were not allowed to file claims under the *Pigford* Consent Decree because of untimeliness and have not had decisions on the merits to seek relief in Federal court. All prevailing claimants were paid, and OGC ensured that funds dedicated to payments, the Ombudsperson, and administration are transferred timely. The Litigation Section continues to address issues involving the disposition of remaining settlement funds, probate and tax issues involving prevailing claimants, and inquiries from Congressional stakeholders and claimants concerning the completed claims process.

CRLELD Policy Section: The Civil Rights, Labor and Employment Law Policy Section (Policy Section) is responsible for providing advice and counsel prior to the request for a hearing in employment matters before EEOC. The Policy Section provides legal sufficiency reviews of Final Agency Decisions (FAD) issued by the Assistant Secretary for Civil Rights in program civil rights complaints, including decisions rendered in the farm and housing loan programs under the Equal Credit Opportunity Act (ECOA). The Policy Section also prepares formal legal opinions on a wide variety of civil rights matters and has the primary responsibility for working with the Office of Adjudication (OA) to ensure compliance with Title VI of the Civil Rights Act and related statutes covering federally assisted programs. The Policy Section also functions as a proactive civil rights office providing training on a variety of civil rights and employment issues, suggesting changes to agency practices in order to reduce discrimination complaint activity, developing action plans in response to compliance reviews, and anticipating areas in which civil rights issues may arise.

Strengthening Service Initiative: The Policy Section served as a key member of two Department-wide efforts as part of the Strengthening Service Initiative, and worked as a member of the Marketplace Initiative Planning Team for providing EEO counseling, ADR services, and reasonable accommodations. The Policy Section also served as a major contributor to the Department-wide team setting standards for employee training on civil rights and related topics, designing the committee's charter and helped generate minimum requirements for training content that will ensure the development of all USDA employees, managers, and supervisors.

Changes to Delegations: The Policy Section worked to change the Secretary's delegations of authority for settlements of EEO cases involving political appointees or cases exceeding \$200,000 or more.

Training: The Policy Section provided more than 50 training sessions for over 3,000 USDA employees during the fiscal year and across all agencies and staff offices. The training sessions provided valuable information on a wide variety of EEO and civil rights topics that help the Department foster the highest standards in meeting its mission. In particular, the Policy Section, partnering with the Litigation Section, provided highly successful training to all RD State Directors that has resulted in improved morale and assisted them in improving the management of the State offices.

Program Civil Rights Complaints: The Policy Section served as a partner with OASCR and FSA in addressing concerns about certain program civil rights complaints raised by the NAACP Washington Office Director. OGC, OASCR, and FSA held individual meetings with each complainant to discuss potential settlement of their complaints or programmatic relief that FSA may provide to those with outstanding debt. The meetings and attention

provided to the complainants satisfied the concerns raised by the NAACP and congressional aides who were also monitoring the same cases.

Guidance for RD's Construction Programs: The Policy Section worked with the Access Board, HUD, and DOJ to develop specific accessibility guidance for all of RD's construction programs. Recognizing the complicated laws surrounding construction of single family housing, multi-family housing, and non-housing community facilities, the Policy Section made certain that this guidance will help the field offices in all 50 states ensure that all new construction meets the appropriate and applicable legal standards for physical accessibility.

Development of OASCR Collective Bargaining Agreement: The Policy Section directed the development of the OASCR Collective Bargaining Agreement after the certified Union remained dormant for over 10 years, and worked with OASCR to identify the appropriate BUS codes for its entire staff, and responded to several ULPs filed by the new Union against OASCR's planned office realignment and physical moves. The Policy Section provided guidance and review for more than 30 disciplinary and performance actions, more than 40 settlement agreements, and more than 25 new and revised regulations and policy documents.

REGIONAL OFFICES

Attorneys in OGC's field offices play a critical role in the Department, advising the USDA agencies and officials charged with implementing programs at the regional, state and local levels. Attorneys in all of the Regional Offices handled a wide variety of matters critical to the Department's programs and goals, including:

Civil Rights, Employment Law, and Contract Law: OGC's field offices successfully defended USDA agencies in employment and program-related discrimination litigations before the EEOC, Merit System Protection Board, and the United States District Courts within their respective regions. OGC attorneys also provided USDA agencies with training, legal advice, case assessments, and settlement recommendations designed to minimize the risk of liability in employment-related matters.

SNAP Integrity: OGC field offices have been actively involved in ensuring SNAP program integrity by assisting in the agency's debarment of store owners who have engaged in illegally trafficking program benefits.

RD: OGC provided legal advice and litigation support to all RD offices, including assisting with loans worth hundreds of millions of dollars (including making, servicing, restructuring, and collecting loans, and, where necessary, foreclosing on collateral), grants, and tribal issues.

NRCS: OGC continues to see a large number of requests from NRCS for review of easement acquisitions under the Wetlands Reserve Program, Grassland Reserve Program, and Farm and Ranch Lands Protection Program. Many of these acquisitions involved parcels where the value exceeded \$1 million or involved significant conservation projects. NRCS is transitioning to more monitoring that will result in additional enforcement actions requiring OGC legal review.

In addition, the varied resources and needs of the clients in each of OGC's field regions require OGC to provide a host of legal services to its client agencies and officers, specific to each region of the country.

Eastern Region

OGC's Eastern Region provides legal support and advice to USDA agencies in 29 eastern States along with the U.S. Territories of Puerto Rico and the U.S. Virgin Islands.

FSA: OGC Eastern Region provided legal advice to FSA with loan issues and bankruptcies in hundreds of matters during the past year. OGC helped FSA provide millions of dollars in loans to family farmers and small farming operations, and also assisted DOJ in defending FSA in cases brought challenging its implementation of program funds.

FNS: OGC Eastern Region assisted DOJ in defending 73% of all of the challenged FNS disqualification decisions. OGC's assistance in these cases helped uphold the integrity of the Supplemental Nutrition Assistance Program.

FS: OGC assisted the FS in upholding its forest plans in numerous litigation matters. For example, in *Pennsylvania Oil and Gas Association (PIOGA) v. USFS*, *Ouachita Watch League, et al. v. Judith Henry, et al.*, *Ozark Society v. USFS, et al.*, OGC assisted the FS in defense of alleged violations of NEPA, NFMA and APA claims relating to oil and gas operations on the National Forests. In *Louisiana Sportsmen Alliance LLC v. Vilsack, et al.*, OGC assisted with the defense of FS in its decision regarding hunting on the National Forest.

Contract Litigation: OGC Eastern Region has seen an increase in requests for representation of the FS in contract claims. In these cases, the OGC attorney is the litigator for the Department. For example, OGC represented the FS in *Chloeta Fire LLC*, a matter involving a contract between the Ozark NF and an entity in Oklahoma City pursuant to a Master Contract between the Ozark NF and the Choctaw Nation of Oklahoma; and *Mountain Air, LLC*, in which the OGC attorney represented the FS in a claim relating to a FS Contracting Officer decision concluding that the proper filing of the taxes is the responsibility of the business owner and that the FS should not pay a late filed (by several years) item in a contract agreement.

NRCS: During 2014, OGC Eastern Region assisted NRCS in acquiring over 300 easements within the OGC Eastern Region. This assistance helped NRCS in its mission to help reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce damages caused by floods and other natural disasters.

RD: OGC Eastern Region assisted RD with the origination, servicing, restructuring and collection of its direct loans and in handling a large volume of related litigation, such as bankruptcies and foreclosures that arose out such a large loan portfolio. OGC also provided assistance for RD's guaranteed loan and grant programs. The Eastern Region handled almost 2,500 matters for RD during FY 2014.

Employment/Program Discrimination Defense: OGC Eastern Region attorneys successfully defended USDA agencies in employment and program-related discrimination litigation before the EEOC, and assisted the U.S. Attorney's Offices in defending such cases in the United States District Courts.

Central Region

The Central Region of OGC provides legal advice and services to all USDA agencies in a 13 State region: Arkansas, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, Oklahoma, Tennessee, and Texas.

RD: The thirteen states that comprise the Central Region are located in America's heartland and are home to vast areas of rural populations. With this in mind, the Central Region and RD mission area agencies provided significant assistance to individuals and communities with direct and guaranteed loans and grants. Within the Central Region, there are almost 120,000 outstanding direct housing loans totaling \$8 billion and almost 10,000 outstanding community program direct loans totaling \$5.2 billion. During 2014, OGC provided legal assistance to prevent the dissolution of a sewer district which if dissolved could have unraveled many such transactions that used municipal bond financing as a form of security for RD loans. All of the RD programs provide a steady amount of legal work related to foreclosures and bankruptcies, but 2014 brought some new twists as a result of some State law changes which impact lending programs, such as changes to the Uniform Commercial Code, sex offender laws, and Uniform Relocation Act implications. Other examples of the legal work include: assisting the Rural Utilities Service in making a water loan that was complicated by the presence of an insect that was protected by the Endangered Species Act; successfully defending RHS against the demands from a guaranteed lender when the lender failed to close the loan without first obtaining a conditional commitment; and assisting RHS in recovering and collecting funds from delinquent debtors through the Treasury Offset Program based on tax returns.

FSA and related CCC Programs: The Central Region is home to millions of acres of the richest production agriculture and farms that feed the world. There are over 900,000 farms and \$3.3 billion in outstanding FSA loans in the Central Region, requiring significant legal resources for the loan and commodity programs. In an on-going and high-profile case, OGC provided legal advice to assist in defending an environmental challenge to a FSA

guaranteed loan made to a concentrated animal feeding operation in Arkansas. The plaintiffs alleged that a large hog farm will adversely impact the Buffalo River Valley and the Buffalo National River. The Central Region also provides representation to FSA for the operations related to the United States Warehouse Act, and its Federal license and examination programs. During 2014, one warehouse lost its license and was closed by FSA, and as a result USDA became involved in an interpleader action filed by a national grain broker. In another case, the licensee did not have sufficient grain in-store to cover receipted grain, and OGC provided extensive legal advice to assist in protecting the integrity of the program, to facilitate the wind-down of the operation and to protect grain depositors who were competing with other creditors for grain proceeds. Other examples include: working with FSA to resolve legal issues involving facility leases and the wide-variety of issues related to those transactions; OGC defended the Agency in many bankruptcy proceedings and adversary proceedings such as one case where the Trustee challenged the validity and priority of the Agency's \$900,000 in liens, and another on-going case where the Trustee is alleging that USDA's fixture filing is inadequate.

Food and Nutrition Service: In addition to large rural areas, the Central Region is also home to several large urban areas; Chicago, St. Louis, Minneapolis/St. Paul, Dallas, Houston, New Orleans, Kansas City, Indianapolis, and Nashville. These areas bring in a large amount of legal work related to the Food and Nutrition Service and its Supplemental Nutrition Assistance Program. In 2014, the Central Region successfully defended several suits brought by store owners challenging the sanctions established by the Agency to permanently disqualify the store, deny authorization, suspend the store for a period or levy a fine against the store owners. OGC's assistance to defend challenges to the SNAP program and the sanctions levied is essential to the integrity of the program and the public's trust that the program is being carried out with sufficient integrity, oversight and accountability.

RMA and FCIC: OGC provided legal assistance to RMA and its various components that operate in the Central Region. Home to a large volume of production agriculture farms, the Central Region provides legal assistance to all components of the RMA. During 2014, OGC concluded the litigation to collect approximately \$12 million from the American Growers Crop Insurance Corporation. This litigation involved an insolvent insurance company that went into liquidation leaving RMA and FCIC to wind down the business affairs of the operation and defend against other challengers to the remaining assets of the corporation. In another case, the Central Region provided legal advice, support and assisted in negotiations related to Compliance Findings that found an insurance company failed to carry out its compliance responsibilities under the SRA and resulted in potential losses to the government of over \$40 million. 2014 also brought in several new and novel cases brought by producers challenging RMA findings that they failed to utilize Good Farming Practices.

FS: OGC's Central Region assisted the FS with a wide variety of matters including land exchanges and acquisitions, closure orders, law enforcement issues, timber sale contract disputes, access issues, hunting and recreation issues, title claims and fire cost recovery actions. In the "Ferguson Fire" case OGC and the FS are working to recover damages regarding a fire that did \$14 million in damages to the United States and destroyed 10 houses. The Central Region provided legal assistance to the FS and DOJ in resolving a long-standing boundary dispute which culminated in a criminal prosecution for timber theft. The Central Region also reviewed proposed legislation involving the Sabine National Forest Land Exchange Act to exchange National Forest Land in Texas.

NRCS: NRCS continues to acquire more easements and land, and accordingly needs legal advice during acquisition but also in its new role as a land management agency to ensure that its land holdings are preserved. NRCS has acquired over 8,225 easements covering more than 1.6 million acres within the OGC Central Region. In one case, OGC successfully defended a claim by an easement grantor who claimed a right to construct a levee on the easement in spite of language expressly forbidding it. The challenge to the language had the potential to severely undermine the entire easement program and its objectives. OGC assisted NRCS in addressing issues arising out of the presence of active and abandoned railroad rights-of-way on land that NRCS was considering acquiring, and assisted NRCS with the legal issues arising out of a proposed pipeline over an easement where the reserved rights had been acquired by the U.S. Fish & Wildlife Service.

Contract Litigation: The Central Region provides advice to all USDA agencies involved in contracting, including FSA for both international and domestic feeding programs, as well as the FS and NRCS. The Central Region is assisting NRCS and its Contracting Officers defend several contractor claims involving coastal restoration and reconstruction initiatives by NRCS undertaken after the hurricanes that hit the Gulf Coast over the last decade. In *Omni Pinnacle v. NRCS, et al.*, (Civilian Board of Contract Appeals) OGC successfully defended a \$4 million contract dispute claim brought by a contractor for channel excavation work. Two other cases are set for trial in 2015. OGC also assisted NRCS contracting officers in responding to contractor claims regarding two different contracts at Fort Hood and is currently working with NRCS to defend a \$750,000 contractor claim before the Civilian Board of Contract Appeals. For the FS, OGC successfully defended the FS against a contractor claim arising out of a timber sale contract.

Employment and Discrimination Cases: The Central Region also defended USDA in actions brought by employees alleging various types of workplace discrimination. The Central Region successfully defended the actions brought against the agency. For example, Summary Judgment was granted in *Johnson, v. Vilsack, et al.*, an individual who also sued several employees in their individual capacities. In *Culpepper, v. Vilsack*, a reprisal and disability discrimination case, OGC won a summary judgment motion against a frequent filer. In *Allen, v. Vilsack*, OGC secured a dismissal in a sex discrimination, retaliation and harassment case. In *Smith, v. Vilsack*, OGC secured a dismissal in a disability, race, age and reprisal discrimination case.

Mountain Region

OGC's Mountain Region provided legal support and advice to USDA agencies in 12 states in the Rocky Mountain and western area of the country.

NEPA, NFMA, and ESA: OGC handled a wide range of legal issues arising under the NEPA, NFMA and ESA. OGC provided extensive advice to the FS on NEPA and NFMA compliance issues, including forest health projects under the Healthy Forests Restoration Act and the protection of endangered and threatened species such as the Canada lynx, bighorn sheep, sage grouse, cutthroat trout, and San Francisco Peaks groundsel. Examples of active litigation include *Biodiversity Conservation Alliance v. Jiron* (10th Cir.) (Tenth Circuit upheld an innovative FS plan to limit the spread of mountain pine beetles on Black Hills NF); *Alliance for the Wild Rockies v. Weber* (D. Mont.) (challenge to timber thinning project on the Flathead NF); *Alliance for the Wild Rockies v. Ashe* (D. Mont.) (challenge to timber sale and prescribed burn based on alleged impact on grizzly habitat); *Alliance for the Wild Rockies v. Bradford* (D. Mont.) (challenge to road reconstruction based on alleged impact on grizzly habitat); and *San Diego Cattlemen's Coop. Assoc. v. USFS* (livestock grazers' challenge to FS measures to protect habitat of endangered New Mexico meadow jumping mouse).

Water Rights: OGC represented the FS in water rights issues at the regional and national levels. OGC is also actively involved in helping the FS establish and protect water rights in state administrative proceedings in Colorado, Nevada, Arizona, Montana, and Utah. For example, in Arizona, we are prosecuting a precedential in stream flow application before the Arizona Department of Water Resources (Cherry Creek, on Tonto NF). Also in Arizona, we are advising the FS on groundwater issues relating to the Rosemont Mine, a proposed open-pit copper mine on the Coronado NF.

Mining and Energy Development: OGC advised the FS regarding controversial oil and gas development projects in Colorado, Utah and Wyoming; coal development in Colorado, Wyoming, and Utah; and mines and proposed mining projects throughout the region, including proposed copper and uranium mines in Arizona, phosphate and cobalt mines in Utah, a proposed molybdenum mine in Colorado, and proposed silver mines in Montana. We are defending the FS in active litigation including *Idaho Conservation League, et al. v. USFS* (D. Idaho) (challenge to FS authorization of mineral exploration project on the Payette and Boise NF) and *High Country Conservation Advocates v. USFS* (D. Colo.) (challenge to coal leasing in western Colorado). In *U.S. v. Armstrong* (D. N.M.), a mineral trespass case, we successfully recovered \$2.25 million from mining companies that illegally removed and sold pumice on the Santa Fe NF.

Grazing: OGC continued to provide extensive advice and litigation support to the FS regarding its ongoing efforts to reconcile grazing rights with its obligations to protect endangered bighorn sheep, which are susceptible to disease spread by domestic sheep. A recent success was *Idaho Wool Growers Assn. v. Vilsack* (D. Idaho) (court held that FS adequately considered effect of domestic sheep grazing on bighorn sheep).

Fire: The four FS regions served by the Mountain Region of OGC have active wild-land fire programs, which led to a large number of claims for collection of fire suppression costs and damages. Numerous costs collection suits are pending, and OGC routinely assisted the FS with administrative cost collection efforts.

Contract Issues: OGC represented USDA agencies in a number of CBCA cases in the Mountain Region, often involving FS stewardship, timber, and construction contracts.

Land Issues: OGC is defending the FS in quiet title litigation filed by the State of North Dakota and several counties in that State which seek to block FS travel management initiatives in the Little Missouri National Grassland by asserting public rights of way over all section lines in the Grassland. This case could significantly affect Federal land management in all states with section line laws. OGC has also provided extensive advice and litigation support to the FS in a number of other lawsuits raising quiet title and RS 2477 road claims, including a dispute concerning public access to an area on the Gallatin NF in Montana that was featured in Robert Redford's movie "The Horse Whisperer", and has assisted the FS with major land acquisition projects including the Montana Legacy Project (in FY14, 26,705 new acres acquired from the Nature Conservancy).

Law Enforcement Issues: OGC helped FS law enforcement develop evidence that "exploding targets" cause forest fires, leading to bans on the use of such devices on national forests in several fire-prone western states.

Hazardous Materials Cleanup and Cost Recovery: OGC provided extensive advice relating to hazardous materials cleanup on national forest system lands, as well as litigation support in numerous pending CERCLA cases. In FY14, we had a major victory in *Tronox, Inc. v. Kerr-McGee* (Bankr. S.D. NY) (bankruptcy court determined that Kerr-McGee's corporate reorganization, which separated billions of dollars in environmental cleanup liability from billions of dollars in assets, constituted a fraudulent conveyance).

FSA and RD: OGC provided legal advice to FSA and RD with respect to hundreds of loan and grant transactions in the Mountain Region during the past year.

Pacific Region

OGC's Pacific Region provided legal support and advice to USDA agencies and officials in 7 western states as well as American Samoa, Guam, Palau, the Federated States of Micronesia, and the Marshall Islands.

Affirmative Fire Claims: OGC actively pursued cost-recovery actions against parties responsible for negligently starting fires on National Forest System (NFS) lands in the Pacific Region. OGC has represented the FS in affirmative fire cases in California that have resulted in the recovery of more than \$470 million (in cash and the value of real property conveyed to the United States). Of this amount, the FS has received about \$300 million to help restore the NFS lands burned in the fires, make the lands more resilient to climate change, and enhance water resources.

Alaska Subsistence Program: OGC advised the Federal Subsistence Board and USDA officials on controversial issues regarding subsistence resources for rural residents of Alaska. This work included helping the Department respond to legislation that would alter the management of national forests in Alaska, such as lowering fees for remote cabins used for subsistence hunting and fishing. OGC continued to provide assistance to DOJ in litigation affecting the Federal Subsistence Program, resulting in the U.S. Supreme Court leaving in place the Ninth Circuit's affirmation of the Program's jurisdictional reach into the navigable waters within the boundaries of Alaska's national forests.

Climate Change: OGC worked with the FS to address climate change considerations in NEPA analyses and the evolving role of carbon accounting with respect to FS facilities, procurements, and land management projects.

Contract Litigation: OGC successfully defended USDA agencies in contract-related litigation before the Civilian Board of Contract Appeals.

Crop Insurance: OGC provides advice and litigation representation to RMA and the FCIC. In the last year, OGC obtained a favorable district court ruling which, if upheld on appeal, will result in more than \$5 million in savings of taxpayer funds.

Employment Law: OGC plays an important role in providing employment advice to USDA client agencies and in representing USDA agencies in employment-related cases before the EEOC, the MSPB, and the federal courts. In Fiscal Year 2014, an administrative judge from the EEOC decertified a class action complaint that had been filed against the FS.

Farm Loan Programs: OGC provided advice to FSA regarding various projects and loans. It helped FSA make millions of dollars in loans to family farmers and small farming operations. Pacific Region attorneys helped FSA recover debt in bankruptcy cases and other litigation matters, and provided advice to the agency regarding its conservation programs and foreclosure actions.

Grazing: OGC devoted significant resources to advising the FS, and defending litigation regarding, livestock grazing permits on national forest system lands.

Law Enforcement Assistance: OGC reviewed orders issued under 36 CFR 261.50 to ensure that they met legal requirements and provided advice to FS law enforcement personnel with respect to ongoing criminal investigations. OGC defended challenges to FS law enforcement authority, including *Bivens* claims against individual law enforcement officers.

Legislation and Congressional Relations: OGC provided legal services to the FS and the Department on Alaska-specific legislation and congressional relations. For example, Senate Bill 340 would transfer 70,000 acres within the Tongass National Forest to Sealaska Corporation, an Alaska Native corporation, for logging, to finalize Sealaska's entitlement under the Alaska Native Claims Settlement Act. OGC continued to review and offer opinions on the effect of particular sections in the legislation to help ensure that the meaning of the bill comported with the Administration's policies, and worked extensively on the Department's responses to congressional questions.

Mining and Minerals: OGC helped the FS address challenging and controversial issues regarding mining on NFS lands, including defense of environmental challenges to FS decisions to allow proposed mining activities. OGC also advised the FS with respect to unauthorized mining activities and unauthorized occupancies and worked with DOJ in prosecution of civil and criminal enforcement actions relating to those situations. OGC's work in this area included helping the United States obtain a favorable decision in *United States v. Backlund*—a case in which the 9th Circuit adopted a deferential standard of review for FS determinations as to whether a miner's occupancy on public lands is reasonably incident to mining activities.

Native American Issues: A number of the national forests in the Pacific Region are renewing or entering into agreements with Native American tribes. OGC reviewed and provided advice to the FS with respect to these agreements.

Natural Resources Litigation: OGC provided invaluable assistance to DOJ in natural resources litigation, including lawsuits challenging protections for roadless areas and proposals for timber sales in roaded areas of the Tongass National Forest. OGC continued to handle a large number of lawsuits challenging the FS's tree thinning projects, fuels reduction projects, and other vegetation management projects; grazing program; and travel management plans.

Pre-Decisional Environmental and Natural Resources Advice: OGC provided pre-decisional advice to the FS on many significant environmental and natural resources matters to reduce the vulnerability of agency decisions in

litigation. This included advice in support of the Administration's strategy to help communities shift from relying on old-growth timber resources of the Tongass National Forest to a more diversified economy. OGC also provided advice on land and resource management plans, salvage and green timber sales, fuels and hazard reduction projects, and grazing allotments. OGC developed a "Law for Resource Managers" course. More than 30 FS employees attended this one-week course, which was offered for the first time in November 2013. The course enhanced the technical expertise of the participants and the ability of the FS to achieve its mission of caring for the land. For the fourth time, OGC presented its "Forestry for Lawyers" course, which was offered to OGC and DOJ attorneys from around the country.

Renewable and Alternative Sources of Energy: OGC helped the FS respond to a large number of proposals for hydropower and other alternative energy projects. In Alaska, for example, there are more than 30 proposed hydroelectric projects on NFS lands, most of which are in roadless areas and pose potential conflicts with USDA roadless policies. OGC also advised USDA agencies on wind, solar, and biomass renewable energy projects.

OFFICE OF THE GENERAL COUNSEL

Summary of Budget and Performance
Statement of Agency Goals and Objectives

By General Order of June 17, 1905, the Secretary of Agriculture established the position of Solicitor, thereby consolidating the legal activities of the Department. In 1956, Congress established the position of General Counsel of the Department of Agriculture as a Presidential appointee confirmed by the Senate (70 Stat. 742) (7 U.S.C. 2214). The Office of the General Counsel (OGC) provides legal services and legal oversight required by the Secretary of Agriculture and USDA to achieve the Department’s mission and deliver programs and services to the American people. OGC serves as the law office of USDA and provides legal services to officials at all levels of USDA, as well as members of Congress concerning the programs and activities carried out by USDA.

USDA Strategic Goal: Create a USDA for the 21st century That is High-Performing, Efficient and Adaptable.

USDA Strategic Objectives: Develop a customer-center, inclusive and high-performing workforce by investing in and engaging employees to improve service delivery. (Objective 5.1)

Agency Strategic Goals	Agency Objectives	Programs that Contribute	Key Outcome
<p>To provide effective legal services in support of all programs and activities of USDA, consistent with the strategic goals of USDA and the priorities of the Secretary of Agriculture.</p>	<p>Conduct litigation before courts and administrative forums, and provide litigation support services to the Department of Justice in connection with litigation arising out of USDA programs and activities.</p> <p>Provide advice and counsel to USDA officials concerning legal issues arising out of USDA programs and activities.</p> <p>Review all draft regulations submitted by USDA agencies, and provide advice to USDA officials as to the legal-sufficiency of the draft regulations.</p> <p>Prepare and review for legal sufficiency legal documents, memoranda, and correspondence.</p> <p>Draft legislation, and review proposed legislation, reports, and testimony for legal sufficiency in connection with proposal to establish or amend USDA programs and activities.</p>	<p>Legal Services Program</p>	<p>Provide effective legal services in a timely and responsive manner to support USDA activities, consistent with the priorities established by the Secretary of Agriculture.</p>

Summary of Budget and Performance
Key Performance Outcomes and Measures

Agency Strategic Goal: To provide effective legal services in support of programs and activities of USDA, consistent with the strategic goals of USDA and the priorities of the Secretary of Agriculture.

Key Performance Measures:

Performance Measure	2010 Actual	2011 Actual	2012 Actual	2013 Actual	2014 Actual	2015 Target	2016 Target
Litigation before administrative forums, including Equal Employment Opportunity Commission, Merit Systems Protection Board, USDA's Administrative Law Judge's and Judicial Officer, and other administrative bodies, conducted in an effective and timely manner.	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner
Provision of assistance to Department of Justice and U.S. Attorneys in connection with litigation in Federal courts as assigned accomplished in an effective and timely manner.	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner
Legal advice and counsel to USDA officials and agencies provided timely and in an effective manner.	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner
Dollars (in thousands)	\$43,393	\$41,387	\$39,259	\$40,826	\$41,202	\$44,383	\$48,075

Selected Past Accomplishments toward Achievement of the Key Outcome:

- OGC drafted or reviewed 172 orders in PACA reparation cases that resulted in awards of over \$3.5 million
- OGC filed 62 administrative complaints to enforce the requirements of the P&S Act. These complaints generally seek the imposition of cease and assist orders and civil penalties. OGC closed approximately 120 administrative cases.
- OGC played a significant role in recovering over \$138 million from a major tobacco product manufacturer in connection with the Tobacco Transition Payment Program.
- OGC played a significant role in recovering \$80 million in a civil frauds claim related to fraudulent activity that had occurred under the Supplier Credit Guarantee Program.
- OGC represented the FS and the Department in CERCLA enforcement matters that resulted in cost recovery from responsible parties at contaminated waste sites on USDA-managed land of more than \$106 million, including funds recovered and the value of cleanup work performed.
- The decertification of the Sedillo class action saved the Department an estimated \$8 million.
- OGC provided more than 50 training sessions for over 3,000 USDA employees during the fiscal year and across all agencies and staff offices.

Selected Accomplishments Expected at the 2016 Proposed Resource Level: OGC will provide effective and quality legal services without delay in order to ensure that agency officials can implement their programs.

Strategic Goal Funding Matrix

(Dollars in thousands)

<u>Program/ Program Items</u>	<u>2013 Actual</u>	<u>2014 Actual</u>	<u>2015 Enacted</u>	<u>Increase or Decrease</u>	<u>2016 Estimate</u>
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Department Strategic Goal 5: Create a USDA for the 21st century That is High-Performing, Efficient, and Adaptable

Department Objective 5.1: Develop a customer-centric, inclusive, and high-performing workforce by investing in and engaging employee to improve service delivery

Legal Services.....	\$45,074	\$41,202	\$44,383	\$3,692	\$48,075
Staff Years.....	244	219	245	19	264
Total Cost, Strategic Goal	45,075	41,202	44,383	3,692	48,075
Staff Years, Strategic Goal	244	219	245	19	264

Full Cost by Agency Strategic Goal
(Dollars in thousands)

Department Strategic Goal 5: Create a USDA for the 21st century That is High-Performing, Efficient and Adaptable.

Program/ Program Items	2013 Actual	2014 Actual	2015 Enacted	2016 Estimate
Administrative costs (direct).....	\$37,189	\$34,996	\$40,832	\$43,660
Indirect costs.....	3,637	4,489	3,551	4,318
Total Costs.....	40,826	39,489	44,383	48,075
FTEs.....	244	219	245	264