

2017 President’s Budget
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. Three 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; in quasi-judicial hearings held in connection with the administration of various USDA programs; and defends USDA in civil rights, employment, and labor cases.

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 includes 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, 2015, there were 241 permanent full-time employees of which 122 were located in the headquarters office and 119 in the field offices.

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	2014 Actual		2015 Actual		2016 Enacted		2017 Estimate	
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs
Salaries and Expenses:								
Discretionary Appropriations.....	\$41,202	219	\$44,383	221	\$44,383	253	\$49,599	277
Sequestration.....	-	-	-	-	-	-	-	-
Rescission.....	-	-	-	-	-	-	-	-
Transfer Out: WCF	-1,550	-	-	-	-	-	-	-
Total Available.....	39,652	219	44,383	221	44,383	253	49,599	277
Lapsing Balances.....	-163	-	-1,064	-	-	-	-	-
Obligations.....	39,489	219	43,319	221	44,383	253	49,599	277
<u>Obligations under other USDA appropriations:</u>								
Hazardous Materials Management								
Program.....	1,207	8	1,150	8	1,150	8	1,150	8
FS Non-Litigation Travel.....	30	-	50	-	50	-	50	-
CCC.....	433	4	332	3	434	4	434	4
OCFO WCF	-	-	7	-	15	-	15	-
Detail Support.....	127	1	276	2	184	1	-	-
Ombudsperson.....	54	1	189	1	234	1	234	1
Civil Rights Reimbursable.....	585	4	740	6	1,102	8	1,279	9
AMS User Fees.....	648	5	652	5	659	5	659	5
APHIS User Fees.....	100	1	76	-	76	-	76	-
GPSA User Fees.....	9	-	15	-	15	-	15	-
FSA User Fees.....	1	-	-	-	-	-	-	-
FSIS User Fees.....	15	-	-	-	-	-	-	-
Total, Other USDA.....	3,209	24	3,487	25	3,919	27	3,912	27
Total, Agriculture Appropriations..	42,698	243	46,806	246	48,302	280	53,511	304

OFFICE OF THE GENERAL COUNSEL

Permanent Positions by Grade and Staff Year Summary

Item	2014 Actual			2015 Actual			2016 Enacted			2017 Estimate		
	Wash.		Total	Wash.		Total	Wash.		Total	Wash.		Total
	D.C.	Field		D.C.	Field		D.C.	Field		D.C.	Field	
ES.....	1	-	1	1	-	1	1	-	1	1	-	1
SES.....	14	4	18	13	4	17	15	4	19	15	4	19
GS-15.....	33	22	55	36	29	65	35	29	64	36	28	64
GS-14.....	62	58	120	57	49	106	54	47	101	58	52	110
GS-13.....	6	-	6	8	-	8	7	6	13	12	10	22
GS-12.....	3	-	3	6	5	11	12	10	22	15	13	28
GS-11.....	12	17	29	4	21	25	8	12	20	4	10	14
GS-10.....	3	-	3	2	-	2	2	-	2	2	-	2
GS-9.....	5	7	12	6	8	14	6	8	14	9	8	17
GS-8.....	7	7	14	4	7	11	4	7	11	4	9	13
GS-7.....	1	7	8	1	10	11	1	10	11	2	10	12
GS-6.....	1	-	1	1	-	1	1	-	1	1	-	1
GS-5.....	1	-	1	1	-	1	1	-	1	1	-	1
Total Perm. Positions.....	149	122	271	140	133	273	147	133	280	160	144	304
Unfilled, EOY.....	-20	-8	-28	-18	-14	-32	-	-	-	-	-	-
Total, Perm. Full-Time Employment, EOY.....	129	114	243	122	119	241	147	133	280	160	144	304
Staff Year Est.....	126	117	243	130	116	246	147	133	280	160	144	304

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~~] \$49,599,000.

Lead-Off Tabular Statement

Budget Estimate, 2017.....	\$49,599,000
2016 Enacted.....	<u>44,383,000</u>
Change in Appropriation.....	<u>+ 5,216,000</u>

Summary of Increases and Decreases

(Dollars in thousands)

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2017</u>
	<u>Actual</u>	<u>Change</u>	<u>Change</u>	<u>Change</u>	<u>Estimate</u>
Discretionary Appropriations:					
Office of the General Counsel.....	\$41,202	+\$3,181	-	+\$5,216	\$49,599

OFFICE OF THE GENERAL COUNSEL

Project Statement

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

Program	<u>2014 Actual</u>		<u>2015 Actual</u>		<u>2016 Enacted</u>		<u>Inc. or Dec.</u>		<u>2017 Estimate</u>		
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	
Discretionary Appropriations:											
Legal Services.....	\$41,202	219	\$44,383	221	\$44,383	253	+\$5,216	(1)	+24	\$49,599	277
Total Appropriation.....	41,202	219	44,383	221	44,383	253	+5,216		+24	49,599	277
Transfer Out: WCF.....	-1,550		-	-	-		-			-	
Total Available.....	39,652	219	44,383	221	44,383	253	+5,216		+24	49,599	277
Lapsing Balances.....	-163		-1,064		-		-			-	
Total Obligations.....	39,489	219	43,319	221	44,383	253	+5,216		+24	49,599	277

Project Statement

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

Program	<u>2014 Actual</u>		<u>2015 Actual</u>		<u>2016 Enacted</u>		<u>Inc. or Dec.</u>		<u>2017 Estimate</u>		
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	
Discretionary Obligations:											
Legal Services.....	\$39,489	219	\$43,319	221	\$44,383	253	+\$5,216		+24	\$49,599	277
Total Obligations.....	39,489	219	43,319	221	44,383	253	+5,216		-	49,599	277
Lapsing Balances.....	163	-	1,064	-	-	-	-		-	-	-
Total Available.....	39,652	219	44,383	221	44,383	253	+5,216		+24	49,599	277
Transfer Out.....	1,550		-		-		-			-	
Total Appropriation.....	41,202	219	44,383	221	44,383	253	+5,216		+24	49,599	277

Justification of Increases and Decreases

- (1) An increase of \$5,216,000 and 24 staff years (\$44,383,000 and 253 staff years available in 2016).

Base funds will allow the Office of the General Counsel to continue to provide legal oversight, responsively 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 \$627,000 for pay costs, (\$119,000 for annualization of the fiscal year 2016 pay raise and \$508,000 for the anticipated fiscal year 2017 pay raise.) Approximately 87 percent of OGC's budget is expended in support of personnel salaries and benefits, and the remaining 13 percent is comprised of rent, and other necessary expenses such as mission critical travel, training, equipment, maintenance of equipment, law library purchases, and supplies that leave 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 technical assistance, legal advice and services within requested time frames.
- (b) An increase of \$2,733,000 and 24 staff years for increased legal services.

Administration and Resource Management (2 staff years): OGC's Office of Administration and Resource Management requests funding to fill a Deputy Director for Administration and an Information Technology Specialist position. The Deputy position is needed to assist the Director in managing the day-to-day operations of the agency, mainly focusing on the continued improvements to OGC's infrastructure nationwide. An Information Technology Specialist is required to assist with technology needs in our field offices and in meeting security mandates. With the recent influx of mandated security requirements (Federal Information Security Management Act milestones and reports, Certification and Accreditation of Computer Systems, Development and Implementation of a Computer Security Awareness Program, Implementation of Computer Workstation Security Checklists, and Internet Security Scans) the challenge to meet deadlines without an increase in IT resources is almost impossible.

Civil Rights, Labor and Employment Law Division (CRLELD) (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. Since the enactment of the Whistleblower Protection Enhancement Act of 2012, the agency has experienced an increase in cases.

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 that involve billions

of dollars encompass 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 (MRFSP) (4 staff years): The MRFSP Division is seeking three additional attorneys and one paralegal. The Division has experienced significant increases in its rulemaking dockets and providing technical assistance, 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 30 Federal court cases in 2013, 44 in 2014, and 69 in 2015. Client agency referrals for Administrative litigation increased by an additional 135 cases from 2013 to 2014, and that number increased again by 24 more cases in 2015. Recent changes to FSIS regulations and the APHIS' streamlined process regarding deregulation of genetically engineered 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 secretary position to provide legal services to the Forest Service and the Natural Resources Conservation Service (NRCS). The NRCS workload is expected to increase as the client demands advice on a host of complex, legal policy issues and regulations that must be reviewed and approved under tight time constraint in order to meet statutory deadlines. 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 (FSA) and Rural Development (RD) transactional matters, as well as FS work and NRCS easement acquisition work, will help ensure the continued ability to provide necessary and responsive legal services.

Milwaukee (1 staff year): The Milwaukee office seeks to add one attorney. This Milwaukee office provides legal services to the Forest Service 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, which has increased in recent years due to an increase in oil and gas mineral development in that area.

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 (2 staff year): The Temple office seeks to add two attorneys. This office serves USDA agencies in Texas and Oklahoma, a vast area of land and diverse agricultural demands. The new attorneys 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 FSA loan servicing activities is expected to increase, while other agencies are anticipated to make steady demands on legal resources.

Mountain Region

Denver (2 staff year): The Denver Office seeks to add a one attorney and legal assistant. 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 Forest Service 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 because 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. The legal assistant would provide clerical and legal support to all attorneys in the office, including filing, typing, copying, scanning, answering the phone, and preparing non-complex legal documents.

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

Pacific Region

Portland (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 Forest Service. 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 RD mission area and the FSA 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 Forest Service and NRCS further their missions by obtaining easements and other interests in real property.

(c) **An increase of \$1,422,000 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 mission 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

formal 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 \$434,000 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	2014 Actual		2015 Actual		2016 Enacted		2017 Estimate	
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs
Alaska.....	\$416	3	\$635	4	\$643	4	\$650	4
Arkansas.....	852	7	952	7	1,010	8	1,054	8
California.....	2,412	16	4,067	16	3,421	19	3,588	19
Colorado.....	2,007	10	2,348	10	2,581	12	2,853	14
Georgia.....	2,474	17	2,569	16	2,445	17	2,467	17
Missouri.....	1,147	8	1,403	12	1,493	13	1,798	16
Montana.....	1,198	9	1,467	8	1,469	9	1,502	9
New Mexico.....	730	6	1,003	6	971	7	1,115	8
Oregon.....	1,511	10	1,595	10	1,604	10	1,702	11
Pennsylvania.....	947	8	1,224	8	1,228	8	1,326	9
Texas.....	734	6	976	6	1,014	7	1,246	9
Wisconsin.....	1,003	8	1,014	8	1,177	11	1,386	12
District of Columbia.....	24,058	111	24,066	110	25,327	128	28,912	141
Obligations.....	39,489	219	43,319	221	44,383	253	49,599	277
Lapsing Balances.....	163	-	1,064	-	-	-	-	-
Total, Available.....	39,652	219	44,383	221	44,383	253	49,599	277

OFFICE OF THE GENERAL COUNSEL

Classification by Objects

(Dollars in thousands)

	2014	2015	2016	2017
	<u>Actual</u>	<u>Actual</u>	<u>Enacted</u>	<u>Estimate</u>
Personnel Compensation:				
Washington D.C.....	\$14,705	\$13,757	\$15,357	\$16,860
Field.....	12,527	13,218	14,754	16,198
11 Total personnel compensation.....	27,232	26,975	30,111	33,058
12 Personnel benefits.....	7,598	8,271	8,442	9,404
13.0 Benefits for former personnel.....	147	32	22	22
Total, personnel comp. and benefits.....	34,977	35,278	38,575	42,484
Other Objects:				
21.0 Travel and transportation of persons.....	283	269	220	281
22.0 Transportation of things.....	3	6	6	6
23.1 Rental payments to GSA.....	0	1,530	1,528	1,528
23.2 Rental payments to others.....	0	123	125	125
23.3 Communications, utilities, and misc. charges...	700	902	684	721
24.0 Printing and reproduction.....	55	95	111	116
25.2 Other services	2,065	3,664	2,122	3,030
25.3 Other goods and services from Federal				
sources	46	167	167	167
26.0 Supplies and materials.....	618	715	739	828
31.0 Equipment.....	742	570	106	313
Total, Other Objects.....	4,512	8,041	5,808	7,115
99.9 Total, new obligations.....	39,489	43,319	44,383	49,599
DHS Building Security Payments (included in 25.3)...	-	167	167	167
Position Data:				
Average Salary (dollars), ES Position.....	\$168,571	\$172,571	\$177,740	\$182,765
Average Salary (dollars), GS Position.....	\$108,117	\$113,579	\$117,157	\$118,760
Average Grade, GS Position.....	14.2	14.3	14.4	14.4

OFFICE OF THE GENERAL COUNSEL

Shared Funding Projects

(Dollars in thousands)

	2014	2015	2016	2017
	<u>Actual</u>	<u>Actual</u>	<u>Enacted</u>	<u>Estimate</u>
Working Capital Fund:				
Administration:				
HR Enterprise System Management.....	-	-	\$2	\$2
Procurement Operations.....	\$1	\$30	32	30
Material Management Service Center.....	\$26	\$38	49	51
Mail and Reproduction Management.....	\$177	\$191	263	250
Integrated Procurement System.....	5	7	10	10
Subtotal.....	209	266	356	343
Communications:				
Creative Media & Broadcast Center.....	10	24	16	14
Finance and Management:				
NFC/USDA.....	77	79	76	73
Controller Operations.....	59	-	-	-
Internal Control Support Services.....	-	-	-	13
Financial Systems.....	99	156	160	161
Subtotal.....	235	235	236	247
Information Technology:				
NITC/USDA.....	37	34	53	63
International Technology Services.....	341	326	266	264
Telecommunications Services.....	14	14	76	25
Subtotal.....	392	374	395	352
Correspondence Management.....	14	20	25	35
Total, Working Capital Fund.....	860	919	1,028	991
Department Shared Cost Programs:				
1890's USDA Initiatives.....	8	8	10	10
Classified National Security Information.....	-	3	2	2
Continuity of Operations Planning.....	6	6	6	6
Emergency Operations Center.....	7	6	7	7
Facility and Infrastructure Review and Assessment.....	1	1	1	1
Faith-Based Initiatives and Neighborhood Partnerships.....	-	1	1	1
Federal Biobased Products Preferred Procurement Program.....	-	-	-	-
FITARA Administration and Operations.....	-	-	1	1
Hispanic-Serving Institutions National Program.....	6	5	7	7
Human Resources Transformation.....	5	5	4	4
Identity & Access Management (HSPD-12).....	19	19	19	19
Medical Services.....	6	12	16	16
People's Garden.....	2	2	2	2
Personnel Security Branch.....	4	3	4	4
Pre-authorizing Funding.....	10	11	12	12
Retirement Processor/Web Application.....	2	2	2	2
Sign Language Interpreter Services.....	9	-	-	-
TARGET Center.....	3	4	4	4
USDA 1994 Program.....	2	2	4	4
Virtual University.....	6	6	6	6
Visitor Information Center.....	-	-	-	-
Total, Departmental shared Cost Programs.....	96	96	108	108

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

	2014	2015	2016	2017
	<u>Actual</u>	<u>Actual</u>	<u>Enacted</u>	<u>Estimate</u>
E-Gov:				
Enterprise Human Resources Intigration.....	6	6	6	6
E-Rulemaking.....	3	2	-	-
E-Training.....	8	8	7	-
Financial Management Line of Business.....	1	-	-	-
Human Resources Line of Business.....	1	1	1	1
Integrated Acquisition Environment - Loans and Grants.....	5	5	-	-
Integrated Acquisition Environment.....	2	2	3	-
Total, E-Gov.....	<u>26</u>	<u>24</u>	<u>17</u>	<u>7</u>
Agency Total.....	<u>982</u>	<u>1,039</u>	<u>1,153</u>	<u>1,106</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, assists the Department in briefing Congress in response to inquiries, and assists 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 prepare briefs and collaborates with the Department of Justice (DOJ) in trial and appellate litigation.

Selected Examples of Recent Progress:

- The 1999 Consent Decree for *Pigford/Brewington, et al.*, the historic class action filed on behalf of African American farmers alleging race discrimination in farm loan and benefits programs, was terminated; and OGC, along with DOJ, completed implementation. The parties are discharged from all duties under the Consent Decree; and overall relief was \$1,007,538,623 in monetary awards and \$51,038,575 in debt relief paid out to approximately 15,723 African American farmers.
- OGC provided legal assistance to recover funds and to facilitate a plan for the pro rata distribution of any funds recovered from insurance and the sale of commodities for the benefit of peanut producers after a licensee under the United States Warehouse Act (Texoma Peanut Co.,) ceased operations, filed bankruptcy and failed to provide for a distribution plan for any in-store commodities.
- OGC worked with DOJ's Environmental Crimes Section to obtain a felony conviction of a company and a misdemeanor conviction of its president/owner for the use of an International Plant Protection Convention (IPPC) mark to falsely certify that wood pallets used in foreign commerce had been treated and were free from plant pest when, in fact, they had not been treated. The company was assessed the highest criminal penalty assessed under the Plant Protection Act.
- OGC successfully defended the U.S. Forest Service in two GAO bid protests of the solicitation for "NextGen 2.0" airtanker services for wildland fire suppression, which are crucial in order to deliver fire retardant to wildfires quickly and reduce fire intensity and rate of spread.

ADMINISTRATION AND RESOURCES MANAGEMENT

OGC Office of Administration and Resource Management (OARM) provides administrative support to OGC in order to provide quality legal services effectively and efficiently.

OARM purchased lighter\thinner laptop and faster computers to replace obsolete heavy mobile equipment in order to further enable knowledge transfer and provide an easier telework environment for OGC employees. OGC has also made additional enhancements to its network infrastructure to increase bandwidth in three OGC field offices. This will result in increased work productivity for OGC's employees within those offices by allowing all networked Information Technology (IT) equipment in those offices to efficiently and securely connect to USDA's internal network and the internet. To align with the Office of Management and Budget 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. OGC entered into a Service Level Agreement with a service provider to expedite hiring of OGC employees that will result in more timely and responsive legal services.

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. AMS provided 30 rulemaking actions to OGC for legal sufficiency review in FY 2015, including the rulemaking to establish a fee framework for most of its programs and to set future fees for each program by notice rather than rulemaking. 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 representation and support to AMS in the formal rulemaking hearings pertaining to the establishment of a new pecan marketing order and a proposed California Milk Marketing Order. The California hearing began in September 2015 and will conclude during the first quarter of 2016. OGC successfully represented AMS in administrative litigation including challenges to the Tart Cherry Marketing Order, the Softwood Lumber Research, Promotion Order and the collection of overdue assessments. OGC assisted DOJ in six cases involving a marketing order and two research and promotion programs.

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 12 new referrals and filed 15 new administrative enforcement complaints alleging violations of the fair trade requirements of PACA. In FY 2015, OGC attorneys successfully handled the first ever license suspension review proceeding conducted pursuant to the PACA. A licensee under investigation refused to provide PACA Division investigators access to its records, which subjected it to suspension of its license until access is provided. After an informal hearing, the hearing examiner found that the requested records were material to the investigation, that the licensee had refused to provide the requested records, and that suspension of the license was reasonable under the circumstances. In addition, OGC resolved and closed a total of 20 other PACA enforcement actions, resulting in unpaid sellers receiving several hundred thousand dollars in restitution. Additionally, OGC provides legal sufficiency review and clearance of PACA informal rulemaking dockets. In FY 2015, OGC reviewed and commented on PACA's rulemaking to update and clarify its regulations in 7 CFR part 46. 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 presided over oral hearings, drafted numerous orders and reviewed draft decisions and orders prepared by AMS staff. In total, OGC drafted or reviewed over 150 orders in PACA reparation cases that resulted in awards of over \$3.2 million.

Animal and Plant Health Laws and Wildlife Services: In FY 2015, OGC reviewed and approved for legal sufficiency 115 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 a 20% increase over the number of rulemaking documents and notices provided for review in the previous fiscal year. OGC assisted APHIS in the development, drafting and issuance of several significant regulations, including the following: (1) Final Rule for APHIS Agricultural Quarantine and Inspection User Fees, (2) Final Rule for the Importation of Beef from a Region in Argentina; and (3) Final Rule for the Importation of Beef from a Region in Brazil. OGC provided significant legal assistance to APHIS-VS on a multitude of issues that arose as a result of the largest outbreak of highly

pathogenic avian influenza in the history of the United States. OGC assisted DOJ in connection with four lawsuits challenging Wildlife Services' wildlife control activities. Finally, OGC assisted APHIS in successfully obtaining official English and Spanish translations and the formal exchange of Diplomatic Notes to bring into force a new crucially needed trilateral agreement among the Governments of the United States, Mexico and Guatemala for the control of fruit flies of economic significance that can cause significant damage to citrus and other fruits and vegetables in the three countries. This program is a critical component of APHIS' mission to protect over 100 plant commodities at risk of direct harm by fruit flies of economic significance and that could result in estimated agricultural losses into the billions of dollars if not averted.

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 2015, OGC attorneys helped APHIS secure \$33,400 in civil penalties and \$146,712 in stipulated penalties under those statutes; filed 61 administrative complaints against alleged violators of the statutes; and obtained decisions and orders involving 42 respondents in ongoing enforcement cases. OGC also secured 3 orders revoking or suspending AWA licenses, and APHIS issued decisions in non-penal AWA license denial and termination cases.

Federal Grain Inspection Service: OGC provided legal advice and support for the reauthorization of certain provisions of the U.S. Grain Standards Act (USGSA) including the fee authority. OGC counseled the Grain Inspection, Packers and Stockyards Administration's (GIPSA) leadership and provided timely technical assistance to House and Senate staff on legislative language. Congress reauthorized USGSA prior to the expiration of the sunset date with language OGC assisted in revising. OGC reviewed and cleared for legal sufficiency 16 rulemaking documents including those involving user fees, designations of official agencies, and delegations to State agencies.

Packers and Stockyards Act (P&S Act): OGC works with GIPSA to enforce the P&S Act. In FY 2015, OGC filed 36 new administrative complaints and referred 12 new actions to DOJ to enforce the requirements of the P&S Act. These complaints and actions seek the imposition of cease and desist orders and civil penalties. In FY 2015, OGC closed 120 P&S administrative cases and closed 13 referrals to the DOJ for violations of a Secretary's order for failure to file annual reports. The closure of the 133 P&S cases resulted in the assessment of almost \$800,000 in civil penalties. OGC reviewed 10 rulemaking dockets and Federal register Notices and provided important legal advice and guidance regarding enforcement actions to the Packers and Stockyards Administration with ten specific recommendations to improve the efficiency of enforcement actions taken against persons violating the Packers and Stockyards Act. OGC also provided GIPSA leadership important legal guidance regarding the reauthorization of specific regulatory provisions affected and identifying the consequences to the Packers and Stockyards Administration should Congress fail to reauthorize those provisions.

Food Safety: OGC reviewed and cleared for legal sufficiency over 45 proposed rules, final rules and notices for publication in the Federal Register for the Food Safety and Inspection Service (FSIS) during FY 2015. OGC assisted FSIS with the development and clearance of several significant rules, including: 1) the Final Rule for the Modernization of Poultry Slaughter Inspection; 2) the Proposed Rule for Product labeling and the Use of the Voluntary Claims "Natural," "Natural: Made with All Natural Ingredients," and "Natural Minimally Processed" in the labeling of Meat and Poultry Products; 3) the Final Rule for Records to be Kept by Official Establishments and Retail Stores That Grind Raw Beef Products. OGC worked closely and effectively with DOJ to successfully prevail in two lawsuits challenging FSIS' final rule for the Modernization of Poultry Slaughter Inspection. These cases represent a significant victory for FSIS as its poultry slaughter modernization rulemaking was the foremost priority for FSIS during the past few years. OGC also worked closely and effectively with DOJ, Federal Drug Administration (FDA), and Federal Trade Commission attorneys to successfully prevail in a lawsuit challenging USDA's and FDA's denials of egg labeling petitions. OGC filed 15 administrative actions to withdraw FSIS Federal inspection services from meat and poultry establishments and referred five criminal cases and three civil cases to DOJ during FY 2015. Finally, OGC worked effectively with FSIS and DOJ in FSIS' very significant effort to seize approximately 750,000 lbs. of poultry product located in 25 States that were contaminated with a highly virulent strain of Salmonella that caused multiple illnesses in several States.

INTERNATIONAL AFFAIRS, FOOD ASSISTANCE, AND FARM AND RURAL PROGRAMS

CCC, Farm Service Agency (FSA), and Domestic Commodity-Related Activities: OGC provided extensive legal advice regarding the implementation of the commodity, conservation, and credit titles to Congressional staff and Administration officials during Congress' consideration of the Agricultural Act of 2014 (2014 Farm Bill). The focus of OGC's attention is this area concerned the implementation of the Agricultural Risk Coverage and Price Loss Coverage programs, the amendments to the Actively Engaged in Farming regulations, the conservation compliance requirements for crop insurance, and the highly fractionated land loan program.

Foreign Agricultural Service (FAS): OGC assisted in the presentation of the U.S. positions in two disputes in the World Trade Organization. One involved a dispute brought by Argentina regarding access for its beef into the United States and the other concerned a dispute brought by both Canada and Mexico regarding Country of Origin Labeling. In addition, OGC has provided technical assistance to Congressional staff regarding both matters. 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 legal advice to RMA and the FCIC Board of Directors regarding the implementation of the Crop Insurance 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 with respect to the implementation of the new conservation compliance requirements and the yield exclusion provision. This assistance was critical in allowing the yield exclusion provisions to be implemented beginning with the 2015 spring planted crops. OGC successfully represented FCIC in a dispute before the Civilian Board of Contract Appeals where the Approved Insurance Providers challenged FCIC's right to adjust premium rates in order to comply with the statutory requirement that premium rates be actuarially sound.

Food, Nutrition and Consumer Services (FNCS): OGC provided technical assistance on the nutrition title to Congressional staff and Administration officials during Congress' consideration of the reauthorization of the Child Nutrition programs. 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. OGC has provided extensive legal advice regarding the development of the Dietary Guidelines for Americans.

Rural Development (RD): OGC provided extensive legal assistance in the development of regulations, notices, and other legal documents required for the implementation of Rural Development and bioenergy titles of the 2014 Farm Bill, especially the regionalization regulations. OGC worked closely with the Rural Utilities Service regarding the finalization of the implementation of the Broadband Initiatives Program authorized by the Recovery Act. OGC has provided extensive legal advice regarding the development of ways to more effectively leverage RD funds with private sector funds to finance critical investments in rural America businesses and infrastructure.

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 including the Administrative Procedures Act (APA), the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Healthy Forest Restoration Act (HFRA) and the Endangered Species Act (ESA) to name just a few. In addition, OGC provided support to FS State and Private Forestry, Business Operations, and Research and Development regarding a myriad of other conservation programs. In the past year, OGC provided legal services to the FS on 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, projects, and permits.

- *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, mining and energy development.
- *Forest Management Program*: OGC assisted the FS in the development of templates and supporting documents to implement the Good Neighbor Authority. 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 finalizing regulations governing stewardship contracts and agreements.
- *Recreation*: OGC provided advice to the FS on 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 regulations governing management of over-snow vehicle use and a *Federal Register* notice and directive concerning water rights and ski area permits.
- *Lands, Energy, Wilderness and Treaty Rights*: OGC is actively engaged in assisting the FS 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 management activities within designated wilderness areas. In the past year OGC increased its legal assistance and supporting role in litigation concerning American Indian treaty rights and religious freedom, and provided significant legal advice on environmental justice and historic and archaeological resource protection.

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 Forests 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, such as the Agricultural Conservation Easement Program and the Healthy Forest Reserve Program; 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; 4) expediting review and clearance of several final rules implementing the 2014 Farm Bill; 5) providing support to NRCS as it restructures its easement acquisition procedures; 6) advising NRCS on easement acquisitions related to water rights, outstanding mineral rights, and limitations on access; 7) advising NRCS on easement enforcement and evaluation of easement

administrative actions; 8) preparing preliminary title opinions on Emergency Watershed Program-Floodplain Easement projects acquired using Hurricane Sandy relief funds; 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.

Environmental Law: OGC provided legal services to the Hazardous Materials Management Program through litigation support and legal advice for all USDA agency matters related to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). OGC 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 accomplishments include: 1) successfully defending a RCRA lawsuit filed against the FS in the Ninth Circuit seeking to ban the use of lead ammunition by hunters on the National Forest System (NFS) land; 2) 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; 3) advising the Department's Environmental Management Division with respect to a GAO investigation of USDA's contaminated waste site cleanup programs; 4) assisting Rural Development's efforts to identify and evaluate potential environmental liabilities that could adversely impact various direct loan and loan guarantee transactions; and 5) defending ARS and APHIS in connection with existing and potential hazardous waste site cleanup liabilities. 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 impacting NFS lands, including the Georgetown Railroad-Site, Holden Mine Site, Georgetown Canyon Site, Ruth/Morning Star Mine Site, and Viburnum Trend Mining Area (Magmont and Freeport-McMoRan).

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 agreement in principle with the United States and the five Gulf States (Louisiana, Alabama, Mississippi, Texas, and Florida) to settle all outstanding Federal and State claims arising out of the 2010 Deepwater Horizon oil spill in the Gulf of Mexico. OGC assisted in the development of a Consent Decree which memorialized the details of the agreement in principle. In total, this agreement is worth more than \$20 billion, the largest environmental settlement in the history of the United States.

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 the Department of Justice (DOJ) and other divisions within OGC, is responsible for presenting USDA's legal position in cases on appeal. During FY 2015, GLRD handled approximately 130 such appellate matters.

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 FY 2015, GLRD assisted DOJ prepare the brief filed in the Supreme Court on behalf of the United States, and prepare for oral argument, in *Horne v. USDA*, in which the Supreme Court considered whether the AMS' marketing order establishing a reserve program for California raisins constituted a Fifth Amendment taking. GLRD continues to assist DOJ as this case enters the Equal Access to Justice Act (EAJA) fee phase before the Court of Appeals for the Ninth Circuit. GLRD also coordinated document production from USDA agencies in response to subpoenas issued in a unique original case before the Supreme Court involving water rights, *Florida v. Georgia*. GLRD assisted DOJ with briefing and preparing for oral argument before the D.C. Circuit in *Humane Society v. Vilsack*, in which the court decided that the plaintiffs had established Article III standing to challenge payments made by the National Pork Board to the

National Pork Producers Council for trademarks associated with the slogan *Pork: The Other White Meat*. GLRD also assisted DOJ defend a quiet title action affecting the Valles Caldera National Preserve, heard by the Court of Appeals for the Tenth Circuit, including drafting USDA's recommendation regarding *en banc* rehearing in the case (*Pueblo of Jemez v. USA*). GLRD assisted DOJ in filing an amicus brief in the Second Circuit in *Briggs v. Bremby*, which raised the question of whether the time limits for awarding food stamp benefits in the Food and Nutrition Act are privately enforceable under 42 U.S.C. § 1983. The Second Circuit agreed with USDA's arguments and concluded that the timely-processing provisions in the Act are sufficiently focused on the needs of individual beneficiaries to be privately enforceable under § 1983. Finally, GLRD coordinated USDA's participation as *amicus* in a case affecting suction dredge mining pending before the California Supreme Court (*People v. Reinhart*).

GLRD defends most 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 FY 2015, GLRD handled three such cases, obtaining a predominantly favorable result on the merits in two; one was dismissed on procedural grounds. In *Woudenberg v. U.S. Dep't of Agriculture*, the Court of Appeals for the Sixth Circuit affirmed the Secretary's interpretation of a regulation under the AWA. In *Knapp v. U.S. Dep't of Agriculture*, the Fifth Circuit affirmed the Secretary's finding that Knapp violated the AWA by buying and selling certain wild and exotic animals without an AWA license, and rejected Knapp's arguments that he was targeted for selective enforcement and his due process rights were violated. The Seventh Circuit dismissed *Agri-Sales, Inc. v. U.S. Dep't of Agric.*, on procedural grounds.

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 FY 2015, GLRD prepared 35 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 on Farm Bill implementation, including the commodity board provision of the Agriculture and Food Research Initiative grant program, priority considerations for grant applications from Centers of Excellence, as well as the Food Insecurity Nutrition Incentive grant program. Within REE, GLRD assisted the National Institute of Food and Agriculture (NIFA) with various program issues: advising NIFA on issues related to the Foundation for Food and Agriculture Research in order to leverage private funding; and updating the terms and conditions of the Veterinary Medicine Loan Repayment Program, which serves the public by ensuring highly trained veterinarians are mitigating priority food supply veterinary shortage situations all across America. Other assistance provided to NIFA include advice on the indirect cost rate charged on NIFA grants to other Federal agencies, issues surrounding the status of 1862 Institutions, and issues regarding formula fund allocation.

In supporting Departmental and agency procurement actions, GLRD defended or assisted in numerous proceedings before the Civilian Board of Contract Appeals (CBCA), the Court of Appeals for the Federal Circuit, the Court of Federal Claims, District Courts, and the Government Accountability Office (GAO). GLRD's successful defense of the GAO bid protests of the solicitation for "NextGen 2.0" airtanker services for wildland fire suppression, had two primary benefits: first, it permitted the Forest Service to require proof of safety certifications at the time of pre-award inspection and to inspect aircraft at the times scheduled by the agency; second, it supported the solicitation of existing, air worthy aircraft, and prevented vendors from offering "paper airplanes."

GLRD assisted agencies in their program efforts as well. GLRD opined on the use of Section 32 funds to purchase agricultural commodities in connection with the Stafford Act and Presidentially-declared disasters in the Republic of the Marshall Islands and the Federated States of Micronesia for the Agricultural Marketing Service; advised Senior Leadership regarding the steps necessary to implement a major 2014 Farm Bill provision requiring the reorganization of international trade functions within the Department; and analyzed options for incorporating a new 1890 Land-Grant Institution into the mathematical calculation methodology for certain research and extension formula grants. GLRD secured the concurrence of the Office of Personnel Management (OPM) on legal issues related to the National Finance Center providing services to OPM. GLRD also worked extensively on high profile

issues, such as the reauthorization of the Secure Rural Schools and Community Self-Determination Act of 2000, contract coordination and administration during the emergency response efforts to the large outbreak of high pathogenic avian influenza in the spring of 2015, and litigation strategies and compliance solutions related to the Agricultural Research Service U.S. Sheep Experiment Station.

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). In addition to reviewing approximately 150 administrative FOIA appeals for legal sufficiency and making determinations in 50 administrative tort claims; 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 continued handling 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 the vacancy in the FAS FOIA Officer position; and *Argus Leader v. USDA (FNS)* dealing with records of numerous retailers containing confidential business information relative to SNAP. Moreover, GLRD began working with APHIS and DOJ to defend another high-volume FOIA suit filed by the Center for Food Safety relative to numerous outstanding information requests concerning genetically-engineered crops; Center for Food Safety involves over 150,000 in records and, over the next few years, will require legal sufficiency review of these documents on a production schedule set by the court.

OGC also spent significant time and effort preparing high-level agency officials for deposition as well as 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. Breibart*, which has finally resolved. 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; and, indeed, participated in interagency initiatives in this area. In addition to continuing to provide input and guidance on FOIA improvement legislation, GLRD also supported USDA efforts to bring itself into compliance with OMB statistical initiatives and other Administration initiatives on Open Government.

Intellectual Property: 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. Noteworthy has been a significant upswing in review of appearance releases for high Departmental officials, including the Secretary, frequently requested without advance warning and with short turn-around times. OGC also provided advice and assistance to DOJ in intellectual property litigation. Noteworthy have been successful conclusions in *Online Tools v. Vilsack* (a successful defense of ChooseMyPlate, the Department's nutrition program symbol, against a charge of trademark infringement) and *Delano Farms v. The California Table Grape Commission* (a successful defense of two Departmental table grape plant patents, a loss in which would have negatively affected California's table grape marketing program).

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. The Equal Employment Opportunity Commission (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 230 complaints of employment and program discrimination, and complaints related to labor and employee relations, in various forums across the country, including continuing to successfully absorb cases filed by RD employees and applicants. 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 was also responsible for promoting a national practice of civil rights litigation throughout the Department to ensure consistency and best practices, and held many training sessions for both Agency representatives before EEOC and MSPB, and managers throughout USDA to ensure that the Secretary's vision of civil rights continues to be accomplished. A summary of some of the major work of the Litigation Section is summarized below.

Employment Discrimination Class Actions: The Litigation Section is assisting the Department of Justice in defending a claim by non-exempt Fair Labor Standards Act (FLSA) employees, Government-wide, who worked during the furlough period in October 2013. CRLELD collected information from all USDA offices and subcomponent Agencies, resulting in over 10,000 notices being sent to potential class members. Based upon the organization and demonstration of effective collection of data, the Judge denied a motion to have a second notice period. The Litigation Section is also working with OGC Pacific Region to assist the Department of Justice in defending a putative class action by Forest Service foresters in the Pacific Northwest Research Station who allegedly were not paid overtime in accordance with the FLSA and Federal Employees Pay Act (FEPA).

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. The Litigation Section worked directly with OGC's Pacific Region and the civil rights staff of the Forest Service to successfully resolve the majority of individual complaints that were released once the *Sedillo* administrative class action was dismissed. Reasonable resolution of individual cases filed as long as 17 years ago is in the best interests of the Secretary.

The Litigation Section is also 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. The Litigation Section is also representing USDA in a formal class complaint alleging discrimination and harassment (nonsexual) based on mental disability (dysnomia) and reprisal (current EEO activity) by the Office of Human Resources Management.

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 *Dexter Davis v. Vilsack*.

Program Discrimination Group and Class Action Cases: The Litigation Section successfully worked with DOJ to dismiss an attempted Pigford class action (*Ronald White v. Vilsack*) filed at the Court of Appeals.

The Litigation Section also 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. The Litigation Section ensured that the claims process completed adjudication of over 22,000 claims this year. The Litigation assumed a direct liaison role between Agency offices, the Office of Congressional Relations, and the Office of Communications, as the Hispanic and Women Farmers Claims Process (HWFCP) has drawn high levels of attention from Congressional staffs. The Litigation Section continues to monitor all aspects of this voluntary claims process, including responding timely to hundreds of 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 with the implementation of programmatic relief that was required by the *Keepseagle* settlement agreement. With regard to an approximately \$380 million *cy pres* fund remaining, the Judge denied the Class's request 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. The Judge also denied the lead Class Agents' request for a full redistribution of the *cy pres* funds to successful claimants. OGC worked daily with DOJ, Class Counsel and the lead Class Agent's counsel in the fall of 2015 to attempt to resolve outstanding issues regarding the distribution of the fund. The Litigation Section 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* - The Litigation Section worked with DOJ to finalize a wind down stipulation, and coordinate with the Claims Administrator on transferring records to permanent archives, closing the chapter on this long-standing and historic class action.

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

Action Plan for Addressing Harassment Allegations: The Policy Section led a major effort to assist in the development of an Action Plan with the Office of the Assistant Secretary for Civil Rights (OASCR) and FS to address identified areas of improvement in the handling of harassment and retaliation complaints, particularly in Region 5 of Forest Service. This effort included intense meetings with the two agencies, monthly monitoring of the Action Plan, and devoting staff resources to several initiatives including a Region 5 climate assessment, revised procedures for 24-hour reporting and addressing harassment, and a comprehensive review of informal EEO cases and how they were processed by Forest Service.

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 provided a series of training to senior officials in agencies who are assigned as Resolving Officials for EEO cases. These efforts resulted in improved contract language in settlement agreements.

Addressing Workplace Violence: The Policy Section assisted NRCS and OASCR with several concerns about potential violence from customers and a former contractor, respectively, who had made threats against employees. The Policy Section advised agencies to follow appropriate procedures to secure the work sites and investigate the allegations sufficiently.

Providing Services to Individuals with Limited English Proficiency: The Policy Section worked directly with OASCR to ensure that all agencies meet the year-end requirements for providing services to customers with Limited English Proficiency (LEP). The Policy Section worked with several agency Civil Rights Directors to assist with their LEP implementation plans and developed and provided training to over 200 Agency employees on the LEP requirements.

Review of OGC Collective Bargaining Agreement: The Policy Section conducted a section-by-section review of the entire OGC Collective Bargaining Agreement (CBA) to identify areas that needed to be addressed or updated to conform to current law and USDA directives. This review was a critical part of a larger management review of the CBA.

The Policy Section provided guidance and review for more than 40 disciplinary and performance actions, more than 40 settlement agreements, and more than 30 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.

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. Opening over 600 new matters, 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.

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 of such a large loan portfolio. OGC also provided assistance for RD's guaranteed loan and grant programs. The Eastern Region opened almost 2,500 new matters for RD during FY 2015.

NRCS: During FY2015, OGC Eastern Region assisted NRCS in acquiring over 200 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. For example, this year the Eastern Region assisted in the review of title packages in connection with the Emergency Watershed Protection Hurricane Sandy Relief project in of Connecticut, New Jersey and New York.

FS: OGC assisted the FS in upholding its forest plans and projects in numerous litigation matters. For example, the OGC assisted the FS in obtaining a summary judgment in *Georgia Forest Watch* which, once again, upheld FS decisions in managing the Chattooga Wild and Scenic River. Also, OGC assisted the U.S. Forest Service in introducing American bison to the prairie at the U.S. Forest Service's Midwin National Tallgrass Prairie. OGC also assisted in defending the Forest Service in numerous cases involving encroachment or boundary disputes.

Food and Nutrition Service (FNS): OGC Eastern Region assisted DOJ in defending over half of all of the challenged FNS disqualification decisions. OGC's assistance in these cases helped uphold the integrity of the Supplemental Nutrition Assistance Program.

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

OGC's Central Region provides legal advice and services to all USDA agencies in a 13 State region that is comprised of thousands of communities categorized as "rural" and home to America's most productive farmland.

RD: During 2015, the Central Region made great improvement in referring out many single family foreclosures for prosecution and collection. The Central Region also provided legal assistance to recapture grant funds involving a municipality that tried to use funds for an unauthorized purpose. All of the Rural Development programs provide a steady amount of legal work related to foreclosures and bankruptcies, but 2015 brought new challenges requiring legal assistance to improve program integrity and collection. Other examples of the legal work include: challenges brought by debtors asserting violations of the bankruptcy automatic stay; challenges brought by other lenders seeking to void USDA's lien or lien position; challenges brought by non-borrowers through redemption actions; defending the Agency's interest against tax lien actions; and collection actions to recover assets owed to the United States through tax refund offsets.

FSA and related CCC Programs: 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 one high-profile case OGC provided legal advice to assist in defending a challenge to FSA's guaranteed loan program brought by several environmental groups involving 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, and an environmental analysis was ordered by the Court. 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. In one case, OGC provided extensive legal advice to assist in protecting the integrity of the program, and to protect grain depositors who were competing with other creditors for grain proceeds. Other examples include: working with FSA and NRCS to resolve legal issues involving facility leases for Service Centers agencies and lease termination following the recurring detection of mold which posed a severe threat to the health of employees. In another case, the Central Region successfully defended a challenge brought by a participant that claimed a right to reenroll his land in a program, and which if successful would have necessitated allowing many other participants the same right. Lastly, the Central Region defended the Agency in many bankruptcy proceedings and adversary proceedings which threatened the Agency's liens or financial interests.

FNS: In 2015, 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 (transfer of ownership). 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. During 2015, the Central Region completed numerous legal sufficiency reviews of Final Agency Determinations seeking to recover indemnity overpayments against insurance companies. The Central Region provided extensive legal assistance in reviewing these FADs so as to minimize the litigative risk and exposure for the agency. 2015 also brought in several cases brought by producer challenging RMA findings that they failed to utilize "Good Farming Practices." Lastly, the Central Region also provided training to RMA clients to assist them in carrying out their mission and to better meet their program goals and objectives.

FS: OGC's Central Region assisted the Forest Service 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. Challenges brought by adjacent landowners involving boundary disputes, title challenges, title questions and access rights continued to provide legal work for the Central Region. In another action, the Central Region defended the Forest Service in an action brought to enforce water quality at a Forest Service facility. Following the severe flooding in Texas that occurred during 2015, OGC provided legal assistance to the Forest Service regarding special challenges brought by those natural disasters. A long-simmering fire recovery case was also resolved during 2015, which involved extensive legal assistance in bringing this matter to a final resolution.

NRCS: NRCS is still acquiring easements, and accordingly needs legal advice during acquisition, but as a land management agency it also needs additional support to ensure that its land holdings are preserved and that owners are not violating the terms of the easement agreements and programs. In 2015, OGC successfully defended the Agency in a case brought by a claimant alleging that a corrective action plan mandated by NRCS regarding a Wetland Reserve Program Easement had damaged him in the amount of \$12 million. In another case, the Central Region successfully defended a claim brought by a participant in the Environmental Quality Incentive Program who alleged that the agreement was an "unlawful taking" because of its interplay with the Endangered Species Act. The Central Region also provided training and counseling to NRCS clients to assist them in carrying out their mission and to better meet their program goals and objectives.

Contract Litigation: The Central Region is assisting NRCS and its Contracting Officers actively litigating several contractor claims involving coastal restoration and reconstruction initiatives by NRCS following the hurricanes that hit the Gulf Coast over the last decade. The Central Region also defended NRCS in two cases involving claims brought by contractors for technical assistance provided under cooperative agreements with the Army and financially exacerbated by the shut-down of 2013. For the Forest Service, OGC also defends the Forest Service in contractor claims on timber sale contracts.

Employment and Discrimination Cases: The Central Region defended USDA in litigation brought by employees alleging various types of workplace discrimination, brought in various forums. The Central Region successfully defended actions brought against the agency involving cases of non-selection, or alleging various types of discrimination based on disability, reprisal, sex (gender), race and/or age. The Central Region also defended the Agency in programmatic cases brought by program participants alleging various types of discrimination or mistreatment.

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 three cases challenging the greater sage-grouse land use plan amendments (*Western Exploration v. Dept. of Interior, et al.* (D. Nev.), *Otter v. Jewell, et al.* (D. Idaho), and *Wyoming Stock Growers Assn. v. Dept. of Interior, et al.* (D. Wyo.)).

Water Rights and Water Facilities: OGC represented the FS in water rights issues at the regional and national levels, and is actively involved in helping the FS establish and protect water rights in state administrative proceedings in Colorado, Nevada, Arizona, Montana, and Utah. For example, we are currently working with the Department of Justice to protect Forest Service water rights in the Coeur d'Alene Spokane River Basin Adjudication. In Colorado, we are drafting the necessary easement forms to re-authorize a reservoir on the Arapaho National Forest that serves important agricultural and urban users on Colorado's Front Range.

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 *Wildearth Guardians v. Jewell* (D. Colo.) (Coal Mining in central Utah) and *Wildearth Guardians v. USFS* (D. Wyo.) (Coal Mining in Wyoming's Thunder Basin).

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 species including bullhead trout, bighorn sheep, and the New Mexico meadow jumping mouse. Current litigation includes *San Diego Cattlemen's Coop. Assoc. v. USFS* (D. NM), *Jarita Mesa v. USFS* (D. NM), and *Gallatin Wildlife Assn. v. USFS* (D. Mont.).

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 assisted the Forest Service with major land acquisition projects including the Montana Legacy Project (in FY14, 26,705 new acres acquired from the Nature Conservancy) and Tenderfoot Project (in FY15, 8,220 new acres acquired from Rocky Mountain Elk Foundation and other partners). OGC is also protecting the FS' rights in numerous quiet title lawsuits, including a major case 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.

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 FY15, in *Tronox, Inc. v. Kerr-McGee* (Bankr. S.D. NY), OGC recovered more than \$200 million from Anardarko, Inc., which the FS can use for environmental cleanup at historic Kerr-McGee sites on NFS lands. In addition, we successfully defended the FS in *Chevron Mining, Inc. v. U.S.* (D. N.M.), a contribution action in which Chevron tried unsuccessfully to hold the FS partially responsible under CERCLA for the environmental cleanup of a molybdenum mine site on the Carson NF.

FSA, RD, and NRCS: OGC provided legal advice to FSA, RD, and NRCS with respect to hundreds of loan, grant, and conservation easement transactions in the Mountain Region during the past year. We also handled a range of litigation including *Foster v. Vilsack* (D. SD and Eighth Circuit) (defending NRCS determination that plaintiff's

land was wetland under the “Swampbuster” law).

OGC’s Pacific Region provides legal representation and advice to USDA agencies and officials in seven western states as well as American Samoa, Guam, Palau, the Federated States of Micronesia, the Northern Mariana Islands, and the Marshall Islands.

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 Board with its efforts to revise a regulation relating to the designation of a community as rural, which is the basis for the subsistence priority under ANILCA. President Obama’s historic trip to Alaska in 2015 cast a spotlight on the Subsistence Program during meetings with Alaska Natives about the importance of subsistence to rural communities. OGC continued to provide assistance to the DOJ in litigation affecting the Program, including new litigation over a tribe’s controversial use of gillnets for salmon fishing in one of Alaska’s world-renowned rivers.

Contract Litigation: OGC successfully defended USDA agencies in contract-related litigation before the CBCA. In FY2015, OGC successfully defended the Forest Service’s first-ever debarment of a special use authorization holder based on several civil and criminal judgments against the company and its owner.

Crop Insurance: OGC provided advice and litigation representation to RMA and the FCIC. In FY 2015, OGC continued to represent RMA and FCIC in a variety of litigation, including a pending Ninth Circuit case 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 FY 2015, OGC, among other things, helped resolve numerous individual claims that were part of a major civil rights class action (*Sedillo v. Vilsack*) and obtained a summary judgment from a federal district court upholding a favorable MSPB decision.

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. OGC helped FSA recover debt in bankruptcy cases and other litigation matters, and provided advice to FSA regarding its conservation programs and foreclosure actions.

Grazing: OGC devoted significant resources to advising the Forest Service and defending litigation regarding livestock grazing permits on National Forest System (NFS) lands

Land Rights: OGC provided legal services to the Forest Service with respect to various land rights issues. During FY 2015, these issues included a question involving a surface estate, which was acquired as important habitat with Exxon Valdez Oil Spill settlement dollars and a mineral estate owned by an Alaska Native corporation wishing to assert mining rights. OGC also advised on a large proposed land exchange between the Tongass National Forest and the Alaska Mental Health Trust and on implementation of dozens of lands transactions involving transfers of lands to the Forest Service pursuant to the Forest Service’s Moonlight Fire settlement with Sierra Pacific Industries.

Legislation and Congressional Relations: OGC assisted the Chief of the Forest Service respond to congressional inquiries about the effect of the Administration’s policies on the Tongass National Forest’s timber program and renewable energy development. OGC also helped the Forest Service draft legislation that was designed to resolve an Alaska Native corporation’s entitlement to federal land. After the legislation was enacted, OGC advised the Forest Service on the work it needed to do to implement the required transfer of nearly 70,000 acres of Tongass NF lands to the Alaska Native Corporation.

Mining and Minerals: OGC helped the Forest Service address challenging and controversial issues regarding mining on NFS lands, including defense of environmental challenges to Forest Service decisions to allow proposed mining activities. In FY 2015, OGC successfully resolved a long-standing mining occupancy dispute when the Ninth Circuit upheld the Forest Service’s position that the claimant had no valid mineral discovery and thus no right to mine or occupy the wilderness. OGC also advised the Forest Service with respect to a variety of other

unauthorized mining and unauthorized occupancy issues and worked with the DOJ in prosecution of civil and criminal enforcement actions relating to those situations.

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 the DOJ in litigation challenging Forest Service land management projects. During FY2015, OGC successfully worked with the DOJ to defend litigation concerning the Rim Project, which involved proposed sales of salvage timber burned in the Rim Fire (one of the largest forest fires in California's history, covering more than 400 square miles). OGC's involvement in one consolidated set of lawsuits in Alaska, collectively known as the Big Thorne and Tongass Plan cases, resulted in a victory in the district court and denial of a preliminary injunction before the Ninth Circuit. The Secretary has identified the Big Thorne sale as crucial to his policy of transitioning the Tongass National Forest away from old-growth timber harvest. 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.

Public Lands Management Decisions: OGC provided pre-decisional advice to the Forest Service on many significant environmental and natural resources matters to reduce the vulnerability of agency decisions in litigation. During FY2015, OGC's provided advice and drafted guidance documents regarding implementation of the Forest Service's new planning regulations and advice in support of the Administration's strategy to help communities in Alaska shift from relying on old-growth timber resources of the Tongass National Forest to a more diversified economy. OGC advised several national forests within the Pacific Region about how to implement the 2012 Planning Rule through significant land and resource management plan revisions and amendments. OGC also provided advice on a variety of proposed salvage timber sales, fuels and hazard reduction projects, and grazing allotments.

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. OGC also advised USDA agencies on wind, solar, and biomass renewable energy projects.

Rural Development: OGC provided legal advice and legal compliance reviews for RD agencies with respect to hundreds of loan and grant transactions in the Pacific Region. In FY2015, OGC developed a subordination form, the use of which increased consistency in RD transactions throughout the Pacific Region. OGC also helped RD identify strategies to address the increasingly common issues of prepayment requests and re-amortization of prematurely maturing loans.

Water Rights: OGC advised the Forest Service and NRCS with respect to water law and water rights issues. During FY2015, OGC provided advice and representation to the Forest Service on controversial issues relating to renewal of a special use permit allowing a major bottled water company to extract water on NFS lands in California.

Wildfire and Pollution Abatement Cost Recovery: OGC actively pursued claims to recover costs incurred and natural resource damages from parties responsible for negligently starting fires on NFS lands in the Pacific Region. OGC also worked to recover costs of hazardous waste abatement on NFS lands. During FY2015, the Pacific Region obtained more than \$12 million in fire and CERCLA cost recovery actions.

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 5: *Create a USDA for the 21st century that is High-Performing, Efficient and Adaptable*

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

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	Actual				Actual	Estimate/ Target	Target
	2011	2012	2013	2014	2015	2016	2017
Litigation before administrative forums, including Equal Employment Opportunity Commission, Merit Systems Protection Board, USDA 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)	\$41,387	\$39,259	\$40,826	\$39,489	\$43,319	\$44,383	\$49,599

Analysis Results

Selected Past Accomplishments Toward the Achievement of the Key Outcome FY 2015:

- The 1999 Consent Decree for *Pigford/Brewington, et al.*, the historic class action filed on behalf of African American farmers alleging race discrimination in farm loan and benefits programs, was terminated; and OGC, along with DOJ, completed implementation. The parties are discharged from all duties under the Consent Decree; and overall relief was \$1,007,538,623 in monetary awards and \$51,038,575 in debt relief paid out to approximately 15,723 African American farmers.
- OGC provided legal assistance to recover funds and to facilitate a plan for the pro rata distribution of any funds recovered from insurance and the sale of commodities for the benefit of peanut producers after a licensee under the United States Warehouse Act (Texoma Peanut Co.) ceased operations, filed bankruptcy and failed to provide for a distribution plan for any in-store commodities.
- OGC worked with DOJ's Environmental Crimes Section to obtain a felony conviction of a company and a misdemeanor conviction of its president/owner for the use of an International Plant Protection Convention (IPPC) mark to falsely certify that wood pallets used in foreign commerce has been treated and were free from plant pest when, in fact, they had not been treated. The company was assessed the highest criminal penalty assessed under the Plant Protection Act.
- OGC successfully defended the U.S. Forest Service in two GAO bids protest of the solicitation for "NextGen 2.0" airtanker services for wildland fire suppression, which are crucial in order to deliver fire retardant to wildfires quickly and reduce fire intensity and rate of spread.

Selected Accomplishments Expected at the 2017 Proposed Resource Level/Challenges for the Future

- 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>2014 Actual</u>	<u>2015 Actual</u>	<u>2016 Enacted</u>	<u>Increase or Decrease</u>	<u>2017 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.....	\$39,562	\$44,383	\$44,383	\$5,216	\$49,599
Staff Years.....	219	221	253	24	277

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	2014 Actual	2015 Actual	2016 Enacted	2017 Estimate
Administrative costs (direct).....	\$34,977	\$35,278	\$38,575	\$42,484
Indirect costs.....	4,512	8,041	5,808	7,115
Total Costs.....	39,489	43,319	44,383	49,599
FTEs.....	219	221	253	277