

2019 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. Two Deputy General Counsels, five Associate General Counsels, and four Regional Attorneys assist the General Counsel in managing the work of the office.

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

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

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

Administrative Proceedings. OGC represents USDA in administrative proceedings for the enforcement of rules having the force and effect of law; 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 include 12 offices as follows:

Eastern Region:

Atlanta, Georgia
Harrisburg, Pennsylvania
Milwaukee, Wisconsin

Central Region:

Kansas City, Missouri
Little Rock, Arkansas
Temple, Texas

Mountain Region:

Denver, Colorado
Albuquerque, New Mexico
Missoula, Montana

Pacific Region:

San Francisco, California
Juneau, Alaska
Portland, Oregon

As of September 30, 2017, there were 245 permanent full-time employees of which 126 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.

Available Funds and Staff Years (SYs)
(Dollars in thousands)

Item	2016 Actuals		2017 Actuals		2018 Estimate		2019 President's Budget	
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs
	Salaries and Expenses:							
Discretionary Appropriations.....	\$44,383	227	\$44,697	235	\$44,394	225	\$41,717	212
Lapsing Balances.....	-186	-	-91	-	-	-	-	-
Obligations.....	44,197	227	44,606	235	44,394	225	41,717	212
 <u>Obligations under other USDA appropriations:</u>								
Hazardous Materials Management								
Program.....	1,153	8	1,153	8	1,153	8	1,153	8
FS Non-Litigation Travel.....	13	-	6	-	10	-	10	-
CCC.....	326	3	283	3	420	4	420	4
OCFO WCF	5	-	-	-	-	-	-	-
Detail Support.....	248	2	599	4	330	2	-	-
Ombudsperson.....	178	1	230	1	105	1	-	-
Civil Rights Reimbursable.....	1,068	8	1,287	9	2,288	13	2,288	13
AMS User Fees.....	647	5	771	5	771	5	771	5
APHIS User Fees.....	76	-	76	-	76	-	76	-
GIPSA User Fees.....	14	-	15	-	15	-	15	-
Total, Agriculture Appropriations..	3,728	27	4,420	30	5,168	33	4,733	30
Total, OGC.....	47,925	254	49,026	265	49,562	258	46,450	242

Permanent Positions by Grade and Staff Year Summary

Item	2016 Actual			2017 Actual			2018 Estimate			2019 President's Budget		
	Wash.			Wash.			Wash.			Wash.		
	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total
ES.....	1	-	1	1	-	1	1	-	1	1	-	1
SES.....	14	4	18	14	4	18	14	4	18	14	4	18
GS-15.....	33	25	58	37	29	66	35	29	64	28	23	51
GS-14.....	58	45	103	60	45	105	54	42	96	47	45	92
GS-13.....	9	2	11	10	6	16	9	6	15	12	9	21
GS-12.....	4	5	9	7	5	12	7	5	12	5	5	10
GS-11.....	6	13	19	9	15	24	8	15	23	9	13	22
GS-10.....	2	-	2	-	-	-	-	-	-	-	-	-
GS-9.....	6	5	11	6	3	9	6	3	9	6	3	9
GS-8.....	4	8	12	4	10	14	4	10	14	4	8	12
GS-7.....	1	6	7	2	3	5	2	3	5	2	3	5
GS-6.....	1	-	1	1	-	1	1	-	1	1	-	1
GS-5.....	1	-	1	-	-	-	-	-	-	-	-	-
Total Perm.												
Positions.....	140	113	253	151	120	271	141	117	258	129	113	242
Unfilled, EOY.....	-	-	-	16	10	26	-	-	-	-	-	-
Total, Perm.												
Full-Time												
Employment,												
EOY.....	130	123	253	135	110	245	141	117	258	129	113	242
Staff Year Est.....	134	120	254	142	123	265	141	117	258	129	113	242

Shared Funding Projects
(Dollars in thousands)

	2016	2017	2018	2019
	<u>Actual</u>	<u>Actual</u>	<u>Estimate</u>	<u>President's Budget</u>
Working Capital Fund:				
Administration:				
HR Enterprise System Management.....	\$2	\$2	\$3	\$4
Procurement Operations.....	31	42	55	61
Material Management Service Center.....	50	43	33	35
Mail and Reproduction Management.....	262	232	291	293
Integrated Procurement System.....	10	10	30	30
Subtotal.....	<u>355</u>	<u>329</u>	<u>412</u>	<u>423</u>
Communications:				
Creative Media & Broadcast Center.....	42	14	22	27
Finance and Management:				
Financial Management Services.....	167	186	177	180
National Finance Center.....	77	74	83	84
Subtotal.....	<u>244</u>	<u>260</u>	<u>260</u>	<u>264</u>
Information Technology:				
Client Technology Service.....	300	546	728	734
National Information Technology Center.....	44	42	44	44
Enterprise Network Services.....	71	54	73	103
Subtotal.....	<u>415</u>	<u>642</u>	<u>845</u>	<u>881</u>
Correspondence Management.....	25	32	29	31
Total, Working Capital Fund.....	<u>1,081</u>	<u>1,277</u>	<u>1,568</u>	<u>1,626</u>
Department Shared Cost Programs:				
1890's USDA Initiatives.....	9	11	10	10
Classified National Security Information.....	2	2	2	2
Continuity of Operations Planning.....	6	6	5	5
Emergency Operations Center.....	7	7	6	6
Facility and Infrastructure Review and Assessment.....	1	1	1	1
Faith-Based Initiatives and Neighborhood Partnerships.....	1	1	1	1
Hispanic-Serving Institutions National Program.....	5	6	5	5
Human Resources Transformation.....	4	5	5	5
Identity & Access Management (HSPD-12).....	19	19	17	17
Medical Services.....	13	12	14	14
People's Garden.....	2	2	2	2
Personnel Security Branch.....	4	4	3	3
Pre-authorizing Funding.....	10	10	9	9
Retirement Processor/Web Application.....	2	2	2	2
TARGET Center.....	4	4	4	4
USDA 1994 Program.....	2	2	2	2
Virtual University.....	6	6	5	5
Total, Departmental shared Cost Programs.....	<u>97</u>	<u>100</u>	<u>93</u>	<u>93</u>

Shared Funding Projects
(Dollars in thousands)

	2016	2017	2018	2019
	<u>Actual</u>	<u>Actual</u>	<u>Estimate</u>	<u>President's Budget</u>
E-Gov:				
Enterprise Human Resources Intigration.....	6	6	6	6
E-Training.....	7	-	-	-
Human Resources Line of Business.....	1	1	1	1
Integrated Acquisition Environment.....	3	-	-	-
Freedom of Information Act.....	-	-	-	2
Total, E-Gov.....	17	7	7	9
Agency Total.....	1,195	1,384	1,668	1,728

OFFICE OF THE GENERAL COUNSEL

The estimates included 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, [\$44,394,000] \$41,717,000

Lead-Off Tabular Statement

Budget Estimate, 2019.....	\$41,717,000
2018 Annualized Continuing Resolution.....	<u>44,394,000</u>
Change in Appropriation.....	<u><u>-2,677,000</u></u>

Project Statement

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

Program	2016 Actual		2017 Actual		2018 Estimate		Inc. or Dec.		2019 President's Budget		
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	
Discretionary Appropriations:											
Legal Services.....	\$44,383	227	\$44,697	235	\$44,394	225	-\$2,677	(1)	-13	\$41,717	212
Lapsing Balances.....	-186		-91		-		-			-	.
Total Obligations.....	<u>44,197</u>	<u>227</u>	<u>44,606</u>	<u>235</u>	<u>44,394</u>	<u>225</u>	<u>-2,677</u>		<u>-13</u>	<u>41,717</u>	<u>212</u>

Project Statement

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

Program	2016 Actual		2017 Actual		2018 Estimate		Inc. or Dec.		2019 Estimate		
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	
Discretionary Obligations:											
Legal Services.....	\$44,197	227	\$44,606	235	\$44,394	225	-\$2,677	(1)	-13	\$41,717	212
Lapsing Balances.....	186	-	91	-	-	-	-		-	-	-
Total Appropriation.....	<u>44,383</u>	<u>227</u>	<u>44,697</u>	<u>235</u>	<u>44,394</u>	<u>225</u>	<u>-2,677</u>		<u>-13</u>	<u>41,717</u>	<u>212</u>

Justification of Increases and Decreases

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.

- (1) A decrease of \$2,677,000 and 13 staff years (\$44,394,000 and 225 staff years available in 2018) for the Office of the General Counsel consisting of:

The funding change is requested for the following items:

- (a) An increase of \$600,000 and 3 staff for increased legal services.

International Affairs, Food Assistance, and Farm and Rural Programs Division (3 staff years):

This Division seeks to add three attorneys to support the Department's international trade activities. During FY 2019, OGC anticipates a significant increase in demand for its services in the area of international trade. Already, in FY 2018, the Administration has launched renegotiations of two major free trade agreements: the North American Free Trade Agreement and the U.S.-Korea Free Trade Agreement. Also, the Administration has initiated two major disputes in the World Trade Organization against China, involving, respectively, China's agricultural aggregate measure of support and tariff-rate quota administration. These cases are in addition to other disputes with China, such as the application of countervailing and anti-dumping duties with respect to broiler chickens. Furthermore, OGC anticipates trade irritants with Canada in the dairy and beef sectors will require considerable man-hours. All of these matters are expected to remain very active and to intensify in FY 2019, in addition to currently unforeseen trade matters. Currently, OGC has only one attorney working full-time on international trade disputes.

- (b) A decrease of \$2,609,000 and 13 staff years in legal services.

While we will ensure that the quality of OGC's advice remains high, OGC will curtail lower priority legal services such as client training, technical assistance, and will reduce issuing formal legal opinions. OGC will reduce legal services in a number of areas. Litigation and litigation support of Department of Justice will remain high priority.

- (c) A decrease of \$668,000 in non-salary costs.

OGC will reduce discretionary expenses in several areas. One area is a reduction in travel for non-critical legal services such as client training and in-person legal counseling and advice. Supplies and contractual support will also be reduced. OGC will scale back on purchasing updated IT equipment and will eliminate computerized legal research (Westlaw/Lexis), all awards and professional development programs.

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

State/Territory	2016 Actual		2017 Actual		2018 Estimate		2019 President's Budget	
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs
Alaska.....	\$642	4	\$681	4	\$698	4	\$706	4
Arkansas.....	1,012	7	1,130	7	1,135	7	1,147	7
California.....	2,805	14	2,706	14	2,757	13	2,469	12
Colorado.....	2,646	13	2,189	13	2,103	12	2,111	11
Georgia.....	2,552	17	2,938	17	2,798	17	2,988	17
Missouri.....	1,617	11	1,830	13	1,758	13	1,600	12
Montana.....	1,304	8	1,385	8	1,310	8	1,165	7
New Mexico.....	870	6	1,103	5	714	5	722	5
Oregon.....	1,743	10	1,851	11	1,860	11	1,740	10
Pennsylvania.....	1,182	8	1,254	8	1,278	8	1,073	7
Texas.....	955	6	1,087	7	1,120	7	959	6
Wisconsin.....	1,436	9	1,385	10	1,394	10	1,229	9
District of Columbia.....	25,433	114	25,067	118	25,469	110	23,808	105
Obligations.....	44,197	227	44,606	235	44,394	225	41,717	212
Lapsing Balances.....	186	-	91	-	-	-	-	-
Total, Available.....	44,383	227	44,697	235	44,394	225	41,717	212

Classification by Objects
(Dollars in thousands)

	2016	2017	2018	2019
	<u>Actual</u>	<u>Actual</u>	<u>Estimate</u>	<u>President's</u> <u>Budget</u>
Personnel Compensation:				
Washington D.C.....	\$14,677	\$16,175	\$15,148	\$14,694
Field.....	14,104	13,234	14,553	14,118
11 Total personnel compensation.....	28,781	29,409	29,701	28,812
12 Personnel benefits.....	8,831	9,137	9,420	9,052
13.0 Benefits for former personnel.....	10	10	10	10
Total, personnel comp. and benefits.....	37,622	38,556	39,131	37,874
Other Objects:				
21.0 Travel and transportation of persons.....	267	169	170	93
22.0 Transportation of things.....	7	7	5	5
23.1 Rental payments to GSA.....	1,479	1,256	1,292	1,328
23.2 Rental payments to others.....	129	125	130	133
23.3 Communications, utilities, and misc. charges....	800	846	811	809
24.0 Printing and reproduction.....	116	132	117	117
25.2 Other services	2,458	2,382	1,936	1,160
25.3 Other goods and services from Federal sources	447	238	19	19
26.0 Supplies and materials.....	709	761	695	141
31.0 Equipment.....	163	134	88	38
Total, Other Objects.....	6,575	6,050	5,263	3,843
99.9 Total, new obligations.....	44,197	44,606	44,394	41,717
DHS Building Security Payments (included in 25.3)...	\$273	\$273	\$278	\$284
Position Data:				
Average Salary (dollars), ES Position.....	\$174,086	\$177,640	\$178,597	\$181,990
Average Salary (dollars), GS Position.....	\$116,572	\$124,150	\$127,417	\$120,199
Average Grade, GS Position.....	14.3	14.5	14.6	14.4

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 provides 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, prepares briefs, and collaborates with the Department of Justice (DOJ) in trial and appellate litigation.

Selected Examples of Recent Progress:

- As presiding officers, OGC attorneys convened oral hearings, and drafted and reviewed over 120 orders in Perishable Agricultural Commodities Act reparation cases prepared by the Agricultural Marketing Service (AMS) staff that resulted in awards of over \$3 million to unpaid sellers.
- OGC provided extensive support to the Food and Nutrition Service in its efforts to provide food assistance in the immediate aftermath of Hurricanes Harvey, Irma, and Maria.
- OGC pursued resolution of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) matters with responsible parties that required them to undertake site work and/or reimburse oversight costs at contaminated waste sites impacting National Forest System (NFS) lands, including the Holden Mine Site, Mammoth Stamp Mill Site, Lake Bryant Site, Pendola Mill Site, and St. Regis Site.
- OGC successfully defended two rounds of bid protests filed by multiple small businesses in connection with a Forest Service solicitation for Type 2 Initial Attack Fire Crews. OGC implemented a partial stay of performance so that those crews that had been deployed in response to the fires raging in the Great Smoky Mountains National Park and the city of Gatlinburg, Tennessee, would be allowed to complete their initial containment efforts while the bid protests continued.
- OGC worked with the Forest Service to develop 26 training modules on a wide variety of anti-harassment and other civil rights issues to be provided to a diverse workforce with a focus on fire fighters.

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. OGC purchased 24 additional lighter/thinner laptops to replace obsolete heavy mobile equipment in order to further enable knowledge transfer, assist with Windows 10 migration and provide an easier telework environment for all OGC employees. In addition, OGC entered into a contract agreement with Microsoft to migrate and enhance its case management system to the

Government Community Cloud (GCC) utilizing a product called Matter Center. This will result in increased work productivity for OGC employees, and future taxpayer savings by utilizing current licensing and infrastructure at USDA. To align with the Office of Management and Budget (OMB), OGC continued its use of its General Support System, Enterprise Active Directory, Enterprise VPN, O365 and USDA's Tier One Help Desk Support to consolidate IT services and provide cost savings to the agency.

LAW LIBRARY AND PROFESSIONAL DEVELOPMENT

The Law Library coordinates access to legal information and training resources for OGC to help attorneys and staff provide quality legal services and develop their professional skills. In FY 2017, the Law Library negotiated a new favorable contract with the vendor who provides the majority of OGC's web-based research sources that increases the breadth of available content with no price increase. Training and support for a new product for accessing court dockets and documents online was delivered in Headquarters and throughout the field. This new tool helped lower costs for viewing and retrieving court documents by about 35 percent while also improving efficiency through tracking and alert features. Throughout FY 2017, OGC offered 41 different trainings and meetings for staff at all levels. These were conducted in-person and via video teleconference by in-house and third-party instructors, coordinated through the Law Library. The Law Librarian/Training Coordinator facilitated the ongoing development of internal learning curricula to formally document expected knowledge and skill sets in various legal and professional practice areas.

MARKETING, REGULATORY AND FOOD SAFETY PROGRAMS

Marketing Agreements and Orders, Research and Promotion Programs, and National Organic Programs: OGC provides the AMS with legal support for marketing orders, research and promotion programs, and the National Organic Program (NOP), to include formal and informal rulemaking, and enforcement and defense of these programs. AMS provided approximately 93 rulemaking actions to OGC for legal sufficiency review in FY 2017, including rulemaking to establish the National Bioengineered Food Disclosure Standard; revise the NOP's requirement for livestock and poultry practices; reestablish the de minimis threshold for the Softwood Lumber Order; clarify that NOP's organic certification is predicated on the operations having no FSIS violations or resolving an outstanding violation, as determined by Food Safety and Inspection Service (FSIS) or the appropriate authority under an FSIS equivalency program; establish rules of procedure for formal rulemaking; and clarifying the impact of State-mandate fees for a state checkoff program on the Federal checkoff assessment under the Beef Act. 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 assisted DOJ in five cases involving marketing orders, four cases involving research and promotion programs, and two cases involving the National Organic Program. OGC also provided extensive drafting and technical assistance to the Department and Congress on legislative proposals, assisted the Department in briefing Congress in response to inquiries, including assisting AMS in developing Farm Bill language to transfer all export-related activities for dairy and dairy-containing products (e.g. infant formula) from the Food and Drug Administration to AMS.

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 16 new referrals and filed 15 new administrative enforcement complaints alleging violations of the fair trade requirements of PACA. In FY 2017, OGC litigated an administrative complaint alleging that a licensee issued false and misleading statements and failed to account truly and correctly regarding transactions involving tomatoes from Mexico. This was the first complaint filed for violations of PACA that are also in violation of the Tomato Suspension Agreement. In addition, OGC resolved and closed a total of 20 PACA enforcement actions, resulting in unpaid sellers receiving several hundred thousand dollars in restitution. In FY 2017, OGC reviewed and revised PACA's final rule to update and clarify growers' rights under the PACA trust and when PACA has authority to initiate a disciplinary investigation. PACA also provides an administrative forum for USDA's Judicial Officer to resolve disputes among private parties relating to produce transactions in reparation cases.

Animal and Plant Health Laws and Wildlife Services (WS): In FY 2017, OGC reviewed for legal sufficiency 7 notices, 19 final rules, and 6 proposed rules, in support of the Animal and Plant Health Inspection Service (APHIS). OGC worked closely and effectively with DOJ to defend the agency in several lawsuits including challenges to WS'

implementation of gray wolf damage management activities in cooperation with the State of Oregon; APHIS' Cattle Fever tick Eradication Program; and the biological control program for the invasive salt cedar plant in the southwestern United States.

Animal Welfare Act and Horse Protection Act: OGC supports APHIS in its unique Federal role of ensuring the humane care and treatment of millions of animals covered by the Animal Welfare Act (AWA) and the Horse Protection Act (HPA) through administrative enforcement actions. In FY 2017, OGC attorneys filed 40 initial HPA complaints and 8 amended HPA complaints in cases involving 194 respondents, and helped APHIS to settle or to obtain final decisions for 79 respondents, including orders assessing 72 respondents' civil penalties totaling \$82,750 and disqualifying 76 respondents for a period of time from participating in horse shows, exhibitions, sales, and auctions regulated under the HPA. OGC has also provided APHIS assistance in the development and drafting of modifications to its existing system of records subject to the Privacy Act. Additionally, OGC spent many hours assisting APHIS in reviewing its website to determine if certain personal information in documents, such as inspection reports, regulatory correspondence, annual reports, and enforcement records, it posts on the APHIS website involving the Horse Protection Act and the Animal Welfare Act was consistent with the Privacy Act. APHIS removed documents from its website to conduct a review of the documents posted online to ensure that they do not contain personal information that should be redacted or removed from disclosure to the general public. Working with DOJ, OGC was able to successfully defend the APHIS decision to remove the documents while conducting the review.

Federal Grain Inspection Service (FGIS): OGC reviewed for legal sufficiency approximately 34 Federal Register documents. The documents involved grading standards, designations of official agencies, and delegations to State agencies. OGC is also providing legal support to FGIS as it determines its interpretation of when a producer has to use the official agency in its area and under what conditions.

Packers and Stockyards Act (P&S Act): In FY 2017, OGC filed 27 administrative complaints and referred 6 new actions to DOJ to enforce the requirements of the P&S Act, which amounted to civil penalties totaling \$511,350. These complaints and actions seek the imposition of cease and desist orders and civil penalties. OGC reviewed rulemaking dockets and Federal Register Notices and provided important legal advice and guidance regarding enforcement actions to the Packers and Stockyards Administration. OGC reviewed and cleared the final rule to withdraw the Grain Inspection, Packers and Stockyards Administration interim final rule (IFR) on harm to competition under sections 202(a) and (b) of the Packers and Stockyards Act. We also reviewed and cleared the notice of no further action on the proposed rule that would clarify what would constitute unfair, unjustly discriminatory, or deceptive conduct and what would be considered an undue or unreasonable preference or advantage.

Food Safety: OGC reviewed and cleared for legal sufficiency proposed rules, final rules and notices for publication in the Federal Register for the FSIS. OGC worked closely and effectively with DOJ to defend the agency in several lawsuits including challenges to FSIS discretion in determining the quantum of evidence needed before it takes an action as drastic as banning a food product, such as foie grass, from the market. OGC filed administrative actions to withdraw FSIS Federal inspection services from meat and poultry establishments that are not in compliance with statutes and regulations, and referred criminal cases and civil cases to DOJ. OGC worked effectively with FSIS in developing and drafting 5 rulemaking dockets to protect the Nation's food supply.

INTERNATIONAL AFFAIRS, FOOD ASSISTANCE, AND FARM AND RURAL PROGRAMS

Commodity Credit Corporation (CCC), Farm Service Agency (FSA), and Domestic Commodity-Related Activities: OGC provided extensive advice to FSA and the Secretary in connection with the authorization of emergency haying under the CRP program, during the primary nesting season, in the face of drought and wildfires in the Dakotas and Montana.

Foreign Agricultural Service (FAS): OGC provided extensive advice in the development of litigation in the World Trade Organization (WTO) in two cases against China. In addition, OGC provided extensive advice on the text of various chapters under consideration in the renegotiation of the North American Free Trade Agreement. These texts include market access, sanitary and phytosanitary measures, and technical barriers to trade.

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 efforts to bring more accountability, consistency, and transparency in a manner in which private parties seek reimbursement for the costs of administering policies and plans of insurance approved by the Board pursuant to section 508(h) of the Federal Crop Insurance Act.

Rural Development (RD): OGC provided extensive legal assistance in the development of regulations, notices, and other legal documents required for the implementation of RD programs for Rural Electric Savings Loans, Community Facilities Relender Loans, and Technical and Assistance Training Grants. OGC provided significant legal counsel concerning Telecommunications and Water loan collection actions and negotiations, as well as legal defense of a tort claim arising from fraudulent guarantees issued by a former approved lender for the Business and Industry program. OGC has provided extensive legal advice regarding preparation for the 2018 Farm Bill and support of the Administration's infrastructure initiatives.

NATURAL RESOURCES AND ENVIRONMENT

Forest Service: OGC advised the Forest Service on compliance with Federal environmental and administrative laws governing management of the 193 million-acre National Forest System (NFS). OGC counsels the Forest Service on legal issues arising under laws including the Administrative Procedures Act, the National Environmental Policy Act, the National Forest Management Act, the Healthy Forest Restoration Act, and the Endangered Species Act to name just a few. In addition, OGC provided support to Forest Service State and Private Forestry, Business Operations, and Research and Development regarding a myriad of conservation programs. OGC provided assistance to the FS and other USDA offices in drafting legislation, and reviewed pending legislation, legislative reports, and testimony for congressional hearings. OGC also provided legal advice to the Forest Service regarding law enforcement issues and the Secure Rural Schools Act payments.

In the past year, OGC provided legal services to the Forest Service on a wide range of agency activities:

1. *Energy and Mineral Development:* OGC provided legal assistance to the Forest Service in its response to Executive Order 13783 and in the review of energy development projects involving coal and geothermal development and oil and gas leasing. OGC also provided significant assistance to the Forest Service regarding the development of hard rock mineral deposits in Arizona and Minnesota valued in the billions of dollars.
2. *Infrastructure:* OGC provided legal advice to the Forest Service to expedite infrastructure development involving the national forests, especially with regard to electric transmission lines, water developments, and natural gas pipelines.
3. *Regulatory Reform and Forest Planning:* OGC assisted the Forest Service in identifying barriers and obstacles to national forest management resulting from obsolete and redundant regulations and directives. OGC also provided legal research and informal advice regarding ongoing land and resource management plan amendments and revisions, as well as objections concerning plans, projects, and permits.
4. *Litigation:* OGC coordinated litigation strategy and assisted in the defense of cases involving emerging legal issues concerning wildlife management, timber salvage, mineral development, hazardous fuels reduction, livestock grazing, 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.
5. *Forest Management:* OGC provided informal advice concerning stewardship contracting authority, and assisted the Forest Service in the development of Good Neighbor agreements with several States. OGC also provided advice and represented the agency in various administrative forums, including appeals before the Civilian Board of Contract Appeals, suspension and debarment proceedings, bid protests before the General Accounting Office (GAO), small business set-aside appeals, and export sourcing area proceedings.
6. *Recreation:* OGC provided advice to the Forest Service on maintaining access for hunting and fishing, 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 FS recreation programs.

7. Lands, Water, Wilderness and Wild and Scenic Rivers: OGC assisted the Forest Service 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 litigation support for water adjudications, and provided advice regarding management of designated wilderness areas and wild and scenic river corridors.

Natural Resources Conservation Service (NRCS): OGC provided support for the agency's natural resource conservation activities on private or non-Federal lands, including legal advice regarding the administration of programs such as the Conservation Stewardship Program, the Environmental Quality Incentives Program, the Agricultural Conservation Easement Program, and the Regional Conservation Partnership Program. In addition, OGC provided significant legal services related to implementation of the 2014 Farm Bill.

1. Environmental Law: OGC provided litigation support and legal advice for all USDA agency matters related to the 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.

2. Deepwater Horizon Oil Spill: OGC actively assisted the Department on the implementation of the Deepwater Horizon consent decree, the largest environmental settlement in U.S. history. OGC advised and represented USDA senior leadership in connection with the Gulf Coast Ecosystem Restoration Council, which selects and implements Gulf of Mexico ecosystem restoration projects.

3. 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. 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 DOJ and other divisions within OGC, is responsible for presenting USDA's legal position in cases on appeal. During FY 2017, GLRD consulted on 120 such appellate matters and prepared 32 appeal recommendations for DOJ's consideration.

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 2017, GLRD coordinated USDA's participation as *amicus curiae* in several cases. GLRD coordinated with the Office of the Solicitor General regarding USDA's significant interests affected by *Raymond J. Lucia Industries, Inc., and Raymond Lucia v. SEC*, in which the Supreme Court will consider the application of the Appointments Clause to enforcement proceedings presided over by administrative law judges. GLRD assisted DOJ with drafting an *amicus curiae* brief requested by the Second Circuit in *Marentette v. Abbott Laboratories, Inc.*, in which the Court sought USDA's views on its organic certification program pursuant to the Organic Foods Production Act. GLRD is assisting DOJ in an affirmative appeal before the Ninth Circuit in *Ranchers-Cattlemen Action Legal Fund, et al. v. Perdue*, in which the United States is defending USDA's administration of the beef checkoff program in Montana against a First Amendment challenge. GLRD is assisting DOJ in defending the Secretary's position in *Animal Legal Defense Fund et al. v. USDA, et al.*, where the Animal Legal Defense Fund contends that USDA violated FOIA's affirmative disclosure requirements by removing from its public website various Animal Welfare Act records. Finally, GLRD is assisting DOJ with a significant crop insurance case in the Fifth Circuit, *Adkins v. Vilsack* that questions whether the APH Yield Exclusion in 2014 Farm Bill was intended to be self-executing and immediately available to producers of winter wheat.

GLRD defends most USDA Judicial Officer decisions that enforce the P&S Act, PACA, AWA, and the HPA, and that are appealed to the Federal courts of appeals. GLRD attorneys brief and argue these cases before the courts of

appeals. During FY 2017, GLRD handled two such cases before the Court of Appeals for the Sixth Circuit. 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 2017, GLRD prepared 32 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's legal issues and litigation relating to the Farm Bill, procurements, and fiscal law.

GLRD provides the primary legal support for the Departmental Management (DM) and for the Research, Education and Economics (REE) mission area. For DM, GLRD provided legal guidance in support of the Secretary's efforts to reorganize the Department. In addition to advising the Administration on the legal aspects of the reorganization plans, GLRD drafted memoranda and delegations of authority to implement the changes and assisted in responding to informational requests from Congress. OGC also provided DM with significant support with respect to modernization options for the USDA National Capitol Region (NCR) buildings. Within REE, GLRD advised the National Institute of Food and Agriculture (NIFA) in connection with OMB cost principles and the use of State matching funds by land-grant institutions, the carryover of unexpended funds under capacity and infrastructure awards, and the fiscal law implications of using carryover funds in subsequent fiscal years. In addition, GLRD assisted NIFA in implementing a new pilot program authorized in the 2016 Consolidated Appropriations Bill to provide grants to nonprofit organizations for programs and services targeting military veterans. GLRD also began providing assistance to Office of Congressional Relations and REE with respect to the research title of the Farm Bill. Also within the REE mission area, GLRD worked with the International Affairs, Food Assistance, and Farm and Rural Programs Division, Department of State, and U.S. Agency for International Development to stand up the Agricultural Research Service's (ARS') administration of the United States obligations pursuant to the International Treaty on Plant Genetic Resources for Food, which the Senate ratified at the end of September 2016.

In supporting Departmental and agency procurement actions, GLRD defended the Department in litigation before the Civilian Board of Contract Appeals) and in at least 30 bid protests before both GAO and the Court of Federal Claims (COFC). Two of the GAO protests threatened to suspend the five shared line-of-business services provided by the Department's National Finance Center to USDA and other Federal clients. GLRD continued its defense of the FS and its contract award for the overhaul of Recreation.gov, the United States' online recreation reservation system, working with Forest Service successfully to respond to a remand by the COFC and now defending the COFC decision in favor of Forest Service on appeal.

GLRD assisted a variety of USDA agencies in program efforts as well. For AMS, GLRD prepared a memorandum interpreting Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and its applicability to an AMS bioengineered disclosure rule. This work kept AMS in compliance both with its congressionally mandated obligation to promulgate a national labeling regulation and with the Administration's guidance on regulatory processes. Also for AMS, GLRD attorneys responded to emergency inquiries regarding the organic status of Texas crops sprayed with insecticide in the wake of Hurricane Harvey, as well as questions regarding AMS' use of funds for emergency food distribution under the Stafford Act after Hurricanes Harvey, Irma, and Maria. GLRD worked on numerous drafts of legislative language related to wildfire funding; and worked with budget officers in the FSA to determine that a change in accounting method for the Conservation Reserve Program, undertaken in response to OMB direction, did not result in any Anti-deficiency Act violations with respect to FSA's prior-year apportionments, allowing FSA to inform its auditors it had committed no potential or actual violations to report.

Federal Tort Claims Act/Freedom Of Information Act 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, the Freedom of Information Act (FOIA), the Privacy Act (PA), and the Federal Advisory Committee Act. In addition to reviewing 150 administrative FOIA appeal packages for legal sufficiency and making determinations in 28 administrative tort claims in addition to continuing to spend significant legal resources in the defense of the FOIA and FTCA lawsuits. Among successes in FY 17, GLRD prevailed on a motion to dismiss in *Moss, et al. v. U.S.* (now on appeal), which was filed against the FS as a result of the June 2010 flash flood at the Albert Pike Recreation Area in Arkansas seeking over a half-billion dollars. In the Pennant Financial Fraud cases against RD, GLRD prevailed on a motion to dismiss in a case seeking \$186.4 million.

GLRD continued handling a large number of FOIA cases, involving over 100,000 pages of records. Chief among these were *Animal Legal Defense Fund et al. v. USDA* (N.D. Ca.) and *PETA v. USDA* D.D.C., two cases filed mounting a variety of legal challenges under FOIA to the temporary removal of the APHIS Animal Care website to remove privacy-related information. GLRD prevailed on a motion to dismiss in *ALDF*, which is now on appeal. Additionally, in 10 separate FOIA litigations that the Cornucopia Institute filed against AMS in pursuit of records relative to the NOP, three resulted in summary judgments in favor of USDA, two were settled, and the rest remain pending. GLRD also assisted DOJ in defending two sensitive FOIA lawsuits brought against the U.S. -- *Natural Resources Defense Council* (involving presidential transition records) and *American Oversight*.

National/Homeland Security: GLRD continued to provide legal oversight in the development of the Department's cybersecurity, defensive counterintelligence, insider threat detection initiatives and other national security issues and participated in Federal interagency initiatives in this area, particularly with respect to biodefense initiatives, working with the USDA Office of Homeland Security and Emergency Coordination, USDA Office of Chief Information Officer, National Security Council staff and Treasury.

Intellectual Property: GLRD provided legal services in patent, trademark, and copyright law for a variety of programs throughout the Department. This included advice in the transfer of Department technology to the private sector, that is, advice in the patenting and licensing of Department inventions. This included providing oversight and advice on patent procurement, reviewing updates of invention licensing forms and invention assignments, clearing Federal Register license notices for legal sufficiency, and advising on potential infringement of licensed patents. GLRD also experienced a significant increase in its patent workload owing to a reorganization of the Forest Service's technology transfer program requiring GLRD's direct handling of Forest Service domestic and foreign patent application filings. GLRD also advised on invention rights, copyright, trade secrecy, confidentiality, and publicity rights in various types of agreements, including joint research, material transfer, confidentiality, publishing agreements, model releases, appearance releases, procurement contracts, grants, and memoranda of understanding. Additionally, GLRD advised Department agencies on intellectual property rights in the conduct of their activities, including infringement, the proper use of trademarks and copyrighted material, and endorsements. USDA insignia, symbols, and marks, on which GLRD advised, included the USDA Symbol, the 4-H Club name and emblem, Smokey Bear, the FS Insignia, and various program logos. GLRD activities included the filing of trademark applications at the Patent and Trademark Office and the maintenance of trademark registrations. A first, in FY 2017 GLRD intellectual property staff have been extensively involved in a criminal investigation and prosecution arising out of the fraudulent activities of a participant in an agency technology transfer agreement.

CIVIL RIGHTS, LABOR AND EMPLOYMENT LAW

OGC represents USDA in issues involving civil rights and employment, human resources, labor relations, and employee relations, 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 authorities. OGC defends the Secretary's interests before the Equal Employment Opportunity Commission (EEOC), the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority, the U.S. Office of Special Counsel, and before numerous administrative tribunals referenced earlier. OGC also assists DOJ in defending the Secretary in similar claims brought in Federal district and appellate courts, and the Court of Federal Claims. 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 the Secretary 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 400 complaints of employment and program discrimination, and complaints related to labor and employee relations decisions, in various forums across the country. CRLELD also represented the Secretary's interests in resolutions and investigations of Office of Special Counsel complaints filed by employees and former employees alleging whistleblower allegations. The Litigation Section was responsible for promoting a national practice of civil rights litigation throughout the Department to ensure consistency and best practices, and held numerous in-person and video teleconference training sessions for both Agency representatives before EEOC and MSPB, and managers throughout USDA to ensure that the Department's vision of civil rights continues to be accomplished. A summary of some of the major work of the Litigation Section is summarized below:

Defending All EEOC Complaints Involving the Office of Chief Financial Officer (OCFO) and Natural Resources Conservation Services (NRCS): The Litigation Section absorbed forty-one (41) EEOC administrative cases and appeals involving USDA's OCFO over the course of the fiscal year when OCFO's Agency Representative left its employment; and absorbed fifty-seven (57) EEOC administrative cases and appeals involving NRCS over the course of the fiscal year.

Administrative Employment Discrimination Class Actions: The Litigation Section represents the Secretary in six pending EEOC administrative class actions of employment discrimination, ensuring the proper representation of management at RD, APHIS, FSIS, FS, and DM. Specifically, the Litigation Section represents 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. 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. The Litigation Section is defending the Secretary at the certification level in an administrative class action brought by current and former employees and applicants who applied for positions in the Office of the Assistant Secretary for Civil Rights (OASCR) and/or requested disability accommodations, who allege that they were discriminated against based on their disabilities. The Litigation Section is also defending the Secretary at the certification stage in a putative administrative class action brought by female fighters in Region 5 of the FS, who allege that the Agency discriminates on the basis of gender in reassignment, hiring and promotions, among other alleged actions. The Litigation Section is defending the Secretary at the certification stage in claims of class discrimination on the basis of age via denial of overtime by APHIS since December 2012, due to collective bargaining agreement changes regarding work schedule assignments. The Litigation Section is also defending the Secretary at the certification stage on claims that FSIS's policy of prohibiting employees working in alternative duty assignments from working overtime or holidays violates the Rehabilitation Act.

Judicial Employment Class Actions: The Litigation Section assists DOJ in defending claims by non-exempt Fair Labor Standards Act (FLSA) employees, government-wide, who worked during the furlough period in October 2013. The Litigation Section is also working with OGC Pacific Region to assist DOJ in defending a putative class action by FS foresters in the Pacific Northwest Research Station who allegedly were not paid overtime in accordance with the FLSA and Federal Employees Pay Act (FEPA).

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.

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

1. *Hispanic and Women Farmers Claims Process (HWFCP):* In *Garcia, et al. v. Vilsack, and Love, et al. v. Vilsack* - Hispanic and Women farmers and ranchers alleged discrimination by FSA in loan making and loan servicing, respectively. After denial of class certifications, USDA established a voluntary non-judicial adjudicative claims process to address the decades old allegations of discrimination 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. Approximately 22,000 claims were adjudicated, and the claims process provided over 3,000 payments to prevailing claimants in 2016. All of the collateral cases challenging the HWFCP have now been dismissed by numerous Federal district courts. The Litigation Section is working with the DOJ to defend the Secretary in the appeal of a dismissed class action by African American farmers alleging that they were excluded from the process without any briefing at all.

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. All payments have been made and all debt relief provided to prevailing class members; and OGC assisted with programmatic relief implementation that was required by the *Keepseagle* settlement agreement. The court denied the Class's initial request to create a 501(c) (3) trust that would select beneficiaries and disburse remaining settlement funds of approximately \$380 million over a period of no more than 20 years because the lead class agent did not support the request. The Judge also denied the lead Class Agents' request for a full redistribution of the *cy pres* funds to successful claimants. In 2017, OGC worked with DOJ, Class Counsel and the lead Class Agent's counsel on the ultimate resolution of the distribution of *cy pres* funds. In 2017, the Litigation Section assisted DOJ in responding to several judicial appeals filed challenging the ultimate resolution of the *cy pres* distribution, providing relevant facts, legal options, and appropriate research to adequately defend the Government in these challenges. 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.

EEOC's New Electronic Filing Portal: The Litigation Section worked with all of USDA's subcomponent Agencies and the OASCR to ensure compliance with the filing requirements of EEOC's new electronic database, FedSEP. The Section served as USDA liaison for EEOC in all aspects of FedSEP for all complaints and appeals filed USDA-wide. The Litigation Section ensured that an Agency affirmative appeal was properly submitted in FedSEP when a USDA office failed to do so on the day the appeal was due. EEOC informed USDA that the appeal would have been considered late and not considered if OGC had not filed the matter in FedSEP.

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 the EEOC. The section is also responsible for advising agencies on a variety of labor relations matters, including grievances, Unfair Labor Practice allegations, midterm bargaining, and impact and implementation bargaining. The Policy Section, upon request, provides legal sufficiency reviews of Final Agency Decisions 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. The Policy Section also prepares formal legal opinions on a wide variety of civil rights, labor, and EEO matters and has the primary responsibility for working with the Office of Adjudication to ensure compliance with Title VI of the Civil Rights Act and related statutes covering federally assisted programs. In addition, the Policy Section 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 responding to changes in the law. The Policy Section serves as the primary office for addressing internal labor, personnel, and EEO matters within OGC.

1. Initiative with OASCR re Late-Investigated Complaints of Employment Discrimination: With the Litigation Section, the Policy Section participated weekly for a six-month period with leadership from USDA's OASCR to establish a 180-Day Initiative to ensure that USDA did not receive sanctions from EEOC for late-investigated EEO complaints and to ensure that USDA improved its case processing time. The OASCR-OGC project was successful, led to improvements in backlog reduction by 100 percent, and put into place processes and staffing to maintain the goal that all accepted civil rights claims are investigated within a 180-day period.

2. Regulatory Review: The Policy Section performed a comprehensive review of all regulations and departmental directives in civil rights, EEO, labor, and employment as part of the Secretary's regulatory reform initiative. The analysis identified several directives that could be eliminated or modified to streamline processes, increase efficiency, and eliminate redundancies. In particular, the Policy Section provided comprehensive recommendations for streamlining Civil Rights Impact Analyses), reducing duplicative reporting requirements in the OASCR agency head assessments, and improving the operations of special emphasis programs in the agencies.

3. Conforming USDA's Title IX Rule to the Government-wide Common Rule: The Policy Section took the lead on revising USDA's Title IX enforcement regulations at 7 C.F.R. Part 15a to remove inconsistencies with the Department of Education and the Department of Justice. The revisions bring USDA in compliance with the Department of Justice Common Rule for Title IX issued in 2000.

4. Review of USDA Labor Contracts: The Policy Section completed a comprehensive review of USDA labor contracts to ensure that all notice requirements were met for the Secretary's September announcement of the realignment of several agencies. The Policy Section also created a new training module to explain to USDA supervisors and managers the labor rules regarding notice, formal discussions, and impact and implementation bargaining.

5. OGC Collective Bargaining Agreement: The Policy Section provided significant legal support to the OGC management team as it undertook a year-long effort to negotiate a new Collective Bargaining Agreement with the OGC employees' union (AFGE Local 1106).

The Policy Section also provided guidance and review for more than 75 disciplinary and performance actions, more than 80 settlement agreements, and more than 50 legal opinions 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. The Eastern Region handled almost 2,000 litigation matters and almost 3,000 transactional matters and legal opinions in FY 2017.

Forest Service: OGC Eastern Region assisted the Forest Service in upholding its forest plans and projects in numerous litigation matters, including continuing to defend the Forest Service in several matters challenging its oversight of minerals and oil and gas development on National Forest land. For example, OGC is defending the Forest Service in four separate cases challenging a Land Exchange Project on the Superior National Forest. This project exchanges 6,650 acres of federal land for the acquisition of 6,690 acres of non-federal lands. The Federal lands are underlain by copper-nickel-platinum group elements, the rights to which are owned by a Minnesota mining company. The exchange will provide the Forest Service with a number of acres outside the mining area that will be managed for National Forest purposes.

OGC also assisted the Forest Service in defending a challenge to oil and gas management on the Ozark –St. Francis National Forest. In *Ozark Society vs. U.S. FS*, the Ozark Society, filed a complaint in the U.S. District Court against U.S. FS, and others, to prevent gas drilling in north central Arkansas, and in the Ozark National Forest in northwest Arkansas until studies have been conducted to comply with applicable environmental laws and to demonstrate that hydraulic fracturing of gas wells is not potentially harmful to the environment. The Court of Appeals ruled that the Ozark Society did not have standing to challenge the FS decision.

Risk Management Agency (RMA): OGC assisted RMA in handling several large crop insurance claim cases in defense of the agency's denial of claims. For example, in *J.O.C. Farms v. USDA*, the Plaintiffs claimed that RMA failed to timely and properly process and pay their claim for \$1.5 million in damages to its tobacco crop. OGC, as lead litigator, defended the agency's determination to not pay the claim and received a favorable decision from USDA National Appeals Division (NAD). OGC also assisted RMA in maintaining the integrity of its programs and funds by providing legal sufficiency reviews of decisions seeking to recover overpayments or debar fraudulent actors from future participation.

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/foreclosures that arose out of such a large loan portfolio. In addition, OGC assisted RD with the Multi-Family Housing (MFH) Program, including representing RD as lead counsel before NAD in 35 administrative proceedings, along with assisting the U.S. Attorney's Office in defending a District Court lawsuit brought against RD while it attempted to collect a delinquent

debt of approximately \$36 million owed by one MFH Owner/Operator.

NRCS: OGC Eastern Region assisted NRCS in acquiring 242 conservation easements within the OGC Eastern Region, which included acquisitions valued at over \$85 million. 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, OGC Eastern Region worked closely with NRCS to develop a streamlined process for implementing the Emergency Watershed Protection Program for the Hurricane Sandy Relief project. This included issuing 24 Preliminary Title Opinions, developing contract documents, evaluating compatibility of various nonstandard exceptions to the title and formulating strategies for dealing with the conflicts that arose between residents who did enroll and those who did not.

FSA: OGC Eastern Region provided legal advice to FSA with loan issues and bankruptcies in almost 600 matters during the past year; and also assisted DOJ in defending FSA in cases brought challenging its implementation of program funds.

Federal Tort Claims Act – Attorneys in the Eastern Region adjudicated over 113 Federal Tort Claims Act claims seeking damages against agencies of the Department.

Employment/Program Discrimination Defense: OGC Eastern Region attorneys successfully defended USDA agencies in employment and program-related discrimination litigation before the EEOC, dedicating two full time staff to handle these cases; 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 home to America's most productive farmland and is comprised of thousands of rural communities needing access to essential services and credit facilitated by USDA. The Central Region is also home to many large urban areas¹ that obtain supplemental food assistance from USDA. These USDA activities require legal advice and representation provided by the attorneys in the Central Region.

Food and Nutrition Service (FNS): Legal advice and representation in the Courts for the FNS Supplemental Nutrition Assistance Program required OGC litigation support. Store owners challenged actions brought by FNS to disqualify their stores or to assess a civil monetary penalty in transfer of ownership cases. In *Selam Grocery*, OGC successfully defended the FNS ALERT system which detects suspicious transactions based on algorithms. In *Hawkins*, OGC supported FNS litigation by resolving litigation challenging an alleged sale of a disqualified store and the imposition of a transfer-of-ownership civil money penalty. The *Southend Meat Market*, *Nicks Food Market*, *St. Clair Food Market* cases revealed that one individual was using a front person to escape detection, even though that individual retailer had been permanently disqualified.

Risk Management Agency and Federal Crop Insurance Corporation: OGC provided legal assistance to RMA, FCIC and its various components that operate in the Central Region. In the *Bottoms Farms* case, OGC successfully defended the decision by RMA/FCIC that required levees to be built immediately following rice planting. This case is currently on appeal to the Eighth Circuit. *In re: Davis*, OGC is providing legal advice to RMA to assist in offsetting payments due to a partnership stemming from a criminal plea agreement involving one of the partners, but coupled with a complicated bankruptcy and competing creditors. The Central Region worked with the Compliance Offices to review and issue legal sufficiency reviews of Final Agency Determinations seeking to recover indemnity overpayments against insurance companies, review large claims and then defend these actions before the United States Civilian Board of Contract Appeals.

RD: The Central Region continued its efforts to assist the Rural Development mission area in making and servicing loans to Rural America. In the Community Facilities Program, OGC provided legal advice and counseling to facilitate loans and grants on several faith-based projects. Faith-based loans provide additional challenges necessitating additional eligibility reviews and safeguards to conform to constitutional restrictions. Medical

facilities in Rural America continue to apply for Community Facilities loans to finance computers and other state-of-the-art equipment (e.g., MRI) needed in the modern practice of medicine, which includes providing legal advice to RD related to Chapter 9 bankruptcies by rural municipalities in Atoka County Healthcare Authority, and Pushmataha County-City of Antlers, Hospital Authority. RD's housing programs, both single-family and multi-family, continue to need legal services to defend the Agency's financial interest in bankruptcy, as well as claims made by other creditors and adjoining landowners. Tax lien claims also required OGC legal intervention to protect the agency's financial interests. Other OGC legal work includes issues related to debt restructuring, parity transactions, revitalization, as well as pre-payment issues related to multi-family borrowers that are interested in leaving the program due to retirement.

Farm Service Agency and related Commodity Credit Corporation Programs: In the Central Region, FSA has \$5 billion in outstanding direct loans and \$6.7 million in guaranteed loans. The Central Region has over 1 million farms and farm product sales total almost \$180 billion. FSA requires significant legal counseling and representation for these loan and commodity programs. Work continued in the *Caldwell Bank* case, where OGC is defending the Agency's security interest (\$5.3 million) for Farm Storage Loans that are in default. Additional FSA work in the environmental arena has also increased, due to challenges brought by environmental groups regarding loans secured or guaranteed by FSA. Work continued on Tracy Poultry involving the FSA guaranteed loan program and the implementation of the new environmental regulations (7 CFR § 799). The project is for a concentrated animal feeding operation, drawing environmental opposition from various groups regarding the environmental and biological assessments. As commodity prices have softened, FSA is seeing an increase in bankruptcies and adversary proceedings that threatened the agency's liens or financial interests or diminished its potential recovery. Bankruptcy Trustees have been increasingly assertive in challenging creditors, including FSA. There are several actions where OGC is defending the programmatic decisions made by FSA in the Farm Program area. OGC's Central Region also provides legal advice for the United States Warehouse Licensing and Examination Division to ensure the integrity of United States Warehouse Act, and to ensure the protection of depositors. The Porter Grain matter was completed this year, and OGC successfully protected the rights and financial recovery of grain depositors making sure the depositors were made whole. The U.S. Warehouse Act also provides the statutory authority for the issuance and conveyance of electronic receipts to approved "providers." The Central Region is providing legal advice to protect the integrity of the electronic receipt system operated by these providers.

Forest Service: OGC's Central Region assisted the FS with a wide variety of matters including land exchanges and acquisitions, closure orders, law enforcement issues, timber sale contract disputes, access issues, hunting and recreation issues, title claims and fire cost recovery actions. Challenges brought by adjacent landowners involving boundary disputes, title challenges, title questions and access rights continued to necessitate legal representation for the Central Region. In *Perdue Properties* there was disputed ownership by various parties over real property along the Homochitto River in Mississippi. OGC representation successfully obtained an Order with the United States affirming title to the disputed area and all parties quitclaiming their alleged interests to the United States. OGC provided legal advice to the Forest Service on multiple real property transactions with historical significance. By working with several not-for-profits, and governmental agencies, OGC was able to assist the Forest Service in its eventual acquisition of land for inclusion in the Appalachian National Scenic Trail. This acquisition will incorporate land into the Appalachian Trail, connecting Carver's Gap to Elk Park, and due to its proximity to an Audubon Important Bird and Biodiversity Area will improve management capability for the Golden-Winged Warbler.

NRCS: OGC continues to provide legal services to NRCS to assist it in acquiring easements for the Agricultural Conservation Easement Program. In particular, Wetland Reserve Easements require significant legal review and assistance, and given the topography of Arkansas and Louisiana, large numbers of wetland easements were acquired there with OGC legal assistance. This presents new and different challenges to NRCS requiring additional OGC assistance. In *Heslep v. Arkansas Game & Fish Commission et al.*, the WRP easement was thwarted by a gate installed by a State agency, which also then claimed sovereign immunity. OGC was successful in getting the case dismissed, thereby protecting and preserving the NRCS easement. OGC assisted the NRCS in developing a nationwide policy for the acquisition of mitigation easements by addressing several over-arching programmatic needs. NRCS also requires additional legal assistance for restoration projects that it is contracting and funding along the Gulf Coast, following the devastating hurricanes of the last decade. The *St. Bernard Parish* has now concluded, and OGC successfully defended this Contracts Disputes Act Claim for \$4 million where the Court found that a Cooperative Agreement did not provide for monetary compensation from the United States.

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. In *Lobell*, OGC defended a mixed case appeal from the MSPB that sustained the dismissal of Lobell from Federal employment after she failed to report and accumulated over 2,000 absent without leave hours. Lobell claimed that the agency failed to make reasonable accommodation for her disability. The Central Region is also defending several cases before the EEOC where the employees are alleging a variety of bases, such as failure to accommodate, retaliation, and age and/or race discrimination. The Central Region also defended the Department in programmatic cases brought by program participants alleging various types of discrimination or mistreatment.

Security and Continuity of Operations Issues: Central Region provided legal support to the agency's Continuity of Operations Plans, and Devolution Emergency Responses. Several disasters over the last years have placed an increased importance on these types of activities so that USDA can contribute to the Federal response when disasters strike. Also, threats to the government necessitated additional work in devolution so that operations can continue uninterrupted. Other threats made to USDA structures and employees required additional legal assistance, in addition to work place violence concerns.

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.

Forest Service Programs: The majority of legal challenges to Forest Service proposals to harvest timber, implement projects to reduce the threat of wildfire and restore forest health, authorize private parties to mine, extract oil and gas, construct energy infrastructure and water developments, and operate recreational facilities are brought under the National Environmental Policy Act, the National Forest Management Act and the Endangered Species Act. The Mountain Region provided extensive advice to the Forest Service regarding compliance with these and other laws in furtherance of the priorities of the Secretary of Agriculture and the Chief of the Forest Service, and assisted the Justice Department in defense of over 100 pending cases. The majority of Forest Service litigation cases in the Mountain Region involved Forest Service proposals to harvest timber or treat forest vegetation, authorize livestock grazing, authorize mining and mineral development activities, and manage the motor vehicle transportation system of roads and trails. As the Forest Service undertook revision of its Forest Plans for each National Forest under new rules, OGC was instrumental in advising the FS regarding compliance with these laws. OGC also advised on the reinitiating of programmatic consultation for Canada Lynx critical habitat and assisted in several ongoing cases involving Lynx consultation following the Ninth Circuit decision in *Cottonwood Environmental Law Center v. US FS*, 789 F.3d 1075 (9th Cir. 2015), *cert. den'd 137 S.Ct. 293*.

Water Rights: Many uses of NFS land are dependent upon water and water rights, and OGC assisted the Forest Service to acquire and protect water rights necessary for National Forest purposes. The Mountain Region represented the Forest Service in administrative water rights proceedings in Nevada, Arizona, New Mexico, Idaho, Montana, and Utah. OGC also worked with the Department of Justice in judicial water rights proceedings to acquire and protect water rights administered by the Forest Service for National Forest purposes. OGC assisted the FS in assuring that authorized users of the national forests who use water are in compliance with state law water rights requirements. Finally, OGC assisted the Forest Service in evaluating private claims of water rights that are located on or affect NFS land to assure that such private water rights are respected.

Mining and Energy Development: OGC advised the Forest Service regarding several controversial oil and gas development projects on NFS land 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 and New Mexico, phosphate and cobalt mines in Utah, a proposed molybdenum mine in Colorado, and proposed silver mines in Montana.

Wildlife Management: There has been a recent trend in lawsuits seeking to compel the Forest Service to regulate wildlife management activities traditionally administered by the States. OGC advised the FS and assisted the DOJ

in litigation concerning: collection of wildlife data by the State of Idaho in wilderness areas that requires helicopter landings in wilderness; private sponsorship of hunting contests when some hunters might take game on national forests; translocation of mountain goats by the State of Utah on State land, where transplanted goats may eventually wander onto a national forest; winter feeding of elk by the State of Wyoming on national forests; use of lead projectiles by hunters in Arizona; and potential impacts to bighorn sheep from diseases transmitted by domestic sheep permitted on national forests.

Grazing and Range: OGC continued to provide extensive advice and litigation support to the Forest Service regarding its ongoing efforts to reconcile its authorization of livestock grazing with its obligations to protect endangered and sensitive species including bullhead trout, bighorn sheep, and the New Mexico meadow jumping mouse.

Fire: The four Forest Service regions served by the Mountain Region have active wildland 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 assists the Forest Service with administrative cost collection efforts.

Real Property: Federal agencies are required by law to obtain approval of title from their Departmental Counsel when acquiring land or interests in land. OGC assisted the FS and agencies such as the ARS in acquiring title to real property to support their programs by evaluating and approving title to land to be acquired. OGC also assisted agencies that hold title to real property, such as the Forest Service and ARS, in protecting and defending title and boundaries. Where title disputes could not be resolved by settlement, OGC assisted the DOJ in defending and prosecuting quiet title and trespass actions.

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 CERCLA cases such as *Chevron Mining, Inc. v. U.S.* (D. N.M.), a contribution action now decided by the 10th Circuit Court of Appeals.

Commercial and Assistance Programs: OGC handled a range of litigation including defending NRCS wetland determinations (*Foster v. Vilsack*, (8th Cir)). OGC assisted DOJ in defending food stamp fraud determinations by FNS.

Pacific Region

OGC's Pacific Region provides legal representation and advice to USDA agencies and officials in the states of Alaska, Washington, Oregon, California, Hawaii, Nevada, and Idaho, as well as American Samoa, Guam, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.

Alaska Subsistence Program: The OGC Pacific Region plays a unique role in advising the Alaska Federal Subsistence Board and USDA officials on controversial issues regarding subsistence resources for rural residents of Alaska. In this fiscal year, OGC advised on a wide range of topics, including (a) successful efforts to resolve a lawsuit by an Alaska Native tribe to harvest salmon using a net in a river prized for its sports fishery, (b) issues regarding the harvest of wolves which recently have been considered for listing under the Endangered Species Act, and (c) compliance with a court order to identify areas of marine submerged lands that were improved and therefore reserved from conveyance to the State of Alaska at statehood.

Contract Disputes: OGC Pacific Region attorneys advise USDA agencies in a variety of types of contract disputes, including disputes concerning timber sales contracts. When these disputes result in litigation, OGC Pacific Region attorneys provide first-chair representation of client agencies before the Civilian Board of Contract Appeals. The OGC Pacific Region's work during this fiscal year included advising the Forest Service on two timber sale contract claims related to the 2013 government-wide shut down and defending USDA in related litigation before the Court of Federal Claims.

Crop Insurance: The OGC Pacific Region provides advice and litigation representation to RMA and the FCIC concerning the Federal crop insurance program. During this fiscal year, the OGC Pacific Region continued its litigation representation of RMA in a multi-million dollar crop insurance case.

Employment Law: The OGC Pacific Region plays an important role in providing employment advice to USDA client agencies and in representing USDA agencies in employment-related cases before the EEOC and the Federal courts. For example, OGC Pacific Region attorneys argued against the inclusion of class claims and specific class agents in a sex discrimination class action filed against Region 5 of the Forest Service, and helped resolve individual claims that were part of a nation-wide civil rights class action.

Farm Loan Programs: OGC Pacific Region drafts and reviews legal documentation and provides advice to FSA regarding loans to family farmers and small farming operations in the Pacific Region. OGC attorneys helped ensure that FSA's use of taxpayer funds complied with applicable legal requirements and that security interests FSA obtained to secure repayments are valid and enforceable. OGC Pacific Region attorneys also provided advice and representation to FSA in borrower default and bankruptcy situations where OGC helped FSA to enforce its security interests and to recover debts owed to the United States.

Fire Cost Recovery: The OGC Pacific Region has an extremely active and effective role in helping the Forest Service recover some of the millions of dollars in costs the Forest Service incurs annually in fighting human-caused wildfires. OGC Pacific Region attorneys work with the FS in accounting for fire cost expenditures and in calculating associated damages to Forest Service facilities and natural resources. OGC then plays a central role working with the Department of Justice in civil cases seeking recovery of these damages. The OGC Pacific Region has helped the Forest Service obtain more than half a billion dollars in fire cost recovery over the years, including more than \$43.7 million in FY 2017.

Lands Transfers: Attorneys in OGC Pacific Region offices provide advice and review legal documentation relating to hundreds of transfers of interests in land either from or to the United States. OGC helps ensure that these transactions comply with legal standards and that the interests of the United States are protected. Examples of significant lands transaction issues during FY 2017 include: dozens of transfers of lands to the Forest Service valued at more than \$50 million that were done as part of the fire cost recovery compensation that Sierra Pacific Industries agreed to pay in the FS's Moonlight Fire settlement; the second phase of acquisition of lands that will result in the largest transfer of lands from a private inholding into wilderness status in the history of the Forest Service; and the initial implementation of a massive land exchange with the State of Alaska that Congress legislated in FY 2017.

Land Management Decisions and Litigation: The OGC Pacific Region advises three Forest Service Regions including 39 National Forests with respect to a wide range of types of public lands management decisions. OGC's role helps the Forest Service with legal compliance to prevent and prepare for litigation challenging the decisions, and OGC works with DOJ attorneys in defending any litigation that is filed. For FY 2017, for example, OGC successfully defended numerous lawsuits involving challenges to proposed sales of salvage timber burned in a variety of wildfires on NFS lands. In addition, OGC's involvement in one consolidated set of lawsuits in Alaska, collectively known as the Big Thorne and Tongass Plan cases, has resulted in continuation of a victory in the district court through appeal before the Ninth Circuit. OGC also successfully defended a lawsuit challenging the FS's implementation of a wildfire community protection line for the Wolverine Fire and an emergency response regulation providing that environmental analysis of such actions was not needed. OGC continued to handle a large number of lawsuits challenging the FS's tree thinning and other vegetation management projects, grazing programs, and travel management plans.

Law Enforcement Assistance: OGC Pacific Region plays an important role in advising the Forest Service on law enforcement issues. During FY 2017, for example, OGC Pacific Region reviewed and advised the Forest Service on hundreds of Forest Orders which prohibited specified conduct and provided for criminal citations for violations. In addition, OGC Pacific Region advised the FS on law enforcement issues relating to unauthorized occupancy of NFS lands, such as an estimated 12,000 people camped illegally on the Malheur National Forest in Oregon as part of the national Rainbow Family Gathering. These occupancies garnered significant public attention and OGC involvement helped ensure that law enforcement activities and prosecutions were handled appropriately.

Legislative and Congressional Affairs: The OGC Pacific Region provides advice to USDA client agencies concerning proposed legislation and with respect to inquiries from Members of Congress. For example, during FY 2017, the OGC Pacific Region researched and drafted a memorandum regarding the question of whether a forest plan amendment for the Tongass National Forest in Alaska was a "rule" subject to disapproval by Congress under the Congressional Review Act. We also advised the Forest Service on drafting of a response from the Secretary to

an inquiry from the Alaska Congressional delegation regarding cabins located in wilderness areas in Alaska. We reviewed and advised the Forest Service on its answers to Questions for the Record posed by the U.S. Senate Energy and Natural Resources Committee related to land acquisition issues involving Alaska Native corporations. Similarly, we assisted in the preparation of Department officials for a meeting with a U.S. Senator to address issues related to a controversial interpretation of an Alaska-specific provision of federal legislation that provides for the State of Alaska to receive rights-of-way in identified locations of the Tongass National Forest.

Mining and Minerals: OGC Pacific Region 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 and enforcement of mining laws and regulations.

Energy: OGC helped the Forest Service 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 with dollar values in the hundreds of millions. OGC Pacific Region attorneys helped RD identify strategies to address the increasingly common issues of prepayment requests and re-amortization of prematurely maturing loans. OGC also provided advice and representation to USDA agencies with respect to delinquent loans, bankruptcy, and debt collection.

Special Use Permitting: The OGC Pacific Region provides advice to the Forest Service on a wide range of types of special use permits authorizing individuals and entities to engage in specified activities on NFS lands. Special use permit issues often are controversial and OGC provides ongoing representation to the Forest Service when litigation is filed.

Summary of Budget and Performance

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.

Strategic Goal #1: Ensure USDA programs are delivered efficiently, effectively, and with integrity and a focus on customer service.

Performance Measures:

Performance Measure	2013 Actual	2014 Actual	2015 Actual	2016 Actual	2017 Actual	2018 Target	2019 Target
Litigation before administrative forums, including Equal Employment Opportunity Commission, Merit Systems Protection Board, USDA’s Administrative Law Judge’s and Judicial Officer, and other administrative bodies, conducted in an effective and timely manner.	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner
Provision of assistance to Department of Justice and U.S. Attorneys in connection with litigation in Federal courts as assigned accomplished in an effective and timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner
Legal advice and counsel to USDA officials and agencies provided timely and in an effective manner.	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Some legal services may be delayed and/or curtailed
Dollars (in thousands)	\$40,826	\$39,489	\$43,319	\$44,197	\$44,606	\$44,394	\$41,717

Selected Past Accomplishments toward Achievements of the Key Outcome:

- As presiding officers, OGC attorneys convened oral hearings, and drafted and reviewed over 120 orders in Perishable Agricultural Commodities Act reparation cases prepared by the Agricultural Marketing Service (AMS) staff that resulted in awards of over \$3 million to unpaid sellers.
- OGC provided extensive support to the Food and Nutrition Service in its efforts to provide food assistance in the immediate aftermath of Hurricanes Harvey, Irma, and Maria.
- OGC pursued resolution of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) matters with responsible parties that required them to undertake site work and/or reimburse oversight costs at contaminated waste sites impacting National Forest System (NFS) lands, including the Holden Mine Site, Mammoth Stamp Mill Site, Lake Bryant Site, Pendola Mill Site, and St. Regis Site.
- OGC successfully defended two rounds of bid protests filed by multiple small businesses in connection with a Forest Service solicitation for Type 2 Initial Attack Fire Crews. OGC implemented a partial stay of performance so that those crews that had been deployed in response to the fires raging in the Great Smoky Mountains National Park and the city of Gatlinburg, Tennessee, would be allowed to complete their initial containment efforts while the bid protests continued.
- OGC worked with the Forest Service to develop 26 training modules on a wide variety of anti-harassment and other civil rights issues to be provided to a diverse workforce with a focus on fire fighters.

Selected Accomplishments Expected at the 2019 Proposed Resources Level:

- OGC will file timely and quality pleadings; and provide effective and timely litigation assistance.