2014 Explanatory Notes

Office of the General Counsel

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OFFICE OF THE GENERAL COUNSEL

Purpose Statement

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

The office provides all necessary legal advice and services for the Department's ongoing programs. 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 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.

Legal Advice. OGC provides legal advice, both written and oral, to all agency officials of USDA. That advice takes the form of oral advice, written opinions, review of administrative rules and regulations for legal sufficiency, review of agency agreements and contracts and review and advice concerning any other agency activities that involve legal issues.

Legislation and Document Preparation. The office also prepares 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 promulgation of rules having the force and effect of law and in quasi-judicial hearings held in connection with the administration of various USDA programs.

Federal and State Court Litigation. OGC works with the Department of Justice (DOJ) in all Departmental civil litigation. The bulk of this litigation is defensive litigation. The office serves as liaison with DOJ and assists in the preparation of all aspects of the government's case. OGC refers matters that indicate criminal violations of law have occurred 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 this office is carried out in Washington, D.C., and four regions which include 17 offices as follows:

Eastern Region:
- Atlanta, Georgia
- Columbus, Ohio
- Harrisburg, Pennsylvania
- Milwaukee, Wisconsin
- Montgomery, Alabama

Central Region:
- Kansas City, Missouri
- Chicago, Illinois
- Little Rock, Arkansas
- St. Paul, Minnesota
- Temple, Texas

Mountain Region:
- Denver, Colorado
- Albuquerque, New Mexico
- Missoula, Montana
- Ogden, Utah

Pacific Region:
- San Francisco, California
- Juneau, Alaska
- Portland, Oregon

As of September 30, 2012, the Office of the General Counsel had 272 permanent full-time employees of which 130 were located in Washington, D.C. and 142 in the field.

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

Office of Ethics

The Ethics in Government Act, 5 U.S.C. App 401 (the Act), established the ethics compliance requirements and infrastructure applicable throughout the Executive Branch. Under regulations implementing the Act, the head of each Executive Branch department or agency must exercise personal leadership in establishing, maintaining, and carrying out the agency's ethics program and make available sufficient resources to ensure the agency's ethics program can be implemented effectively (5 C.F.R. 2638.202). The Office of Ethics (OE) is the centralized and consolidated office implementing USDA's ethics program throughout the Department. As such, OE provides ethics services to the Secretary of Agriculture and employees at all levels of USDA concerning advice, training, and guidance about compliance with conflict of interest and impartiality rules. The mission of the OE is to provide ethics services necessary to support all employees of USDA. This includes complying with new requirements mandated by the Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (2012) (The STOCK Act), and Office of Government Ethics regulatory requirements (at 5 C.F.R. Parts 2634 through 2641). The Secretary of Agriculture ordered the realignment of OE from the Office of Human Resources Management (OHRM), an office under Departmental Management, to the Office of the General Counsel (Secretary's Memorandum 1076-001, dated June 26, 2012). The Secretary mandated this realignment to support the Executive Branch's "best practice" of housing the ethics function within each Cabinet-level Department's legal offices.

OFFICE OF THE GENERAL COUNSEL

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

Item	2011 Actual		2012 Actual		2013 Estimate		2014 Estimate	
	Amount	SY	Amount	SY	Amount	SY	Amount	SY
Salaries and Expenses:								
OGC Discretionary Appropriations..	$41,499	267	$39,345	253	$39,586	245	$41,563	255
OE Discretionary Appropriations.....	-	-	-	-	-	-	3,451	27 a/
Rescission.....	-83	-	-	-	-	-	-	-
Total Available.....	41,416	267	39,345	253	39,586	245	45,014	282
Lapsing Balances.....	-29	-	-86	-	-	-	-	-
Obligations.....	41,387	267	39,259	253	39,586	245	45,014	282
Obligations under other USDA appropriations:								
Hazardous Materials Management Program.....	1,398	10	1,350	8	1,283	8	1,283	8
FS Non-Litigation Travel.....	45	-	25	-	30	-	30	-
CCC/Farm Bill.....	350	2	1,243	7	1,268	7	1,268	7
OCFO WCF b/	-	-	-	-	75	-	75	-
Civil Rights Reimbursable.....	847	7	897	6	670	5	670	5
AMS User Fees.....	687	5	774	6	663	5	663	5
APHIS User Fees.....	535	2	291	1	438	2	438	2
GIPSA User Fees.....	7	-	7	-	5	-	5	-
FSA User Fees.....	15	-	15	-	2	-	2	-
FSIS User Fees.....	21	-	21	-	21	-	21	-
Ethics/OCFO.....	-	-	-	-	-	-	116	1
Ethics/ OCIO.....	-	-	-	-	-	-	116	1
Total, Agriculture Appropriations.....	3,905	26	4,623	28	4,455	27	4,687	29
Total, OGC.....	45,292	293	43,882	281	44,041	272	49,701	311

In FY-2012, the SF113G included 3 OE actual staff years.

Reimbursable figures are slightly different than the official budget database, due to the approval of the reimbursable agreements after the database closed.

a/ 27 SY were transferred to OGC from DM.
b/ For reimbursements for legal support costs pursuant to 7 U.S.C. 2235 and 7 U.S.C. 2209h.

OFFICE OF THE GENERAL COUNSEL

Permanent Positions by Grade and Staff Year Summary

Item	2011 Actual			2012 Actual			2013 Estimate			2014 Estimate		
	Wash. D.C.	Field	Total	Wash. D.C.	Field	Total	Wash. D.C.	Field	Total	Wash. D.C.	Field	Total
ES.....	1	-	1	1	-	1	1	-	1	1	-	1
SES.....	16	4	20	16	4	20	14	4	18	16	4	20
GS-15.....	43	29	72	41	29	70	31	23	54	32	23	55
GS-14.....	60	61	121	63	64	127	59	61	120	66	61	127
GS-13.....	6	3	9	5	3	8	6	3	9	14	3	17
GS-12.....	4	2	6	4	-	4	4	-	4	12	-	12
GS-11.....	19	17	36	14	19	33	2	12	14	9	15	24
GS-10.....	2	-	2	2	-	2	2	-	2	2	-	2
GS-9.....	5	11	16	6	9	15	6	7	13	9	7	16
GS-8.....	12	17	29	12	17	29	7	17	24	7	17	24
GS-7.....	1	15	16	2	14	14	1	10	11	1	10	11
GS-6.....	1	-	1	1	-	1	1	-	1	1	-	1
GS-5.....	-	-	-	1	-	1	1	-	1	1	-	1
Total Perm. Positions.....	170	159	329	168	159	325	135	137	272	171	140	311
Unfilled, EOY....	32	15	47	38	17	53	-	-	-	-	-	-
Total, Perm. Full-Time Employment, a/ EOY.....	138	144	282	130	142	272	135	137	272	171	140	311
Staff Year Est.....	148	145	293	148	133	281	143	129	272	164	147	311

a/ Data does not inlcude 26 Full-Time Permanent Employees included in the SF-1132 for OE.

OFFICE OF THE GENERAL COUNSEL

The estimates include appropriation language for this item as follows:

Salaries and Expenses:
For necessary expenses of the Office of the General Counsel, $45,014,000, of which $3,451,000 is for the Office of Ethics.

Lead-Off Tabular Statement
Current Law

Office of the General Counsel	
2013 Estimate	$39,586,000
Budget Estimate, 2014	41,563,000
Change in Appropriation	+ 1,977,000
Office of Ethics	
2013 Estimate	0
Budget Estimate, 2014	$3,451,000 a/
Change in Appropriation	+3,451,000

a/ In 2013, the Office of Ethics was funded by Departmental Administration at $3,426, an increase of $25,000 for 2014.

Summary of Increases and Decreases Current Law
(Dollars in thousands)

	2011 Actual	2012 Change	2013 Change	2014 Change	2014 Estimate
Discretionary Appropriations:					
Office of the General Counsel	$41,416	-$2,071	+$241	+1,977	$41,563
Office of Ethics	-	-	-	+3,451	$3,451
Total, Appropriation or Change	$41,416	-$2,071	+$241	+5,428	$45,014

OFFICE OF THE GENERAL COUNSEL

Project Statement
Appropriations Detail and Staff Years (SY)
(Dollars in thousands)

Program	2011 Actual		2012 Actual		2013 Estimate		Inc. or Dec.		2014 Estimate	
	Amount	SY	Amount	SY	Amount	SY	Amount	SY	Amount	SY
Discretionary Appropriations:										
Legal Services.....	$41,416	267	$39,345	253	$39,586	245	+$1,977 (1)	+10	$41,563	255
Ethics Services.....	-	-		-	-	-	+$3,451 (2)	+27	3,451	27
Rescission and Tranfer (Net).....	83	-	-	-	-	-	-	-	-	-
Total Appropriation.....	41,499	267	39,345	253	39,586	245	+5,428	+37	45,014	282
Rescission.....	-83	-	-	-	-	-	-	-	-	-
Total Available.....	41,416	267	39,345	253	39,586	245	+5,428	+37	45,014	282
Lapsing Balances.....	-29	-	-86	-	-	-	-	-	-	-
Total Obligations.....	41,387	267	39,259	253	39,586	245	+5,428	+37	45,014	282

Project Statement
Obligation Detail and Staff Years (SY)
(Dollars in thousands)

Program	2011 Actual		2012 Actual		2013 Estimate		Inc. or Dec.		2014 Estimate	
	Amount	SY	Amount	SY	Amount	SY	Amount	SY	Amount	SY
Discretionary Obligations:										
Legal Services.....	$41,387	267	$39,259	263	$39,586	245	+$1,977	+10	$41,563	255
Ethcis Services.....	-	-					+$3,451	+27	3,451	27
Total Obligations.....	41,387	267	39,259	263	39,586	245	+5,428	+37	45,014	282
Recoveries, Other (Net).....	-	-	-	-	-	-	-	-	-	-
Lapsing Balances.....	29	-	86	-	-	-	-	-	-	-
Total Available.....	41,416	267	39,345	263	39,586	245	+5,428	+37	45,014	282
Rescission.....	83	-	-	-	-	-	-	-	-	-
Total Appropriation.....	41,499	267	39,345	263	39,586	245	+5,428	+37	45,014	282

OFFICE OF THE GENERAL COUNSEL

Justification of Increases and Decreases

Base funds will allow the Office of the General Counsel to continue to provide legal oversight, counsel and support to all activities of the Department.

(1) An increase of $1,977,000 ($39,586,000 and 245 staff years available in 2013 for the Office of the General Counsel).

(a) An increase of $361,000 for pay costs which includes $51,000 for annualization of the fiscal year 2013 pay raise and $310,000 for the anticipated fiscal year 2014 pay raise.
Approximately 94 percent of OGC's budget is expended in support of personnel salaries and benefits, which leaves no flexibility for absorbing increased costs for pay. OGC can only absorb any such increases by reducing staff or reassessing its operating requirements for travel, maintenance of equipment, law library purchases, and supplies.

(b) An increase of $950,000 and 10 staff years for increased legal services.
The 2014 budget request includes sufficient resources to cover personnel compensation for staff in the following areas:

Administration and Resource Management (1 staff year): OGC's Office of Administration and Resource Management requests funding to fill one information technology position. This position is needed to assist with development and implementation of a new case management system and OGC's document management system.

Marketing, Regulatory, and Food Safety Division (2 staff years): OGC seeks to add two attorneys to this Division, which has experienced significant workload increases in several program area. APHIS has dramatically increased the number of cases referred to OGC for administrative prosecution under the Animal Welfare Act and the Horse Protection Act and regulatory decisions of the Biotechnology Regulatory Services (BRS) have generated increased Federal court litigation brought by opponents of BRS actions under this program. AMS has added new programs, particularly in the area of research and promotion orders, and is increasing enforcement in various labeling areas, including the National Organic Program. AMS is also involved in new initiatives, including the leafy greens marketing agreement, which are drawing heavily on OGC legal resources. FSIS will generate new demands for legal support as it enhances enforcement and moves into new areas of regulation to better address significant public health issues.

Civil Rights, Labor and Employment Law Division (1staff year): OGC seeks to add an attorney for the Policy, Compliance, and Counsel section, to respond to increased demand for preventive services such as training and best practice development, and to assist the Department in settlement negotiations, to review EEO settlements, and to review Final Agency Decisions for legal sufficiency. In addition, the Assistant Secretary for Civil Rights has instituted a resolution initiative for EEO matters that has significantly increased the demand for representation during mediations and for drafting and reviewing settlement agreements. The Secretary's accountability policy has also placed a greater emphasis on disciplinary action for civil rights matters and OGC is being asked to review many more of these actions than in the past.

International Affairs, Food Assistance, and Farm and Rural Programs Division (1 staff year): OGC seeks to add an attorney in this division to address international programs, food assistance programs, farm programs and crop insurance, and rural utilities programs. Specific programs include: export credit guarantee program; international grants and cooperative agreements; Supplemental Nutrition Assistance Program (SNAP); the Special Supplemental Nutrition Program for Women, Infants and Children (WIC); the School Lunch Program; grants related to disaster assistance; tobacco buyout litigation; disaster assistance programs; crop insurance; Rural Business Cooperative Service programs; and Rural Utilities Service electric program and the expansion of the broadband and water program loan portfolios.

All of these programs involve complicated legal issues with significant fiscal implications for the Department and taxpayers.

Natural Resources and Environment Division (1 staff year): OGC seeks to add an attorney to provide legal services to the Forest Service and the Natural Resources Conservation Service (NRCS). Due to recent retirements, OGC is currently unable to provide sufficient legal support for Forest Service programs.

General Law and Research Division (1 staff year): OGC seeks to add an attorney in this Division. The attorney will assist in responding to increased demands in suspension and debarment matters, contractor compliance requirements, FOIA and e-discovery matters, and procurement litigation before GAO and the Federal courts.

San Francisco Office (1 staff year): The San Francisco office provides legal services in support of the Pacific Region's fire cost recovery program. This program has recovered more than $180 million since October 2008, including more than $20 million in 2011. OGC seeks to add one attorney to support this program and USDA's lending programs in California, Nevada, Hawaii, and the Western Pacific Islands.

Denver Office (1 staff year): The Denver office handles virtually all of the legal work for the Forest Service in Colorado, Wyoming, Kansas, Nebraska, North Dakota, and South Dakota, and the majority of the legal work for Rural Development, the Farm Service Agency, the Natural Resources Conservation Service, and other USDA agencies in Colorado, Wyoming, Utah, New Mexico, and Arizona. During the past two years, OGC has been unable to fill several vacancies due to budgetary constraints, and backlogs have inevitably begun to develop in several areas. An additional attorney will be able to provide critical legal support for client agencies in a cost-effective manner.

Kansas City (1 staff year): The Kansas City office represents USDA agencies in four of the Nation's largest farm States: Iowa, Nebraska, Kansas and Missouri. There has been an increase in the demand for legal services related to loan servicing, bankruptcy and foreclosure to protect the government's property interests. Natural disasters and economic and political turmoil around the world have increased the need for international food aid and the legal support for food aid programs provided by the Kansas City office. Adding one attorney will enable the office to better serve the clients' needs in a timely manner and to better protect the financial interests of the government.

(c) An increase of $325,000 to maintain and support current staff.
This increase will enable OGC to maintain current staff positions, which are critical to achieving the agency's objective of providing effective legal services in a timely manner. It is absolutely critical that OGC be able to support and maintain current staffing levels in order to ensure that agencies of the Department receive adequate predecisional legal advice, training, appeal and litigation legal services. There is no flexibility in OGC's budget for absorbing increased cost for personnel benefits, lump sum payments, career ladder promotions, within-grade increases and other salary adjustments. OGC can only absorb these increases by reducing staff or reassessing its operating requirements for travel, maintenance of equipment, law library purchases and supplies. Which would impact the level of legal services we are able to provide to the Department. A staff reduction would result in backlogs and delays in reviewing and clearing agency rulemakings and correspondence, and in providing legal advice within requested time frames.

(d) An increase of $341,000 for Computerized Legal Research and training.
These services allow OGC attorneys to stay abreast of new developments in their respective areas of law, access current laws and regulations and access on-line legal education resources in many areas useful to keep up-to-date on work related issues. Computerized legal research has provided OGC attorneys electronic access to legal materials that are not affordable to purchase or maintain in hard copy.

Pursuant to Secretarial Memorandum No. 1076-001, OE was realigned from the Office of Human Resources Management under Departmental Administration to the supervision of the General Counsel. This realignment places USDA's ethics function with the legal office, consistent with other Executive departments and agencies and promotes efficiency by enhancing the Department's ability to coordinate USDA's ethics functions with the performance of other legal advisory services already provided by the General Counsel, through OGC in the ethics arena. For 2014, the budget for the General Counsel reflects the addition of OE's budget to provide the necessary resources to fund current OE activities and staffing. Base funding allows OE to provide ethics program oversight, execution, and information to the Secretary and other senior policy officials to support the Department's compliance with ethics laws and regulations. Additionally, base funds allow OE to serve the key functions of conducting financial disclosure reviews, ethics training, and providing guidance to all employees of the Department.

(2) An increase of $25,000 ($3,426,000 and 27 staff years available in 2013 for OE within DA.

(a) An increase of $11,000 for pay costs, which includes $4,000 for annualization of the fiscal year 2013 pay raise and $7,000 for the anticipated fiscal year 2014 pay raise.
Approximately 90 percent of OE's budget is expended in support of personnel salaries and benefits, which leaves no flexibility for absorbing increased costs for pay. OE can only absorb such increases by reducing staff or reassessing its operating requirements for travel, maintenance of equipment, and supplies.

(b) A decrease of $11,000 for operating costs.
OE will reduce operating spending in the areas of travel and communications charges.

(c) An increase of $25,000 to expand ethics training and distance learning.
The USDA web site is one of the top web sites in the government ethics community and is utilized by dozens of Federal agencies and USDA employees worldwide, who would not otherwise have convenient access to ethics advice, guidance, and training. OE requests funding to provide necessary technological updates and improvements to maintain the web site. adequately. These technological improvements will increase OE's efficiency and ability to provide ethics training and distance learning materials to employees located across the country. Moreover, as a publicly available web site, this site promotes public transparency.

OFFICE OF THE GENERAL COUNSEL

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

State/Territory	2011 Actual		2012 Actual		2013 Estimate		2014 Estimate	
	Amount	SY	Amount	SY	Amount	SY	Amount	SY
Alabama.....	$549	5	$463	4	$463	4	$468	4
Alaska.....	511	4	513	4	513	4	518	4
Arkansas.....	1,059	7	1,061	7	1,061	7	1,072	7
California.....	2,415	15	2,421	15	2,421	15	2,533	16
Colorado.....	1,863	9	1,865	9	1,865	9	1,964	10
Georgia.....	2,192	16	2,197	16	2,197	16	2,222	16
Illinois.....	885	6	889	6	889	6	898	6
Minnesota.....	777	7	736	6	651	5	658	5
Missouri.....	1,232	11	993	8	808	7	889	8
Montana.....	933	7	936	7	936	7	944	7
New Mexico.....	657	6	659	6	659	6	666	6
Ohio.....	439	4	442	4	324	3	327	3
Oregon.....	1,654	12	1,648	12	1,648	12	1,668	12
Pennsylvania.....	1,173	10	1,170	10	1,170	10	1,180	10
Texas.....	912	8	914	8	914	8	922	8
Utah.....	541	4	537	4	537	4	542	4
Wisconsin.....	1,070	8	962	7	962	7	971	7
District of Columbia.....	22,460	127	20,789	119	21,504	114	26,507	148
Puerto Rico.....	65	1	64	1	64	1	65	1
Obligations.....	41,387	267	39,259	253	39,586	245	45,014	282
Lapsing Balances.....	29	-	86	-	-	-	-	-
Total, Available.....	41,416	267	39,345	253	39,586	245	45,014	282

OFFICE OF THE GENERAL COUNSEL

Classification by Objects
(Dollars in thousands)

		2011 Actual	2012 Actual	2013 Estimate	2014 Estimate
Personnel Compensation:					
	Washington D.C.	$15,528	$14,372	$14,800	$18,098
	Field	14,957	13,812	14,501	14,786
11	Total personnel compensation	30,485	28,184	29,301	32,884
12	Personnel benefits	7,988	7,905	8,050	9,159
13.0	Benefits for former personnel	12	14	14	14
	Total, personnel comp. and benefits	38,485	36,103	37,365	42,057
Other Objects:					
21.0	Travel and transportation of persons	115	85	65	80
22.0	Transportation of things	6	4	6	7
23.3	Communications, utilities, and misc. charges	709	605	512	702
24.0	Printing and reproduction	32	47	48	97
25.2	Other services	1,248	1,310	1,125	1,150
26.0	Supplies and materials	635	825	315	724
31.0	Equipment	157	280	150	197
	Total, Other Objects	2,902	3,156	2,221	2,957
99.9	Total, new obligations	41,387	39,259	39,586	45,014
Position Data:					
	Average Salary (dollars), ES Position	$167,630	$167,696	$166,053	$166,701
	Average Salary (dollars), GS Position	$100,918	$107,860	$111,565	$114,870
	Average Grade, GS Position	13.5	14.2	14.3	14.4

OFFICE OF THE GENERAL COUNSEL

STATUS OF PROGRAM

Current Activities: The Office of the General Counsel (OGC) serves as the legal advisor and counsel for the Secretary and provides legal services for all components of the Department. These services include, but are not limited to, the following:

- 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 such as the Freedom of Information Act, the Federal Advisory Committee Act, the Equal Credit Opportunity Act, the Economy Act, the Defense Procurement Act, and constitutional and fiscal law matters;
- Preparing or reviewing rules and regulations;
- Preparing or interpreting contracts, mortgages, leases, deeds, and other legal documents;
- Preparing briefs and representing the Department in judicial proceedings and litigation;
- Representing the Department in formal administrative proceedings before the Equal Employment Opportunity Commission, the USDA Office of Administrative Law Judges, the Merit System Protection Board, the Civilian Board of Contract Appeals, the National Appeals Division, the Interior Board of Land Appeals, and other Federal agencies;
- Collaborating with the Department of Justice (DOJ) in trial and appellate litigation involving the Department;
- Providing briefings and technical assistance to Committees and members of both chambers of the U.S. Congress;
- Representing Departmental agencies in non-litigation debt collection programs;
- Preparing or reviewing patent applications and other documents required to protect the Department's intellectual property rights;
- Representing Departmental agencies in State water rights adjudications; and
- Evaluating, defending and prosecuting claims by and against the United States arising out of the Department's activities.

Selected Examples of Recent Progress:

Highlights of OGC's 2012 operations are described below:

ADMINISTRATION AND RESOURCES MANAGEMENT

OGC focused on technology to facilitate the electronic exchange of data nationwide. In 2012, OGC developed a case/matter tracking system using the Enterprise Content Management System (ECM) platform. The case/matter tracking system is uniform and accessible by all employees, captures important data about OGC's work, provides a case management tool for supervisors, and facilitates collection of data for required reports. OGC also established a document repository to facilitate information sharing, to eliminate duplication of legal research and drafting, to maintain the consistency of legal advice, and to enable knowledge transfer. OGC identified significant hard copy documents, which were sent to a central location for scanning and loading into the ECM system. The repository data are searchable and will be accessible to all OGC staff. In addition, OGC purchased laptop computers to replace obsolete equipment and to facilitate telework.

MARKETING, REGULATORY AND FOOD SAFETY PROGRAMS

Marketing Agreements and Orders and Research and Promotion Programs: OGC attorneys work with the marketing orders and research and promotion programs under the Agricultural Marketing Service (AMS). OGC attorneys reviewed almost 75 rulemaking actions as well as many other documents and provided daily legal advice to the client agency in connection with a wide variety of matters related to these programs. These activities included assistance in connection with formal and informal rulemaking actions, and with the enforcement and defense of the

programs. In 2012, OGC attorneys also assisted DOJ in 12 trial cases involving challenges to marketing orders and research and promotion programs.

Perishable Agricultural Commodities Act (PACA): PACA is administered and enforced by AMS. Violations of PACA may result in the assessment of civil penalties or suspension or revocation of licenses, and individuals found to be responsibly connected to a violating entity can be barred from employment with any PACA licensee for a period of one year and also barred from employment with any PACA licensee for the following year unless the licensee posts a bond in an amount satisfactory to the Secretary. OGC supports AMS in its administration of PACA.

In 2012, OGC received 28 new PACA referrals and OGC attorneys filed 38 new administrative enforcement complaints alleging violations of the fair trade requirements of PACA. OGC helped AMS investigate whether several responsibly connected individuals were affiliated with PACA licensees in violation of their employment sanctions and, when the evidence warranted it, filed administrative complaints against the individuals and the licensees. In 2012, OGC resolved and closed 33 PACA enforcement actions. PACA provides an administrative forum for the resolution of disputes among private parties relating to produce transactions. These reparation cases result in orders issued by the Judicial Officer of the Department. OGC attorneys, in the role of presiding officers, drafted numerous orders and also reviewed orders drafted by AMS staff. In total, OGC drafted or reviewed 219 orders in PACA reparation cases. The PACA reparation awards issued in 2012 totaled almost $4.8 million.

Animal and Plant Health Laws and Wildlife Services: During 2012, OGC attorneys reviewed, assisted in drafting, and approved for legal sufficiency over 80 proposed rules, final rules, or notices for publication in the Federal Register and Federal quarantine orders for the different program areas of the Animal and Plant Health Inspection Service (APHIS). OGC assisted APHIS in the development, drafting, and issuance of regulations regarding the establishment of a system for animal traceability, the development of a forfeiture rule for further enforcement of the Lacey Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES as implemented through the Endangered Species Act) regulations, herd certification, the interstate movement requirements to control chronic wasting disease and to control the spread of harmful forest and wood pests. OGC attorneys have also provided considerable assistance to DOJ in connection with four cases, two in District Court and two on appeal, challenging APHIS' biotechnology regulatory activities. The two district court cases were successfully dismissed with prejudice and one of the cases on appeal was successfully resolved in APHIS' favor during 2012. A decision in the other appellate case has not yet been issued.

Animal Welfare and Horse Protection Acts: OGC attorneys serve as agency counsel in administrative enforcement actions brought under the Animal Welfare Act (AWA) and the Horse Protection Act (HPA) programs administered by APHIS. In 2012, OGC attorneys helped APHIS secure $449,513 in civil penalties under those statutes; filed administrative complaints against 45 alleged violators of the statutes; and obtained decisions and orders involving 99 respondents in ongoing enforcement cases. Final decisions were issued in three license denial and in three license termination cases. Also during 2012, OGC attorneys assisted APHIS on several confiscation actions, and reviewed and provided drafting assistance in connection with a number of rulemaking actions. OGC also reached a pre-litigation settlement with an exhibitor who agreed to pay a $270,000 civil penalty and develop a compliance training program to promote the appropriate care of its elephants, which was the largest settlement under the AWA to date. Other notable actions included obtaining a consent decision and order with an animal sanctuary that provided for the revocation of its license and ownership transfer of close to 300 wild and exotic animals to ensure humane care for the animals; and a consent decision and order in which a horse trainer and repeat violator of the HPA agreed to a permanent disqualification and the assessment of a $150,000 civil penalty. In 2012, OGC attorneys also assisted DOJ in district court actions under both the AWA and HPA.

Packers and Stockyards Act (P&S Act): OGC attorneys work with the Grain Inspection Packers and Stockyards Administration to enforce the P&S Act. In 2012, the Packers and Stockyard Program referred a total of 109 cases to OGC. These referrals seek the filing of an administrative complaint for the enforcement of the requirements of the P&S Act and the imposition of civil penalties; for the legal review of agency action; or for review and assistance with P&S Act violations for referral to DOJ. During 2012, OGC filed 124 administrative complaints under the P&S Act, closed 152 cases, and secured assessments of over $1.5 million in civil penalties. OGC also referred P&S Act cases to DOJ for violations of a Secretary's order or failure to file annual reports. Twenty five referrals to DOJ were closed and resulted in the assessment of over $425,000 in penalties. During 2012, OGC attorneys contributed to a 260 percent increase in the amount of monetary penalties obtained for program violations and almost a 300 percent increase in the number of complaints filed under the P&S Act. These efforts helped the program improve its regulatory enforcement objectives.

Food Safety: In 2012, OGC reviewed over 60 proposed rules, final rules and notices for publication in the Federal Register. OGC assisted the Food Safety and Inspection Service (FSIS) with the development of a rule to modernize poultry slaughter inspection and with the implementation of a new cooperative interstate shipment program that allows State-inspected meat and poultry products to be shipped in interstate commerce. OGC also assisted FSIS in the finalization of a notice declaring six additional strains of E. coli as adulterants in certain raw beef products. Other significant rulemaking dockets included a notice regarding changes to import application and certification procedures to implement the Public Health Information System, and changes to the national residue program for meat, poultry and egg products. During the year, OGC attorneys initiated seven administrative cases to withdraw inspection services from establishments based on criminal convictions or violations of FSIS regulations and prepared 15 cases for referral to DOJ for the initiation of criminal or civil action. OGC attorneys also provided substantial assistance to DOJ in connection with discovery issues in a case filed under the False Claims Act against a federally inspected beef slaughter and processing company.

INTERNATIONAL AFFAIRS, FOOD ASSISTANCE, AND FARM AND RURAL PROGRAMS

Commodity Credit Corporation (CCC), Farm Service Agency (FSA), and Domestic Commodity-Related Activities:

Tobacco Buyout Program and Assessments. OGC continues to provide critical assistance to FSA on this 10-year, $10 billion program. OGC has provided wide-ranging legal support, including underpinning the defense in major lawsuits and prosecuting dozens of affirmative actions that have resulted in successful recovery of hundreds of millions of dollars from tobacco manufacturers and importers that contravened various provisions of the program. In granting summary judgment to the United States, a Federal district court rejected one tobacco manufacturer's attempt to shift assessments to another segment of the tobacco industry and validated the first step of USDA's two-step assessment methodology. OGC continued to vigorously defend a lawsuit filed by a major cigarette manufacturer challenging the second step of the assessment methodology.

Foreign Agricultural Service (FAS) and CCC International Activities: During 2012, OGC supported the work of the Department in the implementation of several major international trade and foreign assistance initiatives:

- Trans-Pacific Partnership (TPP): OGC attorneys played a significant role in collaboration with the Office of the United States Trade Representative (USTR) and the National Security Council (NSC) in reviewing and revising proposals for legal text in the TPP negotiations, particularly with relation to the Regulatory Coherence, Sanitary and Phytosanitary (SPS) Measures, Technical Barriers to Trade (TBT), and Competition (State-owned enterprises) chapters and the implications of such provisions for the activities of CCC and other USDA agencies;
- EU-U.S. Organics Equivalence Determinations: OGC attorneys provided critical advice to the Department and USTR in finalizing the EU and U.S. recognitions of each other's organics systems for agricultural products as equivalent;

- Market Access Program Final Rule: OGC attorneys provided extensive advice, counseling, and drafting for the final regulations for the FAS Market Access Program (MAP) that were published May 2012; and
- World Trade Organization (WTO) Country of Origin Labeling dispute with Canada and Mexico. OGC attorneys played an integral role in defending the United States' country of origin labeling laws and regulations related to certain meat commodities before the Appellate Body at the WTO. OGC attorneys continue to play a pivotal role in determining the United States' next steps in the compliance phase of the case.

Food, Nutrition and Consumer Services. OGC provided assistance to the Food and Nutrition Service (FNS) in the promulgation and implementation of regulations that establish enhanced nutritional standards for the National School Lunch Program and the provision of bonus payments for school food authorities that comply with these new standards. OGC provided technical assistance regarding the Nutrition provisions of the Farm Bill. OGC provided assistance to FNS in refining its program integrity activities for the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Rural Development (RD) OGC worked with the agencies of the RD Mission Area on debt collection, credit questions under direct and guaranteed loan programs, grants/cooperative agreements, and environmental issues. OGC provided assistance to RD in publishing high priority rules, including rules on construction and development and for funding energy efficiency loans. OGC provided technical assistance to staff of the Senate Agricultural Committee and the Housing Agricultural Committee, staff of individual Senate and House members, and USDA official with respect to the versions prepared by the Senate and Housing Agriculture Committee during the 2012 Fiscal Year regarding RD programs, and worked closely with other Departmental agencies toward improving lending policy on Native American lands and increasing jobs by building infrastructure in rural areas. OGC helped RD successfully defend several lawsuits challenging the Rural Housing Service guaranteed loan servicing and appeal procedures and continues to defend other similar actions. OGC attorneys did a significant amount of the legal work for the more sophisticated transactions of the mission area, such as guaranteed underwriting loans by the Rural Utilities Service and conditional commitments for significant section 9003 guaranteed loans by the Rural Business Service.

Farm Loan Programs of FSA: OGC continued to assist FSA in the implementation of settlement agreements involving In re Black Farmers Discrimination Litigation, Garcia v. Vilsack, and Love v. Vilsack. OGC reviewed and assisted FSA in publishing several priority regulations: the interim rule Farm Loan Program Microloans; proposed rule on environmental compliance; interim rule on interest rates in the guaranteed loan program; and the final rule on disaster declarations. In addition, OGC participated in an inter-departmental committee to improve lending policy on Native American lands and assisted FSA in drafting a Memorandum of Understanding with the Bureau of Indian Affairs and the Natural Resources Conservation Service (NRCS).

Risk Management Agency (RMA) and the Federal Crop Insurance Corporation (FCIC): OGC provided substantial assistance in addressing issues concerning the new Standard Reinsurance Agreement, including litigation brought by the Approved Insurance Providers (AIPs) against FCIC before the Civilian Board of Contract Appeals regarding the financial impact against the AIPs for premium rate adjustments made by FCIC for the 2013 reinsurance year. OGC assisted in developing several new concept proposals into policies or endorsements and continued to assist the FCIC Board of Directors in considering many new products as a result of 2008 Farm Bill provisions.

NATURAL RESOURCES AND ENVIRONMENT

Forest Service Programs: 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 such as the Administrative Procedure Act (APA), the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Endangered Species Act (ESA) and assists in the defense of regulations, policies, plans and projects. OGC has provided assistance in:

- Planning. OGC assisted the Department in finalizing the new planning rule, and in developing the directives for the rule;

- Administrative appeals. OGC provided substantial assistance in the development of proposed regulations reforming the project level appeal/objection system, while continuing to advise the Forest Service regarding the application of the agency's administrative appeal regulations; and
- Litigation. As of September 30, 2012**,** over 100 cases involving APA, NEPA, NFMA, ESA, and other issues were pending, including cases concerning timber salvage, fuels reduction projects, Roadless Area management, range management, Sierra Nevada forest plan amendments, travel management, minerals, and energy corridors.

OGC has continued to provide substantial legal services in the forest management program area including:

- Legal assistance in the defense of the Forest Service against lawsuits collectively seeking over $12 million for alleged takings of private property related to wildfires;
- Legal assistance in the defense of the Forest Service against Federal lawsuits seeking tens of millions of dollars based on challenges related to timber sales;
- Representation of the Forest Service in various administrative forums , including suspension and debarment proceedings, bid protests, and export sourcing area proceedings;
- Advice regarding implementation of long-term stewardship contract projects;
- Legal assistance to the Forest Service regarding its efforts aimed at providing relief to the timber industry in light of severely declining timber market conditions;
- Development of contract law training for contracting officers and other responsible officials; and
- Legal advice on implementing the Secure Rural Schools and Community Self-Determination Act of 2000, including the one year reauthorization of the Act.

In support of the Forest Service Lands and Recreation Programs, OGC performed several significant tasks:

- Defended the Forest Service in litigation involving revisions to water rights clauses in ski area permits to ensure that ski area operators will continue to have the water they need to operate;
- Assisted in litigation involving regulation of over-snow vehicle use on NFS lands and litigation involving recreation fees charged for areas on NFS lands;
- Drafted a final rule that will clarify and streamline the administrative appeal process for decisions relating to special use authorizations, grazing permits, and plans of operations for mining activities;
- Provided drafting services for legislation authorizing four-season operations at ski areas on NFS lands; and
- In coordination with the U.S. Department of the Interior's Solicitor's Office, drafted a paper on visitor capacity policy for the Forest Service, National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management for Wild and Scenic Rivers, National Scenic and National Historic Trails, commercial use in wilderness areas, and National Park Service General Management Plans.

In the minerals area, OGC has provided extensive advice regarding the rights conveyed by U.S. mining laws, the Forest Service's authority to regulate locatable mineral operations, and oil and gas leasing issues. OGC continues to provide substantial legal assistance and litigation support regarding Federal laws such as those concerning American Indian treaty rights and religious freedom, and historic and archaeological resource protection. OGC provided assistance to Forest Service and other USDA offices in drafting legislation, and in reviewing a significant amount of pending legislation. OGC also reviewed and assisted in drafting legislative reports, and reviewed testimony for congressional hearings. OGC provided assistance to the Forest Service regarding hydroelectric licensing projects on NFS land and worked with an interagency group to draft final regulations for trial-type hearings and alternative licensing conditions.

NRCS Programs: OGC provides legal advice and services to NRCS in support of programs for natural resource conservation on private or non-Federal lands, including programs authorized by the Food Security Act of 1985. OGC assisted the agency in the administration of the Conservation Stewardship Program, Environmental Quality Incentives Program, the Farm and Ranch Lands Protection Program, the Grassland Reserve Program, Wetland Reserve Program, Wildlife Habitat Incentives Program, and the Healthy Forest Reserve Program.

Pollution Control: The OGC Pollution Control Team (PCT), in support of the Hazardous Materials Management Program, provided legal services for all USDA agency matters related to the Resource Conservation and Recovery Act and Comprehensive Environment Response, Compensation, and Liability Act (CERCLA). In 2012, the PCT recovered money or equivalent work for cleanup costs of more than $10 million. OGC also provided advice on compliance with pollution control standards concerning USDA programs and facilities, and provided advice on hazardous materials liability in real property transactions as agencies divest themselves of surplus properties. Since the inception of the Pollution Control Team in 1991, the PCT has received funding from the Hazardous Materials Management appropriation. Examples of the PCT's accomplishments in 2012 include:

- Assisted DOJ on behalf of the Forest Service in concluding a consent decree settlement at the Rio Tinto Mine Site. The settlement was reached in partnership with the Shoshone Paiute Tribes of the Duck Valley and the Department of the Interior. The consent decree will require approximately $21 million of work by the Rio Tinto Working Group on private and federal lands, and will be supervised by the Nevada Department of Environmental Protection and the U.S. Environmental Protection Agency.
- Assisted the Forest Service in negotiating a consent decree for the cleanup of the Butterfly and Burrell abandoned uranium mines in Colorado, where the responsible party paid approximately $2.5 million;
- Concluded an interagency agreement with the U.S. Air Force which obligates the Air Force to clean up contamination that it caused on the Tongass National Forest in Alaska;
- Negotiated a consent decree with several corporate entities to resolve the Forest Service's potential liability at the Gilt Edge Mine Site in South Dakota. The negotiated consent decree includes no provision for the Forest Service liability or payments. Instead Cyprus Mines Corporation and three other entities agreed collectively to pay $70 million to clean up the site.

Real Property Matters: OGC works closely with USDA agencies that manage real property assets on a variety of legal issues relating to landownership transactions and stewardship responsibilities, including the Forest Service, NRCS, and Agricultural Research Service (ARS). OGC provides 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.

Farm Bill: Natural Resources and Environment Division provided comprehensive assistance to NRCS, Forest Service, and USDA officials by drafting and analyzing legislative language contained in the House and Senate versions of the Agriculture Reform, Food and Jobs Act (2012 Farm Bill).

GENERAL LAW AND RESEARCH

Appellate Litigation: The General Law and Research Division (GLRD), in coordination with attorneys from DOJ and other divisions within OGC, are responsible for presenting USDA's legal position in cases on appeal. During 2012, GLRD handled approximately 300 such appellate matters, including 51 new matters opened during this period.

GLRD's responsibilities include reviewing briefs and advising DOJ in cases affecting USDA programs before the United States Supreme Court, Federal circuit courts, and State appellate courts. In 2012, GLRD assisted DOJ in oral argument preparation in PPL Montana, LLC v. Montana, in which the Supreme Court elected to review a decision of the Montana Supreme Court that pertains to the legal standards by which a State may show ownership of beds of rivers and streams within the State's boundaries. GLRD also assisted DOJ in preparing the United States' petition for en banc rehearing before the Ninth Circuit in Pacific Rivers Council v. USFS. Although the petition was denied, DOJ subsequently filed a petition for certiorari, which is pending before the Supreme Court.

GLRD also assisted DOJ in preparing for argument before the Ninth Circuit in U.S. v. CB&I Constructors, Inc., an affirmative case brought by the United States in tort for damages caused by a forest fire. The United States prevailed in its appeal. DOJ and USDA obtained two significant favorable decisions from the Court of Appeals for the Federal Circuit. In Scott Timber Company v. United States, the Federal Circuit reversed an award of almost $7 million in contract breach damages against the Forest Service, and in The Estate of E. Wayne Hage v. United States, the Federal Circuit reversed the Court of Federal Claims' finding of regulatory and physical takings of water rights

and its award of $14 million against the Forest Service. GLRD also helped facilitate settlement on appeal of significant fee awards in prominent cases in 2012.

In addition, DOJ and USDA successfully opposed certiorari in a number of Supreme Court cases, including Wyoming v. USDA, in which the Tenth Circuit upheld the Forest Service's Roadless Rule.

GLRD defends all USDA Judicial Officer decisions, of which review is sought in the Federal courts of appeals that enforce P&S Act, PACA, AWA, and HPA. OGC attorneys brief and argue these cases before the Courts of Appeals. During 2012, GLRD handled five such cases, obtaining favorable results on the merits in two, a transfer to district court in another, and with two cases pending. In Perfectly Fresh Farms, Inc., et al. v. USDA, the Ninth Circuit upheld the Secretary's determination that the corporations violated PACA prompt payment provisions and that the corporations' officers and directors were responsibly connected to the corporations at the time of the violations. GLRD also obtained a favorable decision before the Third Circuit in Empire Kosher Poultry, Inc. v. USDA, a P&S Act case. The court of appeals upheld USDA's interpretation of statutory prompt payment requirements for poultry and affirmed a civil penalty that was assessed against the appellant by the Judicial Officer. 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 2012, GLRD prepared 25 such recommendations.

General Law: GLRD counseled the Department on many significant issues ranging from China to Cybersecurity, from the Farm Bill to fiscal law to Homeland Security and emergency preparedness. For example, GLRD reviewed and provided comments on a Joint Flagship Program Protocol and several Annex agreements between the Department and the China Ministry of Science and Technology. GLRD also negotiated additional agreements between the Department and the China Garden Foundation, identifying and resolving issues related to the next phase for construction of the China Garden within the National Arboretum. GLRD continued to work on issues related to Homeland Security, emergency preparedness and response, and continuity planning, including the drought response. GLRD assisted the Center for Nutrition Policy and Promotion and the Faith-Based and Neighborhood Partnership Office in partnering with Department of Health and Human Services and the First Lady's Let's Move initiative to conduct the Let's Move Faith and Communities Video Challenge, as well as a 4-H photo contest, a Forest Service photo contest, and Department's participation in a White House and Department of Education sponsored recipe contest. GLRD provided critical technical and drafting assistance on Senate and House versions of the 2012 Farm Bill and on a fellowship grants bill.

GLRD defended or assisted in numerous proceedings before the Civilian Board of Contract Appeals (CBCA), the Court of Appeals for the Federal Circuit, the Court of Federal Claims (COFC), District Courts, and the Government Accountability Office (GAO). GLRD successfully represented the Department at the CBCA, saving the Forest Service approximately $3.1 million in claims as the CBCA agreed that the Appellant was compensated adequately during its stop work order, and at GAO and COFC, through defending the Forest Service web-based incident procurement system. GLRD participated in the Moonlight Fire settlement from a fiscal law perspective, enabling the Forest Service to accept land as part of the creative settlement structure.

GLRD reviewed and provided legal guidance on the Final Rule establishing the Hispanic-Serving Agricultural College and University certification process, which will provide a gateway to participation in certain National Institute of Food and Agriculture (NIFA) programs.

Importantly, given the Administration's goals of transparency and connectivity, GLRD reviewed amended Terms of Service agreements for the Department's social media tools, including Google+ and Storify.

GLRD is also responsible for handling on behalf of all the agencies and offices of the Department the legal work and litigation that arises under the Federal Tort Claims Act (FTCA), the Freedom of Information Act (FOIA), the Privacy Act (PA) and the Federal Advisory Committee Act (FACA). Significant legal resources continue to be expended on the defense of the tort claims and suits that have been filed against the Forest Service as a result of the June 2010 flash flood at the Albert Pike Recreation Area in Arkansas, in addition to other major claims and suits against the Department under the FTCA.

Division attorneys handled a large number of FOIA cases, some of which involved tens of thousands of pages or were complicated because they were FOIA/Administrative Procedure Act "Reverse FOIA" actions such as Humane Society v. APHIS, Jurewicz v. APHIS and CSPI v. USDA v Aurora Dairy, White Wave Foods v USDA. We anticipate that requesters will continue to file FOIA cases against USDA agencies in the next year.

GLRD attorneys have spent significant time and effort coordinating and leading the review of a large number of documents responsive to e-discovery requests in litigation, such as the Westland Hallmark case. Division attorneys have worked with agency personnel regarding collection and preservation of digital information related to investigations and litigation.

GLRD attorneys have provided legal oversight and guidance in the development of the Department's cybersecurity, defensive counterintelligence, and insider threat detection initiatives, in order to bring these programs in line with the intelligence community's standards.

Intellectual Property: GLRD provided trademark and copyright advice in regard to Administration and Department initiatives, including Biopreferred, USDA Foods, and the change of the MyPyramid nutrition program to ChooseMyPlate. GLRD assisted DOJ in regard to the Federal Government's involvement in Delano Farms Company v. The California Table Grape Comm'n., (E.D. Ca.), a case concerning intellectual property rights in the Agricultural Research Service program for the development and introduction of certain new table grape varieties among California growers.

CIVIL RIGHTS, LABOR AND EMPLOYMENT LAW

The Civil Rights, Labor and Employment Law Division (CRLELD) represents the Secretary's interests in issues involving civil rights and employment issues, and OGC legal functions related to human resources, labor relations, and employee relations, including litigation and policy work.

CRLELD Litigation Section: CRLELD's Litigation Section defends USDA in individual cases and class actions filed pursuant to equal employment opportunity laws, the Equal Credit Opportunity Act, and other Federal statutory and regulatory authorities. The Litigation Section litigates actions before the Equal Employment Opportunity Commission (EEOC), Merit Systems Protection Board (MSPB), USDA Administrative Law Judges, Federal district and appellate courts, before the Federal Labor Relations Authority, and involving the U.S. Office of Special Counsel. The Litigation Section provides a national practice for civil rights and employment litigation by providing standards for other litigators throughout the Department on best practices. The Litigation Section also provides comprehensive training on issues involving best practices and litigation techniques.

During 2012, the Litigation Section was responsible for handling over 150 complaints of employment and program discrimination, and complaints related to labor and employee relations, in various forums across the country. The Litigation Section was also responsible for promoting a national practice of civil rights litigation throughout the Department to ensure consistency and best practices.

Employment Discrimination Class Actions: The Litigation Section defended pending employment discrimination class actions of Joseph Sedillo, et al. v. Vilsack (an allegation that the Forest Service discriminated against employees nation-wide on the basis of Hispanic national origin in selections and promotions, and the existence of a hostile work environment), including filing a renewed motion for decertification of this class. The Section addressed extensive pre-certification class action discovery and certification issues in Elaine Vercruysse, et al. v. Vilsack (female non-managerial current and former employees of Forest Service Region 5 who have been denied career-enhancing details, training and assignments; have been non-selected for other positions within Region 5; and/or have been denied promotions into other positions in Region 5). The Litigation Section successfully sought the dismissal of the nation-wide employment discrimination class action of Al Gibbons, et al. v. Vilsack (allegations that class agent and other Christian employees were discriminated against based on their religion because USDA's policies and actions are "contra to congressionally passed laws establishing Christmas, Thanksgiving and Martin Luther King Day").

Program Discrimination Individual Federal District Court Cases: OGC worked with DOJ attorneys and potential witnesses from FNS to prepare for a trial in the Federal district court case of The Deron Schools v. Vilsack. This private for-profit school alleges violations of the Administrative Procedure Act, Individuals with Disabilities Education Act, and the Rehabilitation Act with regard to whether students with special needs who were moved from New Jersey public schools to the private for-profit school should receive free or reduced price meals under the National School Lunch Program. The trial has been rescheduled to early 2013. The Litigation Section continued to coordinate the defense of USDA with DOJ in numerous individual program cases brought by plaintiffs who allege discrimination in the delivery of USDA direct loan and other programs, including the successful dismissal of two such long-standing cases, Eddie Wise v. Vilsack and Michael Stovall v. Vilsack.

Program Discrimination Group and Class Action District Court Cases and Resolutions: In 2012, the Litigation Section worked daily on implementation issues involved in four former class action complaints of program discrimination which have been resolved:

- Garcia, et al. v. Vilsack, and Love, et al. v. Vilsack - Cases alleging discrimination by FSA against Hispanic and Women farmers and ranchers in loan making and loan servicing, respectively; the U.S. Supreme Court denied the petitions for writ of certiorari challenging the D.C. Circuit Court of Appeals and the District Court decisions regarding the denial of class certification. USDA established a voluntary non-judicial adjudicative claims process to address the decades old allegations of discrimination against women and Hispanics as an alternative for individual plaintiffs to litigate their cases in Federal court. USDA is conducting outreach to notify female and Hispanic primary operators about the claims process, and the claims administrator is currently receiving applications until March 25, 2013. Plaintiffs filed an amended complaint in Love, et al., alleging that the claims process is discriminatory. The Government filed a Motion to Dismiss, which the Court granted on December 11, 2012. Plaintiffs in Garcia did not file an amended complaint by the deadline ordered by the Court. Rather, those plaintiffs are proceeding under a parallel class action, Cantu, et al. v. Vilsack, which also alleges that the voluntary claims process itself is discriminatory and seeks monetary and equitable relief. The Court dismissed the Cantu et al. class action on December 11, 2012.

- Keepseagle et al. v. Vilsack - In November 1999, Native American farmers and ranchers filed a class action against the Department alleging discriminatory treatment in USDA loan programs and a systematic failure to investigate civil rights complaints. In Keepseagle, the United States District Court certified the case as a class action for injunctive relief purposes. After many years of litigation, plaintiffs and the United States achieved a comprehensive and historic settlement which the court approved on April 28, 2011. USDA is currently implementing the settlement agreement. The claims period for the non-judicial adjudication process, ended on December 24, 2011, and all payments were mailed to prevailing claimants as of November 1, 2012. FSA also provided debt forgiveness to prevailing claimants for eligible, outstanding debts identified by the claimants.

- Pigford I – OGC is completing implementation of the April 14, 1999, consent decree in Pigford/Brewington, et al., the class action filed on behalf of African American farmers alleging race discrimination in farm loan and benefits programs. The Office of the Monitor closed in March 2012. The parties are dealing with a handful of cases with disputed debt relief and are finalizing a wind down stipulation and archiving plans. As of November 10, 2011, no additional prevailing decisions were implemented in favor of Track A claimants. To date, the government has paid $1,016,328,416 to prevailing Track A claimants, including $44,598,941 in debt relief and related expenses. In addition, a total of $34,739,783 has been paid to the 162 persons who elected to file Track B claims which were either adjudicated or settled.

- Pigford II - The settlement agreement in In Re Black Farmers Litigation (Pigford II), a consolidation of lawsuits with approximately 35,000 plaintiffs, was approved by the court on October 27, 2011. The lawsuits were in response to the 2008 Farm Bill, Public Law No. 110-246, § 14012(j)(1), 122 Stat. 1651, 2212 (2008), which authorizes individuals who were not allowed to file claims under the Pigford Consent Decree because of untimeliness and have not had decisions on the merits to seek relief in Federal court. The claims period began November 14, 2011, and ended on May 11, 2012, except for a limited group of claimants covered by the Court's September 14, 2012, order allowing some to file after the May 11, 2012 deadline. The neutral adjudicators are currently adjudicating the claims submitted.

Training and National Practice: The Litigation Section continued quarterly employment law calls and coordination of a national 2-day webinar to train agency representatives and OGC field and regional attorneys on best practices for employment discrimination litigation. The Litigation Section and Policy Section continued to provide a quarterly newsletter to USDA civil rights and human resources personnel on changes in the law, recent relevant case law decisions, and practical advice and counsel on civil rights, labor and employment law issues. The Litigation Section and Policy Section also continued quarterly meetings with USDA's Civil Rights Directors' Council and met with Agency heads and human resources personnel to offer services and collaborate on practice areas.

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

During 2012, the Policy Section provided extensive EEO training for a variety of agencies including RMA, FSA, and FNS. The Policy Section also provided program civil rights training to FNS and FSIS. Other accomplishments include the successful resolution of several informal EEO complaints, resulting in savings of hundreds of thousands of dollars in litigation costs and judgments against USDA. In 2012, the Policy Section adopted a variety of new responsibilities including all OGC legal functions related to human resources, labor relations, and employee relations, in addition to the ongoing EEO and civil rights responsibilities of the division. In this capacity, the Policy Section has provided advice on personnel and labor issues for the Forest Service and for OGC senior management on internal OGC labor and employment matters.

REGIONAL OFFICES

OGC has four regional and thirteen branch offices which provide legal services to numerous USDA agencies with field organizations. Attorneys in the field locations advise USDA officials who have been charged with program implementation duties at the regional, State and local levels.

Eastern Region

Forest Service. Approximately 12,000 mineral operations on NFS lands are associated with private (reserved or outstanding) mineral rights. Most of these operations are oil and/or gas wells on eastern forests in Forest Service Regions 8 and 9. The Forest Service uses an assortment of approaches to manage the activities associated with private mineral rights. As the number of outstanding and reserved minerals interests and leases on National Forest Lands has been increasing, the legal questions and challenges have grown more complex. As a result, OGC attorneys have seen an increase in cases relating to mineral operations. For example, Eastern Region attorneys assisted the DOJ in defending a takings claim in Louisiana. Central Pines Land Co. v. U.S. involved mineral servitudes which lapsed by operation of state law. District Court awarded $3,361,000 in damages and attorney's fees in favor of the Plaintiff. Judgment was overturned by Court of Federal Claims. A similar matter, Petro Hunt v. U.S. involving millions of dollars in alleged losses, is currently pending in District Court. OGC attorneys are also assisting DOJ in defending oil and gas leasing cases including: Ouachita Watch League et al. v. Henry, Ozark Society v. United States Forest Service,andMinard Run Oil Company v. USFS.

Rural Development Programs. The Eastern Region provided legal advice and litigation support to all Rural Development agencies, including RHS, RUS, and RBS in 23 eastern States along with the U.S. Territories of Puerto

Rico and the U.S. Virgin Islands. The region's services included assisting with loans worth hundreds of millions of dollars (including making, servicing, restructuring, and collecting loans, and, where necessary, foreclosing on collateral), grants, and tribal issues. OGC also assisted DOJ in defending lawsuits relating to loan servicing, such as Harris v. Vilsack, a U.S. District Court case in Ohio which was dismissed with prejudice. This was one of several cases filed by borrowers who had single family housing loans with private lenders which were guaranteed by RD. These cases challenge USDA's administration of the Housing Act of 1949, 42 U.S.C. §§ 1441-1490. If plaintiffs had prevailed, the agency would have had to require certain actions by the lenders and become more involved in servicing guaranteed loans, which would likely have decreased lenders' willingness to participate in the program.

NRCS Easement Acquisitions and Claims. The Eastern Region continued to see a substantial increase in legal work related to easement acquisition for NRCS. OGC ensures that in these matters the environmental and financial interests of the United States are protected through adequate legal review and documentation. Many of these acquisitions involve parcels where the value exceeded $1 million or involved significant conservation projects. For example, the Eastern Region assisted in reviewing a complex wetland reserve easement to provide a critical corridor for the endangered Florida panther.

Civil Rights, Employment Law, and Contract Law. The Eastern Region successfully defended USDA agencies in employment-related litigation before the Equal Employment Opportunity Commission, Merit System Protection Board, and the United States District Courts. For example, Eastern Region attorneys acted as co-counsel with DOJ in a two week long trial in Abramsen et al. v. Vilsack. The court ruled that the 32 plaintiffs were not discriminated against by officials with the Cooperative State, Research, Education & Extension Service (now known as National Institute of Food and Agriculture) thus saving the agency over $11 million in damages plus attorney's fees.

Farm Service Agency. Eastern Region attorneys provided legal advice to FSA with loan issues and bankruptcies in hundreds of matters during the past year. The Eastern Region helped FSA make millions of dollars in loans to family farmers and small farming operations in 23 eastern states along with the U.S. Territories of Puerto Rico and the U.S. Virgin Islands. Attorneys also assisted DOJ in defending FSA in cases brought challenging its implementation of program funds. In Mariculture Technologies v. Vilsack, the plaintiff challenged an administrative determination by FSA requiring Plaintiff to refund the 2004 Crop Disaster Program (CDP) payment because it failed to purchase coverage under the Noninsured Crop Disaster Assistance Program (NAP). The agency's decision was upheld by the National Appeals Division, the District Court and the Court of Appeals.

FNS. Eastern Region attorneys have also seen an increase in debarment cases brought against store owners who have violated the SNAP regulations by illegally trafficking program benefits -- almost one-half of all SNAP violation cases are pending in the Eastern Region.

Central Region

Loan Servicing. The Central Region has a large concentration of "rural" communities, and OGC's Central Region worked with Rural Development to provide legal review to finance and service many types of loans involving hundreds of millions of dollars. In the Single-family housing program, the Central Region continued to see a consistent volume of foreclosures for referral, and an increase in the number of claims in bankruptcy. Several Community Facility and Water and Sewer loans are in default and require legal review to protect the interests of the United States in the claims and liquidation processes. For example, in Illinois, the Moecherville Water District, received loan and grant funds totaling $4.5 million from RD to construct a water system. The system went into receivership and RD ultimately liquidated the loan with OGC legal assistance. Another water project in Iowa is financially distressed and a receivership proceeding is in process, requiring additional legal analysis and review to protect the RD debt (approximately $45 million.) Another water project in Kansas was financed by RD and the debt there is approximately $6 million; and the distressed project continues to require servicing and legal assistance from OGC. Smaller dollar loans to nursing homes and multi-family housing projects also provided a continuing volume of work to protect the financial interest of the United States, in both the prospective transactional financing and the legal review related to servicing of troubled loans. OGC assisted Rural Development with the legal review related

to financing and processing of RBS and RUS programs, and the transfer, assumption and consolidation of RD multi-family housing properties.

Fraud Claims. Fraud claims continued to provide a steady flow of legal work for the Central Region during 2012. In Michigan, OGC settled a claim against a mortgage company involving the fraudulent initiation of residential loans guaranteed by USDA. In the crop insurance program, OGC recovered $850,000 from an insurance agent who submitted crop insurance claims for producers who did not have an insurable interest in the crops. OGC assisted in resolving Farm Service Agency payment limitation "scheme and device" findings, with producers, paying back approximately $1.13 million in unearned payments for three program years in one case and $600,000 in another case involving seven program years. OGC is pursuing non-dischargeability claims in bankruptcy cases where producers submitted false claims and defrauded the government. Other investigations and prosecutions of Farm Program Fraud are on-going; one case seeks approximately $16 million in unearned payments.

Supplemental Nutrition Assistance Program. FNS increased surveillance and detection into SNAP fraud and abuse, resulting in increased requests for legal services in this program area and an increase in litigation. These cases seek permanent disqualification of store owners and large civil monetary penalties. One such case resulted in a criminal prosecution: In United States, v. Ansari, a SNAP retailer pled guilty to a multimillion dollar trafficking fraud. Ansari was sentenced to 41 months in prison on one count of food stamp fraud and ordered to pay $2.4 million in restitution. Because the sanctions are permanent and the civil penalties are large, the retailers often appeal these cases, which require further legal assistance. In J & K Market Centerville v. United States, the Central Region successfully defended FNS in a permanent disqualification case, wherein United States Court of Appeals for the Eighth Circuit found that the FNS denial was not arbitrary or capricious and permanent denial of participation was an appropriate sanction because of the owner's involvement in a prior food stamp trafficking violation. FNS continues to bring more cases to OGC for legal review in their effort to enforce the program and deter other SNAP violations.

Gulf Coast Disasters. The Central Region has continued to see an increased demand for legal services brought about by hurricanes striking the Gulf Coast over the past several years and by the BP Deepwater Horizon oil spill. These disasters harmed agricultural producers and rural communities by drowning livestock, flooding cropland, damaging water and sewer systems and damaging barrier island restoration projects undertaken by NRCS. The Central Region assists with coastal restoration projects involving litigation before the Civilian Board of Contract Appeals. The Raccoon Island contract claim for $4.1 million (Choctaw Transportation Co., Inc., v. USDA) was a barrier island project, intended to protect coastal areas from water surges produced by hurricanes. In this case, the changed site conditions alleged by the Appellants were the result of a subsequent hurricane. In Singleton Enterprises v. USDA, the Central Region defended a contract claim where NRCS terminated a contract for default and denied a claim for a mistake in bid on a marsh restoration project to alleviate erosion and salt water incursion in fragile natural habitat along the shores of the Gulf Intracoastal Waterway. The Civilian Board of Contract Appeals issued orders sustaining the contracting officer's termination decision and denied the claim.

Easements and Enforcement. OGC's Central Region continues to see a substantial increase in legal work related to easement acquisition under NRCS programs: Wetlands Reserve Program, Emergency Watershed Program, the Grassland Reserve Program, the Farm and Ranch Lands Protection Program, and the Environmental Quality Incentives Program. OGC has also seen an increase in enforcement actions to ensure that the environmental and financial interests of the United States are protected as these easements age and conditions change. In order to monitor its inventory of land, NRCS began using remote sensing laboratories to create high resolution aerial photographs of all NRCS conservation easements throughout the United States. The aerial photographs will reveal additional easement violations and result in additional enforcement actions requiring legal review.

Crop Disasters. OGC's Central Region provides legal advice to the RMA and the Federal Crop Insurance Corporation. Volatile weather conditions during the past few years resulted in an increase in crop insurance claims. The Central Region has seen an increase in prevented planting claims, and the consequent increase in demands for legal assistance to reduce the number of overstated claims presented.

Mountain Region

Travel Management. Mountain Region attorneys spent considerable time during FY 2012 assisting the Forest Service in implementing its travel management decisions, including helping the Forest Service respond to administrative appeals and defending decisions in federal court. Many of the travel plans are being challenged by motorized vehicle use groups, environmental groups, or both. Active travel management litigation included challenges to travel plans for the Custer and Gallatin NFs in Montana, the Payette NF in Idaho, the Medicine Bow NF in Wyoming, and the San Juan and Pike-San Isabel NFs in Colorado.

NEPA, NFMA, and ESA. Mountain Region attorneys handled a wide range of legal issues arising under the NEPA, NFMA and ESA. Our attorneys provided extensive advice to the Forest Service on NEPA and NFMA compliance issues, including forest health projects under the Healthy Forests Restoration Act- the protection of endangered and threatened species such as the Canada lynx, bighorn sheep, sage grouse, cutthroat trout, and San Francisco Peaks groundsel. We continue to defend the Forest Service in NEPA, NFMA, and ESA lawsuits filed in all ten states in the Mountain Region. Examples of active litigation include Salix v. U.S. (D. Mont.) (challenge to 18 forest plans for failure to initiate consultation with the Fish & Wildlife Service regarding the Canada lynx); Native Ecosystems v. Krueger (D. Mont.) (challenge to timber sales and other projects based on alleged impacts to the lynx); Water Supply and Storage Company v. USDA (D. Colo.) (dispute involving a dam owner's responsibility to mitigate the effects of its water diversion on cutthroat trout); and Save the Peaks Coalition v. USFS (D. Ariz. and 9th Cir.) (challenge to use of reclaimed water for snowmaking at Arizona Snowbowl, based on alleged adverse impacts to the groundsel).

Water Rights. Mountain Region attorneys provided legal counsel and represented the Forest Service in water rights issues at the regional and national levels. In 2012, water rights issues were especially prevalent in Montana, where the Montana Water Court opened adjudications in several previously-unadjudicated basins. Our Missoula office prepared hundreds of objections and responses to objections on behalf of the Forest Service in the Montana water rights adjudication process and played an integral role in drafting and reviewing reserved water rights compacts for both the Forest Service and ARS. In Colorado, we have worked extensively with the Department of Justice on several significant lawsuits that affect water rights, including National Ski Area Assn. v. USDA (D. Colo.) (challenging Forest Service interim directive that requires ski areas to acquire certain new water rights in the name of the United States), and Water Supply and Storage Company v. USDA and USDOI, (D. Colo.) (challenging Forest Service regulation of a private dam).

Mining and Energy Development. Mountain Region attorneys advised the Forest Service regarding controversial oil and gas development projects in Colorado, Utah and Wyoming; coal development in Colorado, Wyoming, and Utah; and mines and proposed mining projects throughout the region, including proposed copper and uranium mines in Arizona, phosphate and cobalt mines in Utah, a proposed molybdenum mine in Colorado, and proposed silver mines in Montana.

Grazing. In 2012, the Mountain Region provided extensive advice to the Forest Service regarding its ongoing effort to reconcile grazing rights with its obligations to protect bighorn sheep, which are susceptible to disease spread by domestic sheep. For example, OGC assisted the Forest Service with an administrative appeal concerning the Big Six Allotment Management Plan (bighorn sheep on the Bighorn NF) and with WWP v. USFWS (D. Idaho) (grazing and bighorn sheep issues on the Salmon-Challis NF). In addition, in 2012 the Federal Circuit Court of Appeals resolved an extremely important grazing and water rights case in favor of the Forest Service, ending 20 years of litigation with a Nevada rancher who asserted that the Forest Service's administration of his grazing permits constituted a "taking" of private property. (Estate of Wayne Hage v. U.S.)

Fire. The four Forest Service regions served by the Mountain Region of OGC have active wildland fire programs, which lead to a large number of claims for collection of fire suppression costs and damages. Numerous costs collection suits are pending, and OGC routinely assist, the Forest Service with administrative cost collection efforts.

Contract Issues. Mountain Region Attorneys represented USDA agencies in a number of Civilian Board of Contract Appeals cases, mainly involving Forest Service timber contracts. Other cases involved a Job Corps food service contract and NRCS construction contracts.

Quiet Title Disputes. The Mountain Region is helping to defend the Forest Service with respect to litigation filed by the State of North Dakota and several counties in that State. The State and counties seek to block Forest Service travel management initiatives in the Little Missouri National Grassland by asserting public rights of way over all section lines in the Grassland. This case could significantly affect Federal land management in all states with section line laws. OGC has also assisted in defending the Forest Service in a number of other lawsuits raising quiet title and RS 2477 road claims, including Shoshone County v. USFS (D. Idaho), in which the court ruled in favor of the Forest Service after an exhaustive examination of historic land use records.

Rural Development Programs. The Mountain Region provided legal advice and litigation support to all Rural Development agencies in Colorado, Wyoming, Utah, Arizona, New Mexico, and Montana, including RHS, RUS, and RBS. The region's services included assisting with loans worth hundreds of millions of dollars (including making, servicing, restructuring, and collecting loans, and, where necessary, foreclosing on collateral), grants, and tribal issues.

Law Enforcement Issues. The region assisted Forest Service law enforcement with hundreds of closure orders, and is assisting Forest Service law enforcement to resolve jurisdictional disputes arising between Federal land management agencies and some county sheriffs in Western States.

FSA. Mountain Region attorneys provided legal advice to FSA with respect to loan issues and bankruptcies in more than 100 matters during the past year.

Pacific Region

Affirmative Fire Claims. The Pacific Region actively pursued cost-recovery actions against parties responsible for negligently starting fires on NFS lands. It has represented USDA in affirmative fire cases that have resulted in the recovery of more than $400 million (in cash and the value of real property conveyed to the United States), including more than $170 million in 2012. Of the amount recovered by the Pacific Region, the Forest Service has received more than $250 million to help restore the NFS lands burned in the fires, make the lands more resilient to climate change, and enhance water resources.

Alaska Subsistence Program. The Pacific Region advised the Federal Subsistence Board on controversial issues regarding subsistence resources for rural residents of Alaska. This work included helping the Board respond to a petition to the Secretary to assert extraterritorial jurisdiction over commercial salmon fishing that may be interfering with subsistence uses in the Tongass National Forest. The Pacific Region continued to provide assistance to the DOJ in litigation affecting the Federal Subsistence Program, including initiating a public rulemaking in response to a court order to examine federal land withdrawals effected prior to Alaska Statehood.

Civil Rights and Employment Law. The Pacific Region successfully defended USDA agencies in employment-related litigation before the EEOC and before the Federal courts. Pacific Region attorneys provided USDA agencies with training, legal advice, case assessments, and settlement recommendations designed to minimize the risk of liability in employment-related matters. Pacific Region attorneys helped defend USDA before the EEOC in the class action litigation entitled Sedillo v.Vilsack.

Climate Change. The Pacific Region worked with the Forest Service to address climate change considerations in NEPA analyses and the evolving role of carbon accounting with respect to Forest Service facilities, procurements, and land management projects.

Contract Litigation. Pacific Region attorneys helped DOJ obtain a favorable decision from the Court of Appeals for the Federal Circuit in Scott Timber Co. v. U.S. Specifically, the Court of Appeals reversed a decision from the U.S. Court of Federal Claims awarding the plaintiff $6.8 million. Pacific Region attorneys also successfully defended

USDA agencies in contract-related litigation before the Civilian Board of Contract Appeals. The Pacific Region is seeing an increase in the number of cases filed with the Board.

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

Grazing. The Pacific Region devoted significant resources to grazing matters because environmental groups are filing an increased number of lawsuits challenging the Forest Service's grazing program.

Hydropower. Pacific Region attorneys helped the Forest Service respond to a large number of proposals for projects involving alternative sources of energy. In Alaska, for example, there are more than 30 proposed hydroelectric projects on NFS lands, most of which are in roadless areas and pose potential conflicts with USDA roadless policies.

Law Enforcement Assistance. Pacific Region attorneys review Orders issued under 36 CFR 261.50 to ensure that they meet legal requirements and provide advice to Forest Service law enforcement personnel with respect to ongoing criminal investigations. Pacific Region attorneys helped the Forest Service and DOJ criminal convictions of individuals who were conducting unauthorized mining activities on NFS lands. In 2012, the Ninth Circuit Court of Appeals upheld the convictions of several of these individuals.

Legislation and Congressional Relations. The Pacific Region provided legal services to the Forest Service and the Department on Alaska-specific legislation and congressional relations. This work included the possible transfer of 70,000 acres of NFS lands within the Tongass National Forest to the Sealaska Corporation, an Alaska Native Corporation, to finalize Sealaska's entitlement under the Alaska Native Claims Settlement Act.

Mining. Pacific Region attorneys helped the Forest Service address unauthorized mining activities and unauthorized occupancies and helped DOJ file civil and criminal enforcement actions in some of these cases. Pacific Region attorneys also helped the Forest Service resolve issues involving authorized mining.

Natural Resources Conservation Service. The Pacific Region continues to see a large number of requests from NRCS for review of easement acquisitions under the Wetlands Reserve Program, Grassland Reserve Program, and Farm and Ranch Lands Protection Program.

Natural Resources Litigation. The Pacific Region provided significant assistance to DOJ in natural resources litigation, including the lawsuits challenging the 2004 Sierra Nevada Framework, an amendment to the Land and Resource Management Plans (LRMPs) for 11 National Forests in California; the lawsuits challenging various travel management plans in the Pacific Region; the lawsuits challenging the Revised Management Plan for the Columbia River Gorge National Scenic Area; the lawsuits challenging the Tongass National Forest LRMP's protection of roadless areas and old-growth reserves, which the court dismissed in 2012 in response to our motion noting that the matter had been the subject of previous litigation; and the lawsuits challenging timber sales in roaded areas of the Tongass. The Pacific Region has seen an increase in the number of lawsuits challenging the Forest Service's tree thinning and fuels reduction projects.

Pre-Decisional Environmental and Natural Resources Advice. The Pacific Region provided pre-decisional advice to the Forest Service on many significant environmental and natural resources matters to reduce the vulnerability of agency decisions in litigation. This included advice in support of the Administration's strategy to help communities shift from relying on old-growth timber resources of the Tongass National Forest to a more diversified economy. Pacific Region attorneys also provided advice on land and resource management plans, salvage and green timber sales, fuels and hazard reduction projects, and grazing allotments. Pacific Region attorneys developed and conducted a "Forestry for Lawyers" course, which has been offered in three of the last four years. More than 50 OGC and DOJ attorneys have attended the course. The course has enhanced the technical expertise of the participants and the ability of the Forest Service to achieve its mission of caring for the land.

Renewable and Alternative Sources of Energy. The Pacific Region has advised USDA agencies on many renewable energy projects, including projects involving wind, solar, and biomass power generation. For example, Pacific Region attorneys worked with the San Dimas Technology and Development Center on cutting-edge issues concerning the construction and deployment of a photovoltaic system that meets the electricity needs of the facility and produces excess power that is being fed back into the electrical grid. Pacific Region attorneys also provided advice on issues related to the use of woody biomass and related incentive programs available under Federal law, and advice concerning interactions with State public utility companies. The Pacific Region devoted considerable time to helping the Forest Service respond to proposals from power companies seeking to upgrade existing infrastructures on NFS lands and to build major new transmission lines. The Pacific Region expects this workload to increase.

Rural Development. The Pacific Region reviewed and prepared legal documents for grants and loans helping USDA agencies obligate several hundred million dollars in 2012. The Pacific Region helped the Rural Development mission area obtain adequate security for its loans and issued loan closing instructions for important community facility projects. Pacific Region attorneys helped RHS with the transfer and assumption of multi-family housing properties and the issuance of multi-family loan closing instructions.

Western Pacific Programs. The Pacific Region provided considerable assistance to RD with respect to its programs in American Samoa, Guam, Palau, and the Federated States of Micronesia. Pacific Region attorneys used their expertise to help USDA agencies address the unique issues posed in these countries and trust territories.

OFFICE OF ETHICS

The USDA Office of Ethics (OE) completed its realignment from the Office of Human Resources Management to the General Counsel in 2012. During the year, OE began implementation of the new statutory disclosure, transparency, and reporting requirements mandated by the Stop Trading on Congressional Knowledge Act (the "STOCK Act"). The STOCK Act established new reporting requirements for the government’s most senior officials. The STOCK Act requires: (1) new periodic reports of employees' securities transactions; (2) additional notifications to the Ethics Office for officials commencing negotiations for post government employment; and (3) the Internet posting of all public financial disclosure reports for senior officials. OE instituted a program of training, systematic notifications to senior officials, and created a new STOCK Act webpage on the USDA Ethics website to inform USDA employees of their requirements under the law. OE also worked closely this year with the USDA White House Liaison to improve ethics disclosure and training for USDA's 150 Federal Advisory Committees. Additionally, OE completed its second successful year of electronic filing for USDA’s nearly 700 public financial disclosure statements (OGE-278) and prepared to launch electronic filing of the Department’s 16,000 confidential financial disclosure reports (OGE-450). OE serves the entire Department and all component agencies. OE is organized into an Office of the Director and four branches: the Farm, Conservation, and Rural Programs Branch; the Science Ethics Branch; the Marketing, Regulatory, and Nutrition Branch; and the Forestry Ethics Branch.

OFFICE OF THE GENERAL COUNSEL

Summary of Budget and Performance
Statement of Agency Goals and Objectives

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

OGC has one strategic goal and five strategic objectives that contribute to all the Department's strategic goals.

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

OFFICE OF THE GENERAL COUNSEL

Summary of Budget and Performance
Statement of Agency Goals and Objectives – Office of Ethics

USDA has a centralized Ethics Program, the Office of Ethics, which fulfills the statutory requirements of the Ethics in Government Act of 1979 as amended by the Stop Trading in Congressional Knowledge Act of 2012 (STOCK Act) and the regulatory requirements of the Office of Government Ethics at 5 CFR § 2634 and following. Until 2012, OE was located either in the Office of Human Resources Development under Departmental Administration or directly under Departmental Administration. In June of 2012, the Secretary ordered the realignment of OE to report directly to the General Counsel.

The mission of the Office of Ethics (OGC) is to provide ethics services necessary to support all activities of USDA. That includes setting ethics policy, and providing ethics advice, counseling, training, review of disclosure reports, and conflict of interest analysis for all employees within the Department

OE has one strategic goal and two strategic objectives that contribute to all the Department's strategic goals.

Agency Strategic Goals	**Agency Objectives**	**Programs that Contribute**	**Key Outcome**
To provide effective ethics services in support of all programs and activities of USDA, consistent with the strategic goals of USDA and the priorities of the Secretary of Agriculture.	Ensure USDA has a model ethics program that complies with the requirements of the ethics program for the executive branch, as required by OGE regulations. Ensure that employees are trained in ethics, receive prompt and accurate advice, and fully disclose financial information and transactions and outside relationship information on required financial disclosure forms.	Ethics Services Program	Provide effective ethics services in a timely and responsive manner to support USDA activities, consistent with the priorities established by the Secretary of Agriculture.

OFFICE OF THE GENERAL COUNSEL

Summary of Budget and Performance
Key Performance Outcomes and Measures

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

Key Outcome : Provide effective legal services in a responsive manner to support USDA activities, consistent with the priorities established by the Secretary of Agriculture.

Key Performance Measures:

- Measure #1: Litigation before administrative forums, including Equal Employment Opportunity Commission, Merit Systems Protection Board, USDA's Administrative Law Judges and Judicial Officer, and other administrative bodies, conducted in an effective and timely manner.
- Measure #2: 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.
- Measure #3: Legal advice and counsel to USDA officials and agencies provided in a timely and effective manner.

Key Performance Targets:

Performance Measure	2008 Actual	2009 Actual	2010 Actual	2011 Actual	2012 Actual	2013 Target	2014 Target
Litigation before administrative forums, including Equal Employment Opportunity Commission, Merit Systems Protection Board, USDA's Administrative Law Judge's and Judicial Officer, and other administrative bodies, conducted in an effective and timely manner.	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner
Provision of assistance to Department of Justice and U.S. Attorneys in connection with litigation in Federal courts as assigned accomplished in an effective and timely manner.	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner
Legal advice and counsel to USDA officials and agencies provided timely and in an effective manner.	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner
Dollars (in thousands)	$38,884	$41,530	$43,393	$41,387	$39,259	$39,586	$41,563

OFFICE OF THE GENERAL COUNSEL

Summary of Budget and Performance
Key Performance Outcomes and Measure – Office of Ethics

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

Key Outcome : Provide effective ethics services in a responsive manner to support USDA activities, consistent with the priorities established by the Secretary of Agriculture.

Key Performance Measures:
- Measure #1: Provide ethics training, advice and guidance to all USDA employees and agencies in a timely and effective manner.
- Measure #2: Conduct ethics and conflicts of interest reviews of all Public Financial Disclosure Reports (OGC-278 Reports) including all new entrant reports, all annual reports and all termination reports. Ensure that all ethics and conflicts of interest reviews are conducted in an effective and timely manner.

Key Performance Targets:

Performance Measure	2008 Actual	2009 Actual	2010 Actual	2011 Actual	2012 Actual	2013 Target	2014 Target
Provide ethics training, advice, and guidance to all USDA employees and agencies in a timely and effective manner	-	-	-	-	95% of USDA filers receive training during the calendar year	95% of USDA filers receive training during the calendar year	95% of USDA filers receive training during the calendar year
Conduct ethics and conflicts of interest reviews of all Public Financial Disclosure Reports (OGE-278 Reports) including all new entrant reports, all annual reports and all termination reports. Ensure that all ethics and conflict of interest reviews are conducted in an effective and timely	-	-	-	-	New Measure	90% of reports reviewed within 60 days of filing	90% of reports reviewed within 60 days of filing
Dollars (in thousands)	-	-	-	-	$3,405	$3,426	$3,451

In 2012 and 2013, Departmental Administration funded the Office of Ethics.

Key Outcome: Provide effective legal and ethics services in a responsive manner to support USDA activities, consistent with the priorities established by the Secretary of Agriculture.

Selected Past Accomplishments toward Achievement of the Key Outcome OGC:

- Processed 219 administrative orders in cases under the Perishable Agricultural Commodities Act resulting in reparation awards of nearly $4.8 million.
- Filed 124 administrative complaints under the Packers and Stockyards Act, closed 152 cases, and obtained civil penalties of over $1.5 million.
- Defended NIFA in a discrimination matter by 32 plaintiffs in Puerto Rico, saving NIFA over $11 million.
- Negotiated consent decree to resolve claims against the Forest Service for no liability at the Gilt Edge Mine Site in South Dakota and obtained $70 million from private parties to cleanup the site.
- Assisted FSA in developing and implementing an out-of-court administrative claims involving large-scale civil rights discrimination litigation against USDA by African-American, Native-American, Hispanic and women farmers and ranchers.
- Assisted FSA in developing and implementing an out-of-court administrative claims process for women and Hispanic farmers and ranchers victims of discrimination in the making of FSA loans, alleging. at minimum $1.33 billion for compensation.
- Pursued cost-recovery actions against parties responsible for negligently starting fires on NFS lands resulting in the recovery of more than $170 million.
- Assisted DOJ on behalf of the Forest Service in concluding a consent decree settlement at the Rio Tinto Mine Site requiring approximately $21 million of work on private and Federal lands.
- Obtained with DOJ significant favorable decision from the Court of Appeals reversing an award of almost $7 million in contract breach damages against the Forest Service and reversing a finding of regulatory and physical taking of water rights and its award of $14 million against the Forest Service.
- Successfully represented USDA at the Civilian Board of Contract Appeals, saving the Forest Service approximately $3.1 million in claims.

Selected Past Accomplishments toward Achievement of the Key Outcome OE:

- OE began implementation of the new statutory disclosure, transparency, and reporting requirements mandated by the Stop Trading on Congressional Knowledge Act (the "Stock Act").

Selected Accomplishments Expected at the 2014 Proposed Resource Level: OGC and OE will provide effective legal and ethics serivces in a responsive manner in order to ensure that agency officials can implement their programs.

Strategic Goal Funding Matrix
(Dollars in thousands)

Program / Program Items	2011 Actual	2012 Actual	2013 Estimate	Increase or Decrease	2014 Estimate
Agency Strategic Goal: To provide effective legal services in support of all programs and activities of USDA, consistent with the strategic goals of USDA and the priorities of the Secretary of Agriculture.					
Legal Services	$41,416	$39,345	$39,586	$1,977	$41,563
Staff Years	267	253	245	+10	255
Ethics Services	-	-	-	$3,451	$3,451
Staff Years	-	-	-	+27	27

OFFICE OF THE GENERAL COUNSEL

Full Cost by Agency Strategic Goal
(Dollars in thousands)

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

Program / Program Items	2011 Actual	2012 Actual	2013 Estimate	2014 Estimate
Administrative costs (direct)	$38,485	$36,103	$37,365	$42,057
Indirect costs	2,902	3,156	2,221	2,957
Total Costs	41,387	39,259	39,586	45,014
FTEs	267	253	245	282