



GENERAL COUNSEL

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-0500

April 16, 2012

MEMORANDUM FOR: Karen Newton Cole, Acting Chief Human Capital Officer

FROM: Linda M. Cruciani, Deputy General Counsel for Operations

SUBJECT: FY 2012 OGC Realignment/Reorganization

This memorandum sets forth OGC's plans to (1) redistribute the functions of the Senior Counsel for Appeals to the OGC Ethics Law Division and the Regional Counsel Office for Region I; (2) officially change OGC organization charts to reflect the transfer of two divisions to the Consumer Financial Protection Bureau; and (3) redistribute legal work in HUD's regional offices to recognize and maintain the skill sets necessary to have high-performing, nimble workforce to face the workload challenges of the current housing and lending crisis.

OCHCO has provided comments on an earlier draft of this memorandum. Those comments have been incorporated. It is important that the OGC's reorganization be put into Departmental clearance no later than April 18, 2012. The General Counsel is having an all-hands meeting to discuss the reorganization on April 19, 2012. That meeting is being broadcast to the field and regions.

**Function Statements**

**(1) Create the Ethics and Appeals Division and Redistribute the Functions of the Senior Counsel for Appeals**

The Senior Counsel for Appeals (SES) retired in 2011. Her portfolio included handling FOIA appeals, providing direct counsel to the Office of the Secretary in its handling of appeals of HUD administrative law judge decisions, and providing counsel to the Office of Departmental Equal Employment Opportunity (ODEEO). The Senior Counsel for Appeals was supported by an Administrative Specialist, GS-301-11.

OGC has redistributed the work of the Senior Counsel for Appeals to two offices. The Ethics Law Division is now handling the FOIA and Secretarial appeals. To recognize this redistribution of work, OGC proposes renaming the "Ethics Law Division" the "Ethics and Appeals Division." The Senior Counsel's work has been spread among the attorneys in the division and provides those attorneys with a wider variety of work. The Associate General Counsel for Ethics and Personnel Law has the delegated authority to sign the decision on FOIA appeals. As the positions in the Ethics Law Division are not in the bargaining unit, there is no impact to the union. Minor pen and ink changes to the current position descriptions will be necessary.

OGC proposes dividing the legal advisory functions related to ODEEO to two offices, the Regional Counsel Office in Region I (Boston) and the headquarters OGC Office of Ethics and Personnel Law. To comport with the directives of EEOC Management Directive 110, the Regional Counsel Office in Region I (Boston) will serve as program counsel to ODEEO and will handle all aspects of legal advice for the EEO pre-complaint and complaint processes, including legal review of Final Agency Decisions (FADs) and settlement agreements for legal sufficiency. HUD's Region I generates very few federal EEO cases and those cases will be transferred to other Regional Counsel offices so conflicts of interest will be minimized. If an actual conflict arises, the issue will be treated as conflicts within the Office of General Counsel are normally handled and the issue will be transferred to another Office of Regional Counsel or OGC headquarters office. This redistribution of work will not require any additional staffing and will satisfy EEO Management Directive 110 that requires that "the same agency officials responsible for executing and advising on personnel actions may not also be responsible for managing, advising, or overseeing the EEO pre-complaint or complaint processes." No changes to existing position descriptions will be necessary. The attorneys in the Litigation Division in the Regional Counsel Office (discussed below) for Region I (Boston) will be responsible for serving as program counsel to ODEEO.

The Administrative Specialist, GS-301-11, who reported to the Senior Counsel for Appeals has been moved to the Administrative Management and Human Resources Division in the Office of General Counsel. There is no impact on the bargaining unit as this position was a confidential position in both the originating and receiving locations. The net result of this redistribution of work was the elimination of the Senior Counsel for Appeals (SES) position in the Office of General Counsel, making this position available to the Department's available pool of SES slots.

## **(2) Official Change to Headquarters Organization Chart**

In July 2011, HUD transferred the Department's responsibilities for the SAFE Act, Interstate Land Sales, and RESPA to the Consumer Financial Protection Bureau (CFPB). The new organization chart for OGC Headquarters reflects the loss of the Program Compliance and SAFE-RESPA divisions to the CFPB. The impacts to the bargaining unit were realized in July 2011 and were addressed at that time. The current and proposed OGC headquarters organization charts are at Attachment I.

## **(3) Realignment/Reorganization of OGC Regional Offices**

OGC proposes to flatten its regional office structure to develop and maintain the skill sets necessary to have high-performing, nimble workforce to face the challenges of the current housing and lending crisis. OGC needs to be more flexible to face the challenges of an increased legal workload in both terms of complexity and volume while at the same time dealing with the challenges of a tightening federal budget. In this Administration, OGC's workforce has declined by almost 6% while the workload has skyrocketed. OGC regional and field attorneys closed over \$16 billion in insured loans for multifamily housing, nursing homes and hospitals in each of the last two fiscal years and defend the Department against billions of dollars in claims against the FHA Fund.

Currently, OGC's regional offices have a wide variety of specialized position descriptions for attorneys with each attorney having a specialized focus on one to three areas of law. Currently,

there are 42 different OGC regional and field attorney position descriptions. With the exception of Region X (Seattle) and Region VIII (Denver), these attorneys are broken into small practice groups, headed by a GS-905-14 or GS-905-15 attorney-supervisor. This level of specialty does not allow OGC to move resources easily to address workload imbalances that occur throughout a fiscal year. In the regional offices, the current hierarchical structure is maintained by an average 1:4 ratio of first level supervisors to employees.

OGC intends to retire all regional and field attorney position descriptions with only three exceptions: Regional Counsel, Deputy Regional Counsel and Law Clerk (Legal Honors). Working with OCHCO, OGC has already established 14 new position descriptions for field and regional attorneys and those positions have been classified by OCHCO. After the reorganization, OGC will have 17 position descriptions for field and regional attorneys and will eliminate 41 position descriptions.

With the exception of Region X (Seattle), each regional office will have one Regional Counsel, one Deputy Regional Counsel and two supervisory attorneys (an Associate Regional Counsel for Housing Finance and Programs and an Associate Regional Counsel for Litigation). Each Associate Regional Counsel will supervise a division. The two divisions will be staffed with GS-905-12/13/14 attorneys. Under the proposed structure, the average ratio of first level supervisors to employees will be 1:8. The current and proposed organization charts for each Office of Regional Counsel are at Attachment II.

#### **Office of Regional Counsel Programs Division**

One division group will be named the "Programs Division" and provide legal advice on the administration of HUD programs, with the exception of Fair Housing and Equal Opportunity (FHEO), and perform legal work related to FOIA and other administrative law issues. This division will be headed by an Associate Regional Counsel for Housing Finance and Programs, GS-905-15, and staffed with Attorney-Advisors, GS-905-12/13/14 and Legal Honors. The Attorney-Advisors will perform closings for all FHA-insured loan types, including complex financial transactions involving mixed finance, accounts receivable financing, and master leases. With the exception of Region VI (Fort Worth), the Attorney-Advisors, Legal Honors, and the support staff assigned to the Programs Division will be in the bargaining unit.

#### **Office of Regional Counsel Litigation Division**

The second division in each Regional Office will be named the "Litigation Division." It will be headed by an Associate General Counsel for Litigation, GS-905-15, and staffed with Trial Attorneys, GS-905-12/13/14, and Legal Honors. The Trial Attorneys will be expected to handle all HUD litigation types, including personnel, Fair Housing, affirmative enforcement, defensive, and procurement. Trial Attorneys will provide legal advice on personnel, enforcement, ethics, procurement and Fair Housing program issues. The Trial Attorneys, Legal Honors and support staff assigned to the Litigation Division will not be in the bargaining unit due to the confidential nature of the ethics and personnel work.

By eliminating the narrow litigation practice groups, attorneys will have greater opportunities to participate in hearings and keep their litigation skills in sharper focus. Currently, attorneys, specializing in narrow litigation practice areas, may not have a deposition or trial for extended periods of time. As a result, the quality of their trial skills dulls and they may lack confidence when preparing for hearings. By combining these practice areas with personnel law, the litigation attorneys will likely be able to have at least one EEO hearing or arbitration per year and keep their trial skills sharpened. By expanding the duties and responsibilities of the Regional attorneys currently handling various litigation types, OGC intends to increase the number of attorneys available to handle the increasing litigation workload in a number of subject areas, including personnel, enforcement and Fair Housing.

### **Additional Considerations/Human Resource Impact**

There will be no details, downgrades, relocations or separations in connection with this reorganization. OGC's overall FTE number will not increase or decrease. The restructuring will result in five (5) less supervisory positions nationwide and improve the first-line supervisor to employee ratio to 1:8.

The Associate Regional Counsel for Housing Finance and Programs in Regional Offices were filled through competition and announced by the General Counsel on March 16, 2012. The Associate Regional Counsel for Litigation positions are being filled through competition in April and May, 2012. These positions are located in Regions I-IX. Current supervisory attorneys who are not selected for Associate Regional Counsel positions will be laterally reassigned to Trial Attorney or Attorney-Advisor positions with no loss of grade or pay.

In the fourth quarter, all OGC attorneys in regional offices will be laterally reassigned to the new Attorney-Advisor or Trial Attorney, GS-905-12/13/14, position descriptions. All GS-905-12/13/14 attorneys in field offices will be laterally reassigned to the new Attorney-Advisor, GS-905-12/13/14, position description.

In the fourth quarter of FY 2012, all Regional and Field Office attorneys who have served in a GS-905-13 attorney position for 18 months will be promoted to the GS-905-14 level commiserate with the new established career ladders. Current legal honors in field and regional offices will be placed on the newly established GS-905-12/13/14 career ladders at the end of their legal honors year, in August 2012, when they have met the prerequisites to be converted to attorney positions.

As previously discussed, OGC field and regional attorneys closed over \$16 billion dollars of insured loans in each of the last two fiscal years. During this time period, four OGC transactional attorneys have requested desk audits, asserting that they are performing GS-905-14 level work. Those desk audits have confirmed that these transactional attorneys are performing GS-905-14 level work. An additional eight desk audits have been requested and more requests are projected. In recognition of the complexity and dollar amounts involved in the transactional legal work, the new Attorney-Advisor career ladder for the Programs Division was classified to the GS-905-14 level. OGC's reorganization should moot those requested desk audits and reduce the desk audit workload for OCHCO. The expanded duties and responsibilities for the new Trial Attorney positions

supported the classification of a new career ladder, topping out at the GS-905-14 level for these positions.

There will be no impact on upward mobility positions. The Union will receive an Article 5 notification regarding any physical moves resulting from this reorganization.

Field and regional attorneys will receive a final FY 2012 rating based upon the performance plan that existed at the mid-year. New performance plans based upon the new position descriptions will be established at the beginning of FY 2013.

### **Conclusion**

By flattening the organization and creating broader practice groups, OGC hopes to achieve many objectives. OGC will be in a better position to react to fluctuations in the workload and staffing and give more responsibility to OGC line attorneys. Field attorneys will have a wider variety of work and more opportunities to develop additional skills sets, engage intellectually, grow professionally and take greater responsibility. The greater depth and breadth in the complexity of and responsibility for the legal work will be recognized by a career ladder, GS-905-12/13/14, that is comparable to regional and field attorneys in other federal cabinet level agencies. OGC will improve the current first line supervisor to employee ratio from 1:4 to 1:8. The flattening of the Regional office structures will make OGC more nimble in addressing increasing workloads. Currently, OGC has seen significant increases in the areas of closing, fair housing hearings, procurement and personnel cases and needs to intelligently and creatively deploy its workforce to address that workload.

### **Attachments:**

- I. Before and after organization chart for OGC Headquarters
- II. Before and after organization charts for OGC Regional Offices
- III. To/From List for Regional and Field OGC Employees
- IV. Key to OGC Attorney Position Descriptions
- V. Regional and Field Position Descriptions after Reorganization