

# **EXHIBIT 1**

Civil Action No. 00-2445(JR)

**SECOND SUPPLEMENTAL DECLARATION OF  
ROSALIND D. GRAY**

1. I am over 18 years of age and a United States Citizen.

2. My business address is 607 Oneida Place, N.W., Washington, D.C.

3. I am a 1973 graduate of Howard University School of Law, a member of the Mississippi Bar and have practiced in many federal district courts. I am also a member of the Bar of the United States Supreme Court. From 1976 to 1986, as trial counsel for and director of the Lawyers' Committee Municipal Services Equalization Project, I represented minorities in small, rural communities seeking to equalize municipal services. I have served as a consultant to the Legal Services Corporation, the Office of Revenue Sharing and the Department of Justice and Housing and Urban Department. I have also served as Acting General Counsel to the U.S. Commission on Civil Rights and as Deputy General Counsel at the Equal Employment Opportunity Commission ("EEOC"). As EEOC Deputy General Counsel, I managed EEOC's national litigation programs and participated in the settlement of a number of major class actions. In addition, I have served as Associate General Counsel for the University of the District of Columbia ("UDC") where I represented UDC in federal litigation and administrative proceedings on employment discrimination and other labor claims. From July 13, 1998 to January 20, 2001, I served as Director of the Office of Civil Rights ("OCR") for the United States Department of Agriculture ("USDA").

4. The OCR has broad responsibility for implementing and coordinating all USDA nondiscrimination, civil rights, and equal opportunity efforts in connection with all USDA programs and activities, including programs and activities which are operated or sponsored by USDA and carried out by non-federal organizations. During my tenure as the OCR Director, I was the principal advisor to the Secretary and the Assistant Secretary

for Administration on all matters related to equal opportunity and civil rights. In 2003 the duties of the Assistant Secretary for Administration with respect to civil rights matters were transferred to the Assistant Secretary for Civil Rights. One of the principal duties of OCR was to investigate and process discrimination complaints of farmers and other producers with respect to the administration of USDA farm credit and non-credit benefit programs.

5. In my April 6, 2002 declaration, I described the problems that plagued OCR and stymied my best efforts to improve OCR's processing of discrimination complaints. These problems continue to plague OCR and are reportedly worse.

6. In my October 18, 2006 declaration, I affirmed, based upon my personal experience, that there can be no justification for OCR's inability to comply with the requirements of Departmental Regulation 4330-3 and that the fact that farmers have not had their discrimination complaints acknowledged or investigated years after filing them indicates that the system is still dysfunctional.

7. During my tenure as OCR Director, I attempted to work with the USDA Office of General Counsel ("OGC") to formulate and implement the procedures promulgated at 7 C.F.R. Part 15f in response to the enactment of Pub. L. No. 105-277 § 741, codified at 7 U.S.C. § 2279 note. These efforts took place against the backdrop of the on-going *Pigford* litigation, the certification of a class in that litigation, and a struggle between OGC and OCR regarding how to carry out the remedial intent of the legislation. In terms of addressing fully the problems that gave rise to the special legislation extending the statute of limitations, the regulations were fatally flawed.

8. Previously I affirmed in my April 6, 2002 declaration that until 1997 the Farm Service Agency ("FSA") and its predecessor, Farmers Home Administration ("FmHA"), processed their civil rights complaints and that many complaints were destroyed, not accepted or not recorded at all even though FSA provided for a verbal complaint to be filed in person or through the telephone. Indeed, the Civil Rights Action Team

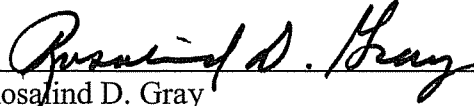
(“CRAT”), appointed by Secretary Glickman in 1996 to investigate civil rights enforcement within USDA, noted that it “was unable to gather historical data on program discrimination complaints at USDA because record keeping on those matters has been virtually nonexistent.” CRAT Report at 24. Despite this fact, OGC insisted that the regulations require a complainant to have a written discrimination complaint on file with USDA in order to invoke the optional procedure described in 7 C.F.R. Part 15f, a limitation more narrow than the special remedial statute, more narrow than the definition of the class certified in the *Pigford* litigation and inconsistent with representations made by Secretary Glickman that oral complaints made during the recorded listening sessions conducted by the CRAT in January 1997 would be fully investigated.

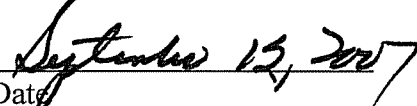
9. In determining who would be eligible to receive notification letters prescribed by 7 C.F.R. § 15f.5, all members of the *Pigford* class as defined were eliminated. As a result of these efforts to limit eligibility, only 194 notification letters were sent pursuant to 7 C.F.R. § 15f.5 and of that number only 111 involved FSA programs. Characteristic of the apparent indifference of USDA to civil rights enforcement was the complete lack of response from FSA to OCR’s request that FSA review its databases and records to determine whether additional eligible complaints were still lodged with the local FSA offices. In addition, the regulation placed the burden upon those complainants who had not received a notification letter to contact OCR in order to find out how to participate in the statute of limitation process. However, information about the program was not disseminated in a way reasonably calculated to provide notice to all minority farmers covered by the special legislation. To the best of my recollection, the outreach effort consisted of contacting the 1890 historically black agricultural schools, black farmer organizations and state FSA offices, which was particularly ironic inasmuch as black farmers who fit within the *Pigford* class definition were deemed to be ineligible to receive the § 741 notification letter. I do not recall and am not aware of any efforts to

inform Hispanic or women farmers or any organizations representing such farmers of the optional § 741 procedure.

10. For the few farmers that opted for the § 741 administrative procedure, their complaints and the staff initially designated to process them were soon merged into the processing of existing and new complaints that poured into OCR. As I affirmed in my April 6, 2002 declaration, after substantially reducing the backlogged cases that I encountered when I assumed the position of OCR Director, OCR received 1261 new cases filed in 1999 and another 671 cases in fiscal year 2000 and many of the filings were more than a year old before the initial processing began. Ultimately, OCR staff was simply not prepared to do the work of the office. In the final analysis, as I also affirmed in my April 6, 2002 declaration, “[c]ivil rights procedures were developed and published, but were not and are not followed,” and despite my best efforts to make the system work properly, the complaint processing system collapsed and complaints, whether submitted pursuant to the optional § 741 procedure or otherwise, were caught up in the dysfunction that characterized OCR.

I have reviewed the foregoing Declaration and declare under penalty of perjury that it is true and correct to the best of my personal knowledge.

  
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Rosalind D. Gray

  
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Date