

EXHIBIT 9

October 5, 1998

CONGRESSIONAL RECORD — SENATE

S11411

AGRICULTURAL, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the report will be stated.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4101), have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 2, 1998.)

Mr. COCHRAN. Madam President, pending before the Senate at this time is the conference report on the fiscal year 1999 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act. We present this conference report for the Senate's approval this afternoon.

The agreement provides total new budget authority of \$55.7 billion for programs and activities of the U.S. Department of Agriculture—except for the Forest Service, which is funded by the Interior appropriations bill—the Food and Drug Administration, the Commodity Futures Trading Commission, and expenses and payments of the farm credit system. This is \$6 billion more than the fiscal year 1998 enacted level; it is \$1.9 billion less than the President's request level; it is \$192 million less than the House-passed bill, and it is \$1.1 billion less than the Senate-passed bill level.

The changes that were made in conference on mandatory funding requirements account for the overall increase from the fiscal year 1998 enacted level, principally reflecting a \$2.6 billion lower estimate for Food Stamp Program funding requirements, higher Child Nutrition Program expenses, and a \$7.6 billion increase in the payment to reimburse the Commodity Credit Corporation for net realized losses. The conference report also provides an additional \$4.2 billion in emergency appropriations to assist agricultural producers and others who have suffered financial hardship due to adverse weather conditions and loss of markets.

Including congressional budget scorekeeping adjustments and prior

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base, 260 acres of soybeans, the conference report will provide a \$4,230 payment to that farmer. The Democratic proposal, in removing the marketing loan caps, would provide increased income protection of \$18,455 or a difference of \$14,225 to the farmer with 390 acres of corn and 260 acres of soybeans in Iowa.

So again, that is a very substantial difference, and it is a difference that would carry through into next year because of the improved income safety net aspect of the marketing assistance loan. The small AMTA supplement is a short term one-time payment.

So again, I just ask my colleagues from the Corn Belt whether 7 cents a bushel paid out now, but soon gone, is anywhere near enough to address severe farm income problems. Is 13 cents a bushel enough even to begin to address the economic devastation in wheat country? And I ask my colleagues whether a proposal with no direct support for soybeans is adequate to address the steep decline in soybean prices.

So that is really the question today. The question is whether or not those very small cash payments are going to be adequate for the tremendous farm income problems that are out there. I do not believe so. I do not believe that will help nearly enough—

The PRESIDING OFFICER. If the Senator will withhold, the hour of 5:30 having arrived, the clerk is to report the motion to invoke cloture on the motion to proceed to H.R. 10.

Mr. HARKIN. Mr. President, I ask unanimous consent that I just be allowed 3 more minutes.

The PRESIDING OFFICER. Is there objection?

Mr. ROBB. Mr. President, reserving the right to object, I ask for 1 additional minute at the conclusion of the remarks of the Senator from Iowa before the rollcall vote on the motion to invoke cloture.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HARKIN. Mr. President, again, this conference report needs to be rejected and sent back for further work to restore farm income protection by removing the marketing loan rate caps. There are also two other areas in which the conference report is not acceptable.

I would mention the labeling of beef and lamb for country of origin. The House Republicans rejected this idea. It is too bad, because under the WTO it is allowed, to have country of origin labeling. It is not just for our beef and lamb producers in this country. I believe our consumers have the right to know, when they buy a steak or chop or other cut of beef or lamb at the meat counter, what its country of origin is.

Second, we had mandatory price reporting in the Senate bill so livestock producers will have information to help them evaluate packer bids for fairness.

The conference report converted that bill language into weak report language. We have had study after study after study on pricing practices in the livestock and meat business and the need for more openness and transparency. It is time we have real action, not another study on that.

For those reasons I believe the conference report ought to be rejected and sent back for further work. If it is not, then I am afraid we will have a one-time payment to farmers this fall and we will be back again here next year with fewer farmers and even more economic devastation in rural America.

Mr. President, I ask unanimous consent to have printed in the RECORD "Suggested Changes in Farm Policy for the 21st Century," submitted by Dr. Neil Harl of Iowa State University, and I yield the floor.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUGGESTED CHANGES IN FARM POLICY FOR THE 21ST CENTURY

FINE TUNING "FREEDOM TO FARM"

(By Neil Harl)

Farmer-owned storage program for major commodities.

Long-term land idling (up to 20 years) in marginal areas (contracts terminate if prices rise above a specified level).

Standby authority to implement acreage set aside (if prices remain for a specified period below a designated level).

Adequate funding for FSA direct lending and loan guarantees for limited resource borrowers.

Continue LDP and marketing loans with slightly higher loan rate (not higher than cost of production on marginal lands).

The PRESIDING OFFICER. The Senator from Virginia, under a previous unanimous consent request, is recognized for 1 minute.

Mr. ROBB. Mr. President, I rise to express my surprise and dismay about what occurred in the conference committee on the agriculture appropriations bill.

During debate on this bill in July, Mr. President, the Senate accepted an amendment I offered to waive the statute of limitations for discrimination complaints filed by many small and minority farmers against the U.S. Department of Agriculture. This amendment addresses an urgent and shameful problem, Mr. President, and we worked with farmers, the White House, the USDA, the Department of Justice, and the Congressional Black Caucus to develop language that would protect the legal rights of farmers' and be implementable by USDA.

Mr. President, similar language was included in the House bill, but it was drafted more quickly and with less consensus. It was more narrowly defined and had less aggressive time limits for USDA to resolve discrimination complaints. And it cost \$5 million less.

And even though Representative MAXINE WATERS, the chairman of the Congressional Black Caucus lobbied the conferees in support of the Senate version of this amendment, Mr. Presi-

dent, the Senate lost on almost all counts.

To give my colleagues some background, the investigative unit at USDA's Office of Civil Rights was abolished in 1983. Farmers whose complaints were pending at the time were led to believe their complaints were still being investigated, when they were not. Farmers who filed complaints after the abolition of the unit were also led to believe that their complaints would be processed and investigated, despite the fact that the USDA had no resources with which to conduct such investigations. The bottom line is that none of these complaints were ever considered—but none of the farmers were told that was the case.

When Secretary Glickman learned of this problem, Mr. President, he directed that the complaints be resolved quickly. In fact, I offered an amendment to last year's appropriations bill to fund the investigative unit.

But when USDA was finally prepared to enter into settlement agreements on some of these cases, Mr. President, the Department of Justice stepped in to claim that the statute of limitations for the complaints—despite USDA's deception in the matter—had expired. The amendment I offered to this year's appropriations bill eliminates this legal obstacle and allows farmers to pursue their claims of discrimination. It allows them to have their day in court, so to speak.

As we approached conference, however, I learned through staff that objections to accepting the Senate version of this amendment were raised based on cost. Our version was scored at \$15 million, while the House version was scored at \$10 million. Mr. President, there's no question the two amendments were slightly different. But the \$15 million in the Senate amendment was to compensate Americans for discrimination perpetuated by their own government. It was a figure determined by CBO, conferring with USDA, about which of the pending complaints would have likely resulted in legitimate and provable cases of government discrimination. It is money that our government owes to farmers who have been treated in such an unjust and morally reprehensible manner.

Mr. President, during conference deliberations, I learned that the House conferees objected to the scope of the Senate amendment. As I've alluded to before, the House version addressed only discrimination complaints against the Farm Service Agency. My amendment addressed complaints filed against not only the Farm Service Agency, but also the Rural Housing Service. We know that discrimination has occurred in both agencies, and study after study has clearly illustrated this. Unless we address complaints against both agencies, we allow justice to continue to elude a number of minority farmers in America who deserve at long last to be treated fairly.

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To my dismay, Mr. President, the conferees accepted the House version of the civil rights amendment, adding only a small portion of the Senate version.

The Senate version of the civil rights amendment allowed for the waiver of the statute of limitations for discrimination complaints made against both the Farm Service Agency and the Rural Housing Service. The House version only allowed the FSA claims.

While the conference language allows farmers to file suit in federal court if their claims for relief are denied by USDA, the Senate language specified that the federal court shall apply a *de novo* standard of review. This standard would have allowed a federal court to review USDA's findings and rationales with a fresh eye, so to speak. In other words, a court would not be required to give as much deference to USDA's decisions. This is obviously a protection that would have given aggrieved farmers a degree of legal protection that is imminently justified. Yet no such protection exists in the conference language.

To make matters worse, Mr. President, the one protective provision that I was told would be included in the conference language—the expedited review provision—was somehow omitted from the conference report. When the conferees reached a compromise on this amendment, it is my understanding that they specifically agreed to include a provision of my amendment which limited USDA to 180 days in which to investigate complaints, issue findings, and propose settlement awards, where applicable. This provision was supposed to be included, but it was not.

Mr. President, I am at a loss to explain why we can't do a better job of rectifying such a grievous history of overt, admitted discrimination for so little money. Our Minority farmers deserved better conference language from this Congress than they got. It just underscores the enormous obstacle we face in resolving this issue—and that is that too few members care enough about this problem to give it the attention and the priority it calls for.

Before I conclude, Mr. President, I'd like to share with my colleagues some updated news. Last week, the Office of Inspector General issued a report which lambasted the Office of Civil Rights' handling of the backlog of discrimination complaints. The report characterized the Office's case files as "too slovenly to ensure the availability of critical documents." It further berated the Office for its failure to implement the majority of recommendations made to the Department in a February 1997 report.

I am not sure why this Department has had so many problems, not only with eliminating unjust and inexcusable behavior, but also with efficiently resolving complaints of discrimination. These are symptoms of an overwhelming and inexcusable problem. As many of my colleagues know, this is a prob-

lem that I have been working to solve for almost two years, from the moment it was first brought to my attention by a group of minority farmers headed by a Virginian.

Mr. President, I have heard account after account of inexcusable behavior on the part of various officials at USDA, primarily those in positions of authority who process farmers' applications for loans. Some farmers have had trouble even getting loan applications, much less having their applications processed in a timely manner. Many farmers have cited stories in which their applications have been purposely processed later than those of non-minority farmers. The loan money then, in effect, was dispersed to non-minority farmers first. Then, when many minority farmers checked the status of their applications, the USDA officials responded by stating that there wasn't any money left. Another farmer told me that a USDA official was permitted to keep a noose in his office, despite repeated complaints about the message it sent to minority farmers wishing to do business in that office.

I know that Secretary Glickman is committed to stemming this pattern, but ultimately Congress is responsible for overseeing our government agencies. In the two years that I've been working on this issue, talking with farmers, meeting with the Secretary and the President, we, as a Congress, have not taken a sufficiently forceful approach to stem this shameful pattern of discrimination. In my view, that makes us part of the problem as well.

When the conferees chose not to accept the Senate language, they made a choice that sends a disquieting message to minority farmers across this country. The message they sent was that they were willing to do the bare minimum for minority farmers who have suffered discrimination at the hands of government officials. It is a message that we, the Congress, are not willing to get fully invested in eliminating discrimination within our own government.

The President has indicated that he will veto this bill, and I am hopeful that my colleagues will take another opportunity to look at the differences between the Senate language and the conference language. We will have another opportunity to correct a critical error in our priorities. The farmers deserve our best oversight efforts, and they deserve the strongest civil rights amendment that we can craft. I will continue to push all of our colleagues to do so. A lack of attention to this issue means not only failure on our part, but a perpetuation of a problem for which we should all be ashamed.

Thank you, Mr. President. I'd like to ask unanimous consent that this letter and executive summary from the Inspector General to the Secretary of Agriculture dated September 30, 1998 be included in the RECORD immediately following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF AGRICULTURE,
OFFICE OF INSPECTOR GENERAL,
Washington, DC, September 30, 1998.

REPORT TO THE SECRETARY ON CIVIL RIGHTS
ISSUES—PHASE V

From: Roger C. Viadero, Inspector General.
Subject: Evaluation of the Office of Civil Rights' Efforts to Reduce the Backlog of Program Complaints, Evaluation Report No. 60801-1-Hq.

In July 1998, your Assistant Secretary for Administration asked the Office of Inspector General to review the efforts by the Office of Civil Rights (CR) to reduce the backlog of program complaints in USDA. Attached is a copy of the results of this review. This represents our fifth evaluation of the Department's efforts to reduce the program complaints backlog and to improve the overall complaint processing system, including the investigative process.

We found that the Department, through CR, has not made significant progress in reducing the complaints backlog. Whereas the backlog stood at 1,088 complaints on November 1, 1997, it still remains at 616 complaints as of September 11, 1998.

The problems we noted before in the complaints resolution process also continue. CR's data base remains an unreliable repository of information, and its casefiles are too slovenly to ensure the availability of critical documents. A disaffected staff and a leadership vacuum have contributed to a system that cannot ensure complainants a timely hearing of their grievances.

Of considerable concern to us is CR's lack of progress in reforming its operations in accordance with our previous recommendations. Few corrective actions have been taken to increase the efficiency of the complaints resolution process. We also noted that CR staff members have not always been honest in portraying the actual level of their performance. Some of the information they gave us proved to be inaccurate. Some of the information they gave you on earlier occasions proved likewise to be inaccurate.

Because of continuing problems in the complaints resolution process, we are recommending that you convene a Complaints Resolution Task Force (independent of CR) to immediately assume control of the backlog and have full authority to resolve complaints, including entering into settlement agreements. We are also recommending that the civil rights function within the Department be elevated to the level of Assistant Secretary.

At your request, we will be continuing our work with CR, giving special emphasis to its management of settlement agreements.

EXECUTIVE SUMMARY

Purpose

The Assistant Secretary for Administration asked us to perform a followup review of the operations of USDA's Office of Civil Rights (CR), the office responsible for resolving complaints made against the Department for alleged civil rights violations in the administration of its programs. During four previous reviews of the Department's civil rights program complaints system, we determined that the system was not functioning properly and that the Department had amassed a growing backlog of complaints that required immediate attention. Although CR itself could not accurately determine how large the backlog was at the time of our first review, it later identified 1,088 outstanding unresolved complaints before November 1, 1997.

EXHIBIT 10

Civil Action No. 00-2445 (JR)

Declaration of Lloyd E. Wright

1. I am over 18 years of age and a United States citizen. My business address is: 11307 Baritone Court, Silver Spring, Maryland 20901.
2. I have a B.S. in Agronomy and a M.S. in Human Resources Management. Currently retired, I spent 37 years with the United States Department of Agriculture working with programs (e.g. Farmland Protection, Watershed Protection, and Rural Development programs). From March 1997 through May 1998, I served as the Director of the Office of Civil Rights (OCR) at National Headquarters in Washington, DC. Prior to this position, I was Director of the Conservation Operations Division in the Natural Resources Conservation Service (NRCS). I also served as Director of the Community Assistance Resource Development Division and the Watershed Protection Division in NRCS.

Conditions of OCR and FSA

3. When I assumed the position as Director of OCR, there was a backlog of approximately 500-600 program discrimination complaints and a larger backlog of employee discrimination complaints. Previously, the Secretary of USDA, Dan Glickman, had announced that all of the program complaints would be processed and a decision made by May 2, 1998. I formed two teams, one to address program complaints and the other to handle employee complaints.
4. The program complaints team consisted of 35 employees from across the various agencies in USDA. Prior to joining the team, most of these employees did not have investigative experience. In fact, a large number of them, like myself, did not have civil rights investigating experience. Despite their lack of civil rights experience, most of them had program experience. I appointed an individual to head the team who, in turn, reported directly to me.
5. The team's objective was to examine the files to determine if they contained adequate information to make a finding. If so, the team reviewers would draft a decision based on the information contained in the file. If the file did not contain adequate information, the investigators were instructed to make recommendations as to what was needed to reach a decision.
6. By April 1998, the team had processed about 350 of the estimated 500+ complaints. Of the 350 processed complaints, there were initially only two potential findings of discrimination. Originally, I started to sign some of the decisions because superficially the reports appeared to support the "no finding of discrimination" decisions. However, after thoroughly examining the reports, I began to notice a pattern.
7. The team reviewers based their "no finding of discrimination" decisions largely on the accused agency's initial preliminary inquiry. The problem was that 99 percent of the time, the agency accused of discrimination investigated itself and invariably found no

discrimination had occurred. These preliminary inquiry reports were self-serving. Based on my instructions, the team reviewers should have found that the files were incomplete since the only review of the complaint came from the accused agency. The file should have also contained an independent investigation by OCR. Because the files did not contain independent investigation reports prepared by OCR, I refused to sign the no finding decisions. Instead, I hired contract investigators to conduct an extensive independent investigation. During interviews with Civil Rights employees and others in my efforts to ascertain why the files did not contain independent OCR investigation reports, I discovered that in 1983, the fourteen-person investigative unit in the OCR had been dismantled. Thus for a period of approximately fourteen years, OCR at USDA lacked the capacity to investigate producer civil rights complaints. Ironically, during the entire period, USDA openly and repeatedly urged producers who experienced discrimination in credit and other programs to file complaints. I understand that attorneys for the Secretary of Agriculture have represented to the court that the OCR was never shut down. While it is the case that the office was never officially closed, it was also the case that all fourteen of the office's investigators were eliminated and hence the office's investigative apparatus was not functional.

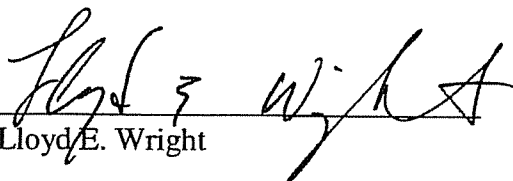
Policies Implemented

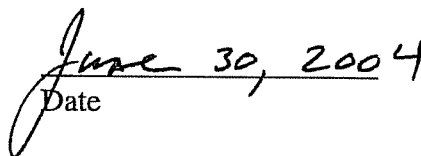
8. In addition to hiring contract investigators, I also hired fourteen civil rights investigators to work in OCR. In conducting the investigation of Program Complaints, the investigation was divided into six phases so that no single individual could significantly influence the outcome of the Decision. I structured the investigation as follows:
 - Part 1. Agency Preliminary Inquiry
 - Part 2. Civil Rights Department Investigation
 - Part 3. Adjudication
 - If finding of discrimination
 - Part 4. Office of the General Counsel (OGC) Review
 - Part 5. Economist Determination
 - Part 6. Negotiations
9. Once a complaint is filed with a program agency, that agency assigns an employee to conduct a preliminary inquiry (PI). Although most of the time the preliminary inquiries were inadequate, the PI reports provided the necessary background information that helped assist the OCR Investigators with their investigation. The OCR Investigators would forward their recommendations to the Adjudicators, who would determine whether discrimination occurred. If the Adjudicators recommended a finding of discrimination, the proposed decision was sent to OGC for its concurrence. Upon obtaining approval from OGC, the Economist reviewed the report and determined the amount of damages sustained by the farmer. The final stage of this process consisted of my negotiating with the farmer on settlement terms.
10. Compliance Review is another policy I attempted to implement. When I arrived, OCR had not conducted a compliance review in three years. I noticed that most of the

discrimination complaints were from a few counties across the country. We started the process of sending compliance investigators to a number of these counties to examine their compliance with program policies and regulations.

11. Finally, I created a computer tracking system for complaints. This system enabled the department to track a complaint from the filing date to completion. Prior to the tracking system, OCR's handling of complaints lacked any accountability. As a result of the dismantlement of the office, files were left in an unsecured room, where anyone could walk in, take a file and no one would ever know the file was missing. OCR had not assigned anyone to manage the files in the file room. An example of how bad the situation was, several days after becoming OCR Director, I walked into the room containing the complaint files and no one ever questioned or stopped me from accessing the files in the file room. There were files thrown on top of file cabinets and some lying in the corner. Upon examining the files, we found complaint files for one farmer mixed in with another farmer's file. As a result, the number of program complaints increased from 500+ to 900+.
12. When I left OCR there were plenty of things that needed to be done; but through the programs that I developed, the office was, in my opinion, beginning to move in the right direction.

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.


Lloyd E. Wright


Date