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APPROVED
OCT 14 1976

810/14/76

THE WHITE HOUSE
WASHINGTON
October 12, 1976

ACTION
Last Day: October 18

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *JAC*
SUBJECT: H.R. 8027 - For the relief of Commander Stanley W. Birch, Jr.

Attached for your consideration is H.R. 8027, sponsored by Representative Whitehurst.

The enrolled bill relieves Commander Birch of liability to the United States of \$1,513.69, representing overpayments of active duty compensation resulting from an administrative error in the determination of his pay entry base date.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Kilberg) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 8027 at Tab B.





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 9 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8027 - For the relief
of Commander Stanley W. Birch, Junior
Sponsor - Rep. Whitehurst (R) Virginia

Last Day for Action

October 18, 1976 - Monday

Purpose

Relieves Commander Stanley W. Birch, Jr., of liability to the United States in the amount of \$1,513.69, representing overpayments of active duty compensation resulting from an administrative error in the determination of his pay entry base date.

Agency Recommendations

Office of Management and Budget	Approval
Department of Defense	Approval
Department of Justice	No objection

Discussion

Commander Birch served in an enlisted capacity in the Navy from April 10, 1944, to September 23, 1946. Then, from September 24, 1946, through February 8, 1948, he served as a Midshipman in the Navy Reserve Officers Training Corps (ROTC), a service not creditable toward determining the pay entry base date. Immediately thereafter, from February 9, 1948, to July 1, 1974, he served as an officer in the Navy.

On February 23, 1949, Commander Birch's pay entry base date was erroneously established as April 10, 1944. On August 22, 1955, Commander Birch requested



verification of his pay entry base date, and it was subsequently verified as April 10, 1944. In May of 1967, an administrative review of Commander Birch's record finally revealed that his pay entry base date had mistakenly included his service in the Navy ROTC. On May 18, 1967, his pay entry base date was corrected to August 25, 1945.

Apparently there have been several similar miscalculations of pay entry base dates affecting Navy personnel, and a law was enacted to relieve all affected personnel of any liability to refund overpayments of basic pay received as a result of these miscalculations. The law relieved affected Navy personnel of liability for overpayments prior to March 15, 1961, and became effective on October 2, 1964. March 15, 1961 was chosen as the cutoff date because the Navy thought that all of its pay entry base dates had been adjusted by that time.

Unfortunately, the Navy did not correct Commander Birch's pay entry base date until May, 1967. As a result, a liability accrued between March 15, 1961, and May 18, 1967, of \$1,513.69.

This enrolled bill would relieve Commander Birch of all liability to repay this amount to the United States. H.R. 8027 would also direct the Secretary of the Treasury to pay Commander Birch any money paid by him, or withheld from him, in complete or partial satisfaction of this liability to the United States. Finally, the bill would prohibit the payment of any attorney or agent fees on account of services rendered in connection with this claim.

The Department of the Navy, on behalf of the Department of Defense, recommends approval of H.R. 8027. In its enrolled bill letter, Navy states:

"Nothing in the records of this Department indicates that the determination of an erroneous pay entry base date was caused by, or was the fault of,



Commander Birch. There is no indication that Commander Birch has acted in other than good faith. In fact ... Commander Birch requested verification of his pay entry base date in 1955 and was advised that the erroneous date was correct."

James M. Frey
Assistant Director for
Legislative Reference

Enclosure



Department of Justice
Washington, D.C. 20530

October 7, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 8027, "For the relief of Commander Stanley W. Birch, Junior."

The Department has no information concerning the facts in the matter except those provided informally to us by the Navy pursuant to our inquiry. Navy advises it has no objection to the bill. It advised further that the erroneous payment was on account of an erroneous "pay entry base date" used in good faith by the Commander. Other military officers similarly overpaid were given relief by a bill in 1964. Birch's overpayment was not discovered until after the bill's passage and the current act is simply a means of giving the Commander equal treatment.

Under the circumstances, the Department of Justice has no objection to Executive approval of this bill.

Sincerely,



MICHAEL M. UHLMANN
Assistant Attorney General





DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

October 7, 1976

Dear Mr. Lynn:

Your transmittal sheet dated October 5, 1976, enclosing a facsimile of an enrolled bill of Congress, H.R. 8027, "For the relief of Commander Stanley W. Birch, Junior," and requesting the comments of the Department of Defense, has been received. The Department of the Navy has been assigned the responsibility for the preparation of a report expressing the views of the Department of Defense.

The purpose of H.R. 8027 is to relieve Commander Birch of liability for a \$1,513.69 overpayment of active duty compensation during the period from April 10, 1944, to May 18, 1967. The overpayment resulted from the determination of an erroneous pay entry base date.

A review of Commander Birch's record shows that on February 23, 1949, his pay entry base date was established as April 10, 1944. On August 22, 1955, he requested verification of his pay entry base date; and on September 6, 1955, it was verified as April 10, 1944. An administrative review of Commander Birch's record in May 1967 revealed that his pay entry base date of April 10, 1944, included a period of non-creditable Midshipman, NROTC, USNR service from September 24, 1946, to February 8, 1948, a period of one year, four months, and fifteen days. Accordingly, on May 18, 1967, Commander Birch's pay entry base date was corrected to August 25, 1945. The corrected pay entry base date is computed on the basis of the following service:

<u>COMPONENT</u>	<u>FROM</u>	<u>TO</u>
USNR-ENLISTED	10 APR 1944	23 SEP 1946
USN-OFFICER	9 FEB 1948	1 JUL 1974

Public Law 88-614 (approved on October 2, 1964) provides that any member of the naval service who, as an enlisted reservist, was appointed a midshipman, USNR without termination of the enlistment contract and who was thereafter erroneously credited in the computation of his basic pay with a period of enlisted service on and after the date of that appointment, is relieved of all liability to refund overpayments of basic pay received by him prior to March 15, 1961, as a result of the erroneous credit for service. The purpose of P.L. 88-614 was to relieve from liability all of those naval officers who received overpayment under the aforementioned circumstances. The choice of a March 15, 1961, cutoff apparently reflected the belief that the pay entry base dates of all affected officers had been appropriately adjusted by that time. Unfortunately, the Department of the Navy did not discover and adjust Commander Birch's incorrect pay entry base



date until May 1967. As a result, P.L. 88-614 relieved Commander Birch of all liability accrued prior to March 15, 1961, but not of any liability accrued from March 15, 1961, to May 18, 1967--a total of \$1,513.69.

Nothing in the records of this Department indicates that the determination of an erroneous pay entry base date was caused by, or was the fault of, Commander Birch. There is no indication that Commander Birch has acted other than in good faith. In fact, as previously indicated, Commander Birch requested verification of his pay entry base date in 1955 and was advised that the erroneous date was correct.

In its report on H.R. 14044, a 93rd Congress bill similar to H.R. 8027, the Department of the Navy supported private relief for Commander Birch but recommended deferral of legislative action until consideration by the Comptroller General of an administrative waiver of the indebtedness pursuant to section 2774 of title 10, United States Code. It is understood that, after reviewing H.R. 14044, the Comptroller General determined that he does not have authority to administratively waive Commander Birch's indebtedness because the erroneous pay entry base date was discovered more than three years prior to the effective date of section 2774.

In view of the foregoing, the Department of the Navy, on behalf of the Department of Defense, recommends approval of H.R. 8027.

Sincerely yours,



J. William Middendorf II
Secretary of the Navy

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20530



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 11

Time: 745pm

FOR ACTION: Max Friedersdorf
Dick Parsons
Bobbie Kilberg

cc (for information): Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 12

Time: 630pm

SUBJECT:

H.R.9027-Relief of Commander Stanley Birch, Jr.

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

Date: October 11

Time: 745pm

FOR ACTION: Max Friedersdorf
Dick Parsons
Bobbie Kilberg

cc (for information): Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 12

Time: 530pm

SUBJECT:

H.R.8027-Relief of Commander Stanley Birch, Jr.

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Approve. RB

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

Date: October 11

Time: 745pm

FOR ACTION: Max Friedersdorf
Dick Parsons
Bobbie Kilberg

cc (for information): Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 12

Time: 530pm

SUBJECT:

H.R.8027-Relief of Commander Stanley Birch, Jr.

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Recommend Approval. [Signature]

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

Date: October 11

Time: 745pm

FOR ACTION: Max Friedersdorf
Dick Parsons
Bobbie Kilberg

cc (for information): Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 12

Time: 530pm

SUBJECT:

H.R.8027-Relief of Commander Stanley Birch, Jr.

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

For Your Comments

___ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

approve Kelley 10/12/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

COMDR. STANLEY W. BIRCH, JR.

NOVEMBER 4, 1975.—Committed to the Committee of the Whole House and ordered to be printed

Mr. PATTISON, of New York, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 8027]

The Committee on the Judiciary, to whom was referred the bill (H.R. 8027) for the relief of Comdr. Stanley W. Birch, Jr., having considered the same, reports favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 5: Strike "\$1,406.42" and insert "\$1,513.69".

Page 1, lines 9, 10 and 11: Strike "in violation of the Act of July 31, 1894, as amended (5 U.S.C. 62), and which were".

PURPOSE

The purpose of the proposed legislation, as amended, is to relieve Commander Stanley W. Birch, Jr., of Virginia Beach, Virginia, of liability to repay \$1,513.69 for overpayments of active duty compensation received by him for the period of April 10, 1944, to May 18, 1967, while he was employed by the United States Navy, such overpayments having been made through administrative error and having been received in good faith by him. The bill would also authorize the refund of any amounts repaid or withheld by reason of the liability.

STATEMENT

The Department of the Navy in its report on the bill dated August 7, 1975 recommended enactment of the bill with the amendments recommended by the committee correcting the amount to read "\$1,513.69" and making technical amendments to the bill. The General Accounting Office in a report on an earlier bill in the 93rd Congress noted that there was no legal authority for administrative relief in this instance, but questioned private relief in such cases.

The history in this case dates back to February 23, 1949 when this officer's pay entry base date was established as April 10, 1944. It is

significant to note that on August 22, 1955, Mr. Birch requested verification of his pay entry base date; and on September 6, 1955, it was verified as April 10, 1944. It was not until an administrative review of Commander Birch's record in May 1967 revealed that his pay entry base of April 10, 1944, included a period of non-creditable Midshipman, NROTC; USNR service from September 24, 1946, to February 8, 1948, a period of one year, four months, and fifteen days. Accordingly, on May 18, 1967, Commander Birch's pay entry base date was corrected to August 25, 1945. The corrected pay entry base date is computed on the basis of the following service:

Component	From	To
U.S. Naval Reserve, enlisted	Apr. 10, 1944	Sept. 23, 1946
U.S. Navy, officer	Feb. 9, 1948	July 3, 1974

In the 88th Congress, a bill H.R. 5042, was favorably considered in this committee which was enacted as Public Law 88-614 on October 2, 1964. That law provided that any member of the naval service who, as enlisted reservist, was appointed a midshipman USNR without termination of the enlistment contract and who was thereafter erroneously credited in the computation of his basic pay with a period of enlisted service on and after the date of that appointment, is relieved of all liability to refund overpayments of basic pay received by him prior to March 15, 1961, as a result of the erroneous credit for service. The purpose of P.L. 88-614 was to relieve from liability all of those naval officers who received overpayments under the aforementioned circumstances. At that time, it was assumed that all affected officers had been identified. These were persons who had apparently been carried on Navy records in a dual capacity of apprentice seamen and midshipmen in the Naval Reserve Officers Training Corps. The report of this committee which accompanied H.R. 5042 (H. Rept. No. 233, 88th Cong., 1st Sess.) outlined the history of the circumstances giving rise to the need for relief legislation. It noted the 88th Congress' bill had been introduced in accordance with an executive communication from the Navy Department, and that the problem with which it was concerned had its origin in the period immediately following the war. At the time of the cessation of hostilities in World War II, numerous persons were engaged in various educational programs, one of which was the Navy college training program (V-12). It was officially terminated on June 30, 1946. Those who did not desire to be discharged, but who wished to continue their education under Navy sponsorship, were released from the V-12 program and enlisted as apprentice seamen (now known as seaman recruits) on inactive duty in the Naval Reserve pending establishment of the Naval Reserve Officers' Training Corps.

When the latter came into existence in August 1946, they were appointed midshipmen in that program. Under this arrangement the person's education was to be completed in approximately 1 year at the most. However, the short intervening period of time before commencement of the academic year in September 1946 resulted in a failure in some cases to terminate the Naval Reserve enlistment. Records,

therefore, showed in such instances that Inactive enlisted Naval Reserve service continued until completion of their education, at which time they were commissioned. This event clearly terminated the Naval Reserve enlisted status. Consequently, records indicated a period time ranging from a few months to a year that these persons were apprentice seamen in the Inactive Naval Reserve, which is creditable in the computation of basic pay, and at the same time were midshipmen in the Naval Reserve, which is not creditable in the computation of basic pay.

The liability with which H.R. 5042 was concerned was finally determined to exist on the basis of a decision of the Comptroller General (B-144276; dated Feb. 23, 1961), which held that the acceptance of the midshipman appointment, in effect, cancelled the Inactive Naval Reserve enlisted status. Since the persons involved had received credit in the computation of basic pay from the Inactive Naval Reserve service, this decision resulted in their having received over a period of approximately 15 years longevity increases a few months to a year before they were entitled thereto.

The 88th Congress committee report also stated that a review of Navy records had indicated that not more than 40 members and former members of the naval service were involved, and that steps had been taken to correct the situation. As was stated in the Navy report of August 7, 1975 on the current bill, the March 15, 1961 cut-off in the 88th Congress relief act apparently reflected the belief that the pay entry base dates of all affected officers had been appropriately adjusted by that time. Unfortunately, the Department of the Navy did not discover and adjust Commander Birch's incorrect pay entry base date until May 1967. As a result, under the authority of P.L. 88-614 Commander Birch was relieved of all liability accrued prior to March 15, 1961, but not of any liability accrued from March 15, 1961 to May 18, 1967—a total of \$1,513.69, rather than \$1,406.42 as indicated in H.R. 8027.

The Navy Department stated that it has no indication that the determination of an erroneous pay entry base date was caused by, or was the fault of, Commander Birch. There is no indication that Commander Birch has acted other than in good faith. In fact, as previously indicated, Commander Birch requested verification of his pay entry base date in 1955 and was advised that the erroneous date was correct.

In its report on H.R. 14044, a 93rd Congress bill identical to H.R. 8027, the Department of the Navy supported private relief for Commander Birch but recommended deferral of legislative action until consideration by the Comptroller General of an administrative waiver of the indebtedness pursuant to section 2774 of title 10, United States Code. As was stated at the beginning of this report, the Comptroller General determined that he does not have authority to administratively waive Commander Birch's indebtedness because the erroneous pay entry base date was discovered more than three years prior to the effective date of section 2774.

The committee agrees that relief is merited in this case, and further notes that such relief is consistent with its previous action in connection with the public bill in the 88th Congress.

The Department of the Navy has recommended enactment of H.R. 8027, with the substitution of "\$1,513.69" for "\$1,406.42" in line 5 on

page 1 of the bill and the substitution of "and having been" for "in violation of the Act of July 31, 1894, as amended (5 U.S.C. 62), and which were" in lines 9-11 on page 1 of the bill. The latter amendment is necessary because, as outlined in this report, the overpayment resulted from an erroneous pay entry base date. It is recommended that the amended bill be considered favorably.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., August 7, 1975.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your letter to the Secretary of the Navy requesting comment on H.R. 8027, a bill "For the relief of Commander Stanley W. Birch, Junior."

The purpose of H.R. 8027 is to relieve Commander Birch of liability for a \$1,406.42 overpayment of active duty compensation during the period from April 10, 1944, to May 18, 1967. The language of H.R. 8027 indicates that the overpayments were made through administrative error in violation of the Act of July 31, 1894, as amended (formerly 5 U.S.C. 62), the so-called "Dual Employment Act." In actuality, the overpayment resulted from the determination of an erroneous pay entry base date.

A review of Commander Birch's record shows that on February 23, 1949, his pay entry base date was established as April 10, 1944. On August 22, 1955, he requested verification of his pay entry base date; and on September 6, 1955, it was verified as April 10, 1944. An administrative review of Commander Birch's record in May 1967 revealed that his pay entry base date of April 10, 1944, included a period of non-creditable Midshipman, NROTC, USNR service from September 24, 1946, to February 8, 1948, a period of one year, four months, and fifteen days. Accordingly, on May 18, 1967, Commander Birch's pay entry base date was corrected to August 25, 1945. The corrected pay entry base date is computed on the basis of the following service:

Component	From—	To—
U.S. Naval Reserve, enlisted.....	Apr. 10, 1944	Sept. 23, 1946
U.S. Navy, officer.....	Feb. 9, 1948	July 1, 1974

Public Law 88-614 (approved on October 2, 1964) provides that any member of the naval service who, as an enlisted reservist, was appointed a midshipman, USNR without termination of the enlistment contract and who was thereafter erroneously credited in the computation of his basic pay with a period of enlisted service on and after the date of that appointment, is relieved of all liability to refund overpayments of basic pay received by him prior to March 15, 1961, as a result of the erroneous credit for service. The purpose of P.L. 88-614 was to relieve from liability all of those naval officers who received overpayments under the aforementioned circumstances. The choice of a March 15, 1961, cutoff apparently reflected the belief that the pay entry base dates of all affected officers had been appropriately

adjusted by that time. Unfortunately, the Department of the Navy did not discover and adjust Commander Birch's incorrect pay entry base date until May 1967. As a result, P.L. 88-614 relieved Commander Birch of all liability accrued prior to March 15, 1961, but not of any liability accrued from March 15, 1961, to May 18, 1967—a total of \$1,513.69, rather than \$1,406.42 as indicated in H.R. 8027.

Nothing in the records of this Department indicates that the determination of an erroneous pay entry base date was caused by, or was the fault of, Commander Birch. There is no indication that Commander Birch has acted other than in good faith. In fact, as previously indicated, Commander Birch requested verification of his pay entry base date in 1955 and was advised that the erroneous date was correct.

In its report on H.R. 14044, a 93rd Congress bill identical to H.R. 8027, the Department of the Navy supported private relief for Commander Birch but recommended deferral of legislative action until consideration by the Comptroller General of an administrative waiver of the indebtedness pursuant to section 2774 of title 10, United States Code. It is understood that, after reviewing H.R. 14044, the Comptroller General determined that he does not have authority to administratively waive Commander Birch's indebtedness because the erroneous pay entry base date was discovered more than three years prior to the effective date of section 2774.

In view of the foregoing, the Department of the Navy recommends enactment of H.R. 8027, with the substitution of "\$1,513.69" for "\$1,406.42" in line 5 on page 1 of the bill and the substitution of "and having been" for "in violation of the Act of July 31, 1894, as amended (5 U.S.C. 62), and which were" in lines 9-11 on page 1 of the bill.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely yours,

N. R. GOODING, Jr.,
Captain, U.S. Navy,
Deputy Chief.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 30, 1974.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your letter of April 17, 1974, requesting our views on H.R. 14044, a bill for the relief of Commander Stanley W. Birch, Jr., United States Navy.

The bill would relieve Commander Birch of all liability for repayment to the United States of the amount of \$1,406.42, representing overpayments of active duty compensation as a member of the United States Navy for the period of April 10, 1944, to May 18, 1967, which he received as a result of the establishment of an erroneous pay entry base date (PEBD) in his case. It would also authorize and direct the Secretary of the Treasury to pay to Commander Birch the sum of any

amounts received or withheld from any sums otherwise due him on account of such overpayments.

The record shows that Commander Birch enlisted in the United States Naval Reserve on April 10, 1944; that he was discharged on June 16, 1946, and reenlisted the following day; that he was appointed a Midshipman on September 24, 1946; that his enlistment was terminated on February 8, 1948, and that he was commissioned an Ensign the following day.

His PEBD was originally established as August 23, 1945, and he was paid accordingly. In 1955 the PEBD was erroneously changed to April 10, 1944, and the member's pay was retroactively adjusted through June 30, 1955. An administrative review of Commander Birch's record in May 1967 revealed that his PEBD of April 10, 1944, included a period of non-creditable Midshipman, NROTC, United States Naval Reserve service from September 24, 1946, to February 8, 1948. On May 18, 1967, Commander Birch was advised by the Chief of Naval Personnel that an administrative review of his records disclose his PEBD was erroneous and being corrected to August 25, 1945.

On June 19, 1967, Commander Birch inquired regarding relief of his liability under the act of October 2, 1964, Public Law 88-614, 78 Stat. 993. The fact provides that any member of the Navy who, as an enlisted reservist, was appointed a Midshipman, United States Naval Reserve without termination of the enlistment contract and who was thereafter erroneously credited in the computation of his basic pay with a period of enlisted service on and after the date of that appointment, is relieved of all liability to refund overpayments of basic pay received by the member prior to March 15, 1961, as a result of the erroneous credit for service. The choice of March 15, 1961, as a cutoff date apparently reflected the belief that the pay entry base dates of all affected officers had been appropriately adjusted by that time. Unfortunately, the Department of the Navy did not discover and adjust Commander Birch's incorrect PEBD until May 1967. As a result, Public Law 88-614 relieved Commander Birch of all liability incident to erroneous pay which accrued prior to March 15, 1961, but not for that erroneous pay which accrued subsequent to March 15, 1961, which in Commander Birch's case continued until August 24, 1967. The record shows that Commander Birch's indebtedness incident to the erroneous PEBD not waived, totaled \$1,513.69, rather than the amount stated in the bill. Our computation, agrees with the increased amount.

When Commander Birch learned of the need to adjust his PEBD he sought relief by petitioning the Board for the Correction of Naval Records (BCNR). In December 1967 and again in January 1968, the BCNR advised Commander Birch that it lacked the authority to relieve him from his indebtedness. Further, that it would not be possible to correct his record to reflect one pay entry base date to be utilized until the date of discovery of the error and another pay entry base date to be utilized after the discovery of the error. Accordingly, the BCNR concluded that it could not change Commander Birch's record to reflect an April 10, 1944 PEBD to be utilized until May 18, 1967, and an August 25, 1945 PEBD to be utilized thereafter.

It has been our practice where private relief legislation is intro-

duced on behalf of a member or former member of a uniformed service subsequent to October 2, 1972, where it appears the indebtedness of such an individual to the United States arose as a result of administrative error, to consider such cases for waiver under the provisions of the act of October 2, 1972, Public Law 92-453, 86 Stat. 758, 10 U.S.C. 2774.

Subsection 2774(a) of title 10, U.S. Code, authorizes the waiver of a claim of the United States against a person arising out of an erroneous payment of pay and allowance, the collection of which would be against equity and good conscience and not in the best interests of the United States. However, 10 U.S.C. 2774(b)(2) provides that the Comptroller General or the Secretary concerned may not exercise his authority under the act, if application for waiver is received in his office after the expiration of 3 years immediately following the date on which the erroneous payment of pay or allowances was discovered.

It is our view that since Public Law 92-453 became effective on October 2, 1972, any erroneous payment which otherwise would come within the purview of 10 U.S.C. 2774, which was discovered prior to October 2, 1969 (three years prior to date of enactment), may not be considered for waiver under that law. Since the erroneous payment in this case was discovered in May 1967, we are precluded from considering the case for waiver under the provisions of 10 U.S.C. 2774.

Enactment of this legislation will result in preferential treatment of the individual over others similarly situated.

However, if H.R. 14044 is to receive favorable consideration, we suggest that the amount of the indebtedness stated in the bill as "\$1,406.72" be changed to "\$1,513.69", and the dates shown in line 7, page 1 should be changed to read "March 15, 1961 to August 24, 1967."

Sincerely yours,

ROBERT F. KELLER,
*Acting Comptroller General
of the United States.*

○

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

For the relief of Commander Stanley W. Birch, Junior.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Commander Stanley W. Birch, Junior, of Virginia Beach, Virginia, is hereby relieved of all liability to repay to the United States the sum of \$1,513.69, representing overpayments of active duty compensation received by him for the period of April 10, 1944, to May 18, 1967, while he was employed by the United States Navy, such overpayments having been made through administrative error received in good faith by him.

SEC. 2. The Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Commander Stanley W. Birch, Junior, an amount equal to the aggregate of the amounts paid by him, or withheld from sums otherwise due him, in complete or partial satisfaction of the liability to the United States specified in the first section.

SEC. 3. No part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*