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**APPROVED**  
**JAN 2-1975**

**ACTION**

**THE WHITE HOUSE**

Last Day: January 4

**WASHINGTON**

December 31, 1974

*Posted  
1/3*

*To Archives  
1/3*

MEMORANDUM FOR THE PRESIDENT

FROM: KEN COLE

SUBJECT: Enrolled Bill H.R. 10827  
Relief of Kiyonao Okami

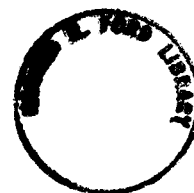
Attached for your consideration is H.R. 10827, sponsored by Representative Flood, which authorizes a prospective recomputation of the retirement annuity for Mr. Kiyonao Okami, a retired Foreign Service Officer, based upon the salary he would have received if he had been promoted in May, 1968. The Foreign Service Grievance Board concluded in 1972 that Mr. Okami had been unfairly passed over for promotion in 1968.

OMB recommends approval and provides additional background information in its enrolled bill report (Tab A).

Max Friedersdorf (Loen), Phil Areeda and the NSC recommend approval.

RECOMMENDATION

That you sign H.R. 10827 (Tab B).



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

DEC 28 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 10827 - For the relief of  
Kiyonao Okami  
Sponsor - Rep. Flood (D) Pennsylvania

Last Day for Action

January 4, 1975 - Saturday

Purpose

Authorizes a prospective recomputation of the retirement annuity for Mr. Kiyonao Okami, a retired Foreign Service officer, based upon the salary he would have received if he had been promoted in May 1968.

Agency Recommendations

Office of Management and Budget	Approval
Department of State	Approval

Discussion

In 1972, after a full investigation and hearing, the State Department's Foreign Service Grievance Board concluded that Mr. Kiyonao Okami had been unfairly passed over for promotion to class 3 in 1968 because of his age. The Board recommended that he be placed prospectively in the fourth step of class 3--rather than the customary first step--as representing "the approximate point in grade which the grievant would have reached had his career not been impeded...." (The Department at the time did not have authority to make retroactive promotions.) Accordingly, Mr. Okami's name was included in the promotion list confirmed by the Senate on October 3, 1972, and he was officially promoted effective October 9, 1972.



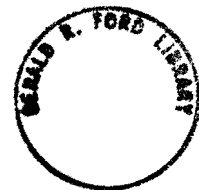
When he reached the mandatory retirement age on June 30, 1973, however, Mr. Okami's Foreign Service annuity--calculated on his high-3 average salary--was not as high as it would have been had he been rightfully promoted in 1968, since the annuity could be based only upon nine months of the higher salary. H.R. 10827 would authorize recomputation of Mr. Okami's annuity as if he had been promoted in May 1968, and had received the concomitant higher salary all along, provided that he pays into the Foreign Service Retirement Fund his share of the higher contributions that would have resulted from the higher salary. The bill does not authorize back pay or any other benefits for the period of constructive promotion.

The increased annuity, according to the House Judiciary Committee report, would be approximately \$1,500 per year. State estimates that enactment of H.R. 10827 would increase the unfunded liability of the Foreign Service Retirement Fund by approximately \$18,500.

Citing its earlier report to the House Judiciary Committee in which it indicated no objection to enactment, State recommends approval.

*Welford H. Rowland*  
Assistant Director for  
Legislative Reference

Enclosures



MEMORANDUM

NATIONAL SECURITY COUNCIL

6358

December 30, 1974

MEMORANDUM FOR: WARREN HENDRIKS  
FROM: Jeanne W. Davis *JWD*  
SUBJECT: Enrolled Bill  
H. R. 10827

The NSC staff concurs in H. R. 10827 --For the relief of  
Kiyonao Okami.





DEPARTMENT OF STATE

Washington, D.C. 20520

DEC 24 1974

Honorable Roy L. Ash  
Director, Office of  
Management and Budget  
Washington, D.C.

Dear Mr. Ash:

The following comments on enrolled bill H.R. 10827, for the relief of Kiyonao Okami, are provided pursuant to an undated request from your office.

The bill would authorize recomputation of Mr. Okami's Foreign Service annuity to rectify an injustice done in 1968. The injustice, as determined by the Foreign Service Grievance Board, was that Mr. Okami was passed over for promotion in 1968 because of his age. As a result of the Board's finding, Mr. Okami was promoted in 1972 from class 4 to class 3. However, he reached mandatory retirement age in June, 1973, and his annuity, based on his high-3 average salary, is not as high as it would have been if he had been promoted in 1968.

This bill authorizes Mr. Okami's annuity to be recomputed as if he had been promoted in 1968 provided he makes retirement contributions on the higher salary.

The bill would increase the unfunded liability of the Foreign Service retirement fund approximately \$18,500.

In response to a request from the Chairman of the House Judiciary Committee, the Department stated on April 11, 1974 that it would have no objection to enactment of the bill provided a technical amendment suggested by the Department was made. The recommended amendment was made and the Department recommends that the President approve the bill.

Cordially,

A handwritten signature in cursive script that reads "Linwood Holton".

Linwood Holton  
Assistant Secretary  
for Congressional Relations

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR: WARREN HENDRIKS  
FROM: *Max L. Friedersdorf* MAX L. FRIEDERSDORF  
SUBJECT: Action Memorandum - Log No. 790  
Enrolled Bill H. R. 10827

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 28 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 10827 - For the relief of  
Kiyonao Okami  
Sponsor - Rep. Flood (D) Pennsylvania

Last Day for Action

January 4, 1975 - Saturday

Purpose

Authorizes a prospective recomputation of the retirement annuity for Mr. Kiyonao Okami, a retired Foreign Service officer, based upon the salary he would have received if he had been promoted in May 1968.

Agency Recommendations

Office of Management and Budget

Approval

Department of State

Approval

Discussion

In 1972, after a full investigation and hearing, the State Department's Foreign Service Grievance Board concluded that Mr. Kiyonao Okami had been unfairly passed over for promotion to class 3 in 1968 because of his age. The Board recommended that he be placed prospectively in the fourth step of class 3--rather than the customary first step--as representing "the approximate point in grade which the grievant would have reached had his career not been impeded...." (The Department at the time did not have authority to make retroactive promotions.) Accordingly, Mr. Okami's name was included in the promotion list confirmed by the Senate on October 3, 1972, and he was officially promoted effective October 9, 1972.

To  
H. Anderson  
12-28-74



When he reached the mandatory retirement age on June 30, 1973, however, Mr. Okami's Foreign Service annuity--calculated on his high-3 average salary--was not as high as it would have been had he been rightfully promoted in 1968, since the annuity could be based only upon nine months of the higher salary. H.R. 10827 would authorize recomputation of Mr. Okami's annuity as if he had been promoted in May 1968, and had received the concomitant higher salary all along, provided that he pays into the Foreign Service Retirement Fund his share of the higher contributions that would have resulted from the higher salary. The bill does not authorize back pay or any other benefits for the period of constructive promotion.

The increased annuity, according to the House Judiciary Committee report, would be approximately \$1,500 per year. State estimates that enactment of H.R. 10827 would increase the unfunded liability of the Foreign Service Retirement Fund by approximately \$18,500.

Citing its earlier report to the House Judiciary Committee in which it indicated no objection to enactment, State recommends approval.

*Welford H. Roumel*  
Assistant Director for  
Legislative Reference

Enclosures



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 790

Date: December 28, 1974

Time: 7:00 p.m.

FOR ACTION: NSC/S *oh.*  
Phil Areeda *no obj*  
Max Friedersdorf *ow*

cc (for information): Warren Hendriks  
Jerry Jones  
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 30

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill H.R. 10827 - For the relief of Kiyonao Okami

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

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 790

Date: December 28, 1974

Time: 7:00 p.m.

FOR ACTION: NSC/S  
Phil Areeda  
Max Friedersdorf

cc (for information): Warren Hendriks  
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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

*No Objection  
P. Areeda  
NC*

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.

Warren K. Hendriks  
For the President

KIYONAO OKAMI

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AUGUST 22, 1974.—Committed to the Committee of the Whole House and  
ordered to be printed

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Mr. BUTLER, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 10827]

The Committee on the Judiciary to whom was referred the bill (H.R. 10827) for the relief of Kiyonao Okami, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 6: Strike "fourth in grade" and insert "step one".

Page 2, line 3: After "promotion." insert

The said Kiyonao Okami shall be given the option to increase the survivor election he made at retirement up to the maximum amount possible on the increased annuity authorized by this Act.

PURPOSE

The purpose of the proposed legislation, as amended, is to recompute the retirement annuity of Kiyonao Okami so that it would equal the amount to which he would be entitled had he been promoted to Foreign Service Officer class 3 in May of 1968 and to permit him an additional survivorship election based upon the increased annuity.

STATEMENT

The Department of State in its report to the committee on the bill indicated it would have no objection to its enactment.

As is stated in the report of the Department of State on the bill. In June, 1972, after a full investigation and hearing, the Foreign Service Grievance Board concluded that Mr. Okami had been unfairly passed over for promotion to class 3 in 1968. They recommended to the Secretary of State that he be promoted to class 3, and be placed in the fourth step of that class, rather than the customary first step. He was placed

in the higher step based on the conclusion that he would have reached that level, under normal advancement, by 1972 had he originally been promoted in 1968.

On June 30, 1973, Okami retired upon reaching the mandatory retirement age of sixty. Consequently, his retirement annuity (based upon the average of his high three earning years) is computed with only 9 months of credit at a class 3 salary, instead of the full 3 years. This bill would recompute his annuity from the time the Board determined he should have been promoted, i.e. May, 1968. The increased annuity would be approximately \$1,500 per year.

At the time the Grievance Board acted upon Okami's case, they had no authority to recommend a retroactive promotion. However, by virtue of the "Pell Amendment" (Section 10 of P.L. 93-126) the State Department now has the authority to effect a retroactive promotion, upon the recommendation of the Grievance Board. Thus, it would appear that private bills of this type will soon be unnecessary.

The report of the Department of State pointed out that the passage of the Pell Amendment (Section 10 of P.L. 93-126 of October 17, 1973) now provides the Department with authority to effect promotions retroactively for active employees where such action is recommended by a grievance board or panel or an equal employment opportunity appeals examiner. The Department noted that private relief bills should no longer be required to provide this type of relief for active employees. Department also stated that it knows of no retired employees with claims for recomputation of their annuities in circumstances such as those surrounding this bill, it is possible that a retired employee will come forward with such a claim in the future.

The Department suggested that the Committee consider two amendments. The first amendment concerns the salary level to be used in the recomputation. The bill directs the recomputation in annuity to be based upon the assumption that Mr. Okami had been promoted to the fourth step of class 3 in May, 1968. This would provide an excessive annuity because that salary is the level which the Board concluded that Mr. Okami would have reached in June, 1972 if he had been promoted in May, 1968. To correct this, the words "fourth in grade" on line 6 of page 1 of the bill should be deleted and "step one" substituted therefor, and this amendment is recommended by the committee.

The second amendment concerns survivorship rights. At his retirement, Mr. Okami elected the maximum survivor benefit for his wife that he then could. If he is to be given the right to elect a survivorship benefit based on the approximate \$1,500 increased annuity that this bill would provide, the bill should make this clear. Accordingly the committee has recommended that the bill be amended by adding after the word "promotion." in line 3 of page 2 of the bill the words "The said Kiyonao Okami, shall be given the option to increase the survivor election he made at retirement up to the maximum amount possible on the increased annuity authorized by this Act."

The committee finds that the facts of this case as developed by the State Department and as followed in the Grievance Board procedure support the additional relief provided by the amended bill. It is recommended that the amended bill be considered favorably.

DEPARTMENT OF STATE,  
Washington, D.C., April 11, 1974.

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

DEAR MR. CHAIRMAN: We are pleased to supply the following comments on private bill H.R. 10827 which you referred to the Secretary on November 18, 1973.

The bill would provide relief for Kiyonao Okami, a retired Foreign Service officer, by authorizing a recomputation of his retirement annuity to recognize salary he would have received if he had been promoted to the fourth step of Foreign Service officer class 3 in May, 1968.

The Foreign Service Grievance Board concluded, after an investigation and a formal hearing, that Mr. Okami was unfairly passed over for promotion to class 3. The Board recommended in a letter to the Secretary on June 5, 1972 that Mr. Okami be promoted to class 3 and placed in the fourth step of that class—rather than the customary first step—which, the Board felt, was “the approximate point in grade which the grievant would have reached had his career not been impeded by the circumstances stated above.” The recommendation of the Board was accepted. Mr. Okami’s name was included on a promotion list which was confirmed by the Senate on October 3, 1972. His promotion to step 4 of class 3 was effective on October 9, 1972.

Mr. Okami retired on June 30, 1973 after reaching the mandatory retirement age of 60. Therefore, his high-3 average salary, upon which his annuity was computed, reflects the higher class 3 salary for less than 9 months rather than the 36 months that would have been the case if he had not been passed over for promotion in 1968 and subsequent years. The only way Mr. Okami’s annuity can be recomputed to reflect a hypothetical higher salary is through enactment of a bill such as H.R. 10827.

The Grievance Board recommended only a prospective promotion. In June, 1972, when the Board acted, the Department had no authority to effect a retroactive promotion even if the Board had recommended that action.

Passage of the Pell Amendment (Section 10 of P.L. 93-126 of October 17, 1973) provides the Department with authority to effect promotions retroactively for active employees where such action is recommended by a grievance board or panel or an equal employment opportunity appeals examiner. Accordingly, private relief bills should no longer be required to provide this type of relief for active employees. Although the Department knows of no retired employees with claims for recomputation of their annuities in circumstances such as those surrounding this bill, it is possible that a retired employee will come forward with such a claim in the future.

If the bill is to be considered further, the Department would suggest that the Committee consider two amendments. The first amendment concerns the salary level to be used in the recomputation. The bill directs the recomputation in annuity to be based upon the assumption that Mr. Okami had been promoted to the fourth step of class 3 in May, 1968. This would provide an excessive annuity because that

salary is the level which the Board concluded that Mr. Okami would have reached in June, 1972 if he had been promoted in May, 1968. To correct this, the words "fourth in grade" on line 6 of page 1 of the bill should be deleted and "step one" substituted therefor.

The second amendment we would suggest concerns survivorship rights. At his retirement, Mr. Okami elected the maximum survivor benefit for his wife that he then could. If he is to be given the right to elect a survivorship benefit based on the approximate \$1,500 increased annuity that this bill would provide, the bill should make this clear. This could be done by adding the following as the penultimate sentence of the bill: "Mr. Okami shall be given the option to increase the survivor election he made at retirement up to the maximum amount possible on the increased annuity authorized by this bill."

The Department would have no objection to the enactment of this bill if the first amendment suggested above concerning the proper salary level to be considered is adopted. We are advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report.

Sincerely yours,

LINWOOD HOLTON,  
*Assistant Secretary  
for Congressional Relations.*

○

# Ninety-third Congress of the United States of America

AT THE SECOND SESSION

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

## An Act

For the relief of Kiyonao Okami.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of computing the retirement annuity due Kiyonao Okami, of Dublin, Ireland, under section 821(a) of the Foreign Service Act of 1946 (22 U.S.C. 1076(a)), his promotion to step one of class 3 shall be deemed to have taken effect on May 19, 1968, if he pays any additional contributions within six months after the date of enactment of this Act which may be required by section 811 of such Act (22 U.S.C. 1071) because of the effective date of such promotion. However, he shall not have to pay any such contributions for the time period beginning on the date of his retirement from the Foreign Service through the date on which he receives the first increased annuity payment resulting from such promotion. The said Kiyonao Okami shall be given the option to increase the survivor election he made at retirement up to the maximum amount possible on the increased annuity authorized by this Act. The increased annuity payments resulting from such promotion shall be effective beginning with the first annuity payment after the month in which he makes the additional contribution provided by the first sentence of this Act.*

---

*Speaker of the House of Representatives.*

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