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APPROVED
JAN 2-1975

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: January 4

December 31, 1974

*Posted
1/3
To Archivist
1/3*

MEMORANDUM FOR THE PRESIDENT
FROM: KEN CDLE
SUBJECT: Enrolled Bill H.R. 1715
For the Relief of Paul C. Amedeo

Attached for your consideration is H.R. 1715, sponsored by Representative Robison, which relieves Paul C. Amedeo of his liability to the United States for \$606.92 as a result of certain overpayments of pay and allowances he received while on active duty in the Marine Corps.

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

Max Friedersdorf and Phil Areeda both recommend approval.

RECOMMENDATION

That you sign H.R. 1715 (Tab B).





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

DEC 30 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 1715 - For the relief of
Paul C. Amedeo
Sponsor - Rep. Robison (R) New York

Last Day for Action

January 4, 1975 - Saturday

Purpose

Relieves Paul C. Amedeo of his liability to the United States for \$606.92 as a result of certain overpayments of pay and allowances he received while on active duty in the Marine Corps.

Agency Recommendations

Office of Management and Budget

Approval

Department of the Navy

No objection

Discussion

Mr. Amedeo served in the Marine Corps from 1966 to 1970. Upon his release from active duty, a review of his pay records indicated that he had been overpaid for certain pay and allowances in an amount of \$896.12 due to a number of administrative errors.

That amount was subsequently reduced, however, when the Comptroller General, acting under authority provided in existing law, waived a portion of Mr. Amedeo's indebtedness resulting from the overpayments. In granting the waiver, the Comptroller General agreed with a recommendation from the Marine Corps that such action would be appropriate because Mr. Amedeo easily could have been unaware of the overpayments which the amount waived represented.



Although the Comptroller General considered the remainder of Mr. Amedeo's indebtedness for waiver, he denied this relief based upon a Marine Corps report that the claimant should have been aware of the overpayments comprising the remaining portion of his debt and should have taken appropriate action to have his pay record corrected at the time such overpayments occurred. The Navy expressed the same position in its report to the 92nd Congress on H.R. 11715, a bill similar to the enrolled bill.

H.R. 1715 would relieve Mr. Amedeo of his liability to repay \$606.92, the portion of his debt to the U.S. not waived by the Comptroller General, and would permit him to be repaid for any part of that amount that he has previously paid.

In its report on this legislation, the House Judiciary Committee stated:

". . . the committee feels that the entire situation regarding pay was confused to the degree that it can be understood how this serviceman did not have actual knowledge of the overpayment and is entitled to relief. This is borne out by the fact that partial relief has been granted him. The explanation of the various overpayments . . . is an involved one, and it does indicate the problem faced by this Marine corporal. . . . The committee feels the entire history of the matter is such that it is understandable that he did not recognize that he was being overpaid. . . ."

In its enrolled bill letter, Navy states:

"Although neither the Senate Judiciary Committee nor the House Judiciary Committee requested the views of the Department of the Navy on H.R. 1715, the report of this Department on H.R. 11715, 92nd Congress, was discussed in the reports of both committees on H.R. 1715. Inasmuch as the Congress enacted H.R. 1715, after giving consideration to the adverse views of the Department of the Navy, the Department of the Navy has no objection to approval of this enrolled enactment."



Under the existing law, the Comptroller General is prohibited from exercising his waiver authority if in his opinion there exists in connection with a claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the claimant or any other interested person. In view of the fact that the Comptroller General did not waive the portion of Mr. Amedeo's debt which is the subject of H.R. 1715 because he determined that it arose from overpayments that Mr. Amedeo should have known were inappropriate, we are concerned that the enrolled bill, if approved, could serve as a precedent for others who are unable to obtain administrative waiver of indebtedness under the established statutory procedure because of lack of good faith.

In light of our concern, we have carefully reviewed the facts of this case and are in agreement with the report of the House Judiciary Committee that Mr. Amedeo's pay situation was extremely confused. We believe that the history of this matter raises sufficient doubt concerning Mr. Amedeo's ability to know that he was being overpaid and that, under the circumstances, such doubt should be resolved in his favor.

Wesford H. Rowland

Assistant Director for
Legislative Reference

Enclosures





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

December 24, 1974

Dear Mr. Ash:

Your transmittal sheet dated December 23, 1974, enclosing a facsimile of an enrolled bill of Congress, H.R. 1715, "For the relief of Corporal Paul C. Amedeo, United States Marine Corps Reserves," and requesting the comments of the Department of the Navy, has been received.

H.R. 1715, as passed with an amendment, would relieve Corporal Amedeo of a \$606.92 liability to the government as a result of certain overpayments of pay and allowances while he was on active duty in the U.S. Marine Corps.

The records of this Department indicate that Corporal Amedeo served on active duty from April 20, 1966, to October 19, 1970. Subsequent to Corporal Amedeo's release, an examination of his pay account revealed an indebtedness of \$896.12 resulting primarily from accounting and disbursing errors with regard to his leave time, dependent's allotment, and longevity credit.

A \$170.00 overpayment occurred when an increase in basic pay resulting from an increase in longevity was erroneously credited retroactively to Corporal Amedeo's account. An error in carrying forward a credit from one pay record to a succeeding pay record resulted in a further overpayment of \$2.00. In the settlement for his unused leave at the time of his release from active duty, Corporal Amedeo was paid 10 days' basic pay and allowances in the amount of \$117.20 for leave which he had in fact taken but which had not been charged to his account.

A member in pay grade E-4 with four or fewer years of service is required to allot a portion of his pay to his dependents by a Class Q allotment in order to qualify for credit for basic allowance for quarters. He must terminate his Class Q allotment when he completes four years of service; but if he desires to continue to allot part of his pay to his dependents, he may establish a Class D allotment. To conform to the foregoing requirements, upon completion of four years of service in March 1970, Corporal Amedeo requested that his \$130.60 per month Class Q allotment be stopped after April 1970. There is no record that he requested that a Class D allotment be registered. Although deductions were discontinued on his pay record, allotment payments continued through September 1970. This resulted in an overpayment of \$653.00.

In addition to the overpayments discovered during the examination of Corporal Amedeo's pay account, it was found that his account had not been credited leave rations in the amount of \$37.92. Also, it was discovered that \$8.16 was incorrectly withheld from Corporal Amedeo for FICA tax. These credits reduced his indebtedness to the government to \$896.12.

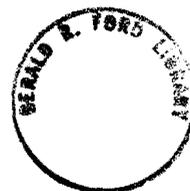


In its report on H.R. 11715, a 92nd Congress bill which was similar to H.R. 1715, the Department of the Navy opposed relief of that part of Corporal Amedeo's indebtedness which resulted from the \$653.00 overpayment of his Class Q allotment. In that report, the Department of the Navy indicated that since Corporal Amedeo had requested the termination of his allotment, he could reasonably have expected an increase in the pay he received on May 15, 1970. However, when his wife, who was residing with him, received an allotment check for May 1970, Corporal Amedeo should have known he was being overpaid, the report continued. Corporal Amedeo's continued acceptance of those overpayments, apparently without bringing the matter to the attention of proper authorities, established a presumption that he did not accept the payments in good faith, the Department of the Navy concluded in its report on H.R. 11715. Subsequent correspondence with the sponsor of H.R. 11715 produced an assertion by Corporal Amedeo that he had made a good faith effort to determine his proper rate of pay since he had discussed his finance records with a Marine corporal assigned to the disbursing office and with a Marine sergeant not assigned to that office. However, the sergeant had been separated from the Marine Corps and efforts to contact him were unsuccessful. The corporal, a private first class at the time he was contacted, stated that he did not recall anything unusual about Corporal Amedeo's pay account and that he had no recollection of having discussed "pay problems" with Amedeo.

The aforementioned correspondence with the sponsor of H.R. 11715 also produced a suggestion that the timing of Corporal Amedeo's change of allotment caused some confusion and misunderstanding on his part since he was expecting during the same approximate period an increase in allowances because of the birth of his daughter on March 15, 1970, and an increase in pay because of his completion of four years of service.

In its report on H.R. 11715, 92nd Congress, the Department of the Navy interposed no objection to relief from that part of Corporal Amedeo's indebtedness which did not result from the overpayment of the Class Q allotment. Subsequent to the introduction of H.R. 1715, the Comptroller General, acting pursuant to 10 U.S.C. 2774, waived all of the indebtedness except that which resulted from the overpayment of the Class Q allotment. As passed by the Congress, H.R. 1715 has been amended to reduce the amount of legislative relief by the amount of the administrative waiver.

Although neither the Senate Judiciary Committee nor the House Judiciary Committee requested the views of the Department of the Navy on H.R. 1715, the report of this Department on H.R. 11715, 92nd Congress, was discussed in the reports of both committees on H.R. 1715. Inasmuch as the Congress enacted



H.R. 1715, after giving consideration to the adverse views of the Department of the Navy, the Department of the Navy has no objection to approval of this enrolled enactment.

Sincerely yours,

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503



D. S. Potter
Under Secretary of the Navy



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 30 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 1715 - For the relief of
Paul C. Amedeo
Sponsor - Rep. Robison (R) New York

Last Day for Action

January 4, 1975 - Saturday

Purpose

Relieves Paul C. Amedeo of his liability to the United States for \$606.92 as a result of certain overpayments of pay and allowances he received while on active duty in the Marine Corps.

Agency Recommendations

Office of Management and Budget

Approval

Department of the Navy

No objection

Discussion

Mr. Amedeo served in the Marine Corps from 1966 to 1970. Upon his release from active duty, a review of his pay records indicated that he had been overpaid for certain pay and allowances in an amount of \$896.12 due to a number of administrative errors.

That amount was subsequently reduced, however, when the Comptroller General, acting under authority provided in existing law, waived a portion of Mr. Amedeo's indebtedness resulting from the overpayments. In granting the waiver, the Comptroller General agreed with a recommendation from the Marine Corps that such action would be appropriate because Mr. Amedeo easily could have been unaware of the overpayments which the amount waived represented.



To
H. Hurdick
12-30-74
6:30 P.M.



Although the Comptroller General considered the remainder of Mr. Amedeo's indebtedness for waiver, he denied this relief based upon a Marine Corps report that the claimant should have been aware of the overpayments comprising the remaining portion of his debt and should have taken appropriate action to have his pay record corrected at the time such overpayments occurred. The Navy expressed the same position in its report to the 92nd Congress on H.R. 11715, a bill similar to the enrolled bill.

H.R. 1715 would relieve Mr. Amedeo of his liability to repay \$606.92, the portion of his debt to the U.S. not waived by the Comptroller General, and would permit him to be repaid for any part of that amount that he has previously paid.

In its report on this legislation, the House Judiciary Committee stated:

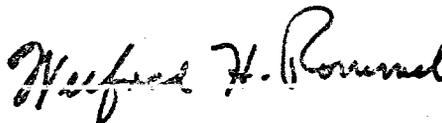
". . . the committee feels that the entire situation regarding pay was confused to the degree that it can be understood how this serviceman did not have actual knowledge of the overpayment and is entitled to relief. This is borne out by the fact that partial relief has been granted him. The explanation of the various overpayments . . . is an involved one, and it does indicate the problem faced by this Marine corporal. . . . The committee feels the entire history of the matter is such that it is understandable that he did not recognize that he was being overpaid. . . ."

In its enrolled bill letter, Navy states:

"Although neither the Senate Judiciary Committee nor the House Judiciary Committee requested the views of the Department of the Navy on H.R. 1715, the report of this Department on H.R. 11715, 92nd Congress, was discussed in the reports of both committees on H.R. 1715. Inasmuch as the Congress enacted H.R. 1715, after giving consideration to the adverse views of the Department of the Navy, the Department of the Navy has no objection to approval of this enrolled enactment."

Under the existing law, the Comptroller General is prohibited from exercising his waiver authority if in his opinion there exists in connection with a claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the claimant or any other interested person. In view of the fact that the Comptroller General did not waive the portion of Mr. Amedeo's debt which is the subject of H.R. 1715 because he determined that it arose from overpayments that Mr. Amedeo should have known were inappropriate, we are concerned that the enrolled bill, if approved, could serve as a precedent for others who are unable to obtain administrative waiver of indebtedness under the established statutory procedure because of lack of good faith.

In light of our concern, we have carefully reviewed the facts of this case and are in agreement with the report of the House Judiciary Committee that Mr. Amedeo's pay situation was extremely confused. We believe that the history of this matter raises sufficient doubt concerning Mr. Amedeo's ability to know that he was being overpaid and that, under the circumstances, such doubt should be resolved in his favor.



Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR: WARREN HENDRIKS
FROM: *Vern Loefer* MAX L. FRIEDERSDORF
SUBJECT: Action Memorandum - Log No. 923

The Office of Legislative Affairs concurs with the Agencies
that the enrolled bill should be signed.

Attachments



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 923

Date: December 30, 1974

Time: 10:00 p.m.

FOR ACTION: Max Friedersdorf
Phil Areeda

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

FROM THE STAFF SECRETARY

DUE: Date: ~~Dec~~ Tuesday, December 31

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill H.R. 1715 - For the relief of Paul C. Amedeo

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.: 923

Date: December 30, 1974

Time: 10:00 p.m.

FOR ACTION: Max Friedersdorf
Phil Areeda

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

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, December 31

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill H.R. 1715 - For the relief of Paul C. Amedeo

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*



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

CORP. PAUL C. AMEDEO

MARCH 11, 1974.—Committed to the Committee of the Whole House
and ordered to be printed

Mr. MOORHEAD of California, from the Committee on Judiciary,
submitted the following

REPORT

[To accompany H.R. 1715]

The Committee on the Judiciary to which was referred the bill (H.R. 1715) for the relief of Corp. Paul C. Amedeo, U.S. Marine Corps Reserve, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended do pass.

The amendment is as follows: page 1, line 5: Strike "\$896.12" and insert "\$606.92".

PURPOSE

The purpose of the proposed legislation, as amended, is to relieve Corp. Paul C. Amedeo, U.S. Marine Corps Reserve of Binghamton, N.Y., of liability in the amount of \$606.92, representing the amount due to the United States as a result of certain overpayments of pay and allowances received by him during the period beginning April 20, 1966, and ending October 19, 1970, while he was on active duty in the U.S. Marine Corps.

STATEMENT

Corp. Paul C. Amedeo came on active duty with the Marine Corps on April 20, 1966, and was released from active duty on October 19, 1970. As is outlined in the Navy Department report, subsequent to his release, an examination of his pay account was conducted, and it was found that he had been overpaid \$896.12. This indebtedness resulted from accounting and disbursing errors pertaining to Corporal Amedeo's leave time, dependent's allotment, and longevity credit.

On July 5, 1973, the committee received a new report from the General Accounting Office which stated the indebtedness had been reduced from \$896.12 to \$606.92 due to a waiver of apportionment of the indebtedness. This is the amount stated in the committee amendment.

During his 4½ years service, Corporal Amedeo earned 136 days leave. He used 131 days leave. He was entitled to settlement for 5 days

unused leave at the time of his release from active duty. However, because a 10-day period of leave had not been recorded on his record, he was erroneously paid for 15 days unused leave. The resulting adjustment to his pay account caused an indebtedness of \$117.20. It was also determined that an increase in basic pay for longevity purposes had been erroneously credited retroactively to his account. That adjustment added another \$170 to his indebtedness.

On March 20, 1970, Corporal Amedeo was in grade E-4 and had just completed 4 years' service. Prior to March 21, 1970, he was entitled to quarters allowance in the amount of \$90.60, upon maintaining a class "Q" allotment in the amount of \$130.60, in favor of his dependents.

Under the provision of section 403 of title 37, United States Code, he became eligible for basic allowance for quarters as a member with dependents, if Government quarters were not available for him and his dependents at his permanent duty station commencing March 21, 1970, and he was no longer required to maintain a class "Q" allotment. The record indicates that the allotment deductions from his pay were discontinued commencing May 1970. The Allotment Division, however, failed to receive notice of the termination of the allotment and it sent five checks in the amount of \$130.60 to the member's wife from May through September 1970, resulting in overpayments of \$653.

The General Accounting Office stated that the corporal's pay record closed July 31, 1966, showed the amount unpaid to be carried forward as \$24.10. However, the amount actually brought forward and credited on a subsequent pay record was \$26.10, resulting in an overpayment of \$2.

Payments of \$37.92, representing leave rations for the period July 23 through August 11, 1966, and from November 20 through November 30, 1966, had not been paid. Also, \$8.16 had been incorrectly withheld for FICA tax on the pay record closed October 19, 1970. These underpayments totaled \$46.08 and when subtracted from the total overpayments of \$942.20 result in a net indebtedness to the United States of \$896.12, the amount originally stated in the bill.

The General Accounting Office considered whether the indebtedness of Corporal Amedeo should be waived under the provisions of the act of October 2, 1972, Public Law 92-453, 86 Stat. 758, 10 U.S.C. 2774, and the Standards for Waiver promulgated in implementation thereof.

The General Accounting Office stated that Standards for Waiver, 4 C.F.R. 91.5(c), promulgated in implementation of the act provide in pertinent part that any significant unexplained increase in pay or allowances, which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of the appropriate officials.

The General Accounting Office requested a report from the Commandant of the Marine Corps as to the propriety of waiving the indebtedness. In its report to the General Accounting Office, the Marine Corps stated that the allotment payments from May through September 1970 were mailed to the member's wife in Naples, Italy where she and Corporal Amedeo resided. The Marine Corps concluded that

Corporal Amedeo knew or should have known that the appropriate deductions were not being made from his pay, and also stated that during the critical period surrounding the allotment transaction a net monthly increase in his pay of \$80 occurred. While stating that during this same period Corporal Amedeo was entitled to an increase of \$24 in his monthly basic pay (difference between a corporal with over 3 years service and over 4 years service). However, the Marine Corps took the position that the actual increase of \$80 a month over and above his regular entitlements was such a significant increase of pay and allowances that a prudent person should have noticed the error and should have prompted a sincere effort on his part to have the matter clarified.

The Marine Corps reported that Corporal Amedeo had stated that he spoke with finance personnel concerning the matter and identified two individuals. One of the individuals, who was a disbursing clerk in the Navy Disbursing Office, Naples, Italy, during the period, was interviewed by the Marine Corps and he stated that he did not recall anything unusual about Corporal Amedeo's pay account. He also stated he did not recall discussing pay problems with him. The report also indicates the other individual named by Corporal Amedeo has been separated from the service and was not contacted. On the basis of those facts, the Marine Corps recommended that this indebtedness (\$653) not be waived. The Navy took the same position in its report on an earlier bill.

The Marine Corps recommended that the balance of the indebtedness caused by administrative errors be considered for waiver since during the periods of the overpayments many transactions occurred in his pay which could easily have led to his being unaware of the overpayments. As has been noted, the General Accounting Office waived the claim of the United States against Corporal Amedeo in the amount of \$289.20.

The General Accounting Office has explained that Corporal Amedeo's indebtedness was initially established as \$942.20 and then reduced by a credit of \$46.08 to \$896.12. However, since that office has waived \$289.20 of the indebtedness, it is its view that the credit of \$46.08 may be applied to that portion of the indebtedness for which waiver was denied under 10 U.S.C. 2774. Thus, a balance of \$606.92 remains due the United States.

As has been outlined above, this portion of Corporal Amedeo's indebtedness resulted from failure of the Marine Corps to make deductions from his pay for the allotments to his wife. The Navy states that he requested that his allotment be terminated so that an increase in his pay on May 15, 1970, was to be expected. However, receipt by his wife of an allotment check after May 1970 is contended by the Navy to be notice that he was being overpaid. Acceptance of allotment payments was taken as the basis for a presumption against good faith. On this basis, the Navy has questioned relief in connection with the overpayment as does the General Accounting Office.

However, the committee feels that the entire situation regarding pay was confused to the degree that it can be understood how this serviceman did not have actual knowledge of the overpayment and is entitled to relief. This is borne out by the fact that partial relief has been granted him. The explanation of the various overpayments and underpayments is an involved one, and it does indicate the problem

faced by this Marine corporal. The Navy has noted that his pay was in a state of fluctuation at the time he was given retroactive credit of basic pay and concedes that it is conceivable he thought he was entitled to the credits. The committee feels the entire history of the matter is such that it is understandable that he did not recognize that he was being overpaid in his final 5 months of active duty.

On the basis of the facts and circumstances outlined above, the committee has concluded that Corporal Amedeo should be relieved of the remaining indebtedness stated in the amended bill. It is recommended that the amended bill be considered favorably.

The committee has been advised that an attorney has rendered services in connection with this matter. Therefore, the bill carries the customary limitation on attorney's fees.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., April 11, 1972.

HON. EMANUEL CELLER,
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. 11715, a bill "For the relief of Corporal Paul C. Amedeo, U.S. Marine Corps Reserve."

This bill would relieve Corporal Amedeo of liability to repay to the United States the amount of \$896.12 which is an amount "received by him during the period beginning April 20, 1966, and ending October 19, 1970, while he was on duty in the U.S. Marine Corps."

The records of this Department reveal that Corporal Amedeo came on active duty on April 20, 1966, and was released from active duty on October 19, 1970. Subsequent to his release, an examination of his pay account was conducted, and it was found that he had been overpaid \$896.12. This indebtedness resulted from accounting and dispersing errors pertaining to Corporal Amedeo's leave time, dependent's allotment, and longevity credit.

During his 4½ years service, Corporal Amedeo earned 136 days leave. He used 131 days leave. He was entitled to settlement for 5 days unused leave at the time of his release from active duty. However, because a 10-day period of leave had not been recorded on his record, he was erroneously paid for 15 days unused leave. The resulting adjustment to his pay account caused an indebtedness of \$117.20. It was also determined that an increase in basic pay for longevity purposes had been erroneously credited retroactively to his account. That adjustment added another \$163.84 to his indebtedness.

A member in pay grade E-4 with 4 or less years service is required to allot a portion of his pay to his dependents in order to qualify for credit for basic allowance for quarters through the medium of a class Q allotment. He must terminate his class Q allotment when he completes 4 years of service. If he desires to continue to allot part of his pay to his dependents, he may establish a class D allotment. To conform to the foregoing requirements, upon completion of 4 years service in March 1970, Corporal Amedeo requested that his \$130.60 per month class Q allotment be stopped after April, 1970. There is no record that he requested that a class D allotment be registered. Although

deductions were discontinued on his pay record, allotment payments continued through September 1970. This resulted in an overpayment of \$653.00.

In addition to the overpayments discovered during the examination of Corporal Amedeo's pay account, it was found that his account had not been credited leave rations in the amount of \$37.92. That credit served to reduce his indebtedness to the United States to \$896.12.

The largest portion of Corporal Amedeo's indebtedness resulted from failure to make deductions from his pay for the allotments to his wife. Since he requested that the allotment be terminated, the increase that he received in his pay on May 15, 1970, was to be expected. However, when his wife, who was residing with him, received an allotment check for May 1970, he should have known that he was being overpaid. His continued acceptance of those overpayments, apparently without bringing the matter to the attention of proper authorities, establishes a presumption of lack of good faith on his part.

It is understandable that Corporal Amedeo could have lost count of the number of days leave he had taken over a 4½-year period. Likewise, since his pay was in a state of fluctuation at the time of the retroactive credit of basic pay, it is conceivable he thought he was entitled to the credit. Therefore, except for the allotment overpayments, he reasonably should not have been expected to detect any of the overpayments resulting from the erroneous accounting pertaining to his leave settlement and his credit in basic pay for longevity.

The Department of the Navy is opposed to the granting of relief to a member for overpayments where there is evidence that they were not received in good faith and therefore opposes the granting of relief for the allotment overpayments. However, the Department of the Navy is not opposed to the enactment of H.R. 11715 if the amount of the indebtedness to be forgiven is amended to \$281.04, which is the sum of the leave time (\$117.20) and the longevity (\$163.84) indebtedness.

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 on H.R. 11715 for the consideration of the committee.

For the Secretary of the Navy.

Sincerely yours,

LANDO W. ZECH, JR.,
Captain, U.S. Navy,
Deputy Chief.

COMPTROLLER GENERAL OF THE UNITED STATES,
 Washington, D.C., July 5, 1973.

B-174593.

HON. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Further reference is made to your letter dated February 26, 1973, in which you request our views on H.R. 1715, 93d

Congress, a bill for the relief of Corp. Paul C. Amedeo, U.S. Marine Corps Reserve.

The bill would relieve Corporal Amedeo of liability in the amount of \$896.12, representing overpayment of pay and allowances while he was on active duty from April 20, 1966, through October 1970. The bill states that the overpayments were the result of administrative errors which occurred without fault on the part of the member. The bill would also relieve any certifying or disbursing officer of the United States of liability to the extent of overpayments and would authorize and direct the Secretary of the Treasury to pay to Corporal Amedeo an amount equal to the sum paid by him with respect to the indebtedness specified.

On January 5, 1972, B-174593, we furnished your committee with a report on an identical bill, H.R. 11715, 92d Congress. In our report of January 5, 1972, we said that Corporal Amedeo enlisted in the Marine Corps on March 21, 1966, and reported for active duty on April 20, 1966. He was separated from the Marine Corps on October 19, 1970.

On December 28, 1970, an attorney acting on behalf of Corporal Amedeo, requested from the Marine Corps Finance Center, Kansas City, Mo., information whether the member was in receipt of basic allowance for quarters on account of his infant daughter born March 15, 1970. By letter dated July 19, 1971, the Finance Center advised Mr. Amedeo that an examination of his pay account shows that he had been properly credited basic allowance for quarters during the period involved, but it showed further that he had been overpaid various items of pay and allowances during his period of service.

On March 20, 1970, Corporal Amedeo was in grade E-4 and had just completed 4 years' service. Prior to March 21, 1970, he was entitled to quarters allowance in the amount of \$90.60, upon maintaining a class "Q" allotment in the amount of \$130.60, in favor of his dependents.

Under the provision of section 403 of title 37, United States Code, he became eligible for basic allowance for quarters as a member with dependents, if Government quarters were not available for him and his dependents at his permanent duty station commencing March 21, 1970, and he was no longer required to maintain a class "Q" allotment. The record indicates that the allotment deductions from his pay were discontinued commencing May 1970. The Allotment Division, however, failed to receive notice of the termination of the allotment and it continued to send checks in the amount of \$130.60 to the member's wife from May through September 1970, resulting in overpayments of \$653.

In the settlement of his unused leave upon discharge, it was discovered that he was overpaid 10 days' basic pay and allowances in the amount of \$117.20, for leave he had taken during the period October 8 through 17, 1966, but which had not been charged to his account.

A further overpayment occurred when the member was credited with \$170 as the difference in pay between E-3 with less than 2 years' service and E-3 with over 2 years' service for the period March 21 through June 30, 1968, on pay records for the period July to December 31, 1968. The pay record for the prior period (January through June 1968) shows that the member had already been credited basic pay as E-3 with over 2 years' service for the period March 21 through June 30, 1968, resulting in the \$170 overpayment.

Also, the member's pay record closed July 31, 1966, showed the amount unpaid to be carried forward as \$24.10. However, the amount actually brought forward and credited on a subsequent pay record was \$26.10, resulting in an overpayment of \$2.

Payments of \$37.92, representing leave rations for the period July 23 through August 11, 1966, and from November 20 through November 30, 1966, had not been paid. Also, \$8.16 had been incorrectly withheld for FICA tax on the pay record closed October 19, 1970. These underpayments totalled \$46.08 and when subtracted from the total overpayments of \$942.20 result in a net indebtedness to the United States of \$896.12.

As we informed you in our letter of April 19, 1973, we considered whether the indebtedness of Corporal Amedeo should be waived under the provisions of the act of October 2, 1972, Public Law 92-453, 86 Stat. 758, 10 U.S.C. 2774, and the Standards for Waiver promulgated in implementation thereof. Pursuant to the Standards we requested a report from the Commandant of the Marine Corps as to the propriety of waiving the indebtedness.

Under the provisions of the act of October 2, 1972, a claim of the United States against a person arising out of an erroneous payment of pay and allowances may be waived by the Secretary of the service concerned or the Comptroller General if the amount of such claim does not exceed \$500 or by the Comptroller General for claims aggregating more than \$500. This act further provides that if the collection of the amount would be against equity and good conscience and not in the best interests of the United States, the claim may be waived by the Secretary concerned or the Comptroller General, but if in their opinion there exists in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other interested person, this authority may not be exercised.

The Standards for Waiver, 4 C.F.R. 91.5(c), promulgated in implementation of the act provide in pertinent part that any significant unexplained increase in pay or allowances, which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of the appropriate officials.

In a report to us pursuant to our request, the Marine Corps indicates that the allotment payments for the period May through September 1970 were mailed to the member's wife in Naples, Italy where she and Corporal Amedeo resided. The Marine Corps report expresses the opinion Corporal Amedeo knew or should have known that the appropriate deductions were not being made from his pay. In support of this it is stated that during the critical period surrounding the allotment transaction a net monthly increase in his pay of \$80 occurred. While during this same period it is reported that the enlisted man received an increase of \$24 in his monthly basic pay (difference between a corporal with over 3 years' service and over 4 years' service), however, the Marine Corps reports that the actual increase of \$80 a month over and above his regular entitlements was such a significant increase of pay and allowances that a prudent person should have noticed the error, thus leading to a sincere effort on his part to have the matter clarified.

The Marine Corps reports that Corporal Amedeo alleged to a Member of Congress that he spoke with finance personnel concerning the matter and identified two individuals. One of the individuals, who was a disbursing clerk in the Navy Disbursing Office, Naples, Italy, during the period, was interviewed by the Marine Corps and he stated that he did not recall anything unusual about Corporal Amedeo's pay account.

He also stated he did not recall discussing pay problems with him. The report also indicates the other individual named by Corporal Amedeo has been separated from the service and was not contacted.

It is the Marine Corps view that Corporal Amedeo knew or should have known that the erroneous allotment payments received by his wife represented money that did not belong to him or her, and that he had neither a legal nor moral right to keep and use such money. The Marine Corps recommends that this indebtedness (\$653) not be waived.

The report, however, continues that the balance of the indebtedness caused by administrative errors, may be considered for waiver since during the periods of the overpayments many transactions occurred in his pay which could easily have led to his being unaware of the overpayments. We are in accord with these recommendations.

Therefore, under the authority of 10 U.S.C. 2774, we hereby waive the claim of the United States against Corporal Amedeo in the amount of \$289.20. However, waiver of the amount of \$653 representing the overpayments of allotments is hereby denied, since it appears that Corporal Amedeo was not without fault in accepting these payments.

Corporal Amedeo's indebtedness was initially established as \$942.20 and then reduced by a credit of \$46.08 to \$896.12. However, since we have waived \$289.20 of the indebtedness, it is our view that the credit of \$46.08 may be applied to that portion of the indebtedness for which waiver was denied under 10 U.S.C. 2774. Thus, a balance of \$606.92 remains due the United States.

We do not view with favor legislation such as H.R. 1715 which grants preferential treatment to an individual over others similarly situated, especially when it appears that a portion of the indebtedness was caused to some extent by his own fault.

If H.R. 1715 is to receive favorable consideration we suggest that the amount in line 5 of the bill be changed to \$606.92 since the remaining portion of the claim has been waived under the provisions of 10 U.S.C. 2774.

Sincerely yours,

PAUL G. DEMBLING,
*Acting Comptroller General
of the United States.*

○

CPL. PAUL C. AMEDEO

DECEMBER 17, 1974.—Ordered to be printed

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

REPORT

[To accompany H.R. 1715]

The Committee on the Judiciary, to which was referred the bill (H.R. 1715) for the relief of Cpl. Paul C. Amedo, U.S. Marine Corps Reserve, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Cpl. Paul C. Amedeo, U.S. Marine Corps Reserve of Binghamton, N.Y., of liability in the amount of \$606.92, representing the amount due to the United States as a result of certain overpayments of pay and allowances received by him during the period beginning April 20, 1966, and ending October 19, 1970, while he was on active duty in the U.S. Marine Corps.

STATEMENT

The facts of this case, as contained in House Report 93-886, are as follows:

Corp. Paul C. Amedeo came on active duty with the Marine Corps on April 20, 1966, and was released from active duty on October 19, 1970. As is outlined in the Navy Department report, subsequent to his release, an examination of his pay account was conducted, and it was found that he had been overpaid \$896.12. This indebtedness resulted from accounting and disbursing errors pertaining to Corporal Amedeo's leave time, dependent's allotment, and longevity credit.

On July 5, 1973, the committee received a new report from the General Accounting Office which stated the indebtedness had been reduced from \$896.12 to \$606.92 due to a waiver of apportionment of the indebtedness. This is the amount stated in the committee amendment.

During his 41½ years service, Corporal Amedeo earned 136 days leave. He used 131 days leave. He was entitled to settlement for 5 days unused leave at the time of his release from active duty. However, because a 10-day period of leave had not been recorded on his record, he was erroneously paid for 15 days unused leave. The resulting adjustment to his pay account caused an indebtedness of \$117.20. It was also determined that an increase in basic pay for longevity purposes had been erroneously credited retroactively to his account. That adjustment added another \$170 to his indebtedness.

On March 20, 1970, Corporal Amedeo was in grade E-4 and had just completed 4 years' service. Prior to March 21, 1970, he was entitled to quarters allowance in the amount of \$90.60, upon maintaining a class "Q" allotment in the amount of \$130.60, in favor of his dependents.

Under the provision of section 403 of title 37, United States Code, he became eligible for basic allowance for quarters as a member with dependents, if Government quarters were not available for him and his dependents at his permanent duty station commencing March 21, 1970, and he was no longer required to maintain a class "Q" allotment. The record indicates that the allotment deductions from his pay were discontinued commencing May 1970. The Allotment Division, however, failed to receive notice of the termination of the allotment and it sent five checks in the amount of \$130.60 to the member's wife from May through September 1970, resulting in overpayment of \$653.

The General Accounting Office stated that the corporal's pay record closed July 31, 1966, showed the amount unpaid to be carried forward as \$24.10. However, the amount actually brought forward and credited on a subsequent pay record was \$26.10, resulting in an overpayment of \$2.

Payments of \$37.92, representing leave rations for the period July 23 through August 11, 1966, and from November 20 through November 30, 1966, had not been paid. Also, \$8.16 had been incorrectly withheld for FICA tax on the pay record closed October 19, 1970. These underpayments totaled \$46.08 and when subtracted from the total overpayments of \$942.20 result in a net indebtedness to the United States of \$896.12, the amount originally stated in the bill.

The General Accounting Office considered whether the indebtedness of Corporal Amedeo should be waived under the provisions of the act of October 2, 1972, Public Law 92-453, 86 Stat. 758, 10 U.S.C. 2774, and the Standards for Waiver promulgated in implementation thereof.

The General Accounting Office stated that Standards for Waiver, 4 C.F.R. 91.5 (c), promulgated in implementation of the act provide in pertinent part that any significant unex-

plained increase in pay or allowances, which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of the appropriate officials.

The General Accounting Office requested a report from the Commandant of the Marine Corps as to the propriety of waiving the indebtedness. In its report to the General Accounting Office, the Marine Corps stated that the allotment payments from May through September 1970 were mailed to the member's wife in Naples, Italy where she and Corporal Amedeo resided. The Marine Corps concluded that Corporal Amedeo knew or should have known that the appropriate deductions were not being made from his pay, and also stated that during the critical period surrounding the allotment transaction a net monthly increase in his pay of \$80 occurred. While stating that during this same period Corporal Amedeo was entitled to an increase of \$24 in his monthly basic pay (difference between a corporal with over 3 years service and over 4 years service). However, the Marine Corps took the position that the actual increase of \$80 a month over and above his regular entitlements was such a significant increase of pay and allowances that a prudent person should have noticed the error and should have prompted a sincere effort on his part to have the matter clarified.

The Marine Corps reported that Corporal Amedeo had stated that he spoke with finance personnel concerning the matter and identified two individuals. One of the individuals, who was a disbursing clerk in the Navy Disbursing Office, Naples, Italy, during the period, was interviewed by the Marine Corps and he stated that he did not recall anything unusual about Corporal Amedeo's pay account. He also stated he did not recall discussing pay problems with him. The report also indicates the other individual named by Corporal Amedeo has been separated from the service and was not contacted. On the basis of those facts, the Marine Corps recommended that this indebtedness (\$653) not be waived. The Navy took the same position in its report on an earlier bill.

The Marine Corps recommended that the balance of the indebtedness caused by administrative errors be considered for waiver since during the periods of the overpayments many transactions occurred in his pay which could easily have led to his being unaware of the overpayments. As has been noted, the General Accounting Office waived the claim of the United States against Corporal Amedeo in the amount of \$289.20.

The General Accounting Office has explained that Corporal Amedeo's indebtedness was initially established as \$942.20 and then reduced by a credit of \$46.08 to \$896.12. However, since that office has waived \$289.20 of the indebtedness, it is its view that the credit of \$46.08 may be applied to that portion of the indebtedness for which waiver was denied under

10 U.S.C. 2774. Thus, a balance of \$606.92 remains due the United States.

As has been outlined above, this portion of Corporal Amedeo's indebtedness resulted from failure of the Marine Corps to make deductions from his pay for the allotments to his wife. The Navy states that he requested that his allotment be terminated so that an increase in his pay on May 15, 1970, was to be expected. However, receipt by his wife of an allotment check after May 1970 is contended by the Navy to be notice that he was being overpaid. Acceptance of allotment payments was taken as the basis for a presumption against good faith. On this basis, the Navy has questioned relief in connection with the overpayment as does the General Accounting Office.

However, the committee feels that the entire situation regarding pay was confused to the degree that it can be understood how this serviceman did not have actual knowledge of the overpayment and is entitled to relief. This is borne out by the fact that partial relief has been granted him. The explanation of the various overpayments and underpayments is an involved one, and it does indicate the problem faced by this Marine corporal. The Navy has noted that his pay was in a state of fluctuation at the time he was given retroactive credit of basic pay and concedes that it is conceivable he thought he was entitled to the credits. The committee feels the entire history of the matter is such that it is understandable that he did not recognize that he was being overpaid in his final 5 months of active duty.

On the basis of the facts and circumstances outlined above, the committee has concluded that Corporal Amedeo should be relieved of the remaining indebtedness stated in the amended bill. It is recommended that the amended bill be considered favorably.

The committee has been advised that an attorney has rendered services in connection with this matter. Therefore, the bill carries the customary limitation on attorney's fees.

In agreement with the views of the House Judiciary Committee, this committee recommends that the bill be favorably considered.

Attached to and made a part of this report are the agency reports.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., April 11, 1972.

HON. EMANUEL CELLER,
*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. 11715, a bill "For the relief of Corporal Paul C. Amedeo, U.S. Marine Corps Reserve."

This bill would relieve Corporal Amedeo of liability to repay to the United States the amount of \$896.12 which is an amount "received by him during the period beginning April 20, 1966, and ending October 19, 1970, while he was on duty in the U.S. Marine Corps."

The records of this Department reveal that Corporal Amedeo came on active duty on April 20, 1966, and was released from active duty on October 19, 1970. Subsequent to his release, an examination of his pay account was conducted, and it was found that he had been overpaid \$896.12. This indebtedness resulted from accounting and dispersing errors pertaining to Corporal Amedeo's leave time, dependent's allotment, and longevity credit.

During his 4½ years service, Corporal Amedeo earned 136 days leave. He used 131 days leave. He was entitled to settlement for 5 days unused leave at the time of his release from active duty. However, because a 10-day period of leave had not been recorded on his record, he was erroneously paid for 15 days unused leave. The resulting adjustment to his pay account caused an indebtedness of \$117.20. It was also determined that an increase in basic pay for longevity purposes had been erroneously credited retroactively to his account. That adjustment added another \$163.84 to his indebtedness.

A member in pay grade E-4 with 4 or less years service is required to allot a portion of his pay to his dependents in order to qualify for credit for basic allowance for quarters through the medium of a class Q allotment. He must terminate his class Q allotment when he completes 4 years of service. If he desires to continue to allot part of his pay to his dependents, he may establish a class D allotment. To conform to the foregoing requirements, upon completion of 4 years service in March 1970, Corporal Amedeo requested that his \$130.60 per month class Q allotment be stopped after April, 1970. There is no record that he requested that a class D allotment be registered. Although deductions were discontinued on his pay record, allotment payments continued through September 1970. This resulted in an overpayment of \$653.00.

In addition to the overpayments discovered during the examination of Corporal Amedeo's pay account, it was found that his account had not been credited leave rations in the amount of \$37.92. That credit served to reduce his indebtedness to the United States to \$896.12.

The largest portion of Corporal Amedeo's indebtedness resulted from failure to make deductions from his pay for the allotments to his wife. Since he requested that the allotment be terminated, the increase that he received in his pay on May 15, 1970, was to be expected. However, when his wife, who was residing with him, received an allotment check for May 1970, he should have known that he was being overpaid. His continued acceptance of those overpayments, apparently without bringing the matter to the attention of proper authorities, establishes a presumption of lack of good faith on his part.

It is understandable that Corporal Amedeo could have lost count of the number of days leave he had taken over a 4½-year period. Likewise, since his pay was in a state of fluctuation at the time of the retroactive credit of basic pay, it is conceivable he thought he was entitled to the credit. Therefore, except for the allotment overpayments, he reasonably should not have been expected to detect any of the overpayments resulting from the erroneous accounting pertaining to his leave settlement and his credit in basic pay for longevity.

The Department of the Navy is opposed to the granting of relief to a member for overpayments where there is evidence that they were not received in good faith and therefore opposes the granting of relief for the allotment overpayments. However, the Department of the Navy is not opposed to the enactment of H.R. 11715 if the amount of the indebtedness to be forgiven is amended to \$281.04, which is the sum of the leave time (\$117.20) and the longevity (\$163.84) indebtedness.

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 on H.R. 11715 for the consideration of the committee.

For the Secretary of the Navy.

Sincerely yours,

LANDO W. ZECH, Jr.,
Captain, U.S. Navy,
Deputy Chief.

COMPTROLLER GENERAL OF THE UNITED STATES,
 Washington, D.C., July 5, 1973.

B-174593.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Further reference is made to your letter dated February 26, 1973, in which you request our views on H.R. 1715, 93d Congress, a bill for the relief of Corp. Paul C. Amedeo, U.S. Marine Corps Reserve.

The bill would relieve Corporal Amedeo of liability in the amount of \$896.12, representing overpayment of pay and allowances while he was on active duty from April 20, 1966, through October 1970. The bill states that the overpayments were the result of administrative errors which occurred without fault on the part of the member. The bill would also relieve any certifying or disbursing officer of the United States of liability to the extent of overpayments and would authorize and direct the Secretary of the Treasury to pay to Corporal Amedeo an amount equal to the sum paid by him with respect to the indebtedness specified.

On January 5, 1972, B-174593, we furnished your committee with a report on an identical bill, H.R. 11715, 92d Congress. In our report of January 5, 1972, we said that Corporal Amedeo enlisted in the Marine Corps on March 21, 1966, and reported for active duty on April 20, 1966. He was separated from the Marine Corps on October 19, 1970.

On December 28, 1970, an attorney acting on behalf of Corporal Amedeo, requested from the Marine Corps Finance Center, Kansas City, Mo., information whether the member was in receipt of basic allowance for quarters on account of his infant daughter born March 15, 1970. By letter dated July 19, 1971, the Finance Center advised Mr. Amedeo that an examination of his pay account shows that he had been properly credited basic allowance for quarters during the period in-

volved, but it showed further that he had been overpaid various items of pay and allowances during his period of service.

On March 20, 1970, Corporal Amedeo was in grade E-4 and had just completed 4 years' service. Prior to March 21, 1970, he was entitled to quarters allowance in the amount of \$90.60, upon maintaining a class "Q" allotment in the amount of \$130.60, in favor of his dependents.

Under the provision of section 403 of title 37, United States Code, he became eligible for basic allowance for quarters as a member with dependents, if Government quarters were not available for him and his dependents at his permanent duty station commencing March 21, 1970, and he was no longer required to maintain a class "Q" allotment. The record indicates that the allotment deductions from his pay were discontinued commencing May 1970. The Allotment Division, however, failed to receive notice of the termination of the allotment and it continued to send checks in the amount of \$130.60 to the member's wife from May through September 1970, resulting in overpayments of \$653.

In the settlement of his unused leave upon discharge, it was discovered that he was overpaid 10 days' basic pay and allowances in the amount of \$117.20, for leave he had taken during the period October 8 through 17, 1966, but which had not been charged to his account.

A further overpayment occurred when the member was credited with \$170 as the difference in pay between E-8 with less than 2 years' service and E-3 with over 2 years' service for the period March 21 through June 30, 1968, on pay records for the period July to December 31, 1968. The pay record for the prior period (January through June 1968) shows that the member had already been credited basic pay as E-3 with over 2 years' service for the period March 21 through June 30, 1968, resulting in the \$170 overpayment.

Also, the member's pay record closed July 31, 1966, showed the amount unpaid to be carried forward as \$24.10. However, the amount actually brought forward and credited on a subsequent pay record was \$26.10, resulting in an overpayment of \$2.

Payments of \$37.92, representing leave rations for the period July 23 through August 11, 1966, and from November 20 through November 30, 1966, had not been paid. Also, \$8.16 had been incorrectly withheld for FICA tax on the pay record closed October 19, 1970. These underpayments totalled \$46.08 and when subtracted from the total overpayments of \$941.20 result in a net indebtedness to the United States of \$896.12.

As we informed you in our letter of April 19, 1973, we considered whether the indebtedness of Corporal Amedeo should be waived under the provisions of the act of October 2, 1972, Public Law 92-453, 86 Stat. 758, 10 U.S.C. 2774, and the Standards for Waiver promulgated in implementation thereof. Pursuant to the Standards we requested a report from the Commandant of the Marine Corps as to the propriety of waiving the indebtedness.

Under the provisions of the act of October 2, 1972, a claim of the United States against a person arising out of an erroneous payment of pay and allowances may be waived by the Secretary of the service concerned or the Comptroller General if the amount of such claim does not exceed \$500 or by the Comptroller General for claims aggregating more than \$500. This act further provides that if the collection of the

amount would be against equity and good conscience and not in the best interests of the United States, the claim may be waived by the Secretary concerned or the Comptroller General, but if in their opinion there exists in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other interested person, this authority may not be exercised.

The Standards for Waiver, 4 C.F.R. 91.5 (c), promulgated in implementation of the act provide in pertinent part that any significant unexplained increase in pay or allowances, which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of the appropriate officials.

In a report to us pursuant to our request, the Marine Corps indicates that the allotment payments for the period May through September 1970 were mailed to the member's wife in Naples, Italy where she and Corporal Amedeo resided. The Marine Corps report expresses the opinion Corporal Amedeo knew or should have known that the appropriate deductions were not being made from his pay. In support of this it is stated that during the critical period surrounding the allotment transaction a net monthly increase in his pay of \$80 occurred. While during this same period it is reported that the enlisted man received an increase of \$24 in his monthly basic pay (difference between a corporal with over 3 years' service and over 4 years' service), however, the Marine Corps reports that the actual increase of \$80 a month over and above his regular entitlements was such a significant increase of pay and allowances that a prudent person should have noticed the error, thus leading to a sincere effort on his part to have the matter clarified.

The Marine Corps reports that Corporal Amedeo alleged to a Member of Congress that he spoke with finance personnel concerning the matter and identified two individuals. One of the individuals, who was a disbursing clerk in the Navy Disbursing Office, Naples, Italy, during the period, was interviewed by the Marine Corps and he stated that he did not recall anything unusual about Corporal Amedeo's pay account.

He also stated he did not recall discussing pay problems with him. The report also indicates the other individual named by Corporal Amedeo has been separated from the service and was not contacted.

It is the Marine Corps view that Corporal Amedeo knew or should have known that the erroneous allotment payments received by his wife represented money that did not belong to him or her, and that he had neither a legal nor moral right to keep and use such money. The Marine Corps recommends that this indebtedness (\$653) not be waived.

The report, however, continues that the balance of the indebtedness caused by administrative errors, may be considered for waiver since during the periods of the overpayments many transactions occurred in his pay which could easily have led to his being unaware of the overpayments. We are in accord with these recommendations.

Therefore, under the authority of 10 U.S.C. 2774, we hereby waive the claim of the United States against Corporal Amedeo in the amount of \$289.20. However, waiver of the amount of \$653 representing the

overpayments of allotments is hereby denied, since it appears that Corporal Amedeo was not without fault in accepting these payments.

Corporal Amedeo's indebtedness was initially established as \$942.20 and then reduced by a credit of \$46.08 to \$896.12. However, since we have waived \$289.20 of the indebtedness, it is our view that the credit of \$46.08 may be applied to that portion of the indebtedness for which waiver was denied under 10 U.S.C. 2774. Thus, a balance of \$606.92 remains due the United States.

We do not view with favor legislation such as H.R. 1715 which grants preferential treatment to an individual over others similarly situated, especially when it appears that a portion of the indebtedness was caused to some extent by his own fault.

If H.R. 1715 is to receive favorable consideration we suggest that the amount in line 5 of the bill be changed to \$606.92 since the remaining portion of the claim has been waived under the provisions of 10 U.S.C. 2774.

Sincerely yours,

PAUL G. DEMBLING,
*Acting Comptroller General
of the United States.*

○

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 Corporal Paul C. Amedeo, United States Marine Corps Reserve.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Corporal Paul C. Amedeo, United States Marine Corps Reserve, of Binghamton, New York, is relieved of liability to the United States in the amount of \$606.92, representing the amount due to the United States as a result of certain overpayments of pay and allowances received by him during the period beginning April 20, 1966, and ending October 19, 1970, while he was on active duty in the United States Marine Corps. The overpayments were the result of administrative errors which occurred without fault on the part of Corporal Paul C. Amedeo. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for the amount for which liability is relieved by this section.

SEC. 2. (a) The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Corporal Paul C. Amedeo an amount equal to the aggregate of any amounts paid by him to the United States with respect to the indebtedness to the United States referred to in the first section of this Act.

(b) No part of the amount appropriated in subsection (a) of this section in excess of 10 per centum thereof 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 subsection 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.*