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8/6/76

APPROVED
AUG 6 - 1976

ACTION

THE WHITE HOUSE
WASHINGTON
August 4, 1976

Last Day: August 10

Posted
8/9/76

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON ✓
SUBJECT: H.R. 1558 - Relief of Dr. Gernot Winkler

Archives
8/9/76

Attached for your consideration is H.R. 1558, sponsored by Representative Gude.

The enrolled bill would relieve Dr. Gernot Winkler of liability to the United States of \$3,908.90 for expenses incurred in his transfer from one duty station to another.

A discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

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

RECOMMENDATION

That you sign H.R. 1558 at Tab B.





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

AUG 5 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 1558 - Relief of Dr. Gernot Winkler
Sponsor - Rep. Gude (R) Maryland

Last Day for Action

August 10, 1976 - Tuesday

Purpose

To relieve Dr. Gernot Winkler of liability to the United States of \$3,908.90 for expenses incurred in his transfer from one duty station to another.

Agency Recommendations

Office of Management and Budget

Approval

General Services Administration
Department of the Navy

Approval
No objection

Discussion

The enrolled bill would relieve Doctor Gernot M. R. Winkler of a \$3,908.90 liability to the United States for real estate expenses incurred in the sale of his residence in New Jersey and the purchase of a new residence in Maryland.

Section 5724a (a)(4) of title 5, U.S.C. provides for the reimbursement of expenses incurred by certain Government employees in the sale of a residence at an old duty station and the purchase of a home at a new official station. However, Government regulations in effect from October 1966 permitted such reimbursement only if the settlement dates for the sale and purchase transactions were not later than one year after the date the employee reported for duty

at his new duty station. These regulations, which were set forth in Bureau of the Budget Circular A-56, also provided that an extension of the one year time limit could only be granted if settlement were necessarily delayed because of litigation.

In October 1966, Dr. Winkler was transferred from a position with the Army Department in New Jersey to a position with the Navy Department in Washington, D.C. Because he was having difficulty in selling his house in New Jersey, he inquired, when he reported for duty in Washington on October 24, 1966, whether he would have to move within a specific length of time. His Navy supervisor assured him he had two years within which to sell and still receive reimbursement.

In August 1967, Dr. Winkler first learned of the existence of Budget Circular A-56 and of the one year time limitation. He promptly requested and was granted an extension of that limitation by the Superintendent of the Naval Observatory. This extension, however, was erroneously granted because the delay in settlement, which ultimately occurred in December 1967, 14 months after the effective date of his transfer, was not caused by litigation. Thus, the subsequent reimbursement made to Dr. Winkler of \$3,908.90 in expenses he had incurred was also an erroneous action.

In its views letter, the Department of the Navy notes that although it is "generally reluctant to support legislation which would have the effect of waiving regulations for the benefit of an individual employee, Dr. Winkler in good faith relied to his detriment upon an erroneous extension by his Superintendent of the Naval Observatory of the time period for filing a reimbursement claim."

James M. Frey
Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 3

Time: 445pm

FOR ACTION:

~~_____~~ *Lynn May*
Max Friedersdorf
Ken Lazarus *ll*

cc (for information):

Jack Marsh -
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: August 4

Time: 500pm

SUBJECT:

H.R. 1558-relief of Dr. Gernot Winkler

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

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



July 30, 1976

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

Dear Mr. Lynn:

By letter of July 28, 1976, you requested the views of the General Services Administration (GSA) on enrolled bill H.R. 1558, "For the relief of Doctor Gernot M. R. Winkler."

GSA supports enactment of the enrolled bill.

Sincerely,

A handwritten signature in black ink that reads "Terry Chambers". The signature is fluid and cursive, with a long horizontal stroke at the end.

TERRY CHAMBERS
Deputy Administrator



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

July 30, 1976

Dear Mr. Lynn:

Your transmittal sheet dated July 28, 1976, enclosing a facsimile of an enrolled bill of Congress, H.R. 1558, a bill "For the relief of Dr. Gernot M. R. Winkler," and requesting comment of the Department of the Navy has been received.

The purpose of H.R. 1558 is to relieve Dr. Gernot M. R. Winkler of liability to the United States in the amount of \$3,908.90, "such sum representing certain real estate expenses incurred in the sale of his residence in Long Branch, New Jersey, and the purchase of a new residence in Potomac, Maryland, incident to his transfer for employment as Director of the Time Service Division of the United States Naval Observatory, Washington, D. C."

Dr. Winkler would normally have qualified under section 5724a(a)(4) of title 5, United States Code for the reimbursement of expenses incurred in the sale of a residence at his old duty station and purchase of a home at his new official station. As a condition for reimbursement, Bureau of the Budget Circular A-56, dated October 12, 1966, requires that the settlement dates for the sale and purchase transactions be not later than one year after the date on which the employee reported for duty at the new official station. No extension of time is authorized unless the settlement is necessarily delayed because of litigation. When Dr. Winkler reported to Washington on October 24, 1966, he inquired whether he would have to move within a specific length of time. He was informed that a two year period was considered reasonable. In August 1967, Dr. Winkler first heard unofficially about the existence of Bureau of the Budget Circular A-56 containing the one year limitation. Dr. Winkler immediately asked the Superintendent of the Observatory for an extension. The extension was granted orally by the Superintendent of the Observatory, and confirmed in writing by the successor Superintendent in October 1970. Because the prospective purchaser had difficulty meeting the contract terms, settlement was delayed until December 1967, 14 months after Dr. Winkler transferred to Washington. At that time Dr. Winkler erroneously was paid \$3,908.90 as reimbursement for the expenses he incurred.

The Department of the Navy proposed report supporting the enactment of H.R. 1558, subject to an amendment, was cleared by you on October 15, 1973. H.R. 1558 was subsequently passed with the amendment recommended by the Department of the Navy.

Although the Department of the Navy is generally reluctant to support legislation which would have the effect of waiving regulations for the benefit of an individual employee, Dr. Winkler in good faith relied to his detriment upon an erroneous extension by his Superintendent of the Naval Observatory of the time period for filing a reimbursement claim.



Accordingly, the Department of the Navy has no objection to the approval of the enrolled enactment, H.R. 1558.

Sincerely yours,

Bill

J. William Middendorf II
Secretary of the Navy

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20350

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 3

Time: 445pm

FOR ACTION: Lynn May
Max Friedersdorf
Ken Lazarus ✓

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: August 4

Time: 500pm

SUBJECT:

H.R. 1558-relief of Dr. Gernot Winkler

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

X For Your Comments

___ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

No objection -- Ken Lazarus 8/4/76

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

THE WHITE HOUSE
WASHINGTON

August 4, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.F.*
SUBJECT: H.R. 1558 - relief of Dr. Gernot Winkler

The Office of Legislative Affairs concurs with the agencies
that the bill be signed.

Attachments

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

To-
J. Conroy
8-3-76
4:00 p.m.



AUG 3 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 1558 - Relief of Dr. Gernot Winkler
Sponsor - Rep. Gude (R) Maryland

Last Day for Action

August 10, 1976 - Tuesday

Purpose

To relieve Dr. Gernot Winkler of liability to the United States of \$3,908.90 for expenses incurred in his transfer from one duty station to another.

Agency Recommendations

Office of Management and Budget	Approval
General Services Administration	Approval
Department of the Navy	No objection

Discussion

The enrolled bill would relieve Doctor Gernot M. R. Winkler of a \$3,908.90 liability to the United States for real estate expenses incurred in the sale of his residence in New Jersey and the purchase of a new residence in Maryland.

Section 5724a (a) (4) of title 5, U.S.C. provides for the reimbursement of expenses incurred by certain Government employees in the sale of a residence at an old duty station and the purchase of a home at a new official station. However, Government regulations in effect from October 1966 permitted such reimbursement only if the settlement dates for the sale and purchase transactions were not later than one year after the date the employee reported for duty



DR. GERNOT M. R. WINKLER

JULY 23, 1976.—Ordered to be printed

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

REPORT

[To accompany H.R. 1558]

The Committee on the Judiciary, to which was referred the bill (H.R. 1558), for the relief of Doctor Gernot M. R. Winkler, 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 Dr. Gernot M. R. Winkler of Potomac, Md., of liability to the United States of \$3,908.90, representing certain real estate expenses incurred in the sale of his residence in Long Branch, N.J., and the purchase of a new residence in Potomac, Md., incident to his transfer for employment as Director of the Time Service Division of the U.S. Naval Observatory, Washington, D.C. The bill would also authorize refund of any amounts paid or withheld from Dr. Winkler for the liability stated in the bill.

STATEMENT

The facts of the case are contained in the House Report as follows:

The Department of the Navy in its report to the committee states that it has no objection to the bill.

In its report the Department of the Navy stated that Dr. Winkler would normally have qualified for reimbursement for certain expenses under section 5724a(a)(4) of title 5, United States Code. This section provides for the reimbursement of the sale and purchase expenses incurred by certain Government employees when they sell their residence at their old duty station and purchase a home at a new official station. As a condition for reimbursement, Bureau of the Budget

Circular A-56, dated October 12, 1966, requires that the settlement dates for the sale and purchase transactions be not later than 1 year after the date on which the employee reported for duty at the new official station. No extension of time is authorized unless the settlement is necessarily delayed because of litigation. Dr. Winkler was transferred from a position with the Department of the Army in New Jersey to a position with the Department of the Navy in Washington, D.C., on October 24, 1966, and he left his family in New Jersey pending sale of his home. When he reported to Washington, he inquired whether he would have to move within a specific length of time. He was informed that a 2-year period was considered reasonable. He listed his New Jersey home for sale immediately, and pursued the matter actively because he did not wish to continue commuting to New Jersey on weekends and residing in temporary quarters in Washington. After several listings of the property, a sales contract was signed in August 1967. Because the prospective purchaser had difficulty meeting the contract terms, settlement was delayed until December 1967, 14 months after Dr. Winkler transferred to Washington. At that time Dr. Winkler erroneously was paid \$3,908.90 as reimbursement for the expenses he incurred. In August 1967, Dr. Winkler first heard unofficially about the existence of Bureau of the Budget Circular A-56 containing the 1-year limitation. Dr. Winkler immediately asked the Superintendent of the Observatory for an extension. The extension was granted orally by the Superintendent of the Observatory, and confirmed in writing by the successor Superintendent in October 1970.

In its report, the Department of the Navy noted the provision of the original bill providing for an additional payment of \$800 for a loan origination fee and suggested an amendment reducing that amount. The committee has considered this aspect of the bill and feels that the matter should be equitably settled by limiting relief to a release of the outstanding indebtedness of \$3,908.90. As is indicated in the departmental report, Dr. Winkler relied in good faith on the Superintendent's erroneous extension of the time period and the relief provided in the amended bill as reported by the committee would have the effect of placing the employee in the same position as he would have been in had that extension been effective. It is recommended that the amended bill be considered favorably.

H.R. 1558 was subsequently approved by the House of Representatives on October 7, 1975, and referred to the Senate Committee on the Judiciary. In agreement with the views of the House of Representatives, the Committee recommends that the bill be favorably considered.

Attached to and made a part of this report are the reports from the Department of the Navy and the Comptroller General's Office regarding H.R. 1558.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., April 21, 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. 1558, a bill "For the relief of Dr. Gernot M. R. Winkler."

H.R. 1558 would relieve Dr. Gernot M. R. Winkler of liability to the United States in the amount of \$3,908.90, "such sum representing certain real estate expenses incurred in the sale of his residence in Long Branch, N.J., and the purchase of a new residence in Potomac, Md., incident to his transfer for employment as Director of the Time Service Division of the U.S. Naval Observatory, Washington, D.C." Additionally, the bill would authorize the Secretary of the Treasury to pay Dr. Winkler the sum of \$800 in full settlement of his claim against the United States for reimbursement of a loan origination fee incurred in connection with the purchase of a new residence incident to his transfer to Washington, D.C.

The records of this Department indicate that Dr. Winkler would normally have qualified for reimbursement for certain expenses under section 5724(a)(4) of title 5, United States Code. This section provides for the reimbursement of the sale and purchase expenses incurred by certain Government employees when they sell their residence at their old duty station and purchase a home at a new official station. As a condition for reimbursement, Bureau of the Budget Circular A-56, dated October 12, 1966, requires that the settlement dates for the sale and purchase transactions be not later than one year after the date on which the employee reported for duty at the new official station. No extension of time is authorized unless the settlement is necessarily delayed because of litigation. Dr. Winkler was transferred from a position with the Department of the Army in New Jersey to a position with the Department of the Navy in Washington, D.C., on October 24, 1966, and he left his family in New Jersey pending sale of his home. When he reported to Washington, he inquired whether he would have to move within a specific length of time. He was informed that a 2-year period was considered reasonable. He listed his New Jersey home for sale immediately, and pursued the matter actively because he did not wish to continue commuting to New Jersey on weekends and residing in temporary quarters in Washington. After several listings of the property, a sales contract was signed in August 1967. Because the prospective purchaser had difficulty meeting the contract terms, settlement was delayed until December 1967, 14 months after Dr. Winkler transferred to Washington. At that time Dr. Winkler's erroneously was paid \$3,908.90 as reimbursement for the expenses he incurred. In August 1967, Dr. Winkler first heard unofficially about the existence of Bureau of the Budget Circular A-56 containing the 1-year limitation. Dr. Winkler immediately asked the Superintendent of the Observatory for an extension. The extension was granted orally by the Superintendent of the Observatory, and confirmed in writing by the successor Superintendent in October 1970.

In addition to the \$3,908.90 sale and purchase expenses, Dr. Winkler paid a loan origination fee of \$800 as part of the closing fees for his home in Maryland. Paragraph 4.2d of Bureau of the Budget Circular A-56, dated October 12, 1966, listed fees for loan applications, lender's loan origination, etc., as "reimbursable to the extent such costs are customarily paid by the seller at the location of the old official station or by the purchaser at the location of the new official station . . ." It is the opinion of this Department that, but for the fact that Dr. Winkler's claim did not meet the time requirement, he would have been entitled to reimbursement for \$400 of the \$800 loan origination fee. In 1967 buyers in the Potomac, Md., area were customarily being charged a 1 percent loan origination fee. Since Dr. Winkler's loan was for \$40,000, \$400 would have been reimbursable, but for the time delay. It is noted that BUBUD Circular A-56 was amended June 26, 1969, to prohibit reimbursement of loan origination fees.

Although the Department of the Navy is generally reluctant to support legislation which would have the effect of waiving regulations for the benefit of an individual employee, the Department would not object if Congress enacted H.R. 1558 with an amendment changing the \$800 figure in line 11, page 2, to \$400, since Dr. Winkler in good faith relied to his detriment upon the Superintendent's erroneous extension of the time period.

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,

E. H. WILLET,
Captain, U.S. Navy Deputy Chief.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 26, 1973.

B-169862.

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

DEAR MR. CHAIRMAN: In your letter of June 28, 1973, you requested our views on H.R. 8796, a bill "For the relief of Doctor Gernot M. R. Winkler."

Section 1 of the bill would relieve Doctor Winkler of Potomac, Md., of liability to the United States in the amount of \$3,908.90, representing certain real estate expenses incurred in the sale of his residence in Long Branch, N.J., and the purchase of a residence in Potomac, Md., incident to his transfer for employment as Director of the Time Service Division of the U.S. Naval Observatory, Washington, District of Columbia. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit would be given for amounts for which liability is relieved.

Section 2 of the bill would authorize and direct the Secretary of the Treasury to pay to Dr. Winkler—(1) an amount equal to the aggregate

of any amounts paid by him or withheld from sums otherwise due him with respect to the indebtedness set forth in section 1 of the bill and (2) the sum of \$800 in full settlement of his claim against the United States for reimbursement of a loan origination fee incurred in connection with the purchase of a new residence incident to transfer for employment as set forth in section 1 of the bill.

Dr. Winkler's case in part has been before our Office. A review of our records shows that he was transferred from Fort Monmouth, New Jersey, to Washington, D.C., as an employee of the Department of the Navy. He reported for duty in Washington on October 24, 1966. He was reimbursed \$3,908.90 by his administrative office for real estate expenses arising from the transfer—\$2,800 incident to the sale of his residence in New Jersey and \$1,109.90 incident to the purchase of a residence in Potomac, Maryland. Settlement dates on the two transactions were December 29 and December 8, 1967, respectively. For the reason discussed below none of the \$3,908.90 should have been paid to Dr. Winkler and we requested that steps be taken to recover the amount thus overpaid.

In order to qualify for reimbursement of real estate expenses incident to a transfer, the applicable regulations—section 4.1d of Bureau of the Budget Circular No. A-56, Revised, October 12, 1966—required that the settlement dates for sale and purchase transactions be not later than one year after the date the employee reported for duty at his new official station. The only exception at that time to the above requirement was that extensions of time could be authorized by the head of a department when settlement was necessarily delayed because of litigation. Apparently Dr. Winkler was not able to show that settlement on the sale of his old residence or the purchase of his new residence was in fact delayed by litigation.

We do not favor legislation which is preferential in nature, such as here, since there doubtless are many other employees in the Federal service who have been disallowed reimbursement of relocation expenses under similar circumstances. However, should the legislation receive favorable consideration, we recommend that the bill be amended as set forth below.

The administrative office in its original adjudication of the claim involving the purchase of the Maryland residence disallowed an item of \$800 identified as a processing fee of 2 percent of the original amount of the \$40,000 loan. The case came before our Office as a supplemental claim by Dr. Winkler for the \$800 item identified as a loan origination fee. Since the administrative report on the item states the customary charge within the area at the time to be 1 percent of the original amount of the loan, under 5 U.S.C. 5724a(a)(4) which provides that reimbursement for expenses incurred in the purchase or sale of a residence "may not exceed those customarily charged in the locality where the residence is located," only \$400 of the amount claimed could be allowed. Accordingly, we recommend that the item of \$800 proposed to be paid under section 2a(2) of the bill be changed to \$400.

A review of Dr. Winkler's case shows that he sold his residence at his former duty station for \$28,000 and he paid an 11 percent broker's fee or real estate commission amounting to \$3,080. He claimed reim-

bursement for and was paid \$2,800 or 10 percent of the sale price of a residence at the old official station. The record, however, shows that the commission on sale of a residence at the old official station involved was customarily 6 percent and under the limitation of 5 U.S.C. 5724 (a) (4) payment in excess of 6 percent or \$1,680 is not authorized. Accordingly, we suggest that the proposed relief in the total amount of \$3,908.90 be reduced by \$1,120 representing the difference between \$2,800, the broker's fee paid, and \$1,680, the allowable broker's fee.

Sincerely yours,

E. H. MORSE, Jr.
(For the Comptroller General
of the United States).

○

DR. GERNOT M. R. WINKLER

July 31, 1975.—Committed to the Committee of the Whole House and
ordered to be printed

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

REPORT

[To accompany H.R. 1558]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1558) for the relief of Doctor Gernot M. R. Winkler, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, line 6: After "Winkler", strike the dash.

Page 2: Strike all of lines 7 through 15, and insert:

an amount equal to the aggregate of the amounts paid by him, or withheld from sums otherwise due him, with respect to the indebtedness to the United States specified in the first section of this Act.

PURPOSE

The purpose of the proposed legislation, as amended, is to relieve Doctor Gernot M. R. Winkler of Potomac, Md., of liability to the United States of \$3,908.90, representing certain real estate expenses incurred in the sale of his residence in Long Branch, N.J., and the purchase of a new residence in Potomac, Md., incident to his transfer for employment as Director of the Time Service Division of the U.S. Naval Observatory, Washington, District of Columbia. The bill would also authorize refund of any amounts paid or withheld from Dr. Winkler for the liability stated in the bill.

STATEMENT

The Department of the Navy in its report to the committee states that it has no objection to the bill.

In its report the Department of the Navy stated that Dr. Winkler would normally have qualified for reimbursement for certain expenses under section 5724a (a) (4) of title 5, United States Code. This section provides for the reimbursement of the sale and purchase expenses incurred by certain Government employees when they sell their residence at their old duty station and purchase a home at a new official station. As a condition for reimbursement, Bureau of the Budget Circular A-56, dated October 12, 1966, requires that the settlement dates for the sale and purchase transactions be not later than 1 year after the date on which the employee reported for duty at the new official sta-

tion. No extension of time is authorized unless the settlement is necessarily delayed because of litigation. Dr. Winkler was transferred from a position with the Department of the Army in New Jersey to a position with the Department of the Navy in Washington, D.C., on October 24, 1966, and he left his family in New Jersey pending sale of his home. When he reported to Washington, he inquired whether he would have to move within a specific length of time. He was informed that a 2-year period was considered reasonable. He listed his New Jersey home for sale immediately, and pursued the matter actively because he did not wish to continue commuting to New Jersey on weekends and residing in temporary quarters in Washington. After several listings of the property, a sales contract was signed in August 1967. Because the prospective purchaser had difficulty meeting the contract terms, settlement was delayed until December 1967, 14 months after Dr. Winkler transferred to Washington. At that time Dr. Winkler erroneously was paid \$3,908.90 as reimbursement for the expenses he incurred. In August 1967, Dr. Winkler first heard unofficially about the existence of Bureau of the Budget Circular A-56 containing the 1-year limitation. Dr. Winkler immediately asked the Superintendent of the Observatory for an extension. The extension was granted orally by the Superintendent of the Observatory, and confirmed in writing by the successor Superintendent in October 1970.

In its report, the Department of the Navy noted the provision of the original bill providing for an additional payment of \$800 for a loan origination fee and suggested an amendment reducing that amount. The committee has considered this aspect of the bill and feels that the matter should be equitably settled by limiting relief to a release of the outstanding indebtedness of \$3,908.90. As is indicated in the departmental report, Dr. Winkler relied in good faith on the Superintendent's erroneous extension of the time period and the relief provided in the amended bill as reported by the committee would have the effect of placing the employee in the same position as he would have been in had that extension been effective. It is recommended that the amended bill be considered favorably.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., April 21, 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. 1558, a bill "For the relief of Dr. Gernot M. R. Winkler."

H.R. 1558 would relieve Dr. Gernot M. R. Winkler of liability to the United States in the amount of \$3,908.90, "such sum representing certain real estate expenses incurred in the sale of his residence in Long Branch, N.J., and the purchase of a new residence in Potomac, Md., incident to his transfer for employment as Director of the Time Service Division of the U.S. Naval Observatory, Washington, D.C." Additionally, the bill would authorize the Secretary of the Treasury to pay Dr. Winkler the sum of \$800 in full settlement of his claim against

the United States for reimbursement of a loan origination fee incurred in connection with the purchase of a new residence incident to his transfer to Washington, D.C.

The records of this Department indicate that Dr. Winkler would normally have qualified for reimbursement for certain expenses under section 5724a (a) (4) of title 5, United States Code. This section provides for the reimbursement of the sale and purchase expenses incurred by certain Government employees when they sell their residence at their old duty station and purchase a home at a new official station. As a condition for reimbursement, Bureau of the Budget Circular A-56, dated October 12, 1966, requires that the settlement dates for the sale and purchase transactions be not later than one year after the date on which the employee reported for duty at the new official station. No extension of time is authorized unless the settlement is necessarily delayed because of litigation. Dr. Winkler was transferred from a position with the Department of the Army in New Jersey to a position with the Department of the Navy in Washington, D.C., on October 24, 1966, and he left his family in New Jersey pending sale of his home. When he reported to Washington, he inquired whether he would have to move within a specific length of time. He was informed that a 2-year period was considered reasonable. He listed his New Jersey home for sale immediately, and pursued the matter actively because he did not wish to continue commuting to New Jersey on weekends and residing in temporary quarters in Washington. After several listings of the property, a sales contract was signed in August 1967. Because the prospective purchaser had difficulty meeting the contract terms, settlement was delayed until December 1967, 14 months after Dr. Winkler transferred to Washington. At that time Dr. Winkler erroneously was paid \$3,908.90 as reimbursement for the expenses he incurred. In August 1967, Dr. Winkler first heard unofficially about the existence of Bureau of the Budget Circular A-56 containing the 1-year limitation. Dr. Winkler immediately asked the Superintendent of the Observatory for an extension. The extension was granted orally by the Superintendent of the Observatory, and confirmed in writing by the successor Superintendent in October 1970.

In addition to the \$3,908.90 sale and purchase expenses, Dr. Winkler paid a loan origination fee of \$800 as part of the closing fees for his home in Maryland. Paragraph 4.2d of Bureau of the Budget Circular A-56, dated October 12, 1966, listed fees for loan applications, lender's loan origination, etc., as "reimbursable to the extent such costs are customarily paid by the seller at the location of the old official station or by the purchaser at the location of the new official station . . ." It is the opinion of this Department that, but for the fact that Dr. Winkler's claim did not meet the time requirement, he would have been entitled to reimbursement for \$400 of the \$800 loan origination fee. In 1967 buyers in the Potomac, Md., area were customarily being charged a 1 percent loan origination fee. Since Dr. Winkler's loan was for \$40,000, \$400 would have been reimbursable, but for the time delay. It is noted that BUBUD Circular A-56 was amended June 26, 1969, to prohibit reimbursement of loan origination fees.

Although the Department of the Navy is generally reluctant to support legislation which would have the effect of waiving regulations for

the benefit of an individual employee, the Department would not object if Congress enacted H.R. 1558 with an amendment changing the \$800 figure in line 11, page 2, to \$400, since Dr. Winkler in good faith relied to his detriment upon the Superintendent's erroneous extension of the time period.

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,

E. H. WILLETT,
Captain, U.S. Navy Deputy Chief.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 26, 1973.

B-169862.

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

DEAR MR. CHAIRMAN: In your letter of June 28, 1973, you requested our views on H.R. 8796, a bill "For the relief of Doctor Gernot M. R. Winkler."

Section 1 of the bill would relieve Doctor Winkler of Potomac, Md., of liability to the United States in the amount of \$3,908.90, representing certain real estate expenses incurred in the sale of his residence in Long Branch, N.J., and the purchase of a residence in Potomac, Md., incident to his transfer for employment as Director of the Time Service Division of the U.S. Naval Observatory, Washington, District of Columbia. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit would be given for amounts for which liability is relieved.

Section 2 of the bill would authorize and direct the Secretary of the Treasury to pay to Dr. Winkler—(1) an amount equal to the aggregate of any amounts paid by him or withheld from sums otherwise due him with respect to the indebtedness set forth in section 1 of the bill and (2) the sum of \$800 in full settlement of his claim against the United States for reimbursement of a loan origination fee incurred in connection with the purchase of a new residence incident to transfer for employment as set forth in section 1 of the bill.

Dr. Winkler's case in part has been before our Office. A review of our records shows that he was transferred from Fort Monmouth, New Jersey, to Washington, D.C., as an employee of the Department of the Navy. He reported for duty in Washington on October 24, 1966. He was reimbursed \$3,908.90 by his administrative office for real estate expenses arising from the transfer—\$2,800 incident to the sale of his residence in New Jersey and \$1,108.90 incident to the purchase of a residence in Potomac, Maryland. Settlement dates on the two transactions were December 29 and December 8, 1967, respectively. For the reason discussed below none of the \$3,908.90 should have been paid to Dr. Winkler and we requested that steps be taken to recover the amount thus overpaid.

In order to qualify for reimbursement of real estate expenses incident to a transfer, the applicable regulations—section 4.1d of Bureau

of the Budget Circular No. A-56, Revised, October 12, 1966—required that the settlement dates for sale and purchase transactions be not later than one year after the date the employee reported for duty at his new official station. The only exception at that time to the above requirement was that extensions of time could be authorized by the head of a department when settlement was necessarily delayed because of litigation. Apparently Dr. Winkler was not able to show that settlement on the sale of his old residence or the purchase of his new residence was in fact delayed by litigation.

We do not favor legislation which is preferential in nature, such as here, since there doubtless are many other employees in the Federal service who have been disallowed reimbursement of relocation expenses under similar circumstances. However, should the legislation receive favorable consideration, we recommend that the bill be amended as set forth below.

The administrative office in its original adjudication of the claim involving the purchase of the Maryland residence disallowed an item of \$800 identified as a processing fee of 2 percent of the original amount of the \$40,000 loan. The case came before our Office as a supplemental claim by Dr. Winkler for the \$800 item identified as a loan origination fee. Since the administrative report on the item states the customary charge within the area at the time to be 1 percent of the original amount of the loan, under 5 U.S.C. 5724(a)(4) which provides that reimbursement for expenses incurred in the purchase or sale of a residence "may not exceed those customarily charged in the locality where the residence is located," only \$400 of the amount claimed could be allowed. Accordingly, we recommend that the item of \$800 proposed to be paid under section 2a(2) of the bill be changed to \$400.

A review of Dr. Winkler's case shows that he sold his residence at his former duty station for \$28,000 and he paid an 11 percent broker's fee or real estate commission amounting to \$3,080. He claimed reimbursement for and was paid \$2,800 or 10 percent of the sale price of a residence at the old official station. The record, however, shows that the commission on sale of a residence at the old official station involved was customarily 6 percent and under the limitation of 5 U.S.C. 5724(a)(4) payment in excess of 6 percent or \$1,680 is not authorized. Accordingly, we suggest that the proposed relief in the total amount of \$3,908.90 be reduced by \$1,120 representing the difference between \$2,800, the broker's fee paid, and \$1,680, the allowable broker's fee.

Sincerely yours,

E. H. MORSE, Jr.,
(For the 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 Doctor Gernot M. R. Winkler.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Doctor Gernot M. R. Winkler of Potomac, Maryland, is relieved of liability to the United States in the amount of \$3,908.90 such sum representing certain real estate expenses incurred in the sale of his residence in Long Branch, New Jersey, and the purchase of a new residence in Potomac, Maryland, incident to his transfer for employment as Director of the Time Service Division of the United States Naval Observatory, Washington, District of Columbia. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for amounts 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 Doctor Gernot M. R. Winkler an amount equal to the aggregate of the amounts paid by him, or withheld from sums otherwise due him, with respect to the indebtedness to the United States specified 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.*