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Charles E. Goodell to 'Dear Senator,' 4 December 1974

Charles E. Goodell

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Dear Senator:

The Presidential Clemency Board has reached unanimous agreement on the administrative procedures and the substantive standards which it proposes to employ in determining its recommendations to the President on applications for clemency under the President's clemency program. These procedures and standards have been published in last Wednesday's Federal Register. It is the intent of the Board to publish a revised rulemaking after the end of the comment period on December 12.

The Board would be very grateful if you would examine the proposed rulemaking and give us your comments by December 13 on how it should be improved. It will be useful if your comments reflect both your own reactions to the proposed rulemaking and whatever comments you may have received from your constituents on the clemency program. Since a large number of people communicate with you who probably do not attempt to give their views directly to the Executive Branch, it will be particularly helpful to the Board to learn about the comments which have been given to you.

As you know, the Presidential Clemency Board deals only with those individuals who have received punishment for their offenses.

I appreciate your help.

Sincerely,

Charles E. Goodell
Chairman
This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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Title 2—Clemency

CHAPTER II—PRESIDENTIAL CLEMENCY BOARD

PART 201—ADMINISTRATIVE PROCEDURES

PART 202—SUBSTANTIVE STANDARDS OF THE PRESIDENTIAL CLEMENCY BOARD

Procedures and Standards

In order to accommodate new regulations being issued by the Presidential Clemency Board, the heading of Title 2 of the Code of Federal Regulations is changed to read: Title 2—Clemency. In addition, Chapter II, Presidential Clemency Board, is added, reading as set forth below.

This notice of rulemaking sets forth in Part 201 the administrative procedures and in Part 202 the substantive standards to be used by the Presidential Clemency Board (hereinafter "the Board") in accepting and processing applications from individuals subject to the jurisdiction of the Board and in the determination of its recommendations to the President concerning those individuals.

The Presidential Clemency Board has made every reasonable effort to assure to both applicants and those individuals who may be subject to the jurisdiction of any of the three parts of the Presidential Clemency Program every procedural consideration. Applicants will be sent notice concerning the procedures and standards used by the Board; their privacy will be respected in every way possible within the bounds of the law. All information concerning the applicant which is sought by the Board from governmental sources will be open to inspection by the applicant or his representative. The records and files concerning the applicant will be summarized by an attorney on the staff of the Board, and sent to the applicant for his amendment and correction. A sure process for the appeal of adverse determinations has been established. In the Board's discretion, the applicant or his representative may be allowed to present an oral statement to the Board prior to its determination of his case. Each applicant will have an opportunity to petition for reconsideration of the decision to recommend, grant, or deny executive clemency in his case.

Individuals who may be subject to the jurisdiction of the Department of Justice or the Departments of Defense or Transportation will be assisted in confidence in determining their status with respect to the clemency program.

Finally, it cannot be too often stated that an applicant may apply to the Clemency Board without risk. His application will be held in confidence, and he may withdraw his application at any time.

It is the intent of the Presidential Clemency Board to provide notice to applicants, and to maximize public certainty and predictability, about the substantive standards which the Board will apply in recommending to the President proposed dispositions of applications for executive clemency under Proclamation 4313 (published in the FEDERAL REGISTER on September 17, 1974, 39 FR 33293). It is further the intent of the Board to ensure equity and consistency in the way that similarly situated applicants are treated.

The Presidential Clemency Board therefore herein publishes the substantive standards to which it has committed itself in the implementation of the clemency program. Applicants for executive clemency under the program are invited to submit evidence suggesting that one or more of the mitigating circumstances listed below apply to their case, or that one or more of the aggravating circumstances listed do not apply to their case. Applicants are also invited to submit letters from third parties containing such evidence, or to ask other people to write directly to the Board on their behalf.

It is contemplated that the Board will weigh the factors listed below in each individual case. It is not contemplated, however, that any one of these factors will necessarily be dispositive of a particular case, and the Board reserves the option of considering other factors in mitigation not listed herein to be dispositive of a particular case.

Actions taken and determinations made by the Presidential Clemency Board and members of the Board's staff prior to the issuance of these regulations have been in substantial compliance with the provisions thereof.

Because of the short duration of the Presidential clemency program, and for other good cause appearing, it is hereby determined that publication of this chapter in accordance with normal rule-making procedure is impracticable and that good cause exists for making these regulations effective in less than thirty (30) days. Notwithstanding the abbreviated rulemaking procedure, however, comments and views regarding the proposed chapter are solicited, and may be filed to be received no later than 5 p.m. d.s.t., December 12, 1974. Comments should be submitted in five (5) copies, and directed to:

Office of the General Counsel
Presidential Clemency Board
The White House
Washington, D.C. 20500

(Executive Order 11803, 39 FR 33297)

In consideration of the foregoing, this chapter will become effective immediately.

Issued in Washington, D.C., on November 25, 1974.

CHARLES E. GOODELL, Chairman, Presidential Clemency Board.

1. Part 201 is added to read as follows:

Appendix A

Appendix B

AUTHORITY: E.O. 11803, 39 FR 33297.

§ 201.1 Purpose and scope.

This subpart contains the regulations of the Presidential Clemency Board, created pursuant to Executive Order 11803 (39 FR 33297) concerning the procedures by which the Board will accept and process applications from individuals who avail themselves of the opportunity to come within its jurisdiction. Certain other matters are also treated, such as the assistance to be given to individuals requesting determinations of jurisdiction, or requesting information respecting those parts of the Presidential Clemency Program which are administered by the Department of Defense and the Department of Justice under Presidential Proclamation 4313 (39 FR 33293).

§ 201.2 General definitions.

"Action attorney" means an attorney on the staff of the Board who is assigned an applicant's case and is thereafter responsible for all information-gathering and communications concerning that
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applicants' case from the applicant's initial filing until final disposition has been made by the Board.

"Applicant" means an individual who is subject to the jurisdiction of the Board, and who has submitted an initial filing.

"Board" means the Presidential Clemency Board as created by Executive Order 11803, or any successor agencies.

§ 201.3 Initial filing.

In order to comply with the requirements of Executive Order 11803 as to timely application for consideration by the Board, an individual must make an initial filing prior to January 31, 1976. The Board will consider sufficient as an initial filing any written communication received from an individual or his representative which requests consideration of the individual's specific case or which demonstrates an intention to request consideration. Oral initial filings will be considered sufficient if reduced to writing and received by the Board within thirty (30) calendar days of receipt.

§ 201.4 Application form.

(a) Upon receipt of an initial filing a member of the Board's staff will make a determination of probable jurisdiction. Applicants who are clearly beyond the Board's jurisdiction will be so notified in writing. An applicant who questions this adverse determination of probable jurisdiction should promptly write the General Counsel, Presidential Clemency Board, The White House, Washington, D.C. 20500, stating his reasons for question the determination. The General Counsel of the Board shall make the final determination of jurisdiction.

(b) An applicant who has been notified that probable jurisdiction does not lie in his case will be considered as having made a timely filing should the final decision be that the Board has jurisdiction over his case.

(c) Applicants who are within the probable jurisdiction of the Board will be sent by mail:

(1) An application form (see appendix "A");

(2) Information about the Presidential Clemency program and instructions for the preparation of the application form (see appendix "B");

(3) A statement describing the Board's procedures and method of determining cases.

(d) The applicant will be urged to return the completed application form to the Board as soon as possible. In the absence of extenuating circumstances, completed application forms must be received by the Board within thirty (30) calendar days of receipt.

§ 201.5 Assignment of Action Attorney and case number, and determination of jurisdiction.

(a) Upon receipt of all necessary information, the applicant's case will be assigned to an Action Attorney, who will make a preliminary determination of the Board's jurisdiction. If the Action Attorney determines that the Board has jurisdiction over the applicant, a file for the applicant's case will be opened and a case number for that file will be assigned. Without any delay, the Action Attorney shall request from all appropriate government agencies the relevant records and files pertaining to the applicant's case.

(b) In normal cases, the relevant records and files will include for civilian cases the applicant's files from the Selective Service System and the Bureau of Prisons, and in the case of the applicant's military personnel records, military clemency folder, and record of court martial. Applicants may request that the Board consider other pertinent files, but such applicant-requested files will not be made available to the applicant and his representative as of right.

(c) Where the initial filing contains adequate information, Board staff may assign a case number and request records and files prior to receipt of the completed application form.

(d) If the Action Attorney determines that probable jurisdiction does not exist, he will promptly notify the applicant in writing, stating the reasons therefor.

(e) An applicant who questions this adverse determination of jurisdiction should write the General Counsel of the Board in accordance with the provisions of § 201.4(a).

§ 201.6 Initial summary.

(a) Upon receipt of the necessary records and files, the Action Attorney will prepare an initial summary of the applicant's case. The files, records, and any additional sources used in preparing the initial summary will be noted thereupon; no material not so noted will be used in its preparation. The initial summary shall include the name and business telephone number of the Action Attorney who prepared it, and who may be contacted by the applicant or his representative.

(b) The initial summary shall be sent by certified mail to the applicant. The summary will be accompanied by an instruction sheet describing by which the summary was prepared, and by a copy of the guidelines that have been adopted by the Board for the determination of cases. Applicants will be requested to review the initial summary for accuracy and completeness, and advise of their right to submit additional sworn or unsworn material. Such additional material may be in any length, but should be accompanied by a summary of not more than three (3) single-spaced, typewritten, letter-sized pages in length. If a summary of suitable length is not submitted with the additional material, the Action Attorney will prepare such a summary.

(c) At any time after the mailing of the initial summary, the applicant's complete Board file, and the files from which the summary was prepared, may be examined at the offices of the Board by the applicant, his representative, or by each member of the Board. An applicant or his representative may submit evidence of inaccurate, incomplete, or misleading information in the complete Board file.

(d) An applicant's case will be considered ready for consideration by the Board not earlier than twenty (20) days after the initial summary has been received by the applicant. Material which amends or supplements the applicant's initial summary must therefore be received by the Board within twenty (20) days to insure that it will be considered. Unless within that period the applicant requests and receives permission for an extension, permission for late filing shall be liberally granted, if the request is received prior to Board action.

§ 201.7 Final summary.

(a) Upon receipt of the applicant's response to the initial summary, the Action Attorney will note such amendments, supplements, or corrections on the initial summary as are indicated by the applicant.

(b) The final summary shall then consist of the initial summary with appropriate amendments, and the summary of the materials submitted by the applicant as described in § 201.6(b).

§ 201.8 Consideration before the Board.

(a) At a regularly scheduled meeting of the Presidential Clemency Board, a quorum of at least five (5) members being present, the Board will consider the applicant's case.

(b) The Action Attorney will present to the Board, a brief statement of the final summary of the applicant's case. The Action Attorney will then stand ready to answer from the complete file any questions from the members of the Board concerning the applicant's case.

(c) At the Board's discretion, it may permit an applicant or his representative to present before the Board an oral statement, not to exceed ten (10) minutes in length. Neither applicant nor his representative may be present when the Board begins deliberations, but should remain available for further consultation immediately thereafter for a period not to exceed one hour.

(d) After due deliberation, the Board will decide upon its recommendation to the President concerning the applicant's case, stating the reasons for its recommendation.

§ 201.9 Recommendations to the President.

(a) At appropriate intervals, the Chairman of the Board will submit to the President certain master warrants listing the names of applicants recommended for executive clemency, and a list of the names of applicants considered by the Board but not recommended for clemency. The Chairman will also submit such terms and conditions for executive clemency if any, that have been recommended in each case by the Board.

(b) Following action by the President, the Board will send notice of such action in writing to all persons whose names were submitted to the President. Persons not receiving executive clemency will be so notified.

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§ 201.10 Reconsideration.
(a) An applicant may petition the Board for reconsideration of his grant or denial of executive clemency, or of the terms and conditions thereof.
(b) Such petitions for reconsideration, including any supplemental material, must be received by the Board within thirty (30) days of the mailing of the notification of F. 231-19(b).
(c) At a regularly scheduled Board meeting, a quorum being present, the Board will consider the applicant's petition for reconsideration.
(d) In appropriate cases, the Board may permit an applicant or his representative to present before the Board an oral statement not to exceed fifteen (15) minutes in length.
(e) After due deliberation, the Board may either:
   (1) As to any person granted executive clemency, let stand or mitigate the terms and conditions, upon which executive clemency was granted;
   (2) As to any person denied executive clemency, recommend to the President that he grant executive clemency in accordance with such terms and conditions as may be appropriate; or
   (3) As to any person denied executive clemency, again not recommend the applicant for executive clemency.

§ 201.11 Referral to appropriate agencies.

After the expiration of the period allowed for petitions for reconsideration, the Chairman of the Board shall forward for further action to the Secretaries of the Army, Navy, and Air Force, the Secretary of the Department of Transportation, the Director of the Selective Service System, and the Attorney General, as appropriate, the President's determination as to each recipient of executive clemency.

§ 201.12 Confidentiality of communications.

(a) The Board has determined that it will take all steps possible to protect the privacy of applicants and potential applicants to the Presidential clemency program. No personal information concerning an applicant or potential applicant and related to the Presidential clemency program will be made known to any agency, organization, or individual, whether public or private, unless such disclosure is necessary for the normal and proper functioning of the Presidential Clemency Board. However, if the Board, in its discretion, determines that the existence of a violation of law (other than an offense subject to the Presidential clemency program) will be of necessity be forwarded to the appropriate authorities.

(b) In order to have his case considered by the Board, an applicant need submit only information sufficient for the determination of jurisdiction and for the retrieval of necessary official records and files. The application form will therefore require the applicant's name; date of birth; selective service number; military service and service number, if applicable; information concerning the draft evasion offenses, or absence-related military offenses and the disposition thereof; and the mailing address of either the applicant or his representative. If the applicant submits evidence, as part of his initial filing, the completion of the application form itself is not necessary.

§ 201.13 Representation before the Board.

(a) Although an applicant may bring his case before the Board without a representative or legal counsel, each applicant is entitled to representation and will be encouraged to seek legal counsel experienced in military or selective service law. Upon request, Board staff will attempt to refer an applicant to a skilled volunteer representative.

(b) An applicant who does not wish to file his application in person may have his representative do so on his behalf.

§ 201.14 Requests for information about the clemency program.

(a) Upon receipt by the Board of an oral or written request for information or consideration concerning an individual who is clearly beyond the jurisdiction of the Board, a member of the Board's staff shall inform the individual:
   (1) That jurisdiction does not lie;
   (2) Whether jurisdiction may lie in the event the individual is convicted of an offense subject to the President's grant of executive clemency;
   (3) That in the event the individual may be appropriate.
(b) An applicant who does not wish to contact the Board may apply to the Department of Justice, or the Department of Defense.

APPENDIX B

INSTRUCTIONS FOR APPLICATION FOR CLEMENCY

On September 16, 1974 the President announced a program of clemency. Depending on your case, you may apply to the Presidential Clemency Board, the Department of Justice, or the Department of Defense. You may be eligible for clemency by the Presidential Clemency Board if you have been convicted of a draft evasion offense such as failure to register or register on time; failure to keep the local board informed of current address; failure to report for or submit to pre-induction or induction examination; failure to report for or submit to or complete service in the period from August 4, 1964 to March 28, 1973; or if you have received an undesirable, bad conduct, or dishonorable discharge for desertion, absence without leave, or missing movement, and for offenses directly related, between August 4, 1964 and March 28, 1973.

If you are now absent from military service or have a charge against you for a Selective Service violation, you may be eligible for clemency if you have been convicted or received a discharge, you may still be eligible for clemency under another part of the President's program. If you have any questions, please call the Board and we will try to answer your questions.
§ 202.2 Board decision on whether or not to grant executive clemency.

(a) The first decision which the Board will reach, with respect to an application before it, is whether or not it will recommend to the President that the applicant be granted executive clemency. In reaching that decision, the Board will take notice of the presence of any of the aggravating circumstances listed in § 202.3, and will take notice of whether such aggravating circumstances are balanced by the presence of any of the mitigating circumstances listed in § 202.4.

(b) Unless there are aggravating circumstances not balanced by mitigating circumstances, the Board will recommend that the President grant executive clemency to each applicant.

§ 202.3 Aggravating circumstances.

(a) Presence of any of the aggravating circumstances listed herein either will disqualify an individual for executive clemency or will cause the Board to consider the applicant as a candidate for discretionary executive clemency as stated in the President's Proclamation establishing the Board. The Board will then recommend to the President that the applicant be denied discretionary executive clemency unless such aggravating circumstances are conditioned upon a period of alternative service as determined under § 202.5.

(b) Aggravating circumstances of which the Board will take notice are:

1. Prior adult criminal convictions.
2. False statement by applicant to the President Clemency Board.
3. Use of force by applicant collaterally to AWOL, desertion, missing movement, or civilian draft evasion offense.
4. Desertion during combat.
5. Evidence that applicant committed the offense for obviously manipulative or selfish reasons.
6. Prior refusal to fulfill alternative service.
7. Prior violation of probation or parole requirements.

§ 202.4 Mitigating circumstances.

(a) Presence of any of the mitigating circumstances listed herein will be considered by the Board as cause for recommending that the President grant executive clemency to a particular applicant, and will in exceptional cases be further considered as cause for recommitting clemency conditioned upon a period of alternative service less than the applicant's "baseline period of alternative service," as determined under § 202.5.

(b) Mitigating circumstances of which the Board will take notice are:

1. Applicant's lack of sufficient education or ability to understand obligations, or remedies available, under the law.
2. Personal and family hardship either at the time of the offense or if the applicant were to perform alternative service.
3. Mental or physical illness or condition, either at the time of the offense or currently.
4. Employment or volunteer activities of service to the public since conviction or military discharge.

5. Service-connected disability, wounds in combat, or decorations for valor in combat.
6. Tours of service in the war zone.
7. Substantial evidence of personal or procedural unfairness in treatment of applicant.
8. Denial of conscientious objector status, of other claim for Selective Service exemption or deferment, or of a claim for hardship discharge, compassionate reassignment, emergency leave, or other remedy available under military law, on procedural, technical, or improper grounds, or on grounds which have subsequently been held unlawful by the judiciary.
9. Evidence that an applicant acted in conscience, and not for manipulative or selfish reasons.
10. Voluntary submission to authorities by applicant.

§ 202.5 Calculation of length of alternative service.

(a) Having reached a decision to recommend that the President grant alternative service, the Board will then condition clemency upon a specified period of alternative service and, if so, what length that period should be.

1. The starting point for calculation of length of alternative service will be 24 months.
2. That starting point will be reduced by those times the amount of time period served.
3. That starting point will be further reduced by the amount of prior alternative service performed, provided that a prescribed period of alternative service has been satisfactorily completed.
4. That starting point will be further reduced by the amount of time served on probation or parole, provided that a prescribed period of alternative service has been satisfactorily completed.
5. The remainder of those three subtractions will be the "baseline period of alternative service" applicable to a particular case before the Board.

(b) Provided, that the baseline period of alternative service shall not exceed a judge's sentence to imprisonment in any case. And provided further, that the baseline period of alternative service shall be, notwithstanding the remainder of the calculation above, not less than a minimum of three (3) months.

(c) In exceptional cases in which aggravating circumstances are present, the Board may consider such mitigating circumstances as cause for recommending clemency conditioned upon a period of alternative service less than the applicant's "baseline period of alternative service."