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APPROVED
MAY 29 1976

5/29/76

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: May 31

May 27, 1976

*Posted
6/1/76
to Archives
6/1/76*

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON

SUBJECT:

H.R. 2279 - For the relief of
Mrs. Louise G. Whalen

Attached for your consideration is H.R. 2279, sponsored by Representative Conte.

The enrolled bill authorizes payment of \$3,473 to Mrs. Louise G. Whalen in full satisfaction of her claims for death indemnity compensation she failed to receive from 1969 to 1973 because she was not given adequate notice of her right to claim such compensation.

Mrs. Whalen's claim arises from the death of a son killed in Vietnam in 1969. Although records indicate that a representative of the Army counselled Mrs. Whalen soon after her son's death with respect to compensation, it is not apparent whether she was advised that under existing law, benefits could be paid from the date of her son's death only if a claim was filed with the Veterans Administration within one year of such date. It was not until 1973 that the VA learned that Mrs. Whalen was not receiving compensation. H.R. 2279 would allow payment to Mrs. Whalen of the amount she would have received from 1969 to 1973 had she filed a timely claim for compensation.

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

The Veterans Administration recommends disapproval of H.R. 2279 because there is no legal requirement that notice be given regarding potential entitlement to indemnity compensation and there is no apparent reason why this case should be singled out for special legislative treatment.



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

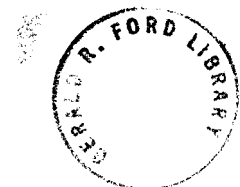
DECISION

Sign H.R. 2279 at Tab B.

Approve MC-1 Disapprove _____

Disapprove H.R. 2279 and prepare veto message

Approve _____ Disapprove _____





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

MAY 25 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2279 - For the relief
of Mrs. Louise G. Whalen
Sponsor - Rep. Conte (R) Massachusetts

Last Day for Action

May 31, 1976 - Monday

Purpose

Authorizes payment of \$3,473 to Mrs. Louise G. Whalen in full satisfaction of her claims for death indemnity compensation she failed to receive from 1969 to 1973 because she was not given adequate notice of her right to claim such compensation.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Army	No objection
Veterans Administration	Disapproval (Veto Message attached)

Discussion

Mrs. Louise G. Whalen is the widow of a World War I veteran. Five of her sons have been discharged honorably from military service. Another son, Donald, was killed in World War II. Her youngest son, Michael, was killed in action in South Vietnam in 1969 having returned to duty twice after being wounded. Michael was awarded the Distinguished Service Cross, the nation's second highest award,



posthumously for extraordinary acts of heroism.

Mrs. Whalen is 72 years old and suffers from Parkinson's Disease. Her monthly income of approximately \$300 consists of social security benefits, a widow's pension from the Veterans Administration and dependency and indemnity compensation (DIC) on account of the deaths of her two sons, also from the Veterans Administration.

Approximately one week after her son Michael was killed in 1969, an Army representative personally counselled Mrs. Whalen concerning her rights and benefits, including her eligibility for DIC. Available records do not indicate whether the counselor advised her that, under existing law, DIC benefits could be paid from the date of her son's death only if a claim was filed with the Veterans Administration within one year of such date. The counselor's report did note that, initially, Mrs. Whalen was reluctant to talk to him, but later she cooperated.

Within one month after Michael's death, the Veterans Administration sent Mrs. Whalen an application form for DIC. Apparently, however, she failed to complete and return the form. Not until 1973, when Mrs. Whalen requested that her records be transferred to a location closer to her home, did the Veterans Administration realize she was not receiving compensation for Michael's death. Upon receiving a second notice of her entitlement, Mrs. Whalen promptly filed a claim. Her claim was approved but, as a result of the one year statute of limitations noted above, no retroactive payment to the date of her son's death in 1969 could be made. H.R. 2279 would allow payment of \$3,473 to Mrs. Whalen, the amount she would have received from 1969 to 1973 had she filed a timely claim for compensation.

In recommending disapproval of H.R. 2279, the Veterans Administration's letter points out that there is no legal requirement that notice be given regarding potential entitlement to indemnity

compensation and further states:

"We fail to find any rationale in the committee reports to support approval of the bill and there is no factual basis for the statement in the text of the bill that 'she was not given adequate notice.' The circumstances have been carefully considered. There are many cases wherein timely applications for benefits are not filed. No reason is apparent why this case should be singled out for special legislative treatment authorizing the payment of benefits from an earlier date than the law permits in this and similar cases. To do so would be discriminatory and precedential. It is not believed that private bills of this nature should receive favorable consideration."

The Veterans Administration's report on H.R. 2279 to the House Judiciary Committee similarly opposed enactment of the bill.

In its report to the House Judiciary Committee on H.R. 2279, the Department of the Army stated:

"As noted above, Mrs. Whalen was counselled personally by an Army representative concerning her rights and benefits and the Veterans Administration records indicate that it sent her, on a timely basis, an application for 'DIC.' Ordinarily, in this factual situation, this Department would see no basis for relief as proposed in H.R. 2279.

"In this case, however, we cannot understand why she did not apply timely for 'DIC,' unless there were some extenuating circumstances which are not readily apparent from the available record. The counselling and the mailing of the application



all occurred within a short time of her son's death, a period in which she was undoubtedly distraught. Her age and her suffering from Parkinson's Disease may have been complicating factors. She may not have received the application form from the VA or may have been in no condition to comprehend its significance. A follow-up interview by the Army representative may well have been in order.

"Accordingly, if the Congress finds that the above circumstances apply in this case, and that relief should therefore be granted, this Department would not object."

The report of the House Judiciary Committee states:

"The Committee has concluded on the basis of the material in the Army report, and notwithstanding the objections of the Veterans Administration, that this case is an appropriate subject for legislative relief."

Normally, the Office of Management and Budget would object to the exemption from the statutory time limit embodied in H.R. 2279. In view of Mrs. Whalen's circumstances and the Congressional support for relief in this case, however, we do not believe disapproval of H.R. 2279, as the Veterans Administration recommends, would be appropriate. In this connection, we would also note that the delay in filing here was not prejudicial to the government from the standpoint of the customary protective purposes statutes of limitations are designed to serve.

James M. Frey
Assistant Director for
Legislative Reference

Enclosure





DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

20 MAY 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Washington, D.C. 20403

Dear Mr. Lynn:

This represents the views of the Department of the Army on enrolled enactment H.R. 2279, 94th Congress, "For the relief of Mrs. Louise G. Whalen."

The Department of the Army interposes no objection to approval of the enrolled enactment.

This act provides for the payment to Mrs. Louise Whalen the sum of \$3,473 in full satisfaction of her claims against the United States for death indemnity compensation in the period from February 1969 to November 1973 based upon the death of her son, Michael Whalen, in action in Vietnam in February 1969.

Extenuating circumstances favoring Mrs. Whalen's case support an exception to the statutory time limit for the late filing to her indemnity compensation claim.

Approval of the enactment will cost \$3,473.00.

Sincerely,

A handwritten signature in black ink that reads "Martin R. Hoffmann".

Martin R. Hoffmann
Secretary of the Army





VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420



May 21, 1976

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

Dear Mr. Lynn:

We are pleased to respond to the request for a report on the enrolled enactment of H. R. 2279, 94th Congress, "An Act For the relief of Mrs. Louise G. Whalen."

The bill proposes to pay Mrs. Louise G. Whalen the sum of \$3,473.00 in satisfaction of her claim for dependency and indemnity compensation from February 1969, the month of death of her son, Michael C. (VA No. XC 24 830 173), up to November 23, 1973, the date her application for this benefit was first received in the Veterans Administration. She is currently receiving monthly payments of \$44.32 on account of Michael's death, in addition to two other payments hereinafter mentioned.

The Veterans Administration, after clearance with your office, reported unfavorably on H. R. 2279 to the Committee on the Judiciary, House of Representatives, under date of November 26, 1975, too late for the report to be incorporated in the report of that committee (H. Rept. No. 94-520). However, incorporated in that committee report and also in the report of the Senate Committee on the Judiciary (S. Rept. No. 94-826) are reports made by the Veterans Administration on H. R. 15579, 93d Congress, a similar bill. One copy of each of the Congressional reports is enclosed for ready reference.

It should first be noted that the text of the bill appears factually incorrect in stating that Mrs. Whalen



The Honorable James T. Lynn

was not given adequate notice of her right to claim dependency and indemnity compensation. Mrs. Whalen's son, Michael, was killed in Vietnam on February 28, 1969. Department of Defense Form 1300, Report of Casualty, was sent to the Veterans Administration by the Department of the Army and received in the Boston, Massachusetts Regional Office on March 20, 1969. On March 25, 1969, the Boston office mailed Veterans Administration Form 21-535, Application for Dependency and Indemnity Compensation by Parent(s), with applicable instructions, to Mrs. Whalen at 259 Prospect Street, Lee, Massachusetts 01238. Information of record discloses that Mrs. Whalen has lived at this address for over 40 years.

Mrs. Whalen is receiving death compensation of \$75 monthly as the surviving dependent parent of a son, Donald Whalen (VA No. XC 3 357 209), killed in World War II, and non-service-connected death pension of \$42.05 monthly as the widow of World War I veteran, Joseph P. Whalen (VA No. XC 18 925 881). She was receiving these benefits at the time of Michael's death, and checks in payment thereof have always been sent to her at the Prospect Street address. There is no record of a failure to receive any of the checks, so it seems reasonable to assume that the application form was also delivered.

Additionally, Army records show that on March 4, 1969, a Survivor Assistance Officer visited Mrs. Whalen and counseled her on her eligibility to receive benefits from the Veterans Administration. That individual reported that Mrs. Whalen was at first reluctant to talk to him but later cooperated.

Title 38, United States Code, section 3010(a), provides a general standard that the effective date of an original award of dependency and indemnity compensation shall not be earlier than the date of receipt of application therefor. Section 3010(d) provides an exception to the stated rule where application is received within one year from the date of death. In that event, benefits may be authorized from the first day of the month of death.

The Honorable James T. Lynn

Under the law Mrs. Whalen had one year in which to claim benefits effective the first day of the month of Michael's death. She was sent the appropriate form to make claim and was also counselled in person about possible Veterans Administration entitlement. She had more reason than most to know about possible Veterans Administration entitlement since she was already drawing benefits as a widow and parent. Also, it should be noted that there is no legal requirement that notice be given regarding potential entitlement to the benefits here under consideration.


The sum of \$3,473 which is set forth in the bill approximates the amount of dependency and indemnity compensation that would have been payable to Mrs. Whalen for the period February 1, 1969 to November 23, 1973, had she filed claim within one year from date of death. A specific figure cannot now be quoted since there appears to be some question as to the exact amount of Mrs. Whalen's social security payments during the pertinent period.

We fail to find any rationale in the committee reports to support approval of the bill and there is no factual basis for the statement in the text of the bill that "she was not given adequate notice." The circumstances have been carefully considered. There are many cases wherein timely applications for benefits are not filed. No reason is apparent why this case should be singled out for special legislative treatment authorizing the payment of benefits from an earlier date than the law permits in this and similar cases. To do so would be discriminatory and precedential. It is not believed that private bills of this nature should receive favorable consideration.

The Honorable James T. Lynn

I recommend that the President withhold his approval of H. R. 2279. A draft of the proposed veto message is enclosed.

Sincerely,



Deputy Administrator - in the absence of


RICHARD L. ROUDEBUSH
Administrator

Enclosures (8)



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

To: Cavanaugh
5-25-76
6:00 PM



MAY 25 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2279 - For the relief
of Mrs. Louise G. Whalen
Sponsor - Rep. Conte (R) Massachusetts

Last Day for Action

May 31, 1976 - Monday

Purpose

Authorizes payment of \$3,473 to Mrs. Louise G. Whalen in full satisfaction of her claims for death indemnity compensation she failed to receive from 1969 to 1973 because she was not given adequate notice of her right to claim such compensation.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Army	No objection
Veterans Administration	Disapproval (Veto Message attached)

Discussion

Mrs. Louise G. Whalen is the widow of a World War I veteran. Five of her sons have been discharged honorably from military service. Another son, Donald, was killed in World War II. Her youngest son, Michael, was killed in action in South Vietnam in 1969 having returned to duty twice after being wounded. Michael was awarded the Distinguished Service Cross, the nation's second highest award,



posthumously for extraordinary acts of heroism.

Mrs. Whalen is 72 years old and suffers from Parkinson's Disease. Her monthly income of approximately \$300 consists of social security benefits, a widow's pension from the Veterans Administration and dependency and indemnity compensation (DIC) on account of the deaths of her two sons, also from the Veterans Administration.

Approximately one week after her son Michael was killed in 1969, an Army representative personally counselled Mrs. Whalen concerning her rights and benefits, including her eligibility for DIC. Available records do not indicate whether the counselor advised her that, under existing law, DIC benefits could be paid from the date of her son's death only if a claim was filed with the Veterans Administration within one year of such date. The counselor's report did note that, initially, Mrs. Whalen was reluctant to talk to him, but later she cooperated.

Within one month after Michael's death, the Veterans Administration sent Mrs. Whalen an application form for DIC. Apparently, however, she failed to complete and return the form. Not until 1973, when Mrs. Whalen requested that her records be transferred to a location closer to her home, did the Veterans Administration realize she was not receiving compensation for Michael's death. Upon receiving a second notice of her entitlement, Mrs. Whalen promptly filed a claim. Her claim was approved but, as a result of the one year statute of limitations noted above, no retroactive payment to the date of her son's death in 1969 could be made. H.R. 2279 would allow payment of \$3,473 to Mrs. Whalen, the amount she would have received from 1969 to 1973 had she filed a timely claim for compensation.

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compensation and further states:

"We fail to find any rationale in the committee reports to support approval of the bill and there is no factual basis for the statement in the text of the bill that 'she was not given adequate notice.' The circumstances have been carefully considered. There are many cases wherein timely applications for benefits are not filed. No reason is apparent why this case should be singled out for special legislative treatment authorizing the payment of benefits from an earlier date than the law permits in this and similar cases. To do so would be discriminatory and precedential. It is not believed that private bills of this nature should receive favorable consideration."

The Veterans Administration's report on H.R. 2279 to the House Judiciary Committee similarly opposed enactment of the bill.

In its report to the House Judiciary Committee on H.R. 2279, the Department of the Army stated:

"As noted above, Mrs. Whalen was counselled personally by an Army representative concerning her rights and benefits and the Veterans Administration records indicate that it sent her, on a timely basis, an application for 'DIC.' Ordinarily, in this factual situation, this Department would see no basis for relief as proposed in H.R. 2279.

"In this case, however, we cannot understand why she did not apply timely for 'DIC,' unless there were some extenuating circumstances which are not readily apparent from the available record. The counselling and the mailing of the application

all occurred within a short time of her son's death, a period in which she was undoubtedly distraught. Her age and her suffering from Parkinson's Disease may have been complicating factors. She may not have received the application form from the VA or may have been in no condition to comprehend its significance. A follow-up interview by the Army representative may well have been in order.

"Accordingly, if the Congress finds that the above circumstances apply in this case, and that relief should therefore be granted, this Department would not object."

The report of the House Judiciary Committee states:

"The Committee has concluded on the basis of the material in the Army report, and notwithstanding the objections of the Veterans Administration, that this case is an appropriate subject for legislative relief."

Normally, the Office of Management and Budget would object to the exemption from the statutory time limit embodied in H.R. 2279. In view of Mrs. Whalen's circumstances and the Congressional support for relief in this case, however, we do not believe disapproval of H.R. 2279, as the Veterans Administration recommends, would be appropriate. In this connection, we would also note that the delay in filing here was not prejudicial to the government from the standpoint of the customary protective purposes statutes of limitations are designed to serve.

James M. Frey
Assistant Director for
Legislative Reference

Enclosure

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 26

Time: 930am

FOR ACTION:

David Lissy *DL* cc (for information):
NSC7S *NSC*
Max Fried ~~ed~~sdorf *MF*
Ken Lazarus *KL*

Jack Marsh
Jim Cavanaugh
Ed Schmitts

FROM THE STAFF SECRETARY

DUE: Date: May 27

Time: noon

SUBJECT:

H.R. 2279 - For the relief of Louise G. Whalen

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.:

Date: May 26

Time: 930am

FOR ACTION:

David Lissy
NSC/S
Max Friedersdorf
Ken Lazarus

cc (for information):

Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: May 27

Time: noon

SUBJECT:

H.R. 2279 - For the relief of Louise G. Whalen

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 -- Ken Lazarus 5/26/76

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

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 26

Time: 930am

FOR ACTION:

David Lissy ✓
NSC/S
Max Friedersdorf
Ken Lazarus

cc (for information):

Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: May 27

Time: noon

SUBJECT:

H.R. 2279 - For the relief of Louise G. Whalen

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

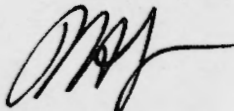
For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

^{5/26}
I recommend approval. This does not represent a change in policy or a major new precedent. The issue is not one of the policy but of the facts in the case. For the President to veto, there should be a clear indication that Congress was wrong on the facts - and that is not clear.



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

May 27, 1976


MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.F.*
SUBJECT: HR 2279 - For the relief of Louise G. Whalen

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

Attachments

NATIONAL SECURITY COUNCIL

May 27, 1976

MEMORANDUM FOR: JAMES M. CANNON
FROM: Jeanne W. Davi 
SUBJECT: H. R. 2279

The NSC Staff concurs in H. R. 2279 for the relief of Louise G. Whalen.

TO THE HOUSE OF REPRESENTATIVES:

I am returning without my approval H. R. 2279, 94th Congress, for the relief of Mrs. Louise G. Whalen.

The bill would authorize a payment to Mrs. Whalen, parent of the deceased serviceman, Michael C. Whalen, in satisfaction of her claim for dependency and indemnity compensation to which she might have been entitled had she filed application therefor within one year following the date of his death.

Michael was killed in Vietnam on February 28, 1969. Mrs. Whalen's application for dependency and indemnity compensation was not received by the Veterans Administration until November 23, 1973. Had application been received within one year following Michael's death the law provides that any monetary benefit to which Mrs. Whalen would have been entitled would be effective the first day of the month in which he died. Since application was not received until more than a year after Michael's death, the law provides entitlement effective the date of receipt of her application.

The text of H. R. 2279 indicates that Mrs. Whalen was denied dependency and indemnity compensation for the period February 1969 to November 1973 because she was not given adequate notice of her right to claim such benefits. This is factually incorrect. By letter dated March 25, 1969, sent to her at the address at which she was then living,

the Veterans Administration advised Mrs. Whalen of her right to claim this benefit and of the importance of her filing application within one year of her son's death. The proper application form was enclosed. This was the same type of notice provided other parents under similar circumstances.

In addition, an Army Survivor Assistance Officer visited Mrs. Whalen on March 4, 1969, and advised her concerning potential entitlement to Veterans Administration benefits. Mrs. Whalen was, at the time of Michael's death, already receiving death compensation because of the death of another son in service and death pension as widow of a deceased serviceman. It appears that Mrs. Whalen had more reason than most to know of potential entitlement to such benefits and of her need to make timely application therefor.

I can see no justification whatever for singling out this case for preferential treatment. To do so would seriously discriminate against similarly situated parents of military personnel killed in service. It is important that we preserve the integrity and impartiality essential to the administration of programs for veterans and their dependents. This we cannot do if we grant special privilege or favored treatment as proposed by H. R. 2279.

MRS. LOUISE G. WHALEN

SEPTEMBER 29, 1975.—Committed to the Committee of the Whole House and ordered to be printed

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

REPORT

[To accompany H.R. 2279]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2279) for the relief of Mrs. Louise G. Whalen, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 11: Strike "timely" and insert "adequate".

Page 1, after line 12, add the following:

SEC. 2. No part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

PURPOSE

The purpose of the proposed legislation, as amended, is to pay Louise G. Whalen of Lee, Massachusetts, \$3,473.00 in satisfaction of her claims for death indemnity compensation from February 1969 to November 1973, based upon the death of her son in action in Vietnam which was not paid because she was not given adequate notice of her right to claim the compensation.

STATEMENT

The Department of the Army in its report to the committee on the bill outlined the circumstances of the case as reflected in their records and stated that should the Congress determine relief was appropriate,

it would interpose no objection. The Veterans' Administration in a report on an earlier bill opposed legislative relief.

Mrs. Louis G. Whalen is the widow of a World War I veteran. Five of her sons have been honorably discharged from the military service; another son Donald was killed in World War II, and her youngest son Michael was killed in action in the Republic of South Vietnam. During his Vietnam service Michael returned to duty after twice being wounded, and on February 28, 1969, he was fatally wounded in action. He received the Distinguished Service Cross, posthumously, the Nation's second highest award, for extraordinary acts of heroism.

Mrs. Whalen is 71 years of age and suffers from Parkinson's Disease. She lived alone at the family residence after Michael entered military duty. Her income consists of the following: \$159.22 per month from Social Security; \$75.00 per month indemnity compensation as the survivor of her son Donald; \$50.40 per month as a widow's pension; and \$63.70 per month for indemnity compensation as Michael's survivor.

The Army report stated that the records of the Veterans' Administration indicated that an appropriate application for compensation had been forwarded to Mrs. Whalen on March 25, 1969 (approximately 1 month after Michael's death). The Department of the Army records disclose that a Survivor Assistance Officer visited Mrs. Whalen on March 4, 1969. His report, shown as Enclosure 1 in the attached Army report, indicates that Mrs. Whalen was counseled on her eligibility for dependency and indemnity compensation (hereinafter referred to as "DIC") (Item No. 19). The Army report specifically states that there is no showing that she was advised by the Army representatives of the fact that payments of benefits from the date of death could not be paid if the claim was not filed within 1 year. The counsellor said that initially, she was reluctant to talk to him, but later she cooperated (Item No. 48). The Department does not know whether forms were provided to her by the counselling officer, or the extent or nature of any followup counseling.

In November 1973, Mrs. Whalen requested the transfer of her files to a geographical location closer to her home, and at this time the Veterans' Administration noted that she was not receiving the indemnity compensation for Michael's death. After receiving this second notice of her entitlement, she promptly filed a claim. The Veterans' Administration approved the claim effective from the date of its receipt in November 1973, but informed Mrs. Whalen that retroactive payments to the date of death in February 1969 were prohibited by statute (38 U.S.C. 2010) because the claim was not filed within 1 year of the date of death.

The Department of the Army in reporting on this bill stated that normally the circumstances that an individual had been counseled on rights and benefits and an indication in the VA records that a form had been sent would cause the Department to conclude there was no basis for relief. However, the Army noted that the counseling and mailing occurred within a short time of her son's death, a difficult period in which the Army concluded that "she was undoubtedly distraught." The Army further noted that "she was undoubtedly distraught." The Army further noted that Mrs. Whalen's age and her suffering from Parkinson's Disease could also have been complicating factors. The Army also stated that she might not have actually received the application form or might have been in no condition to

comprehend its significance. Under these circumstances, the Army admits that a followup interview by the Army representative may well have been in order. In this connection, the Army stated:

Accordingly, if the Congress finds that the above circumstances apply in this case, and that relief should therefore be granted, this Department would not object. If your Committee favorably considers H.R. 15579, however, we recommend that the word "adequate" be substituted for the word "timely" in line 11 of the bill. We also defer to the VA as to the appropriate amount of an award which would be equivalent to the amount which Mrs. Whalen would have received had she filed a timely claim.

The Committee has concluded on the basis of the material in the Army report, and notwithstanding the objections of the Veterans' Administration, that this case is an appropriate subject for legislative relief. The committee recommends the amendment suggested by the Army that the term "timely" in line 11 of page 1 of the bill be amended to read "adequate," and that the language barring an attorney's fee in this instance be added to the bill. It is recommended that the amended bill be considered favorably.

The sponsor of the bill has furnished the committee with the following analysis of the amount stated in the bill H.R. 2279—Mrs. Louise G. Whalen:

	Income	DIC
1969-70	\$1,400.00	\$46
1971-73	1,710.00	69
1974	1,910.70	75
1969-70, 23 mo. at \$46		\$1,058
1971-73, 35 mo. at \$69		2,415
Total February 1969 to November 1973		3,473

DEPARTMENTAL REPORTS

DEPARTMENT OF THE ARMY,
Washington, D.C., December 9, 1974.

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

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H.R. 15579, 93d Congress, a bill for the relief of Mrs. Louise G. Whalen.

The bill provides: "That the Secretary of the Treasury is authorized and directed to pay out of any money in the Treasury not otherwise appropriated, to Mrs. Louise G. Whalen, of Lee, Massachusetts, the sum of \$2,872.80 in full satisfaction of her claims against the United States for death indemnity compensation in the period from February 1969 to November 1973 based upon the death of her son, Michael Whalen, in action in Vietnam in February of 1969, which amount was not paid because she was not given timely notice of her right to claim indemnity compensation under applicable law."

The records of the Department of the Army and the Veterans Administration disclose the following facts.

Mr. Louise G. Whalen is the widow of a World War I veteran. Five of her sons have been honorably discharged from the military service; another son Donald was killed in World War II, and her youngest son Michael was killed in action in the Republic of South Vietnam. During his Vietnam service Michael returned to duty after twice being wounded, and on February 28, 1969, he was fatally wounded in action. He received the Distinguished Service Cross, posthumously, the nation's second highest award, for extraordinary acts of heroism.

Mrs. Whalen is 71 years of age and suffers from Parkinson's Disease. She lived alone at the family residence after Michael entered military duty. Her income consists of the following: \$159.23 per month from Social Security; \$75.00 per month indemnity compensation as the survivor of her son Donald; \$50.40 per month as a widow's pension; and \$63.70 per month for indemnity compensation as Michael's survivor.

The records of the Veterans Administration disclose that an appropriate application for compensation had been forwarded to Mrs. Whalen on March 25, 1969 (approximately one month after Michael's death). The Department of the Army records disclose that a Survivor Assistance Officer visited Mrs. Whalen on March 4, 1969. His report (Enclosure 1) indicates that Mrs. Whalen was counselled on her eligibility for dependency and indemnity compensation (hereinafter referred to as "DIC") (Item No. 19). However, there is no showing that she was advised by the Army representatives of the fact that payments of benefits from the date of death could not be paid if the claim was not filed within one year. The counsellor said that initially, she was reluctant to talk to him, but later she cooperated (Item No. 48). The Department does not know whether forms were provided to her by the counselling officer, or the extent or nature of any followup counselling.

In November 1973, Mrs. Whalen requested the transfer of her files to a geographical location closer to her home, and at this time the Veterans Administration noted that she was not receiving indemnity compensation for Michael's death. After receiving this second notice of her entitlement, she promptly filed a claim. The Veterans Administration approved the claim effective from the date of its receipt in November 1973, but informed Mrs. Whalen that retroactive payments to the date of death in February 1969 were prohibited by statute (38 U.S.C. 3010) because the claim was not filed within one year of the date of death.

As noted above, Mrs. Whalen was counselled personally by an Army representative of her rights and benefits and VA's records indicates that it sent her on a timely basis an application for "DIC". Ordinarily, in this factual situation, this Department would see no basis for relief as proposed in H.R. 15579.

In this case, however, we cannot understand why she did not apply timely for "DIC", unless there were some extenuating circumstances which are not readily apparent from the available record. The counselling and the mailing of the application all occurred within a short time of her son's death, a period in which she was undoubtedly distraught. Her age and her suffering from Parkinson's Disease may have

been complicating factors. She may not have received the application form from the VA or may have been in no condition to comprehend its significance. A follow-up interview by the Army representative may well have been in order.

Accordingly, if the Congress finds that the above circumstances apply in this case, and that relief should therefore be granted, this Department would not object. If your Committee favorably considers H.R. 15579, however, we recommend that the word "adequate" be substituted for the word "timely" in line 11 of the bill. We also defer to the VA as to the appropriate amount of an award which would be equivalent to the amount which Mrs. Whalen would have received had she filed a timely claim.

The cost of the bill, if enacted, would be \$2,872.80.

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

Sincerely,

HOWARD H. CALLAWAY,
Secretary of the Army.

Enclosures:

1. DA Form 2204, Survivor Assistance Report.
2. AR 600-10, Chapter 4, Survivor Assistance.

ENCLOSURE 1

SURVIVOR ASSISTANCE REPORT (SF 600-20)		DATE
TO: Commanding General Headquarters, West Division Attn: AMH&D Fort Monmouth, NJ 07433		2 April 1969
FROM: Major Ronald L. Harrington Ret. 3d Co, 2nd Bn, 1st Div, 1st AFV Howard St., Springfield, MA 01102		
1. LAST NAME - FIRST NAME - MIDDLE INITIAL	2. GRADE	3. SERVICE NUMBER
WHALEN, MICHAEL G.	Sp4	US 214500
4. ORGANIZATION AND STATION		
Co R 4th Bn 3d Div 1st AFV (Ameria Div) 9537th Rvn		
5. DEATH OR MISSING STATUS	6. DATE	7. PLACE
	23 Feb 69	INA
8. DEATH - INTERMENT	9. DATE	10. PLACE
	13 Mar 69	JCS, VA
11. NEXT OF KIN (NOK) - GIVE NEXT OF KIN FIRST AND ADULT NEXT OF KIN'S GRADE. INDICATE IF SPOUSE		
LAST NAME - FIRST NAME - MIDDLE INITIAL	ADDRESS	RELATIONSHIP
WHALEN, Louise (Wife)	259 Prospect St, Lee, MA	Wife
12. NEW ADDRESS OF NEXT OF KIN (No., street, city and state), IF MOVING		
31020		
13. SCHEDULED DATE OF ARRIVAL		
NA		
IN THE FOLLOWING LIST OF ACTIONS AND/OR BENEFITS INDICATE THE DATE OR DATE'S THAT ACTION WAS TAKEN. SPECIFY TYPE OF ACTION AS FOLLOWS: COUNSELLING (C), ASSISTANCE (A) OR REFERRAL (R), CLAIM OR APPLICATION SUBMITTED (CS), NO ACTION REQUIRED (NA), COUNSEL LED, NO ACTION REQUIRED (CN).		
ITEM	ACTION	DATE (C)
9. INITIAL CONTACT MADE (include time with date) ¹		3 Feb 69 1200 Hrs
10. BURIAL / ARRANGEMENTS AND RIGHTS		5 Mar 69
a. FUNERAL SERVICES	CA	"
b. MILITARY HONORS	CA	"
c. NATIONAL OR POST CEMETERY	C	"
d. FLAG TO DRAIN COFFIN	C	"
e. HEADSTONE OR MARKER	C	"
f. REIMBURSEMENT FOR PREPARATION AND TRANSPORTATION OF REMAINS IF PRIVATELY ARRANGED ²	C	"
g. INTERMENT ALLOWANCE ²	C	"
h. SOCIAL SECURITY LUMP-SUM PAYMENT FOR BURIAL EXPENSES	CR	"
i. VA BURIAL ALLOWANCE (National Graves only)	CA	"
¹ Which may be applicable to "selected" personnel cases. ² NOT generally applicable to retired personnel cases.		
CONTINUE ON REVERSE		

REPLACES EDITION OF 1 JUL 62, WHICH IS OBSOLETE.

ITEM	ACTION	DATE(S)
11. FINANCIAL ASSISTANCE (M.R. ARR. or ARC) ¹	CA	4 May 69
12. DA PAMPHLET FUNG FURNISHED ²	CA	"
13. OFFICIAL STATEMENT OF DEATH	C	"
14. WILL AND/OR PROBATE AFFAIRS RECORD	C	"
15. PERSONAL EFFECTS ²	C	Received 21 Mar 69
16. TRAVEL OF DEPENDENTS ²	CA	4 Mar 69
17. MOVEMENT OF HOUSEHOLD GOODS ²	C	"
18. VA 111 PAYMENT ²	NA	700, To Springfield, MA
19. VA COMPENSATION OR PENSION	C	"
20. SOCIAL SECURITY BENEFITS	CA	"
21. UNIFORMED SERVICES CONTINGENCY OPTION ACT (Selected cases only)	CA	"
22. GOVERNMENT LIFE INSURANCE (USGLI, NSLI, and SGLI)	CA	Request submitted 22 Mar 69
23. COMMERCIAL LIFE INSURANCE	CA	4 Mar
24. SETTLEMENT OF ACCOUNTS	C	"
25. UNITED STATES SAVINGS BONDS	C	"
26. ALLOTMENT ASSIGNMENTS (Financial cases)	C	"
27. LEGAL REPRESENTATION	CA	"
28. UNIFORMED SERVICES IDENTIFICATION AND PRIVILEGE CARD (See Para 113) ¹	CA	"
29. MARRIAGE	CA	"
30. COMMISSION TO BE PROMOTED	CA	"
31. POST PROMOTION PAYMENTS	CA	"
32. MILITARY TRAVEL EXPENSES (MILITARY TRAVEL)	CA	"
33. INCOME TAX	C	"
34. CHALLENGE TO PROMOTION AND/OR	C	"
35. CHALLENGE TO PROMOTION AND/OR	C	"
36. CLAIMS TO TITLE OR DISTRIBUTION OF PERSONAL PROPERTY ²	C	"
37. PROPERTY	C	"
38. DEPENDENT'S NO AWARD ²	C	"
39. DEPENDENT'S NO AWARD ²	C	"
40. HONORARY PROMOTION	C	"
41. HONORARY PROMOTION	C	"
42. HONORARY PROMOTION	C	"
43. HONORARY PROMOTION	C	"
44. HONORARY PROMOTION	C	"
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96. HONORARY PROMOTION	C	"
97. HONORARY PROMOTION	C	"
98. HONORARY PROMOTION	C	"
99. HONORARY PROMOTION	C	"
100. HONORARY PROMOTION	C	"

43. HONORARY PROMOTION (Give only relevant or individual cases. Do not list of 100. If any individual case is listed, it must be do critical.)

44. HONORARY PROMOTION (Mother) was very reluctant to see SAO initially; wanting mother to do with the military, however, later she was quite pleasant and no difficulty was experienced. The family was very appreciative of the Army's interest and assistance. Case is not complete; pending receipt by the family of the gratuity pay and the ggc's list.

GOLD STAR AWARDS PRESENTED TO:

Mrs. Louise Whalen (Mother) 259 Prospect St. Lee, Mass
 Mr. Robert Whalen (brother) Raymond Whalen (brother) Elizabeth (sister)
 Mr. Joseph Whalen (brother) David Whalen (brother) Margaret (sister)
 Mr. William Whalen (brother) John Whalen (brother)

44. DATE AND ORIGIN CASE RECEIVED BY ASSISTANCE OFFICER
 9 Feb 69

45. DATE CASE COMPLETED
 2 April 69 (See 43 above)

46. NAME AND GRADE OF ASSISTANCE OFFICER
 MARSHAL J. HARRINGTON MAJOR

47. NAME AND GRADE OF ASSISTANCE OFFICER
 [Signature]

ENCLOSURE 2

[AR 600-10, June 7, 1968]

CHAPTER 4—SURVIVOR ASSISTANCE

4-1. Purpose. This chapter establishes policies and outlines procedures for providing prompt, courteous, and efficient survivor assistance to the next of kin and other dependents (hereafter referred to in this chapter as next of kin) of deceased and missing members and employees of the Army.

4-2. Responsibilities. *a. Area commanders.* Area commanders are responsible for administering and monitoring the survivor assistance program within their respective areas. Initial area responsibilities and coordinating responsibilities are outlined in paragraphs 4-5 through 4-7. Within an area, the commander, for reasons of economy and timely assistance, may assign assistance cases to commanders of—

(1) units at class I and II installations and activities (defined in AR 10-7).

(2) Those units assigned to either the U.S. Army Materiel Command, the U.S. Army Combat Developments Command, or the U.S. Army Air Defense Command that are located near the residence of the next of kin.

(3) U.S. Army Reserve component activities, including National Guard advisor groups and ROTC instructor groups.

(4) U.S. Army Recruiting Districts. Survivor assistance cases will be transferred to other area commanders if considerations of economy so dictate.

b. Installation, unit, and activity commanders. Commanders of installations, units, or activities (and commanders of units or activities who are assigned assistance cases) are responsible for—

(1) Appointing a survivor assistance officer or officers, preferably field grade, from assigned personnel. Persons appointed survivor assistance officers must be competent, dependable, and sympathetic with the objectives of the survivor assistance program.

(2) Providing administrative support to the appointed officer or officers.

(3) Making sure in each case that survivor assistance officers personally visit the next of kin as soon as practicable after the next of kin receive the casualty notification, and that the assistance required by this regulation is given promptly.

(4) Appointing the survivor assistance officer a class A agent officer to the finance and accounting officer most readily accessible to the survivor assistance officer for the purpose of making a death gratuity payment to the designated surviving spouse. When the designated spouse does not reside in an area served by an Army finance and accounting officer and when it will expedite service to the spouse of a deceased member, payment of the death gratuity may be made through the survivor assistance officer by an Air Force accounting and finance officer or Navy disbursing officer serving the area convenient to the residence of such spouse. When funds are to be furnished by a disbursing officer of another service, the survivor assistance officer will not be appointed a class A agent but will be authorized to obtain funds

from the disbursing officer of the other service. Payment may only be made to a designated surviving spouse when—

(a) Direct payment of gratuity to the decedent's spouse by the local finance and accounting officer is impracticable or direct payment is not otherwise authorized by chapter 5, part 4, DOD Military Pay and Allowances Entitlements Manual.

(b) The Adjutant General, CONUS army commander, overseas commander, or commander who submits the death report authorizes payment of a maximum partial death gratuity pay to the designated spouse and specifies the decedent's monthly basic pay.

(5) Notifying the Chief, Claims Division, Settlement Operations, Finance Center, U.S. Army, by telephone or priority message when maximum partial gratuity payment authorized under (4) above will not be made through the survivor assistance officer because one of the disbursing authorities listed above is not located within a reasonable distance, or other circumstances preclude payment through the survivor assistance officer on a timely basis. This notification should be given within 72 hours of receipt of the casualty notification.

c. Senior Army representatives outside CONUS. The Senior Army representatives in areas outside the continental United States where there are no Army installations will assume responsibility for giving assistance under this regulation.

d. Survivor assistance officers. Survivor assistance officers are responsible for—

(1) Communicating with the next of kin as soon as possible after the next of kin receive the casualty notification, assuring them of the Army's interest in their welfare, and arranging for a personal visit on the earliest date convenient to them.

(2) Determining the immediate needs of the next of kin and giving them prompt, courteous, efficient, and sympathetic assistance. Inadequate or unsympathetic actions or attitudes by survivor assistance officers are discrediting to the Army.

(3) Arranging for emergency financial help, if needed, with the Army Emergency Relief, Army Relief Society, or the American Red Cross.

(4) Assisting in funeral arrangements and arranging military honors if desired, including inspecting, orienting, and supervising burial details. In this connection it is to be noted that responsibilities of the military escort, as discussed in paragraph 12-6, AR 638-40, terminate upon delivery of the remains unless he is requested to remain for the funeral services.

(5) Giving the next of kin of deceased active duty members a copy of DA Pam 608-4 (For Your Guidance) and advising them of monetary and other benefits or entitlements as a result of the death for which they should file applications, and helping them file applications. Survivor assistance officers will not inform the next of kin of the amount of expected monetary benefits or entitlements, except that they may specify an approximate dollar amount for death gratuity pay entitlements only. They will stress that the office or agency administering the benefit or entitlement determines the exact entitlement and makes the actual payments (except as stated in (6) below). The installation legal assistance officer is always available to help the next

of kin and survivor assistance officers. If legal help is not needed immediately, the survivor assistance officer will tell the family that the services of the legal assistance officer are available when needed. Military reproducing equipment may be used without charge for copies of documents to support claims for benefits.

(6) Paying the death gratuity pay to a designated surviving spouse when appointed class A agent to an appropriate finance and accounting officer or on behalf of an Air Force accounting and finance officer or Navy disbursing officer as discussed in *b(4)* above. Actions required in connection with this responsibility are—

(a) Giving the appropriate finance or disbursing officer a duly certified Claim Certification and Voucher for Death Gratuity Payment (DD Form 397) completed as to blocks 5 through 14, less block 12, and the claim certification portion of block 18. The DD Form 397 will be supported by copies of orders appointing the survivor assistance officer a class A agent officer (when funds are to be obtained from the disbursing officer of another service, orders will not appoint him a class A agent officer but will authorize him, as Survivor Assistance Officer, to obtain funds from the appropriate disbursing officer) and copies of the message from The Adjutant General, CONUS army commander, oversea commander or commander who submits the death report, authorizing the gratuity payment to the designated spouse.

(b) Obtaining from the finance or disbursing officer the gratuity check with original and one copy of payment voucher (DD Form 397) for hand delivery to the eligible payee.

(c) Obtaining the required certification and signatures on the original and copy of DD Form 397 before presenting the check to payee. The payee is required to complete the certification in block 15, sign the voucher in block 17a, and have it witnessed in block 17. The survivor assistance officer will complete the claim certification portion of block 18.

(d) Informing the payee that additional forms with instructions will be received from the Finance Center, U.S. Army, for signatures and return for purpose of receiving unpaid pay and allowances due the deceased member at the time of his death. If applicable, these claim forms will cover the unpaid amount of death gratuity applicable to foreign service and hazardous duty pay.

(e) Returning to the finance or disbursing officer the original and copy of the completed voucher, DD Form 397. If the payee cannot or will not sign the voucher, both the voucher and check will be returned to the finance and accounting officer.

(7) Filling out a Survivor Assistance Report (DA Form 2204) (fig. 4-1). A report on Department of the Army civilians is discretionary with the oversea commander. See paragraph 4-12 for disposition of complete or incomplete survivor assistance reports.

(8) Immediately notifying the Chief, Casualty Division, TAGO, DA by the fastest means if the next of kin has moved or will move to another address. The old and new addresses and effective date will be included. Notification to TAGO will be recorded on the DA Form 2204.

4-3. Survivor assistance when personal notification of next of kin is made under the provisions of section IV, chapter 3. *a.* The mission of survivor assistance is inherent in the initial telephonic casualty notifi-

cation from the Chief, Casualty Division, TAGO, DA; commanding general of a CONUS army; CONUS installation commander; or CONUS hospital commander (para 3-15a).

b. Immediately upon receipt of the initial casualty notification, and concurrent with the designation of the installation or activity commander who will assign responsibility for notification (para 3-17b (2)), the commanding general of the CONUS army concerned will designate the installation or activity commander who will be responsible for survivor assistance (normally, this will be the commander designated to assign responsibility for notification action).

c. Immediately upon receipt of verification of notification of the primary next of kin, the designated installation or activity commander will appoint the survivor assistance officer who may, or may not, be the Army representative who was designated to make the personal notification.

d. In order to accomplish timely maximum partial payment of the death gratuity to surviving spouses, the following procedures (applicable only if there is a surviving spouse) will be followed in death cases:

(1) Reports of delivery of notification messages made to the agency that provided the casualty information (para 3-17b (3)) will include the duty title and address of the installation commander designated to appoint the survivor assistance officer and/or name and address of the survivor assistance officer. Upon receipt of this information, the agency that provided the casualty information will send a message to the installation commander designated to appoint the survivor assistance officer or direct to the survivor assistance officer, as applicable, authorizing maximum partial payment of the death gratuity to the surviving spouse and including data concerning the basic pay and years of service of the decedent (for completion of DD Form 397 (Claim Certification and Voucher for Death Gratuity Payment)).

(2) The survivor assistance officer will use a copy of the message authorizing maximum partial payment of the death gratuity to arrange payment with the nearest finance and accounting officer, who will accept the message as authority for payment. The survivor assistance officer will then accomplish the actions outlined in paragraph 4-2d(6).

4-4. Persons entitled to assistance. *a.* Persons entitled to assistance covered by this regulation are identified by an "X" under the columnar headings "Survivor Assistance" in figure 3-1.

b. Formal survivor assistance as such normally is not extended to the survivors of civilian employees of the Department of the Army, because employees are normally a part of the civil community in which employed. Oversea commanders may prescribe survivor assistance within their respective commands to dependents of deceased civilian employees when considered necessary. When given, it will not exceed that prescribed here for military dependents. Except in extraordinary cases, survivor assistance to dependents of Department of the Army civilian employees will not be given after they enter CONUS. However, civilian personnel officers should give Department of the Army civilian personnel such assistance as is considered proper under CPR P 1.10.

c. When two or more persons at different addresses are entitled to assistance, it may be necessary that more than one installation command provide the assistance. Usually, the person giving instructions for disposition of remains will be the only one to receive help. However, children of deceased members who are in custody of persons other than the person directing disposition of remains should be helped when necessary.

d. When both parents die or are incapacitated or unavailable, and their minor children are being returned to CONUS, a responsible person will be designated to accompany the children to their final destination.

4-5. Assignment and transfer of assistance cases. a. *Assignment.*

(1) When an Army member dies or is reported missing, the area commander in whose area the next of kin lives will designate the commander in his area to give survivor assistance.

(2) When the next of kin lives in another oversea command, or when the deceased or missing person was in CONUS and the next of kin lives in an oversea command, Chief, Casualty Division, TAGO, on receipt of report of death or missing person status, will notify the proper major oversea commander or senior Army representative in the area. This commander or representative will then extend assistance.

b. *Transfer.*

(1) When, before survivor assistance actions are completed, the next of kin returns to CONUS or moves to another oversea command, the commander providing survivor assistance will promptly notify the gaining area commander by message or telephone. He will give the mode of travel; departure time; estimated time of arrival and address at destination; and other information needed by the gaining commander to effectively give assistance, including specific actions that should be completed as soon after arrival as possible.

(2) Oversea commanders are authorized to prescribe the authority to send survivor assistance cases (DA Form 2204) direct to the gaining area commander (exempt report, para 39af, AR 335-15). The gaining area commander will assign the case by the fastest available means to the Army installation, unit, or activity commander nearest the address of the next of kin. That commander will give assistance in all actions not completed by the commander giving initial and en route assistance.

(3) When the next of kin moves to another area, the losing commander will send the case with the Survivor Assistance Report (DA Form 2204) to the gaining area commander, with an information copy to the losing area commander. When the next of kin moves within the area, the losing commander will send the case with the DA Form 204 to his area commander who will reassign it.

(4) The Chief, Casualty Division, TAGO, will be informed promptly of movement of survivors and transfer of each survivor assistance case.

c. *Controls.* Area commanders may set up controls or require reports (within the provisions of AR 335-15) from survivor assistance officers to administer and monitor the program effectively.

4-6. Assistance at intermediate points. When assistance will be needed at intermediate points en route to the survivor's final destination (as at ports of embarkation or debarkation, or when remains are to be

interred elsewhere than at survivor's final destination), the commander providing assistance will promptly inform the area commanders between point of origin and final destination of the travel details and needs of next of kin while en route, and request assistance.

4-7. Assistance at national and post cemeteries. a. When the remains of a deceased active duty Army member are to be interred in a national or post cemetery, the area commander of the area in which the cemetery is located will make sure that a military attendant of at least equal grade to the decedent meets the next of kin or their representatives at the point of arrival in the city where the cemetery is located. If practical, the attendant may be the survivor assistance officer.

b. The survivor assistance officer will send the following information by message to the proper area commander:

- (1) Names of next of kin arriving for funeral services.
- (2) Estimated time of arrival.
- (3) Mode of travel.
- (4) Accommodation requirements.
- (5) Any other applicable information.

c. The attendant to the next of kin will give any needed assistance. This will include, but will not be limited to, transporting dependents to temporary quarters previously arranged for, informing them of arrangements for interment, and making sure that departure arrangements are made.

d. The attendant will inform the next of kin that facilities for viewing remains are not available at national cemeteries except to a limited extent at Golden Gate National Cemetery, San Francisco, California, and Arlington National Cemetery, Arlington, Virginia. The attendant will advise the next of kin that if viewing of the remains is desired, a local funeral director must be employed to open the casket to insure the remains are suitable for viewing, and that payment for this service is a matter between the next of kin and the funeral director. As an alternate method of payment, those persons wishing this service may sign DD Form 1375 (Request for Payment of Funeral and/or Interment Expenses) to secure direct payment to the funeral director by the Government. The amount so paid will be deducted from the allowable interment expense.

4-8. Missing persons. Assistance to the next of kin of missing persons will differ considerably from assistance given survivors of deceased personnel. Generally, assistance will be limited to a genuine concern for the welfare of the next of kin; emergency financial help; legal help; establishment or change of allotments (see chapter 3, part 4; DOD Military Pay and Allowances Entitlements Manual); travel of dependents and disposition of household goods (if status as a missing person continues beyond 30 days); and informing them of the continuance of service privileges such as medical care and the use of commissary and post exchange facilities. They will not be given DA Pam 608-4 unless the status is changed to dead. Survivor assistance officers will periodically visit or call the next of kin while the member is in a missing person status.

4-9. Retired personnel. a. Because of delay in receiving information of the death of retired persons, it will not always be possible to establish contact with the survivors, nor will it always be necessary to render

survivor assistance since in many instances applications for benefits will already have been submitted to the appropriate Government agencies. When a CONUS army commander does receive information that a retired person has died he will provide or offer to provide survivor assistance to the next of kin.

b. The survivor assistance officer may visit and provide assistance to next of kin who live, close enough to his installation, unit, or activity that they can be visited and counseled in about half a day. When the survivors live so far from an installation that a personal visit by the survivor assistance officer is not feasible or practical, the CONUS army commander or such other commander as he may direct will write the family to extend condolences and inform them of the availability of an officer to assist them (see fig. 4-1 for sample format). This assistance may be provided by letter, personal visit, or both as deemed appropriate by the responsible commander. If a reply to the letter is not received and the letter is not returned by postal authorities for a better address, it may be assumed that the recipient is disinterested, and the case may be closed. It may be reopened if the survivor later inquires.

4-10. Survivor assistance kits. Survivor assistance officers will refer to the publications listed below in assisting and counseling the next of kin. Each installation, unit, or activity that is required to appoint a survivor assistance officer under paragraph 4-2b will prepare and keep up-to-date reference kits, including a standing operating procedure, for survivor assistance officers' use on a loan basis. These kits will contain at least: an extract of chapters 3 and 5, part 4, DOD Military Pay and Allowances Entitlements Manual; paragraphs 6-35 and 6-36 AR 37-104-2; AR 55-46; this regulation; AR 600-25; AR 608-50; AR 638-40; AR 643-50; AR 672-5-1; DA Pam 600-5; DA Pam 608-2; DA Pam 608-4; DD Forms 397 and 766; DA Form 2204; Standard Forms 117 and 1012, and VA Forms 21-543, 21-535, and 29-8283 (available at the nearest Veterans Administration Regional Office).

4-11. Transportation. When Government vehicles are used for travel to and from the home of the next of kin in the assistance program, they may be operated beyond the permissible operating distance of the installation, unit, or activity extending assistance, if it is necessary in accomplishing the mission.

4-12. Disposition of survivor assistance reports. Survivor assistance officers will send completed reports through channels to the proper Army area headquarters. Each headquarters will review and take any corrective action that is within their scope of responsibility and authority. The Army area headquarters is the normal file repository for these reports. Reports (except on DA civilians) that contain derogatory or controversial comments will be sent to the Chief Casualty Division, TAGO, DA, for resolution.

7 June 1968

AR 600-10

SURVIVOR ASSISTANCE REPORT (AR 600-10)		DATE	
To: Commanding General Third U. S. Army Fort McPherson, Georgia		FROM: Survivor Assistance Officer U. S. Army Infantry Center Fort Benning, Georgia	
DECEASED OR MISSING			
1. LAST NAME - FIRST NAME - MIDDLE INITIAL Doe, John F.		2. GRADE SFC (E-7)	3. SERVICE NUMBER RA 30 000 000
4. ORGANIZATION AND STATION 57th Ordnance Detachment, Fort Benning, Georgia			
5. DEATH OR MISSING STATUS a. DATE 9 March 1969		b. PLACE Fort Benning, Georgia	
6. DEATH - INTERMENT 12 March 1969		a. PLACE Arlington National Cemetery, Arlington, Virginia	
7. GIVE NEXT OF KIN FIRST AND ADULT NEXT OF KIN SECOND. INDICATE IF SAME.			
LAST NAME - FIRST NAME - MIDDLE INITIAL		ADDRESS	RELATION- SHIP
Doe, Mary F.		2300 Main Street Columbus, Georgia	Wife
(Wife is also adult next of kin)			
Doe, James F.		Same	Son
Doe, Jane P.		Same	Daughter
8. NLR ADDRESS OF NEXT OF KIN (Name, street, city and state), IF MOVING		9. SCHEDULED DATE OF ARRIVAL	
Next of kin expects to remain at present address		N/A	
IN THE FOLLOWING LIST OF ACTIONS AND/OR BENEFITS INDICATE THE DATE OR DATES THAT ACTION WAS TAKEN. SPECIFY TYPE OF ACTION AS FOLLOWS: COUNSELLING (C), ASSISTANCE (A) OR REFERRAL (R), CLAIM OR APPLICATION SUBMITTED (ED (CS), NO ACTION REQUIRED (NA), COUNSELLED, NO ACTION REQUIRED (CH).			
ITEM	ACTION	DATE(S)	
8. INITIAL CONTACT MADE (Date - show with care) ¹		1100 hours, 9 March 1969	
9. FUNERAL ARRANGEMENTS AND RIGHTS			
a. FUNERAL SERVICES	A	9 March 1969	
b. MILITARY BURIAL	A	9 March 1969	
c. NATIONAL CEMETERY CEMETERY	A	9 March 1969	
d. FLAG TO FUNERAL CASSETTE	A	9 March 1969	
e. HEADSTONE OR MARKER	A	9 March 1969	
10. REIMBURSEMENT FOR PREPARATION AND TRANSPORTATION OF REMAINS IF PRIVATELY ARRANGED ²	N/A		
11. INTERMENT ALLOWANCE ²	N/A		
12. SPECIAL SECURITY LUMP-SUM PAYMENT FOR BURIAL EXPENSE	CS	13 March 1969	
13. VA BURIAL ALLOWANCE (Check of cases only)	N/A		
¹ Which may be applicable to "members" personnel cases.			
² NOT generally applicable to retired personnel cases.			

DA FORM 2204

REPLACES EDITION OF 1 JUL 57, WHICH IS OBSOLETE.

Figure 4-1. Sample Survivor Assistance Report.

7 June 1968

ITEM	AC	DATE
1. FINANCIAL ASSISTANCE AMOUNT (AR 600-10)	N/A	13 March 1969
2. DEPENDENT BENEFITS FURNISHED	C	13 March 1969
3. OFFICIAL STATEMENT OF DEATH	C	13 March 1969
4. WILL AND/OR PERSONAL AFFAIRS RECORD	N/A	
5. PERSONAL EFFECTS	N/A	
6. TRAVEL OF DEPENDENTS	C	13 March 1969
7. MOVEMENT OF HOUSEHOLD DEPENDENTS	C	13 March 1969
8. DEATH GRATUITY PAY	A	13 March 1969
9. VA COMPENSATION OR PENSION	CS	13 March 1969
10. SOCIAL SECURITY BENEFITS	CS	13 March 1969
11. UNIFORMED SERVICES CONTINGENCY OPTION ACT (where applicable)	N/A	
12. GOVERNMENT LIFE INSURANCE (GOLI, NSLI, and GOLI)	C	13 March 1969
13. CIVIL SERVICE LIFE INSURANCE	C	13 March 1969
14. SETTLEMENT OF ACCOUNTS	C	13 March 1969
15. UNITED STATES SAVINGS BONDS	C	13 March 1969
16. MILITARY ADJUSTMENTS (Military Service)	N/A	
17. LEGAL ASSISTANCE	C	13 March 1969
18. UNIFORMED SERVICES IDENTIFICATION AND PRIVILEGE CARD (DD Form 1300)	A	13 March 1969
19. MEDICAL CARE	A	13 March 1969
20. COMMUNITY SERVICE PRIVILEGES	A	13 March 1969
21. POST EXCHANGE PRIVILEGES	S	13 March 1969
22. MILITARY ROTATION PICTURE (Where Applicable)	C	13 March 1969
23. INCOME TAX	C	13 March 1969
24. CIVIL SERVICE EMPLOYMENT	C	13 March 1969
25. CIVIL SERVICE JOB PREFERENCE	C	13 March 1969
26. CLAIMS FOR LOSS OR DESTRUCTION OF PERSONAL PROPERTY	N/A	
27. DECORATIONS AND AWARDS	C	13 March 1969
28. HONORARIUM PAY BENEFIT	C	13 March 1969
29. MILITARY SERVICE RECORD	C	13 March 1969
30. NATIONAL RETIREMENT DEATH BENEFITS	N/A	
31. STATE BENEFITS	C	13 March 1969
32. EDUCATION OF CHILDREN	C	13 March 1969
33. ASSISTANCE AT REFORMIDATE PRINTS	N/A	
34. ASSISTANCE AT NATIONAL POST OFFICE	R	13 March 1969
35. CLAIMS IN FAVOR OF U.S. (AR 27-12)	N/A	
36. REMARKS (Give any items of uncertainty to items made by unit of origin. Use military abbreviations. Do not use "N/A" or "N/A" unless applicable.)	<p>Item 27. (a) Mrs. Doe inquired as to what steps would be taken against civilian whose car crashed into her husband's. (b) Also could she get the decorations and awards her husband was entitled to and have received? Referred her to legal assistance officer concerning item (a). Prepared letter to DA for item (b). Financial assistance not required as local finance officer paid Mrs. Doe death gratuity in amount of \$1,710. Mrs. Doe expressed her thanks for the prompt and efficient manner in which everything was taken care of and said she never would have been able to get through this without the Army's help.</p>	
37. TIME AND DATE CARD RECEIVED BY ASSISTANCE OFFICER	43. DATE CASE COMPLETED	
0900 9 March 1969	13 March 1969	
TYPED NAME AND GRADE OF SURVIVOR ASSISTANCE OFFICER	SIGNATURE OF SURVIVOR ASSISTANCE OFFICER	
Alfred B. Jones, Major		

1 which may be applicable to "missing" personnel cases.

* COMMENTS WILL BE MADE IN THE COMMENTS COLUMN OF A FORM 2208, BY THE SURVIVOR ASSISTANCE OFFICER, IN REGARDS TO ITEMS 16 AND 17 OF THE FORM, TO INDICATE THAT SURVIVORS HAVE BEEN COUNSELLED REGARDING TRANSPORTATION AND MOVEMENT OF HOUSEHOLD GOODS AND PROCEDURES FOR REQUESTING EXTENSIONS FOR ENTITLEMENTS (AR 55-46).

Figure 1-1. Survivor Assistance Report—Continued.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., December 5, 1974.

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

DEAR MR. CHAIRMAN: We are pleased to respond to your request for a report on H.R. 15579, 93d Congress, a bill for the relief of Mrs. Louise G. Whalen.

The bill proposes to pay to Mrs. Louise G. Whalen the sum of \$2,872.80 in satisfaction of her claim for dependency and indemnity compensation from the date of death of her son, Michael C. (VA No. XC 24 830 173), on February 28, 1969, up to November 23, 1973, the date her application for this benefit was first received in the Veterans Administration. She is currently receiving monthly payments of \$63.70 on account of Michael's death, in addition to two other payments hereinafter mentioned.

It should first be noted that the text of the bill appears factually incorrect in stating that Mrs. Whalen was not given timely notice of her right to claim dependency and indemnity compensation. Mrs. Whalen's son, Michael, was killed in Vietnam on February 28, 1969. Department of Defense Form 1300, Report of Casualty, was sent to the Veterans Administration by the Department of the Army and received in the Boston, Massachusetts Regional Office on March 20, 1969. On March 25, 1969, the Boston Office mailed Veterans Administration Form 21-535, Application for Dependency and Indemnity Compensation by Parent(s), to Mrs. Whalen at 259 Prospect Street, Lee, Massachusetts 01238. Information of record discloses that Mrs. Whalen has lived at this address for over 40 years.

Mrs. Whalen is receiving death compensation of \$75 monthly as the surviving dependent parent of a son, Donald Whalen (VA No. XC 3 357 209), killed in World War II, and non-service-connected death pension of \$50.40 monthly as the widow of a World War I veteran, Joseph P. Whalen (VA No. XC 18 925 881). She was receiving these benefits at the time of Michael's death, and checks in payment thereof have always been sent to her at the Prospect Street address. There is no record of a failure to receive any of the checks, so it seems reasonable to assume that the application form was also delivered.

Additionally, Army records show that on March 4, 1969, a Survivor Assistance Officer visited Mrs. Whalen and counselled her on her eligibility to receive benefits from the Veterans Administration. That individual reported that Mrs. Whalen was at first reluctant to talk to him but later cooperated.

Title 38 U.S.C., section 3010(a), provides a general standard that the effective date of an original award of dependency and indemnity compensation shall not be earlier than the date of receipt of application therefor. Section 3010(d) provides an exception to the stated rule where application is received within one year from the date of death. In that event, benefits may be authorized from the first day of the month of death.

Under the law Mrs. Whalen had one year in which to claim benefits retroactively to the date of Michael's death. She was sent the appropriate form to make claim and was also counselled in person about possible Veterans Administration entitlement. She had more reason than most to know about possible Veterans Administration entitlement since she was already drawing benefits as a widow and parent. Also, it should be noted that there is no legal requirement that notice be given regarding potential entitlement to the benefits here under consideration.

The sum of \$2,872.80 which is set forth in the bill closely approximates the amount of dependency and indemnity compensation that would have been payable to Mrs. Whalen for the period February 1, 1969, to November 23, 1973, had she filed claim within one year from date of death. A specific figure cannot now be quoted since there appears to be some question as to the exact amount of Mrs. Whalen's social security payments during the pertinent period.

There are many cases wherein timely applications for benefits are not filed. The circumstances have been carefully considered. No reason is apparent why this case should be singled out for special legislative treatment authorizing the payment of benefits from an earlier date than the law permits in this and similar cases. To do so would be discriminatory and precedential. It is not believed that private bills of this nature should receive favorable consideration.

Accordingly, the Veterans Administration opposes enactment of H.R. 15579, 93d Congress.

Advice has been received from the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD L. ROUDEBUSH, *Administrator.*

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Calendar No. 784

94TH CONGRESS }
2d Session }

SENATE

{ REPORT
94-826

MRS. LOUISE G. WHALEN

MAY 13, 1976.—Ordered to be printed

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

REPORT

[To accompany H.R. 2279]

The Committee on the Judiciary, to which was referred the bill (H.R. 2279) for the relief of Mrs. Louise G. Whalen, 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 pay Louise G. Whalen of Lee, Mass., \$3,473 in satisfaction of her claims for death indemnity compensation from February 1969 to November 1973, based upon the death of her son in action in Vietnam which was not paid because she was not given adequate notice of her right to claim compensation.

STATEMENT

The Committee on the Judiciary of the House of Representatives, in its favorable report on this bill, House Report 94-520, said:

The Department of the Army in its report to the committee on the bill outlined the circumstances of the case as reflected in their records and stated that should the Congress determine relief was appropriate, it would interpose no objection. The Veterans' Administration in a report on an earlier bill opposed legislative relief.

Mrs. Louis G. Whalen is the widow of a World War I veteran. Five of her sons have been honorably discharged from the military service; another son Donald was killed in World War II, and her youngest son Michael was killed in action in the Republic of South Vietnam. During his

Vietnam service Michael returned to duty after twice being wounded, and on February 28, 1969, he was fatally wounded in action. He received the Distinguished Service Cross, posthumously, the Nation's second highest award, for extraordinary acts of heroism.

Mrs. Whalen is 71 years of age and suffers from Parkinson's Disease. She lived alone at the family residence after Michael entered military duty. Her income consists of the following: \$159.22 per month from Social Security; \$75.00 per month indemnity compensation as the survivor of her son Donald; \$50.40 per month as a widow's pension; and \$63.70 per month for indemnity compensation as Michael's survivor.

The Army report stated that the records of the Veterans' Administration indicated that an appropriate application for compensation had been forwarded to Mrs. Whalen on March 25, 1969 (approximately 1 month after Michael's death). The Department of the Army records disclose that a Survivor Assistance Officer visited Mrs. Whalen on March 4, 1969. His report, shown as Enclosure 1 in the attached Army Report, indicates that Mrs. Whalen was counseled on her eligibility for dependency and indemnity compensation (hereinafter referred to as "DIC") (Item No. 19). The Army report specifically states that there is no showing that she was advised by the Army representatives of the fact that payments of benefits from the date of death could not be paid if the claim was not filed within 1 year. The counsellor said that initially she was reluctant to talk to him, but later she cooperated (Item No. 48). The Department does not know whether forms were provided to her by the counselling officer, or the extent or nature of any followup counseling.

In November 1973, Mrs. Whalen requested the transfer of her files to a geographical location closer to her home, and at this time the Veterans' Administration noted that she was not receiving the indemnity compensation for Michael's death. After receiving this second notice of her entitlement, she promptly filed a claim. The Veterans' Administration approved the claim effective from the date of its receipt in November 1973, but informed Mrs. Whalen that retroactive payments to the date of death in February 1969 were prohibited by statute (38 U.S.C. 2010) because the claim was not filed within 1 year of the date of death.

The Department of the Army in reporting on this bill stated that normally the circumstances that an individual had been counseled on rights and benefits and an indication in the VA records that a form had been sent would cause the Department to conclude there was no basis for relief. However, the Army noted that the counselling and mailing occurred within a short time of her son's death, a difficult period in which the Army concluded that "she was undoubtedly distraught." The Army further noted that Mrs. Whalen's age and her suffering from Parkinson's Disease could also have

been complicating factors. The Army also stated that she might not have actually received the application form or might have been in no condition to comprehend its significance. Under these circumstances, the Army admits that a followup interview by the Army representative may well have been in order. In this connection, the Army stated:

"Accordingly, if the Congress finds that the above circumstances apply in this case, and that relief should therefore be granted, this Department would not object. If your Committee favorably considers H.R. 15579, however, we recommend that the word "adequately" be substituted for the word "timely" in line 11 of the bill. We also defer to the VA as to the appropriate amount of an award which would be equivalent to the amount which Mrs. Whalen would have received had she filed a timely claim."

The Committee has concluded on the basis of the material in the Army report, and notwithstanding the objections of the Veterans' Administration, that this case is an appropriate subject for legislative relief. The committee recommends the amendment suggested by the Army that the term "timely" in line 11 of page 1 of the bill be amended to read "adequate," and that the language barring an attorney's fee in this instance be added to the bill. It is recommended that the amended bill be considered favorably.

The sponsor of the bill has furnished the committee with the following analysis of the amount stated in the bill H.R. 2279—Mrs. Louise G. Whalen:

	Income	DIC
1969-70	\$1,400.00	\$46
1971-73	1,710.00	69
1974	1,910.70	75
1969-70, 23 mo at \$46		1,058
1971-73, 35 mo at \$69		2,415
Total, February 1969, to November 1973		3,473

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

Attached and made a part of this report are the reports of the Department of the Army and the Veterans' Administration.

DEPARTMENTAL REPORTS

DEPARTMENT OF THE ARMY,
Washington, D.C., December 9, 1974.

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

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H.R. 15579, 93d Congress, a bill for the relief of Mrs. Louise G. Whalen.

The bill provides: "That the Secretary of the Treasury is authorized and directed to pay out of any money in the Treasury not otherwise appropriated, to Mrs. Louise G. Whalen, of Lee, Massachusetts, the sum of \$2,872.80 in full satisfaction of her claims against the United States for death indemnity compensation in the period from February 1969 to November 1973 based upon the death of her son, Michael Whalen; in action in Vietnam in February of 1969 which amount was not paid because she was not given timely notice of her right to claim indemnity compensation under applicable law."

The records of the Department of the Army and the Veterans Administration disclose the following facts.

Mr. Louise G. Whalen is the widow of a World War I veteran. Five of her sons have been honorably discharged from the military service; another son Donald was killed in World War II, and her youngest son Michael was killed in action in the Republic of South Vietnam. During his Vietnam service Michael returned to duty after twice being wounded, and on February 28, 1969, he was fatally wounded in action. He received the Distinguished Service Cross, posthumously, the nation's second highest award, for extraordinary acts of heroism.

Mrs. Whalen is 71 years of age and suffers from Parkinson's Disease. She lived alone at the family residence after Michael entered military duty. Her income consists of the following: \$159.22 per month from Social Security; \$75.00 per month indemnity compensation as the survivor of her son Donald; \$50.40 per month as a widow's pension; and \$63.70 per month for indemnity compensation as Michael's survivor.

The records of the Veterans Administration disclose that an appropriate application for compensation had been forwarded to Mrs. Whalen on March 25, 1969 (approximately one month after Michael's death). The Department of the Army records disclose that a Survivor Assistance Officer visited Mrs. Whalen on March 4, 1969. His report (Enclosure 1) indicates that Mr. Whalen was counselled on her eligibility for dependency and indemnity compensation (hereinafter referred to as "DIC") (Item No. 19). However, there is no showing that she was advised by the Army representatives of the fact that payments of benefits from the date of death could not be paid if the claim was not filed within one year. The counsellor said that initially, she was reluctant to talk to him, but later she cooperated (Item No. 48). The Department does not know whether forms were provided to her by the counselling officer, or the extent or nature of any followup counselling.

In November 1973, Mrs. Whalen requested the transfer of her files to a geographical location closer to her home, and at this time the Veterans Administration noted that she was not receiving indemnity compensation for Michael's death. After receiving this second notice of her entitlement, she promptly filed a claim. The Veterans Administration approved the claim effective from the date of its receipt in November 1973, but informed Mr. Whalen that retroactive payments to the date of death in February 1969 were prohibited by statute (38 U.S.C. 3010) because the claim was not filed within one year of the date of death.

As noted above, Mr. Whalen was counselled personally by an Army representative of her rights and benefits and VA's records indicates

that it sent her on a timely basis an application for "DIC". Ordinarily, in this factual situation, the Department would see no basis for relief as proposed in H.R. 15579.

In this case, however, we cannot understand why she did not apply timely for "DIC", unless there were some extenuating circumstances which are not readily apparent from the available record. The counselling and the mailing of the application all occurred within a short time of her son's death, a period in which she was undoubtedly distraught. Her age and her suffering from Parkinson's Disease may have been complicating factors. She may not have received the application form from the VA or may have been in no condition to comprehend its significance. A follow-up interview by the Army representative may well have been in order.

Accordingly, if the Congress finds that the above circumstances apply in this case, and that relief should therefore be granted, this Department would not object. If your Committee favorably considers H.R. 15579, however, we recommend that the word "adequate" be substituted for the word "timely" in line 11 of the bill. We also defer to the VA as to the appropriate amount of an award which would be equivalent to the amount with Mrs. Whalen would have received had she filed a timely claim.

The cost of the bill, if enacted, would be \$2,872.80.

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

Sincerely,

HOWARD H. CALLAWAY,
Secretary of the Army.

Enclosures: (in House Report)

1. DA Form 2204, Survivor Assistance Report.
2. AR 600-10, Chapter 4, Survivor Assistance.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., December 5, 1974.

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

DEAR MR. CHAIRMAN: We are pleased to respond to your request for a report on H.R. 15579, 93d Congress, a bill for the relief of Mrs. Louise G. Whalen.

The bill proposes to pay to Mrs. Louise G. Whalen the sum of \$2,872.80 in satisfaction of her claim for dependency and indemnity compensation from the date of death of her son, Michael C. (VA No. XC 24 830 173), on February 28, 1969, up to November 23, 1973, the date her application for this benefit was first received in the Veterans Administration. She is currently receiving monthly payments of \$63.70 on account of Michael's death, in addition to two other payments hereinafter mentioned.

It should first be noted that the text of the bill appears factually incorrect in stating that Mrs. Whalen was not given timely notice of her right to claim dependency and indemnity compensation. Mrs.

Whalen's son, Michael, was killed in Vietnam on February 28, 1969. Department of Defense Form 1300, Report of Casualty, was sent to the Veterans Administration by the Department of the Army and received in the Boston, Massachusetts Regional Office on March 20, 1969. On March 25, 1969, the Boston Office mailed Veterans Administration Form 21-535, Application for Dependency and Indemnity Compensation by Parent(s), to Mrs. Whalen at 259 Prospect Street, Lee, Massachusetts 02138. Information of record discloses that Mrs. Whalen has lived at this address for over 40 years.

Mrs. Whalen is receiving death compensation of \$75 monthly as the surviving dependent parent of a son, Donald Whalen (VA No. XC 3 357 209), killed in World War II, and non-service-connected death pension of \$50.40 monthly as the widow of a World War I veteran, Joseph P. Whalen (VA No. XC 18 925 881). She was receiving these benefits at the time of Michael's death, and checks in payment thereof have always been sent to her at the Prospect Street address. There is no record of a failure to receive any of the checks, so it seems reasonable to assume that the application form was also delivered.

Additionally, Army records show that on March 4, 1969, a Survivor Assistance Officer visited Mrs. Whalen and counselled her on her eligibility to receive benefits from the Veterans Administration. That individual reported that Mrs. Whalen was at first reluctant to talk to him but later cooperated.

Title 38 U.S.C., section 3010(a), provides a general standard that the effective date of an original award of dependency and indemnity compensation shall not be earlier than the date of receipt of application therefor. Section 3010(d) provides an exception to the stated rule where application is received within one year from the date of death. In that event, benefits may be authorized from the first day of the month of death.

Under the law Mrs. Whalen had one year in which to claim benefits retroactively to the date of Michael's death. She was sent the appropriate form to make claim and was also counselled in person about possible Veterans Administration entitlement. She had more reason than most to know about possible Veterans Administration entitlement since she was already drawing benefits as a widow and parent. Also, it should be noted that there is no legal requirement that notice be given regarding potential entitlement to the benefits here under consideration.

The sum of \$2,872.80 which is set forth in the bill closely approximates the amount of dependency and indemnity compensation that would have been payable to Mrs. Whalen for the period February 1, 1969, to November 23, 1973, had she filed claim within one year from date of death. A specific figure cannot now be quoted since there appears to be some question as to the exact amount of Mrs. Whalen's social security payments during the pertinent period.

There are many cases wherein timely applications for benefits are not filed. The circumstances have been carefully considered. No reason is apparent why this case should be singled out for special legislative treatment authorizing the payment of benefits from an earlier date than the law permits in this and similar cases. To do so would be dis-

criminatory and precedential. It is not believed that private bills of this nature should receive favorable consideration.

Accordingly, the Veterans Administration opposes enactment of H.R. 15579, 93d Congress.

Advice has been received from the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD L. ROUDEBUSH, *Administrator.*

○

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 Mrs. Louise G. Whalen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay out of any money in the Treasury not otherwise appropriated, to Mrs. Louise G. Whalen, of Lee, Massachusetts, the sum of \$3,473 in full satisfaction of her claims against the United States for death indemnity compensation in the period from February 1969 to November 1973 based upon the death of her son, Michael Whalen, in action in Vietnam in February of 1969, which amount was not paid because she was not given adequate notice of her right to claim indemnity compensation under applicable law.

SEC. 2. No part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

Speaker of the House of Representatives.

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

May 19, 1976

Dear Mr. Director:

The following bills were received at the White House on May 19th:

S. 1494 ✓
H.R. 2279 ✓
H.R. 8089 ✓
H.R. 11619 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

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