

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 235, 236, 280, 813, 913, and 950

[Docket No. N-95-3900; FR-3856-N-01]

Treatment of Holocaust Reparation Payments in Assisted Housing Programs: Notification of Affected Individuals

AGENCY: Office of the Secretary, HUD.
ACTION: Notification of policy.

SUMMARY: Before April 23, 1993, the Department of Housing and Urban Development counted Holocaust reparation payments made by foreign governments as income in its means-tested rental housing assistance programs. This policy may have caused some applicants to be denied admission to assisted housing, and some residents of the housing to pay a higher contribution to rent, because these payments were included in their income.

This document announces that the Department will attempt to provide relief to individuals adversely affected by this policy. As described more fully below, the Department will attempt to inform those who were denied eligibility of their potential current eligibility for rental assistance. For those whose rents were increased, the Department will attempt to find an administrative way to recompense them for the increased rent they paid.

The policy announced in this document applies to all initial and continuing income determinations that were conducted before April 23, 1993. The policy also applies to the Section 235 Homeownership Program. Members of the public who believe they may qualify for relief are encouraged to contact the appropriate Departmental official listed below for more information. It should be noted that in some cases, recompense may not be possible without further congressional action.

FOR FURTHER INFORMATION CONTACT: *For Public and Indian Housing programs:* Contact Sherone Ivey, Acting Director, Office of Assisted Housing, Room 4206, telephone (202) 708-0744 (voice), (202) 708-9300 (TDD).

For the Rent Supplement Program; the Section 236 Program (including RAP); Section 8 Programs (including New Construction, Substantial Rehabilitation, State Agency Set-Aside, and Loan Management Set-Aside); the Section 515/8 Farmers Home Set-Aside

Program, and the Nehemiah Housing Opportunity Grants Program: Contact Barbara Hunter, Acting Division Director, Planning and Procedures Division, Office of Multifamily Housing Management, Room 6180, telephone (202) 708-3944 (voice), (202) 708-4594 (TDD).

For the Section 202 and Section 202/8 Housing for the Elderly and Handicapped Programs; the Section 202 Supportive Housing for the Elderly Program; the Section 811 Supportive Housing for Persons with Disabilities Program; and the HOPE 2 Program: Contact Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Room 6130, telephone (202) 708-4542 (voice), (202) 708-4594 (TDD).

For the Section 235 Homeownership Program: Contact Joseph Bates, Director, Single Family Servicing Division, Room 9178, telephone (202) 708-1672 (voice), (202) 708-4594 (TDD).

For the HOPE 3 Program: Contact Clifford Taffet, Program Policy Division, Office of Community Planning and Development, Room 7168, telephone (202) 708-3226 (voice), (202) 708-2565 (TDD).

The address for all the above-listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. The telephone numbers listed above are not toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements in this notice have been submitted to the Office of Management and Budget (OMB) for review. These information collection requirements are not effective until such time that OMB grants its approval. The approval numbers will be published in the **Federal Register** through separate notice.

Background

The Department provides means-tested housing assistance to eligible low-income families under a variety of programs. Rental assistance programs include the following: Rent Supplement,¹ Section 236,² Section 8 and Public and Indian Housing,³ and Supportive Housing for Elderly⁴ and

Disabled Persons.⁵ Programs using Section 8 assistance include Section 8 new construction, substantial rehabilitation, certificate/voucher, State Housing Agency, Farmers Home Administration, moderate rehabilitation, loan management, property disposition, and Section 202/Section 8. The Department also provides means-tested subsidies in the Section 235 Homeownership Program.⁶

In these programs, the Department takes family income into account in determining initial program eligibility, and uses periodic income reexaminations to determine the level of benefits to be provided eligible families. The Department also uses family income to determine eligibility for the HOPE Programs (1, 2, and 3),⁷ the Nehemiah Housing Opportunity Grants program,⁸ and the Section 23 Housing Assistance Payments Program.⁹

In establishing criteria for calculating family income, the Department historically counted the full amount of periodic payments received by program applicants and participants.¹⁰ Since reparation payments made by foreign governments in connection with the Holocaust are made periodically (normally on a monthly basis), they were traditionally included in family income.

Almost two years ago, the Department reversed this position. On March 24, 1993, the Department published a final rule in the **Federal Register**¹¹ that excluded reparation payments, paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era, from family income under the rental assistance programs described above.¹²

⁵ Section 811 of the Cranston-Gonzalez National Affordable Housing Act.

⁶ Section 235 of the National Housing Act. New business under this program was terminated effective October 1, 1989, by section 401(d) of the Housing and Community Development Act of 1987.

⁷ Title IV of the Cranston-Gonzalez National Affordable Housing Act.

⁸ Title VI of the Housing and Community Development Act of 1987, repealed by section 289(b) of the Cranston-Gonzalez National Affordable Housing Act.

⁹ Section 23 of the U.S. Housing Act of 1937, repealed by section 201(a) of the Housing and Community Development Act of 1974.

¹⁰ See the following regulations, as they existed before April 23, 1993: Rent Supplement—24 CFR 215.21(b)(7); Section 236—24 CFR 236.3(b)(4); Section 8—24 CFR 813.106(b)(4); and Public Housing—24 CFR 913.106(b)(4).

¹¹ 58 FR 15773, effective April 23, 1993.

¹² This final rule did not include amendments to the Section 235 regulations. The Department intends to implement the exclusion of reparation payments from income in this program through administrative instructions. Anyone who believes his or her reparation payments were included in

¹ Section 101 of the Housing and Urban Development Act of 1965.

² Section 236 of the National Housing Act.

³ The United States Housing Act of 1937.

⁴ Section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act.

The Department took this action voluntarily, under its general authority to define "income" for the programs involved. As indicated in the preamble to the final rule, the Department believes that the Holocaust—in both its scope and severity—represents a unique situation, and that payments by foreign governments intended to atone for atrocities committed during the Nazi era should not be taken into account with respect to the housing assistance programs involved.

The final rule was *prospective* only. It applied to all initial and continuing income determinations conducted *on or after its effective date*—April 23, 1993. It also made clear that any assisted housing residents who had been asked to repay assistance because of their failure to include past reparation payments in income would be excused from further repayment beginning on April 23, 1993.

The rule did not, however, provide *retroactive* relief to those for whom reparation payments were included in income pursuant to initial and continuing income determinations conducted *before* April 23, 1993. The preamble to the rule indicated that the Department was reviewing the feasibility, practicality, and desirability of making the new policy retroactive, and would advise the public of its conclusions in a later **Federal Register** publication.

This notice announces that as a result of this review, the Department will take steps to provide appropriate retroactive relief where possible under current law. This notice is part of an outreach effort to identify individuals who may be eligible for this relief. This outreach will include, among other efforts, contacting Survivors' groups. The relief has two aspects.

1. *Those who were denied eligibility in the Department's assisted rental housing programs as a result of including reparation payments in family income.*

Section 1(d) of Pub. L. 103-286 (approved August 1, 1994) (42 U.S.C. 1437a note) requires any Federal agency that denied individuals eligibility for means-tested programs by reason of counting reparation payments as income to make a good faith effort to notify them of their potential eligibility under the programs. This notice, and the outreach effort described above, constitute the Department's good faith effort to identify potential affected individuals.

income on or after April 23, 1993 should contact the person identified above for this program.

The Department encourages anyone who believes that he or she was found to be income-ineligible for any of the above rental assistance programs by reason of counting reparation payments in income, to notify the person listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for the program involved. Consistent with section 1(d) of the above statute, the Department will determine the individual's current potential eligibility for rental housing assistance.

2. *Those whose rents under the Department's assisted rental housing programs were increased as a result of including reparation payments in family income.*

The Department will, on a voluntary basis, attempt to repay the amount of any such rent increases and any repayments made by individuals to the extent permissible. Since there is no specific appropriation for these purposes, the critical question in determining whether the Department can provide this relief is the availability of the necessary funding under the particular program involved.

a. *Budget-based Section 202/8 projects.* Based on the circumstances of one claimant, the Department has determined that there are funds to recompense residents of Section 202/Section 8 elderly projects that receive rent adjustments on the basis of project budgets, rather than through Annual Adjustment Factors. To be eligible, the individual:

- must be a current resident of the project, and
- must have resided in a Section 202/8 project during the period in which the reparation payments were counted as income.

For any eligible residents of these projects, the Department will attempt to repay, or offset against any increased future tenant rental payments, the full amount of any increased rental payments stemming from the inclusion of reparation payments in income. The Department will also attempt to repay the full amount of any repayments of assistance paid by tenants because of their failure to include past reparation payments in income. The Department encourages residents of these projects who believe they may qualify for recompense to contact the individual listed under Section 8 project-based programs in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

b. *Other projects.* Similarly, the Department encourages current residents of other assisted projects who resided in the project during the period

in which the reparation payments were counted as income to contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice for the appropriate program. Public housing authorities (PHAs) with locally-owned projects receiving operating subsidies under the Performance Funding System may, after HUD review of the calculations, utilize the regulatory provision at § 990.110(g) to recalculate operating subsidy eligibility, and request current year funds to cover the payment of retroactive payments to eligible recipients. For other programs, the Department will determine the eligibility of the individual, as well as the availability of funds to provide the recompense administratively without the need for further congressional action. Since the Department's assisted rental housing programs use a variety of funding techniques, the ability to provide the necessary relief administratively, without the need for further congressional appropriation action, depends on the program involved.

It should be noted that section 1(e) of Pub. L. 103-286 also purports to provide retroactive relief for those whose rents were increased by reason of counting reparation payments. The relief is limited, however, to rental payments from February 1, 1993 through April 30, 1993. In addition, the authority to make any recompense under Pub. L. 103-286 is conditioned on approval in an appropriation Act. Since no such approval was provided, Pub. L. 103-286 may NOT be used as a source of recompensing eligible individuals.

In contrast, the Department's voluntary action announced in this notice is designed to provide full compensation not just for a three-month period, but for the entire time in which reparation payments were taken into account. It also provides a mechanism for recompensing at least some eligible claimants, without the necessity of further appropriation action. Any recompense that cannot be provided pursuant to the provisions set forth in this notice requires further congressional action.

3. *Those who were denied eligibility, or whose level of subsidy was determined, as a result of including reparation payments in family income in the Section 235 Homeownership Program.*

Although the Department did not include the Section 235 Homeownership Program in its March 24, 1993 final rule (58 FR 15773), the Department is including in its outreach

effort those individuals who may have been affected in this program. Any such individuals should notify the person listed above in the **FOR FURTHER INFORMATION CONTACT** section for this program.

Other Matters

National Environmental Policy Act (NEPA)

This action is categorically excluded from the NEPA requirements at 24 CFR part 50 in accordance with 24 CFR 50.20(k), because it relates to an internal administrative procedure, the content of which does not constitute a development decision nor affect the physical condition of project areas or building sites.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of the Executive Order 12612, *Federalism*, has determined that the policies contained in this notice would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The notice simply announces the Department's intent to provide relief to those whose eligibility or rental payments under HUD's assisted rental housing programs were adversely affected by counting reparation payments as family income.

Executive Order 12606, The Family

The General Counsel, as the Designated Officer under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. The notice simply announces the Department's intent to provide relief to those whose eligibility or rental payments under HUD's assisted rental housing programs were adversely affected by counting reparation payments as family income.

Dated: March 30, 1995.

Henry G. Cisneros,
Secretary.

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