

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