

Date: December 22, 1997

VAOPGCPREC 39-97

From: Acting General Counsel (022)

Subj: Countability as Income of Reparations Paid to Victims
of Nazi Persecution -- XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

To: Director, Compensation and Pension Service (213B)

QUESTION PRESENTED:

Are reparations paid to a veteran's spouse, a victim of Nazi persecution, by the Federal Republic of Germany (FRG) countable as income for purposes of Department of Veterans Affairs (VA) pension programs and parents' dependency and indemnity compensation (DIC)?

COMMENTS:

1. In the matter which gave rise to this request for opinion, the veteran had been in receipt of nonservice-connected pension under the section-306 pension program. In an eligibility verification report, the veteran reported that the veteran's spouse receives approximately \$700 per month in reparations from the FRG government. If these reparations are counted as income, the amount of the veteran's family's income exceeds the maximum allowable for section-306 pension. The veteran has explained that the reparations are intended to compensate his spouse's family whose possessions, including the family's business and home, were seized by the Nazis when they fled Germany in 1939.

2. Following World War II, the FRG entered into an agreement known as Protocol No. 1 with the Conference on Jewish Material Claims against Germany, which required the FRG to enact laws that would compensate Jewish victims of Nazi persecution directly. The German laws implementing Protocol No. 1, which are known by the acronym of their German title as BEG, provide compensation to those who suffered physical injury or loss of freedom, property, income, or professional and financial advancement as a result of that persecution. ¹

¹ The German title of this collection of laws is "Bundesentschaedigungsgesetz. The German compensation efforts

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Office of German, Austrian and Swiss Affairs, Bureau of European and Canadian Affairs, U.S. Dep't of State, *German Compensation for National Socialist Crimes* (March 1996).

3. Section 1503(a) of title 38, United States Code, which governs income computation for improved-pension purposes, states that "[i]n determining annual income . . . all payments of any kind or from any source . . . shall be included except" as specifically provided in that section. The history of this provision indicates Congress' purpose "that a pensioner's total annual nonpension income shall be included in determining the amount of pension payable, unless a specific exclusion from such income is authorized by law." S. Rep. No. 1329, 95th Cong., 2d Sess. 22 (1978); see

also H.R. Conf. Rep. No. 1768, 95th Cong., 2d Sess. 22 (1978), reprinted in 1978 U.S.C.C.A.N. 5702, 5708. Section 1315(f)(1) of title 38, United States Code, pertaining to parents' DIC, contains language similar to that of section 1503(a). Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 provides that persons entitled to receive pension under the provisions of title 38 amended by that act (referred to as "section-306 pensioners"), or under section 9(b) of the Veterans' Pension Act of 1959, Pub. L. No. 86-211 ("old-law pensioners") may continue receiving pension payments at the monthly rate being paid on December 31, 1978, "subject to all provisions of law applicable to basic eligibility for and payment of pension" as in effect on December 31, 1978, and subject to specified income limitations. Pub. L. No. 95-588, § 306(a)(2), (b)(3), 92 Stat. 2497, 2508, 2509 (1978). Annual income for purposes of section-306 pension is to be "determined in accordance with section 503 of title 38,

were codified in three laws. The first law, entitled the "Supplementary law for the Compensation of the Victims of National Socialist Persecution," enacted October 1, 1953, implemented the initial German compensation program. The "Federal Law for the Compensation of the Victims of National Socialist Persecution," enacted June 29, 1956, expanded the scope of the first law. The "Final Federal Compensation Law," enacted September 14, 1965, increased the number of persons eligible for compensation and the assistance offered. U.S. Dep't of State, *German Compensation for National Socialist Crimes*.

United States Code, as in effect on December 31, 1978," which section included language identical to that quoted above from current section 1503(a), although the specific income exclusions in the two statutes differed. Pub. L. No. 95-588, § 306(a)(2)(A), 92 Stat. at 2508. Annual income for purposes of old-law pension is to be "determined in accordance with the applicable provisions of law, as in effect on December 31, 1978." Pub. L. No. 95-588, § 306(b)(3), 92 Stat. at 2509. Those

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provisions contained a limited list of specific items which were not considered income for old-law pension purposes. None of the referenced income-computation provisions contains an exclusion from income for reparations paid to victims of Nazi persecution or more generally for restitution payments of this nature. ²

4. In 1994, Congress enacted Pub. L. No. 103-286, 108 Stat. 1450 (42 U.S.C. § 1437a note), which provides, in section 1(a), that "[p]ayments made to individuals because of their status as victims of Nazi persecution shall be disregarded in determining eligibility for and the amount of benefits or services to be provided under any Federal or federally assisted program which provides benefits or services based, in whole or in part, on need." The law is applicable to determinations made on or after August 1, 1994, "with respect to payments . . . made before, on, or after such date." Pub. L. No. 103-286, § 1(b), 108 Stat. 1450.

5. This legislation was prompted in large part by a decision by the Department of Housing and Urban Development, subsequently modified, to count FRG reparations as annual income in determining eligibility for low-income assisted housing. See 140 Cong. Rec. S9259-60 (daily ed. July 19, 1994) (statement of Sen. DeConcini); see also 140 Cong. Rec. H5529, H5530 (daily ed. July 12, 1994) (statements of Reps. Towns, Coppersmith, and Gilman). The Internal Revenue Service had concluded that the compensation paid by the FRG is in the nature of reimbursement for the deprivation of civil or personal rights and therefore did not consti-

² The veteran contends that the reparations are not countable as income for purposes of determining pension entitlement because they constitute reimbursement for a casualty loss. The exclusion for reimbursements for casualty loss found at 38 U.S.C. §§ 1315(f)(1)(I) and 1503(a)(5) would not be applicable to section-306 and old-law pension because the exclusion was not part of the statutes governing those programs as in effect on December 31, 1978. See Pub. L. No. 100-687, § 1402, 102 Stat. 4105, 4129 (1988) (adding casualty-loss exclusion for improved pension and parents' DIC). We need not address whether the reparation payments constitute reimbursement for a casualty loss for purposes of determining entitlement to improved-pension and parents' DIC in light of our conclusion based upon Pub. L. No. 103-286. See *infra*.

tute taxable income to the recipients for Federal income tax

purposes. Rev. Rul. 56-518, 1956-2 C.B. 25; see also Rev. Rul. 58-370, 1958-2 C.B. 14 (same conclusion regarding

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similar payments by Federal Republic of Austria). Proponents of the legislation also noted a decision by the United States Court of Appeals for the Ninth Circuit, *Grunfeder v. Heckler*, 748 F.2d 503 (9th Cir. 1984) (*en banc*), which overturned a determination by the Social Security Administration that German reparation payments made to victims of Nazi persecution constituted countable income for purposes of determining eligibility for supplemental security income under the Social Security Act. 140 Cong. Rec. at S9260 (statement of Sen. DeConcini); 140 Cong. Rec. at H5529 (statement of Rep. Waxman). In order to insure fair and consistent treatment of victims of Nazi persecution under all Federal benefit programs, proponents advocated what became section 1 of Pub. L. No. 103-286 as a means of establishing "a uniform standard regarding reparations payments to Holocaust victims . . . within the Federal Government." 140 Cong. Rec. at H5530 (statement of Rep. Gilman). Senator DeConcini described the legislation as "prevent[ing] all Government agencies" from considering such reparations payments in determining eligibility for need-based benefits. 140 Cong. Rec. at S9259 (statement of Sen. DeConcini).

6. The language of section 1(a) of Pub. L. No. 103-286, which refers to "any Federal . . . program which provides benefits . . . based, in whole or in part, on need," effectuates Congress' objective to create a uniform standard applicable to all Federal need-based programs and is broad enough to encompass the improved, section-306, and old-law pension programs and the parents' DIC program. To the extent of any conflict between the statutes governing these programs, which do not exclude reparations payments from income-computation, and Pub. L. No. 103-286, the latter, more recently enacted, law must control. 2B Norman J. Singer, *Sutherland Statutory Construction* § 51.02 (5th ed. 1992); see also VAOPGCPREC 4-93 (O.G.C. Prec. 4-93); VAOPGCPREC 71-90 (O.G.C. Prec. 71-90). We therefore conclude that reparation payments to victims of Nazi persecution may not be considered countable income for purposes of determining eligibility for these benefits. Further, to the extent that a claimant's net worth may be relevant to determining "eligibility for and the amount of benefits"

under VA need-based programs, as it is for purposes of improved pension and section-306 pension (but not old-law pension and parents' DIC), section 1(a) of Pub. L. No. 103-286 would preclude consideration of reparation payments to victims of Nazi persecution in determining net worth.

7. Finally, we note that section 1(d) of Pub. L. No. 103-286, 108 Stat. 1450, requires any government agency that has

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not disregarded reparation payments to victims of Nazi persecution in making eligibility determinations for Federal need-based benefits to make a "good faith effort" to notify any person who may have been denied benefits based upon the receipt of these reparations of the potential eligibility of that person for the benefits. We suggest that the Veterans Benefits Administration attempt to determine whether the reparation payments in question may have been counted in determining eligibility for need-based benefits administered by VA and, if so, whether it would be feasible to identify and notify claimants who may have been denied benefits on this basis.

HELD:

Reparations paid by the Federal Republic of Germany to individuals who were victims of Nazi persecution are not countable as income or net worth for purposes of determining eligibility for section-306, old-law, and improved pension, and parents' dependency and indemnity compensation.

Robert E. Coy