



OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

FEB 26 1991

RECEIVED MAR 02 1991

Ms. Donna S. Yamashiro
Staff Attorney
Asian Law Alliance
184 East Jackson Street
San Jose, CA 95112-5153

Dear Ms. Yamashiro:

This responds to your correspondence concerning whether reparation payments authorized by the Civil Liberties Act of 1988 are considered income and/or assets in determining eligibility and tenant rent under the Federal housing programs.

As we have discussed, HUD has excluded reparation payments received by Holocaust survivors from income sources when determining their eligibility for admission and assistance under the programs administered by HUD. Accordingly and based on the Civil Liberties Act of 1988, HUD will also exclude reparation payments received by Japanese American concentration camp survivors from sources of income when determining their eligibility.

You have also asked for the exclusion of these amounts in later years when they are placed in savings or checking accounts, certificates of deposits, etc. When these payments are included in these types of accounts, they are then known as net family assets. 24 CFR 813.102 defines net family assets and 24 CFR 813.106(b) (3) describes how income is derived from net family assets in determining annual income.

The term "net family assets" means the net cash value of real property, savings, stocks, bonds, and other forms of capital investment. The term net cash value is the market value less any indebtedness and less any cost of disposing of the asset. Examples of cost of disposing of the assets include penalties for withdrawing funds before maturity, broker or legal fees assessed to sell or convert the asset to cash, and settlement costs for real estate transactions.

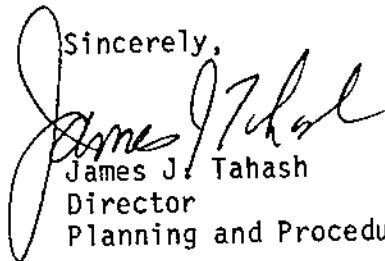
In using assets to determine annual income, a distinction is made between net family assets totalling \$5,000 or less and those that total more than \$5,000. When the total is \$5,000 or less,

the actual income from all assets is included in annual income. When the total is more than \$5,000, the amount included in annual income is the higher of the actual income from all the assets or the net cash value of the assets times the HUD-approved passbook rate of .0550.

When reparation payments from any source become assets, their value will be included in determining annual income and tenant rent. We are unable to exclude reparation payments further from these computations.

I trust that this information is of assistance to you.

Sincerely,



James J. Tahash

Director

Planning and Procedures Division



APR 23 1991

OFFICE OF THE ASSISTANT SECRETARY FOR
HOUSING-FEDERAL HOUSING COMMISSIONER

Ms. Donna S. Yamashiro
Staff Attorney
Asian Law Alliance
184 East Jackson Street
San Jose, CA 95112-5153

Dear Ms. Yamashiro:

This is in response to your letter of April 3, 1991, concerning the effect of reparation payments on tenant income eligibility requirements for public and assisted housing.

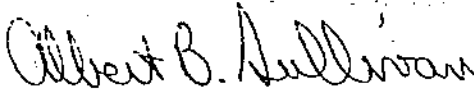
HUD has excluded reparation payments received by Holocaust survivors from the definition of income when determining a tenant's eligibility for Section 8 assistance. Out of concern for those who were interned during the Second World War, out of a sense of uniformity of procedures, and in conformity with the Civil Liberties Act of 1988, the same exclusion regarding determination of income will be applicable to reparation payments received by Japanese American concentration camp survivors.

However, once reparation payments are received, these funds are subject to existing HUD regulations concerning "net family assets" if placed in savings or checking accounts, certificates of deposit, etc., and as assets, their value will be included in the determination of annual income and tenant rent. We are unable to exclude reparation payments further from these computations. Regulatory authority for such a decision is provided in 24 CFR 813.102 and 24 CFR 813.106 (b)(3), respectively.

For a technical discussion of "net family assets" and in determining imputed income from assets, we guide your attention to HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, Chapter 3 "Certifying Tenant Eligibility and Calculating Tenant Rent," reprinted December 1990. A copy is enclosed for your information.

We trust that this information will be of use to you, and we thank you for bringing your concerns to the Department's attention.

Sincerely,

for 
Donald A. Kaplan
Director
Office of Multifamily
Housing Management

Enclosure



Asian Law Alliance

184 East Jackson Street • San Jose, California 95112-5153
(408) 287-9710

December 3, 1990

James J. Tahash, Director of
Placement and Procedures Division
Multi-Family Housing Programs
Department of Housing and Urban
Development (HUD)
451 Seventh Street S.W.
Room 6182
Washington DC 20410

Dear Mr. Tahash:

This letter will confirm our telephone conversation which occurred on November 26, 1990, when you urged me to submit a position statement regarding the impact of redress/reparations payments from the U.S. government to persons of Japanese ancestry on eligibility and rent-setting in relation to federal housing programs.

I. THE CIVIL LIBERTIES ACT OF 1988

In August 1988, President Reagan signed the Civil Liberties Act of 1988 (50 U.S.C. Section 1989 et seq), which provided for the payment of \$20,000 to each eligible individual who was interned, relocated, or otherwise deprived of liberty or property as a result of Executive Order 9066 or other governmental action. 50 U.S.C Section 1989b-4(f) states the following:

Amounts paid to an eligible individual under this section --

- (1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and
- (2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31,¹

¹31 U.S.C. Section 3803(c)(2)(C) states as follows:
For purposes of this subsection, the term "benefits"
means--

(xiv) benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

United States Code, or the amount of such benefits
(emphasis added).

II. FEDERAL HOUSING REGULATIONS

A. Eligibility

For purposes of determining "income" for eligibility under the public housing, Section 8 Programs, Section 236, and Rent Supplement Programs, when families have net assets exceeding \$5,000, annual income includes the greater of actual income from the assets OR imputed income from the assets (based on a percentage of the value of the assets using the current passbook savings rate). 24 C.F.R. Section 215.21, 24 C.F.R. Section 236.3, 24 C.F.R. Section 813.106(b)(3).

B. Rent-Setting

Similarly, when families have net assets exceeding \$5,000, annual income--for rent-setting purposes--includes the greater of the actual income from the assets or the imputed income (based on a percentage of the value of the assets using the current passbook savings rate). 24 C.F.R. Section 215.21, 24 C.F.R. Section 236.3, 24 C.F.R. Section 813.106(b)(3), 24 C.F.R. Section 913.106.

III. LEGISLATIVE HISTORY OF THE CIVIL LIBERTIES ACT OF 1988

A. Senate Report No. 100-202 (October 20, 1987)

Senate Report No. 100-202 states that the full Committee reported Senate Bill 1009 to the Senate with an amendment which, inter alia, "adds Section 205(f), which clarifies that payments under the Act, . . . shall not be included in determining eligibility to receive certain income-based Federal benefits" (p. 7, Senate Report).

Senate Report No. 100-202 also states that the redress payments "shall not be included as income or resources to determine whether or not a person was eligible to receive benefits described in section 3803(c)(2)(C) of Title 31, United States Code. So, an eligible person under this section could still apply for and receive benefits from Federal programs such as enumerated parts of Social Security, the Older Americans Act, and certain low income housing assistance benefits, even though that person had received compensation from the law" (p. 17, Senate Report, emphasis added).

B. House Conference Report No. 100-785 (July 26, 1988)

The House Conference Report No. 100-785, section 105(F)(2), states that redress payments "shall not be included as income or resources for purposes of determining eligibility to receive

benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits (p. 6, House Conference Report, emphasis added).

IV. ANALYSIS

It is clear from the language of the statute which authorizes redress and reparations and from the legislative history of that statute that not only should redress payments themselves not be considered as "income," but that additionally actual or imputed interest derived from the redress payments should NOT be considered as income either for purposes of determining eligibility or rent-setting.

The redress statute literally states that the redress payments shall not be included as income or "resources" (50 U.S.C. Section 1989b-4(f)). "Resources" (as it appears in the reparations statute) is synonymous with "assets" (as it appears in the federal housing regulations). Thus, the reparations statute clearly states that the redress payments are not "assets." Accordingly, the federal housing regulations which provide that either actual or imputed interest derived from "assets" must be included as "income" do not apply to the redress payments.

The redress statute also states that the redress payments shall not be included as income or resources for purposes of determining eligibility or for purposes of determining "the amount of such benefits" (50 U.S.C. Section 1989b-4(f)). The phrase "the amount of such benefits" indicates that neither actual nor imputed interest from the redress payments should be included as income to set the amount of rent under federal housing programs.

The legislative history of the redress statute also lends support to the fact that Congress intended that the redress payments would not affect either eligibility for federal housing programs or the amount of rent to be paid by the recipients of the redress payments. The relevant portion of the language in the House Conference Report No. 100-785 parallels the language in the redress statute (50 U.S.C. Section 1989b-4(f)). Language in Senate Report No. 100-202 provides additional insight through the following statement: "So, an eligible person under this section could still apply for and receive benefits from Federal programs such as . . . certain low income housing assistance benefits, even though that person had received compensation from the law" (p. 17; Senate Report). Congress clearly did not intend that receipt of the redress payments should have any impact on eligibility or rent setting for federal housing programs.

It is thus unlikely that Congress would had intended to exclude the redress payments from the definition of "income," but at the same time, included the redress payments in the definition of "assets," which would lead to the incongruous result of including actual or imputed interest from the redress payments as "income," even though the redress payments themselves are not "income."

It also should be noted that the Civil Liberties Act of 1988 makes the following statement:

The Congress recognizes that, . . . a grave injustice was done to both citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II. . . . The excluded individuals of Japanese ancestry suffered enormous damages, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant human suffering for which appropriate compensation has not been made. For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation. 50 U.S.C. Section 1989a(a).

The above-quoted language reflects the depth of feeling experienced by Congress in their attempts to provide for symbolic compensation "for a grave injustice" inflicted on persons of Japanese ancestry who were interned, relocated or evacuated. Query whether, given the above language, Congress would be more than happy to exclude the redress payments as "income" for purposes of determining eligibility for and the amount of federal housing benefits, but that Congress would be reluctant to go the extra step of excluding the redress from the definition of "assets." If HUD were to interpret the federal housing regulations to include actual or imputed interest derived from the redress payments as "income," then in effect all recipients of the redress payments would be penalized for receipt of redress. It is simply illogical that Congress would had intended such a penalty on recipients of the redress payments, while at the same time, attempting to provide redress for "enormous damages, . . . incalculable losses, . . . significant human suffering."

Although there is no case law on point regarding whether actual or imputed interest from the redress payments under the Civil Liberties Act of 1988 should be included as "income" for purposes of determining eligibility or setting rent for federal housing programs, two cases demonstrate that Congress generally regards redress payments in a special light. In Hamilton v. Butz, 520 F.2d 709 (9th cir. 1975), the 9th Circuit Court of Appeals addressed the issue of whether payments to individuals under the Alaska Natives Claims Settlement Act should be considered as "resources" under the Food Stamp Act. The 9th Circuit concluded that the Settlement Act and its legislative history indicated that Congress did not intend that payments under the Settlement Act should preclude food stamp assistance. The 9th Circuit stated as follows:

It bears emphasis that in making this determination, we are primarily concerned with the proper construction of the

Settlement Act, taking into account the special character of payments made under the Act. We are only incidentally concerned with the general meaning of "resources" as that term is used in the Food Stamp Act and regulation promulgated thereunder.

Hamilton v. Butz, supra, p. 713.

Likewise, in Grunfeder v. Heckler, 748 F.2d 503 (9th Cir. 1984), the 9th Circuit held that Congress did not intend that German reparations payments to Jewish survivors of the Holocaust be included as income for purposes of determining eligibility for SSI. The 9th Circuit reasoned as follows:

Having recognized the great suffering of people like Felicia Grunfelder, and having consistently taken steps to ameliorate their plight, Congress could not have intended to undermine its own longstanding policy favoring their welfare by counting German reparations payments as income in determining eligibility for SSI benefits. Today's decision is in harmony with Congress' desire to provide some solace to the victims of one of human history's terrible tragedies. Grunfeder v. Heckler, supra, p. 509-510.

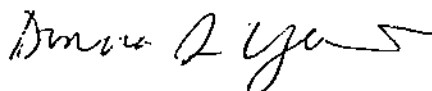
Similarly, given the special nature of the redress payments under the Civil Liberties Act of 1988, Congress could not have intended that interest from the redress payments be counted as income.

In closing, the Asian Law Alliance, on behalf of the Japanese-American community, urges the Department of Housing and Urban Development to arrive at the only reasonable conclusion possible after considering the federal housing regulations in the context of the Civil Liberties Act of 1988 and its legislative history: That neither actual nor imputed interest derived from the redress payments will be considered as "income" for purposes of determining eligibility or for purposes of setting rent under the various federal housing programs.

I am respectfully requesting the Department of Housing and Urban Development issue a special issuance that actual and imputed interest derived from the redress payments authorized by the Civil Liberties Act of 1988 will not be considered as "income" for purposes of determining eligibility or setting rent. Thank you for your prompt attention to this matter. Should you have any questions, please do not hesitate to call.

Sincerely,

ASIAN LAW ALLIANCE



Donna S. Yamashiro
Staff Attorney