

September 18, 2014

Carolyn W. Colvin
Acting Commissioner
Social Security Administration
6401 Security Blvd.
Baltimore, Maryland 21235

RE: German Ghetto Pension – Protections Needed for Victims of Nazi
Persecution – Windfall Elimination Provision and Retirement Insurance Benefits

Dear Commissioner Colvin:

We write to bring your attention to a pattern of erroneous reductions in Social Security Title II Retirement Insurance Benefits (RIB) received by some victims of Nazi persecution, resulting from misapplication of the Windfall Elimination Provision (WEP). We ask you to make some changes in operating procedures to address this problem. Also, we request that you identify a contact person for us to bring cases of erroneous reduction of RIB based on the WEP.

WHO WE ARE

NYLAG is a non-profit legal services organization founded in 1990 that uses the power of the law to protect the rights of the vulnerable, strengthen communities, and fight poverty. Last year, NYLAG's free civil legal services directly benefited over 76,000 low-income New Yorkers. NYLAG reaches even the most isolated populations by placing its attorneys directly within over 101 local sites -- community centers, courts, hospitals and local agencies -- in all five boroughs of New York City as well as neighboring counties. Our Mobile Legal Help Center is a legal services office on wheels reaching even more people in their communities.

NYLAG's 200 paid staff and hundreds of volunteers represent low-income clients in disputes regarding health care, SSI and other public benefits, VA benefits, family law, eviction and foreclosure prevention, immigration law, employment law, consumer law, disaster relief, special education, advance planning, and Holocaust survivor compensation. In addition to direct representation of clients, our staff conducts community outreach, Continuing Legal Education, numerous clinics for law students, trainings for social workers and other professionals, and impact litigation.

NYLAG's Holocaust Compensation Assistance Project and Evelyn Frank Legal Resources Program specialize in assisting victims of Nazi persecution in two ways. First, we assist them in securing restitution from Germany and other countries. Second, we advocate to ensure that Holocaust

restitution is accorded the protection guaranteed by Congress when it enacted the Victims of Nazi Persecution Act in 1994.¹ The 1994 federal law provides that Holocaust restitution payments shall be disregarded in determining financial eligibility when victims of Nazi persecution apply for SSI and other federally-funded benefits that are based on financial need. NYLAG is a national expert in this area, and has developed numerous resources that educate survivors, their families and professionals, as well as state and local government officials about this important law. See article posted at <http://www.wnylc.com/health/entry/65/>.

Windfall Elimination Provision (WEP) Being Misapplied to Reduce German Pensions for Nazi Victims

As you know, the WEP reduces the amount of U.S. Social Security Retirement Insurance benefits for some beneficiaries who have also earned a retirement pension from a foreign government. Work performed before 1957 cannot be a basis for reduction of Title II Retirement Insurance Benefits (RIB) under the WEP. See 20 CFR §§ 404.213(b), 404.243. Many victims of Nazi persecution receive German social insurance benefits based on work credits earned during World War II – which of course can only have been before 1957. We have seen a number of instances where the SSA has mistakenly used German social insurance benefits awarded to victims of Nazi persecution to reduce their Social Security retirement benefits based on the WEP – even when all work credits were earned long before 1957. We ask you to consider some operational changes that will prevent the WEP being mistakenly applied to reduce Title II RIB relied on by Nazi victims because of their receipt of German social insurance. The need for these changes is pressing now because thousands of Nazi victims will be newly receiving the “Ghetto Pension” from Germany, explained below, because of recent changes in German law authorizing this pension.

Background on the Ghetto Pension and Other German Social Insurance Awarded as Restitution for Nazi Persecution

Over the decades since World War II, Germany has developed different types of restitution. Originally, under Germany’s National Reconciliation Law, *Bundesentschädigungsgesetzes* or (German acronym, “BEG”) was awarded since the 1950’s as a stand-alone restitution benefit. In 1970, the German Law on Compensation for National Socialist Injustice through the Social Insurance System (German acronym, “WGSVG”) granted wage credits under the German social insurance program to victims of Nazi persecution who were deprived of the opportunity to work in Germany because they were forced to flee, live in ghettos or concentration camps, or were otherwise prohibited from working during the Nazi regime.

Since 1997, under the German Law for the Payment of Pensions for Periods of Employment in a Ghetto (German acronym, “ZRBG”), the German government has granted credits under its social insurance program to victims of Nazi persecution who were employed for some form of

¹ Public Law No: 103-286 (108 Stat. 1450), enacted August 1, 1994; appears as a note after 42 U.S.C. § 1437a; see text of law posted at <http://thomas.loc.gov/cgi-bin/query/z?c103:H.R.1873.ENR:>

compensation during their confinement in ghettos annexed to the Third Reich.² This “Ghetto Pension” was expanded in 2002. Initially, most applicants were rejected due to local German authorities’ misinterpretation of eligibility criteria. A 2009 German court ruling allowed for denied applications to be reconsidered under a broader definition of “remuneration” received in the ghetto, but entitlement to retroactive payments was tied up in the courts until, in June 2014, the German government amended the ZRBG legislation granting retroactive payments dating to 1997 to all recipients. In addition, the location of ghettos has been widened to include those in a “territory under Nazi influence,” whereas previously the ghetto had to be located in a “territory occupied or annexed by the Third Reich.”

Mis-Application of the “WEP” for Nazi Victims – and the Urgent Need for Action Now

We have seen a number of cases in which the SSA reduced Title II RIB under the WEP, even though the German social insurance was clearly based on work credits earned before 1957. While NYLAG represents people only in New York City, this is such a rare and arcane issue that we have had cases referred to us from New Jersey and Florida. After months of pursuing appeals and contacts with the regional offices, we have been able to resolve these cases individually.³ However, this required preventable administrative burden for the SSA and also caused preventable financial hardship for the claimants. Moreover, all of those affected do not have access to legal counsel, and even many lawyers do not understand this little-known issue.

A policy clarification and operational changes would be extremely beneficial for both individual Nazi victims as well as to reduce the SSA’s administrative burden.

The recent German rulings and legislative action in June 2014 liberalizing eligibility for the Ghetto Pension will result in thousands of older Title II RIB beneficiaries being awarded it through the rest of 2014 and going forward. Many of them are low income and have little resources. When their Title II RIB is mistakenly reduced – or suspended altogether – because of a misapplied WEP reduction, it can cause severe hardship.

The SSA has recently recognized the need for policies and procedures that protect beneficiaries who receive the Ghetto Pension. We were delighted to see the emergency message issued by the SSA in June 2014 concerning German Social Insurance Payments under the ZRBG (“Ghetto Pension”)([EM-14041](#)).⁴ We supported these amendments to the POMS manual, which had been proposed by our colleagues at Bet Tzedek Legal Services in California, with whom we

² Information on the Ghetto Pension is available at http://www.claimscon.org/forms/Ghetto_Pension_Handbook.pdf and <http://www.claimscon.org/what-we-do/compensation/germany-payments/zrbg/>.

³ Redacted documents from one New Jersey case are attached. After the initial WEP reduction was imposed in June 29, 2011, the case was not resolved until March 6, 2012.

⁴ Available at <https://secure.ssa.gov/apps10/reference.nsf/links/06192014092412AM>.

collaborate on these issues. We applaud your swift action on this matter. That emergency message, however, does not address the WEP problem. Rather, it enforces compliance with the Victims of Nazi Persecution Act in 1994 (see footnote 1), which exempts restitution based on status as a Nazi victim from being counted toward financial eligibility for SSI and other federally funded benefits based on financial need.

RECOMMENDATIONS:

We recognize the challenge for SSA in ensuring that the WEP is not applied to reduce Title II RIB for Nazi victims, since the Ghetto Pension and other forms of German social insurance *look* like a traditional German social insurance benefit. Operating procedures and electronic systems must be able to identify whether a German social insurance benefit is based on work credits earned before or after 1957. We believe that changes in both the POMS manual and in operating procedures can ensure that the WEP is not wrongly applied when thousands of elderly Social Security beneficiaries begin receiving a Ghetto Pension in the coming months and years.

1. POMS

We request that the POMS be amended to clarify that the WEP not be used to reduce Title II RIB when it is based on work performed prior to 1957, and specifically when it was performed in Germany prior to 1957. It would be helpful to specifically state that the Ghetto Pension is not a basis for WEP. Any reference to the Ghetto Pension could cross-reference or mirror the helpful clarifications issued in Emergency Message [EM-14041](#), which provide a guide for identifying which pensions are a “Ghetto Pension.” We understand further amendments to the POMS are forthcoming as well.

The POMS section titled RS 00605.36 *Windfall Elimination Provision (WEP) Exceptions* at section (B)(3) does state, “Payments based on the following are not subject to WEP:

- ... All non-covered employment before 1957...”

However, given the cases we’ve seen, this language is not operationally sufficient, and should specifically reference the Ghetto Pension and work performed in Germany during World War II, including but not limited to the Ghetto Pension. Additionally, other POMS sections should be amended to clarify that work performed prior to 1957, including but not limited to the Ghetto Pension, cannot be the basis for WEP, including:

- RS 00605.360 WEP Applicability (no mention of 1957 cut-off date)
- RS 00605.367 Chart on WEP Development
- RS 00605.372 Special Situations Applied To WEP

2. Systems issues in identifying Ghetto Pension and other German social insurance based on work credits earned during World War II

We are not familiar with the systems by which Germany transmits information to the SSA documenting receipt of a German pension. We realize that this is likely done electronically, and we do not know whether the information received by the SSA specifies that the pension is based on work prior to 1957. However, in one case involving a New Jersey beneficiary, for which documents are attached, we were able to obtain from the local SSA office a completed German Insurance Record, which indicated that all work used as the basis for the pension was performed from 1941 to 1944. If this insurance record is routinely provided to the SSA, then operating procedures should be modified to require the SSA office to examine the work record, and to disregard pensions based on work prior to 1957. If this work record is not routinely provided to the SSA, then we ask that you explore a systems programming or operational change to require the SSA office to make further inquiry – whether with Germany or with the beneficiary – as to whether the work credits were earned before 1957, *before* taking action to apply the WEP to reduce RIB.

If the WEP is automatically applied by virtue of electronic transmission of the pension information from Germany, then we ask that you explore a systems programming change to prevent these automatic reductions without an inquiry as to whether the pension is based on work credits earned during World War II or otherwise prior to 1957. Whether through a back end systems change or by operating instructions for SSA personnel, steps must be taken to prevent such automatic WEP reductions without an individual inquiry.

* * *

As you explore these proposed remedies, and for future relevant cases, we would very much appreciate your designation of a contact person to whom we can bring cases requiring relief from an erroneous reduction based on the WEP. With the increase in the number of Social Security beneficiaries who may be approved for the Ghetto Pension in the coming months, we expect there will be an increased need for quick resolution of cases where Title II RIB benefits may be mistakenly reduced.

We would be glad to meet to discuss these issues and to provide additional examples in order to work toward developing procedures that will prevent mistaken WEP reductions. Your staff can contact Valerie Bogart at vbogart@nylag.org or 212.613.5047.

Thank you for your commitment to improve SSA's policies and procedures to protect this most vulnerable population.

Sincerely,

Yisroel Schulman
President

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encl. Sample case (redacted)

cc: Aviva Sufian, Special Envoy for U.S. Holocaust Survivor Services
Jonathan Greenblatt, White House Office of Social Innovation, Special Advisor