

**SWISS FUND FOR NEEDY
VICTIMS OF THE HOLOCAUST/SHOA**

I. INTRODUCTION

The Swiss Fund for Needy Victims of the Holocaust/Shoa (the “Swiss Humanitarian Fund” or the “Fund”) was established in 1997 by the government of Switzerland to assist needy victims of the Nazi Regime during the Second World War. The Swiss Humanitarian Fund, established on a voluntary basis by Switzerland, is unrelated to this class action. As of July 10, 2000, the Swiss Humanitarian Fund had disbursed SFr. 288,669,948 (approximately \$169,304,924 in current value)¹ to more than 300,000 Holocaust survivors, both Jews and non-Jews.² These monies are wholly separate from, and in addition to, the \$1.25 billion Settlement Fund in this action.

The work of the Swiss Humanitarian Fund was of particular interest to the Special Master because the Fund already has confronted many of the issues that arise in connection with any Plan of Allocation and Distribution the Court may approve. Like the class action settlement, the Swiss Humanitarian Fund was established to benefit a broad range of Nazi victims worldwide, including many who had received scant, if any, benefit, from other Holocaust compensation programs. Among others, the Swiss Humanitarian Fund benefited the “double victims” of Central and Eastern Europe, the Roma, Jehovah’s Witnesses, the physically or mentally disabled or handicapped and homosexuals. Swiss Humanitarian Fund administrators

¹ The conversion rate used for all conversions throughout this Annex is: 1 SFr. = \$.5865 as of August 7, 2000.

² See Overview of Finances, Payments and Pending Applications, Swiss Fund for Needy Victims of the Holocaust/Shoa, July 10, 2000, at 1-3.

accordingly were required, as the Special Master is here, to determine a fair allocation of benefits among the various eligible groups, to establish reasonable eligibility criteria, and to plan for distributing these benefits expeditiously in nations and among communities often not yet organized for the task.

Moreover, Swiss Humanitarian Fund administrators and the distributing bodies of approximately forty-five nations where beneficiaries reside had to wrestle with the question of who, among generally poor and elderly Nazi survivors, were “needy,” and whether distinctions among such needy survivors should be drawn. Swiss Humanitarian Fund administrators had to resolve whether an applicant’s “need” had to be proven with evidence, and, if so, by what quantum, or whether self-certification of need would suffice. As discussed below, these questions were answered differently by the distribution bodies of different nations. Some national committees decided to require detailed proof of need, while in the United States, for example, all qualified applicants who simply declared themselves in need were deemed eligible.

These lessons and others – among them, the process by which Swiss Humanitarian Fund benefits were divided among Jewish and non-Jewish survivors, the problems inherent in distributing monies worldwide among many diverse communities, the treatment accorded to “heirs” and the question of whether to benefit only individuals or to include “communities” and their organizational representatives – all resonate here.

For these reasons, the Special Master has studied the Swiss Humanitarian Fund, its structure, and a number of the key problems it has faced.

II. ORIGIN OF THE FUND

Like the \$1.25 billion Settlement Fund, the Swiss Humanitarian Fund also grew out of the negotiations between Swiss banks and Holocaust survivors and heirs seeking the return of bank accounts opened in Swiss banks before and during the Second World War. In December, 1996, the Banking Committee of the U.S. House of Representatives (the “House Banking Committee”), chaired by Rep. James A. Leach, held public hearings on this issue. In his testimony before the House Banking Committee, Edgar Bronfman, president of the World Jewish Restitution Organization (the “WJRO”), expressed grave disappointment that elderly Holocaust survivors were required to await the conclusion of the lengthy ongoing talks.³ Bronfman called on Switzerland to establish a humanitarian fund to assist Holocaust survivors as “a good faith financial gesture” while negotiations continued.⁴

On January 22, 1997, Rainer Gut of Credit Suisse proposed that a \$70 million fund be created, to be financed by the commercial banks, the Swiss National Bank and the Swiss Confederation out of their general revenues.⁵ Mr. Gut’s proposal was quickly endorsed by the Swiss government, which agreed the next day to establish a memorial fund for victims of the Holocaust.

³ See *In re Holocaust Victim Assets Litig.*, (96 CV 4849 (ERK), The World Jewish Restitution Organization’s Brief in Support of Its Proposed Plan to Allocate and Distribute Settlement Funds (hereinafter “WJRO Brief”), at 11, *at* <http://www.swissbankclaims.com/index.asp>.

⁴ *Id.*

⁵ *See id.*

A. The Creation of the Fund

On February 26, 1997, the Swiss Federal Council established the Swiss Humanitarian Fund, effective March 1, 1997,⁶ “to support persons in need who were persecuted for reasons of their race, religion or political views or for other reasons, or otherwise were victims of the Holocaust/Shoa, as well as to support their descendants in need.”⁷ Three Swiss banks, UBS, Credit Suisse and Swiss Bank Corporation provided initial financing of SFr. 100 million, and the Swiss Humanitarian Fund was authorized to accept contributions from others.

Other Swiss businesses later contributed SFr. 65 million, and the Swiss National Bank pledged another SFr. 100 million.⁸ Appeals for contributions from the Swiss public raised an additional SFr. 8 million. With subsequent contributions and interest payments, the total Swiss Humanitarian Fund corpus came to SFr. 294,892,293 (approximately \$172,954,329 in current values).⁹ All but SFr. 6,222,345 (approximately \$3,649,405 in current values) has been

⁶ See Task Force of Switzerland (hereinafter “Task Force”), “Creation of a Special Fund for Needy Victims of the Holocaust/Shoa”, Feb. 26, 1997 http://www.switzerland.taskforce.ch/G/G2a/pr/970226_e.htm (visited Dec. 20, 1999). The Task Force of the Federal Department of Foreign Affairs has been entrusted with coordinating the investigation into the Swiss authorities’ role and responsibilities before, during and after World War II. See also letter from Eli Spanic, Director General, World Jewish Restitution Organization, (the “Spanic Report”), at Annex 1, p. 2.

⁷ Task Force, “Executive Ordinance Concerning the Special Fund for Needy Victims of the Holocaust/Shoa,” Mar. 1, 1997, http://www.switzerland.taskforce.ch/S/S1/a2_e.htm (visited Jan. 13, 1999).

⁸ See Task Force, “President and Swiss Members of Executive Leadership Named to the Special Holocaust Fund”, Apr. 16, 1997, http://www.switzerland.taskforce.ch/G/G2/Ga2/pr/970416_e.htm (visited June 30, 1999).

⁹ See Overview on Finances, Payments and Pending Applications, Swiss Fund for Needy Victims of the Holocaust/Shoa, July 10, 2000, at 1.

distributed as of July 10, 2000 and it is expected to be largely distributed during the remainder of 2000.¹⁰

B. Eligibility Issues

1. Determining Need

In keeping with its name, the Swiss Humanitarian Fund was established to provide aid on a humanitarian basis to Holocaust victims in need.¹¹ The term “Holocaust victims” was defined to include all “persons persecuted by the Nazi regime, under Nazi occupation or by a regime collaborating with the Nazis because of their belonging to a group where the aim was to exterminate members of that group.”¹² This broad definition specifically included all persons persecuted on account of religion, race or political orientation, although it was interpreted to exclude those who fled their homes in advance of Nazi armies, the so-called “flight cases.” Even with this exclusion, the Swiss Humanitarian Fund represented one of the most systematic efforts to benefit non-Jewish victims of the Nazi Regime for the harms inflicted on them.¹³

The Swiss Humanitarian Fund announced that it was not a “compensation” or “reparations” program. It proposed to provide only humanitarian assistance to Holocaust

¹⁰ See *id.* There is approximately SFr. 2.9 million not yet allocated.

¹¹ See Spanic Report, at Annex 1, p. 2.

¹² See *id.* at Annex 1, p.3.

¹³ See Non-Jewish Receiving Money, *Ukraine Roma Claim Money From Swiss Holocaust Fund*, <http://search.rferl.org/nce/features/1998/08/F.R.U.980810130326.html> (visited Apr. 27, 2000) (The money from the Swiss Humanitarian Fund “legitimizes Gypsies’ claims of suffering during the war. ‘It isn’t dear to us because it’s money but because it is showing help and support. It means our suffering was not forgotten’”); *Swiss Aid First Non-Jewish Holocaust Survivors in Albania*, AP Worldstream, Dec. 18, 1997 (“I knew that some day someone would remember us and our suffering. The amount isn’t important; it’s the gesture that counts”).

victims,¹⁴ and focused purely on need.¹⁵ For the same reason, the Swiss Humanitarian Fund decided that all eligible applicants in the same country of the same Holocaust victim group would receive the same benefit.¹⁶ In each country where Holocaust victims were found, “need” would be specifically defined to take local and community economic conditions into account, but at a minimum, a Holocaust victim had to live at or below the local poverty line in order to be deemed “needy.” In some nations, this requirement was equated to eligibility for government assistance.¹⁷ In others, “need” was defined by reference to some minimum income level.¹⁸

The distributing agency of each nation where Holocaust survivors live was empowered to establish its own need criteria.¹⁹ The distributing agency in New Zealand — where an applicant had to receive government benefits and hold a community service card to be

¹⁴ See Information on the Swiss Fund for Needy Victims of the Holocaust/Shoa to the Attention of Mr. Judah Gribetz, Special Master (hereinafter “Fund Information”), Attach. 1, p. 1 (on file with the Special Master). Rolf Bloch of the Fund Executive stated: “Payments from this fund are not meant to be reparation, compensation, restitution or atonement, but a symbolic humanitarian gesture.” See “Governor Pataki, Senator D’Amato: \$31.4 Million from Swiss Humanitarian Fund to be Distributed to U.S. Holocaust Survivors,” http://www.state.ny.us/governor/press/aug17_2_98.htm, at 1 (visited February 8, 1999).

¹⁵ See Daniel Kurtzman, *Picture of Beneficiaries Emerges Months After Swiss Fund Created*, JTA Daily News Bulletin, June 4, 1997, at 1 (hereinafter, “Kurtzman”).

¹⁶ See Swiss Fund for Needy Victims of the Holocaust/Shoa United States Distribution Program, Interim Final Report, Mar. 1, 1999 (stating that each eligible applicant received the same payment amount). See also Letter from Barbara Ekwall, Secretary-General, Swiss Fund for Needy Victims of the Holocaust/Shoa, to all members of the Fund Executive 2 (May 25, 1998) (“Concerning the requested support, the applying organization seems to suggest differentiated payments not exceeding 500 US dollars to each victim, depending on the neediness of the individual. Such a differentiation does not correspond to our practice and to the philosophy of our Fund. Sub-group II considered that all needy survivors in the same country presented by the same group should receive the same amount”).

¹⁷ See, e.g., Australia and New Zealand, Spanic Report, at Annex 3.

¹⁸ See, e.g., Austria and South Africa, Spanic Report, at Annex 3.

¹⁹ See Spanic Report, at Annex 2, p. 3.

eligible — required applicants to submit documentary proof of their income.²⁰ In the United States, as noted previously, self-certification of need without further proof was accepted.²¹ Other nations established different requirements.

2. Allocation Between Jewish and Non-Jewish Survivors

One of the fundamental baseline issues was the relative allocation of Swiss Humanitarian Fund benefits among eligible survivor groups. Fund administrators decided that 88% of the Swiss Humanitarian Fund's benefits should be distributed to Jewish survivors, and 12% allocated to the other eligible groups, based upon the number of deaths each group suffered. The Swiss Humanitarian Fund adopted the formula used in Austria to distribute the proceeds of the 1996 Mauerbach auction of property looted by the Nazi Regime and later recovered.²² Of the proceeds of the Mauerbach auction, 88% was distributed to Jewish groups, on the grounds that this represented the number of Jewish victim deaths as a percentage of the deaths suffered by all eligible groups.²³

²⁰ See Spanic Report, at Annex 3.

²¹ See Swiss Fund for Needy Victims of the Holocaust/Shoa, Fund Auditor's Status Report on Final Interim Monitoring, Advisory Committee Office, American Jewish Joint Distribution Committee, September 13, 1999, at 4.

²² See Fund Information, at 1; Spanic Report, at 1. The Mauerbach auction was named after the Austrian convent where thousands of artworks looted from unknown Nazi victims were stored for more than fifty years. The art was sold at auction in October 1996 for \$14.57 million, and the proceeds went to both Jewish and non-Jewish survivors of the Holocaust. See "Jewish Congress Seeks Auction of Plundered Art in European Museums," Agence France Presse, Nov. 23, 1998. See also Annex E ("Holocaust Compensation").

²³ The Fund also relied on a study conducted by Prof. Klaus Urner of the *Eidgenössische Technische Hochschule* in Zurich, which concluded that 86.5% of the murdered Holocaust victims were Jewish. Prof. Urner's conclusion was later modified when it was realized that it underrepresented the number of political prisoners who perished in concentration camps. See Fund Information, at 1-2.

3. Only Survivors Benefit

The Swiss Humanitarian Fund decided at its inception that it could meaningfully assist only individual survivors. With limited resources, and believing that direct cash payments to needy persons best suited its humanitarian purpose, the Fund concluded that it could not aid organizations, communities, or support groups which might otherwise represent eligible survivors.²⁴ Similarly, the Fund rejected all requests to endow many worthwhile projects in remembrance of those who perished in the Holocaust.²⁵

On the same basis, the Swiss Humanitarian Fund decided, at least initially, not to provide assistance to the heirs or “descendants” of persons who died in the Holocaust, even if the need criteria had been satisfied. The Fund made this difficult choice even though its enabling legislation specifically authorized aid to needy “descendants” of Holocaust victims. As with its decisions not to benefit survivor organizations or remembrance projects, the Swiss Humanitarian Fund decided that its most urgent concern was to provide humanitarian aid to needy survivors themselves and that the Fund could not meaningfully assist them if all potentially eligible persons were to receive benefits.²⁶ This policy choice was never revisited; as it anticipated, the Swiss Humanitarian Fund’s assets were entirely spent aiding living Nazi victims.

²⁴ See Kurtzman, at 1, n.14.

²⁵ See Swiss Fund for Needy Victims of the Holocaust/Shoa, Fund Auditor’s Report for the Period Ending Dec. 31, 1998 (hereinafter, “Fund Auditor’s Report 1998”), Mar. 1, 1999, at 4; see also Kurtzman, at 1, n.14.

²⁶ Spanic Report, at Annex 1, p. 3; see also Marilyn Henry, *A Divisive Legacy*, Jerusalem Post, Feb. 28, 1997, at Magazine p. 8.

4. The “Double Victims” of the Holocaust

Another of the Swiss Humanitarian Fund’s early policy decisions was to grant first priority to the “double victims” of the Holocaust – those survivors who remained behind the Iron Curtain after World War II, and who thus had been mistreated both by the Nazis and the post-War communist regimes.²⁷ These survivors had received little benefit from the post-War compensation programs funded by the government of West Germany for victims in the West, Israel and elsewhere.²⁸ In the 1990s, these “double victims” lived in nations where the economies and social welfare safety nets had largely collapsed; their small pensions often were inadequate to cover their costs of living, and many lived without adequate nutrition and without access to necessary medical care.²⁹ Though it otherwise avoided comparing the relative “need” of its beneficiary communities, the Swiss Humanitarian Fund concluded that the needy “double victims” were entitled to special treatment. Accordingly, the Swiss Humanitarian Fund allocated 35% of the allotment for all Jewish survivors to the “double victim” survivors of Central and Eastern Europe and the former Soviet Union, although, as noted previously, excluding “flight cases.”³⁰

²⁷ See Kurtzman, at 1, fn 14; see also Annex E (“Holocaust Compensation”).

²⁸ See Annex E.

²⁹ See Annex F (“Social Safety Nets”).

³⁰ See Spanic Report, at 2.

5. Administration Costs Funded Externally

Unlike the Settlement Fund in this litigation, the costs of administration of the Swiss Humanitarian Fund do not reduce the Fund itself.³¹ Instead, the banks which initially endowed the Swiss Humanitarian Fund announced that they would separately pay the estimated SFr. 15 million in distribution costs, including the costs of identifying claimants, from another fund they would separately establish.³² In the same vein, the Swiss government agreed to pay other administrative costs associated with management of the Swiss Humanitarian Fund.³³

C. Fund Structure and Personnel

The Swiss Humanitarian Fund was administratively divided into four “organs.”³⁴ The organs — the Fund Executive, the Fund Council, the Fund Secretariat and the Fund Auditor— are each briefly described below.

1. The Fund Executive

The Fund Executive consisted of seven members who served three-year terms. Four members were appointed by the Swiss Federal Council, including the president. The

³¹ See Switzerland and the Holocaust Assets, Timelines, <http://www.giussani.com/holocaust-assets/updates/timeline05.html> (visited Apr. 28, 2000).

³² See *id.*; see also Dialogue 3, “1997: The Swiss Special Fund for Holocaust Victims Starts to Work”, January-February 1998, http://www.swissemb.org/dialogue3/html/article_7.html (visited Apr. 30, 2000).

³³ See Switzerland and the Holocaust Assets, Timelines, <http://www.giussani.com/holocaust-assets/updates/timeline05.html> (visited Apr. 28, 2000).

³⁴ See Task Force, “Executive Ordinance Concerning the Special Fund for Needy Victims of the Holocaust/Shoa”, Mar. 1, 1997, http://www.switzerland.taskforce.ch/S/S1/a2_e.htm, at Art. 3 (visited Jan. 13, 1999).

remaining three were nominated by the WJRO,³⁵ but formally appointed by the Swiss Federal Council.

The Fund Executive acted on recommendations of the Fund Council, discussed below, as to the disbursement of monies.³⁶ The Fund Executive was empowered to adopt regulations and rules of procedure and to designate the Auditor. This body was also authorized to appoint national committees for Jewish survivors and to determine the relief organizations for other eligible survivor groups with which the Swiss Humanitarian Fund should affiliate. The Fund Executive also was responsible for reporting the Swiss Humanitarian Fund's activities to the Swiss Federal Council and the public.³⁷

2. The Fund Council

The Fund Council consisted of eighteen members, including representatives from domestic and foreign institutions and organizations dedicated to serving Holocaust victims.³⁸ Half of the Fund Council was appointed by the Swiss Federal Council; the other half was named by the WJRO. All eighteen members served three-year terms.

The Fund Council was primarily responsible for reviewing applications.³⁹ It did this through two subcommittees: one for applications from Jewish survivors, the second for all

³⁵ *See id.* at Art. 4. Of the three members recommended by the WJRO, one had to reside outside Israel, one had to be from Israel, and one had to represent survivor organizations. *See id.* at n.2.

³⁶ *See id.*

³⁷ *See id.*

³⁸ *See id.* at Art. 5.

³⁹ *See id.*

other eligible groups.⁴⁰ The Fund Council's funding recommendations were submitted to the Fund Executive, which decided whether to accept, reject or modify them.

3. The Fund Secretariat

The Fund Secretariat was responsible for all administrative work.⁴¹ It received applications from national committees and relief organizations, processed them, and forwarded them to the Fund Council for review.⁴² The Fund Secretariat worked closely with the Fund Auditor.

4. The Fund Auditor

The Fund Auditor was charged with monitoring the Fund's assets in Switzerland and abroad. Its authority extended to all foreign entities receiving assets for distribution so that the Fund Executive could be confident that benefits were paid only to approved survivors, and that national committees and relief organizations were following all approved procedures.⁴³ ATAG Ernst & Young was appointed Fund Auditor,⁴⁴ and remained independent of the Fund.

⁴⁰ See Task Force, "Meetings of Executive Board and Council of the Fund for Needy Victims of the Holocaust/Shoa," Sept. 15, 1997 (visited June 30, 1999)

⁴¹ See Task Force, "Executive Ordinance Concerning the Special Fund for Needy Victims of the Holocaust/Shoa," Mar. 1, 1997, http://www.switzerland.taskforce.ch/S/S1/a2_e.htm, at Art. 6 (visited Jan. 13, 1999).

⁴² See Fund Auditor's Report 1998, Mar. 1, 1999, at 9.

⁴³ See *id.* at 6.

⁴⁴ See Task Force, "Meetings of Executive Board and Council of the Fund for Needy Victims of the Holocaust/Shoa," Sept. 15, 1997, http://www.switzerland.taskforce.ch/G/G2/G2a/pr/970915a_e.htm (visited June 30, 1999).

D. Distribution Procedures

The Swiss Humanitarian Fund appointed the WJRO to supervise the distribution of benefits to Jewish Holocaust survivors.⁴⁵ Non-Jewish survivors submitted applications through relief organizations representing the interests of each eligible group.⁴⁶ Some survivors were represented by multiple relief organizations.⁴⁷

1. Jewish Survivors: the WJRO

In accordance with Fund requirements, the WJRO established a worldwide system for distributing funds to eligible Jewish survivors. For each nation with a Jewish survivor population, the WJRO contacted leading Jewish organizations, including survivor organizations, and proposed the formation of a unified national committee to solicit and process applications from within its community.⁴⁸ This structure allowed the Swiss Humanitarian Fund to take advantage of the constituent organizations' familiarity with local communities and customs.⁴⁹ National committees were asked to designate a distribution organization.⁵⁰ A national committee could designate itself the distribution body

To be approved as a national committee, the Swiss Humanitarian Fund and the WJRO required each organization to present a distribution plan, to design a proposed application

⁴⁵ See Spanic Report, at 1.

⁴⁶ See *id.* at Annex 1, p.4.

⁴⁷ See Fund Information, at 3.

⁴⁸ See Spanic Report, at 2.

⁴⁹ See Fund Auditor's Report 1998, Mar. 1, 1999, at 15.

⁵⁰ See Fund Information, at Attach. 1, p. 4; Spanic Report, at 2.

form and to present a plan to notify eligible applicants of the Fund's availability.⁵¹ Each prospective national committee also was asked to propose a specific definition of "need."⁵²

This last requirement did not apply in the nations of Central and Eastern Europe and the former Soviet Union. All survivors in those countries automatically were deemed "needy."⁵³

Once the WJRO and the Swiss Humanitarian Fund approved these plans and designated a national committee, the WJRO and the national committee negotiated a formal agreement. The distribution bodies appointed by the national committees also were asked to sign an agreement with the WJRO to comply with Fund policies.⁵⁴

For Jewish survivors outside Central and Eastern Europe and the former Soviet Union, the national committees would then solicit and review applications and forward their recommendations to the WJRO, which in turn would make its own recommendation to the Swiss Humanitarian Fund. Once received by the Fund, applications would be processed and reviewed as discussed above.

Applications from Central and Eastern Europe and the former Soviet Union followed a different process: the national committee first approved the applications and sent them to the WJRO for further review.⁵⁵ The WJRO scanned and processed the applications into

⁵¹ See Spanic Report, at 3. National committees from countries in Central and Eastern Europe and the former Soviet Union were not required to design their own application forms; instead they used forms provided by the WJRO. *See id.* at 2-3.

⁵² *See id.* at 3.

⁵³ *See id.* at 2.

⁵⁴ *See id.* at 2.

⁵⁵ *See* Fund Auditor's Report 1998, Mar. 1, 1999, at 16.

a database and approved eligible applicants.⁵⁶ To expedite delivery of benefits to these survivors, many of whom were “double victims,” the Swiss Humanitarian Fund sought to pay them first. On final approval, payments were forwarded to the distributing body of the individual country and paid directly to beneficiaries.⁵⁷

2. Non-Jewish Survivors: Relief Organizations

Because non-Jewish beneficiaries belong to many diverse groups, no single organization could represent their interests or perform the administrative functions assumed on behalf of the Jewish survivors by the WJRO and the national committees.⁵⁸ Instead, non-Jewish applicants submitted requests for aid through “any organization devoted to serve their interests if that organisation is able and willing to screen the case and ensure the reliable distribution of support allocated by the Swiss Humanitarian Fund.”⁵⁹ Many different organizations received applications from non-Jewish survivors. Over 60 organizations served the Roma community alone, although fewer submitted applications to the Fund.⁶⁰

Organizations not represented on the Fund Council were required to submit background information about their activities, objectives, membership and budgets sufficient to permit a determination that the organization could process individual applications and carry out distribution.⁶¹ In addition, each organization was required to present a plan of distribution.⁶² All

⁵⁶ See Spanic Report, at 3; Fund Auditor’s Report 1998, Mar. 1, 1999, at 16.

⁵⁷ See Spanic Report, at 3.

⁵⁸ See Fund Information, at 3.

⁵⁹ See Spanic Report, at Annex 1, p. 4.

⁶⁰ See Fund Information, at 3.

⁶¹ See Spanic Report, at Annex 1, p. 4; Fund Information, at Attach. 1, p. 3.

⁶² See Spanic Report, at Annex 1, p. 4.

approved organizations were required to agree to follow Fund regulations, to cooperate with the Secretariat and the Auditor, and to keep specified distribution records.⁶³

Non-Jewish survivors applied for Swiss Humanitarian Fund benefits through their respective relief organizations, and the organizations screened the applications to verify the information and confirm the applicant's eligibility. The organization then submitted a formal application to the Fund for final approval.⁶⁴ The specific distribution procedure for benefits to non-Jewish survivors varied by country and relief organization, but funds generally would be transferred from the Swiss Humanitarian Fund to a bank associated with the relief organization and then paid directly to the beneficiary.⁶⁵

3. Criteria for Non-Jewish survivors

With its resources limited, the Swiss Humanitarian Fund established specific eligibility guidelines for the non-Jewish survivor groups.⁶⁶ Generally, an applicant must have been "(a) for reasons of 'race,' religion, political orientation, or other reasons (b) systematically persecuted in a country that was (c) under Nazi regime, under Nazi occupation or under a regime of Nazi collaborators, (d) where persecution [was] aimed at the extermination of members of a group due to their common characteristics."⁶⁷ As with Jewish survivors, the specific definition of "need" was left to each relief organization to define in keeping with local economic conditions

⁶³ *See id.*

⁶⁴ *See* Fund Information, at Attach. 1, p. 3; Fund Auditor's Report 1998, Mar. 1, 1999, at 9.

⁶⁵ *See* Fund Auditor's Report 1998, Mar. 1, 1999, at 12.

⁶⁶ *See* Fund Information, at Attach. 1, p. 1.

⁶⁷ *Id.* at Attach. 1, p. 2

and the standards of each affected group.⁶⁸ All needy persons in a particular nation belonging to an eligible survivor group received the same benefit, which reduced the incentive for different organizations serving an eligible community to compete for applicants.

In January 1999, new eligibility guidelines were enacted for Roma applicants living outside the designated “core countries” of Germany, Austria, the Czech Republic, Poland, Estonia, Latvia, Lithuania, Belgium, Holland, Luxembourg, Croatia and Belarus.⁶⁹ The Fund explained:

The financial means of the Swiss Fund for Needy Victims of the Holocaust/Shoa are limited. The number of Roma/Sinti and Yenish people who have submitted an application for support to the Fund was much larger than initially expected. Therefore, the Fund Executive had to adjust the guidelines for the treatment of applications. The decision is based on the aim of the Fund to provide humanitarian support for needy persons who suffered systematic Nazi Persecution. In the working process, the Fund Executive has considered the fact that the persecution differed from country to country. Based on these considerations, the Fund Executive decided to give priority to those persons who suffered the worst types of persecution.⁷⁰

For Roma outside the “core countries,” only those who had been imprisoned in internationally-recognized concentration camps, ghettos, transit camps, extermination camps, labor camps or any other camp or program leading to extermination or who had been subjected to medical experiments or forced sterilization would henceforth be eligible.⁷¹

⁶⁸ See Fund Information, at Attach. 1, p. 3.

⁶⁹ See *id.* at Attach. 2, p. 2.

⁷⁰ See *id.* at Attach. 2, p. 1.

⁷¹ See *id.*

Roma survivors who lived in one of the “core countries” were unaffected by the new guidelines.⁷²

4. Distribution Problems Among Non-Jewish Survivor Groups

a. The Roma

The Swiss Humanitarian Fund found it difficult to organize aid for the Roma in several nations. In those places, the Roma community was often divided, with different organizations competing for applications and for the right to distribute benefits to its local population. Differences among these organizations often complicated the process of distribution.⁷³ The Fund Information states that “[i]n general, several rumors and differences between representatives of the various Roma/Sinti/Yenish groups marked the distributions to this category of beneficiaries.”⁷⁴

Some Roma relief organizations were unable to satisfy all of the administrative duties required by the Swiss Humanitarian Fund.⁷⁵ The organizations were new to the humanitarian aid arena, a difficulty often complicated by inadequate postal and banking systems in nations where large Roma survivor communities exist.⁷⁶ The continuing mistreatment of the Roma in many locales, and their lingering distrust of government, added to the distribution

⁷² *See id.* at Attach. 2, p. 2.

⁷³ *See id.* at 4. One organization initiated a legal proceeding in the Swiss courts against another concerning distributions, but the court did not follow up on the complaint and the case was dropped.

⁷⁴ *Id.*

⁷⁵ *See id.* at 3. In particular, the International Romani Union (hereinafter “IRU”) had a number of difficulties in administering the funds. After its president resigned in May 1998, the IRU called back all pending applications and announced that it would not make any further distributions of benefits from the Fund. All the payments were properly made, and any funds that were not distributed were returned to the Fund. *See id.*

⁷⁶ *See id.* at 3.

difficulties.⁷⁷ These problems were exacerbated by the relative lack of identifying data concerning potential recipients.

b. Other Eligible Groups

For other survivor groups, there were similar difficulties in obtaining reliable data and documentation to determine eligibility.⁷⁸ For example, Christians persecuted as Jews under Nazi race legislation were eligible for benefits, even if never imprisoned in a concentration camp or similar facility,⁷⁹ but there was little or no data that would allow an estimate of the size of this group or that would help the Swiss Humanitarian Fund identify its members. Determining how much of the Fund to allocate to this group of persecutees was difficult. There were similar difficulties obtaining accurate information about the potential number and identities of homosexual and disabled applicants.

Persons persecuted for their political views who had been detained in a concentration camp or like facility, and could demonstrate such detention, automatically were eligible for benefits.⁸⁰ Many more applications were received from political prisoner claimants than had been anticipated.⁸¹ On May 12, 1998, the Fund Executive limited benefits only to

⁷⁷ See Günter Grass, "Why the Roma?" Index Online (visited April 27, 2000), http://www.oneworld.org/index_oc/498/grass.html.

⁷⁸ See Fund Information, at 4.

⁷⁹ See *id.* at Attach. 1, p. 2.

⁸⁰ See *id.* at Attach. 3, p. 2.

⁸¹ The Fund cannot accurately determine the total number of former prisoners of concentration camps persecuted for political reasons or other reasons who are alive today; however, there are currently 30,000 former political prisoners of concentration camps living in Eastern Europe alone. See *id.* at Attach. 3, p. 2.

political prisoners born in Central and Eastern Europe not later than 1925,⁸² and to political prisoners born elsewhere in or before 1921.⁸³

E. Processing of Applications and Payment of Funds

1. Duties of National Committees and Relief Organizations

National committees and relief organizations were responsible for, among other things, publicizing the availability of the Swiss Humanitarian Fund, distributing application forms, screening completed applications, and sending the completed applications to the WJRO and then to the Fund for approval.⁸⁴ The organizations also maintained individual applicant files and related documents. These files were made available to the Secretariat and the Fund Auditor on request.⁸⁵ The organizations kept a separate record of all distributions, and these records were also available to the Auditor and the Secretariat.⁸⁶

For Jewish survivors, the distribution bodies chosen by each national committee were responsible for making payments to individual beneficiaries,⁸⁷ either with checks from a bank, bank transfers, or through the national post office.⁸⁸

⁸² See *id.* at Attach. 1, p. 2, Attach. 3, p. 1-3.

⁸³ See *id.* The year 1921 was chosen as a cut-off because persons born in that year or earlier were at least twenty years old in 1941, and these persons were considered the core group of victims persecuted for political reasons. See *id.* at Attach 3, p. 2.

⁸⁴ See *id.* at 2.

⁸⁵ See *id.* at Attach. 1, p. 3.

⁸⁶ See *id.* at Attach. 1, p. 4.

⁸⁷ See Fund Auditor's Report 1998, Mar. 1, 1999, at 19; Spanic Report, at Annex 8 (providing a sample distribution agreement and mentioning the need for separate bank accounts for administrative expenses).

⁸⁸ See Fund Auditor's Report 1998, Mar. 1, 1999, at 11.

Other than the reimbursement of expenses, relief organizations and national committees received no compensation for their work.⁸⁹ The Swiss Humanitarian Fund reimbursed expenses upon presentation of proof of the expense and an audited report justifying the request.⁹⁰

2. The Application Process

Each potential beneficiary was required to fill out a written application. Application forms were created in the language of each subject nation.⁹¹ The national committees and relief organizations reviewed each application for eligibility and completeness. Once all applications were reviewed, national committees and relief organizations typically submitted master applications, listing the names and basis for eligibility of all applicants within the submitting organization's nation or community. Applications from Jewish survivors were submitted to the WJRO and forwarded to the Secretariat for ultimate review and approval by the Fund Executive. Applications from other survivor groups went directly to the Secretariat.⁹²

3. Disbursements

Once the Fund Executive approved a set of applications, the Secretariat sent a transfer notification to the Swiss Federal Finance Administration.⁹³ For Jewish applicants, the Swiss Federal Finance Administration transferred the specified amount to the WJRO, which then

⁸⁹ See Spanic Report, Annex 8, p. 1 (providing a sample agreement with a national committee and distribution body and stating that membership on the committee is honorary and no remuneration is paid).

⁹⁰ See Fund Information, at Attach. 1, p. 4.

⁹¹ See Spanic Report, at 3 (see Annex 4 for examples of the various applications).

⁹² See Fund Auditor's Report 1998, Mar. 1, 1999, at 9.

⁹³ See *id.* at 9

forwarded it to the distribution body⁹⁴ for deposit in a bank or a post office.⁹⁵ In the case of non-Jewish beneficiaries, funds were transferred directly to the relief organization⁹⁶ which, as discussed above, disbursed these sums in a variety of ways, depending upon the country's infrastructure.⁹⁷

Following disbursement, the distribution bodies and relief organizations submitted reports to the Swiss Humanitarian Fund, furnishing details about the manner in which the money was distributed.⁹⁸ The Auditor performed on-site inspections in many nations; it reviewed the application and decision-making processes as well as distribution procedures.⁹⁹

III. ALLOCATIONS TO ORGANIZATIONS AND COUNTRIES

The Swiss Humanitarian Fund provided assistance to more than 300,000 Nazi victims from around the world.¹⁰⁰ Distributions ranged from \$400 to \$1,400 per person. As noted above, as of July 10, 2000, the Swiss Humanitarian Fund had made payments amounting to SFr. 288,669,948 (approximately \$169,304,924 in current value), leaving a balance of SFr. 6,222,345 (approximately \$3,649,405) still to be distributed.¹⁰¹ The undistributed monies will be

⁹⁴ See *id.* at 17.

⁹⁵ See *id.* at 12.

⁹⁶ See *id.* at 9, 12.

⁹⁷ See Fund Auditor's Report 1998, Mar. 1, 1999, at 17 (discussing disbursements to beneficiaries in Eastern Europe and the former Soviet Union).

⁹⁸ See *id.* at 13; Spanic Report, at Annex 8 (discussing the need for an audit by the distribution body); Fund Information, at 3 ("After a distribution has taken place, organizations are asked to submit distribution reports indicating the details about each payment made and the financial flows").

⁹⁹ See Fund Auditor's Report 1998, Mar. 1, 1999, at 6-10.

¹⁰⁰ See "Overview on Finances, Payments and Pending Applications," Swiss Fund for Needy Victims of the Holocaust/Shoa, July 10, 2000, at 1-3.

¹⁰¹ See *id.* at 1.

paid to Jewish and Roma beneficiaries and certain others.¹⁰² The Swiss Humanitarian Fund expects to finish distributing and close down its operations in 2001.¹⁰³

A table listing payments to Jewish survivors by country is attached as Exhibit 1. A table listing non-Jewish relief organizations and applicable need criteria is annexed as Exhibit 2. The Swiss Humanitarian Fund asked the Special Master not to publish the number of non-Jewish beneficiaries compensated by each relief organization and the amounts transferred to such organizations.¹⁰⁴

A. Jewish Survivors

The WJRO allocated the payments to Jewish survivors based on the demographic distribution of the Jewish survivor community.¹⁰⁵ As noted above, the “double victims” in the former Soviet Union and Central and Eastern Europe received 35% of the allocation to Jewish survivors (approximately 40,000-45,000 persons). Another 35% was allocated to survivors living in Israel (ca. 120,000 persons). Survivors in the United States were allotted 19% (62,356 persons), while those from Western Europe, Australia, Canada, Latin America and South Africa divided the remaining 11% (24,105 persons).¹⁰⁶

¹⁰² See *id.* at 3.

¹⁰³ See Swiss Fund for Needy Victims of the Holocaust/Shoa, Fund Auditor’s Report for the Period Ending Dec. 31, 1999 (hereinafter Fund Auditor’s Report 1999), Mar. 10, 2000, at 6.

¹⁰⁴ The information in these exhibits was provided to the Special Master from the Swiss Humanitarian Fund. The number of applications approved and the total distributions is up to date as of the most recent audit report of the Fund from December 31, 1999. For the most recent numbers on the total number of beneficiaries in each group and the total distributions, refer to the table at the end of the Annex.

¹⁰⁵ See Spanic Report, at Annex 2, p. 1.

¹⁰⁶ See Spanic Report, at 2.

1. Central and Eastern Europe and the former Soviet Union

Payments to Jewish beneficiaries in this region were made in three stages: \$400 in the first phase, and \$600 in the second, for a total disbursement of \$1,000.¹⁰⁷ A third installment, in the amount of \$400, was approved by the Swiss Humanitarian Fund on February 15, 2000 and payments are to be made in 2000.¹⁰⁸

The Swiss Humanitarian Fund received 41,966 applications from Jewish survivors in this region for the first installment. Of these, 41,774 were approved for payment.¹⁰⁹ 37,147 applications were received for the second installment.¹¹⁰ A total of SFr. 84,988,939 (approximately \$49,846,012) was approved for payment to Jewish survivors in Central and Eastern Europe and the FSU, of which SFr. 65,862,720 (approximately \$38,628,485) had been paid as of July 10, 2000. The anticipated third installment accounts for the unpaid balance. In addition, the Swiss Humanitarian Fund reported as of July 10, 2000 that SFr. 770,800 (approximately \$452,074) in payments to Jewish survivors had been approved, but not yet transmitted to the national organizations for distribution. All payments made to survivors in this region were exempt from local taxation.

¹⁰⁷ See Fund Auditor's Report 1999, Mar. 10, 2000, at App. 6, "WJRO Information," at 4.

¹⁰⁸ See *id.* at 23.

¹⁰⁹ See *id.* at App. 6, at 4.

¹¹⁰ There is no explanation in the literature for the smaller number of applications paid in the second round of distribution. It is likely that some of the difference is due to the death or disappearance of a beneficiary. See *e.g.*, Fund Auditor's Report 1999, Mar. 10, 2000, at 27 (discussing the Belarussian distribution and stating that the difference between the transferred amount and the confirmed amount, *i.e.*, the number used to determine payment of the second installment, is attributable to the death or change of address of the beneficiary subsequent to completing the application).

2. Israel

In Israel, SFr. 86,610,398 (approximately \$50,796,998 in current value) was to be divided among approximately 120,000 survivors, with SFr. 57,617,934 (approximately \$33,792,918) having been paid to beneficiaries as of July 10, 2000.¹¹¹ According to the head of the Finance Ministry's Department of Rehabilitation of Victims of Nazi Persecution, all Fund beneficiaries in Israel will receive a total of NIS 1,800.¹¹²

To be eligible, an Israeli applicant had to be a) a Jew "living in a country at a time when it was under Nazi rule or Nazi occupation or under a regime that collaborated with the Nazis",¹¹³ b) an Israeli citizen or permanent resident of Israel and c) a person whose income from all sources was not greater than NIS 3,500 (equivalent to \$875)¹¹⁴ a month.¹¹⁵ This eligibility definition excluded the "flight cases."

Litigation over the mechanism of distribution ensued in Israeli courts. In April, 1999, after negotiations between the government and Jewish survivor groups and mediation by the WJRO, the parties agreed that distribution should be performed by the Finance Ministry, via its Office for Rehabilitation of Disabled Survivors of Nazi Persecution.¹¹⁶ In or about February, 2000, the parties reached agreement on the procedures by which survivor claims would be paid

¹¹¹ See "Overview of Finances, Payments and Pending Applications," Swiss Fund for Needy Victims of the Holocaust/Shoa, July 10, 2000, at 2.

¹¹² See Yair Sheleg, *Local Survivors to Get Swiss Funds*, Ha'aretz, Apr. 17, 2000, at 1.

¹¹³ Spanic Report, Annex 6.

¹¹⁴ See Avi Machlis, *Israeli Survivors May Finally Get Funds After Month of Delay*, JTA Daily Bulletin, Feb. 18, 2000, at 2.

¹¹⁵ See Spanic Report, Annex 6. Income from all sources meant sources in both Israel and abroad, including salary, pensions, payments from the National Insurance Institute and any other form of compensation or sources of income. See *id.*

¹¹⁶ See *id.*

from the Swiss Humanitarian Fund, and they were free to start payments as soon as the Fund Executive approved the distribution process.¹¹⁷

Payments to Israeli survivors commenced in Spring, 2000, and are ongoing.

3. United States

The Swiss Humanitarian Fund allocated \$31.4 million to needy Jewish survivors living in the United States.¹¹⁸ Unlike other countries, the United States national committee required applicants only to certify that they were needy.¹¹⁹ All approved applicants received \$502.00.¹²⁰ This payment was exempt from federal income taxation.¹²¹

United States applicants were required a) to have lived in a country controlled by the Nazi Regime or a collaborator, b) to be a citizen, permanent resident, or legal resident of the United States, and c) to certify need.¹²² Again, these criteria excluded “flight cases.”

The American Jewish Joint Distribution Committee (“JDC”) supervised Jewish distributions in the United States.¹²³ The Advisory Committee Office (“ACO”) reviewed

¹¹⁷ *See id.* at 1.

¹¹⁸ *See* Fund Auditor’s Report 1998, Mar. 1, 1999, at 28.

¹¹⁹ *See* Swiss Fund for Needy Victims of the Holocaust/Shoa, Fund Auditor’s Status Report on Final Interim Monitoring, Advisory Committee Office, American Jewish Joint Distribution Committee, September 13, 1999 at 4.

¹²⁰ *See id.*

¹²¹ *See* WJRO, Swiss Fund for Needy Victims of the Holocaust/Shoa United States Distribution Program, Interim Final Report Statistical Review and Archival Documentation, March 1, 1999, at 1.

¹²² *See* Swiss Fund for Needy Victims of the Holocaust/Shoa, Fund Auditor’s Status Report on Final Interim Monitoring, Advisory Committee Office, American Jewish Joint Distribution Committee, Sept. 13, 1999, at 12 (hereinafter, “ACO Report”).

¹²³ *See id.* at 3.

applications and an appeals process, discussed below.¹²⁴ The Bank of New York was appointed the distribution body in the United States for Jewish survivors.¹²⁵ A professional processing agent, the Application Processing Center, was hired to distribute applications and to receive all completed forms.¹²⁶ A toll-free information line was set up, and applications were mailed to callers who requested them.¹²⁷ The ACO ultimately reviewed 88,262 applications,¹²⁸ and approved 62,358.¹²⁹ An application was automatically approved if the applicant's name was in an existing database, and the information on the application showed that the applicant met the criteria.¹³⁰

Approximately 7,000 denied applicants appealed. These appeals came largely from applicants denied because they a) did not meet the appropriate criteria, b) submitted applications after the November 30, 1998 deadline had passed, or c) listed an incorrect social security number or other identifying information. Appeals were reviewed by the ACO.¹³¹

In February 1999, a total of 60,071 applicants received a check in the amount of \$502.00. The remaining 2,287 applicants, most of whom had initially been rejected but were

¹²⁴ *See id.*

¹²⁵ *See id.*

¹²⁶ *See id.*

¹²⁷ *See* TH On-line, "Holocaust Survivors Share Fund," <http://www.thonline.com/th/news/031598/National/99206.htm> (visited Apr. 27, 2000).

¹²⁸ *See* ACO Report, at 14.

¹²⁹ *See id.* at 21.

¹³⁰ *See id.* at 13.

¹³¹ *See id.* at 3.

approved on appeal, were paid from the Reserve Fund¹³² and received payment in August 1999.¹³³

The approved applicants were paid a total of \$31,309,238.00, leaving an undistributed balance of \$103,039.00.¹³⁴ The disposition of these funds is unclear.

¹³² The Reserve Fund was established to address inquiries involving the appeal of applications, applications that were originally denied due to processing errors, late applications, and applications that were undeliverable but where the survivor was subsequently located. The Reserve Fund was used to pay disbursements to approved applicants from these groups. *See* WJRO, Swiss Fund for the Needy Victims of the Holocaust/Shoa United States Distribution Program, Interim Final Report, Mar. 1, 1999, at 1.

¹³³ *See* ACO Report, at 21.

¹³⁴ *See* Warren Feierstein, Swiss Fund for the Needy Victims of the Holocaust/Shoa, United States Distribution Program Final Report, Jan. 23, 2000, at 2.

Conclusion: Total Allocations to Beneficiaries

The following survivor groups received Swiss Humanitarian Fund benefits as indicated below:¹³⁵

Beneficiary Group	Number of Beneficiaries	Amount Transferred to Each Group		Amount paid to Beneficiaries to Date	
		SFr./\$	SFr./\$	SFr./\$	SFr./\$
Jews from FSU, Eastern and Central Europe	40,000-45,000	SFr. 84,988,939	\$49,846,012	SFr. 65,862,720	\$39,080,559
Jews from Israel	ca. 120,000	SFr. 86,610,398	\$50,796,998	SFr. 57,617,934	\$33,792,918
Jews from United States	62,356	SFr. 44,712,235	\$31,309,238	SFr. 44,556,280	\$31,309,238
Jews from Western Europe, Australia, Canada, Latin America and South Africa	24,105	SFr. 28,613,662	\$16,781,912	SFr. 12,179,005	\$7,142,986
Roma	14,917	SFr. 17,545,063	\$10,290,179	SFr. 12,049,714	\$7,067,157
Jehovah's Witnesses	69	SFr. 104,012	\$61,003	SFr. 104,000	\$60,996
Disabled persons	32	SFr. 61,000	\$35,776	SFr. 59,000	\$34,603
Homosexuals	9	SFr. 18,000	\$10,557	SFr. 18,000	\$10,557
Political prisoners	39,291	SFr. 24,999,364	\$14,662,126	SFr. 11,452,780	\$6,717,055
Christians Persecuted as Jews	101	SFr. 71,979	\$42,215	SFr. 68,229	\$40,016
Righteous of Nations ¹³⁶	2,000 expected	SFr. 3,478,392	\$2,040,076	SFr. 1,107,600	\$649,607
TOTAL	ca. 305,380	SFr. 291,203,044	\$175,967,559	SFr. 205,075,262	\$125,905,692

¹³⁵ The number of beneficiaries and the amounts paid to each group includes all beneficiaries who were approved and paid by the Fund, approved and awaiting payment by the Fund and pending final approval from the Fund. See "Overview on Finances, Payments and Pending Applications," Swiss Fund for Needy Victims of the Holocaust/Shoa, July 10, 2000 at 2-3.

¹³⁶ The Righteous of Nations consists of persons persecuted for aiding Jews during the Holocaust.