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GENERAL COUNSEL

FEB - 7 1985

TO: Robert E. Moore, Chief Counsel, Birmingham, Alabama, 4.1A

FROM: Joseph F. Gelletich, Assistant General Counsel for
Assisted Housing, GCH *J.F. Gelletich*

SUBJECT: Definition of "Income under 24 CFR Section 913.106(b)(8)

We have been advised that the Housing Management Division in your office has interpreted the subject regulation to require that all regular pay of a divorced spouse who is a member of the Armed Forces but who is not living in the unit should be included in the income of his ex-wife who is living in the unit with the children of the marriage. We understand that this interpretation has been attributed to instructors at training sessions.

Section 913.106(b) states that: "Income includes, but is not limited to: . . . (8) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the Family, spouse or other person whose dependents are residing in the unit (but see paragraph (c)(5) of this section." The ex-husband is clearly not the head of the family nor a spouse, but might be considered to be included in the category of an "other person whose dependents are residing in the unit."

The term "other person" is ambiguous and the Department is presently processing a technical amendment to the regulation to change "other person" to "other Family member." We consider this a clarification and not a substantive change. Section 913.106(b)(8) refers to "paragraph (c)(5)" and this paragraph includes the correct term "Family member in the Armed Forces." Moreover, section 913.106(b)(7), which specifically requires that "alimony and child support payments" are to be included in income, cannot be reconciled with an interpretation of section 913.108(b)(8) that requires that all income of a divorced spouse be included in tenant income.

Where it is clear that there has been a valid divorce and the parties are living apart, "allowances" under section 913.106(c)(7), such as alimony and child support payments, are to be included in tenant income but all pay or other income of the divorced spouse is not to be included notwithstanding the language of section 913.106(b)(8).