

CHAPTER 8. OFFSETTING SECTION 8 PAYMENTS

8-1. GENERAL. The policies and procedures stated in this Chapter apply only to HUD-administered Section 8 contracts. Both the Section 8 contract and Regulatory Agreement permit the exercise of remedies, including the offsetting of Section 8 payments. HUD will use administrative sanctions (limited denial of participation, suspension and/or debarment, civil money penalties, etc.) or initiate affirmative litigation against owners and management agents where there is evidence that the owner refuses to provide decent, safe, and sanitary housing, and/or fails to comply with HUD regulations. The welfare of the tenants necessitates forethought before Section 8 payments are offset. Section 8 payments should be offset only for the amount of the monthly workout or mortgage payment and then, only if all other necessary project expenses covering health and safety to the tenants are being paid.

8-2. PROCEDURES FOR OFFSETTING SECTION 8 PAYMENTS. Prior to offsetting any Section 8 payments, Field Office Counsel must perform a legal review to assure that the applicable contract provisions have been complied with. Before HUD can begin to offset the Section 8 payments, HUD must notify the mortgagor of HUD's intent to offset the payment, reasons why the Department is offsetting the payments, and rights the mortgagor has to appeal the offsetting procedure. This notice should provide the owner 30 days in which to appeal the Department's decision (Appendix 5).

- A. HUD Field Office staff should reduce the amount of Section 8 assistance being offset if there is a clear basis to show that the project could not operate at the reduced level of Section 8 payments (i.e., if there are court-ordered repairs or unpaid utility bills, etc.).
- B. HUD will begin offsetting the Section 8 payments the first day of the first full month following the expiration of the 30-day period. For example, if an owner is sent a notice of intent to offset Section 8 payments on July 15, the owner has 30 days from July 15 to appeal the decision, i.e., August 15. If the appeal is denied the offsetting may begin September 1. If the owner exercises his/her right to review the Department's record pertaining to the offsetting, the offsetting action will be stayed for no more than a 30-day period pending the outcome of the review.

- C. At the same time that HUD notifies the owner of the Department's intent to offset Section 8 payments, HUD

Loan Management staff must also notify the appropriate Regional Accounting Division (RAD) of the date to begin offsetting the Section 8 payments (Appendix 6). Loan Management staff must notify RAD of the identity of the project and the amount of monthly subsidy to be offset. Loan Management staff must give RAD notice by the tenth of the month prior to the month in which the offset is to occur. Loan Management staff must also notify RAD by the tenth of any month if there are any changes to the offset.