

Opening Doors

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New Section 811 Supportive Housing Program Legislation Introduced in US Congress

By Ann O'Hara

HR 5772 – The Frank Melville Supportive Housing Investment Act of 2008 – Promotes Community Integration for People with Disabilities

The Consortium for Citizens with Disabilities Housing Task Force (CCD Housing Task Force) and the Technical Assistance Collaborative, Inc. (TAC) are pleased to announce that on April 10, 2008, Representatives Christopher Murphy (D-CT) and Judy Biggert (R-IL) jointly introduced groundbreaking permanent supportive housing legislation – the Frank Melville Supportive Housing Investment Act of 2008 (HR 5772) – in the U.S. House of Representatives. This critically important legislation will help address the enormous and unrelenting housing crisis faced by millions of extremely low-income people with disabilities and will spur the creation of thousands more new 811 units every year by:

- Authorizing a new Section 811 Demonstration Program that fulfills the promise of true community integration as envisioned in the Americans with Disabilities Act; and
- Enacting long overdue reforms and improvements to the existing Section 811 production program essential for the program's long-term viability.

Historically, the Section 811 program has been one of the most successful programs available through the U.S. Department of Housing and Urban Development (HUD) to create new supportive housing units. However, the future of Section 811 is being jeopardized by an out-dated statute and program models, excessive HUD bureaucracy, and rapidly declining production levels.

For the fourth year in a row, HUD has proposed drastic budget cuts for the Section 811 program that threaten the program's survival. Fortunately, Congress has thus far rejected these cuts and has continued to support the program with level funding of \$237 million. However, several factors – including the high cost of Section 811 capital provided for each new unit, the burden of renewing Section 811-funded Mainstream vouchers, and rising development costs – have all combined to reduce the number of new units produced nationally each year from over 3,000 units in the 1990s to only 700 units in Fiscal Year (FY) 2006 and 1,008 units in FY 2007.

How Can I Take Action on HR 5772: The Frank Melville Supportive Housing Investment Act of 2008?

To ensure that you receive regular Action Alerts on this important legislation, please contact the following individuals:
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A Housing Publication for the Disability Community

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The Technical Assistance Collaborative, Inc.

is a non-profit organization that provides state-of-the-art technical assistance and training to housing and human service organizations so that they may achieve positive outcomes in their work on behalf of people who are disadvantaged and/or disabled. For more information, please contact the Technical Assistance Collaborative, Inc., 535 Boylston Street, Suite 1301, Boston, Massachusetts 02116. Phone/TTY: (617) 266-5657 or Fax: (617) 266-4343 or email: info@tacinc.org.



The Consortium for Citizens with Disabilities (CCD)

is a national coalition of consumer, advocacy, provider, and professional organizations who advocate on behalf of people of all ages with disabilities in their families. CCD has created the CCD Housing Task Force to focus specifically on housing issues that affect people with disabilities.



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HUD's FY 2009 budget proposal for Section 811 would provide only \$29 million for the creation of new units. Experts calculate that fewer than 300 new units would be produced should HUD's latest proposal become law. This recent budget history – along with the program's structural problems – threaten the future viability of this important supportive housing program.

Why Save Section 811?

Some federal officials have asked “Why save Section 811? There are other HUD programs that can create permanent supportive housing.” The reasons to save the Section 811 program are clear and compelling. Most importantly, Section 811 is the only federal program solely dedicated to addressing the housing crisis facing millions of extremely low-income people with significant and long-term disabilities who also need access to services and supports to live successfully in the community. In addition, Section 811 is one of the very few remaining HUD programs that can provide the essential project-based rent subsidy needed to ensure that rents in new permanent supportive housing units are affordable for the most vulnerable people with disabilities with the lowest incomes.

Merely “tinkering” with the Section 811 statute will not be enough to save it. To effectively respond to the housing choices and service approaches preferred by most people with disabilities – and to produce new permanent supportive housing units at the scale needed – the Section 811 program must be reformed and revitalized by Congress. This new approach to Section 811 must bring the program into alignment with the other major government programs that fund affordable rental housing in the United States today – particularly the federal Low Income Housing Tax Credit (LIHTC) program and HUD's HOME program.

Under the provisions of HR 5772, new high quality rental units in properties produced through the LIHTC and HOME programs (as well as other state/local government affordable housing resources) can be targeted for the lowest-income people with disabilities and linked with the community-based supportive services they want and need. The vision for this new Section 811 approach includes small set-asides of permanent supportive housing units integrated within larger rental

housing developments funded routinely each year by state and local governments. For example, a new 100 unit LIHTC property could include ten 811-funded permanent supportive housing units. Or a non-profit organization could create a “mixed income” rental property that incorporated 15 permanent supportive housing units financed with Section 811 funds within a 60 unit building.

This issue of *Opening Doors* is devoted to the future of a revitalized and reinvigorated Section 811 program that could produce thousands more new units of permanent supportive housing every year. It is also dedicated to the memory of Frank Melville, the first chair of the Melville Charitable Trust, whose vision and commitment sparked the creation of thousands of permanent supportive housing units in Connecticut and many other states. In recognition of his efforts, it is fitting that this important supportive housing legislation bears his name.

During the coming months, it is critically important that the disability community speak with one voice to vigorously support HR 5772, along with a companion Section 811 bill that will soon be introduced in the Senate. The disability community must also seek the support of other organizations and groups that will be critical to the future success of the Section 811. This includes state Housing Finance Agencies, state health and human services agencies, local governments, and service providers who are committed to the principal of community integration. This must be done on behalf of the millions of people with disabilities in our country today who are waiting for an integrated permanent supportive housing unit of their own in the community.

The Status of the Section 811 Program Today

The basic structure of the Section 811 program is quite simple. Under current federal

law, Section 811 is a competitive program with three distinct components:

1. A Section 811 Capital Advance (essentially a grant with a 40-year use restriction) to assist non-profit organizations to buy, rehabilitate, or newly construct supportive housing;
2. A five-year renewable Section 811 Project Rental Assistance Contract (PRAC) linked to Capital Advance projects that helps cover project operating costs (insurance, utilities, maintenance, etc) and ensures that tenants pay no more than 30 percent of their income for housing; and
3. A separate Section 811 tenant-based rental assistance program administered primarily by Public Housing Agencies (PHAs) as the Section 8 Mainstream Housing Opportunities for Persons with Disabilities program.

Section 811 projects financed through the Capital Advance/PRAC components are “single purpose” properties that fall into two basic categories: (1) small group homes with no more than 8 units; and (2) independent living facilities that can have up to 24 units. An extremely small number of the estimated 30,000 funded Section 811 units are condominiums or cooperative units that are integrated within other housing settings. However, this approach has proven extremely difficult to implement under current Section 811 rules.

Section 811 properties provide segregated housing because all the units in a project are exclusively set-aside for people with disabilities. Many 811 projects further restricted occupancy to one disability sub-population (e.g., people with mental illness, people with mobility impairments, people with developmental disabilities). And, although 811 properties are usually attractive and well constructed, the program’s “single purpose” model means that many Section 811 projects are identified by neighbors as “where people with disabilities live.”

Key Features of New Section 811 Legislation – HR 5772

The primary goals of the new Section 811 legislation are to create more units of permanent supportive housing every year, to produce these units more efficiently by leveraging other affordable rental housing financing, and to promote more integrated Section 811 housing opportunities.

The key provisions of HR 5772 are summarized below:

- **Section 811 PRAC-ONLY Demonstration Program**

The most innovative and exciting component of HR 5772 is the proposed PRAC-ONLY Demonstration program. The PRAC-ONLY Demonstration could create 2,500 – 3,000 new integrated Section 811 units each year without increasing current Section 811 appropriations. The Demonstration has been designed to take advantage of the hundreds of thousands of “affordable” units routinely produced each year by states and localities through the LIHTC and HOME programs, as well as other potential sources of affordable housing financing.

The PRAC-ONLY Demonstration would provide a long-term commitment of Section 811 PRAC funding to ensure that a small but significant percentage of permanent supportive housing units – not to exceed 25 percent of the total units – could be set-aside in HOME or LIHTC-financed projects. The Demonstration program would be administered through state housing agencies and local governments willing to create these set-aside policies that align with the community integration goals of state disability and supportive services policies.

Under the PRAC-ONLY Demonstration, rents for Section 811 units would be set at 30 percent of monthly income with the Section 811 PRAC providing the long-term rental subsidy up to the “affordable” rent charged in the LIHTC, HOME or similar affordable rental housing financing program. This cost-effective approach means that the annual cost of a Section 811 unit could be as low as \$3,000 per year and would require no Section 811 capital funding to implement.

Section 811 PRAC funding could be linked “up front” when projects are financed or could be provided at any time as long as the project owner is willing to accept the long-term commitment of PRAC funding. Linkages to supportive service resources would be structured through formal partnerships with state health/human services and Medicaid agencies implementing policies focused on community integration.

- **Improvements to the Existing Section 811 Program**

HR 5772 also proposes changes to the existing Section 811 production program to encourage non-profit Section 811 grantees to better leverage other capital funding and to eliminate barriers to mixed-finance Section 811 projects that target LIHTC investment. These long overdue reforms include the use of Section 811 Capital Advance and PRAC funding to support a percentage of the units – not to exceed 25 percent of the total units in the project – in a multi-family rental housing development project. The legislation would also streamline HUD Section 811 processing requirements and remove outdated HUD regulatory barriers to help increase the number of new units that can be created each year by non-profit organizations through the Section 811 Capital Advance/PRAC program.

• Shifting Renewal of Section 811-funded Mainstream Vouchers to the Housing Choice Voucher Program Budget

Since its inception, the Section 811 tenant-based rental assistance program has been plagued with problems. The provisions of HR 5772 related to this component of Section 811 are essential for two reasons:

1. HR 5772 finally will undo the ill-advised and ill-fated HUD decision made in the 1990s to convert Section 811 tenant-based rental assistance funding to Section 8 Mainstream Housing Choice Vouchers administered primarily by Public Housing Agencies (PHAs); and
2. HR 5772 could free up more than \$80 million in Section 811 funding that could be re-directed to the PRAC-ONLY Demonstration program.

It would take this entire article to discuss the problems that arose when HUD created the Mainstream Voucher Program. Stated simply, although funded and renewed from Section 811 appropriations, more than 14,000 Mainstream Housing Choice Vouchers were awarded to PHAs that issued them to people with disabilities who were on Section 8 Housing Choice Voucher waiting lists. These Section 811-funded vouchers were rarely – if ever – used by PHAs to provide permanent supportive housing and they were not targeted to people with the most serious and long-term disabilities. Lax HUD tracking of the Mainstream program just compounded these problems.

HUD's own data suggests that some PHAs never issued all of these vouchers or gave them to households without disabilities. And, even though they were fully funded and renewed from the Section 811 appropriation rather than from the Section 8 budget, some Mainstream Vouchers were not re-issued by PHAs

because of budget problems that continue to plague the Housing Choice Voucher program.

It is abundantly clear that there is only one good solution to this mess – which is to authorize these disability vouchers as a permanent set-aside funded from the Section 8 Housing Choice Voucher program appropriation. HR 5772 would initiate this policy change. This would free up an estimated \$80+ million in Section 811 funding that could be redirected to the PRAC-ONLY Demonstration program. Certainly this is a major step in the right direction for people with the most significant and long-term disabilities, who have lost an estimated \$400 million in federal supportive housing resources from Section 811 since the Mainstream program was created in 1997.

Problems with the Current Section 811 Program

In addition to the problems that have plagued the Section 811-funded Mainstream Voucher program, there are major problems associated with the current Section 811 Capital Advance/PRAC program including those highlighted below.

Problem #1 – Developing integrated scattered-site housing with Section 811 funding is virtually impossible due to the program's structure. A few entrepreneurial Section 811 developers have struggled to use the program to purchase condominiums and cooperatives, which is permitted under the statute. However, this approach has been extremely difficult to implement – and finding the money to pay periodic condominium assessments and rising condo fees can be a significant problem.

Problem #2 – Section 811 funding is not highly leveraged with other affordable housing financing. Because the amount of per unit fund-

ing provided by HUD from Section 811 typically covers 80 – 100 percent of the cost of developing the project, mainstream affordable housing funding streams such as the LIHTC and HOME programs are rarely used to create Section 811 units. The federal Office of Management and Budget (OMB) gave a low cost-effectiveness rating to Section 811 because the program's design does not sufficiently leverage other affordable housing funding

Problem #3 – The complexity of the Section 811 application process means that first-time applicants are rarely successful unless they hire a specialized Section 811 consultant that can charge \$15,000 - \$25,000. This cost can be paid for with Section 811 funds if the project is selected by HUD, but not all consultants will work on a contingency basis. During recent years, a relatively small number of disability organizations with successful track records have begun to “corner the market” on new Section 811 funding – an outcome that has certainly been good for them but not necessarily good for the future of the program.

Problem #4 – Because of the current HUD rules and processing requirements for Section 811 housing development, it's not unusual for a new project to take 5-7 years to complete. These delays jeopardize the future of the program because – until the funds are actually spent by the project sponsor – they remain “on the books” of the federal government. Unexpended funding was another reason why Section 811 received a low rating from OMB.

Problem #5 – Despite legislative changes to the Section 811 program (and its companion program the Section 202 Elderly Housing program) in the late 1990s intended to help 202/811 project sponsors successfully leverage federal LIHTC financing, major barriers still prevent Section 811 projects from using this important federal program. One basic problem is that “single purpose” Section 811 group home and independent living

projects are simply too small to be financially feasible under the LIHTC approach. For Section 811 funding to attract LIHTC investment, it must be used in integrated rental housing developments that provide both supportive housing units financed with Section 811 as well as other affordable housing units.

These unresolved Section 811 program issues have caused a significant decline in the number of non-profit organizations that are even willing to compete for Section 811 funding. In the most recent funding round which concluded in late 2007, only 140 applications were received by HUD for the entire country! That shocking statistic comes at a time when states and localities are desperate for new permanent supportive housing resources to help the millions of people with significant and long-term disabilities who are living in restrictive settings, or who remain at home with aging parents, or who are homeless. The declining in 811 applications in recent years has also prompted a few federal officials to assert that there must no longer be any need for the program – a tragic conclusion at a time when the demand for permanent supportive housing has never been greater.

Section 811 vs. Section 202

One other important dimension of the current Section 811 program is its long-standing relationship and similarity to the Section 202 Elderly Housing program. Even though these programs became more distinct when the Section 202 Program for People with Disabilities was re-authorized as the Section 811 Supportive Housing for Persons with Disabilities program in the early 1990s, many of the statutory and regulatory provisions of Section 202 and Section 811 remained the same.

Simply stated, what was good policy for the Section 202 program was considered good policy for

Section 811. For example, it was and is considered good policy for elderly households to live together in large “elderly projects.” For many years, it was also considered good policy for people with disabilities to live together in “disabled only” projects, primarily so that services for disability-specific populations could be based on-site.

Because of changes in disability policy, it is no longer appropriate for the Section 811 program to be linked so closely to the Section 202 program. In fact, replicating the current approach used by Section 202 Elderly Housing developers to leverage LIHTC financing would mean developing very large (typically 50 units or more) single purpose Section 811 projects dedicated solely to people with disabilities. HR 5772 creates a new approach to combining LIHTC funding that is consistent with best practices in supportive housing and disability policy.

To be viable now and in the future, the Section 811 program must reflect the housing preferences of people with disabilities as well as recent policy changes that promote evidenced-based supportive services approaches and models that emphasize choice and community integration. Disability advocates who have worked so hard to save the Section 811 program from HUD’s budget cuts understand that now is the time to create a new vision and a new future for the program – and that this work is crucial to state and local efforts to end the reliance on segregated settings such as nursing homes, Board and Care facilities, ICF/MRs, or other inappropriate places. They also recognize that maintaining the status quo within Section 811 is a recipe for the program’s continued decline and eventual demise.

The New Community Integration Paradigm

Evolving state government community integration policies – prompted as a result of the U.S. Supreme Court’s *Olmstead* decision

and more recently by U.S. Department of Health and Human Services (HHS) Real Choice Systems Change Grants, Money Follows the Person Grants, and Mental Health System Transformation initiatives – also have prompted a re-examination of government supportive housing and residential services policies for people with disabilities, including the continued reliance on nursing homes and/or segregated Board and Care homes. In fact, some states now have community integration policies that no longer permit the development of the kind of highly concentrated housing settings that are still the norm in the Section 811 program.

What has emerged through these new policies is a housing and services paradigm that seeks to fulfill the vision of community integration embedded within the Americans with Disabilities Act of 1990. This paradigm envisions that people with disabilities with extremely low incomes will have access to an increasing supply of decent, safe, affordable, accessible, and integrated rental housing. Moreover, this housing will be produced routinely and at-scale through “mainstream” affordable rental housing programs, particularly the federal LIHTC program, HUD’s HOME program, state and local housing trust funds, etc.

The principles, financing, and supportive services approaches for people with disabilities have also evolved from models that required mandatory site-based services to evidence-based best practice models that emphasize voluntary, individualized, and flexible services that can be adjusted to a person’s changing needs in permanent housing of their choice. Many states are now in the process of designing and implementing these community-based supportive services policies through a realignment of Medicaid and state financing strategies.

Two states, North Carolina and Louisiana, have already adopted housing policies that demonstrate the feasibility and cost effectiveness of integrating set-asides of permanent supportive hous-

ing for people with disabilities within LIHTC-financed affordable housing developments. The North Carolina Housing Finance Agency has financed over 1,300 units, and Louisiana currently has over 800 units in the pipeline financed with Hurricane Katrina/Rita recovery funds. Many other states are struggling to respond to this need but do not have the resources that a revitalized Section 811 program could provide.

Why We Need Section 811 Reforms Now!

Across the nation, millions of extremely low-income people with the most significant and long-term disabilities face an extreme and intractable housing crisis because they cannot afford decent, safe, and integrated housing of their choice in the community. Instead, they eek out an existence in public institutions, nursing homes, Board and Care facilities, and other restrictive settings, or live in emergency shelters, under bridges, or on the streets of our cities. This crisis grows worse every day as hundreds of thousands of people with disabilities currently living at home with aging parents begin to seek alternative housing arrangements.

According to TAC's most recent study, *Priced Out in 2006*, the four million non-elderly adults with disabilities who receive Supplemental Security Income (SSI) must pay – on average nationally – 100% of their monthly income to rent a modest studio apartment and 113% of their income to rent a modest one-bedroom apartment priced at the HUD Fair Market Rents. This deep affordability crisis can only be addressed through a long-term and permanent rental subsidy – like the type that has been provided through the Section 811 PRAC for almost 20 years.

Conclusion

Time is running out on the Section 811 program and the need to create new permanent

supportive housing units has never been greater. Disability housing policy is at a critical juncture as the community integration paradigm takes hold – unfortunately without the housing resources to ensure its success. Section 811 legislation that supports this new paradigm is essential because it will provide important new resources to ensure its implementation in states and localities around the country.

Even a reinvigorated and modernized Section 811 program cannot be expected to address the full extent of the unmet need for permanent supportive housing for people with the most significant and long-term disabilities. However, a newly authorized Section 811 program that truly supports community integration for people with disabilities will symbolize a renewed, serious, and sustainable commitment from the federal government to respond to this housing crisis.

By enacting new Section 811 legislation, Congress can ensure that a reinvigorated Section 811 program is ready to create thousands of new permanent supportive housing units every year without needing to double or triple appropriation levels. The removal of many bureaucratic barriers that cause protracted delays in Section 811 project development will also produce new units more efficiently. Shifting renewal costs associated with the flawed 811-funded Mainstream Housing Choice Voucher program – which has drained funding away from essential permanent supportive housing production since 1997 – also is long overdue.

TAC and the CCD Housing Task Force look forward to working with Section 811 stakeholders across the nation to ensure that this essential and critically needed legislation is enacted as soon as possible. More specific information on this important legislation is available on TAC's website www.tacinc.org as well as the CCD Housing Task Force website www.c-c-d.org.