

# **Frank Melville Supportive Housing Investment Act of 2010**

## **Reforms to HUD's Section 811 Program Enacted**

### **Summary**

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## **Introduction**

On January 4, 2011, President Barack Obama signed into law the Frank Melville Supportive Housing Investment Act of 2010 – groundbreaking legislation to revitalize and reform the U.S. Department of Housing and Urban Development (HUD) Section 811 Supportive Housing for Persons with Disabilities Program. This action completes a three year advocacy effort led by the Technical Assistance Collaborative (TAC) and the Consortium for Citizens with Disabilities Housing Task Force (CCD) to reinvigorate this important supportive housing program, to promote community integration and related best practices in supportive housing, and ensure 811's future viability and effectiveness.

Section 811 is a critical HUD program that assists the lowest income people with the most significant and long-term disabilities to live independently in the community by providing affordable housing linked with voluntary services and supports. Over the past decade, the Section 811 program has become less and less effective, creating fewer than 1,000 new units per year through an outdated law that did not reflect best practices in disability or supportive housing policies.

The new and reformed Section 811 program has important features, which will create thousands more units of integrated permanent supportive housing every year by: (1) providing stronger incentives to leverage other sources of capital for 811 units, including federal Low Income Housing Tax Credits, HUD HOME funds, and bond financing; (2) authorizing a 'stand alone' Project Based Rental Assistance approach to help state and local governments systematically create integrated supportive housing units in affordable rental housing developments. The legislation also permanently transfers Section 811 funded vouchers to the Housing Choice Voucher program and ensures that other Housing Choice Vouchers appropriated by Congress for non-elderly people with disabilities continue to be used for that purpose.

The purpose of this paper is to provide as much specificity as currently possible regarding key provisions of this new law, including opportunities it presents for a significant expansion of supportive housing across the country. It's important to note that some issues and questions may not be addressed until HUD publishes new Section 811 regulations, which may not happen until later in 2011. TAC will continue to provide as much accurate and timely information on these important supportive housing policy developments as they unfold at [www.tacinc.org](http://www.tacinc.org).

## **Overview of the Melville Act**

The Melville Act makes many long-overdue reforms and improvements to the Section 811 program. Most importantly, the statute authorizes and/or incentivizes more integrated models of supportive housing units by funding small set-asides of Section 811 units within affordable housing developments. The new Section 811 law also includes strong language emphasizing the goal of community integration for people with disabilities.

### **Community Integration, Voluntary Services, and Lease Protections**

The Melville Act provides a strong Section 811 statutory foundation for community integration, tenancy rights, and voluntary services and supports, including programs that emphasize personal autonomy and choice. The new law specifies that one purpose of the Section 811 program is to expand the supply of supportive housing that “promotes and facilitates community integration for people with significant and long-term disabilities.” These goals were not emphasized in the previous statute which, instead, used terms such as “supervision” and “necessary supportive services.” New project selection criteria also emphasize locations which “facilitate the provision of community-based supportive services and address other basic needs...including appropriate and accessible transportation, access to community services agencies, public facilities, and shopping.” The prior law was silent on these important site and neighborhood features.

The Melville Act also emphasizes voluntary supportive services by providing that a “supportive services plan ...shall permit each resident to take responsibility for choosing and acquiring their own services, to receive any supportive services made available directly or indirectly by the owner of such housing, or not to receive any supportive services. Section 811 leases are authorized for “not less than one year” and tenancies may not be terminated or leases terminated except for “serious and repeated violations of the terms and conditions of the lease.”

Over the past decade, these tenancy rights and voluntary service requirements now codified in the Melville Act had been incorporated within HUD’s guidelines and funding notices for Section 811 during recent years. Because they have now been incorporated in the 811 statute, HUD has a clear mandate to ensure that all 811 housing development and program activities reflect these best practices in permanent supportive housing.

### **Section 811 Models of Housing and Leveraging Capital Resources for Integrated Housing**

The Melville Act retains language in the prior law, which permits “housing options ranging from group homes and independent living facilities to dwelling units in multifamily developments, condominium housing, and cooperative housing.” However, various provisions of the new law will incentivize the development of integrated Section 811 units within multi-family rental developments that can be financed with other capital sources. The Melville Act requires the HUD Secretary to “establish a minimum percentage of the amount available for each fiscal year for Section 811 Capital Advances for [supportive housing units within] multi-family developments.” New project selection criteria also incentivize leveraging of other capital financing programs, specifically, “the extent to which the per-unit cost of units to be assisted... [are] supplemented with resources from other public and private sources.” This provision will

favor applications for Section 811 funding that can obtain commitments of capital from affordable housing programs, such as the federal Low Income Housing Tax Credit program, the HOME program, bond-financing, state/local housing trust funds, etc.

## **Section 811 Program Components**

The reformed Section 811 program has two approaches to creating permanent supportive housing:

- The Modernized Capital Advance/Project Rental Assistance Contract (PRAC) approach
- The Project Based Rental Assistance approach

### **The Modernized Capital Advance Approach**

The Section 811 program will continue to provide non-profit developers with a Capital Advance linked to PRAC to create permanent supportive housing for very low-income non-elderly adults with disabilities. However, as stated above, the intent of the new law is to promote the creation of more integrated Section 811 units through the use of the multi-family affordable rental housing development model.

Under the new law, no more than 25 percent of the units in any Section 811-financed multi-family project, including condominium or cooperative housing, may have an occupancy preference for people with disabilities. This means that non-profit affordable housing developers may now use Section 811 Capital Advance/PRAC funding to create small set-asides of permanent supportive housing units within rental developments that provide housing for households without disabilities. The goal here is to expand the supply of permanent supportive housing at greater scale by leveraging affordable rental housing development that routinely occurs in local communities using mainstream affordable housing programs. These projects are typically financed and overseen by state and local government housing finance and community development agencies, which will also make the Section 811 program operate more efficiently.

Other provisions of the modernized Capital Advance/PRAC program include:

- New minimum PRAC terms of at least 30 years for projects assisted with federal Low Income Housing Tax Credits;
- A 20 year initial PRAC term for all other projects;
- A five year PRAC contract renewal term;
- Initial PRAC funding for 5 years;
- Utilization of HOME program cost limits (except for group homes) with waiver authority for design features and accessible locations;
- Delegated processing for multi-family developments to state and local housing agencies. The delegation occurs within 30 days of award to agencies that agree to issue a firm

commitment within 12 months and have demonstrated experience in and capacity to underwrite multi-family loans;

- A 24 unit size limit for independent living projects unless the HUD Secretary prescribes criteria for limits exceeding 24 units and submits a detailed explanation of the reasons for such higher limit to Congress;
- An 8 unit group home size limit with size waiver notification requirements to Congress;
- Use restrictions specifying that Section 811 projects are to be used as supportive housing for very low-income persons with disabilities, or if the project is no longer needed as supportive housing, as affordable housing for the same population;
- A new tenant selection provision that permits owners – with HUD permission – to restrict occupancy to people with disabilities “who can benefit from the supportive services offered in connection with the housing.” The previous statute stipulated that HUD could approve tenant selection policies that limited occupancy to “persons who have similar disabilities and require a similar set of supportive services.”
- The new law specifies that only very-low income households with at least one non-elderly adult with disabilities between the ages of 18-61 are eligible for the Modernized Section 811 Capital Advance program.

### **The New Section 811 Project Based Rental Assistance Approach**

The Melville Act – for the first time in federal housing policy – authorizes a separate Section 811 Project Based Rental Assistance approach to promote the creation of integrated supportive housing units. The new law states that:

*“To offer additional methods of financing supportive housing for non-elderly adults with disabilities, the Secretary shall make funds available for project rental assistance ....[and] shall provide for State housing finance agencies and other appropriate entities to apply ....for such....funds which shall be made available by such agencies...for dwelling units in eligible projects based upon criteria established by the Secretary. The Secretary may not require any State housing finance agency or other entity ....to identify in such application the eligible projects for which such funds will be used and shall allow such agencies and applicants to subsequently identify such eligible projects pursuant to making commitments.”*

Eligible projects can be either new or existing multi-family developments in which the development costs are paid for from other public or private sources, including projects that have a commitment of federal Low Income Housing Tax Credits, HOME funds, or other commitments of funding from federal, state, or local government or any other source. To ensure Section 811 community integration goals are achieved under this new approach to supportive housing, no more than 25 percent of the total number of dwelling units in any project receiving Section 811 Project Based Rental Assistance may be used for supportive housing **or** have an occupancy preference for people with disabilities

This new Section 811 approach requires a partnership be established between the housing agency applying for the Project Based Rental Assistance and the state Medicaid agency. The Melville Act stipulates that:

*“Assistance under this paragraph may be provided only for projects for which the applicable State agency responsible for health and human services administer or supervise the administration of the State Plan for medical assistance under title XIX of the Social Security Act, have entered into such agreements as the Secretary considers appropriate—*

- (i) to identify the target populations to be served by the project*
- (ii) to set forth methods for outreach and referral*
- (iii) to make available appropriate services for tenants of the project”*

The new Section 811 Project Based Rental Assistance approach is also targeted solely to people with disabilities who can benefit from supportive housing with extremely low incomes – defined as incomes at or below 30 percent of Area Median Income (AMI). The Modernized Capital Advance program discussed above, as well as the prior Section 811 statute, set income eligibility limits at or below 50 percent of AMI. For consistency with Low Income Housing Tax Credit use requirements, Project Based Rental Assistance units created through this approach must be operated as supportive housing for not less than 30 years.

Within 3 years of the enactment of the Melville Act, HUD is required to submit a report to Congress which analyzes the effectiveness of the Project Based Rental Assistance approach as compared to the Modernized Capital Advance/PRAC Section 811 model of supportive housing development.

### **Tenant Based Rental Assistance Provisions**

The Melville Act repeals authority within the Section 811 statute to fund tenant based rental assistance by authorizing the conversion of approximately 14,000 Section 811 funded “Mainstream” vouchers to Housing Choice Vouchers, including an authorization to appropriate funding for these vouchers within the Housing Choice Voucher program appropriation. The Melville Act ends the long saga of this troubled Section 811 funded voucher program, which – from its inception in the mid-1990s – was administered by Public Housing Agencies (PHAs) under the rules for the Housing Choice Voucher program. Because Section 811 funded vouchers were, for all intents and purposes, Housing Choice Vouchers, some PHAs lost track of them, or did not always re-issue them to Section 811 eligible households.

The Melville Act also permanently protects this supply of vouchers targeted to people with disabilities by providing that they continue to be made available to people with disabilities upon turnover. The Act also protects the 25-30 non-profit organizations that administer a small portion of these vouchers by stipulating that “such entities shall be considered a public housing agency authorized to engage in the operation of tenant-based rental assistance under Section 8 of the United States Housing Act of 1937.”

Another very significant tenant-based rental assistance provision of the Melville Act provides important statutory protection for a much larger supply of HUD disability vouchers. Specifically, the Melville Act requires that an estimated 56,000 Housing Choice Vouchers appropriated by Congress for non-elderly people with disabilities<sup>1</sup> also be permanently reserved

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<sup>1</sup> Specifically, these vouchers were appropriated by Congress to help replace the supply of hundreds of thousands of studio and one-bedroom federal public housing units that are no longer available to non-elderly people with

for this group upon turnover. For many years, anecdotal evidence has suggested that some PHAs may not have carefully tracked this valuable supply of disability vouchers. As a result, some vouchers may have been provided to non-disabled households upon turnover. This provision of the Melville Act means that HUD must take more assertive steps to ensure that – when one of these 56,000 disability vouchers turns over and can therefore be given to another household on the PHA waiting list – it is given to a non-elderly household with disabilities.

The Melville Act also specifies that future appropriations acts can include technical assistance funding to assist PHAs to facilitate using this supply of Housing Choice Vouchers for people with disabilities to create permanent supportive housing to help states reduce reliance on restrictive settings and to end chronic homelessness and for other related purposes. An increasing number of PHAs are expressing interest in using vouchers for this purpose, but may lack permanent supportive housing knowledge or capacity. This new source of technical assistance funding authorized by the Melville Act would assist many PHAs and many communities to expand the supply of this evidenced-based and highly cost-effective housing model.

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disabilities because they had been designated as “elderly-only” housing under laws passed in the 1990s. Thus, the population eligible to receive these vouchers should be restricted to non-elderly adults with disabilities in households that would qualify to occupy these size units.