Good News - Congress Reforms the Section 811 Supportive Housing Program But Careful Implementation is Necessary


by Charles Elsesser

The one bright spot in last year's rather dismal performance for housing in Congress was the passage of the Frank Melville Supportive Housing Investment Act of 2009. The Act significantly reformed and rejuvenated the Section 811 housing program, offering the possibility of significantly increasing the number and effectiveness of new housing units.

Finding affordable housing is a difficult for anyone on a fixed income. If you also have a long term disability and need additional supportive services that task becomes near impossible. In Miami-Dade County the FMR for a one-bedroom unit is $842 which is 125% of the total monthly income for a disabled recipient of Supplemental Security Income (SSI). For the past 20 years, the 811 program has been an important tool for nonprofit developers in producing affordable supportive housing for extremely low income individuals. Section 811 was the one program targeted to providing supportive housing for people with serious and long-term disabilities, including physical or developmental disabilities and serious mental illness. It focused on single purpose housing with an integration of services and was affordable to people with disabilities with extremely low incomes - such as SSI.

However, the world of affordable housing, and particularly housing with services, has changed significantly over the past 20 years. Much of the affordable housing already developed has aged significantly. New sources of subsidy, such as the Low Income Housing Tax Credits (LIHTC), have become the dominant means of financing affordable housing. Older sources of subsidy have dwindled and dried up. And supportive housing policy itself has evolved.

The structure of the 811 program has undergone relatively few changes during that period. As a result, developers using the program have had difficulty adapting it to the changed environment. For example, the 811 program structure made it extremely difficult to integrate 811-financed supportive housing units within larger rental housing properties - a preferred policy approach. In additional, it was extremely difficult to utilize the LIHTC program—one of the predominant sources of capital funding over the past 20 years— with the Section 811 program. Thus each unit required more capital subsidy from the 811 program. As a result of all of these problems, the number of units developed by the 811 program has decreased to less than 1,000 annually since 2005.

The Frank Melville Supportive Housing Investment Act of 2009 addresses these problems and others, creating a supportive housing funding program designed to work more efficiently in the current environment. Section 811 has traditionally provided two types of assistance:

1. A capital funding subsidy paired with project-based assistance to assist nonprofits in the development of supportive housing projects (the Capital Advance/PRA program); and
2. A tenant-based voucher program. The new Section 811 program reforms both and adds a new Project-Based Rental Assistance program.

The reformed Capital Advance/PRA program is designed specifically to provide capital subsidies and project-based assistance to leverage other capital funding sources such as federal LIHTC, HUD HOME funds, and bond financing. Thus, while single purpose projects will still be permitted, the program will also permit the integration of 811 units into a larger LIHTC project. Section 811 Capital Advance funds can be used as an additional source of gap financing to supplement the LIHTC funding, thus stretching the 811 funds further. The project-based assistance can then pay the difference between the base rents necessary to support the debt and the rents that are actually affordable to people most in need. The program will continue to be administered directly by HUD and would continue to maintain a focus on nonprofit-based developers.

The other major innovation, the new Project-Based Rental Assistance approach provides 15-year Section 811 Project-Based Rental Assistance contracts to integrate Section 811 units affordable to extremely low income households into the larger rental projects. The PBRA program will limit the number of subsidized Section 811 units to no more than 25% of the total units in the project. For example, a 100-unit affordable rental project, subsidized solely with LIHTC/HOME, could receive a PBRA rental assistance contract so that 25 units would be reserved for 811 eligible clients at rents affordable to SSI income levels. The Project-Based Rental Assistance contracts will be renewable 15-year contracts and will require a 30-year use restriction.

Unlike the Capital Advance Program, the Project-Based Rental Assistance program will be administered through State Housing Finance Agencies. This will allow for coordination with LIHTC allocations. In addition, to be awarded the Project-Based Rental Assistance there must be a partnership established between the housing finance agency applying for the Project-Based Rental Assistance and the state Medicaid agency. The contract must identify the target populations to be served by the projects and ensure the availability of appropriate supportive services for the tenants of the project.

Another form of rental assistance included in the old 811 program—the stand alone Section 811 tenant-based voucher program—has ended. The program had been widely criticized by advocates as ineffective. The vouchers issued under the old 811 program will continue to be renewed and have been folded into the regular Section 8 voucher program. In addition, as the vouchers turnover, they will still be reserved for people meeting the 811 criteria.

Finally, many tenant protections, including "good cause" evictions have been moved from regulation to the statute, reemphasizing their importance.

The Need for a Carefully Developed Implementation Program

While the 811 revisions incorporate generally progressive policy changes and financing policies that could lead to additional units, there are concerns that the implementation might have serious unintended consequences. For example, 811 developments in the past have generally been limited to 14 units. Nonprofit developers dedicated to the development of supportive housing for the hardest to serve populations have generally not utilized the far more complicated Low Income Housing Tax Credit process. The LIHTC process generally requires much larger projects to pay for the processing costs. It is possible that many traditional supportive housing developers who are extremely sophisticated in the provision of services could be at a serious competitive disadvantage if they are required to compete with the far more sophisticated financing expertise of tax credit developers. The integration of LIHTC into the new 811 program must be done in a way so as to not cast aside the wealth of experience of the existing supportive housing developers.

In addition, there is the fear that tax credit developers may be less likely to incorporate supportive housing for the "chronically mentally ill" into larger tax credit projects. Tax credit developers must keep in mind the marketability and financial viability of the entire project, not just the 811 units. While the tax credit developers might highly value the additional subsidy of the project- based assistance, they might want to avoid housing anyone who could undermine the marketability of the remaining units. Thus, unless the occupancy of new 811 units is closely monitored, it is possible that many of the new 811 units created will not be used for those residents, such as the severely mentally ill, who are the most difficult to house.

Finally, there is the requirement that the 811 developer contract with the state Medicaid agency for the funds to provide supportive services. Unfortunately, this requirement is imposed at precisely the same time that the Florida Medicaid program is going through its greatest upheaval in recent memory. Much of the Florida Medicaid program may be transferred to privately run HMOs and it is not clear at present the extent to which the contracts for supportive services will be run through HMOs, who are obviously concerned with the bottom line, or through other entities. Should the supportive services be subjected to the cost controls of the HMOs, it could disadvantage those 811 providers who serve the most severely disabled, and therefore most expensive, clients.

All of these issues - the competition with tax credit providers, the emphasis on the marketability of the non-811 units in a large tax credit project and the possible privatization of the Medicaid program—potentially disadvantage the traditional provider of supportive housing targeted to the most severely mentally ill. Unless these concerns are overcome through careful and targeted funding, the seriously mentally ill clients of these traditional providers may lose their opportunity for housing in the community and be forced back into state hospitals. This is exactly the opposite of what is intended by these 811 reforms.

The 811 NOFA for 2010

HUD issued the new 811 NOFA for 2010 on April 8, 2011. The deadline for applications is June 23, 2011. The NOFA, while distributing funds appropriated in 2009, incorporates the approaches of the Frank Melville Supportive Housing Investment Act of 2009. However, it is only distributing funding for Capital Advance/Project Rental Assistance Project. The entire NOFA is available at: ***http://www.hud.gov/offices/adm/grants/nofa10/811nofa.pdf***

Unfortunately, the new budget compromise recently passed by Congress included significant cuts to the 811 program. Congress is already looking at further cuts to the HUD budget for the FY 2012 budget. **HNN**

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"It's Not Dark Yet but It's Getting There" [1]
Congress Passes Deep Cuts to HUD Programs in FY 2011 Budget Continuing Resolution

On April 14, Congress finally passed a Continuing Resolution, H.R.1473, ending the budget standoff and threatened government shutdown. The cuts in this bill total nearly $40 billion. The bill included deep cuts in the HUD budget.

According to a report by the National Low Income Housing Coalition, the budget bill included an across the board cut to overall HUD programs of nearly $3 billion dollars, or 6.5%, below FY10 funding levels. In addition, the following are some significant cuts to individual programs.

Tenant-Based Rental Assistance

- Admin Fees: $125 million cut
- Family Unification Program: $15 million cut (funding eliminated)
- Veterans Affairs Supportive Housing Vouchers: $25 million cut
- Tenant Protection Vouchers: $10 million cut

Public Housing Operation Fund: $149 million cut

HOPE IV: $100 million cut

Public Housing Capital Fund: $456 million cut

Native American Housing Block Grants: $50 million cut

Community Development Fund: $942 million cut

- CDBG: $643 million cut

HOME Investment Partnerships: $215 million cut

Lead Hazard Reduction: $20 million cut

Section 202: $425 million cut

Section 811: $115 million cut

Housing Counseling Assistance: $88 million cut (funding eliminated)

Brownfield Redevelopment: $18 million cut (funding eliminated)

Energy Innovation Fund: $50 million cut (funding eliminated)

Congress will now proceed with the FY12 funding process. Unfortunately, the FY11 levels in the Continuing Resolution will serve simply as a baseline for Congress as they search for even deeper spending cuts in HUD programs.

[1]Bob Dylan 1997