



Comment of Together For Choice On IACC's Strategic Planning Working Draft

Together for Choice (TFC) is a nationwide disabilities advocacy organization representing individuals with significant developmental disabilities, their families and the providers who serve them. TFC's focus is advocacy at the federal, state and local levels for more high quality residential and vocational options for individuals with significant developmental disabilities. This community has a diverse set of needs and preferences. It needs a wide variety of high quality residential and vocational options that are adequately resourced. The individuals and their families, not the government, should choose the option that works best for them.

TFC agrees with the following statement in Life Course Domain V of the Working Draft:

The central problem is not merely that services are difficult to coordinate. It is that the housing supply itself is insufficient. For many families, eligibility on paper does not translate into an available, appropriate place to live, and coordination alone cannot solve a shortage of actual residential capacity. Federal policy should therefore move beyond helping systems manage existing scarcity and toward creating the conditions for new supply: more residential models, more providers and developers, more financing tools, and more public-private partnerships capable of producing housing at scale.

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Restrictive regulations and statutes, federal and state, are the primary barrier to a greater supply and a wider variety of housing and vocational options. The federal Settings Rule, 42 C.F.R. Sec. 441.301(c), and similar state regulations, prevent the development of campus settings, farmsteads and intentional communities that many individuals with significant developmental disabilities find most beneficial. Low-income housing for individuals with disabilities under the U.S. Department of Housing and Urban Development is hampered by the legislative restriction that dwelling units for individuals with disabilities in multi-unit buildings may not exceed 25%. 42 U.S.C. Sec. 8013(b)(3)(B)(ii). The Settings Rule and the Section 811 25% limitation were

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intended to implement the so-called “integration mandate” which the Department of Justice recently opined does not exist.

TFC requests the following changes to Life Course Domain V of the Strategic Plan:

1. Include as one of the Core Objectives and Initiatives rescission of the Settings Rule and amendment of Section 811.
2. Under Agency Actions, call for CMS to rescind the Settings Rule and for HUD to petition Congress to amend Section 811.
3. These initiatives should be included in the first phase of the Consolidated Federal Implementation Compact.

Further Background

The vast majority of people with developmental disabilities live in the family home. As those family caregivers age, the shortage of appropriate residential options is becoming a national crisis.

For many, the choices are severely limited, primarily to group homes or individual supported living arrangements. This crisis is too vast to be solved by government funding alone. We must pivot from a purely public approach to a public-private partnership model.

A precedent exists: when federal public housing failed to meet demand, Congress created the Low-Income Housing Tax Credit (LIHTC) program in 1986, which has since produced over 3 million high-quality, affordable housing units across the U.S. The same market-driven mechanism is essential to funding the I/DD housing solutions we need now.

That mechanism has already worked for this population. Through the 1990s and 2000s, organizations built affordable housing for people with disabilities by combining low-income housing tax credits with HUD Section 811. In 2010, the Frank Melville Supportive Housing

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Investment Act—intended to reform Section 811—instead constrained it: by limiting units set aside for people with disabilities to 25% or less per project.

Until 2014, CMS interpreted Section 1915(c) of the Social Security Act to allow states to provide home and community services in any setting other than a hospital, nursing facility, or ICF/IID. In 2014, CMS introduced the Settings Rule, which narrowed the definition of eligible settings. This change has resulted in some states prohibiting Medicaid funding for certain settings, including campus settings, farmsteads, and intentional communities that serve individuals with significant challenges. Some states have imported Section 811's 25% limit for multi-family settings into their disability housing regulations, severely limiting residential options especially for those with severe autism or complex medical or behavioral challenges.

These restrictions also limit access to low-income housing tax credits. States administer the credits, and each sets its own allocation policy. For competitive 9% credit projects, scoring preferences and basis boosts already exist. Often it comes down to a tiebreaker: how much public funding you have raised outside of tax credits. Homeless projects are prioritized in LIHTCs, because ample city and county subsidies exist for homeless housing development but not for I/DD. Many government subsidies for I/DD housing cap disability units at 25% or less, automatically disqualifying many preferred housing initiatives.

9% LIHTC projects rely on a stack of public funding sources. But disability-specific developments are automatically ineligible for HUD Section 811 funding because of the 25% restriction. Senior housing developments, by contrast, can apply for HUD Section 202 with no such limit. This is clearly discrimination on the basis of disability.

Florida has chosen differently and makes the best use of LIHTCs for disability housing: it is the only state that allocates 5% of its 9% tax credits to I/DD housing. Florida also provides development subsidies that make up for the absent HUD Section 811 funding.

Public-private partnerships are possible only once the regulatory barriers are removed: the Settings Rule and the HUD Section 811 program's 25% limit. A system that systematically

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discriminates against disability-specific housing will not attract private partners. Private capital flows to senior, veteran, and homeless housing because there is no limit on how many people can live there. Why would anyone invest in a project that comes with so many barriers? No philanthropic capital will absorb that risk.

For these reasons, we urge the three changes to the Strategic Plan listed above. These actions are critical to enabling the public-private partnerships that can expand appropriate housing and support services for people with developmental disabilities.