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Sweeping Deregulation of Small Public Housing Agencies Would Do More Harm Than Good

By Will Fischer and Barbara Sard

The Small Public Housing Agency Opportunity Act (SPHAOA), introduced in similar form by Senators John Tester (D-MT) and Deb Fischer (R-NE) and Representative Steve Palazzo (R-MS),¹ is intended to reduce administrative burdens for small local agencies that operate the public housing and Housing Choice Voucher programs. Unfortunately, the bills' deregulation provisions go so far to sweep aside federal rules and safeguards that they could have unintended and undesirable consequences — such as higher federal costs, fewer low-income families receiving federal housing assistance, and higher rents for many vulnerable households. They would also complicate program administration by establishing a separate set of rules for small agencies.

More promisingly, the bills seek to help local agencies work together to administer rental assistance more efficiently. This approach could streamline rental assistance administration *without* weakening standards or accountability and should be the focus of legislative efforts to address the administrative challenges that stem from the large number of small agencies.

Those challenges are considerable. Nearly 3,800 agencies administer Housing Choice Vouchers or public housing units; 2,800 of them administer 550 or fewer total units (thus meeting SPHAOA's definition of a small agency), and more than 1,300 agencies administer fewer than 100 units. This fragmentation has significant adverse consequences. Small agencies have higher administrative costs than large ones, require costlier federal oversight, and have lower voucher program performance ratings.

SPHAOA seeks to address this challenge mainly through risky and unnecessary deregulation. But policymakers have already done much in recent years to streamline rental assistance, including enacting a broad set of reforms in the Housing Opportunity Through Modernization Act (HOTMA) in July 2016. These recent measures will substantially reduce administrative costs through careful changes that apply to all agencies regardless of size, and they balance streamlining against other goals such as ensuring effective assistance to low-income families and efficient use of federal funds.

¹ The Senate version (S. 2292) was introduced on November 17, 2015, and the House version (H.R. 4816) on March 21, 2016.

The Department of Housing and Urban Development (HUD) is also evaluating alternative policies that go beyond recently enacted reforms. For example, HUD is conducting a rent reform demonstration testing whether alternative formulas for setting tenant rents can both ease administrative burdens and support work. In addition, in December 2015, Congress directed HUD to add 100 agencies — nearly all of them small or mid-sized — to its Moving to Work (MTW) demonstration. This expansion will provide broad flexibility to test alternative policies and, in a departure from prior practice under MTW, requires that those policies be carefully evaluated.

HUD should move promptly to implement HOTMA and ensure that MTW expansion generates findings that are rigorous and useful. Until the recent streamlining measures have been assessed and the ongoing and planned demonstration evaluations completed, there is no justification for Congress to consider sweeping additional deregulation like that proposed in SPHAAOA.

Rather than weakening standards for small housing agencies, Congress and HUD should help and encourage them to work together with other agencies to achieve economies of scale and administer assistance more effectively. SPHAAOA seeks to advance this goal by allowing agencies that administer rental assistance jointly through a consortium to combine their reports to HUD. Consortia — which can allow two or more agencies to combine many aspects of program operations while maintaining separate organizational identities and local boards of directors — are a potentially powerful tool for easing administrative and oversight burdens and improving program performance. But realizing their potential will require stronger action on this front than SPHAAOA proposes.

Congress should take a series of steps to support consortia and other types of cooperation and consolidation across housing agencies:

- Direct HUD to permit consortia to have a single voucher contract with HUD rather than a separate one for each agency.
- Modify the voucher administrative fee formula to remove disincentives for forming consortia.
- Make clear that state laws may not block local agencies from forming consortia.
- Direct HUD to make greater use of its authority to consolidate poorly performing agencies.
- Direct HUD to develop and make available technology that could help agencies establish and operate consolidated waiting lists, thereby allowing families that need assistance to submit a single application.
- Fund a regional housing mobility demonstration in the final 2017 appropriations legislation.
- Expand the conversion of small agencies' public housing to project-based vouchers under the Rental Assistance Demonstration, which would let the agencies continue managing the properties but greatly ease administrative burdens.

This paper reviews data on small housing agencies and assesses SPHAAOA. It discusses the steps Congress has already taken to address SPHAAOA's goals of reducing administrative burdens and examines unintended problems SPHAAOA's deregulation provisions could foster. It also discusses other proposals to help agencies work together to administer rental assistance more efficiently.

Large Majority of Public Housing Agencies Are Small

Nearly 3,800 public housing agencies (PHAs) receive funding from HUD to operate public housing, administer vouchers, or both. PHAs range dramatically in size: some administer as few as four rental assistance units while the largest, the New York City Housing Authority, receives funding from HUD for nearly 274,000 units.

TABLE 1

Overview of Public Housing Agencies (PHAs), 2015

Program administered	Number of PHAs	Number of occupied units	
		Vouchers	Public housing
Vouchers only	805	506,292	--
Public housing only	1,558	--	201,793
Vouchers and public housing	1,433	1,678,463	848,982
		2,184,755	1,050,775
Total	3,796	3,235,530	

Source: CBPP analysis of HUD's 2015 Picture of Subsidized Households, <http://www.huduser.org/portal/datasets/picture/yearlydata.html>.

SPHAOA defines as “small” any PHA that administers 550 or fewer public housing units and/or authorized vouchers.² Nearly 2,800 PHAs — close to three-quarters of all agencies — come within this definition.³ These small agencies assist close to 400,000 low-income households nationally, 12 percent of the total assisted through public housing and vouchers. More than 1,300 of these small agencies administer fewer than 100 units; more than 200 of them administer fewer than 20 units.

² At most agencies, some public housing units are not occupied and some authorized vouchers are not in use, so an agency with 550 total units will typically assist fewer than 550 families.

³ We use the SPHAOA definition of small agencies throughout this analysis. This is the same definition used in the Small Public Housing Authorities Paperwork Reduction Act, enacted as part of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, Sections 2701 and 2702, July 30, 2008), which relieved small PHAs of many formal planning obligations. HUD regulations issued in 2003 that deregulate small agencies in other ways (see 68 Federal Register 37664, June 24, 2003) define a small PHA as one with fewer than 250 vouchers or fewer than 250 public housing units; this definition covers considerably fewer agencies and units than SPHAOA's definition.

TABLE 2

Small Public Housing Agencies (PHAs), 2015

Program administered	Number of PHAs	Number of occupied units	
		Vouchers	Public housing
Vouchers only	591	96,018	--
Public housing only	1,540	--	138,599
Vouchers and public housing	647	83,649	79,957
		179,667	218,556
Total	2,778		398,223

Source: CBPP analysis of HUD's 2015 Picture of Subsidized Households, <http://www.huduser.org/portal/datasets/picture/yearlydata.html>.

Small Agencies Are Common in Metropolitan as Well as Rural Areas

While some policymakers may believe that small agencies mainly serve sparsely populated rural areas, nearly half (49 percent) of all units administered by small agencies are in metropolitan areas. For example, 68 small PHAs administer vouchers in the greater Boston metropolitan area, in addition to 25 larger agencies and two state-administered housing voucher programs.

TABLE 3

Nearly Half of All Vouchers and Public Housing Units Administered by Small Public Housing Agencies (PHAs) Are in Metropolitan Areas

Programs administered	Non-Metro PHAs			Metro PHAs		
	PHAs	Number of units		PHAs	Number of units	
		Vouchers	Public housing		Vouchers	Public housing
Vouchers only	215	35,303	--	376	60,715	--
Public housing only	1,032	--	86,049	508	--	52,550
Vouchers and public housing	346	39,012	44,092	301	44,637	35,865
		74,315	130,141		105,352	88,415
Total	1,593	204,456		1,185	193,767	

Note: Metro areas defined as metropolitan Core-Based Statistical Areas (CBSAs) based on 2013 geography. A PHA is classified as metropolitan if its address is in a county that falls within a metro CBSA.

Source: CBPP analysis of HUD's 2015 Picture of Subsidized Households, <http://www.huduser.org/portal/datasets/picture/yearlydata.html>.

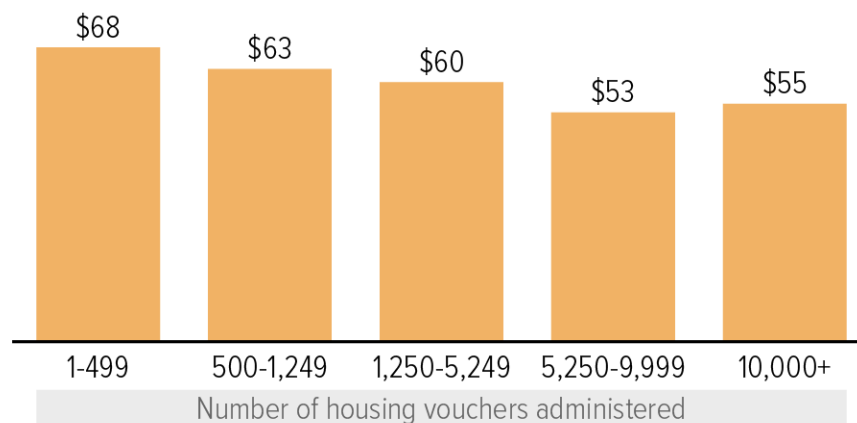
Fragmented Administration Makes Rental Assistance Less Efficient and Effective

The large number of small housing agencies makes federal rental assistance programs costlier to administer and less effective.⁴ The federal staff time required to contract with a housing agency and conduct many oversight functions is roughly the same regardless of how many families the agency assists. As a result, federal oversight costs are much higher *per family* for small agencies. A 2008 HUD report estimated that between half and two-thirds of the effort HUD put into basic compliance monitoring went toward agencies administering only 10 percent of units.⁵

FIGURE 1

Smaller Public Housing Agencies Have Higher Administrative Costs

Average monthly administrative cost per voucher



Source: Abt Associates, "Housing Choice Voucher Program Administrative Fee Study" Ex. 8-2, August 2015, http://www.huduser.org/portal/publications/pdf/AdminFeeStudy_2015.pdf.

Note: Abt adjusted its cost estimates to account for differences in local labor costs.

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Small agencies' own administrative costs are also higher than those at larger agencies, for essentially the same reason: many of their administrative tasks cost about the same regardless of the number of families assisted. A recent HUD study found that per-voucher administrative costs were 24 percent higher at agencies with fewer than 500 vouchers than at the largest agencies (see Figure 1). The federal administrative funding formula provides more funding per voucher to smaller agencies, so these higher costs are in large part passed on to the federal government.

⁴ For further discussion of the challenges posed by the large number of small agencies and policies to support cooperation and consolidation, see Barbara Sard and Deborah Thrope, "Consolidating Rental Assistance Administration Would Increase Efficiency and Expand Opportunity," Center on Budget and Policy Priorities, April 11, 2016, <http://www.cbpp.org/research/consolidating-rental-assistance-administration-would-increase-efficiency-and-expand>.

⁵ HUD Office of Policy, Program and Legislative Initiatives, "Rebalancing HUD's Oversight and Small PHAs' Regulatory Burdens," 2008, pp. iv-v.

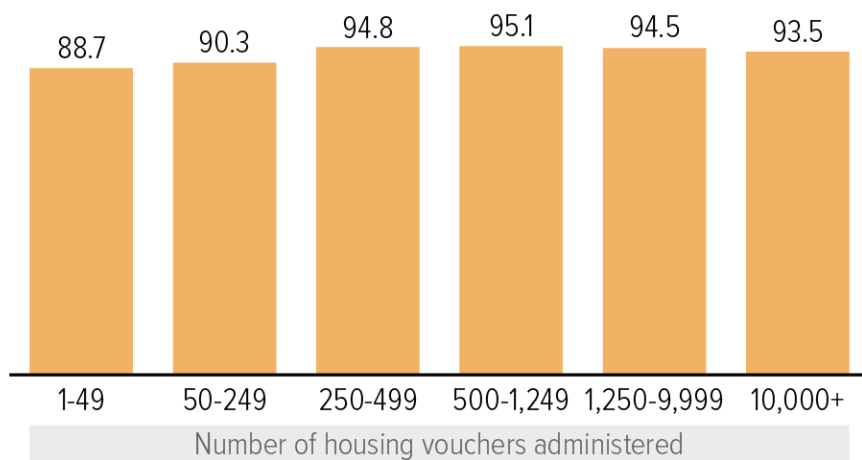
In addition, agencies with fewer than 250 authorized vouchers score significantly lower than larger agencies on the Section 8 Management Assessment Program (SEMAP), HUD’s voucher performance measurement system (see Figure 2). They are about four times more likely to be designated as “troubled” or “near troubled” under SEMAP and less likely to be designated as high performers.⁶

Agencies without sufficient scale to devote staff time to plan and implement new initiatives are less likely to take advantage of options that provide additional types of housing opportunities, such as supportive housing for people with disabilities. Similarly, smaller PHAs are less able to spare staff time to develop partnerships with community agencies that could improve families’ finances or help homeless individuals navigate the housing application process and find an appropriate unit if they receive a voucher. Small agencies invest less in technology so they are less able to track various components of program operations to increase efficiency and improve outcomes, a Government Accountability Office (GAO) study found.⁷

FIGURE 2

Smaller Public Housing Agencies Have Lower Performance Ratings

Average Section 8 Management Assessment Program score by agency size



Note: Housing agencies participating in the Moving to Work demonstration were excluded from this analysis. Data was missing for 12 agencies.

Source: CBPP analysis of 2013-2015 Department of Housing and Urban Development Section 8 Management Assessment Program scores.

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Fragmentation of voucher programs among numerous housing agencies can also make it more difficult for families to move to neighborhoods with low poverty rates, well performing schools, and

⁶ CBPP analysis of 2013-2015 HUD SEMAP data, using the most recent scores available.

⁷ Government Accountability Office, “Housing Choice Vouchers: Options Exist to Increase Program Efficiencies,” GAO-12-300, March 2012.

low crime — which research shows can improve children’s long-term chances of success and mothers’ mental and physical health.⁸ Agency staff may be unfamiliar with housing opportunities outside their jurisdiction and unlikely to encourage families to make such moves. And PHAs in destination communities may be reluctant to accept new families or help them find a willing landlord, seeing newcomers as potential competition with current residents for scarce rentals.

In addition, in metro areas where multiple agencies administer federal rental assistance, families seeking to maximize their opportunity to receive assistance must apply separately to agencies throughout the region, which can be time consuming and costly.

Recent Reforms Will Reduce Burdens for Small and Large Agencies

Policymakers have passed substantial reforms in recent years to reduce unnecessary administrative burdens and expand flexibility for all housing agencies, including changes affecting many of the issues that SPHAAO covers. SPHAAO would go further in a number of areas, but many SPHAAO provisions are so sweeping that they could lead to serious adverse consequences, such as substantial rent increases for vulnerable families. In addition, because SPHAAO would create two different sets of rules based on agency size, it would complicate federal oversight and could increase complexity for some low-income families and private owners renting to voucher holders. Enacting SPHAAO’s potentially harmful proposals for further deregulation would be unwise, particularly before the effects of the recent changes have been assessed.

HUD is just beginning to implement the Housing Opportunity Through Modernization Act (HOTMA), which became law on July 29, 2016 and streamlines many aspects of rental assistance administration. Other measures passed in 2014 and 2015 sharply reduced the frequency with which agencies must conduct voucher housing quality inspections and tenant income reviews — two of the most time-consuming tasks involved in administering rental assistance.⁹ Once fully implemented, these changes should considerably reduce administrative costs for all housing agencies, small and large. Importantly, these recent laws ease unnecessary administrative burdens while keeping in place the core characteristics that have made rental assistance effective.

Congress and HUD have also begun to *test* alternative rental assistance policies beyond those in the recent laws. Most significantly, legislation enacted in December 2015 requires HUD to add 100 agencies to the Moving to Work (MTW) demonstration, which today gives 39 agencies broad flexibility to implement alternative policies. MTW, which mainly includes large agencies, has produced few concrete research findings because the changes MTW agencies have implemented have not been rigorously evaluated. It also has had some serious adverse consequences, such as allowing agencies to assist many fewer families than they could with available funding.

⁸ Barbara Sard and Douglas Rice, “Realizing the Housing Voucher Program’s Potential to Enable Families to Move to Better Neighborhoods,” Center on Budget and Policy Priorities, January 12, 2016, <http://www.cbpp.org/research/housing/realizing-the-housing-voucher-programs-potential-to-enable-families-to-move-to>.

⁹ Section 220 of Division L of the Consolidated Appropriations Act, 2014 (P.L. 113-76, January 17, 2014) allowed housing agencies to conduct voucher housing quality inspections every two years instead of annually. It also allowed agencies, for purposes of these biennial inspections, to rely on inspections conducted under other housing programs rather than duplicating them. Section 78001 of the Fixing America’s Surface Transportation Act (P.L. 114-94, December 4, 2015) allows housing agencies and owners to certify incomes every three years instead of annually for families that receive most of their income from Social Security, Supplemental Security Income, or other fixed sources.

Under the expansion, HUD must admit at least 50 agencies with 1,000 or fewer units, direct each cohort of new MTW agencies to test a specific alternative policy, and ensure that these policies are rigorously evaluated. It will be important that HUD implement the expansion in a manner that produces meaningful results (for example, by preventing agencies from making multiple major policy changes at once so that it is impossible to assess the effect of any one) and limits reductions in assistance and other adverse side effects. The expansion should produce careful research regarding a range of alternative policies, and is another reason to avoid hasty, sweeping measures to deregulate small agencies.

Tenant Rent Policies

Many of the changes in recently enacted legislation simplify the process of determining tenant rent payments, an area that is the subject of SPHAWA provisions that pose serious risks for low-income families. SPHAWA would require HUD to carry out a rent reform “demonstration” allowing as many as 555 agencies (20 percent of all small agencies) to make sweeping changes to rent rules. Despite the demonstration label, SPHAWA does not require a rigorous evaluation. Indeed, it would be virtually impossible for HUD to meaningfully evaluate the changes that hundreds of small agencies would make. Yet those changes could have significant impacts.

- Of greatest concern, agencies in the demonstration could charge families a minimum rent *of any amount* even if it exceeds 30 percent of the family’s income; today minimum rents are capped at \$50 per month.¹⁰ This proposal would effectively permit small PHAs to impose flat rents with *no link to income*, eviscerating the fundamental policy of HUD’s rental assistance programs that the rental charge should reflect a household’s ability to pay.
- Agencies could replace the current rent limit of 30 percent of a family’s income with a “tiered-rent” system that would raise rents on the poorest tenants while cutting them for many higher-income families and could raise federal costs.
- Agencies could base rents on a family’s *gross* income, thereby eliminating deductions for families with dependents, elderly and disabled households, and households with unreimbursed medical or child-care expenses. These deductions are designed to reflect the more limited resources these household have available to pay for housing.
- Agencies could determine families’ incomes and make adjustments to the rent they owe only once every *five years* rather than annually (or every three years for families on fixed incomes), as current law requires. A family could request a review before the five years have elapsed if its income changes by an amount exceeding an agency-established threshold. There would be no cap, however, on the threshold that an agency could establish, so it could sharply curtail

¹⁰ For all small agencies (not just those in the demonstration), the House version of SPHAWA would also index the \$50 cap on minimum rent to inflation. This would allow gradual increases in minimum rents above the level permitted by current law, but the increases could still be difficult for families with little or no income to pay. The bill also creates an incentive for PHAs to raise minimum rents in public housing by changing how the public housing operating subsidy formula treats such increases. Normally, operating subsidies are based on estimates of agencies’ operating costs minus their actual rental income. An agency that raises rents therefore receives less in subsidies, producing essentially the same total revenues. But the House SPHAWA bill would specifically exclude minimum rent increases from the operating subsidy calculation, so PHAs that raise minimum rents on the poorest families could increase their revenues because they would have more rent revenue while keeping the same operating subsidy.

families' access to interim rent changes by setting the threshold at a very high level. This would reduce agencies' administrative costs but could expose families whose income drops substantially to serious hardship and even displacement from their homes. Moreover, since tenant incomes tend to rise over time, on average, limiting income reviews to every five years would likely cut rent revenues and increase federal costs.

In addition to their direct effects on families, these changes would allow participating small agencies to establish a complex patchwork of widely varying local rent rules that could be confusing for families and private owners and difficult for HUD to oversee.

Unlike the SPHAOA rent demonstration, recently enacted rent simplification provisions would reduce administrative burdens for *all* agencies, small and large, while protecting tenants from sharp rent increases. Also unlike the SPHAOA provisions, the enacted reforms were carefully crafted to avoid increasing federal costs; Congressional Budget Office estimates showed that modest cost increases from some provisions would be more than offset by reductions from others.

For example, a change enacted in December 2015 allows agencies and owners to conduct income reviews every three years (rather than annually) for households receiving most or all of their income from fixed sources such as Social Security or Supplemental Security Income, which are unlikely to experience much income variation. This will reduce burdens for agencies while posing far less risk of hardship for families and added federal costs than the SPHAOA provision allowing agencies to review incomes as infrequently as every *five* years for *all* families, including those with volatile incomes.

In addition, HOTMA streamlined requirements for “interim” reviews when a tenant’s income changes between regular annual (and now sometimes triennial) income reviews, without the serious risks that would result from SPHAOA’s proposal to allow agencies to essentially eliminate interim reviews. Previously, PHAs were required to recalculate rents if a family’s income dropped by any amount, and allowed to do so whenever a family’s income rose. HOTMA modified this to require reviews only when a family’s income drops by more than 10 percent and to allow reviews for increases above 10 percent, though rent increases stemming from earnings increases would always be delayed until the next annual review. These policies, which emerged from years of discussion among Congress, HUD, and stakeholders, carefully balance the goals of streamlining administration, containing costs, encouraging work, and protecting vulnerable tenants.

HOTMA also will sharply reduce the administrative burdens resulting from the requirement that housing agencies and owners deduct medical expenses from the income of elderly people and people with disabilities. And it will do so without permitting agencies to eliminate this and other income deductions entirely, as SPHAOA would. HOTMA raised the threshold for the medical deduction from 3 percent of annual income to 10 percent. This would substantially reduce the number of people eligible for the deduction while still providing relief for tenants with extremely high medical or disability-related expenses.

It is worthwhile to test alternative rent policies that go beyond the changes in HOTMA, particularly to determine whether there are cost-effective policies that would encourage increased work effort. But the “demonstration” in SPHAOA is not needed to do this. In the 2010 appropriations act, Congress directed HUD to initiate a rent reform demonstration. This

demonstration is testing alternative rent policies at four agencies, is subject to rigorous evaluation, and is expected to produce results by 2019. HUD is also strongly considering experimenting with alternative rent policies as part of the MTW expansion, which could test policies similar to those outlined in SPHAWA but subject to rigorous evaluation. Congress should not permit hundreds of agencies to make fundamental changes in rent policy — as the SPHAWA demonstration would do — without first learning the impact of such changes on families and program costs, which the pending demonstrations should make possible.

Reducing Housing Quality Requirements

Vouchers may be used only in houses or apartments that meet federal quality standards. SPHAWA would allow small agencies to conduct inspections to verify that this requirement is met as infrequently as once every three years. In 2014, Congress enacted legislation reducing the frequency of required inspections from every year to every two years for all agencies. That legislation and HOTMA also enacted other policies to reduce inspection-related administrative burdens for agencies and owners, such as allowing PHAs to rely on recent inspections performed for other federal housing programs.

These changes had wide support, reflecting a consensus that they would substantially reduce administrative burdens while ensuring that vouchers are used in decent-quality units. Reducing the frequency of inspections to every three years could upset this balance and pose risks for assisted families. It also makes little sense when agencies have just implemented the reduction to every two years and the effects of that reduction are not yet apparent. Also, there is no sound reason for holding small agencies that administer voucher programs to a lower standard than larger agencies, as SPHAWA would do.

SPHAWA would also remove compliance with housing quality requirements as a factor in assessing small agencies' performance in managing their voucher programs. Currently, about one-fourth of the points available under HUD's assessment policy are based on PHAs' compliance with requirements to assure that units rented by voucher holders meet minimum quality standards. SPHAWA would thus eliminate agency incentives to maintain quality, and could thereby expose more families living in voucher-assisted properties to poor housing quality (and allow units to deteriorate and worsen neighborhood blight).

SPHAWA would also prohibit HUD from inspecting any public housing properties owned by a small agency more frequently than every three years, unless HUD has previously determined that the agency's performance is severely deficient and placed the agency in "troubled" status. Today HUD rules generally require inspections of public housing properties at one- to three-year intervals, depending on the agency's prior performance; this is similar to the rules for privately owned subsidized properties, many of which are owned by small entities.¹¹ The SPHAWA proposal risks allowing the 20 percent of public housing units that small agencies own to deteriorate in quality.

¹¹ A HUD rule, effective March 25, 2011, reduces the frequency of inspections (and other components of the Public Housing Assessment System or PHAS) to every three years for all high-performing agencies, including those with fewer than 250 public housing units. Other agencies (of any size) will be subject to the same inspection frequency that now applies to properties in HUD's multifamily program with project-based Section 8 assistance, except that properties owned by a non-troubled PHA with fewer than 250 public housing units are not inspected more frequently than every two years. 76 Federal Register 10136 (February 23, 2011).

Raising Limits on Share of an Agency’s Vouchers That Can Be Project-Based

Housing agencies can contract with owners to use a portion of their vouchers at a particular housing development. Through such “project-basing,” agencies can, for example, partner with social service agencies to provide supportive housing to people with disabilities or to support the development of mixed-income housing in neighborhoods with strong educational or employment opportunities. HOTMA allows agencies to project-base up to 20 percent of their authorized vouchers and up to 30 percent if the agency uses the added 10 percent in areas where vouchers are difficult to use or to house particular types of households with special needs (such as the homeless). This is a significant — but targeted — increase above the pre-HOTMA limit, which allowed agencies to project-base up to 20 percent of their voucher funds.¹²

In contrast, SPHAAO would allow small agencies to project-base up to 50 percent of their vouchers, and with no requirement that they serve special-needs populations or expand affordable rentals in areas where vouchers are difficult to use. This policy would undermine the choice-based nature of the voucher program: for half of an agency’s vouchers, families would have to live in a unit chosen by the agency rather than a unit of their choice for at least a year, or longer if a tenant-based voucher did not become available. Moreover, there is no apparent rationale for applying a different policy to small agencies.

Other Proposed Changes in SPHAAO Are Unwise

Most other provisions of SPHAAO would give small agencies additional flexibility in their use of funds, diminish their accountability to HUD, and reduce HUD’s oversight. While these provisions may provide administrative relief to small agencies, they could also have unintended adverse consequences for vulnerable families, communities, and the federal treasury.

Combining Voucher and Public Housing Funds Would Likely Mean Assisting Fewer Families

SPHAAO would allow small agencies to combine their voucher and public housing funding and use the funds for any purpose that either program permits.¹³ This “fungibility” authority would allow agencies to shift voucher renewal funds to support administrative costs or to operate or repair their public housing rather than to provide voucher assistance to needy families.¹⁴ Any or all of the

¹² The fact that HOTMA ties an agency’s limit on project-basing to its number of authorized vouchers rather than its voucher funding will also give most agencies more flexibility, since most agencies are funded for fewer than their full number of authorized vouchers.

¹³ Section 3 of SPHAAO inserts a new section 37 of the U.S. Housing Act concerning small PHAs. New section 37(e) provides authority for all small PHAs to combine public housing and voucher funding streams.

¹⁴ Theoretically, small agencies that administer both the voucher and public housing programs could use fungibility to shift funds out of public housing in order to provide more families with vouchers. But this would be unlikely to occur on a significant scale. Few agencies would have excess public housing funds unless they allowed some of their public housing units to deteriorate or remain vacant, and agencies would likely prioritize maintenance and repairs at units they own and manage over reducing voucher waiting lists. The fungibility provision also would allow small agencies that manage public housing but do not have a voucher program to combine their operating and capital funds, modestly increasing the number of agencies with this flexibility. Section 9(g)(2) of the U.S. Housing Act allows agencies with fewer than 250 public housing units to combine their operating and capital funds; SPHAAO would extend this flexibility to also cover agencies with up to 550 total voucher and public housing units. Larger agencies can shift up to 20 percent of capital funds to cover operating costs, and as a result of a change included in HOTMA they will be able to shift up to 20 percent of operating funds to cover capital costs.

more than 1,200 small PHAs administering voucher programs could reduce the number of families receiving vouchers under this sweeping provision.¹⁵

Under the current voucher funding formula, agencies that spend less because they provide fewer families with vouchers receive a proportional reduction in their funding the following year. Proponents of the fungibility option may not have realized its potential negative impact on agencies' future funding. Enactment of SPHAAO almost certainly would lead to strong pressure on appropriators to alter the formula and allow agencies electing the fungibility option to shift voucher funds *without* losing some future funding.

The MTW demonstration, which gives agencies broad flexibility to shift funds between programs, illustrates the risks of fungibility. In 2015, MTW agencies transferred more than \$650 million out of their voucher programs to other purposes (such as public housing redevelopment, services to low-income families, or agency administrative budgets) or left the funds unspent. More than 60,000 low-income families were left without housing assistance as a result.¹⁶

The fungibility provision is of particular concern given SPHAAO's proposals to weaken performance standards. The bills would require HUD to consider an agency's management "acceptable" if it uses 90 percent of its voucher funds for vouchers and 90 percent of its public housing units are occupied. In combination, these provisions could permit PHAs to shift up to 10 percent of voucher renewal funds to cover administrative costs or to shift the funds from vouchers to public housing. They also would weaken incentives for PHAs to maintain high occupancy rates in public housing.¹⁷

Changes in Performance Measures Would Undermine Programs

SPHAAO would eliminate or drastically modify most of the measures HUD uses to assess small PHAs' performance in managing their public housing and voucher programs. It also would exempt small PHAs from all planning and reporting requirements that do not apply to private owners administering HUD subsidies. The impacts of these changes could be far-reaching.

¹⁵ SPHAAO requires agencies using fungibility to assist "not less than substantially the same number of low-income families" as in the year before they qualify as a small PHA, but does not specify what types of assistance would count, how much variation "substantially the same" allows, or how the requirement would be enforced. HUD has implemented a similar MTW requirement in a manner that allows housing agencies to sharply scale back the level of rental assistance they provide.

¹⁶ MTW agencies provided vouchers to about 70,000 fewer families as result of these funding shifts. MTW agencies used a portion of the transferred funds to assist families through "local, non-traditional" housing programs, but only report assisting about 8,000 families in this manner. Moreover, many of these 8,000 families appear to have received relatively shallow assistance that resulted in higher rent burdens than a voucher would have.

¹⁷ Today a PHA receives a score of zero on SEMAP's leasing indicator if it fails to use at least 95 percent of its vouchers (or budget authority); a PHA receives the maximum points if it uses 98 percent or more of its vouchers or funding. PHAs that receive a zero score must submit a corrective action plan to HUD. Similarly, in assessing management performance in the public housing program, HUD rewards occupancy rates of 96-98 percent (different standards apply to the capital and operating funds). Deeming performance "acceptable" if 90 percent of units are occupied would undermine this incentive substantially.

Voucher Payment Errors and Federal Costs May Increase

SPHAOA would prohibit HUD from assessing the performance of small PHAs in administering their voucher programs on any factor other than the number of families served.¹⁸ HUD could no longer evaluate small PHAs based on whether they have paid the correct amount of voucher subsidy for participating families.¹⁹ As a result, SPHAOA would eliminate a powerful tool for ensuring that federal funds are spent properly. HUD assesses this aspect of PHA performance using tenant data that agencies already regularly report, so evaluating payment accuracy does not add to small agencies' administrative burdens.²⁰

Assisted Families and the Public Would Have Less Input into PHA Decisions

When Congress responded in 2008 to small PHAs' request to relieve them of the administrative burdens of submitting annual plans to HUD (see footnote 3), it was careful to preserve PHAs' obligation to hold a public hearing each year at which residents and the public could comment on changes to agency goals or policies. Congress established this principle of participatory and transparent public policymaking in the Quality Housing and Work Responsibility Act of 1998 to balance the increased discretion that the Act gave PHAs over key policy choices.

SPHAOA would eliminate the remaining obligations of small PHAs to have a Resident Advisory Board, to afford residents and the public a once-a-year opportunity to provide input into agencies' policy decisions, and to certify their compliance with fair housing requirements.²¹ This change is ill

¹⁸ The new section 37(c)(2)(B) that SPHAOA would insert into the Housing Act would require HUD to evaluate small agencies' management of their housing voucher programs "solely on the basis of the lease-up rate or the budget utilization rate of the small public housing agency." New section 37(c)(4)(B) of SPHAOA would allow HUD to consider two additional factors to determine whether a small PHA is "troubled": whether it has failed to comply with the three-year inspection requirement (discussed above) and whether it has "failed to account for the revenues and expenses of the small public housing agency, misappropriated Federal funds, or otherwise failed to comply with applicable Federal law."

¹⁹ Under current SEMAP regulations, half of a typical small agency's performance rating in administering the voucher program (65 out of a total of 130 possible points for agencies without a required Family Self-Sufficiency program located in a non-metropolitan area) is based on whether unit rents are "reasonable" and whether tenants' incomes and their rent contributions are calculated correctly. These are the key measures for determining whether a subsidy is correctly paid. In contrast, the "lease-up" indicator accounts for only 20 points of the total SEMAP rating. For the 862 PHAs with fewer than 250 vouchers, this assessment occurs every two years; for all other PHAs it is annual.

²⁰ Federal policy relieves entities that spend less than \$500,000 in federal funds in a year from the requirements of the Single Audit Act. (See Office of Management and Budget Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 27, 2003 and June 26, 2007, http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf.) Approximately 340 PHAs with a voucher program spend less than \$500,000 in federal funds annually and are already largely exempt from having their performance on these criteria count as part of HUD's assessment. These very small PHAs are, however, required to certify that they have performed a quality control review of payment accuracy. HUD requires all PHAs to have a supervisor review at least five files for up to 50 cases, plus one file for each additional 50 families assisted. Except for those PHAs that have only a single staff person and may therefore have to pay someone outside the agency to perform the review, reviewing up to 15 files (for a PHA with 550 vouchers) seems a minor administrative responsibility.

²¹ Section 3 of SPHAOA strikes requirements added by the Small Public Housing Authorities Paperwork Reduction Act of 2008 that retained small agencies' obligations to establish resident advisory boards, conduct annual public hearings, and certify to HUD their compliance with civil rights obligations. Section 3 also eliminates any public housing reporting or planning requirement beyond reports or other information that an owner of a Section 8-assisted property with FHA insurance has to submit to HUD.

advised. These requirements are needed to ensure meaningful participation but impose only modest burdens on agencies.

Reducing HUD Powers Would Limit Its Ability to Address Poorly Managed Programs

SPHAOA would eliminate HUD's authority to consolidate the voucher or public housing programs of a small agency that has exhibited chronic poor management with the programs of a nearby well-managed agency. It also would eliminate the requirement that HUD transfer administration of programs when agencies fail to remedy substantial noncompliance.²² As explained below, HUD's authority to consolidate poor performers is a potentially important tool to improve the efficiency of rental assistance; limiting this authority would be a step backwards.

Encouraging Agencies to Work Together Offers a Better Approach Than Sweeping Deregulation

The sheer number of PHAs undermines the effectiveness of the programs they administer and increases costs. To get the most value out of the federal funds spent on rental assistance, it is vital to take a 21st century look at their administrative geography and determine what would be most efficient and effective at promoting program goals. In considering efficiency, it is important to remember that all funding for the public housing and voucher programs is federal. States and localities do not contribute matching funds or share in administrative costs.

Rather than creating special rules for small PHAs that risk harming families and wasting funds, Congress should *directly* tackle the administrative complexity that results from having so many small PHAs. The most straightforward way to do this would be to establish regional entities that administer vouchers throughout a housing market area, or statewide housing voucher programs. There is no sound policy justification for maintaining separate voucher programs for towns, cities, or counties within a metropolitan area.

Mandatory consolidation of agencies into regional or statewide entities, however, would face significant political hurdles, since retaining their independent identity is a paramount concern for many PHAs. Short of a widespread, required consolidation, Congress could take major steps to help housing agencies work together to reduce administrative costs and improve outcomes.

Allow Single-Contract Consortia

SPHAOA seeks to advance this goal by encouraging agencies to enter consortia to administer rental assistance. In 1998, Congress for the first time permitted two or more PHAs to form a consortium to administer their public housing or voucher programs in order to reduce administrative burdens for PHAs and HUD. Agencies could be more willing to join a consortium agreement than to fully consolidate, since a consortium can enable them to achieve economies of

²² New section 37(c)(4)(B), inserted by section 3 of SPHAOA, limits the grounds on which HUD may designate a small PHA's voucher program as "troubled"; clause 37(c)(4)(D)(ii)(I) allows HUD to renew corrective action agreements repeatedly, regardless of whether an agency demonstrates progress. Clause 37(c)(4)(D)(ii)(IV) specifies HUD's remedial powers in the case of substantial noncompliance. Those powers do not include the power to consolidate agencies, which is now granted by section 6(j)(3)(D)(i)(IV) of the U.S. Housing Act (42 U.S.C. 1437d(j)(3)(D)(i)(IV)). Section 6(j)(3)(B)(ii)(III) of the Housing Act requires HUD to take further action if a troubled agency fails to cure its performance deficiencies within two years.

scale in many aspects of program operations while maintaining their own local identities and boards of directors. Few agencies have formed consortia, however, in part because each agency in the consortia must separately report to HUD and manage certain other administrative tasks — limiting the streamlining that consortia provide.²³

SPHAAO would require HUD to modify its electronic systems to allow agencies in a consortium agreement to function as a single entity for reporting purposes. This is a step in the right direction, but stronger action would be needed to ensure that consortia sharply reduce administrative burdens.

Congress should direct HUD to allow all agencies in a consortium to have a single voucher funding contract with HUD, and to implement this policy by notice. (HUD proposed a rule making this change in July 2014 but appears unlikely to finalize it before the end of this Administration.²⁴)

Enabling agencies in a consortium to function as a single entity for funding, reporting, and oversight purposes would substantially reduce PHAs' and HUD's administrative burdens. Agencies would also benefit from greater economies of scale. GAO has noted, for example, that greater efficiencies are possible when small agencies join together to hire inspectors or when a voucher program is large enough to generate sufficient administrative fees to support a fraud detection unit.²⁵ Economies of scale also could free up staff time to take advantage of program options such as using project-based vouchers to help develop or preserve mixed-income housing and supportive housing. Creating a consortium with a single jurisdiction would also eliminate the administrative work required when a voucher holder moves from one community to another.

Modify Administrative Fee Policy to Encourage Consortia

In August 2015, HUD completed a multi-year study of the cost of administering a high-performing Housing Choice Voucher program.²⁶ The study recommends paying additional fees for agencies that assist fewer than 750 families (continuing in modified form the current policy of paying higher per-voucher fees to small agencies) and HUD has proposed a regulation that would incorporate this recommendation into a revised formula. This recommendation reflects the study's findings concerning the additional costs of small agency administration, but it does not appear to be sound policy. The added fees it would provide would cost approximately \$40 million more per year and would encourage small agencies to operate independently rather than forming consortia.²⁷

If HUD does not revise its proposed formula to pay the same (or more similar) fees to smaller housing agencies as large ones — with a potential exception for smaller agencies that are isolated enough that they do not have a real opportunity to form consortia or consolidate — Congress

²³ According to HUD, in 2014 there were only eight consortia involving 35 PHAs that administer the Housing Choice Voucher program. HUD, Streamlining Requirements Applicable to Formation of Consortia by Public Housing Agencies, Proposed Rule, 79 Federal Register 40019, July 11, 2014.

²⁴ For additional discussion of the Administration's proposals in this area, see Sard and Thrope, 2016, p. 10.

²⁵ GAO, 2012, p. 40.

²⁶ Abt Associates, "Housing Choice Voucher Program Administrative Fee Study," August 2015, http://www.huduser.org/portal/publications/pdf/AdminFeeStudy_2015.pdf.

²⁷ The size adjustment in the proposed administrative fee formula that HUD released on July 6, 2016 would have increased smaller agencies' funding eligibility by \$43 million in 2015. (CBPP analysis of HUD's estimate of 2015 fee eligibility under the proposed formula, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=proposdformulafephas.xlsx>.)

should direct it to do so. In addition, Congress should direct HUD to use part of the savings from scaling back added fees for small agencies to help PHAs meet the transition costs of forming a consortium or consolidating.

Ensure That State Laws Do Not Block Formation of Consortia

Federal law broadly permits PHAs to form consortia unless state laws stand in the way. In most states, the laws governing the powers and jurisdictions of PHAs appear to permit consortia. But these laws are often unclear, inconsistent, or confusing and have sometimes been interpreted restrictively by state attorneys general or others.

To avoid any confusion, Congress should explicitly bar state laws from blocking formation of consortia. Congress could do so by revising the consortia section of the U.S. Housing Act²⁸ to include a broad preemption provision for both Housing Choice Vouchers and public housing, modeled on (but expanding) Congress' existing preemption of state law for purposes of administering tenant-based Section 8.²⁹ By broadening the statute's preemption language to apply to all U.S. Housing Act programs PHAs administer, Congress could better enable PHAs to form consortia by eliminating concerns regarding a state's interpretation of its joint powers statute or other enabling laws.

Use Existing Authority to Transfer Rental Assistance from Poor-Performing Agencies

HUD has authority under existing statutes and regulations to take over administration of programs that are in substantial default or are "troubled" under HUD's performance assessment rules and fail to improve satisfactorily within two years. HUD may also consolidate the poorly performing agency with a willing, well-managed PHA or appoint another PHA or private management entity to manage the agency's programs.³⁰ HUD, however, has made little use of this authority. Congress should direct HUD to use available remedies for poor performance to foster the formation of larger, more effective and more efficient local programs, where appropriate.

Encourage Consolidation of Waiting Lists

A related, beneficial change would be to encourage agencies within the same housing market area to consolidate their waiting lists, which would reduce administrative costs and allow families needing housing assistance to submit a single application. As noted in Figure 3, almost all small PHAs that operate in metropolitan areas share those areas with other agencies. Even rural counties often have

²⁸ Section 13 of the U.S. Housing Act, 42 U.S.C. §1437k(a).

²⁹ Once the Secretary determines there is a need for a new PHA to administer the Housing Choice Voucher program in an area because no current agency is doing so or the current agency is not operating effectively, the Secretary may contract with a PHA to operate outside of its jurisdiction, regardless of any state or local restrictions. 42 U.S.C. §1437a(6)(B)(iii).

³⁰ HUD's remedial authority is specified in section 6(j) of the U.S. Housing Act, 42 U.S.C. 1437d(j). In addition, section 3(b)(6)(B)(iii) of the Act, 42 U.S.C. 1437a(b)(6)(B)(iii) gives HUD the authority, for Section 8 programs only, to override state and local laws to select a public or non-profit entity or another PHA to administer the housing voucher program in place of an agency that "is not performing effectively." An authoritative study found that, as of mid-2004, HUD had largely failed to implement the substantial new authority and responsibility the 1998 Housing Act provided to address failed management, though HUD did focus reform efforts on several of the largest severely troubled agencies. Rod Solomon, "Public Housing Reform and Voucher Success: Progress and Challenges," The Brookings Institution Metropolitan Policy Program, 2005.

two or more agencies; about 1,000 small agencies are located in a non-metro county with at least one other PHA. In such areas, needy families seeking affordable housing must apply in multiple locations to increase their chances of receiving assistance.

Regardless of whether agencies form consortia, it would help families in need if they could submit a single application for assistance from all housing agencies operating in a metropolitan area or rural county.

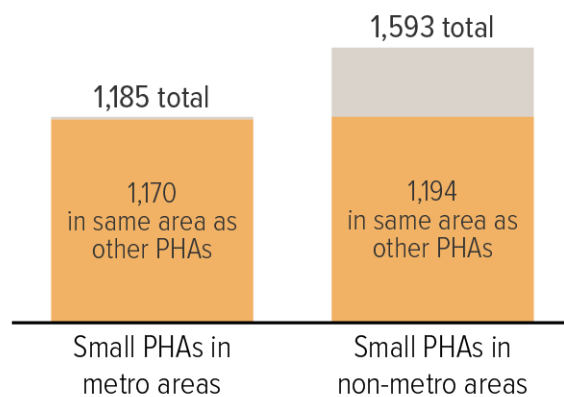
Consolidated waiting lists also would reduce administrative costs for small agencies, whose staff now must maintain waiting lists with many duplicative applicants. In Massachusetts, an organization representing local housing agencies oversees such a list for a majority of the state’s voucher PHAs, saving participating agencies significant staff time. Recognizing the importance of a single application point for families seeking assistance, the Utah legislature recently required a single waiting list for all voucher agencies in each county.³¹

Federal policy should also seek to overcome the access barrier that the presence of multiple small agencies creates for eligible families.

Allowing families to submit a single application ought to be one goal of small agency reform since it would benefit needy families while reducing agency costs. Congress should direct HUD to facilitate this improvement by developing software and related procedural guidance that interested agencies can use to consolidate waiting lists.

FIGURE 3

Most Small Public Housing Agencies (PHAs) Operate in Same Housing Market as Others



Note: A small PHA administers 550 or fewer housing vouchers, public housing units, or both.

Source: PHA data from Department Housing and Urban Development 2015 Picture of Subsidized Households. Metro areas defined as Metropolitan Core-Based Statistical Areas (CBSAs) based on 2013 geography. A PHA is classified as metropolitan if its address is in a county that falls within a metro CBSA.

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Fund Proposed Regional Housing Demonstration

The 2017 HUD appropriations bill passed by the Senate Appropriations Committee would provide \$14 million for a new Housing Choice Voucher Mobility Demonstration. This demonstration, proposed by HUD, would help public housing agencies in selected regions collaborate on initiatives to help low-income families use vouchers to move to higher-opportunity neighborhoods. Demonstration funds could be used to support staff time to plan for regional collaboration and align policies and administrative systems across public housing agencies, as well as to cover costs of other activities to expand families’ housing choices. The one-time funding also would support research to learn what strategies are most cost-effective. The mobility demonstration is a modest investment that could improve outcomes for children by enabling more families to use their vouchers in high-opportunity neighborhoods. It deserves congressional support.

³¹ Utah H.B. 489, 2011.

Expand Conversion of Public Housing to Project-Based Vouchers

Under the Rental Assistance Demonstration (RAD), enacted in 2012 and later expanded, agencies can convert as many as 185,000 public housing units to either project-based vouchers (PBVs) or project-based Section 8 contracts. With either type of conversion, the PHAs usually would still own and manage the former public housing properties. These two different types of project-based Section 8 assistance would have substantially different impacts, however, on the administrative responsibilities of the agencies and HUD.

If PHAs chose to convert their properties to project-based Section 8 contracts, they would continue to have a direct legal relationship with HUD, and their responsibilities regarding tenant rent determinations, maintaining waiting lists, and submitting data to HUD would remain essentially the same as under the public housing program. These conversions also would not reduce HUD's workload significantly, as each property would have its own Section 8 contract after conversion. HUD (or its contractors) would continue to monitor the physical condition of the properties and verify the accuracy of requests for subsidy payments. (HUD's work would shift, however, from the office responsible for public housing to the one that oversees contracts with private owners of multifamily rental properties.)

Conversion to PBV, by contrast, could sharply reduce administrative burdens for the 2,187 small agencies — 79 percent of all small agencies — that administer public housing, as well as HUD. Converting to PBV assistance could relieve the 1,540 agencies that *only* administer public housing of most federal requirements. An agency cannot administer PBVs unless it has a tenant-based voucher program, so HUD would contract with another (typically larger) agency to administer the PBVs that subsidize the units of the converting agency, which would no longer have a direct financial or legal relationship with HUD, thereby reducing HUD's workload considerably. Responsibility for complying with HUD rules for setting tenant rent contributions and submitting tenant and financial data to HUD would shift to the agency administering the PBV contract. The converting PHA could maintain its own waiting list or could have the administering agency take over that responsibility and determine applicants' eligibility.

Conversion to PBV assistance also would benefit the 647 small PHAs that administer both public housing and vouchers. Conversion would eliminate the need for the agency to operate two different programs with different rules and accounting requirements. HUD would have one set of legal agreements with the agency, rather than two (managed by separate staff), and reporting requirements would be streamlined. If the converting PHA administered the PBVs itself, it would have to arrange for a third party to inspect the units (because PHAs are not permitted to carry out inspections themselves for buildings they own), but it would receive added funds to cover this cost.

Congress should increase the number of small housing agencies that convert public housing to PBVs under RAD. Most immediately, it should enact a provision in the 2017 Senate appropriations bill raising the number of units that can be converted from 185,000 to 250,000. Congress should also fund supplemental subsidies to make RAD conversion financially feasible for more small agencies. In addition, Congress should direct HUD to give small agencies seeking to convert public housing to PBVs a preference for available slots, educate them about the potential for reduced administrative burden, help public housing-only agencies identify other agencies that could administer the PBVs, and provide other technical assistance.

Conclusion

Deregulation based solely on agency size, without regard to performance, is not sound policy, particularly when coupled with the diminished accountability for small agencies that many SPHAAOA provisions would produce. In HOTMA and other recent measures, Congress has extended streamlining to all agencies and designed changes thoughtfully to avoid adverse side effects. Congress should not consider additional sweeping deregulation before those changes have been assessed.

Policymakers should instead build on the other approach SPHAAOA takes to the challenge posed by the large number of small agencies: helping agencies work together to operate the housing programs more efficiently and effectively. Congress could take a series of measures to support cooperation and consolidation across agencies. These changes could ease burdens on small agencies and HUD staff and substantially improve the effectiveness of federal rental assistance.