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Cover: Members of Causa Justa :: Just Cause participate in a protest outside of a Wells Fargo shareholders' meeting in San Francisco. Photo courtesy of Chi Mei Tam.

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Budget Control Act and FY 2012 Funding Threaten Many HUD Affordable Housing Programs

In late July, Congress enacted the high-profile Budget Control Act of 2011 (BCA) that increased the federal debt ceiling while substantially cutting federal spending over the next decade.[1] As the House and Senate Appropriations Committees draft appropriations bills for fiscal year (FY) 2012, which begins October 1, they must operate under spending caps established by the BCA. On September 8, the House Appropriations Subcommittee for Transportation and the Department of Housing and Urban Development (T-HUD) released and marked up its FY 2012 funding bill, which proposes a substantial cut in HUD funding from the FY 2011 level. Using a budget allocation only $100 million higher to set a similar total spending level (after accounting for rescissions), the Senate T-HUD Subcommittee marked up its version of the bill on September 20, with the full Committee passing it the following day. Under almost any scenario, the BCA's required cuts will directly and significantly affect how every major HUD housing program operates in the long term, in ways yet unknown. This article briefly reviews these changes and their possible implications.

The Budget Control Act

The BCA specifies increases in the debt limit, creates a disapproval process permitting legislators to register their votes on certain increases, requires a Senate and House vote on a Balanced Budget Amendment to the Constitution before the end of the year,[2] and establishes binding limitations on discretionary non-entitlement spending through 2021. The budget limitations are projected to reduce funding by around $1 trillion over that period.

The BCA sets a $1.04 trillion mandatory cap on discretionary spending for FY 2012 and provides specific limits for two subcategories, "security" and "non-security" programs. Federal housing programs fall into the non-security category, which is capped at $359 billion in new budget authority for FY 2012 and $361 billion for FY 2013.[3]

[1]Budget Control Act of 2011, Pub. L. No. 112-25, 125 Stat. 240 (Aug. 2, 2011), *available at* thomas.loc.gov [hereinafter BCA]. The bill amends Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, 2 U.S.C. §§ 901 *et seq.* (Westlaw Sept. 26, 2011). Citations to the BCA will refer to the relevant page in the Statutes at Large.
[2]*Id.*, Title II and § 301, 125 Stat. 250-255.
[3]*Id.*, § 101, revising § 251(c) of the 1985 Act, 125 Stat. 245. Starting in 2014, the BCA no longer mandates a specific split between discretionary security and non-security spending, combining them into an overall discretionary spending cap of $1.07 trillion, which rises incrementally every year thereafter until 2021. *Id*. The appropriations process presumably will determine how to distribute these funds among both sets of programs.

This FY 2012 limit represents a 5.3% reduction (about $20 billion) from the current FY 2011 level for discretionary non-security funding. Appropriators have received their revised and reduced spending allocations and are drafting and marking up bills that provide funding levels within these amounts. The House bill is reviewed later in this article.

For FY 2013 through FY 2021, the BCA establishes caps on discretionary spending that increase marginally every year. The BCA also establishes a Joint Select Committee[4] (popularly known as the Super Committee) to develop, vote on (by November 23) and report (by December 2) legislation to reduce projected deficits by an additional $1.5 trillion. The 12 members, six from each chamber, appear likely to deadlock and fail to report legislation. Even if the Super Committee does report a bill, it must then pass both chambers and be signed by the President.

Legally, the Super Committee can develop any kind of deficit reduction it desires, including tax or revenue increases, cuts in entitlement programs, or further cuts in discretionary spending.[5] Politically, agreement of a majority of the 12 on a plan seems improbable because all six Republican appointees have either pledged or previously indicated that they will not support tax increases.

The BCA's Sequestration Process

If for any reason Super Committee proposals achieving at least $1.2 trillion in deficit reduction are not enacted by January 15, 2012, the BCA requires automatic mandatory cuts through the establishment of reduced discretionary spending limits under a process known as sequestration.[6] This form of deficit reduction would be all cuts, with no tax or revenue increases. This sequestration would first apply to FY 2013 spending which, by that time, will have already been underway for several months.

Absent changes in the BCA, then, failure to enact additional deficit reductions of this magnitude by January 15, 2012, itself is sufficient to trigger these additional and automatic cuts that will become effective one year later, in January 2013. The BCA leaves no room for additional bargaining about how to distribute additional cuts among various departments, agencies and programs. Under a sequestration scenario, during 2012, Congress and agencies would undoubtedly be scrambling to revise policies and practices to accommodate the specified cuts.

The sequestration cuts would be equivalent to the amount that the Super Committee process falls short of the $1.2 trillion target. These cuts would be distributed evenly across the defense and non-defense categories. If no additional savings emerge from the completion of the Super Committee process, an additional $1.2 trillion sequestration would reduce spending from the already reduced FY 2012 levels by about $55 billion annually for each category, starting in 2013 and running through 2021.[7]

A $55 billion non-defense funding sequestration would affect both discretionary and entitlement programs. The BCA effectively requires that approximately $17 billion come from entitlement programs—$10 billion in Medicare cuts to providers and insurance plans, and $7 billion from other mandatory programs that are not exempt.[8] Thus, about $38 billion would come from discretionary spending programs.

An additional $38 billion cut in annual discretionary funding beginning in FY 2013 (and running for nine more years) would spell huge trouble for housing programs. First, the cut, which would augment any cut already enacted for FY 2012, may be substantial for some programs. Second, for FY 2013, the BCA specifies that the cut must be distributed across-the-board, pro-rata by account, not by subcommittee or even department.[9] For FY 2013, each and every account will be automatically cut. In subsequent years from FY 2014 through 2021, the Appropriations Committees would decide how to distribute the statutory cap reduction among Subcommittees, agencies and programs.

Reliable estimates are that, if the Super Committee process fails to yield any results, the required FY 2013 non-defense sequestration of $55 billion would result in cuts of about 9% in the accounts for each non-exempt program,[10] as applied to FY 2013 levels already in effect as a result of either enacted appropriations or a continuing resolution. For affordable housing programs, these cuts would be dramatic. The cuts would be especially problematic for public housing, which is already poised for a huge reduction in FY 2012, ostensibly premised upon one-time use of excess reserves.

Unlike many other federal discretionary programs, the core federal housing programs such as public housing, the Section 8 Housing Choice Voucher Program and project-based Section 8 require essentially the same amount of funding every year to provide current services to existing assisted households. Slightly more revenue is

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[4]*Id.*, § 401 *et seq.*, 125 Stat. 259.

[5]James R. Horney, Center on Budget and Policy Priorities, *Contrary to Speaker Boehner's Claim, Budget Deal's "Supercommittee" Can Consider Revenue Increases* (Aug. 1, 2011), *available at* http://www.cbpp.org/cms/index.cfm?fa=view&id=3554.

[6]BCA § 302, enacting a new § 251A of the 1985 law, to be codified at 2 U.S.C. § 901a, 125 Stat. 256.

[7]*Id.*

[8]*Id.*, 125 Stat. 257-258. The 1985 law explicitly exempts certain "safety net" programs from sequestration (including Social Security, Medicaid, SNAP, CHIP, SSI, EITC, child nutrition, veterans benefits and federal retirement), 2 U.S.C. § 905, and these exemptions remain unaffected by the BCA. Despite their "safety net" character, housing programs are not on the list of exemptions.

[9]Reportedly, veterans' medical care and Pell higher education grants would be exempt, due to complex rules previously adopted. *See* BCA, 125 Stat. 258.

[10]Richard Kogan, Center on Budget and Policy Priorities, *How the Potential Across-the-Board Cuts in the Debt Limit Deal Would Occur* (Aug. 8, 2011), *available at* http://www.cbpp.org/files/8-4-11bud.pdf.

needed each year to account for any rising costs, declining tenant incomes, and units requiring refunding that were previously assisted through time-limited appropriations. Reducing appropriations for these HUD programs means not just a reduction of regulatory staff or the scope of new commitments, but a reduction in current assistance levels or the number of units assisted. Such cuts would have a real and dramatic impact on housing providers, tenants and people in need languishing on waiting lists.

The automatic sequestration cuts for FY 2013 would have the following impact:

- Section 8 vouchers would drop by about $1.7 billion (to a level of about $16.8 billion, compared to the current FY 2011 level of $18.4 billion).
- Project-based Section 8 would drop by more than $800 million (to a level of about $8.6 billion, compared to the current FY 2011 level of $9.3 billion).
- The public housing operating fund would drop by more than $350 million (to a level of about $3.5 billion, compared to the current FY 2011 level of $4.6 billion).

This picture is devastating. Cuts of this magnitude would require substantial program changes to supportable rent levels, services and conditions, numbers of assisted units and tenant rent contributions.

FY 2012 Appropriations: House Bill

The House T-HUD Subcommittee bill[11] proposes distributing the BCA's required FY 2012 spending reduction unevenly across HUD and Transportation programs, under a total allocation of $55.15 billion in discretionary spending. The bill proposes a 7.3% cut for HUD (as compared with a cap reduction for the category of 5.3%), reducing net new HUD funding by $3 billion to a $38.1 billion level. In reality, however, total HUD funding remains significantly higher than this amount because it is augmented by receipts from the Federal Housing Administration (FHA).[12] Looking ahead, as the housing market recovers and FHA loses market share and insures fewer loans, FHA receipts will decline, thus increasing pressure on the remaining programs in the HUD budget under the BCA caps.

House Appropriations Committee Chair Harold Rogers (R-KY) asserted that the HUD cuts are targeted at administrative or capital accounts, so that "no one will see cutbacks or terminations in services" because the bill places "a high priority on individuals and families receiving public assistance."[13] Although increasing transportation spending by $3 billion for FY 2012, the House bill also provides substantially lower funding levels than provided in FY 2011 for certain federal highway and mass transit programs, which are funded through trust funds rather than regular discretionary funding, as well as lower funding for various transportation and pipeline safety programs. The Committee has stated its willingness to support a higher spending level from the Highway Trust Fund and Mass Transit Accounts, but only after Congress enacts a new multi-year authorization bill for the program, which expires September 30, 2011.

The proposed HUD cuts hit public housing and HOME especially hard. Efforts at markup to restore these funds were unsuccessful. The public housing operating fund would receive only $3.86 billion, a reduction of $750 million (16%) from the FY 2011 level. The bill includes language proposed by the Administration to offset needed operating funding with excess reserves held by a PHA, as determined by the Secretary. The public housing capital fund would receive only $1.53 billion, which is 25% below the FY 2011 level. This is almost $1 billion below the FY 2010 level, despite a growing unfunded backlog of capital repairs of about $30 billion. PHAs will face increasing difficulty in performing needed rehabilitation, ultimately resulting in removal of units to meet the pressing needs of waiting list households nationwide. The Resident Opportunity and Supportive Services (ROSS) program, a set-aside within the capital fund offering important resources for public housing residents, was not included in the bill. Subcommittee Ranking Member John Olver's (D-MA) amendment to restore funding to the public housing capital fund failed on a party-line vote. No funds would be provided for HUD's proposed Rental Assistance Demonstration, which seeks to create another vehicle for recapitalizing public and assisted housing.

The bill proposes to eliminate funding for the HOPE VI program, including funding for the set-aside for the Choice Neighborhoods Initiative (CNI). HOPE VI had received $100 million in FY 2011, including the $65 million set-aside for CNI. An amendment to restore HOPE VI funding also failed along party lines.

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[11]At press time, only the draft bill text, with no bill number, and summaries of the amendments adopted were available, at http://appropriations.house.gov/UploadedFiles/12THUD_xml.pdf, and http://appropriations.house.gov/News/DocumentSingle.aspx?DocumentID=259012, respectively.

[12]FHA receipts for FY 2012 are currently estimated by the Subcommittee at $5.76 billion. Any increase in FHA receipts beyond the $4.1 billion projected for FY 2011 will reduce the magnitude of the apparent overall $3 billion proposed cut in HUD funding, possibly by as much as half. While they exist, these FHA receipts operate to insulate other HUD programs from the deeper short-run cuts that would be needed to remain within the caps.

[13]Statement of Chairman Hal Rogers at Subcommittee Mark Up (Sept. 8, 2011), http://appropriations.house.gov/News/DocumentSingle.aspx?DocumentID=259004. However, the bill would "defund public housing units that were included in the failed 'stimulus' bill." See House Appropriations T-HUD Subcommittee Press Release Announcing Release of FY 2012 HUD Funding Bill, http://appropriations.house.gov/News/DocumentSingle.aspx?DocumentID=258659. This refers to those units originally developed under state public housing programs, but converted to federal public housing under the 2009 stimulus legislation in order to access federal subsidies—units reportedly located primarily in New York and Massachusetts.

The bill claims to provide sufficient funding to maintain assistance for Section 8 voucher households. For tenant-based vouchers, the bill proposes almost $18.5 billion, with $17.04 billion for contract renewals, about $375 million (2.2%) over the FY 2011 level. These increases are essential to cover increased assistance needs driven by lower tenant incomes and higher rental housing costs.

However, according to the Center on Budget and Policy Priorities, based on the most recent leasing data available from HUD, the amount actually provided may be about $325 million below the level necessary to renew all vouchers. The Center's analysis estimates that about 42,000 vouchers currently in use may not be able to be renewed,[14] and recommends adding cost-free reserve offset authority similar to that requested by the Administration to address this risk.

Within the $18.5 billion total, the bill funds $75 million for tenant protection vouchers,[15] $35 million below the FY 2011 funding level. No funds are provided to protect currently unassisted HUD and Rural Development tenants where mortgages will mature and rent restrictions expire.

Of the total voucher funding, the bill would provide funding for new Veterans Affairs Supportive Housing (VASH) vouchers at the FY 2010 level of $75 million, a $25 million increase over FY 2011 funding. Similarly, the bill proposes a big increase for Section 811 mainstream vouchers, increasing last year's $35 million level to $114 million. PHA voucher administrative fees would be dramatically reduced by $350 million (24%) from the FY 2011 level to $1.1 billion. These cuts threaten needy households because they may impair PHAs' ability to issue vouchers and perform required pre-leasing activities in a timely fashion, possibly resulting in lower voucher utilization.

Project-based Section 8 rental assistance would receive $9.43 billion, about $170 million over last year's level. As for vouchers, increased funding is needed to cover lower tenant incomes and higher market rents in some areas, as well as the full cost of renewing hundreds of project-based contracts that are expiring for the first time. The Subcommittee has not made clear whether this increase will be sufficient to fund the renewal needs of all expiring contracts.

The bill also includes increases for two programs cut in FY 2011. The Section 202 Housing for the Elderly program would receive $600 million, an increase of $200 million (50%) above FY 2011 funding.[16] The Section 811 Housing for People with Disabilities program would receive $196 million for the Section 811 account, a 31% increase.[17]

Other programs are slated for level funding, including Homeless Assistance Grants at $1.9 billion; the Community Development Fund at $3.5 billion, which would fund Community Development Block Grants (CDBG), but would not fund the Sustainable Communities Initiative, which received $100 million last year; Fair Housing and Equal Opportunity at $72 million; Housing Opportunities for Persons with AIDS at $334 million; Healthy Homes and Lead Hazard Control at $120 million; Native American Housing Block Grants at $649 million; and Policy Development and Research at $48 million.

Other programs taking hits include: HOME at $1.2 billion, 25% below the FY 2011 level; the Self-Help Homeownership Opportunity Program, cut by $11 billion to $16 billion; and the elimination of FY 2011's $13 million for Native Hawaiian Housing Block Grants.

The bill fails to restore funding for housing counseling that was eliminated in FY 2011, deferring consideration of an amendment to do so until full Committee mark-up. The draft bill had included no funding for the Interagency Council on Homelessness (ICH), but the reported bill restored funding by allocating funds from HUD's working capital fund. The House bill pointedly excludes funding for any new "sustainable," "livable," or "green" community development programs.

Although the Subcommittee approved the bill on a voice vote, the full Appropriations Committee may not separately consider the bill, as the House leadership has indicated a reluctance to bring any more individual spending bills to the House floor this year. If so, this bill may be considered as part of an omnibus appropriations bill, including negotiations with the Senate, which has yet to act. Until then, Congress will probably have to pass a short-term continuing resolution to continue government operations after the new fiscal year begins October 1, 2011.

FY 2012: Senate Appropriations

The Senate Committee on Appropriations has issued a $55.25 billion allocation for its T-HUD subcommittee, which is $117 million (1%) lower than FY 2011. Because this is only $100 million higher than the House allocation under the BCA cap, any higher program funding levels than those proposed by the House must come primarily from reductions in other housing and transportation programs funded by the bill.

Overall, the Senate bill provides about $1.1 billion less in total new HUD spending than the House, but this effect is offset by $1.2 billion in proposed rescissions from previously appropriated funds (mostly from the Section 8 and Section 236 programs), which frees up these funds to be

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[14]The Center's memo is available at http://www.cbpp.org/files/9-12-11-IP-Memo-Approps.pdf.

[15]These vouchers protect residents adversely affected by a variety of subsidy conversion events, including public housing demolition or disposition, certain mortgage prepayments, or terminations and opt-outs from project-based Section 8 contracts.

[16]Note that even this increased level still represents a $225 million decrease from the FY 2010 level of $825 million.

[17]The total amount for Section 811 would be $310 million, but $114 million would go to fund Section 811 Mainstream Vouchers within the tenant-based rental assistance account.

used for other programs.[18] The Committee bill[19] adopted on September 21 proposes different funding levels from the House version for the following programs:

- $400 million more for the tenant-based rental assistance account, $100 million of which would support contract renewals and $300 million more for PHA administrative fees;
- $350 million more for the public housing capital fund, of which $50 million would be for ROSS;
- $100 million more for the public housing operating fund;
- $120 million more for Choice Neighborhoods;
- $13 million more for Native Hawaiian block grants; and
- $60 million more for housing counseling assistance.

These increases are offset by the following proposed reductions from the House levels:

- a net of $500 million from the Community Development Fund, of which CDBG formula grants would take a $650 million hit in order to support $90 million more for the Sustainable Communities Initiative;
- $200 million from the HOME formula grant program;
- $230 million from the Section 202 Housing for the Elderly program;
- $46 million from the Section 811 program for People with Disabilities; and
- about $7 million from Fair Housing Initiatives.

Other programs would receive approximately the same funding under both bills.

The Senate bill includes several policy provisions absent from the House version, including a $10 million set-aside of tenant protection vouchers to protect tenants facing expirations of HUD-subsidized mortgages, rental assistance or use restrictions, who otherwise would be without protection. Also included are provisions authorizing HUD to conduct a Rental Assistance Demonstration (but without specifying many important protections for tenants and housing preservation), saving millions in the voucher program, and reauthorizing HUD's restructuring authority under the Mark to Market Program.[20]

Although these bills now provide vehicles for negotiations on an overall funding bill for the fiscal year within the strictures of the BCA caps, that is unlikely to occur until later in the fall, if at all. As of late September, the chambers were still negotiating the content of a short-term continuing resolution, which would then provide the time for further negotiations on the FY 2012 spending bills, whether separately or as part of an omnibus package.

Conclusion

The Budget Control Act has enshrined funding reductions for affordable housing programs into law, which may well become even worse if the Super Committee fails to develop a successful plan to increase revenues or redistribute cuts elsewhere. As initially demonstrated by the FY 2012 appropriations process, harm is lurking at the door of affordable housing. Unless the BCA's provisions are revisited and revised, the decade ahead will bring historic damage to tenants and communities. Hopefully these consequences will eventually cause that second look. ■

[18]*See* Center on Budget and Policy Priorities, Memo re HUD Program Funding for FY 2012 (Sept. 27, 2012), available at http://www.cbpp.org/files/9-27-11-IPmemoHUDapprops.pdf.

[19]The Senate's bill text (S. 1596) is available at http://www.gpo.gov/fdsys/pkg/BILLS-112s1596pcs/pdf/BILLS-112s1596pcs.pdf. The Report (S. Rep. 112-83) is available at http://www.gpo.gov/fdsys/pkg/CRPT-112srpt83/pdf/CRPT-112srpt83.pdf.

[20]More details of these provisions are available in NLIHC's Memo to Members at: http://www.nlihc.org/doc/Memo16-37.pdf.

FY 2012 Budget Chart for Selected HUD Programs (in millions)

HUD Program (set asides indented)	**FY10 Enacted**	**FY11 Enacted**	**FY12 President's Request**	**FY12 House Bill Passed by Sub-committee**	**FY12 S. 1596 Passed by Committee**
Tenant Based Rental Assistance	**18,184**	**18,370.9**	**19,223**	**18,467.9**	**18,872.4**
Contract Renewals	*16,339*	*16,669.3*	*17,144*	*17,043.8*	*17,143.9*
Tenant Protection Vouchers	*120*	*109.8*	*75*	*75*	*75*
Administrative Fees	*1,575*	*1,447.1*	*1,648*	*1,100*	*1,400*
Family Self Sufficiency Coordinators	*60*	*59.9*	*60*	*60*	*60*
Family Unification Program Vouchers	*15*	*0*	*0*	*0*	*---*
Section 811 Mainstream Vouchers		*34.9*	*114*	*114*	*113.5*
Veterans Supportive Housing Vouchers	*75*	*49.9*	*75*	*75*	*75*
Nonelderly Disabled Vouchers	*0*	*0*	*0*	*0*	*---*
Disaster Housing Assistance Program		*---*	*50*	*0*	*---*
Homeless Special Needs Demonstration Vouchers		*---*	*57*	*0*	*5*
Project Based Rental Assistance	**8,552**	**9,257.4**	**9,429**	**9,428.7**	**9,418.7**
Public Housing Capital Fund	**2,500**	**2,040.1**	**2,405**	**1,532.1**	**1,875.0**
Emergency/Disaster Grants	*20*	*20.0*	*20*	*0*	*---*
Resident Opportunities and Supportive Services	*50*	*49.9*	*0*	*0*	*50.0*
Public Housing Operating Fund	**4,775**	**4,616.7**	**3,962**	**3,861.9**	**3,961.9**
HOPE VI	**135**	**99.8**	**0**	**0**	---
Choice Neighborhoods Initiative	*65*	*64.9*	*250*	*0*	*120.0*
Native American Housing Block Grants	**700**	**648.7**	**700**	**648.7**	**650.0**
Native Hawaiian Housing Block Grants	**13**	**13.0**	**10**	**0.0**	**13.0**
Housing Opportunities for Persons with AIDS	**335**	**334.3**	**335**	**334.3**	**330.0**
Community Development Fund	**4,450**	**3,501.0**	**3,804**	**3,501.0**	**3,401.3**
CDBG Formula Grants	*3,990*	*3,336.3*	*3,684*	*3,501.0*	*2,851.0*
Economic Development Initiative Grants	*173*	*0*	*0*	*0*	*---*
Catalytic Investment Grants		*---*	*0*	*0*	*---*
Sustainable Communities Initiative	*150*	*99.8*	*150*	*0*	*90.0*
Rural Innovation Fund	*25*	*0*	*25*	*0*	*---*
University Community Fund	*0*	*0*	*0*	*0*	*---*
Brownfields Redevelopment	**18**	**0**	**0**	**0**	---
Energy Innovation Fund	**50**	**0**	**0**	**0**	---
HOME Investment Partnership Program	**1,825**	**1,606.8**	**1,650**	**1,200.0**	**1,000.0**
HOME Formula Grants	*1,825*	*1,606.8*	*1,650*	*1,200.0*	*---*
American Dream Downpayment Initiative	*0*	*0*	*0*	*0*	*---*
Self-Help Homeownership Opportunity Program	**27**	**26.9**	**0**	**15.9**	**17.0**
Homeless Assistance Grants	**1,865**	**1,901.2**	**2,372**	**1,901.2**	**1,901.2**
Housing Counseling Assistance	**87.5**	**0**	**88**	**0**	**60**
Rural Housing and Economic Development	**0**	**0**	**0**	**0**	---
Housing for the Elderly (Section 202)	**825**	**399.2**	**757**	**600**	**369.6**
Housing for Persons with Disabilities (Section 811)	**300**	**149.7**	**196**	**196**	**150.0**
Fair Housing and Equal Opportunity	**72**	**71.9**	**72**	**71.9**	**64.3**
Fair Housing Assistance Program	*29*	*28.4*	*29*	*---*	*28.3*
Fair Housing Initiatives Program	*43*	*42.4*	*43*	*42.5*	*35.9*
Healthy Homes & Lead Hazard Control	**140**	**119.8**	**140**	**119.8**	**120.0**
Policy Devel. & Research (excluding academic grants)	**48**	**47.9**	**57**	**47.9**	**45.8**
Total Budget Authority (includes items not on chart)	**43,581**	*	**41,739**	*	*

*Comparable figures are not currently available.

Chart courtesy of the National Low Income Housing Coalition. Reprinted with permission.