

# 2005: A Year of Diverse Challenges

By Michael J. Novogradac, CPA

No one in the affordable housing and community development industries could be faulted for heaving a huge sigh of relief as a tumultuous 2005 came to a close. Last year's many challenges and threats, which included calls for tax reform and for gutting programs like the Community Development Block Grant (CDBG) and Community Development Institutions (CDFI) Fund, a move for a major overhaul of government sponsored entities (GSE) and the devastating hurricanes that hit the Gulf Coast, caused the industry to pause and to take stock. We can only hope that 2006 will be comparatively calm.

And perhaps it will. Media reports last month indicated the possibility of a temporary tabling of tax reform efforts; the CDBG and CDFI Fund programs escaped elimination in the 2006 budget; legislation is pending to alleviate the effects of hurricane Katrina, Rita and Wilma, with several lawmakers predicting it would be passed by year-end 2005; and the move by lawmakers to rein in the GSEs, which include Fannie Mae, Freddie Mac and the Federal Home Loan Banks, continues to generate debate, albeit since late July with a Senate committee amendment that would strengthen the GSEs' affordable housing goals.

## Promising start

Last year started on a hopeful note, with a late-in-2004 announcement by Sen. Charles E. Schumer, D-N.Y., that he would introduce a bill to double the current low-income housing tax credit (LIHTC) from \$1.85 per capita in fiscal year (FY) 2005 to \$3.70 in FY 2006. H.R. 2681, the Affordable Housing Tax Credit Enhancement Act of 2005, was introduced by Rep. William Jefferson, D-La., on May 26 and was referred to the House Committee on Ways and Means where it remains. It has 60 sponsors. Industry players were also hopeful when Jefferson and then-Rep. Rob Portman, R-Ohio, introduced the Community Restoration and Revitalization Act. H.R. 3159, reintroduced on June 30, would improve the existing historic preservation tax credit for the restoration and rehabilitation of vacant and underutilized historic buildings. Portman's sponsorship was replaced by that of Rep. Phil English, R-Pa., when Portman was tapped to become U.S. Trade Representative.

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Early in 2005, many in the affordable housing and tax-exempt bond communities rallied around Fannie Mae, Freddie Mac and the Federal Home Loan Banks as legislators sought to create a new regulator for Fannie and Freddie and limit their portfolio holdings to those assets that promote their housing mission. The Senate Committee on Banking, Housing and Urban Affairs on July 28 passed S. 190, the Federal Housing Enterprise Regulatory Reform Act of 2005, and attached an amendment, offered by Sen. Rick Santorum, R-Pa., to strengthen the GSEs' affordable housing goals. On October 26, after an unsuccessful attempt to alter the bill to be more closely aligned with the Senate version of the bill, the House passed HR 1461, Federal Housing Finance Reform Act, which establishes a new regulator for Fannie Mae and Freddie Mac. The bill has yet to be considered by the full Senate.

## Appropriations bill rescues programs

On November 18, both the House and Senate adopted the conference report to the fiscal 2006 Transportation-Treasury-HUD Appropriations bill (H.R. 3058). The bill provides \$65.9 billion in discretionary spending, \$2.7 billion over current funding and \$5.2 billion over the administration's request. While the measure retains the CDBG program within the Department of Housing and Urban Development (HUD), funding was cut roughly \$400 million, to \$3.75 billion. The administration had sought the elimination of CDBG under its Strengthening America's Communities Initiative (SACI).

The CDFI Fund received \$55 million for 2006, which will remain available until September 30, 2007. Of that amount, as much as \$13.5 million may be used for administrative expenses, including the administration of the new markets tax credit. Other CDFI Fund amounts are \$4 million for financial assistance, technical assistance, training and outreach programs designed to benefit Native American, Native Hawaiian and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community

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development banking and lending in Indian Country, Native American organizations, tribes and tribal organizations and other suitable providers; as much as \$6 million may be used for the cost of direct loans, and as much as \$250,000 may be used for administrative expenses to carry out the direct loan program: provided that the cost of direct loans, including the cost of modifying such loans, are available to subsidize gross obligations for the principal amount of direct loans not to exceed \$11 million.

## Tax reform and hurricanes

Long before one of the most devastating natural disasters to ever strike the United States hit the Gulf Coast, President George W. Bush's expressed desire to reform the nation's tax system to make it simpler and more fair had many in the affordable housing industry on edge. Early in the process it was obvious that there were no clear objectives set for the commission charged with providing reform recommendations. This, industry watchers felt, left the door open to any number of proposals, results and consequences, among them a deleterious effect on the LIHTC program. Many, including the Affordable Housing Tax Credit Coalition, expressed concern that some potential recommendations, including a value added tax and national sales tax, could have a negative impact on the value of tax preferences. After several months of meetings in which the tax reform panel listened to a bevy of concerns and recommendations, the panel on November 1 recommended two fixes: the first would simply the income tax, lower rates somewhat and eliminate the alternative minimum tax. The second would replace the existing income tax with a consumption-type tax that would be paid by filing an annual tax return. At that time, many observers predicted that the political system would not be ready for such changes and indeed stiff opposition followed.

Last month it was reported on Newsday.com that Bush, concerned about getting major tax reform through Capitol Hill during an election year, is unlikely to make it part of his domestic agenda in 2006. Instead, according to Time magazine, Bush may spend next year trying to raise support for revamping the tax code before pushing it in 2007.

Adding to industry concerns about tax reform, hurricanes Katrina, Wilma and Rita tore through the Gulf Coast, destroying homes and leaving large swaths of devastation and a huge number of residents homeless. A flurry of activity and legislation sought to alleviate the misery that these disasters had on residents of Louisiana, Mississippi, Alabama and Florida. On December 7, the House of Representatives passed H.R. 4440, the Gulf Opportunity Zone Act of 2005, by a vote of 415-4. The measure, intended to help in the Gulf Coast recovery efforts, contains a provision to increase LIHTC authority for 2006, 2007 and 2008 in Gulf Opportunity (GO) Zones. GO Zones would also be treated as difficult development areas (DDA) and would not count towards the 20 percent nationwide cap on designated DDAs. The Senate was expected to take up the bill when it returned from recess and substitute the House language with the Senate hurricane relief provisions it already passed as part of the tax reconciliation bill.

The Senate bill is not as generous as far as the annual allocation of emergency credits but it does have the extra year (2009) of allocations and a few other bells and whistles, said Boston Capital executive director David Gasson.

## Looking Ahead

As we enter the new year, we do well to remember the lessons learned in 2005 and the need for flexibility and adaptability in meeting the challenges and threats to our communities and industry. We can rightfully take pride in our collective responses to the sometimes grim events of 2005 but we cannot afford to take a holiday from the important work of making decent, safe and affordable housing available to all those who need it. ❖