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## GSE, fair-lending policies could look radically different if Biden wins

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August 24, 2020, 9:00 p.m. EDT 8 Min Read

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WASHINGTON — Neither President Donald Trump nor Democratic nominee Joe Biden has made housing finance a focus of their campaigns, but the upcoming election could have a huge impact on how the federal government reforms Fannie Mae and Freddie Mac, addresses the high costs of homeownership and enforces fair-lending laws.

Given a second term, the Trump administration would likely continue steps to deregulate the mortgage industry and plow ahead with a plan to reprivatize the government-sponsored enterprises, experts say. But in a Biden administration, Obama-era efforts to toughen regulatory standards for the mortgage sector and low the cost of housing could be renewed.

Housing advocates and the mortgage industry see housing policies taking sharply divergent paths depending on whether Trump or Biden wins in November.

A Trump victory would intensify the administration's continuing efforts to reopen various consumer-focused laws to make them more palatable to the industry, said David Dworkin, the president and CEO of the National Housing Conference.



*Bloomberg News*

# AMERICAN BANKER

A second Trump term “will be an attempt to peel back the entire regulatory framework of enacted fair housing legislation, including the Fair Housing Act itself, and all the related regulations and the Community Reinvestment Act, and potentially, moving into areas like the Equal Credit Opportunity Act,” Dworkin said.

“All of this legislation is covered in the rhetoric that we’ve seen as part of the campaign, and there’s really no reason to believe that in the second term, it won’t be actively pursued,” he said.

But lenders worry that Biden's rhetoric is reminiscent of how the Obama administration cracked down on the industry after the 2008 financial crisis.

Fair-lending provisions recently proposed by a unity task force created by Biden and Bernie Sanders put a “little bit of a lump in my throat,” said Tim Rood, chairman and co-founder of the Collingwood Group, which advises lending institutions.

“I hear a lot of the same vitriol and threats that certainly gives me pause,” he said. “I’ve got to imagine any mortgage lender or servicer reading this is buckling their chinstrap thinking, ‘Oh my god, here we go again.’”

## **The future of Fannie and Freddie**

If Biden is elected, much of what his administration can do with the mortgage giants Fannie Mae and Freddie Mac will depend on the Supreme Court, which is [set to hear a case](#) challenging the single-director structure of the Federal Housing Finance Agency.

FHFA Director Mark Calabria was sworn in last April for a five-year term, but his tenure could be dashed should Biden win and the high court rule that a president has the ability to fire the FHFA director at will.

Calabria has made it his mission as director to free the GSEs from conservatorship, a process that he has said could take until the end of his term in 2024.

The FHFA under Calabria has already taken several steps to shore up Fannie and Freddie’s capital position, proposing a post-conservatorship capital framework and striking an agreement with the Treasury Department to raise the minimum amount of earnings the GSEs are able to retain. The Trump administration also published a report last year detailing how it would reform the entire housing finance system.

“As far as the Trump administration goes on the GSEs, they’ve got their path forward with the plan that came out last September,” said Dwight Smith, a partner at Covington & Burling. “I would think that the FHFA and the enterprises would just keep moving forward.”

# AMERICAN BANKER

But if Biden is able to replace Calabria with a director of his choosing, the future for Fannie and Freddie is more uncertain.

“The Democrats have historically been huge proponents of the GSEs,” Rood said. “You would certainly imagine in this environment where you’re trying to find new and creative ways to extend credit to more people that you’re going to need to rely on some quasi-governmental entity like the GSEs to be those instruments of public policy to drive home policies of the new administration.”

Biden could also decide to pursue releasing Fannie and Freddie from conservatorship, although it’s difficult to know where exactly he stands on the issue, said Dworkin.

“It’s not expected, but you can’t rule it out,” he said. “Circumstances will probably dictate it and we’ll see a more deliberate approach to moving forward with a greater emphasis on the GSEs’ duty to serve” lower-income homeowners.

Even if Biden were unable to remove Calabria, he would still retain significant influence over the FHFA through the personnel he would appoint to the Treasury Department, said Smith.

“Regardless of the Supreme Court’s decision, I think [Biden] will be much more focused on affordable housing, and because the Biden administration will control Treasury, FHFA has less ability to move forward with privatization,” he said. “I think that a new administration can exercise some control over the FHFA, even though, under the statute right now, there’s not the same ability to simply fire the head.”

Biden might also favor some of the Capitol Hill proposals that have been touted by Democrats like Sen. Sherrod Brown of Ohio and that envision spinning out Fannie and Freddie into a government utility, said Norbert Michel, the director of the Heritage Foundation’s Center for Data Analysis.

“I suspect given that Biden was Obama’s VP that you’re going to get a lot of Obama people in, so I would imagine it will be some of the same stuff,” he said. “I would imagine that there’s still going to be a general push towards more of a government model, more of a utility model, more of a common securitization model.”

## **Housing affordability**

Home values on average are rising steadily across the U.S., putting homeownership out of reach for many low-to-moderate-income families. Home prices increased 7.7% in the first quarter of 2020, compared to the same period in 2019, according to the National Association of Realtors. This trend has worried both Democratic and Republican policymakers.

“You need to remove some of the economic hurdles associated with homeownership to get people in line for that wealth-creation opportunity, that generational wealth that will occur from homeownership historically,” said Rood.

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Last year, Trump formed a White House council dedicated to reducing regulatory barriers that may impede affordable housing, specifically calling out state and local zoning regulations that the administration says inflates the cost of housing development.

But the Trump administration has also [called for eliminating](#) the GSEs' contributions to affordable housing trust funds and cutting the community development block grant program, which supports affordable housing for low- and moderate-income families, raising alarm among affordable housing advocates.

"It's likely that [Trump's reelection] will diminish the role that housing traditionally plays in an economic recovery," Dworkin said. "And the reason for that is that the market is already oversaturated in the high-end space, and so I would expect us to lose the opportunity to really grow the market where supply is short."

However, it could be an area Trump could be forced to address, especially if housing costs become too burdensome for an increasing share of borrowers.

"I think the one wild card for the Trump administration would be affordable housing," said Smith. "I have this sense that we might be headed for a cliff event on the ability of borrowers to repay their mortgages, particularly at the lower end of household incomes."

In the unity plan developed with Sanders, the Vermont senator who had sought the Democratic nomination, the Biden campaign laid out several policy ideas for increasing housing affordability, including "supercharging" investment in the Housing Trust Fund to expand the supply of affordable housing units on the market.

Either administration will have to be careful about how it expands access to affordable homeownership, said Michel.

"If you have somebody who has volatile income, if you have somebody who's trying to climb the income ladder, you don't want to put them in a low-equity loan," he said. "You don't want to give them a 30-year mortgage with no equity down, especially not if you are at a spot where it looks like it could end up being a peak of another boom."

## **Fair-lending enforcement**

Quite possibly, the biggest difference between a Biden and a Trump administration could be their approaches to fair-lending enforcement.

Under Trump, the Department of Housing and Urban Development has initiated a process to relax the "disparate impact" standard in fair-lending rules, which Democrats have called the department's "most important tool" for enforcing the Fair Housing Act.

# AMERICAN BANKER

The administration has also offered relief to some lenders from reporting Home Mortgage Disclosure Act data, rolled back the Affirmatively Further Fair Housing rule that was meant to help locales meet obligations under the Fair Housing Act, and has most recently proposed [a new category of qualified mortgages](#) shielding lenders that originate risky loans from legal action.

It is likely that a Biden administration would try to reverse many of those actions. The Biden-Sanders unity plan even calls for reinstating the Affirmatively Furthering Fair Housing rule, as well as enacting a new homeowner and renter “Bill of Rights.”

“This new Bill of Rights will prevent mortgage brokers from leading borrowers into loans that cost more than their credit history demands, prevent mortgage servicers from advancing a foreclosure when a homeowner is in the process of receiving a loan modification, and give homeowners opportunities to seek financial redress from mortgage lenders and servicers that violate these protections,” the plan says.

Those who are supportive of the Trump administration’s deregulatory policies say the Biden campaign’s proposals could backfire.

“The problem is, on the backdrop of a punitive federal environment for mortgage lenders, then you lose sight of the fact that the only way that you’re going to get people into these homes is if you have mortgage lenders that are willing to lend,” said Rood.

But Dworkin is worried that a second term of a Trump presidency could lead to the dismantling of generations-old fair-lending laws that have historically protected minorities and lower-income borrowers from predatory lending.

“All of this legislation is covered in the rhetoric that we’ve seen as part of the campaign, and there’s really no reason to believe that in the second term, it won’t be actively pursued,” he said.

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