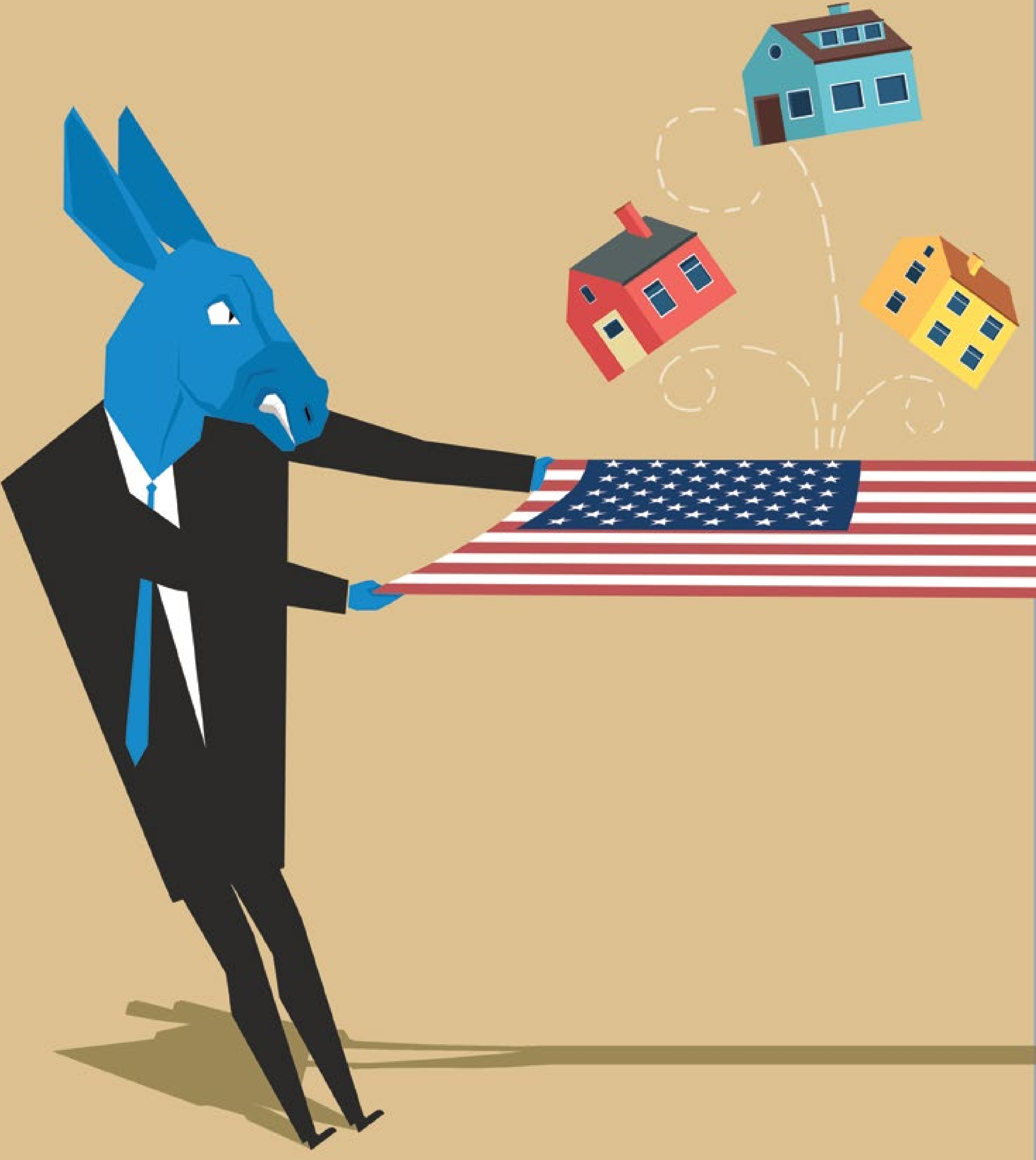

Artwork by Paula Douglass

Post-Election Bounce

Housing may not be a prominent issue this election year but much is still at stake

This November, Americans will go to the polls to elect a president, choose a new House of Representatives and determine which party will control the Senate. For those who make a living in the mortgage and housing industries, how much does it matter who wins?

By Scott Olson
Executive director
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> “Whether Donald Trump or Joe Biden wins the presidency, and whether Republicans or Democrats control the Senate, could have profound implications for the mortgage market.”

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It's sad to say, but with the exception of 2008 when a housing crisis was front and center, presidential candidates generally treat housing as a second- or even third-tier issue. They'll release position papers but not talk much about the issue.

Even so, whether Donald Trump or Joe Biden wins the presidency, and whether Republicans or Democrats control the Senate, could have profound implications for the mortgage market and the way mortgage professionals do business. Mortgage originators should pay close attention to what's at stake.

CFPB administration

A recent Supreme Court case, Seila Law vs. Consumer Financial Protection Bureau (CFPB), greenlighted the presidential right to fire the CFPB director at will (i.e., without cause). In a potential irony, a lawsuit motivated by a goal of allowing Trump to fire Democratic appointee Richard Cordray now has the effect of potentially paving the way for a Democrat to fire Republican appointee Kathy Kraninger if Biden were to be elected.

It is clear that the first two CFPB directors have had a significantly different approach to regulation, probably best illustrated by the tens of billions of dollars of industry fines that Cordray imposed. So, whoever wins the presidency could have a big impact on CFPB regulation.

Here is where it gets complicated. If Biden wins, he could fire the current director, but whether he can install his own nominee through Senate confirmation depends on which party controls the Senate. The other variable is the type of person whom Biden might nominate and what their priorities might be, including whether to emphasize the imposition of fines.

Notably, regardless of who is in charge, it looks like the much-criticized practice of regulation by enforcement is out. Mortgage lender PHH Corp. was fined $109 million due to the CFPB's interpretation of the anti-kickback provisions of the Real Estate Settlement Procedures Act. The fine was tossed when an appeals court ruled that the bureau violated the company's right to due process and also found that the bureau was subject to a three-year statute of limitations in prosecuting violations. The Supreme Court ruling allowed that decision to stand.

GSE patch

CFPB director Kraninger seems determined to move expeditiously in finalizing the agency's proposed rule to eliminate the 43% debt-to-income threshold for a qualified mortgage (QM). The CFPB's proposal would change the fees for a QM by capping the annual percentage rate at 199 basis points over the average prime offer rate, and it would eliminate the patch for QM loans through the government-sponsored enterprise (GSEs).

If Biden is elected, it is possible that a new director whom he installs may want to revisit this rule, since it moves away from a metric that measures a consumer's ability to repay. This potential change has raised concerns among some consumer and industry groups.

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It seems unlikely that a new CFPB director would move immediately to change a rule recently put in place by their predecessor. If a new Democratic-nominated CFPB director was installed next year, he or she would likely monitor the types of loans made under the new rules to assess the impact on consumers, and only then propose changes if and when they conclude changes are needed.

Ending conservatorship

Although the CFPB case does not explicitly apply to the Federal Housing Finance Agency (FHFA), the two agencies have similar legal structures and the Supreme Court has announced it will consider the issue of the FHFA's constitutionality. This raises the possibility that FHFA director Mark Calabria could be replaced if Biden is elected.

Therefore, one immediate reaction to the Supreme Court's CFPB ruling is that it could jeopardize the course set to quickly move forward on taking Fannie Mae and Freddie Mac out of government conservatorship. Commentators have continuously speculated about the likely course of GSE reform in the 12 years since Fannie and Freddie went into conservatorship. The issues and possibilities are exceedingly complex and unpredictable.

Calabria's determination to end the inertia of inaction and conclude the conservatorship has started a process that can be slowed down but seems difficult to derail. It also is not clear that a new Democratic president would replace him.

GSE reform does not easily fall along partisan lines, so a different director may not chart a materially different course. A Democratic appointee would be likely to modulate some on specific issues, such as dialing back on proposed capital levels for the GSEs or more emphasis on access to credit through FHFA regulation.

Mortgage credit

Both parties are committed to mortgage access to credit. But they tend to have a somewhat different emphasis for achieving that.

Republicans are generally concerned that federal agency loans, including those made by the GSEs and the Federal Housing Administration (FHA), are crowding out private-sector mortgages. They generally support actions such as making the QM rule — which aims to make sure the borrower can repay a loan — more flexible. This would encourage private loans while making sure FHA and GSE loans are not unfairly priced to undercut private-sector loans. Democrats tend to be more focused on maintaining a strong FHA and GSE presence, particularly for lower credit-quality borrowers.

In practice, the partisan differences on these issues are arguably not that deep. A case in point is the FHA. In general, both the Obama and Trump administrations have steered a middle course that balances the goals of maintaining an FHA presence in mortgage markets while protecting taxpayers by building up FHA's net worth and guarding against risky lending.

Housing legislation

The question of which party controls Congress should be important to the mortgage and housing industries. Increasingly, however, it does not seem to matter that much, except when there is a housing crisis as in 2008.

The simple reality is that divided government — which often is the case — is not suited to decisive legislative action on housing. One is hard pressed to name a single piece of housing legislation in the past five years.

Moreover, even when one party controls both the White House and Congress, the Senate filibuster empowers the minority party and makes it difficult to pass substantive bills. There is increasing pressure, however, to end the Senate filibuster. If either party takes control of the White House and both houses of Congress, and if that party ends the filibuster, watch out.

The result would likely be much more decisive action on issues affecting the housing industry. It also could create a potential whiplash effect if power swings back at a later date and the successor party tries to reverse course.

Coronavirus response

Finally, will the election mean anything for the federal response to the coronavirus pandemic? Hopefully, by next January, things will be largely under control, and there is unlikely to be significant housing-policy changes related to COVID-19 at that time.

COVID-19 and the impending election are arguably playing a huge role upon federal policies that impact the mortgage and housing markets. The threat of economic implosion resulting from shelter-in-place restrictions and other virus-related impacts has driven the Federal Reserve to act aggressively in keeping interest rates low — which is helping to maintain historically low mortgage rates and steady our housing markets.

The upcoming election also is driving congressional spending and other actions regarding the coronavirus. Both parties are jockeying to gain an electoral advantage by spearheading various initiatives.

For the Democrats, the House-approved HEROES Act provides significant funding to states and municipalities. Senate Republicans have prioritized liability protections so that businesses can reopen. Look for last-minute negotiations and drama as a potential final coronavirus-related stimulus bill is developed, and for both parties to struggle to reinforce the messaging they plan to take into the election. ●