



# For Congressional Republicans, Wall Street Trumps Main Street

By David Min    March 1, 2017

Less than one decade ago, during the final two years of the George W. Bush administration, the United States went through what was in absolute terms the worst financial crisis it has ever experienced. When President Barack Obama entered office, the United States was losing close to 700,000 jobs each month.<sup>1</sup> By the end of the crisis, more than \$19 trillion in wealth had been lost, unemployment had reached a peak of 10 percent, home prices had declined an average of 35 percent, and more than 10 million homes had been lost due to foreclosure or distressed sales.<sup>2</sup> This was a tsunami of economic devastation by any measure, and many Americans are still recovering today. Yet, even before Americans have fully cleared the wreckage from this past crisis, congressional Republicans are trying to roll back large portions of the Dodd-Frank Wall Street Reform and Consumer Protection Act—the signature financial protections put in place to prevent another such crisis from occurring.<sup>3</sup>

Through the use of an obscure legislative provision known as the Congressional Review Act, or CRA, the Trump administration and its congressional allies are seeking the mass nullification of regulations proposed in the last part of the Obama administration. Used only once in the past two decades prior to the Trump administration, the CRA gives Congress 60 legislative days to overturn a rule by a simple majority vote.<sup>4</sup> The Trump administration is trying to weaponize the CRA with the enactment of the Midnight Rules Relief Act of 2017, which was passed by the House on a 238-184 party-line vote with four Democrats voting for it. It is currently under consideration by the Senate. The Midnight Rules Relief Act would allow President Trump and his congressional allies to bypass the CRA's existing procedures for overturning new rules and instead bundle multiple rules—potentially all of the hundreds of rules that the Obama administration issued in its final months—to be overturned en masse in a single up-or-down vote and signed into law by the president.<sup>5</sup>

While the Trump administration's extraordinary abuse of the CRA may ultimately affect an extraordinarily broad set of safeguards, there are nine financial reform rules issued under Dodd-Frank, which are currently being targeted by conservatives, worth focusing upon.<sup>6</sup> Taken together, these nine rules improve market transparency,

increase regulators' understanding of where risk is being taken, reduce systemic problems that could blow up the financial system, and improve confidence in the integrity of the financial market. While technical, each of these rules were written to protect Americans from another financial crisis.

---

## Congressional Republican efforts to dismantle Dodd-Frank

The first of the nine rules has already been nullified. The repeal of the rule has been described by one news outlet as a “major win for oil producers and other companies in extractive industries.”<sup>7</sup> While in force, the rule required natural resource extraction companies that file reports with the U.S. Securities and Exchange Commission, or SEC, to include information relating to any payments made to a government for the purpose of developing oil, natural gas, or minerals.<sup>8</sup> The rule provided transparency and accountability for investors and the public and reduced the risk of bribes and corruption.

And the Trump administration's efforts are not likely to stop there. The second rule up for termination allows regulators to wind down large financial institutions and avoid spillover effects that threaten financial stability. The rule put in place recordkeeping requirements for “qualified financial contracts”—a broad term that encompasses nearly all types of financial instruments, derivatives, and securities.<sup>9</sup> Without this requirement, regulators would be operating blindly in the event of another crisis, just as they were in 2008 when Lehman Brothers failed.<sup>10</sup> Such recordkeeping is vital for understanding the potential interconnectedness of financial institutions and markets and ensuring that a similar disaster never happens again.

The remaining seven rules deal with the transparency of swaps derivatives. Principally, these are credit default swaps—risky financial instruments that were among the chief causes of the financial meltdown. Before the crisis, firms would effectively offer insurance against the credit default of a bond or other security held by a separate party through an instrument known as a credit default swap.<sup>11</sup> By the time of the crisis, credit default swaps accounted for as much as \$57 trillion.<sup>12</sup> Because of how these swaps were traded—between firms privately and not on a public exchange—regulators and the public were unaware of exactly how much risk was built up in these instruments or which parties held this risk.<sup>13</sup> The opacity of these swaps was a major cause of the financial crisis and left taxpayers holding the bag.

The Dodd-Frank Act addressed these obvious weaknesses, in the hopes that the swaps markets would never again cause such massive financial and economic distress. To implement the law, the Commodity Futures Trading Commission and the SEC have been in the process of putting in place the details needed to operationalize the law; these seven rules are key pieces of that effort. Collectively, these rules govern the public reporting of transaction and pricing data on swap trades. Without this data,

regulators would have a hard time knowing when the financial system is at risk, and investors, with less access to information, would make riskier bets. In addition, these rules govern margin requirements—that is, how much collateral must be held against derivatives risk—for swap dealers and major participants in the swaps market.<sup>14</sup> The concept is a simple one: If a firm is offering insurance-like protection, it needs to hold enough money to cover its responsibilities if its insurance obligations come due. Although technical, these seven rules significantly reduce the risk that credit default swaps pose to the U.S. system.

Sadly, the nullification of these nine financial regulations is only the opening salvo in conservative efforts to dismantle financial reform. President Donald Trump has already signed an executive order to begin the process of disassembling Obama-era financial protections.<sup>15</sup> In short order, House Financial Services Committee Chairman Jeb Hensarling (R-TX) will also see to this by unveiling his Financial CHOICE Act, or more accurately, “Wall Street’s CHOICE Act.”<sup>16</sup> The bill would gut the fundamental pillars of Dodd-Frank that enhance the financial stability of the U.S. economy, protect consumers, and reduce the economic power in the hands of Wall Street.

---

## Conclusion

The Trump administration and its supporters in Congress are ignoring the fear and distress that so many American families faced during the financial crisis. The GOP’s systematic dismantling of financial regulations by any means necessary—no matter how unprecedented or problematic—shows who is driving its agenda: Wall Street. If this agenda is successfully implemented, a return to Wall Street’s excessive risk taking and predatory practices is inevitable—and another financial crisis will be just around the corner. These efforts show a total disregard for lessons learned during the financial crisis and should scare everyone that suffered through hardships as a result—a lost job, foreclosed home, or lost savings. Now is not the time to wipe rules off the books. Now is the time to hone our protections; enforce our rules; and avoid the deregulatory mindset that caused the last financial crisis, which will almost certainly—unless unchecked—lead to another catastrophe.

*David Min is an assistant professor of law at the University of California Irvine School of Law.*

---

## Endnotes

- 1 Federal Reserve Bank of St. Louis, "FRED: Economic Research, All Employees: Total Nonfarm Payrolls ((PAYEMS);)" available at <https://fred.stlouisfed.org/series/PAYEMS> (last accessed February 2017).
- 2 U.S. Department of the Treasury, "The Financial Crisis Response: In Charts" (2012), available at [https://www.treasury.gov/resource-center/data-chart-center/Documents/20120413\\_FinancialCrisisResponse.pdf](https://www.treasury.gov/resource-center/data-chart-center/Documents/20120413_FinancialCrisisResponse.pdf); Federal Reserve Bank of St. Louis, "FRED: Economic Research, Civilian Unemployment Rate (UNRATE)," available at <https://fred.stlouisfed.org/series/UNRATE> (last accessed February 2017); Atif Mian, Amir Sufi, and Francesco Trebbi, "Foreclosures, House Prices, and the Real Economy," Working Paper 6 (Kreisman Working Papers Series in Housing Law and Policy, 2014); Laura Kusisto "Many Who Lost Homes to Foreclosure in Last Decade Won't Return — NAR," *The Wall Street Journal*, April 20, 2015, available at <https://www.wsj.com/articles/many-who-lost-homes-to-foreclosure-in-last-decade-wont-return-nar-1429548640>.
- 3 David Weigel, "Claiming mandate, GOP Congress lays plans to propel sweeping conservative agenda," *The Washington Post*, January 1, 2017, available at [https://www.washingtonpost.com/politics/claiming-mandate-gop-congress-lays-plans-to-propel-sweeping-conservative-agenda/2017/01/01/9840338a-ceee-11e6-b8a2-8c2a61b0436f\\_story.html?utm\\_term=.b5a1e10bbf62](https://www.washingtonpost.com/politics/claiming-mandate-gop-congress-lays-plans-to-propel-sweeping-conservative-agenda/2017/01/01/9840338a-ceee-11e6-b8a2-8c2a61b0436f_story.html?utm_term=.b5a1e10bbf62).
- 4 In 2001, President George W. Bush signed a joint congressional resolution disapproving a rule issued by the Occupational Safety and Health Administration toward the end of the Bill Clinton administration that would have set workplace ergonomic standards. See Rema Rahman, "GOP Poised to Undo Obama 'Midnight Regulations,'" Roll Call, January 4, 2017, available at <http://www.rollcall.com/news/politics/house-gop-poised-undo-obama-midnight-regulations>; Under the CRA, before a rule takes effect, the agency promulgating the rule must submit a report briefly describing the rule and its proposed effective date. After receiving this report, Congress may submit and vote on a joint resolution of disapproval. If, within 60 legislative session days, both the U.S. House of Representatives and Senate pass the resolution of disapproval and the president signs the resolution—or Congress overrides a presidential veto—then the rule will be nullified. It "shall not take effect (or continue)." For more information on the CRA, see Maeva P. Carey, Alissa M. Dolan and Christopher M. Davis, "The Congressional Review Act: Frequently Asked Questions" (Washington: Congressional Research Service, 2016), available at <https://fas.org/sgp/crs/misc/R43992.pdf>
- 5 Lydia Wheeler, "House passes bill to overturn 'midnight' regulations en masse," *The Hill*, January 4, 2017, available at <http://thehill.com/homenews/house/312730-house-passes-bill-to-overturn-midnight-regulations-en-masse>; Carolyn Lochhead, "GOP pushing 3 bills in Congress to restrain federal regulations," *San Francisco Chronicle*, January 9, 2017, available at <http://www.sfchronicle.com/nation/article/GOP-pushing-3-bills-in-Congress-to-restrain-10846194.php>.
- 6 Sam Batkins, "Undoing Dodd-Frank In 2017?," American Action Forum Insight, December 6, 2016, available at <https://www.americanactionforum.org/insight/undoing-dodd-frank-2017/>.
- 7 Timothy Cama, "Senate votes to repeal transparency rule for oil companies," *The Hill*, February 3, 2017, available at <http://thehill.com/policy/energy-environment/317700-senate-votes-to-repeal-transparency-rule-for-oil-companies>
- 8 Ibid.
- 9 31 C.F.R. § 148 (2016), available at <https://www.federalregister.gov/documents/2016/10/31/2016-25329/qualified-financial-contracts-recordkeeping-related-to-orderly-liquidation-authority>.
- 10 As the Financial Crisis Inquiry Commission described it at the time of Lehman's insolvency, "regulators did not nearly enough about over-the-counter derivatives activities at Lehman and other investment banks... Investment banks disclosed the total number of OTC derivative contracts they had, the total exposures of the contracts, and their estimated market value, but they did not public report the terms of the contracts or the counterparties. Thus, there was no way to know who would be owed how much and when payments would have to be made—information that would be critically important to analyze the possible impact of a Lehman bankruptcy on derivatives counterparties and the financial markets." See Financial Crisis Inquiry Commission, "The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States" (2011), p. 392, available at <https://www.gpo.gov/fdsys/pkg/GPO-FICR>.
- 11 Martin H. Wolfson and Gerald A Epstein, eds., *The Handbook of the Political Economy of Financial Crises* (New York: Oxford University Press, 2013).
- 12 René M. Stulz, "Credit Default Swaps and the Credit Crisis," *Journal of Economic Perspectives* 24 (1) (2010): 73–92; Ibid.
- 13 Created by Congress, the Financial Crisis Inquiry Commission is tasked with investigating the causes of the financial crisis, which concluded that credit default swaps "contributed to the crisis in three significant ways." First, they were used to effectively insure Wall Street's mortgage-backed securities, allowing these to be rated as investment-grade—AA or AAA—securities, greatly expanding the marketability of these instruments that proved to be so risky and thus fueling the housing bubble. Second, credit default swaps were an integral part of the creation of "synthetic" collateralized debt obligations, which further amplified risk by allowing investors to "bet" on mortgage performance even when there was no underlying mortgage collateral. Third, credit default swaps were the proximate cause of the downfall of American International Group, Inc., or AIG, which had accumulated a massive exposure to U.S. residential mortgage risk through this type of derivative. See Financial Crisis Inquiry Commission, "The Financial Crisis Inquiry Report," p. xxiv–xxv.
- 14 17 C.F.R. § 23 (2016), available at <https://www.federalregister.gov/documents/2016/05/31/2016-12612/margin-requirements-for-uncleared-swaps-for-swap-dealers-and-major-swap-participants-cross-border>.
- 15 Renae Merle and Steven Mufson, "Trump signs order to begin rolling back Wall Street regulations," *The Washington Post*, February 3, 2017, available at [https://www.washingtonpost.com/business/economy/trump-signs-order-to-begin-rolling-back-wall-street-regulations/2017/02/03/650668d8-ea30-11e6-80c2-30e57e57e05d\\_story.html?utm\\_term=.6a3567edc81d](https://www.washingtonpost.com/business/economy/trump-signs-order-to-begin-rolling-back-wall-street-regulations/2017/02/03/650668d8-ea30-11e6-80c2-30e57e57e05d_story.html?utm_term=.6a3567edc81d).
- 16 Michael Greene, "Dodd-Frank Rollback Bill Expected in February, Duffy Says," *Bloomberg BNA*, February 1, 2017, available at <https://www.bna.com/doddfrank-rollback-bill-n57982083142/>