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A decade after the 2008 crisis: Grudge-holding taxpayers and regulatory risks

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A decade after a brewing financial crisis toppled Lehman Brothers, the fourth-largest investment bank in the U.S., most of its rivals have recovered the value they lost and more.

Stock in JPMorgan Chase, the largest U.S. lender, has nearly tripled in price, reaching $117 a share. Shares of Goldman Sachs, Morgan Stanley and Bank of America, which purchased the investment firm Merrill Lynch, have all posted gains.

But if their shareholders have forgiven the speculation and risky loans that led to Lehman's failure on Sept. 15, 2008, forcing the government to pour billions into bailouts for large institutions to keep the U.S. financial system afloat, taxpayers have not.

"I really wish I was able to help the American people understand that what we were doing wasn’t for Wall Street, it was to protect the financial system for them," Henry Paulson, the former Goldman Sachs head who served as Treasury Secretary at the time, said in a March interview with the syndicated radio show *Marketplace*.

Instead, a decade later, the public resentment lingering from a rescue that Paulson says "worked very well economically but was a disaster politically" leaves a significant, perhaps existential, risk to big banks — especially if Democrats regain power in Washington.

Wall Street's net-favorable rating of 21 percent as of May 2017 ranked below Congress, at 23 percent, and used car dealers, at 26 percent, according to an online survey by the libertarian Cato Institute.

Approval measures of industry firms, the people who run them and financial regulators are not only less than 50 percent today, they're below even the lows to which they had tumbled before the crisis, according to a report by the conservative-leaning American Enterprise Institute this month that examined public-opinion polls covering a period of decades.

"I stand guilty of not being able to explain why the financial system was good for Americans," Paulson said.

The political hostility means the possibility that Congress might force megabanks like JPMorgan Chase, Bank of America and Citi to separate their deposit businesses from investment and trading operations can't be ruled out, said Jaret Seiberg, an analyst with Cowen Washington Research Group, which has tracked federal policy for more than four decades.

Such a prohibition existed under the Depression-era Glass-Steagall Act before its repeal under former President Bill Clinton. That law was touted by critics of the government's handling of the crisis such as Occupy Wall Street, whose members set up a months-long encampment just blocks from the New York Stock Exchange in 2011.

Criticism of the industry by Sen. Elizabeth Warren, who championed the creation of the Consumer Financial Protection Bureau and has backed a 21st century version of Glass-Steagall, is "tapping into a skepticism of banks among voters," Seiberg said. "It is why her message is not going away. We expect to hear anti-Wall Street out of the latest crop of Democratic activists turned candidates."

Indeed, JPMorgan Chief Executive Officer Jamie Dimon acknowledged as much when he said earlier this month he could beat President Trump in an election but he wouldn't be able to get past the liberal wing of the Democratic Party.

While there's no immediate path to enacting any law reminiscent of Glass-Steagall, the calculus changes if Democrats retake one or both houses of Congress in November — even though any bill that garnered enough votes to pass would still probably be vetoed by President Trump, Seiberg said.

"The real threat for these ideas will come in 2020, when the U.S. elects a new president," he said. If that person is Warren — whose potential candidacy is the subject of frequent speculation — "or someone who shares her perspective, then the threat to the biggest banks will skyrocket."

For now, taxpayer ire explains why large banks have been largely excluded from changes to the Dodd-Frank law, passed two years after the crisis, which tightened regulation in an attempt to prevent a repeat.

The law imposed heightened supervision on financial institutions with more than $50 billion in assets, subjecting them to annual stress tests, and banned proprietary trading under the Volcker Rule, a provision named for former Fed Chairman Paul Volcker.

This spring, President Trump signed a compromise bill engineered by Senate Banking Committee Chairman Mike Crapo that raised the level at which banks are considered "systemically important" and have to undergo the yearly reviews to $250 billion from $50 billion.

It also exempted small banks — those with less than $10 billion in assets and trading less than 5 percent of their value — from the Volcker Rule.

Notably, neither of the two provisions benefited the six biggest banks: JPMorgan leads the group with $2.54 trillion in assets, while the smallest, Morgan Stanley, has $852.6 billion. Helping out community and regional banks was the bill's primary goal, lawmakers said.

Raising the systemically-important threshold was among the Crapo bill's most significant steps, which ultimately amounted to common-sense reforms of a post-crisis bill in which "regulatory overreach went a bit too far," Aaron Cutler, a partner at the international law firm Hogan Lovells told the *Washington Examiner*.

In the near future, Trump's recent appointments to key regulatory posts such as the Federal Reserve's chief of supervision and the Federal Deposit Insurance Corp. chair, will also "impact the the financial services regulatory agenda in significant ways," added Cutler, who previously worked as a senior policy adviser to former House Majority Leader Eric Cantor.

One of those appointments, Office of Management and Budget Diretor Mick Mulvaney, as acting head of the Consumer Financial Protection Bureau, drew immediate criticism from Democrats. Mulvaney, formerly a Republican congressman from South Carolina, had previously referred to the agency as a "sad, sick joke" and backed a bill eliminating it.

As director, however, Mulvaney conceded he didn't have the authority to do that. Months later, his agency and the Comptroller of the Currency reached a $1 billion settlement with Wells Fargo, the third-largest bank in the country, over its auto- and mortgage-lending practices.

Trump's nominee to fill the job permanently, Kathy Kraninger — who works with Mulvaney at Management and Budget, has yet to be confirmed by the full Senate. And while she promised to use cost-benefit analysis to curb regulatory burdens as much as possible, consumer lenders remain somewhat wary.

In the court system, many lenders find themselves "in the crosshairs in litigation in a way they weren't as frequently before" the financial crisis, Lisa Fried, a Hogan Lovells attorney who handles consumer finance and cross-border litigation, told the *Examiner*.

The large, class-action cases that multiplied after 2008 haven't abated, Fried said, and some plaintiffs unsuccessful in the U.S. then try to leverage the laws of other countries to retry suits in which the defendant is an international bank.

It's "something we definitely see on the rise," she said.

And while "the biggest banks are getting better at pressuring" lawmakers and regulators for changes, according to Seiberg, their influence has declined since the crisis.

To Warren, the reasons for that are obvious.

The economy of the 1950s and 1960s in which families could live on a single income, carry a small amount of debt and save a substantial amount of money "has disappeared and left behind an America where people work harder and harder and take on more and more risk," she said in a New York Times forum at the Newseum in Washington, D.C.

"Families live one bad diagnosis, one pink slip, away from financial calamity and they know it," Warren added. That's despite unemployment that recently matched a 1969 low, booming corporate earnings and quarterly economic growth above 4 percent.

"They read every headline that says, 'Economy great,' and they think, 'What the hell happened to my family?'" she said. "And they are right to ask that question, because America's government has failed them."