AFR Americans for Financial Reform

October 2021

Stop Wall Street Looting Act of 2021 Provisions			
Title	**Description**	**Explanation**	**Private Equity Predatory Example**
Title I: Corporate Responsibility	Joint and several liability for private funds, including debt, legal judgments, violations like WARN Act, and pensions. Prohibits indemnification. Limited partners (like pension investors) are not liable.	Private equity (PE) firms and their executives are insulated from responsibility for their predatory practices, like loading portfolio companies with so much debt they slide into bankruptcy, harming workers and communities. This title makes private equity firms and managers legally responsible for the debt imposed on portfolio firms, violations of laws like failing to give notice for mass layoffs under the WARN Act, fines and judgements against companies they own for wrongdoing like environmental contamination and other legal liabilities.	In 2021, Formation Capital backed nursing home Consulate Health Care used bankruptcy to dodge almost all of a $250 million penalty for defrauding publicly funded health programs. In 2019, two private equity owned refineries exploded, harming workers and forcing evacuations. Under current law the PE firms have no legal liability for environmental and safety lapses that contributed to these disasters (AFREF 2019 Private Equity's Chemical Catastrophe study).
Title II: Anti-looting	Bars dividends and outsourcing for 2 years after a takeover (§201)	Private equity firms takeover target companies with debt-funded leveraged buyouts that the target firm must repay. Often, private equity firms then require these companies to borrow even more money to pay dividends to the private equity firm. This title would bar private equity firms from extracting dividends for 2 years after the takeover. This title would also bar private equity firms from outsourcing portfolio company jobs for 2 years after the takeover.	AFR's 2019 SWSLA testimony at pages 10-11 describes dividend recapitalizations. Dividend recaps have become common again during the pandemic including at healthcare companies, after contributing to prior bankruptcies, like Payless Shoes. AFREF 2020 Retail Double Exposure study at pages 6-7 describes dividend recaps at Payless and J.Crew that led to the loss of thousands of jobs. After acquiring Hufcor, a family-owned Wisconsin manufacturer, OpenGate Capital announced in 2021 that it would close the plant and move the jobs to Mexico.

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Title	**Description**	**Explanation**	**Private Equity Predatory Example**
Title II: Anti-looting (cont.)	Stops Fraudulent Transfers (§202)	Private equity firms can extract valuable assets from portfolio firms — either selling them or moving them to other companies — that weaken the financial viability of the portfolio company and make it more vulnerable to bankruptcy and liquidation. These "fraudulent transfers" mean that the PE general partners have extracted money from the firm, and other stakeholders — including workers — bear the losses in a bankruptcy. This title will put a stop to that. Private equity firms have also been able to hamstring litigation against them by appointing "independent" directors to the boards of their companies before the companies file for bankruptcy. These private equity-appointed directors are then able to take control of the litigation, allowing private equity firms to kill the claims or settle them on the cheap, denying creditors of their due. This title will put an end to use of "bankruptcy directors" to game the system.	Private equity firms have routinely stripped valuable real estate from portfolio firms, like the shuttered Hahnemann Hospital in Philadelphia, and the Mervyns retail chain. The PE executives make more money and the portfolio firms are forced to pay rent on property they previously owned adding to their operating costs that can lead to bankruptcy. PE stripped out Sears' valuable Craftsman and Land's End brands before the company went into bankruptcy and the PE owner of J.Crew moved assets to a subsidiary in the Cayman Islands to hide them from creditors in bankruptcy. In the month before filing for bankruptcy, the private equity sponsors of Neiman Marcus appointed two bankruptcy experts to the Neiman board, who appeared to succeed in negotiating an unusually low settlement amount.
	Surtax on certain private equity fees (§203)	Private equity firms charge so called monitoring fees to portfolio companies that are not actually payments for particular services, but an additional way of extracting income for PE executives at the expense of businesses and investors. This provision taxes these fake fees at 100% to put an end to this abusive practice.	*Bloomberg* reported these fees are a "gusher of profit." Monitoring fees typically act as disguised dividends paid by the portfolio companies to the private equity firm as shareholders rather than a payment for managerial expertise.

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Title II: Anti-looting (cont.)	Limits tax deductibility of debt (§204)	Private equity firms rely on debt financing for leveraged buyouts and dividend recapitalization. This title limits the tax deductibility of these private equity-driven debt loads.	Leveraged buyouts effectively require target firms to borrow money to pay for their own takeovers. The new debt burden compromises the firm's financial viability, adding new and often unsustainable costs that can contribute to bankruptcies. Debt from leveraged buyouts has been linked to the Hertz, Neiman Marcus, Chuck E Cheese bankruptcies. This debt load was bad for the company, its workers, and its customers; why should the PE owner enjoy tax privileges for this form of financing.
Title III Worker & Consumer Protection	Prioritizes wages in bankruptcy (§301, §307)	When private equity's predatory practices push companies into bankruptcy, workers can lose wages and other benefits in bankruptcy. This title prioritizes workers claims for lost wages and benefits in the bankruptcy process. Note that these provisions, and all of the bankruptcy protections, apply not just in PE related bankruptcies but in all bankruptcies.	Private equity firms are far more likely to go into bankruptcy according to a 2019 Cal Poly study. AFREF 2020 Retail Double Exposure study found that almost two-thirds of retail bankruptcies were private equity owned firms (at page 9)
	Prioritizes Severance (§302)		
	Prioritizes violation payments (§303)	Safety, workplace, environmental and other violations are low on the list of bankruptcy obligations. This section increases the priority to pay violations in bankruptcy.	AFREF 2019 Private Equity's Chemical Catastrophe study

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Title	**Description**	**Explanation**	**Private Equity Predatory Example**
Title III Worker & Consumer Protection (cont.)	Limits executive compensation (§304-§306, §308)	There is a growing number of private equity billionaires, even as the aggressive cost cutting of private equity means downsizing and layoffs and bankruptcies can eliminate jobs forever. These provisions limit the executive compensation private equity and portfolio firm executives can take out of companies during bankruptcy.	A 2020 University of Oxford study found that private equity returns were stagnant but the firms were a "billionaire factory." There were 47 private equity billionaires on the 2021 *Forbes* list including Blackstone's Stephen Schwarzman ($31B) former Apollo chairman Leon Black ($9.4B), and KKR's George Roberts ($8.6B).
	Protects workers in asset sale (§309, §311)	Retail and restaurant chains in bankruptcy can shed locations without regard to workers. These provisions require bankruptcy court to take into account keeping workers employed with their current terms and conditions of employment and makes it easier for seasonal retailers to reorganize.	AFREF 2020 Retail Double Exposure study of 65 private equity owned retailers found more than half went into bankruptcy and one-third shut down forever. Over the past two decades, these 65 retailers have shed nearly half a million jobs.
	Protects gift cards (§310)	Consumers can lose all of their balances on gift cards of retailer or restaurant chains that go into bankruptcy. This provision protects the value of outstanding gift cards in bankruptcy.	Gift cards are unsecured credit that evaporates in bankruptcy according to *USA Today* and can be multimillion dollar windfall to bankrupt firms, according to the *Wall Street Journal*
Title IV: Carried interest loophole	Closes the carried interest tax loophole	Private equity managers and firms use the carried interest loophole to disguise their profits as "investment" income to pay a lower tax rate. The investors pay the private equity firms a carried interest payment out of their investment profits, which is really a fee paid for the management services, lowering their tax rate from 37 percent for ordinary income to 20 percent for carried interest. This title would close this tax loophole.	Private equity industry spends $120 billion in executive compensation according to the *New York Times*. For private equity executives, the carried interest tax loophole is the alchemy that turns fee income into long-term investment income. Closing the carried interest loophole could generate between $1.4 and $18 billion in revenues annually.

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Title	**Description**	**Explanation**	**Private Equity Predatory Example**
Title V: Investor protection disclosure	Annual SEC disclosures for private funds, imposes fiduciary responsibility to private equity managed pension assets, disclosures of performance to investors (§501).	Private equity firms tell investors they have much higher returns, but undisclosed fees, manipulated returns reporting, and diminishing actual returns means that this is often not the case. They also make it very hard for even sophisticated investors to seriously evaluate performance. Recently, many private equity funds have been preforming no better, and often worse than comparable stock market investments. This title requires private funds to disclose their returns and requires private equity firms to have a fiduciary duty to their investors like pensions.	AFREF and American Federation of Teachers study on private equity risks, lack of transparency, indifferent returns. A Center for Economic and Policy Research study asks if lower PE returns are the new normal.
Title V: Other disclosures	Annual report of climate-related financial risks posed by private equity investments (§501(b)(23)).	Private equity is a huge investor in fossil fuel companies that drive global warming, increase systemic climate risk, and threaten the financial system. This section requires private equity firms to disclose the present and future climate risks posed by these investments and their plans to manage these risks.	Private equity firms have invested over $1.1 trillion dollars into energy companies since 2010 — about 80 percent of it in climate destroying fossil fuels. Private equity firms own everything from wellhead to wall socket, including fracking drilling, pipelines, power plants, offshore drilling, petrochemical plants and more.
	Annual report on the workforce at portfolio companies (§501(b)(24)).	Workers at private equity firms often face low pay, inadequate benefits, insecure scheduling, and difficult work environments. This provision requires disclosure of workforce demographics, wages, benefits, full- and part-time workers, subcontracting and outsourcing, and workplace harassment claims.	Private equity takeovers often lead to job cuts, with the number of workers declining 13 percent after leveraged buyouts of public companies. Workers also can face wage cuts and reduced benefits like more expensive healthcare and reduced retirement benefits. It is no surprise that a new study found that worker satisfaction declined after private equity takeovers.

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Title	**Description**	**Explanation**	**Private Equity Predatory Example**
Title V: Other disclosures (cont.)	Annual disclosure of political spending (§5501(b)(25))	Requires the disclosure of private equity firms' lobbying, campaign contributions, and independent political spending.	The opacity of the private equity industry conceals tremendous political expenditures to shape federal policy through campaign contributions and lobbying. By the summer of 2020, executives at some of the largest private equity and hedge fund firms had donated $92 million dollars to candidates, campaigns, and political groups. The largest private equity firms spent $32 million lobbying in 2020, including on pandemic relief legislation.
	Annual disclosure of federal funding received by portfolio companies (§501(b)(26)).	The opaque ownership of portfolio firms allows companies owned by well-funded private equity firms to receive federal funding with little or no public scrutiny.	Private equity-owned hospitals and nursing homes receive federal Medicare and Medicaid funds and private equity-owned schools' benefit from federal student loan revenues. During the pandemic, companies backed by the largest private equity firms received an estimated $5.3 billion in federal pandemic relief.
Title VI: Debt Risk Retention	Requires leveraged lenders to retain risk on their own balance sheets.	Private equity LBOs are fueled by leveraged lending – loans that are a large proportion of the underlying asset value. The extraordinary amount of leveraged lending poses substantial risk of default that harms the portfolio firms but also could imperil the macro economy. This title closes a legal loophole so that leveraged loans are (again) covered by Dodd-Frank risk-retention provisions in order to diminish the systemic risk these loans may pose.	AFR's 2019 SWSLA testimony at pages 5-9 discusses the systemic risk posed by private equity leveraged lending. AFREF 2019 study on Trump, Wall Street and the Next Recession at pages 4-6 discusses leveraged lending (including private equity) and its impact on economic fragility.