

118TH CONGRESS
2D SESSION

S. _____

To subject certain private funds to joint and several liability with respect to the liabilities of firms acquired and controlled by those funds, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. WARREN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To subject certain private funds to joint and several liability with respect to the liabilities of firms acquired and controlled by those funds, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Stop Wall Street Looting Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Definitions.

2

TITLE I—CORPORATE RESPONSIBILITY

- Sec. 101. Joint and several liability for controlling private funds and holders of active interests in controlling private funds.
- Sec. 102. Indemnification void as against public policy.

TITLE II—ANTI-LOOTING

- Sec. 201. Limitations on post-acquisition dividends, distributions, redemptions, buybacks, and outsourcing.
- Sec. 202. Prevention of fraudulent transfers.
- Sec. 203. Surtax on certain amounts received by investment firms from controlled target firms.
- Sec. 204. Limitation on deduction for business interest of certain businesses owned by private funds.
- Sec. 205. Guardrails around accessing public funds.
- Sec. 206. Prohibiting payments from Federal health care programs to entities that sell assets to or use assets as collateral for a loan with a real estate investment trust.
- Sec. 207. Repeal of special rule for taxable REIT subsidiaries with interests in certain health care property.
- Sec. 208. Elimination of qualified REIT dividends from qualified business income.
- Sec. 209. Protections for striking workers.

TITLE III—PROTECTING WORKERS WHEN COMPANIES GO
BANKRUPT

- Sec. 301. Increased priority for wages.
- Sec. 302. Priority for severance pay and contributions to employee welfare benefit plans.
- Sec. 303. Priority for violations of Federal and State laws.
- Sec. 304. Limitation on executive compensation enhancements.
- Sec. 305. Prohibition against special compensation payments.
- Sec. 306. Executive compensation upon exit from bankruptcy.
- Sec. 307. Collateral surcharge for employee obligations.
- Sec. 308. Voidability of preferential compensation transfers.
- Sec. 309. Protection for employees in a sale of assets.
- Sec. 310. Protection of gift card purchasers.
- Sec. 311. Commercial real estate.

TITLE IV—CLOSING TAX LOOPHOLES

- Sec. 401. Amendment of 1986 Code.
- Sec. 402. Partnership interests transferred in connection with performance of services.
- Sec. 403. Special rules for partners providing investment management services to partnerships.

TITLE V—INVESTOR PROTECTION AND MARKET TRANSPARENCY

- Sec. 501. Disclosure of fees and returns.
- Sec. 502. Fiduciary obligations.
- Sec. 503. Disclosures relating to the marketing of private equity funds.
- Sec. 504. Greater visibility into non-bank direct lending and private credit.

TITLE VI—RESTRICTIONS ON SECURITIZING RISKY CORPORATE
DEBT

Sec. 601. Risk retention requirements for securitization of corporate debt.

TITLE VII—MISCELLANEOUS

Sec. 701. Anti-evasion.

Sec. 702. Severability.

1 SEC. 2. FINDINGS.

2 Congress finds the following:

3 (1) During the 20-year period preceding the
4 date of enactment of this Act, activity by private equity
5 funds has exploded.

6 (2) Millions of people in communities across the
7 United States rely on companies that are owned by
8 private equity funds, including nearly 12,000,000 individuals
9 who work for companies owned by those
10 funds. For millions of additional individuals, a private
11 investment fund acts as a landlord, a lender, or
12 an owner of a local grocery store, newspaper, or hospital.
13 Many pension funds are also investors in private
14 investment funds.

15 (3) Private investment funds have taken controlling
16 stakes in companies in a wide variety of industries,
17 including the financial services, real estate, media,
18 and healthcare industries, but some of the largest
19 impacts from private investment funds have been in the
20 retail sector. In the 10 years preceding the date of
21 enactment of this Act, cases have been

1 commenced under title 11, United States Code, with
2 respect to dozens of retailers in the United States,
3 including Sears, Toys “R” Us, Shopko, Payless
4 ShoeSource, Charlotte Russe, Bon-Ton, Nine West,
5 David’s Bridal, Claire’s, J. Crew, Neiman Marcus,
6 Guitar Center, Art Van Furniture, and Southeastern
7 Grocers, which was the parent company for BI-LO
8 and Winn-Dixie.

9 (4) Private investment funds have also targeted
10 entities that serve low-income or vulnerable popu-
11 lations, including affordable housing developments,
12 for-profit colleges, payday lenders, medical providers,
13 and nursing homes.

14 (5) While private investment funds often pur-
15 port to take over struggling companies and make
16 those companies viable, the opposite is often true.
17 Leveraged buyouts impose enormous debt loads on
18 otherwise viable companies and then strip those
19 companies of assets, hobbling the operations of those
20 companies and preventing them from making nec-
21 essary investments for future growth. If an invest-
22 ment goes well, the fund reaps most of the rewards,
23 but if the investment does not go well, workers and
24 customers of the company, and the community rely-
25 ing on the company, suffer.

1 (6) Regardless of the performance of a private
2 investment fund, the managers of the fund often
3 make profits through fees, dividends, and other fi-
4 nancial engineering. Private funds should have a
5 stake in the outcome of their investments, enjoying
6 returns if those investments are successful but ab-
7 sorbing losses if those investments fail.

8 (7) When a case is commenced under title 11,
9 United States Code, with respect to a portfolio com-
10 pany, workers not only lose jobs, but also lose wages
11 and benefits that are owed, severance pay that has
12 been promised, and pensions that have been earned.
13 Workers should not be sent to the back of the line
14 behind other creditors if, through no fault of those
15 workers, an investment fails.

16 (8) The performance of private investment
17 funds is often cloaked in secrecy. Those funds have
18 full control over the information that the funds dis-
19 close to investors, which allows the funds to manu-
20 facture their own performance metrics and makes it
21 difficult for an investor to compare the returns to
22 other investment options. Funds also increasingly re-
23 quire investors to waive the fiduciary obligations ap-
24 plicable to the funds. Investors should have the in-

1 formation and bargaining power to take control over
2 their own investments.

3 (9) An increasing amount of risky debt is being
4 introduced into the market and the quality of that
5 debt is deteriorating, raising concerns with regu-
6 lators and lawmakers about systemic risk. The insti-
7 tutions that make and securitize risky loans collect
8 large fees and then pass on risk to unwitting inves-
9 tors. The financial system should not bear all of the
10 risk while lenders and securitizers reap the rewards.

11 (10) The Federal Government should—

12 (A) protect workers, companies, con-
13 sumers, and investors in the United States; and

14 (B) put an end to the practice of looting
15 economically viable companies for the enrich-
16 ment of private investment fund managers.

17 **SEC. 3. DEFINITIONS.**

18 Except as otherwise expressly provided, in this Act:

19 (1) AFFILIATE.—The term “affiliate” means—

20 (A) a person that directly or indirectly
21 owns, controls, or holds with power to vote, 5
22 percent or more of the outstanding voting secu-
23 rities of another entity, other than a person
24 that holds such securities—

1 (i) in a fiduciary or agency capacity
2 without sole discretionary power to vote
3 such securities; or

4 (ii) solely to secure a debt, if such en-
5 tity has not in fact exercised such power to
6 vote;

7 (B) a corporation, 5 percent or more of
8 whose outstanding voting securities are directly
9 or indirectly owned, controlled, or held with
10 power to vote, by another entity (referred to in
11 this subparagraph as a “covered entity”), or by
12 an entity that directly or indirectly owns, con-
13 trols, or holds with power to vote, 5 percent or
14 more of the outstanding voting securities of the
15 covered entity, other than an entity that holds
16 such securities—

17 (i) in a fiduciary or agency capacity
18 without sole discretionary power to vote
19 such securities; or

20 (ii) solely to secure a debt, if such en-
21 tity has not in fact exercised such power to
22 vote;

23 (C) a person whose business is operated
24 under a lease or operating agreement by an-
25 other entity, or person substantially all of whose

1 property is operated under an operating agree-
2 ment with that other entity; or

3 (D) an entity that operates the business or
4 substantially all of the property of another enti-
5 ty under a lease or operating agreement.

6 (2) CAPITAL DISTRIBUTION.—The term “cap-
7 ital distribution” means—

8 (A) a cash or share dividend;

9 (B) a share repurchase;

10 (C) a share redemption;

11 (D) a share buyback;

12 (E) a payment of interest or fee on a share
13 of stock; and

14 (F) any other transaction similar to a
15 transaction described in any of subparagraphs
16 (A) through (E).

17 (3) CHANGE IN CONTROL.—The term “change
18 in control” means a change in a legal right with re-
19 spect to—

20 (A) the power to vote more than 5 per cen-
21 tum of any class of voting securities of a cor-
22 poration that engages in interstate commerce;
23 or

24 (B) any lesser per centum of any class of
25 voting securities of a corporation that engages

1 in interstate commerce that is sufficient to
2 make the acquirer of such an interest a person
3 that has the ability to direct the actions of that
4 corporation.

5 (4) CHANGE IN CONTROL TRANSACTION.—The
6 term “change in control transaction” means a trans-
7 action, or a set of related transactions, that effec-
8 tuates a change in control.

9 (5) COMMISSION.—The term “Commission”
10 means the Securities and Exchange Commission.

11 (6) CONTROL PERSON.—The term “control per-
12 son”—

13 (A) means—

14 (i) a person—

15 (I) that directly or indirectly
16 owns, controls, or holds with power to
17 vote, including through coordination
18 with other persons, 5 percent or more
19 of the outstanding voting interests of
20 a corporation; or

21 (II) that operates the business or
22 substantially all of the property of a
23 corporation under a lease or an oper-
24 ating or management agreement;

1 (ii) a corporation, other than a target
2 firm, that has 5 percent or more of its out-
3 standing voting interests directly or indi-
4 rectly owned, controlled, or held with
5 power to vote by a person that directly or
6 indirectly owns, controls, or holds with
7 power to vote, including through coordina-
8 tion with other persons, 5 percent or more
9 of the outstanding voting interests of an-
10 other corporation; or

11 (iii) a person that otherwise has the
12 ability to direct the actions of a corpora-
13 tion; and

14 (B) does not include a person that—

15 (i)(I) is a limited partner with respect
16 to a controlling private fund that is a part-
17 nership;

18 (II) does not participate in the direc-
19 tion of the management or policy of a cor-
20 poration; and

21 (III) is not an insider with respect to
22 the controlling private fund described in
23 subclause (I);

24 (ii) is a pension fund or employee wel-
25 fare benefit plan, if neither the fund nor

1 plan (as applicable), nor any beneficiary or
2 affiliate of the benefit or plan, is an insider
3 with respect to a controlling private fund;
4 or

5 (iii) holds the voting interests of a
6 corporation solely—

7 (I) in a fiduciary or agency ca-
8 pacity without sole discretionary
9 power to vote the securities; or

10 (II) to secure a debt, if the per-
11 son has not—

12 (aa) exercised the power to
13 vote; or

14 (bb) exercised any other gov-
15 ernance rights with respect to the
16 corporation.

17 (7) CONTROLLING PRIVATE FUND.—The term
18 “controlling private fund” means a private fund
19 that, directly or through an affiliate, becomes a con-
20 trol person with respect to a target firm through the
21 change in control transaction with respect to the tar-
22 get firm.

23 (8) CORPORATION.—The term “corporation”
24 means—

25 (A) a joint-stock company;

1 (B) a company or partnership association
2 organized under a law that makes only the cap-
3 ital subscribed or callable up to a specified
4 amount responsible for the debts of the associa-
5 tion, including a limited partnership and a lim-
6 ited liability company;

7 (C) a trust; and

8 (D) an association having a power or privi-
9 lege that a private corporation, but not an indi-
10 vidual or a partnership, possesses.

11 (9) EMPLOYEE WELFARE BENEFIT PLAN.—The
12 term “employee welfare benefit plan” has the mean-
13 ing given the term in section 3 of the Employee Re-
14 tirement Income Security Act of 1974 (29 U.S.C.
15 1002).

16 (10) HOLDER OF AN ACTIVE INTEREST.—The
17 term “holder of an active interest”—

18 (A) subject to subparagraph (B)(ii),
19 means—

20 (i) a person that directly or indirectly
21 has the right to participate in the govern-
22 ance of a controlling private fund, without
23 regard to the form or source of that right;
24 and

1 (ii) any insider with respect to a con-
2 trolling private fund; and

3 (B) does not include—

4 (i) a person that—

5 (I) holds an economic interest
6 solely to secure a debt, if that person
7 does not exercise any voting or other
8 governance right with respect to the
9 interest;

10 (II)(aa) is a limited partner with
11 respect to a controlling private fund
12 that is a partnership;

13 (bb) does not participate in the
14 direction of the management or policy
15 of a corporation; and

16 (cc) is not an insider with respect
17 to the controlling private fund de-
18 scribed in item (aa); or

19 (III) is a pension fund or em-
20 ployee welfare benefit plan, if neither
21 the pension fund nor employee welfare
22 benefit plan (as applicable), nor any
23 affiliate or beneficiary of the pension
24 fund or employee welfare benefit plan,

1 is an insider with respect to, or affil-
2 iate of, a controlling private fund; or
3 (ii) if the source of the right described
4 in subparagraph (A)(i) is a security—

5 (I) a person that is engaged in
6 business as an underwriter of securi-
7 ties and that acquires that security
8 through the good faith participation
9 of the person in a firm commitment
10 underwriting registered under the Se-
11 curities Act of 1933 (15 U.S.C. 77a
12 et seq.), until the date that is 40 days
13 after the date on which that acquisi-
14 tion occurs; or

15 (II) a member of a national secu-
16 rities exchange solely because that
17 member is the record holder of that
18 security and, under the rules of that
19 exchange—

20 (aa) may direct the vote of
21 that security, without instruction,
22 on—

23 (AA) other than con-
24 tested matters; or

1 (BB) matters that may
2 substantially affect the
3 rights or privileges of the
4 holders of the security to be
5 voted; and

6 (bb) is otherwise precluded
7 from voting without instruction.

8 (11) INSIDER.—The term “insider” means
9 any—

10 (A) director of a corporation;

11 (B) officer of a corporation;

12 (C) managing agent of a corporation;

13 (D) control person with respect to a cor-
14 poration;

15 (E) affiliate of a corporation;

16 (F) general partner of a corporation that
17 is a partnership;

18 (G) consultant or contractor retained by a
19 corporation;

20 (H) affiliate, relative, or agent of a person
21 described in any of subparagraphs (A) through
22 (F); or

23 (I) affiliate, relative, or agent of a person
24 described in subparagraph (H).

1 (12) INVESTMENT ADVISER.—The term “in-
2 vestment adviser” has the meaning given the term
3 in section 202(a) of the Investment Advisers Act of
4 1940 (15 U.S.C. 80b–2(a)).

5 (13) ISSUER.—The term “issuer” has the
6 meaning given the term in section 3(a) of the Secu-
7 rities Exchange Act of 1934 (15 U.S.C. 78c(a)).

8 (14) NATIONAL SECURITIES EXCHANGE.—The
9 term “national securities exchange” means an ex-
10 change that is registered as a national securities ex-
11 change under section 6 of the Securities Exchange
12 Act of 1934 (15 U.S.C. 78f).

13 (15) PENSION FUND.—The term “pension
14 fund” has the meaning given the term “pension
15 plan” in section 3 of the Employee Retirement Secu-
16 rity Act of 1974 (29 U.S.C. 1002).

17 (16) PRIVATE FUND.—The term “private fund”
18 means a corporation that—

19 (A) would be considered an investment
20 company under section 3 of the Investment
21 Company Act of 1940 (15 U.S.C. 80a–3) but
22 for the application of paragraph (1) or (7) of
23 subsection (c) of such section 3;

24 (B) is not a venture capital fund, as de-
25 fined in section 275.203(l)–1 of title 17, Code

1 of Federal Regulations, as in effect on the date
2 of enactment of this Act; and

3 (C) is not an institution selected under sec-
4 tion 107 of the Community Development Bank-
5 ing and Financial Institutions Act of 1994 (12
6 U.S.C. 4706).

7 (17) RELATIVE.—The term “relative” means
8 an individual related by affinity or consanguinity
9 within the third degree as determined by the com-
10 mon law, or individual in a step or adoptive relation-
11 ship within such third degree.

12 (18) SECURITY.—The term “security” has the
13 meaning given the term in section 2(a) of the Secu-
14 rities Act of 1933 (15 U.S.C. 77b(a)).

15 (19) TARGET FIRM.—The term “target firm”
16 means a corporation that is acquired in a change in
17 control transaction.

18 **TITLE I—CORPORATE**
19 **RESPONSIBILITY**

20 **SEC. 101. JOINT AND SEVERAL LIABILITY FOR CONTROL-**
21 **LING PRIVATE FUNDS AND HOLDERS OF AC-**
22 **TIVE INTERESTS IN CONTROLLING PRIVATE**
23 **FUNDS.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of law, or the terms of any contract or agreement,

1 a controlling private fund, and any holder of an active in-
2 terest with respect to a controlling private fund, shall be
3 jointly and severally liable for all liabilities of each target
4 firm for which the controlling private fund is a control
5 person, and for all liabilities of any affiliate of each such
6 target firm, including—

7 (1) any debt incurred by the target firm or an
8 affiliate of the target firm, including as part of the
9 acquisition of the target firm by the controlling pri-
10 vate fund;

11 (2) any Federal or State civil monetary penalty,
12 or obligation under a settlement or consent order
13 with a Federal or State governmental agency or in-
14 strumentality, including a consumer restitution obli-
15 gation, for which the target firm, or an affiliate of
16 the target firm, is liable;

17 (3) any liability resulting from a violation of
18 section 3 of the Worker Adjustment and Retraining
19 Notification Act (29 U.S.C. 2102) by the target firm
20 or an affiliate of the target firm;

21 (4) any withdrawal liability determined under
22 part 1 of subtitle E of title IV of the Employee Re-
23 tirement Income Security Act of 1974 (29 U.S.C.
24 1381 et seq.) that is incurred by the target firm or
25 an affiliate of the target firm; and

1 (5) any claim for unfunded benefit liabilities
2 owed to the Pension Benefit Guaranty Corporation
3 under subtitle D of title IV of the Employee Retirement
4 Income Security Act of 1974 (29 U.S.C. 1361
5 et seq.) with respect to the termination of a pension
6 plan sponsored by the target firm or an affiliate of
7 the target firm.

8 (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-
9 tion may be construed to diminish existing, as of the date
10 of enactment of this Act, controlled group liability under
11 the Employee Retirement Income Security Act of 1974
12 (29 U.S.C. 1001 et seq.).

13 **SEC. 102. INDEMNIFICATION VOID AS AGAINST PUBLIC**
14 **POLICY.**

15 It shall be void as against public policy for a target
16 firm, or an affiliate of a target firm, to indemnify a con-
17 trolling private fund with respect to—

18 (1) the target firm;

19 (2) any affiliate of the target firm; or

20 (3) any person that is the holder of an active
21 interest in the controlling private fund with respect
22 to the liabilities of that person under section 101.

TITLE II—ANTI-LOOTING

SEC. 201. LIMITATIONS ON POST-ACQUISITION DIVIDENDS, DISTRIBUTIONS, REDEMPTIONS, BUYBACKS, AND OUTSOURCING.

(a) IN GENERAL.—No target firm may, directly or indirectly, after the closing date of a change in control transaction that results in a private fund becoming a controlling private fund with respect to the target firm—

(1) for a 4-year period, make a capital distribution or similarly reduce the equity capital of the target firm;

(2) make a capital distribution greater than 10 percent of the sum of all financial obligations of the target firm for each of the previous 2 years or similarly reduce the equity capital of the target firm;

(3) incur an obligation that commits the target firm to making a capital distribution of greater than 10 percent of the new sum of all financial obligations of the firm or a similar reduction of the equity capital of the target firm for each of the following 2 years; or

(4) order a plant closing or mass layoff (as defined in section 2(a) of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101(a))) and relocate the trade or business conducted by the

1 employees in the United States to one or more facili-
2 ties outside the United States, in accordance with
3 regulations issued by the Secretary of Labor.

4 (b) VOID.—Any transfer made or obligation incurred
5 by a target firm or an affiliate with respect to a target
6 firm in violation of subsection (a) shall be void.

7 (c) JOINT AND SEVERAL LIABILITY FOR AIDERS AND
8 ABETTORS.—Any controlling private fund, any holder of
9 an active interest in a controlling private fund, or any af-
10 filiate of a target firm that aids, abets, facilitates, sup-
11 ports, or instructs a target firm's violation of subsection
12 (a) shall be jointly and severally liable under this sub-
13 section for any transfer made or obligation incurred, in-
14 cluding for reasonable attorney's fees and costs awarded
15 to a plaintiff under subsection (d)(2).

16 (d) CAUSE OF ACTION.—

17 (1) IN GENERAL.—Any employee or creditor, or
18 representative of an employee or creditor, of a target
19 firm that is a debtor under title 11, United States
20 Code, or of an affiliate of a target firm that is such
21 a debtor, may bring an action in an appropriate dis-
22 trict court of the United States against the direct or
23 indirect transferee or obligee or beneficiary of the
24 transfer or obligation to void the transfer or obliga-

1 tion and recover any transferred property for the
2 target firm.

3 (2) AWARD.—In a successful action to recover
4 a transfer, the court shall also award the plaintiff
5 reasonable attorney’s fees and costs.

6 **SEC. 202. PREVENTION OF FRAUDULENT TRANSFERS.**

7 (a) LIMITATION ON SAFE HARBORS.—Section 546(e)
8 of title 11, United States Code, is amended by inserting
9 after “548(b) of this title,” the following: “and except in
10 the case of a transfer made in connection with a change
11 in control transaction, as defined in section 3 of the Stop
12 Wall Street Looting Act, or during the protected period,
13 as defined in section 548(f) of this title,”.

14 (b) PRESUMPTION OF INSOLVENCY IN TRANSFERS
15 UNDERTAKEN IN CONNECTION WITH CHANGE IN CON-
16 TROL TRANSACTIONS.—Section 548 of title 11, United
17 States Code, is amended by adding at the end the fol-
18 lowing:

19 “(f)(1) In this subsection—

20 “(A) the terms ‘change in control trans-
21 action’, ‘control person’, and ‘target firm’ have
22 the meanings given those terms in section 3 of
23 the Stop Wall Street Looting Act; and

24 “(B) the term ‘protected period’ means the
25 shorter of—

1 “(i) the 15-year period beginning on
2 the date on which a change in control
3 transaction closed; or

4 “(ii) the period beginning on the date
5 on which a change in control transaction
6 closed and ending on the earliest subse-
7 quent date on which a public offering of a
8 controlling share of the common equity se-
9 curities of the target firm occurs.

10 “(2) For purposes of this section, if the debtor
11 is a target firm, the debtor is presumed to have
12 made a transfer or incurred an obligation described
13 in subparagraphs (A) and (B) of subsection (a)(1)
14 if—

15 “(A) the transfer was made to or obliga-
16 tion was incurred by the debtor or an affiliate
17 in connection with a change in control trans-
18 action; or

19 “(B) during a protected period—

20 “(i) the transfer was made by the
21 debtor or an affiliate to a control person,
22 an affiliate, or an insider; or

23 “(ii) the obligation was incurred by
24 the debtor or an affiliate from a control
25 person, an affiliate, or an insider.

1 “(3) For the purposes of this section, a court
2 shall, in analyzing related transactions, link together
3 as a single transaction any interrelated yet formally
4 distinct steps in an integrated transaction (com-
5 monly known as the ‘step transaction doctrine’).”.

6 (c) STATUTE OF LIMITATIONS.—

7 (1) TITLE 11.—Section 548 of title 11, United
8 States Code, is amended—

9 (A) in subsection (a)(1), by striking para-
10 graph “that was made or incurred on or within
11 15 years before the date of the filing of the pe-
12 tition” and inserting “that was made or in-
13 curred during the period described in subsection
14 (g)”; and

15 (B) adding at the end the following:

16 “(g) The trustee may avoid under subsection (a) a
17 transfer of an interest of the debtor in property or any
18 obligation incurred by the debtor on or within—

19 “(1) 15 years before the date of the filing of
20 the petition if the transfer was made or obligation
21 incurred in connection with a change in control
22 transaction, as defined in section 3 of the Stop Wall
23 Street Looting Act; or

24 “(2) 15 years before the date of the filing of
25 the petition for all other transfers and obligations.”.

1 (2) TITLE 28.—Section 3306(b) of title 28,
2 United States Code, is amended—

3 (A) in paragraph (2), by striking “or” at
4 the end;

5 (B) in paragraph (3), by striking the pe-
6 riod at the end and inserting “; or”; and

7 (C) by adding at the end the following:

8 “(4) within 15 years after the transfer was
9 made or the obligation was incurred, if the transfer
10 was made or the obligation was incurred—

11 “(A) in connection with a change in con-
12 trol transaction, as defined in section 3 of the
13 Stop Wall Street Looting Act; or

14 “(B) during a protected period, as defined
15 in section 548(f) of title 11.”.

16 (d) POWERS AND DUTIES OF COMMITTEES.—Section
17 1103(c) of title 11, United States Code, is amended—

18 (1) by redesignating paragraphs (3) through
19 (5) as paragraphs (4) through (6), respectively; and

20 (2) by inserting after paragraph (2) the fol-
21 lowing:

22 “(3) upon motion, undertake an examination of
23 a director, officer, general partner, or person in con-
24 trol of the debtor regarding potential conflicts of in-
25 terest;”.

1 (e) ELIMINATION OF SHAM INDEPENDENT DIREC-
2 TORS.—Section 1107 of title 11, United States Code, is
3 amended—

4 (1) in subsection (a), by striking “Subject to”
5 and inserting, “Except as provided in subsection (c),
6 subject to”; and

7 (2) by adding at the end the following:

8 “(c) Notwithstanding subsection (a), if a debtor in
9 possession is serving in a case under this title, a committee
10 of creditors appointed under section 1102 of this title shall
11 have the exclusive right of a trustee serving in a case
12 under this chapter to bring or settle on behalf of the es-
13 tate—

14 “(1) an action under section 544, 547, 548, or
15 553 to avoid a transfer made or obligation incurred
16 by the debtor in connection with a change of control
17 transaction, as defined in section 3 of the Stop Wall
18 Street Looting Act; or

19 “(2) an action against an insider, a former in-
20 sider, or an agent or aider and abettor of an insider
21 or former insider.”.

1 **SEC. 203. SURTAX ON CERTAIN AMOUNTS RECEIVED BY IN-**
 2 **VESTMENT FIRMS FROM CONTROLLED TAR-**
 3 **GET FIRMS.**

4 (a) IMPOSITION OF TAX.—Subchapter A of chapter
 5 1 of the Internal Revenue Code of 1986 is amended by
 6 adding at the end the following new part:

7 **“PART VIII—SURTAX ON CERTAIN AMOUNTS**
 8 **RECEIVED BY INVESTMENT FIRMS**

“Sec. 59B. Surtax on certain amounts received by investment firms from controlled target firms.

9 **“SEC. 59B. SURTAX ON CERTAIN AMOUNTS RECEIVED BY**
 10 **INVESTMENT FIRMS FROM CONTROLLED**
 11 **TARGET FIRMS.**

12 “(a) IMPOSITION OF TAX.—

13 “(1) IN GENERAL.—If one or more applicable
 14 payments are included in the gross income of a tax-
 15 payer for any taxable year, then there is hereby im-
 16 posed on the taxpayer for the taxable year a tax
 17 equal to the applicable percentage of the aggregate
 18 amount of such payments. Such tax shall be in addi-
 19 tion to any other tax imposed by this subtitle.

20 “(2) APPLICABLE PERCENTAGE.—For purposes
 21 of this subsection, the term ‘applicable percentage’
 22 means 100 percent, minus the highest rate of tax
 23 under section 1 or 11 (whichever is applicable) for
 24 the taxable year.

1 “(b) APPLICABLE PAYMENT.—For purposes of this
2 section—

3 “(1) IN GENERAL.—The term ‘applicable pay-
4 ment’ means any amount paid or incurred by an ap-
5 plicable entity (or any person related within the
6 meaning of section 267(b) or 707(b) to such entity)
7 to any other person which, at the time such amount
8 is paid or incurred, is an applicable controlling enti-
9 ty. An amount shall be treated as an applicable pay-
10 ment without regard to whether it is paid or in-
11 curred to the taxpayer including it in gross income
12 and to which subsection (a) applies.

13 “(2) EXCEPTIONS.—Such term shall not in-
14 clude any of the following:

15 “(A) INTEREST.—Any amount paid or in-
16 curred which is treated as interest for purposes
17 of this chapter.

18 “(B) DISTRIBUTIONS OF PROPERTY WITH
19 RESPECT TO STOCK.—Any distribution of prop-
20 erty (as defined in section 317(a)) to which sec-
21 tion 301(a) applies.

22 “(c) DEFINITIONS RELATING TO ENTITIES.—For
23 purposes of this section—

24 “(1) APPLICABLE ENTITY.—The term ‘applica-
25 ble entity’ means any person—

1 “(A) which is engaged in the active con-
2 duct of a trade or business, and

3 “(B) with respect to which any other per-
4 son conducts activities in connection with an
5 applicable trade or business.

6 “(2) APPLICABLE CONTROLLING ENTITY.—The
7 term ‘applicable controlling entity’ means, with re-
8 spect to any applicable entity, any person—

9 “(A) which is engaged in an applicable
10 trade or business some or all of the activities of
11 which are conducted in connection with the ap-
12 plicable entity, and

13 “(B) which controls (or is related within
14 the meaning of section 267(b) or 707(b) to a
15 person which controls) the applicable entity.

16 “(3) APPLICABLE TRADE OR BUSINESS.—The
17 term ‘applicable trade or business’ means any activ-
18 ity conducted on a regular, continuous, and substan-
19 tial basis which, regardless of whether the activity is
20 conducted in one or more entities, consists, in whole
21 or in part, of—

22 “(A) raising or returning capital, and

23 “(B) either—

1 “(i) investing in or disposing of speci-
2 fied assets (or identifying specified assets
3 for such investing or disposition), or

4 “(ii) developing specified assets.

5 “(4) SPECIFIED ASSET.—The term ‘specified
6 asset’ means—

7 “(A) securities (as defined in section
8 475(c)(2) but without regard to the phrase
9 ‘widely held or publicly traded’ in subparagraph
10 (B) thereof and without regard to the last sen-
11 tence thereof), and

12 “(B) real estate held for rental or invest-
13 ment.

14 “(d) RULES AND DEFINITIONS RELATING TO OWN-
15 ERSHIP ATTRIBUTION AND CONTROL.—For purposes of
16 this section—

17 “(1) CONSTRUCTIVE OWNERSHIP RULES USED
18 IN DETERMINING RELATED PARTY.—In determining
19 whether persons are related within the meaning of
20 section 267(b) or 707(b), the constructive ownership
21 rules of section 318 shall apply in lieu of the con-
22 structive ownership rules which would otherwise
23 apply, except that in applying such rules the term
24 ‘stock’ shall include capital, profits, or other bene-
25 ficial interests in persons other than corporations.

1 “(2) CONTROL.—

2 “(A) CORPORATIONS.—In the case of a
3 corporation, the term ‘control’ has the meaning
4 given such term by section 304(c) (without re-
5 gard to paragraph (3)(B) thereof).

6 “(B) OTHER ENTITIES.—In the case of a
7 person other than a corporation, such term
8 means the ownership, directly or indirectly, of
9 at least 50 percent of the capital, profits, or
10 other beneficial interests in the person.

11 “(e) REGULATIONS.—The Secretary shall prescribe
12 such regulations or other guidance as may be necessary
13 or appropriate to carry out the provisions of this section,
14 including regulations—

15 “(1) providing for such adjustments to the ap-
16 plication of this section as are necessary to prevent
17 the avoidance of the purposes of this section, includ-
18 ing through the use of unrelated persons, or conduit
19 transactions, and

20 “(2) modifying the constructive ownership rules
21 under section 318 to the extent necessary to apply
22 such rules to capital, profits, or other beneficial in-
23 terests as well as stock.”.

24 (b) DISALLOWANCE OF CREDITS AGAINST TAX.—
25 Subparagraph (B) of section 26(b)(2) of the Internal Rev-

1 enue Code of 1986 is amended by inserting “or section
2 59B (relating to surtax on certain amounts received by
3 investment firms from controlled target firms)” after
4 “anti-abuse tax”).

5 (c) CONFORMING AMENDMENTS.—

6 (1) The table of parts for subchapter A of chap-
7 ter 1 of the Internal Revenue Code of 1986 is
8 amended by adding after the item relating to part
9 VII the following new item:

“PART VIII. SURTAX ON CERTAIN AMOUNTS RECEIVED BY INVESTMENT
FIRMS”.

10 (2) Section 871(b)(1) of such Code is amended
11 by inserting “, and as provided in section 59B on
12 applicable payments included in gross income which
13 are effectively connected with the conduct of a trade
14 or business within the United States” before the pe-
15 riod.

16 (3) Section 882(a)(1) of such Code is amend-
17 ed—

18 (A) by striking “59A,” and inserting
19 “59A”; and

20 (B) by inserting “, and as provided in sec-
21 tion 59B on applicable payments included in
22 gross income which are effectively connected
23 with the conduct of a trade or business within
24 the United States” before the period.

1 (4) Subparagraph (A) of section 6425(c)(1) of
2 such Code is amended by striking “plus” at the end
3 of clause (i), by striking “plus” at the end of clause
4 (ii), by striking “over” at the end of clause (iii) and
5 inserting “and”, and by adding at the end the fol-
6 lowing new clause:

7 “(iv) the tax imposed by section 59B,
8 over”.

9 (5) Paragraph (1) of section 6654(f) of such
10 Code is amended by striking “tax” each place it ap-
11 pears and inserting “taxes”.

12 (6) Subparagraph (A) of section 6655(g)(1) of
13 such Code is amended by striking “plus” at the end
14 of clause (iii), by redesignating clause (iv) as clause
15 (v), and by inserting after clause (iii) the following
16 new clause:

17 “(iv) the tax imposed by section 59B,
18 and”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to applicable payments (as defined
21 in section 59B(b) of the Internal Revenue Code of 1986,
22 as added by this section) paid or accrued on or after the
23 date of the enactment of this Act.

1 **SEC. 204. LIMITATION ON DEDUCTION FOR BUSINESS IN-**
2 **TEREST OF CERTAIN BUSINESSES OWNED BY**
3 **PRIVATE FUNDS.**

4 (a) IN GENERAL.—Section 163(j) of the Internal
5 Revenue Code of 1986 is amended by redesignating para-
6 graph (11) as paragraph (12) and by inserting after para-
7 graph (10) the following new paragraph:

8 “(11) MODIFICATION OF LIMITATION FOR CER-
9 TAIN BUSINESSES OWNED BY PRIVATE FIRMS.—

10 “(A) IN GENERAL.—In the case of a tax-
11 payer which is an applicable entity controlled by
12 an applicable controlling entity (or any person
13 related within the meaning of section 267(b) or
14 707(b) to such entity) at any time during the
15 taxable year—

16 “(i) if the ratio of debt to equity of
17 the taxpayer as of the close of the taxable
18 year (or on any other day during the tax-
19 able year as the Secretary may prescribe in
20 regulations) exceeds 1, then paragraph (1)
21 shall be applied by substituting a percent-
22 age that the Secretary determines appro-
23 priate (and which shall be not less than 30
24 percent) for ‘30 percent’, and

25 “(ii) in the case of the election under
26 paragraph (7)(B) to treat any trade or

1 business of the taxpayer as an electing real
2 property trade or business—

3 “(I) the taxpayer may not make
4 any such election during such taxable
5 year, and

6 “(II) any such election of the
7 taxpayer in effect as of the close of
8 the taxable year preceding such tax-
9 able year with respect to a trade or
10 business shall be revoked, effective for
11 such taxable year and all succeeding
12 taxable years.

13 “(B) RATIO OF DEBT TO EQUITY.—For
14 purposes of this paragraph, the term ‘ratio of
15 debt to equity’ means, with respect to any tax-
16 payer, the ratio which the total indebtedness of
17 the taxpayer bears to the sum of the taxpayer’s
18 money and all other assets reduced (but not
19 below zero) by such total indebtedness. For
20 purposes of the preceding sentence—

21 “(i) the amount taken into account
22 with respect to any asset shall be the ad-
23 justed basis thereof for purposes of deter-
24 mining gain,

1 “(ii) the amount taken into account
2 with respect to any indebtedness with
3 original issue discount shall be its issue
4 price plus the portion of the original issue
5 discount previously accrued as determined
6 under the rules of section 1272 (deter-
7 mined without regard to subsection (a)(7)
8 or (b)(4) thereof), and

9 “(iii) there shall be such other adjust-
10 ments as the Secretary may by regulations
11 prescribe.

12 “(C) COORDINATION WITH DEPRECIATION
13 RULES.—If the alternative depreciation system
14 under section 168(g) applies to property by rea-
15 son of an election under paragraph (7)(B)
16 which is revoked under subparagraph
17 (A)(ii)(II), then the depreciation deduction
18 under section 167(a) with respect to such prop-
19 erty for the taxable year of revocation and all
20 succeeding taxable years shall be determined
21 under section 168 in the same manner as if
22 such revocation were a change in use of the
23 property under section 168(i)(5) and the regu-
24 lations thereunder.

1 “(D) DEFINITIONS AND RULES.—For pur-
2 poses of this paragraph—

3 “ (i) any term used in this paragraph
4 which is also used in section 59B shall
5 have the same meaning as when used in
6 such section, and

7 “ (ii) the constructive ownership rules
8 of section 318 shall apply in the same
9 manner as such rules apply for purposes of
10 section 59B.”.

11 (b) EFFECTIVE DATES.—

12 (1) IN GENERAL.—The amendments made by
13 this section shall apply to taxable years beginning on
14 or after the date of enactment of this Act.

15 (2) REVOCATION OF ELECTIONS.—Subpara-
16 graphs (A)(ii)(II) and (C) of section 163(j)(11) of
17 the Internal Revenue Code of 1986, as added by this
18 section, shall apply to taxable years beginning on or
19 after the date of enactment of this Act, with respect
20 to elections under section 163(j)(7)(B) of such Code
21 made before, on, or after such date.

1 **SEC. 205. GUARDRAILS AROUND ACCESSING PUBLIC**
2 **FUNDS.**

3 The Investment Company Act of 1940 (15 U.S.C.
4 80a–1 et seq.) is amended by adding at the end the fol-
5 lowing:

6 **“SEC. 66. DISCLOSURES.**

7 “Any person described in paragraph (1) or (7) of sec-
8 tion 3(c) that receives funds from a Federal or State agen-
9 cy—

10 “(1) shall publicly disclose—

11 “(A) the total funds received from the
12 agency;

13 “(B) the workforce demographics of the
14 person;

15 “(C) the amount of loans, grants, or other
16 benefits provided;

17 “(D) the use of the proceeds;

18 “(E) how many jobs were saved or wages
19 preserved;

20 “(F) any loans forgiven or discharged;

21 “(G) the beneficial owners of the person;

22 “(H) the pay ratio between the chief execu-
23 tive officer and the median pay of employees;

24 and

1 “(2) may not, during the 2-year period begin-
2 ning on the date on which the person receives the
3 funds—

4 “(A) acquire any company; or

5 “(B) make any distribution to a share-
6 holder of the person.”.

7 **SEC. 206. PROHIBITING PAYMENTS FROM FEDERAL**
8 **HEALTH CARE PROGRAMS TO ENTITIES THAT**
9 **SELL ASSETS TO OR USE ASSETS AS COLLAT-**
10 **ERAL FOR A LOAN WITH A REAL ESTATE IN-**
11 **VESTMENT TRUST.**

12 Section 1128(a) of the Social Security Act (42 U.S.C.
13 1320a-7(a)) is amended by adding at the end the fol-
14 lowing new paragraph:

15 “(5) SELLING ASSETS TO OR USING ASSETS AS
16 COLLATERAL FOR A LOAN WITH A REAL ESTATE IN-
17 VESTMENT TRUST.—

18 “(A) IN GENERAL.—Any individual or en-
19 tity that, on or after the date of enactment of
20 this paragraph, sells any assets to, or newly
21 pledges any assets as collateral for a loan with,
22 a real estate investment trust (as defined in
23 section 856(a) of the Internal Revenue Code of
24 1986).

1 “(B) CLARIFICATION.—Subparagraph (A)
2 shall not apply in the case where an individual
3 or entity agreed to pledge an asset as collateral
4 for a loan with a real estate investment trust
5 prior to the date of enactment of this para-
6 graph, including with respect to any future
7 agreement between the individual or entity and
8 the real estate investment trust regarding that
9 same asset.”.

10 **SEC. 207. REPEAL OF SPECIAL RULE FOR TAXABLE REIT**
11 **SUBSIDIARIES WITH INTERESTS IN CERTAIN**
12 **HEALTH CARE PROPERTY.**

13 (a) IN GENERAL.—Section 856(d)(8)(B) of the Inter-
14 nal Revenue Code of 1986 is amended—

15 (1) by striking “or a qualified health care prop-
16 erty (as defined in subsection (e)(6)(D)(i))”, and

17 (2) by striking “qualified health care property
18 or”.

19 (b) CONFORMING AMENDMENTS.—Section 856(d)(9)
20 of such Code is amended—

21 (1) in subparagraph (A)—

22 (A) by striking “or a qualified health care
23 property (as defined in subsection
24 (e)(6)(D)(i))”,

1 (B) by striking “or qualified health care
2 property”, and

3 (C) by striking “or qualified health care
4 properties”, and

5 (2) in subparagraph (B)—

6 (A) by striking “or qualified health care
7 property (as so defined)”, and

8 (B) by striking “or qualified health care
9 property” each place it appears in clauses (i),
10 (ii), and (iii)(II).

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years beginning after
13 the date of the enactment of this Act.

14 **SEC. 208. ELIMINATION OF QUALIFIED REIT DIVIDENDS**
15 **FROM QUALIFIED BUSINESS INCOME.**

16 (a) IN GENERAL.—Paragraph (1) of section 199A(b)
17 of the Internal Revenue Code of 1986 is amended to read
18 as follows:

19 “(1) IN GENERAL.—The term ‘combined quali-
20 fied business income amount’ means, with respect to
21 any taxable year, an amount equal to the sum of the
22 amounts determined under paragraph (2) for each
23 qualified trade or business carried on by the tax-
24 payer.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 199A(c)(1) of such Code is amend-
2 ed by striking the last sentence.

3 (2) Section 199A(e) of such Code is amended
4 by striking paragraph (3) and by redesignating
5 paragraph (4) as paragraph (3).

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to taxable years beginning after
8 the date of the enactment of this Act.

9 **SEC. 209. PROTECTIONS FOR STRIKING WORKERS.**

10 (a) IN GENERAL.—Section 8 of the National Labor
11 Relations Act (29 U.S.C. 158) is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (5), by striking the pe-
14 riod and inserting “;”; and

15 (B) by adding at the end the following:

16 “(6) to promise, threaten, or take any action—

17 “(A) to permanently replace an employee
18 who participates in a strike as defined by sec-
19 tion 501(2) of the Labor Management Rela-
20 tions Act, 1947 (29 U.S.C. 142(2));

21 “(B) to discriminate against an employee
22 who is working or has unconditionally offered to
23 return to work for the employer because the
24 employee supported or participated in such a
25 strike; or

1 “(C) to lockout, suspend, or otherwise
2 withhold employment from employees in order
3 to influence the position of such employees or
4 the representative of such employees in collec-
5 tive bargaining prior to a strike; and

6 “(7) to communicate or misrepresent to an em-
7 ployee under section 2(3) that such employee is ex-
8 cluded from the definition of employee under section
9 2(3).”;

10 (2) in subsection (b)—

11 (A) by striking paragraphs (4) and (7);

12 (B) by redesignating paragraphs (5) and
13 (6) as paragraphs (4) and (5), respectively;

14 (C) in paragraph (4), as so redesignated,
15 by striking “affected;” and inserting “affected;
16 and”; and

17 (D) in paragraph (5), as so redesignated,
18 by striking “; and” and inserting a period;

19 (3) in subsection (c), by striking the period at
20 the end and inserting the following: “: *Provided,*
21 That it shall be an unfair labor practice under sub-
22 section (a)(1) for any employer to require or coerce
23 an employee to attend or participate in such employ-
24 er’s campaign activities unrelated to the employee’s
25 job duties, including activities that are subject to the

1 requirements under section 203(b) of the Labor-
2 Management Reporting and Disclosure Act of 1959
3 (29 U.S.C. 433(b)).”; and

4 (4) in subsection (d), in the matter preceding
5 paragraph (1), by inserting “and to maintain cur-
6 rent wages, hours, and terms and conditions of em-
7 ployment pending an agreement” after “arising
8 thereunder”.

9 (b) CONFORMING AMENDMENTS.—The National
10 Labor Relations Act is amended—

11 (1) in section 8(e) (29 U.S.C. 158(e)), by strik-
12 ing “and section 8(b)(4)(B)”;

13 (2) in section 10 (29 U.S.C. 160)—

14 (A) by repealing subsection (k); and

15 (B) in subsection (l)—

16 (i) by striking “of paragraph” and all
17 that follows through “the preliminary” and
18 inserting “of section 8(e), the prelimi-
19 nary”;

20 (ii) by striking the second proviso;

21 and

22 (iii) by striking the final sentence.

1 **TITLE III—PROTECTING WORK-**
2 **ERS WHEN COMPANIES GO**
3 **BANKRUPT**

4 **SEC. 301. INCREASED PRIORITY FOR WAGES.**

5 Section 507(a) of title 11, United States Code, is
6 amended—

7 (1) in paragraph (4)—

8 (A) by redesignating subparagraphs (A)
9 and (B) as clauses (i) and (ii), respectively;

10 (B) in the matter preceding clause (i), as
11 so redesignated, by inserting “(A)” before
12 “Fourth”;

13 (C) in subparagraph (A), as so designated,
14 in the matter preceding clause (i), as so reded-
15 igned—

16 (i) by striking “\$10,000” and insert-
17 ing “\$20,000”;

18 (ii) by striking “within 180 days”;
19 and

20 (iii) by striking “or the date of the
21 cessation of the debtor’s business, which-
22 ever occurs first”; and

23 (D) by adding at the end the following:

24 “(B) Severance pay described in subparagraph
25 (A)(i) shall be deemed earned in full upon the layoff

1 or termination of employment of the individual to
2 whom the severance pay is owed.”; and

3 (2) in paragraph (5)—

4 (A) in subparagraph (A)—

5 (i) by striking “within 180 days”; and

6 (ii) by striking “or the date of the
7 cessation of the debtor’s business, which-
8 ever occurs first”; and

9 (B) by striking subparagraph (B) and in-
10 sserting the following:

11 “(B) for each such plan, to the extent of
12 the number of employees covered by each such
13 plan multiplied by \$20,000.”.

14 **SEC. 302. PRIORITY FOR SEVERANCE PAY AND CONTRIBU-**
15 **TIONS TO EMPLOYEE WELFARE BENEFIT**
16 **PLANS.**

17 Section 503(b) of title 11, United States Code, is
18 amended—

19 (1) in paragraph (8)(B), by striking “and” at
20 the end;

21 (2) in paragraph (9), by striking the period and
22 inserting a semicolon; and

23 (3) by adding at the end the following:

24 “(10) severance pay owed to employees of the
25 debtor (other than to an insider of the debtor or a

1 senior executive officer of the debtor), under a plan,
2 program, or policy generally applicable to employees
3 of the debtor (but not under an individual contract
4 of employment), or owed pursuant to a collective
5 bargaining agreement, for layoff or termination on
6 or after the date of the filing of the petition, which
7 pay shall be deemed earned in full upon such layoff
8 or termination of employment; and

9 “(11) any contribution due on or after the date
10 of the filing of the petition under an employee wel-
11 fare benefit plan, as defined in section 3 of the Stop
12 Wall Street Looting Act.”.

13 **SEC. 303. PRIORITY FOR VIOLATIONS OF FEDERAL AND**
14 **STATE LAWS.**

15 (a) ALLOWANCE OF ADMINISTRATIVE EXPENSES IN
16 BANKRUPTCY CASES.—Section 503(b)(1)(A)(ii) of title
17 11, United States Code, is amended by inserting after
18 “(ii)” the following: “any back pay, civil penalty, or dam-
19 ages for a violation of any Federal or State labor and em-
20 ployment law, including the Worker Adjustment and Re-
21 training Notification Act (29 U.S.C. 2101 et seq.) and any
22 comparable State law, and”.

23 (b) ADMINISTRATION AND ENFORCEMENT OF WORK-
24 ER ADJUSTMENT AND RETRAINING NOTIFICATION RE-
25 QUIREMENTS.—Section 5(a)(1) of the Worker Adjustment

1 and Retraining Notification Act (29 U.S.C. 2104(a)(1))
2 is amended, in the matter following subparagraph (B)—

3 (1) by inserting “which for purposes of this
4 sentence shall consist of the days, in the notification
5 period, that are or that follow the date of the pro-
6 hibited closing or layoff under this Act,” after “pe-
7 riod of the violation,”; and

8 (2) by inserting “calendar” after “60”.

9 **SEC. 304. LIMITATION ON EXECUTIVE COMPENSATION EN-**
10 **HANCEMENTS.**

11 Section 503(e) of title 11, United States Code, is
12 amended—

13 (1) in the matter preceding paragraph (1), by
14 inserting “and subject to section 363(b)(3),” after
15 “Notwithstanding subsection (b),”;

16 (2) in paragraph (1), in the matter preceding
17 subparagraph (A)—

18 (A) by inserting “, a senior executive offi-
19 cer of the debtor, or any of the 20 next most
20 highly compensated employees of the debtor, de-
21 partment or division managers of the debtor, or
22 consultants providing services to the debtor (re-
23 gardless of whether the executive officer, em-
24 ployee, manager, or consultant is an insider)”
25 after “insider of the debtor”;

1 (B) by inserting “or for the payment of
2 performance or incentive compensation, a bonus
3 of any kind, or any other financial return de-
4 signed to replace or enhance incentive, stock, or
5 other compensation in effect before the date of
6 the commencement of the case,” after “remain
7 with the debtor’s business,”; and

8 (C) by inserting “clear and convincing” be-
9 fore “evidence in the record”;

10 (3) in paragraph (2), in the matter preceding
11 subparagraph (A), by inserting “, a senior executive
12 officer of the debtor, or any of the 20 next most
13 highly compensated employees of the debtor, depart-
14 ment or division managers of the debtor, or consult-
15 ants providing services to the debtor (regardless of
16 whether the executive officer, employee, manager, or
17 consultant is an insider)” after “an insider of the
18 debtor”; and

19 (4) by striking paragraph (3) and inserting the
20 following:

21 “(3) any other transfer or obligation to or for
22 the benefit of an insider of the debtor, a senior exec-
23 utive officer of the debtor, or any of the 20 next
24 most highly compensated employees of the debtor,
25 department or division managers of the debtor, or

1 consultants providing services to the debtor (regard-
2 less of whether the executive officer, employee, man-
3 ager, or consultant is an insider), absent a finding
4 by the court, based upon clear and convincing evi-
5 dence in the record, and without deference to a re-
6 quest by the debtor for such payment, that—

7 “(A) because of the essential and particu-
8 larized nature of the services provided by the
9 insider, executive officer, employee, manager, or
10 consultant, the transfer or obligation is essen-
11 tial to—

12 “(i) the survival of the business of the
13 debtor; or

14 “(ii) in a case in which some or all of
15 the assets of the debtor are liquidated, the
16 orderly liquidation of the assets;

17 “(B) in the case of a transfer or obligation
18 under an incentive program, the transfer or ob-
19 ligation is part of a workforce incentive pro-
20 gram generally applicable to the nonmanage-
21 ment workforce of the debtor; and

22 “(C) the cost of the transfer or obliga-
23 tion—

24 “(i) is reasonable;

1 “(ii) is not excessive in the context of
2 the financial circumstances of the debtor;
3 and

4 “(iii) is not disproportionate in light
5 of any economic loss incurred by the non-
6 management workforce of the debtor dur-
7 ing the case.”.

8 **SEC. 305. PROHIBITION AGAINST SPECIAL COMPENSATION**
9 **PAYMENTS.**

10 Section 363 of title 11, United States Code, is
11 amended—

12 (1) in subsection (b), by adding at the end the
13 following:

14 “(3) No plan, program, or other transfer or obliga-
15 tion to or for the benefit of an insider of the debtor, a
16 senior executive officer of the debtor, or any of the 20
17 next most highly compensated employees of the debtor, de-
18 partment or division managers of the debtor, or consult-
19 ants providing services to the debtor (regardless of wheth-
20 er the executive officer, employee, manager, or consultant
21 is an insider) shall be approved if the debtor has, on or
22 after the date that is 1 year before the date of the filing
23 of the petition—

1 “(A) discontinued any plan, program, policy or
2 practice of paying severance pay to the nonmanage-
3 ment workforce of the debtor; or

4 “(B) modified any plan, program, policy, or
5 practice described in subparagraph (A) in order to
6 reduce benefits under the plan, program, policy or
7 practice.”; and

8 (2) in subsection (c)(1), by inserting before the
9 period at the end the following: “, except that, for
10 any transaction that constitutes a transfer or obliga-
11 tion subject to section 503(c), the trustee shall be
12 required to obtain the prior approval of the court
13 after notice and an opportunity for a hearing”.

14 **SEC. 306. EXECUTIVE COMPENSATION UPON EXIT FROM**
15 **BANKRUPTCY.**

16 Section 1129(a) of title 11, United States Code, is
17 amended—

18 (1) in paragraph (4), by adding at the end the
19 following: “Except for compensation subject to re-
20 view under paragraph (5), any payment or other dis-
21 tribution under the plan to or for the benefit of an
22 insider of the debtor, a senior executive officer of the
23 debtor, or any of the 20 next most highly com-
24 pensated employees of the debtor, department or di-
25 vision managers of the debtor, or consultants pro-

1 viding services to the debtor (regardless of whether
2 the executive officer, employee, manager, or consult-
3 ant is an insider), shall not be approved by the court
4 except as part of a program of payments or distribu-
5 tions generally applicable to employees of the debtor,
6 and only to the extent that the court determines
7 that the payment or other distribution is not exces-
8 sive or disproportionate in comparison to payments
9 or other distributions to the nonmanagement work-
10 force of the debtor.”; and

11 (2) in paragraph (5)—

12 (A) in subparagraph (A)(ii), by striking
13 “and” at the end;

14 (B) in subparagraph (B), by striking the
15 period at the end and inserting “; and”; and

16 (C) by adding at the end the following:

17 “(C) the compensation disclosed pursuant to
18 subparagraph (B) has been approved by, or is sub-
19 ject to the approval of, the court as—

20 “(i) reasonable in comparison to compensa-
21 tion paid to individuals holding comparable po-
22 sitions at comparable companies in the same in-
23 dustry; and

1 “(ii) benefiting the holder of the allowed
2 secured claim; and

3 “(B) recovered by the trustee for payment to
4 the employees or the employee welfare benefit plan,
5 as defined in section 3 of the Stop Wall Street
6 Looting Act, as applicable, even if the trustee, or a
7 predecessor or successor in interest, has otherwise
8 waived the provisions of this subsection under an
9 agreement with the holder of the allowed secured
10 claim or a successor or predecessor in interest of the
11 holder of the allowed secured claim.”.

12 **SEC. 308. VOIDABILITY OF PREFERENTIAL COMPENSATION**
13 **TRANSFERS.**

14 Section 547 of title 11, United States Code, is
15 amended by adding at the end the following:

16 “(j)(1) The trustee may avoid a transfer to or for
17 the benefit of an insider of the debtor, a senior executive
18 officer of the debtor, or any of the 20 next most highly
19 compensated employees of the debtor, department or divi-
20 sion managers of the debtor, or consultants providing serv-
21 ices to the debtor (regardless of whether the executive offi-
22 cer, employee, manager, or consultant is an insider),
23 that—

1 “(A) is made or incurred under a retention,
2 bonus, or incentive plan devised before the date of
3 the filing of the petition; and

4 “(B) does not meet the requirements under sec-
5 tion 363(b)(3) or 503(c).

6 “(2) Subsection (c) shall not constitute a defense
7 against the recovery of a transfer under paragraph (1) of
8 this subsection.

9 “(3)(A) The trustee, or a committee appointed under
10 section 1102, may commence an action to recover a trans-
11 fer under paragraph (1) of this subsection.

12 “(B) If neither the trustee nor a committee com-
13 mences an action to recover a transfer under subpara-
14 graph (A) before the date of the commencement of a hear-
15 ing on the confirmation of a plan, any party in interest
16 may apply to the court for authority to recover the trans-
17 fer for the benefit of the estate, in which case the costs
18 of recovery shall be borne by the estate.”.

19 **SEC. 309. PROTECTION FOR EMPLOYEES IN A SALE OF AS-**
20 **SETS.**

21 (a) REQUIREMENT RELATING TO PRESERVING JOBS
22 AND MAINTAINING TERMS AND CONDITIONS RELATING
23 TO EMPLOYMENT.—Section 363 of title 11, United States
24 Code, is amended by adding at the end the following:

1 “(q)(1) In approving a sale or lease of property of
2 the estate under this section, or under a plan under chap-
3 ter 11, the court shall give substantial weight to the extent
4 to which a prospective purchaser or lessee, respectively,
5 of the property will—

6 “(A) preserve the jobs of the workforce of the
7 debtor; and

8 “(B) maintain the terms and conditions of em-
9 ployment of the workforce of the debtor.

10 “(2) If there are two or more offers to purchase or
11 lease property of the estate under this section, or under
12 a plan under chapter 11, that qualify under the procedures
13 for the sale or lease, respectively, approved by the court,
14 the court shall approve the offer that best—

15 “(A) preserves the jobs of the workforce of the
16 debtor; and

17 “(B) maintains the terms and conditions of em-
18 ployment of the workforce of the debtor.

19 “(r)(1) Any party seeking to purchase or lease prop-
20 erty of the estate under this section, or under a plan under
21 chapter 11, shall represent to the court the effect of such
22 a transaction with respect to—

23 “(A) the preservation of the jobs of the work-
24 force of the debtor; and

1 “(B) the maintenance of the terms and condi-
2 tions of employment of the workforce of the debtor.

3 “(2) The court shall expressly include in an order ap-
4 proving a purchase or lease of property of the estate under
5 this section, or under a plan under chapter 11, any rep-
6 resentation made by a purchaser or lessee of the property
7 under paragraph (1).

8 “(3) With respect to a purchase or lease of property
9 of the estate under this section, or under a plan under
10 chapter 11—

11 “(A) the court shall have jurisdiction over the
12 purchaser or lessee of the property in order to en-
13 force the terms of the order approving the purchase
14 or lease;

15 “(B) the purchaser or lessee shall promptly dis-
16 close to the court any material noncompliance with
17 the terms of the order described in subparagraph
18 (A) and explain the basis for such noncompliance;
19 and

20 “(C) with respect to material noncompliance de-
21 scribed in subparagraph (B), the court may impose
22 any appropriate remedy, including injunctive relief,
23 to address the noncompliance.”.

24 (b) PLANS UNDER CHAPTER 11.—

1 (1) CONTENTS OF PLAN.—Section 1123(b)(4)
2 of title 11, United States Code, is amended by in-
3 sserting “, which sale shall be subject to the require-
4 ments under subsections (q) and (r) of section 363
5 of this title,” after “property of the estate”.

6 (2) CONFIRMATION OF PLAN.—Section 1129(a)
7 of title 11, United States Code, is amended by add-
8 ing at the end the following:

9 “(17) If the plan provides for the sale of all or
10 substantially all of the property of the estate, the
11 sale meets the requirements under subsections (q)
12 and (r) of section 363 of this title.”.

13 **SEC. 310. PROTECTION OF GIFT CARD PURCHASERS.**

14 (a) DEFINITION OF GIFT CARD.—Section 101(a) of
15 title 11, United States Code, is amended by inserting after
16 paragraph (26) the following:

17 “(26A) The term ‘gift card’ means a paper or
18 electronic promise, plastic card, or other payment
19 code or device that is—

20 “(A) redeemable at—

21 “(i) a single merchant; or

22 “(ii) an affiliated group of merchants
23 that share the same name, mark, or logo;

24 “(B) issued in a specified amount, regard-
25 less of whether that amount may be increased

1 in value or reloaded at the request of the hold-
2 er;

3 “(C) purchased on a prepaid basis in ex-
4 change for payment; and

5 “(D) honored by the single merchant or af-
6 filiated group of merchants described in sub-
7 paragraph (A) upon presentation for goods or
8 services.”.

9 (b) CONSUMER DEPOSIT.—Section 507(a) of title 11,
10 United States Code, is amended by striking paragraph (7)
11 and inserting the following:

12 “(7) Seventh, allowed unsecured claims of indi-
13 viduals, to the extent of \$1,800 for each such indi-
14 vidual, arising from the deposit, before the com-
15 mencement of the case, of money in connection
16 with—

17 “(A) the purchase, lease, or rental of prop-
18 erty;

19 “(B) the purchase of services, for the per-
20 sonal, family, or household use of such individ-
21 uals, that were not delivered or provided; or

22 “(C) the purchase of a gift card with re-
23 spect to which funds exist that have not been
24 redeemed.”.

1 **SEC. 311. COMMERCIAL REAL ESTATE.**

2 Section 365(d) of title 11, United States Code, is
3 amended—

4 (1) by striking paragraph (4); and

5 (2) by redesignating paragraph (5) as para-
6 graph (4).

7 **TITLE IV—CLOSING TAX**
8 **LOOPHOLES**

9 **SEC. 401. AMENDMENT OF 1986 CODE.**

10 Except as otherwise expressly provided, whenever in
11 this title an amendment or repeal is expressed in terms
12 of an amendment to, or repeal of, a section or other provi-
13 sion, the reference shall be considered to be made to a
14 section or other provision of the Internal Revenue Code
15 of 1986.

16 **SEC. 402. PARTNERSHIP INTERESTS TRANSFERRED IN**
17 **CONNECTION WITH PERFORMANCE OF SERV-**
18 **ICES.**

19 (a) MODIFICATION TO ELECTION TO INCLUDE PART-
20 NERSHIP INTEREST IN GROSS INCOME IN YEAR OF
21 TRANSFER.—Subsection (c) of section 83 is amended by
22 redesignating paragraph (4) as paragraph (5) and by in-
23 serting after paragraph (3) the following new paragraph:

24 “(4) PARTNERSHIP INTERESTS.—Except as
25 provided by the Secretary—

1 “(A) IN GENERAL.—In the case of any
2 transfer of an interest in a partnership in con-
3 nection with the provision of services to (or for
4 the benefit of) such partnership—

5 “(i) the fair market value of such in-
6 terest shall be treated for purposes of this
7 section as being equal to the amount of the
8 distribution which the partner would re-
9 ceive if the partnership sold (at the time of
10 the transfer) all of its assets at fair market
11 value and distributed the proceeds of such
12 sale (reduced by the liabilities of the part-
13 nership) to its partners in liquidation of
14 the partnership, and

15 “(ii) the person receiving such interest
16 shall be treated as having made the elec-
17 tion under subsection (b)(1) unless such
18 person makes an election under this para-
19 graph to have such subsection not apply.

20 “(B) ELECTION.—The election under sub-
21 paragraph (A)(ii) shall be made under rules
22 similar to the rules of subsection (b)(2).”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to interests in partnerships trans-
25 ferred after the date of enactment of this Act.

1 **SEC. 403. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
2 **VESTMENT MANAGEMENT SERVICES TO**
3 **PARTNERSHIPS.**

4 (a) IN GENERAL.—Part I of subchapter K of chapter
5 1 is amended by adding at the end the following new sec-
6 tion:

7 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
8 **VESTMENT MANAGEMENT SERVICES TO**
9 **PARTNERSHIPS.**

10 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF
11 PARTNERSHIP ITEMS.—For purposes of this title, in the
12 case of an investment services partnership interest—

13 “(1) IN GENERAL.—Notwithstanding section
14 702(b)—

15 “(A) an amount equal to the net capital
16 gain with respect to such interest for any part-
17 nership taxable year shall be treated as ordi-
18 nary income, and

19 “(B) subject to the limitation of paragraph
20 (2), an amount equal to the net capital loss
21 with respect to such interest for any partner-
22 ship taxable year shall be treated as an ordi-
23 nary loss.

24 “(2) RECHARACTERIZATION OF LOSSES LIM-
25 ITED TO RECHARACTERIZED GAINS.—The amount
26 treated as ordinary loss under paragraph (1)(B) for

1 any taxable year shall not exceed the excess (if any)
2 of—

3 “(A) the aggregate amount treated as ordi-
4 nary income under paragraph (1)(A) with re-
5 spect to the investment services partnership in-
6 terest for all preceding partnership taxable
7 years to which this section applies, over

8 “(B) the aggregate amount treated as or-
9 dinary loss under paragraph (1)(B) with re-
10 spect to such interest for all preceding partner-
11 ship taxable years to which this section applies.

12 “(3) ALLOCATION TO ITEMS OF GAIN AND
13 LOSS.—

14 “(A) NET CAPITAL GAIN.—The amount
15 treated as ordinary income under paragraph
16 (1)(A) shall be allocated ratably among the
17 items of long-term capital gain taken into ac-
18 count in determining such net capital gain.

19 “(B) NET CAPITAL LOSS.—The amount
20 treated as ordinary loss under paragraph (1)(B)
21 shall be allocated ratably among the items of
22 long-term capital loss and short-term capital
23 loss taken into account in determining such net
24 capital loss.

1 “(4) TERMS RELATING TO CAPITAL GAINS AND
2 LOSSES.—For purposes of this section—

3 “(A) IN GENERAL.—Net capital gain, long-
4 term capital gain, and long-term capital loss,
5 with respect to any investment services partner-
6 ship interest for any taxable year, shall be de-
7 termined under section 1222, except that such
8 section shall be applied—

9 “(i) without regard to the recharacter-
10 ization of any item as ordinary income or
11 ordinary loss under this section,

12 “(ii) by only taking into account items
13 of gain and loss taken into account by the
14 holder of such interest under section 702
15 (other than subsection (a)(9) thereof) with
16 respect to such interest for such taxable
17 year, and

18 “(iii) by treating property which is
19 taken into account in determining gains
20 and losses to which section 1231 applies as
21 capital assets held for more than 1 year.

22 “(B) NET CAPITAL LOSS.—The term ‘net
23 capital loss’ means the excess of the losses from
24 sales or exchanges of capital assets over the
25 gains from such sales or exchanges. Rules simi-

1 lar to the rules of clauses (i) through (iii) of
2 subparagraph (A) shall apply for purposes of
3 the preceding sentence.

4 “(5) SPECIAL RULE FOR DIVIDENDS.—Any div-
5 idend allocated with respect to any investment serv-
6 ices partnership interest shall not be treated as
7 qualified dividend income for purposes of section
8 1(h).

9 “(6) SPECIAL RULE FOR QUALIFIED SMALL
10 BUSINESS STOCK.—Section 1202 shall not apply to
11 any gain from the sale or exchange of qualified small
12 business stock (as defined in section 1202(c)) allo-
13 cated with respect to any investment services part-
14 nership interest.

15 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

16 “(1) GAIN.—

17 “(A) IN GENERAL.—Any gain on the dis-
18 position of an investment services partnership
19 interest shall be—

20 “(i) treated as ordinary income, and

21 “(ii) recognized notwithstanding any
22 other provision of this subtitle.

23 “(B) GIFT AND TRANSFERS AT DEATH.—

24 In the case of a disposition of an investment

1 services partnership interest by gift or by rea-
2 son of death of the taxpayer—

3 “(i) subparagraph (A) shall not apply,

4 “(ii) such interest shall be treated as
5 an investment services partnership interest
6 in the hands of the person acquiring such
7 interest, and

8 “(iii) any amount that would have
9 been treated as ordinary income under this
10 subsection had the decedent sold such in-
11 terest immediately before death shall be
12 treated as an item of income in respect of
13 a decedent under section 691.

14 “(2) LOSS.—Any loss on the disposition of an
15 investment services partnership interest shall be
16 treated as an ordinary loss to the extent of the ex-
17 cess (if any) of—

18 “(A) the aggregate amount treated as ordi-
19 nary income under subsection (a) with respect
20 to such interest for all partnership taxable
21 years to which this section applies, over

22 “(B) the aggregate amount treated as or-
23 dinary loss under subsection (a) with respect to
24 such interest for all partnership taxable years
25 to which this section applies.

1 “(3) ELECTION WITH RESPECT TO CERTAIN EX-
2 CHANGES.—Paragraph (1)(A)(ii) shall not apply to
3 the contribution of an investment services partner-
4 ship interest to a partnership in exchange for an in-
5 terest in such partnership if—

6 “(A) the taxpayer makes an irrevocable
7 election to treat the partnership interest re-
8 ceived in the exchange as an investment serv-
9 ices partnership interest, and

10 “(B) the taxpayer agrees to comply with
11 such reporting and recordkeeping requirements
12 as the Secretary may prescribe.

13 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-
14 ERTY.—

15 “(A) IN GENERAL.—In the case of any dis-
16 tribution of property by a partnership with re-
17 spect to any investment services partnership in-
18 terest held by a partner, the partner receiving
19 such property shall recognize gain equal to the
20 excess (if any) of—

21 “(i) the fair market value of such
22 property at the time of such distribution,
23 over

24 “(ii) the adjusted basis of such prop-
25 erty in the hands of such partner (deter-

1 mined without regard to subparagraph
2 (C)).

3 “(B) TREATMENT OF GAIN AS ORDINARY
4 INCOME.—Any gain recognized by such partner
5 under subparagraph (A) shall be treated as or-
6 dinary income to the same extent and in the
7 same manner as the increase in such partner’s
8 distributive share of the taxable income of the
9 partnership would be treated under subsection
10 (a) if, immediately prior to the distribution, the
11 partnership had sold the distributed property at
12 fair market value and all of the gain from such
13 disposition were allocated to such partner. For
14 purposes of applying subsection (a)(2), any gain
15 treated as ordinary income under this subpara-
16 graph shall be treated as an amount treated as
17 ordinary income under subsection (a)(1)(A).

18 “(C) ADJUSTMENT OF BASIS.—In the case
19 a distribution to which subparagraph (A) ap-
20 plies, the basis of the distributed property in
21 the hands of the distributee partner shall be the
22 fair market value of such property.

23 “(D) SPECIAL RULES WITH RESPECT TO
24 MERGERS AND DIVISIONS.—In the case of a
25 taxpayer which satisfies requirements similar to

1 the requirements of subparagraphs (A) and (B)
2 of paragraph (3), this paragraph and paragraph
3 (1)(A)(ii) shall not apply to the distribution of
4 a partnership interest if such distribution is in
5 connection with a contribution (or deemed con-
6 tribution) of any property of the partnership to
7 which section 721 applies pursuant to a trans-
8 action described in section 708(b)(2).

9 “(c) INVESTMENT SERVICES PARTNERSHIP INTER-
10 EST.—For purposes of this section—

11 “(1) IN GENERAL.—The term ‘investment serv-
12 ices partnership interest’ means any interest in an
13 investment partnership acquired or held by any per-
14 son in connection with the conduct of a trade or
15 business described in paragraph (2) by such person
16 (or any person related to such person). An interest
17 in an investment partnership held by any person—

18 “(A) shall not be treated as an investment
19 services partnership interest for any period be-
20 fore the first date on which it is so held in con-
21 nection with such a trade or business,

22 “(B) shall not cease to be an investment
23 services partnership interest merely because
24 such person holds such interest other than in
25 connection with such a trade or business, and

1 “(C) shall be treated as an investment
2 services partnership interest if acquired from a
3 related person in whose hands such interest was
4 an investment services partnership interest.

5 “(2) BUSINESSES TO WHICH THIS SECTION AP-
6 PLIES.—A trade or business is described in this
7 paragraph if such trade or business primarily in-
8 volves the performance of any of the following serv-
9 ices with respect to assets held (directly or indi-
10 rectly) by one or more investment partnerships re-
11 ferred to in paragraph (1):

12 “(A) Advising as to the advisability of in-
13 vesting in, purchasing, or selling any specified
14 asset.

15 “(B) Managing, acquiring, or disposing of
16 any specified asset.

17 “(C) Arranging financing with respect to
18 acquiring specified assets.

19 “(D) Any activity in support of any service
20 described in subparagraphs (A) through (C).

21 “(3) INVESTMENT PARTNERSHIP.—

22 “(A) IN GENERAL.—The term ‘investment
23 partnership’ means any partnership if, at the
24 end of any two consecutive calendar quarters

1 ending after the date of enactment of this sec-
2 tion—

3 “(i) substantially all of the assets of
4 the partnership are specified assets (deter-
5 mined without regard to any section 197
6 intangible within the meaning of section
7 197(d)), and

8 “(ii) less than 75 percent of the cap-
9 ital of the partnership is attributable to
10 qualified capital interests which constitute
11 property held in connection with a trade or
12 business of the owner of such interest.

13 “(B) LOOK-THROUGH OF CERTAIN WHOL-
14 LY OWNED ENTITIES FOR PURPOSES OF DETER-
15 MINING ASSETS OF THE PARTNERSHIP.—

16 “(i) IN GENERAL.—For purposes of
17 determining the assets of a partnership
18 under subparagraph (A)(i)—

19 “(I) any interest in a specified
20 entity shall not be treated as an asset
21 of such partnership, and

22 “(II) such partnership shall be
23 treated as holding its proportionate
24 share of each of the assets of such
25 specified entity.

1 “(I) a trade or business of any
2 person closely related to the owner of
3 such interest shall be treated as a
4 trade or business of such owner,

5 “(II) such interest shall be treat-
6 ed as held by a person in connection
7 with a trade or business during any
8 taxable year if such interest was so
9 held by such person during any 3 tax-
10 able years preceding such taxable
11 year, and

12 “(III) paragraph (5)(B) shall not
13 apply.

14 “(ii) CLOSELY RELATED PERSONS.—
15 For purposes of clause (i)(I), a person
16 shall be treated as closely related to an-
17 other person if, taking into account the
18 rules of section 267(c), the relationship be-
19 tween such persons is described in—

20 “(I) paragraph (1) or (9) of sec-
21 tion 267(b), or

22 “(II) section 267(b)(4), but solely
23 in the case of a trust with respect to
24 which each current beneficiary is the
25 grantor or a person whose relationship

1 to the grantor is described in para-
2 graph (1) or (9) of section 267(b).

3 “(D) ANTI-ABUSE RULES.—The Secretary
4 may issue regulations or other guidance which
5 prevent the avoidance of the purposes of sub-
6 paragraph (A), including regulations or other
7 guidance which treat convertible and contingent
8 debt (and other debt having the attributes of
9 equity) as a capital interest in the partnership.

10 “(E) CONTROLLED GROUPS OF ENTI-
11 TIES.—

12 “(i) IN GENERAL.—In the case of a
13 controlled group of entities, if an interest
14 in the partnership received in exchange for
15 a contribution to the capital of the part-
16 nership by any member of such controlled
17 group would (in the hands of such mem-
18 ber) constitute property held in connection
19 with a trade or business, then any interest
20 in such partnership held by any member of
21 such group shall be treated for purposes of
22 subparagraph (A) as constituting (in the
23 hands of such member) property held in
24 connection with a trade or business.

1 “(ii) CONTROLLED GROUP OF ENTI-
2 TIES.—For purposes of clause (i), the term
3 ‘controlled group of entities’ means a con-
4 trolled group of corporations as defined in
5 section 1563(a)(1), applied without regard
6 to subsections (a)(4) and (b)(2) of section
7 1563. A partnership or any other entity
8 (other than a corporation) shall be treated
9 as a member of a controlled group of enti-
10 ties if such entity is controlled (within the
11 meaning of section 954(d)(3)) by members
12 of such group (including any entity treated
13 as a member of such group by reason of
14 this sentence).

15 “(F) SPECIAL RULE FOR CORPORA-
16 TIONS.—For purposes of this paragraph, in the
17 case of a corporation, the determination of
18 whether property is held in connection with a
19 trade or business shall be determined as if the
20 taxpayer were an individual.

21 “(4) SPECIFIED ASSET.—The term ‘specified
22 asset’ means securities (as defined in section
23 475(c)(2) without regard to the last sentence there-
24 of), real estate held for rental or investment, inter-
25 ests in partnerships, commodities (as defined in sec-

1 tion 475(e)(2)), cash or cash equivalents, or options
2 or derivative contracts with respect to any of the
3 foregoing.

4 “(5) RELATED PERSONS.—

5 “(A) IN GENERAL.—A person shall be
6 treated as related to another person if the rela-
7 tionship between such persons is described in
8 section 267(b) or 707(b).

9 “(B) CONTRIBUTION OF PARTNER SERV-
10 ICES.—Any service described in paragraph (2)
11 which is provided by a partner of a partnership
12 shall be treated as also provided by such part-
13 nership.

14 “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-
15 ESTS.—

16 “(1) IN GENERAL.—In the case of any portion
17 of an investment services partnership interest which
18 is a qualified capital interest, all items of gain and
19 loss (and any dividends) which are allocated to such
20 qualified capital interest shall not be taken into ac-
21 count under subsection (a) if—

22 “(A) allocations of items are made by the
23 partnership to such qualified capital interest in
24 the same manner as such allocations are made
25 to other qualified capital interests held by part-

1 ners who do not provide any services described
2 in subsection (c)(2) and who are not related to
3 the partner holding the qualified capital inter-
4 est, and

5 “(B) the allocations made to such other in-
6 terests are significant compared to the alloca-
7 tions made to such qualified capital interest.

8 “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO
9 ALLOCATION REQUIREMENTS.—To the extent pro-
10 vided by the Secretary in regulations or other guid-
11 ance—

12 “(A) ALLOCATIONS TO PORTION OF QUALI-
13 FIED CAPITAL INTEREST.—Paragraph (1) may
14 be applied separately with respect to a portion
15 of a qualified capital interest.

16 “(B) NO OR INSIGNIFICANT ALLOCATIONS
17 TO NONSERVICE PROVIDERS.—In any case in
18 which the requirements of paragraph (1)(B) are
19 not satisfied, items of gain and loss (and any
20 dividends) shall not be taken into account under
21 subsection (a) to the extent that such items are
22 properly allocable under such regulations or
23 other guidance to qualified capital interests.

24 “(C) ALLOCATIONS TO SERVICE PRO-
25 VIDERS’ QUALIFIED CAPITAL INTERESTS WHICH

1 ARE LESS THAN OTHER ALLOCATIONS.—Alloca-
2 tions shall not be treated as failing to meet the
3 requirement of paragraph (1)(A) merely be-
4 cause the allocations to the qualified capital in-
5 terest represent a lower return than the alloca-
6 tions made to the other qualified capital inter-
7 ests referred to in such paragraph.

8 “(3) SPECIAL RULE FOR CHANGES IN SERVICES
9 AND CAPITAL CONTRIBUTIONS.—In the case of an
10 interest in a partnership which was not an invest-
11 ment services partnership interest and which, by
12 reason of a change in the services with respect to as-
13 sets held (directly or indirectly) by the partnership
14 or by reason of a change in the capital contributions
15 to such partnership, becomes an investment services
16 partnership interest, the qualified capital interest of
17 the holder of such partnership interest immediately
18 after such change shall not, for purposes of this sub-
19 section, be less than the fair market value of such
20 interest (determined immediately before such
21 change).

22 “(4) SPECIAL RULE FOR TIERED PARTNER-
23 SHIPS.—Except as otherwise provided by the Sec-
24 retary, in the case of tiered partnerships, all items
25 which are allocated in a manner which meets the re-

1 requirements of paragraph (1) to qualified capital in-
2 terests in a lower-tier partnership shall retain such
3 character to the extent allocated on the basis of
4 qualified capital interests in any upper-tier partner-
5 ship.

6 “(5) EXCEPTION FOR NO-SELF-CHARGED
7 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-
8 cept as otherwise provided by the Secretary, an in-
9 terest shall not fail to be treated as satisfying the
10 requirement of paragraph (1)(A) merely because the
11 allocations made by the partnership to such interest
12 do not reflect the cost of services described in sub-
13 section (c)(2) which are provided (directly or indi-
14 rectly) to the partnership by the holder of such in-
15 terest (or a related person).

16 “(6) SPECIAL RULE FOR DISPOSITIONS.—In the
17 case of any investment services partnership interest
18 any portion of which is a qualified capital interest,
19 subsection (b) shall not apply to so much of any
20 gain or loss as bears the same proportion to the en-
21 tire amount of such gain or loss as—

22 “(A) the distributive share of gain or loss
23 that would have been allocated to the qualified
24 capital interest (consistent with the require-
25 ments of paragraph (1)) if the partnership had

1 sold all of its assets at fair market value imme-
2 diately before the disposition, bears to

3 “(B) the distributive share of gain or loss
4 that would have been so allocated to the invest-
5 ment services partnership interest of which such
6 qualified capital interest is a part.

7 “(7) QUALIFIED CAPITAL INTEREST.—For pur-
8 poses of this section—

9 “(A) IN GENERAL.—The term ‘qualified
10 capital interest’ means so much of a partner’s
11 interest in the capital of the partnership as is
12 attributable to—

13 “(i) the fair market value of any
14 money or other property contributed to the
15 partnership in exchange for such interest
16 (determined without regard to section
17 752(a)),

18 “(ii) any amounts which have been in-
19 cluded in gross income under section 83
20 with respect to the transfer of such inter-
21 est, and

22 “(iii) the excess (if any) of—

23 “(I) any items of income and
24 gain taken into account under section
25 702 with respect to such interest, over

1 “(II) any items of deduction and
2 loss so taken into account.

3 “(B) ADJUSTMENT TO QUALIFIED CAPITAL
4 INTEREST.—

5 “(i) DISTRIBUTIONS AND LOSSES.—

6 The qualified capital interest shall be re-
7 duced by distributions from the partner-
8 ship with respect to such interest and by
9 the excess (if any) of the amount described
10 in subparagraph (A)(iii)(II) over the
11 amount described in subparagraph
12 (A)(iii)(I).

13 “(ii) SPECIAL RULE FOR CONTRIBU-
14 TIONS OF PROPERTY.—In the case of any
15 contribution of property described in sub-
16 paragraph (A)(i) with respect to which the
17 fair market value of such property is not
18 equal to the adjusted basis of such prop-
19 erty immediately before such contribution,
20 proper adjustments shall be made to the
21 qualified capital interest to take into ac-
22 count such difference consistent with such
23 regulations or other guidance as the Sec-
24 retary may provide.

1 “(C) TECHNICAL TERMINATIONS, ETC.,
2 DISREGARDED.—No increase or decrease in the
3 qualified capital interest of any partner shall re-
4 sult from a termination, merger, consolidation,
5 or division described in section 708, or any
6 similar transaction.

7 “(8) TREATMENT OF CERTAIN LOANS.—

8 “(A) PROCEEDS OF PARTNERSHIP LOANS
9 NOT TREATED AS QUALIFIED CAPITAL INTER-
10 EST OF SERVICE PROVIDING PARTNERS.—For
11 purposes of this subsection, an investment serv-
12 ices partnership interest shall not be treated as
13 a qualified capital interest to the extent that
14 such interest is acquired in connection with the
15 proceeds of any loan or other advance made or
16 guaranteed, directly or indirectly, by any other
17 partner or the partnership (or any person re-
18 lated to any such other partner or the partner-
19 ship). The preceding sentence shall not apply to
20 the extent the loan or other advance is repaid
21 before the date of enactment of this section un-
22 less such repayment is made with the proceeds
23 of a loan or other advance described in the pre-
24 ceding sentence.

1 “(B) REDUCTION IN ALLOCATIONS TO
2 QUALIFIED CAPITAL INTERESTS FOR LOANS
3 FROM NONSERVICE-PROVIDING PARTNERS TO
4 THE PARTNERSHIP.—For purposes of this sub-
5 section, any loan or other advance to the part-
6 nership made or guaranteed, directly or indi-
7 rectly, by a partner not providing services de-
8 scribed in subsection (c)(2) to the partnership
9 (or any person related to such partner) shall be
10 taken into account in determining the qualified
11 capital interests of the partners in the partner-
12 ship.

13 “(9) SPECIAL RULE FOR QUALIFIED FAMILY
14 PARTNERSHIPS.—

15 “(A) IN GENERAL.—In the case of any
16 specified family partnership interest, paragraph
17 (1)(A) shall be applied without regard to the
18 phrase ‘and who are not related to the partner
19 holding the qualified capital interest’.

20 “(B) SPECIFIED FAMILY PARTNERSHIP IN-
21 TEREST.—For purposes of this paragraph, the
22 term ‘specified family partnership interest’
23 means any investment services partnership in-
24 terest if—

1 “(I) specified family members,

2 “(II) any person closely related
3 (within the meaning of subsection
4 (c)(3)(C)(ii)) to a specified family
5 member, or

6 “(III) any other person (not de-
7 scribed in subclause (I) or (II)) if
8 such interest is an investment services
9 partnership interest with respect to
10 such person, and

11 “(ii) such partnership does not hold
12 itself out to the public as an investment
13 advisor.

14 “(D) SPECIFIED FAMILY MEMBERS.—For
15 purposes of subparagraph (C), individuals shall
16 be treated as specified family members if such
17 individuals would be treated as one person
18 under the rules of section 1361(c)(1) if the ap-
19 plicable date (within the meaning of subpara-
20 graph (B)(iii) thereof) were the latest of—

21 “(i) the date of the establishment of
22 the partnership,

23 “(ii) the earliest date that the com-
24 mon ancestor holds a capital or profits in-
25 terest in the partnership, or

1 “(iii) the date of enactment of this
2 section.

3 “(e) OTHER INCOME AND GAIN IN CONNECTION
4 WITH INVESTMENT MANAGEMENT SERVICES.—

5 “(1) IN GENERAL.—If—

6 “(A) a person performs (directly or indi-
7 rectly) investment management services for any
8 investment entity,

9 “(B) such person holds (directly or indi-
10 rectly) a disqualified interest with respect to
11 such entity, and

12 “(C) the value of such interest (or pay-
13 ments thereunder) is substantially related to
14 the amount of income or gain (whether or not
15 realized) from the assets with respect to which
16 the investment management services are per-
17 formed,

18 any income or gain with respect to such interest
19 shall be treated as ordinary income. Rules similar to
20 the rules of subsections (a)(5) and (d) shall apply
21 for purposes of this subsection.

22 “(2) DEFINITIONS.—For purposes of this sub-
23 section—

24 “(A) DISQUALIFIED INTEREST.—

1 “(i) IN GENERAL.—The term ‘dis-
2 qualified interest’ means, with respect to
3 any investment entity—

4 “(I) any interest in such entity
5 other than indebtedness,

6 “(II) convertible or contingent
7 debt of such entity,

8 “(III) any option or other right
9 to acquire property described in sub-
10 clause (I) or (II), and

11 “(IV) any derivative instrument
12 entered into (directly or indirectly)
13 with such entity or any investor in
14 such entity.

15 “(ii) EXCEPTIONS.—Such term shall
16 not include—

17 “(I) a partnership interest,

18 “(II) except as provided by the
19 Secretary, any interest in a taxable
20 corporation, and

21 “(III) except as provided by the
22 Secretary, stock in an S corporation.

23 “(B) TAXABLE CORPORATION.—The term
24 ‘taxable corporation’ means—

25 “(i) a domestic C corporation, or

1 “(ii) a foreign corporation substan-
2 tially all of the income of which is—

3 “(I) effectively connected with
4 the conduct of a trade or business in
5 the United States, or

6 “(II) subject to a comprehensive
7 foreign income tax (as defined in sec-
8 tion 457A(d)(2)).

9 “(C) INVESTMENT MANAGEMENT SERV-
10 ICES.—The term ‘investment management serv-
11 ices’ means a substantial quantity of any of the
12 services described in subsection (c)(2).

13 “(D) INVESTMENT ENTITY.—The term ‘in-
14 vestment entity’ means any entity which, if it
15 were a partnership, would be an investment
16 partnership.

17 “(f) EXCEPTION FOR DOMESTIC C CORPORATIONS.—
18 Except as otherwise provided by the Secretary, in the case
19 of a domestic C corporation—

20 “(1) subsections (a) and (b) shall not apply to
21 any item allocated to such corporation with respect
22 to any investment services partnership interest (or
23 to any gain or loss with respect to the disposition of
24 such an interest), and

25 “(2) subsection (e) shall not apply.

1 “(g) REGULATIONS.—The Secretary shall prescribe
2 such regulations or other guidance as is necessary or ap-
3 propriate to carry out the purposes of this section, includ-
4 ing regulations or other guidance to—

5 “(1) require such reporting and recordkeeping
6 by any person in such manner and at such time as
7 the Secretary may prescribe for purposes of enabling
8 the partnership to meet the requirements of section
9 6031 with respect to any item described in section
10 702(a)(9),

11 “(2) provide modifications to the application of
12 this section (including treating related persons as
13 not related to one another) to the extent such modi-
14 fication is consistent with the purposes of this sec-
15 tion,

16 “(3) prevent the avoidance of the purposes of
17 this section (including through the use of qualified
18 family partnerships), and

19 “(4) coordinate this section with the other pro-
20 visions of this title.

21 “(h) CROSS REFERENCE.—For 40-percent penalty
22 on certain underpayments due to the avoidance of this sec-
23 tion, see section 6662.”.

1 (b) APPLICATION OF SECTION 751 TO INDIRECT DIS-
2 POSITIONS OF INVESTMENT SERVICES PARTNERSHIP IN-
3 TERESTS.—

4 (1) IN GENERAL.—Subsection (a) of section
5 751 is amended by striking “or” at the end of para-
6 graph (1), by inserting “or” at the end of paragraph
7 (2), and by inserting after paragraph (2) the fol-
8 lowing new paragraph:

9 “(3) investment services partnership interests
10 held by the partnership,”.

11 (2) CERTAIN DISTRIBUTIONS TREATED AS
12 SALES OR EXCHANGES.—Subparagraph (A) of sec-
13 tion 751(b)(1) is amended by striking “or” at the
14 end of clause (i), by inserting “or” at the end of
15 clause (ii), and by inserting after clause (ii) the fol-
16 lowing new clause:

17 “(iii) investment services partnership
18 interests held by the partnership,”.

19 (3) APPLICATION OF SPECIAL RULES IN THE
20 CASE OF TIERED PARTNERSHIPS.—Subsection (f) of
21 section 751 is amended—

22 (A) by striking “or” at the end of para-
23 graph (1), by inserting “or” at the end of para-
24 graph (2), and by inserting after paragraph (2)
25 the following new paragraph:

1 “(3) an investment services partnership interest
2 held by the partnership,”; and

3 (B) by striking “partner.” and inserting
4 “partner (other than a partnership in which it
5 holds an investment services partnership inter-
6 est).”.

7 (4) INVESTMENT SERVICES PARTNERSHIP IN-
8 TERESTS; QUALIFIED CAPITAL INTERESTS.—Section
9 751 is amended by adding at the end the following
10 new subsection:

11 “(g) INVESTMENT SERVICES PARTNERSHIP INTER-
12 ESTS.—For purposes of this section—

13 “(1) IN GENERAL.—The term ‘investment serv-
14 ices partnership interest’ has the meaning given
15 such term by section 710(c).

16 “(2) ADJUSTMENTS FOR QUALIFIED CAPITAL
17 INTERESTS.—The amount to which subsection (a)
18 applies by reason of paragraph (3) thereof shall not
19 include so much of such amount as is attributable
20 to any portion of the investment services partnership
21 interest which is a qualified capital interest (deter-
22 mined under rules similar to the rules of section
23 710(d)).

24 “(3) EXCEPTION FOR PUBLICLY TRADED PART-
25 NERSHIPS.—Except as otherwise provided by the

1 Secretary, in the case of an exchange of an interest
2 in a publicly traded partnership (as defined in sec-
3 tion 7704) to which subsection (a) applies—

4 “(A) this section shall be applied without
5 regard to subsections (a)(3), (b)(1)(A)(iii), and
6 (f)(3), and

7 “(B) such partnership shall be treated as
8 owning its proportionate share of the property
9 of any other partnership in which it is a part-
10 ner.

11 “(4) RECOGNITION OF GAINS.—Any gain with
12 respect to which subsection (a) applies by reason of
13 paragraph (3) thereof shall be recognized notwith-
14 standing any other provision of this title.

15 “(5) COORDINATION WITH INVENTORY
16 ITEMS.—An investment services partnership interest
17 held by the partnership shall not be treated as an
18 inventory item of the partnership.

19 “(6) PREVENTION OF DOUBLE COUNTING.—
20 Under regulations or other guidance prescribed by
21 the Secretary, subsection (a)(3) shall not apply with
22 respect to any amount to which section 710 applies.

23 “(7) VALUATION METHODS.—The Secretary
24 shall prescribe regulations or other guidance which
25 provide the acceptable methods for valuing invest-

1 ment services partnership interests for purposes of
2 this section.”.

3 (c) TREATMENT FOR PURPOSES OF SECTION
4 7704.—Subsection (d) of section 7704 is amended by add-
5 ing at the end the following new paragraph:

6 “(6) INCOME FROM CERTAIN CARRIED INTER-
7 ESTS NOT QUALIFIED.—

8 “(A) IN GENERAL.—Specified carried in-
9 terest income shall not be treated as qualifying
10 income.

11 “(B) SPECIFIED CARRIED INTEREST IN-
12 COME.—For purposes of this paragraph—

13 “(i) IN GENERAL.—The term ‘speci-
14 fied carried interest income’ means—

15 “(I) any item of income or gain
16 allocated to an investment services
17 partnership interest (as defined in
18 section 710(c)) held by the partner-
19 ship,

20 “(II) any gain on the disposition
21 of an investment services partnership
22 interest (as so defined) or a partner-
23 ship interest to which (in the hands of
24 the partnership) section 751 applies,
25 and

1 terests in a real estate investment
2 trust which is publicly traded.

3 “(II) Fifty percent or more of
4 the capital and profits interests of
5 such partnership are owned, directly
6 or indirectly, at all times during the
7 taxable year by such real estate in-
8 vestment trust (determined with the
9 application of section 267(c)).

10 “(III) Such partnership meets
11 the requirements of paragraphs (2),
12 (3), and (4) of section 856(c).

13 “(ii) CERTAIN PARTNERSHIPS OWN-
14 ING OTHER PUBLICLY TRADED PARTNER-
15 SHIPS.—Subparagraph (A) shall not apply
16 in the case of a partnership which meets
17 each of the following requirements:

18 “(I) Substantially all of the as-
19 sets of such partnership consist of in-
20 terests in one or more publicly traded
21 partnerships (determined without re-
22 gard to subsection (b)(2)).

23 “(II) Substantially all of the in-
24 come of such partnership is ordinary

1 income or section 1231 gain (as de-
2 fined in section 1231(a)(3)).

3 “(E) TRANSITIONAL RULE.—Subpara-
4 graph (A) shall not apply to any taxable year
5 of the partnership beginning before the date
6 which is 10 years after the date of enactment
7 of this paragraph.”.

8 (d) IMPOSITION OF PENALTY ON UNDERPAY-
9 MENTS.—

10 (1) IN GENERAL.—Subsection (b) of section
11 6662 is amended by inserting after paragraph (9)
12 the following new paragraph:

13 “(10) The application of section 710(e) or the
14 regulations or other guidance prescribed under sec-
15 tion 710(g) to prevent the avoidance of the purposes
16 of section 710.”.

17 (2) AMOUNT OF PENALTY.—

18 (A) IN GENERAL.—Section 6662 is amend-
19 ed by adding at the end the following new sub-
20 section:

21 “(m) INCREASE IN PENALTY IN CASE OF PROPERTY
22 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-
23 ICES.—In the case of any portion of an underpayment to
24 which this section applies by reason of subsection (b)(10),

1 subsection (a) shall be applied with respect to such portion
2 by substituting ‘40 percent’ for ‘20 percent’.”.

3 (B) CONFORMING AMENDMENT.—Subpara-
4 graph (B) of section 6662A(e)(2) is amended
5 by striking “or (i)” and inserting “, (i), or
6 (m)”.

7 (3) SPECIAL RULES FOR APPLICATION OF REA-
8 SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-
9 tion 6664 is amended—

10 (A) by redesignating paragraphs (3) and
11 (4) as paragraphs (4) and (5), respectively;

12 (B) by striking “paragraph (3)” in para-
13 graph (5)(A), as so redesignated, and inserting
14 “paragraph (4)”; and

15 (C) by inserting after paragraph (2) the
16 following new paragraph:

17 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-
18 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-
19 ICES.—

20 “(A) IN GENERAL.—Paragraph (1) shall
21 not apply to any portion of an underpayment to
22 which section 6662 applies by reason of sub-
23 section (b)(10) unless—

1 “(i) the relevant facts affecting the
2 tax treatment of the item are adequately
3 disclosed,

4 “(ii) there is or was substantial au-
5 thority for such treatment, and

6 “(iii) the taxpayer reasonably believed
7 that such treatment was more likely than
8 not the proper treatment.

9 “(B) RULES RELATING TO REASONABLE
10 BELIEF.—Rules similar to the rules of sub-
11 section (d)(4) shall apply for purposes of sub-
12 paragraph (A)(iii).”.

13 (e) INCOME AND LOSS FROM INVESTMENT SERVICES
14 PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DE-
15 TERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

16 (1) INTERNAL REVENUE CODE.—

17 (A) IN GENERAL.—Section 1402(a) is
18 amended by striking “and” at the end of para-
19 graph (16), by striking the period at the end of
20 paragraph (17) and inserting “; and”, and by
21 inserting after paragraph (17) the following
22 new paragraph:

23 “(18) notwithstanding the preceding provisions
24 of this subsection, in the case of any individual en-
25 gaged in the trade or business of providing services

1 described in section 710(c)(2) with respect to any
2 entity, investment services partnership income or
3 loss (as defined in subsection (m)) of such individual
4 with respect to such entity shall be taken into ac-
5 count in determining the net earnings from self-em-
6 ployment of such individual.”.

7 (B) INVESTMENT SERVICES PARTNERSHIP
8 INCOME OR LOSS.—Section 1402 is amended by
9 adding at the end the following new subsection:
10 “(m) INVESTMENT SERVICES PARTNERSHIP INCOME
11 OR LOSS.—For purposes of subsection (a)—

12 “(1) IN GENERAL.—The term ‘investment serv-
13 ices partnership income or loss’ means, with respect
14 to any investment services partnership interest (as
15 defined in section 710(c)) or disqualified interest (as
16 defined in section 710(e)), the net of—

17 “(A) the amounts treated as ordinary in-
18 come or ordinary loss under subsections (b) and
19 (e) of section 710 with respect to such interest,

20 “(B) all items of income, gain, loss, and
21 deduction allocated to such interest, and

22 “(C) the amounts treated as realized from
23 the sale or exchange of property other than a
24 capital asset under section 751 with respect to
25 such interest.

1 “(2) EXCEPTION FOR QUALIFIED CAPITAL IN-
2 TERESTS.—A rule similar to the rule of section
3 710(d) shall apply for purposes of applying para-
4 graph (1)(B).”.

5 (2) SOCIAL SECURITY ACT.—Section 211(a) of
6 the Social Security Act is amended by striking
7 “and” at the end of paragraph (15), by striking the
8 period at the end of paragraph (16) and inserting “;
9 and”, and by inserting after paragraph (16) the fol-
10 lowing new paragraph:

11 “(17) Notwithstanding the preceding provisions
12 of this subsection, in the case of any individual en-
13 gaged in the trade or business of providing services
14 described in section 710(c)(2) of the Internal Rev-
15 enue Code of 1986 with respect to any entity, invest-
16 ment services partnership income or loss (as defined
17 in section 1402(m) of such Code) shall be taken into
18 account in determining the net earnings from self-
19 employment of such individual.”.

20 (f) SEPARATE ACCOUNTING BY PARTNER.—Section
21 702(a) is amended by striking “and” at the end of para-
22 graph (7), by striking the period at the end of paragraph
23 (8) and inserting “, and”, and by inserting after para-
24 graph (8) the following:

1 “(9) any amount treated as ordinary income or
2 loss under subsection (a), (b), or (e) of section
3 710.”.

4 (g) CONFORMING AMENDMENTS.—

5 (1) Subsection (d) of section 731 is amended by
6 inserting “section 710(b)(4) (relating to distribu-
7 tions of partnership property),” after “to the extent
8 otherwise provided by”.

9 (2) Section 741 is amended by inserting “or
10 section 710 (relating to special rules for partners
11 providing investment management services to part-
12 nerships)” before the period at the end.

13 (3) The table of sections for part I of sub-
14 chapter K of chapter 1 is amended by adding at the
15 end the following new item:

 “Sec. 710. Special rules for partners providing investment management services
 to partnerships.”.

16 (4)(A) Part IV of subchapter O of chapter 1 is
17 amended by striking section 1061.

18 (B) The table of sections for part IV of sub-
19 chapter O of chapter 1 is amended by striking the
20 item relating to section 1061.

21 (h) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Except as otherwise pro-
23 vided in this subsection, the amendments made by

1 this section shall apply to taxable years ending after
2 the date of enactment of this Act.

3 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
4 CLUDE EFFECTIVE DATE.—In applying section
5 710(a) of the Internal Revenue Code of 1986 (as
6 added by this section) in the case of any partnership
7 taxable year which includes the date of enactment of
8 this Act, the amount of the net capital gain referred
9 to in such section shall be treated as being the lesser
10 of the net capital gain for the entire partnership tax-
11 able year or the net capital gain determined by only
12 taking into account items attributable to the portion
13 of the partnership taxable year which is after such
14 date.

15 (3) DISPOSITIONS OF PARTNERSHIP INTER-
16 ESTS.—

17 (A) IN GENERAL.—Section 710(b) of such
18 Code (as added by this section) shall apply to
19 dispositions and distributions after the date of
20 enactment of this Act.

21 (B) INDIRECT DISPOSITIONS.—The amend-
22 ments made by subsection (b) shall apply to
23 transactions after the date of enactment of this
24 Act.

1 (4) OTHER INCOME AND GAIN IN CONNECTION
2 WITH INVESTMENT MANAGEMENT SERVICES.—Sec-
3 tion 710(e) of such Code (as added by this section)
4 shall take effect on the date of enactment of this
5 Act.

6 **TITLE V—INVESTOR PROTEC-**
7 **TION AND MARKET TRANS-**
8 **PARENCY**

9 **SEC. 501. DISCLOSURE OF FEES AND RETURNS.**

10 The Investment Company Act of 1940 (15 U.S.C.
11 80a–1 et seq.), as amended by this Act, is amended by
12 adding at the end the following:

13 **“SEC. 67. DISCLOSURE OF FEES AND RETURNS.**

14 “(a) DEFINITIONS.—In this section—

15 “(1) the terms ‘controlling private fund’, ‘pri-
16 vate fund’, and ‘target firm’ have the meanings
17 given the terms in section 3 of the Stop Wall Street
18 Looting Act; and

19 “(2) the term ‘expenditure for political activi-
20 ties’—

21 “(A) means—

22 “(i) an independent expenditure, as
23 that term is defined in section 301(17) of
24 the Federal Election Campaign Act of
25 1971 (52 U.S.C. 30101(17));

1 “(ii) a disbursement for an election-
2 eering communication, as that term is de-
3 fined in section 304(f)(3) of the Federal
4 Election Campaign Act of 1971 (52 U.S.C.
5 30104(f)(3)) or any other public commu-
6 nication, as defined in section 301(22) of
7 that Act (52 U.S.C. 30101(22)), that
8 would be an electioneering communication
9 if it were a broadcast, cable, or satellite
10 communication; or

11 “(iii) dues or other payments to trade
12 associations or organizations described in
13 section 501(c) of the Internal Revenue
14 Code of 1986 and exempt from tax under
15 section 501(a) of that Code that are, or
16 could reasonably be anticipated to be, used
17 or transferred to another association or or-
18 ganization for the purposes described in
19 clause (i) or (ii); and

20 “(B) does not include an expenditure for—

21 “(i) direct lobbying efforts through
22 registered lobbyists employed or hired by a
23 controlling private fund;

24 “(ii) communications by a controlling
25 private fund to—

1 “(I) a partner of the fund or ex-
2 ecutive or administrative personnel
3 with respect to the fund; or

4 “(II) a family member of any in-
5 dividual described in subclause (I); or

6 “(iii) the establishment and adminis-
7 tration of contributions to a separate seg-
8 regated private fund to be utilized for po-
9 litical purposes by a controlling private
10 fund.

11 “(b) RULES.—Not later than 1 year after the date
12 of enactment of this section, the Commission shall issue
13 final rules that require a controlling private fund to, using
14 generally accepted accounting principles, annually report
15 the following information with respect to that controlling
16 private fund:

17 “(1) The name, address, and vintage year of
18 the fund.

19 “(2) The name of each general partner of the
20 fund.

21 “(3) The name of each limited partner of the
22 fund.

23 “(4) A list of each entity with respect to which
24 the fund owns an equity interest.

1 “(5) In dollars, the total amount of regulatory
2 assets under management by the fund.

3 “(6) In dollars, the total amount of net assets
4 under management by the fund.

5 “(7) The percentage of fund equity contributed
6 by the general partners of the fund and the percent-
7 age of fund equity contributed by the limited part-
8 ners of the fund.

9 “(8) Information on the debt owed by the fund,
10 including—

11 “(A) the dollar amount of total debt;

12 “(B) the percentage of debt for which the
13 creditor is a financial institution in the United
14 States;

15 “(C) the percentage of debt for which the
16 creditor is a financial institution outside of the
17 United States;

18 “(D) the percentage of debt for which the
19 creditor is an entity that is located in the
20 United States and is not a financial institution;
21 and

22 “(E) the percentage of debt for which the
23 creditor is an entity that is located outside of
24 the United States and is not a financial institu-
25 tion.

1 “(9) The gross performance of the fund during
2 the year covered by the report.

3 “(10) For the year covered by the report, the
4 difference obtained by subtracting the financial
5 gains of the fund by the fees that the general part-
6 ners of the fund charged to the limited partners of
7 the fund (commonly referred to as the ‘performance
8 net of fees’).

9 “(11) For the year covered by the report, an
10 annual financial statement, which shall include in-
11 come statements, a balance sheet, and cash flow
12 statements.

13 “(12) The average debt-to-equity ratio of each
14 target firm with respect to the fund and the debt-
15 to-equity ratio of each such target firm.

16 “(13) The total gross asset value of each target
17 firm with respect to the fund and the gross asset
18 value of each such target firm.

19 “(14) The total amount of debt held by each
20 target firm with respect to the fund and the total
21 amount of debt held by each such target firm.

22 “(15) The total amount of debt held by each
23 target firm with respect to the fund that, as of the
24 date on which the report is submitted, are cat-

1 egorized as liabilities, long-term liabilities, and pay-
2 ment in kind or zero coupon debt.

3 “(16) The total number of target firms with re-
4 spect to the fund that experienced default during the
5 period covered by the report, including the name of
6 any such target firm.

7 “(17) The total number of the target firms with
8 respect to the fund with respect to which a case was
9 commenced under title 11, United States Code, dur-
10 ing the period covered by the report, including the
11 name of any such target firm.

12 “(18) The percentage of the equity of the fund
13 that is owned by—

14 “(A) citizens of the United States;

15 “(B) individuals who are not citizens of the
16 United States;

17 “(C) brokers or dealers;

18 “(D) insurance companies;

19 “(E) investment companies that are reg-
20 istered with the Commission under this Act;

21 “(F) private funds and other investment
22 companies not required to be registered with
23 the Commission;

24 “(G) nonprofit organizations;

1 “(H) pension plans maintained by State or
2 local governments (or an agency or instrumen-
3 tality of either);

4 “(I) pension plans maintained by non-
5 governmental employers;

6 “(J) State or municipal government enti-
7 ties;

8 “(K) banking or thrift institutions;

9 “(L) sovereign wealth funds; and

10 “(M) other investors.

11 “(19) The total dollar amount of aggregate fees
12 and expenses collected by the fund, the manager of
13 the fund, or related parties from target firms for
14 which the fund is a controlling private fund, which
15 shall—

16 “(A) be categorized by the type of fee; and

17 “(B) include a description of the purpose
18 of the fees.

19 “(20) The total dollar amount of aggregate fees
20 and expenses collected by the fund, the manager of
21 the fund, or related parties from the limited part-
22 ners of the fund, which shall—

23 “(A) be categorized by the type of fee; and

24 “(B) include a description of the purpose
25 of the fees.

1 “(21) The total carried interest claimed by the
2 fund, the manager of the fund, or related parties
3 and the total dollar amount of carried interest dis-
4 tributed to the limited partners of the fund.

5 “(22) A description of, during the year covered
6 by the report, any material changes in risk factors
7 at the fund level, including—

8 “(A) concentration risk;

9 “(B) foreign exchange risk; and

10 “(C) extra-financial risk, including envi-
11 ronmental, social, and corporate governance
12 risk.

13 “(23) Disclosures that satisfy the Recommenda-
14 tions of the Task Force on Climate-related Financial
15 Disclosures of the Financial Stability Board, as re-
16 ported in June 2017.

17 “(24) A description of the human capital man-
18 agement practices of the fund, including—

19 “(A) fund workforce demographic informa-
20 tion, including the number of full-time employ-
21 ees, the number of part-time employees, the
22 number of contingent workers (including tem-
23 porary and contract workers), and any policies
24 or practices of the firm relating to subcon-
25 tracting, outsourcing, and insourcing;

1 “(B) fund workforce composition, including
2 data on the diversity of that workforce, includ-
3 ing the racial and gender composition of that
4 workforce, and any policies and audits relating
5 to the diversity of that workforce;

6 “(C) any incident of alleged workplace har-
7 assment during the 5 years preceding the year
8 in which the report is submitted; and

9 “(D) any health or safety incident during
10 the 5 years preceding the year in which the re-
11 port is submitted.

12 “(25) A description of any expenditure for po-
13 litical activities made during the year preceding the
14 year in which the report is submitted, including—

15 “(A) the date on which each such expendi-
16 ture for political activities was made;

17 “(B) the amount of each such expenditure
18 for political activities;

19 “(C) if such an expenditure for political ac-
20 tivities was made in support of, or in opposition
21 to, a candidate, the name of the candidate, the
22 office sought by the candidate, and the political
23 party affiliation of the candidate;

24 “(D) a summary of—

1 “(i) each such expenditure for political
2 activities that is in amount that is not less
3 than \$10,000; and

4 “(ii) each expenditure for political ac-
5 tivities with respect to a particular election
6 if the total amount of expenditures for po-
7 litical activities by the firm with respect to
8 that election is in an amount that is not
9 less than \$10,000;

10 “(E) a description of the specific nature of
11 any expenditure for political activities that the
12 firm intends to make for the year in which the
13 report is submitted, to the extent that the spe-
14 cific nature is known to the firm; and

15 “(F) the total amount of expenditures for
16 political activities that the fund intends to make
17 for the year in which the report is submitted.

18 “(26) For the year preceding the year in which
19 the report is submitted, the total amount of Federal
20 support, if any, received by—

21 “(A) the fund; and

22 “(B) any entity with respect to which the
23 fund is a beneficial owner, as that term is de-
24 fined in section 5336(a)(3) of title 31, United
25 States Code.

1 (B) by inserting “or such private fund, as
2 applicable” before the period at the end.

3 (2) FIDUCIARY OBLIGATIONS OF FUND MAN-
4 AGERS.—Section 3(21)(A) of such Act (29 U.S.C.
5 1002(21)) is amended by inserting “, and, in the
6 case of a plan which invests in a security issued by
7 a private fund (as such term is defined in section 3
8 of the Stop Wall Street Looting Act), includes the
9 manager of such private fund” before the period at
10 the end.

11 (b) PROHIBITION AGAINST WAIVING FIDUCIARY DU-
12 TIES.—Section 211(h) of the Investment Advisers Act of
13 1940 (15 U.S.C. 80b–11(h)) is amended—

14 (1) in paragraph (1), by striking “and” at the
15 end;

16 (2) in paragraph (2), by striking the period at
17 the end and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(3) promulgate rules that prohibit an invest-
20 ment adviser from requiring any person to which the
21 investment adviser provides investment advice, in-
22 cluding a pension plan (as defined in section 3 of the
23 Employee Retirement Income Security Act of 1974
24 (29 U.S.C. 1002)) that is subject to title I of the
25 Employee Retirement Income Security Act of 1974

1 (29 U.S.C. 1001 et seq.), to, as a condition of the
2 investment adviser providing that advice, sign a con-
3 tract or other agreement in which that person waives
4 a fiduciary duty owed by that person to another per-
5 son.”.

6 (c) APPLICABILITY OF BENEFITS.—The general
7 partner of a controlling private fund that is a partnership
8 may not provide any term or benefit to any limited partner
9 of the fund unless the general partner provides that term
10 or benefit to all limited partners of the fund.

11 **SEC. 503. DISCLOSURES RELATING TO THE MARKETING OF**
12 **PRIVATE EQUITY FUNDS.**

13 Any investment adviser to a private fund shall dis-
14 close to potential investors with respect to the other pri-
15 vate funds, as defined in section 202(a) of the Investment
16 Advisers Act of 1940 (15 U.S.C. 80b–2(a)), managed by
17 that investment adviser (referred to in this section as
18 “managed firms”) the following information:

19 (1) A list of all managed firms with respect to
20 the investment adviser, including those managed
21 firms that, as of the date on which the disclosure is
22 made—

23 (A) have active investments; and

24 (B) have liquidated the assets of the firms.

1 (2) For each managed firm listed under para-
2 graph (1), the following information:

3 (A) As applicable, the total term of the
4 listed firm beginning with the commencement of
5 the commitment period with respect to the firm
6 and ending on the date on which the firm is
7 dissolved, including, with respect to a listed
8 firm that, as of the date on which the disclosure
9 is made, is actively investing—

10 (i) the term specified by any limited
11 partnership agreement; and

12 (ii) the nature of any provisions that
13 would allow for the extension of that term.

14 (B) The performance of the listed firm's
15 net of fees, as measured by the public market
16 equivalent or a similar measure.

17 (C) A list of target firms with respect to
18 which the listed firm was a control person, the
19 nature of the control person relationship, and
20 the period of that control.

21 (D) The number of employees at each tar-
22 get firm identified under subparagraph (C), as
23 of the date on which the listed firm became a
24 control person with respect to the target firm,
25 and the date on which the listed firm ceased to

1 be a control person with respect to the target
2 firm.

3 (E) A list of target firms with respect to
4 the listed firm with respect to which a case has
5 been commenced under title 11, United States
6 Code.

7 (F) For each target firm with respect to
8 the listed firm, and with respect to which the
9 listed firm is a control person—

10 (i) a list of actions taken by any State
11 or local regulatory agency; and

12 (ii) any legal or regulatory penalties
13 paid, or settlements entered into, by the
14 general partners of the target firm or the
15 target firm itself.

16 (3) The percentage breakdown of the means
17 employed by the investment adviser to divest owner-
18 ship or control of target firms, including—

19 (A) the sale of target firms to other pri-
20 vate funds;

21 (B) the sale of target firms to private enti-
22 ties, other than private funds;

23 (C) the sale of target firms to issuers, the
24 securities of which are traded on a national se-
25 curities exchange;

1 (D) the commencement of cases under title
2 11, United States Code, with respect to target
3 firms; and

4 (E) initial public offerings with respect to
5 target firms.

6 **SEC. 504. GREATER VISIBILITY INTO NON-BANK DIRECT**
7 **LENDING AND PRIVATE CREDIT.**

8 Not later than 180 days after the date of enactment
9 of this Act, the Commission shall amend the rules of the
10 Commission to require investment advisers required to
11 submit the form described in section 279.9 of title 17,
12 Code of Federal Regulations (commonly known as “Form
13 PF”), or any successor regulation, to report quarterly to
14 the Commission all—

15 (a) investments of the private funds advised by that
16 investment adviser; and

17 (b) loans made by the applicable investment adviser
18 during the period covered by the disclosure.

19 **TITLE VI—RESTRICTIONS ON**
20 **SECURITIZING RISKY COR-**
21 **PORATE DEBT**

22 **SEC. 601. RISK RETENTION REQUIREMENTS FOR SECURITI-**
23 **ZATION OF CORPORATE DEBT.**

24 Section 15G of the Securities Exchange Act of 1934
25 (15 U.S.C. 78o–11) is amended—

1 (1) in subsection (a)(3)—

2 (A) in subparagraph (A), by striking “or”
3 at the end;

4 (B) in subparagraph (B), by striking
5 “and” at the end and inserting “or”; and

6 (C) by adding at the end the following:

7 “(C) a manager of a collateralized debt ob-
8 ligation; and”;

9 (2) by redesignating subsection (i) as subsection
10 (j); and

11 (3) by inserting after subsection (h) the fol-
12 lowing:

13 “(i) RULES OF CONSTRUCTION.—With respect to a
14 securitizer described in subsection (a)(3)(C)—

15 “(1) any provision of this section that requires
16 that securitizer to retain a portion of the credit risk
17 for an asset that such securitizer does not hold, or
18 has never held, shall be construed as requiring that
19 securitizer to—

20 “(A) obtain that portion of the credit risk
21 for that asset; and

22 “(B) retain that portion of the credit risk,
23 either directly by the securitizer or through a
24 wholly-owned affiliate of the securitizer; and

1 “(2) any reference in this section to an asset
2 transferred by the securitizer shall be construed to
3 include any transfer caused by the securitizer.”.

4 **TITLE VII—MISCELLANEOUS**

5 **SEC. 701. ANTI-EVASION.**

6 It shall be unlawful to conduct any activity, including
7 by entering into an agreement or contract, engaging in
8 a transaction, or structuring an entity, to willfully evade
9 or attempt to evade any provision of this Act.

10 **SEC. 702. SEVERABILITY.**

11 If any provision of this Act or the application of such
12 a provision to any person or circumstance is held to be
13 invalid or unconstitutional, the remainder of this Act and
14 the application of the provisions of this Act to any person
15 or circumstance shall remain and shall not be affected by
16 that holding.