

# ***The Stop Wall Street Looting Act of 2021***

## **Section-by-Section**

Section 1: Short Title; Table of Contents

Section 2: Findings

Section 3: Definitions

- Defines affiliate, change in control, control person, holder of an economic interest, insider, private fund, and target firm.
- Defines control person as someone who owns or controls, including through coordination with other persons, at least 20 percent of voting securities of a company, but excludes limited partners not participating in the management or policy of a corporation.
- Defines holder of an economic interest as someone who directly or indirectly has an economic interest in a corporation or a right to participate in governance of a corporation.

### **TITLE I – CORPORATE RESPONSIBILITY**

#### **Section 101: Joint and Several Liability for Controlling Private Funds and Holders of Active Interests in Controlling Private Funds**

- Controlling private funds are jointly and severally liable for all debt incurred by a target firm and its affiliates, including for legal judgments, liabilities in connection with violations of the Worker Adjustment and Retraining Notification (WARN) Act, and pension-related obligations.

#### **Section 102: Indemnification Void as Against Public Policy**

- Holds that any indemnification of a private fund that is a control person or affiliate for the liabilities of the target firm and its affiliates is void against public policy.

### **TITLE II – ANTI-LOOTING**

#### **Section 201: Limitations on Post-Acquisition Dividends, Distributions, Redemptions, Buybacks, and Outsourcing**

- Prohibits target firms from making a capital distribution during the 24 months following a leveraged buyout transaction.
- Restricts plant closings, mass layoffs, or outsourcing of jobs within the first 24 months.
- Holds related parties that aid or abet any violation of this section jointly liable for such violations.
- Provides a private right of action for any employee or creditor to enforce this section.
- Based on a provision of the European Union’s Alternative Investment Funds Management Directive (AIFMD).

#### **Section 202: Prevention of Fraudulent Transfers**

- Allows the claw back of money transferred out of portfolio companies by removing existing safe harbors in fraudulent transfer laws for certain kinds of transactions in cases where such transfers are connected to a change in control transaction.
- Creates a positive presumption of fraudulent transfer for transactions connected to a change in control.
- Extends the statute of limitations for fraudulent transfers to at least eight years after the transfer was made, if it was connected to a change in control and two years for all other transfers.
- Litigation claims brought against company insiders must be brought by a trustee representing the creditor committee rather than the debtor-in-possession who often put sham “independent” directors on boards.

### **Section 203: Surtax on Certain Amounts Received by Investment Firms from Controlled Target Firms**

- Applies a 100% tax on fees paid by target firms to private fund managers, often called “monitoring” or “transaction” fees, effectively ending this form of looting of portfolio companies by managers.

### **Section 204: Limitation on Deduction for Business Interest of Certain Businesses Owned by Private Funds**

- Prohibits interest on excessive debt obligations from being tax deductible by target companies.
- This is a stricter version of the Internal Revenue Code’s existing “[section 163\(j\)](#) limitation of the deduction of business interest expense.”

## **TITLE III – WORKER AND CONSUMER PROTECTION IN BANKRUPTCY**

### **Section 301: Increased Priority for Wages**

- Raises the 507(a)(4) priority claim for unpaid wages and severance from \$10,000 to \$20,000 per worker and eliminates the 180-day time restriction.
- Raises the 507(a)(5) priority claim for employee benefit contributions from \$10,000 to \$20,000 per worker and eliminates the 180-day time restriction.

### **Section 302: Priority for Severance Pay and Contributions to Employee Benefit Plans**

- Classifies severance pay owed to employees (“under a plan, program or policy generally applicable to employees... [or] pursuant to a collective bargaining agreement”) as administrative expenses for the purposes of the priority of claims in Chapter 11 bankruptcy.
- Classifies unsecured claims for contributions to an employee benefit plan due on or after the bankruptcy filing as administrative expenses of the purposes of the priority of claims in bankruptcy.

### **Section 303: Priority for Violations of Federal and State Laws**

- Increases the priority of back pay or damages arising from any violation of federal or state labor and employment law (including the WARN Act) to the level of administrative expenses.

#### **Section 304: Limitation on Executive Compensation Enhancements**

- Expands the 503(c) restriction against executive payments to include any incentive compensation, bonus, or severance payment to senior executives, any of the next 20 most highly compensated employees, consultants of the company, and department or division managers of the company.

#### **Section 305: Prohibition Against Special Compensation Payments**

- Prohibits bankruptcy courts from approving any payments to an insider, senior executive, highly compensated employee, or consultant of the company if the company has not paid promised severance pay to employees or has reduced employee benefits within the year before declaring bankruptcy.

#### **Section 306: Executive Compensation Upon Exit From Bankruptcy**

- Prohibits bankruptcy courts from approving a company's reorganization plan if an insider, senior executive, highly compensated employee, or consultant of the company will receive payments that are not generally applicable to the company's employees when the company exits bankruptcy or that the court determines are excessive or disproportionate compared to payments to the company's non-management workforce.

#### **Section 307: Collateral Surcharge for Employee Obligations**

- Deems all unpaid wages and benefits for services rendered on and after bankruptcy to be necessary costs and expenses of preserving, or disposing of, property securing an allowed secured claim and therefore recoverable even if the trustee has otherwise waived certain provisions.

#### **Section 308: Voidability of Preferential Compensation Transfers**

- Allows the trustee to void any payment made in violation of executive compensation provisions and allows any party in interest to apply to void any payment made in violation of those provisions.

#### **Section 309: Protection for Employees In a Sale of Assets**

- In cases where there are multiple offers to purchase the property of a company in Chapter 11 bankruptcy, directs bankruptcy courts to approve the offer that best preserves the company's jobs and maintains the terms and conditions of employment for its workers.
- In approving the sale of property by a company in bankruptcy, directs courts to give substantial weight to the extent to which the purchase would preserve jobs and maintain the terms and conditions of employment for the company's employees.

#### **Section 310: Protection of Gift Card Purchasers**

- Creates a new priority in Chapter 11 bankruptcy (behind employee wages and benefits) for claims by individuals arising from:
  - The purchase, lease, or rental of property;
  - The purchase of services that were not delivered; and
  - The purchase of gift cards that have not been redeemed.

### **Section 311: Commercial Real Estate**

- Eliminates the time limit on retailers for deciding whether to assume or reject a commercial real estate lease, easing restrictions on seasonal retailers seeking to reorganize.

## **TITLE IV – CLOSING THE CARRIED INTEREST LOOPHOLE**

### **Section 401: Amendment of the 1986 Code**

### **Section 402: Partnership Interests Transferred in Connection with Performance of Services**

- Describes the valuation of certain interests affected by this Title.

### **Section 403: Special Rules for Partners Providing Investment Management Services to Partnerships**

- Taxes carried interest, currently taxed at the preferential capital gains rate at the higher earned income rates.
- Based directly on Sen. Baldwin’s *Carried Interest Fairness Act*.

## **TITLE V – INVESTOR PROTECTION AND MARKET TRANSPARENCY**

### **Section 501: Disclosure of Fees and Returns**

- Defines a “private equity fund.”
- Requires the Securities and Exchange Commission (SEC) to issue rules requiring each private equity fund to make certain annual disclosures including the identities of those with interests in the fund and their ownership interests, the debt held by the fund and its portfolio companies, the performance of the portfolio companies, and fees and payments collected by the firm.
- Mandatory disclosures of:
  - political spending
  - climate related disclosures that satisfy the Task Force on Climate-related Financial Disclosures (TCFD)
  - human capital practices of the fund including workforce demographic information and documentation of alleged workplace harassment in the prior five years
  - federal financial support the fund or entities which it is a beneficial owner received in the prior year
- Requires the SEC to review these rules once every five years to ensure that they reflect contemporary trends.
- Requires the SEC to make the information disclosed under these rules available to the public.

### **Section 502: Fiduciary Obligations**

- Amends the Employee Retirement Income Security Act of 1974 (ERISA) to clearly require private fund managers to have a fiduciary duty to pension plans whose assets they manage.
- Prohibits investment advisers, including private fund managers, from requiring investors (including pension plans) to waive their fiduciary duty under ERISA or under the Investment Advisors Act.

- Prohibits preferential side deals between a fund and any one of its limited partners that is not offered to them all.

### **Section 503: Disclosure Relating to the Marketing of Private Equity Funds**

- Requires the SEC to issue rules requiring each private equity firm to make certain disclosures in their marketing related the performance of their previous funds and the target firms they controlled.

## **TITLE VI – RESTRICTIONS ON SECURITIZING RISKY CORPORATE DEBT**

### **Section 601: Risk Retention Requirements for Securitization of Corporate Debt**

- Requires arrangers of corporate loan securitizations to retain a share of the risk of those securitizations by clarifying that managers of collateralized debt obligations are subject to the risk retention requirements established in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

## **TITLE VII – MISCELLANEOUS**

### **Section 701. Anti-Evasion**

- Prohibits activities, such as entering into agreements, contracts, and transactions, and structuring entities, to willfully evade or attempt to evade any provision of this bill.

### **Section 702. Severability**

- In the event that any provision of this bill is held to be invalid or unconstitutional, the remainder of the bill and its application shall not be affected.