AFR Americans for Financial Reform

America for Sale? An Examination of the Practices of Private Funds

Committee on Financial Services
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Testimony Submitted by Americans for Financial Reform

The private equity industry controls a large and growing portion of the economy, including businesses and other assets like housing, that workers and consumers rely upon for jobs, goods and services. It has increased in size eight-fold over the past two decades from $700 billion in global assets in 2000 to $5.8 billion in 2018.[1] Today, the private equity industry controls 8,000 companies in the United States, more than twice as many companies as are publicly traded on U.S. stock markets.[2]

The business model followed by the dominant private equity firms today is fundamentally predatory and extractive. Current law permits and even encourages private equity firms to be structured in such a way that the general partners – the key individuals controlling the fund and holding decision making power over portfolio firms owned by the private equity fund — rewarded for maximizing immediate returns to themselves, and shielded from liability, accountability, and transparency for the decisions they make. They take advantage of this privileged position to extract value from portfolio firms, as well as limited partner outside investors.

A major mechanism of value extraction is the use of debt. This begins with the leveraged buyout transaction in which the target firm is acquired for the private equity owner's portfolio. These LBO transactions are funded with high proportions of debt, with the target firm used as collateral. The acquired firm – but not the private equity fund which is the beneficiary of the transaction – is responsible for repayment of the acquisition debt. All too often the portfolio firm emerges from the LBO with crushing levels of debt that force layoffs and prevent it from investing in its future due to the burden of debt repayment. Even in cases where an unsustainable debt burden created by private equity acquisition forces bankruptcy, those harmed by the failure of the firm have no recourse to the private equity owner. The debt excesses of private equity have driven levels of high-risk corporate debt to record levels, creating risks to the broader economy and the financial system.

Once the private equity firm owns the portfolio company, it is able to use its managerial control to extract value from the firm and its customers in other ways. There is a repeated record, across multiple industries, of private equity owned firms and their owners taking advantage of legal and regulatory loopholes, or simply defying authorities to enforce limits on exploitative business

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[1] Elvin, Christopher. Preqin. "Private Equity Update." KPMG Private Equity Forum. November 2016 at 5; Preqin. "Private Equity Spotlight." Vol. 14, Iss. 1. January 2018 at 7; McKinsey & Company. "Private Markets Come of Age." 2019 at 15.
[2] Parmer, Hema and Jason Kelly. "The returns are spectacular. But there are catches." *Businessweek*. October 3, 2019.

practices, in order to maximize short run profits for the fund at the expense of worker and customer well-being. These extractive practices include simply forcing portfolio firms to pay unnecessary fees or charges to the private equity owner, or siphoning value out of the portfolio firms through arrangements like the sale and lease back of the sites where they do business. They also include creating monopolies or oligopolies by purchasing multiple firms in the same field, so that customers can be squeezed for monopoly profits. Private equity owned firms also exploit customers who have limited recourse in order to maximize their profits, such as taking advantage of tenants in private equity owned real estate, or extreme cost cutting in private equity owned health care companies that endanger the health of patients.

Even when the long-term viability of the portfolio firm is damaged by these practices, or the firm goes bankrupt, private equity owners have generally extracted enough value to ensure their own profit on the transaction. Since the private equity insiders generally do not have financial or personal liability for the debt owed or legal judgements against their portfolio firms, they can take these steps with relative impunity, so long as they have made back their own small equity investment in the deal.

Private equity firms claim to make their money by improving the operations, capacity, and business strategy of the companies they acquire. Some PE firms or transactions actually do this. But as documented in the testimony below, all too often the profits of private equity come not from genuinely improving the management of the portfolio firm but through predatory actions that create long-run damage for the workers, community, and customers of that firm.

Private equity firms also claim that their returns produce benefits for the broader investor public through the sharing of returns with limited partner investors, including union and other public pension funds. But their promises often rely on manipulated or misleading numbers, in addition to often resting on activities that will harm the medium and long-term interests of their own outside investors as well as other stakeholders in portfolio companies. Private equity firms benefit from favorable treatment and exemptions under the securities laws, which allow them to raise funds from outside investors without disclosing reliable data on their returns, fees and costs, or activities.

This testimony documents and shines a spotlight on some of the abusive practices of private equity. These include destroying retail jobs, saddling people with unmanageable medical bills through surprise billing, gouging students at for-profit colleges that fail to provide an adequate education, exacerbating the affordable housing crisis by buying up single-family houses, apartment buildings, and manufactured home communities after the financial crisis and raising rents and harassing tenants. We describe how private equity actions threaten the well-being of workers, consumers, investors, and communities, and how the measures taken by private equity to finance their activities threaten the integrity of debt markets. Private equity extraction is contributing to growing inequality and to increasing economic hardship and vulnerability for millions of Americans.

This testimony also describes and analyzes a critical legislative response to the issues in the private equity business model, the Pocan-Jayapal Stop Wall Street Looting Act (SWSLA, HR 3848). This legislation directly attacks the perverse incentives that reward predatory practices by private equity general partners. By closing loopholes and making fundamental changes in legal liability for private equity general partners, it would curb the excesses of private equity insiders, without affecting productive partnerships that genuinely assist portfolio firms. Critically, the SWSLA is designed to address the incentives faced by the general partners of the private equity firm, and is aimed squarely at ending the power of private equity insiders to engage in behavior that exploits and harms portfolio firms and limited partners, and at strengthening workers, investors, and other stakeholders in dealing with PE We urge Congress to stand up for working people and for communities, patients and consumers, and enact the Stop Wall Street Looting Act.

I. The Growing Private Equity Industry

The private equity industry has an outsize influence on today's economy. Private equity (PE) funds control $5.8 trillion in global assets, including over 8,000 U.S. businesses with millions of employees. The PE industry owns hospitals, residential houses, restaurants, retailers, manufacturers, tech firms, for-profit colleges, payday lenders, and much, much more. Private equity is behind private corrections and prison services, bail bonds, electronic monitoring, and even prison hospitals as well as funding private migrant detention facilities that generate profits by disproportionately harm people of color.[3] And private equity is a major funder of fossil fuel extraction, transportation, and power production, worsening the climate crisis.[4]

Private equity firms are Wall Street investment companies that pool large volumes of private capital to buy companies, real estate, natural resources, and other assets. PE funds operate in their own private market — the companies and assets are privately owned by the PE firms, with values, earnings, and corporate information hidden from public view.[5] The investors include wealthy families, sovereign wealth funds, pension funds, endowments, and other institutional investors.

The PE firms recruit investors to put money into specific funds that then invest in assets (sometimes specialized into a single industry, like health care). These investors generally are required to keep their investments in the private equity fund for the entirety of its ten-year (or more) duration. The institutional investors are limited partners in the fund and the private equity managers are the general partners: the investors commit the funds that make up the majority of the equity stake and agree to pay a management fee and the PE firm manages the fund, determines which assets to buy, manages the portfolio, and controls the portfolio companies.[6]

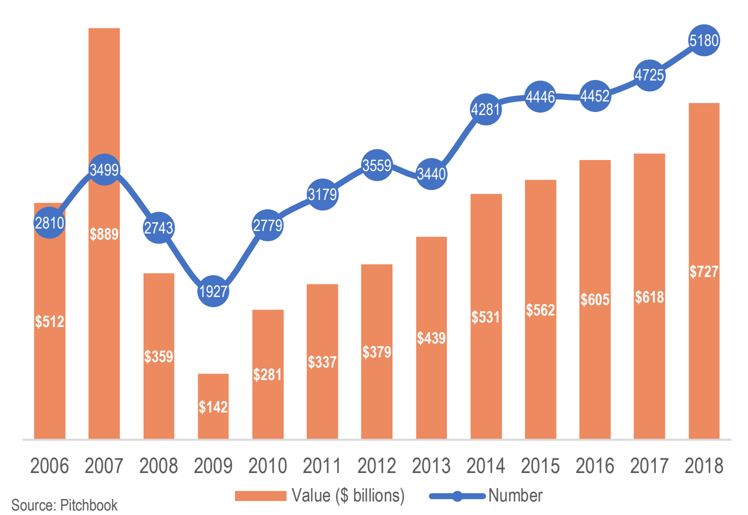
The majority of the private funds go into corporate takeovers that buy publicly traded or private companies. Theoretically, the private equity firms share their capital and managerial expertise to strengthen the performance of the target firm and deliver higher earnings and profits.[7] Target firms include publicly traded or privately held companies that the PE firm thinks are undervalued, poorly performing, undercapitalized, or capable of becoming more profitable.[8] The PE firms control and

[3] Burke, Garance and Martha Mendoza. "Trump admin shifting to privatize migrant child detention." *Associated Press*. October 3, 2019; Private Equity Stakeholder Project. "Continuing Incarceration: Apax Partners' Digital Shackles." October 2019; Private Equity Stakeholder Project. [Fact sheet]. "Private Equity-Owned Firms Dominate Prison and Detention Services." December 2018; McLeod, Marsha. "The private option." *The Atlantic*. September 12, 2019.
[4] Seidman, Derek and Donald Shaw. Public Accountability. "Presidential Candidates Take Money from Major Fossil Fuel Investors." September 9, 2019.
[5] Kelly, Jason. "Everything is private equity now." *Businessweek*. October 3, 2019.
[6] Applebaum, Eileen and Rosemary Batt. Center for Economic and Policy Research. "A Primer on Private Equity at Work." February 2012 at 11.
[7] *Ibid.* at 2; Kelly (2019, "Everything is private equity now").
[8] Kelly, Jason. "The magic formula is leverage…and fees." *Businessweek*. October 3, 2019.

manage the target portfolio companies for a few years and either launch it as a public company through an initial public offering (IPO) or sell it to another firm.

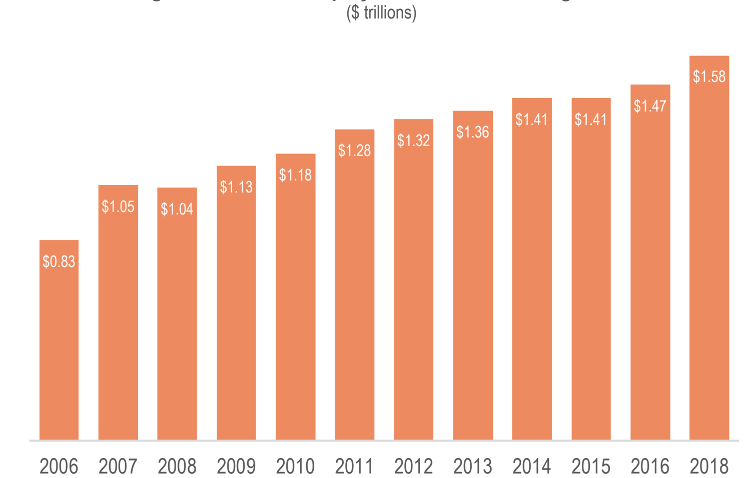
Private equity takeover funds have been rapidly buying up U.S companies for the past decade. The number of deals, the scale of the investments, and the average size of the deals has soared (see Figure 1). As a result of the surge of deals, private equity owns a bigger stake in the U.S. economic landscape.[9] U.S. private equity assets under management (essentially a measure of the scale of PE-owned companies) has grown by $455 billion (or 40 percent) over the past decade from $1.13 trillion in 2009 to $1.58 trillion in 2018 (see Figure 2).[10]

Fig. 1: U.S. Private Equity Takeover Deals



Source: Pitchbook

Fig. 2: U.S. Private Equity Assets Under Management
($ trillions)



Source: Pitchbook

Private equity has grown in the low interest rate environment during a bullish stock market that buoyed corporate values — the same conditions that led to the PE boom before the global financial crisis (and its subsequent bust). Importantly, while dealmaking slowed down in the immediate aftermath of the financial crisis, private equity's ownership stake in the U.S. economy grew steadily throughout the Great Recession.

Some of the "assets under management" are not companies, but committed investor funds that the private equity firms have not yet deployed in takeover deals. These committed but unused funding remains available as "dry powder." The global pool of dry powder reached a record $2.5 trillion by the summer of 2019, and private equity firms continued to raise money for even more funds as they searched for takeover targets.[11] Large pools of dry powder can increase the pressure on PE firms to buy assets even at high multiples of valuation, essentially overpaying for assets, which will in turn hinder long-term returns.[12] The ballooning dry powder has pushed PE firms to pursue more

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[9] Linley, Graham. Pitchbook. "Here are 9 charts that describe the US private equity industry in 2Q." July 22, 2019.
[10] Black, Garrett James. Pitchbook. "The current US Private equity scene in 11 charts." August 1, 2017; Stanford, Kyle. Pitchbook. "A 17-chart breakdown of the US PE industry." June 6, 2017; Pitchbook. "Private Markets: A Decade of Growth." July 19, 2019 at 5 and 6. 2018 figure derived from global assets under management based on share of U.S. investments and share of private equity.
[11] Espinoza, Javier and Eric Platt. "Private equity races to spend record $2.5tn cash pile." *Financial Times.* June 27, 2019.
[12] Applebaum and Batt (2012) at 2.

aggressive takeovers — higher prices, more leverage, and bigger deals.[13] Moreover, dry powder represents potentially investible capital that is parked on the economic sidelines while PE firms decide what investment strategies and takeover targets to pursue.

Dry powder can be expensive for PE investors like pension funds. PE firms do not access committed funds until they are used to make a purchase, but institutional investors are required to park the money in easily accessible — and usually low yield — investments. The committed but undeployed fundraising constitutes a portion of a fund's dry powder.[14] But investors nonetheless must pay management fees on these dry-powder funds, meaning they are paying management fees on these sums even though the dry-powder funds are not being actually managed by the PE firms.

II. Predatory Practices and Financial Engineering by the Private Equity

The earnings and performance of private equity firms are generally not derived from superior management but from financial engineering that generates income for the PE executives but does not strengthen the takeover targets. The PE firm takes control of the company, often imposing severe cost-cutting measures and layoffs.[15] Private equity firms promise quick 20 to 25 percent profits which can often only be achieved by extracting value from the firm, not improving its long term productivity.

The economic benefits flow significantly to the general partners in fees, disbursements, and profit sharing. Limited partners (PE investors) gain if the portfolio assets are sold for more than the acquisition price, but they lose all or a portion of their equity stake if portfolio companies are liquidated or enter bankruptcy.

The PE firms have distorted incentives to engage in financial engineering and excessive risk taking. Because the private equity owner is largely shielded from downside risks that may fall on workers and customers of portfolio firms, it has an incentive to take actions that effectively transfer value from the firm to the private equity owner, even at the cost of the long-term productivity or sustainability of the target firm. Below, we describe several ways in which this occurs.

First, the leveraged buyouts load target firms with debt that diminishes their resiliency and capacity to respond to market shifts, and can drive them into bankruptcy. Second, the PE firms extract substantial value from target firms through excessive fees, dividends, real estate lease backs and other tactics. Third, private equity firms take advantage of tax loopholes, create complex corporate structures to sidestep corporate responsibility, and are a major force behind the current wave of merger mania that is rapidly consolidating the U.S. economy.

A. Private equity leveraged buyouts threaten target firms and the economy

Private equity investments rely on substantial amounts of debt financing to take over companies. This shifts the risk of the takeover to the target company and the benefits to the PE buyer. These leveraged buyouts are the "core of the business," according to *Businessweek*.[16] Target firms that

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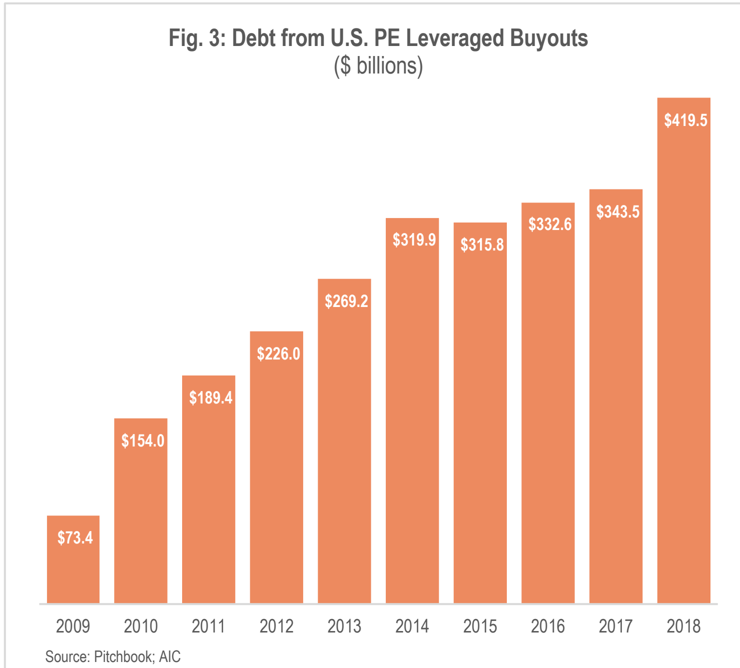
13 Espinoza and Platt (2019).
14 Applebaum and Batt (2012) at 1
15 Kelly (2019, "The magic formula is leverage…and fees").
16 *Ibid.*

prosper deliver outsized returns for PE firms when they are sold, because their small equity stake is multiplied when the portfolio is sold for more than it cost to takeover. But if the higher debt loads drive the portfolio firm into bankruptcy, the PE firm only loses its small initial equity investment (and institutional investors lose their comparatively larger equity stake); the target firm is solely responsible for repaying the debt imposed on it by its PE owner, which increases the risk of bankruptcy. The quick exit window means that PE managers are unconcerned about the imposed debt loads that can continue to burden the firms for years after the PE firm has exited.



The private equity firms have largely walked away unscathed, but there are all-too-frequent real and devastating impacts of the private equity leveraged buyout gamble. There have been a host of high-profile PE-driven bankruptcies in recent years, including retailers like Sears and Toys "R" Us, mining company Blackjewel, and Hahnemann Hospital in Philadelphia. These catastrophic collapses have harmed workers and communities.

Looming leveraged buyouts: Funds buy assets with the investors' money and a considerable amount of debt. Private equity firms generally pay a tiny portion of the purchase price to takeover target companies, meaning they have little invested in the financial future of the portfolio company. The PE firms pony up about 2 percent of the purchase price, the investors put in the rest of the equity, and the remainder is typically debt financing.[17]

These leveraged-buyouts (LBOs) are like investors that flip a house for profit. The PE firm buys the target company with a small equity down payment and borrows the rest of the purchase price, like getting a mortgage on a house that you intended to improve and resell. Unlike a mortgage, the target company must borrow to finance its own takeover and service the debt (sort of like the house repaying the mortgage).[18] If the PE deal is successful, when the PE firm sells the company or launches an initial public offering, it keeps the profits (the price appreciation since the takeover) and repays the debt. The debt makes the deal much more profitable.

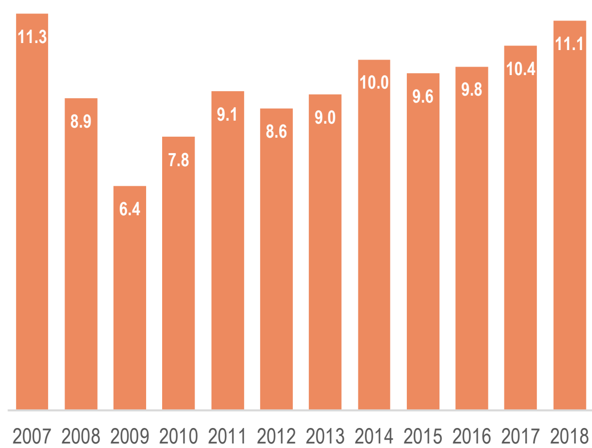
[17] Slavkin Corzo, Heather. Testimony before the House Financial Services Committee, Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets. U.S. House of Representatives. Promoting Economic Growth: A Review of Proposals to Strengthen the Rights and Protections for Workers. May 15, 2019 at 13.
[18] Applebaum and Batt (2012) at 1.

Over the past five years, the PE leveraged buyout deals have relied an average of 60 percent debt financing.[19] Many of these deals have had much higher leverage. The 2008 PE-backed leveraged buyout of Harrah's Entertainment (now Caesars Entertainment) was financed with $23 billion in debt – making the $31 billion deal over 75 percent leveraged (it collapsed in bankruptcy).[20] The 2006 KKR and Bain Capital $21 billion takeover of hospital chain HCA included $16 billion of debt, making it 76 percent leveraged.[21]

And as deal volume has grown, the total debt load from these leverage buyouts has ballooned as well. Over the past decade, debt from U.S. PE leveraged buyouts has grown nearly six-fold, from $73 billion in 2009 to $419 billion in 2018 (see Figure 3).[22]

The highly leveraged and indebted target firms are at risk of substantial financial distress if their earnings are insufficient to service their debt payments that can lead to bankruptcy and liquidation.[23] These risks are more pronounced during periods of slow or moderate growth or economic downturns, similar to the current conditions and economic forecasts given trade tensions and corporate debt loads. In 2019, there were 99 private equity-owned firms with distressed credit ratings that had a significant chance of defaulting on their debt.[24]

Fig. 4: PE Takeover Valuation Multiples



Source: purchase price/EBITDA; McKinsey 2019

The debt from the LBO and any dividend recapture stays on the books of the portfolio firm, not the private equity firm that required the company to take out the loans. The target companies are responsible for making the debt payments out of the business earnings. The debt burden can make it harder or impossible for the target company to invest in the business to increase productivity, competitiveness, sales, or increase compensation for workers to provide family sustaining wages or benefits.

High purchase premiums increase debt loads and leverage: PE firms are paying an increasing premium for target companies. Since 2009, the PE purchase price versus performance multiple (earnings before income taxes, debt, and amortization, or EBITDA), has risen by 73 percent (see

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19 American Investment Council (AIC). "Private equity trends 2019 Q1: Private equity firms continue to raise significant capital." 2019.
20 Indap, Sujeet. "What happens Vegas ... the messy bankruptcy of Caesars Entertainment." *Financial Times*. September 26, 2017; Morgenson, Gretchen. "Caesars" debt: A game of dealer's choice." *New York Times*. September 13, 2014.
21 "HCA agrees to $21 billion buyout." *CNN* July 24, 2006; Creswell, Julie and Reed Abelson. "A giant hospital chain is blazing a profit trail." *New York Times*. August 14, 2012.
22 AIC (2019, "Private Equity Trends 2019 Q1"); Linley (2019). Debt load calculated by debt percentage for leveraged buyouts (AIC) multiplied by deal volume (Linley, Pitchbook).
23 Applebaum and Batt (2012) at 2.
24 Rodriquez Valladares, Mayra. "Distressed credit ratings for private-equity-backed companies have risen significantly." *Forbes*. October 22, 2019.

Figure 4).[25] In 2018, PE firms paid more than 11 times target firm's financial performance — approaching multiples not seen since before the financial crisis.

Higher purchase multiples may affect the financial returns for PE firms and their investors. First, these higher prices mean that the takeovers require more leverage and higher debt loads, leaving the target portfolio firm with a larger loan payment that could threaten performance. Secondly, it may be harder for PE firms to profitably sell assets that were purchased at high price premiums; if the purchase price was overvalued it would require higher exit prices to get promised returns.

B. The impact of private equity debt on the macro economy and financial system

The large number of private equity leveraged buyouts, their increasing leverage levels, and the borrowing used to finance them have been at the heart of a rapid growth in high-risk corporate debt. The volume of loans outstanding to companies that are already highly leveraged compared to their cash flow, often referred to as "leveraged loans," has doubled in size since 2007, to at least $1.2 trillion. Corporate sector debt is now at a record level as a proportion of the economy (gross domestic product or GDP). This increase in high-risk debt has repeatedly been singled out by analysts and regulators as a threat to the economy. For example, the last three financial stability reports by the Federal Reserve Board have all highlighted leveraged business debt as a key economic vulnerability.[26]

There is no question that private equity activity is at the heart of the growth in leveraged lending. The International Monetary Fund found that globally over half of leveraged lending in 2018 was acquisition-related.[27] In 2019, private equity portfolio firms were responsible for over half of U.S. leveraged lending.[28] And the private equity business model is built on taking advantage of the tax and other incentives that reward high levels of leverage.

High levels of leveraged lending pose several macroeconomic threats. First, they are likely to amplify the next recessionary downturn.[29] Current levels of leveraged lending mean that corporations will enter the next economic downturn with an unprecedented level of business debt. When companies experience a decline in their cash flow due to the recession some will become unable to service such elevated levels of debt and either lay off workers or go bankrupt. As documented elsewhere in this paper, we are already seeing this occur to private equity owned companies even without a broad economic downturn. Second, high levels of defaults on leveraged loans could contribute to the instability of the financial system due to losses experienced by banks and investors, in something like the way that high levels of foreclosures on mortgages stressed the financial system in 2008.

There is some uncertainty around this second point on the effects of leveraged lending on the stability of the financial sector. Some banks and regulators have argued that banks themselves are not exposed to losses due to leveraged loans, as most of these loans are sold on to other non-bank

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25 McKinsey & Company (2019) at 23.

26 Board of Governors, Federal Reserve System. "Financial Stability Report." 2019 and prior years.

27 Adrian, Tobias, Fabio Natalucci, and Thomas Piontek. International Monetary Fund. [Blog]. "Sounding the Alarm on Leveraged Lending." November 15, 2018.

28 Rodriquez Valladares (2019).

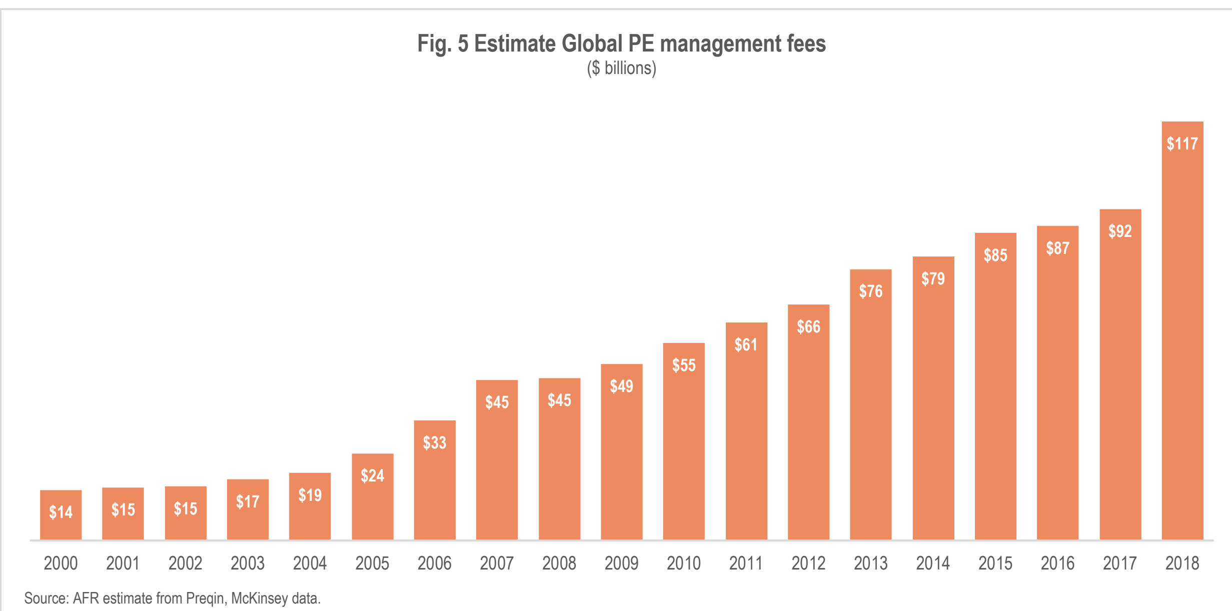
29 Kaplan, Robert. Federal Reserve Bank of Dallas. "Corporate Debt as a Potential Amplifier in a Slowdown." March 5, 2019.

investors. High-risk leveraged loans are often repackaged into securitized products known as collateralized loan obligations (CLOs), which are sold to insurance companies, institutional investors, and investment funds. If there are substantial losses on these securitized products, such losses could occur at pension funds and insurance companies. While this would cause significant losses to retirement savings, these institutions are not as critical to credit intermediation as banks.

However, this is very similar to arguments made prior to the 2008 financial crisis concerning subprime mortgages and mortgage backed securities. Prior to the crisis banks also argued that losses on subprime mortgages and securitizations would fall on outside investors that were not critical to the financial system. But subprime mortgage defaults and the associated shutdown of securitization markets used to sell these loans did produce dramatic stresses on banks and the entire financial system. Banks turned out to have substantial inventories of unsold loans and to be more vulnerable to securitization losses than observers predicted. Non-banks such as the insurance company AIG which were exposed to credit risk turned out to be critical to credit intermediation. Large-scale defaults on leveraged loans and the shutdown of CLO markets could have similar unexpected impacts on the financial system and could endanger the flow of credit.

C. Private equity extracts value through fees, dividends and asset stripping

Private equity management and consultant fees: Private equity firms charge high fees for their purported management expertise. According to *Bloomberg*, these management fees now "yield a geyser of profit."[30] Institutional investors may be unaware of the fees and expenses charged to portfolio companies that can be high enough to affect the finances and cash flow of the portfolio firms.[31] Private equity firms charge monitoring fees and can require portfolio companies to pay "operating partner" consultants that are not fully or clearly disclosed to institutional investors.[32]



30 Basak, Sonali and David Carey. "Private equity's biggest backers are tired of the fees." *Bloomberg*. October 26, 2017.
31 Bowden, Andrew J. U.S. Securities and Exchange Commission. Director of Office of Compliance Inspections and Examinations. "Spreading sunshine in private equity." Speech before Private Equity International. May 6, 2014.
32 *Ibid.*

Management fees alone generated tremendous income for PE firms. *Bloomberg* calculated that Blackstone's received $2.46 billion in management fees and Apollo received $1.12 billion in fees in 2016.[33]

PE firms typically charge 2 percent of the assets in the portfolio as well as 20 percent of any asset appreciation.[34] The 2 percent management fee is more than twice what most money managers charge and has not changed even as fund sizes have ballooned.[35] The fee includes committed but undeployed funds — so the PE firms charge a management fee for money the investors have not yet given to the fund to be invested.[36] Two percent can add up quickly. Americans for Financial Reform estimates that investors paid $117 billion in management fees to private equity firms in 2018 — more than double what they paid a decade earlier (see Figure 5).[37]

In some cases, PE firms may be charging institutional investors inappropriate fees or imposing fees or charges on investors without the general partners (the PE firm) bearing their share. In 2015, KKR & Co. paid $30 million to the SEC to settle charges that it imposed $17 million in "broken deal" expenses solely on its institutional investors without allocating any of the broken deal costs to KKR and without disclosing that the firm would not share in broken deal costs.[38] In 2014, the PE firm Clean Energy Partners, LLC and its chief executive paid $2.2 million for inappropriately charging investors for over $3 million in expenses that were improperly disclosed.[39] Also in 2014, Lincolnshire Management pad $2.3 million to settle SEC charges that it misallocated expenses to its investors by billing one fund for a portfolio firm's expenses that was owned by two Lincolnshire funds.[40] In 2018, Yucaipa Master Manager LLC agreed to pay $1 million to settle charges that it failed to disclose conflicts of interest and misallocated expenses that harmed investors.[41]

Dividend recapture schemes add debt: The private equity firms often require the target companies to take on more debt to pay the investors a dividend or repay a portion of the general partners' down payment, known as dividend recapture.[42] According to *Bloomberg* "buyout firms routinely extract large sums for themselves after taking companies private."[43] These dividend extractions benefit the PE general partners and investors, but additional debt loads can damage portfolio firms' credit ratings and even contribute to bankruptcies.[44] These dividend recaptures also juice reported earnings, making the portfolio firm artificially look more profitable even though the payments were made with debt.[45]

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33 Basak and Carey (2017).
34 McKinsey & Company (2019) at 27.
35 Kelly (2019, "The magic formula is leverage…and fees"); Basak and Carey (2017).
36 Applebaum and Batt (2012) at 14.
37 Elvin (2016) at 5; Preqin (January 2018) at 7; McKinsey & Company (2019) at 15.
38 SEC. [Press release]. "SEC charges KKR with misallocating broken deal expenses." Press Release 2015-131. June 29, 2015.
39 Lynch, Sarah N. "Private equity advisor, CEO settle with SEC over fee allocations." October 17, 2014.
40 Vardi, Nathan. "T.J. Maloney's private equity firm pays $2.3 million to settle SEC charges." *Forbes*. September 22, 2014.
41 SEC. [Press release]. "SEC settles with investment advisor who failed to disclose conflicts of interest and misallocated expenses." File No. 3-18930. December 13, 2018.
42 Slavkin Corzo (2019) at 13.
43 Ronalds-Hanon, Eliza and Davide Scigliuzzoo. "Sycamore pockets $1 billion from deal that amazed Wall Street." *Bloomberg*. April 11, 2019.
44 Lewis, Adam. Pitchbook. "PE firms keep deploying dividend recaps despite the risks." August 15, 2019.
45 Parmar, Hema and Sonali Basak. "Private equity's returns questioned, this time by Buffett." *Bloomberg*. May 5, 2019.

Dividend recaptures can be substantial and impose additional debt loads on portfolio firms. In 2019, Silver Lake Management LLC and Singapore's sovereign wealth fund GIC took out $910 million in debt-financed dividends from Ancestry.com and planned to take another $150 million before 2020.[46] In 2017, Sycamore Partners bought office supply retailer Staples for $6.9 billion with $4 billion in debt, and within two years it extracted $1.3 billion in dividend recaptures, about 80 percent of the fund's initial equity stake. This also raised the firms total debt to $5.4 billion — nearly 80 percent of the purchase price.[47] Bain and KKR extracted a $1.75 billion dividend payment from hospital chain HCA the year before taking it public in 2011.[48] In total, *Barron's* estimated the dividend payments to the private equity owners (and the CEO) totaled $20.7 billion from 2006 to 2010.[49]

Stripping real estate and other assets: PE firms also shift assets out of target firms into other PE controlled subsidiaries. The PE firms create a series of shell companies, often separating the operating businesses (a nursing home or retail establishment) from the real estate assets, forcing the operating businesses to pay rent to a separate PE owned real estate shell company in what is known as lease-back. After Sun Capital bought the department store chain Shopko in a leveraged buyout, it sold off its real estate for $800 million and forced the chain to lease-back its formerly owned real estate. The added rent costs helped drive the store into liquidation that closed 360 stores and destroyed nearly 23,000 jobs.[50]

The PE-controlled hospital chain Paladin Healthcare bought two Philadelphia community safety-net hospitals, including Hahnemann University Hospital for $170 million.[51] Paladin quickly moved Hahnemann's prime real estate into a separate real estate business valued at $58 million.[52] The Hahnemann campus covered a city block near city hall that *CNN* reported would be "incredibly desirable for a high-end hotel or condominiums."[53] When Paladin moved Hahnemann into bankruptcy (ultimately shuttering the hospital, see below at pages 44 to 46), it kept ownership of the real estate; these valuable assets were excluded from the bankruptcy process.[54] Other assets can be looted as well. As Caesars Entertainment was sliding into bankruptcy, PE owners Apollo and TPG sold valuable assets like Planet Hollywood and Bally's to other Apollo and TPG controlled companies.[55]

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46 Scigliuzzo, Davide. "Ancestry.com owners aim to extract $900 million payout with loan." *Bloomberg*. August 14, 2019.
47 Ronalds-Hanon and Scigliuzzoo (2019).
48 Advisen Ltd. Produced for OneBeacon Insurance Group. "Private Equity and Hospitals: Providence or Problem?" May 2011 at 7.
49 Briloff, Abraham J. and Leonore A. Briloff. "Where did the $15.8 billion go?" *Barron's*. October 1, 2011.
50 Coleman-Lochner, Lauren and Eliza Ronalds-Hannon. "What happens to a company when PE buys it?" *Businessweek*. October 3, 2019; Center for Popular Democracy, Americans for Financial Reform Education Fund, Strong Economy for All Coalition, United for Respect, Hedge Clippers, and Private Equity Stakeholder Project. "Pirate Equity." (Pirate Equity) July 2019 at 40.
51 LaPointe, Jacqueline. "Tenet sells remaining Philly hospitals, announces divestitures." *Xtelligent Health Care Media*. September 11, 2017.
52 Feldman, Nina. "Many fear Hahnemann's story will send a message: Buying a failing hospital pays." *WHYY FM-91*. July 31, 2019.
53 DePillis, Lydia. "Rich investors may have let a hospital go bankrupt. Now they could profit from the land." *CNN*. July 29, 2019; Picchi, Aimee. "Private equity rushed into health care – now a nurse warns: 'Be scared.'" *CBS News MoneyWatch*. July 29, 2019.
54 Adelman, Jacob. "As Hahnemann enters bankruptcy, 'gateway' development site could open up in Center City." *Philadelphia Inquirer*. July 1, 2019; "Hahnemann University Hospital owners file for Chapter 11 bankruptcy protection." *CBS News Channel 3 (Philadelphia)*. July 1, 2019.
55 Indap (2017).

D. Private equity's tax loopholes, corporate structures, and merger-mania

Private equity dodges responsibility and liability: The PE firms distance themselves from liabilities by structuring the portfolio companies as separate partnerships owned by the PE firm.[56] This insulates the PE firm from responsibility for the actions of the portfolio company, even though the PE managers make the business decisions for the acquired firms. The portfolio firm is responsible for business losses (or bankruptcy judgments), not the PE firm. Similarly, the PE firm is insulated from liability from any dangerous result of cost-cutting directed by the PE firm — safety lapses, environmental accidents, or personal injury or negligence. For example, private equity adopts complex corporate partnership structures to takeover nursing homes that largely eliminates the PE firm's liability for negligence, malpractice, or government claims of overbilling Medicare or Medicaid and reduces the incentive to deliver quality care.[57]

Private equity's beneficial tax treatment: The private equity industry benefits from extensive tax benefits. First, the tax code allows businesses to deduct loan payments from their income, which lowers their tax obligations and increases net revenues and investor returns, which acts essentially as a transfer from taxpayers to private equity firms.[58] Additionally, private equity earnings from selling portfolio firms (either through sales or IPOs) are considered capital gains not corporate income, which is subject to lower tax rates. Private equity general partners also can take advantage of the carried interest loophole to pay lower rates on their income.

Private equity driving merger mania: private equity firms have supercharged the recent wave of merger-mania by financing nearly half of all U.S mergers. Private equity deals were less than one fourth of all North American mergers in 2009 (23.9 percent) but rose to nearly four in ten deals by early 2019 (39.4 percent).[59] Private equity firms not only fund merger-mania, but individual firms often pursue a monopoly strategy to roll-up fragmented industries. The PE firms use "add-on" deals to purchase multiple competitors of a portfolio company to create a much bigger player in an industry. Through the third quarter of 2019, 68 percent of all U.S. PE buyouts were add-on takeovers.[60] For example, the two largest helicopter ambulance firms are private equity-owned, were formed by PE buying up scores of separate firms, and now control more than half of the national market and routinely "surprise bill" transported patients as much as $30,000 to $40,000.[61]

Private equity operates in a regulatory blind spot that facilitates predatory practices: The private investments are inadequately regulated; they are not subject to the same level of federal oversight or required transparency as banks, stockbrokers, or mutual funds even though they provide similar services (credit and investments). The Center for Economic and Policy Research's Eileen Applebaum says private equity firms operate as part of the "growing shadow banking

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56 Applebaum and Batt (2012) at 13.
57 Pradhan, Rohit et al. "Private equity ownership of nursing homes: Implications for quality." *Journal of Health Care Finance*. June/July 2014; Rau, Jordan. "Care suffers as more nursing homes feed money into corporate webs." *New York Times*. January 2, 2018.
58 Applebaum and Batt (2012) at 3.
59 Lykken, Alex. Pitchbook. "PE's prominence in the M&A scene continues to grow." August 2, 2019.
60 Lykken, Alex. Pitchbook. "This year could set another record for add-on activity." October 11, 2019.
61 Tozzi, John. "Air ambulances are flying more patients than ever, and leaving massive bills behind." *Bloomberg*. June 11, 2018; Roland, Christopher. "Why the flight to the hospital is more costly than ever." *Washington Post*. July 1, 2019.

system."[62] The private equity industry grew to its current size by exploiting vagaries and loopholes in the U.S. financial regulatory system fostered by decades of deregulation.

These Wall Street investment firms to operate with no or minimal disclosures of their financial performance or governance and without prohibitions against conflicts of interest. Private equity funds that did not solicit unsophisticated or many investors were exempted from certain federal securities laws (notably the Investment Advisors Act and Securities Act among others) that allow them to operate with little financial disclosure (although the Dodd Frank Wall Street Reform and Consumer Protection Act required some registration and reporting for funds over $150 million).[63]

III. The risks and declining returns for private equity pension investors

The private equity industry promotes its investment funds as providing reliably superior returns to the stock market, but the reality is that PE investments are not necessarily better performers and these investments can pose risks for investors — including liquidity risk, lower transparency, and higher risks associated with debt leverage, along with reputational risks, and the risks that come from PE actions that undermine their members economic security outside of their pension funds.

Private equity investors are generally more sophisticated, more experienced, and more knowledgeable investors, but private equity funds can pose unique risks that can harm even these large institutional investors. The Securities and Exchange Commission director of compliance noted that PE funds can pose "risks and temptations that are not present" in the public market.[64] Although the PE industry offers rosy projections of high returns, the reality for investors like pension funds can be substantially more anemic. It is very difficult for investors to assess or track the performance of these investments for a host of important reasons. PE funds are not required to make comparable financial disclosures, it is difficult to value PE-held assets because they are not traded, and the performance results can be misleading.

A. Recent private equity performance lagging industry promises

The industry promotes its history of outperforming the stock market over the past quarter century, but its recent returns have been less impressive and more volatile as the low-hanging fruit of super-profitable opportunities are evaporating.[65] A 2015 study by the University of Virginia Darden School of Business found that the post-2005 vintage private equity funds did not exceed the performance of stock markets.[66] Newer vintages of funds might perform more poorly, as returns decline as PE fundraising increases, as it has over recent years.[67]

The private equity trade association American Investment Council's latest performance benchmark report demonstrates that PE investments do little better — or even worse — than comparable investments in the stock market. In 2019, AIC reported that the 10-year median return for major

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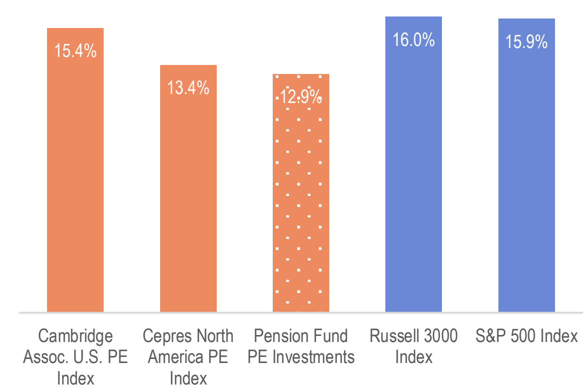
62 Applebaum and Batt (2012) at 4.
63 *Ibid.* at 5 to 6.
64 Bowden (2014).
65 Parmer and Kelly (2019).
66 Harris, Robert S., Tim Jenkinson, and Steven N. Kaplan. "How Do Private Equity Investments Perform Compared to Public Equity?" Darden Business School Working Paper No. 2597259. June 2015 at 10.
67 *Ibid.* at 24.

PE indexes (excluding venture capital) was slightly below the 10-year return for stock indexes (including dividends) (see Figure 6).[68]

Over the past decade, pension fund investments in private equity performed even worse than typical PE investments and the stock market.[69] Collectively bargained retirement plans and pensions have over $7 trillion in invested capital.[70] Some pension funds are under pressure to rely on the promised higher returns from private equity to compensate for inadequate contributions from employers.[71] On average, about 9 percent of these funds are invested in private equity and the ten largest pension fund investments in private equity amounted to $163 billion in 2019.[72] Some pensions invest far more in private equity. As of 2019, two Pennsylvania public employee pension funds had over 14 percent of their portfolios tied up in private equity.[73] According to Preqin, 27 public pension funds have 15 percent or more invested in PE in 2019.[74]

Fig. 6: 10-Year Return Private Equity v. Stock Market



Source: AIC 2019; median PE fund index (without venture capital), stock indexes include dividends)

Limited partners rarely see the returns that the industry average indexes. Several studies have found that limited partners receive far less favorable returns than the PE industry advertises. In part this is because limited partners (like pensions) do not benefit from the fees and carried interest payments that go to the fund's general partner.[75] The industry highlights short- and medium-term returns, but the 10-year returns (which have recently been lower than stock market indexes) may better reflect the yields for limited partner investors that have their money locked-into private equity for the life of the fund. This is confirmed by a footnote in AIC's performance report that admits that PE investment returns that exceed stock market performance do not apply to the limited partner investors, only the PE fund (and general partners).[76]

Even when average returns appear rosy, many PE funds have indifferent performance, often comparable to the stock market, meaning that there is little premium for the loss of liquidity (locked-up investment) or opacity. One report suggests that more than half the PE funds perform only as well as — or worse than — the stock market.[77] A University of Virginia study found that

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68 AIC. "Performance Update 2019 Q1." 2019 at 2.
69 *Ibid.* at 5.
70 Slavkin Corzo (2019) at 1.
71 Slavkin Corzo (2019) at 14.
72 AIC. "Public Pension Study." July 2019 at 2 and 4.
73 Idzelis, Christine. "Private equity managers are 'running a grift,' Pennsylvania Treasury says." *Institutional Investor.* August 26, 2019.
74 Prequin. Public pension investor data. 2019.
75 Applebaum and Batt (2012) at 24.
76 AIC (2019, "Performance Update 2019 Q1") at 3.
77 Parmer and Kelly (2019).

only the top quartile of funds exceeded the stock market; if investors put money into the bottom three-fourths of fund performers the results were comparable to or worse than the stock market.[78]

B. Private equity poses liquidity, transparency, and valuation risks for investors

Difficult for institutional investors to accurately value portfolio assets: It is almost impossible to assess the value of PE-owned businesses and assets while they are held by the PE firm. Unlike publicly traded assets, there is not the constant pricing data from investors continuously trading the stocks.[79] Fund values are basically the returns from portfolio exits and the net asset value of current portfolio holdings. But current, accurate net asset values are difficult to assess for assets that have not changed hands.[80]

The initial purchase price is often highly overvalued, with high and rising valuation multiples, which can make it hard to secure returns. In addition, it can be difficult to distinguish increases in PE-owned company values from overall appreciation in publicly owned companies during bullish stock markets.[81] General partners' earnings are tied tightly to raising money for future funds, which can affect the valuation of funds and potentially mislead investors. A 2013 study found that PE firms tended to fundraise for new funds after profitable exits and/or after artificially inflating net asset value (which was subsequently marked down after the fundraising).[82]

Liquidity risk: Investments in private equity funds are especially illiquid; investors are required to keep their money in the fund for its duration which can be a decade or more.[83] It is difficult for institutional investors to exit funds until the fund is wound down or the private equity firm sells off its entire portfolio of target firms and assets.[84] There is little secondary market for private equity investments. In 2018, there were only $57 billion in secondary private equity transactions — less than 1 percent of private equity's $5.8 trillion global assets under management.[85] The illiquidity of PE investments represents an opportunity cost, as these investments cannot be reallocated to other, potentially more profitable assets.[86]

Private equity opacity prevents performance assessments: It is difficult for institutional investors to assess the actual performance of private equity funds. The private equity firms are not obligated to provide the kinds of financial performance information that publicly traded companies are required to disclose. Efficient, healthy markets require that all parties have access to transparent material information to make investment decisions. The quality, quantity, and form of financial disclosure essential to providing equitable access to market information that is necessary for investors, the public, and functioning markets is not currently available for private equity investments. The limited disclosure required under the Dodd-Frank uncovered substantial lapses.

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78 Harris, Jenkinson, and Kaplan (2015) at 20.
79 Parmer and Kelly (2019).
80 Barber, Brad M. and Ayako Yasuda. "Interim Fund Performance and Fundraising in Private Equity." December 16, 2015 at 2 to 3.
81 Applebaum and Batt (2012) at 16.
82 Barber and Yasuda (2015).
83 Harris, Robert S., Tim Jenkinson, and Steven N. Kaplan. "Private equity performance: What do we know?" *Journal of Finance*. Vol. 69, Iss. 5. October 2014.
84 Slavkin Corzo (2019) at 14.
85 McKinsey & Company (2019) at 15 and 31.
86 Parmar and Basak (2019).

More than half of the SEC's examinations of private equity advisors in 2014 found "violations of law or material weaknesses in controls."[87]

The PE industry's performance metric, the self-reported internal rate of return (IRR), can be easily manipulated. PE firms calculate the fund's IRR based on the performance of portfolio assets (from purchase to sale), not on the performance of investors' committed funds. But PE firms do not instantly purchase assets with the committed money, which is required to be held ready to make purchases. This can artificially shorten the performance horizon of the assets relative to the committed funds and raise the apparent rate of return, but that faster rate of return would not apply for the entirety of the investor's commitment.[88] Warren Buffett recently said that IRR returns were "really not calculated in a manner I would regard as honest."[89]

Private Equity also does not report clearly or adequately to investors about the fees they are collecting, and how much investors have paid and will be required to pay. In fact, the funds may require investors to sign agreements specifically stating that they do not have the right to know what fees they are collecting. Finally, PE's lack of transparency to investors about what portfolio companies they own and acquire, and about the business strategies they plan to pursue at those firms, is another serious impediment to investors effective assessment of the costs and benefits of specific fund investments.

IV. Private Equity Accountability and the Stop Wall Street Looting Act

The disturbing impacts of private equity ownership – increased indebtedness, more worker layoffs, a greater risk of bankruptcy, and an increase in abusive practices toward customers and communities – spring directly from the private equity business model.

A central feature of that business model is a lack of accountability for the general partners of the private equity fund. General partners advance only a tiny fraction of the funds used for private equity activities — on average, less than 3 percent of the fund's equity, which implies far less than 1 percent of the total funds used for acquisitions.[90] Yet they are the key insiders who control the fund's decisions and the management of portfolio firms. Private equity general managers have been able to manipulate the limited liability framework of corporate law to shield themselves from the downside risk of their actions, while using their control of portfolio companies to capture the upside profit. This lack of accountability creates skewed incentives which undermine the long-term well-being of private equity owned companies, their workers, their customers, and the communities in which they operate.

The relationship between a portfolio company and its private equity owner begins with a leveraged buyout in which the portfolio company takes on debt to pay for its own acquisition by the private equity fund. The portfolio company is responsible for re-paying this debt but the private equity owner is not.

[87] Bowden (2014).
[88] Parmer and Kelly (2019).
[89] Parmar and Basak (2019).
[90] Segal, Julie. "Having skin in the game isn't so easy anymore for private equity managers." *Institutional Investor*. February 19, 2019

In order to service the portfolio company's enormous acquisition debt, the private equity fund owner will impose extreme cost-cutting on the portfolio company, which endangers the long-term future of the company. At the same time, the private equity fund will extract various types of fees and distributions from the portfolio company, leaving the portfolio company even more thinly capitalized, but increasing the short-term profits of the private equity fund. In some cases, the private equity fund might insist on cost-cutting measures that involve legal violations, such as environmental pollution or workplace safety violations, for which the portfolio company, not the private equity fund, is legally responsible.

If the portfolio company is able to service the enormous acquisition debt, it will be sold by the private equity company. If not, it will end up in a bankruptcy in which the acquisition lender will be paid off the top from the company's assets because of its security interest, leaving other creditors (including the federal government) and the employees of the company with recourse only to whatever scraps are left over, not the resources which the private equity owners have drained from the company during the period between acquisition and bankruptcy. The leveraged buyout is in essence a "heads-I-win, tails-you-lose" proposition for private equity.

Lack of accountability extends not only to the relationship with the portfolio firm, but to the relationship between general partners and their passive investor limited partners, who provide the great majority of the fund's equity. Private equity funds are not subject to the disclosure framework intended to protect investors in publicly registered funds such as mutual funds. General partner insiders have taken advantage of that fact to routinely mislead or deceived limited partners regarding overall returns to investments, as well as other issues.[91]

A central goal of the Stop Wall Street Looting Act (SWSLA) is to impose accountability on private equity general partners and their fellow insiders for their actions with respect to portfolio companies and outside investors. The new restrictions on private equity general partners and their insiders in the SWSLA are designed to protect portfolio companies — and their stakeholders — by eliminating the incentives and capability of the general partners to engage in harmful actions. Elements of the law also protect limited partners by requiring general partners to follow disclosure and other rules designed to protect outside investors. In addition, the legislation increases worker protections in bankruptcy procedures and eliminates certain tax advantages enjoyed by private equity insiders.

Title I of the bill imposes joint and several liability on the private equity firm's general partners and their insiders for liabilities of the portfolio companies owned by the private equity fund. This includes debt incurred in the takeover of the portfolio company, as well as legal penalties due to lawsuits or regulatory actions against the company. The joint and several liability makes the general partners of the private equity fund liable for debt that is incurred by a company in a private equity takeover, as well as for any costs of regulatory violations or legal judgements involving customer harm at the company. SWSLA also extends this liability to the insiders of general partners, so the actual control persons have liability for the wrongdoing they direct.[92]

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[91] Applebaum, Eileen and Rosemary Batt. Center for Economic and Policy Research. "Fees, Fees and More Fees: How Private Equity Abuses its Limited Partners and U.S. Taxpayers." May 2016.
[92] Congress has previously mandated such control person liability for violations of federal consumer financial law as part of the "related person" liability under the Consumer Financial Protection Act.

SWSLA's joint-and-several liability provision are necessary to appropriately align the incentives of private equity general partners, who currently have an extremely lopsided risk-reward balance because of the combination of limited liability and their enormous leverage. This lopsided risk-reward balance is problematic because the general partners control the portfolio firm, so they are able to encourage it to pursue riskier strategies, such as undue cost-cutting and disinvestment. Importantly, SWSLA does not change the liability of the limited partners in private equity funds.

Title II of the bill restricts the mechanisms private equity funds use to drain value from their portfolio companies after they are taken over. The title includes a two-year ban on dividend payouts from the portfolio company up to the private equity fund, and a complete ban on so-called "monitoring fees" which are payments from the company to the fund that are not clearly tied to services rendered. The two-year ban on distributions mirrors the EU's 2011 Alternative Investment Fund Managers Directive.[93] It also includes a provision that strengthens federal fraudulent transfer law enabling certain transfers of value from the portfolio company to the private equity firm, including transfers in the initial acquisition process for the company, to be reversed and recaptured in cases where the portfolio company goes bankrupt. This means that resources taken from the company by the private equity firm will be available to pay obligations to workers of the company in case of a bankruptcy. Finally, the title includes a provision that ends tax benefits for excessive leverage at a portfolio company.

Title III of the bill elevates the priority of worker claims in bankruptcy cases, and also restricts mechanisms by which management insiders are able to take outsize shares of the bankruptcy estate ahead of worker claims. This means that in cases in which private equity owned firms (as well as other firms) go bankrupt, the claims of ordinary workers for severance pay and pension obligations are more likely to be honored.

Title IV of the bill eliminates the "carried interest" tax loophole, which permits private equity general partners to qualify their income for the lower capital gains tax rate rather than the ordinary income rate paid by wage and salary workers. The section provides that the returns to partnership interests received for providing investment management services be classified as ordinary income and taxed at the ordinary income rate.

Title V of the bill responds to ways in which private equity funds engage in deceptive marketing practices in attracting outside investors, and also ways in which they take advantage of outside investors (limited partners) once their funds are committed. Like hedge funds, private equity funds benefit from exemptions to the securities laws and do not have abide by disclosure requirements that normally apply to investment managers in funds that are registered investment companies (e.g. mutual funds). The title addresses this problem by mandating that private equity firms provide standardized disclosures to their investors in critical areas such as fees, returns, leverage, portfolio firms owned, and the activities of other funds managed by the private equity firm. Furthermore, it imposes fiduciary duties on the private equity general partners as regards any investments of pension fund money, requiring them to respect the interests of limited partners who are entrusting them with pension fund resources to manage.

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[93] European Parliament and European Council. "Directive on Alternative Investment Fund Managers." Directive 2011/61/EU. June 8, 2011.

Title VI of the bill reverses a 2018 legal decision that exempted Collateralized Loan Obligations (CLOs) from key risk protections imposed by the Dodd-Frank Act.[94] CLOs are a key financing mechanism used by private equity firms to fund their acquisitions. Leveraged buyouts are financed with syndicated loans. CLOs are securitizations of pieces of these syndicated loans, enabling bond market investors to invest in the loans that fund leveraged buyouts. This title restores the Dodd-Frank "skin in the game" requirement that some of the risk from these securitizations be retained by the entity selling the CLO. This creates an incentive not to deceive investors concerning the risks of loan securitizations, as occurred during the 2008 financial crisis.

A. Private equity interests have misrepresented the SWSLA

Insiders at private equity funds have a great deal of wealth and power, and the SWSLA would greatly increase their accountability for the decisions they make. Indeed, it would effectively cut off many of the most lucrative mechanisms private equity insiders use to enrich themselves at the expense of portfolio firms and outside investors. So private equity firms have every incentive to lobby against it, and are doing so.

In their efforts to stop the SWSLA, private equity interests have significantly misrepresented the nature of the bill. They have consistently claimed that the SWSLA would harm companies owned by private equity, which employ millions of workers, and also that it would increase liability for private equity limited partners. Neither of these claims are true. As described above, the SWSLA is aimed directly at private equity general partners, increasing their liability for actions they take and also increasing their disclosures to outside investors. Since, as described elsewhere in this testimony, actions taken by private equity general partners to drain value from portfolio firms have frequently been harmful to workers, firms, and communities, these steps can be expected on net to help firms that are or might be the targets of private equity acquisition. The same is true for private equity limited partners, who would be helped by the new disclosures and accountability measures in the SWSLA.

A good example of extreme industry misrepresentation is the recent report by the Center for Capital Markets at the U.S. Chamber of Commerce, purporting to estimate the economic effects of the SWSLA.[95] The report estimates that the SWSLA could lead to the loss of up to 26 million jobs. This implies that the SWSLA alone would lead to the loss of almost one in five (17 percent) of the total jobs in the economy, almost triple the job losses experienced in the 2008 financial crash and the Great Recession, and comparable to all the job losses experienced from 1929-1932 in the worst period of the Great Depression.[96]

These numbers are based on the obviously faulty assumption that if returns to private equity general partners are reduced due to increased liability, a significant share or even all of the firms owned by private equity firms would simply go out of business. But private equity-owned companies do not owe their existence to private equity. Private equity does not create businesses. Instead, it generally acquires them when they are already established mature firms with a proven business model. Firms

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[94] U.S. Court of Appeals for District of Columbia. Loan Syndications and Trading Association v. Securities and Exchange Commission and Board of Governors of the Federal Reserve System. No. 17-5004. February 9, 2018.
[95] Swenson, Charles. Center for Capital Markets and U.S. Chamber of Commerce. "Economic Impact Analysis of the Stop Wall Street Looting Act." November 12, 2019.
[96] Bureau of Labor Statistics. "Labor Force, Wages, and Working Conditions." 1945.

owned by private equity are not funded day to day by the private equity money used to acquire them, but by their own earnings from ordinary business operations. As documented elsewhere in this testimony, the tactics used by private equity funds divert the cash flow of the portfolio firms away from business operations and investing for the future, and toward servicing debt imposed in the leveraged buyout of the firm, or fees levied by the private equity owners. By reducing incentives for these kinds of predatory activities, the SWSLA would in fact increase the stability of firms targeted by private equity.

Furthermore, it is not true that the SWSLA imposes new liability on passive investor limited partners of the private equity firm, as is claimed in the Chamber of Commerce report. The report asserts that the new liability for debt and legal judgements in the SWSLA extends not just to general partners and insiders of the private equity fund, but to limited partner investors such as pension funds and charitable foundations. In fact, SWSLA's definitions expressly exclude passive limited partners from the reach of these provisions.[97]

In general, in their lobbying against the SWSLA private equity insiders are seeking to blur the distinction between their own financial liability and the well-being of the firms they own and the pension funds they are entrusted to manage. But the SWSLA is effectively aimed at increasing the accountability of private equity insiders specifically, and reducing their incentives to take actions that are harmful to targeted firms and outside investors, as well as to their customers and the public.

V. Private Equity Abuses Threaten Workers' Economic Security

Workers frequently pay the price for PE takeovers. First, cost cutting strategies to boost profits are often taken out of workers through workforce downsizing, lowering wages or eliminating raises, reducing benefits like health care and retirement, and eliminating severance payments.[98] Even for workers in unions, many PE takeovers have forced benefit or wage concessions (cuts) from workers and even occasionally efforts to decertify existing unions or marginalize union workers (by shifting work to non-union facilities, for example).[99] The PE-imposed cost-cutting "inevitably means job cuts," according to *Businessweek*.[100]

Second, the leveraged buyouts, financial engineering including dividend recapturing, and asset stripping can leave target firms in a financially precarious condition. The downward pressure on performance can lead to further downward pressure on wages and benefits, but it also can lead to bankruptcy. If the portfolio companies do not generate enough revenue to finance the higher debt burden, the companies can and do slide into bankruptcy and liquidation, costing even more workers their jobs, livelihoods, and economic security. Since private equity controls a growing share of the economy, both cost-cutting driven downsizing and bankruptcy-driven layoffs pose significant risks to U.S. workers and their families. Finally, the PE firms shield themselves behind a complex veil of corporate shell subsidiaries, that prevent the PE firms and PE managers from being held

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97 Specifically, the bill defines "the holder of an economic interest" in a fund, a status required by the bill for the attachment of liability, to exclude any "person that is not an insider with respect to a control person." (SWSLA, sec. 3(8)(C)(ii)). The terms "insider" is then defined as a "control person" of the private equity fund (SWSLA, sec. 3(9)). But "control person" is defined to expressly exclude passive limited partners in a fund.

98 Coleman-Lochner and Ronalds-Hannon (2019).

99 Applebaum and Batt (2012) at 20.

100 Dmitrieva, Katia. "It might be making inequality worse." *Businessweek*. October 3, 2019.

responsible for pension losses, unpaid benefits, or owed severance pay. The Pennsylvania state treasurer observed that "too often, private equity firms instead buy companies, load them with debt, and pay themselves off in secret while decimating a firm and a community."[101]

The PE industry brags about the number of people that work at PE-owned businesses, without acknowledging the increased job insecurity this creates from layoffs and bankruptcies. It makes sense that as private equity buys up more businesses, the industry would employ a lot of workers. But it is not the case that private equity creates jobs, it merely buys employers and in many cases the number of workers at those companies shrinks after the PE takeover.

Fig. 7: Job growth at PE Firms v. U.S. job growth v. PE investment growth

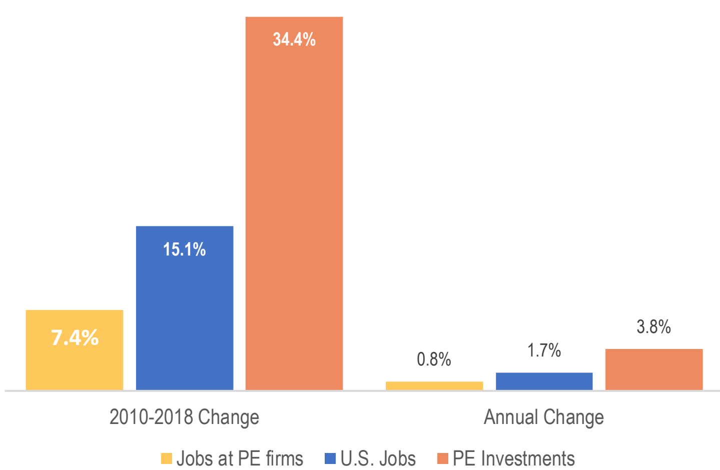
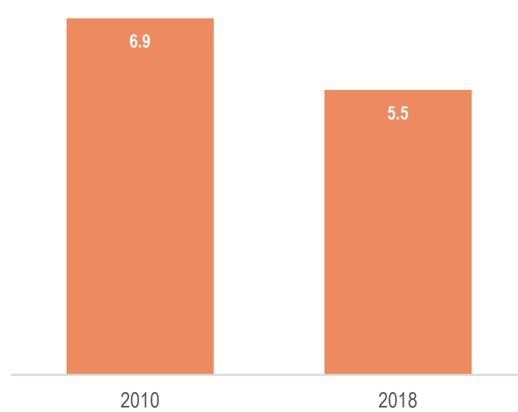


Fig. 8: Jobs at PE firms per million dollars invested



Sources: AFR calculations from AIC, Pitchbook and BLS data.

Nor does private equity sustain jobs or foster job growth. PE investments are rising much faster than the workforce at PE owned businesses and the number of jobs at PE-owned firms is declining. In 2010, the private equity industry trade association reported that PE-owned firms employed 8.1 million workers; by 2018, it claimed the figure was 8.7 million workers – a modest increase of 0.8 percent per year, about half the rate of the nation's overall annual job growth of 1.7 percent (see Figure 7).[102] But U.S. PE assets under management (companies) grew much faster, rising 27.1 percent from $1.1 trillion in 2010 to $1.5 trillion in 2018.[103] Because PE investments have grown far faster than the number of workers at PE-owned firms, every million dollars of PE investments accounts for fewer jobs today than a decade ago. In 2010, every $1 million in PE assets employed 6.9 workers, but that figure fell to 5.5 workers per $1 million invested in 2018 (see Figure 8).[104]

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[101] Idzelis (2019).
[102] Applebaum and Batt (2012) at 12; Ernst & Young. Prepared for the American Investment Council. "Economic Contribution of the US Private Equity Sector in 2018." October 2019 at 4. Number adjusted to exclude the 1 percent of private equity direct employees that work at private equity firms (1 percent of the 8.8 million estimate, bringing the number of workers at PE-owned firms to 8.7 million); BLS. Seasonally adjusted full-time employees 16 years and over. BLS Series No. LNS 12500000.
[103] Black (2017); Pitchbook "Private Markets: A Decade of Growth" (2019) at 5 and 6. 2018 figure derived from global assets under management based on share of U.S. investments and share of private equity.
[104] *Ibid.*; Applebaum & Batt (2012) at 12; Ernst & Young (2019) at 4.

A. Private equity abuses worsen economic inequality

Predatory and extractive practices by the PE industry have exacerbated economic inequality by enriching a tiny number of PE executives while slashing jobs and pushing down on wages for working families. PE general partners fare very well under the industry's business model. The top private equity executives earn tremendous amounts each year. In 2019, managing general partners and CEOs salary, bonus, and carried interest distribution reached $4.2 million and senior partners earned $3.3 million.[105]

All this income makes many PE executives very, very rich. The share of PE firms as the sources of the wealth behind the Forbes 400 richest Americans doubled from 1992 to 2011, when nearly 7 percent of the richest fortunes were derived from private equity.[106] The 2019 Forbes 400 listed many private equity leaders among the nation's richest people, including Blackstone's Steven Schwarzman ($17.7 billion net worth), Apollo Global Management's Leon Black ($7.7 billion), KKR & Co.'s George Roberts ($6.1 billion) and Henry Kravis ($6.0 billion), and Platinum Equity's Tom Gores ($5.6 billion).[107]

This astounding wealth is accumulated at working people's expense. Private equity takeovers generate operational savings through cost-cutting that frequently involves layoffs, offshoring, and depressing wages and benefits.[108] The financial engineering and debt loads imposed on target firms make them more financially precarious. PE-owned firms are more likely to slide into bankruptcy and liquidation, costing even more workers their jobs and economic security. By raising already sky-high earnings for top executives, financializing a broader swath of the U.S. economy, and destroying family sustaining jobs, private equity is exacerbating the gulf between the haves and have-nots in America, and increasing economic insecurity for working people.

B. Private equity downsizing and layoffs (even without bankruptcy)

Firms taken over by private equity are more likely to shed workers than non-PE firms. A 2019 study by University of Chicago and Harvard economists found that after two years, companies taken over by private equity had reduced the workforce (layoffs) by 4.4 percent compared to companies that were not taken over.[109] If the effects of this peer-reviewed, empirical analysis of employee rolls were applied to the PE industry's 2018 estimate of employees at PE-owned firms, about 400,000 of the workers in the industry sponsored study could lose their jobs by 2020. A 2014 study by the same authors found that the two-year job losses doubled within five years after a PE takeover.[110] These job losses were mostly middle-class, family sustaining jobs. A 2016 study found that private equity

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105 Dorbian, Iris. "Compensation spikes across PE as fundraising nears record level, ex-Lariat partner re-activates independent sponsor shop." *PE Hub Wire*. October 30, 2019.
106 Kaplan, Stephen N. and Joshua Rauh. "It's the market: The broad-based rise in the return to top talent." *Journal of Economic Perspectives*. Vol. 27, No. 3. Summer 2013 at 47.
107 Kroll, Luisa and Kerry A. Dolan. "The Forbes 400: The definitive ranking of the wealthiest Americans." *Forbes*. October 2, 2019.
108 Dmitrieva (2019).
109 Davis, Steven J. et al. "The Social Impact of Private Equity Over the Economic Cycle." January 1, 2019 at 5.
110 Davis, Steven J. et al. "Private equity, jobs, and productivity." *American Economic Review*. Vol. 104, No. 12. December 2014 at 3958.

layoffs were concentrated among middle-class workers and that workers at PE-firms had twice the risk of unemployment due to offshoring or automation compared to non-PE workers.[111]

The PE business model incentivizes downsizing and benefits cuts, as increased revenues can be captured by the PE owners. Private equity firms aim to sell their portfolio companies fairly rapidly, ideally within 5 years. This encourages managers to extract value quickly. This often involves slashing costs through downsizing of employees that can juice profits and productivity as fewer workers struggle to perform the same workload.

For example, private equity firms have bought hundreds of newspapers in the past decade. The financial crisis accelerated the newspaper industry's loss of revenues from online advertising competition that depressed the value of newspaper companies; private equity eagerly bought up these cheaper news companies. The five largest private equity and hedge fund-backed newspaper chains went from owning 226 daily newspapers in 2004 to 785 in 2019.[112]

The PE investors demand severe cost cutting by firing reporters, editors, designers, and printing-press operators to drive revenues and profits.[113] Alden Capital slashed two-thirds of its newspaper staff including unionized newspaper guild workers in the first seven years after it took over the Digital First Media newspaper chain.[114] Alden also shifted $900 million worth of newspaper real estate — offices and printing plants — into a separate Alden subsidiary, stripping assets out of the newspaper businesses.[115] The *American Prospect* concluded that "Private equity has been gobbling up newspapers across the country and systematically squeezing the life out of them to produce windfall profits."[116]

The staff cuts and asset stripping has compromised local news coverage and undermined democracy itself. For example, the Fortress Investment Group's GateHouse Media downsized the *Peoria Journal Star* so severely that it reduced downstate Illinois coverage from 23 counties to only 3.[117] Especially for daily papers in smaller cities, firing or dramatically cutting the newspaper staff has reduced coverage of local governments and businesses. For example, even the *Arizona Republic* now has only one reporter covering the Phoenix city government.[118] A 2014 report by American University researchers found that the decline in the number of newspapers contributed to lower voter turnout and democratic participation.[119] In August 2019, GateHouse announced a leveraged buyout of Gannett, owner of *USA Today* and many others, to create the nation's biggest newspaper chain with 280 daily papers, 300 weeklies and a circulation of 8.7 million.[120] The deal was financed

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111 Olsson, Martin and Joacim Tåg. Research Institute of Industrial Economics. "Private Equity, Layoffs, and Job Polarization." May 2016 at 2.
112 AFR analysis of the Database of Newspapers. University of North Carolina at Chapel Hill's Center for Innovation and Sustainability in Local Media. Available at https://www.usnewsdeserts.com/. Accessed
113 Posner, Michael. "Hedge funds and newspapers: A bad mix." *Forbes*. January 18, 2019.
114 Reynolds, Julie. "Meet the vulture who savaged the Denver Post." *The Nation*. April 13, 2018.
115 O'Connell, Jonathan and Emma Brown. "A hedge fund's 'mercenary' strategy: Buy newspapers, slash jobs, sell the buildings." *Washington Post*. February 11, 2019.
116 Kuttner, Robert and Hildy Zenger. "Saving the free press from private equity." *American Prospect*. December 22, 2018.
117 Tracy, Marc. "A paradox at the heart of the newspaper crisis." *New York Times*. August 1, 2019.
118 O'Connell, Jonathan. "As Gannett merger nears completion, union claims 'journalism will suffer' under deal." *Washington Post*. November 8, 2019.
119 Hayes, Danny and Jennifer L. "As local news goes, so goes citizen engagement." *Journal of Politics*. Vol. 77, No. 2. February 2015.
120 Arbel, Tali. "GateHouse, Gannett to merge for $1.4B, build newspaper giant." *Associated Press*. August 5, 2019.

with a $1.8 billion loan from Apollo and the company planned to cut $300 in costs annually.[121] The takeover threatens the jobs of 1,200 newspaper guild workers at 33 Gannett newspapers and newsroom staff at the *Arizona Republic* voted to unionize in advance of the private equity acquisition.[122]

The private equity takeover of other businesses has cut staff, reduced wages and benefits, and eliminated raises. The Cerberus-purchased Steward hospital network in Massachusetts reduced staffing, closed units and eliminated jobs to meet budget targets.[123] The nurses' union said these moves caused dangerously low staffing levels.[124] The nurses' union also accused Steward of reneging on commitments to support their pensions, refusing to base pension contributions on all work (including overtime), and balking at joining a multiemployer pension plan.[125] Immediately after Bain Capital, KKR, and Vornado Realty Trust bought Toys "R" Us, it slashed jobs and froze or drastically lowered annual pay raises, even for long-time employees.[126]

C. Private equity-driven bankruptcies destroy jobs

The private equity industry's reliance on leveraged buyouts that burden the takeover target firms with often unsustainable debt loads can — and often do — imperil the finances of portfolio companies and even drive them into bankruptcy. Other financial engineering can further compromise the balance sheet of portfolio companies, including paying management fees and additional debt to fund dividend recapitalization payments to the PE firms. In addition, PE asset stripping of real estate can force portfolio companies to pay rent for occupying buildings they once owned. The PE industry contends that it delivers management expertise and needed financing to struggling or undervalued firms, but portfolio firms often struggle to pay fees, rents, service new and higher debt loads, *and* deliver higher profits for PE owners. When revenues are insufficient to cover debt obligations, these firms slide into bankruptcy and/or liquidation.

Portfolio firm bankruptcies and liquidations cost workers their jobs, benefits, severance payments, and retirement security. Other businesses that supply or provide services to bankrupt firms can go unpaid as well, potentially harming workers at these firms. Even without liquidation, bankruptcy can significantly hobble portfolio firms because of the legal, organizational, and debt restructuring costs and because the devaluation of corporate assets combined with the bankruptcy filing makes securing future credit more difficult and expensive.[127]

Private equity portfolio firms are much more likely to go bankrupt than firms that were not taken over by private equity. A 2019 California Polytechnic State University study of nearly 500 leveraged

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121 O'Connell (November 8, 2019).

122 The NewsGuild-Communications Workers of America. "GateHouse-Gannett Merger Threatens Journalism." November 2019; O'Connell, Jonathan. "Newsroom staff at Arizona Republic, a Gannett paper, moves to unionize ahead of GateHouse deal." *Washington Post.* November 20, 2019.

123 Applebaum, Eileen. Center for Economic and Policy Research. "Everyone Wondered How a Private Equity Firm Would Make Money in a Leveraged Buyout of a Struggling Non-Profit Hospital Chain—Now We Know." October 2015 at 4; Encarnacao, Jack. "Quincy Medical nurses end strike; layoffs begin." *Quincy (MA) Patriot Ledger.* April 12, 2013.

124 Encarnacao (2013.

125 Laroque, Marc. "Morton Hospital nurses: Cerberus more concerned with profits than patients." *Taunton (MA) Daily Gazette.* December 21, 2011; Kronenberg, Jerry. "Hub nurses hound health giant." *Boston Herald.* December 21, 2011.

126 Guthrie Weissman, Cale. "Why work has failed us: Because companies aren't sharing the profits." *Fast Company.* September 4, 2018.

127 Applebaum and Batt (2012) at 2.

buyouts between 1980 and 2006 found that 20 percent of the firms went into bankruptcy — ten times higher than the 2 percent of comparable non-LBO firms that went into bankruptcy.[128] A 2019 Pitchbook analysis confirmed that this trend is still continuing. Between 2016 and 2018, more than one-eighth (12.1 percent) of PE public-to-private takeovers over $500 million went bankrupt, nearly two-and-a-half times the 5.4 percent bankruptcy rate for other comparably sized transactions, which Pitchbook attributed to the tremendously high levels of debt from the leveraged buyouts.[129]

These PE-driven bankruptcies have cost jobs. The highly leveraged PE takeover of Harrah's Entertainment (now Caesars Entertainment) ended in disaster for workers. PE firms Apollo Global Management and TPG loaded up the casino company with $24 billion in debt during the 2008 takeover; the company's debt payments of $2 billion annually exceeded its revenues and it went into bankruptcy in 2015.[130] Workers paid the price for the PE gamble. By the time Caesars came out of bankruptcy, there were 19,000 fewer workers at the casino chain than before the PE takeover.[131]

Several PE takeovers of health care companies have led to job slashing bankruptcies. The PE-driven bankruptcy of Hahnemann hospital this year not only affected the community, but the fate of the health care workers. In early 2019, Hahnemann stopped paying into the pensions for its workers.[132] By the summer, Paladin moved Hahnemann into bankruptcy and announced it would shutter the hospital.[133] The shutdown cost 2,500 jobs, including those of 800 union nurses, and left nearly 600 physicians-in-training without residency placements.[134]

Starting in 2010, Enhanced Equity Funds created the ambulance chain First Med EMS by rolling up a series of ambulance companies with leveraged buyouts that incurred $30 million in debt.[135] By early 2013, First Med was unable to pay its debts and it collapsed abruptly into bankruptcy liquidation two weeks before the Christmas holiday season, firing 2,300 workers and cutting off their benefits without notice.[136] Another PE-owned ambulance company, TransCare, went into liquidation in 2016, unexpectedly reducing ambulance coverage and costing EMTs and paramedics their jobs (and final paychecks).[137]

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128 Ayash, Brian and Mahdi Rastad. California Polytechnic State University. "Leveraged Buyouts and Financial Distress." July 19, 2019.
129 Dowd, Kevin. Pitchbook. "Are take-private buyouts worth the risk?" April 17, 2019.
130 Indap (2017); "Caesars casinos files for bankruptcy." *Reuters*. January 15, 2015.
131 Harrah's Entertainment, Inc. U.S. Securities and Exchange Commission (SEC). Form 10-K. March 1, 2007 at 8; Caesar's Entertainment Corporation. SEC Form 10-K. February 22, 2019 at 8.
132 Rush, Mariah. "Hahnemann University Hospital's inner turmoil: A timeline of changes, layoffs, and closing." *Philadelphia Inquirer*. July 1, 2019.
133 "Owners of Hahnemann University Hospital file for bankruptcy protection." *WPVA ABC-6*. July 2, 2019.
134 "Hahnemann University Hospital to close, leaving thousands out of work." *WCAU NBC-10*. June 26, 2019; "Hahnemann's closure will leave medical residents scrambling." *WHYY FM-91*. July 5, 2019.
135 Maricopa Ambulance, LLC. Maricopa Ambulance's Written Closing Argument. In the Matter of Maricopa Ambulance, LLC. Certificate of Necessity. Arizona Department of Health Services. Matter No. 2015A-EMS-0190-DHS. February 8, 2016 at 41 to 42; Second amended complaint. In re: American Ambulette & Ambulance Service, Inc. et al. U.S. Bankruptcy Court. Eastern District of North Carolina, Wilmington Division. Case No. 13-07673-8-SWH. Adversary Proceeding No. 15-00043-8-SWH. October 118, 2016 at 2, 11, 12, and 14 to 15.
136 Second amended complaint. In re: American Ambulette & Ambulance Service, Inc. et al. (2016) at 14 and 76; Sweigart, Josh. "Dozens left jobless when private ambulance company abruptly closes." *Dayton Daily News*. December 14, 2013; "Major ambulance service shuts down without notice in six states." *NBC News*. December 9, 2013; "Lawsuit filed against shuttered ambulance service that stranded hospitals in six states." *NBC News*. December 10, 2013.
137 Otis, Ginger Adams. "EMTs, paramedics lost final paychecks after private ambulance company TransCare went bankrupt." *New York Daily News*. April 1, 2016; Otis, Ginger Adams. "Exclusive: Private ambulance company TransCare that answered FDNY 911 calls ceases operations in Bronx, Manhattan." *New York Daily News*. February 24, 2016; Coyne, Matt and Michael

D. Private equity behind retail apocalypse that destroyed nearly 600,000 jobs

The PE takeovers of retail chains have been particularly disastrous. Over the past decade, private equity firms and hedge funds have rapidly expanded into retail, snapping up over 80 major retailers.[138] The highly-leveraged retail takeovers had frequently led to bankruptcies and significant job losses, destroying the economic security of working families and sapping the economic vitality from local communities. Today, one out of eight retail workers are employed by a chain controlled by private equity — about 1 million out of the total 15.8 million U.S. retail workers.[139] These workers are especially vulnerable to future layoffs.

Over the last ten years, PE-driven layoffs, bankruptcies, and liquidations have destroyed 597,000 jobs, according to a 2019 study by Center for Popular Democracy, Private Equity Stakeholder Project, Americans for Financial Reform Education Fund, and United for Respect.[140] These job losses suggest that private equity has slashed 40 percent of the jobs at PE-owned retailers, since today the industry reports there are 900,000 workers were employed by PE-owned retailers (meaning that before the layoffs, there were about 1.5 million jobs).[141]

Private equity owned retailers both shed store locations and cut the retail workforce. A 2014 study found that PE takeovers of retail companies cut 12 percent of their workforce within five years.[142] The biggest job losses came from PE-controlled retail bankruptcies. The PE industry and other analysts put the blame for these job losses on competition from e-commerce (especially Amazon), but the business failures and job losses have been highly-concentrated in the PE-owned retailers. As one financial analyst observed, the debt-backed PE retail takeovers with "high-leverage, especially in this difficult [retail] environment, can be fatal."[143]

PE-owned retailers were the vast majority of retail bankruptcies. Ten out of the 14 (or 71 percent) of the largest retail chain bankruptcies since 2012 were at private equity-acquired chains. Among the retailers that filed for Chapter 11 bankruptcy in 2016 and 2017, two-thirds were backed by private equity.[144] There were at least six more PE-owned retail bankruptcies in 2018 and layoffs at Sears alone cost over 250,000 jobs (Sears, Southeastern Grocers, Nine West, David's Bridal, Top's Market, Claire's Stores).[145]

Many of these failures were at grocery stores. Over the last decade, private equity firms have taken over at least 14 grocery store chains. Six of them (43 percent) went into bankruptcy and 2 of those were liquidated (14 percent).[146] These included nationally known chains like A&P and important

D'Onofrio. "TransCare ambulance service abruptly halts Westchester service." *White Plains (NY) Journal News*. February 24, 2016.

138 Pirate Equity (2019) at 4.

139 BLS, "All Employees: Retail Trade [USTRADE]," retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/USTRADE, May 13, 2019; Private Equity Stakeholder Project analysis of PitchBook data related to total employees at private equity acquired companies.

140 Pirate Equity (2019) at 4.

141 Ernst & Young (2019) at 5

142 Davis et al. (2014) at 3978.

143 Coleman-Lochner and Ronalds-Hannon (2019).

144 Covert, Bryce. "The demise of Toys 'R' Us is a warning." *The Atlantic*, July/August 2018.

145 Pirate Equity (2019) at 40 to 44.

146 *Ibid.*

regional grocery chains like Marsh Supermarkets in the Midwest and DeMoula's Market Basket in New England. These bankruptcies and liquidations cost 69,700 supermarket jobs.[147]

Other private equity takeovers of supermarket chains have stripped assets and siphoned off fees that have imperiled the financial viability of the grocery businesses. For example, Cerberus Capital Management began its investment in Albertsons-Safeway in 2006; since then it has raised the company's debt load to $8.6, sold off $2.6 billion of the supermarket real estate requiring a leaseback, and extracted nearly $350 million in fees.[148] In 2019, Albertsons-Safeway is trying to strip the pension benefits of grocery workers in Maryland, West Virginia, Virginia, and Washington, DC during union contract negotiations.

The profits from the PE retail takeovers were vacuumed to Wall Street, but the costs of these takeover blunders fell squarely on low-wage retail workers, most commonly women of color. Retail employers often provide poor quality jobs with low pay and no benefits, stagnant wages, high rates of underemployment (despite many workers wanting full-time hours), and unstable schedules that fluctuate week to week.[149] As a result, one out of four retail workers live below or near the poverty level.[150] Retail workers of color face high rates of occupational segregation and are concentrated in the retail jobs and sub sectors with the lowest pay and limited mobility (such as cashier positions in apparel).[151] Faced with poor job quality and widespread racial discrimination, very high numbers of retail workers of color — two out of five of Black (43 percent) and Latinx (42 percent) workers in this sector — live in or near poverty.[152]

VI. Private Equity's Impacts on Affordable Housing, Consumer Debt, and Students at For-Profit Colleges

The private equity industry has a growing influence over several sectors directly under the House Financial Services Committee's jurisdiction, including housing, consumer lending, and student lending. In all of these areas, private equity has been a driving and sustaining force in predatory and extractive profiteering, including practices that target households of color and lower-income households, and that exacerbate social and economic inequality.

A. Private equity threatens affordable housing and tenants

Private equity's investment in real estate exploded after the 2008 financial crisis. PE real estate speculators snapped up single-family homes as foreclosures rose and real estate values plummeted. PE firms also bought multifamily apartment buildings and manufactured home communities where they could generate steady profits by extracting higher rents. In some cases, the private equity investments were facilitated by taxpayer-subsidized loans from the government sponsored

147 *Ibid.*
148 United Food & Commercial Workers Local 400 and Private Equity Stakeholder Project. "Private Equity's Biggest Retail Gamble: Albertsons Safeway." November 6, 2019.
149 Center for Popular Democracy (CPD), Fair Workweek Initiative. "Job Quality and Economic Opportunity in Retail Key Findings from a National Survey of the Retail Workforce." November 2017.
150 Ruetschlin, Catherine and Dedrick Asante-Muhammad. Dēmos. "The Retail Race Divide How the Retail Industry Is Perpetuating Racial Inequality in the 21st Century." June 2, 2015.
151 CPD (2016) at 1 to 2.
152 Ruetschlin and Asante-Muhammad (2015).

enterprises Fannie Mae and Freddie Mac that have a statutory mandate to encourage affordable housing, but the predatory practices of private equity landlords have undermined that goal.

Globally, PE real estate investments rose by about 50 percent in recent years, from around $600 billion in 2011 to over $900 billion in real estate assets owned by 2018.[153] About two-thirds of the real estate deals in 2018 were in the United States (4,400 deals worth $206 billion) and about one-fifth of that was in residential real estate (about $40 billion). [154] Today, private equity landlords own at least one million apartment units, nearly 250,000 single-family homes, and 150,000 manufactured home sites.[155] The private equity industry views rental properties as just a new asset class that can generate yield for investors through families paying their monthly rent.[156] Blackstone has become the world's biggest landlord with over $230 billion in residential and commercial properties.[157]

PE purchases are backed with mountains of debt, and made with an eye to creating high levels of return for the PE firm, so PE firms often pursue aggressive cost cutting and revenue enhancing strategies like raising rent, adding new fees and charges, skimping on upkeep, and aggressively pushing tenants to depart (including through evictions) to further raise rents and revenues. The web of corporate subsidiaries and limited partnerships can shield private equity owners from legal consequences for pursuing these aggressive — and sometimes illegal — tactics to generate higher profits. PE investments in residential rental properties are contributing to the affordable housing crisis across the country. Families are finding it harder to find decent affordable rental homes and potential first-time homebuyers are less able to purchase faced with competition from deep pocketed PE-backed buyers that can make all cash offers.

Private equity profits from housing collapse: After millions of families lost their homes during the foreclosure crisis, private equity bought up tens of thousands of homes across the country. The private equity industry frequently bought those homes at a substantial discount as a result of the mortgage crisis,[158] profiting off the economic losses that were especially deep in lower- and moderate-income neighborhoods and communities of color. The PE firms took real estate investment trusts (REITs) private and merged many companies together to form consolidated owners of single-family rental homes.

Today, private equity firms own at least a quarter million single-family rental homes estimated to be worth nearly $40 billion.[159] The biggest of the PE investors, Blackstone Group-controlled Invitation Homes, was formed out of a series of mergers that created a company with 82,000 rental homes in

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153 EisnerAmper and Preqin. "2019 Private Equity Real Estate Market Outlook." 2019 at 8. Includes dry powder behind real estate PE funds.
154 *Ibid*. at 14 to 15.
155 National Multifamily Housing Council (NMHC). "NMHC 50 largest apartment owners, 2018." 2019; Americans for Financial Reform Education Fund, Alliance of Californians for Community Empowerment, and Private Equity Stakeholder Project (AFREF, ACCE and PESP). "The Continuing Threat of Private Equity Investment in Single Family Rentals." April 2019; Private Equity Stakeholder Project, Manufactured Housing Action, and Americans for Financial Reform Education Fund (PESP, MHA, and AFREF). "Private Equity Giants Converge on Manufactured Homes." February 2019 at 4.
156 Gopal, Prashant and Patrick Clark. "PE snapped up houses after the real estate crisis." *Businessweek*. October 3, 2019.
157 Flood, Chris. "Blackstone leads global surge in property investment." *Financial Times*. May 22, 2019.
158 Casselman, Ben and Conor Dougherty. "Want a house like this? Prepare for a bidding war with investors." *New York Times*. June 20, 2019.
159 "Single-Family Rentals Growing as an Institution-Owned Asset Class." *National Real Estate Investor*. December 2018.

17 metropolitan areas.[160] As a result, Blackstone alone owns nearly one out of every 200 rental houses and its Invitation subsidiary share price has risen by 50 percent since it went public in early 2017.[161] The PE presence is much more extreme in some specific local markets. According to the *Atlantic*, institutional investors own one in every five single family homes in some Atlanta neighborhoods, and in one zip code they bought almost 90 percent of the 7,500 homes sold between January 2011 and June 2012.[162]

These distant PE landlords often hike rents, avoid investing in repairs and upkeep, gouge tenants with additional fees and costs, and are more likely to evict tenants.[163] On investor calls, they boasted of cost-cutting measures like pushing increasing responsibility for basic maintenance and repairs onto tenants, along with generally reducing spending in these areas. The consequences for families can be both increased costs and unsafe or unlivable homes.[164] The substantial waves of private equity money into the single-family housing market has also made it harder for families to become homeowners. In some markets, these private equity funds are pushing up home prices and outbidding — often with all-cash offers — potential first-time buyers.[165] The negative effects have fallen disproportionately on low- and moderate-income families and communities of color – the very families most impacted by the predatory subprime lending spree that led to the financial crisis.

The buy-up continues today. In 2018, investors bought about 20 percent of the available starter homes — the cheapest third of single-family houses.[166] Private equity-funded SFR companies including Progress Residential (Pretium Partners), FirstKey Homes (Cerberus Capital Management), Tricon American Homes (Tricon Capital), and Main Street Renewal (Amherst Holdings) have continued to be aggressive acquirers and are raising a combined $3.25 billion to invest in single-family rental properties.[167]

Private equity's multifamily empire: Private equity and private real estate managers own at least a million apartment units around the United States, based on data from the National Multifamily Housing Council, more than twice the number of apartment units owned by publicly-traded apartment real estate investment trusts (REITs).[168] Many private equity funds held few multifamily buildings before the financial crisis, but capitalized on the real estate collapse by buying hundreds of thousands of apartment units. Today, private equity-backed buyers are the primary drivers behind multifamily residential property investments.[169]

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160 Invitation Homes. [Press release]. "Invitation Homes and Starwood Waypoint Homes complete merger." November 16, 2017.
161 Gopalt and Clark (2019); Invitation Homes share price rose from $20.63 when it was launched January 29, 2017 to about $30 during September 2019. Ticker INVH.
162 Semuels, Alana. "When Wall Street is your landlord." *The Atlantic*. February 13, 2019.
163 ACCE Institute, Americans for Financial Reform and Public Advocates. "Wall Street Landlords Turn American Dream into a Nightmare." January 2018.
164 Semuels (2019).
165 *National Real Estate Investor* (2018).
166 Casselman and Dougherty (2019).
167 Premium Partners LLC. [Press release]. "Premium Partners raises more than $1 billion for single-family rental platform." July 9, 2018; Tan, Gillian and Patrick Clark. "Cerberus is seeking more than $500 million for rental homes." *Bloomberg*. August 20, 2018; Tan, Gillian and Patrick Clark. "Amherst seeks more than $1 billion for rental houses." *Bloomberg*. August 22, 2018; Semuels (2019.
168 *Ibid.*
169 Jones Lang LaSalle. "JLL Multifamily Investment Outlook, H1 2017." 2018.

These buyers can demand quick and high returns that can ultimately harm tenants. Lone Star Funds acquired Home Properties and promised investors it intended to generate a 25 percent internal rate of return.[170] These high returns can be financed with loads of debt (up 80 or 90 percent in some cases), and also by raising rents and fees, sometimes quite sharply, to extract more cash from the apartment properties. This can include purchasing more modest buildings, pressing working class tenants to leave in order to then upgrade the apartments and raise the rents, attract more affluent tenants and sometimes flip the properties for a profit.[171]

Some private equity buyers have adopted a business strategy of pushing out long-time lower-income tenants – through rent hikes, harassing frivolous legal actions, spurious eviction notices, avoiding upkeep, and letting buildings fall into disrepair – to convert buildings in gentrifying areas into high-rent properties that can be sold for much more than their purchase price.[172]

The most notorious PE takeover of multifamily is BlackRock and Tishman Speyer Properties $5.6 billion 2006 leveraged takeover of the 11,000-unit Stuyvesant Town and Peter Cooper Village, a pool of affordable housing in high-priced Manhattan.[173] Tishman Speyer and Blackrock invested a combined $224 million of their own money in the deal, the rest was equity from PE investors like pension funds as well as a $3 billion mortgage; Tishman Speyer pocketed $18 million in fees annually until the deal soured.[174]

When PE bought the property, there were over 8,000 rent controlled apartments, but Tishman quickly and aggressively pushed to deny 800 rent-controlled lease renewals in order to convert them into higher-priced apartments – 40 percent of the tenants prevailed, but Tishman's aggressive legal intimidation encouraged 30 percent to move out.[175] In 2009, the New York Court of Appeals fined Tishman Speyer $200 million for illegally raising rent on 4,400 apartments.[176]

In 2010, Tishman-Blackrock defaulted on the apartment complex and PE investors had their equity stake in the building wiped out; one major fund alone lost $500 million.[177] Because of the partnership structure, Tishman Steyer and Blackrock only lost their initial investment, and it is unlikely that tenants will recover the damages from illegal rent hikes.[178] In 2015, when PE firm Blackstone bought Stuyvesant Town/Peter Cooper, there were 20 percent fewer rent controlled units than when PE first took over the complex and Blackstone only committed to maintaining them as rent-controlled for a limited time (10 or 20 years).[179]

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170 "Lone Star Gears Up for Another Mega-Fund." *Commercial Real Estate Direct*. December 17, 2015.
171 Wishnia, Steven. "How forcing tenants to move became a business model for NYC landlords." *Village Voice*. September 18, 2017; Kim, Julia. "Inside Manhattanville tenants' fight against predatory landlords." Columbia Spectator. February 21, 2018.

172 Morgenson, Gretchen. "As investment firms buy up buildings, tenants see bullies." *New York Times*. May 9, 2008; Wishnia (2017); Kim (2018); Anderson, Scott Thomas. "Sacramento is the land of corporate landlords." *Sacramento News & Review*. February 8, 2018; Shabazz, Rasheed. "Wall Street comes to Alameda." *East Bay Express*. May 23, 2018.
173 Fernandez, Manny and Charles V. Bagli. "Tenants roiled by challenges on residency." *New York Times*. May 27, 2008; Bagli, Charles V. "Buying landmarks? Easy. Keeping them? Maybe not." *New York Times*. January 16, 2010.
174 Bagli (2010).
175 Fernandez and Bagli (2008).
176 Bagli, Charles V. "Court deals blow to owners of apartment complex." *New York Times*. October 22, 2009.
177 Bagli (2010).
178 Gottensdiener, Laura. "How Wall Street screwed over tenants in New York City." *Mother Jones*. April 8, 2014;
179 Schiffman, Betsy. "Blackstone to buy Stuy Town in $5.3 billion deal." *Forbes*. October 20, 2015; Bagli (2010).

This month, private equity firm Greystar Equity Partners announced it had raised $2 billion for a new multifamily property fund.[180] It already held nearly 50,000 apartment buildings, including a building in Northern Virginia that threatened to evict a senior citizen over a misunderstanding about cookies before a *Washington Post* column publicized the reportedly common occurrence of threatening tenants for very minor infractions like cursing.[181]

Buying up manufactured home communities: Private equity firms have purchased and rolled-up hundreds of manufactured home communities (also known as mobile home parks) with an estimated 150,000 homesites.[182] Until recently, most of these communities were owned locally by mom-and-pop landlords, but in the last decade private equity firms have followed the lead of a first wave of corporate owners and snapped up scores of manufactured home communities, building large portfolios that can control the financial fate of hundreds of thousands of families. The PE firms have utilized the same profiteering practices as in single-family and multifamily takeovers: rent hikes, fee gouging and penalties, repeated baseless eviction notices, inadequate investment in maintenance, and more to generate more revenues from the communities' residents.[183]

Manufactured home communities are a vital pool of affordable housing for seniors on fixed incomes, low-income families, immigrants, people with disabilities, veterans and others, especially in rural and sprawling metropolitan areas. Manufactured homes offer an affordable homeownership opportunity for 20 million people; 70 percent of the homes sold for less than $125,000 are manufactured homes, and households that live in these communities typically earn $39,000 annually, far short of the national median income.[184] Residents generally own the manufactured home and rent the land where the home sits; about 3 million families own or rent manufactured homes with these land-leases.[185]

Private equity buyers have bought up these communities because the tenants are a captive audience paying rents that generate steady revenues even during downturns. Although manufactured homes are sometimes called mobile homes or trailers, it is generally infeasible to move them. It can cost over $10,000 to move a manufactured home even if a family could find a new place to put it.[186] That means that private equity landlords can and do rapidly raise rents and the trapped community members have little choice but to pay escalating rents and fees.[187] PE firms have jacked monthly rents up by 40 percent to 70 percent and added new fees and penalties to generate even more revenues.[188] Oftentimes, private equity-owned communities skimped on upkeep and providing basic services to extract more revenues from the communities. As a result, residents could end up paying

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180 "Greystar raises $2bn for tenth US multifamily property fund." *IPE Real Assets*. November 6, 2019.
181 NMHC (2019); Vargas, Theresa. "She's 83 and might get kicked out of her apartment. Among her violations: Taking too many cookies." *Washington Post*. October 16, 2019; Vargas, Theresa. "'Yawhoo!': The 83-year-old grandmother hit with a lease violation for taking too many cookies won't have to leave." *Washington Post*. October 23, 2019.
182 PESP, MHA, and AFREF (2019) at 4.
183 Brown, Jennifer and Kevin Simpson. "Mobile home parks move from mon-and-pop to corporate." *Associated Press*. September 15, 2019.
184 *Ibid*.
185 U.S. Consumer Financial Protection Bureau (CFPB). "Manufactured-Housing Consumer Finance in the United States." September 2014.
186 Dubb, Steve, "Mobile home affordability threatened by private equity." *Nonprofit Quarterly*. June 24, 2019.
187 Sullivan, Esther. *Manufactured Insecurity: Mobile Home Parks and Americans' Tenuous Right to Place*. University of California Press: Oakland. 2018 at 183 to 184.
188 Whitford, Emma. "Affordable housing is disappearing. These mobile home residents are fighting to protect theirs." *Time*. November 30, 2018; "Private equity firms rapidly investing in mobile home parks." *Associated Press*. April 20, 2019.

nearly $700 per month for rent that only covered modest basic services — like water, sewer, and basic landscaping or snow removal — that sometimes were not even provided.[189]

Many of these PE firms own large portfolios of manufactured homes. Private equity-backed Equity Lifestyle Properties own over 200 communities with over 70,000 homesites[190] After it took over a mobile home park for senior citizens in Florida, it tripled the eviction rate, kicking out over 12 percent of the households.[191] In California, Equity Lifestyle Properties settled a $10 million suit for failing to maintain a community, including unannounced water shutoffs, frequent sewage backups, electricity blackouts, potholes, and more.[192] Smaller PE firms like Havenpark Capital have bought up communities across the Midwest and steeply raised rents so that they became unaffordable for those on fixed incomes. In some cases, they have increased rents by 40 percent to 70 percent and to close to 80 percent of monthly Social Security benefits — forcing hard-pressed residents to choose between paying their rent and buying food or medicine or keeping the lights on.[193]

B. Private equity-owned consumer lenders prey on vulnerable consumers

Private equity firms have pushed into the high-priced, consumer loan industry, offering payday loans and other consumer loan products that trap borrowers in a cycle of debt. As the *Washington Post* reported, "sensing profits in loaning money to cash-strapped Americans, private equity firms have jumped into consumer lending."[194] By the end of 2017, private equity firms owned more than 5,000 storefront payday lenders as well as a host of online lenders that offer comparably steep prices with triple-digit annual percentage rates (APR) loans.[195] Some of the largest and most well-known payday lending companies, like ACE Cash Express, Speedy Cash, Money Mart and the Check Cashing Store, have been owned by private equity firms.[196] Private equity is also an increasing force in the high cost installment loan business, which typically involves somewhat larger loans paid back in installments over longer periods and can involve similar (as well as additional) abusive practices.[197]

Payday and car title loans are structured to create a long-term debt trap that drains consumers' bank accounts and causes significant financial harm, including delinquency and default, overdraft and non-sufficient fund fees, increased difficulty paying bills like mortgages, rent, utilities, and other bills, loss of checking accounts and bankruptcy. Consumers borrow several hundred dollars at high rates to be repaid when they get their next pay check or Social Security check; but most borrowers

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189 Durst, Noah J. and Esther Sullivan. "The contribution of manufactured housing to affordable housing in the United States: Assessing variation among manufactured housing tenures and community types." *Housing Policy* Debate. Vol. 29, Iss. 6. June 2019; Rucker, Patrick. "Fannie Mae: Mobile-home loan program leaves evictions, billionaire profits in wake." *Capitol Forum*. May 16, 2019; Whitford (2018).
190 PESP, MHA, and AFREF (2019) at 17.
191 Rucker (2019).
192 Kaplan, Tracey. "Mobile home park victory: A negligent owner, $10 million settlement and San Jose residents who prevailed." *San Jose Mercury News*. March 5, 2017.
193 *Associated Press* (April 20, 2019).
194 Whoriskey, Peter. "Senate bill would prohibit mailing checks worth thousands of dollars to strangers." *Washington Post*. December 11, 2018.
195 Americans for Financial Reform and Private Equity Stakeholder Project. "Private Equity Piles into Payday Lending and Other Subprime Consumer Lending." December 2017
196 Whoriskey, Peter. "'A way of monetizing poor people': How private equity firms make money offering loans to cash-strapped Americans." *Washington Post*. July 1, 2018.
197 Whoriskey (July 1, 2018).

have to refinance their loans again and again because they cannot afford to repay the high-cost loans. More than 80 percent of payday loans are rolled over or renewed within two weeks.[198]

These high cost lenders' business model is based on using the coercive tactic of withdrawing money directly from a bank account (or holding a car title that may be worth many times the amount of the loan as collateral in the case of car title loans) to extract money from economically vulnerable people. In addition to various strategies to try to evade existing state anti-predatory lending laws, many of the companies in this sector and their trade associations spend heavily on lobbying and political contributions to try to head off new rate caps and other regulations, which have consistently high levels of popular support.

About one in 25 families take out at least one payday loan each year, according to the Federal Reserve, and African American and Latinx consumers are two to three times more likely to have a payday loan than whites.[199] These high-cost lenders extracted $8 billion in interest and fees from consumers that took out payday and car-title loans.[200] Longer-term (installment) payday loans have extremely high refinance (37 percent) and default (38 percent) rates, clear signs that they are not typically affordable.[201]

FFL Partners' Speedy Cash payday lender sells high-priced loans that skirt consumer protection laws: San Francisco-based PE firm FFL Partners bought Curo Financial, the parent company of Speedy Cash and Rapid Cash in 2008.[202] Speedy Cash interest rates and fees make the loans very expensive: a $400 loan could carry an annual percentage rate of 389 percent and cost $2,300 to repay over 18 months.[203] In 2018, Speedy Cash paid $750,000 to settle allegations that it evaded California rate-cap rules and repay 6,400 borrowers that were deceptively steered into larger and higher-interest rate loans.[204]

Speedy Cash aggressively pursued consumers that fell behind on their payday loans. Speedy Cash has filed suits and garnished paychecks to extract repayment, sometimes seeking attorney fees and court costs that can be 50 percent of the original debts.[205] In 2013, *ProPublica* found that Speedy Cash filed over 9,300 collection lawsuits in Missouri against delinquent payday borrowers — about 20 percent of all the payday lawsuits in the state even though it only had 6 storefront locations.[206]

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198 Burke, Kathleen et al. CFPB's Office of Research. "CFPB Data Point: Payday Lending." March 2014 at 4 to 5.
199 Bricker, Jesse et al. Board of Governors of the Federal Reserve System. "Changes in U.S. Family Finances from 2013 to 2016: Evidence from the Survey of Consumer Finances." *Federal Reserve Bulletin*. Vol. 103, No.3. September 2017 at Table 5 at 27. See Table 5; Burhouse, Susan et al. Federal Deposit Insurance Corporation. "2013 FDIC National Survey of Unbanked and Underbanked Households—Appendices." October 2014 at Table 12A at 83
200 Standaert, Diane, Delvin Davis, Charla Rios. Center for Responsible Lending. "Payday and Car-Title Lenders Drain Nearly $8 Billion in Fees Every Year." April 2019 at 3.
201 CFPB. "Supplemental findings on payday, payday installment, and vehicle tile loans, and deposit advance products." June 2016 at 15 and 22.
202 FFL Partners. Portfolio Companies: Speedy Cash. Internet Archive December 2008. Accessed November 2019.
203 Kiel, Paul. "When lenders sue, quick cash can turn into a lifetime of debt." *ProPublica*. December 13, 2013.
204 California Department of Business Oversight. [Press release]. "DBO continues crackdown on interest rate cap avoidance entering consent order with California check cashing stores." January 22, 2019.
205 Bulusu, Siri. "How small short-term loans draw vulnerable borrowers into big long-term debt." *Medill Reports Chicago*. April 9, 2016.
206 Kiel (2013).

In late 2018, FFL Partners took Curo public, but it retained a nearly 20 percent stake in the company even in late 2019.[207] Curo has begun to make more installment loans than payday loans — loans with their own triple-digit interest rates that get paid back in installments instead of lump-sum repayment — and that are designed to evade regulatory limits on payday lenders.[208]

Most recently, Curo has told its investors that it plans to evade a new interest rate cap in California by setting up a sham partnership with a bank, which would involve falsely claiming the bank (which is not generally considered subject to state interest rate caps) is the true lender.[209]

Online payday lender dodges state usury laws, goes bankrupt from lawsuits: Private equity startup firms Sequoia Capital and Victory Park Capital as well as other investors backed an early internet lender, Think Finance.[210] This online lender described itself as serving the unbanked, but pushed high-cost but convenient loans that posed the same risks as storefront payday lenders: sky-high interest rates and fees that trap consumers in a cycle of debt.

Think Finance was charged with multiple violations, including using front companies on tribal land to circumvent state interest rate caps and charge higher interest rates.[211] The Consumer Financial Protection Bureau found that Think Finance made $49.1 million in loans that were void under various state laws and that it had collected $85.8 million in principle, interest, and fees on these loans between 2013 and 2015.[212]

Ultimately, Think Finance settled a raft of additional lawsuits by agreeing to pay $39.7 million to 21 million borrowers.[213] The lawsuits contended that many borrowers received unsolicited mailings that promised loans — for $1,000 or more — merely by going online; a $500 loan could have an interest rate of 438 percent, making it cost nearly $1,800 to pay off the debt.[214] Pennsylvania's Attorney General secured a settlement with Think Finance as part of its bankruptcy to erase remaining loan balances for 80,000 Pennsylvanians who were sold $133 million in illegal online payday loans that charged effective interest rates as high as 448 percent.[215] In 2017, Think Finance went into bankruptcy in part because of the lawsuits over its predatory loans.[216]

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207 Dugan, Kevin. "Payday lender's IPO gets a 'meh' from Wall Street." *New York Post*. December 7, 2017; CURO Group Holdings Corp. SEC form DEF-14A. April 16, 2019 at 16.
208 Weinstein, Austin. "Payday lenders are making bank on high-interest products." *Bloomberg*. June 5, 2018.
209 National Consumer Law Center. [Press release]. "Advocates Urge FDIC, OCC, Federal Reserve to Stop Banks from Helping Payday Lenders Evade State Interest Rate Limits." November 7, 2019.
210 Rao, Leena. "Sequoia-backed Think Finance gets a $90 million credit line to help serve 'the unbanked.'" *TechCrunch*. September 23, 2010; Shubber, Kadhim. "Why this subprime lender funds loans through the Cayman Islands." *Financial Times*. January 19, 2016; Brickley, Peg. "Think Finance bankruptcy exposes fallout with Victory Park Capital." *Wall Street Journal*. October 24, 2017.
211 Howland, Jack. "Fort Worth firm allegedly violated payday loan laws for years. Now it's paying $39.7M." *Fort Worth Star-Telegram*. June 28, 2019.
212 CFPB. CFPB v. Think Finance, LLC. Complaint. U.S. District Court of Montana, Great Falls Division. November 15, 2017 at 25.
213 Howland (2019).
214 Tompor, Susam. "Westland woman had 350% interest rate on $1,200 loan and a loophole allows it." *Detroit Free Press*. July 12, 2019.
215 "State attorney general announces relief for 80,000 Pennsylvanians targeted by online payday loan scheme." *Fox WPMT-43*. July 24, 2019.
216 Tompor (2019).

Warburg Pincus' Mariner Finance reaps revenue from high-cost installment loans: In 2013, New York-based private equity firm Warburg Pincus bought installment lender Mariner Finance for $88 million.[217] Mariner Finance has over 44 branches in 22 states and has about 500,000 borrowers.[218]

Mariner sends unsolicited "live checks" to potential borrowers without consideration of their income, current debt obligations, or whether they can repay new debts.[219] Once borrowers sign and deposit the checks, they are obligated to repay the loans; cash-strapped consumers may not be aware of the terms, fees, and, conditions of the loan.[220] The business of what one former Mariner manager trainee called "monetizing poor people" has generated ample profits for the company.[221]

Mariner installment loans may carry lower nominal interest rates than payday loans, sometimes 35 to 36 percent, but it also charges fees that inflate the cost of the loans — adding hundreds of dollars on top of the interest, so that APRs are well above the nominal interest rate (and Mariner also makes still higher rate loans)[222] It also push-markets loan insurance of dubious value that can add nearly $400 more to the cost of the loans.[223] Insurance of this kind has repeatedly been found to be predatory, and often sold in illegal ways, in connection with mortgages as well as personal loans.

Mariner also relentlessly badgers delinquent borrowers with daily calls — even calling friends and relatives — and pursues them in court.[224] It has sued borrowers that have fallen behind for nearly three times the original debt principle, asking $3,300 for the loan principle, interest, loan fees, attorney costs, and court fees for a $1,200 loan[225]

C. Private equity drives student debt at for-profit colleges

Private equity firms have helped fuel the e for-profit college industry in the United States by buying up chains like the University of Phoenix, Art Institutes, Walden University, and Ashford University.[226] Between 2007 and 2019, private equity firms bought over 100 for-profit colleges.[227] The PE firms use leveraged buyouts to acquire for-profit schools and roll-up additional campuses into national companies. The PE firms cut educational expenses while increasing marketing to lure more students and their federally-backed loans to maximize profits.

PE-takeovers surged in the wake of the financial crisis, as people enrolled in schools when there were fewer job opportunities; the anticipation of an economic downturn has now also contributed

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217 Hyde Park Capital. "Consumer Finance Industry Update." May 2014 at 3.
218 Mariner Finance. Corporate description at website home page. Accessed November 2019; Apple, Alex. "Lending companies target need Americans with loans sent in the mail." *Fox News WZTV-17 Nashville, Tennessee.* July 5, 2018; Whoriskey (July 1, 2018).
219 Nicastro, Steve. "Here's the catch to those 'checks' you get in the mail." *MarketWatch.* December 28, 2018.
220 Whoriskey (December 11, 2018).
221 Whoriskey (July 1, 2018).
222 Mariner Finance. "Itemized Schedule of Charges (Delaware) Closed End Loans." June 2017.
223 Whoriskey (July 1, 2018).
224 *Ibid.*
225 Apple (2018).
226 Americans for Financial Reform and Private Equity Stakeholder Project (AFR and PESP). "Private Equity's Failing Grade." March 2018.
227 Unglesbee, Ben. "Private equity's role in the rise — and fall of for-profit colleges." *EducationDive.* May 6, 2019.

to reinvigorated private equity interest.[228] But private equity firms have been particularly emboldened by the Trump administration's roll-back of student borrower protections, including the repealing the gainful employment rule that can discipline schools that have too many students leaving with unmanageable debt.[229] There were at least 5 private equity for-profit college deals in 2018 and in 2019, including the purchase of University of St. Augustine for Health Sciences by Atlas Partners for $400 million.[230]

These takeovers have harmed students that end up incurring substantial debts often without having received an education that prepares them for a job. And the harm has been particularly severe for students of color. For example, African Americans are more than one-fifth of the students at for-profit colleges, as compared to 13 percent of the students at public colleges.[231]

For-profit schools have a poor record overall on graduation rates, impact on student earnings post-graduation, and portion of revenues devoted to teaching as opposed to marketing. A 2018 National Bureau of Economic Research (NBER) study found that students at for-profit colleges earned less after attending school than they did before their enrollment and that the income decline after attendance was twice as big at chain for-profit schools.[232]

Research points to PE owned for profit schools doing still worse. A 2019 NBER study found that 88 private equity takeovers of for-profit colleges and post-secondary schools managed to triple their profits largely through steep tuition hikes, marketing to drive higher enrollment, and reduced spending on instruction. This in turn caused significant declines in (already troubling) graduation rates (13.0 percent) and loan repayment (5.6 percent) compared to before the PE purchase.[233] The study concluded that the private equity profit incentives, along with reliance on public sources like federal student loans for 90 percent of revenues "is a purely rent-seeking phenomenon and is unambiguously not in the students' or taxpayers' interest."[234]

The short-term profit maximization, ability to evade liabilities, and increased pressure caused by the debt burden created by highly leveraged acquisition supercharge predatory practices. They incentivize extreme forms of revenue extraction through increasing enrollment to collect federal student loan dollars at the expense of providing a meaningful education. Students saddled with unpayable debts pay a high price. Because the for-profit schools rely overwhelmingly on federally backed student loans for revenue, so does the public purse. In the 2017-2018 school year, for profit colleges accounted for $16.6 billion in federal grants and loans, including GI bill student loans.[235]

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228 Unglesbee (May 6, 2019).
229 Givant Star, Marlene. "For-profit secondary education M&A poised for quiet comeback." *Merger Market.* October 15, 2018; Kreighbaum, Andrew. "DeVos issues final repeal of gainful employment." *Inside Higher Ed*. July 2, 2019.
230 Givant Star (2018); Unglesbee, Ben. "For-profit Laureate sells St. Augustine for $400M, holds onto Walden U." *EducationDIve*. February 7, 2019.
231 Kahn, Suzanne, Mark Huelsman, and Jen Mishory. Roosevelt Institute, The Century Foundation, and Dēmos. "Bridging the Progressive Policy Debate: How Student Debt and the Racial Wealth Gap Reinforce Each Other." September 2019 at 10.
232 Reigg Cellini, Stephanie and Nicholas Turner. "Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data." Working Paper No. 22287. January 2018 at 21.
233 Eaton, Charlie, Sabrina T. Howell, and Constantine Yannelis. National Bureau of Economic Research. "When Investor Incentives and Consumer Interests Diverge: Private Equity in Higher Education." NBER Paper No. 24976. April 4, 2019 at 2 to 4.
234 *Ibid.* at 2 and 8.
235 U.S. Department of Education (Dept. of Ed.). Office of Federal Student Loans. Title IV Program Volume Reports. 2017-2018 Disbursements; U.S. Department of Veterans Affairs. Post 9-11 GI Bill Data. 2017 Tuition & Fees.

For example, Endeavor Capital-owned Southern Careers Institute (a subsidiary of Tall Oak Learning) derived more than 98 percent of its revenue from federal student loans, $32.4 million of $33.0 million in 2015, in violation of Department of Education rules that schools cannot take more than 90 percent of revenues from federal education aid and the highest rate in the country in 2015.[236] A decade after starting at Southern Careers, former students from the Austin campus had average annual earnings of $20,500 — about $5,000 less than average Austin residents with only a high school diploma.[237] Only 19 percent of these students had paid back *any* of their federal loan principle 3 years after leaving school, half the national rate of 46 percent.[238]

Private equity takeover of Art Institute parent, creates fraudulent "enrollment mill," resale, subsequent collapse, and re-resale to private equity-affiliated foundation: The private equity backed for-profit schools have been mired in controversy for fraudulent enrollments, illegal recruitment, and other violations. Private equity firms Providence Equity Partners and Leeds Equity Partners joined by Goldman Sachs took over Education Management Corp. (EDMC) in a $3.4 leveraged buyout in 2006 that left the company saddled with $1.4 billion in debt even six years later.[239] KKR got a 90 percent stake in EDMC after taking over its bad debts in 2014.[240] EDMC ran one of the nation's biggest for-profit college chains including Art Institutes and Brown Mackie Colleges.[241] The private equity owners pushed EDMC to swell enrollment to drive profits, doubling its student body by 2010.[242]

The EDMC enrollment growth was fueled by fraud. In 2015, EDMC paid $95.5 million to settle charges that it illegally payed recruiters bounties to secure ballooning enrollment that generated taxpayer-backed student loan revenues, including recruiting unqualified and unprepared students who accumulated unsustainable debt that they frequently defaulted on.[243] Attorney General Loretta Lynch said that EDMC operated "essentially as a recruitment mill, EDMC's actions were not only a violation of federal law but also a violation of the trust placed in them by their students — including veterans and working parents — all at taxpayers' expense."[244] EDMC separately paid a $102.9 million settlement to states attorneys general for paying recruitment bonuses that burdened students who enrolled and took out loans but then dropped out of school.[245]

In 2017, EDMC was on the verge of going bankrupt because of its PE-driven debt load and it's 65,000 student operation was sold for $60 million, about 2 percent of the original leveraged buyout

236 Halperin, David. "Inside a for-profit college conversion: Lucrative ties, troubling actions." *Republic Report*. May 16, 2018; Endeavor Capital. "Tall Oak Learning." Available at https://endeavourcapital.com/ec/tall-oak-learning/. Accessed November 2019; Dept. of Ed.. Proprietary School Revenue Percentages Report for Financial Statements with Fiscal Year Ending Dates Between July 1, 2014 and June 30, 2015; VA GI Bill Comparison Tool profile for Southern Careers Institute-Austin. Accessed October 22, 2017.
237 AFR and PESP (2018) at 2.
238 *Ibid.*
239 Ananthalaskmi, A. "Analysis — EDMC flirts with debt covenant breach as profits slide." *Reuters*. September 20, 2012.
240 EDMC. Securities and Exchange Commission filing DEF-14A. October 7, 2013.
241 Douglas-Gabriel, Danielle. "Art Institute campuses are being sold to L.A.'s Dream Center Foundation." *Los Angeles Times*. March 3, 2017.
242 Unglesbee (May 6, 2019).
243 U.S. Department of Justice (DOJ). [Press release]. "For-profit college company to pay $95.5 million to settle claims of illegal recruiting, consumer fraud and other violations." November 16, 2015.
244 *Ibid.*
245 Pohle, Allison. "One of nation's largest for-profit chains will forgive loans for 80,000 former students in settlement." *Boston Globe*. November 17, 2015.

price, to the non-profit faith-based Dream Center Education Holdings.[246] A year later, Dream Center could not pay its debts, one of its schools, Argosy College, had its student loans cut-off after misappropriating $13 million in student loans, and it collapsed into receivership, stranding its remaining 26,000 students, many of whom were stuck with the debt but unable to finish their education.[247] Dream Center sold the Art Institute campuses to the Education Principle Foundation, a non-profit with close ties to the private equity firm Colbeck Capital in 2019.[248]

High debt, low educational value, low graduation rates at Apollo's University of Phoenix: In 2017, Apollo Global Management and other investors bought the parent company of the for-profit University of Phoenix chain for $1.1 billion.[249] Although University of Phoenix once had nearly half a million students annually, its enrollment dropped to about 100,000 by 2018.[250] University of Phoenix spent $27 million in online advertising between 2016 and 2017, the latest data available.[251] But it spent only 21 percent of its tuition dollars on educational instruction in 2016 and 15 percent of tuition on instruction in 2017.[252] Fairly few University of Phoenix students leave with a degree: only 17 percent of first-time, full-time students received a degree,[253] far below the 60 percent graduation rate at all colleges and even below the 21 percent rate at private for-profit schools over all.[254]And University of Phoenix students typically incurred nearly $32,000 in debt.[255] A 2019 study found that barely half (50.8 percent) of University of Phoenix graduates earned more than people with only a high school degree.[256] With such low earnings, it is perhaps unsurprising that more than one-in-eight (12.3 percent in 2015) University of Phoenix students defaulted on that debt,[257] far higher than the national average default rate of 10.8 percent.[258]

VII. Private Equity's Healthcare Takeover Threatens Patients

Private equity firms now own health care companies from birth (fertility clinics) to death (hospice care) and everything in between. PE firms own hospitals, ambulances, surgery centers, physician practices, dialysis, cancer care, nursing homes, autism treatment, drug and alcohol rehabilitation, fertility clinics and more.[259] Private equity has been a major force in the healthcare industry for over

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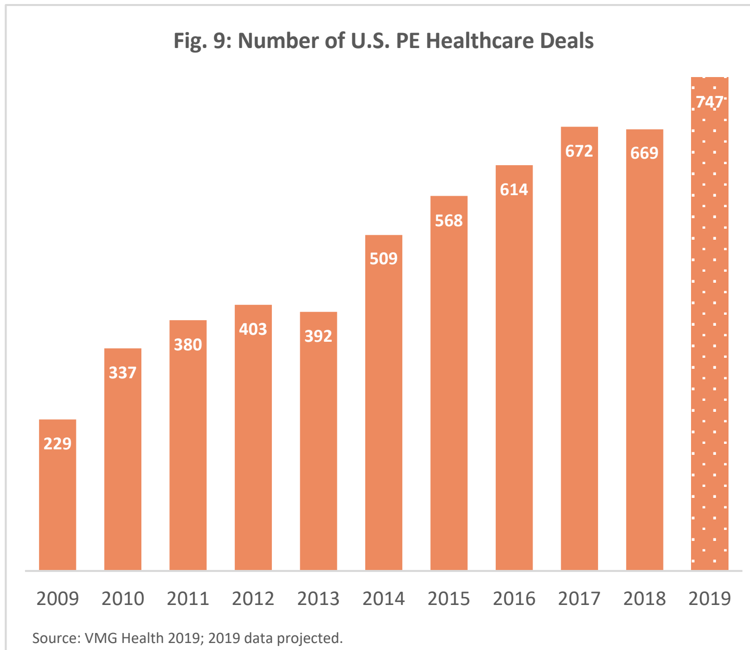
246 Moore, Daniel. "EDMC completes sale of schools to Dream Center." *Pittsburgh Post-Gazette*. October 18, 2017; Unglesbee (May 6, 2019).
247 Cowley, Stacy and Erica L. Green. "A college chain crumbles, and millions in student loan cash disappears." *New York Times*. March 7, 2019.
248 Moore, Daniel. "Dream Center, blaming EDMC, turns to foundation with ties to private equity to revive Art Institutes." *Pittsburgh Post-Gazette*. January 23, 2019.
249 Cohen, Patricia and Chad Bray. "University of Phoenix owner, Apollo Education Group, will be taken private." *New York Times*. February 8, 2016; Fain, Paul. "University of Phoenix hires new president." *Inside Higher Ed*. April 26, 2017.
250 McKenzie, Lindsay. "The 100K club." *Inside Higher Ed*. April 23, 2018.
251 Hall, Stephanie. The Century Foundation. "How much education are students getting for their tuition dollar." February 28, 2019.
252 *Ibid*.; Veterans Education Success. "Should Colleges Spend the GI Bill on Veteran's Education or Late Night TV Ads." April 2019 at 5.
253 University of Phoenix. "2019-2020 Consumer Information Guide." November 2019 at 6.
254 National Center for Education Statistics. "Retention and Graduation Rates." May 2019.
255 University of Phoenix (2019) at 5.
256 Veterans Education Success (2019) at 6.
257 University of Phoenix (2019) at 5.
258 Dept. of Ed.. [Press release]. "National federal student loan cohort default rate continues to decline." September 25, 2019.
259 Bain & Company. "Global Healthcare Private Equity and Corporate M&A Report 2019." 2019 at 17, 29, and 30; Whoriskey, Peter and Dan Keating. "Overdoses, bedsores, broken bones: What happened when a private equity firm sought to care for society's most vulnerable." *Washington Post*. November 25, 2018; Whalen, Jeanne and Laura Cooper. "Private-Equity pours cash into opioid treatment sector." *Wall Street Journal*. September 2, 2017; Liss, Samantha. "Private equity sees

a decade,[260] but the pace of PE takeovers is accelerating.[261] Over the past ten years, the number of PE healthcare deals tripled (see Figure 9), with $100 billion in takeovers in 2018.[262]

Private equity's aim to rapidly increase profitability can conflict with delivering quality health care. A *Journal of the American Medical Association* editorial observed that the PE drive for "high returns on investment on a fast time horizon may conflict with the need for investments in quality and safety."[263] PE firms typically increase revenues by cutting staff and reducing expenditures on care delivery that can harm patients, especially those that are sicker, elderly, lower-income or desperate. One PE healthcare specialist admitted the PE involvement in health care had "a reputation of acquiring to basically strip down and over-leverage and cash out, and everyone else left in its wake be damned."[264]



The gaps oversight and distorted incentives have allowed private equity firms to profit from healthcare takeovers at the expense of patients. First, the PE takeovers have been fueled by leveraged-buyouts,[265] often with substantial debt loads that can leave healthcare companies with little financial wherewithal to provide quality care for patients. Second, PE takeovers of healthcare facilities — hospitals and nursing homes — have included stripping real estate assets into separate subsidiaries or partnerships that further compromise financial viability. Third, the PE takeovers are frequently part of a roll-up or add-on merger wave where the PE firm aggregates many smaller businesses (like ambulance companies, medical practice groups, like dermatologists or dental offices) into larger firms that can negotiate for higher prices, charge consumers excessive fees by staying out-of-network (a surprise billing

ripe opportunity in health care this year." *HealthcareDive*. March 25, 2019; Objective Capital Partners. "M&A in fertility outpatient care remains strong." *Healthcare Insights*. June 11, 2019; RegionalCare Hospital Partners. [Press release]. "RegionalCare Hospital Partners to be acquired by funds affiliated with Apollo Global Management." November 12, 2015; BainCapital. [Press release]. "U.S. Renal Care to be acquired by investor group." February 13, 2019.

260 Robbins, Catherine J., Todd Rudsenske, and James S. Vaughan. "Private equity investment in health care services." *Health Affairs*. Vol. 28, No. 5. September/October 2008 at 1391.

261 PwC Health Research Institute. "Top Health Industry Issues of 2019: The New Health Economy Comes of Age." 2019 at 29.

262 Liss (2019); Meindl, John and Winston Smart. VMG Health. "Healthcare M&A Report." 2019 at 25.

263 Gondi, Suhas and Zirui Song. "Potential implications of private equity investments in health care delivery." *Journal of the American Medical Association*. February 28, 2019 at E1; Flynn, Maggie. "New private equity firm eyes 'good buying opportunity' as skilled nursing prices cool." *Skilled Nursing News*. June 26, 2019.

264 Flynn, Maggie. "New private equity firm eyes 'good buying opportunity' as skilled nursing prices cool." *Skilled Nursing News*. June 26, 2019.

265 Meindl and Smart (2019) at 25.

strategy), or offer ancillary services that are uncovered by insurance coverage to drive up revenues.[266]

Finally, the PE owners also shield themselves from legal responsibility for any negligence or low-quality care that might occur under aggressive cost-cutting and profit-maximizing strategies. The PE firms often shield their ownership behind a maze of shell companies and partnerships that immunizes the PE firms and partners from being responsible for any wrongdoing.[267] This potentially creates a disincentive to provide care. For example, the *Journal of Health Care Finance* reported that PE-owned nursing home chains adopt complex corporate structures to limit liability for negligence and malpractice that reduces the incentive to deliver quality care.[268]

A. Private equity-controlled nursing home quality disasters

Private equity's investment in nursing homes has compromised the quality of care for the most vulnerable patients. In the early 2000s, private equity firms began snapping up major nursing home chains, and by 2010 PE firms owned 40 percent of the biggest for-profit chains.[269] After the PE takeovers, nursing home chain profits increased, staffing (especially registered nurses) declined and patient care suffered.[270]

Private equity-owned nursing homes often split nursing homes into real estate partnerships (that own the nursing homes) and operating businesses (that run the individual nursing homes). The real estate shell companies own the nursing homes and rent them back to the operating businesses, which is profitable for the PE firm but dangerous for the nursing homes. Lease-backs strip assets out of the nursing home chains and generate rental revenue for the PE real estate subsidiary, but they undermine the finances of nursing homes by adding additional business costs (rent) and reducing their assets that could be used to secure operating credit or other financing.

The individual nursing homes can be separate companies that not only pay rent to another PE subsidiary but may also contract for services and purchase supplies from other companies owned by the PE parent firm.[271] The nursing home subsidiaries are technically separate corporations, but the PE owners still exert control over business operations, review financial reports, and approve or modify budgets.[272] Despite the PE operational control over the nursing homes, the real estate subsidiaries and other corporate subsidiary structures also insulate the PE firm and the real estate assets from responsibility and liability that might arise from lawsuits over negligent care or government claims of overbilling Medicare or Medicaid.[273]

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266 American Medical Association (AMA). Proceedings of the AMA 2019 Annual Meeting. 2019 at 446.
267 Kirchhgaessner, Stephanie. "Private equity swoops in on nursing homes." *Financial Times*. October 27, 2010.
268 Pradhan et al. (2014).
269 Bos, Aline and Charlene Harrington. "What happens to a nursing home chain when private equity takes over? A longitudinal case study." *International Health Economics & Finance*. Vol. 54. 2017 at 1.
270 Duhigg, Charles. "At many homes, more profit and less nursing." *New York Times*. September 23, 2007.
271 Mills, Ryan and Melanie Payne. "Neglected: Florida's largest nursing home owner represents a trend toward corporate control." *Naples (FL) Daily News*. May 31, 2018; Rau (2018).
272 Southwick, Ron. "Pa. Health Department ordered to turn over leases on nursing homes." *Harrisburg (PA) Patriot-Leader*. December 8, 2018.
273 Rau (2018).

The quality of care is lower at private equity-owned nursing homes. The Government Accountability Office found that PE-owned facilities had higher rates of care deficiencies than non-profit facilities and lower overall staffing levels than other for-profit and non-profit nursing homes.[274] A 2014 study found that private equity delivered lower quality than other for-profits, which deliver poorer care than non-profit nursing homes.[275] It found that PE-owned nursing homes had 29 percent fewer registered nursing hours per patient, 9 percent more pressure sores and 21 percent more deficiencies than for-profit homes.[276]

A 2007 *New York Times* analysis found that private equity-owned nursing homes had worse performance for 12 of 14 quality of care indicators like bedsores than the national average and that "serious quality-of-care deficiencies—such as moldy food and the restraining of residents for long periods or the administration of the wrong medications—rose at every large nursing home chain after it was acquired by a private investment group."[277]

The private equity ownership of two major nursing homes ended in financial disaster that also threatened the safety of their residents: ManorCare went into bankruptcy and the operating business of Beverly (renamed Golden Living) was sold off to several companies that subsequently went out of business.

Carlyle drives ManorCare into bankruptcy and threatens patient care: In 2007, the Carlyle Group purchased the nation's largest nursing home chain, ManorCare, in a leveraged buyout for $6.3 billion including $4.8 billion in debt — 76 percent leveraged.[278] Carlyle contributed only $65 million, the rest of the $1.3 equity for the purchase came from the limited partner investors.[279]

In 2011, ManorCare sold most of its facilities to the real estate investment trust HCP in a $6 billion sale-leaseback deal (later spun off into a separate REIT called QCP).[280] The deal included a $1.3 billion payout to Carlyle investors, which covered the initial investment, but Carlyle also recovered nearly $90 million in transaction and management fees — more than its initial equity stake.[281] HCP's CEO touted annual 3.6 percent rent hikes on ManorCare properties that would "fund an awful lot of dividend increases."[282] By 2012, ManorCare's revenue did not cover its rental costs.[283]

While the ManorCare operations struggled under the PE-imposed debt and rent burden, its 25,000 patients suffered under increasingly perilous health risks, according to a *Washington Post* examination. ManorCare laid off hundreds of employees to cut costs and for years it operated with fewer nurses than other nursing homes.[284] From 2013 to 2017, ManorCare's health-code violations increased 26

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274 Government Accountability Office (GAO). "Private Investment Homes Sometimes Differed from Others in Deficiencies, Staffing and Financial Performance." GAO-11-571. July 2011 at 16 and 20.
275 Pradhan et al. (2014).
276 *Ibid.*
277 Duhigg (2007).
278 Zaborney, Mark. "Despite recent troubles, HCR ManorCare has a rich history." *Toledo Blade*. April 29, 2018; Whoriskey and Keating (2018).
279 *Ibid.*
280 Davies, Megan. "HCP and Carlyle's ManorCare in $6 billion asset deal." *Reuters*. December 14, 2010; HCP, Inc. [Press release]. "HCP, Inc. completes spin-off of Quality Care Properties, Inc." October 31, 2016.
281 Whoriskey and Keating (2018).
282 Rucinski, Tracy. "ManorCare wins court approval to exit bankruptcy under landlord." *Reuters*. April 13, 2018.
283 Kosman, Josh. "Nursing home chain's collapse has been a decade in the making." *New York Post*. March 5, 2018.
284 Whoriskey and Keating (2018).

percent annually to almost 2,000 violations at its 230 facilities the year before its bankruptcy.[285] The violations were likely related to chronic short-staffing that left patients vulnerable to the documented bedsores, infections, falls, and the failure to assist patients with eating or cleaning.[286]

The Carlyle-imposed debt load made the nursing home operations financially unviable. ManorCare's revenues were not enough to cover its rent payments to HCP; it had fallen $446 million behind in its nearly $40 million monthly rental payments.[287] By 2018, ManorCare's $7 billion-plus debt load dragged the company into bankruptcy.[288]

State governments forced to takeover floundering former Golden Living nursing homes: In 2006, private equity firm Fillmore Capital bought the troubled for-profit chain Beverly Enterprises in a $2.3 leveraged buyout and renamed it Golden Living.[289] Beverly already had a history of low-quality care and many residents and their families had sued the chain for inadequate or negligent care.[290] Fillmore created layers of limited liability companies between itself and the nursing homes and shifted the real estate into a separate subsidiary that leased them back to the Golden Living operating companies.[291]

While Filmore owned and operated Golden Living, debt rose dramatically and quality did not improve — patients and families continued to bring lawsuits for negligent care and staffing levels declined after the purchase.[292] In 2013, it paid more than $600,000 to settle a federal lawsuit for allegedly providing inadequate wound care that the U.S. Attorney said "placed at risk the life and health of individuals who were entrusted to its care."[293]

A 2018 Arkansas study found persistently low staffing levels that Golden Living knew about and continued to press facilities to keep staffing levels low and under budget.[294] The Arkansas facilities failed to promptly administer medications or make necessary patient transfers to hospitals as well as having many lapses in delivering basic care that compromised patients' dignity and comfort.[295] Golden Living settled a lawsuit over these issues for $71 million in 2017.[296]

In Pennsylvania, state and federal regulators as well as the media documented low-quality conditions that imperiled patients' health. Pennsylvania and the federal government put one facility under heightened regulatory scrutiny for its persistent low staffing levels and violations; even after

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285 *Ibid.*
286 *Ibid.*
287 Rucinski (April 13, 2018).
288 Rucinski, Tracy. "HCR ManorCare files for bankruptcy with $7.1 billion in debt." *Reuters*. March 5, 2018.
289 Bos and Harrington (2017) at 2 to 3.
290 Brambila, Nicole C. "Golden Living Centers divests operating interest in all of its Pennsylvania facilities." *Reading Eagle*. March 3, 2017; Rustad, Michael L. "Heart of stone: What is revealed about the attitude of compassionate conservatives toward nursing home practices, tort reform, and noneconomic damages." *New Mexico Law Review*. Vol. 35, Iss. 2. Summer 2005 at note 189 at 365; Hilzenrath, David S. "Nursing home firm settles fraud case." *Washington Post*. February 4, 2000; California State Senate. Committee on Health and Subcommittee on Aging and Long-Term Care. "Nursing Home Quality in the 21st Century: Staffing Adequacy and Complaint Investigation." July 20, 2005 at 23 to 25.
291 Bos and Harrington (2017) at 2 to 3.
292 *Ibid.* at 6 to 7.
293 DOJ. [Press release]. "Golden Living nursing homes settle allegations of substandard wound care." January 2, 2013.
294 Harrington, Charlene and Toby S. Edelman. "Failure to meet nurse staffing standards: A litigation case study of a large US nursing home chain." *Inquiry*. Vol. 55. 2018 at 5 and 8.
295 *Ibid.* at 7 to 8.
296 *Ibid.* at 9.

Pennsylvania removed the home from the special focus list still had one of the worst staffing levels in the nation and was fined over $59,000 for violations that included finding maggots in a patients feeding tube.[297]

Violations like that spurred Pennsylvania to sue Golden Living in 2015 for "fail[ing] to meet residents' most basic human needs" including risking bedsores, leaving patients in soiled diapers, allowing residents to miss meals or showers and more.[298] A year later, a Lancaster, Pennsylvania television station found a local Golden Living home was not meeting requirements for long-term care facilities, including medication error rates over 5 percent.[299]

Pennsylvania's crackdown on Golden Living spurred the company to start selling its nursing home licenses to other chains while keeping the real estate in 2016.[300]
Fillmore officially exited the nursing home business. It remained the profitable landlord for the debt-saddled facilities while shielding itself from liability or regulatory oversight for managing the nursing homes.[301] But the new operators contended their leases required them to buy services and supplies from other Fillmore subsidiaries that effectively maintained the PE-firm's operational control.[302]

The debt loads and rent payments at the former Golden Living homes made them financially unsustainable. Some staff bought snacks for patients and gas for nursing home vehicles and even hoarded cash to pay vendors unwilling to take checks from troubled facilities.[303] At least two of the nursing home operators that took over Golden Living nursing home operations collapsed in bankruptcy that required state governments to take over the facilities within a few years of buying the licenses from Fillmore.
Skyline Healthcare bought Golden Living operating licenses in several states but could not survive under the debt loads. In 2018, Skyline, collapsed into bankruptcy and several state governments including Nebraska, Kansas, Pennsylvania, and South Dakota had to put scores of Skyline homes into receivership after some operations stopped paying utilities, worker wages and benefits, and nearly ran out of food.[304] Fourteen Skyline homes closed permanently, displacing over 900 residents who were forced to relocate often with little notice.[305] The Dycora chain was unable to pay its rent,

297 Rau, Jordan. "Poor patient care at many nursing homes despite stricter oversight." *New York Times*. July 5, 2017.
298 Smith, Paul. "Attorney General announces legal action against Golden Living nursing homes." *WMPT Fox Channel 43 (York, PA)*. July 1, 2015;
299 "Violations found at Golding Living Center in Lancaster." *CBS Channel 21 (Lancaster, PA)*. June 1, 2016.
300 Simmons-Ritchie, Daniel. "Worst nursing homes continue to fail the frail despite lawsuit and promises." *Harrisburg (PA) Patriot-News*. November 26, 2018.; "Golden Living planning to sell three service companies, shed more nursing home operations." *Talk Business & Politics (AR)*. August 16, 2016; Brambila, Nicole C. "Failing Care: 'Bad actor' ran operations at nursing homes in Pa. for 14 months before being ousted." *Reading (PA) Eagle*. February 10, 2019
301 Brambila (2017)
302 Simmons-Ritchie, Daniel. "Has Golden Living really left Pa.?" *Penn-Live/Harrisburg (PA) Patriot-Leader*. November 26, 2018.
303 Brambila (2019).
304 Stoddard, Martha. "Chain of 21 Nebraska nursing homes placed in receivership after missing payroll." *Omaha World-Herald*. March 26, 2018; Pfankuch, Bart. "Wave of nursing home closures hitting small communities." *Mitchell (SD) Daily Republic*. December 14, 2018; Flynn, Maggie. "New investigation puts skyline Healthcare back in the spotlight." *Sklilled Nursing News*. July 19, 2019.
305 Strickler, Laura, Stephanie Gosk, and Shelby Hanssen. "A nursing home chain grows too fast and collapses, and elderly and disabled residents pay the price." *NBC News*. July 19, 2019.

employee wages, or its vendors.[306] In 2019, California and Wisconsin moved a total of 11 Dycora nursing home operations into receivership.[307]

B. Private equity destroys community hospitals

Private equity has targeted hospital chains for takeovers since the late 1990s because they generate stable cash flow from private and public insurance.[308] Local hospitals can make vulnerable takeover targets because their often-troubled finances – from uncompensated care, underinsured patients, and low reimbursements – make them eager for cash infusions and management expertise that PE purports to provide.[309]

The rise in private equity hospital takeovers and mergers coincided with an increase in hospital closures and declining total number of hospitals, especially rural hospitals.[310] The PE-owned chains are the most profit-oriented of the for-profit hospitals. The majority of studies have found that for-profit hospitals have lower quality (some finding higher risks of death), worse access to care and provide less uncompensated (or charity) care for patients unable to pay.[311]

Many private equity hospital chains have sold their hospital facilities to real estate companies to raise money (that can be funneled to the PE firms), but then the hospitals are forced to lease back the property they once owned (raising the hospital operating costs). These sale-leasebacks divide hospitals into real estate companies and operating companies that must deliver health care profitably while paying rent to a firm often held by the same PE owner.[312]

Regulatory blind spots and misaligned incentives allowed private equity firms to extract tremendous wealth from these hospitals but left some of them precariously burdened with unsustainable debt. PE firms engineered these takeovers with mountains of debt, extracted exorbitant management fees, shifted hospital properties into real estate shell companies, and increased revenues by cutting staff and services. Some hospitals have been driven into bankruptcy, some have been shuttered, and even the more apparently "successful" takeovers have burdened the hospitals with debt.

Private equity cannibalizes Philadelphia safety-net hospital: In 2017, the private-equity hospital chain Paladin Healthcare bought two Philadelphia community safety-net hospitals for $170 million.[313] The deal was financed with at least $35 million in debt provided by Apollo Global Management, which later loaned Paladin another $20 million backed by Hahnemann's real estate.[314]

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306 Spanko, Alex. "Golden Living takes back control of 8 Dycora skilled nursing facilities in receivership." *Skilled Nursing News*. April 5, 2019; Boulton, Guy. "8 Wisconsin nursing homes operated by Dycora, including 3 in the Milwaukee area, put into receivership." *Milwaukee Journal Sentinel*. April 4, 2019; Promnitz, Donald A. "Fresno nursing home enters receivership." *Fresno Business Journal*. April 19, 2019.
307 Boulton (2019); Promnitz (2019).
308 Robbins, Rudsenske, and Vaughan. (2008) at 1393 to 1394.
309 Advisen Ltd. (2011) at 2 to 4.
310 Ellison, Ayla. "State-by-state breakdown of 102 rural hospital closures." *Becker's Hospital Review*. March 20, 2019; Flanagan, Cristin. "U.S. hospitals shut at 30-a-year pace, with no end in sight." *Bloomberg*. August 21, 2018.
311 Rosenau, Pauline Vaillancourt and Stephen H. Linder. "Two decades of research comparing for-profit and nonprofit health provider performance in the United States." *Social Science Quarterly*. Vol. 84, No. 2. June 2003.
312 Applebaum (2015) at 1.
313 LaPointe (2017).
314 DiStefano, Joseph N. "Hahnemann Hospital's demise should not be a revelation to any politicians in Philly." *Philadelphia Inquirer*. July 12, 2019.

Hahnemann University Hospital and St. Christopher's Hospital for Children were former non-profit hospitals that had been financially troubled and previously purchased by non-profit and for-profit chains before being sold to private equity.[315]

Hahnemann was an over 170-year old hospital that provided essential health care for some of Philadelphia's most vulnerable residents and served as the teaching hospital for Drexel University's medical school.[316] Two-thirds of Hahnemann's patients were African American or Latinx and nearly half were on Medicaid.[317]

Paladin moved Hahnemann's centrally located facilities, assessed at being worth $58 million, into a separate real estate business.[318] The Hahnemann campus covered a city block of prime real estate near city hall, the convention center, and an arts district that *CNN* reported would be "incredibly desirable for a high-end hotel or condominiums."[319] By moving the real estate into another company, these valuable assets were excluded from the hospital bankruptcy process.[320] Real estate investors are already eyeing the Hahnemann campus as part of a "gateway development" that might include luxury condominiums or a hotel to serve the nearby convention center, allowing the Paladin owners to make real estate profits from the collapse the PE-takeover facilitated.[321]

Hahnemann struggled under its debt load and was losing upwards of $5 million each month.[322] Within two years, Paladin pushed Hahnemann and St. Christopher's into bankruptcy and announced plans to shut down Hahnemann – starting by closing the emergency room to new trauma patients.[323] The city's two other safety net hospitals had to accommodate Hahnemann's 40,000 annual emergency room patients.[324] It subsequently stopped accepting OBGYN patients, forcing around 800 expectant mothers to find new hospitals to deliver their babies.[325]

The closure of Hahnemann left much of central Philadelphia without a safety-net hospital to serve the most vulnerable and lowest-income population as well as the elimination of a key trauma center for the city.[326] While many rural hospitals have shuttered over the past decade, Hahnemann's closure in September 2019 was the first major urban hospital affiliated with a medical school to shut down.[327]

Hospital workers were stranded by the bankruptcy. Hahnemann had already stopped paying into the pensions for its workers in early 2019, before it filed for bankruptcy.[328] The shutdown cost

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315 LaPointe (2017).
316 *WCAU NBC-10*. June 26, 2019.
317 Elk, Mike. "Private equity's latest scheme: Closing urban hospitals and selling off the real estate." *American Prospect*. July 11, 2019.
318 Feldman (July 31, 2019).
319 DePillis (2019); Picchi (2019).
320 Adelman (2019); *CBS News Channel 3* (July 1, 2019).
321 Adelman (2019); DePillis (2019).
322 Feldman, Nina. "Hahnemann closure will be a public health emergency, nurses union says." *WHYY 90.9-FM*. June 26, 2019; "Hahnemann University Hospital to close, leaving thousands out of work." *NBC TV-10*. June 26, 2019.
323 *WPVA ABC-6* (July 2, 2019).
324 Elk (2019).
325 Conti, Allie. "Rich investors were supposed to save this hospital. Instead they helped destroy it." *Vice*. July 17, 2019.
326 DePillis (2019).
327 Rnagarajan, Soumya. "The closure of a historic hospital is an ominous warning sign." *Scientific American*. September 17, 2019.
328 Rush (2019).

2,500 jobs, including 800 union nurses, and left nearly 600 physicians-in-training without residency placements.[329] Paladin is attempting to sell these residents (actually residency program placements) in the bankruptcy auction proceedings, but the federal Centers for Medicare & Medicaid Services has opposed this sale of residencies.[330] While the status of workers' benefits remains unknown in the bankruptcy proceedings, the bankruptcy lawyers hired by the PE firm expected the legal and accounting fees for the bankruptcy to reach upwards of $7 million — considerably more than the $2 million in unpaid pension and benefit contributions Hahnemann owes its workers.[331]

Cerberus closes community hospital in Quincy, Massachusetts: In 2010, Cerberus Capital Management purchased the non-profit 6-hospital Caritas Christi hospital network to form Steward Health Care System in a $895 million leveraged buyout (including $475 million in debt and pension liabilities); Cerberus promised to maintain the hospitals at least through 2018 and fund the pensions of the mostly unionized workforce.[332] Cerberus made more add-on purchases to expand Steward into a chain of 9 for-profit hospitals in Massachusetts.[333]

Steward sold its facilities to a real estate investment firm a few years after the Cerberus takeover, which funded a dividend to Cerberus and forced the chain to lease back the facilities it once owned.[334] Cerberus invested $150 million in the real estate firm as part of the deal—so the PE firm would reap rewards as Steward paid rent for its own hospitals.[335]

Steward cut costs to service its debt and pay rent on its facilities. It reduced staffing, closed units and eliminated jobs to meet Cerberus budget targets.[336] The nurses' union said these moves caused dangerously low staffing levels.[337] The union also accused Steward of reneging on commitments to support their pensions, refusing to base pension contributions on all work (including overtime), and balking at joining a multiemployer pension plan.[338]

In 2014, Steward closed the Quincy Medical Center, making Quincy the largest city in Massachusetts without a hospital.[339] The closure of the 196-bed hospital was the biggest Massachusetts hospital shutdown in a decade; although Steward kept the emergency room open, the shutdown cost 700 jobs and seemed to violate Cerberus' commitment to remain operational at least through 2018 and provide 18-months' notice before closing the facility.[340]

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329 *WCAU NBC-10* (June 26, 2019); *WHYY FM-91* (July 5, 2019).
330 Patel, Nisarg A. "Private equity is trying to sell medical residencies for profit." *Slate*. October 21, 2019; Feldman, Nina. "Judge puts freeze on sale of Hahnemann residency program — for now." *WHYY FM-91*. September 17, 2019.
331 Brubaker, Harold. "Hahnemann University Hospital sued by union funds over nearly $2 million in unpaid bills." *Philadelphia Inquirer*. May 2, 2019; Brubaker, Harold. "Hahnemann bankruptcy pays millions to consultants, lawyers charging up to $795 an hour." *Philadelphia Inquirer*. August 28, 2019.
332 Applebaum (2015) at 2 and 4; McCluskey, Priyanka Dayal. "Steward gets $1.25b to fund expansion, repay Cerberus." *Boston Globe*. September 26, 2016.
333 McCluskey (2016).
334 *Ibid.*
335 Mohl, Bruce. "Steward's asset-light philosophy." *Commonwealth Magazine*. January 10, 2017.
336 Applebaum (2015) at 4; Encarnacao (2013).
337 Encarnacao (2013).
338 Laroque (2011); Kronenberg (2011.
339 Ronan, Patrick. "Critics of Quincy hospital closure question Steward donations to Coakley." *Quincy (MA) Patriot Ledger*. January 17, 2015.
340 McCLuskey, Priyanka Dayal and Robert Weisman. "Quincy Medical Center to close." *Boston Globe*. November 6, 2014; Ronan, Patrick. "Quincy hospital property sold in major deal with downtown implications." *Quincy (MA) Patriot Ledger*. December 8, 2016.

In 2019, Steward closed the Quincy emergency room which had continued to treat nearly 17,000 patients annually after the hospital closed, forcing people to go to more distant emergency rooms that have twice the emergency response time for the 100,000 Quincy residents.[341]

PE-takeover of HCA Holdings burdened company with debt, curtailed quality care: In 2006, KKR, Bain Capital and the hospital's CEO took over the nation's largest hospital chain HCA Holdings (formerly Hospital Corporation of America) in a $33 billion leveraged buyout.[342] The leveraged buyout forced HCA to double its debt to $26 billion to fund the takeover and reward PE investors.[343] HCA was politically connected (Senator Rick Scott (R–Florida) was the former CEO and former Senator Bill Frist's (R–TN) family founded the chain) and had the dubious distinction of settling one of the biggest Medicare fraud cases in history.[344]

While Bain and KKR owned HCA, the quality concerns and federal investigations and settlements continued. HCA raised revenues by billing more for services, reducing staffing costs and deterring patients from emergency room visits — strategies that critics contended created inadequate staffing, risked patient care, increased incidences of bedsores, delaying dialysis, or not administering drugs.[345] While PE-owned, HCA paid millions in dollars in fines to resolve or settle federal charges for paying kickbacks for referrals, unnecessary laboratory tests and double billing, and filing false Medicare claims.[346]

The private equity owners extracted tremendous revenues from HCA. From 2006 to 2010, Bain, KKR, and the CEO extracted $20.7 billion in dividend recapture payments and fees, according to a *Barron's* accounting analysis.[347] In 2011, Bain and KKR converted HCA back into a publicly traded company, though they still controlled three-quarters of the stock.[348] The PE firms charged another $120 million for management and transaction fees for the HCA IPO.[349]

KKR and Bain began selling their HCA stake in 2012 and by 2014 had netted another $6.3 billion from the sale of HCA stock.[350] In 2016, KKR sold another 9 million shares back to HCA for $750 million.[351] While the private equity stake dwindled, HCA still held the debt that had swollen since the leveraged buyout to $32.8 billion at the end of 2018 and the company admitted its "substantial leverage" could hinder its ability to raise or borrow money and its hospital revenues might be insufficient to service the debt.[352]

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341 Tiernan, Erin. "Quincy may soon be the largest city in Mass. without an ER. Then what?" *Patriot Ledger*. August 9, 2019.
342 Wechsler, Pat. "HCA plans biggest U.S. private equity IPO at $4.28 billion." *Bloomberg*. February 22, 2011; Briloff and Briloff (2011).
343 Creswell and Abelson (2012).
344 *Ibid.*
345 *Ibid.*
346 DOJ. [Press release]. "HCA settles allegations of billing for unnecessary lab tests and double billing for fetal testing for $2,000,000." November 16, 2015; DOJ. [Press release]. "Hospital Chain HCA Inc. Pays $16.5 Million to Settle False Claims Act Allegations Regarding Chattanooga, Tenn., Hospital." September 19, 2012; DOJ. [Press release]. "Fifty-five hospitals to pay U.S. more than $34 million to resolve False Claims Act allegations related to kyphoplasty." July 2, 2013.
347 Briloff and Briloff (2011).
348 Wechsler (2011).
349 Primack, Dan. "How much did Bain really make on HCA?" *Fortune*. March 11, 2011.
350 "HCA's top private equity owners to sell 29.5M shares." *Becker's Hospital Review*. May 21, 2014.
351 De Lombaerde, Geert. "Health care finance: HCA in big buyback deal." *Nashville Post*. May 12, 2016.
352 HCA Healthcare, Inc. U.S. Securities and Exchange Commission Form 10-K. Fiscal year ended December 31, 2018 at 31 to 32.

C. Private equity drives surprise billing nightmare for patients

Private equity-owned healthcare companies have relied on surprise billing techniques to charge more for healthcare services to generate profits. Patients are vulnerable to expensive "surprise" medical bills when they unknowingly receive out-of-network care that insurers will not cover or fully reimburse, leaving patients to cover an often-expensive balance. These bills can not only be unexpected, they are typically much larger because patients must reach higher out-of-network deductibles and have higher co-payment or out-of-pocket limits.[353]

Patients often assume that ambulances and emergency room doctors are covered by their insurance, but the private equity industry has created the epidemic of surprise medical billing by buying up medical practice groups and services that hover outside the insurance industry's networks. This can happen when in-network hospitals contract with PE-owned doctors' groups to provide services or when PE firms buy up ambulance companies that appear to shun contractual agreements with insurers.

Private equity practice groups gouge patients at the emergency rooms Private equity firms have pursued a roll-up strategy to buy and aggregate medical practices and physician groups into large companies that rely on patients paying out-of-pocket to generate profits. In 2019, the *Annals of Internal Medicine* reported that the takeover of physician practice groups "increased dramatically" over recent years.[354] PE firms bought nearly 200 practice groups between 2017 and 2018 and sought returns of at least 20 percent.[355]

PE firms have been focusing their practice purchases on practices that can generate higher revenues, including out-of-network, out-of-pocket services and procedures.[356] The American Medical Association reported that PE-owned practices raised prices, increased the volume of ancillary out-of-pocket services, and could drive up self-referrals within PE-owned networks.[357] For PE-owned doctors' groups, out-of-network, surprise billing has been "a key to their highly profitable business strategy," according to *Kaiser Health News*, because it allows them to charge whatever rates they want since they are not part of insurance networks.[358]

The PE-owned doctor groups have made their way into hospitals that have shifted to outsourcing some departments. The third-party physician staffing companies replace hospital specialty departments, like emergency room doctors, radiologists or anesthesiologists.[359] These third-party providers are the primary source of surprise billing because they are not necessarily in the approved

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353 American Academy of Actuaries. "Surprise Medical Bills: An Overview of the Problem and Approaches to Address It." September 2019 at 1.

354 Casalino, Lawrence P. et al. "Private equity acquisition of physician practices." *Annals of Internal Medicine*. Vol. 170, No. 2. January 8, 2019.

355 *Ibid.*; American Medical Association (AMA). Proceedings of the AMA 2019 Annual Meeting. 2019 at 446.

356 Meindl and Smart (2019) at 26.

357 AMA (2019) at 447.

358 Bluth, Rachel and Emmarie Huetteman. "Investor's deep-pocket push to defend surprise medical billing." *Kaiser Health News*. September 11, 2019.

359 *Ibid.*

hospital or insurance provider networks. The rise in outsourced physician staffing groups, like emergency room departments, has dramatically increased the rate of surprise billing.[360]

Private equity owns the two largest emergency room physician staffing groups that control one-third of the nation's physician staffing firms and supply doctors to hundreds of hospitals.[361] Blackstone bought TeamHealth for $6.1 billion in 2016.[362] KKR bought Envision Physician Staffing in 2018 in a $9.9 billion leveraged buyout including $4 billion in debt; it was 2018's biggest PE deal in the world.[363] A Yale University study found that these two ER staffing companies raised prices by two-thirds compared to bills before the PE-backed ER outsourcing firms arrived.[364]

Surprise billing has been on the rise as PE-firms have bought up doctor staffing companies. Surprise bills rose from 32 percent of emergency room visits in 2010 to nearly 43 percent in 2016, according to a 2019 Stanford University study.[365] The study found that surprise billing for hospital inpatient stays rose from 26 percent to 43 percent over the same period—and the cost of those out-of-network bills rose to over $2,000.[366]

The proposed federal legislation to curtail surprise billing would limit the ability of PE-owned health care companies to continue price gouging patients, which is essential to their business model. In 2019, Fitch Ratings put both Envision and TeamHealth on its list of "loans of concern" because it would be difficult for the firms to cover their debts without surprise billing.[367] The private equity industry has mounted an aggressive campaign to derail any meaningful surprise billing legislation. In the summer of 2019, Envision and TeamHealth financed the Doctor Patient Unity coalition that launched $28.6 million in television advertisements and advocacy efforts to block the congressional effort to curb surprise billing.[368] A Yale University associate professor of public health noted that "Private equity firms are buying up physician practices that allow them to bill out-of-network, cloaking themselves in the halo that physicians generally receive and then actively watering down any legislation that would both protect patients but affect their bottom line."[369]

Private equity takeover of ambulance industry delivers surprise bills to patients: Before the 2008 financial crisis, ambulances were mostly operated by local governments (fire and emergency medical services), local non-profit hospitals, or local private companies. After the recession, private equity firms began to snap up ambulance companies.[370]

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360 American Academy of Actuaries (2019) at 4.
361 Bluth and Huetteman (2019).
362 Sanger-Katz, Margot, Julie Creswell, and Reed Abelson. "Mystery solved: Private-equity-backed firms are behind ad blitz on 'surprise billing.'" *New York Times*. September 13, 2019.
363 Bain & Company (2019) at 28; Liss (2019).
364 Applebaum, Eileen. "Private equity is a driving force behind devious surprise billing." *The Hill*. May 16, 2019; Cooper, Zack, Fiona Scott Morton, and Nathan Shekita. Yale University. "Surprise! Out-of-Network Billing for Emergency Care in the United States." March 2018 at 4.
365 Sun, Eric C. et al. "Assessment of out-of-network billing for privately insured patients receiving care in in-network hospitals." *JAMA Internal Medicine.* August 12, 2019.
366 *Ibid.*
367 FitchRatings. "Fitch U.S. Leveraged Loan Default Insight." August 27, 2019 at 4 and 9.
368 Sanger-Katz, Creswell, and Abelson. (2019); Roubein, Rachel. "Health care groups backed dark money campaign to sink 'surprise' billing fix." *Politico*. September 13, 2019.
369 Bluth and Huetteman (2019).
370 Webb, Olivia. "Private equity chases ambulances." *American Prospect*. October 3, 2019.

Patients are vulnerable to surprise ambulance bills because they cannot select among ambulance services based on price or whether the services are covered by insurance. Often bystanders or police often call 911 for ambulances and emergency dispatchers determine which ambulance is sent to the scene, making it impossible for patients to choose their medical transportation.[371] As many as 80 percent of ambulance trips are for non-urgent, non-emergency medical care, but ambulance companies still bill for the emergency trip.[372]

More than 80 percent of ambulance services resulted in surprise bills for patients in 2016.[373] Ambulance companies frequently refuse to join insurance and hospital networks, making private ambulance trips out-of-network services that impose surprise bills on patients for the full cost of the trip.[374] Many ground ambulance bills can run $2,000 to $4,000, depending on the distance to the hospital and the medical treatment, some private ambulances bill separately for things like oxygen.[375]

The surprise billing is especially expensive for patients transported by air ambulance. Air ambulances provide a key service for patients in rural areas, where many hospitals have been closed and others have moved specialized care to regional medical centers.[376]

Private equity firms have bought up the majority of air ambulance services. In 2002, there were no for-profit air ambulance operators.[377] By 2018, PE-firms owned two of the three biggest for-profit helicopter ambulance services that controlled two-thirds of the industry.[378] KKR bought Air Medical Group Holdings, including its Air Evac brand, in 2015 and American Securities bought Air Methods for $2.5 billion in 2017.[379]

Most air ambulance trips lead to surprise bills. the GAO found that more than two-thirds (69 percent) of air ambulance trips were out-of-network transports in 2017.[380] The air transport firms benefit from being outside of insurance networks because they earn more per flight by imposing surprise, out-of-network bills on their patients.[381] By remaining out of the networks, they can "charge whatever they wish," according to Consumer's Union.[382]

Patients are often slapped with huge surprise bills.[383] Air ambulance helicopter prices rose by 60 percent between 2012 and 2017 to a typical price of over $36,000.[384] American Security's Air

371 Bailey, Melissa. "Ambulance trips can leave you with surprising – and very expensive – bills." *Washington Post*. November 20, 2017.
372 Webb (2019).
373 Sun. et al. (2019).
374 Elmore, Charles. "Florida bill aims for fewer billing surprises after 911 calls." *Palm Beach Post*. February 25, 2015.
375 Bailey (2017).
376 GAO. "Air Ambulance: Available Data Show Privately-Insured Patients Are at Financial Risk." GAO-19-292, March 2019 at 15.
377 Perry, Angela Elizabeth. Consumers Union. "Up in the Air: Inadequate Regulation for Emergency Air Ambulance Transportation." March 2017 at 2.
378 Tozzi (2018).
379 *Ibid.*
380 GAO (2019) at 8 and 16.
381 Perry (2017) at 4 and 5.
382 *Ibid.* at 4 and 5.
383 Greene, Jan. "Air ambulance turbulence: Consolidation, cost shifting, and surprise billing." *Managed Care Magazine*. March 28, 2019.
384 GAO (2019) at 17.

Methods has taken an aggressive approach to collecting the unpaid exorbitant fees, including debt collectors, lawsuits, wage garnishment, and imposing property liens on patients' homes.[385]

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Present laws permit and in fact reward a predatory private equity business model that takes wealth from people, communities, and viable businesses and transfers it to a very small number of very rich people leading PE firms. The rules reward unchecked short-term greed. The process destroys jobs, and it also hurts patients, customers, students, renters, the planet, and more. It increases inequality and makes millions of people's financial situation more precarious. These harms are not inevitable. We urge you to support and pass the Stop Wall Street Looting Act to stop these abuses, realign incentives to promote accountability, and protect workers and communities.

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385 Perry (2017) at 6; Tozzi (2018); DeQuasie v. Air Methods Corporation. U.S. District Court for the District of Colorado. Civil Action No. 1:19-cv-1951. July 5, 2019.