Retirement Security: Trends in Corporate Restructurings and Implications for Employee Pensions

Briefing for Congressional Staff
Committee on Education and Labor
House of Representatives

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Introduction: Corporate Restructurings and Their Implications for Workers' Pensions

- Corporate restructurings and their many forms are frequent and an aspect of a dynamic economy. For example:
  - Bankruptcy of Delphi Corp. (2005);
  - Bankruptcies of Toys 'R' Us (2017) and Sears Holding Corp. (2018);
  - Amazon's acquisition of Whole Foods Market in 2017; and
  - CVS Health's acquisition of Aetna in 2018.
- Some of these examples highlight that corporate restructurings, such as a merger and acquisition (M&A) or bankruptcy restructuring, could result in the change or elimination of benefits thus affecting the financial well-being of workers or retirees of the restructured firm.
- Some experts say such restructurings could result in business and economic efficiencies and could allow some employees to obtain access to another company's pension and benefit programs.

Objectives, Scope, and Methodology

This briefing provides information on:

- What is known about the trends in corporate restructuring over the last 20 years. To do this, we reviewed and analyzed:
  - Bloomberg Terminal (Bloomberg) M&A data from 1999 through 2018. We analyzed deals that included a U.S. target and were $100 million or more in completed value (2018 dollars); and
  - UCLA-LoPucki Bankruptcy Research Database (BRD) from 1999 through 2018. The BRD contains information on Chapter 11 (reorganization) bankruptcy and Chapter 7 (liquidation) bankruptcy by large, public companies. The BRD defines a large company as having publicly reported assets of $305 million or more in 2018 dollars within 3 years prior to filing for bankruptcy.

Objectives, Scope, and Methodology (cont.)

- What is known about the effects, if any, of corporate restructuring on pension benefits for employees and retirees. To do this, we:
  - interviewed officials from the Department of Labor (DOL), Department of the Treasury (Treasury) including the Internal Revenue Service (IRS), the Pension Benefit Guaranty Corporation (PBGC), and other federal agencies, as well as 11 pension and restructuring experts (including academic and other experts) that were judgmentally selected; and
  - conducted a search of the relevant literature.

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Summary of Findings

- **Over the past 20 years, most corporate restructuring, especially M&A activity, tended to happen more frequently during periods of economic expansion.**
  - From 1999 through 2018, M&A deals comprised the largest share of activity.
  - Since 2009, M&A deals tended to be completed in shorter times, on average.
  - In contrast, bankruptcies most often occurred during periods of economic distress and peaked during the two most recent recessions.
- **Effects of corporate restructuring on pension benefits are generally unclear.**
  - Limited data make it difficult to understand or determine the effect, if any, of corporate restructuring on pension benefits.
  - An expert said acquiring firms will often harmonize benefits of target companies rather than to make any specific changes.
  - The speed of corporate restructuring events are likely to have implications for how workers are notified of such events, according to some experts.
  - Bankruptcy may have adverse consequences on employee benefits.

Background: Types of Corporate Restructuring Deals and Characteristics

- In the Bloomberg data, corporate restructuring deals include M&A, minority purchases, buybacks, and spin-offs (see table 1), and these deal types are mutually exclusive.
  - We generally focused on M&A, since they accounted for the largest share of deal types.
- Corporate restructuring characteristics are not mutually exclusive in the Bloomberg data and may result in a combination of attributes in a single deal (see table 2). For example, an event could include private equity involvement and end in bankruptcy.
- However, because Bloomberg data tracks bankruptcy as an additional characteristic to a deal, it may not capture the bankruptcy unless it occurs in close proximity to the deal. Thus we use a different database, the LoPucki BRD, to analyze bankruptcy as a distinct event.

Table 1: Common Corporate Restructuring Deal Types

Deal type	Description
Merger and acquisition (M&A)	The acquisition or sale of control in a company or asset for strategic purposes. The acquirer purchases 50 percent or more of the target.
Buyback	The repurchase of outstanding shares by a company that reduces the number of shares on the market.
Minority purchase[a]	A minority purchase, private equity investment, or venture capital round of financing where the acquirer purchases less than 50 percent of the target.
Spin-off	The creation of an independent company through the sale or distribution of new shares of an existing business or division of a parent company.

Source: Bloomberg and GAO. | GAO-19-447R

Note: These deals are generally defined as they appear in Bloomberg data, where each deal is categorized in the data as one deal type and the type categories are mutually exclusive.

[a]For purposes of discussion in this report, we have defined the Bloomberg investment deal type—which includes minority purchases, private equity investments, and venture capital financing of less than 50 percent of the target—to be the minority purchase deal type for this report. Bloomberg data refer to certain non-mutually exclusive characteristics—where an acquirer without a percentage stake acquires less than 50 percent of a company—as minority purchases. We do not separately report on the valuation of minority purchases as a characteristic in this report.

Table 2: Selected Corporate Restructuring Characteristics

Restructuring characteristic	Description
Company takeover	Indicates a target company is fully acquired; either 100 percent full purchase of the company or the remainder of the company, which brings acquirer ownership of the target to 100 percent.
Cross border[a]	A transaction in which the acquirer's country is not in the United States.
Private equity involvement	A transaction that involves equity capital not quoted on a public exchange, whether the private equity firm is acquiring a company or selling company assets. Investors and funds make investments directly into private companies or conduct buyouts of public companies that result in a delisting of public equity.
Bankruptcy	An acquisition of a company or the assets of a company either through a liquidation, wind down, dissolution, or bankruptcy.

Source: Bloomberg and GAO. | GAO-19-447R

Note: These characteristics are generally defined as they appear in Bloomberg data. These deal characteristics are not mutually exclusive; more than one deal characteristic can occur in any corporate restructuring. In total, Bloomberg includes more than 40 different deal characteristics in its database.

[a]Bloomberg defines a cross border transaction as one in which the target or acquirer's country of risk is different than the other involved in the transaction. Bloomberg determines a corporation's country of risk according to four factors listed in order of importance: management location, country of primary (bond) listing, country of revenue, and reporting currency of (any bond) issuance. Our analysis is of U.S. targets only, therefore our modified definition for cross border in this report indicates a non-U.S. acquirer.

Background: Agency Oversight of Pensions and Select Labor Laws

- The Employee Retirement Income Security Act of 1974 (ERISA), as amended, sets minimum standards and requirements for, among other things, plan participation, vesting, benefit accrual, and funding.
- Agencies that play a role in administering ERISA:
  - DOL;
  - Treasury including the IRS; and
  - PBGC.
- Other laws potentially relevant during a restructuring:
  - The Worker Adjustment and Retraining Notification (WARN) Act; and
  - The National Labor Relations Act (NLRA).

Background: GAO's Previous Work on Restructuring Effects

- Previous GAO work noted that:
  - Of the selected bankruptcy cases reviewed, most employers did not offer benefits that required specific approval to change. However, certain benefit changes during Chapter 11 bankruptcy require court approval—such as terminating a single-employer defined benefit plan or changing certain retiree benefits. Of the 115 employers reviewed, 15 sought the court's approval through the bankruptcy process to change at least some of the benefits they offered (GAO-07-1101).
  - Leveraged buyouts (LBOs) that occurred in the mid-1980s were company takeovers that were financed by large amounts of debt. Of the LBOs we reviewed for our 1991 report, 20 percent of the defined benefit plans were terminated and excess funding in those plans was "reverted" to the company—freeing up monies for non-pension purposes (GAO/HRD-91-21). The ultimate result on participants' pensions was unclear. Most terminated plans were replaced with a new plan, but the benefits of the new plan could not be determined.
    - According to experts, current private equity involvement in restructuring shows similarities to LBO activities of the 1980s.

Restructuring Trends: Deal Volume Tended to Increase During Economic Expansions

- According to our analysis, during our selected time period (1999 through 2018), the value of all deals in aggregate grew at an average rate of about 13 percent during expansionary years compared to an average decline of about 20 percent during recessionary years.*
- The total number of deals grew at an average rate of about 11 percent during expansionary years compared to about a 23 percent decline during recessionary years.

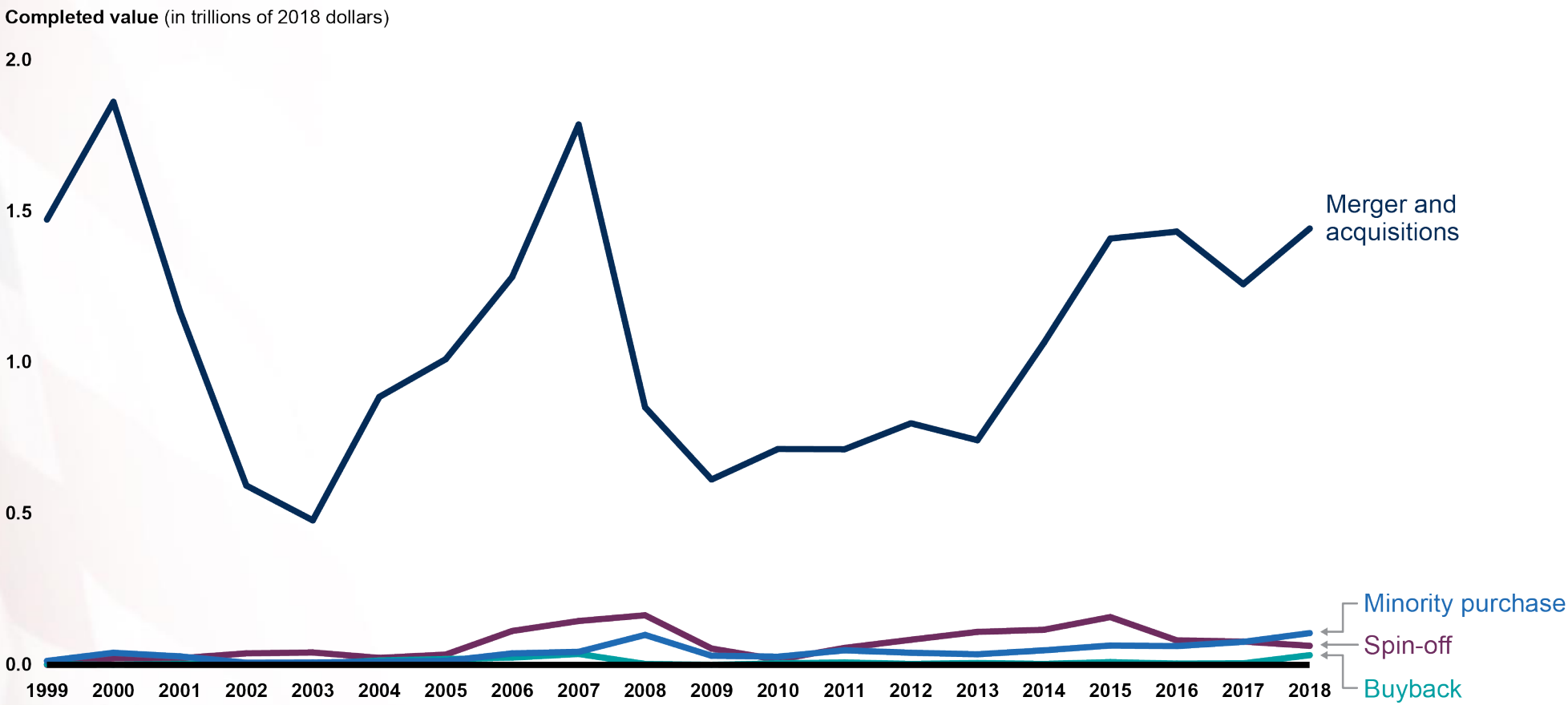
*Expansionary years were 1999-2000, 2002-2006, and 2010-2018. Non-expansionary/recessionary years were 2001 and 2007-2009. We note that 1 month of 2007 occurred during a recession; more specifically, the Great Recession began in December 2007. Accordingly, we looked at the averages including 2007 as an expansionary year, as well as excluding 2007 from the analysis, and found a similar conclusion (i.e. activity tended to increase during expansions and decrease during recessions). Note that these are summary descriptive statistics and thus do not imply any causality or rigorous statistical association between restructuring activity and economic cycles.

Restructuring Trends: Deal Volume Tended to Increase During Economic Expansions (cont.)

- Over the past 20 years, M&A comprised the largest share of corporate restructuring deals (see fig. 1), accounting for 90 percent of total deal value during the period, and tended to increase during expansionary years.*
- In terms of deal value, M&A had relative peaks in 2000, 2007, 2015, 2016, and 2018. The trend for M&A of at least $750 million completed value followed a similar trend.
- The numbers of M&A deals followed a similar trend: M&A had about 1,100 to 1,200 completed deals in 2000 and 2006-2007, before decreasing to about 400 in 2009 and then generally increasing to between about 1,000 to 1,100 deals each year from 2014 to 2018.
- Minority purchases experienced a peak in terms of value in 2018, spin-offs peaked in 2008, and buybacks peaked in 2007 (see fig. 2).

*Note that these are summary descriptive statistics and thus do not imply any causality or rigorous statistical association between restructuring activity and economic cycles.

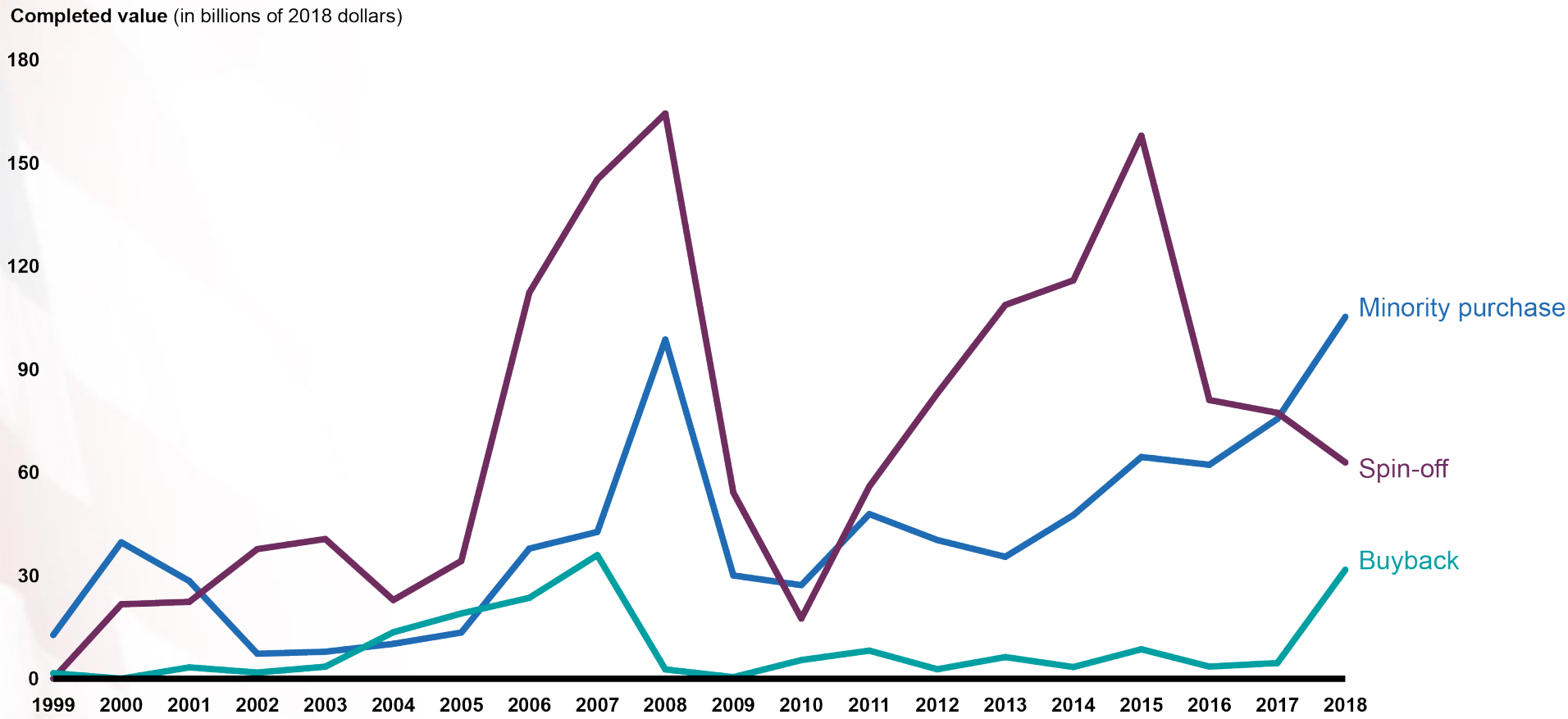
Figure 1: Value of Corporate Restructurings by Deal Type in 2018 Dollars, 1999 through 2018



Source: GAO analysis of Bloomberg Terminal data. I GAO-19-447R

Note: For completed buyback, merger and acquisition (M&A), minority purchase, or spin-off deals of $100 million or more, 2018 dollars.

Figure 2: Value of Non-M&A Corporate Restructuring Deals in 2018 Dollars, 1999 through 2018



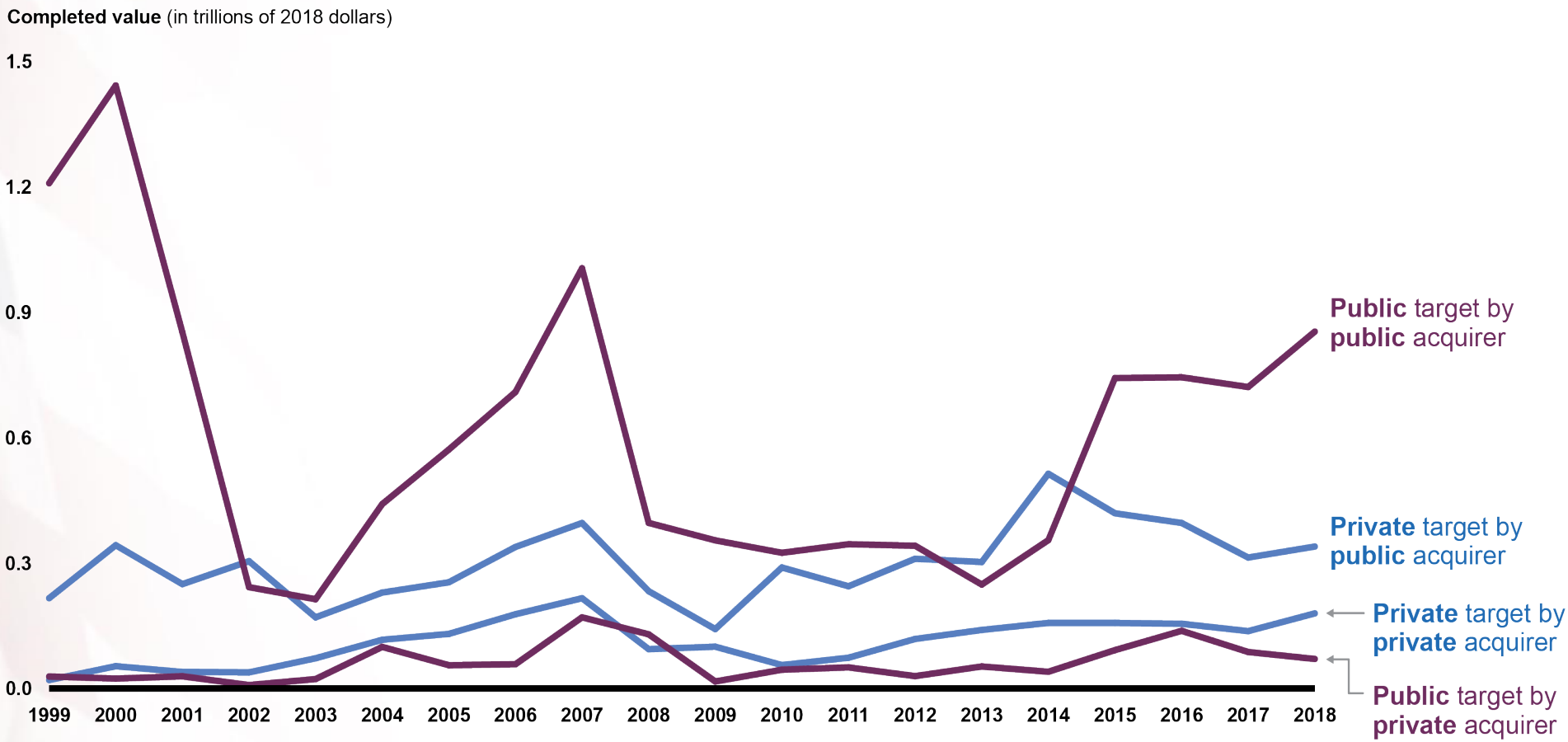
Source: GAO analysis of Bloomberg Terminal data. I GAO-19-447R

Note: For completed buyback, minority purchase, or spin-off deals of $100 million or more, 2018 dollars.

Restructuring Trends: Publicly Listed Firms Acquiring Other Public Firms Accounted for Largest Share of Total Deal Value of M&A

- Publicly-listed firms completed the largest share of M&A deals over the last 20 years, by deal value (see fig. 3).
  - In terms of deal value, public firms acquiring other public firms accounted for the highest share of completed M&A deal valuations—with a high about $1.4 trillion in 2000—of at least $100 million each during the time period.
- However, public firms acquiring public firms (about 3,400 deals) were the third largest in terms of the number of deals, after public firms acquiring private firms (about 9,400 deals), and private firms acquiring another private firm (about 3,800 deals).

Figure 3: Target and Acquirer Firm Pairs for Completed M&A in 2018 Dollars, 1999 through 2018



Source: GAO analysis of Bloomberg Terminal data I GAO-19-447R

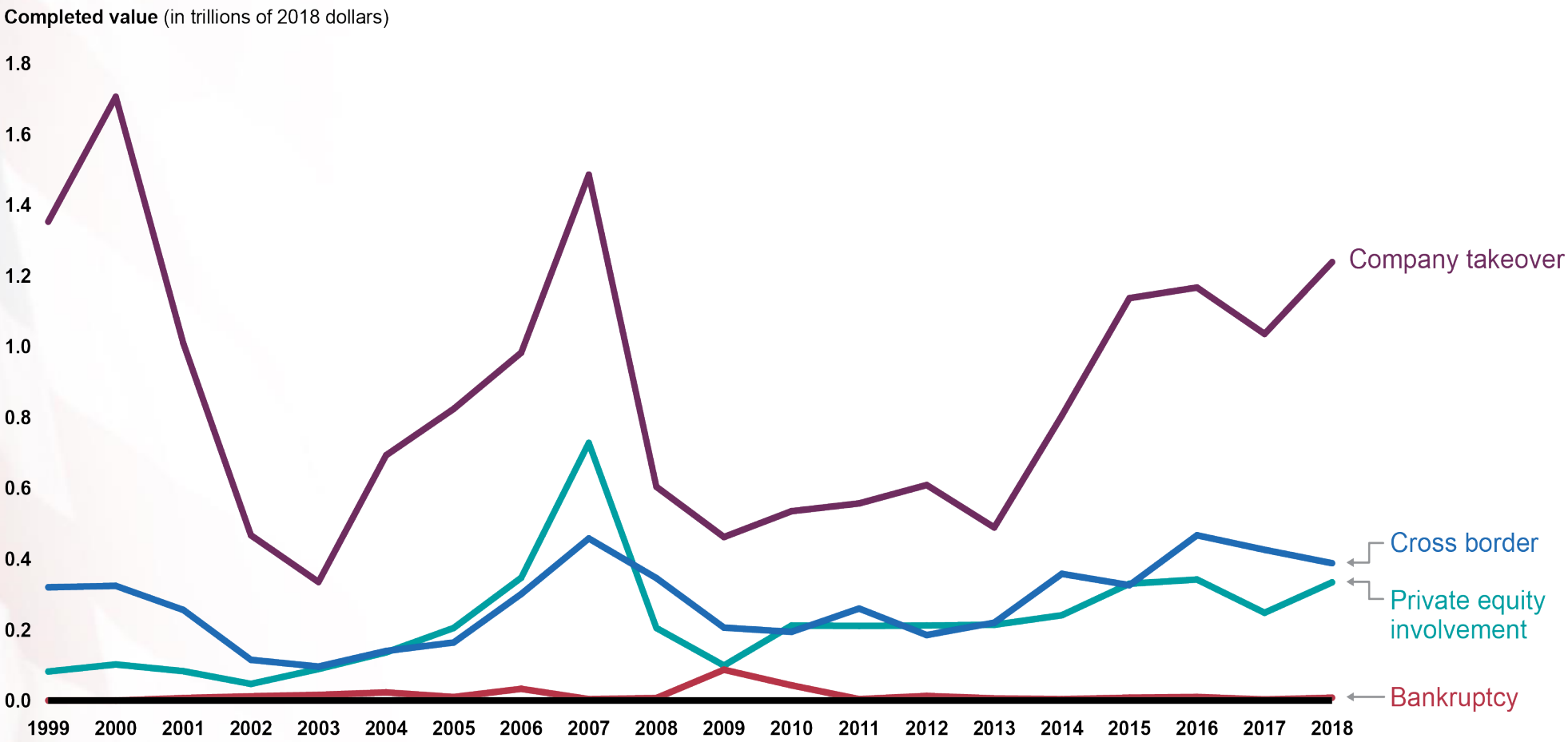
Note: For completed merger and acquisition (M&A) deals of $100 million or more, 2018 dollars. A public company is one that is publicly traded. A private company is one that is privately held (i.e. not traded on a public market).

Restructuring Trends: Company Takeovers Comprised Largest Share of M&A Characteristics

- Of the different types of M&As that occurred from 1999 through 2008, Company Takeover deals represented the largest share of deal characteristics at 10,200 deals worth about $17.5 trillion.*
- Other significant deal characteristics during the period:
  - Cross Border deals: 4,400 deals worth about $5.6 trillion.
  - Private Equity deals: 4,600 deals worth about $4.5 trillion. This included about $2.1 trillion in private equity buyouts—where the private equity firm acquired a controlling stake or 100 percent ownership of the target—and $1.5 trillion in deals where the private equity firm sold some or all target company assets (see fig. 4).

*As described earlier and in Table 2, deal characteristics are not mutually exclusive; any M&A or other deal type can have a number of potential deal characteristics, including company takeover, cross border, and private equity involvement. In total, Bloomberg includes more than 40 different deal outcomes in its database. We analyzed the top 13 characteristics by announced deal value, as well as bankruptcies.

Figure 4: Completed M&A by Selected Deal Characteristic in 2018 Dollars, 1999 through 2018



Source: GAO analysis of Bloomberg Terminal data. I GAO-19-447R

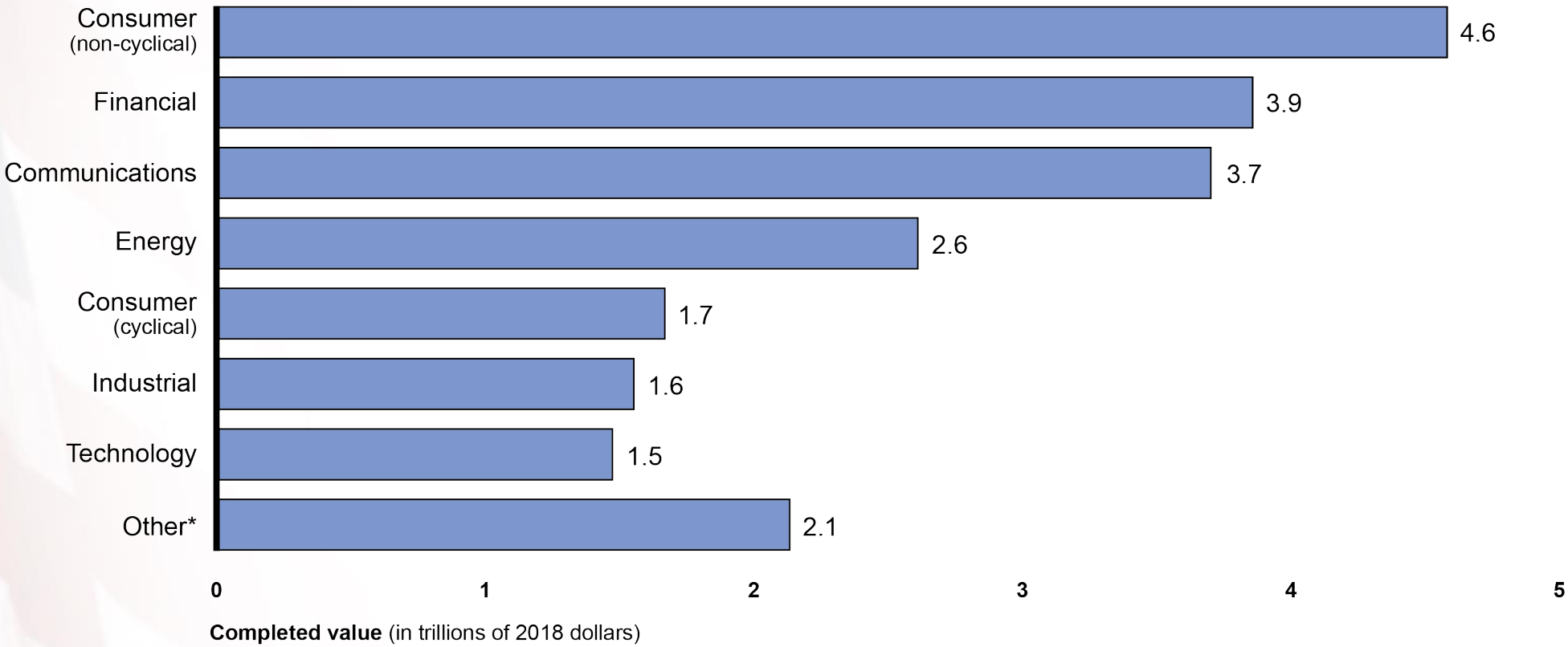
Note: For completed merger and acquisition (M&A) deals of $100 million or more, 2018 dollars.

Restructuring Trends: Financial and Communication Industries Heavily Represented

- The non-cyclical consumer goods and financial industries comprised the highest shares of completed corporate restructurings of $100 million or more from 1999 through 2018 (see fig. 5).*
  - The largest M&A deal with a non-cyclical consumer good industry target was Pfizer's $169 billion acquisition of Warner Lambert in June 2000.
  - The largest M&A deal with a financial industry target from 1999 through 2018 was the JP Morgan $77 billion acquisition of Bank One in July 2004.
- The non-cyclical consumer goods and financial industries experienced the largest numbers of completed deals from 1999 through 2018, at about 2,900 and 4,000, respectively.
- In terms of the highest valued individual deals, the communications industry had a significant presence; communications industry companies were targets in seven of the top 10 M&As completed during the period, in terms of deal valuation.

*Non-cyclical consumer goods industries are those engaged in food production or other goods whose consumer demand continues regardless of the overall economy. Bloomberg uses a proprietary industry classification system.

Figure 5: Value of All Completed M&A Deals by Industry, 1999 through 2018



Source: GAO analysis of Bloomberg Terminal data. I GAO-19-447R

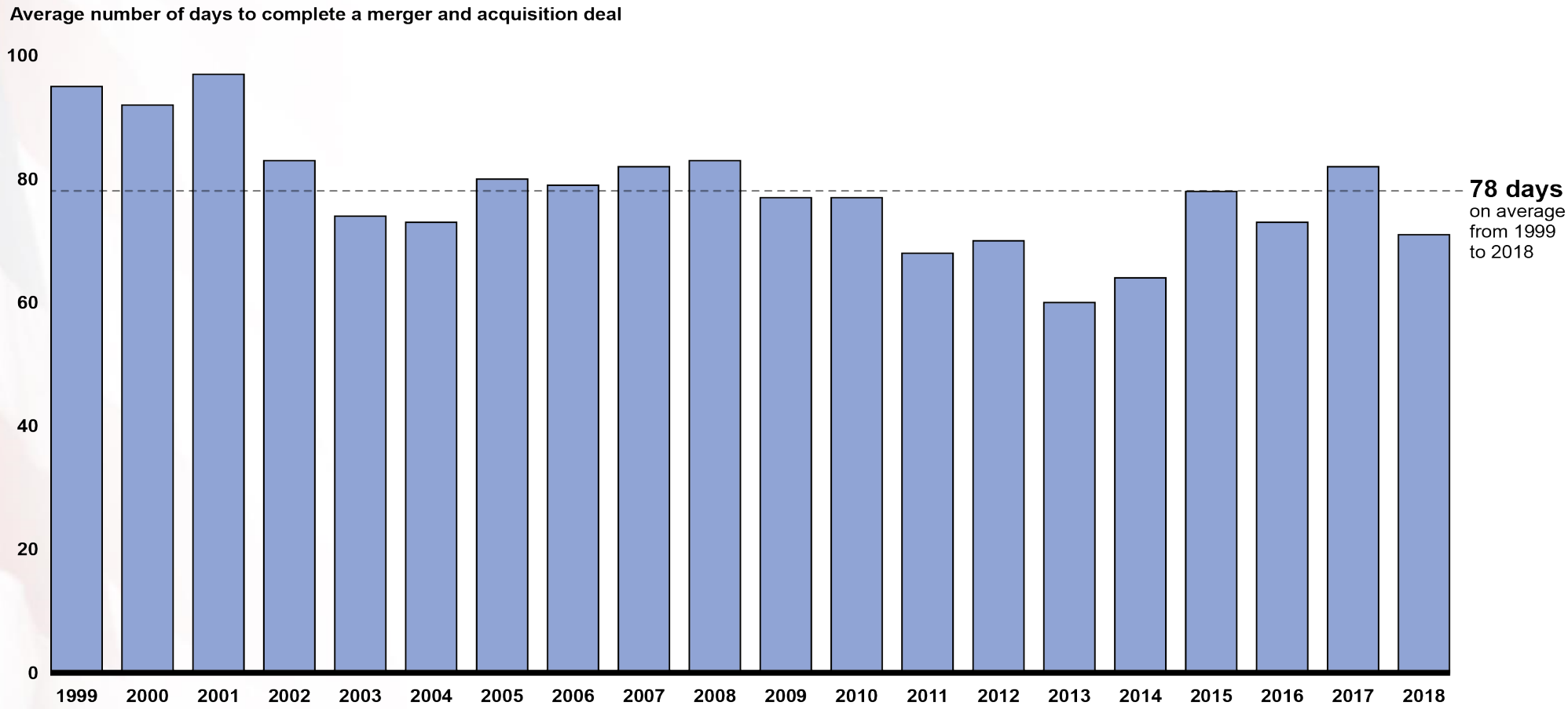
Note: For completed merger and acquisition (M&A) deals of $100 million or more, 2018 dollars.

*Other includes $0.9 trillion of completed deals of targets in the basic materials industry, $0.8 trillion where the target was a utility, $0.3 trillion where the industry was not listed in the data, and $0.1 trillion where the primary industry is a hybrid of two or more other main industries, and not individually able to be categorized.

Restructuring Trends: Recent M&A Deals Tended To Be Completed in Shorter Time Frames, on Average, Since 2009

- The average time between a M&A planned announcement and completion from 2009 onward tended to be lower than the average over the 1999 through 2008 time period (see fig. 6).
  - More specifically, the average time between a M&A planned announcement and completion from 1999 through 2008 was 84 days compared to an average time from 2009 through 2018 of 72 days.
- The number of M&A deals announced and completed on the same day tended to rise since 2009 (see fig. 7).

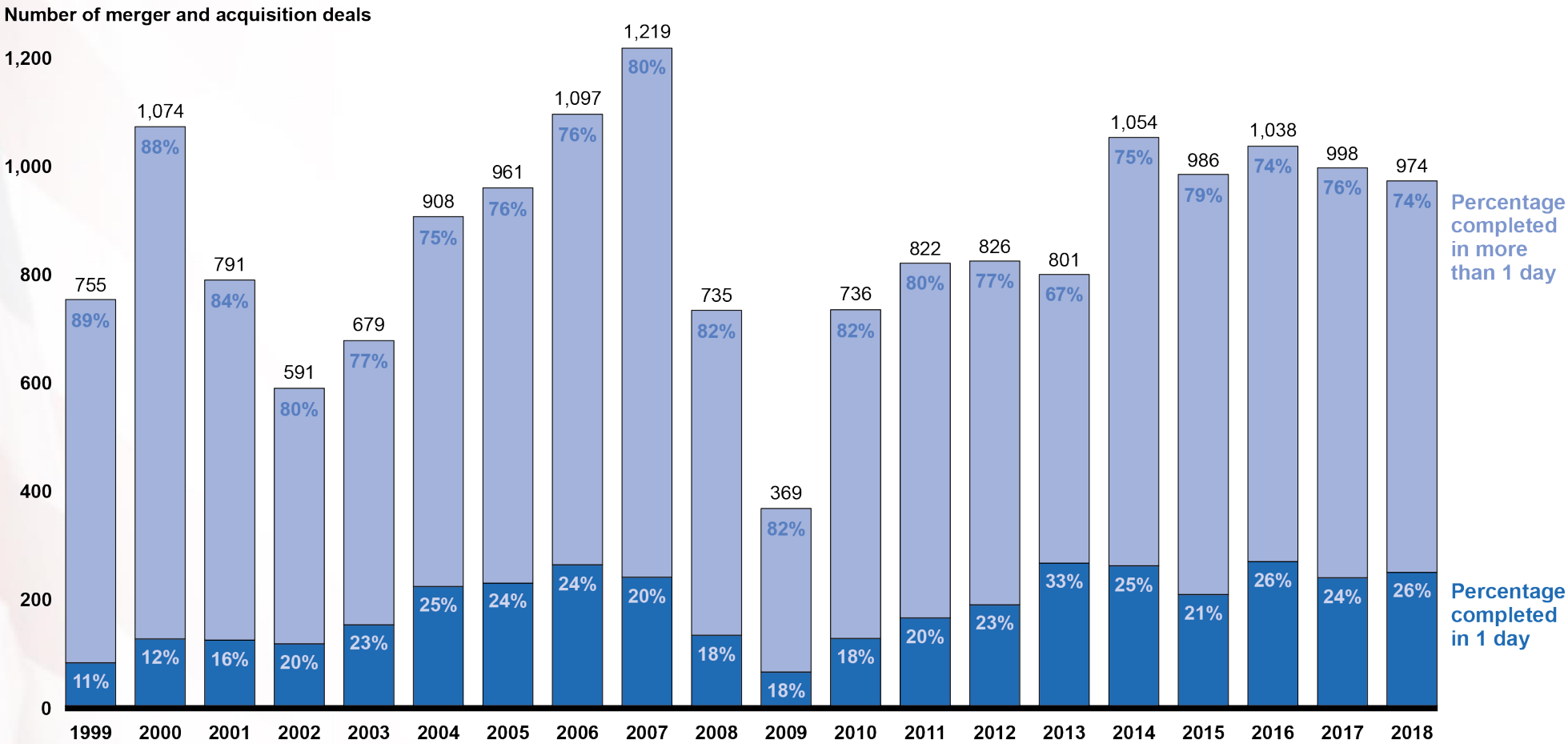
Figure 6: Average Number of Days to Complete an M&A Deal Since 2009 Tended to Be Lower than the Overall Average



Source: GAO analysis of Bloomberg Terminal data. I GAO-19-447R

Note: For completed merger and acquisition (M&A) deals of $100 million or more, 2018 dollars.

Figure 7: A Notable Minority of M&A Deals Are Completed on Same Day as Deal Is Announced



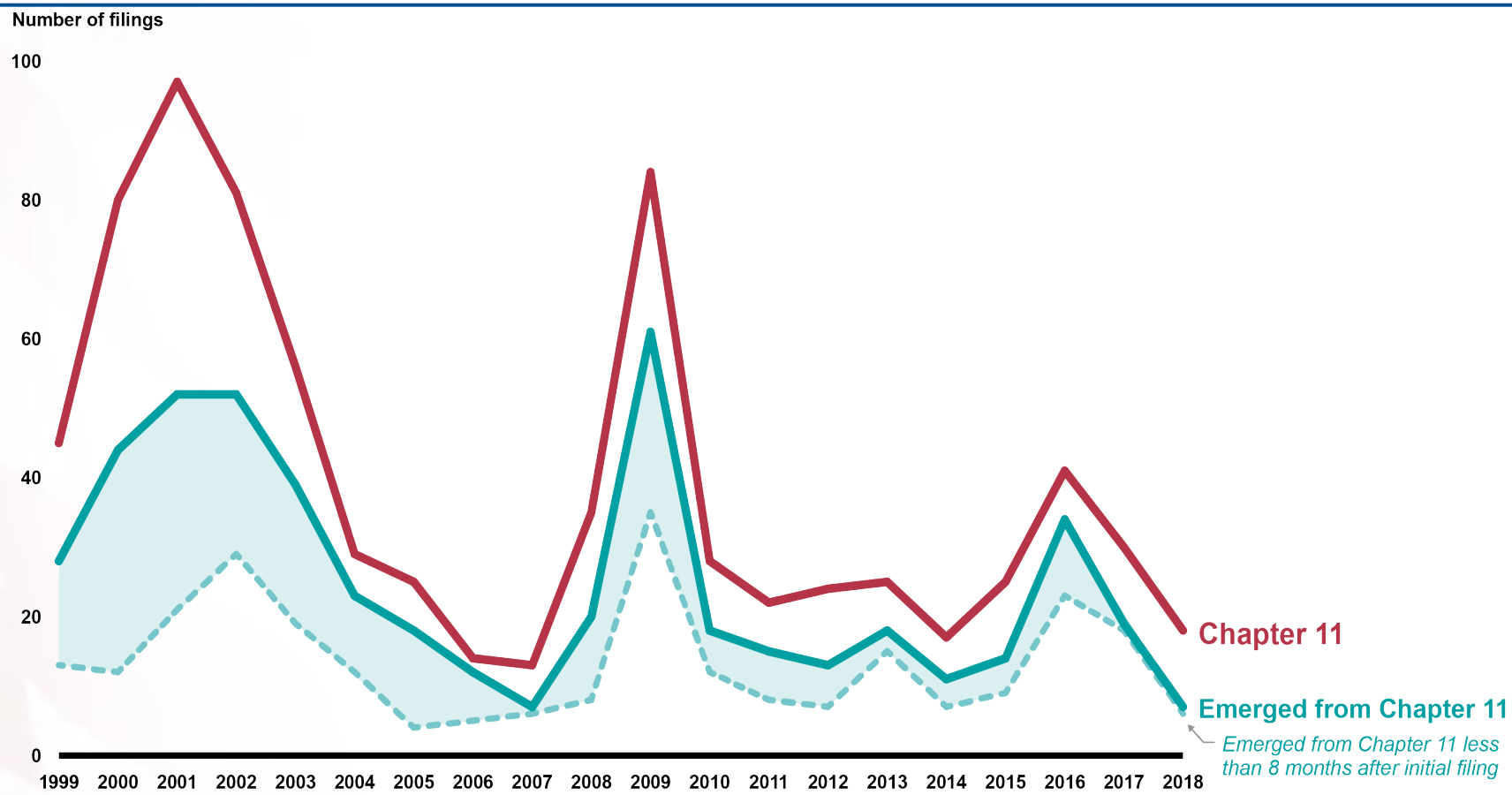
Source: GAO analysis of Bloomberg Terminal data. I GAO-19-447R

Note: For completed merger and acquisition (M&A) deals of $100 million or more, 2018 dollars.

Restructuring Trends: Bankruptcies Are More Common during Periods of Economic Distress

- Our analysis of BRD data from 1999 through 2018 shows Chapter 11 bankruptcies among large firms (over $305 million in assets in 2018 dollars) peaked during the two most recent recessions (see fig. 8).
  - 505 out of the 789 companies that filed for Chapter 11 bankruptcy emerged according to the BRD definition; 269 of those emerging did so within 8 months of their initial filing.
- The BRD includes 24 Chapter 7 bankruptcies (liquidation) by large firms from 1999 through 2018—19 of the filings occurred from 2008 through 2010 (data not shown).
- Bloomberg data showed the number of bankruptcies of $100 million or more with relative peaks in 2003-2004 and 2009-2010. However, Bloomberg may not identify a bankruptcy that occurred months or years after the initial M&A event that triggered inclusion of the restructuring event by Bloomberg; thus, Bloomberg may not be fully reliable for discerning bankruptcy outcomes.

Figure 8: Trend in Bankruptcies by Large Firms, 1999 through 2018



Source: GAO analysis of UCLA-LoPucki Bankruptcy Research Database. I GAO-19-447R

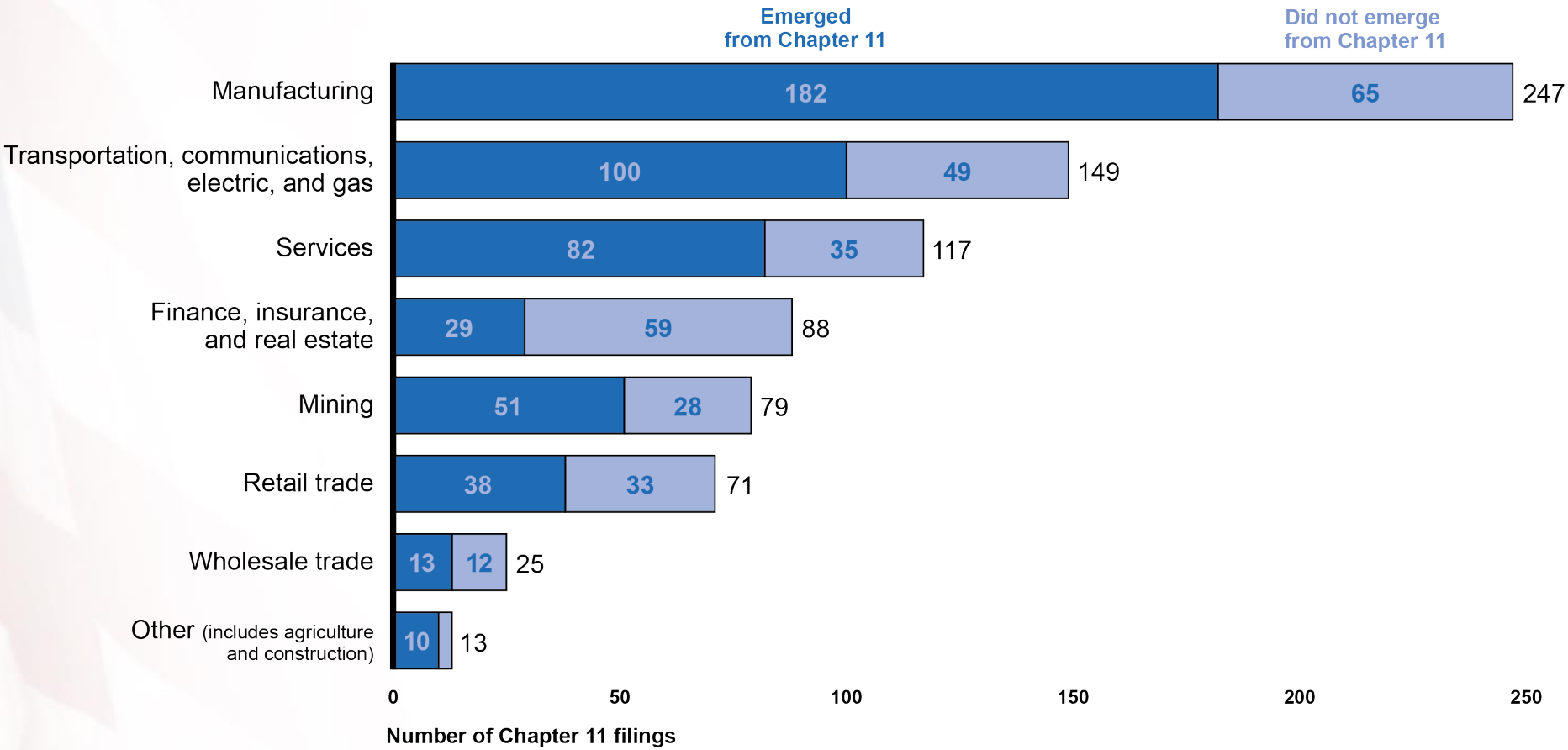
Note: Large firms are defined in the UCLA-LoPucki Bankruptcy Research Database (BRD) as firms with over $305 million in assets in 2018 dollars. The BRD represents updates made as of February 3, 2019. Thus companies that recently filed for Chapter 11 bankruptcy may not yet have a resolved case.

Restructuring Trends: Majority of Bankruptcies Were Concentrated in Four Industries

- BRD data show that, from 1999 through 2018, 601 out of 789 Chapter 11 bankruptcy filings were concentrated in four industrial classifications (see fig. 9):
  - Services;
  - Finance, insurance and real estate;
  - Manufacturing; and
  - Transportation, communications, electric, and gas.*

*This is a broadly defined category in the BRD; three subcategories represent an overwhelming majority of the bankruptcies: communications (83 filings); electric, gas, and sanitary services (25 filings); and air transportation (22 filings).

Figure 9: Chapter 11 Bankruptcies of Large Firms by Industry, 1999 through 2018



Source: GAO analysis of UCLA-LoPucki Bankruptcy Research Database. I GAO-19-447R

Note: Large firms are defined in the UCLA-LoPucki Bankruptcy Research Database (BRD) as firms with over $305 million in assets in 2018 dollars. The BRD represents updates made as of February 3, 2019. Thus, companies that recently filed for Chapter 11 bankruptcy may not yet have a resolved case.

Restructuring's Impact on Pensions: Generally Unclear

- Limited data make it difficult to understand the effect of corporate restructuring on pension benefits.
- Some pension and restructuring experts said it is hard to attribute specific pension benefit changes to restructuring events. For example, a given restructuring event may not specifically trigger or cause a change to pension benefits. Alternatively, pension benefit changes may be made with or without regard to any underlying restructuring event.
- Key sources of restructuring data, such as Bloomberg and BRD are not specifically intended to track changes in pension benefits.
- Data are not exhaustive of all types of restructuring events. For example, a corporation may introduce measures that reduce its workforce and future pension obligations, but such measures are not in the datasets we analyzed.

Restructuring's Impact on Pensions: Acquiring Firm May Harmonize Pension Benefits

- A benefits consulting expert noted that the acquiring company will often "harmonize" the pension benefits of the target firm to be similar to the acquiring firm (i.e. the plan types as well as accruals or employer matching contributions will be as similar as possible). The expert noted a case where a target company's benefits were improved as a result of harmonization.
- Some experts said a restructuring may prompt a company to re-think its employee benefit structures.
- Defined benefit plans may change the rate at which a recipient may accrue future benefits, but they generally cannot reduce the amount of benefits already accrued.
- As we have reported, some experts have noted the declining presence of unions and collective bargaining has reduced the ability of workers to negotiate access to pensions, especially defined benefit plans (GAO-18-111SP).

Effect of Restructuring: Experts Said Speed of Corporate Transactions May Have Implications

- Some experts said there is increasingly less time for some stakeholders, such as employees and retirees, to determine how the restructuring will impact their pension plans.
- For example, one expert noted that the pre-negotiated aspects of many restructurings, particularly those in bankruptcy, may exclude certain stakeholders (e.g. retirees and PBGC).
- In the context of a bankruptcy, the facts and circumstances of a particular case and the determinations of the bankruptcy court will affect the outcome of the bankruptcy.

Effect of Restructuring: Experts Said Speed of Corporate Transactions May Have Implications (cont.)

- One expert said that asset sales under 11 U.S.C. § 363* (sometimes referred to as 363 sales) often have expedited timeframes and pension holders or PBGC may have difficulty participating in the proceeding.
  - PBGC officials stated that they have seen:
    - a rise in 363 sales over the last 25 or so years, and
    - that 363 sales tend result in debtors shedding the pension plan in the reorganization—but noted that, if there is a CBA in place, the debtor must make a formal proposal and confer with the union to make mutually satisfactory modifications to pension benefits in the CBA.
- According to a few experts, some recent, high profile business transactions and bankruptcies have been driven by private equity takeovers. One expert said the increasing speed of private equity transactions can make it difficult for unions to identify and negotiate with new management.

*Section 363 of the U.S. Bankruptcy Code generally authorizes a debtor to sell its assets outside the ordinary course of business and permits sales that are free and clear of creditor claims on the property being sold, subject to certain requirements.

Restructuring Effects: Additional Implications of Speed of Corporate Transactions

- Experts did not identify any legal requirements relating to pensions that required advanced government approval with respect to the completion of the various corporate restructuring events we examined.
- Experts mentioned other issues, including legal requirements that may apply during a corporate restructuring. For example:
  - One expert mentioned the Worker Adjustment and Retraining Notification (WARN) Act, which generally requires companies with 100 or more employees to provide 60 days' advance notice prior to plant closings or mass layoffs, but may not apply in connection with bankruptcy.
  - The National Labor Relations Act (NLRA). Depending on the contract, a company may have to bargain over some effects of a corporate restructuring, including pension benefits. One expert noted that rank-and-file workers may often be unaware of new management's intent when the company is taken over by private equity, and noted that a union may undertake education efforts to make workers aware of changes that could occur from the deal.

Restructuring Effects: Bankruptcy May Have Effects on Benefits in the Short Term

- Bankruptcy may help a company eliminate or restructure debts it cannot repay and may help creditors receive some payment in an equitable manner.
- However, as noted in previous work (GAO-07-1101), another goal of a bankruptcy reorganization may be for the company to reorganize its finances in an attempt to become profitable. This process may be contentious, as many stakeholders, including creditors, and employee and retiree groups, may be competing for diminishing portions of the reorganizing company's remaining assets.

Restructuring Effects: Bankruptcy May Have Effects on Benefits in the Short Term (cont.)

- The outcome for a given creditor (stakeholder) generally depends on the amount of assets of the debtor and the relative standing of the creditor against other creditors.
- According to BRD data, firms that emerged from Chapter 11 had an average of about 12,300 employees before filing and about 9,000 employees after emerging. This could represent employees who lost access to an employer sponsored pension.
  - However, the magnitude of lost access is likely to be much more severe if a firm does not emerge and instead liquidates.

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