

## An Act

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Emergency Multiemployer Plan Financing Act of 2017”.

3 **SEC. 2. TABLE OF CONTENTS.**

4 The table of contents of this Act is as follows:

- 5 Sec. 1. Short title.
- 6 Sec. 2. Table of contents.
- 7 Sec. 101. Definitions.
- 8 Sec. 102. Loans for eligible plans authorized.
- 9 Sec. 103. Eligible plans.
- 10 Sec. 104. Loan application process.
- 11 Sec. 105. Loan financial terms.
- 12 Sec. 106. Financial projections.
- 13 Sec. 107. Proposed benefit reductions and related limitations.
- 14 Sec. 108. Plan actuary certification.
- 15 Sec. 109. Rating opinion letters.
- 16 Sec. 110. Subsidy cost demonstration.
- 17 Sec. 111. Loan approval process.
- 18 Sec. 112. Plan benefits reduced; reduction amounts transferred.
- 19 Sec. 113. Use of loan funds.
- 20 Sec. 114. Treatment of loan account investment returns.
- 21 Sec. 115. Consequences of negative investment returns, material experience loss, or material experience gain.
- 22 Sec. 116. Withdrawal liability determination; consequences of mass withdrawal.
- 23 Sec. 117. Loan payments.
- 24 Sec. 118. Continuing requirements.
- 25 Sec. 119. Fees.
- 26 Sec. 120. Appropriations.
- 27 Sec. 121. Guidance.
- 28 Sec. 122. Modifications.
- 29 Sec. 123. Audits.
- 30 Sec. 124. Conforming amendments to the Employee Retirement Income Security Act.
- 31 Sec. 125. Conforming amendments to the Internal Revenue Code.

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33 **SEC. 101. DEFINITIONS.**

34 In this Act—

35 (1) **ADMINISTRATIVE EXPENSES.**—The term “administrative expenses”  
36 means expenses incurred in the general operations of the plan.

37 (2) **BENEFIT REDUCTION AMOUNTS.**—The term “benefit reduction  
38 amounts” means the difference between the contractual benefit payments and the reduced  
39 contractual benefit payments.

40 (3) **CONTRACTUAL BENEFIT PAYMENTS.**—The term “contractual benefit  
41 payments” means all benefit payments to be made directly to each participant or

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1 beneficiary under the terms of a multiemployer pension plan, without regard to the  
2 reductions in benefit payments proposed in an application for a loan under this Act.

3 (4) CORPORATION.—The term “Corporation” means the Pension Benefit  
4 Guaranty Corporation.

5 (5) CRITICAL AND DECLINING STATUS.—The term “critical and declining  
6 status” shall have the meaning given that term in section 305(b)(6) of the Employee  
7 Retirement Income Security Act of 1974 (29 U.S.C. 1085).

8 (6) CURRENT PLAN YEAR.—The term “current plan year” means the plan year  
9 in which the plan sponsor submits a loan application.

10 (7) ELIGIBLE PLAN.—The term “eligible plan” shall have the meaning given  
11 that term in section 103.

12 (8) EMPLOYER CONTRIBUTIONS.—The term “employer contributions”  
13 means contributions due under one or more collective bargaining or related agreements or  
14 as a result of a duty under applicable labor management relations law.

15 (9) EXPERIENCE LOSS RESERVE SUB-ACCOUNT.—The term “experience  
16 loss reserve sub-account” means a sub-account established within a loan account  
17 pursuant to section 113(a)(2)(B).

18 (10) FINANCING ACCOUNT.—The term “financing account” means, for a loan  
19 made for an eligible plan under this Act, the financing account for the loan established  
20 pursuant to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

21 (11) INITIAL PERIOD.—The term “initial period” means, for a loan made for an  
22 eligible plan under this Act, the time period beginning on the date on which the loan is  
23 disbursed and ending on the last day of the first or second, as applicable, 6-month period  
24 of the plan’s plan year in which the disbursement occurs.

25 (12) LOAN ACCOUNT.—The term “loan account” means an account established  
26 pursuant to section 113.

27 (13) MULTIEMPLOYER PENSION PLAN.—The term “multiemployer pension  
28 plan” means a multiemployer plan, as that term is defined in section 3(37) of the  
29 Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), that is a  
30 defined benefit plan, as that term is defined in section 3(35) of that Act.

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1 (14) PERMITTED INVESTMENTS.—The term “permitted investments” means  
2 financial assets that are classified as “Level 1” or “Level 2” assets under the valuation  
3 techniques prescribed by the Financial Accounting Standards Board in Statement of  
4 Financial Accounting Standards No. 157, “Fair Value Measurements,” dated September  
5 2006, as amended.

6 (15) PLAN ACTUARY.—The term “plan actuary” means the actuary engaged  
7 under section 103(a)(4)(A) of the Employee Retirement Income Security Act of 1974 (29  
8 U.S.C. 1023(a)(4)(A)).

9 (16) PLAN SPONSOR.—The term “plan sponsor” shall have the meaning given  
10 that term in section 3(16)(B)(iii) of the Employee Retirement Income Security Act of  
11 1974 (29 U.S.C. 1002(16)(B)(iii)).

12 (17) PLAN YEAR.—The term “plan year” shall have the meaning given that term  
13 in section 3(39) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.  
14 1002(39)).

15 (18) POSITIVE VARIANCE RESERVE SUB-ACCOUNT.—The term “positive  
16 variance reserve sub-account” means a sub-account established within a loan account  
17 pursuant to section 113(a)(2)(A).

18 (19) RATING AGENCY.—The term “rating agency” means a credit rating  
19 agency, as that term is defined in section 3(a)(61) of the Securities Exchange Act of 1934  
20 (15 U.S.C. 78c(61)), registered with the Securities and Exchange Commission as a  
21 nationally recognized statistical rating organization, as that term is defined in section  
22 3(a)(62) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(62)).

23 (20) REDUCED CONTRACTUAL BENEFIT PAYMENTS.—The term  
24 “reduced contractual benefit payments” means all benefit payments to be made directly to  
25 participants or beneficiaries under a multiemployer pension plan that reflect the  
26 reductions in the contractual benefit payments proposed to be made, or made, as  
27 applicable, under this Act.

28 (21) SUBSIDY COST—The term “subsidy cost” has the meaning given the term  
29 “cost of a direct loan” in section 502(5)(B) of the Federal Credit Reform Act of 1990 (2  
30 U.S.C. 661a(5)(B)).

1 (22) WITHDRAWAL LIABILITY PAYMENTS.—The term “withdrawal  
2 liability payments” means payments due under section 4219 of the Employee Retirement  
3 Income Security Act of 1974 (29 U.S.C. 1399), including other terms and conditions for  
4 the satisfaction of an employer’s withdrawal liability as permitted under sections  
5 4219(c)(7) and 4224 of that Act (29 U.S.C. 1399(c)(7) and 1404, respectively), or as  
6 approved by the Corporation as part of an alternative allocation method as provided  
7 under section 4211(c)(5) of that Act (29 U.S.C. 1391(c)(5)).

8 **SEC. 102. LOANS FOR ELIGIBLE PLANS AUTHORIZED.**

9 (a) IN GENERAL.—The Corporation shall make loans for eligible plans under terms and  
10 conditions specified in this Act.

11 (b) FEDERAL CREDIT REFORM ACT APPLIES.—Notwithstanding section 506(a) of  
12 the Federal Credit Reform Act of 1990 (2 U.S.C. 661e(a)), loans made by the Corporation under  
13 this Act shall be made in accordance with, and subject to, the provisions of the Federal Credit  
14 Reform Act of 1990.

15 (c) MAXIMUM AMOUNT OF LOANS AUTHORIZED.—Obligations for the total  
16 principal amount of all direct loans made under this Act shall not exceed \$100,000,000,000.

17 (d) TERMINATION OF LOAN AUTHORITY.—The Corporation’s authority to make  
18 loans under this Act shall terminate 10 years after the date of enactment of this Act.

19 **SEC. 103. ELIGIBLE PLANS.**

20 (a) ELIGIBILITY CRITERIA.—A multiemployer pension plan is an “eligible plan” that  
21 may apply for, and receive, a loan under this Act if either—

22 (1) each of the following three acts has occurred:

23 (A) the plan actuary has certified that the plan is in critical and declining  
24 status for the current plan year;

25 (B) the plan sponsor has submitted an application to the Secretary of the  
26 Treasury for approval of a suspension of benefits under section 305(e)(9) of the  
27 Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(e)(9)); and

28 (C) the Secretary of the Treasury has denied the application for a reason  
29 other than the plan sponsor having failed to deliver to the Secretary all of the  
30 information required under section 305(e)(9) of the Employee Retirement Income

1 Security Act of 1974 (29 U.S.C. 1085(e)(9) for applicants to deliver to the  
2 Secretary; or

3 (2) the plan actuary has certified that the plan is in critical and declining status  
4 and is unable to reasonably fulfill the requirements for a suspension of benefits in the  
5 absence of a related application for a partition under sections 305(e)(9) and 4233,  
6 respectively, of the Employee Retirement Income Security Act of 1974 (29 U.S.C.  
7 1085(e)(9) and 1413), and applicable regulations or other agency guidance issued  
8 thereunder, and has included a narrative explaining in reasonable detail such inability.

9 (b) LIMITATION.—An eligible plan may receive only one loan under this Act.

10 **SEC. 104.—LOAN APPLICATION PROCESS.**

11 (a) IN GENERAL.—To obtain a loan under this Act, the plan sponsor of an eligible plan  
12 must submit a complete loan application to the Corporation. The loan application must be  
13 submitted electronically.

14 (b) PRE-APPLICATION CONSULTATION AUTHORIZED.—The plan sponsor of an  
15 eligible plan may consult with the Corporation and the Office of Management and Budget, and  
16 the Corporation and the Office of Management and Budget may consult with the plan sponsor,  
17 before the plan sponsor submits a loan application.

18 (c) APPLICATION REQUIREMENTS.—To be considered complete, a loan application  
19 must include the following:

20 (1) LOAN FINANCIAL TERMS.—A description of the proposed loan, including  
21 the proposed total principal amount of the loan, that satisfies the requirements of section  
22 105.

23 (2) FINANCIAL PROJECTION.—A financial projection that satisfies the  
24 requirements of section 106.

25 (3) PROPOSED BENEFIT REDUCTIONS.—A description of proposed benefit  
26 reductions that satisfy the requirements of section 107. **[If Alternative 1 is selected for**  
27 **funding subsidy costs (USG pays whole subsidy cost with appropriations), this**  
28 **paragraph (3) will not be included. Include this paragraph (3) only if Alternative 2**  
29 **or Alternative 3 is selected for funding subsidy costs (i.e., plans pay subsidy cost**  
30 **with benefit cuts + USG pays with appropriations, if needed; or plans pay whole**  
31 **subsidy cost with benefit cuts)]**

1 (4) PLAN ACTUARY CERTIFICATION.— A certification by the plan actuary  
2 that satisfies the requirements of section 108.

3 (5) RATING OPINION LETTERS.—Two rating opinion letters, each of which  
4 satisfies the requirements of section 109.

5 (6) SUBSIDY COST DEMONSTRATION.—A demonstration that satisfies the  
6 requirements of section 110. **[If Alternative 1 is selected for funding subsidy costs  
7 (USG pays whole subsidy cost with appropriations), this paragraph (6) will not be  
8 included. Include this paragraph (6) only if Alternative 2 or Alternative 3 is selected  
9 for funding subsidy costs (i.e., plans pay subsidy cost with benefit cuts + USG pays  
10 with appropriations, if needed; or plans pay whole subsidy cost with benefit cuts)]**

11 (7) ADDITIONAL APPLICATION REQUIREMENTS IN NOTICE OF  
12 FUNDING AVAILABILITY.—Information that satisfies any requirements for additional  
13 information that may be established for the loan application in the notice of funding  
14 availability published by the Corporation.

15 (d) COMPLETE APPLICATION.—

16 (1) TIMING ON NOTIFICATION AS TO COMPLETENESS.—After receiving  
17 a loan application, the Corporation shall notify the plan sponsor within 5 business days  
18 whether the submission constitutes a complete application.

19 (2) SUBMISSION DATE FOR A COMPLETE APPLICATION.—A complete  
20 application will be treated as submitted on the date originally submitted to the  
21 Corporation.

22 (3) NOTIFICATION OF INCOMPLETENESS.—If the Corporation determines  
23 that the application is incomplete, the Corporation shall notify the plan sponsor and allow  
24 a reasonable opportunity for the plan sponsor to submit a completed application.

25 (4) SUBMISSION DATE FOR A COMPLETED APPLICATION.—In such a  
26 case, the completed application will be treated as submitted on the date on which the  
27 additional information to complete the application is submitted to the Corporation.

28 (e) NOTICES.—

29 (1) IN GENERAL.—Concurrent with the filing of a loan application with the  
30 Corporation, the plan sponsor shall notify the parties described in (A) through (C)  
31 regarding the plan's loan application.

1 (A) All participants and beneficiaries, who may be contacted by  
2 reasonable efforts,

3 (B) Each employer who has an obligation to contribute (within the  
4 meaning of section 4212 of the Employee Retirement Income Security Act of  
5 1974 (29 U.S.C. 1392)), and

6 (C) Each employee organization that for purposes of collective bargaining  
7 represents plan participants employed by such an employer.

8 (2) CONTENT.—The notice shall contain—

9 (A) sufficient information to enable participants and beneficiaries to  
10 understand the effect of the loan application, including an individualized estimate  
11 (on an annual or monthly basis) of the reduced contractual benefit payment and  
12 the proposed timing of such reduction; **[A description of the proposed benefit  
13 reductions would be required only if Alternative 2 or Alternative 3 is selected  
14 for funding subsidy costs (i.e., plans pay subsidy cost with benefit cuts + USG  
15 pays with appropriations, if needed; or plans pay whole subsidy cost with  
16 benefit cuts)]**

17 (B) a statement that the loan application shall be available on the website  
18 of the Corporation;

19 (C) information as to the rights and remedies of plan participants and  
20 beneficiaries under the plan; and

21 (D) other information the plan sponsor may deem appropriate.

22 (3) METHOD OF DELIVERY.—A notice provided under this section must be  
23 provided in written or electronic form to the extent that the form is reasonably accessible  
24 to whom the notice is required to be provided. Permissible electronic methods include  
25 those permitted under regulations of the Department of Labor.

26 (f) PUBLICATION OF APPLICATION.— Not later than 30 days after receipt of a  
27 complete application, the Corporation shall publish the loan application on the Corporation’s  
28 website.

29 (g) OTHER NOTICE REQUIREMENT.—Any notice provided under subsection (e)  
30 shall fulfill the requirement for notice of a significant reduction in benefits described in section  
31 204(h) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(h)).

1 **SEC. 105. LOAN FINANCIAL TERMS.**

2 (a) LOAN AMOUNT.—

3 (1) IN GENERAL.—A loan application must specify a proposed total principal  
4 amount for the loan. This amount may not exceed the maximum permissible loan  
5 amount.

6 (2) “MAXIMUM PERMISSIBLE LOAN AMOUNT” DEFINED.—

7 (A) FORMULA.—For purposes of this Act, the term “maximum  
8 permissible loan amount” for any eligible plan means—

9 (i) the absolute value of the average annual negative cash flow  
10 projected for the plan for the current plan year and the immediately  
11 following 14 plan years;

12 (ii) multiplied by 20.

13 (B) “NEGATIVE CASH FLOW” DEFINED.—For purposes of this Act,  
14 the term “negative cash flow” means, for each plan year of an eligible plan, the  
15 employer contributions (excluding any withdrawal liability payments) less  
16 contractual benefit payments less administrative expenses of the plan.

17 (3) ACTUARIAL CERTIFICATION.—The plan actuary shall certify that the  
18 proposed total principal amount for the loan does not exceed the maximum permissible  
19 loan amount.

20 (4) PERMITTED EXCEPTION.—A loan application may specify a loan amount  
21 that is lower than maximum permissible loan amount if the application demonstrates that  
22 projected cash flows using the proposed lower loan amount would be sufficient for—

23 (A) the loan to be fully repaid by its maturity;

24 (B) the reduced contractual benefit payment not to be subject to  
25 suspension under section 4245 of the Employee Retirement Income Security Act  
26 of 1974 (29 U.S.C. 1426) during—

27 (i) the term of the loan; and

28 (ii) the 10-year period after the maturity of the loan; and

29 (C) fees, in amounts equal to plan assets attributable to the benefit  
30 reduction amounts, to be paid to the Corporation as provided in section 119.

31 (b) MATURITY.—



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1 (A) IN GENERAL.— Each loan made under this Act shall mature 30 years after  
2 the date on which the loan is disbursed.

3 (B) RULE OF CONSTRUCTION.—For purposes of determining the 10-year  
4 period after the maturity of a loan as required under sections 105(a)(4)(B)(ii),  
5 106(a)(2)(B), 106(b), and 108(a)(4)(B), the maturity of the loan shall be considered to be  
6 the maturity date identified in the application for the loan.

7 (c) INTEREST RATE.—Each loan shall accrue interest at the rate of 1 percent per  
8 annum.

9 (d) REPAYMENT.—

10 (1) 1st 15 YEARS.—Interest only on a loan shall be due and payable to the  
11 financing account for the loan semi-annually during the first 15 years that the loan is  
12 outstanding.

13 (2) 2nd 15 YEARS.—Level payments of interest and principal on a loan shall be  
14 due and payable to the financing account for the loan semi-annually during the second 15  
15 years that the loan is outstanding.

16 (3) PREPAYMENT.—A loan may be repaid before maturity at any time without  
17 penalty or interest.

18 **SEC. 106. FINANCIAL PROJECTION.**

19 (a) IN GENERAL.—Each loan application must include a financial projection of the  
20 operations of the loan account and the plan, certified by the plan actuary, demonstrating—

21 (1) the loan being fully repaid by its maturity;

22 (2) the reduced contractual benefit payments not being subject to suspension  
23 under section 4245 of the Employee Retirement Income Security Act of 1974 (29 U.S.C.  
24 1426) during—

25 (A) the term of the loan; and

26 (B) the 10-year period after the maturity of the loan; and

27 (3) fees, in amounts equal to plan assets attributable to the benefit reduction  
28 amounts, being paid to the Corporation as provided in section 119.

29 (b) PROJECTION PERIOD.—The financial projection shall cover the 40-year period  
30 that begins on the first day of the plan year that begins after the date on which the loan  
31 application is submitted to the Corporation.

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1 (c) REQUIRED ELEMENTS OF PROJECTION.—The financial projection shall  
2 display, in spreadsheet format, for each year in the projection period unless specified otherwise  
3 below, the following information:

- 4 (1) market value of plan assets at the beginning of the projection period;
- 5 (2) loan amount;
- 6 (3) loan interest payments during the first 15 years of the projection period;
- 7 (4) loan interest and principal payments during the second 15 years of the  
8 projection period;
- 9 (5) employer contributions;
- 10 (6) withdrawal liability payments;
- 11 (7) contractual benefit payments;
- 12 (8) benefit reduction amounts;
- 13 (9) reduced contractual benefit payments;
- 14 (10) administrative expenses of the plan;
- 15 (11) assumed investment returns, including the assumed investment rate;
- 16 (12) market value of plan assets at the end of each year; and
- 17 (13) such additional information that may be prescribed for the financial  
18 projection in the notice of funding availability published by the Corporation.

19 (d) ASSUMED RATE OF RETURN.—The assumed rate of return on the investment of  
20 the disbursed principal amount of each loan and the plan assets shall be 5.5 percent per annum,  
21 or such lower percentage as may be specified by the plan sponsor in the loan application.

22 (e) INVESTMENT POLICIES AND STRATEGIES.—Each loan application must  
23 include reasonably detailed statements of the investment policies and strategies that will be  
24 followed in the investment of the loan account and the plan assets.

25 (f) INVESTMENT MANAGEMENT.—Each loan application must include reasonably  
26 detailed information on the investment manager or managers, as that term is defined under  
27 section 3(38) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(38))  
28 and investment advisor or advisors for the loan account and the plan assets, and, to the extent  
29 available, their 5-year, 10-year, and 20-year performance on similar accounts.

30 **SEC. 107. PROPOSED BENEFIT REDUCTIONS AND RELATED LIMITATIONS.**

31 (a) IN GENERAL.—Each loan application must include schedules of—

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- 1 (1) contractual benefit payments;
- 2 (2) proposed benefit reduction amounts; and
- 3 (3) proposed reduced contractual benefit payments.

4 (b) SIZE OF REDUCTIONS.—

5 (1) GENERAL RULE.—The amount of benefit reduction amounts proposed in  
6 any loan application shall be equal to 20 percent of the contractual benefit payments.

7 (2) PERMITTED EXCEPTION.—The loan application may specify a percentage  
8 **[Alternative 3 only]** higher than 20 percent if the application demonstrates that projected  
9 cash flows using the proposed higher percentage of benefit reduction amounts would  
10 result in the loan having no subsidy cost that is not covered.

11 (3) LIMITATION.—Notwithstanding any provisions of this Act to the contrary,  
12 at no time shall a plan sponsor propose or put into effect a reduced contractual benefit  
13 payment in an amount that is less than the basic benefit that a participant or beneficiary  
14 would receive if the plan were insolvent under section 4245 of the Employee Retirement  
15 Income Security Act of 1974 (29 U.S.C. 1426), and the individual were receiving a  
16 guaranteed benefit pursuant to section 4022A(c) of that Act (29 U.S.C. 1322a). The  
17 guarantee as described under 4022A of that Act, as the Act is in effect on the date that the  
18 application is submitted, shall apply for the duration of the loan. The amount of the  
19 guarantee as described in the preceding sentence shall be based on the accrued benefit as  
20 of the date the individual enters pay status.

21 (4) ACTUAL REDUCTION IN BENEFITS.—Benefit amounts projected for  
22 those participants and beneficiaries who are not yet in pay status as of the date the loan  
23 application is submitted to the Corporation may not be the amount actually received by  
24 such participants and beneficiaries upon entering pay status. The actual amount of a  
25 reduced contractual benefit payment payable to individual participants and beneficiaries  
26 shall be determined in accordance with this subsection (b) and in accordance with the  
27 terms of the plan at the time the individual participant or beneficiary enters pay status.

28 (c) DURATION OF BENEFIT REDUCTIONS.—

29 (1) DURING THE LOAN.—Reduced contractual benefits may not be increased  
30 before the loan is paid in full.

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1 (2) AFTER THE LOAN.—During the 10-year period that begins on the date that  
2 the loan is paid in full, reduced contractual benefit payments may not be increased if the  
3 increase would result in the plan being certified in critical and declining status.

4 (d) BENEFIT MODIFICATIONS ALLOWED IF PRIOR BENEFIT REDUCTIONS  
5 HAVE BEEN MADE.—

6 (1) IN GENERAL.—If future benefit accruals under an eligible plan have been  
7 reduced or eliminated, including through a rehabilitation plan or funding improvement  
8 plan under section 305 of the Employee Retirement Income Security Act of 1974 (29  
9 U.S.C. 1085), before a plan sponsor applies for a loan under this Act, the loan application  
10 may, notwithstanding section 305(f) of that Act, include proposed modifications to the  
11 future benefit accruals under the plan as provided in paragraphs (2) and (3).

12 (2) PROCESS.—The plan sponsor—

13 (A) shall determine the average benefit accrual rate for the 20-year period  
14 before the date the loan application is submitted to the Corporation; and

15 (B) shall reduce the average benefit accrual rate, as determined under  
16 subparagraph (A), by the same percentage as the benefit reduction amounts; and

17 (C) may propose modifications to the future active benefit accruals that do  
18 not exceed the prior 20-year average of accrual rates, as determined under  
19 subparagraph (A), less the accrual reduction, as determined under subparagraph  
20 (B).

21 (3) SPECIAL RULE FOR AN ELIGIBLE PLAN HAVING MORE THAN ONE  
22 BENEFIT ACCRUAL RATE.—Where an eligible plan has more than one benefit  
23 accrual rate, the process described in paragraph (2) shall be applied to each accrual rate  
24 group using a reasonable calculation methodology.

25 (e) SPECIAL RULE.— Subsections (a), (b), (c), and (d) shall not apply to the application  
26 for a loan for the plan described in section 402(i)(4)(C) of the Surface Mining Control and  
27 Reclamation Act of 1977 (30 U.S.C. 1232(i)(4)(C)).

28 (f) NO OTHER POSITIVE BENEFIT MODIFICATION ALLOWED.—

29 (1) DURING THE LOAN.—Except as otherwise allowed by this Act or as  
30 required under applicable law, an eligible plan for which a loan has been made under this  
31 Act may not be amended, before the loan is paid in full, to include increases in the

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1 contractual benefit provisions that existed under the plan on the day before the loan is  
2 disbursed.

3 (2) AFTER THE LOAN.—During the 10-year period that begins on the date that  
4 the loan is paid in full, contractual benefit payments may not be increased if the increase  
5 would result in the plan being certified in critical and declining status.

6 (g) DETERMINATION OF ZONE STATUS FOR DURATION OF LOAN.—For the  
7 plan years following the current plan year, actuarial projections of assets and liabilities required  
8 under section 305(b)(3)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.  
9 1085(b)(3)(B)) shall include reasonable assumptions regarding future transfers to and from the  
10 loan account. In no event shall the loan principal be considered as a plan asset for purposes of  
11 actuarial projections of assets and liabilities required under that section.

12 (h) OPERATIONAL ZONE STATUS FOR DURATION OF LOAN.—If the funded  
13 status of an eligible plan for which a loan is made under this Act improves so that the plan is no  
14 longer certified to be in critical and declining status, the plan shall, for the duration of the loan,  
15 be considered to be in critical status, within the meaning of section 305 of the Employee  
16 Retirement Income Security Act of 1974 (29 U.S.C. 1085), even if the plan later is determined to  
17 have emerged from critical status during that time period. For the duration of the loan, the plan  
18 shall be required to meet the requirements of section 305 of that Act (29 U.S.C. 1083) including,  
19 without limitation, the adoption and maintenance of a rehabilitation plan (including annual  
20 updates), the completion of annual actuarial certifications, the observation of benefit restrictions,  
21 fulfillment of notice requirements and the maintenance of reasonable measures adopted, if  
22 applicable. During the period such requirements remain in place, section 302(b)(3) of the Act  
23 (29 U.S.C. 1082(b)(3)) shall continue to apply as if the plan were still in critical status.

24 **SEC. 108. PLAN ACTUARY CERTIFICATION.**

25 (a) CERTIFICATION.—Each loan application must include a certification by the plan  
26 actuary that—

- 27 (1) the plan is an eligible plan under this Act;  
28 (2) the proposed total principal amount of the loan does not exceed the maximum  
29 permissible loan amount;  
30 (3) the loan is projected to be fully repaid by its maturity;

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1 (4) the reduced contractual benefit payments are not reasonably expected to be  
2 subject to suspension under section 4245 of the Employee Retirement Income Security  
3 Act of 1974 (29 U.S.C. 1426) during—

4 (A) the term of the loan; and

5 (B) the 10-year period after the maturity of the loan; and

6 (5) fees, in amounts equal to plan assets attributable to benefit reduction amounts,  
7 are to be paid to the Corporation as provided in section 119.

8 (b) ACTUARIAL PROJECTIONS.—

9 (1) IN GENERAL.—The plan actuary’s projections shall be based on reasonable  
10 actuarial estimates, assumptions, and methods that, except as provided in paragraph (2),  
11 offer the plan actuary’s best estimate of anticipated experience under the plan.

12 (2) EXCEPTIONS.—

13 (A) EMPLOYER CONTRIBUTIONS.—For purposes of determining  
14 future employer contributions under this Act, an actuarial projection of plan assets  
15 shall assume, if reasonable, that each contributing employer in compliance  
16 continues to comply through the end of the rehabilitation period or such later time  
17 as provided in section 305(e)(3)(A)(ii) of the Employee Retirement Income  
18 Security Act (29 U.S.C. 1085(e)(3)(A)(ii)) with the terms of the rehabilitation  
19 plan that correspond to the schedule adopted or imposed under that subsection (e).

20 (B) PROJECTED INDUSTRY ACTIVITY.—Any projection of activity  
21 in the industry or industries covered by the eligible plan, including future covered  
22 employment and contribution levels, shall be based on information provided by  
23 the plan sponsor, which shall act reasonably and in good faith.

24 (C) ASSUMED RATE OF RETURN.—The assumed rate of return on the  
25 investment of the total principal amount of the loan and the plan assets shall be  
26 the rate prescribed in section 106(d), or such lower percentage as may be  
27 specified by the plan sponsor in the loan application.

28 **SEC. 109. RATING OPINION LETTERS.**

29 (a) FROM AT LEAST 2 RATING AGENCIES.—Each loan application must include a  
30 rating opinion letter from at least 2 rating agencies concluding that the loan will be rated at least  
31 “BBplus” or its equivalent.

1 (b) PLAN SPONSOR TO PROVIDE NECESSARY INFORMATION.—The plan  
2 sponsor shall provide the rating agencies with such information as the rating agencies may  
3 reasonably require to rate the loan.

4 **SEC. 110. SUBSIDY COST DEMONSTRATION.**

5 Each loan application must include a demonstration that the loan, taking into account the  
6 payment of fees under section 119 through the transfers of plan assets attributable to benefit  
7 reduction amounts under section 112(c), will have no subsidy cost that is not covered. **[If**  
8 **Alternative 1 is selected for funding subsidy costs (i.e., USG pays whole subsidy cost with**  
9 **approps), this section 110 is not needed at all. Include this section 110 only if Alternative 2**  
10 **or Alternative 3 is selected for funding subsidy costs (i.e., plans pay subsidy cost with**  
11 **benefit cuts + USG approps, if needed; or plans pay subsidy whole cost with benefit cuts)]**

12 **SEC. 111. LOAN APPROVAL PROCESS.**

13 (a) IN GENERAL.—If a plan sponsor submits a loan application, the Corporation shall  
14 approve the application if—

15 (1) the Corporation determines that the application is complete and has satisfied  
16 the requirements of this Act; and

17 (2) all requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et  
18 seq.) have been satisfied.

19 (b) STANDARD FOR ACCEPTING PLAN SPONSOR DETERMINATIONS AND  
20 PLAN ACTUARY ASSUMPTIONS AND METHODS.—

21 (1) PLAN SPONSOR DETERMINATIONS.—The Corporation shall accept the  
22 plan sponsor’s determinations made under this Act unless the Corporation concludes that  
23 the determinations are clearly erroneous.

24 (2) PLAN ACTUARY ASSUMPTIONS AND METHODS.—The Corporation  
25 shall accept the actuarial assumptions and methods used in the loan application unless  
26 the assumptions and methods do not meet applicable Actuarial Standards of Practice.

27 (3) DISCIPLINE.—If the Director of the Corporation concludes that a plan  
28 actuary has not met its responsibilities under the Actuarial Standards of Practice, the  
29 Director shall refer the matter to the Actuarial Board for Counseling and Discipline and  
30 may, in the case of an unfavorable determination rendered against the plan actuary,  
31 publish the determination on the Corporation’s website.

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1 (c) MODIFICATION TO APPLICATION AUTHORIZED.—The plan sponsor of an  
2 eligible plan may modify its loan application after having submitted the application if the  
3 Corporation provides written notice to the plan sponsor of one or more specific requirements that  
4 have not been satisfied.

5 (d) APPLICATION APPROVAL OR DENIAL.—

6 (1) TIMING.—The Corporation shall approve or deny any loan application within  
7 60 days after the submission of such application.

8 (2) NOTICE TO CONGRESS IF CORPORATION ACTION IS NOT  
9 TIMELY.—If the Corporation fails to approve or deny a loan application within the time  
10 prescribed by paragraph (1), the Corporation’s Participant and Plan Sponsor Advocate  
11 selected pursuant to section 4004 of the Employee Retirement Income Security Act of  
12 1974 (29 U.S.C. 1304) shall provide written notice of the failure to—

13 (A) the Committee on Health, Education, Labor, and Pensions of the  
14 Senate;

15 (B) the Committee on Appropriations of the Senate;

16 (C) the Committee on Education and the Workforce of the House of  
17 Representatives; and

18 (D) the Committee on Appropriations of the House of Representatives.

19 (3) NOTICE REQUIRED IF DENIAL.—If the Corporation denies a loan  
20 application, the Corporation shall provide written notice to the plan sponsor detailing the  
21 specific reasons for the denial, including reference to the one or more specific  
22 requirements that have not been satisfied.

23 (4) FINAL AGENCY ACTION.—Approval or denial by the Corporation of a  
24 loan application shall be treated as a final agency action for purposes of section 704 of  
25 title 5, United States Code.

26 (e) LOAN DISBURSEMENT.—The Corporation shall disburse promptly to the loan  
27 account the total principal amount of an approved loan.

28 (f) NOTICE.—Within 15 days after the loan is disbursed, the plan sponsor shall notify  
29 the parties described in section 104(e) of the approval of the loan application by the Corporation  
30 and the date on which benefit reductions will occur. The plan sponsor shall also revise



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1 individual estimates as previously provided under 104(e) in the event of a material change in  
2 estimated benefit reductions.

3 (g) JUDICIAL REVIEW.—

4 (1) DENIAL OF APPLICATION.—An action by the plan sponsor challenging  
5 the denial by the Corporation of an application for a loan under this Act may only be  
6 brought following such denial.

7 (2) APPROVAL OF LOAN.—

8 (A) TIMING OF ACTION.—An action challenging an approval by the  
9 Corporation of an application for a loan under this Act or a reduction in  
10 contractual benefit payments proposed in such an application may only be  
11 brought following a final approval by the Corporation of such an application  
12 pursuant to subsection (d).

13 (B) STANDARDS OF REVIEW.—

14 (i) IN GENERAL.—A court shall review an action challenging a  
15 final approval by the Corporation of an application for a loan under this  
16 Act or a reduction in contractual benefit payments proposed in such an  
17 application or made following the final approval by the Corporation of the  
18 application in accordance with section 706 of title 5.

19 (ii) TEMPORARY INJUNCTION.—A court reviewing an action  
20 challenging a final approval by the Corporation of an application for a  
21 loan under this Act or a reduction in contractual benefit payments  
22 proposed in such an application or made following the final approval by  
23 the Corporation of the application may not grant a temporary injunction  
24 with respect to such approval or reduction unless the court finds a clear  
25 and convincing likelihood that the plaintiff will prevail on the merits of the  
26 case.

27 (3) RESTRICTED CAUSE OF ACTION.—A participant or beneficiary affected  
28 by the final approval by the Corporation of an application for a loan under this Act or a  
29 reduction in contractual benefit payments proposed in such an application or made  
30 following the final approval by the Corporation of the application shall not have a cause  
31 of action under this Act.

1 (4) LIMITATION ON ACTION.—No action challenging the final approval by  
2 the Corporation of an application for a loan under this Act or a reduction in contractual  
3 benefit payments proposed in such an application or made following the final approval by  
4 the Corporation of the application may be brought after one year after the earliest date on  
5 which the plaintiff acquired or should have acquired actual knowledge of the existence of  
6 such cause of action.

7 **SEC. 112. PLAN BENEFITS REDUCED; REDUCTION AMOUNTS TRANSFERRED.**

8 (a) IN GENERAL.—Notwithstanding section 204(g) of the Employee Retirement  
9 Income Security Act of 1974 (29 U.S.C. 1054(g)), the plan sponsor of an eligible plan whose  
10 loan application is approved by the Corporation shall, by plan amendment, reduce contractual  
11 benefit payments in the manner that is proposed in the approved loan application.

12 (b) TIMING.—The plan sponsor shall effect the benefit reductions in subsection (a) not  
13 later than 30 days after the loan is disbursed.

14 (c) TRANSFER OF BENEFIT REDUCTION AMOUNTS.—The plan sponsor shall  
15 transfer funds, in amounts equal to plan assets attributable to the benefit reduction amounts, from  
16 the plan assets to the financing account for the loan made under this Act. These transfers of  
17 funds shall—

18 (A) be made at the same time that reduced benefit payments are made to  
19 participants and beneficiaries;

20 (B) be treated as payment of fees under section 119(a); and

21 (C) end when the loan made for the eligible plan under this Act has been paid in  
22 full, after which time the amounts equal to plan assets attributable to the benefit reduction  
23 amounts shall be remain in the plan trust fund for use as plan assets.

24 (d) ADDITIONAL BENEFIT REDUCTIONS.—The plan sponsor may propose further  
25 plan benefit reductions under conditions described in section 115.

26 (e) NO LIABILITY.—No liability shall attach to the United States, or the eligible plan,  
27 or the plan sponsor for any benefit payments not made as a result of a reduction of benefits under  
28 this Act.

29 (f) SPECIAL RULE.—With respect to a loan made under this Act for the plan described  
30 in section 402(i)(4)(C) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.

1 1232(i)(4)(C)), the amounts described in section 120(b)(2)(B) shall be transferred to the  
2 financing account for the loan.

3 **SEC. 113. USE OF LOAN FUNDS.**

4 (a) LOAN ACCOUNT.—

5 (1) ESTABLISHMENT OF LOAN ACCOUNT.—For a loan for an eligible plan,  
6 the plan sponsor shall establish and maintain a segregated account (“loan account”) to  
7 hold, in trust for the United States Government, the disbursed principal amount of the  
8 loan and the amounts described in subsection (c)(2).

9 (2) ESTABLISHMENT OF SUB-ACCOUNTS.—The plan sponsor shall  
10 establish and maintain within the loan account—

11 (A) a sub-account called the “positive variance reserve sub-account”; and

12 (B) a sub-account called the “experience loss reserve sub-account”.

13 (3) SEPARATE AND DISTINCT ACCOUNT AND TRUST.—The loan account  
14 shall be separate and distinct from the account or accounts that hold the eligible plan’s  
15 plan assets, and the trust for the loan account shall be separate and distinct from the trust  
16 for the plan assets.

17 (b) DISBURSEMENT OF LOAN FUNDS INTO LOAN ACCOUNT.—

18 (1) IN GENERAL.—The Corporation shall disburse the total principal amount of  
19 each loan for an eligible plan into the loan account established for the loan.

20 (2) LOAN ACCOUNT AMOUNTS NOT PLAN ASSETS.—Amounts in the loan  
21 account shall not be considered plan assets of the eligible plan for any purpose.

22 (c) INVESTMENT.—

23 (1) IN GENERAL.—For each loan, the plan sponsor shall invest in permitted  
24 investments all amounts in the loan account that, in the judgment of the plan sponsor, are  
25 not needed for current withdrawals.

26 (2) INVESTMENT EARNINGS AND SALE PROCEEDS.—All earnings from,  
27 and proceeds from sales of, loan account investments shall be deposited into the loan  
28 account and invested.

29 (3) COMMINGLING WITH PLAN ASSETS PROHIBITED.—Loan account  
30 assets shall not be commingled with plan assets.

31 (d) FIDUCIARY DUTIES; PROHIBITED TRANSACTIONS.—

1 (1) FIDUCIARY STATUS OF PLAN SPONSOR WITH RESPECT TO LOAN  
2 ACCOUNT.—The plan sponsor shall have the same fiduciary duty, including, but not  
3 limited to, the prohibitions and restrictions on certain transactions described in sections  
4 406 and 407 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 106  
5 and 107), with respect to the loan account as it does with respect to the plan under the  
6 Employee Retirement Income Security Act of 1974. Any act on the part of the plan  
7 sponsor that is necessary or desirable to fulfill an obligation under this Act shall be  
8 permitted and shall not by itself constitute a violation of the prohibited transaction  
9 provisions under section 406(a) and (b)(2) of the Employee Retirement Security Act of  
10 1974 (29 U.S.C. 106(a) and (b)(2)), or under section 4975 of the Internal Revenue Code  
11 (26 U.S.C. 4975).

12 (2) USE OF PLAN ASSETS FOR COSTS AND REQUIRED PAYMENTS.—  
13 The plan sponsor shall use plan assets to defray the costs of administering a loan through  
14 a loan account under this Act, including, without limitation, expenses incurred in (i)  
15 retaining service providers; (ii) obtaining annual rating opinion letters, annual financial  
16 audits, fiduciary coverage, fidelity bonding, and other applicable insurance coverage; and  
17 (iii) making required filings and disclosures. The plan sponsor also shall use plan assets  
18 to pay any amounts that are required under this Act to be paid to the loan account. Use of  
19 plan assets for these purposes, and for any other purpose required by this Act or  
20 determined to be necessary to comply with this Act, shall be permitted uses for purposes  
21 of the Employee Retirement Security Act of 1974, and shall not, by themselves,  
22 constitute a violation of the prohibited transaction provisions under section 406(a) and  
23 (b)(2) of the Employee Retirement Security Act of 1974 (29 U.S.C. 106(a) and (b)(2)), or  
24 under section 4975 of the Internal Revenue Code (26 U.S.C. 4975).

25 (3) TRANSFERS BETWEEN LOAN ACCOUNT AND PLAN.—The transfer of  
26 plan assets to the Corporation and to the loan account and the transfer of loan account  
27 assets to the plan in compliance with the requirements of this Act shall be permitted uses  
28 of such assets for purposes of the Employee Retirement Security Act of 1974, and shall  
29 not, by themselves, constitute a violation of the prohibited transaction provisions under  
30 section 406(a) and (b)(2) of the Employee Retirement Security Act of 1974 (29 U.S.C.

1 106(a) and (b)(2)), or under section 4975 of the Internal Revenue Code (26 U.S.C.  
2 4975).

3 (e) LIEN ON ACCOUNT.—

4 (1) IN FAVOR OF THE UNITED STATES.—The United States shall have the  
5 first and only lien on all investments and moneys held in each loan account.

6 (2) NO OTHER LIENS ALLOWED.—The plan sponsor shall take all action  
7 necessary to ensure that there are no other liens on the investments and moneys held in  
8 the loan account.

9 (3) PLAN INSOLVENCY.—If a plan for which a loan is made under this Act  
10 becomes insolvent within the meaning of section 4245 of the Employee Retirement  
11 Income Security Act of 1974 (29 U.S.C. 1426) before the loan is paid in full, all amounts  
12 in the loan account shall be promptly transferred to the United States Treasury.

13 (f) WITHDRAWALS OF ACCOUNT FUNDS.—Except as provided in section  
14 114(b)(2) and (d)—

15 (1) amounts may be withdrawn from the loan account solely for the repayment of  
16 the principal and interest with respect to the loan; and

17 (2) no amounts in the loan account may be used to pay reduced contractual benefit  
18 payments or administrative expenses of the plan or loan account.

19 (g) UPON LOAN REPAYMENT.—When all interest on, and principal of, a loan have  
20 been paid in full at any time, the plan sponsor shall transfer any remaining balance in the loan  
21 account, including the positive variance reserve sub-account and the experience loss reserve sub-  
22 account, to the eligible plan’s trust fund.

23 **SEC. 114. TREATMENT OF LOAN ACCOUNT INVESTMENT RETURNS.**

24 (a) SEMI-ANNUAL ACCOUNTING OF LOAN ACCOUNT INVESTMENT  
25 RETURNS.—

26 (1) IN GENERAL.—Not later than 30 days after the end of each 6-month period  
27 beginning on the first day of the first plan year to occur after a loan for an eligible plan is  
28 disbursed, the plan sponsor shall determine the return on the investment of amounts in the  
29 loan account for the preceding 6-month period.

1           (2) SPECIAL RULE.—With respect to the initial period, the plan sponsor shall  
2           determine the return on the investment of amounts in the loan account for that period not  
3           later than 30 days after the end of that period.

4           (b) APPLICATION OF POSITIVE INVESTMENT RETURNS IN THE LOAN  
5           ACCOUNT.—The plan sponsor shall apply actual positive returns on the investment of amounts  
6           in the loan account as follows:

7           (1) First, any positive returns on the investment of amounts in the loan account up  
8           to and including the amount equal to 0.5 percent (on a semiannual basis) shall be applied  
9           to make interest payments on the loan when due.

10          (2) Second, any positive returns on the investment of amounts in the loan account  
11          in excess of 0.5 percent (on a semiannual basis) up to and including 4.5 percent (on a  
12          semiannual basis) shall be transferred to the eligible plan’s trust fund.

13          (3) Third, any positive returns on the investment of amounts in the loan account in  
14          excess of 4.5 percent (on a semiannual basis) shall be deposited into the positive variance  
15          reserve sub-account established within the loan account and shall be available to be  
16          applied as provided in section (c)(2).

17          (c) CONSEQUENCES OF LOW INVESTMENT RETURNS IN THE LOAN  
18          ACCOUNT.—

19          (1) BELOW 0.5 PERCENT.—If returns on the investment of amounts in the loan  
20          account for any 6-month period (or the initial period, as applicable) are less than 0.5  
21          percent (on a semiannual basis), the plan sponsor shall use plan assets to the extent  
22          necessary to make the loan payment then due.

23          (2) BELOW ASSUMED RATE OF RETURN.—If returns on the investment of  
24          amounts in the loan account for any 6-month period (or the initial period, as applicable)  
25          are determined to be lower per annum than the assumed rate of return (on a semiannual  
26          basis) specified by the plan sponsor in the loan application, the plan sponsor shall  
27          transfer, from any funds in the positive variance reserve sub-account of the loan account  
28          to the eligible plan’s trust fund, an amount equal the difference between the assumed rate  
29          of return (on a semiannual basis) and the actual return on the investment of amounts in  
30          the loan account (on a semiannual basis) for the 6-month period.

1 (d) TAX-EXEMPTION FOR LOAN ACCOUNT INVESTMENT RETURNS.—Returns  
2 on the investment of amounts in the loan account shall not be considered “income” of the plan  
3 for purposes of the Internal Revenue Code of 1986.

4 **SEC. 115. CONSEQUENCES OF NEGATIVE INVESTMENT RETURNS, MATERIAL**  
5 **EXPERIENCE LOSS, OR MATERIAL EXPERIENCE GAIN.**

6 (a) NEGATIVE INVESTMENT RETURNS.—

7 (1) IN GENERAL.—For a loan account, if the amount of actual investment  
8 returns for any 6-month period (or the initial period, as applicable) is negative for the  
9 period such that the value of the loan account is reduced, due to investment losses, to an  
10 amount that is less than the unpaid principal amount of the loan at that time, the plan  
11 sponsor shall—

12 (A) suspend the semi-annual transfers of actual positive returns on the  
13 investment of amounts in the loan account from the loan account to the eligible  
14 plan’s trust fund under section 114(b)(2) until such time as the value of the loan  
15 account equals an amount that is equal to or greater than the unpaid principal  
16 amount of the loan at that time; or

17 (B) propose, by plan amendment, further reductions in contractual benefit  
18 payments, subject to the limitation in section 107(b)(3), or increases in employer  
19 contributions, or both, as negotiated by the collective bargaining parties—

20 (i) the present value of which is equal to the amount by which the  
21 loan account is below the unpaid principal amount of the loan at that time;  
22 and

23 (ii) over a period of time that—

24 (I) does not to exceed 10 years; and

25 (II) ends not later than the maturity date of the loan.

26 (2) TIMING.—

27 (A) TRANSFER SUSPENSION.—If the plan sponsor elects to take the  
28 action described in paragraph (1)(A), the plan sponsor shall begin the suspension  
29 of transfers on the first scheduled semi-annual transfer date to occur after the  
30 investment loss is recorded.

1 (B) PLAN AMENDMENT PROPOSAL.—If the plan sponsor elects to  
2 take the action described in paragraph (1)(B), the plan sponsor shall propose the  
3 plan amendment or negotiated contribution increases before the end of the 6-  
4 month period that begins when the investment loss is recorded.

5 (3) SPECIAL RULE.—If a plan amendment is adopted with further reductions in  
6 contractual benefits or contribution increases are negotiated by the collective bargaining  
7 parties, or both, and those reductions or increases or both satisfy the requirements in  
8 paragraph (1)(B)(i) and (ii), the plan sponsor shall suspend the semi-annual transfers of  
9 actual positive returns from the loan account to the eligible plan’s trust fund at each 6-  
10 month period in section 114(a)(1) in an amount that is equal to the amount by which the  
11 plan assets are increased as a result of the adopted plan amendment or contribution  
12 increases negotiated by the collective bargaining parties.

13 (b) MATERIAL EXPERIENCE LOSS.—

14 (1) IN GENERAL.—For any plan year of an eligible plan for which a loan is  
15 made under this Act, if the plan determines that there is a material experience loss, the  
16 plan sponsor shall—

17 (A) suspend the semi-annual transfers of actual positive returns on the  
18 investment of amounts in the loan account from the loan account to the eligible  
19 plan’s trust fund under section 114(b)(2) up to an amount equal to the amount of  
20 the material experience loss that the plan determined for that plan year; or

21 (B) propose, by plan amendment, further reductions in contractual benefit  
22 payments, subject to the limitation in section 107(b)(3), or increases in employer  
23 contributions, or both, as negotiated by the collective bargaining parties, in an  
24 amount, the present value of which is equal to the amount of the material  
25 experience loss for that plan year.

26 (2) EXPERIENCE LOSS RESERVE SUB-ACCOUNT.—If the plan sponsor  
27 elects to take the action described in paragraph (1)(A), the plan sponsor shall transfer  
28 amounts in the loan account equal to the amounts of suspended semi-annual transfers of  
29 actual positive returns to the experience loss reserve sub-account established within the  
30 loan account.



1 (3) BASIS FOR MATERIAL EXPERIENCE LOSS DETERMINATION.—The  
2 plan sponsor shall determine a material experience loss for a plan year based on the  
3 audited financial statements for the plan year.

4 (4) TIMING.—

5 (A) DECISION.—The plan sponsor shall decide between taking the action  
6 described in paragraph (1)(A) or (1)(B) before the end of the first plan year after  
7 the year of the material experience loss.

8 (B) TRANSFER SUSPENSION.—If the plan sponsor elects to take the  
9 action described in paragraph (1)(A), the plan sponsor shall begin the suspension  
10 of transfers on the first scheduled semi-annual transfer date to occur after the  
11 material experience loss is determined.

12 (C) PLAN AMENDMENT PROPOSAL.—If the plan sponsor elects to  
13 take the action described in paragraph (1)(B), the plan sponsor shall propose the  
14 plan amendment or negotiated contribution increase before the end of the 6-month  
15 period that begins on the date that the material experience loss is determined.

16 (5) “MATERIAL EXPERIENCE LOSS” DEFINED.—For purposes of this  
17 section, the term “material experience loss” means—

18 (A) actual employer contributions are at least 20 percent less than  
19 projected in the loan application;

20 (B) actual reduced benefit payments are at least 20 percent greater than  
21 projected in the loan application; or

22 (C) actual fees, in amounts equal to plan assets attributable to the benefit  
23 reduction amounts, paid to the Corporation as provided in section 119, are at least  
24 20 percent less than projected in the loan application.

25 (c) MATERIAL EXPERIENCE GAIN.—

26 (1) IN GENERAL.—For any plan year of an eligible plan for which a loan is  
27 made under this Act, if the plan determines that there is a material experience gain, the  
28 plan sponsor may transfer funds in the experience loss reserve sub-account to the eligible  
29 plan’s trust fund up to an amount equal to the amount of the material experience gain for  
30 that plan year.

1 (2) “MATERIAL EXPERIENCE GAIN” DEFINED.—For purposes of this Act,  
2 the term “material experience gain” means—

3 (A) actual employer contributions are at least 20 percent greater than  
4 projected in the loan application;

5 (B) actual reduced benefit payments are at least 20 percent less than  
6 projected in the loan application; or

7 (C) actual fees, in amounts equal to plan assets attributable to the benefit  
8 reduction amounts, paid to the Corporation as provided in section 119, are at least  
9 20 percent greater than projected in the loan application.

10 **SEC. 116. WITHDRAWAL LIABILITY DETERMINATION; CONSEQUENCES OF**  
11 **MASS WITHDRAWAL**

12 (a) EMPLOYER WITHDRAWALS.—With respect to an eligible plan for which a loan  
13 is made under this Act, if an employer withdraws from the plan in a complete withdrawal or a  
14 partial withdrawal, the employer shall be liable to the plan as determined under Title IV, subtitle  
15 E, part I of the Employee Retirement Income Security Act (29 U.S.C. 1381-1405), and in  
16 accordance with this section.

17 (b) MASS WITHDRAWAL.—With respect to an eligible plan for which a loan has been  
18 made under this Act, if the plan experiences a mass withdrawal before the loan is paid in full, the  
19 plan sponsor shall take additional actions required in paragraph (d).

20 (c) “MASS WITHDRAWAL” DEFINED.—For purposes of this section, the term “mass  
21 withdrawal” means the complete withdrawal of all or substantially all employers as provided  
22 under sections 4203 and 4219, respectively, of the Employee Retirement Income Security Act of  
23 1974 (29 U.S.C. 1383 and 1399).

24 (d) REQUIRED ACTIONS IN THE EVENT OF MASS WITHDRAWAL—

25 (1) WITH RESPECT TO THE LOAN ACCOUNT.—First, all amounts in the  
26 loan account shall be immediately transferred to the United States Treasury and applied  
27 to the repayment of the loan; and

28 (2) WITH RESPECT TO PLAN ASSETS.—Second, to the extent necessary, plan  
29 assets shall be applied to pay any remaining unpaid amounts of the loan;

1 (3) WITH RESPECT TO WITHDRAWAL LIABILITY PAYMENTS.—Third, to  
2 the extent necessary, withdrawal liability payments shall be applied to any remaining  
3 unpaid amounts of the loan; and

4 (4) WITH RESPECT TO BENEFIT PAYMENTS.—Fourth, remaining plan  
5 assets, if any, including withdrawal liability payments, shall be used to pay reduced  
6 contractual benefit payments as well as administrative expenses in accordance with  
7 applicable provisions of the Employee Retirement Income Security Act of 1974.

8 (e) WITHDRAWAL LIABILITY DETERMINATION.—

9 (1) BENEFIT REDUCTIONS.—Any benefit reductions required under sections  
10 112, 115(a)(2), and 115(b)(1)(B) shall be disregarded in determining the plan’s unfunded  
11 vested benefits for purposes of determining an employer’s withdrawal liability under  
12 section 4201 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381).

13 (2) INCREASES TO PLAN ASSETS.—Any increases to plan assets as provided  
14 under sections 114(b)(2), 114(c)(2), and 114(d) shall be disregarded in determining the  
15 plan’s assets for purposes of determining an employer’s withdrawal liability under  
16 section 4201 of the Employee Retirement Income Security Act of 1974 (29 U.S.C.  
17 1381).

18 (3) CONTRIBUTION INCREASES.—Any contribution increase required under  
19 115(a)(2) or 115(b)(2) shall be included in determining the allocation of unfunded vested  
20 benefits to an employer under section 4211 of the Employee Retirement Income Security  
21 Act of 1974 (29 U.S.C. 1391) and in determining the highest contribution rate under  
22 section 4219 of that Act (29 U.S.C. 1399).

23 (f) ADDITIONAL RULE APPLICABLE TO MASS WITHDRAWAL LIABILITY  
24 DETERMINATION.—If an eligible plan for which a loan has been made under this Act  
25 experiences a mass withdrawal before the loan is paid in full, for purposes of determining an  
26 employer’s withdrawal liability under section 4201 of the Employee Retirement Income Security  
27 Act of 1974 (29 U.S.C. 1381), the plan shall include the remaining amount of the principal of the  
28 loan and any unpaid interest payments.

29 (g) SPECIAL RULE.—For a plan described in section 402(i)(4)(C) of the Surface  
30 Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(i)(4)(C)), if an employer  
31 withdraws from the plan in a complete withdrawal or a partial withdrawal, the employer shall be

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1 liable to the plan as determined under Title IV, subtitle E, part I of the Employee Retirement  
2 Income Security Act (29 U.S.C. 1381 and 1405), and in accordance with paragraphs (e)(2),  
3 (e)(3) and (h) of this section.

4 (h) TIMING.—This section shall apply as of the date the loan is disbursed to an eligible  
5 plan and shall cease to apply as of the first day of the first month following the date on which the  
6 loan is paid in full.

7 **SEC. 117. LOAN PAYMENTS.**

8 (a) FROM THE LOAN ACCOUNT.—Except as provided in subsection (b), for each  
9 loan for an eligible plan made under this Act, the plan sponsor shall make the payments due on  
10 the loan from amounts in the loan account to the financing account for the loan.

11 (b) PERMITTED EXCEPTION.—Under the conditions specified in section 114(c)(1)  
12 and 116(b)(2), the plan sponsor shall make loan payments from plan assets to the financing  
13 account for the loan.

14 **SEC. 118. CONTINUING REQUIREMENTS.**

15 (a) ANNUALLY UPDATED RATING OPINION LETTERS.—

16 (1) TIMING.—Not later than 60 days after the end of each 12-month period  
17 beginning on the date on which a loan for an eligible plan is disbursed, the plan sponsor  
18 shall deliver to the Corporation an updated rating opinion letter.

19 (2) DURATION OF REQUIREMENT.—The requirement in this subsection to  
20 deliver annually updated rating opinion letters shall end 25 years after the date on which  
21 the loan is disbursed.

22 (b) AUDITED ANNUAL FINANCIAL STATEMENTS.—

23 (1) TIMING.—The plan sponsor for each eligible plan for which a loan is made  
24 under this Act shall deliver to the Corporation audited financial statements each year  
25 reflecting the operations of the loan account and the plan during the year not later than 14  
26 days after the financial statements of the plan become available to the plan.

27 (2) REQUIRED CONTENTS.—The audited annual financial statements shall  
28 include a balance sheet, gains and loss statement, and statement of cash flows,  
29 prepared—

30 (A) in reasonable detail with supporting schedules;

31 (B) in conformity with generally accepted accounting principles; and

(C) on a basis consistent with that of the preceding year.

(3) DURATION OF REQUIREMENT.—The requirement in this subsection to deliver audited annual financial statements shall end at the beginning of the first plan year that begins after the loan is paid in full.

**SEC. 119. FEES [If Alternative 1 for funding the subsidy costs is selected (USG pays whole subsidy cost with appropriations), this section 119 is not needed at all].**

(a) IN GENERAL.—The Corporation shall charge and collect fees on loans for eligible plans made under this Act. Transfers of funds under section 112(c) shall be treated as payment of fees under this section, and shall be the only fees authorized by this Act to be charged on loans for eligible plans. This requirement to pay fees shall end for an eligible plan when its loan is paid in full. **[Include the following sentence only if Alternative 2 or Alternative 3 is selected for funding subsidy costs (i.e., plans pay subsidy cost with benefit cuts + USG pays with appropriations, if needed; or plans pay whole subsidy cost with benefit cuts)]**

(b) DISPOSITION OF FEES.—Fees on a loan for an eligible plan collected under this subsection shall be deposited by the Corporation into the financing account for the loan.

**SEC. 120. APPROPRIATIONS.**

(a) CORPORATION ADMINISTRATIVE EXPENSES.—Consistent with section 4005(b)(2)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1305(b)(2)(C)), the fund established by section 4005(a) of that Act to finance the operations of the multiemployer plan guarantee program established by section 4022A of that Act (29 U.S.C. 1322a) shall be available to pay the operational and administrative expenses of the Corporation attributable to administering the loan program authorized by this Act.

**[Alternative 1 for funding the subsidy cost of loans – USG pays whole subsidy cost]**

(b) SUBSIDY COSTS.—There are appropriated, out of any money in the Treasury not otherwise appropriated, for the subsidy cost of direct loans, as authorized by this Act, [\$38,000,000,000], to remain available until expended. Such costs, including the cost of modifying such loans, shall be as defined in section 502(5)(B) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(B)).

**[Alternative 2 for funding the subsidy cost of loans – plans pay subsidy cost from 20% benefit reductions; USG pays any remaining subsidy cost]**

(b) SUBSIDY COSTS.—

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1 (1) APPROPRIATION.—After crediting amounts deposited into financing  
2 accounts under section 119(b), there are appropriated, out of any money in the Treasury  
3 not otherwise appropriated, for any remaining subsidy cost of direct loans, as authorized  
4 by this Act, [\$20,000,000,000], to remain available until expended.

5 (2) SPECIAL RULE.—

6 (A) EXCEPTION.—Paragraph (1) shall not apply to the plan described in  
7 section 402(i)(4)(C) of the Surface Mining Control and Reclamation Act of 1977  
8 (30 U.S.C. 1232(i)(4)(C)).

9 (B) APPLICATION OF EXISTING ANNUAL APPROPRIATION.—The  
10 amounts described in section 402(i)(4) of the Surface Mining Control and  
11 Reclamation Act of 1977 (30 U.S.C. 1232(i)(4)) shall be applied toward the  
12 subsidy cost of a direct loan for the plan described in section 402(i)(4)(C) of that  
13 Act (30 U.S.C. 1232(i)(4)(C)). Such cost, including the cost of modifying such  
14 loan, shall be as defined in section 502(5)(B) of the Federal Credit Reform Act of  
15 1990 (2 U.S.C. 661a(5)(B)).

16 (C) Subsection (i) of section 402 of the Surface Mining Control and  
17 Reclamation Act of 1977 (30 U.S.C. 1232) is amended by—

18 (i) redesignating paragraph (4) as paragraph (5); and

19 (ii) inserting after paragraph (3) the following:

20 “(4) ADDITIONAL AMOUNTS.—

21 “(A) CALCULATION.—If the dollar limitation specified in paragraph  
22 (3)(A) exceeds the aggregate amount required to be transferred under paragraphs  
23 (1) and (2) for a fiscal year, the Secretary of the Treasury shall transfer an  
24 additional amount equal to the difference between such dollar limitation and such  
25 aggregate amount to the trustees of the 1974 UMWA Pension Plan to be applied  
26 towards the subsidy cost of a direct loan made for such Plan under the Emergency  
27 Multiemployer Plan Financing Act of 2017.

28 “(B) DURATION OF TRANSFERS.—The transfers described in  
29 subparagraph (A) shall end as of the first fiscal year beginning after the first plan  
30 year during which the loan described in subparagraph (A) is paid in full.

1 “(C) 1974 UMWA PENSION PLAN DEFINED.—For purposes of this  
2 paragraph, the term ‘1974 UMWA Pension Plan’ has the meaning given the term  
3 in section 9701(a)(3) of the Internal Revenue Code of 1986, but without regard to  
4 the limitation on participation to individuals who retired in 1976 and thereafter.’’.

5 **[Alternative 3 for funding the subsidy cost of loans – plans pay whole subsidy cost]**

6 (b) SUBSIDY COSTS.—

7 (1) NO GENERAL FUND APPROPRIATION.—Except as provided in  
8 paragraph (2), there are appropriated, out of any money in the Treasury not otherwise  
9 appropriated, for the subsidy cost of direct loans as authorized by this Act, \$0. Such  
10 costs, including the cost of modifying such loans, shall be as defined in section 502(5)(B)  
11 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(B)).

12 (2) SPECIAL RULE.—

13 (A) EXCEPTION.—Paragraph (1) shall not apply to the plan described in  
14 section 402(i)(4)(C) of the Surface Mining Control and Reclamation Act of 1977  
15 (30 U.S.C. 1232(i)(4)(C)).

16 (B) APPLICATION OF EXISTING ANNUAL APPROPRIATION.—The  
17 amounts described in section 402(i)(4) of the Surface Mining Control and  
18 Reclamation Act of 1977 (30 U.S.C. 1232(i)(4)) shall be applied toward the  
19 subsidy cost of a direct loan for the plan described in section 402(i)(4)(C) of that  
20 Act (30 U.S.C. 1232(i)(4)(C)). Such cost, including the cost of modifying such  
21 loan, shall be as defined in section 502(5)(B) of the Federal Credit Reform Act of  
22 1990 (2 U.S.C. 661a(5)(B)).

23 (C) Subsection (i) of section 402 of the Surface Mining Control and  
24 Reclamation Act of 1977 (30 U.S.C. 1232) is amended by—

25 (i) redesignating paragraph (4) as paragraph (5); and

26 (ii) inserting after paragraph (3) the following:

27 “(4) ADDITIONAL AMOUNTS.—

28 “(A) CALCULATION.—If the dollar limitation specified in paragraph  
29 (3)(A) exceeds the aggregate amount required to be transferred under paragraphs  
30 (1) and (2) for a fiscal year, the Secretary of the Treasury shall transfer an  
31 additional amount equal to the difference between such dollar limitation and such

1 aggregate amount to the trustees of the 1974 UMWA Pension Plan to be applied  
2 towards the subsidy cost of a direct loan made for such Plan under the Emergency  
3 Multiemployer Plan Financing Act of 2017.

4 “(B) DURATION OF TRANSFERS.—The transfers described in  
5 subparagraph (A) shall end as of the first fiscal year beginning after the first plan  
6 year during which the loan described in subparagraph (A) is paid in full.

7 “(C) 1974 UMWA PENSION PLAN DEFINED.—For purposes of this  
8 paragraph, the term ‘1974 UMWA Pension Plan’ has the meaning given the term  
9 in section 9701(a)(3) of the Internal Revenue Code of 1986, but without regard to  
10 the limitation on participation to individuals who retired in 1976 and thereafter.”.

11 **SEC. 121. GUIDANCE.**

12 Not later than 30 days after the date of enactment of this Act, the Corporation shall  
13 publish on the Corporation’s website a notice of funding availability and application form  
14 consistent with this Act. The Corporation shall provide only such additional guidance as may be  
15 necessary to inform plan sponsors how to demonstrate ability to repay the loan and plan  
16 solvency.

17 **SEC. 122. MODIFICATIONS.**

18 (a) IN GENERAL.—With the agreement of the relevant plan sponsor, the Corporation  
19 may modify any loan made under this Act.

20 (b) LIMITATION.—In no event may a modification extend the 30-year term of the loan.

21 **SEC. 123. AUDITS.**

22 The Corporation and the Comptroller of the United States, or their duly authorized  
23 representatives, shall have access, for the purpose of audit, to the records and other pertinent  
24 documents related to each loan and loan account.

25 **SEC. 124. CONFORMING AMENDMENTS TO ERISA.**

26 [The pertinent provisions of the Employee Retirement Income Security Act will  
27 be modified as needed to conform with this Act.]

28 **SEC. 125. CONFORMING AMENDMENTS TO THE INTERNAL REVENUE CODE.**

29 [The pertinent provisions of the Internal Revenue Code will be modified as needed to  
30 conform with this Act.]