

An Act

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Emergency Multiemployer Plan Financing Act of 2018”.

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.
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- 14 Sec. 108. Plan actuary certification.
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- 17 Sec. 111. Loan approval process.
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- 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.
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- 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, for a multiemployer pension plan, expenses incurred in the general operations of
37 the plan.

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

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1 (3) CONTRACTUAL BENEFIT PAYMENTS.—The term “contractual benefit
2 payments” means all benefit payments to be made directly to each participant or
3 beneficiary under the terms of a multiemployer pension plan, without regard to the
4 reductions in benefit payments proposed in an application for a loan under this Act.

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

7 (5) CRITICAL AND DECLINING STATUS.—The term “critical and declining
8 status” shall have the meaning given that term in section 305(b)(6) of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C. 1085) and section 432(b)(6) of the
10 Internal Revenue Code of 1986.

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

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

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

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

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

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

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

30 (13) MULTIEMPLOYER PENSION PLAN.—The term “multiemployer pension
31 plan” means a multiemployer plan, as that term is defined in section 3(37) of the

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1 Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), that is a
2 defined benefit plan, as that term is defined in section 3(35) of that Act.

3 (14) PERMITTED INVESTMENTS.—The term “permitted investments” means
4 financial assets that are classified as “Level 1” or “Level 2” assets under the valuation
5 techniques prescribed by the Financial Accounting Standards Board in Statement of
6 Financial Accounting Standards No. 157, “Fair Value Measurements,” dated September
7 2006, as amended.

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

11 (16) PLAN SPONSOR.—The term “plan sponsor” shall have the meaning given
12 that term in section 3(16)(B)(iii) of the Employee Retirement Income Security Act of
13 1974 (29 U.S.C. 1002(16)(B)(iii)).

14 (17) PLAN YEAR.—The term “plan year” shall have the meaning given that term
15 in section 3(39) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.
16 1002(39)).

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

20 (19) RATING AGENCY.—The term “rating agency” means a credit rating
21 agency, as that term is defined in section 3(a)(61) of the Securities Exchange Act of 1934
22 (15 U.S.C. 78c(61)), registered with the Securities and Exchange Commission as a
23 nationally recognized statistical rating organization, as that term is defined in section
24 3(a)(62) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(62)).

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

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

4 (22) WITHDRAWAL LIABILITY PAYMENTS.—The term “withdrawal
5 liability payments” means payments due under section 4219 of the Employee Retirement
6 Income Security Act of 1974 (29 U.S.C. 1399), including other terms and conditions for
7 the satisfaction of an employer’s withdrawal liability as permitted under sections
8 4219(c)(7) and 4224 of that Act (29 U.S.C. 1399(c)(7) and 1404, respectively), or as
9 approved by the Corporation as part of an alternative allocation method as provided
10 under section 4211(c)(5) of that Act (29 U.S.C. 1391(c)(5)).

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

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

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

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

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

22 **SEC. 103. ELIGIBLE PLANS.**

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

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

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

28 (B) the plan sponsor has submitted an application to the Secretary of the
29 Treasury for approval of a suspension of benefits under section 305(e)(9) of the
30 Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(e)(9)) and
31 section 432(e)(9) of the Internal Revenue Code of 1986; and

1 (C) the Secretary of the Treasury has denied the application for a reason
2 other than the plan sponsor having failed to deliver to the Secretary all of the
3 information required under section 305(e)(9) of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1085(e)(9) and section 432(e)(9) of the Internal
5 Revenue Code of 1986 for applicants to deliver to the Secretary; or

6 (2) the plan actuary has certified that the plan is in critical and declining status
7 and is unable to reasonably fulfill the requirements for a suspension of benefits in the
8 absence of a related application for a partition under sections 305(e)(9) and 4233,
9 respectively, of the Employee Retirement Income Security Act of 1974 (29 U.S.C.
10 1085(e)(9) and 1413) and section 432(e)(9) of the Internal Revenue Code of 1986, and
11 applicable regulations or other agency guidance issued thereunder, and has included a
12 narrative explaining in reasonable detail such inability.

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

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

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

18 (b) PRE-APPLICATION CONSULTATION AUTHORIZED.—The plan sponsor of an
19 eligible plan may consult with the Corporation and the Office of Management and Budget, and
20 the Corporation and the Office of Management and Budget may consult with the plan sponsor,
21 before the plan sponsor submits a loan application.

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

24 (1) LOAN FINANCIAL TERMS.—A description of the proposed loan, including
25 the proposed total principal amount of the loan, that satisfies the requirements of section
26 105.

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

29 (3) PROPOSED BENEFIT REDUCTIONS.—A description of proposed benefit
30 reductions that satisfy the requirements of section 107. **[If Alternative 1 is selected for**
31 **funding subsidy costs (USG pays whole subsidy cost with appropriations), this**

1 paragraph (3) will not be included. Include this paragraph (3) only if Alternative 2
2 or Alternative 3 is selected for funding subsidy costs (i.e., plans pay subsidy cost
3 with benefit cuts + USG pays remaining subsidy costs; or plans pay whole subsidy
4 cost with benefit cuts)]

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

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

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

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

19 (d) COMPLETE APPLICATION.—

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

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

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

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

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1 (e) NOTICES.—

2 (1) IN GENERAL.—Concurrent with the filing of a loan application with the
3 Corporation, the plan sponsor shall notify the parties described in (A) through (C)
4 regarding the plan’s loan application.

5 (A) All “participants” and “beneficiaries,” within the meaning of sections
6 3(7) and 3(8) of the Employee Retirement Income Security Act of 1974 (29
7 U.S.C. 1002(7) and 1002(8)) who may be contacted by reasonable efforts.

8 (B) Each employer who has an obligation to contribute, within the
9 meaning of section 4212 of the Employee Retirement Income Security Act of
10 1974 (29 U.S.C. 1392).

11 (C) Each employee organization, within the meaning of section 3(4) of the
12 Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(4)) that for
13 purposes of collective bargaining represents plan participants employed by such
14 an employer.

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

16 (A) sufficient information to enable participants and beneficiaries to
17 understand the effect of the loan application, including an individualized estimate
18 (on an annual or monthly basis) of the reduced contractual benefit payment and
19 the proposed timing of such reduction; [**A description of the proposed benefit
20 reductions would be required only if Alternative 2 or Alternative 3 is selected
21 for funding subsidy costs (i.e., plans pay subsidy cost with benefit cuts + USG
22 pays remaining subsidy costs; or plans pay whole subsidy cost with benefit
23 cuts)**]

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

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

28 (D) other information the plan sponsor may deem appropriate, provided it
29 is not false or misleading.

30 (3) METHOD OF DELIVERY.—A notice provided under this section must be
31 provided in written or electronic form to the extent that the form is reasonably accessible

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1 to whom the notice is required to be provided. Permissible electronic methods include
2 those permitted under regulations of the Department of Labor.

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

6 (g) OTHER NOTICE REQUIREMENT.—Any notice provided under subsection (e)
7 shall fulfill the requirement for notice of a significant reduction in benefits described in section
8 204(h) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(h)) and 4980F
9 of the Internal Revenue Code of 1986.

10 **SEC. 105. LOAN FINANCIAL TERMS.**

11 (a) LOAN AMOUNT.—

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

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

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

18 (i) the absolute value of the average annual negative cash flow
19 projected for the plan for the current plan year and the immediately
20 following 14 plan years;

21 (ii) multiplied by 20.

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

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

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

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

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

5 (i) the term of the loan; and

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

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

9 (b) MATURITY.—

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

12 (2) RULE OF CONSTRUCTION.—For purposes of determining the 10-year
13 period after the maturity of a loan as required under sections 105(a)(4)(B)(ii),
14 106(a)(2)(B), 106(b), and 108(a)(4)(B), the maturity of the loan shall be considered to be
15 the maturity date identified in the application for the loan.

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

18 (d) REPAYMENT.—

19 (1) 1st 15 YEARS.—Interest only on a loan shall be due and payable to the
20 financing account for the loan semi-annually during the first 15 years that the loan is
21 outstanding.

22 (2) 2nd 15 YEARS.—Level payments of interest and principal on a loan shall be
23 due and payable to the financing account for the loan semi-annually during the second 15
24 years that the loan is outstanding.

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

27 **SEC. 106. FINANCIAL PROJECTION.**

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

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

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

4 (A) the term of the loan; and

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

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

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

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

14 (1) market value of plan assets at the beginning of the projection period;

15 (2) loan amount;

16 (3) loan interest payments during the first 15 years of the projection period;

17 (4) loan interest and principal payments during the second 15 years of the
18 projection period;

19 (5) employer contributions;

20 (6) withdrawal liability payments;

21 (7) contractual benefit payments;

22 (8) benefit reduction amounts;

23 (9) reduced contractual benefit payments;

24 (10) administrative expenses of the plan;

25 (11) assumed investment returns, including the assumed investment rate;

26 (12) market value of plan assets at the end of each year; and

27 (13) such additional information that may be prescribed for the financial
28 projection in the notice of funding availability published by the Corporation.

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

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

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

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

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

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

14 (b) SIZE OF REDUCTIONS.—

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

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

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

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

8 (c) DURATION OF BENEFIT REDUCTIONS.—

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

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

14 (d) BENEFIT MODIFICATIONS ALLOWED IF PRIOR BENEFIT REDUCTIONS
15 HAVE BEEN MADE.—

16 (1) IN GENERAL.—If future benefit accruals under an eligible plan have been
17 reduced or eliminated, including through a rehabilitation plan or funding improvement
18 plan under section 305 of the Employee Retirement Income Security Act of 1974 (29
19 U.S.C. 1085) and section 432 of the Internal Revenue Code of 1986, before a plan
20 sponsor applies for a loan under this Act, the loan application may, notwithstanding
21 section 305(f) of the Act and section 432(f) of the Code, include proposed modifications
22 to the future benefit accruals under the plan as provided in paragraphs (2) and (3).

23 (2) PROCESS.—The plan sponsor—

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

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

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

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

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

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

9 (1) DURING THE LOAN.—Except as otherwise allowed by this Act or as
10 required under applicable law, an eligible plan for which a loan is made under this Act
11 may not be amended, before the loan is paid in full, to include increases in the contractual
12 benefit payments that existed under the plan on the day before the loan is disbursed.

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

16 (g) DETERMINATION OF ZONE STATUS FOR DURATION OF LOAN.—For the
17 plan years following the current plan year, actuarial projections of assets and liabilities required
18 under section 305(b)(3)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.
19 1085(b)(3)(B)) and section 432(b)(3)(B) of the Internal Revenue Code of 1986 shall include
20 reasonable assumptions regarding future transfers from the loan account and to the financing
21 account. In no event shall the loan principal be considered as a plan asset for purposes of
22 actuarial projections of assets and liabilities required under that section.

23 (h) OPERATIONAL ZONE STATUS FOR DURATION OF LOAN.—If the funded
24 status of an eligible plan for which a loan is made under this Act improves so that the plan is no
25 longer certified to be in critical and declining status, the plan shall, for the duration of the loan,
26 be considered to be in critical status, within the meaning of section 305 of the Employee
27 Retirement Income Security Act of 1974 (29 U.S.C. 1085) and section 432 of the Internal
28 Revenue Code of 1986, even if the plan later is determined to have emerged from critical status
29 during that time period. For the duration of the loan, the plan shall be required to meet the
30 requirements of section 305 of the Act and section 432 of the Code, including, without
31 limitation, the adoption and maintenance of a rehabilitation plan (including annual updates), the

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1 completion of annual actuarial certifications, the observation of benefit restrictions, fulfillment of
2 notice requirements and the maintenance of reasonable measures adopted, if applicable. During
3 the period such requirements remain in place, section 302(b)(3) of the Employee Retirement
4 Income Security Act of 1974 (29 U.S.C. 1082(b)(3)) and sections 412(b)(3) and 4971(g) of the
5 Internal Revenue Code of 1986 shall continue to apply as if the plan were still in critical status
6 and the plan shall not be considered to have failed to adopt a rehabilitation plan in accordance
7 with section 305(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.
8 1085(e)) and section 432(e) of the Internal Revenue Code of 1986 or failed to comply with such
9 rehabilitation plan solely because the plan’s rehabilitation period under section 305(e)(4) of the
10 Act and section 432(e) of the Code expired.

11 **SEC. 108. PLAN ACTUARY CERTIFICATION.**

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

- 14 (1) the plan is an eligible plan under this Act;
- 15 (2) the proposed total principal amount of the loan does not exceed the maximum
16 permissible loan amount;
- 17 (3) the loan is projected to be fully repaid by its maturity;
- 18 (4) the reduced contractual benefit payments are not reasonably expected to be
19 subject to suspension under section 4245 of the Employee Retirement Income Security
20 Act of 1974 (29 U.S.C. 1426) during—
 - 21 (A) the term of the loan; and
 - 22 (B) the 10-year period after the maturity of the loan; and
- 23 (5) fees, in amounts equal to plan assets attributable to benefit reduction amounts,
24 are to be paid to the Corporation as provided in section 119.

25 (b) ACTUARIAL PROJECTIONS.—

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

29 (2) EXCEPTIONS.—

30 (A) EMPLOYER CONTRIBUTIONS.—For purposes of determining
31 future employer contributions under this Act, an actuarial projection of plan assets

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1 shall assume, if reasonable, that each contributing employer in compliance
2 continues to comply through the end of the rehabilitation period or such later time
3 as provided in section 305(e)(3)(A)(ii) of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1085(e)(3)(A)(ii)) and section 432(e)(3)(A) of
5 the Internal Revenue Code of 1986 with the terms of the rehabilitation plan that
6 correspond to the schedule adopted or imposed under that subsection (e).

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

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

15 SEC. 109. RATING OPINION LETTERS.

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

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

22 SEC. 110. SUBSIDY COST DEMONSTRATION.

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

31 SEC. 111. LOAN APPROVAL PROCESS.

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

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

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

7 (b) STANDARD FOR ACCEPTING PLAN SPONSOR DETERMINATIONS AND
8 PLAN ACTUARY ASSUMPTIONS AND METHODS.—

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

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

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

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

24 (d) APPLICATION APPROVAL OR DENIAL.—

25 (1) TIMING.—The Corporation shall approve or deny any loan application within
26 60 days after the submission of such application.

27 (2) NOTICE TO CONGRESS IF CORPORATION ACTION IS NOT
28 TIMELY.—If the Corporation fails to approve or deny a loan application within the time
29 prescribed by paragraph (1), the Corporation’s Participant and Plan Sponsor Advocate
30 selected pursuant to section 4004 of the Employee Retirement Income Security Act of
31 1974 (29 U.S.C. 1304) shall provide written notice of the failure to—

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1 (A) the Committee on Health, Education, Labor, and Pensions of the
2 Senate;

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

4 (C) the Committee on Education and the Workforce of the House of
5 Representatives; and

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

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

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

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

16 (f) NOTICE.—Within 15 days after the loan is disbursed, the plan sponsor shall notify
17 the parties described in section 104(e) of the approval of the loan application by the Corporation
18 and the date on which benefit reductions will occur. The plan sponsor shall also revise
19 individual estimates as previously provided under section 104(e) in the event of a material
20 change in estimated benefit reductions.

21 (g) JUDICIAL REVIEW.—

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

25 (2) APPROVAL OF LOAN.—

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

31 (B) STANDARDS OF REVIEW.—

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1 (i) IN GENERAL.—A court shall review an action challenging a
2 final approval by the Corporation of an application for a loan under this
3 Act or a reduction in contractual benefit payments proposed in such an
4 application or made following the final approval by the Corporation of the
5 application in accordance with section 706 of title 5, United States Code.

6 (ii) TEMPORARY INJUNCTION.—A court reviewing an action
7 challenging a final approval by the Corporation of an application for a
8 loan under this Act or a reduction in contractual benefit payments
9 proposed in such an application or made following the final approval by
10 the Corporation of the application may not grant a temporary injunction
11 with respect to such approval or reduction unless the court finds a clear
12 and convincing likelihood that the plaintiff will prevail on the merits of the
13 case.

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

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

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

26 (a) IN GENERAL.—Notwithstanding section 204(g) of the Employee Retirement
27 Income Security Act of 1974 (29 U.S.C. 1054(g)) and section 411(d)(6) of the Internal Revenue
28 Code of 1986, the plan sponsor of an eligible plan whose loan application is approved by the
29 Corporation shall, by plan amendment, reduce contractual benefit payments in the manner that is
30 proposed in the approved loan application.

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

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

6 (1) be made at the same time that reduced benefit payments are made to
7 participants and beneficiaries;

8 (2) be treated as payment of credit subsidy fees under section 119(a); and

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

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

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

17 (f) SPECIAL RULE.—With respect to a loan made under this Act for the plan described
18 in section 402(i)(4)(C) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.
19 1232(i)(4)(C)), the amounts described in section 120(b)(2)(B) shall be transferred to the
20 financing account for the loan.

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

22 (a) LOAN ACCOUNT.—

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

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

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

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

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

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

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

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

10 (c) INVESTMENT.—

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

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

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

19 (d) FIDUCIARY DUTIES; PROHIBITED TRANSACTIONS.—

20 (1) FIDUCIARY STATUS OF PLAN SPONSOR WITH RESPECT TO LOAN
21 ACCOUNT.—The plan sponsor and other individuals or entities that would be
22 fiduciaries under the Employee Retirement Income Security Act of 1974 shall have the
23 same fiduciary duty, including, but not limited to, the prohibitions and restrictions on
24 certain transactions described in sections 406 and 407 of the Employee Retirement
25 Income Security Act of 1974 (29 U.S.C. 106 and 107), with respect to the loan account as
26 they would with respect to the plan under the Employee Retirement Income Security Act
27 of 1974. Any act on the part of the plan sponsor or such other individual or entity
28 described above that is necessary or desirable to fulfill an obligation under this Act shall
29 be permitted and shall not by itself constitute a violation of the prohibited transaction
30 provisions under section 406(a) and (b)(2) of the Employee Retirement Security Act of

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1 1974 (29 U.S.C. 106(a) and (b)(2)), or under section 4975 of the Internal Revenue Code
2 of 1986.

3 (2) USE OF PLAN ASSETS FOR COSTS AND REQUIRED PAYMENTS.—

4 The plan sponsor shall use plan assets to defray the costs of administering a loan through
5 a loan account under this Act, including, without limitation, expenses incurred in (i)
6 retaining service providers; (ii) obtaining annual rating opinion letters, annual financial
7 audits, fiduciary coverage, fidelity bonding, and other applicable insurance coverage; and
8 (iii) making required filings and disclosures. The plan sponsor also shall use plan assets
9 to pay any amounts that are required under this Act to be paid to the loan account or
10 financing account. Use of plan assets for these purposes, and for any other purpose
11 required by this Act or determined to be necessary or desirable to fulfill an obligation
12 under this Act, shall be permitted uses for purposes of the Employee Retirement Security
13 Act of 1974 and the Internal Revenue Code of 1986, and shall not, by themselves,
14 constitute a violation of the prohibited transaction provisions under section 406(a) and
15 (b)(2) of the Employee Retirement Security Act of 1974 (29 U.S.C. 106(a) and (b)(2)), or
16 under section 4975 of the Internal Revenue Code of 1986.

17 (3) TRANSFERS AMONG PLAN, LOAN ACCOUNT, AND FINANCING
18 ACCOUNT.—The transfer of plan assets to the Corporation and to the financing account
19 and the transfer of loan account assets to the plan and to the financing account required
20 by this Act or determined to be necessary or desirable to fulfill an obligation under this
21 Act shall be permitted uses of such assets for purposes of the Employee Retirement
22 Security Act of 1974 and the Internal Revenue Code of 1986, and shall not, by
23 themselves, constitute a violation of the prohibited transaction provisions under section
24 406(a) and (b)(2) of the Employee Retirement Security Act of 1974 (29 U.S.C. 106(a)
25 and (b)(2)), or under section 4975 of the Internal Revenue Code of 1986.

26 (e) LIEN ON ACCOUNT.—

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

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

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

5 (f) WITHDRAWALS OF ACCOUNT FUNDS.—Except as provided in section
6 114(b)(2) and (d)—

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

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

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

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

16 (a) SEMI-ANNUAL ACCOUNTING OF LOAN ACCOUNT INVESTMENT
17 RETURNS.—

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

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

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

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

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

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

8 (c) CONSEQUENCES OF LOW INVESTMENT RETURNS IN THE LOAN
9 ACCOUNT.—

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

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

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

25 **SEC. 115. CONSEQUENCES OF NEGATIVE INVESTMENT RETURNS, MATERIAL**
26 **EXPERIENCE LOSS, OR MATERIAL EXPERIENCE GAIN.**

27 (a) NEGATIVE INVESTMENT RETURNS.—

28 (1) IN GENERAL.—For a loan account, if the amount of actual investment
29 returns for any 6-month period (or the initial period, as applicable) is negative for the
30 period such that the value of the loan account is reduced, due to investment losses, to an

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1 amount that is less than the unpaid principal amount of the loan at that time, the plan
2 sponsor shall—

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

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

11 (i) the present value of which is equal to the amount by which the
12 loan account is below the unpaid principal amount of the loan at that time;
13 and

14 (ii) over a period of time that—

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

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

17 (2) TIMING.—

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

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

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

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1 plan assets are increased as a result of the adopted plan amendment or contribution
2 increases negotiated by the collective bargaining parties.

3 (b) MATERIAL EXPERIENCE LOSS.—

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

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

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

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

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

24 (4) TIMING.—

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

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

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1 (C) 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 increase before the end of the 6-month
4 period that begins on the date that the material experience loss is determined.

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

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

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

11 (C) actual fees, in amounts equal to plan assets attributable to the benefit
12 reduction amounts, paid to the Corporation as provided in section 119, are at least
13 20 percent less than projected in the loan application.

14 (c) MATERIAL EXPERIENCE GAIN.—

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

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

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

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

26 (C) actual fees, in amounts equal to plan assets attributable to the benefit
27 reduction amounts, paid to the Corporation as provided in section 119, are at least
28 20 percent greater than projected in the loan application.

29 **SEC. 116. WITHDRAWAL LIABILITY DETERMINATION; CONSEQUENCES OF**
30 **MASS WITHDRAWAL**

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1 (a) EMPLOYER WITHDRAWALS.—With respect to an eligible plan for which a loan
2 is made under this Act, if an employer withdraws from the plan in a complete withdrawal or a
3 partial withdrawal, the employer shall be liable to the plan as provided under Title IV, subtitle E,
4 part I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381-1405), and in
5 accordance with this section.

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

9 (c) “MASS WITHDRAWAL” DEFINED.—For purposes of this section, the term “mass
10 withdrawal” means the complete withdrawal of all or substantially all employers as provided
11 under sections 4203 and 4219, respectively, of the Employee Retirement Income Security Act of
12 1974 (29 U.S.C. 1383 and 1399).

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

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

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

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

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

26 (e) WITHDRAWAL LIABILITY DETERMINATION.—

27 (1) BENEFIT REDUCTIONS.—Any benefit reductions required under sections
28 112, 115(a)(2), and 115(b)(1)(B) shall be disregarded in determining the plan’s unfunded
29 vested benefits for purposes of determining an employer’s withdrawal liability under
30 section 4201 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381).
31 The Corporation shall prescribe simplified methods for the application of this paragraph.

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1 (2) INCREASES TO PLAN ASSETS.—Any increases to plan assets as provided
2 under sections 114(b)(2), 114(c)(2), and 114(d) shall be disregarded in determining the
3 plan’s assets for purposes of determining an employer’s withdrawal liability under
4 section 4201 of the Employee Retirement Income Security Act of 1974 (29 U.S.C.
5 1381).

6 (3) CONTRIBUTION INCREASES.—Any contribution increase required under
7 115(a)(2) or 115(b)(2) shall be included in determining the allocation of unfunded vested
8 benefits to an employer under section 4211 of the Employee Retirement Income Security
9 Act of 1974 (29 U.S.C. 1391) and in determining the highest contribution rate under
10 section 4219 of that Act (29 U.S.C. 1399).

11 (f) ADDITIONAL RULE APPLICABLE TO MASS WITHDRAWAL LIABILITY
12 DETERMINATION.—If an eligible plan for which a loan is made under this Act experiences a
13 mass withdrawal before the loan is paid in full, for purposes of determining an employer’s
14 withdrawal liability under this Act and section 4201 of the Employee Retirement Income
15 Security Act of 1974 (29 U.S.C. 1381), the plan shall include the remaining amount of the
16 principal of the loan and any unpaid interest payments in accordance with such simplified
17 methods as the Pension Benefit Guaranty Corporation shall prescribe.

18 (g) SPECIAL RULE.—For a plan described in section 402(i)(4)(C) of the Surface
19 Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(i)(4)(C)), if an employer
20 withdraws from the plan in a complete withdrawal or a partial withdrawal, the employer shall be
21 liable to the plan as determined under Title IV, subtitle E, part I of the Employee Retirement
22 Income Security Act of 1974 (29 U.S.C. 1381 and 1405), and in accordance with paragraphs
23 (e)(2), (e)(3) and (h) of this section.

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

27 **SEC. 117. LOAN PAYMENTS.**

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

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

4 **SEC. 118. CONTINUING REQUIREMENTS.**

5 (a) ANNUALLY UPDATED RATING OPINION LETTERS.—

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

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

12 (b) AUDITED ANNUAL FINANCIAL STATEMENTS.—

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

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

20 (A) in reasonable detail with supporting schedules;

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

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

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

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

28 (a) IN GENERAL.—The Corporation shall charge and collect credit subsidy fees on
29 loans for eligible plans made under this Act. Transfers of funds under section 112(c) shall be
30 treated as payment of credit subsidy fees under this section, and shall be the only fees authorized

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1 by this Act to be charged on loans for eligible plans. This requirement to pay credit subsidy fees
2 shall end for an eligible plan when its loan is paid in full.

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

5 **SEC. 120. APPROPRIATIONS.**

6 (a) CORPORATION ADMINISTRATIVE EXPENSES.—Consistent with section
7 4005(b)(2)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.
8 1305(b)(2)(C)), the fund established by section 4005(a) of that Act to finance the operations of
9 the multiemployer plan guarantee program established by section 4022A of that Act (29 U.S.C.
10 1322a) shall be available to pay the operational and administrative expenses of the Corporation
11 attributable to administering the loan program authorized by this Act.

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

13 (b) SUBSIDY COSTS.—There are appropriated, out of any money in the Treasury not
14 otherwise appropriated, for the subsidy cost of direct loans, as authorized by this Act,
15 [\$38,000,000,000], to remain available until expended. Such costs, including the cost of
16 modifying such loans, shall be as defined in section 502(5)(B) of the Federal Credit Reform Act
17 of 1990 (2 U.S.C. 661a(5)(B)).

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

20 (b) SUBSIDY COSTS.—

21 (1) APPROPRIATION.—After crediting amounts deposited into financing
22 accounts under section 119(b), there are appropriated, out of any money in the Treasury
23 not otherwise appropriated, for any remaining subsidy cost of direct loans, as authorized
24 by this Act, [\$20,000,000,000], to remain available until expended. Such costs, including
25 the cost of modifying such loans, shall be as defined in section 502(5)(B) of the Federal
26 Credit Reform Act of 1990 (2 U.S.C. 661a(5)(B)).

27 (2) SPECIAL RULE.—

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

1 (B) APPLICATION OF EXISTING ANNUAL APPROPRIATION.—The
2 amounts described in section 402(i)(4) of the Surface Mining Control and
3 Reclamation Act of 1977 (30 U.S.C. 1232(i)(4)) shall be applied toward the
4 subsidy cost of a direct loan for the plan described in section 402(i)(4)(C) of that
5 Act (30 U.S.C. 1232(i)(4)(C)). Such cost, including the cost of modifying such
6 loan, shall be as defined in section 502(5)(B) of the Federal Credit Reform Act of
7 1990 (2 U.S.C. 661a(5)(B)).

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

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

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

12 “(4) ADDITIONAL AMOUNTS.—

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

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

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

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

28 (b) SUBSIDY COSTS.—

29 (1) NO GENERAL FUND APPROPRIATION.—Except as provided in
30 paragraph (2), there are appropriated, out of any money in the Treasury not otherwise
31 appropriated, for the subsidy cost of direct loans as authorized by this Act, \$0. Such

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1 costs, including the cost of modifying such loans, shall be as defined in section 502(5)(B)
2 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(B)).

3 (2) SPECIAL RULE.—

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

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

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

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

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

18 “(4) ADDITIONAL AMOUNTS.—

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

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

29 “(C) 1974 UMWA PENSION PLAN DEFINED.—For purposes of this
30 paragraph, the term ‘1974 UMWA Pension Plan’ has the meaning given the term

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1 in section 9701(a)(3) of the Internal Revenue Code of 1986, but without regard to
2 the limitation on participation to individuals who retired in 1976 and thereafter.”.

3 **SEC. 121. GUIDANCE.**

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

9 **SEC. 122. MODIFICATIONS.**

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

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

13 **SEC. 123. AUDITS.**

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

17 **SEC. 124. CONFORMING AMENDMENTS TO EMPLOYEE RETIREMENT INCOME**
18 **SECURITY ACT.**

19 (a) ANNUAL FUNDING NOTICE.—Section 101(f)(2)(B)(v) of the Employee
20 Retirement Income Security Act of 1974 (29 U.S.C. 1021(f)(2)(B)(v)) is amended—

- 21 (1) by striking “and” at the end of subclause (I);
22 (2) by inserting “and” at the end of subclause (II); and
23 (3) by adding after subclause (II) the following:

24 “(III) in the case of a multiemployer plan that is in critical
25 status for such plan year and for which a loan is made under the
26 Emergency Multiemployer Plan Financing Act of 2018, a
27 summary of the terms of the loan including the expected maturity
28 date and the related benefit reductions, and a description of any
29 adjustments or modification to the loan or the benefit reductions
30 adopted during such plan year.”.

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1 (b) SUMMARY OF MULTIEMPLOYER PLAN INFORMATION.—Section 104(d)(1)
2 of the Employee Retirement Income Security Act of 1974 (29 U.S.C.1024(d)(1)) is amended—

3 (1) by striking “and” at the end of subparagraph (H);

4 (2) by redesignating subparagraph (I) as subparagraph (J); and

5 (3) by inserting after subparagraph (H) the following:

6 “(I) in the case of a plan for which a loan is made under the
7 Emergency Multiemployer Plan Financing Act of 2018, a
8 description of the loan’s terms and its impact on benefits paid to
9 participants and beneficiaries, and”

10 (c) FUNDING.—Section 302(b)(3) of the Employee Retirement Income Security Act of
11 1974 (29 U.S.C. 1082(b)(3)) is amended by adding at the end the following:

12 “For purposes of this paragraph, the plan sponsor of a plan described in
13 subsection 305(b)(7) shall not be treated as failing to adopt a rehabilitation plan in
14 accordance with section 305(e) or failing to comply with such rehabilitation
15 plan.”.

16 (d) CRITICAL STATUS.—Section 305(b) of the Employee Retirement Income Security
17 Act of 1974 (29 U.S.C. 1085(b)) is amended by adding at the end the following:

18 “(7) CRITICAL STATUS UNDER THE EMERGENCY
19 MULTIEMPLOYER PLAN FINANCING ACT OF 2018.—A plan that is
20 considered to be in critical status solely because of section 107(h) of the
21 Emergency Multiemployer Plan Financing Act of 2018 shall be considered to be
22 in critical status for purposes of this title and title IV.”.

23 (e) FIDUCIARY OBLIGATIONS.—Section 404 of the Employee Retirement Income
24 Security Act of 1974 (29 U.S.C 1104) is amended by adding at the end the following:

25 “(e) EMERGENCY MULTIEMPLOYER PLAN FINANCING ACT.—In the case of a
26 multiemployer pension plan for which a loan is made under the Emergency Multiemployer Plan
27 Financing Act of 2018, a fiduciary shall not be treated as not satisfying section 404(a) solely
28 because of an action required by such Act.”.

29 (f) PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement
30 Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following:

31

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1 “(21) Any transfer of plan assets from the plan required by the Emergency
2 Multiemployer Financing Act of 2018.”.

3 (g) PBGC AUTHORIZATION.—Section 4005(b)(2)(C) of the Employee Retirement
4 Income Security Act of 1974 (29 U.S.C. 1305(b)(2)(C)) is amended by adding at the end the
5 following:

6 “administering the loan program under the Emergency Multiemployer Plan
7 Financing Act of 2018, and”.

8 (h) WITHDRAWAL LIABILITY.—Part 1 of subtitle E of title IV of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C. 1381-1405) is amended by adding after
10 section 4225 the following:

11 **“SEC. 4226. EMERGENCY MULTIEMPLOYER PLAN FINANCING ACT OF 2018**
12 **WITHDRAWAL LIABILITY RULES.**

13 “Section 116 of the Emergency Multiemployer Plan Financing Act of 2018 shall apply
14 for purposes of this part.”.

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

16 (a) EXCLUSIVE PURPOSE.—Section 401(a) of the Internal Revenue Code of 1986 is
17 amended by adding at the end the following:

18 “(38) EMERGENCY MULTIEMPLOYER PLAN FINANCING ACT OF
19 2018.—In the case of a multiemployer pension plan for which a loan is made under the
20 Emergency Multiemployer Plan Financing Act of 2018, a trust forming part of such plan
21 shall not fail to be a qualified trust because of plan actions required by the Emergency
22 Multiemployer Plan Financing Act of 2018.”.

23 (b) FUNDING.—Section 412(b)(3) of the Internal Revenue Code of 1986 is amended by
24 adding at the end the following:

25 “For purposes of this paragraph, the plan sponsor of a plan described in
26 subsection 432(b)(7) shall not be treated as failing to adopt a rehabilitation plan in
27 accordance with section 432(e) or failing to comply with such rehabilitation
28 plan.”.

29 (c) CRITICAL STATUS.—Section 432(b) of the Internal Revenue Code of 1986 is
30 amended by adding at the end the following:

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1 “(7) CRITICAL STATUS UNDER THE EMERGENCY MULTIEMPLOYER
2 PLAN FINANCING ACT OF 2018. A plan that is considered to be in critical status
3 solely because of section 107(h) of the Emergency Multiemployer Plan Financing Act of
4 2018 shall be considered to be in critical status for purposes of the Code.”.

5 (d) LOAN ACCOUNT.—Section 501(c) of the Internal Revenue Code of 1986 is
6 amended by adding at the end the following:

7 “(30) A trust for purposes of holding a loan account established pursuant to
8 section 113 of the Emergency Multiemployer Plan Financing Act of 2018.”

9 (e) EXCISE TAX.—Section 4971(g)(3) of the Internal Revenue Code of 1986 is
10 amended by adding at the end the following:

11 “For purposes of this paragraph, the plan sponsor of a plan described in
12 subsection 432(b)(7) shall not be treated as failing to meet the requirements of
13 section 432(e) by the end of the rehabilitation period solely because the plan’s
14 rehabilitation period under section 432(e)(4) has expired.”.

15 (f) PROHIBITED TRANSACTIONS.—Section 4975(d) of the Internal Revenue Code of
16 1986 is amended by adding at the end the following:

17 “(24) any transfer of plan assets from the plan required by the Emergency
18 Multiemployer Financing Act of 2018.”.