An Act

SECTION 1. SHORT TITLE.

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

SEC. 2. TABLE OF CONTENTS.

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SEC. 101. DEFINITIONS.

In this Act—

(1) ADMINISTRATIVE EXPENSES.––The term “administrative expenses” means, for a multiemployer pension plan, expenses incurred in the general operations of the plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) PLAN YEAR.—The term “plan year” shall have the meaning given that term
1002(39)).

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

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

(20) REDUCED CONTRACTUAL BENEFIT PAYMENTS.—The term
“reduced contractual benefit payments” means all benefit payments to be made directly to
participants or beneficiaries under a multiemployer pension plan that reflect the
reductions in the contractual benefit payments proposed to be made, or made, as
applicable, under this Act.
(21) SUBSIDY COST—The term “subsidy cost” has the meaning given the term “cost of a direct loan” in section 502(5)(B) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(B)).

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

SEC. 102. LOANS FOR ELIGIBLE PLANS AUTHORIZED.

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

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

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

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

SEC. 103. ELIGIBLE PLANS.

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

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

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

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

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

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

SEC. 104.—LOAN APPLICATION PROCESS.

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

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

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

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

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

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

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

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

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

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

(d) COMPLETE APPLICATION.—

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

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

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

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

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

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

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

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

(2) CONTENT.—The notice shall contain—

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

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

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

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

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

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

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

SEC. 105. LOAN FINANCIAL TERMS.

(a) LOAN AMOUNT.—

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

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

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

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

(ii) multiplied by 20.

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

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

(4) PERMITTED EXCEPTION.—A loan application may specify a loan amount that is lower than maximum permissible loan amount if the application demonstrates that 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;
   (B) the reduced contractual benefit payment not to be subject to
   suspension under section 4245 of the Employee Retirement Income Security Act
   of 1974 (29 U.S.C. 1426) during—
   (i) the term of the loan; and
   (ii) the 10-year period after the maturity of the loan; and
   (C) fees, in amounts equal to plan assets attributable to the benefit
   reduction amounts, to be paid to the Corporation as provided in section 119.

2. (b) MATURITY. —
   (1) IN GENERAL. — Each loan made under this Act shall mature 30 years after
   the date on which the loan is disbursed.
   (2) RULE OF CONSTRUCTION. — For purposes of determining the 10-year
   period after the maturity of a loan as required under sections 105(a)(4)(B)(ii),
   106(a)(2)(B), 106(b), and 108(a)(4)(B), the maturity of the loan shall be considered to be
   the maturity date identified in the application for the loan.
   (c) INTEREST RATE. — Each loan shall accrue interest at the rate of 1 percent per
   annum.
   (d) REPAYMENT. —
   (1) 1st 15 YEARS. — Interest only on a loan shall be due and payable to the
   financing account for the loan semi-annually during the first 15 years that the loan is
   outstanding.
   (2) 2nd 15 YEARS. — Level payments of interest and principal on a loan shall be
   due and payable to the financing account for the loan semi-annually during the second 15
   years that the loan is outstanding.
   (3) PREPAYMENT. — A loan may be repaid before maturity at any time without
   penalty or interest.

3. SEC. 106. FINANCIAL PROJECTION.
   (a) IN GENERAL. — Each loan application must include a financial projection of the
   operations of the loan account and the plan, certified by the plan actuary, demonstrating—
   (1) the loan being fully repaid by its maturity;
(2) the reduced contractual benefit payments not being subject to suspension under section 4245 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426) during—
(A) the term of the loan; and
(B) the 10-year period after the maturity of the loan; and
(3) fees, in amounts equal to plan assets attributable to the benefit reduction amounts, being paid to the Corporation as provided in section 119.
(b) PROJECTION PERIOD.—The financial projection shall cover the 40-year period that begins on the first day of the plan year that begins after the date on which the loan application is submitted to the Corporation.
(c) REQUIRED ELEMENTS OF PROJECTION.—The financial projection shall display, in spreadsheet format, for each year in the projection period unless specified otherwise below, the following information:
(1) market value of plan assets at the beginning of the projection period;
(2) loan amount;
(3) loan interest payments during the first 15 years of the projection period;
(4) loan interest and principal payments during the second 15 years of the projection period;
(5) employer contributions;
(6) withdrawal liability payments;
(7) contractual benefit payments;
(8) benefit reduction amounts;
(9) reduced contractual benefit payments;
(10) administrative expenses of the plan;
(11) assumed investment returns, including the assumed investment rate;
(12) market value of plan assets at the end of each year; and
(13) such additional information that may be prescribed for the financial projection in the notice of funding availability published by the Corporation.
(d) ASSUMED RATE OF RETURN.—The assumed rate of return on the investment of the disbursed principal amount of each loan and the plan assets shall be 5.5 percent per annum, or such lower percentage as may be specified by the plan sponsor in the loan application.
(e) INVESTMENT POLICIES AND STRATEGIES.—Each loan application must include reasonably detailed statements of the investment policies and strategies that will be followed in the investment of the loan account and the plan assets.

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

SEC. 107. PROPOSED BENEFIT REDUCTIONS AND RELATED LIMITATIONS.

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

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

(b) SIZE OF REDUCTIONS.—

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

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

(3) LIMITATION.—Notwithstanding any provisions of this Act to the contrary, at no time shall a plan sponsor propose or put into effect a reduced contractual benefit payment in an amount that is less than the basic benefit that a participant or beneficiary would receive if the plan were insolvent under section 4245 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426), and the individual were receiving a guaranteed benefit pursuant to section 4022A(c) of that Act (29 U.S.C. 1322a). The guarantee as described under 4022A of that Act, as the Act is in effect on the date that the application is submitted, shall apply for the duration of the loan. The amount of the guarantee as described in the preceding sentence shall be based on the accrued benefit as of the date the individual enters pay status.
(4) ACTUAL REDUCTION IN BENEFITS.—Benefit amounts projected for those participants and beneficiaries who are not yet in pay status as of the date the loan application is submitted to the Corporation may not be the amount actually received by such participants and beneficiaries upon entering pay status. The actual amount of a reduced contractual benefit payment payable to individual participants and beneficiaries shall be determined in accordance with this subsection (b) and in accordance with the terms of the plan at the time the individual participant or beneficiary enters pay status.

(c) DURATION OF BENEFIT REDUCTIONS.—

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

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

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

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

(2) PROCESS.—The plan sponsor—

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

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

(C) may propose modifications to the future active benefit accruals that do not exceed the prior 20-year average of accrual rates, as determined under subparagraph (A), less the accrual reduction, as determined under subparagraph (B).
(3) SPECIAL RULE FOR AN ELIGIBLE PLAN HAVING MORE THAN ONE
BENEFIT ACCRUAL RATE.—Where an eligible plan has more than one benefit
accrual rate, the process described in paragraph (2) shall be applied to each accrual rate
group using a reasonable calculation methodology.

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

(f) NO OTHER POSITIVE BENEFIT MODIFICATION ALLOWED.—

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

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

(g) DETERMINATION OF ZONE STATUS FOR DURATION OF LOAN.—For the
plan years following the current plan year, actuarial projections of assets and liabilities required
1085(b)(3)(B)) and section 432(b)(3)(B) of the Internal Revenue Code of 1986 shall include
reasonable assumptions regarding future transfers from the loan account and to the financing
account. In no event shall the loan principal be considered as a plan asset for purposes of
actuarial projections of assets and liabilities required under that section.

(h) OPERATIONAL ZONE STATUS FOR DURATION OF LOAN.—If the funded
status of an eligible plan for which a loan is made under this Act improves so that the plan is no
longer certified to be in critical and declining status, the plan shall, for the duration of the loan,
be considered to be in critical status, within the meaning of section 305 of the Employee
Retirement Income Security Act of 1974 (29 U.S.C. 1085) and section 432 of the Internal
Revenue Code of 1986, even if the plan later is determined to have emerged from critical status
during that time period. For the duration of the loan, the plan shall be required to meet the
requirements of section 305 of the Act and section 432 of the Code, including, without
limitation, the adoption and maintenance of a rehabilitation plan (including annual updates), the
completion of annual actuarial certifications, the observation of benefit restrictions, fulfillment of notice requirements and the maintenance of reasonable measures adopted, if applicable. During the period such requirements remain in place, section 302(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(b)(3)) and sections 412(b)(3) and 4971(g) of the Internal Revenue Code of 1986 shall continue to apply as if the plan were still in critical status and the plan shall not be considered to have failed to adopt a rehabilitation plan in accordance with section 305(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(e)) and section 432(e) of the Internal Revenue Code of 1986 or failed to comply with such rehabilitation plan solely because the plan’s rehabilitation period under section 305(e)(4) of the Act and section 432(e) of the Code expired.

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

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

(1) the plan is an eligible plan under this Act;

(2) the proposed total principal amount of the loan does not exceed the maximum permissible loan amount;

(3) the loan is projected to be fully repaid by its maturity;

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

(A) the term of the loan; and

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

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

(b) ACTUARIAL PROJECTIONS.—

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

(2) EXCEPTIONS.—

(A) EMPLOYER CONTRIBUTIONS.—For purposes of determining future employer contributions under this Act, an actuarial projection of plan assets
shall assume, if reasonable, that each contributing employer in compliance
continues to comply through the end of the rehabilitation period or such later time
as provided in section 305(e)(3)(A)(ii) of the Employee Retirement Income
the Internal Revenue Code of 1986 with the terms of the rehabilitation plan that
correspond to the schedule adopted or imposed under that subsection (e).

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

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

SEC. 109. RATING OPINION LETTERS.

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

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

SEC. 110. SUBSIDY COST DEMONSTRATION.

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

SEC. 111. LOAN APPROVAL PROCESS.
(a) IN GENERAL.—If a plan sponsor submits a loan application, the Corporation shall approve the application if—

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

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

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

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

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

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

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

(d) APPLICATION APPROVAL OR DENIAL.—

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

(2) NOTICE TO CONGRESS IF CORPORATION ACTION IS NOT TIMELY.—If the Corporation fails to approve or deny a loan application within the time prescribed by paragraph (1), the Corporation’s Participant and Plan Sponsor Advocate selected pursuant to section 4004 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1304) shall provide written notice of the failure to—
(A) the Committee on Health, Education, Labor, and Pensions of the Senate;
(B) the Committee on Appropriations of the Senate;
(C) the Committee on Education and the Workforce of the House of Representatives; and
(D) the Committee on Appropriations of the House of Representatives.

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

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

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

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

(g) JUDICIAL REVIEW.—

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

(2) APPROVAL OF LOAN.—

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

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

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

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

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

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

(a) IN GENERAL.—Notwithstanding section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) and section 411(d)(6) of the Internal Revenue Code of 1986, the plan sponsor of an eligible plan whose loan application is approved by the Corporation shall, by plan amendment, reduce contractual benefit payments in the manner that is proposed in the approved loan application.
(b) TIMING.—The plan sponsor shall effect the benefit reductions in subsection (a) not later than 30 days after the loan is disbursed.

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

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

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

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

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

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

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

SEC. 113. USE OF LOAN FUNDS.

(a) LOAN ACCOUNT.—

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

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

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

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


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

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

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

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

(c) INVESTMENT.—

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

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

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

(d) FIDUCIARY DUTIES; PROHIBITED TRANSACTIONS.—

(1) FIDUCIARY STATUS OF PLAN SPONSOR WITH RESPECT TO LOAN ACCOUNT.—The plan sponsor and other individuals or entities that would be fiduciaries under the Employee Retirement Income Security Act of 1974 shall have the same fiduciary duty, including, but not limited to, the prohibitions and restrictions on certain transactions described in sections 406 and 407 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 106 and 107), with respect to the loan account as they would with respect to the plan under the Employee Retirement Income Security Act of 1974. Any act on the part of the plan sponsor or such other individual or entity described above that is necessary or desirable to fulfill an obligation under this Act shall be permitted and shall not by itself constitute a violation of the prohibited transaction provisions under section 406(a) and (b)(2) of the Employee Retirement Security Act of
1974 (29 U.S.C. 106(a) and (b)(2)), or under section 4975 of the Internal Revenue Code of 1986.

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

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

(e) LIEN ON ACCOUNT.—

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

(2) NO OTHER LIENS ALLOWED.—The plan sponsor shall take all action necessary to ensure that there are no other liens on the investments and moneys held in the loan account.
(3) PLAN INSOLVENCY.—If a plan for which a loan is made under this Act becomes insolvent within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426) before the loan is paid in full, all amounts in the loan account shall be promptly transferred to the United States Treasury.

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

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

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

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

SEC. 114. TREATMENT OF LOAN ACCOUNT INVESTMENT RETURNS.

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

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

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

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

(1) First, any positive returns on the investment of amounts in the loan account up to and including the amount equal to 0.5 percent (on a semiannual basis) shall be applied to make interest payments on the loan when due.
(2) Second, any positive returns on the investment of amounts in the loan account in excess of 0.5 percent (on a semiannual basis) up to and including 4.5 percent (on a semiannual basis) shall be transferred to the eligible plan’s trust fund.

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

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

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

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

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

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

(a) NEGATIVE INVESTMENT RETURNS.—

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

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

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

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

(ii) over a period of time that—

(I) does not to exceed 10 years; and

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

(2) TIMING.—

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

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

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

(b) MATERIAL EXPERIENCE LOSS.—

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

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

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

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

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

(4) TIMING.—

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

(B) TRANSFER SUSPENSION.—If the plan sponsor elects to take the
action described in paragraph (1)(A), the plan sponsor shall begin the suspension
of transfers on the first scheduled semi-annual transfer date to occur after the
material experience loss is determined.
(C) PLAN AMENDMENT PROPOSAL.—If the plan sponsor elects to take the action described in paragraph (1)(B), the plan sponsor shall propose the plan amendment or negotiated contribution increase before the end of the 6-month period that begins on the date that the material experience loss is determined.

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

(A) actual employer contributions are at least 20 percent less than projected in the loan application;
(B) actual reduced benefit payments are at least 20 percent greater than projected in the loan application; or
(C) actual fees, in amounts equal to plan assets attributable to the benefit reduction amounts, paid to the Corporation as provided in section 119, are at least 20 percent less than projected in the loan application.

(c) MATERIAL EXPERIENCE GAIN.—

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

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

(A) actual employer contributions are at least 20 percent greater than projected in the loan application;
(B) actual reduced benefit payments are at least 20 percent less than projected in the loan application; or
(C) actual fees, in amounts equal to plan assets attributable to the benefit reduction amounts, paid to the Corporation as provided in section 119, are at least 20 percent greater than projected in the loan application.

SEC. 116. WITHDRAWAL LIABILITY DETERMINATION; CONSEQUENCES OF MASS WITHDRAWAL
(a) EMPLOYER WITHDRAWALS.—With respect to an eligible plan for which a loan is made under this Act, if an employer withdraws from the plan in a complete withdrawal or a partial withdrawal, the employer shall be liable to the plan as provided under Title IV, subtitle E, part I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381-1405), and in accordance with this section.

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

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

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

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

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

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

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

(e) WITHDRAWAL LIABILITY DETERMINATION.—

(1) BENEFIT REDUCTIONS.—Any benefit reductions required under sections 112, 115(a)(2), and 115(b)(1)(B) shall be disregarded in determining the plan’s unfunded vested benefits for purposes of determining an employer’s withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381). The Corporation shall prescribe simplified methods for the application of this paragraph.
(2) INCREASES TO PLAN ASSETS.—Any increases to plan assets as provided under sections 114(b)(2), 114(c)(2), and 114(d) shall be disregarded in determining the plan’s assets for purposes of determining an employer’s withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381).

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

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

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

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

SEC. 117. LOAN PAYMENTS.

(a) FROM THE LOAN ACCOUNT.—Except as provided in subsection (b), for each loan for an eligible plan made under this Act, the plan sponsor shall make the payments due on the loan from amounts in the loan account to the financing account for the loan.
(b) PERMITTED EXCEPTION.—Under the conditions specified in section 114(c)(1) and 116(d)(2), the plan sponsor shall make loan payments from plan assets to the financing account for the loan.

SEC. 118. CONTINUING REQUIREMENTS.

(a) ANNUALLY UPDATED RATING OPINION LETTERS.—

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

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

(b) AUDITED ANNUAL FINANCIAL STATEMENTS.—

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

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

(A) in reasonable detail with supporting schedules;

(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 credit subsidy fees on loans for eligible plans made under this Act. Transfers of funds under section 112(c) shall be treated as payment of credit subsidy 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 credit subsidy fees shall end for an eligible plan when its loan is paid in full.

(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 remaining subsidy cost]

(b) SUBSIDY COSTS.—

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

(2) SPECIAL RULE.—

(A) EXCEPTION.—Paragraph (1) shall not apply to the plan described in section 402(i)(4)(C) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(i)(4)(C)).
(B) APPLICATION OF EXISTING ANNUAL APPROPRIATION.—The amounts described in section 402(i)(4) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(i)(4)) shall be applied toward the subsidy cost of a direct loan for the plan described in section 402(i)(4)(C) of that Act (30 U.S.C. 1232(i)(4)(C)). Such cost, including the cost of modifying such loan, shall be as defined in section 502(5)(B) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(B)).

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

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

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

“(4) ADDITIONAL AMOUNTS.—

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

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

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

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

(b) SUBSIDY COSTS.—

(1) NO GENERAL FUND APPROPRIATION.—Except as provided in paragraph (2), 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, $0. 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)).

(2) SPECIAL RULE.—

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

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

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

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

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

‘‘(4) ADDITIONAL AMOUNTS.—

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

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

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

SEC. 121. GUIDANCE.
Not later than 30 days after the date of enactment of this Act, the Corporation shall
publish on the Corporation’s website a notice of funding availability and application form
consistent with this Act. The Corporation shall provide only such additional guidance as may be
necessary to inform plan sponsors how to demonstrate ability to repay the loan and plan
solvency.

SEC. 122. MODIFICATIONS.
(a) IN GENERAL.—With the agreement of the relevant plan sponsor, the Corporation
may modify any loan made under this Act.
(b) LIMITATION.—In no event may a modification extend the 30-year term of the loan.

SEC. 123. AUDITS.
The Corporation and the Comptroller of the United States, or their duly authorized
representatives, shall have access, for the purpose of audit, to the records and other pertinent
documents related to each loan and loan account.

SEC. 124. CONFORMING AMENDMENTS TO EMPLOYEE RETIREMENT INCOME
SECURITY ACT.
(a) ANNUAL FUNDING NOTICE.—Section 101(f)(2)(B)(v) of the Employee
(1) by striking “and” at the end of subclause (I);
(2) by inserting “and” at the end of subclause (II); and
(3) by adding after subclause (II) the following:
“(III) in the case of a multiemployer plan that is in critical
status for such plan year and for which a loan is made under the
Emergency Multiemployer Plan Financing Act of 2018, a
summary of the terms of the loan including the expected maturity
date and the related benefit reductions, and a description of any
adjustments or modification to the loan or the benefit reductions
adopted during such plan year,”.
(b) SUMMARY OF MULTIEMPLOYER PLAN INFORMATION.—Section 104(d)(1)
   (1) by striking “and” at the end of subparagraph (H);
   (2) by redesignating subparagraph (I) as subparagraph (J); and
   (3) by inserting after subparagraph (H) the following:
   “(I) in the case of a plan for which a loan is made under the
   Emergency Multiemployer Plan Financing Act of 2018, a
   description of the loan’s terms and its impact on benefits paid to
   participants and beneficiaries, and”

(c) FUNDING.—Section 302(b)(3) of the Employee Retirement Income Security Act of
1974 (29 U.S.C. 1082(b)(3)) is amended by adding at the end the following:
   “For purposes of this paragraph, the plan sponsor of a plan described in
   subsection 305(b)(7) shall not be treated as failing to adopt a rehabilitation plan in
   accordance with section 305(e) or failing to comply with such rehabilitation
   plan.”.

(d) CRITICAL STATUS.—Section 305(b) of the Employee Retirement Income Security
Act of 1974 (29 U.S.C. 1085(b)) is amended by adding at the end the following:
   “(7) CRITICAL STATUS UNDER THE EMERGENCY
   MULTIEMPLOYER PLAN FINANCING ACT OF 2018.—A plan that is
   considered to be in critical status solely because of section 107(h) of the
   Emergency Multiemployer Plan Financing Act of 2018 shall be considered to be
   in critical status for purposes of this title and title IV.”.

(e) FIDUCIARY OBLIGATIONS.—Section 404 of the Employee Retirement Income
Security Act of 1974 (29 U.S.C 1104) is amended by adding at the end the following:
   “(e) EMERGENCY MULTIEMPLOYER PLAN FINANCING ACT.—In the case of a
   multiemployer pension plan for which a loan is made under the Emergency Multiemployer Plan
   Financing Act of 2018, a fiduciary shall not be treated as not satisfying section 404(a) solely
   because of an action required by such Act.”.

(f) PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement
Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following:
“(21) Any transfer of plan assets from the plan required by the Emergency Multiemployer Financing Act of 2018.”.

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

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

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

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

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

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

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

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

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

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

(c) CRITICAL STATUS.—Section 432(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following:
“(7) CRITICAL STATUS UNDER THE EMERGENCY MULTIEMPLOYER PLAN FINANCING ACT OF 2018. A plan that is considered to be in critical status solely because of section 107(h) of the Emergency Multiemployer Plan Financing Act of 2018 shall be considered to be in critical status for purposes of the Code.”

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

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

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

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

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

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