

Comparing the base document H.R. 397, as reported by the Committee on Education and Labor,
with the Rules Committee Print 116-24

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Section 1. Short title

This Act may be cited as the "Rehabilitation for Multiemployer Pensions Act of 2019".

Sec. 2. Pension Rehabilitation Administration; establishment; powers

(a) ESTABLISHMENT.— There is established in the Department of the Treasury an agency to be known as the "Pension Rehabilitation Administration".

(b) DIRECTOR.—

(1) ESTABLISHMENT OF POSITION.— There shall be at the head of the Pension Rehabilitation Administration a Director, who shall be appointed by the President.

(2) TERM.—

(A) IN GENERAL.— The term of office of the Director shall be 5 years.

(B) SERVICE UNTIL APPOINTMENT OF SUCCESSOR.— An individual serving as Director at the expiration of a term may continue to serve until a successor is appointed.

(3) POWERS.—

(A) APPOINTMENT OF DEPUTY DIRECTORS, OFFICERS, AND EMPLOYEES.— The Director may appoint Deputy Directors, officers, and employees, including attorneys, in accordance with chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

(B) CONTRACTING.—

(i) IN GENERAL.— The Director may contract for financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) with the General Services Administration, or such other Federal agency as the Director determines appropriate, for which payment shall be made in advance, or by reimbursement, from funds of the Pension Rehabilitation Administration in such amounts as may be agreed upon by the Director and the head of the Federal agency providing the services.

(ii) SUBJECT TO APPROPRIATIONS.— Contract authority under clause (i) shall be effective for any fiscal year only to the extent that appropriations are available for that purpose.

~~(c) TRANSFER OF FUNDS.— The Secretary of the Treasury may transfer for any fiscal year, from unobligated amounts appropriated to the Department of the Treasury, to the Pension Rehabilitation Administration such sums as may be reasonably necessary for the administrative and operating expenses of the Pension Rehabilitation Administration.~~

Sec. 3. Pension Rehabilitation Trust Fund

(a) IN GENERAL.—

Subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"Sec. 9512. Pension Rehabilitation Trust Fund

"(a) CREATION OF TRUST FUND.— There is established in the Treasury of the United States a trust fund to be known as the 'Pension Rehabilitation Trust Fund' (hereafter in this section referred to as the 'Fund'), consisting of such amounts as may be appropriated or credited to the Fund as provided in this section and section 9602(b).

"(b) TRANSFERS TO FUND.—

"(1) AMOUNTS ATTRIBUTABLE TO TREASURY BONDS.— There shall be credited to the Fund the amounts transferred under section 6 of the Rehabilitation for Multiemployer Pensions Act of 2019.

"(2) LOAN INTEREST AND PRINCIPAL.—

"(A) IN GENERAL.— The Director of the Pension Rehabilitation Administration established under section 2 of the Rehabilitation for Multiemployer Pensions Act of 2019 shall deposit in the Fund any amounts received from a plan as payment of interest or principal on a loan under section 4 of such Act.

"(B) INTEREST.— For purposes of subparagraph (A), the term 'interest' includes points and other similar amounts.

~~"(3) TRANSFERS FROM SECRETARY.— The Director of the Pension Rehabilitation Administration shall deposit in the Fund any amounts received from the Secretary under section 2(c) of such Act.~~

~~"(4) AVAILABILITY OF FUNDS.— Amounts credited to or deposited in the Fund shall remain available until expended.~~

"(c) EXPENDITURES FROM FUND.— Amounts in the Fund are available without further appropriation to the Pension Rehabilitation Administration—

"(1) for the purpose of making the loans described in section 4 of the Rehabilitation for Multiemployer Pensions Act of 2019,

"(2) for the payment of principal and interest on obligations issued under section 6 of such Act, and

"(3) for administrative and operating expenses of such Administration."

(b) CLERICAL AMENDMENT.—

The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 9512. Pension Rehabilitation Trust Fund."

Sec. 4. Loan program for multiemployer defined benefit plans

(a) LOAN AUTHORITY.—

(1) IN GENERAL.— The Pension Rehabilitation Administration established under section 2 is authorized—

(A) to make loans to multiemployer plans (as defined in section 414(f) of the Internal Revenue Code of 1986) which are defined benefit plans (as defined in section 414(j) of such Code) and which—

(i) are in critical and declining status (within the meaning of section 432(b)(6) of such Code and section 305(b)(6) of ~~such~~ *the Employee Retirement and Income Security Act* as of the date of the enactment of this ~~Act~~ *section*, or with respect to which a suspension of benefits has been approved under section 432(e)(9) of such Code and section 305(e)(9) of such Act as of such date;

(ii) as of such date of enactment, are in critical status (within the meaning of section 432(b)(2) of such Code and section 305(b)(2) of such Act), have a *modified* funded percentage of less than 40 percent ~~(as determined for purposes of section 432 of such Code and section 305 of such Act)~~, and have a ratio of active to inactive participants which is less than 2 to ~~3~~ *5*; or

(iii) are insolvent for purposes of section 418E of such Code as of such date of enactment, if they became insolvent after December 16, 2014, and have not been terminated; and

(B) subject to subsection (b), to establish appropriate terms for such loans.

For purposes of subparagraph (A)(ii), the term "modified funded percentage" means the percentage equal to a fraction the numerator of which is current value of plan assets (as defined in section 3(26) of such Act) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D) of such Code and section 304(c)(6)(D) of such Act).

(2) CONSULTATION.— The Director of the Pension Rehabilitation Administration shall consult with the Secretary of the Treasury, the Secretary of Labor, and the Director of the Pension Benefit Guaranty Corporation

before making any loan under paragraph (1), and shall share with such persons the application and plan information with respect to each such loan.

(3) ESTABLISHMENT OF LOAN PROGRAM.—

(A) IN GENERAL.— A program to make the loans authorized under this section shall be established not later than September 30, 2019, with guidance regarding such program to be promulgated by the Director of the Pension Rehabilitation Administration, in consultation with the *Director of the Pension Benefit Guaranty Corporation* ~~and the Department~~, *the Secretary of the Treasury, and the Secretary* of Labor, not later than December 31, 2019.

(B) LOANS AUTHORIZED BEFORE PROGRAM DATE.— Without regard to whether the program under subparagraph (A) has been established, a plan may apply for a loan under this section before either date described in such subparagraph, and the Pension Rehabilitation Administration shall approve the application and make the loan before establishment of the program if necessary to avoid any suspension of the accrued benefits of participants.

(b) LOAN TERMS.—

(1) IN GENERAL.— The terms of any loan made under subsection (a) shall state that—

(A) the plan shall make payments of interest on the loan for a period of 29 years beginning on the date of the loan (or 19 years in the case of a plan making the election under subsection (c)(5));

(B) final payment of interest and principal shall be due in the 30th year after the date of the loan (except as provided in an election under subsection (c)(5)); and

(C) as a condition of the loan, the plan sponsor stipulates that—

(i) except as provided in clause (ii), the plan will not increase benefits, allow any employer participating in the plan to reduce its contributions, or accept any collective bargaining agreement which provides for reduced contribution rates, during the 30-year period described in subparagraphs (A) and (B);

(ii) in the case of a plan with respect to which a suspension of benefits has been approved under section 432(e)(9) of the Internal Revenue Code of 1986 and section 305(e)(9) of the Employee Retirement Income Security Act of 1974, or under section 418E of such Code, before the loan, the plan will reinstate the suspended benefits (or will not carry out any suspension which has been approved but not yet implemented);

(iii) the plan sponsor will comply with the requirements of section 6059A of the Internal Revenue Code of 1986;

(iv) the plan will continue to pay all premiums due under section 4007 of the Employee Retirement Income Security Act of 1974; and

(v) the plan and plan administrator will meet such other requirements as the Director of the Pension Rehabilitation Administration provides in the loan terms.

The terms of the loan shall not make reference to whether the plan is receiving financial assistance under section 4261(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1431(d)) or to any adjustment of the loan amount under subsection (d)(2)(A)(ii).

(2) INTEREST RATE.— Except as provided in the second sentence of this paragraph and subsection (c)(5), loans made under subsection (a) shall have as low an interest rate as is feasible. Such rate shall be determined by the Pension Rehabilitation Administration and shall—

(A) not be lower than the rate of interest on 30-year Treasury securities on the first day of the calendar year in which the loan is issued, and

(B) not exceed the greater of—

(i) a rate *0.2* percent *age points* higher than such rate of interest on such date, or

(ii) the rate necessary to collect revenues sufficient to administer the program under this section.

(c) LOAN APPLICATION.—

(1) IN GENERAL.— In applying for a loan under subsection (a), the plan sponsor shall—

(A) demonstrate that, except as provided in subparagraph (C)—

(i) the loan will enable the plan to avoid insolvency for at least the 30-year period described in subparagraphs (A) and (B) of subsection (b)(1) or, in the case of a plan which is already insolvent, to emerge from insolvency within and avoid insolvency for the remainder of such period; and

(ii) the plan is reasonably expected to be able to pay benefits and the interest on the loan during such period and to accumulate sufficient funds to repay the principal when due;

(B) provide the plan's most recently filed Form 5500 as of the date of application and any other information necessary to determine the loan amount under subsection (d);

(C) stipulate whether the plan is also applying for financial assistance under section 4261(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1431(d)) in combination with the loan to enable the plan to avoid insolvency and to pay benefits, or is already receiving such financial assistance as a result of a previous application;

(D) state in what manner the loan proceeds will be invested pursuant to subsection (d), the person from whom any annuity contracts under such subsection will be purchased, and the person who will be the investment manager for any portfolio implemented under such subsection; and

(E) include such other information and certifications as the Director of the Pension Rehabilitation Administration shall require.

(2) STANDARD FOR ACCEPTING ACTUARIAL AND PLAN SPONSOR DETERMINATIONS AND DEMONSTRATIONS IN THE APPLICATION.— In evaluating the plan sponsor's application, the Director of the Pension Rehabilitation Administration shall accept the determinations and demonstrations in the application unless the Director, in consultation with the Director of the Pension Benefit Guaranty Corporation, *the Secretary of the Treasury*, and the Secretary of Labor, concludes that ~~the~~*any such* determinations ~~and/or~~ demonstrations in the application ~~(or any underlying assumptions)~~ are unreasonable or are inconsistent with any rules issued by the Director pursuant to subsection (g).

(3) REQUIRED ACTIONS; DEEMED APPROVAL.— The Director of the Pension Rehabilitation Administration shall approve or deny any application under this subsection within 90 days after the submission of such application. An application shall be deemed approved unless, within such 90 days, the Director notifies the plan sponsor of the denial of such application and the reasons for such denial. Any approval or denial of an application by the Director of the Pension Rehabilitation Administration shall be treated as a final agency action for purposes of section 704 of title 5, United States Code. The Pension Rehabilitation Administration shall make the loan pursuant to any application promptly after the approval of such application.

(4) CERTAIN PLANS REQUIRED TO APPLY.— The plan sponsor of any plan with respect to which a suspension of benefits has been approved under section 432(e)(9) of the Internal Revenue Code of 1986 and section 305(e)(9) of the Employee Retirement Income Security Act of 1974 or under section 418E of such Code, before the date of the enactment of this Act shall apply for a loan under this section. The Director of the Pension Rehabilitation Administration shall provide for such plan sponsors to use the simplified application under subsection (d)(2)(B).

(5) INCENTIVE FOR EARLY REPAYMENT.— The plan sponsor may elect at the time of the application to repay the loan principal, along with the remaining interest, *at least as rapidly as equal installments* over the 10-year period beginning with the 21st year after the date of the loan. In the case of a plan making this election, the interest on the loan shall be reduced by 0.5 percent *age points*.

(d) LOAN AMOUNT AND USE.—

(1) AMOUNT OF LOAN.—

(A) IN GENERAL.— Except as provided in subparagraphs (B) ~~and (C)~~ and paragraph (2), the amount of any loan under subsection (a) shall be, as demonstrated by the plan sponsor on the application under subsection (c), the amount needed to purchase annuity contracts or to implement a portfolio described in paragraph (3)(C) (or a combination of the two) sufficient to provide benefits of participants and beneficiaries of the plan in pay status, and terminated vested benefits, at the time the loan is made.

(B) ~~LIMITATION BASED ON ABILITY TO REPAY.— If at the time of the application under subsection (e) the plan sponsor determines that, based on a repayment schedule that would provide for repayment of the full amount determined under subparagraph (A) or (C)(ii) within the 30 year period described in subsection (b)(1), making payments would cause the plan to be within 18 months of becoming insolvent at~~

~~any point during such period, the loan amount shall be such lesser amount as the plan sponsor determines the plan will be able to repay without becoming within 18 months of insolvency.~~

~~(C)~~ PLANS WITH SUSPENDED BENEFITS.— In the case of a plan with respect to which a suspended ~~tion of~~ benefits has been approved under section 432(e)(9) of the Internal Revenue Code of 1986 and section 305(e)(9) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(e)(9)) or under section 418E of such Code—

(i) the suspension of benefits shall not be taken into account in applying subparagraph (A); and

(ii) ~~except as provided in subparagraph (B),~~ the loan amount shall be the amount sufficient to provide benefits of participants and beneficiaries of the plan in pay status and terminated vested benefits at the time the loan is made, determined without regard to the suspension, including retroactive payment of benefits which would otherwise have been payable during the period of the suspension.

(2) COORDINATION WITH PBGC FINANCIAL ASSISTANCE.—

(A) IN GENERAL.— In the case of a plan which is also applying for financial assistance under section 4261(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1431(d))—

(i) the plan sponsor shall submit the loan application and the application for financial assistance jointly to the Pension Rehabilitation Administration and the Pension Benefit Guaranty Corporation with the information necessary to determine the eligibility for and amount of the loan under this section and the financial assistance under section 4261(d) of such Act; and

(ii) if such financial assistance is granted, the amount of the loan under subsection (a) shall not exceed an amount equal to the excess of—

(I) the amount determined under paragraph (1)(A) or (1)(~~C~~B)(ii) (whichever is applicable); ~~without regard to paragraph (1)(B);~~ over

(II) the amount of such financial assistance.

(B) PLANS ALREADY RECEIVING PBGC ASSISTANCE.— The Director of the Pension Rehabilitation Administration shall provide for a simplified application for the loan under this section which may be used by an insolvent plan which has not been terminated and which is already receiving financial assistance (other than under section 4261(d) of such Act) from the Pension Benefit Guaranty Corporation at the time of the application for the loan under this section.

(3) USE OF LOAN FUNDS.—

(A) IN GENERAL.— ~~Notwithstanding section 432(f)(2)(A)(ii) of the Internal Revenue Code of 1986 and section 305(f)(2)(A)(ii) of such Act,~~ the loan received under subsection (a) shall *only* be used to purchase annuity contracts which meet the requirements of subparagraph (B) or to implement a portfolio described in subparagraph (C) (or a combination of the two) to provide the benefits described in paragraph (1).

(B) ANNUITY CONTRACT REQUIREMENTS.— The annuity contracts purchased under subparagraph (A) shall be issued by an insurance company which is licensed to do business under the laws of any State and which is rated A or better by a nationally recognized statistical rating organization, and the purchase of such contracts shall meet all applicable fiduciary standards under the Employee Retirement Income Security Act of 1974.

(C) PORTFOLIO.—

(i) IN GENERAL.— A portfolio described in this subparagraph is—

(I) a cash matching portfolio or duration matching portfolio consisting of investment grade (as rated by a nationally recognized statistical rating organization) fixed income investments, including United States dollar-denominated public or private debt obligations issued or guaranteed by the United States or a foreign issuer, which are tradeable in United States currency and are issued at fixed or zero coupon rates; or

(II) any other portfolio prescribed by the Secretary of the Treasury in regulations which has a similar risk profile to the portfolios described in subclause (I) and is equally protective of the interests of participants and beneficiaries.

Once implemented, such a portfolio shall be maintained until all liabilities to participants and beneficiaries in pay status, and terminated vested participants, at the time of the loan are satisfied.

(ii) FIDUCIARY DUTY.— Any investment manager of a portfolio under this subparagraph shall acknowledge in writing that such person is a fiduciary under the Employee Retirement Income Security Act of 1974 with respect to the plan.

(iii) TREATMENT OF PARTICIPANTS AND BENEFICIARIES.— Participants and beneficiaries covered by a portfolio under this subparagraph shall continue to be treated as participants and beneficiaries of the plan, including for purposes of title IV of the Employee Retirement Income Security Act of 1974.

(D) ACCOUNTING.—

(i) IN GENERAL.— Annuity contracts purchased and portfolios implemented under this paragraph shall be used solely to provide the benefits described in paragraph (1) until all such benefits have been paid and shall be accounted for separately from the other assets of the plan.

(ii) OVERSIGHT OF NON-ANNUITY INVESTMENTS.—

(I) IN GENERAL.— Any portfolio implemented under this paragraph shall be subject to oversight by the Pension Rehabilitation Administration, including a mandatory triennial review of the adequacy of the portfolio to provide the benefits described in paragraph (1) and approval (to be provided within a reasonable period of time) of any decision by the plan sponsor to change the investment manager of the portfolio.

(II) REMEDIAL ACTION.— If the triennial review oversight under subclause (I) determines an inadequacy, the plan sponsor shall take remedial action to ensure that the inadequacy will be cured within 52 years of the review such determination.

(E) OMBUDSPERSON.— The Participant and Plan Sponsor Advocate established under section 4004 of the Employee Retirement Income Security Act of 1974 shall act as ombudsperson for participants and beneficiaries on behalf of whom annuity contracts are purchased or who are covered by a portfolio under this paragraph.

(e) COLLECTION OF REPAYMENT.— Except as provided in subsection (f), the Pension Rehabilitation Administration shall make every effort to collect repayment of loans under this section in accordance with section 3711 of title 31, United States Code.

(f) LOAN DEFAULT.— If a plan is unable to make any payment on a loan under this section when due, the Pension Rehabilitation Administration shall negotiate with the plan sponsor revised terms for repayment (including installment payments over a reasonable period or forgiveness of a portion of the loan principal), but only to the extent necessary to avoid insolvency in the subsequent 18 months.

(g) AUTHORITY TO ISSUE RULES, ETC.— The Director of the Pension Rehabilitation Administration, in consultation with the Director of the Pension Benefit Guaranty Corporation and the Department, the Secretary of the Treasury, and the Secretary of Labor, is authorized to issue rules regarding the form, content, and process of applications for loans under this section, actuarial standards and assumptions to be used in making estimates and projections for purposes of such applications, and assumptions regarding interest rates, mortality, and distributions with respect to a portfolio described in subsection (d)(3)(C).

(h) REPORT TO CONGRESS ON STATUS OF CERTAIN PLANS WITH LOANS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Director of the Pension Rehabilitation Administration shall submit to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, and the Committee on Finance and the Committee on Health, Education, Labor and Pensions of the Senate, a report identifying any plan that—

(1) has failed to make any scheduled payment on a loan under this section,

(2) has negotiated revised terms for repayment of such loan (including any installment payments or forgiveness of a portion of the loan principal), or

(3) the Director has determined is no longer reasonably expected to be able to—

(A) pay benefits and the interest on the loan, or

(B) accumulate sufficient funds to repay the principal when due.

Such report shall include the details of any such failure, revised terms, or determination, as the case may be.

(i) COORDINATION WITH TAXATION OF UNRELATED BUSINESS INCOME.— Subparagraph (A) of section 514(c)(6) of the Internal Revenue Code of 1986 is amended—

- (1) by striking "or" at the end of clause (i);
- (2) by striking the period at the end of clause (ii)(II) and inserting ", or"; and
- (3) by adding at the end the following new clause:

"(iii) indebtedness with respect to a multiemployer plan under a loan made by the Pension Rehabilitation Administration pursuant to section 4 of the Rehabilitation for Multiemployer Pensions Act of 2019."

Sec. 5. Coordination with withdrawal liability and funding rules

(a) **AMENDMENT TO INTERNAL REVENUE CODE OF 1986.**—

Section 432 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(k) **SPECIAL RULES FOR PLANS RECEIVING PENSION REHABILITATION LOANS.**—

"(1) **DETERMINATION OF WITHDRAWAL LIABILITY.**—

"(A) **IN GENERAL.**— If any employer participating in a plan at the time the plan receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019 withdraws from the plan before the end of the 30-year period beginning on the date of the loan, the withdrawal liability of such employer shall be determined under the Employee Retirement Income Security Act of 1974—

"(i) by applying section 4219(c)(1)(D) of the Employee Retirement Income Security Act of 1974 as if the plan were terminating by the withdrawal of every employer from the plan, and

"(ii) by determining the value of nonforfeitable benefits under the plan at the time of the deemed termination by using the interest assumptions prescribed for purposes of section 4044 of the Employee Retirement Income Security Act of 1974, as prescribed in the regulations under section 4281 of the Employee Retirement Income Security Act of 1974 in the case of such a mass withdrawal.

"(B) **ANNUITY CONTRACTS AND INVESTMENT PORTFOLIOS PURCHASED WITH LOAN FUNDS.**— Annuity contracts purchased and portfolios implemented under section 4(d)(3) of the Rehabilitation for Multiemployer Pensions Act of 2019 shall not be taken into account *as plan assets* in determining the withdrawal liability of any employer under subparagraph (A), but the amount equal to the greater of—

"(i) the benefits provided under such contracts or portfolios to participants and beneficiaries, or

"(ii) the remaining payments due on the loan under section 4(a) of such Act,

shall be ~~so~~ taken into account *as unfunded vested benefits in determining such withdrawal liability*.

"(2) **COORDINATION WITH FUNDING REQUIREMENTS.**— In the case of a plan which receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019—

"(A) annuity contracts purchased and portfolios implemented under section 4(d)(3) of such Act, and the benefits provided to participants and beneficiaries under such contracts or portfolios, shall not be taken into account in determining minimum required contributions under section 412,

"(B) payments on the interest and principal under the loan, and any benefits owed in excess of those provided under such contracts or portfolios, shall be taken into account as liabilities for purposes of such section, and

"(C) if such a portfolio is projected due to unfavorable investment or actuarial experience to be unable to fully satisfy the liabilities which it covers, the amount of the liabilities projected to be unsatisfied shall be taken into account as liabilities for purposes of such section."

(b) **AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.**—

Section 305 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085) is amended by adding at the end the following new subsection:

"(k) **SPECIAL RULES FOR PLANS RECEIVING PENSION REHABILITATION LOANS.**—

"(1) **DETERMINATION OF WITHDRAWAL LIABILITY.**—

"(A) **IN GENERAL.**— If any employer participating in a plan at the time the plan receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019 withdraws from the plan before

the end of the 30-year period beginning on the date of the loan, the withdrawal liability of such employer shall be determined—

"(i) by applying section 4219(c)(1)(D) as if the plan were terminating by the withdrawal of every employer from the plan, and

"(ii) by determining the value of nonforfeitable benefits under the plan at the time of the deemed termination by using the interest assumptions prescribed for purposes of section 4044, as prescribed in the regulations under section 4281 in the case of such a mass withdrawal.

"(B) ANNUITY CONTRACTS AND INVESTMENT PORTFOLIOS PURCHASED WITH LOAN FUNDS.— Annuity contracts purchased and portfolios implemented under section 4(d)(3) of the Rehabilitation for Multiemployer Pensions Act of 2019 shall not be taken into account in determining the withdrawal liability of any employer under subparagraph (A), but the amount equal to the greater of—

"(i) the benefits provided under such contracts or portfolios to participants and beneficiaries, or

"(ii) the remaining payments due on the loan under section 4(a) of such Act,

shall be ~~so~~ taken into account *as unfunded vested benefits in determining such withdrawal liability*.

"(2) COORDINATION WITH FUNDING REQUIREMENTS.— In the case of a plan which receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019—

"(A) annuity contracts purchased and portfolios implemented under section 4(d)(3) of such Act, and the benefits provided to participants and beneficiaries under such contracts or portfolios, shall not be taken into account in determining minimum required contributions under section 302,

"(B) payments on the interest and principal under the loan, and any benefits owed in excess of those provided under such contracts or portfolios, shall be taken into account as liabilities for purposes of such section, and

"(C) if such a portfolio is projected due to unfavorable investment or actuarial experience to be unable to fully satisfy the liabilities which it covers, the amount of the liabilities projected to be unsatisfied shall be taken into account as liabilities for purposes of such section."

Sec. 6. Issuance of Treasury bonds

The Secretary of the Treasury ~~(in consultation with the Director of the Pension Rehabilitation Administration established under section 2)~~ shall from time to time transfer from the general fund of the Treasury to the Pension Rehabilitation Trust Fund established under section 9512 of the Internal Revenue Code of 1986 such amounts as are necessary to fund the loan program under section 4 of this Act, including from proceeds from the Secretary's issuance of obligations under chapter 31 of title 31, United States Code.

Sec. 7. Reports of plans receiving pension rehabilitation loans

(a) IN GENERAL.—

Subpart E of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"Sec. 6059A. Reports of plans receiving pension rehabilitation loans

"(a) IN GENERAL.— In the case of a plan receiving a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019, with respect to the first plan year beginning after the date of the loan and each of the 29 succeeding plan years, not later than the 90th day of each such plan year the plan sponsor shall file with the Secretary a report (including appropriate documentation and actuarial certifications from the plan actuary, as required by the Secretary) that contains—

"(1) the funded percentage (as defined in section 432(i)(2)) as of the first day of such plan year, and the underlying actuarial value of assets (determined with regard, and without regard, to annuity contracts purchased and portfolios implemented with proceeds of such loan) and liabilities (including any amounts due with respect to such loan) taken into account in determining such percentage,

"(2) the market value of the assets of the plan (determined as provided in paragraph (1)) as of the last day of the plan year preceding such plan year,

"(3) the total value of all contributions made by employers and employees during the plan year preceding such plan year,

"(4) the total value of all benefits paid during the plan year preceding such plan year,

"(5) cash flow projections for such plan year and the 9 succeeding plan years, and the assumptions used in making such projections,

"(6) funding standard account projections for such plan year and the 9 succeeding plan years, and the assumptions relied upon in making such projections,

"(7) the total value of all investment gains or losses during the plan year preceding such plan year,

"(8) any significant reduction in the number of active participants during the plan year preceding such plan year, and the reason for such reduction,

"(9) a list of employers that withdrew from the plan in the plan year preceding such plan year, and the resulting reduction in contributions,

"(10) a list of employers that paid withdrawal liability to the plan during the plan year preceding such plan year and, for each employer, a total assessment of the withdrawal liability paid, the annual payment amount, and the number of years remaining in the payment schedule with respect to such withdrawal liability,

"(11) any material changes to benefits, accrual rates, or contribution rates during the plan year preceding such plan year, and whether such changes relate to the terms of the loan,

"(12) details regarding any funding improvement plan or rehabilitation plan and updates to such plan,

"(13) the number of participants ~~and beneficiaries~~ during the plan year preceding such plan year who are active participants, the number of participants and beneficiaries in pay status, and the number of terminated vested participants and beneficiaries,

"(14) the amount of any financial assistance received under section 4261 of the Employee Retirement Income Security Act of 1974 to pay benefits during the preceding plan year, and the total amount of such financial assistance received for all preceding years,

"(15) the information contained on the most recent annual funding notice submitted by the plan under section 101(f) of the Employee Retirement Income Security Act of 1974,

"(16) the information contained on the most recent annual return under section 6058 and actuarial report under section 6059 of the plan, and

"(17) copies of the plan document and amendments, other retirement benefit or ancillary benefit plans relating to the plan and contribution obligations under such plans, a breakdown of administrative expenses of the plan, participant census data and distribution of benefits, the most recent actuarial valuation report as of the plan year, copies of collective bargaining agreements, and financial reports, and such other information as the Secretary, in consultation with the Director of the Pension Rehabilitation Administration, may require.

"(b) ELECTRONIC SUBMISSION.— The report required under subsection (a) shall be submitted electronically.

"(c) INFORMATION SHARING.— The Secretary shall share the information in the report under subsection (a) with the Secretary of Labor and the Director of the Pension Benefit Guaranty Corporation.

"(d) REPORT TO PARTICIPANTS, BENEFICIARIES, AND EMPLOYERS.— Each plan sponsor required to file a report under subsection (a) shall, before the expiration of the time prescribed for the filing of such report, also provide a summary (written in a manner so as to be understood by the average plan participant) of the information in such report to participants and beneficiaries in the plan and to each employer with an obligation to contribute to the plan."

(b) PENALTY.— Subsection (e) of section 6652 of the Internal Revenue Code of 1986 is amended—

(1) by inserting ", 6059A (relating to reports of plans receiving pension rehabilitation loans)" after "deferred compensation)";

(2) by inserting "\$100 in the case of failures under section 6059A)" after "\$25"; and

(3) by adding at the end the following: "In the case of a failure with respect to section 6059A, the amount imposed under this subsection shall not be paid from the assets of the plan."

(c) CLERICAL AMENDMENT.—

The table of sections for subpart E of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 6059A. Reports of plans receiving pension rehabilitation loans."

Sec. 8. PBGC financial assistance

(a) IN GENERAL.—

Section 4261 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1431) is amended by adding at the end the following new subsection:

"(d)

"(1) The plan sponsor of a multiemployer plan—

"(A) which is in critical and declining status (within the meaning of section 305(b)(6)) as of the date of the enactment of this subsection, or with respect to which a suspension of benefits has been approved under section 305(e)(9) as of such date;

"(B) which, as of such date of enactment, is in critical status (within the meaning of section 305(b)(2)), has a modified funded percentage of less than 40 percent (as ~~determined for purposes of section 305~~ fined in section 4(a)(1) of the Rehabilitation for Multiemployer Pensions Act of 2019), and has a ratio of active to inactive participants which is less than 2 to ~~3~~5; or

"(C) which is insolvent for purposes of section 418E of the Internal Revenue Code of 1986 as of such date of enactment, if the plan became insolvent after December 16, 2014, and has not been terminated;

and which is applying for a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019 may also apply to the corporation for financial assistance under this subsection, by jointly submitting such applications in accordance with section 4(d)(2) of such Act. The application for financial assistance under this subsection shall demonstrate, based on projections by the plan actuary, that after the receipt of the anticipated loan amount under section 4(a) of such Act, the plan will still become (or remain) insolvent within the 30-year period beginning on the date of the loan.

"(2) In reviewing an application under paragraph (1), the corporation shall review the ~~demonstrations and assumptions~~terminations and assumption demonstrations submitted with the loan application under section 4(c) of the Rehabilitation for Multiemployer Pensions Act of 2019 and provide guidance regarding such ~~assumption determinations and demonstrations~~assumption determinations and demonstrations prior to approving any application for financial assistance under this subsection. The corporation may deny any application if ~~the assumptions and determinations~~any such determinations or demonstrations (or any underlying assumptions) are unreasonable, or inconsistent with rules issued by the corporation, and the plan and the corporation are unable to reach agreement on such ~~assumptions and determinations~~determinations or demonstrations. The corporation shall prescribe any such rules or guidance not later than December 31, 2019.

"(3)

"(A) In the case of a plan described in paragraph (1)(A) or (1)(B), the total financial assistance provided pursuant to such application under this subsection shall be ~~the~~an amount (determined by the plan actuary and submitted on the application) equal to the sum of —

"(A) ~~the percentage of benefits of participants and beneficiaries of the plan in pay status at the time of the application, and~~

"(B) ~~the percentage of future benefits to which participants who have separated from service but are not yet~~equal to the smallest portion of the loan amount with respect to the plan under paragraph (1)(A) or (1)(B)(ii) of section 4(d) of the Rehabilitation for Multiemployer Pensions Act of 2019 (determined without regard to paragraph (2) thereof) that, in pay status are entitled,

~~which, if such percentage were paid by the corporation in combination with the~~provided as financial assistance under this subsection instead of a loan, would allow the plan to avoid ~~the~~ projected insolvency.

"(B) Such amount shall not exceed the present value of the maximum guaranteed benefit with respect to all participants and beneficiaries of the plan under sections 4022A and 4022B. For ~~this purpose,~~purposes of the preceding sentence, the present value of the maximum guaranteed benefit amount shall be determined by disregarding any loan available from the Pension Rehabilitation Administration and shall be determined as if the plan were insolvent on the date of the application. ~~Further,~~ and the present value of the maximum guaranteed benefit amount with respect to such participants and beneficiaries may be calculated in the aggregate, rather than by reference to the benefit of each such participant or beneficiary.

"(4) In the case of a plan described in paragraph (1)(C), the financial assistance provided pursuant to such application under this subsection shall be the present value of the amount (determined by the plan actuary and

submitted on the application) ~~which~~*that*, if such amount were paid by the corporation in combination with the loan and any other assistance being provided to the plan by the corporation at the time of the application, would enable the plan to emerge from ~~the projected insolvency~~*insolvency and avoid any other insolvency projected under paragraph (1).*

"(5)

"(A)

~~"(i) Except as provided in subparagraph (B), if the corporation shall provide the~~*determines at the time of approval, or at the beginning of any plan year beginning thereafter, that the plan's 5-year expenditure projection (determined without regard to loan payments described in clause (iii)(III)) exceeds the fair market value of the plan's assets, the corporation shall (subject to the total amount of financial assistance approved under this subsection only in such amounts as the corporation determines, at the time of approval and at the beginning of each plan year beginning thereafter during the period of assistance, are necessary for the plan to avoid insolvency) provide such assistance in an amount equal to the lesser of—*

"(I) the amount by which the plan's 5-year expenditure projection exceeds such fair market value, or

"(II) the plan's expected expenditures for the plan year.

~~"(ii) For purposes of this subparagraph, the term '5-year expenditure projection' means, with respect to any plan for a plan year, an amount equal to 500 percent of the plan's expected expenditures for the plan year.~~

~~"(iii) For purposes of this subparagraph, the term 'expected expenditures' means, with respect to any plan for a plan year, an amount equal to the sum of—~~

~~"(I) expected benefit payments for the plan year.~~

~~"(II) expected administrative expense payments for the plan year, plus~~

~~"(III) payments on the loan scheduled during the 5-plan year period beginning with the current plan year.~~

~~ursuant to the terms of the loan under section 4(b) of the Rehabilitation for Multiemployer Pensions Act of 2019.~~

~~"(Biv) For purposes of this subparagraph, in the case of any plan described in paragraph (1)(C), the financial assistance under this subsection shall be provided in a lump sum if deemed necessary by the corporation, and in no case year during which a plan is approved for a loan under section 4 of such Act, but has not yet received the proceeds, such proceeds shall be included in determining the fair market value of the plan's assets for the plan year. The preceding sentence shall not apply in the case of any plan that for the plan year beginning in 2015 was certified pursuant to section 305(b)(3) as being in critical and declining status, and had more than 300,000 participants.~~

~~"(B) The financial assistance under this subsection shall be provided in a lump sum if the plan sponsor demonstrates in the application, and the corporation determines, that such a lump sum payment is necessary for the plan to avoid the insolvency to which the application relates. In the case of a plan described in paragraph (1)(C), such lump sum shall be provided not later than December 31, 2020.~~

"(6) Subsections (b) and (c) shall apply to financial assistance under this subsection as if it were provided under subsection (a), except that the terms for repayment under subsection (b)(2) shall not require the financial assistance to be repaid before the date on which the loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019 is repaid in full.

"(7) The corporation may forgo repayment of the financial assistance provided under this subsection if necessary to avoid any suspension of the accrued benefits of participants."

(b) APPROPRIATIONS.— There is appropriated to the Director of the Pension Benefit Guaranty Corporation such sums as may be necessary for each fiscal year to provide the financial assistance described in section 4261(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1431(d)) (as added by this section) (including necessary administrative and operating expenses relating to such assistance).

Sec. 9. Modification of required distribution rules for designated beneficiaries

(a) MODIFICATION OF RULES WHERE EMPLOYEE DIES BEFORE ENTIRE DISTRIBUTION.—

(1) IN GENERAL.— Section 401(a)(9) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(H) SPECIAL RULES FOR CERTAIN DEFINED CONTRIBUTION PLANS.— In the case of a defined contribution plan, if an employee dies before the distribution of the employee's entire interest—

"(i) IN GENERAL.— Except in the case of a beneficiary who is not a designated beneficiary, subparagraph (B)(ii)—

"(I) shall be applied by substituting '10 years' for '5 years', and

"(II) shall apply whether or not distributions of the employee's interests have begun in accordance with subparagraph (A).

"(ii) EXCEPTION ONLY FOR ELIGIBLE DESIGNATED BENEFICIARIES.— Subparagraph (B)(iii) shall apply only in the case of an eligible designated beneficiary.

"(iii) RULES UPON DEATH OF ELIGIBLE DESIGNATED BENEFICIARY.— If an eligible designated beneficiary dies before the portion of the employee's interest to which this subparagraph applies is entirely distributed, the exception under clause (iii) shall not apply to any beneficiary of such eligible designated beneficiary and the remainder of such portion shall be distributed within 10 years after the death of such eligible designated beneficiary.

"(iv) APPLICATION TO CERTAIN ELIGIBLE RETIREMENT PLANS.— For purposes of applying the provisions of this subparagraph in determining amounts required to be distributed pursuant to this paragraph, all eligible retirement plans (as defined in section 402(c)(8)(B), other than a defined benefit plan described in clause (iv) or (v) thereof or a qualified trust which is a part of a defined benefit plan) shall be treated as a defined contribution plan."

(2) DEFINITION OF ELIGIBLE DESIGNATED BENEFICIARY.— Section 401(a)(9)(E) of such Code is amended to read as follows:

"(E) DEFINITIONS AND RULES RELATING TO DESIGNATED BENEFICIARY.— For purposes of this paragraph—

"(i) DESIGNATED BENEFICIARY.— The term 'designated beneficiary' means any individual designated as a beneficiary by the employee.

"(ii) ELIGIBLE DESIGNATED BENEFICIARY.— The term 'eligible designated beneficiary' means, with respect to any employee, any designated beneficiary who is—

"(I) the surviving spouse of the employee,

"(II) subject to clause (iii), a child of the employee who has not reached majority (within the meaning of subparagraph (F)),

"(III) disabled (within the meaning of section 72(m)(7)),

"(IV) a chronically ill individual (within the meaning of section 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature), or

"(V) an individual not described in any of the preceding subclauses who is not more than 10 years younger than the employee.

"(iii) SPECIAL RULE FOR CHILDREN.— Subject to subparagraph (F), an individual described in clause (ii)(II) shall cease to be an eligible designated beneficiary as of the date the individual reaches majority and any remainder of the portion of the individual's interest to which subparagraph (H)(ii) applies shall be distributed within 10 years after such date.

"(iv) TIME FOR DETERMINATION OF ELIGIBLE DESIGNATED BENEFICIARY.— The determination of whether a designated beneficiary is an eligible designated beneficiary shall be made as of the date of death of the employee."

(3) EFFECTIVE DATES.—

(A) IN GENERAL.— Except as provided in this paragraph and paragraphs (4) and (5), the amendments made by this subsection shall apply to distributions with respect to employees who die after December 31, 2019.

(B) COLLECTIVE BARGAINING EXCEPTION.— In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by this subsection shall apply to distributions with respect to employees who die in calendar years beginning after the earlier of—

(i) the later of—

(I) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof agreed to on or after the date of the enactment of this Act), or

(II) December 31, 2019, or

(ii) December 31, 2021.

For purposes of clause (i)(I), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

(C) GOVERNMENTAL PLANS.— In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), subparagraph (A) shall be applied by substituting "December 31, 2021" for "December 31, 2019".

(4) EXCEPTION FOR CERTAIN EXISTING ANNUITY CONTRACTS.—

(A) IN GENERAL.— The amendments made by this subsection shall not apply to a qualified annuity which is a binding annuity contract in effect on the date of enactment of this Act and at all times thereafter.

(B) QUALIFIED ANNUITY.— For purposes of this paragraph, the term "qualified annuity" means, with respect to an employee, an annuity—

(i) which is a commercial annuity (as defined in section 3405(e)(6) of the Internal Revenue Code of 1986);

(ii) under which the annuity payments are made over the life of the employee or over the joint lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the joint life expectancy of such employee and a designated beneficiary) in accordance with the regulations described in section 401(a)(9)(A)(ii) of such Code (as in effect before such amendments) and which meets the other requirements of section 401(a)(9) of such Code (as so in effect) with respect to such payments; and

(iii) with respect to which—

(I) annuity payments to the employee have begun before the date of enactment of this Act, and the employee has made an irrevocable election before such date as to the method and amount of the annuity payments to the employee or any designated beneficiaries; or

(II) if subclause (I) does not apply, the employee has made an irrevocable election before the date of enactment of this Act as to the method and amount of the annuity payments to the employee or any designated beneficiaries.

(5) EXCEPTION FOR CERTAIN BENEFICIARIES.—

(A) IN GENERAL.— If an employee dies before the effective date, then, in applying the amendments made by this subsection to such employee's designated beneficiary who dies after such date—

(i) such amendments shall apply to any beneficiary of such designated beneficiary; and

(ii) the designated beneficiary shall be treated as an eligible designated beneficiary for purposes of applying section 401(a)(9)(H)(ii) of the Internal Revenue Code of 1986 (as in effect after such amendments).

(B) EFFECTIVE DATE.— For purposes of this paragraph, the term "effective date" means the first day of the first calendar year to which the amendments made by this subsection apply to a plan with respect to employees dying on or after such date.

(b) PROVISIONS RELATING TO PLAN AMENDMENTS.—

*(1) IN GENERAL.— If this subsection applies to any plan amendment—**(A) such plan shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(B)(i); and**(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.**(2) AMENDMENTS TO WHICH SUBSECTION APPLIES.—**(A) IN GENERAL.— This subsection shall apply to any amendment to any plan or which is made—**(i) pursuant to any amendment made by this section or pursuant to any regulation issued by the Secretary of the Treasury under this section or such amendments; and**(ii) on or before the last day of the first plan year beginning after December 31, 2021, or such later date as the Secretary of the Treasury may prescribe.**In the case of a governmental or collectively bargained plan to which subparagraph (B) or (C) of subsection (a)(4) applies, clause (ii) shall be applied by substituting the date which is 2 years after the date otherwise applied under such clause.**(B) CONDITIONS.— This subsection shall not apply to any amendment unless—**(i) during the period—**(I) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan amendment not required by such legislative or regulatory amendment, the effective date specified by the plan); and**(II) ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan amendment is adopted),**the plan is operated as if such plan amendment were in effect; and**(ii) such plan amendment applies retroactively for such period.****Sec. 10. Increase in penalty for failure to file****(a) IN GENERAL.— The second sentence of section 6651(a) of the Internal Revenue Code of 1986, as amended by the Taxpayer First Act, is amended by striking "\$330" and inserting "\$435".**(b) INFLATION ADJUSTMENT.— Section 6651(j)(1) of such Code, as amended by such Act, is amended by striking "\$330" and inserting "\$435".**(c) EFFECTIVE DATE.— The amendments made by this section shall apply to returns the due date for which (including extensions) is after December 31, 2019.****Sec. 11. Increased penalties for failure to file retirement plan returns****(a) IN GENERAL.— Subsection (e) of section 6652 of the Internal Revenue Code of 1986 is amended—**(1) by striking "\$25" and inserting "\$250"; and**(2) by striking "\$15,000" and inserting "\$150,000".**(b) ANNUAL REGISTRATION STATEMENT AND NOTIFICATION OF CHANGES.— Subsection (d) of section 6652 of the Internal Revenue Code of 1986 is amended—**(1) by striking "\$1" both places it appears in paragraphs (1) and (2) and inserting "\$10";**(2) by striking "\$5,000" in paragraph (1) and inserting "\$50,000"; and**(3) by striking "\$1,000" in paragraph (2) and inserting "\$10,000".**(c) FAILURE TO PROVIDE NOTICE.— Subsection (h) of section 6652 of the Internal Revenue Code of 1986 is amended—**(1) by striking "\$10" and inserting "\$100"; and**(2) by striking "\$5,000" and inserting "\$50,000".**(d) EFFECTIVE DATE.— The amendments made by this section shall apply to returns, statements, and notifications required to be filed, and notices required to be provided, after December 31, 2019.*

Sec. 12. Increase information sharing to administer excise taxes

(a) IN GENERAL.—

Section 6103(o) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(3) TAXES IMPOSED BY SECTION 4481.— Returns and return information with respect to taxes imposed by section 4481 shall be open to inspection by or disclosure to officers and employees of United States Customs and Border Protection of the Department of Homeland Security whose official duties require such inspection or disclosure for purposes of administering such section."

(b) CONFORMING AMENDMENTS.— Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986 is amended by striking "or (o)(1)(A)" each place it appears and inserting ", (o)(1)(A), or (o)(3)".

