No. 23-1209

In the Supreme Court of the United States

M & K EMPLOYEE SOLUTIONS, LLC, ET AL., PETITIONERS

v.

TRUSTEES OF THE IAM NATIONAL PENSION FUND

On Writ Of Certiorari
To The United States Court Of Appeals
For The District Of Columbia Circuit

BRIEF FOR THE PETITIONERS

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QUESTION PRESENTED

Whether 29 U.S.C. 1391's instruction to compute withdrawal liability "as of the end of the plan year" requires the plan to base the computation on the actuarial assumptions most recently adopted before the end of the year, or allows the plan to use different actuarial assumptions that were adopted after, but based on information available as of, the end of the year.

PARTIES TO THE PROCEEDING

Petitioners M & K Employee Solutions, LLC, Ohio Magnetics, Inc., Phillips Liquidating Trust, and Toyota Logistics Services, Inc. were defendants in the district court and appellants in the court of appeals.

Respondents Trustees of the IAM National Pension Fund were plaintiffs in the district court and appellees in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

M&K Employee Solutions, LLC, is an Illinois Limited Liability Company wholly owned by individuals Chad and Jodi Boucher. No publicly held corporation owns 10% or more of M&K Employee Solutions, LLC.

Ohio Magnetics, Inc. is a wholly owned subsidiary of Peerless-Winsmith, Inc. Peerless Winsmith, Inc. is a wholly owned subsidiary of HBD Industries, Inc. No publicly held corporation owns 10% or more of the stock of HBD Industries, Inc.

Phillips Liquidating Trust, as successor in interest to the Phillips Corporation, d/b/a Equipco, certifies that to the best of counsel's knowledge and belief, there are no parents, subsidiaries and/or affiliates of Phillips Liquidating Trust, as successor in interest to the Phillips Corporation, d/b/a Equipco, that have issued shares or debt securities to the public.

Toyota Logistics Services, Inc. is a wholly owned subsidiary of Toyota Motor Sales, U.S.A., Inc. Toyota Motor Sales, U.S.A., Inc. is a wholly owned subsidiary of Toyota Motor North America, Inc. Toyota Motor North America, Inc. is a wholly owned subsidiary of

Toyota Motor Corporation, which is a publicly traded corporation. No publicly held corporation owns 10% or more of the stock of Toyota Motor Corporation.

TABLE OF CONTENTS

TABLE OF CONTENTS—continued

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—continued

Page(s)

TABLE OF AUTHORITIES—continued

Page(s)

TABLE OF AUTHORITIES—continued

TABLE OF AUTHORITIES—continued

Page(s)

TABLE OF AUTHORITIES—continued

Page(s)

REGULATIONS

TABLE OF AUTHORITIES—continued

Page(s)

INTRODUCTION

Federal law regulates pension plans in meticulous detail. This case turns on one statutory detail that can have a profound effect on the computation of "withdrawal liability." When an employer stops participating in—or "withdraws" from—a pension plan funded by multiple employers, it is liable for its share of any plan underfunding. The statute offers four methods to compute this withdrawal liability, and each follows the same timing rule: liability is based on the amount of underfunding, or "unfunded vested benefits," "as of the end of the plan year preceding the plan year in which the employer withdraws." 29 U.S.C. 1391(b)(2)(E)(i), (c)(2)(C)(i), (c)(3)(A), (c)(4)(A). So, when the plan year matches the calendar year, liability is based on "the underfunding as calculated on December 31" *before* the withdrawal. *Milwaukee Brewery Workers' Pension Plan* v. *Joseph Schlitz Brewing Co.*, 513 U.S. 414, 418 (1995).

The dispute here is over what it means to calculate unfunded vested benefits "as of" the prior December 31. By definition, "unfunded vested benefits" are the difference in value between the benefits the plan owes and the plan's assets. 29 U.S.C. 1393(c). Because the benefits are pension payments that will be made in the future, during employees' retirement, one cannot determine their value on a given date by simply checking an account statement. Their value is a complex function of plan terms, employee demographics, and assumptions about the plan's anticipated experience, including how much the future payments are worth in today's dollars. The assumptions are especially important, as this case illustrates.

Petitioners withdrew from respondents' plan in 2018. The valuation date for all of them was December 31, 2017. Before that date, the plan's actuary had used one set of assumptions to value the plan's underfunding. The actuary made no changes in those assumptions by December 31, 2017. But on January 24, 2018, the actuary and plan trustees met and decided to adopt a different set of assumptions, which attributed a much higher present value to the plan's future benefit obligations. That decision massively increased the plan's unfunded vested benefits. Just a few months before, the prior assumptions had shown under $500 million in unfunded vested benefits. The new assumptions increased the amount to over $3 billion. The plan computed petitioners' withdrawal liability using the new assumptions and higher amount of underfunding. In doing so, the plan tripled the amount petitioners would have owed using the assumptions that the actuary deemed appropriate shortly before December 31, 2017 and did not replace until weeks later.

The court of appeals erroneously held that using the new assumptions complied with the statute. That holding subordinated the carefully worded text of 29 U.S.C. 1391 to the court's understanding of the statute's general purpose—protecting plans. By pegging withdrawal liability to unfunded vested benefits "as of" the December 31 valuation date, Congress instructed plans to treat the underfunding as frozen on that date. And by defining "unfunded vested benefits" in terms of the present value of future benefits, Congress baked actuarial assumptions into the definition of the underfunding that is frozen. Using assumptions that have been changed after December 31 changes the underfunding and thus violates Section 1391's timing rule. As calculated on December 31, the plan's unfunded vested benefits were nowhere close to $3 billion. They increased so high only after the January 24 meeting between the actuary and trustees.

The court of appeals tried to give meaning to the statute's timing requirement through a novel distinction. The court ruled that plans may calculate withdrawal liability using assumptions adopted in the new year as long as the actuary, in adopting those assumptions, does not consider information that was unavailable at the end of the prior year. But nothing in the statutory text justifies drawing such a line. The statute does not say to base assumptions on "information available" as of December 31. It says to base liability on "unfunded vested benefits" as of December 31. To do that, one cannot use actuarial assumptions that the plan's actuary did not accept on December 31. And besides being atextual, the court's rule is impractical. Determining what information was "available" on a particular historical date is difficult and costly. Determining what information an actuary subjectively thought about is even more so. There is no reason to think Congress designed withdrawal liability to depend on such variables.

There is ample reason to think, though, that Congress wrote the statute to prevent plans and actuaries from choosing crucial assumptions after the valuation date. For employers, switching employee retirement benefits is an important decision with large financial ramifications. Thanks to the statute's disclosure requirements, employers contemplating such decisions have much information at their disposal and often have a good idea of what their withdrawal liability would be. But under respondents' view of the statute, such information is worthless. Even if an employer knows what the actuary's assumptions were on the valuation date and relies on that knowledge in deciding to withdraw, respondents believe that the plan may assess a massively higher withdrawal charge based on assumptions that the actuary adopts after the valuation date—and even after the withdrawal itself. If that view prevails, plans will easily be able to orchestrate such changes and blindside employers with unforeseen liabilities. Plans could, for example, replace an incumbent actuary with an actuary known for selecting assumptions that increase withdrawal liability. That is not the regime Congress created. Congress protected employers from retroactive adjustments to plan underfunding, and the court of appeals erred in failing to enforce that protection.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 92 F.4th 316. In *M & K Employee Solutions*, the opinion of the district court (Pet. App. 18a-72a) is not published in the Federal Supplement but is available at 2022 WL 4534998. In *Ohio Magnetics*, the opinion of the district court (Pet. App. 73a-119a) is reported at 656 F. Supp. 3d 112.

JURISDICTION

The judgment of the court of appeals was entered on February 9, 2024. The petition for a writ of certiorari was filed on May 9, 2024, and granted on June 30, 2025, and the order granting the petition was amended on July 3, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this brief. App., *infra*, 1a-20a.

STATEMENT

A. Statutory background

1. Congress passed the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq*., "following almost a decade of studying the Nation's private pension plans." *Nachman Corp.* v. *PBGC*, 446 U.S. 359, 361 (1980). The result was a set of "elaborate provisions," which Congress weaved into a "comprehensive and reticulated statute." *Massachusetts* v. *Morash*, 490 U.S. 107, 113 (1989) (citation omitted). Among other things, pension plans are subject to "a variety of substantive requirements" and "uniform procedural standards concerning reporting, disclosure, and fiduciary responsibility." *Metro. Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 732 (1985).

ERISA governs pension plans regardless of whether they provide retirement benefits for employees of a single employer or employees of multiple employers. See 29 U.S.C. 1002(2), (37). A multiemployer pension plan characteristically arises through collective bargaining agreements between the employers and a union. 29 U.S.C. 1002(37)(A); see *Concrete Pipe & Prods. of Cal., Inc.* v. *Constr. Laborers Pension Tr.*

for S. Cal., 508 U.S. 602, 605 (1993). The employers' contributions "are pooled in a general fund available to pay any benefit obligation of the plan." *Concrete Pipe*, 508 U.S. at 605. Typically, a participating "employee obtains a vested right to secure benefits upon retirement after accruing a certain length of service for participating employers." *Id.* at 606.

2. ERISA has always required multiemployer pension plans to retain and regularly consult with actuaries. Actuaries help promote the security and longevity of these plans by helping meet the statute's reporting and funding requirements.

Reporting. Every ERISA plan must file an "annual report" with the Secretary of Labor and furnish the same report to participants. 29 U.S.C. 1023(a)(1)(A); see also 29 U.S.C. 1024, 1365. These reporting requirements help participants and the government monitor plans' operations. *Fort Halifax Packing Co.* v. *Coyne*, 482 U.S. 1, 15 (1987). The annual reports must include detailed information, which for defined benefit pension plans includes "an actuarial statement and opinion." 29 U.S.C. 1023(a)(1)(B)(ii), (d). That requires the plan to "engage * * * an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement." 29 U.S.C. 1023(a)(4)(A). When ERISA was enacted, the actuary had to perform an actuarial valuation at least once every three years, and the valuation had to include "[t]he present value of all of the plan's liabilities for nonforfeitable pension benefits." 29 U.S.C. 1023(d)(6) (1976). If the actuary deemed it necessary, the actuary could decide to perform a "more frequent valuation." 29 U.S.C. 1023(d) (1976).

In 1980, Congress gave the Pension Benefit Guaranty Corporation (PBGC) the authority, in its discretion, to require annual reports by a multiemployer plan's enrolled actuary of the value of the plan's assets. Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, § 106, 94 Stat. 1208, 1266-1267 (amending 29 U.S.C. 1365). In 1986, Congress amended 29 U.S.C. 1023(d)(6) to require plans to report information about the present value of benefits in accordance with PBGC regulations. Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 11016(b), 100 Stat. 82, 272-273 (1986). Annual reporting requirements include filing the U.S. Department of Labor's Form 5500. 29 C.F.R. 4065.3(b). And, for multiemployer pension plans, Schedule MB of the Form 5500 includes a variety of detailed information about the values of the plan's assets and liabilities. Over time, Congress and regulators have frequently revisited and revised the details for reporting plan liabilities.

Funding. Elsewhere, ERISA and the Internal Revenue Code each require covered pension plans to meet a statutorily prescribed "minimum funding standard." 29 U.S.C. 1082(a)(1); see also 26 U.S.C. 412(a)(1). This requirement helps "guarantee that retirement funds are there when a plan's participants and beneficiaries expect them." *Boggs* v. *Boggs*, 520 U.S. 833, 852 (1997). The funding provisions also obligate plans to regularly value the plan's liabilities. As originally enacted, this valuation was required at least once every three years. 29 U.S.C. 1082(c)(9) (1976); 26 U.S.C. 412(c)(9) (1976). In 1989, Congress increased the frequency of the required valuation of plan liabilities to once per year. Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 7881(a)(6), 103 Stat. 2106, 2436. Since then, Congress has revamped the funding rules in numerous ways, but ERISA and the Internal Revenue Code generally still require multiemployer pension plans to consider their funding status, and thus the value of their liabilities, every year. See 29 U.S.C. 1084(c)(7)(A); 26 U.S.C. 431(c)(7)(A).

3. As originally enacted, ERISA inadvertently threatened the long-term viability of multiemployer pension plans. The PBGC raised concerns in 1978 that employers would have a strong incentive to withdraw from a multiemployer pension plan if it appeared to be heading toward insolvency. *PBGC* v. *R.A. Gray & Co.*, 467 U.S. 717, 722 (1984). Initially, ERISA did not generally require withdrawing employers to make a payment to alleviate plan underfunding; such payments were required only if the plan became insolvent within five years of the withdrawal. *Milwaukee Brewery Workers' Pension Plan* v. *Joseph Schlitz Brewing Co.*, 513 U.S. 414, 416 (1995). "[T]his scheme encouraged an employer to withdraw from a financially shaky plan and risk paying its share if the plan later became insolvent, rather than to remain and (if others withdrew) risk having to bear alone the entire cost of keeping the shaky plan afloat." *Id.* at 416-417. "Consequently, a plan's financial troubles could trigger a stampede for the exit doors, thereby ensuring the plan's demise." *Id.* at 417.

Congress addressed this issue and others in the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), Pub. L. No. 96-364, 94 Stat. 1208. This statute amended ERISA to require "a withdrawing employer to fund its share of the plan obligations incurred during its association with the plan." *Connolly* v. *PBGC*, 475 U.S. 211, 225 (1986). This "withdrawal liability" "is the employer's proportionate share of the plan's 'unfunded vested benefits,' calculated as the difference between the present value of vested benefits and the current value of the plan's assets." *R.A. Gray*, 467 U.S. at 725 (citing 29 U.S.C. 1381, 1391).

The MPPAA "set forth a detailed set of rules for determining" withdrawal liability. *Milwaukee Brewery*, 513 U.S. at 417. Those rules are found in 29 U.S.C. 1391, which "explains (a) how to determine a plan's total underfunding; and (b) how to determine an employer's fair share (based primarily upon the comparative number of that employer's covered workers in each earlier year and the related level of that employer's contributions)." *Milwaukee Brewery*, 513 U.S. at 417.

Section 1391 sets forth four methods that plans may use to determine the employer's share of the plan's underfunding or "unfunded vested benefits." That amount, in turn, is the primary component of the employer's withdrawal liability. See 29 U.S.C. 1381(b)(1). For each of Section 1391's four methods, the statutory text establishes the same timing rule for calculating the plan's unfunded vested benefits. They are to be calculated "as of the end of the plan year preceding the plan year in which the employer withdraws." 29 U.S.C. 1391(b)(2)(E)(i), (c)(2)(C)(i), (c)(3)(A), (c)(4)(A). Under this timing ruling, a plan must "make the withdrawal charge calculation, not as of the day of withdrawal, but *as of the last day of the plan year preceding the year during which the employer withdrew*." *Milwaukee Brewery*, 513 U.S. at 417-418. This Court has referred to "the last day of the year preceding withdrawal" as the "valuation date." *Id.* at 428. It is also sometimes called the "measurement date."

B. Factual and procedural background

1. Petitioners are four employers that withdrew from the IAM National Pension Fund—the multiemployer pension plan for which respondents are trustees—on various dates in 2018. Pet. App. 2a-3a, 10a n.9. The IAM National Pension Fund provides benefits to employees covered by collective bargaining agreements with the International Association of Machinists and Aerospace Workers, AFL-CIO. *Id.* at 6a. Because the plan year matches the calendar year, *id.* at 6a-7a, the valuation date for petitioners' withdrawal liability was December 31, 2017, *id.* at 9a.

In November 2017, less than two months before petitioners' valuation date, the plan's actuary from the firm Cheiron issued a plan valuation that used a 7.5% interest-rate assumption or "discount rate" to value the plan's unfunded vested benefits at the end of 2016 as $448,099,164. Pet. App. 7a; 23-7028 C.A. App. 213, 216. When the plan assessed petitioners' withdrawal liability, however, it did not use the 7.5% rate that its actuary had deemed appropriate so shortly before the valuation date. At a January 24, 2018 meeting with their actuary, respondents approved changes in several actuarial assumptions for computing withdrawal liability. Pet. App. 7a-8a; J.A.

182-185. First, the interest-rate assumption was lowered from 7.5% to 6.5%. Pet. App. 7a-8a; J.A. 184. In addition, a new expense-load assumption was added to begin charging withdrawing employers for future plan administrative expenses. Pet. App. 8a; J.A. 184.

The plan used these new assumptions to calculate the plan's unfunded vested benefits and petitioners' withdrawal liability. Their effect was dramatic. According to the plan's calculations, the 2017 assumptions (7.5% interest rate, no expense load) yield unfunded vested benefits as of December 31, 2017 equal to $934,736,763. J.A. 314-315, 318. But when the plan applies the later assumptions (6.5% interest rate, 3.5% expense load), the unfunded vested benefits jump to $3,043,369,928. J.A. 148-149, 195, 198. And petitioners' withdrawal liability more than triples because of the change in assumptions. One petitioner, for example, would have paid $1,797,781 under the 2017 assumptions, but was charged an amount over three times higher—$6,158,482—under the later assumptions. J.A. 273-276, 314-318.[1]

It is undisputed that the less favorable assumptions were not adopted until after petitioners' valuation date. Respondents admitted below that "[a]s of December 31, 2017, neither the Fund nor its actuary,

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[1] Although the record does not contain revised calculations of the other three petitioners' withdrawal liability using the 2017 assumptions, one can determine that their withdrawal liability also more than tripled by replacing the unfunded vested benefit amounts in their original liability calculations with the revised figures that respondents provided to the first petitioner. Compare J.A. 314-315, with J.A. 194-195, 221-222, 242-243.

Cheiron, had changed the 7.5% discount rate assumption" used to calculate unfunded vested benefits in the November 2017 valuation. J.A. 248; see also J.A. 337. Indeed, the actuary's PowerPoint presentation for the January 24, 2018 trustees' meeting states in multiple places that the plan's "Current Policy" was to use a 7.5% interest rate. J.A. 168, 176. The presentation thus confirmed that the 7.5% rate remained in effect on the December 31, 2017 valuation date and up through January 24, 2018. Similarly, respondents admitted below that "[a]s of December 31, 2017, the Fund did not use an expense load assumption to calculate withdrawal liability." J.A. 248.

2. Petitioners followed the MPPAA's arbitration procedures to challenge their withdrawal-liability assessments. See 29 U.S.C. 1401(a). Under those procedures, four different arbitrators determined that the plan had violated the statute by calculating petitioners' withdrawal liability using actuarial assumptions adopted after the valuation date. Pet. App. 9a-11a & n.9. These seasoned arbitrators justified this conclusion, in part, based on the holding of *National Retirement Fund* v. *Metz Culinary Management, Inc.*, 946 F.3d 146 (2d Cir. 2020), which held that plans must calculate withdrawal liability using the actuarial assumptions their actuaries endorsed as of the valuation date. Pet. App. 11a-12a. So far as petitioners are aware, every MPPAA arbitrator to address the question, including the arbitrator in *Metz*, has reached the same conclusion. J.A. 33, 49, 71, 112, 136, 293.

3. Respondents challenged the four arbitral awards by filing four actions in federal district court.

See 29 U.S.C. 1401(b). Three of the actions were consolidated before one district court judge, while the fourth proceeded separately before a different judge in the same district. See Pet. App. 9a-10a & n.9. Both judges vacated the arbitral awards for similar reasons. *Id.* at 19a, 75a.

The district courts ruled that the four arbitrators had erred in following the *Metz* decision. Pet. App. 58a-64a, 106a-115a. In the courts' view, actuaries may use actuarial assumptions adopted after the valuation date, so long as the new assumptions are adopted based on "information available" on the valuation date. *Id.* at 92a & n.3; see also *id.* at 43a.

4. The court of appeals affirmed, largely adopting the district courts' reasoning. Pet. App. 3a, 12a-15a. It agreed that the arbitrators all erred in concluding that a plan must calculate withdrawal liability using "the assumptions and methods in effect" on the valuation date. *Id.* at 12a. Like the district courts, the court of appeals construed the statutory provisions as requiring actuaries to base their assumptions "on the body of knowledge available" on the valuation date. *Id.* at 13a (citation omitted).

The court of appeals agreed with the district courts that the *Metz* decision was unpersuasive. Pet. App. 14a. The main problem, according to the court of appeals, was that "*Metz*'s reasoning is counter to the text of the MPPAA, which protects [multiemployer pension plans] and their beneficiaries." *Ibid.* (citing 29 U.S.C. 1001a(c)).

SUMMARY OF ARGUMENT

I. The statutory text and structure establish that plans may not compute withdrawal liability using assumptions adopted after the prior plan year.

A. The key language bases withdrawal liability on the amount of underfunding, or "unfunded vested benefits," "as of the end of the plan year preceding the plan year in which the employer withdraws." 29 U.S.C. 1391(b)(2)(E)(i), (c)(2)(C)(i), (c)(3)(A), (c)(4)(A). Liability thus turns on the "underfunding as calculated on" the valuation date. *Milwaukee Brewery Workers' Pension Plan* v. *Joseph Schlitz Brewing Co.*, 513 U.S. 414, 418 (1995). And the valuation date Congress chose—the final day of the year before the year of the withdrawal—is an important feature of the statute. Congress could have tied liability to the actual date of each withdrawal, or to a single date after withdrawal—such as the last day of the withdrawal year. In fact, Congress considered the latter option. *Id.* at 428-430. But it chose a date *before* withdrawal.

To give effect to Congress's choice, plans must use assumptions their actuary accepted before the end of the prior year. This conclusion follows from what it means to calculate unfunded vested benefits "as of" a particular date. By definition, "unfunded vested benefits" are the difference in value between the plan's future benefit payments and its current assets. 29 U.S.C. 1393(c). The value of future benefits hinges on assumptions about the future, like the time value of money. When such assumptions change, the value of the future benefits changes as well. Because Section 1391 freezes the plan's unfunded vested benefits on the valuation date, a change in actuarial assumptions after the valuation date—just like any other change in unfunded vested benefits after that date—cannot lawfully affect withdrawal liability.

B. The statutory context confirms this interpretation. Congress wrote a separate provision prohibiting plans from retroactively changing certain rules for assessing withdrawal liability. 29 U.S.C. 1394(a). Although that provision does not govern the underfunding computation—Section 1391 does—it reinforces Congress's decision to prevent plans from retroactively saddling employers with higher liability. Section 1394(a) would lose its value if employers were vulnerable to retroactive changes in actuarial assumptions, which can be far more consequential, after they announce a decision to withdraw. In addition, Congress guaranteed employers a variety of information to make informed decisions about whether and when to withdraw from a plan. This information would also lose its value under respondents' view.

II. The contrary arguments of respondents and the court of appeals are unpersuasive.

A. The court of appeals distinguished lawful from unlawful assumptions based on whether the actuary considered any information that was unavailable on the valuation date. This distinction fails to give full effect to Section 1391 and lacks any basis in the statutory text. Section 1391 ties the "unfunded vested benefits" to the valuation date, not the "information" considered. A plan's amount of unfunded vested benefits as of a particular date turns on its actuary's actual assumptions on that date, regardless of the information he could have considered had he decided to adopt new assumptions on that date. Nor would it have made sense for Congress to draw this distinction. It would create serious practical problems by embroiling plans and employers in thorny disputes over the availability of certain information on a specific valuation date and the actuary's subjective state of mind.

B. The criticisms leveled against petitioners' view do not survive scrutiny. Respondents accuse petitioners of disregarding 29 U.S.C. 1393(a)(1)'s requirement that assumptions reflect the actuary's best estimate of anticipated plan experience and forcing plans to calculate liability based on "stale" assumptions. Petitioners do no such thing. Sections 1391 and 1393 together require using the estimates that the plan's actuary thought best on the valuation date, and petitioners' view gives effect to that requirement. And contrary to respondents' suggestion, there is no genuine risk of stale assumptions. Since before the MPPAA was enacted, federal law has required actuaries to regularly consider their assumptions and make appropriate changes.

That leaves the D.C. Circuit's objection that petitioners' view fails to promote the statute's general purpose of protecting multiemployer pension plans. Like most statutes, however, the MPPAA was the product of compromise and did not pursue this general purpose to the exclusion of all others. *Milwaukee Brewery*, 513 U.S. at 425-426. Congress took care to protect employers from unwarranted retroactive liabilities if they chose to withdraw, knowing that otherwise employers might never sign up for one of these plans in the first place. The court of appeals erred in sacrificing one of these key protections here, and its judgment should be reversed.

ARGUMENT

I. The statute requires using actuarial assumptions adopted before the end of the prior plan year.

Since 1980, ERISA has charged "withdrawal liability" when an employer withdraws from an underfunded multiemployer pension plan. This charge is meant to be "a fixed and certain debt." *Concrete Pipe & Prods. of Cal., Inc.* v. *Constr. Laborers Pension Tr.*, 508 U.S. 602, 609 (1993) (quoting *PBGC* v. *R.A. Gray & Co.*, 467 U.S. 717, 725 (1984)). The statute therefore provides a "detailed set of rules for determining" the exact amount of the charge. *Milwaukee Brewery Workers' Pension Plan* v. *Joseph Schlitz Brewing Co.*, 513 U.S. 414, 417 (1995). Those detailed rules are principally found in 29 U.S.C. 1391, the statute's "lengthy charge-determination section." *Milwaukee Brewery*, 513 U.S. at 417.

As always, "the text of the statute" is the place to start. *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 74 (2023) (citation omitted). The Court "enforce[s] plain and unambiguous statutory language in ERISA, as in any statute, according to its terms." *Intel Corp. Inv. Pol'y Comm.* v. *Sulyma*, 589 U.S. 178, 184 (2020) (citation and quotation marks omitted).

Here, the key language in Section 1391 requires withdrawal liability to be calculated using actuarial assumptions adopted before the last day of the plan year preceding the year of withdrawal. And, by the same token, this language forbids using different actuarial assumptions adopted after the end of the prior plan year, as respondents did here. The statutory context buttresses the plain language of Section 1391, and respondents' contrary arguments lack merit.

A. The text of Section 1391 adopts a bright-line timing rule for withdrawal liability.

1. Section 1391 freezes a plan's unfunded vested benefits on the valuation date.

By definition, withdrawal liability turns on the employer's share of the plan's unfunded vested benefits. 29 U.S.C. 1381(b)(1), 1391(a). In broad strokes, then, the computation has two parts, each directly addressed by Section 1391. That provision "explains (a) how to determine a plan's total underfunding; and (b) how to determine an employer's fair share." *Milwaukee Brewery*, 513 U.S. at 417.

Section 1391 authorizes four methods for computing withdrawal liability. Fortunately, the intricacies that distinguish these four methods from one another are not pertinent to the question before this Court. This case turns on a common feature of all four methods, relating to the first part of the computation—determining the plan's total underfunding. All four methods rely on the amount of "unfunded vested benefits" "as of the end of the plan year preceding the plan year in which the employer withdraws." 29 U.S.C. 1391(b)(2)(E)(i), (c)(2)(C)(i), (c)(3)(A), (c)(4)(A).

Consider as an illustration the simplest of the four, which is called the "rolling-5" method. It makes a withdrawing employer "liable for a share of the plan's unfunded vested benefits as of the end of the plan year preceding the employer's withdrawal (less outstanding claims for withdrawal liability that can reasonably be expected to be collected), allocated in proportion to the employer's share of total plan contributions for the last five plan years ending before the withdrawal." Methods for Computing Withdrawal Liability; Reallocation Liability Upon Mass Withdrawal; Pension Protection Act of 2006, 73 Fed. Reg. 79,628, 79,629 (Dec. 30, 2008). The first input for this computation, by the statute's plain terms, is "the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws," 29 U.S.C. 1391(c)(3)(A)—in other words, the unfunded vested benefits as of the valuation date. After that amount is determined, it is multiplied by a prescribed fraction to yield the employer's share of the underfunding. 29 U.S.C. 1391(c)(3)(B).

The other three methods similarly rely on the unfunded vested benefits as of the valuation date, although the statutory language varies to reflect the specifics of each method. For the method used by respondents' plan, called the "presumptive" method, withdrawal liability derives from the sum of year-by-year underfunding pools, which reflect the change in plan underfunding from one year to the next, for each of the twenty years "before the plan year in which the withdrawal of the employer occurs." 29 U.S.C. 1391(b)(2)(A)(ii); *Chi. Truck Drivers, Helpers & Warehouse Workers Union (Indep.) Pension Fund* v. *CPC Logistics, Inc.*, 698 F.3d 346, 348 (7th Cir. 2012). The older annual underfunding pools are discounted (at a rate of five percent per year) so that shortfalls that arose longer ago have less effect on the final number. 29 U.S.C. 1391(b)(2)(C); see *Chi. Truck Drivers*, 698

F.3d at 348. Because this method relies on year-by-year changes in underfunding, the statutory language is phrased in terms of "change[s] in unfunded vested benefits" and refers to the "change (as of the end of the plan year preceding the plan year in which the employer withdraws)." 29 U.S.C. 1391(b)(2)(E). But the upshot is the same: liability turns on unfunded vested benefits as of the end of the prior plan year. The remaining two methods (often called the "modified presumptive" and "direct attribution" methods) likewise rely on the "unfunded vested benefits" as of the end of the prior year. 29 U.S.C. 1391(c)(2)(C)(i)(I), (c)(4)(A)(i).

This Court has already recognized the timing rule established by these provisions. Plans "make the withdrawal charge calculation * * * as of the last day of the plan year preceding the year during which the employer withdrew." *Milwaukee Brewery*, 513 U.S. at 417-418 (emphasis omitted). So, for instance, when a plan's bookkeeping year coincides with the calendar year, "the withdrawal charge for an employer withdrawing from an underfunded plan in 1981 equals that employer's fair share of the underfunding as calculated on December 31, 1980, whether the employer withdrew the next day (January 1, 1981) or a year later (December 31, 1981)." *Id.* at 418. Here, each petitioner's withdrawal liability turns on the plan underfunding as calculated on December 31, 2017, even though petitioners withdrew on four different days during the 2018 calendar year.

Congress's selection of this valuation date was deliberate. The statute easily could have pegged liability to the actual date of the withdrawal. *Milwaukee Brewery*, 513 U.S. at 418. Or it could have chosen the last day of the year in which the withdrawal occurs, rather than the *prior* year. Congress indeed considered multiple bills that would have used that later date, "at the end of the withdrawal year." *Id.* at 429. But Congress rejected these alternatives. It chose to make the valuation date "the end of the year preceding withdrawal." *Id.* at 430.

As this Court noted in *Milwaukee Brewery*, tying withdrawal liability to a single valuation date rather than the date of withdrawal promotes administrative convenience. It eliminates the need to "generate new figures tied to the date of actual withdrawal" to compute plan underfunding for every individual employer who withdrew in the same year. *Milwaukee Brewery*, 513 U.S. at 418.

But administrative convenience cannot explain Congress's *choice* of the single valuation date. The same administrative convenience would have resulted had Congress accepted the proposals to make the valuation date the end of the plan year in which the withdrawal occurs. Under that regime, too, there would be no need to generate individualized underfunding figures for every withdrawing employer. A single set of figures would still control. It would have just been a set of figures based on underfunding as calculated after—rather than before—the withdrawal. Congress instead chose to protect withdrawing employers from changes in unfunded vested benefits after they announce a decision to withdraw.

The plain language of the statute proves the point. By requiring unfunded vested benefits to be calculated "as of" a pre-withdrawal valuation date, 29 U.S.C. 1391, Congress ensured that the unfunded vested benefits would be frozen on that date and unaffected by later changes, including changes after withdrawal. Under the ordinary meaning of the phrase "as of," plans must compute the unfunded vested benefits "[a]s things stood on [that] date." *Oxford English Dictionary* (online ed. June 2025). Dictionaries around the time of the MPPAA's enactment similarly defined "as of" to mean "at or on (a specific time or date)." *Webster's Third New International Dictionary of the English Language* 129 (1966); see also *American Heritage Dictionary* 133 (2d coll. ed. 1982) (defining "as of" as "[o]n; at"). Thus, changes in unfunded vested benefits after the valuation date may not factor into withdrawal liability. See *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 179-180 (2003) (Scalia, J., dissenting) (interpreting a statute that based a calculation on "assignments as of October 1, 1993" to exclude assignments initially made after that date (citation omitted)).[2]

In sum, Section 1391 sets forth a clear timing rule. Plans must base the withdrawal charge on the amount of underfunding on the valuation date, based on how things stood on that date, not some later date.

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[2] The majority in *Peabody Coal* ruled that the statutory computation there could lawfully include later initial assignments—on the belief that Congress "clearly did not contemplate" that some initial assignments would not be made by the statute's October 1, 1993 deadline. 537 U.S. at 171. Here, in contrast, Congress considered multiple proposed valuation dates, including a date after the employer's withdrawal. *Milwaukee Brewery*, 513 U.S. at 429. And as discussed in the next section, Congress knew that plans would regularly value their underfunding before any given valuation date. For this statute, then, there is no argument for departing from the ordinary meaning of "as of."

2. For unfunded vested benefits to be frozen, the actuarial assumptions necessary to calculate them must be frozen as well.

To implement Section 1391's timing rule and ensure unfunded vested benefits do not change after the valuation date, the actuarial assumptions used to calculate unfunded vested benefits must be adopted by the valuation date. Plans may not retroactively apply assumptions adopted later. Otherwise, even if all other variables from the valuation date were held constant, the amount of unfunded vested benefits would differ from "the underfunding as calculated on December 31," *Milwaukee Brewery*, 513 U.S. at 418, based on events that occurred afterward.

This conclusion follows from what it means, according to the statute's own definition, to calculate unfunded vested benefits. The statute says that "unfunded vested benefits" are "an amount equal to—(A) the value of nonforfeitable benefits under the plan, less (B) the value of the assets of the plan." 29 U.S.C. 1393(c). In other words, unfunded vested benefits are "the difference between the present value of vested benefits and the current value of the plan's assets." *R.A. Gray*, 467 U.S. at 725. So, to know the unfunded vested benefits as calculated on the valuation date, one must know the value of vested benefits and the value of plan assets on that date.

Calculating the value of vested pension benefits on a particular date is very complicated. Plans pay pension benefits over long stretches of time. For instance, a pension benefit in the form of a single-life annuity beginning at age 65 might result in a monthly payment of a specific amount (*e.g.*, $4,000 per month) for the duration of the pensioner's life, perhaps decades into a retirement that may not even begin for several decades. Valuing each of those future $4,000 payments requires accounting for the time value of money. Cf. *Conkright* v. *Frommert*, 559 U.S. 506, 519 (2010). Just as "[a] dollar today is worth more than a dollar tomorrow," *Atl. Mut. Ins. Co.* v. *Commissioner*, 523 U.S. 382, 384 (1998) (citation omitted), a $4,000 payment in twenty years is worth less than $4,000 today. Someone who had $4,000 today could invest it "to start earning interest immediately" and have much more than $4,000 in twenty years. *Till* v. *SCS Credit Corp.*, 541 U.S. 465, 487 (2004) (Thomas, J., concurring). Plus, some future pension benefits will never become due at all. If an individual retiree is owed a fixed monthly payment for life, as with a single-life annuity, the payments end when the retiree passes away.

For these reasons, it is a fundamental principle of pensions that the value of pension benefits on a particular date—the first ingredient of the statutory concept of "unfunded vested benefits," 29 U.S.C. 1393(c)—turns on the actuarial assumptions used to perform that valuation. More precisely, "[t]he actuarial present value as of a specified date of any given benefit amount payable thereafter is equal to the benefit amount (1) multiplied by the probability of occurrence of the event on which the benefit payment is conditioned and (2) discounted at a stipulated rate or rates of interest." Dan M. McGill et al., *Fundamentals of Private Pensions* 599 (8th ed. 2005) (McGill). The assumptions needed to value a plan's future benefit liabilities include "assumptions about how many employees will vest their benefits, how much they will receive in benefits, and how long they will live," and, given the time value of money, "assumptions about the income the [plan's] assets will generate." *Sofco Erectors, Inc.* v. *Trs. of Ohio Operating Eng'rs Pension Fund*, 15 F.4th 407, 418-419 (6th Cir. 2021). If the actuary assumes that the fund's investments will have a "lower long-term growth rate, the fund will need more assets now to pay those liabilities in the future." *Id.* at 419. That is why the actuary's "interest-rate assumption is a critical factor in determining the present value of future liabilities." *Ibid.*

Indeed, the interest-rate assumption is often the most important factor. Cf. *Concrete Pipe*, 508 U.S. at 633. Pension plan liabilities "are extremely sensitive to the interest assumption in the valuation formula because of the long time-lapse between the accrual of a benefit credit and its payment." McGill 611-612. In general, decreasing the interest rate by just one percentage point can increase the present cost of the plan's future benefits by 25%. *Id.* at 612; see *Chi. Truck Drivers*, 698 F.3d at 348. That generalization approximates the plan's experience in this case. In November 2017, the plan actuary estimated the present value of vested benefits as of the end of the 2016 plan year at roughly $12.35 billion using a 7.5% interest rate. J.A. 159-160. In its next annual valuation for the 2017 plan year, the actuary used a 6.5% rate and estimated the present value of vested benefits as roughly $14.70 billion. J.A. 161-162. The decrease of one percentage point coincided with an increase in the benefits' present value of roughly $2.35 billion, nearly a 20% increase. And, given the inherent connection between the present value of benefits and overall level of unfunded vested benefits, 29 U.S.C. 1393(c), it is no surprise that the plan's total unfunded vested benefits also saw a huge increase. J.A. 160, 162; see also J.A. 276, 318 (showing differing amounts of unfunded vested benefits for withdrawal-liability purposes under the 2017 and 2018 actuarial assumptions).

As this case illustrates, the value of a plan's future benefit obligations on a particular date—and thus its amount of unfunded vested benefits on that date—depends on the actuarial assumptions on that date. The value of a plan's future liabilities is a complex function of many inputs, including not just facts like the number of retirees and the promises employers made to them, but also the actuary's assumptions about life expectancy, investment performance, and more. Without the actuarial assumptions, the present value of the plan's future obligations would be indeterminate.

ERISA's broader framework ensures that a multiemployer plan will have an actuary who, by the time of any particular valuation date, will have recently considered the assumptions to use to value the plan's liabilities. When Section 1391 was enacted (and even before), the statute's reporting and funding provisions obligated multiemployer plans to retain enrolled actuaries to give valuations of plan liabilities at least once every three years. See pp. 6-8, *supra.* And regardless of whether the actuary was valuing plan liabilities for purposes of withdrawal liability, reporting requirements, or minimum funding, the statute required assumptions that reflected the actuary's "best estimate of anticipated experience under the plan." 29 U.S.C. 1023(a)(4)(B)(ii), 1082(c)(3), 1393(a)(1) (1982). This framework ensured that before the valuation date for a given withdrawal, the actuary would have recently made a professional judgment about what assumptions produce his or her best estimate of the present value of the plan's future benefit obligations.[3]

These points suffice to answer the question presented. By the statute's design, a plan's actuary will have recently formed a best estimate of anticipated plan experience for the relevant actuarial assumptions before the valuation date rolls around. Those actuarial assumptions are indispensable inputs into the valuation of the plan's benefits and thus to the amount of unfunded vested benefits. If the actuary does not reconsider his or her assumptions through a *new* best estimate of anticipated experience before the valuation date is over, the plan may not assess withdrawal liability using actuarial assumptions that differ from the actuary's prior best estimate. To do so would change the plan's unfunded vested benefits based on an event after the valuation date—the actuary's new estimate of anticipated plan experience—when Section 1391 forbids basing withdrawal liability on changes in unfunded vested benefits after that valuation date.

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[3] Over the decades, many ERISA amendments and numerous agency regulations have given plans and actuaries increasingly refined directions on which assumptions to use for specific reporting or funding purposes. The important point here is that in creating the MPPAA's withdrawal-liability rules, Congress would have understood that plan actuaries regularly considered the assumptions necessary to value plan underfunding.

The nature of actuarial assumptions helps drive the point home. Actuarial assumptions turn on an exercise of judgment: the actuary's estimate of future experience. They accordingly bear no resemblance to objective facts about the world. They are completely unlike, for instance, facts about the amount of money in a bank account. Because they are the product of the actuary's mind, they can be observed only by reviewing what the actuary has previously predicted about the plan's anticipated experience. Like any judgment about an uncertain future, they reflect that actuary's individual "approach[]," *Concrete Pipe*, 508 U.S. at 635 (citation omitted), and individual "theories and expectations," *Combs* v. *Classic Coal Corp.*, 931 F.2d 96, 99 (D.C. Cir. 1991). Selecting an actuarial assumption is more art than science. See *Concrete Pipe*, 508 U.S. at 635-636; *Combs*, 931 F.2d at 100. And different actuaries have different views about how to value pension liabilities.

One common debate among actuaries is over whether a withdrawal-liability interest rate should match the interest rate used to value plan liabilities for other purposes or should be lower for some reason. For instance, the Segal Group is an actuarial firm known for its "Segal Blend" approach to the withdrawal-liability interest rate, which blends the plan's valuation rate for funding purposes with the often lower rates that the PBGC publishes for certain annuities that terminated plans must purchase. See *Sofco*, 15 F.4th at 419 & n.1; 29 U.S.C. 1341a(c)(2). Other actuaries, meanwhile, have defended using low rates based on "risk-free" investments, on the theory that the withdrawing employer no longer bears any risk of poor performance by the plan's investments. *United*

Mine Workers of Am. 1974 Pension Plan v. *Energy W. Mining Co.*, 39 F.4th 730, 736 (D.C. Cir. 2022). Still other actuaries have defended using lower withdrawal-liability rates to discourage employers from leaving the plan, while acknowledging that those lower rates make participation in the plan less attractive to new employers. *Ace-Saginaw Paving Co.* v. *Operating Eng'rs Loc. 234 Pension Fund*, — F.4th —, 2025 WL 2238023, at *4-5 (6th Cir. 2025). In this case, respondents' actuary highlighted the same policy tradeoff, explaining that a lower rate would provide "more protection * * * to on-going employers" but would be "less desirable for new employers." J.A. 176.

As this discussion shows, deciding to adopt a new withdrawal-liability interest rate can entail a new judgment about the plan's anticipated experience. But it can also entail a new theory, philosophy, or policy on how the withdrawal-liability interest rate should relate to the funding interest rate. Either way, selecting a new interest rate that differs from the actuary's prior rate changes the plan's unfunded vested benefits. And the timing rule of Section 1391 forbids basing withdrawal liability on any such change that takes place after the valuation date.

B. The statutory context confirms that the assumptions must be adopted before the end of the prior year.

Although the plain language of Sections 1391 and 1393 suffices to resolve the question presented in petitioners' favor, the broader statutory scheme provides further support for that conclusion. It shows that

Congress was concerned about the risk that withdrawing employers would be saddled with unfair and excessive withdrawal charges.

1. To start, Congress explicitly prohibited changing and retroactively applying a withdrawal-liability method or other withdrawal-liability rule after an employer decided to withdraw. 29 U.S.C. 1394(a). Plans may apply such changes only prospectively, to future withdrawals. *Ibid.* Without such a prohibition, remaining employers could pressure the plan to take action to inflate the departing employers' share of the underfunding. See *Joseph Schlitz Brewing Co.* v. *Milwaukee Brewery Workers' Pension Plan*, 3 F.3d 994, 1001 (7th Cir. 1993), aff'd, 513 U.S. 414.

Although this provision targets plan "rule[s]" and "amendment[s]" rather than actuarial assumptions, 29 U.S.C. 1394(a), it shows Congress's concern over trustee decisions that retroactively inflate a withdrawing employer's liability. This concern reinforces the likelihood that Section 1391 similarly constrains retroactive changes in actuarial assumptions. See *Nat'l Ret. Fund* v. *Metz Culinary Mgmt., Inc.*, 946 F.3d 146, 151 (2d Cir. 2020). After all, as discussed above, changes in actuarial assumptions (particularly the interest-rate assumption) can have a dramatic effect on withdrawal liability. In most cases, such changes could be far more consequential for a given employer's liability than the choice between allocation methods. Again, the change in assumptions here more than tripled the withdrawal liability—obligating one petitioner, for example, to pay $6,158,482 rather than $1,797,781. J.A. 266-267, 272-276, 312-318.

Citing *Russello* v. *United States*, 464 U.S. 16, 23 (1983), the government has argued that Congress's failure to enact a similar anti-retroactivity provision for actuarial assumptions indicates that ERISA imposes no such limitation. U.S. Cert. Br. 12. But this argument begs the question because it assumes without proving that Section 1391's direction to base liability on unfunded vested benefits "as of" the valuation date does not preclude retroactivity. For the reasons discussed above, the language of Section 1391 does just that. No additional language was necessary. In contrast, Congress needed separate, additional language precluding retroactive changes in rules and methods because the "as of" requirement of Section 1391 applies only to the calculation of unfunded vested benefits—the then-current value of liabilities and of assets—and it applies to all four withdrawal-liability methods. Section 1391 therefore does not constrain the timing for switching between withdrawal-liability methods or for adopting other withdrawal-liability rules (like the "free look" rule that plans are authorized to adopt by plan amendment, 29 U.S.C. 1390).

And Congress chose different anti-retroactivity rules for the two types of change. For a given withdrawal, methods and rules may not be changed after the withdrawal, while unfunded vested benefits may not be changed after a date guaranteed to arrive before *all* withdrawals that year. The unique rule for unfunded vested benefits ensures that all employers who leave in a single year are assessed liability based on the same amount of total unfunded vested benefits, with no need to generate individualized underfunding figures for each. See *Milwaukee Brewery*, 513 U.S.

418. *Russello* itself teaches that Congress's decision to use different language in Section 1391 to establish a different rule is significant. 464 U.S. at 23. So one cannot properly draw the government's inference that Section 1391 would use Section 1394(a)'s phrasing to prohibit retroactive changes in actuarial assumptions. See, *e.g.*, *Clay* v. *United States*, 537 U.S. 522, 532 (2003) ("The *Russello* presumption—that the presence of a phrase in one provision and its absence in another reveals Congress' design—grows weaker with each difference in the formulation of the provisions under inspection." (citation omitted)).

2. Further contextual support for petitioners' reading comes from the statute's important disclosure provisions. ERISA entitles employers to many types of detailed information that allow them to assess their potential withdrawal liability. This information is critically important when employers want to make well-considered decisions about employee benefits. As noted, multiemployer pension plans result from collective bargaining between employers and unions. See 29 U.S.C. 1002(37)(A). A decision to move from one multiemployer pension plan to an alternative retirement benefit is not made on a whim, and it may implicate a complex package of promises between the employer and union. Thankfully, ERISA gives employers and unions extensive information that permits some predictability about the cost of withdrawing from a plan. These sources of information would lose most, if not all, of their value if actuarial assumptions could be changed after the valuation date and even after the date of withdrawal, as respondents' view entails.

For example, plans must file an annual, publicly accessible report on the state of the plan, which includes information about its level of underfunding. 29 U.S.C. 1023, 1024. For multiemployer plans, the MPPAA included within this annual requirement the plan actuary's statement of "the value of all vested benefits under the plan as of the end of the plan year" if the PBGC decided to require such a statement. 29 U.S.C. 1365(3)(A)(i). This annual report is filed using the Form 5500 issued by the Internal Revenue Service, Department of Labor, and PBGC. 29 C.F.R. 4065.3(b).

Today, Schedule MB of the Form 5500 shows extensive information about the current value of a multiemployer plan's liabilities, including both the withdrawal-liability interest rate and the valuation interest rate. U.S. Dep't of Lab., Emp. Benefits Sec. Admin., Schedule MB (Form 5500): Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information (2022), https://www.dol.gov/sites/dolgov/files/ebsa/pdf_files/2022-schedule-mb.pdf. When the MPPAA was enacted, Schedule B showed less information but still showed information relevant to a potential decision to withdraw and incur withdrawal liability—such as information about the present value of vested benefits and the plan's actuarial assumptions, including the interest rate reflecting expected investment return. Revision of Schedule B (Actuarial Information) and Permanent Waiver of Certain Actuarial Information in the Annual Report, 44 Fed. Reg. 5440, 5442-5443, 5445 (Jan. 26, 1979), https://archives.federalregister.gov/issue_slice/1979/1/26/5438-5446.pdf. Employers can rely, and for decades have relied, on available information of this sort when making decisions about withdrawal at the bargaining table.

In 2006, Congress decided to give employers even more information. It added 29 U.S.C. 1021(*l*)(1) to allow employers to request an estimate of potential withdrawal liability and a detailed explanation of how that estimate was calculated. In an apparent compromise to plan administrators, the estimate may be created based on the premise that the employer withdrew in the year before the year in which the request is made, for which the relevant data will already be easily accessible. As a result, the valuation date shown in this estimate can be a year before the actual valuation date of the contemplated withdrawal. 29 U.S.C. 1021(*l*)(1)(A). Still, these estimates often provide useful information. But they have very little value if, as respondents contend, "retroactive changes in interest rates assumptions may be made at any time." *Metz*, 946 F.3d at 151.

3. The next piece of contextual support comes from the statute's requirement that withdrawal-liability assumptions reflect *the actuary's* best estimate of anticipated experience. 29 U.S.C. 1393(a)(1). As this Court has noted, actuaries are supposed to exercise independent professional judgment. See *Concrete Pipe*, 508 U.S. at 633 n.19. The courts of appeals therefore agree that Section 1393's "best estimate" requirement is "designed to ensure that the chosen assumptions actually represent the actuary's own judgment rather than the dictates of plan administrators or sponsors." *Energy W.*, 39 F.4th at 739 (brackets omitted) (quoting *Wachtell, Lipton, Rosen & Katz* v. *Commissioner*, 26 F.3d 291, 296 (2d Cir. 1994));

see also*, e.g.*, *Citrus Valley Ests., Inc.* v. *Commissioner*, 49 F.3d 1410, 1414 (9th Cir. 1995); *Rhoades, McKee & Boer* v. *United States*, 43 F.3d 1071, 1075 (6th Cir. 1995); *Vinson & Elkins* v. *Commissioner*, 7 F.3d 1235, 1238 (5th Cir. 1993); *Chi. Truck Drivers*, 698 F.3d at 357.

Respondents' reading would enable plans to evade this requirement and exercise enormous influence on withdrawal-liability calculations. If a plan's incumbent actuary believes a comparatively high interest rate reflects her best estimate of anticipated plan experience and adheres to that rate through and after the valuation date, plan trustees could fire her—even after an employer announces a decision to withdraw—and hire a new actuary to adopt and apply a lower rate retroactively. See *Metz*, 946 F.3d at 151 ("Actuaries unwilling to yield to trustees' preferred interest rate assumptions can be replaced by others less reticent."). Under respondents' theory, Section 1391's direction to base withdrawal liability on underfunding "as of" the valuation date does not even require using the assumptions of the actuary employed on that date. The government has explicitly taken that position. U.S. Cert. Br. 10-11.

The government dismisses concerns about trustee influence by pointing to this Court's decision in *Concrete Pipe*, which "described actuaries as 'trained professionals' who are 'subject to regulatory standards' and are not 'vulnerable to suggestions of bias or its appearance.'" U.S. Cert. Br. 14 (quoting *Concrete Pipe*, 508 U.S. at 632). Surprisingly, the government ignores the reason that the PBGC itself offered in

Concrete Pipe to assure the Court that actuaries' assumptions are not distorted by bias against withdrawing employers. At oral argument, the PBGC's counsel told this Court that actuaries "are required by law to set these assumptions *in advance of the withdrawal of any employer to whom they will apply*, and then they have to be applied across the board for the period that they're in existence uniformly." Tr. Oral Arg. at 42, *Concrete Pipe*, *supra* (No. 91-904) (emphasis added).[4] The government's cert-stage amicus brief in this case implies that the PBGC now takes the opposite position. But it never acknowledges or explains the PBGC's flip-flop.

In all events, the Court's opinion in *Concrete Pipe* recognized and distinguished scenarios in which trustees attempted to replace the actuary's assumptions with assumptions they preferred. 508 U.S. at 633 n.19. Trustees could easily do that under respondents' approach. Certain actuarial firms are known for actuaries who adopt comparatively low withdrawal-liability interest rates. As noted above, the low "Segal Blend" rate is *named after* such a firm. *Sofco*, 15 F.4th at 419 & n.1. When, as here, numerous employers withdraw in a single year, trustees may think that as the plan's fiduciaries they owe it to the plan, and its remaining employers, to swap an incumbent high-rate

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[4] The PBGC's statement at oral argument is consistent with what it told the Court in its brief. PBGC Amicus Br. at 8 n.8, *Concrete Pipe*, *supra* (No. 91-904) (citing 29 U.S.C. 1391 for the proposition that "all allocation methods are based on actuarial valuations performed for plan years preceding the employer's withdrawal"), *Concrete Pipe* (No. 91-904); see also PBGC Reply Br. at 4, *PBGC* v. *Yahn & McDonnell, Inc.*, 481 U.S. 735 (1987) (No. 86-231) (same).

actuary for a low-rate replacement so the withdrawing employers pay millions of dollars more.

The trustees in *Metz* arguably exercised such influence over the assumptions there. In that case, the plan had long relied on an actuary (Buck Consultants) that used a 7.25% interest rate. 946 F.3d at 148. But then the trustees replaced that actuary with a new one (Horizon Actuarial Services). In June 2014, that new actuary adopted a very low 3.25% interest rate. The actuary then applied that unfavorable rate to an employer who had withdrawn in May, before the new actuary adopted the new rate. The actuary's after-the-fact decision inflated the employer's liability from $254,644 to $997,734. *Id.* at 148-149.

The statute's brightline rule requiring use of the actuarial assumptions in effect on the valuation date eliminates this "opportunity for manipulation and bias" that respondents' and the government's rule allows. *Metz*, 946 F.3d at 151. If Congress had wanted to leave withdrawing employers at the mercy of future developments of this sort, it would not have set a valuation date before the withdrawal.

* * *

Requiring withdrawal-liability assumptions to be adopted by the valuation date respects not just the text of Sections 1391 and 1393 but also all these other structural features of the statute. Allowing the use of assumptions adopted after the valuation date, on the other hand, would stray from the statutory language and remove important guardrails. If the governing withdrawal-liability assumptions need not be adopted by the valuation date, they need not be adopted by the withdrawal date either and thus can be changed even after an employer decides to withdraw. They can also be changed after the plan has publicly announced (through Form 5500 or otherwise) its actuary's assumptions on the valuation date, even if an employer has made its withdrawal-liability decision relying on the assumptions it knows the plan actuary endorsed on the valuation date. Congress did not adopt a scheme with so much potential for surprise and abuse.

II. The contrary view of respondents and the court of appeals is unsupported and unworkable.

A. The statute does not draw a distinction based on when information became available.

The contrary rule adopted below departs from the statute's words and design. Recognizing that "as of" must mean *something*, the court of appeals tried to split the difference between the parties by requiring that withdrawal-liability assumptions be "based on the body of knowledge available up to the measurement date" and no information that becomes available only later. Pet. App. 13a (citation omitted).

This approach has no basis in the statute. Nothing in Section 1391, Section 1393, or any other provision suggests a distinction based on the "information available" before the valuation date. Section 1391 creates a timing rule that applies by its terms to "unfunded vested benefits" as of a particular date. And determining unfunded vested benefits at a specific time turns on the actuary's assumptions at that time about the value of future liabilities, which must reflect the actuary's best estimate at that time of the plan's future experience. See 29 U.S.C. 1393(a)(1), (c)(A). If, by the end of the valuation date, the actuary has not given any thought to certain information, that information has played no role in the actuary's best estimate as of that date, regardless of whether the information was in some sense "available." The lower courts in these cases plucked this distinction out of thin air, not any language of Congress.

Nor does this distinction track common practice in the actuarial profession. The government's brief highlights the Actuarial Standards Board, a private organization whose publications go so far as to approve basing withdrawal-liability assumptions on "event[s] occurring after the measurement date." U.S. Cert. Br. 15 (quoting Actuarial Standards Bd., *Actuarial Standard of Practice No. 27*, § 3.5.5 (June 2020)). In other words, the Actuarial Standards Board *rejects* the D.C. Circuit's distinction based on whether information was available on the valuation date. Of course, even if the Board (or some other private organization) supported the D.C. Circuit's rule, it would not change the outcome. The courts of appeals have repeatedly recognized that the *Actuarial Standards of Practice* cannot override statutory text. *Sofco*, 15 F.4th at 423; *Energy W.*, 39 F.4th at 740. But the Board's rejection of the D.C. Circuit's rule underscores its novelty.

The D.C. Circuit's distinction also misunderstands the nature of actuarial assumptions. They do not follow logically or practically from purely factual information. As discussed, they reflect actuaries' individual theories and perspectives, and there can often be "several equally 'correct' approaches" to such matters. *Concrete Pipe*, 508 U.S. at 635. The record here illustrates the point. There is no hint in the record that *facts* drove the reduction from 7.5% to 6.5%, nor have respondents tried to identify such facts. Instead, there was a meeting between the actuary and the trustees, at which the actuary explained that the plan could use a lower rate to provide "more protection * * * to on-going employers" if the plan was willing to be "less desirable for new employers." J.A. 176. Making that policy tradeoff in January had nothing to do with simply digesting information available on the last day of December. Moreover, the actuary's formal presentation at the meeting, which was no doubt prepared beforehand after careful reflection, presented four different interest-rate options, and 6.5% was not among them. *Ibid.* The absence of a 6.5% rate among the previously selected options discredits any notion that the actuary derived that assumption from the cold hard facts.

The D.C. Circuit's available-information approach is also highly impractical. It will be time-intensive and costly for arbitrators or reviewing courts to determine what information was truly "available" on December 31 before the withdrawal, which could easily end up being several years before the eventual arbitration and litigation try to make that determination. And even if adjudicators can accomplish that much, it will be still harder to evaluate whether an actuary ultimately adopted a particular set of assumptions relying *only* on that available information, without considering later developments.

Even the most well-meaning actuaries would struggle to comply with this restriction. As this Court observed almost a century ago, when a valuation "depends largely on more or less certain prophecies of the future," it is "[t]empting," albeit improper, "to correct uncertain probabilities by the now certain fact[s]." *Ithaca Tr. Co.* v. *United States*, 279 U.S. 151, 155 (1929).

The D.C. Circuit's rule invites such temptation into every withdrawal-liability dispute. Imagine asking an expert today to determine the true fair market value of Zoom, the videoconferencing software company, as of December 31, 2019. It would require heroic discipline to provide an honest valuation that ignored what the coronavirus pandemic and advent of widespread remote work later showed about the company's potential. Petitioners' rule, on the other hand, avoids this impracticality and, most importantly, adheres to the statutory text.

B. The criticisms of petitioners' position are meritless.

Respondents and the court of appeals advanced two main objections to petitioners' position. Neither objection holds up to scrutiny.

1. Section 1393(a)(1) does not justify respondents' position.

Mostly ignoring Section 1391, respondents contend that Section 1393(a)(1) compels their preferred outcome. But read within the broader statutory context, Section 1393(a)(1) fully supports petitioners' reading of Section 1391.

Section 1393 provides that, unless the PBGC prescribes other assumptions, actuaries must determine withdrawal liability using "actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan." 29 U.S.C. 1393(a)(1).

Respondents have argued that these requirements, especially the "best estimate" requirement, implicitly demand that actuarial assumptions be fully up to date, at least on the valuation date itself. But this argument assumes its conclusion—that the actuarial assumptions must represent the actuary's best estimate of anticipated experience after digesting all the information available on the valuation date. Section 1393(a)(1) itself says nothing about timing. It does not identify the moment at which the assumptions must be the actuary's "best." Only Section 1391 addresses timing. And for the reasons already discussed, when it is read in tandem with Section 1393, Section 1391 makes clear that the assumptions necessary to calculate unfunded vested benefits must reflect the best estimate the actuary actually gives by the valuation date, not an estimate that the actuary puts forward on some later date.

Respondents' position also rests on an inaccurate depiction of actuarial assumptions. These assumptions predict the plan's experience over a horizon of many decades (as new generations of current workers enter and enjoy retirement). The notion that selecting such assumptions requires reflecting on every development during the last days of the year is baseless. That is not how it works. For example, because the interest "rate should represent the expected rate of return on plan assets over the long term," "[i]t should not be changed to reflect fluctuations in the financial market that appear to be transitory or short-term." McGill 612. That basic point helps explain why even respondents admit that "assumptions tend to remain stable over time." Br. in Opp. 16; see also *id.* at 17. So, "in the mine run of withdrawal liability cases, * * * the actuary will have used assumptions that it first selected before the measurement date," *id.* at 16—without any problem.

Nor was Congress preoccupied with making withdrawing employers "pay an actuarially perfect fair share." *Milwaukee Brewery*, 513 U.S. at 426. Indeed, far from requiring withdrawal-liability assumptions to always be the latest and greatest, Congress created a safe harbor that permits actuaries to determine unfunded vested benefits using the plan's "most recent complete actuarial valuation used for purposes of [26 U.S.C. 412] and reasonable estimates for the interim years of the unfunded vested benefits." 29 U.S.C. 1393(b)(1). As noted, when Section 1393 was enacted, this actuarial valuation was required at least "once every three years." 26 U.S.C. 412(c)(9) (1982). The Section 1393(b) safe harbor therefore authorized plans to use valuations (and assumptions on which those valuations were based) that could be up to three years old. It is unthinkable that Congress was content to authorize use of years-old valuations but deliberately undercut Section 1391's timing rule through Section 1393(a)'s mere use of the word "best"—all so that actuaries could have a few weeks to digest the end-of-year market data.

Respondents similarly miss the mark in raising concerns about "stale" actuarial assumptions. Br. in Opp. 23. This argument ignores that actuaries, as petitioners have already explained, regularly review their assumptions as part of preparing their reports and valuations. Today, that regular review happens annually. Valuation-date assumptions are not "stale" in any sense.

2. The broader statutory purpose does not justify respondents' position.

The D.C. Circuit placed great weight on the idea that the MPPAA "protects [plans] and their beneficiaries." Pet. App. 14a (citing 29 U.S.C. 1001a(c)). But no statute pursues its purposes—even its primary purpose—at all costs. See, *e.g.*, *Rodriguez* v. *United States*, 480 U.S. 522, 525-526 (1987). Legislation is ordinarily a compromise between competing goals.

The MPPAA is no exception. The very statement of purpose that the court of appeals cited shows that one of the statute's goals was to encourage "the maintenance and growth of multiemployer pension plans." 29 U.S.C. 1001a(c)(2). In the MPPAA, Congress navigated ERISA's familiar balance between on the one hand protecting benefits and on the other encouraging employers to provide benefits when they are under no legal compulsion to do so. This Court has often remarked that "ERISA represents 'a careful balancing'" of competing interests in protecting employee benefits and ensuring that excessive potential liabilities and burdens do not discourage employers from offering benefit plans in the first place. *Conkright*, 559 U.S. at 517 (quoting *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 215 (2004)).

The MPPAA strikes a similar balance and does not resolve all issues in favor of plans and against employers. Just the opposite, it has several provisions that operate to reduce the negative consequences for a withdrawing employer, including the prohibition on retroactive plan amendments or method changes, 29 U.S.C. 1394; a reduction for "de minimis" amounts of withdrawal liability, 29 U.S.C. 1389; a 20-year payment cap, 29 U.S.C. 1399(c)(1)(B); and a limitation on liability in certain other circumstances, 29 U.S.C. 1405. For these reasons, this Court has already rejected an attempt to justify more severe obligations for withdrawing employers based on "the basic objective of the statute." *Milwaukee Brewery*, 513 U.S. at 425. The court of appeals erred in trying to derive concrete guidance from its understanding of the MPPAA's main purpose. It "frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." *Rodriguez*, 480 U.S. at 525-526.

Congress said what it meant and meant what it said in Section 1391: withdrawal liability must be based on the unfunded vested benefits "as of" the valuation date. Respondents seek to charge petitioners for unfunded vested benefits that did not exist on the valuation date and did not exist until the actuary endorsed different actuarial assumptions weeks later. The arbitrators were right to reject this violation of Section 1391's timing rule, and the courts below were wrong to vacate the arbitral decisions.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDIX

TABLE OF CONTENTS

Page

29 U.S.C. 1381

§ 1381. Withdrawal liability established; criteria and definitions

(a) If an employer withdraws from a multiemployer plan in a complete withdrawal or a partial withdrawal, then the employer is liable to the plan in the amount determined under this part to be the withdrawal liability.

(b) For purposes of subsection (a)—

(1) The withdrawal liability of an employer to a plan is the amount determined under section 1391 of this title to be the allocable amount of unfunded vested benefits, adjusted—

(A) first, by any de minimis reduction applicable under section 1389 of this title,

(B) next, in the case of a partial withdrawal, in accordance with section 1386 of this title,

(C) then, to the extent necessary to reflect the limitation on annual payments under section 1399(c)(1)(B) of this title, and

(D) finally, in accordance with section 1405 of this title.

(2) The term "complete withdrawal" means a complete withdrawal described in section 1383 of this title.

(3) The term "partial withdrawal" means a partial withdrawal described in section 1385 of this title.

29 U.S.C. 1391

§ 1391. Methods for computing withdrawal liability

(a) Determination of amount of unfunded vested benefits allocable to employer withdrawn from plan

The amount of the unfunded vested benefits allocable to an employer that withdraws from a plan shall be determined in accordance with subsection (b), (c), or (d) of this section.

(b) Factors determining computation of amount of unfunded vested benefits allocable to employer withdrawn from plan

(1) Except as provided in subsections (c) and (d), the amount of unfunded vested benefits allocable to an employer that withdraws is the sum of—

(A) the employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, as determined under paragraph (2),

(B) the employer's proportional share, if any, of the unamortized amount of the plan's unfunded vested benefits at the end of the plan year ending before September 26, 1980, as determined under paragraph (3); and

(C) the employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if any) as determined under paragraph (4).

If the sum of the amounts determined with respect to an employer under paragraphs (2), (3), and (4) is negative, the unfunded vested benefits allocable to the employer shall be zero.

(2)(A) An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, is the sum of the employer's proportional shares of the unamortized amount of the change in unfunded vested benefits for each plan year in which the employer has an obligation to contribute under the plan ending—

(i) after such date, and

(ii) before the plan year in which the withdrawal of the employer occurs.

(B) The change in a plan's unfunded vested benefits for a plan year is the amount by which—

(i) the unfunded vested benefits at the end of the plan year; exceeds

(ii) the sum of—

(I) the unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, and

(II) the sum of the unamortized amounts of the change in unfunded vested benefits for each plan year ending after September 25, 1980, and preceding the plan year for which the change is determined.

(C) The unamortized amount of the change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by 5 percent of such change for each succeeding plan year.

(D) The unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, is the amount of the unfunded vested benefits as of the end of that plan year reduced by 5 percent of such amount for each succeeding plan year.

(E) An employer's proportional share of the unamortized amount of a change in unfunded vested benefits is the product of—

(i) the unamortized amount of such change (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) a fraction—

(I) the numerator of which is the sum of the contributions required to be made under the plan by the employer for the year in which such change arose and for the 4 preceding plan years, and

(II) the denominator of which is the sum for the plan year in which such change arose and the 4 preceding plan years of all contributions made by employers who had an obligation to contribute under the plan for the plan year in which such change arose reduced by the contributions made in such years by employers who had withdrawn from the plan in the year in which the change arose.

(3) An employer's proportional share of the unamortized amount of the plan's unfunded vested benefits for the last plan year ending before September 26, 1980, is the product of—

(A) such unamortized amount; multiplied by—

(B) a fraction—

(i) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the most recent 5 plan years ending before September 26, 1980, and

(ii) the denominator of which is the sum of all contributions made for the most recent 5 plan years ending before September 26, 1980, by all employers—

(I) who had an obligation to contribute under the plan for the first plan year ending on or after such date, and

(II) who had not withdrawn from the plan before such date.

(4)(A) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits is the sum of the employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits for each plan year ending before the plan year in which the employer withdrew from the plan.

(B) Except as otherwise provided in regulations prescribed by the corporation, the reallocated unfunded vested benefits for a plan year is the sum of—

(i) any amount which the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under Title 11, or similar proceedings.

(ii) any amount which the plan sponsor determines in that plan year will not be assessed as a result of the operation of section 1389, 1399(c)(1)(B), or 1405 of this title against an employer to whom a notice described in section 1399 of this title has been sent, and

(iii) any amount which the plan sponsor determines to be uncollectible or unassessable in that plan year for other reasons under standards not inconsistent with regulations prescribed by the corporation.

(C) The unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the reallocated unfunded vested benefits for the plan year, reduced by 5 percent of such reallocated unfunded vested benefits for each succeeding plan year.

(D) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the product of—

(i) the unamortized amount of the reallocated unfunded vested benefits (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) the fraction defined in paragraph (2)(E)(ii).

(c) Amendment of multiemployer plan for determination respecting amount of unfunded vested benefits allocable to employer withdrawn from plan; factors determining computation of amount

(1) A multiemployer plan, other than a plan which primarily covers employees in the building and construction industry, may be amended to provide that the amount of unfunded vested benefits allocable to an employer that withdraws from the plan is an amount determined under paragraph (2), (3), (4), or (5) of this subsection, rather than under subsection (b) or (d). A plan described in section 1383(b)(1)(B)(i) of this title (relating to the building and construction industry) may be amended, to the extent provided in regulations prescribed by the corporation, to provide that the amount of the unfunded vested benefits allocable to an employer not described in section 1383(b)(1)(A) of this title shall be determined in a manner different from that provided in subsection (b).

(2)(A) The amount of the unfunded vested benefits allocable to any employer under this paragraph is the sum of the amounts determined under subparagraphs (B) and (C).

(B) The amount determined under this subparagraph is the product of—

> **(i)** the plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; multiplied by

(ii) a fraction—

(I) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the last 5 plan years ending before September 26, 1980, and

(II) the denominator of which is the sum of all contributions made for the last 5 plan years ending before September 26, 1980, by all employers who had an obligation to contribute under the plan for the first plan year ending after September 25, 1980, and who had not withdrawn from the plan before such date.

(C) The amount determined under this subparagraph is the product of—

(i) an amount equal to—

(I) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less

(II) the sum of the value as of such date of all outstanding claims for withdrawal liability which can reasonably be expected to be collected, with respect to employers withdrawing before such plan year, and that portion of the amount determined under subparagraph (B)(i) which is allocable to employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws and who also had an obligation to contribute under the plan for the first plan year ending after September 25, 1980; multiplied by

(ii) a fraction—

(I) the numerator of which is the total amount required to be contributed under the plan by the employer for the last 5 plan years ending before the date on which the employer withdraws, and

(II) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the date on which the employer withdraws, increased by the amount of any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed by an employer who withdrew from the plan under this part during those plan years.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(3) The amount of the unfunded vested benefits allocable to an employer under this paragraph is the product of—

(A) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less the value as of the end of such year of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from employers withdrawing before such year; multiplied by

(B) a fraction—

(i) the numerator of which is the total amount required to be contributed by the employer under the plan for the last 5 plan years ending before the withdrawal, and

(ii) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed to the plan during those plan years by employers who withdrew from the plan under this section during those plan years.

(4)(A) The amount of the unfunded vested benefits allocable to an employer under this paragraph is equal to the sum of—

(i) the plan's unfunded vested benefits which are attributable to participants' service with the employer (determined as of the end of the plan year preceding the plan year in which the employer withdraws), and

(ii) the employer's proportional share of any unfunded vested benefits which are not attributable to service with the employer or other employers who are obligated to contribute under the plan in the plan year preceding the plan year in which the employer withdraws (determined as of the end of the plan year preceding the plan year in which the employer withdraws).

(B) The plan's unfunded vested benefits which are attributable to participants' service with the employer is the amount equal to the value of nonforfeitable benefits under the plan which are attributable to participants' service with such employer (determined under plan rules not inconsistent with regulations of the corporation) decreased by the share of plan assets determined under subparagraph (C) which is allocated to the employer as provided under subparagraph (D).

(C) The value of plan assets determined under this subparagraph is the value of plan assets allocated to nonforfeitable benefits which are attributable to service with the employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws, which is determined by multiplying—

(i) the value of the plan assets as of the end of the plan year preceding the plan year in which the employer withdraws, by

(ii) a fraction—

(I) the numerator of which is the value of nonforfeitable benefits which are attributable to service with such employers, and

(II) the denominator of which is the value of all nonforfeitable benefits under the plan

as of the end of the plan year.

(D) The share of plan assets, determined under subparagraph (C), which is allocated to the employer shall be determined in accordance with one of the following methods which shall be adopted by the plan by amendment:

(i) by multiplying the value of plan assets determined under subparagraph (C) by a fraction—

(I) the numerator of which is the value of the nonforfeitable benefits which are attributable to service with the employer, and

(II) the denominator of which is the value of the nonforfeitable benefits which are attributable to service with all employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws;

(ii) by multiplying the value of plan assets determined under subparagraph (C) by a fraction—

(I) the numerator of which is the sum of all contributions (accumulated with interest) which have been made to the plan by the employer for the plan year preceding the plan year in which the employer withdraws and all preceding plan years; and

(II) the denominator of which is the sum of all contributions (accumulated with interest) which have been made to the plan (for the plan year preceding the plan year in which the employer withdraws and all preceding plan years) by all employers who have an obligation to contribute to the plan for the plan year preceding the plan year in which the employer withdraws; or

(iii) by multiplying the value of plan assets under subparagraph (C) by a fraction—

(I) the numerator of which is the amount determined under clause (ii)(I) of this subparagraph, less the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(I) which are attributable to service with the employer; and

(II) the denominator of which is the amount determined under clause (ii)(II) of this subparagraph, reduced by the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(II) which are attributable to service with respect to the employers described in such clause (ii)(II).

(E) The amount of the plan's unfunded vested benefits for a plan year preceding the plan year in which an employer withdraws, which is not attributable to service with employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which such employer withdraws, is equal to—

(i) an amount equal to—

(I) the value of all nonforfeitable benefits under the plan at the end of such plan year, reduced by

(II) the value of nonforfeitable benefits under the plan at the end of such plan year which are attributable to participants' service with employers who have an obligation to contribute under the plan for such plan year; reduced by

(ii) an amount equal to—

(I) the value of the plan assets as of the end of such plan year, reduced by

(II) the value of plan assets as of the end of such plan year as determined under subparagraph (C); reduced by

(iii) the value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected with respect to employers withdrawing before the year preceding the plan year in which the employer withdraws.

(F) The employer's proportional share described in subparagraph (A)(ii) for a plan year is the amount determined under subparagraph (E) for the employer, but not in excess of an amount which bears the same ratio to the sum of the amounts determined under subparagraph (E) for all employers under the plan as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan.

(G) The corporation may prescribe by regulation other methods which a plan may adopt for allocating assets to determine the amount of the unfunded vested benefits attributable to service with the employer and to determine the employer's share of unfunded vested benefits not attributable to service with employers who have an obligation to contribute under the plan in the plan year in which the employer withdraws.

(5)(A) The corporation shall prescribe by regulation a procedure by which a plan may, by amendment, adopt any other alternative method for determining an employer's allocable share of unfunded vested benefits under this section, subject to the approval of the corporation based on its determination that adoption of the method by the plan would not significantly increase the risk of loss to plan participants and beneficiaries or to the corporation.

(B) The corporation may prescribe by regulation standard approaches for alternative methods, other than those set forth in the preceding paragraphs of this subsection, which a plan may adopt under subparagraph (A), for which the corporation may waive or modify the approval requirements of subparagraph (A). Any alternative method shall provide for the allocation of substantially all of a plan's unfunded vested benefits among employers who have an obligation to contribute under the plan.

(C) Unless the corporation by regulation provides otherwise, a plan may be amended to provide that a period of more than 5 but not more than 10 plan years may be used for determining the numerator and denominator of any fraction which is used under any method authorized under this section for determining an employer's allocable share of unfunded vested benefits under this section.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(E) Fresh start option

Notwithstanding paragraph (1), a plan may be amended to provide that the withdrawal liability method described in subsection (b) shall be applied by substituting the plan year which is specified in the amendment and for which the plan has no unfunded vested benefits for the plan year ending before September 26, 1980.

(d) Method of calculating allocable share of employer of unfunded vested benefits set forth in subsection (c)(3); applicability of certain statutory provisions

(1) The method of calculating an employer's allocable share of unfunded vested benefits set forth in subsection (c)(3) shall be the method for calculating an employer's allocable share of unfunded vested benefits under a plan to which section 404(c) of Title 26, or a continuation of such a plan, applies, unless the plan is amended to adopt another method authorized under subsection (b) or (c).

(2) Sections 1384, 1389, 1399(c)(1)(B), and 1405 of this title shall not apply with respect to the withdrawal of an employer from a plan described in paragraph (1) unless the plan is amended to provide that any of such sections apply.

(e) Reduction of liability of withdrawn employer in case of transfer of liabilities to another plan incident to withdrawal or partial withdrawal of employer

In the case of a transfer of liabilities to another plan incident to an employer's withdrawal or partial withdrawal, the withdrawn employer's liability under this part shall be reduced in an amount equal to the value, as of the end of the last plan year ending on or before the date of the withdrawal, of the transferred unfunded vested benefits.

(f) Computations applicable in case of withdrawal following merger of multiemployer plans

In the case of a withdrawal following a merger of multiemployer plans, subsection (b), (c), or (d) shall be applied in accordance with regulations prescribed by the corporation; except that, if a withdrawal occurs in the first plan year beginning after a merger of multiemployer plans, the determination under this section shall be made as if each of the multiemployer plans had remained separate plans.

29 U.S.C. 1393

§ 1393. Actuarial assumptions

(a) Use by plan actuary in determining unfunded vested benefits of a plan for computing withdrawal liability of employer

The corporation may prescribe by regulation actuarial assumptions which may be used by a plan actuary in determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part. Withdrawal liability under this part shall be determined by each plan on the basis of—

(1) actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan, or

(2) actuarial assumptions and methods set forth in the corporation's regulations for purposes of determining an employer's withdrawal liability.

(b) Factors determinative of unfunded vested benefits of plan for computing withdrawal liability of employer

In determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part, the plan actuary may—

(1) rely on the most recent complete actuarial valuation used for purposes of section 412 of Title 26 and reasonable estimates for the interim years of the unfunded vested benefits, and

(2) in the absence of complete data, rely on the data available or on data secured by a sampling which can reasonably be expected to be representative of the status of the entire plan.

(c) Determination of amount of unfunded vested benefits

For purposes of this part, the term "unfunded vested benefits" means with respect to a plan, an amount equal to—

(A) the value of nonforfeitable benefits under the plan, less

(B) the value of the assets of the plan.

29 U.S.C. 1394

§ 1394. Application of plan amendments; exception

(a) No plan rule or amendment adopted after January 31, 1981, under section 1389 or 1391(c) of this title may be applied without the employer's consent with respect to liability for a withdrawal or partial withdrawal which occurred before the date on which the rule or amendment was adopted.

(b) All plan rules and amendments authorized under this part shall operate and be applied uniformly with respect to each employer, except that special provisions may be made to take into account the creditworthiness of an employer. The plan sponsor shall give notice to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan of any plan rules or amendments adopted pursuant to this section.