

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,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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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.

CORPORATE DISCLOSURE STATEMENT

Respondents the Trustees of the IAM National Pension Fund are not nongovernmental corporations and are therefore not required to submit a corporate disclosure statement under Supreme Court Rule 29.6.

TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENT	14
ARGUMENT	17
I. BY ITS PLAIN TERMS, THE MPPAA DOES NOT REQUIRE ACTUARIES TO SELECT ASSUMPTIONS BY THE VALUATION DATE	17
A. The Statutory Text Contains No Requirement that Actuaries Select Assumptions by Any Particular Date	17
B. Section 1391 Does Not Impose Any Deadline for Actuaries to Select Assumptions.....	20
1. The Relevant Method for Calculating Withdrawal Liability Does Not Contain Petitioners’ Cited Language.....	21
2. “As of” Does Not Impose a Deadline for Selecting Assumptions.....	22
3. Petitioners Read the “Best Estimate” Requirement Out of the MPPAA.....	26

4.	Petitioners’ Argument Is Built on a False Premise	28
II.	PETITIONERS’ POLICY ARGUMENTS ARE IRRELEVANT AND MISGUIDED	29
A.	Petitioners’ Selection Deadline Is Not Necessary to Prevent “Manipulation” of Assumptions	30
B.	Petitioners’ Discussion of “Predictability” Is Likewise Inaccurate	32
III.	PETITIONERS’ REMAINING ARGUMENTS ARE MERITLESS	35
A.	Section 1394 Does Not Support Petitioners.....	35
B.	Section 1393(b) Does Not Support Petitioners.....	37
C.	The PBGC Has Not Taken Inconsistent Positions on the Proposed Timing Rule	38
IV.	THE COURT NEED NOT REACH THE QUESTION OF WHAT INFORMATION ACTUARIES MAY CONSIDER WHEN SELECTING ASSUMPTIONS AFTER THE VALUATION DATE	39
	CONCLUSION	42

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Becerra v. Empire Health Found.</i> , 597 U.S. 424 (2022)	25
<i>BP P.L.C. v. Mayor & City Council of Balt.</i> , 141 S. Ct. 1532 (2021)	30
<i>Combs v. Classic Coal Corp.</i> , No. 84-cv-1562, 1990 WL 66583 (D.D.C. Apr. 6, 1990)	24
<i>Concrete Pipe & Prods. of Cal., Inc. v. Constr.</i> <i>Laborers Pension Tr. for S. Cal.</i> , 508 U.S. 602 (1993)	8, 25, 30-31, 37-38
<i>Connolly v. Pension Benefit Guar. Corp.</i> , 475 U.S. 211 (1986)	4, 5, 35
<i>FCC v. AT&T Inc.</i> , 562 U.S. 397 (2011)	17
<i>Mertens v. Hewitt Assocs.</i> , 508 U.S. 248 (1993)	30
<i>Milwaukee Brewery Workers' Pension</i> <i>Plan v. Joseph Schlitz Brewing Co.</i> , 513 U.S. 414 (1995)	1, 5, 7, 20
<i>Nat'l Ret. Fund v. Metz Culinary Mgmt., Inc.</i> , 946 F.3d 146 (2d Cir. 2020)	2-4, 11-16, 20, 28, 34-36

<i>Pension Benefit Guar. Corp. v. R.A. Gray & Co.,</i> 467 U.S. 717 (1984)	4-6
<i>Romag Fasteners, Inc. v. Fossil Grp., Inc.,</i> 590 U.S. 212 (2020)	18
<i>Russello v. United States,</i> 464 U.S. 16 (1983)	18
<i>Sandoz Inc. v. Amgen Inc.,</i> 582 U.S. 1 (2017)	16, 30, 31
<i>SAS Inst., Inc. v. Iancu,</i> 584 U.S. 357 (2018)	29
<i>Transpro, Inc. v. Leggett & Platt, Inc.,</i> 297 F. App'x 434 (6th Cir. 2008)	26
<i>Trs. of Loc. 138 Pension Tr. Fund v. F.W.</i> <i>Honerkamp Co.,</i> 692 F.3d 127 (2d Cir. 2012)	5
<i>United Mine Workers of Am. 1974 Pension</i> <i>Plan v. Energy W. Mining Co.,</i> 39 F.4th 730 (D.C. Cir. 2022)	8
<i>United States v. Munro-Van Helms Co.,</i> 243 F.2d 10 (5th Cir. 1957)	23
<i>Utah Dep't of Transp. v. Boggess-Draper Co.,</i> 467 P.3d 840 (Utah 2020)	26
<i>Wachtell, Lipton, Rosen & Katz v. Comm'r,</i> 26 F.3d 291 (2d Cir. 1994)	16, 31

STATUTES

26 U.S.C. § 431.....	7
29 U.S.C. § 1002.....	5
29 U.S.C. § 1021.....	16, 33-34
29 U.S.C. § 1024.....	7, 33
29 U.S.C. § 1381.....	6
29 U.S.C. § 1391.....	6, 7, 13, 20-23, 28
29 U.S.C. § 1393.....	2, 6, 8-9, 12-14, 16-18, 20 26-28, 31-32, 36-38, 41
29 U.S.C. § 1394.....	18, 35-36
29 U.S.C. § 1399.....	8, 35, 42
29 U.S.C. § 1401.....	10, 16, 31-32, 41

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Employer's Withdrawal Liability, 87
Fed. Reg. 62,316 (proposed Oct. 14, 2022).....9
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of Practice No. 27 (Dec. 2023),
[https://www.actuarialstandardsboard.org
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Multiemployer Plans (July 2020),
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- As Of, Oxford American Dictionary (1980) 23
- Best, Webster's New Collegiate Dictionary
(8th ed. 1980)..... 18
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Subcomm. on Oversight of the H. Comm.
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Sess., 1979 WL 211247 (July 25, 1979).....25

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	7, 33
U.S. Dep’t of Lab., Form 5500 Series, Emp. Benefits Sec. Admin. (Oct. 1, 2025), https://www.dol.gov/agencies/ebsa/empl oyers-and-advisers/plan-administration- and-compliance/reporting-and- filing/form-5500	33
U.S. Dep’t of the Treasury, Internal Revenue Serv., Form 5558: Application for Extension of Time to File Certain Employee Plan Returns (Rev. Jan. 2025), https://www.irs.gov/pub/irs- pdf/f5558.pdf	7-8, 33

INTRODUCTION

The narrow question presented in this case is whether the Multiemployer Pension Plan Amendments Act of 1980 (“MPPAA”) imposes a deadline of 11:59 PM on the so-called “valuation date” for the actuary of a multiemployer pension plan to select the assumptions he uses to calculate a withdrawing employer’s liability to the plan. The MPPAA’s plain text, longstanding actuarial practice, and common sense all confirm that Congress did not impose any such deadline.

Congress enacted the MPPAA to protect the solvency of multiemployer pension plans. To that end, the statute requires any employer that withdraws from an underfunded plan to pay “withdrawal liability” equal to its fair share of the plan’s underfunding. Withdrawal liability is calculated based on the magnitude of the plan’s underfunding on the last day of the year before the employer’s withdrawal—i.e., the valuation date. Congress chose that date as a matter of “administrative convenience.” *Milwaukee Brewery Workers’ Pension Plan v. Joseph Schlitz Brewing Co.*, 513 U.S. 414, 418 (1995). A plan already calculates its underfunding as of the end of each plan year in connection with mandatory reporting requirements, and the MPPAA allows the plan to use those underfunding calculations when assessing an employer’s withdrawal liability.

Congress delegated the task of calculating withdrawal liability to actuaries. To calculate a plan’s underfunding and an employer’s withdrawal liability, an actuary must make certain assumptions about the plan’s anticipated experience—for example, the rate of return the plan will receive on its investments and how long participants will live and collect benefits. The MPPAA

enumerates only two requirements for these actuarial assumptions: The assumptions must be reasonable, and they must represent the actuary's "best estimate" of the plan's anticipated experience. 29 U.S.C. § 1393(a)(1). The statute does not provide any deadline for *when* an actuary must select his assumptions. The obvious inference is that no deadline exists.

That is how plans, actuaries, and employers understood the MPPAA for four decades following its enactment. Consistent with the statute's plain text, actuaries would calculate a plan's underfunding as it stood on the valuation date by collecting relevant information, selecting assumptions, and performing the pertinent calculations *after* the valuation date.

In 2020, the Second Circuit broke with that consistent understanding. It became the first (and only) court to rule that an actuary must select the assumptions he uses to calculate an employer's withdrawal liability by the valuation date, or else the assumptions default to whatever the actuary had previously selected as part of a prior valuation. *Nat'l Ret. Fund v. Metz Culinary Mgmt., Inc.*, 946 F.3d 146 (2d Cir. 2020). The *Metz* court acknowledged that the MPPAA provision governing actuarial assumptions is "silent" as to when assumptions must be selected. *Id.* at 150. But it nevertheless purported to find congressional intent to impose a deadline for selecting assumptions in the legislative history of a different provision that has nothing to do with actuaries or their assumptions. *Id.* Unsurprisingly, the unanimous panel of the court of appeals below, as well as the two district judges below, found *Metz* "unpersuasive." Pet. App. 14a, 61a, 106a.

The MPPAA’s text forecloses the *Metz* rule that actuaries must select their assumptions by the valuation date. The MPPAA expressly addresses the requirements for actuarial assumptions, and selection by the valuation date is not one of them. Moreover, the *Metz* rule conflicts with the MPPAA’s requirement that assumptions offer the actuary’s “best estimate” of the plan’s anticipated experience. The *Metz* rule would force actuaries who do not select assumptions by the valuation date to calculate withdrawal liability using stale assumptions that do *not* reflect their “best estimate” of the plan’s anticipated experience. That would defeat the purpose of the “best estimate” requirement, which is to ensure that withdrawal liability calculations accurately reflect an employer’s fair share of a plan’s underfunding so that plans remain solvent and able to provide the benefits promised to participants.

Petitioners’ sole textual argument is that because the MPPAA requires an actuary to measure a plan’s underfunding “as of” a valuation date, the actuary must necessarily select his assumptions by that date. But that logic does not follow. By its plain meaning, “as of” sets a reference date for assessing the financial condition of a pension plan, not a deadline by which any of the work to perform that assessment must be completed. A directive to calculate underfunding “as of” a valuation date implies that the work to perform that calculation, including the selection of underlying assumptions, will occur on a *later* date. And for decades, actuaries have done just that—performed their calculations after the valuation date based on data collected, and assumptions selected, after the valuation date.

Petitioners’ policy arguments fare no better. They contend that the *Metz* timing rule is necessary to prevent

plan sponsors from manipulating actuarial assumptions and to enable employers to predict their liability before withdrawing. Neither policy argument is correct. For one thing, assumptions are selected by actuaries, not plan sponsors, because Congress viewed actuaries as independent and unbiased professionals. Moreover, the MPPAA already provides employers with a remedy should any “manipulation” occur. Nor would the *Metz* deadline make it easier for employers to predict their liability before withdrawing. Even if actuaries were required to *select* their assumptions by the valuation date, assumptions are not *disclosed* to employers until much later. The *Metz* selection deadline would therefore not result in employers learning about the assumptions used to calculate their withdrawal liability any earlier than they currently do.

For these reasons, the Court should affirm that the MPPAA means what it says and does not require actuaries to select their assumptions by the valuation date.

STATEMENT OF THE CASE

1.a. Congress enacted the Employee Retirement Income Security Act of 1974 (“ERISA”) “to provide comprehensive regulation for private pension plans.” *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 214 (1986). The fundamental purpose of ERISA is to ensure that “if a worker has been promised a defined pension benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—he actually will receive it.” *Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 720 (1984).

1.b. ERISA governs both single-employer and multiemployer pension plans. 29 U.S.C. § 1002(37), (41). Multiemployer plans are those to which more than one employer contributes under the terms of one or more collective-bargaining agreements. *Id.* § 1002(37). In such plans, employers pool contributions into a single fund that pays benefits to retirees who performed covered work for at least one of the contributing employers. *Trs. of Loc. 138 Pension Tr. Fund v. F.W. Honerkamp Co.*, 692 F.3d 127, 129 (2d Cir. 2012).

As originally enacted, ERISA unintentionally incentivized employers to withdraw from multiemployer plans that were struggling financially. *Milwaukee Brewery*, 513 U.S. at 416–17. Under the original regime, an employer was not required to make any additional contributions to a plan following a withdrawal unless (i) the plan terminated within five years and (ii) the Pension Benefit Guaranty Corporation (“PBGC”) exercised its discretion to pay benefits to the defunct plan’s participants. *R.A. Gray*, 467 U.S. at 720. “Unfortunately, this 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.” *Milwaukee Brewery*, 513 U.S. at 416–17. As more employers withdrew from struggling plans, the remaining employers had to make higher and higher contributions to keep the plan afloat, which encouraged additional withdrawals and led to a death spiral for many plans. *Connolly*, 475 U.S. at 216.

To address that problem, Congress enacted the MPPAA, which amended ERISA to provide additional

protections for multiemployer pension plans. *See* Pub. L. No. 96-364, 94 Stat. 1208 (1980), codified at 29 U.S.C. §§ 1381–1461. Among other things, the MPPAA requires any employer that withdraws from an underfunded plan to pay “withdrawal liability” to the plan. 29 U.S.C. § 1381(a). Withdrawal liability represents the withdrawing employer’s proportionate share of the plan’s unfunded vested benefits (“UVBs”). *See id.* § 1381(b). UVBs are defined as the difference between the value of the vested benefits that a plan owes to its participants and the value of the plan’s assets. *Id.* § 1393(c); *see also R.A. Gray*, 467 U.S. at 725.

1.c. The MPPAA provides four methods for determining the portion of a plan’s UVBs that are allocable to an employer as its withdrawal liability. 29 U.S.C. § 1391(b), (c)(1), (c)(2), (c)(3). Under the “presumptive method” (which was used in this case, JA144, JA320), a withdrawing employer’s liability is based on (i) the plan’s UVBs for the plan year ending before September 26, 1980; (ii) the changes in the plan’s UVBs for each subsequent plan year through the year preceding the withdrawal; and (iii) “reallocated UVBs,” which are amounts owed to the plan but uncollectible. *Id.* § 1391(b)(1)(A)–(C). To allocate liability to a particular employer, the statutory formula uses a fraction representing the employer’s contributions to the plan over the previous five years divided by the total employer contributions during that same period. 29 U.S.C. § 1391(b)(2)(E)(ii), (3)(B), (4)(D)(ii).

The three other methods for computing withdrawal liability vary in their specifics but are generally based on the plan’s UVBs as measured at the end of the plan year preceding the year in which the employer withdraws.

29 U.S.C. § 1391(c)(2), (c)(3), (c)(4). The last day of the plan year preceding an employer’s withdrawal is called the “valuation date” or the “measurement date.” *See Milwaukee Brewery*, 513 U.S. at 428.

Congress chose to base withdrawal liability calculations on a plan’s UVBs as of the end of the year preceding an employer’s withdrawal for “administrative convenience.” *Milwaukee Brewery*, 513 U.S. at 418. Plan actuaries calculate UVBs annually as of the end of each plan year as part of a mandatory valuation. *See* 26 U.S.C. § 431(c)(7)(A). The MPPAA allows actuaries to use those annual UVB calculations when determining withdrawal liability rather than requiring new UVB calculations each time an employer withdraws. *See Milwaukee Brewery*, 513 U.S. at 418.

Because the information required to calculate UVBs is not available until after the end of the plan year, UVB calculations are necessarily performed after year-end. *See* Am. Acad. of Actuaries, Issue Brief, *Selection of Actuarial Assumptions for Multiemployer Plans* 4 (July 2020) [hereinafter Actuarial Academy Issue Brief].¹ After UVBs are calculated, they are disclosed in a public filing known as Form 5500, which a plan can file up to nine-and-a-half months after the end of the plan year.² *See* 29 U.S.C. § 1024(a)(1) (Form 5500 due 210 days after end of plan year absent extension); Form 5558 (permitting 2.5-

¹ Available at <https://www.actuary.org/sites/default/files/2020-07/IB.MultiEmpPenPlan.pdf>.

² 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.

month extension).³ An actuary uses the UVB calculations to determine a withdrawing employer’s liability, which the plan must serve on the employer “as soon as practicable” after the withdrawal. 29 U.S.C. § 1399(b)(1).

1.d. Congress entrusted actuaries with the task of calculating withdrawal liability because they are unbiased professionals subject to ethical standards. *See Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 635 (1993). To calculate withdrawal liability, an actuary must first determine the plan’s UVBs, which requires making certain assumptions about the plan’s anticipated experience. For example, when determining the value of the vested benefits that the plan will need to pay in the future, an actuary must make assumptions about how long plan participants will live. *See United Mine Workers of Am. 1974 Pension Plan v. Energy W. Mining Co.*, 39 F.4th 730, 735 (D.C. Cir. 2022). The actuary must also assume a discount rate to determine the present value of the plan’s future liabilities. *Id.*

The MPPAA sets forth two requirements for the assumptions that actuaries employ: “Withdrawal liability . . . shall be determined . . . on the basis of actuarial assumptions and methods, which, [1] in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, [2] in combination, offer the actuary’s best estimate of anticipated experience under the plan[.]” 29 U.S.C. § 1393(a)(1) (brackets and numbering added). No

³ U.S. Dep’t of the Treasury, Internal Revenue Serv., Form 5558: Application for Extension of Time to File Certain Employee Plan Returns (Rev. Jan. 2025), <https://www.irs.gov/pub/irs-pdf/f5558.pdf>.

provision of the MPPAA (or ERISA generally) provides a deadline by which an actuary must select the assumptions he uses when calculating withdrawal liability.⁴

2. The IAM National Pension Plan is a multiemployer pension plan that provides retirement benefits to members of the International Association of Machinists and Aerospace Workers, AFL-CIO and affiliated local districts and lodges. JA143, JA320. The plan's assets are held in a fund (the "Fund"), which is governed by an agreement and declaration of trust. JA143–44, JA320. The Fund's year runs from January 1 to December 31. JA144, JA320.

Cheiron, Inc. has served as the Fund's actuary since March 2014. JA144, JA322. In that role, Cheiron prepares valuations of the Fund's assets and liabilities, calculates the plan's UVBs, and determines the liability owed by withdrawing employers. JA145, JA322.

Cheiron determined that, as of the end of 2016, the Fund had nearly \$450 million in UVBs. JA145–47, JA322. It was the first time in several years that the Fund's assets were projected to be insufficient to cover vested benefits. JA145–47, JA322. That meant that employers withdrawing from the Fund beginning in 2017 would be required to pay withdrawal liability. In calculating UVBs

⁴ The MPPAA alternatively permits an actuary to employ assumptions promulgated by the PBGC. 29 U.S.C. § 1393(a)(2). The PBGC has not promulgated any such assumptions, though it has proposed to do so in a pending rule. *See* Actuarial Assumptions for Determining an Employer's Withdrawal Liability, 87 Fed. Reg. 62,316 (proposed Oct. 14, 2022).

for the 2016 plan year, Cheiron assumed a discount rate of 7.5%. JA146, JA322–23.

On January 24, 2018, Cheiron selected the methods and assumptions it would use to calculate the Fund’s UVBs for the 2017 plan year—and, thus, the liability of employers withdrawing during 2018. JA146–47, JA323–24. For the 2017 plan year, Cheiron selected a discount rate assumption of 6.5%, adopted an administrative expense load, and changed the method for valuing plan assets. JA146–47, JA323–24.

3. Each Petitioner is an employer that previously contributed to the Fund under a collective-bargaining agreement. Pet. App. 8a–11a & n.9. Each Petitioner withdrew from the Fund in 2018 after Cheiron had already selected the methods and assumptions it would use for the 2017 year-end valuation. JA150, JA326.

Cheiron calculated the Fund’s UVBs for the 2017 plan year using the methods and assumptions it had selected on January 24, 2018. JA148–49, JA325. Based on those UVB calculations, Cheiron determined that Petitioners owed withdrawal liability in the following amounts: \$6,158,482 (M & K Employee Solutions, LLC); \$477,475 (Ohio Magnetics, Inc.); \$1,289,384 (Toyota Logistics, Inc.); and \$2,013,028 (Phillips Liquidating Trust). JA151, JA326.

4. Each of the four Petitioners commenced a separate arbitration to challenge the calculation of its withdrawal liability. Pet. App. 9a–11a & n.9; *see also* 29 U.S.C. § 1401(a) (providing that disputes over withdrawal liability assessments “shall be resolved through arbitration”). In each arbitration, Petitioners argued that

Cheiron improperly employed the 6.5% discount rate assumption it selected in January 2018 when calculating withdrawal liability rather than the 7.5% rate it had used to calculate UVBs for the 2016 plan year.⁵

The parties stipulated in each arbitration that, before addressing any other issue, the arbitrator would first decide a threshold legal question: Whether Cheiron was permitted under the MPPAA to employ the methods and assumptions it had selected on January 24, 2018 (three weeks after the valuation date) when calculating Petitioners' withdrawal liability. JA163–64, JA207–08, JA232, JA253–54.⁶

Each arbitrator sided with Petitioners, ruling that Cheiron was not permitted to calculate withdrawal liability using the methods and assumptions that it had selected three weeks after the end of the 2017 plan year. Pet. App. 9a–11a & n.9. In so ruling, each arbitrator relied heavily on the Second Circuit's decision in *Metz*, which held that actuaries must calculate withdrawal liability using assumptions selected before the end of the prior plan year.

5. The Trustees brought four separate lawsuits in the United States District Court for the District of Columbia to challenge the four arbitration decisions. Three were

⁵ Certain Petitioners also challenged Cheiron's use of other methods and assumptions that it had selected on January 24, 2018.

⁶ Because of that stipulation, there was no factual discovery into the actuary's reasons for selecting his methods and assumptions.

consolidated before Judge Moss. The fourth was assigned to Judge Lamberth.

Both district court judges vacated the arbitrators' decisions and held that the MPPAA does *not* require actuaries to select their assumptions by the valuation date. Pet. App. 18a–72a, 73a–119a. The judges relied on the MPPAA's text, observing that the statute “is silent as to the [timing] limitation” proposed by Petitioners. Pet. App. 98a; *see also* Pet. App. 59a–60a. The “clear takeaway from that silence: Congress did not impose any such limitation.” Pet. App. 98a. “Although Congress could have required actuaries to [select assumptions before the valuation date], the Court will not strain to reach such a result in the face of a much more obvious reading of the statute.” Pet. App. 96a.

The district judges also cited the MPPAA's requirement that actuaries select assumptions that offer their “best estimate of anticipated experience under the plan.” Pet. App. 60a (citing 29 U.S.C. § 1393(a)(1)), 99a (same). The judges explained that an actuary should not be required to make his “best estimate” of a plan's anticipated experience on or before the valuation date, when he does not yet have complete information about the applicable plan year. Pet. App. 95a–96a, 54a–55a. They further observed that, under Petitioners' proposed timing rule, actuaries who fail to select assumptions by the valuation date could be forced to employ stale assumptions that are “disconnected from reality” and that do not reflect the actuary's “best estimate” of the plan's anticipated experience. Pet. App. 96a.

Both judges acknowledged that their rulings conflicted with the Second Circuit's decision in *Metz* but

explained that *Metz*'s holding runs counter to the MPPAA's text. Pet. App. 58a–64a, 106a–15a.

6. A unanimous panel of the court of appeals affirmed the two district court decisions. Pet. App. 1a–17a. The court of appeals held that the MPPAA permits plan actuaries to select withdrawal liability assumptions after the valuation date. Pet. App. 12a–15a. The court further ruled that “[w]hen adopting actuarial assumptions, an actuary may base their assumption on information after the measurement date ‘so long as those assumptions are ‘as of’ the measurement date—that is, the assumptions must be based on the body of knowledge available up to the measurement date.’” Pet. App. 13a.

The court of appeals explained that “[i]t would be contrary to 29 U.S.C. § 1393(a)(1)’s requirement that an actuary use his ‘best estimate’ of the plan’s anticipated experience as of the measurement date to require an actuary to determine what assumptions to use before the close of business on the measurement date.” Pet. App. 13a. The court also rejected *Metz* as “neither controlling in this jurisdiction nor persuasive,” finding *Metz* “counter to the text of the MPPAA, which protects [multiemployer pension plans] and their beneficiaries.” Pet. App. 14a & n.10.

7. This Court granted certiorari to resolve the conflict between the decision below and *Metz*. In granting certiorari, the Court reformulated the Question Presented, limiting review to “whether 29 U.S.C. § 1391’s instruction to compute withdrawal liability as of the end of the plan year requires a 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.” JA349. By reformulating the Question Presented, the Court eliminated the false premise in Petitioners’ proposed question that assumptions selected by an actuary continue to reflect the actuary’s views until new assumptions are selected. *See* Pet. i.

SUMMARY OF ARGUMENT

By its plain terms, the MPPAA does not require an actuary to select by 11:59 PM on the valuation date the assumptions he uses to calculate an employer’s withdrawal liability. The section of the MPPAA titled “Actuarial Assumptions” sets forth only two requirements for assumptions: They must be reasonable in the aggregate, and they must offer the actuary’s best estimate of the plan’s anticipated experience. 29 U.S.C. § 1393(a)(1). The statute is silent concerning *when* the assumptions must be selected. *Id.* “[T]he clear takeaway from that silence” is that “Congress did not impose” any deadline for selecting assumptions. Pet. App. 98a.

The MPPAA’s command that actuaries employ assumptions reflecting their “best estimate” of the plan’s anticipated experience confirms that assumptions need not be selected by the valuation date. *See* 29 U.S.C. § 1393(a)(1). An actuary will typically make his “best” estimate of a plan’s anticipated experience as of the valuation date *after* that date, when complete information about the plan’s year is available. By contrast, the *Metz* rule would require actuaries to employ assumptions that may *not* reflect their best estimate of expected experience. Under *Metz*, an actuary who does not select assumptions by the valuation date would be forced to

employ whatever stale assumptions he had selected for a prior valuation—even if those assumptions no longer represent his “best estimate” of the plan’s anticipated experience. A rule that forces an actuary to use assumptions that he does not believe to be accurate flies in the face of the “best estimate” requirement.

Petitioners’ textual argument is a non-sequitur. They argue that because the MPPAA directs actuaries to calculate withdrawal liability “as of” a valuation date, the assumptions used in those calculations must necessarily be locked in by that date. But as a matter of common usage, a directive to perform calculations “as of” a valuation date presumes that the actuary will act *after* that date. “As of” merely sets a reference point for calculations that are performed at a later time. It does not require any of the work that goes into those calculations to be performed by the reference date. That is how the statute has long been understood by actuaries, who for decades following the MPPAA’s enactment have selected after the valuation date the assumptions they use to calculate a plan’s UVBs “as of” the valuation date. It is also how “as of” has been construed in other contexts, where professionals make estimates “as of” a valuation date using information gathered after that date.

Petitioners argue that the *Metz* deadline requiring actuaries to select their assumptions by the valuation date would be good policy. But policy arguments cannot overcome the MPPAA’s text. And Petitioners’ policy arguments are misguided in any event. Contrary to Petitioners’ contention, their proposed deadline is not necessary to prevent plans from manipulating assumptions to punish withdrawing employers. The MPPAA already provides a remedy for withdrawing employers if assumptions are manipulated: The employer

can challenge its withdrawal liability assessment on the grounds that the assumptions employed were not reasonable or do not reflect an actuary's reasoned judgment. *See* 29 U.S.C. §§ 1393(a)(1), 1401(a)(3)(B); *see also Wachtell, Lipton, Rosen & Katz v. Comm'r*, 26 F.3d 291, 296 (2d Cir. 1994). Since Congress has already addressed concerns about manipulation of assumptions, this Court should not craft an additional remedy that has no footing in the statutory text. *See Sandoz Inc. v. Amgen Inc.*, 582 U.S. 1, 21 (2017).

Nor would the *Metz* deadline make it easier for employers to predict their liability before withdrawing from a plan. Congress has determined that a withdrawing employer is entitled only to an estimate of its withdrawal liability that is based on data and assumptions that are more than one year out of date. *See* 29 U.S.C. § 1021(j)(1)(A). The utility of such estimates would be the same whether an actuary selects his assumptions before or after the valuation date. In either case, the assumptions used to calculate the estimate may differ significantly from the assumptions used to calculate the requesting employer's liability. In fact, the *Metz* timing rule would not provide withdrawing employers with any additional information beyond what they already have. While the rule would require actuaries to *select* their assumptions by the valuation date, it would not result in those assumptions being *disclosed* any earlier.

ARGUMENT

I. BY ITS PLAIN TERMS, THE MPPAA DOES NOT REQUIRE ACTUARIES TO SELECT ASSUMPTIONS BY THE VALUATION DATE.

The sole question presented in this case is whether the MPPAA requires actuaries of multiemployer pension plans to calculate an employer's withdrawal liability using assumptions that the actuary selected by the last day of the plan year before the year of withdrawal. The plain text of the MPPAA shows that the answer is "no." The statute by its terms does not set any deadline by which an actuary must select assumptions.

A. The Statutory Text Contains No Requirement that Actuaries Select Assumptions by Any Particular Date.

"[S]tatutory interpretation turns on the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *FCC v. AT&T Inc.*, 562 U.S. 397, 407 (2011). Here, the Court need go no further than the MPPAA's words to resolve this case.

The MPPAA expressly addresses the requirements for actuarial assumptions, and selection by the valuation date is not one of them. Specifically, 29 U.S.C. § 1393, which is titled "Actuarial Assumptions," sets forth only two requirements for actuarial assumptions: (i) the actuary must employ assumptions that, "in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations)," and (ii) the assumptions must, "in combination, offer the actuary's

best estimate of anticipated experience under the plan.” 29 U.S.C. § 1393(a)(1). Section 1393 does not prescribe any other requirement for actuarial assumptions, and it certainly does not set forth any deadline by which assumptions must be selected. That should end the matter because courts do not “read into statutes words that aren’t there.” *Romag Fasteners, Inc. v. Fossil Grp., Inc.*, 590 U.S. 212, 215 (2020).

The omission from § 1393 of any deadline for selecting actuarial assumptions is deliberate and decisive. When Congress wanted to set deadlines relevant to withdrawal liability calculations, it did so expressly. For example, the MPPAA requires plan amendments affecting withdrawal liability to be adopted *before* the date of an employer’s withdrawal. 29 U.S.C. § 1394. Yet when discussing actuarial assumptions, the MPPAA does not require actuaries to select their assumptions by any particular date. *Id.* § 1393. The omission of any timing limitation from § 1393 should be presumed intentional given that Congress expressly imposed a deadline affecting withdrawal liability calculations in the subsequent section. *See Russello v. United States*, 464 U.S. 16, 23 (1983).

The MPPAA’s directive that actuaries calculate withdrawal liability using assumptions that offer their “best estimate of anticipated experience under the plan” confirms that assumptions need not be selected by the end of a plan year. 29 U.S.C. § 1393(a)(1). By definition, an actuary’s “best estimate” of a plan’s anticipated experience is the estimate that is “excelling all others.” *See Best*, Webster’s New Collegiate Dictionary (8th ed. 1980). By requiring actuaries to use their “best” estimate of a plan’s anticipated experience, the MPPAA prioritizes

accuracy: Actuaries are instructed to calculate withdrawal liability in the manner that most accurately reflects the plan's financial condition on the valuation date and the withdrawing employer's fair share of any underfunding.

A timing rule requiring assumptions to be selected by the valuation date would in many instances *prevent* actuaries from using the assumptions that offer their best estimate of a plan's anticipated experience. For example, if an actuary does not select assumptions by the end of a plan year (as happened in this case), Petitioners' rule would force the actuary to calculate withdrawal liability using stale assumptions that could be up to a year old—even if those assumptions no longer represent the actuary's best estimate of the plan's expected experience. That would put actuaries in an untenable position: “[T]he actuary would be reduced to admitting that its actuarial assumptions were wrong and could say only that its hands were tied by a restriction that appears nowhere in the statute.” Pet. App. 100a. There is no reason to infer that Congress *sub silentio* intended to impose a deadline that would cause actuaries to violate the MPPAA's express command to employ assumptions that offer their “best estimate” of the plan's anticipated experience.

What's more, requiring actuaries to select assumptions before the end of the plan year—before complete information about the plan year is available—would deprive the actuaries of information that would allow them to forecast the plan's anticipated experience more accurately. *See* Actuarial Academy Issue Brief 4 (explaining that “the advantage of using the most recent relevant data”—which is “generally not available until after the measurement date”—is that it “ensures the

results fully reflect current experience and the actuary’s best estimate of the situation as of the measurement date”). It would be akin to requiring a company’s CFO to make revenue projections for 2026 before the company had complete financials for 2025. For example, an actuary will be better positioned to make assumptions about a plan’s expected rate of return on its investments as of the end of a plan year if the actuary has complete information about the composition and value of those investments as they stood on December 31—information that is not compiled until after year-end. Given Congress’s concern with ensuring the accuracy of withdrawal liability calculations, it is implausible that the MPPAA would impose a deadline for selecting assumptions that deprives an actuary of information relevant to determining his “best estimate” of the plan’s anticipated experience.

**B. Section 1391 Does Not Impose Any
Deadline for Actuaries to Select
Assumptions.**

Unable to find textual support for their proposed deadline in the MPPAA section devoted to “Actuarial Assumptions” (29 U.S.C. § 1393), Petitioners instead rely on two words (“as of”) buried in sub-sub-subsections of § 1391—a section that does not mention either actuaries or their assumptions. Pet. Br. 17–22. Section 1391 sets forth four formulae for calculating a withdrawing employer’s liability. *See Milwaukee Brewery*, 513 U.S. at 417.⁷ Each formula requires an actuary to calculate withdrawal liability using the plan’s UVBs as they existed

⁷ Contrary to Petitioners’ contention (Pet. Br. 20), *Milwaukee Brewery* does not support the *Metz* timing rule, which was not at issue in that case.

on the final day of one or more plan years. To that end, § 1391 alternately refers to a plan's UVBs "for" a plan year, "at the end of" a plan year, or "as of the end of" a plan year. *E.g.*, 29 U.S.C. § 1391(b)(1)(A)–(B), (b)(2)(A), (c)(3)(E)(i), (c)(4).

Petitioners hinge their textual argument on the words "as of" in § 1391. Pet. Br. 17–22. According to Petitioners, § 1391's directive to calculate withdrawal liability using a plan's UVBs "as of" the end of the prior plan year somehow dictates when actuaries must select the assumptions they use when performing those calculations. *Id.*

Petitioners' textual argument is flawed for at least four reasons: (i) the directive they cite does not appear in § 1391(b), which is the subsection used to calculate withdrawal liability in this case; (ii) as a matter of plain English and longstanding actuarial practice, "as of" does not set a deadline by which an actuary must take any particular action but instead sets a reference date to which calculations must relate; (iii) Petitioners read the "best estimate" requirement out of the MPPAA; and (iv) Petitioners' position is built on the false premise that assumptions "roll over" from year to year.

1. The Relevant Method for Calculating Withdrawal Liability Does Not Contain Petitioners' Cited Language.

The directive that actuaries calculate withdrawal liability using a plan's UVBs "as of" the end of the prior plan year does not appear in § 1391(b), which contains the formula used to calculate Petitioners' withdrawal liability

in this case. *See* JA144, JA320. Under § 1391(b), liability is calculated not as an employer’s share of the plan’s UVBs “as of” the valuation date but rather as the sum of the employer’s share of the “the change in unfunded vested benefits *for each [relevant] plan year*” dating back to 1980, plus other related amounts. 29 U.S.C. § 1391(b) (emphasis added). The changes in UVBs for each prior plan year are, in turn, calculated as the amount by which “the unfunded vested benefits *at the end of [a] plan year*” exceeded the prior year’s underfunding. *Id.* § 1391(b)(2)(B) (emphasis added). The fact that one of the four methods for calculating withdrawal liability does not even mention calculating UVBs “as of” the valuation date undercuts any notion that “as of” are magic words imposing a deadline on actuaries to select their assumptions.⁸

2. “As of” Does Not Impose a Deadline for Selecting Assumptions.

In all events, the phrase “as of” does not set a deadline by which actuaries must take any particular action. In common parlance, “as of” means “at the date

⁸ As used in § 1391(b), “as of” refers to the point in time when figures derived from earlier plan years are no longer reduced by 5%. *See* 29 U.S.C. § 1391(b)(2)(A)(ii), (b)(2)(C). For example, one component of withdrawal liability under § 1391(b) is the unamortized amount of the changes in the plan’s UVBs for each prior plan year dating back to 1980. *Id.* § 1391(b)(1)(A). For each prior plan year, that unamortized amount of the change in UVBs is the amount by which UVBs changed during that year reduced by 5% for each subsequent plan year. *Id.* § 1391(b)(2)(C). The “as of” language in § 1391(b)(2)(E)(i) merely means that the 5% per year reduction continues only through the end of the year prior to withdrawal. Section 1391(b) says nothing about calculating UVBs “as of” a valuation date.

mentioned,” Oxford American Dictionary (1980), or “as if it were,” *United States v. Munro-Van Helms Co.*, 243 F.2d 10, 13 (5th Cir. 1957). The term denotes a reconstruction on a later date of how things stood on an earlier date. *See* Wilson Follett, *Modern American Usage: A Guide* 76 (Jacques Barzun ed., 1966) (“[A]s of is justified only as a device for assigning an event to one time and the report and recognition of it to another.”). As used in portions of § 1391, “as of” simply directs an actuary to calculate on a later date the plan’s UVBs as they stood on the valuation date.

The phrase “as of” thus refutes Petitioners’ position because it contemplates that the actuary will take actions *after* the valuation date based on the state of affairs on the valuation date. For example, the parties agree that an actuary performs UVB calculations *after* the valuation date and that, in performing those calculations, he can rely on data about the prior plan year that was collected *after* the valuation date. There is no reason why an actuary cannot likewise select his assumptions after the valuation date. It would be anomalous for the words “as of” to permit actuaries to perform most of the work to calculate UVBs after the valuation date yet require them to complete one sliver of that work—selecting assumptions—before then. If Congress wanted to set the valuation date as a deadline for actuaries to take a particular action, it would not have chosen a phrase (“as of”) that presupposes actions occurring *after* the valuation date.

Actuaries have long understood “as of” as simply setting a reference date for calculations performed on a later date. As explained by the four actuarial firms that represent the vast majority of multiemployer plans

nationwide, “[i]t is widely understood among actuaries that the term ‘as of’ in the context of valuation is not a deadline by which work must be done or information must be received[.]” Amici Brief of Certain Actuaries at 10, No. 22-7157 (D.C. Cir. Mar. 30, 2023). Rather, that term signals “the date of reference for assessing on a snapshot basis the financial condition of the subject company or, in this case, the pension plan.” *Id.* “[A]ccordingly, for decades, actuaries for multiemployer pension plans have selected their actuarial assumptions after the end of the plan year in order to fully account for the plan’s experience during the year.” *Id.* at 2; *see also Combs v. Classic Coal Corp.*, No. 84-cv-1562, 1990 WL 66583, at *7 (D.D.C. Apr. 6, 1990) (actuary selected assumptions after the valuation date without objection from any party), *aff’d*, 931 F.2d 96 (D.C. Cir. 1991).

That longstanding understanding is reflected in the Actuarial Standards of Practice, which advise: “The actuary should select assumptions that reflect the actuary’s knowledge as of the measurement date.” Actuarial Standards Bd., Actuarial Standard of Practice No. 27, § 3.4.6 (Dec. 2023).⁹ As a general matter, an actuary cannot select *before* the valuation date assumptions that reflect his knowledge as of the valuation date. Instead, actuaries select assumptions *after* the valuation date based on the condition of the plan as of the valuation date. *See* Actuarial Academy Issue Brief 4. The Standards go on to say that “[i]f the actuary learns of an event occurring after the measurement date . . . that

⁹ Available at <https://www.actuarialstandardsboard.org/asops/adopted-asop-no-27-selection-of-assumptions-for-measuring-pension-obligations>.

would have changed the actuary's selection of an assumption, the actuary may reflect this change as of the measurement date." Actuarial Standard of Practice No. 27, § 3.4.6. In other words, in some circumstances, an actuary can consider events occurring *after* the valuation date when selecting assumptions. If an actuary is permitted to consider events occurring after the valuation date when selecting assumptions, by definition the selection itself can occur after the valuation date.

Actuaries' understanding of the phrase "as of" is significant because "when a statute is addressed to specialists, it must be read by judges with the minds of the specialists." *Becerra v. Empire Health Found.*, 597 U.S. 424, 434 (2022). Congress specifically delegated the task of calculating a plan's UVBs to actuaries. *See Concrete Pipe*, 508 U.S. at 632. And actuaries were instrumental in drafting the very provisions at issue. *See, e.g., Multiemployer Pension Plan Termination Insurance Program, Hearings Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 96th Cong., 1st Sess., 1979 WL 211247, at *10–12 (July 25, 1979) (statement of Robert Tilove, Special Consultant to Martin E. Segal Co. and PBGC Advisory Committee member). The fact that actuaries interpret "as of" consistent with its plain meaning not to set a deadline for selecting assumptions but merely to set a reference date for withdrawal liability calculations performed at a later date should be dispositive.

This understanding of "as of" is not unique to actuaries. In other valuation contexts, "as of" likewise serves as a reference point, not a cutoff. "[I]n the accounting industry and under GAAP," for instance, "as of" is a term of art," and "balance sheets are routinely

prepared ‘as of’ a closing date using information acquired and learned after that date.” *Transpro, Inc. v. Leggett & Platt, Inc.*, 297 F. App’x 434, 441–42 (6th Cir. 2008). Eminent domain cases, too, turn on the fair market value of the taken property “as of the date of the taking.” *Utah Dep’t of Transp. v. Boggess-Draper Co.*, 467 P.3d 840, 843 (Utah 2020). Yet factfinders may consider “post-valuation-date” evidence “in checking assumptions about the development potential of the property in question,” “confirming or undermining the expectations, as of the date of taking, of a willing buyer,” or “correct[ing] an uncertain prophecy” about the property based on “real-world experience.” *Id.* at 845 (citing 4A Nichols on Eminent Domain § 14A.04[2][b]). These examples all point to the same conclusion: “As of” identifies the reference date for a calculation, not the moment at which the inputs used in the calculation must be locked in. Petitioners’ contrary view conflicts with ordinary usage, longstanding actuarial practice, and common sense.

3. Petitioners Read the “Best Estimate” Requirement Out of the MPPAA.

Petitioners’ position also runs afoul of the MPPAA’s requirement that an actuary select assumptions that offer his “best estimate” of a plan’s anticipated experience. 29 U.S.C. § 1393(a)(1). As previously explained, Petitioners’ atextual timing rule would require an actuary that does not select assumptions by the end of the plan year to calculate withdrawal liability using old assumptions rather than the assumptions that offer his best estimate of the plan’s anticipated experience. *See supra* pages 19–20.

Petitioners dismiss this concern by arguing that old assumptions are never too “stale” because actuaries have to perform valuations—and, thus, select assumptions—on an annual basis. Pet. Br. 44. But that misses the point. Congress determined that actuaries should use assumptions that reflect their “best” estimate of a plan’s anticipated experience. 29 U.S.C. § 1393(a)(1). Assumptions that are a year or even a few months out of date by definition are not the actuary’s “best” estimate.

Petitioners further contend that the MPPAA does not specify “the moment at which the assumptions must be the actuary’s ‘best.’” Pet. Br. 42. But it is not sufficient for actuaries to employ assumptions that once represented their best estimate of the plan’s anticipated experience at some point in the past. By Petitioners’ logic, the “best estimate” requirement would be satisfied by assumptions that reflected an actuary’s best estimate of anticipated experience at the time of their selection—even if the selection occurred twenty years ago. That would be an odd reading of “best estimate,” to say the least. Under the MPPAA, an actuary must calculate withdrawal liability using his *current* best estimate of a plan’s anticipated experience as of the valuation date, not his best estimate from months ago or longer. *See* 29 U.S.C. § 1393(a)(1).

Petitioners argue that it is unnecessary for an actuary to wait for complete information about a plan year before making his “best” estimate of a plan’s anticipated experience because certain assumptions like discount rates are long-term projections that do not fluctuate based on short-term data. Pet. Br. 42–43. Petitioners’ proposed deadline would apply to all actuarial assumptions, however, not just interest-rate assumptions.

And regardless, important information that actuaries use to set interest-rate assumptions—such as the composition and value of plan assets and capital market expectations—is often not available by the valuation date. More to the point, there is no reason to believe that Congress intended to force actuaries to select assumptions for a plan year before all information about that plan year is available. A “best” estimate is not based on incomplete information. Petitioners’ proposed timing rule would require an actuary to provide his “best estimate” of a plan’s anticipated experience as of the valuation date before the actuary even knows the plan’s condition on that date.

4. *Petitioners’ Argument Is Built on a False Premise.*

Petitioners’ reading of § 1391 also depends on a false premise. Their position is that if an actuary does not select assumptions before the valuation date, § 1391 requires reverting to whatever prior assumptions were most recently selected because those assumptions are what the actuary “accept[ed] on December 31.” Pet. Br. 3. For that to be true, actuarial assumptions must “remain in effect” until changed (Pet. Br. 12)—or, in the words of the *Metz* court, assumptions must “roll over automatically” from one year to the next. 946 F.3d at 150.

That premise has no support in the MPPAA. Under the statute, an actuary selects assumptions when he calculates a plan’s UVBs. 29 U.S.C. § 1393(a). Nothing in the statute suggests that those assumptions somehow remain operative after those calculations are completed. Instead, when the time comes for the actuary to make new calculations for a new plan year, he must go through the

process of selecting his assumptions anew. *Id.* While an actuary may sometimes select some or all of the same assumptions that he had selected in the prior year, that is not because the prior assumptions somehow “rolled over.” It is because the actuary has determined that those assumptions continue to represent his “best estimate” of the plan’s anticipated experience. *Id.*¹⁰

II. PETITIONERS’ POLICY ARGUMENTS ARE IRRELEVANT AND MISGUIDED.

Petitioners’ remaining contentions are largely policy arguments that are “properly addressed to Congress, not this Court.” *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 368 (2018). Specifically, Petitioners argue that the Court should adopt their proposed timing rule because plans might otherwise manipulate actuarial assumptions to harm withdrawing employers. Pet. Br. 36–37. Petitioners also contend that the Court should require actuaries to select their assumptions by the valuation date to allow employers to predict their liability before deciding whether to withdraw. Pet. Br. 32–34. Each of those policy arguments is misguided for the reasons explained below.

¹⁰ Below, Petitioners took the more extreme position that once an actuary selects assumptions, he continues to believe that those assumptions reflect his best estimate of the plan’s anticipated experience each day until he selects new ones. That position likewise has no statutory support. Actuaries select assumptions when calculating a plan’s UVBs. After those calculations are completed, actuaries are not required to reconsider the plan’s anticipated experience each subsequent day. The fact that an actuary has not selected new assumptions therefore does not mean that he continues to endorse his prior ones. It just means that the actuary has not thought about the plan’s anticipated experience because he was not required to do so.

But more to the point, arguments about Petitioners' preferred policy are insufficient to overcome the MPPAA's plain language. *See BPP.L.C. v. Mayor & City Council of Balt.*, 141 S. Ct. 1532, 1542 (2021). What matters is Congress's preferred policy, and the statutory text is the "primary guide to Congress's preferred policy." *Sandoz*, 582 U.S. at 21.

A. Petitioners' Selection Deadline Is Not Necessary to Prevent "Manipulation" of Assumptions.

Petitioners and amici contend that allowing actuaries to select assumptions after the valuation date would allow plans to manipulate actuarial assumptions to wallop withdrawing employers with high liability. *See* Pet. Br. 36–37; Chamber Br. 11–13. But assumptions are selected by actuaries, not plans. *Concrete Pipe*, 508 U.S. at 632. And actuaries are not partisan advocates; they are credentialed professionals bound by ethical rules and standards. *See Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251–52 (1993). As this Court explained, Congress tasked actuaries with performing withdrawal liability calculations because they are "unbiased professional[s] whose obligations tend to moderate any claimed inclination to come down hard on withdrawing employers[.]" *Concrete Pipe*, 508 U.S. at 635. While Petitioners and their amici would have the Court believe that actuaries are predisposed to manipulate their calculations to favor plans, Congress believed otherwise.¹¹

¹¹ Nor do plan trustees have one-directional incentives to manipulate assumptions to inflate withdrawal liability. *Contra* Pet. Br. 36. Trustees owe fiduciary duties not only to protect existing participants but also to preserve the plan's long-term viability. Making

If a plan were to influence an actuary's selection of assumptions improperly, the MPPAA already provides a withdrawing employer with a remedy: It can challenge its withdrawal liability assessment on the grounds that the assumptions used in the calculation were unreasonable or did not actually represent the actuary's best estimate of the plan's anticipated experience. *See* 29 U.S.C. §§ 1393(a)(1), 1401(a)(3)(B); *see also Wachtell*, 26 F.3d at 296; *Concrete Pipe*, 508 U.S. at 633 n.19. In other words, the MPPAA already provides a remedy for assumptions that reflect a plan's bias rather than an actuary's professional judgment. There is no reason for this Court to impose an extra-textual deadline to address an issue for which Congress has already crafted a solution. "Where . . . a statute expressly provides a remedy, courts must be especially reluctant to provide additional remedies." *Sandoz*, 582 U.S. at 16.

In all events, the timing rule proposed by Petitioners would not prevent the "manipulation" that it is supposedly designed to address. A plan bent on manipulation could just as easily coerce an actuary to select biased assumptions before the valuation date as after that date. Petitioners' rule would therefore not accomplish anything. The problem (to the extent any problem exists) is not *when* assumptions are selected but whether the assumptions reflect an actuary's genuine professional judgment based on a reasonable analysis. It thus makes perfect sense that Congress drafted the MPPAA to

withdrawal liability punitive would only deter new employers from joining, undermining the plan's stability.

consider the quality and integrity of actuarial judgment rather than the date on which assumptions are selected.¹²

B. Petitioners' Discussion of "Predictability" Is Likewise Inaccurate.

Petitioners also argue that their proposed timing rule would allow an employer considering a withdrawal to better predict its liability in advance. Pet. Br. 32–34. That also is not true. Petitioners' timing rule would not provide employers with any additional information that would inform a decision whether to withdraw.

Contrary to Petitioners' contention, the timing rule would not allow employers to know before withdrawing which assumptions will be used in calculating their liability. Petitioners' rule merely requires that assumptions be *selected*, not *disclosed*, by the valuation date. The assumptions selected by an actuary are not publicly available until well after they are selected, and an employer has no legal right to their disclosure. An employer will therefore not know which assumptions an actuary has selected any sooner regardless of whether the

¹² Recognizing that actuaries are unlikely to manipulate assumptions, Petitioners concoct a hypothetical in which a plan manipulates assumptions by firing its actuary and then hiring a new one that it believes will choose assumptions that will increase withdrawal liability. Pet. Br. 35–37. Petitioners' timing rule would not prevent that scenario, however, because a plan could always replace its actuary before the valuation date. In all events, in Petitioners' scenario, if the new actuary acts competently and consistently with his professional obligations, withdrawal liability would still be calculated using assumptions that are reasonable and that reflect the actuary's best professional judgment, which was Congress's sole concern. *See* 29 U.S.C. § 1393(a)(1). If the new actuary does not, the MPPAA provides the withdrawing employer a remedy. *See id.* § 1401(a)(3)(B).

selection occurs by December 31 of the prior year or at some point during the year of withdrawal.

Petitioners' discussion of Form 5500 does not change that conclusion. Pet. Br. 33–34. Form 5500 is filed many months after the end of the plan year—after most withdrawal decisions have been made. *See* 29 U.S.C. § 1024(a)(1) (Form 5500 due 210 days after end of plan year absent extension); Form 5558 (permitting 2.5-month extension). Form 5500 discloses the scope of a plan's UVBs as of the end of the year and may include the assumptions the actuary used in calculating those UVBs—information that could be relevant to an employer's decision whether to withdraw. *See* Form 5500 at 3. But the utility of that information would be the same regardless of whether an actuary selects his assumptions before or after the valuation date, and Petitioners do not explain why it would be otherwise. By the time a Form 5500 is filed, the actuary has already selected his assumptions and calculated the plan's UVBs for the prior plan year, so there is no concern that the assumptions would change after the Form 5500 is filed.¹³

Nor would Petitioners' timing rule improve the utility of the withdrawal liability estimate that an employer can request under the MPPAA. *See* 29 U.S.C. § 1021(l)(1)(A).

¹³ The purpose of Form 5500 is not to inform withdrawing employers about their potential liability but to allow regulators to ensure a plan's compliance with the law and to allow participants and beneficiaries to protect their rights. *See* U.S. Dep't of Lab., Form 5500 Series, Emp. Benefits Sec. Admin. (Oct. 1, 2025), <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500>. Those purposes are not impaired if assumptions are selected after the valuation date.

By statute, those estimates are calculated as if the employer withdrew during the year before the request and are therefore necessarily one year out of date. *Id.* (requiring estimate of liability as “if such employer withdrew on the last day of the plan year preceding the date of the request”). For example, an employer requesting an estimate in 2025 would receive an estimate based on the plan’s UVBs and assumptions for the 2023 plan year, whereas the employer’s liability upon withdrawal would be based on the plan’s UVBs and assumptions for the 2024 plan year. *Id.* There is thus always a risk that a § 1021(1)(1) estimate will be based on assumptions that differ from those used to calculate the employer’s liability, and that risk would be present whether assumptions are selected before or after the valuation date.

Petitioners acknowledge that § 1021(1)(1)(A) estimates are a year out of date. Pet. Br. 34. Yet they assert without any accompanying reasoning that, absent their timing rule, the estimates would “have very little value.” *Id.* But § 1021(1)(1)(A) estimates have the same “value” under the *Metz* rule or the decision below. Under either regime, an estimate is based on assumptions and figures from two plan years ago, and the assumptions and figures may differ from those used to calculate the employer’s withdrawal liability.

At the end of the day, there is no support in either the MPPAA’s text or its legislative history for the idea that Congress prioritized allowing an employer to predict its liability before withdrawal. If that had been Congress’s goal, the MPPAA would have been drafted to allow employers to receive current estimates of their withdrawal liability rather than estimates based on

figures from two plan years ago. Petitioners cite an earlier version of the MPPAA that set the valuation date at the end of the year of withdrawal and argue that Congress must have moved the valuation date to the prior year to promote predictability. Pet. Br. 20–21. But Petitioners cite nothing in support of that conjecture. The more obvious inference—consistent with Congress’s primary concern of ensuring the solvency of multiemployer plans, *Connolly*, 475 U.S. at 214—is that Congress moved the valuation date earlier to allow plans to calculate, assess, and collect withdrawal liability more quickly. *Cf.* 29 U.S.C. § 1399(c)(2) (MPPAA’s “pay now, dispute later” provision that requires employers to pay withdrawal liability assessments immediately even if they dispute the amount).¹⁴

III. PETITIONERS’ REMAINING ARGUMENTS ARE MERITLESS.

A. Section 1394 Does Not Support Petitioners.

Like the *Metz* court, Petitioners rely heavily on 29 U.S.C. § 1394, which prohibits plan sponsors from applying to a withdrawing employer certain plan rules and amendments adopted after the employer withdraws.

¹⁴ Amici’s speculation that the proposed timing rule would encourage employer participation and bolster plan solvency is likewise unsupported. *See* Chamber Br. 19–21; Naughton Br. 20–22. For over four decades before *Metz*, employers participated in multiemployer plans and plans remained solvent while actuaries selected assumptions after the valuation date. If anything, a timing rule that prevents actuaries from using assumptions that offer their best estimate of a plan’s anticipated experience when calculating withdrawal liability would threaten plan solvency by making liability calculations less accurate.

Pet. Br. 30–32; *see also Metz*, 946 F.3d at 150. But, as Petitioners concede, § 1394 “targets plan ‘rule[s]’ and ‘amendment[s]’ rather than actuarial assumptions.” Pet. Br. 30. So § 1394 does not help Petitioners. If anything, the fact that Congress expressly barred plan amendments related to withdrawal liability from applying retroactively in § 1394 but included no such timing restriction for actuarial assumptions in § 1393 shows that Congress was not concerned about the timing of when assumptions are selected. *See supra* pages 17–20.

The concept of “retroactivity” as it appears in § 1394 has no bearing on this case in any event. Section 1394 prohibits a plan from applying to a withdrawing employer plan rules or amendments adopted *after the employer’s withdrawal*. 29 U.S.C. § 1394. Here, the actuary selected his assumptions *before* each of the Petitioners withdrew from the Fund. JA150, JA326. So the assumptions were not applied “retroactively” within the meaning of § 1394. Boiled down, Petitioners’ position is that because § 1394 prohibits plan rules and amendments from relating back to the date of an employer’s withdrawal, Congress must have also intended to prohibit actuarial assumptions (which are not plan rules or amendments) from relating back to a different date (the valuation date). That logic is specious at best.

There are obvious reasons why Congress would have prohibited certain plan rules and amendments from applying retroactively in § 1394 but not imposed any deadline in § 1393 for the assumptions selected by actuaries. Rules and amendments are adopted by plan sponsors, who at least arguably could have an incentive to increase the liability of withdrawing employers. Actuarial assumptions, by contrast, are selected by actuaries, whom

Congress viewed as “unbiased professional[s] whose [professional and regulatory] obligations tend to moderate any claimed inclination to come down hard on withdrawing employers[.]” *Concrete Pipe*, 508 U.S. at 635. Because actuaries are independent, unbiased professionals, Congress was not concerned about *when* actuaries select their assumptions, as long as the assumptions are reasonable and the product of an actuary’s reasoned professional judgment. *See* 29 U.S.C. § 1393(a)(1).

B. Section 1393(b) Does Not Support Petitioners.

Petitioners’ reliance on § 1393(b) is likewise misplaced. Pet. Br. 43. That provision permits an actuary to calculate an employer’s withdrawal liability using the UVBs from the plan’s most recently completed valuation along with reasonable estimates of the plan’s UVBs for the interim years. 29 U.S.C. § 1393(b)(1). It is designed to allow a plan to assess and collect withdrawal liability more quickly than it could if it had to wait for the most recent plan year’s UVBs to be calculated as part of a full valuation.

Petitioners contend that § 1393(b) permits actuaries to calculate withdrawal liability using assumptions that are up to three years old. Pet. Br. 43. That is not correct. An actuary operating under § 1393(b) still needs to select assumptions that offer his best estimate of the plan’s anticipated experience when making reasonable estimates of the plan’s UVBs for the interim years following the most recent valuation. Moreover, a § 1393(b) withdrawal liability calculation is not based on “years-old valuations.” *Contra* Pet. Br. 43. While the

most recently completed valuation provides a starting point under § 1393(b), UVB estimates for the interim years are used to reach a reasonable approximation of the plan's condition on the valuation date. 29 U.S.C. § 1393(b)(1).

C. The PBGC Has Not Taken Inconsistent Positions on the Proposed Timing Rule.

Contrary to Petitioners' contention, the PBGC does not support their reading of the MPPAA. *See* Pet. Br. 35–36; *see also* Chamber Br. 12–14. The PBGC's position is clear that an actuary is *not* required to select assumptions by the valuation date. *See* Brief for the United States as Amicus Curiae at 8–16, No. 23-1209 (U.S. May 27, 2025).

The PBGC's position is no “flip-flop.” *Contra* Pet. Br. 36. In an effort to undercut the PBGC's reasoned position in this case, Petitioners cite a stray comment from PBGC's counsel taken out of context from oral argument in *Concrete Pipe* nearly thirty-five years ago. *Id.* The timing question presented in this case was neither presented nor briefed in *Concrete Pipe*, so any statements at oral argument on that topic carry little weight. In all events, PBGC's counsel did not take the position that assumptions must be selected by the valuation date. In the snippet at issue, counsel discussed actuaries selecting assumptions “in advance of the withdrawal of any employer to whom they will apply”—not in advance of the valuation date. Tr. Oral Arg. at 42, No. 91-904 (U.S. Dec. 1, 1992). In this case, the actuary selected assumptions before any Petitioner withdrew from the Fund. *See* JA150, JA326.

IV. THE COURT NEED NOT REACH THE QUESTION OF WHAT INFORMATION ACTUARIES MAY CONSIDER WHEN SELECTING ASSUMPTIONS AFTER THE VALUATION DATE.

After holding that actuaries are not required to select their assumptions by the valuation date, the court of appeals proceeded to address a secondary question: What information may an actuary consider when he selects assumptions after the valuation date? Pet. App. 13a. Specifically, the court of appeals considered whether the actuary must select his assumptions based only on events that occurred before the valuation date, or whether he is also permitted to consider developments occurring after that date. *Id.* The court ultimately held that an actuary must select assumptions based only “on the body of knowledge available up to the measurement date.” Pet. App. 13a.

Although Petitioners discuss this secondary holding at length (Pet. Br. 38–41), this Court need not reach the question to resolve this case. The Court did not grant certiorari to decide the universe of information that an actuary can consider when selecting assumptions after the valuation date, and there is no Circuit split on that question. Nor would it make sense to address the question in this case because the factual record is undeveloped. Below, the parties asked the arbitrators to resolve a single legal issue: whether the MPPAA requires an actuary to select his assumptions by the valuation date. JA163–64, JA207–08, JA232, JA253–54. All other issues were reserved for future proceedings. *Id.* As a result, the factual record is virtually non-existent and

contains no evidence concerning the information that the actuary here considered when selecting his assumptions.

Contrary to Petitioners' contention, the secondary question does not raise any workability concerns with the decision below. *Contra* Pet. Br. 38-41. Petitioners argue that the court of appeals' rule that actuaries may not consider post-valuation-date events when selecting assumptions is "unworkable" because even a "well-meaning" actuary will be unable to ignore such events. *Id.* The *only* workable rule, according to Petitioners, is to force actuaries to select their assumptions before the valuation date so they are not tempted to consider developments occurring after that date. *Id.* There are at least two problems with that "workability" argument.

First, contrary to the court of appeals' secondary ruling, the MPPAA does *not* prohibit actuaries from considering post-valuation-date events when selecting assumptions as of the valuation date. Instead, an actuary may consider any information that sheds light on the plan's anticipated experience as of the valuation date, including information about events occurring after the valuation date. For example, if a world event occurring in February would allow an actuary to better predict the life expectancy of plan participants as of the prior December 31, the actuary can take that event into account when selecting his life-expectancy assumption as of the valuation date. There is thus no "workability" problem because actuaries should not be required to ignore post-valuation date events.

That reading is supported by the MPPAA's text, which provides that withdrawal liability "shall be

determined by each plan on the basis of actuarial assumptions and methods which . . . offer the actuary's best estimate of anticipated experience under the plan." 29 U.S.C. § 1393(a)(1). The selection of assumptions is thus expressly tied to the calculation of withdrawal liability, and the assumptions must "offer" the actuary's best estimate at the time the calculations are performed. *Id.* An actuary is therefore permitted to consider any information available on the date he performs his calculations that allows him to more accurately predict the plan's anticipated experience as of the valuation date. That conclusion is consistent with the professional standards governing actuaries, which permit actuaries to consider certain developments occurring after the valuation date when selecting assumptions as of that date. *See* Actuarial Standard of Practice No. 27, § 3.4.6.

Second, even under the court of appeals' rule, there is nothing impractical about asking an actuary to disregard post-valuation-date events when selecting assumptions. Actuaries are in the business of making projections based on a given set of data. If the data set is restricted to information known about the state of the plan and the world on the valuation date, the actuary can select his assumptions accordingly. *See id.* (providing that an actuary generally "should select assumptions that reflect the actuary's knowledge as of the measurement date"). The MPPAA requires arbitrators and courts to determine whether an actuary's assumptions were reasonable given the information available at the time of their selection notwithstanding any subsequent developments. *See* 29 U.S.C. § 1401. There is no reason why an actuary could not likewise disregard subsequent events and select assumptions reflecting only events occurring by the valuation date. Nor would it be impractical for arbitrators

and courts to determine the scope of the information that an actuary considered when selecting his assumptions. Similar state-of-mind issues are routinely resolved through discovery and litigation.

At the end of the day, the answer to the secondary question decided below will make no difference in most cases. Actuaries typically select their assumptions and calculate a plan's UVBs within a reasonable time after year-end to allow plans to assess and collect withdrawal liability quickly. *See* 29 U.S.C. § 1399(b)(1) (withdrawal liability must be assessed "as soon as practicable" after a withdrawal). The window between the valuation date and the date on which actuaries select assumptions is therefore typically short. It would be unusual for an event occurring within that window to have a material impact on an actuary's selection of assumptions.

This dispute is a case in point. The actuary here selected his assumptions a mere three weeks after the valuation date, and the record (when developed) will show that the actuary did not consider any events occurring during that three-week window when selecting assumptions. Accordingly, if the Court agrees that assumptions need not be selected by the valuation date, the Trustees will prevail regardless of how the Court answers the secondary question.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

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