

IN THE
Supreme Court of the United States

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

v.

TRUSTEES OF THE IAM PENSION FUND,
Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
For the District of Columbia**

**BRIEF OF THE AMERICAN FEDERATION OF
LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS AS *AMICUS CURIAE* IN
SUPPORT OF RESPONDENT**

MATTHEW J. GINSBURG

DARIN M. DALMAT

(Counsel of Record)

AFL-CIO

815 Black Lives Matter Plaza, N.W.

Washington, DC 20006

202-637-5021

ddalmat@afcio.org

*Counsel for American Federation of Labor
and Congress of Industrial Organizations*

TABLE OF CONTENTS

	Page
INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	1
ARGUMENT	4
I. The MPPAA allows plan actuaries, after the measurement date, to set assumptions necessary to calculate withdrawal liability	4
A. Background.....	4
B. Reading the Act’s plain language in context, an actuary must retrospectively determine the value of the plan’s assets and liabilities as of the valuation date, using the best as- sumptions available on the calculation date.....	7
II. Permitting actuaries to use current assumptions best protects participants, beneficiaries, remaining employers, and the PBGC	20
III. Nothing in the MPPAA requires a contrary reading	22
CONCLUSION.....	30

TABLE OF AUTHORITIES

	Page
Cases	
<i>Bay Area Laundry and Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of California, Inc.</i> , 522 U.S. 192 (1997)	6, 9, 18
<i>Bouarfa v. Mayorkas</i> , 604 U.S. 6 (2024)	19
<i>Carr v. United States</i> , 560 U.S. 438 (2010))	12
<i>Concrete Pipe and Products of California, Inc. v. Constr. Laborers Pension Tr. for S. Cal.</i> , 508 U.S. 602 (1993)	5, 7, 9, 11
<i>Connolly v. PBGC</i> , 475 U.S. 211 (1986)	4, 6, 7
<i>Dubin v. United States</i> , 599 U.S. 110 (2023)	13
<i>Epic Sys. Corp. v. Lewis</i> , 584 U.S. 497 (2018)	27
<i>FDA v. Brown & Williamson Tobacco Corp.</i> , 529 U.S. 120 (2000)	27
<i>FTC v. Mandel Brothers, Inc.</i> , 359 U.S. 385 (1959)	27
<i>Hamilton v. Lanning</i> , 560 U.S. 505 (2010)	15
<i>Harris v. Viegelahn</i> , 575 U.S. 510 (2015)	14
<i>Kennedy v. Braidwood Mgt., Inc.</i> , 145 S. Ct. 2427 (2025)	12

TABLE OF AUTHORITIES—Continued

	Page
<i>Milwaukee Brewery Workers’ Pension Plan v. Joseph Schlitz Brewing Co., 513 U.S. 414 (1995).....</i>	7, 9, 10, 15, 19, 20-21
<i>National Retirement Fund v. Metz Culinary Mgmt., Inc., 946 F.3d 146 (2d Cir. 2020)</i>	22
<i>Pension Benefit Guaranty Corp. v. R. A. Gray & Co., 467 U.S. 717 (1984).....</i>	4, 6, 7, 11
<i>Robers v. United States, 572 U.S. 639 (2014).....</i>	14-15
<i>Rudisill v. McDonough, 601 U.S. 294 (2024).....</i>	13, 14, 19-20
<i>Stanley v. City of Sanford, Fla., 145 S. Ct. 2058 (2025).....</i>	12
<i>Taylor v. Riojas, 946 F.3d 150 (5th Cir. 2019).....</i>	22, 23
<i>Trustees of IAM Nat’l Pension Fund v. Ohio Magnetics, 656 F. Supp.3d 112 (D.D.C. 2023).....</i>	26
<i>United States v. Wilson, 503 U.S. 329 (1992).....</i>	12
<i>Ysleta Del Sur Pueblo v. Texas, 596 U.S. 685 (2022).....</i>	27

TABLE OF AUTHORITIES—Continued

	Page
Statutes and Regulations	
1 U.S.C. § 1	12
26 U.S.C. § 412.....	19
29 U.S.C.	
§ 186(c)(5)	4
§ 1001a(a)	23
§ 1001a(a)(4)(a)	20, 23
§ 1001a(c).....	6, 23
§ 1001a(c)(3)	20
§ 1002.....	11
§ 1021(<i>l</i>).....	23, 24, 26
§ 1021(<i>l</i>)(1)(A).....	24
§ 1021(<i>l</i>)(1)(B).....	25
§ 1021(<i>l</i>)(2)(A)(i)	25
§ 1053.....	5
§ 1054(g)	5
§ 1082(c)(9)	19
§ 1301(a)(10).....	8
§ 1301(a)(3)(B).....	4
§ 1381.....	11
§ 1382(1)	9, 15
§ 1382(2)	9
§ 1391.....	10, 15, 17, 22, 23, 26, 28, 29
§ 1391(a)	6, 10
§ 1391(b)(1)	7, 14
§ 1391(b)(2)(E)(i)	7, 14
§ 1391(c)(2)(B)(i).....	7, 8, 14

TABLE OF AUTHORITIES—Continued

	Page
§ 1391(c)(3)	14
§ 1391(c)(3)(A)	7, 14
§ 1391(c)(4)	14
§ 1391(c)(4)(A)(i)	7, 14
§ 1391(c)(2)(C)(i)(I)	7
§ 1391(c)(5)(A)	14
§ 1393.....	7, 10, 13, 15, 16, 17, 27, 28, 29
§ 1393(a)	13, 26
§ 1393(a)(1).....	8, 11, 12, 13, 14, 18, 19, 23, 26
§ 1393(b)(1)	19
§ 1393(c).....	7, 10
§ 1399(b)(1)(A)(i)	9, 15
§ 1399(b)(1)(B)	9
§ 1399(b)(2)(A)	9
§ 1399(c).....	9, 23
§ 1399(c)(1)	21
§ 1399(c)(1)(A)(ii).....	23
§ 1399(c)(4)	9
§ 1401.....	13, 21
§ 1401(a)(1)	9
§ 1401(a)(3)(B)(i)	13
§ 1401(d)	9
MPPAA, § 3(c), Pub. L. 96-364, 94 Stat. 1028 (Sept. 26, 1980).....	6
29 C.F.R.	
§ 2530.210(c)(1)	4
§ 4211.3.....	14

TABLE OF AUTHORITIES—Continued

	Page
Other Authority	
Actuarial Standards Board, ASOP No. 4, <i>Measuring Pension Obligations and Determining Pension Plan Costs or Contributions</i> (Dec. 2021)	28, 29
Actuarial Standards Board, ASOP No. 27, <i>Selection of Assumptions for Measuring Pension Obligation</i> (Dec. 2023)	11, 16, 17
Report of the Committee on Ways & Means on H.R. 3904, H. Rept. 96-869 (Apr. 23, 1980)	6, 7, 8, 14, 18, 20
Historical Inflation Rates: 1914-2025, https://www.usinflationcalculator.com/inflation/ historical-inflation-rates/	16
PBGC, <i>Actuarial Assumptions for Determining an Employer’s Withdrawal Liability— Proposed Rule</i> , 87 Fed. Reg. 62,316 (Oct. 14, 2022)	11
PBGC, <i>American Rescue Plan Act FAQs</i> , https://www.pbgc.gov/arp-sfa/faqs	20
PBGC, <i>Multiemployer Study Required by P.L. 95-214</i> (July 1, 1978)	4, 5, 6
Russell Laurence Hirschhorn et al., <i>Employee Benefits Law</i> (2024)	14

INTEREST OF *AMICUS CURIAE*

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a federation of 63 national and international labor organizations that represent 15 million working people, including more than 10 million who participate in over 1,300 multi-employer plans.¹ The retirement security of those workers and their families depends on these plans' solvency. Yet, around 4 million of them participate in underfunded plans. The principal statutory safeguard for ensuring the retirement security of participants in underfunded plans is withdrawal liability. The AFL-CIO accordingly has a strong interest in the proper calculation of such liability under the Multiemployer Pension Plan Amendments Act (MPPAA or Act), which amended the Employee Retirement Income Security Act (ERISA).

SUMMARY OF ARGUMENT

Congress enacted the MPPAA in 1980 to establish withdrawal liability. It did so not to punish employers who withdraw from underfunded multiemployer pension plans but to ensure that withdrawing employers don't leave behind a debt they helped create. Doing so, Congress feared, would unduly burden employers who remain in underfunded plans, risking the retirement security of plan participants and beneficiaries as well as the solvency of the Pension Benefit Guarantee Corporation (PBGC), which insures pensions. Withdrawal liability thus helps make good on ERISA's principal aim to ensure that workers promised a pension in fact receive one.

¹ No counsel for a party authored this brief in whole or in part, and no person or entity, other than the *amicus curiae*, made a monetary contribution to the preparation or submission of this brief.

The Act contains two interlocking provisions central to the question presented. The first, 29 U.S.C. § 1391, requires plans to compute withdrawal liability using one of several specified formulas. The second, § 1393,² regulates the actuarial assumptions plan actuaries must use in performing those calculations.

The actuarial assumptions provision requires the plan to use reasonable assumptions, account for plan experience and reasonable expectations, and offer the actuary's best estimate of anticipated plan experience—all in a sentence that speaks in the present tense. The same provision makes clear that the present tense is the time when the actuary actually calculates underfunding for withdrawal-liability purposes.

The computation provision, § 1391, in turn requires actuaries to determine the value of, and then fairly allocate, the plan's underfunding "as of" a date in the past—i.e., the end of the plan year preceding the withdrawal. That date is commonly referred to as the "valuation date" or the "measurement date." And the statutory context makes clear that the actuary must perform those calculations after the valuation date.

Reading both provisions together, the statute requires plan actuaries to use actuarial assumptions current through the calculation date in order to retrospectively value and allocate a plan's underfunding as of the valuation date based on historical facts existing on that date. This rule honors all relevant statutory language of the MPPAA while best serving its stated purposes.

The policy of the MPPAA, which Congress specified expressly, is to protect plan participants and beneficia-

² All statutory citations are to Title 29 of the United States Code, unless otherwise specified.

ries, along with employers who remain in multiemployer plans and the PBGC, against the loss of funding that otherwise would attend withdrawals. Using assumptions current through the calculation—as Congress plainly provided by § 1393—helps plan actuaries make sure they are accounting for all relevant plan experience and expectations. The Second Circuit’s rule, in contrast, straightjackets actuaries with stale assumptions (sometimes over a year old) but serves no discernable statutory purpose. Sometimes, it would even reward employers who exit multiemployer plans. But, while Congress made sure employers had the freedom to leave, nothing in the statute sought to reward them for doing so. Quite the opposite: Congress was deeply concerned that withdrawing employers not leave remaining employers solely responsible for digging underfunded plans out of fiscal holes.

The Second Circuit’s contrary approach elevates its own policy preferences over both the plain text of the operative provisions and the policies Congress enshrined in law. While the D.C. Circuit rightly rejected that approach and allows actuaries to adopt assumptions at the time of calculation, in a misguided effort to “harmonize” §§ 1391 and 1393, it requires them to do so using only information known by the valuation date. That approach goes astray because there is nothing discordant about the two provisions. Section 1393 plainly speaks in the present tense and requires actuaries to use assumptions that are current on the calculation date and section 1391 speaks in the past and requires valuation of assets and liability as of an earlier date. Together, the provisions require the actuary to apply current assumptions and methods to historical data—the standard approach actuaries take in conducting retrospective valuations. Because the two provisions, by their terms, are already in harmony,

the D.C. Circuit’s limitation on information known as of the valuation date has no warrant.

The Court should read both provisions by their terms, permit actuaries to use current assumptions, and, for these reasons, affirm the judgment below.

ARGUMENT

I. The MPPAA allows plan actuaries, after the measurement date, to set assumptions necessary to calculate withdrawal liability.

A. Background.

Multiemployer pension plans have existed since the 1940’s. PBGC, *Multiemployer Study Required by P.L. 95-214*, 1 (July 1, 1978) (*PBGC Study*)³ (cited in *PBGC v. R.A. Gray & Co.*, 467 U.S. 717, 722 (1984); *Connolly v. PBGC*, 475 U.S. 211, 215–17 (1986)). They are established and maintained through collective bargaining, *id.* at 2; § 1301(a)(3)(B), and administered by boards of trustees, equally represented by employer- and union-appointed members. § 186(c)(5); *PBGC Study* at 2.

Multiemployer plans provide advantages to employees and employers, alike. For employees, they typically credit work at all contributing employers with pensionable service, thus enabling a worker who changes jobs within an industry to continue to build credit toward a vested pension. *PBGC Study* at 3; 29 C.F.R. § 2530.210(c)(1). This pension portability is particularly important in the construction, manufacturing, trucking and transportation, entertainment, and services sectors, where employment is often mo-

³ Available at https://www.pbgc.gov/sites/default/files/leghist_pbgc-multiemployer-study-1978.pdf.

bile and employees may have stronger ties to a union than to a particular employer. *PBGC Study* at 3; Employee Benefits Security Administration, U.S. Department of Labor, *Private Pension Plan Bulletin*, 13 (Sept. 2024) (Table B3). They also protect employees' pensions in the event that any particular employer leaves the plan, for example, due to bankruptcy or other distress. *See PBGC Study* at 3. For employers, multiemployer plans help recruit trained workers seeking good benefits, while spreading administrative costs and the risks inherent in providing deferred compensation, such as pensions. *Concrete Pipe and Products of California, Inc. v. Constr. Laborers Pension Tr. for S. California*, 508 U.S. 602, 606–07 (1993).

Before Congress enacted ERISA in 1974, multiemployer plans rarely terminated because they were prevalent in growing industries and plans facing financial stress could reduce benefits to avoid termination. *PBGC Study* at 4. By establishing minimum vesting requirements and prohibiting cutback of accrued benefits, §§ 1053, 1054(g), ERISA strengthened benefit protections but inadvertently reduced plans' options for responding to financial stress. *PBGC Study* at 4.

Multiemployer plans faced particularly acute problems when employers withdrew from underfunded plans. In the wake of ERISA's enactment, employers could withdraw individually from multiemployer plans without replacing their lost contributions. *PBGC Study* at 12.⁴ At Congress's direction, PBGC studied the matter and proposed making withdrawing employers liable to underfunded plans for their fair share of the funding shortfall that arose while the withdrawing

⁴ Substantial employers, who contributed 10% or more to a plan, faced sanctions payable to the PBGC but were not required to compensate the plan for lost contributions. *PBGC Study* at 12.

employer was in the plan. *Id.* Doing so, PBGC concluded, would fairly compensate the plan for withdrawals, reduce incentives to withdraw, protect troubled plans against contribution erosion, protect remaining employers from increased contributions to make up for lost contributions, and strengthen the insurance system. *Id.* at 12–13, 24, 63, 96–97. *See also* *R.A. Gray*, 467 U.S. at 722; *Bay Area Laundry and Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of California, Inc.*, 522 U.S. 192, 201 (1997) (withdrawal liability “designed to discourage withdrawals *ex ante* and cushion their impact *ex post*”); *Connolly*, 475 U.S. at 215–16 (withdrawing employers reduced plans’ contribution base, requiring remaining employers to pay higher contribution rates to cover inherited liabilities, making plans unsustainable and leading to further withdrawals).

In framing the MPPAA, the House adopted these rationales, Report of the Committee on Ways & Means on H.R. 3904, HR 96-869 at 60, 67 (Apr. 23, 1980), and Congress enshrined into law the statutory policy, among others, to “provide reasonable protection for the interests of participants and beneficiaries of financially distressed multiemployer pension plans” MPPAA, §3(c), Pub. L. 96-364, 94 Stat. 1028, 1209–10 (Sept. 26, 1980), codified at 29 U.S.C. § 1001a(c).

The MPPAA is not a penalty on exiting employers. *Cf.*, HR 96-869 at 73; *Bay Area Laundry*, 522 U.S. at 201 (statute does not “prohibit[] employers from leaving their plans”). Instead, it imposes liability only when an employer leaves an underfunded plan, only to the extent that the funding shortfall accrued during the exiting employer’s participation in the plan, and only in proportion to the exiting employer’s participation in the plan. § 1391(a); *Milwaukee Brewery Workers’ Pension Plan v. Joseph Schlitz Brewing Co.*, 513

U.S. 414, 417 (1995). Such employers, Congress realized, had made promises to their employees but, when exiting, left behind a debt to which they had contributed, making those promises more difficult to fulfill. HR 96-869 at 51–52. Withdrawal liability thus shores up ERISA’s fundamental goal to ensure private-sector workers would receive the pensions upon retirement they had been promised while working. *See, e.g., Milwaukee Brewery Workers*, 513 U.S. at 416; *Concrete Pipe*, 508 U.S. at 607; *Connolly*, 475 U.S. at 214, 227; *R.A. Gray*, 467 U.S. at 720.

B. Reading the Act’s plain language in context, an actuary must retrospectively determine the value of the plan’s assets and liabilities as of the valuation date, using the best assumptions available on the calculation date.

The question presented requires the Court to read together two statutory provisions—one specifying the formulas for computing withdrawal liability (§ 1391) and the other regulating the assumptions and methods an actuary must use to value plan liabilities in those computations (§ 1393). The two provisions fit seamlessly together through the express statutory definition of “unfunded vested benefits” in § 1393(c).

The computation provision speaks of the past, requiring a plan’s actuary to determine its liabilities “as of” the end of the plan year preceding withdrawal. §§ 1391(b)(2)(E)(i); 1391(c)(2)(B)(i), (c)(2)(C)(i)(I); 1391(c)(3)(A); 1391(c)(4)(A)(i).⁵ The actuarial assump-

⁵ Respondent correctly notes that, as used in § 1391(b)—the formula applicable here—“as of” refers only to the continuation of the 5% reduction (in the presumptive method) through the end of the year prior to withdrawal. Resp. Br. at 22 n.8. *See also*

tions provision, in turn, speaks in the present tense, requiring the actuary to perform the requisite computation using assumptions that “are reasonable” and collectively “offer” the actuary’s best estimate of anticipated experience under the plan. § 1393(a)(1).

Reading the statute as a whole—including the various provisions specifying the procedures for conducting the mandated computations—makes sense of these two time frames: the actuary, when calculating withdrawal liability, should calculate the value of the plan’s assets and liabilities on a date certain in the past (a past that preceded the withdrawal date) but should do so using assumptions and methods that are as current as practicable through the date of computation.

Doing so, first and foremost, is faithful to all relevant text in the MPPAA. This reading also best serves the statute’s express policy to protect participants, beneficiaries, remaining employers, and the PBGC. It does so by allowing the actuary to use all current information available in calculating how much an exiting employer should pay to “continue funding a proportional share of the plan’s unfunded benefit obligations.” HR 96-869 at 67.

An overview of the statutory process helps put the operative provisions’ associated time frames in context. So we start with that process.

1. The Statutory Process: The process begins when a previously contributing employer withdraws from a multiemployer plan. After that happens, the plan sponsor (its trustees, § 1301(a)(10)) “determine[s]

§ 1391(b)(2)(B) (presumptive method driven initially by calculation of “the unfunded vested benefits *at the end* of the plan year,” not “as of” that time) (emphasis added).

the amount of the employer’s withdrawal liability.” § 1382(1) (liability to be determined “[w]hen an employer withdraws from a multiemployer plan.”). See also § 1399(b)(1)(A)(i) (“As soon as practicable *after* an employer’s . . . withdrawal, the plan sponsor shall notify the employer of the amount of the liability”) (emphasis added); accord *Bay Area Laundry*, 522 U.S. at 202 (following withdrawal, “the trustees must calculate the debt, set a schedule of installments, and demand payment”).

Once the plan completes that determination, it must then “notify the employer of the amount of the withdrawal liability,” § 1382(2), and “demand payment” *Bay Area Laundry*, 522 U.S. at 202; § 1399(b)(1)(B). The withdrawing employer’s full liability isn’t due immediately—although it may pay in a lump sum if it wishes. § 1399(c)(4); *Milwaukee Brewery Workers*, 513 U.S. at 418. Instead, the withdrawal liability is amortized over time (up to a 20-year period). § 1399(c)(1); *Milwaukee Brewery Workers*, 513 U.S. at 418–19. The plan must therefore also calculate the amortized payments and include that information, too, in the notice. § 1399(c); *Bay Area Laundry*, 522 U.S. at 196–197.

The withdrawing employer may then object to the plan’s determination. § 1399(b)(2)(A); *Concrete Pipe*, 508 U.S. at 611. If the parties can’t agree, the matter goes to arbitration at either party’s request. § 1401(a)(1); *Concrete Pipe*, 508 U.S. at 611. Either party may then seek judicial review. Under the Act’s “pay now, dispute later” approach, the withdrawing employer “must still pay according to the trustees’ scheduling” pending resolution of the dispute. *Bay Area Laundry*, 522 U.S. at 197 (cleaned up) (discussing § 1401(d)).

In this case, for example, Philips withdrew on April 7, 2018; Ohio Magnetics on June 30; Toyota Logistics

Services, on December 29; and M&K, on December 31. JA 61, 262; Pet. App. 83a. The measurement date for all four petitioners, then, was December 31, 2017. The plan actuaries completed their valuation for plan year 2017, including that year's underfunding, four months after the final withdrawal, in April 2019. JA 60, 260. Two months later, in June 2019, the plan notified M&K and Toyota Logistics of their withdrawal liability assessments, along with their payment schedules. JA 61, 263.⁶ *See also, e.g., Milwaukee Brewery Workers'*, 513 U.S. at 420 (employer withdrew on August 14, 1981; plan completed calculations in September 1981; and plan notified employer of payment schedule by November 1, 1981).

2. The Computations and Assumptions: The amount of withdrawal liability is a function of the “amount of the unfunded vested benefits allocable to” the withdrawing employer. § 1391(a). More plainly, that's the “withdrawing employer's fair share of a plan's underfunding.” *Milwaukee Brewery Workers'*, 513 U.S. at 417. This calculation has two basic components: the funding shortfall (the plan's “unfunded vested benefits”) and the withdrawing employer's fair share of that shortfall (the amount statutorily “allocable” to the withdrawing employer). § 1391(a); *Milwaukee Brewery Workers'*, 513 U.S. at 417.

a. The MPPAA defines the critical phrase, “unfunded vested benefits” (i.e., the shortfall), for withdrawal liability purposes, as the value at a given time of the plan's “nonforfeitable benefits” minus its assets. § 1393(c). This definition appears in the actuarial assumption provision (§ 1393) not the computation

⁶ Phillips and Ohio Magnetics received their assessments in April 2019. Pet. App. 83a.

methods provision (§ 1391) or any general definition provision (§§ 1002, 1381). The assumptions and computations are inherently linked because calculating the *present* value of *future* obligations necessarily requires use of actuarial assumptions and methods. See Actuarial Standards Board, Actuarial Standard of Practice (ASOP) No. 27, *Selection of Assumptions for Measuring Pension Obligations*, § 3.1 (Dec. 2023)⁷ (“[T]o convert future expected payments into present values[]” and “measure a pension obligation, the actuary will typically need to select or assess assumptions underlying the obligation.”); *R.A. Gray*, 467 U.S. at 725 (characterizing the MPPAA’s calculation directives as seeking the “present value of vested benefits”).

The assumptions typically include “such matters as mortality of covered employees, likelihood of benefits vesting, and, importantly, future interest rates.” *Concrete Pipe*, 508 U.S. at 610. See also ASOP No. 27, § 3.3 (Dec. 2023) (assumptions cover inflation, investment return, discount rate, compensation increases, retirement, termination of employment, mortality, disability, election of optional benefit forms, expenses and various other items).

The Act directs actuaries to use “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.” § 1393(a)(1).⁸

⁷ Available at https://www.actuarialstandardsboard.org/wp-content/uploads/2024/05/asop027_211.pdf.

⁸ Alternatively, the plan may use actuarial assumptions and methods set forth in PBGC regulations. § 1393(2). The PBGC has proposed, but not issued, such regulations. See PBGC, *Actuarial Assumptions for Determining an Employer’s Withdrawal Liabil-*

“To ascertain a statute’s temporal reach, this Court has frequently looked to Congress’ choice of verb tense.” *Stanley v. City of Sanford, Fla.*, 145 S. Ct. 2058, 2063 (2025) (cleaned up) (quoting *Carr v. United States*, 560 U.S. 438, 448 (2010)). In particular, it reads present-tense verbs to refer to the time period of the action specified by the statutory context. *Stanley*, 145 S. Ct. at 2063-64 (provision proscribing discrimination against a worker who “can perform the essential functions of” of the job she “holds or desires” protects current employees but not retirees, who no longer hold or desire a job); *Carr*, 560 U.S. at 448 (law’s use of present-tense verbs referred to travel starting with the statute’s effective date, but not earlier); *United States v. Wilson*, 503 U.S. 329, 333 (1992) (statute using past and present perfect tenses indicated that the Attorney General, not the sentencing court, had to compute sentencing credit because the sentencing court had no involvement after the sentence commenced).

The Dictionary Act buttresses this ordinary-language reading of §1393(a)(1) because Congress there commanded that “[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise[,] . . . words used in the present tense include the future as well as the present.” 1 U.S.C. § 1. Accordingly, present-tense words generally exclude the past. *Carr*, 560 U.S. at 448. *See also Kennedy v. Braidwood Mgt., Inc.*, 145 S. Ct. 2427, 2459 (2025).

Here, the present tense refers to the time when the actuary actually calculates the underfunding. That’s because it requires reasonable, experience-based assumptions that offer best estimates “in determining

ity—Proposed Rule, 87 Fed. Reg. 62316 (Oct. 14, 2022). Nothing in the proposed rule would settle the question presented here.

the unfunded vested benefits of a plan for purposes of determining an employer’s withdrawal liability under this part.” § 1393(a). The several present-tense verbs in § 1393(a)(1) thus refer to the time when the actuary determines the underfunding for withdrawal liability purposes, as specified in § 1393(a). The section’s heading underscores the point. § 1393(a) (“Use by plan actuary in determining unfunded vested benefits of a plan for computing withdrawal liability of employer”). See *Rudisill v. McDonough*, 601 U.S. 294, 309 (2024) (looking to section headings for cues of Congressional intent); *Dubin v. United States*, 599 U.S. 110, 121 (2023) (similar).

What the text says, context confirms. When the Act addresses arbitral review of actuarial assumptions in § 1401(a)(3)(B)(i), it uses the past tense. The arbitrator conducting review must assess whether “the actuarial assumptions and methods *used in the determination were . . . unreasonable*” or the plan’s actuary “*made a significant error in applying*” them. *Id.* (emphasis added).

Arbitral review, of course, comes after the calculation itself, so the past tense is necessary in the review context. Juxtaposing § 1401’s use of the past tense for review of the actuary’s assumptions with § 1393’s use of the present tense when selecting and deploying the assumptions during the withdrawal-liability determination leaves no doubt that the Act directs actuaries to use assumptions that are current at the time of the underfunding calculation.

Petitioners are thus mistaken when they assert (at 42) that § 1393(a)(1) says nothing about timing. Petitioners can reach that conclusion only by ignoring § 1393(a)(1)’s present tense verbs along with the statutory text and context that indicate that the present

tense, in § 1393(a)(1), refers to the time of determining underfunding for withdrawal-liability purposes—the time of underfunding calculation.

b. Once the plan’s actuary has determined the funding shortfall, the plan must then calculate the withdrawing employer’s fair share of the shortfall. In a separate section, § 1391, the Act directs the plan to do so using one of four methods. § 1391(b)(1), (c)(2) (presumptive method and its two-pool variant)⁹; 1391(c)(3) (rolling-five year method); 1391(c)(4) (direct attribution); 1391(c)(5)(A) (other PBGC-approved methods prescribed by regulation). *See also* H.R. 96-869 at 77–82 (describing methods); Russell Laurence Hirschhorn et al., *Employee Benefits Law*, 17-7 through -11 (2024).

The statutory directives for each method are precise and complex. Most of the details don’t matter here. The statutory term that does matter is common across the three specified methods. Namely, each such method requires calculation of the “unfunded vested benefits” (or, for the presumptive method, unamortized changes in them) as of a particular date. §§ 1391(b)(2)(E)(i); 1391(c)(2)(B)(i), (c)(2)(C)(i)(I); 1391(c)(3)(A); 1391(c)(4)(A)(i).¹⁰ Namely, the actuary must calculate the value of the unfunded vested benefits “as of the end of the plan year preceding the plan year in which the employer withdraws.” *Id.* (We refer to these as the “measurement-date” or “valuation-date” provisions.) This rule imposes a retrospective focus on the value of the unfunded obligations on the valuation date, viewed from a later time. *See, e.g., Rudisill*, 601 U.S. at 309; *Harris v. Viegelahn*, 575 U.S. 510, 517 (2015); *Roberts v. United States*, 572

⁹ Subject to limited exceptions, construction industry plans are required to use the presumptive method. 29 C.F.R. § 4211.3.

¹⁰ *See* note 5, *supra*.

U.S. 639, 642–43 (2014). *Accord* Webster’s Third New Int’l Dictionary 129 (1965) (“as of” means “at or on (a specific time or date)”). For example, in this case, petitioners all withdrew in 2018, making their measurement dates December 31, 2017. Pet. Br. 2; *supra* at 9–15.

That retrospective perspective makes sense because an actuary doesn’t actually perform the computations on the measurement date. Nor could he: the end-of-year contributions and investment performance aren’t known or knowable until after the plan year closes. So the statute directs the actuary to perform the computations after the valuation date. *Supra* at 8–9 (discussing §§ 1382(1), 1399(b)(1)(A)(i)). In this case, the plan actuary calculated the 2017 funding shortfall in April 2019, four months after M&K’s and Toyota Logistics Services’ December 2018 withdrawal and 16 months after the December 2017 valuation date. To give another example, the plan in *Milwaukee Brewery Workers’* completed the calculations in September 1981, just weeks after the employer’s August 14, 1981, withdrawal, and nine months after the December 31, 1980, valuation date. 513 U.S. at 420–21.

c. Reading the two provisions together, then, the MPPAA requires actuaries to apply assumptions current through the time of calculation (§ 1393) to historical facts and data underpinning the plan’s assets and liabilities as they stood at the end of the plan year before withdrawal (§ 1391). This application of present-day assumptions to historical data is standard in construing statutes requiring retrospective valuations. *See, e.g., Hamilton v. Lanning*, 560 U.S. 505, 513–19 (2010) (construing “projected disposable income” to permit forward-looking adjustments for foreseeable changes, not mechanical computations of past experience).

Here, for example, § 1393 directed the actuaries to use assumptions that were reasonable in April 2019 for computing 2017-plan-year liabilities. Thus, with respect to the assumptions and methods specified by ASOP No. 27, § 1393 directed the actuary to:

- **Inflation:** Assume 2.0% inflation (reflective of April 2019) not 2.1% (reflective of December 2017)¹¹;
- **Investment Returns:** Account for the plan’s recent returns of 13.31% through 2018 (Ct.App. JA153), ¹² rather than the 6.5% it had earned through 2017 (Ct.App.JA075);
- **Compensation Increases:** Determine whether any participating employers had negotiated successor CBAs in 2018 that provided wage increases unforeseen in December 2017;
- **Retirement:** Determine whether the retirement rates had changed, or were anticipated to change, from what had been foreseen in December 2017;
- **Termination of Employment:** Determine whether any participating employers had recent mass layoffs that might have affected the number of employees in the plan;
- **Mortality:** Account for any unforeseen changes to mortality—for example from pandemics or natural disasters, or, in other direction, from miracle drugs—that may have occurred since December 2017;

¹¹ <https://www.usinflationcalculator.com/inflation/historical-inflation-rates/>

¹² All references to “Ct.App.JA” are to the February 22, 2023, Joint Appendix submitted to the D.C. Circuit in USCA Case #22-7157.

- **Plan-Paid Expenses:** Account for any changes to actuarial firms since December 2017 that may have triggered a change in plan-paid expenses;
- **Discount Rate:** Determine a discount rate consistent with these other assumptions and what the actuary knows, in April 2019, about the plan’s recent and anticipated experience.¹³

Ignoring all these developments and requiring the actuary to stick unwaveringly at the time of calculation to earlier assumptions the actuary used before the valuation date—perhaps for a different purpose in a different context—would dishonor § 1393’s directive that the actuary account for the plan’s experience and reasonable expectations and give her best estimate of anticipated plan experience when calculating withdrawal liability.¹⁴

For example, if the plan’s largest contributing employer went out of business after the December 31, 2017, measurement date (say, in June 2018) but before the actuary calculated the 2017 funding shortfall (here, in April 2019), must the actuary ignore those known lost contributions when valuing the 2017 funding shortfall in April 2019? Or, if the plan had used an aggressive investment strategy before the measure-

¹³ See ASOP No. 27, § 3.8.

¹⁴ In this case, petitioners’ view would also dishonor its own reading of § 1391 because the plan had not conducted a valuation on December 31, 2017. If the actuary were not allowed to use assumptions current as of the time of the calculation, it would need to rely on the valuation that preceded the valuation date. That valuation issued on November 2, 2017, and reflected plan data as of January 1, 2017. Ct.App.JA069. The result? The assumptions would not reflect how things stood “as of” December 31, 2017, as § 1391 commands. They would reflect how things stood 364 days earlier on January 1, 2017.

ment date but switched to a more conservative bond ladder after the measurement date (say, in June 2018), must the actuary ignore that shift in its investment portfolio when calculating the 2017 shortfall in April 2019?¹⁵

The plain terms of § 1393(a)(1) answer these questions with a resounding “no.” In April 2019, when calculating the 2017 funding shortfall, the actuary must use assumptions that “are”—in April 2019—reasonable, that “account” for the experience of the plan through April 2019, that also “account” for the plan’s reasonable expectations from an April 2019 vantage point, and that “offer”—in April 2019—the actuary’s best estimate of “anticipated experience” as the actuary foresees it in April 2019.

To account for current experience and make reasonable forecasts, the actuary must receive up-to-date information from the plan and must have time to analyze it—all of which unquestionably impose significant administrative burdens. *Bay Area Laundry*, 522 U.S. at 205 (noting Congress recognized that plans needed time to gather information and “perform[] the complex calculations” needed for determining withdrawal liability). To mitigate those burdens, the MPPAA gave plans “a great deal of flexibility to strike a balance among the competing considerations of encouraging new entrants, discouraging withdrawals, easing administrative burdens, and protecting the financial soundness of a fund.” HR 96-869 at 67. The Act thus allows (“may”), but does not require, plan actuaries to “rely on the most recent complete actuarial valuation

¹⁵ The U.S. Chamber of Commerce argues (at 11–12) that actuaries should reflect these developments in their assumptions but then ignore them. It makes no effort to square that approach with the plain text of § 1393.

used” to calculate contributing employers’ minimum funding obligations. § 1393(b)(1) (referring to 26 U.S.C. § 412). This option serves the plan’s “administrative convenience.” *See Milwaukee Brewery Workers*, 513 U.S. at 418 (citing § 1082(c)(9)).

Here, the plan did just that and completed the withdrawal liability calculations in June 2019 based on the underfunding calculations—the valuation of “unfunded vested liabilities”—for plan year 2017 in April 2019. So, here, § 1393(a)(1)’s present-tense verbs refer to April 2019, when the shortfall calculation took place. The assumptions must be reasonable at that time and offer the actuary’s best estimate from that vantage point.

Petitioners, however, demand more. Disregarding § 1393(b)(1)’s express authorization for actuaries to use the most recent complete actuarial valuation, petitioners insist that the plan actuary should have stuck to the assumptions set forth in the valuation that preceded the one for the relevant plan year—which occurred in November 2017 based on data through January 1, 2017. Ct.App.JA073.

When the plan calculated withdrawal liability between April and June 2019, however, the November 2017 valuation was not the most recent—the April 2019 valuation was. Petitioners would effectively rewrite § 1393(b)(1) to require use of the second-most recent complete actuarial valuation.

That argument is doubly wrong. The “most recent” actuarial valuation is not the second-most recent one. And § 1393(b)(1) does not require actuaries to use the most recent valuation; it simply gives them the option to do so. *See, e.g., Bouarfa v. Mayorkas*, 604 U.S. 6, 13 (2024) (“‘may’ clearly connotes discretion.”); *Rudisill*.

601 U.S. at 310 (same). Where, as here, a plan exercises its statutory option to use assumptions from the “most recent” actuarial valuation, it shouldn’t be faulted for failing to use assumptions from an even earlier valuation.

II. Permitting actuaries to use current assumptions best protects participants, beneficiaries, remaining employers, and the PBGC.

The MPPAA enacted withdrawal liability to ensure that exiting employers would “continue funding a proportional share of the plan’s unfunded benefit obligations.” HR 96-869 at 67. It seeks to ameliorate the “substantially increased funding obligations” imposed on employers who remain in multiemployer plans after a withdrawing employer leaves, while also “provid[ing] reasonable protection for the interests of participants and beneficiaries of financially distressed multiemployer pension plans” § 1001a(a)(4)(A), (c)(3).

An underfunded plan has only two roads to recovery: favorable investment returns or employer contributions. When a previously contributing employer leaves an underfunded plan, it leaves behind not only its share of the funding shortfall that arose while it participated but also the promise of future contributions that could have helped recover from the shortfall. It often takes years for underfunded plans to return to full funding, if they can do so at all. *See* PBGC, *American Rescue Plan Act FAQs*, <https://www.pbgc.gov/arp-sfa/faqs> (“How do I know if my plan is eligible for special financial assistance?”). While the exiting employer’s liability needn’t perfectly match the lost contributions that attend withdrawal, withdrawal-liability payments certainly soften the lost-contribution blow. *See Milwaukee Brewery Workers’*, 513 U.S. at

419 (although the “statute forgives all debt [of the exiting employer] after 20 years, 29 U.S.C. §1399(c)(1) (B),” its payment schedule indicates “that maintaining level funding for the plan is an important goal”).

All of this counsels for recognizing actuaries’ freedom to use the most current information practicable when calculating withdrawal liability. If actuaries are hamstrung with stale assumptions, their liability calculations will not reflect all known experience or forecast all foreseeable events—leading to less-than-best assessments.

And the Act’s dispute-resolution procedures make any subpar assumptions a one-way ratchet. That’s because withdrawing employers may challenge liability calculations, § 1401, but participants, remaining employers, and the PBGC have no statutory route to do likewise. *Cf., id.* As a result, withdrawing employers are likely to challenge what they perceive to be errors resulting in overassessments of liability. But withdrawing employers are not likely to challenge what they perceive to be errors resulting in underassessments of liability. And no other party—not participants, remaining employers, or the PBGC—has a procedural path to bring a similar challenge, even where an underassessment would leave the remaining employers with an unfair share of contributions, risk participants’ benefits, or unduly burden the PBGC.

The statutory cure for this problem is to require plans to use outside actuaries, guided by professional standards and responsibilities, to make calculations based on assumptions that are as accurate as practicably possible at the time of calculation.

Thankfully, that approach is precisely what the express language of the MPPAA plainly requires—man-

dating that assumptions be present-day reasonable at the time of calculation, account for all relevant information practicably available at that time, and account, too, for forward-looking plan experience reasonably foreseeable at calculation time. Honoring the words Congress wrote happily serves the policies Congress enshrined in law.

III. Nothing in the MPPAA requires a contrary reading.

1. The Second Circuit: The Second Circuit reached a contrary result because it did not begin with or focus on the operative text of the statute. Without quoting or analyzing the text itself, that court baldly asserted that § 1393 is “silent” regarding when actuarial assumptions must be adopted. *Nat’l Retirement Fund v. Metz Culinary Mgmt., Inc.*, 946 F.3d 146, 150 (2d Cir. 2020). But § 1393 speaks loudly enough to those who listen.

As shown above, it speaks with present-tense verbs that regulate the assumptions actuaries must use when calculating withdrawal liability through the statutorily prescribed formulas. *Supra* at 10–14. The present tense is no accident, as the arbitral review provisions refer to the same substantive regulations in the past when viewed from a different, later point in the process. *Supra* at 13. And it is entirely consistent with the command in § 1391 to measure the value of the funding shortfall on a particular date—one that will necessarily be in the past, from the vantage point of the calculations themselves. *Supra* at 14–15. That’s because the statute, as this Court made clear in *Bay Area Laundry* and other cases, requires the actuary to calculate withdrawal liability after the valuation date.

Having overlooked the operative statutory language, *Metz* relied instead on the atextual policy that

“interest rate assumptions cannot be altered daily and must have a degree of stability.” 946 F.3d at 150. Whatever merit that policy concern may have, it ill accords with the statutory choice to require actuaries to select reasonable actuarial assumptions when calculating withdrawal liability (§ 1393(a)(1)) while requiring actuaries to use “assumptions used for the most recent actuarial valuation” when setting payment schedules (§ 1399(c)(1)(A)(ii)).

Metz also professed concern for withdrawing employers’ notice, before withdrawing, of how much liability they would face upon withdrawal. 946 F.3d at 150. To the extent *Metz* offers this point based on statutory purposes, it does not track the MPPAA’s stated policies: the protection of participants, beneficiaries, remaining employers, and the PBGC. § 1001a(a)(4)(A), (c)(1)–(4). Withdrawing employers are not among the entities for whom the Act’s express policies show concern. They are, instead, the cause of the problem Congress sought to ameliorate through the Act.¹⁶

Metz next argued that another provision, which requires notice of *potential* withdrawal liability and is housed in ERISA’s reporting and disclosure subtitle two subchapters away from §§ 1391 and 1393, would be “of no value” if “interest rate assumptions may be made at any time.” 946 F.3d at 151 (discussing § 1021(l)). That argument fails for several reasons.

¹⁶ To be sure, the MPPAA’s operative provisions do accommodate withdrawing employers’ interests by capping their annual liability payments and limiting those payments to 20 years. § 1399(c). But when Congress stated the Act’s policies and identified its intended beneficiaries, participants, beneficiaries, remaining employers, and the PBGC all made the cut; withdrawing employers did not. § 1001a(a), (c).

First, by its terms, § 1021(*l*) gives notice only of “potential” withdrawal liability and requires plans to provide only “the estimated amount” of that liability. § 1021(*l*)(1)(A). Estimates are, of course, only estimates and no guarantee of a precise calculation. A degree of uncertainty necessarily inheres in the process of forecasting the present-day value of liabilities that accrue only years, sometimes decades, in the future. Trustees, of course, must navigate that uncertainty in administering the plan. Nothing in the MPPAA or ERISA more generally suggests that Congress intended to insulate from that uncertainty employers considering withdrawing.

Second, § 1021(*l*) requires plans to provide participating employers estimates based on the counterfactual scenario that they had withdrawn on the “last day of the plan year preceding the date of the request.” *Id.* This scenario is counterfactual because if the requesting employer had actually withdrawn then, it would not have “an obligation to contribute to the plan”—and would have no right to request a liability estimate. § 1021(*l*)(1)(A). What’s more, the valuation date used for the estimate won’t correspond with the valuation date for the actual withdrawal. The valuation date for the estimate is the end of the plan year two years before the request (because § 1021(*l*)(1)(A) requires plan to base the estimate on the assumption that the employer withdrew on the last day of the plan year preceding the request, which triggers a valuation date a year earlier), but the valuation date for the actual withdrawal-liability calculation is the end of the plan year that precedes the withdrawal. *Supra* at 7 (citing valuation-date provisions).

Consider an employer who requests an estimate on October 1, 2025. The plan has until March 30, 2026, to

respond to the estimate. § 1021(l)(2)(A)(i). Suppose the employer withdraws the next day, on April 1, 2026. In those circumstances, the valuation date for estimation purposes is December 31, 2023 (because it's based on the assumption the employer had withdrawn on December 31, 2024), but for liability purposes is December 31, 2025. Those two valuation dates are two years apart. There is no reason in law or logic to think actual liability would precisely—or even closely—match the estimate.

Third, the plan's response to a requested estimate must disclose the assumptions underlying the estimate. § 1021(l)(1)(B). Doing so allows employers considering withdrawing to make their own assessments of whether their actual liability might increase or decrease from the estimate given intervening events that could affect those assumptions. That disclosure would make little sense if the plan were forever bound to use the assumptions it used for estimation purposes.

Metz also mistakenly charges plans with retroactively applying post-withdrawal interest rates instead of those that were “in effect” as of the measurement date. 946 F.3d at 151. That charge misses the mark here because the November 2, 2017, valuation—the most recent that preceded the December 31, 2017, measurement date here—advised that it was a valuation as of January 1, 2017, and that “the next valuation will reflect all membership and investment experience changes through December 31, 2017.” Ct.App.JA073. By its terms, then, the November 2017 valuation did not purport to set assumptions that would be in effect on December 31, 2017. That's the normal course. Nothing in the MPPAA generally, or in this particular plan's valuation reports specifically, supports *Metz's* contention that as-

sumptions are set indefinitely and remain in effect until replaced.

Finally, although petitioners echo *Metz* (at 4, 34) in contending that § 1021(*l*)’s estimates are worthless unless assumptions are frozen indefinitely, that echo rings especially hollow here. Petitioners withdrew in mid to late 2018, *Trustees of IAM Nat’l Pension Fund v. Ohio Magnetics, Inc.*, 656 F. Supp.3d 112, 120 (D.D.C. 2023), months after the plan actuary issued updated assumptions in January 2018. Pet. Br. 10. They were not blindsided by new, unforeseen assumptions when they withdrew. They knew the assumptions specified in January 2018 when they later withdrew.

2. The D.C. Circuit: The lower court in this case rightly rejected *Metz*’s categorical rule. But, unfortunately, it made its own statutory error by reading § 1391 to require alignment of the plan’s “experience, reasonable expectations, and the best estimate of anticipated experience ‘as of’ the measurement date, rather than the date of the calculation.” Pet. App. 13a.

While the D.C. Circuit rightly attended to the Act’s text, it divorced that text from its context. The terms “experience,” “reasonable expectations,” and “best estimate of anticipated experience” all appear in § 1393(a)(1), not § 1391. They appear in a sentence using present-tense verbs. And additional text in § 1393(a) makes clear that the context for those present-tense verbs is the actuary’s determination of the plan’s underfunding for the purpose of computing withdrawal liability of employer. § 1393(a) (heading; first sentence; second sentence). That process, to repeat, occurs after the valuation date—by statutory fiat and as recognized by this Court. *Supra* at 8–9. The present-tense verbs thus indicate that the experience, expectations, and anticipated experience all must be

assessed from the vantage point of the calculation date, even though the task at hand is to calculate underfunding at an earlier date—the valuation date.

The lower court thus created an atextual limitation—requiring the actuarial assumptions to be based on information through the valuation date but not through the calculation date—in an effort to align dual directives it mistakenly believed to be misaligned. Pet. App. 12a–15a.

To be sure, this Court reads statutes as a whole in an effort to “‘fit, if possible, all parts into an harmonious whole.’” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quoting *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 389 (1959)). That harmonization rule, however, is not a license to rewrite statutory provisions that fully align as written.

That’s because this Court also reads statutes to give effect to each provision so that none are inoperative. *See, e.g., Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 698–99 (2022). Statutes may be harmonized, then, only by resolving genuine ambiguities in favor of reading the statute to work together; they cannot be “harmonized” by rendering one of the provisions a dead letter. *See Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (because the Court isn’t at liberty to “pick and choose among congressional enactments” and must “strive to give effect to both,” harmonization cannot yield “repeals by implication”) (cleaned up). And that’s exactly what the D.C. Circuit’s approach does: it renders § 1393’s present-tense verbs inoperative and requires the actuary to pretend that she does not know what she actually knows at the time of calculation. It requires her, in this case, to ignore the last 16 months of “the experience of the plan” or any changes in investment strategies or asset allocations within the

last 16 months that would affect the plan’s “reasonable expectations,” and to disregard her truly “best estimate of anticipated experience” by performing a challenging exercise—putting herself in a 16-months-ago mindset and trying to predict the future from there, all the while disregarding what she actually knows about market developments in the last year and a quarter.

If the statute truly required that difficult exercise, the actuary’s duty, of course, would be to accept the charge and don the assumptions-with-blinders task, no matter how difficult. Yet, this Court’s respect “for Congress as drafter” counsels against “too easily finding irreconcilable conflicts” in federal statutes. *Epic Systems*, 598 U.S. at 511. Heeding that counsel, this Court should look for interpretations that give life to both §§ 1391 and 1393, without sacrificing either.

Fortunately, it can easily do so. Here’s how:

First, the actuary should gather and analyze the objective, historical facts necessary to the calculation as they existed on the valuation date (e.g., December 31, 2017). These would include the number of plan participants, the plan rules applicable to them regarding vesting schedules, the extent to which participants had earned vesting credit as of the valuation date, and other basic historical data. *See, e.g.,* Actuarial Standards Board, ASOP No. 4, *Measuring Pension Obligations and Determining Pension Plan Costs or Contributions*, § 3.6 (Dec. 2012) (actuary must gather data before making assumptions).¹⁷ Next, the actuary should formulate the assumptions needed to complete

¹⁷ Available at <https://www.actuarialstandardsboard.org/asops/asop-no-4-measuring-pension-obligations-and-determining-pension-plan-costs-or-contributions>.

the calculations based on information current through the calculation date. *See, e.g.*, ASOP No. 4, § 3.8 (actuary formulates assumptions separately from gathering historical data); ASOP No. 27 (detailed rules for formulating assumptions).

Fixing the historical, objective data by the valuation date while allowing actuaries, when calculating liability, to use (inherently judgment-based) assumptions based on information current through the calculation data gives full effect to both § 1391 and § 1393 and harmonizes them simply by reading each according to its terms.

In short, carefully reading each provision by its terms avoids the need for the lower courts' atextual limitation¹⁸ and "harmonizes" the statute in precisely the manner Congress envisioned through the text it enacted: actuaries must use historical data for valuations as of the in-the-past valuation date but current information must inform the assumptions needed for present-day calculations.

Here, petitioner challenges only plan actuaries' authority to use assumptions set after the measurement date in withdrawal-liability calculations. Its challenge fails under both the D.C. Circuit rule and the plain-language rule advocated here.

¹⁸ The district court, for its part, thought that the operative provisions "fix the factual underpinnings for determining actuarial assumptions and methods at the measurement date, just as Section 1391 fixes the factual composition of the plan's assets and liabilities." Pet. App. 50a–51a. While the court rightly read the § 1391's "as of" language to fix the factual composition of the plan's assets and liabilities at the measurement date, it misread § 1393 to do the same with respect to the actuarial assumptions: § 1393 contains no "as of" language and speaks only in the present tense. *Supra* at 10–14.

CONCLUSION

The judgment below should be affirmed on the ground that actuaries have authority to set assumptions at the time they calculate withdrawal liability, based on information current through the calculation date.

Respectfully Submitted,

/s/ Darin M. Dalmat

MATTHEW J. GINSBURG

DARIN M. DALMAT

(Counsel of Record)

AFL-CIO

815 Black Lives Matter Plaza, N.W.

Washington, DC 20006

202-637-5021

ddalmat@afcio.org

*Counsel for American Federation of Labor
and Congress of Industrial Organizations*

Dated: October 21, 2025

