No. 23-1209

In the Supreme Court of the United States

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

v.

TRUSTEES OF THE IAM NATIONAL PENSION FUND

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Under the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*, when an employer withdraws from a multiemployer pension plan, it must pay its share of the plan's unfunded vested benefits. That amount is calculated "as of" the last day of the plan year preceding the withdrawal, 29 U.S.C. 1391, which is commonly called the "measurement date." The question presented is:

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.

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INTEREST OF THE UNITED STATES

This case concerns the selection of actuarial assumptions for purposes of calculating the liability of an employer that withdraws from a multiemployer pension plan under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.* The Pension Benefit Guaranty Corporation (PBGC), a wholly owned United States government corporation, operates insurance programs and administers various provisions of ERISA for such plans. The United States therefore has a substantial interest in the resolution of the question presented. At the invitation of the Court, the United States filed a brief as amicus curiae at the petition stage of this case.

INTRODUCTION

When an employer withdraws from a multiemployer pension plan, ERISA requires the employer to pay its share of the plan's unfunded vested benefits. See 29 U.S.C. 1381(a). That requirement helps prevent a succession of employer withdrawals from causing the plan to enter a downward spiral into insolvency. The amount owed—the employer's "withdrawal liability," *ibid.*—must be calculated "as of" the last day of the plan year preceding the withdrawal, which is commonly called the measurement date (or valuation date). 29 U.S.C. 1391. Like other valuations, withdrawal-liability calculations combine hard data about the plan (such as the number of beneficiaries and the level of promised benefits) with actuarial assumptions (such as the projected growth of the plan's assets and its beneficiaries' life expectancy).

In this case, four employers (petitioners) withdrew from a multiemployer plan and challenged the assessments of their withdrawal liability on the ground that the actuarial assumptions supporting them had been adopted after the measurement date, and thereby violated ERISA's directive that withdrawal liability be determined "as of" that date. The D.C. Circuit correctly rejected that contention. In accordance with the statutory text and common actuarial practice, a retrospective determination of withdrawal liability as of the measurement date does not require the underlying assumptions to have been selected by that date. Statutory context, to the extent it sheds light on the question presented, further undermines petitioners' proposed timing rule for the adoption of actuarial assumptions. And petitioners' policy concerns with the court of appeals' approach are both misdirected and misconceived. The judgment below should be affirmed.

STATEMENT

A. Legal Background

1. "Congress enacted ERISA in 1974 to provide comprehensive regulation for private pension plans." *Connolly* v. *PBGC*, 475 U.S. 211, 214 (1986). "In addition to prescribing standards for the funding, management, and benefit provisions of these plans, ERISA also established a system of pension benefit insurance" to be administered by the PBGC. *Ibid.* "This comprehensive and reticulated statute was designed * * * to guarantee 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 will actually receive it." *Ibid.* (citation and internal quotation marks omitted).

ERISA governs both single-employer and multiemployer plans, the latter of which are common in some industries. See *Concrete Pipe & Prods. of Cal., Inc.* v. *Construction Laborers Pension Trust*, 508 U.S. 602, 606 (1993). "The contributions made by employers participating in such a multiemployer plan are pooled in a general fund available to pay any benefit obligation of the plan." *Id.* at 605. Soon after ERISA was enacted, however, it became clear that employers were incentivized "to withdraw from a financially shaky [multiemployer] plan * * * , rather than to remain and (if others withdrew) risk having to bear alone the entire cost of keeping the shaky plan afloat." *Milwaukee Brewery Workers' Pension Plan* v. *Joseph Schlitz Brewing Co.*, 513 U.S. 414, 416-417 (1995). "Consequently, a plan's financial troubles could trigger a stampede for the exit doors, thereby ensuring the plan's demise." *Id.* at 417; see *Connolly*, 475 U.S. at 216 (describing that potential "vicious downward spiral") (citation omitted).

In response, the PBGC proposed in 1979 that a withdrawing employer be required "to pay whatever share of the plan's unfunded vested liabilities was attributable to that employer's participation." *PBGC* v. *R.A. Gray & Co.*, 467 U.S. 717, 723 (1984). Congress adopted that approach by amending ERISA in the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1208.

2. As amended, ERISA requires an employer that withdraws from a multiemployer plan to pay the plan its "withdrawal liability," which basically means the employer's share of the plan's unfunded vested benefits (UVBs). 29 U.S.C. 1381(a) and (b)(1). The plan's UVBs equal the value of the benefits owed to employees minus the value of the plan's assets. 29 U.S.C. 1393(c). Valuing those liabilities and assets requires the use of actuarial assumptions about matters both demographic (*e.g.*, employee mortality) and economic (most importantly, the assumed discount rate, which is the interest rate "used to discount future benefit payments to their present value"). 87 Fed. Reg. 62,316, 62,317 (Oct. 14, 2022); see *Sofco Erectors, Inc.* v. *Trustees of Ohio Operating Eng'rs Pension Fund*, 15 F.4th 407, 418 (6th Cir. 2021); Pet. App. 21a. Thus, the higher the discount rate, the lower the UVBs and the exiting employer's withdrawal liability. See *Sofco*, 15 F.4th at 419.

The plan's actuary must 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." 29 U.S.C. 1393(a)(1).[1] In other words,

[1] Alternatively, the actuary may use "actuarial assumptions and methods set forth in [PBGC] regulations for purposes of determin-

the actuary must make a genuine and reasonable effort to project the plan's future "experience"—*e.g.*, when participants will retire, when beneficiaries will die, and how quickly the plan's assets will grow through investment. A similar standard governs the actuary's calculation of the plan's liabilities when determining, under ERISA's "minimum funding" provisions, the amounts that participating employers are obligated to contribute annually in order to ensure that the plan is adequately funded. 29 U.S.C. 1084(c)(3).

The plan's sponsor (typically a board of trustees appointed by participating employers and labor unions) makes the ultimate determination of withdrawal liability. 29 U.S.C. 1382; see 29 U.S.C. 1301(a)(10); *Massaro* v. *Palladino*, 19 F.4th 197, 201 (2d Cir. 2021). That amount (*i.e.*, the withdrawing employer's allocable share of the UVBs) is generally calculated using one of four formulas set forth in 29 U.S.C. 1391. See 29 U.S.C. 1381(b)(1), 1391. Under any of those approaches—the details of which are immaterial here—the employer's allocated share is calculated "as of the end of the plan year preceding the plan year in which the employer withdraws," *e.g.*, 29 U.S.C. 1391(b)(2)(E)(i), "not as of the day of withdrawal." *Milwaukee Brewery*, 513 U.S. at 418. For instance, if the plan year corresponds with the calendar year, the liability of an employer that withdraws on June 1, 2025, is calculated "as of" the measurement date of December 31, 2024. See *ibid.* "The reason for this calculation date seems one of administrative convenience," since the plan already must calcu-

ing an employer's withdrawal liability." 29 U.S.C. 1393(a)(2). The PBGC has never promulgated such regulations, though a pending rulemaking proposes doing so. 87 Fed. Reg. 62,316.

late its liabilities annually. *Ibid.* (citing 29 U.S.C. 1082(c)(9) (1994), now codified at 29 U.S.C. 1084(c)(7)).

Withdrawal-liability disputes are resolved through arbitration. 29 U.S.C. 1401(a). After arbitration, the employer or plan sponsor may bring suit in federal district court "to enforce, vacate, or modify the arbitrator's award." 29 U.S.C. 1401(b)(2).

B. The Present Controversy

1. Respondents are the trustees of the IAM National Pension Fund, a multiemployer pension plan "that provides retirement benefits to employees of employers who maintain collective bargaining agreements with the International Association of Machinists and Aerospace Workers, AFL-CIO." Pet. App. 6a. Every year, the plan's actuary calculates the plan's UVBs as of the end of the prior year. *Id.* at 23a. In November 2017, for example, the actuary determined that, as of the end of 2016, the plan had UVBs of about $448 million, based on a discount rate of 7.5% and other assumptions. *Id.* at 7a, 23a.

In January 2018, the actuary met with respondents "to review assumptions and methods used in making actuarial valuation calculations." Pet. App. 7a. After the meeting, the actuary adopted new assumptions for purposes of "calculat[ing] withdrawal liability for employers withdrawing from the Fund during the 2018 Plan Year," including a lower discount rate of 6.5%. *Ibid.*; see J.A. 183-185. The actuary did not change the discount rate for purposes of calculating the annual minimum-funding obligations of participating employers. See J.A. 184.

Petitioners are four employers that participated in the plan but withdrew in 2018 after the January meeting. Pet. App. 2a-3a. Respondents assessed petitioners' withdrawal liability using the new actuarial assumptions. *Id.* at 9a-11a & n.9. Those assumptions significantly affected the assessments. For example, petitioner M & K Employee Solutions owed about $6.2 million, which would have been about $1.8 million under the previous assumptions. J.A. 273, 315. Petitioners initiated arbitrations to challenge the assessments, including on the ground that the actuary had improperly relied on assumptions adopted after the measurement date of December 31, 2017. Pet. App. 9a, 11a.

2. The arbitrators ruled for petitioners on that timing issue based on the Second Circuit's decision in *National Retirement Fund* v. *Metz Culinary Management, Inc.*, 946 F.3d 146, cert. denied, 141 S. Ct. 246 (2020). See Pet. App. 26a-27a, 84a-85a; J.A. 24-32, 50-51, 73, 287. In *Metz*, an employer withdrew from a multiemployer plan and was assessed withdrawal liability using a discount-rate assumption that was adopted after the measurement date. 946 F.3d at 148-149. The Second Circuit rejected that calculation. It held that, under ERISA, "interest rate assumptions for withdrawal liability purposes must be determined as of" the measurement date, and "[a]bsent any change to the previous plan year's assumption made by the Measurement Date, the interest rate assumption in place from the previous plan year will roll over automatically." *Id.* at 152. In accordance with *Metz*, the arbitrators issued awards concluding that petitioners are entitled to have their withdrawal liability assessed under the actuarial assumptions used in November 2017 instead of those adopted in January 2018. Pet. App. 9a-11a & n.9. The arbitrators did not reach other issues raised by petitioners, including the permissibility of incorporating the plan's future administrative expenses into withdrawal

liability or of using different discount rates for minimum funding and withdrawal liability. J.A. 34, 47.

3. Respondents filed suits challenging the arbitral awards in the United States District Court for the District of Columbia. Two district judges, in separate decisions, vacated the awards. Pet. App. 18a-72a, 73a-119a. Unlike the Second Circuit, both courts construed ERISA to permit "later adoption of actuarial assumptions, so long as those assumptions are * * * based on the body of knowledge available up to the measurement date." *Id.* at 64a; accord *id.* at 92a-93a. The courts remanded the cases to the arbitrators to determine whether respondents' actuary complied with that latter limitation, and to address other challenges that the arbitrators had not reached. See *id.* at 65a-66a, 119a.

4. The court of appeals consolidated petitioners' appeals and affirmed. Pet. App. 1a-17a. It held that ERISA permits plan actuaries to adopt withdrawal-liability assumptions after the measurement date, provided that the assumptions are based on information available on that date. See *id.* at 13a. That rule, the court explained, best reconciles "Congress' dual directives that unfunded vested benefits be determined 'as of' the measurement date" and that actuarial assumptions represent the "'best estimate of anticipated experience.'" *Ibid.* (citation omitted). The court concluded that the Second Circuit's reasoning in *Metz* is inconsistent with ERISA's objective of "protect[ing]" multiemployer plans, and it questioned *Metz*'s reliance on a provision, 29 U.S.C. 1394, that "expressly limits retroactivity for changes to plan rules and amendments" but not for actuarial assumptions. Pet. App. 14a & n.10.

SUMMARY OF ARGUMENT

ERISA's directive in 29 U.S.C. 1391 that withdrawal liability be computed "as of the end of the plan year preceding" the employer's withdrawal does not require a pension plan to make the computation using actuarial assumptions that were adopted on or before that measurement date. As a matter of ordinary usage, to make some determination "as of" a specified date does not mean that the information or inputs bearing on that determination must be ascertained *on* that date; rather, "as of" affirmatively suggests otherwise. As petitioners appear to accept, Section 1391 thus contemplates a retrospective assessment of the plan's unfunded vested benefits and the withdrawing employer's share thereof. The determinate components of that calculation plainly need not be ascertained on or before the measurement date, and nothing in the statute suggests a different rule for actuarial assumptions, such as the interest rate used to project the plan's anticipated returns or employees' life expectancy. As a matter of ordinary meaning, the assumptions may also be selected or revised after the measurement date, at least as long as they are based on information that was already available on that date.

Section 1391's plain meaning comports with actuarial norms, which appropriately inform the application of ERISA. In the pension-plan context and elsewhere, it is commonplace for actuaries, appraisers, and similar professionals to select retrospectively the assumptions and estimates used to perform a valuation as of some prior date. After all, if the relevant asset or liability had not been previously valued, there would be no other option for a retrospective valuation but to select those assumptions after the valuation date.

As the Second Circuit did in *National Retirement Fund* v. *Metz Culinary Management, Inc.*, 946 F.3d 146, cert. denied, 141 S. Ct. 246 (2020), petitioners largely draw their proposed timing rule for actuarial assumptions from other provisions of ERISA. But the statutory context confirms Section 1391's plain meaning. In 29 U.S.C. 1394, for example, Congress specifically prohibited the retroactive application of plan rules and amendments to withdrawing employers, which strongly suggests the absence of any similar restriction for actuarial assumptions. Moreover, the only provision of ERISA that expressly addresses the adoption of actuarial assumptions for withdrawal liability is 29 U.S.C. 1393, which, as petitioners concede (Br. 42), "says nothing about timing." Nor is petitioners' timing rule to be found in the various informational and reporting provisions of ERISA, none of which requires pension plans to employ actuarial assumptions adopted by petitioners' deadline.

Petitioners ultimately retreat to policy arguments, contending (Br. 34-37) that their timing rule is needed to prevent plans from unfairly inflating withdrawing employers' liability. But this Court rejected virtually the same concerns in *Concrete Pipe & Products of California, Inc.* v. *Construction Laborers Pension Trust*, 508 U.S. 602 (1993), on the ground—among others—that such attempted manipulation will readily expose actuarial assumptions to challenge by withdrawing employers. And ERISA imposes other constraints on actuarial assumptions. In any event, such concerns could not justify petitioners' rule, which would prohibit the adoption of actuarial assumptions after the measurement date but before (as in this case) any employer withdrew from the plan. Furthermore, while petitioners emphasize (Br. 38-41) that their timing rule excuses actuaries from having to ignore post-measurement-date events in selecting their assumptions, that is a common actuarial task, and this Court need not resolve the workability of that approach in order to resolve the question presented. Petitioners' policy concerns are both unsound and irrelevant to the proper interpretation of Section 1391, which does not impose petitioners' proposed timing rule.

ARGUMENT

ERISA PERMITS ACTUARIAL ASSUMPTIONS FOR WITHDRAWAL LIABILITY TO BE ADOPTED AFTER THE DATE "AS OF" WHICH SUCH LIABILITY IS MEASURED

A. Section 1391 Does Not Require That Actuarial Assumptions Be Adopted By The Measurement Date

Petitioners contend (Br. 18-29) that, by requiring that withdrawal liability be calculated "as of" the end of the previous plan year, 29 U.S.C. 1391 mandates that the actuarial assumptions used to determine withdrawal liability be adopted by that date. That is incorrect. Section 1391, in accordance with ordinary usage and common actuarial practice, does not impose petitioners' proposed timing rule.

1. The statute's plain text does not impose petitioners' timing rule

a. Under ERISA, an employer's withdrawal liability is essentially its share of the plan's unfunded vested benefits "as of" the last day of the preceding plan year, the measurement date. *E.g.*, 29 U.S.C. 1391(b)(2)(E)(i). Those calculations—the plan's UVBs and the withdrawing employer's allocable share of them—depend on an array of inputs. Those inputs include both "knowable values" (such as the "plan's assets, the number of its beneficiaries, the generosity of the plan's benefits, and the schedule by which those benefits vest") and certain actuarial "assumptions" (such as "the discount rate and the life expectancy of the beneficiaries"). Pet. App. 96a.

By requiring withdrawal liability to be determined "as of" the measurement date, ERISA does not require that all the relevant inputs actually be determined on or before that date. To the contrary, the term "as of" is used in this context to describe a *retrospective* determination of some state of affairs on a prior date. See *Oxford English Dictionary* (online ed. Sept. 2025) (def. P.3.d.i. under "as"; defining "as of": "As things stood on (a date)"); *United States* v. *Munro-Van Helms Co.*, 243 F.2d 10, 13 (5th Cir. 1957) ("'As of' means 'as if it were.'") (citation omitted). The term simply asks what the state of the world was on the designated date. For example, if a statute directs a company to report its total number of employees "as of December 31," but the year-end personnel data do not become available until several weeks later, the company is expected to rely on the newly generated information in making its report about how many employees it had on December 31, absent some other limitation in the statute.

The complication here is that actuarial assumptions are not facts about the world, always existing at any given time, like a company's number of employees. Instead, they are predictive judgments that an actuary makes as the need arises and that are used to estimate the inherently uncertain present value of an asset or liability. See *Concrete Pipe & Prods. of Cal., Inc.* v. *Construction Laborers Pension Trust*, 508 U.S. 602, 635 (1993). But the term "as of" does not suggest that predictive judgments or estimates should be treated any differently from factual data. For example, if the hypothetical company discussed above had high turnover and thus could only estimate its headcount at any given time, making that estimate "as of" December 31 would not require the company to have chosen its methodology for making an accurate estimate on or before that date.

Or suppose that a realtor publishes a brochure in March 2026 ranking "the hottest neighborhoods as of New Year's Day," and her rankings rely on both recent home sale prices and projections of future increases in home values. An ordinary user of English would not read "as of" to mean that the realtor necessarily made those projections by January 1. Perhaps so, if the brochure had been planned well in advance—but "as of" would not establish that. At most, the term would indicate that the projections were based on data that existed on January 1 and did not incorporate subsequent developments. See pp. 31-34, *infra*.

By the same token, to require that an employer's withdrawal liability be calculated "as of" December 31 is not to say that the underlying actuarial assumptions must have been selected on or before that date. For instance, an actuary would comply with Section 1391's plain terms even if the mortality table used to project plan beneficiaries' life expectancy was not selected until after the measurement date, at least as long as the table existed on the measurement date or was based on data that existed at that time.

b. Petitioners do not appear to dispute that the ordinary meaning of the term "as of" encompasses retrospective determinations. They use the past tense when acknowledging (Br. 22) that Section 1391 requires plans to base withdrawal liability on "how things stood" on the measurement date.[2] But they paradoxically draw from Section 1391 a rule that the UVBs must be "calculated," and that the actuarial assumptions must therefore be adopted, "*on* the valuation date." Pet. Br. 23 (emphasis added); see *id.* at 14, 18, 22, 45.

That approach rewrites the statute, which refers to the employer's share of the UVBs "as of" the measurement date, not "on" that date. 29 U.S.C. 1391(b)(2)(E)(i). Even assuming that "on" might have supported petitioners' reading, " 'as of' is not merely a synonym for 'on,' and use of 'as of' for 'on' is held to be improper." *Rosner* v. *Metropolitan Prop. & Liab. Ins. Co.*, 236 F.3d 96, 100 (2d Cir. 2000); see Bryan A. Garner, *Garner's Modern English Usage* 93 (5th ed. 2022). In ordinary usage, "as of" refers to the point in time being described, not the time at which the description is being made or prepared. As one authority on usage has put it, "as of" is " 'justified only as a device for assigning an event to one time and the report and recognition of it to another.' " *Rosner*, 236 F.3d at 100 (quoting Wilson Follett, *Modern American Usage: A Guide* 76 (Jacques

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[2] Thus, although PBGC counsel may have misspoken during oral argument in *Concrete Pipe* in stating that the actuarial assumptions must be set "in advance of the withdrawal of any employer to whom they will apply," Oral Arg. Tr. at 42, *Concrete Pipe*, *supra* (No. 91-904); see Pet. Br. 35-36, she may have merely been referring to the statutory requirement that withdrawal liability be assessed as of a date that necessarily precedes any employer's withdrawal. The statements in the historical briefs cited by petitioners—including that withdrawal liability is based on "actuarial valuations performed for plan years preceding the employer's withdrawal," Br. 36 n.4 (citation omitted)—are consistent with the decision below, which recognized that withdrawal liability is based on the plan's UVBs for the preceding plan year.

Barzun ed., 1966)). "When such a nuance is not intended, *as of* is the wrong phrase." Garner 93.

Section 1391's text accordingly reflects Congress's expectation that the plan's UVBs, and a withdrawing employer's share thereof, would be determined retrospectively. And given that the actuarial assumptions are critical to those "very complicated" calculations, as petitioners note (Br. 23; see Br. 25-26), Congress's retrospective phrasing would be strange if it had intended to mandate implicitly that such an important component of those calculations be locked in by the measurement date rather than the necessarily later date on which the calculation is performed.

Despite their references to calculating the UVBs "on the valuation date," Pet. Br. 23, petitioners do not—and could not reasonably—contend that Section 1391 requires that the determinate components of the withdrawal-liability calculation actually be ascertained on or before the measurement date. Nothing in the text of the statute supports a different rule for actuarial assumptions. And courts generally do not "read into statutes" limitations that do not appear in their text. *Romag Fasteners, Inc.* v. *Fossil Grp., Inc.*, 590 U.S. 212, 215 (2020). By its plain terms, Section 1391 does not require actuarial assumptions to be selected by the measurement date.

2. *Selecting or revising actuarial assumptions after the measurement date is common practice*

The statute's plain meaning—which permits actuarial assumptions to be selected or revised after the measurement date—comports with the norms of actuarial practice. Taking that approach coheres with the requirement that actuarial assumptions for withdrawal liability be reviewed with "reference to what the actuarial profession considers to be within the scope of professional acceptability in making an unfunded liability calculation" and with consideration of what "methods and assumptions" would be "acceptable to a reasonable actuary." *Concrete Pipe*, 508 U.S. at 635; see, *e.g.*, *Stephens* v. *U.S. Airways Grp., Inc.*, 644 F.3d 437, 440 (D.C. Cir. 2011) (opinion of Brown, J.) (applying the term "actuarial equivalent" in 29 U.S.C. 1054(c)(3)), cert. denied, 566 U.S. 921 (2012).

Valuing assets and liabilities as of a past date is a common task for actuaries, accountants, and appraisers. "There are a number of reasons" to assess something's "value as of some date in the past." 1 James R. Eck et al., *Evidence Series: Asset Valuation* 25 (1991) (Eck). "Retrospective appraisals may be required for inheritance tax (date of death), insurance claims (date of casualty), income tax (date of acquisition), law suits (date of loss), and other reasons." Am. Inst. of Real Estate Appraisers, *The Appraisal of Real Estate* 45 (8th ed. 1983); see, *e.g.*, Eck 25-27 (describing valuations as of the date of a breach of contract, marriage or divorce, merger, bankruptcy, etc.). In *United States* v. *Miller*, 317 U.S. 369 (1943), for example, this Court held that the value of condemned property "is to be ascertained" for purposes of the Just Compensation Clause, U.S. Const. Amend. V, "as of the date of taking," even though the valuation "involves the use of assumptions, which make it unlikely that the appraisal will reflect true value with nicety." *Miller*, 317 U.S. at 374; see, *e.g.*, *Ithaca Trust Co.* v. *United States*, 279 U.S. 151, 154-155 (1929) (valuation of an estate as of the decedent's demise); *Latimore* v. *Citibank Fed. Sav. Bank*, 151 F.3d 712, 715 (7th Cir. 1998) ("retrospective appraisal" of a home).

When a retrospective valuation is performed, it is standard practice to select the underlying assumptions after the measurement date. See, *e.g.*, *Okerlund* v. *United States*, 365 F.3d 1044, 1047-1049 (Fed. Cir. 2004) (discussing experts' selection of assumptions in valuing corporate stock as of a prior date). That is why the services of an actuary or appraiser, rather than just a data analyst, are necessary for such a valuation. Indeed, when an actuary has not previously issued a valuation for the relevant property and is hired to do so after the measurement date, there is no choice but to select assumptions after the measurement date.

The ubiquity of that practice is reflected in the professional standards that govern the field. According to the American Academy of Actuaries, a pension-plan actuary "typically makes the final selection of actuarial assumptions after the measurement date." *Selection of Actuarial Assumptions for Multiemployer Plans* 4 (July 2020). Along the same lines, the Public Company Accounting Oversight Board has explained that although "[a]n independent auditor's report ordinarily is issued in connection with historical financial statements that purport to present financial position at a stated date," an auditor should consider " 'subsequent events' " that "provide additional evidence with respect to conditions that existed at the date of the balance sheet and affect the estimates inherent in the process of preparing financial statements." *Auditing Standards* §§ 2801.01, 2801.03 (2004); see Fin. Acct. Standards Bd., *Accounting Standards Codification* § 855-10-25-1 (2025) (similar). The Appraisal Standards Board has likewise instructed that "[d]ata subsequent to the effective date" of an appraisal "may be considered in developing a retrospective value as a confirmation of trends that would reasonably be considered by a buyer or seller as of that date." *Advisory Opinion 34*, *in Uniform Standards of*

Professional Appraisal Practice 156 (2020-2021 ed.). Those standards recognize that even the indeterminate elements of a valuation, such as actuarial assumptions and other estimates, are commonly selected after the valuation date.

Petitioners do not contend otherwise. Their only discussion of professional practice simply notes (Br. 39-41) that the Actuarial Standards Board approves of the consideration of post-measurement-date events when selecting assumptions—which is admittedly contrary to the D.C. Circuit's caveat against considering such developments, Pet. App. 13a. But that issue is not presented here, because the question presented concerns when the assumptions may be adopted rather than what information they may incorporate. See pp. 31-34, *infra*. More important, for present purposes, is petitioners' tacit acknowledgement that the retrospective selection of actuarial assumptions is commonplace in the actuarial field.

None of this is to say that industry practice can "override statutory text." Pet. Br. 39. But because Section 1391—like other provisions of ERISA—takes well-settled actuarial practices and norms into account, it is even clearer that the statute permits actuarial assumptions to be adopted after the measurement date. No reasonable interpretation of Section 1391 supports petitioners' proposed timing rule.

B. Statutory Context Further Undermines Petitioners' Interpretation Of Section 1391

The Second Circuit in *Metz* did not rely on Section 1391 whatsoever in deriving its timing rule for actuarial assumptions. 946 F.3d at 150-152. In urging this Court to endorse the same rule, petitioners similarly rely (Br.

29-38) extensively on other provisions of ERISA. But the statutory context confirms petitioners' error.

1. ERISA expressly prohibits retroactive plan amendments without restricting actuarial assumptions in parallel

Petitioners first point (Br. 30-32) to 29 U.S.C. 1394, which provides that "[n]o plan rule or amendment" governing the allocation of UVBs to a withdrawing employer—for example, an amendment changing the plan's overall method for making that calculation—"may be applied without the employer's consent with respect to liability for a withdrawal or partial withdrawal which occurred before the date on which the rule or amendment was adopted." 29 U.S.C. 1394(a); see 29 U.S.C. 1389, 1391(c). In petitioners' view (Br. 30), Section 1394 signals "Congress's concern over trustee decisions that retroactively inflate a withdrawing employer's liability," and therefore supports an inference that Section 1391 requires actuarial assumptions to be adopted by the measurement date. *Metz* took the same message from Section 1394's legislative history. See 946 F.3d at 150-151.

Yet, as petitioners recognize (Br. 30), actuarial assumptions are not "plan rule[s] or amendment[s]," 29 U.S.C. 1394(a), so Section 1394's anti-retroactivity rule does not apply to them. Section 1394 therefore invites, if anything, the opposite inference from the one drawn by petitioners: Congress's failure to enact a similar anti-retroactivity provision for actuarial assumptions indicates that ERISA imposes no such limitation. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("[I]t is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion [of particular language].") (citation omitted). Nor did Congress specify which assumptions should be used, as it recently did in a new section of ERISA governing the PBGC's "special financial assistance" program for struggling plans. 29 U.S.C. 1432(c)(1) and (2) (generally requiring a plan's application for assistance to use the assumptions "in its most recently completed certification of plan status before January 1, 2021"). That contrast is also telling.

This Court regularly draws similar inferences when interpreting statutes. In *Gallardo* v. *Marstiller*, 596 U.S. 420 (2022), for instance, it declined to read a provision of the Medicaid Act referring to "'payment for medical care'" as limited to payment for "*past*" medical care, in part because "Congress did include such limiting language elsewhere" in the Act. *Id.* at 429 (citation omitted); see *Sandoz Inc.* v. *Amgen Inc.*, 582 U.S. 1, 20 (2017) (applying similar reasoning). By the same logic, ERISA's explicit prohibition of retroactive rules or amendments for withdrawal liability in Section 1394 undercuts petitioners' claim that Section 1391 implicitly imposes a similar restriction on actuarial assumptions. Such an inference does not "beg[] the question" of what Section 1391 means, contra Pet. Br. 31; it simply uses statutory context to further illuminate the meaning of that provision.

Petitioners' analogy to Section 1394 fails for other reasons as well. They may well be correct (Br. 30) that Section 1394 was enacted to prevent pension-plan trustees from changing a plan's rules to retroactively inflate withdrawing employers' liability. But that does not mean that Congress had the same concern about actuaries. As discussed further below, pp. 28-29, *infra*, this Court has declined to impute the potential biases and incentives of plan trustees to actuaries, given the robust and independent constraints on actuarial choices. See *Concrete Pipe*, 508 U.S. at 632. In addition, as petitioners recognize (Br. 30), their timing rule for Section 1391 would be more restrictive than Section 1394's anti-retroactivity rule for plan rules and amendments. It would prohibit any changes to the actuarial assumptions after the measurement date even if no employer had yet withdrawn or indicated an intent to withdraw—and thus even if the actuary had no reason to try to inflate any employer's liability. In fact, that is what occurred in this case: Respondents' actuary selected new assumptions for withdrawal liability in January 2018, before any of petitioners withdrew from the plan or requested their estimated liability if they withdrew that year. See pp. 6-7, *supra*; see also, *e.g.*, J.A. 31, 69-70, 150-151. Furthermore, unlike Section 1394, petitioners' timing rule would bar the retrospective selection of actuarial assumptions even with the withdrawing employer's consent, cf. 29 U.S.C. 1394(a)—even, for instance, when the proposed assumptions would result in a *lower* amount of withdrawal liability for the employer.

If anything "beg[s] the question," it is petitioners' conclusory response (Br. 31) that "Congress chose different anti-retroactivity rules" for plan rules and actuarial assumptions. Section 1394 much more likely suggests that Congress did not impose an anti-retroactivity rule for actuarial assumptions.

2. The provision specifically addressing actuarial assumptions does not include petitioners' timing rule

If ERISA did impose petitioners' timing rule, "we should naturally expect to find it in [the part of the statute] where such matters are exclusively dealt with." *E.I. DuPont de Nemours & Co.* v. *Davis*, 264 U.S. 456, 461 (1924). Only one section of ERISA, 29 U.S.C. 1393, bearing the heading "Actuarial assumptions," expressly addresses the adoption of actuarial assumptions for determining withdrawal liability. Subsection (a)(1) of that provision requires that withdrawal liability be determined using "actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan." 29 U.S.C. 1393(a)(1).

As petitioners acknowledge, that provision "says nothing about timing." Br. 42; accord *Metz*, 946 F.3d at 150 (describing Section 1393 as "silent" about when the assumptions may be selected). The absence of petitioners' purported limitation from its natural statutory home is another telltale sign that the limitation does not exist.

Moreover, as the D.C. Circuit noted below, petitioners' timing rule would be in serious tension with the statute's directive that the assumptions reflect the "experience of the plan" and represent the actuary's "best estimate" of the plan's anticipated experience. 29 U.S.C. 1393(a)(1); see Pet. App. 13a. If the actuary were required to adopt all assumptions on or before the measurement date, it would be impossible to account for year-end data that became available only after the measurement date. Although petitioners suggest (Br. 42) that year-end events and information are comparatively unimportant because actuarial assumptions "predict the plan's experience over a horizon of many decades (as new generations of current workers enter and enjoy retirement)," discrete events can plainly affect a plan's long-term experience (for example, a corporate acquisition that changes the demographic makeup of those "current workers" or a major change to the plan's investment strategy), just as such events can affect the long-term valuation of a business (for example, the onset of a pandemic, Pet. Br. 41). Such events can happen at any time, and without the relevant data becoming available instantaneously. There is no reason to think that Congress meant for the actuary to exclude plan experience that actually occurs on or before the year-end cut-off date that Congress selected.

The next subsection even more starkly undermines petitioners' claim. Section 1393(b) gives the actuary an alternative methodology for determining a plan's UVBs for purposes of withdrawal liability by using "the most recent complete actuarial valuation" made to assess the plan's minimum-funding obligations and "reasonable estimates for the interim years," and it further permits reliance on incomplete or sampled data. 29 U.S.C. 1393(b)(1) and (2). As petitioners explain (Br. 43), when Section 1393(b) was enacted, such valuations were required to be made at least once every three years, which effectively "authorized plans to use valuations (and assumptions on which those valuations were based) that could be up to three years old." Even under the current version of ERISA, the most recent valuation for funding purposes may predate the end of the prior plan year by months. See pp. 25-26, *infra* (discussing 29 U.S.C. 1084(c)(7)). Yet petitioners' broader contention (Br. 37) is that Section 1391 requires the actuary (irrespective of which approach is used under Section 1393) to calculate the UVBs using only those assumptions that were "in effect on the valuation date," which would preclude the use of earlier assumptions underlying a previous funding valuation. Petitioners' theory would therefore "cause the statute, in a significant sense, to contradict itself." *Liteky* v. *United States*, 510 U.S. 540, 552 (1994). Section 1393(b) provides further reason to reject petitioners' view.

3. Petitioners misunderstand ERISA's reporting provisions

Nor do the various informational provisions invoked by petitioners and the Second Circuit support their proposed timing rule for actuarial assumptions.

a. In *Metz*, the Second Circuit placed significant weight on 29 U.S.C. 1021(*l*), which entitles a participating employer to obtain from the plan an estimate of its withdrawal liability. See 946 F.3d at 151. In the Second Circuit's view, that provision would be "of no value" if the actuarial assumptions for withdrawal liability could be adopted after the measurement date. *Ibid.*

But as petitioners tacitly accept (Br. 34), *Metz* appears to have misunderstood the statute, which requires such an estimate to be made "[as] if such employer withdrew on the last day of the plan year preceding the date of the request" for the estimate. 29 U.S.C. 1021(*l*)(1)(A). Because Section 1391 in turn requires withdrawal liability to be calculated as of the last day of the preceding plan year, "the estimated withdrawal liability is * * * calculated" under Section 1021(*l*)(1) "as of the last day of the Plan Year *two* years prior to the Plan Year during which the employer requested the estimate." Pet. App. 47a (emphasis added). As a result, *Metz*'s rule does not actually ensure that the estimate an employer receives will be based on the same actuarial assumptions that would apply if the employer actually proceeds to withdraw. See *id.* at 61a-62a, 111a-112a. While estimates under Section 1021(*l*) can still provide employers with "useful information," Pet. Br.

34, that provision does not sufficiently resemble petitioners' timing rule to support it.

b. Petitioners focus on (Br. 33-34) ERISA's requirement that each plan file annual reports using the government's Form 5500, which for a multiemployer plan includes information relevant to withdrawal liability, such as the withdrawal-liability discount rate and the plan's UVBs. 29 U.S.C. 1023; see U.S. Dep't of the Treasury et al., Form 5500, Schedule MB, *Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information* 1, 3 (2024). But that requirement also fails to support petitioners' timing rule. Among other things, ERISA does not require that the actuarial assumptions included in or used to prepare the annual report be adopted by the withdrawal-liability measurement date, and petitioners do not claim otherwise. The report also need not be filed until seven months after the end of the plan year, a deadline that can be (and routinely is) extended; for instance, respondents file their Form 5500 for the plan's preceding year every October. 29 U.S.C. 1024(a)(1); see U.S. Dep't of Labor, *Form 5500 Search*, https://www.efast.dol.gov/5500Search/ (use search term "IAM National Pension Fund"). For most of the year, therefore, employers considering whether to withdraw do not necessarily have access to these reports. Accordingly, petitioners err in contending (Br. 32) that the reports' usefulness hinges on the actuarial assumptions' being adopted by the measurement date.

c. Petitioners also allude (Br. 7-8, 21) to 29 U.S.C. 1084(c)(7), an earlier version of which, 29 U.S.C. 1082(c)(9) (1994), this Court referred to in *Milwaukee Brewery Workers' Pension Plan* v. *Joseph Schlitz Brewing Co.*, 513 U.S. 414, 418 (1995). That statute generally requires a multiemployer plan to make "a determination of experience gains and losses and a valuation of the plan's liability * * * not less frequently than once every year." 29 U.S.C. 1084(c)(7)(A).

As *Milwaukee Brewery* explains, Section 1391 uses the last day of the preceding plan year as the measurement date seemingly out of "administrative convenience" —so that a plan can base withdrawal liability on UVB figures "that it must prepare in any event for a report required under ERISA, see 29 U.S.C. § 1082(c)(9), thereby avoiding the need to generate new figures tied to the date of actual withdrawal." 513 U.S. at 418. But no provision of ERISA, including any version of Section 1084(c)(7), has required a plan to determine its UVBs on the last day of each plan year. The required annual valuation may be made "as of" any date within a 13-month period (*i.e.*, "as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year"). 29 U.S.C. 1084(c)(7)(B)(i); see 29 U.S.C. 1082(c)(9) (1994) (requiring that "a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year" without specifying the valuation date). So the statement in *Milwaukee Brewery* that "the withdrawal charge * * * equals th[e] employer's fair share of the underfunding *as calculated on*" the measurement date, 513 U.S. at 418 (emphasis added), cannot be taken literally, contrary to petitioners' repeated implication (Br. 1, 3, 14, 20, 23).

d. Petitioners also assert that ERISA at least "ensures that a multiemployer plan will have an actuary who, by the time of any particular valuation date, will have *recently* considered the assumptions to use to value the plan's liabilities"—such as to comply with the reporting provisions or with minimum-funding rules. Br. 26 (emphasis added); see 29 U.S.C. 1023(a)(4)(B) (assumptions for annual report); 29 U.S.C. 1084(c)(3) (assumptions for minimum funding). But that reasoning conflicts with petitioners' own interpretation of Section 1391, which they read (Br. 23, 26) as requiring that the assumptions be in place—and the amount of the plan's UVBs be "frozen"—on the measurement date itself, lest the amount of UVBs be "indeterminate" on that date. As we previously explained, "an actuary's use of certain assumptions on one occasion does not automatically mean that those assumptions " 'remain in effect,' " or that the actuary "continues to 'believe' or subscribe to them, on an ongoing basis thereafter." U.S. Cert. Amicus Br. 19 (citation omitted). Under petitioners' reading of Section 1391, assumptions adopted before the measurement date would be as impermissibly premature as the assumptions in this case are purportedly impermissibly retrospective.

In any event, as petitioners acknowledge (Br. 28-29), it is unsettled whether ERISA even requires that the actuarial assumptions for withdrawal liability and other statutory purposes be identical. See pp. 29-30, *infra*. Thus, even if a plan calculated its UVBs shortly before the end of the year and the underlying assumptions were somehow deemed to remain in effect, it is still uncertain that ERISA would require those assumptions to be used for withdrawal liability. Petitioners' inference from statutory context is unconvincing.

C. Policy Concerns Do Not Support Petitioners' Interpretation Of Section 1391

Petitioners' remaining arguments sound in questions of policy. They contend (Br. 34-41) that their timing rule is necessary to prevent unfair manipulation of withdrawal liability and that compliance with the D.C. Circuit's approach would be impracticable for actuaries. But such policy concerns "generally cannot 'surmount the plain language of the statute.'" *Truck Ins. Exch.* v. *Kaiser Gypsum Co.*, 602 U.S. 268, 284 (2024) (citation omitted). As we have explained, neither Section 1391 nor any other provision of ERISA imposes the rule that petitioners urge. But even taken on their own terms, petitioners' concerns do not justify their rule.

1. Petitioners' timing rule is not necessary to prevent manipulation of withdrawal liability

Echoing the Second Circuit, petitioners contend (Br. 34-37) that their proposed timing rule is necessary to prevent pension plans from manipulating actuarial assumptions so as to inflate the liability of withdrawing employers. See *Metz*, 946 F.3d at 151-152. But as petitioners observe, ERISA requires "that withdrawal-liability assumptions reflect *the actuary's* best estimate of anticipated experience." Br. 34; see 29 U.S.C. 1393(a)(1). In *Concrete Pipe*, this Court rejected the contention that plan trustees' biases and incentives to inflate withdrawal liability can be imputed to plan actuaries, who are sufficiently constrained by other statutory and professional requirements.

Concrete Pipe involved a due-process challenge to ERISA's provision requiring that, in arbitration over withdrawal liability, the actuary's determination of the plan's UVBs "is presumed correct" unless a party makes certain showings. 29 U.S.C. 1401(a)(3)(B); see *Concrete Pipe*, 508 U.S. at 631-632. An employer argued that the presumption worked to deny it "a fair adjudication" because actuaries may be pressured by the "plan sponsors [who] employ them" to "come down hard on withdrawing employers." *Concrete Pipe*, 508 U.S. at

620, 632, 635. This Court rejected that challenge. Despite recognizing that actuaries are selected by the plans who employ them, see *id.* at 632, the Court emphasized that actuaries are "trained professionals" who are "subject to regulatory standards" and are not "vulnerable to suggestions of bias or its appearance." *Id.* at 632; cf. *Richardson* v. *Perales*, 402 U.S. 389, 403 (1971) (declining to "ascribe bias to the work of * * * independent physicians" who examine disability claimants).

Concrete Pipe also recognized that ERISA already contains safeguards against the potential manipulation that petitioners fear (Br. 35). As noted above, an actuary must also calculate a plan's liabilities for purposes of determining the funding obligations of *participating* employers—a context in which, in contrast with the determination of withdrawal liability, the plan would have an incentive to *minimize* its UVBs. See *Concrete Pipe*, 508 U.S. at 632-633; 29 U.S.C. 1084. If the actuary were to adopt assumptions that inflate withdrawal liability and use the same assumptions for funding purposes, it would concomitantly increase the annual contributions that ongoing employers must make. Alternatively, if the actuary used different assumptions, it would invite a challenge to the withdrawal-liability assumptions in arbitration. See *Concrete Pipe*, 508 U.S. at 633 (citing *United Retail & Wholesale Emps. Teamsters Union Local No. 115 Pension Plan* v. *Yahn & McDonnell, Inc.*, 787 F.2d 128, 146-147 (3d Cir. 1986) (Seitz, J., dissenting in part), aff'd by an equally divided Court *sub nom.* *PBGC* v. *Yahn & McDonnell, Inc.*, 481 U.S. 735 (1987)).

Indeed, as to the "critical interest rate assumption," *Concrete Pipe* emphasized that it "must be used for other purposes as well." 508 U.S. at 633. Although lower courts have disagreed about whether the assumptions for withdrawal liability and funding must be identical in light of subsequent amendments to the statute, see Pet. Br. 28-29, they must at least be "similar." *United Mine Workers of Am. 1974 Pension Plan* v. *Energy W. Mining Co.*, 39 F.4th 730, 742 (D.C. Cir. 2022), cert. denied, 143 S. Ct. 1024 (2023). Thus, 29 U.S.C. 1084(c)(3) requires that minimum-funding assumptions be "reasonable (taking into account the experience of the plan and reasonable expectations)" and that they, "in combination, offer the actuary's best estimate of anticipated experience under the plan." And 29 U.S.C. 1393(a)(1) requires withdrawal-liability assumptions "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."

Nor is review of the actuary's assumptions toothless, notwithstanding the presumption of correctness that the Court upheld in *Concrete Pipe*. That presumption may be overcome if the withdrawing employer "shows by a preponderance of evidence" that "the actuarial assumptions and methods used in the determination were, in the aggregate, unreasonable (taking into account the experience of the plan and reasonable expectations)," or that "the plan's actuary made a significant error in applying the actuarial assumptions or methods." 29 U.S.C. 1401(a)(3)(B). Errors of law are per se unreasonable. Cf. *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 405 (1990). And lower courts have not hesitated to find in favor of employers challenging their withdrawal-liability assessments on the ground that, for example, the underlying assumptions were not "based on the [plan's] past or projected investment returns" and therefore did not represent an actuary's best estimate of the plan's anticipated experience. *Energy W.*, 39 F.4th at 740; see, *e.g.*, *Sofco Erectors, Inc.* v. *Trustees of Ohio Operating Eng'rs Pension Fund*, 15 F.4th 407, 421 (6th Cir. 2021) (rejecting "blended" approach that diluted an actuary's projection of investment returns with a risk-free rate). To the extent that petitioners have preserved such challenges to the discount rate used for withdrawal liability here, they may pursue them on remand to the arbitrators.

In any event, as with their reliance on Section 1394, p. 21, *supra*, petitioners' manipulation concerns would at most justify a rule that actuarial assumptions must be adopted for a given plan year before any employer withdraws during the following year. Yet petitioners' timing rule would go further, by prohibiting the adoption of actuarial assumptions after the measurement date but before any employer withdrew, and thus before any incentive for manipulation arose. Petitioners' manipulation concerns scarcely support their atextual reading of Section 1391.

2. Workability concerns do not support reversal

a. Petitioners further object (Br. 38-41) to the D.C. Circuit's view that actuarial assumptions may be selected after the measurement date only "so long as those assumptions are * * * based on the body of knowledge available up to the measurement date." Pet. App. 13a (citation omitted). In petitioners' view (Br. 40-41), that limitation is legally unfounded and "highly impractical," because "[e]ven the most well-meaning actuaries" could not overcome the "temptation" to consider post-measurement-date events and information.

But, as we explained in our brief at the certiorari stage, the soundness of the D.C. Circuit's "body of knowledge" caveat is not at issue here. Petitioners' contention is that respondents' actuarial firm violated ERISA by adopting its assumptions after the measurement date, not by relying on post-measurement-date information in adopting the assumptions. See U.S. Cert. Amicus Br. 16. The question presented as rephrased by the Court's order of July 3, 2025, proceeds on the premise that the actuarial assumptions "were adopted after, but based on information available as of, the end of the year," and petitioners accepted that reformulation in their response to our certiorari-stage brief, see Pet. Supp. Cert. Br. 4; cf. *Eastman Kodak Co.* v. *Image Tech. Servs., Inc.*, 504 U.S. 451, 465 n.10 (1992) (noting parties' failure "to bring their objections to the premise underlying the questions presented to our attention in their opposition to the petition for certiorari" and deciding the case on that premise).

Furthermore, there is good reason for this Court not to address the D.C. Circuit's caveat, for its correctness is not obvious. To be sure, the court of appeals' approach arguably gives fuller effect to Section 1391's requirement that withdrawal liability be determined "as of" the measurement date. See Pet. App. 13a. Petitioners' objection (Br. 38) to that approach as having "no basis in the statute" is peculiar when petitioners read "as of" even more aggressively, to require that the assumptions themselves, and not merely the information affecting the assumptions, be in place on the measurement date.

On the other hand, the professional standards discussed above, pp. 17-18, *supra*, and other authority may suggest that Section 1391's measurement date was meant to apply only "for the fixed, knowable components of the withdrawal liability calculation," not the actuarial assumptions. Pet. App. 91a; see *id.* at 49a. By comparison, this Court has held that the valuation of a patent as of "the time of [a] breach" of contract may account for events postdating the valuation date as "a legitimate aid to the appraisal." *Sinclair Refin. Co.* v. *Jenkins Petroleum Process Co.*, 289 U.S. 689, 697 (1933); but cf. *Ithaca Trust*, 279 U.S. at 154-155 (rejecting that approach in the tax context).

b. In any event, petitioners' concerns about the workability of the D.C. Circuit's rule are overstated. Whereas petitioners doubt an actuary's ability to ignore post-measurement-date events, the ability "to be unbiased by events which occurred between the historic valuation date and the present" is a tool of the actuarial trade. Eck 25; see *ibid.* ("it is necessary to disregard any happenings since the date of valuation if they could not have been foreseen").[3] Petitioners' own hypothetical involving the videoconferencing software company Zoom is instructive. Although petitioners dismiss (Br. 41) the possibility of an "honest" valuation of Zoom "as of December 31, 2019," *i.e.*, the brink of the pandemic that dramatically affected Zoom's value, that kind of exercise is a familiar one. Consider Zoom's own 2020 Form 10-K, which was filed on March 20, 2020, and retrospectively described "the financial position of the Company as of January 31, 2020," weeks before the pandemic's effects were strongly felt in the United States. Zoom Video Commc'ns, Inc., Form 10-K, at 52.

As petitioners correctly note, moreover, ERISA does not mandate "an actuarially perfect" determina-

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[3] The legal system analogously demands similar mental discipline of lay jurors, who lack the specialized training and professional standards of actuaries. See *Esteras* v. *United States*, 145 S. Ct. 2031, 2044 n.9 (2025) ("We routinely require judges and juries to attend to some considerations while ignoring others.").

tion of withdrawal liability. Br. 43 (quoting *Milwaukee Brewery*, 513 U.S. at 426). Nor is such perfection possible, "when one considers that actuarial practice has been described as more in the nature of an 'actuarial art' than a science, and that the [withdrawing] employer's burden covers 'technical actuarial matters with respect to which there are often several equally "correct" approaches.'" *Concrete Pipe*, 508 U.S. at 635 (citations omitted). The fundamental problem with petitioners' proposed timing rule is that it demands a level of certitude and determinacy in withdrawal-liability determinations that is foreign to actuarial practice and that ERISA does not require.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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