

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,
Respondent.

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

**BRIEF OF AMICI CURIAE AARP AND AARP
FOUNDATION IN SUPPORT OF
RESPONDENT**

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INTEREST OF AMICI CURIAE¹

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With a nationwide presence, AARP strengthens communities and advocates for what matters most to the more than 100 million Americans 50-plus and their families: health and financial security, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works for and with vulnerable people over 50 to end senior poverty and reduce financial hardship by building economic opportunity.

AARP and AARP Foundation are deeply committed to increasing the financial security of older adults and have long advocated on behalf of the millions of workers, retirees, and beneficiaries who depend on their retirement and pension savings to live and age with dignity. Amici participate as amicus curiae in federal and state courts to ensure that pension plan participants receive all benefits to which they are entitled. To achieve this goal, Amici endeavor to secure accurate interpretations of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 et seq., as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), 29 U.S.C. §§ 1381 et seq.

¹ Pursuant to Supreme Court Rules 37.2 and 27.6, no counsel for either party authored the brief in whole or in part. In addition, no person or entity, other than amici, their members, and their counsel, has made any monetary contribution to the preparation and submission of this brief. Counsel for all parties received timely notice of our intent to file this brief.

SUMMARY OF ARGUMENT

Fifty years ago, Congress enacted ERISA to ensure that employees and beneficiaries who are promised pension benefits actually receive them. Within six years, Congress enacted the MPPAA to strengthen multiemployer plans and prevent plan insolvency by imposing withdrawal liability on employers that depart such plans. Critical to the MPPAA's statutory framework is the requirement that withdrawal liability be calculated using assumptions that reflect the actuary's "best estimate" of the plan's anticipated experience based on complete and accurate year-end data. The statute's plain text and remedial purpose foreclose any interpretation that restricts an actuary's statutory obligation to use their best professional judgment in adjusting assumptions based on accurate information that accounts for the plan's full experience.

Multiemployer plans remain a critical source of retirement income for millions of American workers and their families, making it essential that statutory protections designed to safeguard these plans are interpreted in a manner consistent with congressional intent. Many workers lack sufficient retirement savings, and economic conditions have made it more difficult for retirees to maintain financial stability. Requiring actuaries to use outdated and potentially inaccurate prior-year assumptions risks undervaluing employer withdrawal liability, thereby undermining the solvency of multiemployer plans. Such an outcome exposes employers and retirees to the very funding

shortfalls and systemic risks that Congress enacted the MPPAA to prevent.

ARGUMENT

I. ERISA, AS AMENDED BY THE MPPAA, IS INTENDED TO ENSURE PENSION PLAN SOLVENCY THAT SAFEGUARDS THE RETIREMENT SECURITY OF WORKERS AND RETIREES

Congress enacted ERISA in 1974 in response to mounting public concern that private pension and retirement plans covering millions of American workers were being mismanaged and abused. *See* 29 U.S.C. § 1001(a); *Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 720 (1984). The collapse of underfunded pension plans inflicted a “great personal tragedy” on workers who lost the benefits they had spent their careers earning. *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 361, 374–75 (1980). With ERISA, Congress sought to ensure that “employees and their beneficiaries would not be deprived of anticipated retirement benefits by the termination of pension plans before sufficient funds have been accumulated in [them].” *R.A. Gray*, 467 U.S. at 720; 29 U.S.C. § 1001(a). Specifically, Congress wanted “to guarantee that if a worker has been promised a defined pension plan benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—he will actually receive it.” *R.A. Gray*, 467 U.S. at 720 (citation modified). In essence, ERISA stands as the cornerstone of retirement security, protecting both the

financial well-being of workers and retirees as well as the integrity of the retirement system itself. *See, e.g.*, 29 U.S.C. § 1002(19) (defining earned pension benefits as “nonforfeitable” and “legally enforceable”).

**A. The MPPAA Strengthens ERISA’s
Commitment to Protect the
Integrity of the Retirement System**

Unlike single-employer plans, which serve employees of a single employer, multiemployer plans cover unionized workers employed by different contributing employers. The employers’ pension obligations are pooled into a single shared trust fund from which benefits are paid to retirees and their families. *See R.A. Gray*, 467 U.S. at 721–22; *see generally* 29 U.S.C. § 1002(37)(A). Because the assets are comingled, contributions made by one employer may fund benefits owed to the employees of another. These plans are particularly common in industries characterized by project-based or transient employment—such as construction, manufacturing, retail, mining, transportation, entertainment, and healthcare—allowing workers to move among employers without forfeiting accrued credit towards their pension benefits. *See* 29 C.F.R. § 2530.210(c)(1) (1991); *Concrete Pipe & Prods. of Cal. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 606–07 (1993). In such industries, there are “hundreds or thousands of small employers going in and out of business,” where the union, rather than any employer, anchors the employment relationship. *United Mine Workers of Am. 1974 Pension Plan v. Energy W. Mining Co.*, 39 F.4th 730, 734, n.1 (D.C. Cir. 2022).

The inherent mobility of workers in these industries renders multiemployer plans particularly susceptible to financial instability.²

Under ERISA as it was originally enacted, multiemployer plans faced acute funding challenges. The statute lacked clear provisions assessing liability for withdrawing employers, generally absolving them of any responsibility for their ongoing share of the plan’s unfunded liabilities—provided the plan remained solvent for five years after their departure. *Energy W.*, 39 F.4th at 734–35 & n.2.; see also *R.A. Gray*, 467 U.S. at 722–23; *Milwaukee Brewery Workers’ Pension Plan v. Jos. Schlitz Brewing Co.*, 513 U.S. 414, 416–17 (1995). Where a plan remained adequately funded, ERISA’s protections functioned as intended. See *Milwaukee Brewery*, 513 U.S. at 416–17. But when a plan became underfunded, the funding shortfall shifted to the remaining employers, whose owed contributions were increased to ensure sufficient assets to cover vested pension benefits. *Id.* Faced with mounting liabilities, remaining employers then had strong incentives to withdraw from underfunded plans—hoping the plan would survive the statutory five-year period, thereby insulating them from liability. H.R. Rep. No. 869, 96th Cong., 2d Sess., 54–55, reprinted in 1980 U.S. Code Cong. & Ad. News 2918, 2922–23. This cascading effect produced what Congress described as a “death spiral,” leaving “a

² PENSION BENEFIT GUAR. CORP. (PBGC), Orphan and Inactive Participants in Multiemployer Plans, 2015 Plan Year reporting, 3 (Aug. 2019), <https://www.pbgc.gov/sites/default/files/orphan-and-inactive-participant-report-final.pdf>.

significant number of [multiemployer] plans to experience “extreme financial hardship.” *R.A. Gray*, 467 U.S. at 721; *see also Milwaukee Brewery*, 513 U.S. at 417 (“[A multiemployer] plan’s financial troubles could trigger a stampede for the exit doors, thereby ensuring the plan’s demise”). By the late 1970s, widespread employer withdrawals threatened the solvency of multiemployer plans and, by extension, the retirement security of millions of workers and retirees. *See R.A. Gray*, 467 U.S. at 721–22.

In response, Congress enacted the MPPAA in 1980 to stabilize multiemployer plans and ensure their solvency when employers withdrew from them. *See generally Milwaukee Brewery*, 513 U.S. at 416-17; *see also R.A. Gray*, 467 U.S. at 722–24; *Bay Area Laundry & Dry Cleaning Pension Tr. Fund v. Ferber Corp. of Cal.*, 522 U.S. 192, 196 (1997). To eliminate adverse incentives and prevent the unfair shifting of contribution burdens, the MPPAA requires any employer who withdraws from a multiemployer plan to pay its pro rata share of the plan’s unfunded vested benefits—defined as the “the difference between the present value of the plan’s vested benefits and the present value of its assets.” *Connors v. B & H Trucking Co.*, 871 F.2d 132, 133 (D.C. Cir. 1989); *see also* 29 U.S.C. §§ 1381, 1391. The MPPAA thus closed a critical loophole in ERISA’s framework that had allowed withdrawing employers to evade ongoing liabilities, leaving multiemployer plans vulnerable to insolvency. In doing so, the MPPAA represents a deepening of ERISA’s central commitment: to ensure retirement security and the payment of promised pension benefits by stabilizing multiemployer plans.

B. The MPPAA’s Plain Language and Purpose Require Complete and Accurate Actuarial Assumptions to Determine Withdrawal Liability

“In ERISA cases, as in any case of statutory construction, our analysis begins with the language of the statute.” *Harris Tr. & Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 254 (2000). And as courts have long recognized, remedial statutes like the MPPAA should be construed liberally to achieve their protective purposes. *See, e.g., Cent. States, Se. and Sw. Areas Pension Fund v. Laguna Dairy, S. De. R.L. De C.V.*, 132 F.4th 672, 678, 681 (3d Cir. 2025) (collecting cases and explaining that “case law has interpreted [the MPPAA] liberally to protect plans’ solvency”).

Section 1391 of the MPPAA states that an employer’s withdrawal liability—representing a withdrawing employer’s share of the unfunded vested benefits in a multiemployer plan—must be calculated “as of the end of the plan year preceding the plan year in which the employer withdraws.” 29 U.S.C. § 1391(b) & (c). Section 1393, in turn, states that withdrawal liability under the MPPAA is determined based on “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). These two provisions are at the crux of this case.

Petitioners contend that this statutory language prescribes a brightline timing rule that freezes the calculated value of a plan’s unfunded vested benefits—and all related actuarial assumptions—on the measurement or valuation date, even if such calculation occurs before the last day of the prior plan year. Petitioners also largely ignore the MPPAA’s express mandate that actuaries use their “best estimate” to make withdrawal liability determinations. Petitioners are wrong on both counts.

1. *Petitioners’ timing rule is not rooted in the statute*

In 29 U.S.C. § 1391(b), Congress declared that withdrawal liability from a multiemployer plan is to be determined “as of the end of the plan year preceding the plan year in which the employer withdraws.” This date—sometimes called a “measurement date” or a “valuation date”—sets the point in time at which plan assets must be calculated by an actuary.³ The MPPAA by its own terms imposes no timing requirement as to *when* the plan actuary must select or finalize the assumptions used in withdrawal liability calculations. Indeed, actuaries are not even referenced in Section

³ For example, an employer that withdraws from a multiemployer plan in the 2023 plan year—which is consistent with the calendar year—would owe withdrawal liability based on its share of the plan’s unfunded vested benefits as of the December 31, 2022 measurement date. *See* 29 U.S.C. § 1391(b)(2)(A)(ii). The reason for this calculation appears to be one of “administrative convenience” as plans already must annually calculate their unfunded liabilities. *Milwaukee Brewery*, 513 U.S. at 418.

1391. As this Court has made clear, it will 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). And where Congress imposes no timing rule, none should be implied. *See Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 589 U.S. 178, 184 (2020) (“We must enforce plain and unambiguous statutory language in ERISA, as in any statute, according to its terms.”).

The D.C. Circuit correctly rejected Petitioners’ restrictive brightline timing arguments, holding that ERISA permits actuaries to select assumptions after the measurement date to satisfy Section 1393’s “best estimate” requirement. *Trustees of the IAM Nat’l Pension Fund v. M & K Emp. Sols., LLC*, 92 F.4th 316, 322–23 (D.C. Cir. 2024). The court observed that essential plan data necessary to formulate accurate assumptions often becomes available only after year-end. *Id.* (“It would be contrary to 29 U.S.C. § 1393(a)(1)’s requirement that an actuary use its “best estimate” of the plan’s anticipated experience as of the measurement date to require an actuary to determine what assumptions to use before the close of business on the measurement date”). Section 1393 further states that actuaries should rely on the “most recent” and “complete” data “representative of the status of the entire plan,” recognizing the need to consider both the most timely and comprehensive information available for the plan. 29 U.S.C. § 1393(b). Forcing actuaries to ignore such information would lead to knowing inaccurate valuations and place actuaries in “an untenable position” bound by “an untenable reading of the statute.” *Trustees of the IAM*

Nat’l Pension Fund v. M & K Emp. Sols., LLC, 656 F.Supp.3d 112, 128 (D.D.C. 2023). As the D.C. Circuit and district courts below recognized, Petitioners’ misguided rule would conflict with both the plain text and purpose of the MPPAA.

Taken together, the plain text of Sections 1391 and 1393 confirm Congress’s clear intent to prioritize accuracy and actuary professional judgment in calculating an employer’s withdrawal liability. Accordingly, this Court should not “read into” the MPPAA “words that aren’t there.” *Romag Fasteners*, 590 U.S. at 215.

2. *Petitioners’ argument thwarts the statute’s requirement for best estimate and reasonable actuarial assumptions*

The MPPAA requires that actuaries offer their “reasonable” and “best estimate” of withdrawal liability for multiemployer plans. 29 U.S.C. § 1393(a). By entrusting actuaries—“trained professionals” who are “subject to regulatory standards” and not “vulnerable to suggestions of bias”—with the responsibility to determine accurate withdrawal liability, Congress ensured that valuations are anchored in expert judgment and complete information. *See Concrete Pipe*, 508 U.S. at 632.

For decades, consistent with their statutory obligations and professional standards, actuaries have selected and finalized their assumptions after the close of the plan year to incorporate full-year data. *See*

Actuarial Standards Board, Actuarial Standards of Practice (ASOP), No. 27 (Dec. 2023). These professional standards require actuaries to rely on all information known or reasonably available as of the measurement date to produce “best estimate” assumptions mandated by Congress. *Id.* (explaining that “an assumption is reasonable” if, *inter alia*, “it takes into account current and historical data that is relevant to selecting the assumption for the measurement date, to the extent such relevant data is reasonably available”).

To make their “best estimate” calculations for withdrawal liability, actuaries must employ assumptions reflecting demographic realities such as an aging workforce, increasing life expectancy, and economic fluctuations. *See Energy W.*, 39 F.4th at 735. Of these assumptions, the discount rate assumption—the rate at which the plan’s assets will earn interest—is particularly consequential: a lower discount rate increases the present value of unfunded vested benefits and, in turn, a withdrawing employer’s liability, while a higher rate decreases both the unfunded vested benefits and resulting liability. *Sofco Erectors, Inc. v. Trs. Of Ohio Operating Eng’s Pension Fund*, 15 F.4th 407, 419 (6th Cir. 2021). An actuary’s failure to select a discount rate that reflects their best estimate of anticipated experience under the plan “will usually render the calculation contrary to the MPPAA.” *Energy W.*, 39 F.4th at 739.

This case demonstrates how minor changes in discount rates could directly affect plan participants. The IAM National Pension Plan’s actuary

incorporated updated information as of December 31, 2017, and reduced the discount rate from 7.5 percent to 6.5 percent. J.A. at 4, *M & K Emp. Sols., LLC v. Trs. of the IAM Nat’l Pension Fund*, No. 23-1209 (Aug. 28, 2025). That adjustment, made accord with actuarial professional standards and grounded in the Plan actuary’s professional judgment, revealed that the Plan’s unfunded vested benefits had increased from approximately \$448 million in 2016 to more than \$3 billion in 2017. *Id.* at 3–4. These liabilities are not theoretical—they reflect the real financial resources necessary to pay benefits earned by retirees and beneficiaries, many of whom depend on modest monthly pensions as their primary source of income.

But under Petitioners’ reading of the statute, the Plan’s actuary would be forced to rely on outdated assumptions made before the measurement date—even if those assumptions did not reflect the actuary’s “best estimate” of the withdrawal liability needed to pay vested pension benefits. Such a reading that forbids an actuary from using all relevant and reasonably available information to formulate their best estimate would directly contradict Section 1393. Petitioners’ interpretation would also invert the MPPAA’s remedial purpose. Congress enacted the statute to ensure that withdrawing employers bear their fair share of unfunded vested benefits, preventing unfair cost-shifting to remaining employers and plan participants. Petitioners’ proposed reading—freezing actuarial assumptions before all relevant plan-year data is available—would produce knowingly inaccurate valuations that underestimate liabilities and undermine plan

solvency. Courts have long rejected statutory readings that would contravene the plain language and defeat Congress's remedial design. *See Concrete Pipe*, 508 U.S. at 632. This Court should do so too.

II. UNDERCOUNTING WITHDRAWAL LIABILITY IN MULTIEMPLOYER PLANS RISKS UPENDING MILLIONS OF AMERICANS' RETIREMENT SECURITY AMID AN ONGOING RETIREMENT CRISIS

While this case is about statutory interpretation, it is, ultimately, about what happens to millions of hardworking Americans who have planned their future around the promise of earned and bargained for pension benefits. It is about long-haul truck drivers; construction and manufacturing workers; and retail, transportation, and service industry employees.⁴ It is about mothers and fathers and grandparents; people who have earned modest but vital pension benefits that they are counting on being paid out when they retire. For these retirees and beneficiaries, financial security in retirement means being able to afford necessities like food, utilities, transportation, and medicine, to remain in their

⁴ *See* EMPLOYEE BENEFITS SECURITY ADMIN., U.S. DEPT OF LABOR, PRIVATE PENSION BULLETIN 16 (Oct. 2022), <https://www.dol.gov/agencies/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2020> (illustrating multiemployer plan participation by industry).

homes, and to live in retirement with dignity and autonomy.⁵

A. Many Older Adults and Their Families Depend on Their Hard-Earned Pensions to Afford Basic Necessities, Like Housing, Food, and Healthcare

Multiemployer plan benefits are earned as “a form of deferred compensation,”⁶ and they serve as a critical lifeline for workers and older adults who count upon those earned benefits in retirement.⁷ As of 2022, “one out of three older adults received income from private company or union pension plans, federal, state, or local government pension plans, or railroad retirement, military or veterans pension.”⁸ And as of

⁵ See, e.g., *The Lived Experience of Adults 50-Plus: Independence and Autonomy*, AARP, <https://datastories.aarp.org/the-lived-experience-of-adults-50-plus/factors/independence-and-autonomy/index.html> (last visited Oct. 7, 2025) (“54% of adults ages 50-64 are extremely or very concerned about maintaining independence when thinking about getting older”).

⁶ CONG. RSCH. SERV., R45187, DATA ON MULTIEMPLOYER DEFINED BENEFIT (DB) PENSION PLANS 1 (May 22, 2020).

⁷ See, e.g., Daniel Thompson and Michael D. King, U.S. CENSUS BUREAU, P70BR-177, INCOME SOURCES OF OLDER HOUSEHOLDS: 2017 1 (Feb. 2022), <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p70br-177.pdf>.

⁸ PENSION RIGHTS CTR., *Income from Pensions* (Oct. 23, 2023), <https://pensionrights.org/resource/income-from-pensions/>.

that year, there were more than 1,300 multiemployer plans covering more than 10.7 million participants.⁹

Pension benefits are a crucial component of household income for older adults and their families. According to U.S. Census Bureau data where the householder is aged 65 and older, “Social Security accounts for just half of total income,” while “pension and retirement account income [amount to] 17.2 percent of total income.”¹⁰ As such, it is essential to ensure that retirees and beneficiaries continue to receive the vested benefits that they have earned and are owed, particularly when “[o]ver 19 million (45 percent) of older adult households do not have the income needed to cover basic living costs.”¹¹ Older adults’ risk of being cost-burdened—meaning they pay more than 30 percent of their income on housing—is particularly acute as housing costs rise. “Older renters are more likely to live on fixed incomes that may not keep up with rising rents,” such that “those with lower incomes may have little left over in the household budget to pay for out-of-pocket medical costs, food, and

⁹ U.S. DEPT OF LABOR, PRIVATE PENSION PLAN BULLETIN HISTORICAL TABLES AND GRAPHS 1975-2022 3, 5 (Sept. 2024), <https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf>; see also PENSION BENEFIT GUAR. CORP., 2022 PENSION INSURANCE DATA TABLES INSTALLMENT 4, <https://www.pbgc.gov/sites/default/files/documents/2022-pension-data-tables.pdf>.

¹⁰ Thompson and King, *supra* note 7, at 6.

¹¹ NAT’L COUNCIL ON AGING, *Addressing the Nation’s Retirement Crisis: The 80%* (Oct. 7, 2025), <https://www.ncoa.org/article/addressing-the-nations-retirement-crisis-the-80-percent-financially-struggling/>.

other necessities.”¹² In 2023, 34 percent of households led by someone 65 or older were cost burdened.¹³ This equates to a record high of 12.4 million households.¹⁴ Moreover, “people age 50 and over represent the fastest growing population of unhoused people in the U.S.”¹⁵

Given these dire circumstances, it is not difficult to understand how the deleterious effects of undercounting withdrawal liability in a multiemployer plan can directly harm older Americans and their families. Consider Mary Fry, whose husband, Virgil, worked for 30 years in construction, earning a monthly pension of \$3,568 to support his retirement.¹⁶ The promise of Virgil’s earned and vested pension benefits included an obligation for the payments to continue to Mary after he succumbed to cancer.¹⁷ But in April 2019, due to instability in their multiemployer plan, the payments were slashed to \$1,514, “shock[ing]” Mary, who was then 72-years-old and herself a cancer survivor.¹⁸ Or consider Cathy Green, who “worked 20 years ... as an office manager for an insurance company,” earning

¹² Jennifer Molinsky, *One in Three Older Households is Cost Burdened*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY (Aug. 11, 2025), <https://www.jchs.harvard.edu/blog/one-three-older-households-cost-burdened>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ George Mannes, *Cuts in Multiemployer Pension Plans Hurt Older Americans*, AARP BULLETIN (July 12, 2019), <https://www.aarp.org/money/retirement/pension-cuts/>.

¹⁷ *Id.*

¹⁸ *Id.*

vested benefits in a multiemployer pension plan.¹⁹ When the fund she participated in faced insolvency risks in 2018, Ms. Green’s monthly benefit was reduced by “about 30 percent”—which, as she put it, “was a lot for me.”²⁰

Such are the very real, human stakes in this case; these are the types of people who stand to lose most if actuaries are not empowered to fully comply with their statutory mandate to calculate the shortfalls that may exist “as of the end of the plan year” using “reasonable” and “best estimate” assumptions. 29 U.S.C. §§ 1391, 1393. Requiring actuaries to use outdated and potentially inaccurate assumptions can have the effect of unfairly shifting costs between employers or onto the Pension Benefit Guaranty Corporation (PBGC), a federally chartered organization established to encourage the continuation and maintenance of pension plans. It would also compound risk for the retirees and beneficiaries least able to absorb it—women, older adults with low-income, and people of color. For example, women generally enter retirement with disproportionately fewer resources, and women aged 65 and older earn 25 percent less income than men, and “are 80 percent more likely to be impoverished at

¹⁹ Mark Miller, *Retirees’ Pensions Were Restored. Debate About It Hasn’t Died*, N.Y. TIMES (Mar. 22, 2024), <https://www.nytimes.com/2024/03/22/business/multiemployer-pensions-retirement-benefits.html>.

²⁰ *Id.*

age 65 or older.”²¹ These gender disparities reflect systemic factors such as lower lifetime earnings, more part-time work, and caregiving responsibilities—factors that combine to make monthly pension income more valuable to women.²²

The ongoing retirement crisis also heightens the import of financial security for millions of Americans, like Mary Fry and Cathy Green. As AARP has frequently highlighted, an alarming number of workers are aging with insufficient savings, and many older adults struggle to meet basic expenses.²³ The “poverty rate for [adults aged] 65 and older was [at least] 9.9 percent” in 2024, and potentially as high as

²¹ Diane Oakley, Jennifer E. Brown, Joelle Saad-Lessler, and Nari Rhee, *Shortchanged in Retirement: Continuing Challenges to Women’s Financial Future*, NAT’L INST. ON RET. SEC. (Mar. 2016), <https://www.nirsonline.org/reports/shortchanged-in-retirement-continuing-challenges-to-womens-financial-future/>.

²² U.S. DEP’T OF LABOR, ADVISORY COUNCIL ON EMP. WELFARE AND PENSION BENEFIT PLANS, *Gaps in Retirement Savings Based on Race, Ethnicity and Gender* 8 (Dec. 2021), <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2021-advisory-council-issue-statement-gaps-in-retirement-savings.pdf>; see also U.S. GOV’T ACCOUNTABILITY OFF., GAO-20-435, *OLDER WOMEN REPORT FACING A FINANCIALLY UNCERTAIN FUTURE* 8–9 (2020), <https://www.gao.gov/assets/gao-20-435.pdf>.

²³ See, e.g., S. Kathi Brown, *Increase in Overall Sense of Financial Security and Spike in Optimism, Though Common Financial Worries Persist*, AARP POLICY RESEARCH INSTITUTE (Sept. 24, 2025), <https://www.aarp.org/pri/topics/work-finances-retirement/financial-security-retirement/financial-security-trends-survey/> (last accessed Oct. 6, 2025) (“Prices, retirement security, and unexpected expenses continue to be top financial worries while worry about health care costs increased”).

15 percent, according to the U.S. Census Bureau.²⁴ Thus, between 6.1 million and 9.2 million older adults are living below the poverty threshold, which is assessed to be \$15,045 annually for a single individual aged 65-and-older and \$18,961 for a household of two such individuals.²⁵

But, if anything, that metric dramatically understates the scope of the retirement crisis. Indeed, “[o]ver 19 million (45 percent) of older adult households do not have the income needed to cover basic living costs.”²⁶ Economic insecurity diminishes older adults’ quality of life, including their ability to live with dignity and autonomy and “age well,” which is a core AARP policy objective.²⁷ Disturbingly, economic insecurity also correlates with higher mortality rates.²⁸ And being “cost burdened” often

²⁴ U.S. CENSUS BUREAU, *Poverty in the United States: 2024* 5, 22, 36 (Sept. 2025), <https://www2.census.gov/library/publications/2025/demo/p60-287.pdf>.

²⁵ *Id.* at 36.

²⁶ NAT’L COUNCIL ON AGING, *supra* note 11.

²⁷ See *The Lived Experience of Adults 50-Plus: Independence and Autonomy*, *supra* note 5 (“54% of adults ages 50-64 are extremely or very concerned about maintaining independence when thinking about getting older”); (“54% of adults ages 50-64 are extremely or very concerned about maintaining independence when thinking about getting older”); see also Edem Hado, Rodney Harrell, Dorothy Siemon, & Debra Whitman, *Aging Well in America: AARP’s Vision for a National Plan on Aging*, AARP POLICY INSTITUTE (July 16, 2024), <https://www.aarp.org/pri/topics/aging-experience/aarp-vision-national-aging-well-plan/>.

²⁸ Jane Tavares, Marc Cohen, Maryssa Pallis, Kerry Glova, & Reena Sethi, THE 80%: LOW-INCOME ADULTS DIE 9 YEARS EARLIER THAN THOSE WITH GREATEST WEALTH 2, NAT’L COUNCIL

leads older adults to make “difficult tradeoffs” when prioritizing household expenses, such as between shelter, healthcare, and food.²⁹ Indeed, 10.4 percent of adults aged 50 and older reported facing food insecurity in 2023—“the highest share in nearly a decade,” according to the AARP Public Policy Institute.³⁰ One consequence flowing from these difficult circumstances is that older adults are increasingly forced to work longer and later in life, as they face the risk of outliving what meager retirement savings they do have.³¹ This dynamic further underscores pension benefits’ role as a key component of older adults’ household income.³²

ON AGING (Sept. 2025), https://assets.ncoa.org/ffacf7d-10b6-0083-2632-604077fd4eca/df44501b-7c8e-43ac-8e12-2373288f71d4/2025_80_Percent_Report.pdf.

²⁹ Molinsky, *supra* note 12.

³⁰ Olivia Dean and Carlos Alberto Figueiredo, *One in Ten Adults Ages 50-plus Were Food Insecure in 2023*, AARP PUBLIC POLICY INSTITUTE (Apr. 9, 2025), <https://www.aarp.org/pri/topics/health/food-insecurity/food-insecurity-adults-50-and-older/> (last accessed Oct. 7, 2025).

³¹ Richard Fry and Dana Braga, *Older Workers Are Growing in Number and Earning Higher Wages* 5, PEW RSCH. CTR. (Dec. 14, 2023), <https://www.pewresearch.org/social-trends/2023/12/14/older-workers-are-growing-in-number-and-earning-higher-wages/> (last accessed Oct. 15, 2025) (“Numbering roughly 11 million today, the older workforce has nearly quadrupled in size since the mid-1980s”); *see also* U.S. BUREAU OF LAB. STAT., *Employment Projections: Civilian labor force participation rate by age, sex, race, and ethnicity* (Aug. 28, 2025), <https://www.bls.gov/emp/tables/civilian-labor-force-participation-rate.htm> (last accessed Oct. 15, 2025).

³² *See, e.g.*, Thompson and King, *supra* note 7, at 6 (finding that among householders aged 65 and older, “pension and retirement account income [amount to] 17.2 percent of total income”).

To be sure, the complex question of how to resolve the growing retirement crisis is *not* before this Court. But this Court *can* forestall a worsened crisis—by construing the MPPAA in a manner that is consistent with its plain text and remedial purpose, and which ensures that retirees and beneficiaries are placed in the best possible position to receive their vested, hard-earned pension benefits. This Court can do that by affirming the D.C. Circuit’s holding that empowers multiemployer plan actuaries to *continue* to comply with their statutory mandate to calculate shortfalls that exist “as of the end of the plan year” using “reasonable” and “best estimate” assumptions, including data based upon the full plan year. 29 U.S.C. §§ 1391, 1393.

B. Adopting Petitioners’ Flawed Interpretation of the Statute Risks Systemic Destabilization of the Nation’s Retirement System

In addition to risking direct harm to retirees and beneficiaries, Petitioners’ interpretation of the MPPAA also threatens to exacerbate systemic destabilization of the retirement system more broadly. This reality was made clear by the recent multiemployer plan insolvency crisis we faced during the last decade³³—a recent history which underscores that Petitioners’ reading of the statute would undermine its plain text and remedial purpose.

³³ See generally Mannes, *supra* note 16.

As of 2017, “over 800,000 participants [were] in [multiemployer defined benefit] plans that [were] expected to become insolvent from 2020 to 2030.”³⁴ Prior to 2021, the PBGC’s “Multiemployer Program was [itself] expected to become insolvent by 2026.”³⁵ In 2021, Congress acted to shore up the PBGC’s ability to provide a safety net for multiemployer plan funds,³⁶ such that the “Multiemployer Program will likely remain solvent for at least 40 years.”³⁷ But serious systemic risks remain, and are acutely implicated by this case, given the interconnected nature of the multiemployer pension system.

While the PBGC’s Multiemployer Program has been temporarily stabilized, its continuing solvency depends upon the solvency of each multiemployer plan it covers.³⁸ In turn, the solvency of each of those plans depends upon member-employers contributing their accurate, proportionate share of the plan’s unfunded liabilities upon withdrawal, in accordance with their statutory obligations; and those members may not be charged with accurate assessments of their share of unfunded vested benefits, if actuaries are prevented

³⁴ CONG. RSCH. SERV., R43305, MULTIEMPLOYER DEFINED BENEFIT PENSION PLANS: A PRIMER 6 (2020).

³⁵ PENSION BENEFIT GUAR. CORP., FY 2023 | PROJECTIONS REPORT 2, 3, <https://www.pbgc.gov/sites/default/files/documents/fy-2023-projections-report.pdf> (last accessed Sept. 29, 2025).

³⁶ See, e.g., U.S. DEPT OF LABOR, *News Release: US Department of Labor reports distressed pension assistance program has protected benefits for more than 1.2M workers, retirees families* (Nov. 1, 2024), <https://www.dol.gov/newsroom/releases/ebsa/ebsa20241101> (last accessed Oct. 2, 2025).

³⁷ PENSION BENEFIT GUAR. CORP., *supra* note 35, at 2.

³⁸ *Id.* at 3 (explaining the systemic interrelatedness).

from offering their “best estimate of anticipated experience under the plan.” 29 U.S.C. §§ 1381, 1393. In the absence of accuracy in employer withdrawal liability assessments, broad systemic risk will once again rear its ugly head and push vulnerable retirees towards the PBGC’s straining safety net that is inadequate to replace employers’ pro rata share of unfunded vested benefits.³⁹

This systemic-stabilization concern is precisely why Congress acted to strengthen ERISA by passing the MPPAA in the first instance—having “identified” that ERISA’s original framework operated to “encourage[] employer withdrawals from multiemployer plans.” *R.A. Gray*, 467 U.S. at 730–31. Thus, the intentional design of the MPPAA reflects Congress’s “concern[] that a significant number of

³⁹ Critically, even when the PBGC is fully funded, it cannot be counted on as a perfect substitute for making best actuarial efforts to keep multiemployer plans adequately capitalized as an initial matter. That is because the PBGC may be unable to offer a 1:1 replacement of benefits when a multiemployer plan requires a bailout—which, in practice, means cuts for beneficiaries who are entitled to more than the PBGC’s maximum guarantee amount. See, e.g., PENSION BENEFIT GUAR. CORP., *PBGC Provides Financial Assistance to Road Carriers Local 707 Pension Fund—Participants’ Benefits Payments Cut to PBGC Guaranteed Levels* (Mar. 1, 2017), <https://www.pbgc.gov/news/press/pr17-02> (last accessed Oct. 15, 2025); see also The Multiemployer Pension Plan System: Recent Reforms and Current Challenges: Hearing Before the S. Comm. on Fin., 114th Cong. 16, 5 (2016) (statement of Rita Lewis), <https://www.finance.senate.gov/imo/media/doc/03012016%20Rita%20Lewis%20SFC%20Statement%20Multiemployer%20Pensions.pdf> (Mar. 2, 2021), <https://www.pbgc.gov/workers-retirees/learn/guaranteed-benefits/multiemployer-plans>.

plans were experiencing financial hardship,” and a desire to head off the systemic risk created by the statute’s “incentive for employers to withdraw from weak multiemployer plans.” *Concrete Pipe*, 508 U.S. at 608 (quoting first *R.A. Gray*, 467 U.S. at 721, and then citing to *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 215 (1986)).

From the foregoing, it should be apparent that Petitioners’ misguided reading of the statute invites this Court to gamble with millions of older Americans’ retirement security and risk systemic destabilization. Requiring actuaries to use outdated, prior-year assumptions risks shifting a withdrawing employer’s financial burden onto the plan’s remaining contributing employers, onto the already-strained PBGC, and—most catastrophically—onto the workers who count on these bargained-for and earned pension benefits to be there when they retire. Such a reading clearly contravenes Congress’s objectives and the MPPAA’s plain language. Ensuring that pension obligations are measured as accurately as possible, in accordance with the MPPAA’s mandate, will bolster multiemployer plan stability, guard against pension insolvency, and serve to protect older Americans’ vested retirement security interests, just as Congress intended. *See, e.g., Nachman Corp.*, 446 U.S. at 375 (“Congress wanted to ... mak[e] sure that if a worker has been promised a defined benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—he actually will receive it”).

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request this Court affirm the decision of the United States Court of Appeals for the District of Columbia Circuit.

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Respectfully submitted,

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