

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**

REPLY BRIEF FOR THE PETITIONERS

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INTRODUCTION

Respondents' briefing helpfully clarifies that no one really disputes what the "as of" phrase means in 29 U.S.C. 1391. That language tells plans to compute withdrawal liability based on how things stood on the valuation date. Resp. Br. 23; see also Gov't Br. 12. The phrase modifies "unfunded vested benefits" and thus makes plain that liability may not reflect changes in unfunded vested benefits that arise after the valuation date. No one would suggest, for example, that a loss of plan assets in January 2018 could be factored into the amount of unfunded vested benefits as of December 31, 2017.

The same conclusion must hold for changes in actuarial assumptions that increase unfunded vested benefits by inflating the present value of the plan's future benefits. The statute defines unfunded vested benefits as a function of the future benefits' present value, which in turn is a function of the actuary's actual estimate of anticipated experience. The statutory definition of unfunded vested benefits is crucial to resolving this dispute given both sides' agreement about what the "as of" phrase means in its own right. Respondents argue as though the amount of unfunded vested benefits is unaffected by changes in the actuary's subjective predictions. But because unfunded vested benefits, by definition, change when the actuary's assumptions change, changing the *assumptions* after the valuation date necessarily changes the *unfunded vested benefits* after the valuation date. Such a change violates the command to base withdrawal liability on the employer's share of unfunded vested benefits as of the valuation date, not a later date.

Respondents' main affirmative argument is that their view promotes actuaries' ability to give their "best" or maximally up-to-date estimate of the plan's future. See 29 U.S.C. 1393(a)(1). They do not claim any other text as support for their view. The problem with this "best estimate" argument is that Congress repeatedly used that phrase in ERISA, including multiple places where Congress understood and accepted that actuaries could wait *years* to reconsider their "best estimates." Besides, this Court has rejected the notion that the statute "aims to make withdrawing employers pay an actuarially perfect fair share." *Milwaukee Brewery Workers' Pension Plan v. Joseph Schlitz Brewing Co.*, 513 U.S. 414, 426 (1995). This statute, like most, balances numerous goals.

One of those goals is to allow withdrawing employers to engage in informed pension-related planning without undue risk of unfairness. Respondents' view wipes those protections away. They believe that plans can change actuarial assumptions at any time—including after the withdrawal—even when the employer based this major business decision on its knowledge of the valuation-date assumptions. Petitioners' view, on the other hand, presents no real challenge for actuaries and, as respondents have admitted, may already be the prevailing practice today.

On all relevant metrics—text, context, purpose, and practicality—petitioners' view outscores respondents' view. The Court should reverse and hold that withdrawal liability must be computed using assumptions adopted before the valuation date.

ARGUMENT

I. The text requires actuarial assumptions adopted before the valuation date.

The two central provisions in this case are Section 1391, which details four methods for deriving withdrawal liability from unfunded vested benefits, and Section 1393, which addresses how to derive unfunded vested benefits using actuarial assumptions. Respondents and the government prefer to read these provisions in isolation, as though they were unconnected instructions. But they work together to resolve the question in this case. Petitioners' reading is the only interpretation that gives full effect to both.

A. Section 1391 freezes the amount of unfunded vested benefits on the valuation date.

All four statutory methods for calculating withdrawal liability rely on the amount of "unfunded vested benefits" "as of the end of the plan year preceding the plan year in which the employer withdraws." 29 U.S.C. 1391(b)(2)(E)(i), (c)(2)(C)(i), (c)(3)(A), (c)(4)(A). Respondents and the government now agree with petitioners that the plain meaning of this "as of" directive requires basing withdrawal liability on the unfunded vested benefits as things stood on the valuation date. Pet. Br. 21-22; Resp. Br. 23; Gov't Br. 12.

For the first time, however, respondents now suggest (Br. 21-22) that this "as of" directive may not apply to the "presumptive method" that their plan uses to calculate withdrawal liability. Respondents' suggestion is meritless. The "as of" directive applies just

as much to the presumptive method as to the three others—as this Court, the court below, and the government have all recognized.

Petitioners explained (Br. 19-20) that the presumptive method adds up the employer’s share of every year-by-year change in unfunded vested benefits for past plan years (reducing the older underfunding pools to account for the passage of time). See 29 U.S.C. 1391(b)(2)(A). For the final plan year before the year of the withdrawal, this amount equals “the product of” “the unamortized amount of such change (*as of* the end of the plan year preceding the plan year in which the employer withdraws)” multiplied by a specified “fraction” to determine the employer’s share. 29 U.S.C. 1391(b)(2)(E)(i)-(ii) (emphasis added). By this language, then, the presumptive method depends on the final annual change in unfunded vested benefits “as of” the valuation date. So just like the other withdrawal-liability methods, the amount of unfunded vested benefits is frozen based on how things stand on the valuation date. Post-valuation date changes in underfunding do not factor in.

This Court correctly cited Section 1391(b)(2)(E)(i) when it observed that for all four methods, underfunding is calculated “as of the last day of the plan year preceding the year during which the employer withdrew.” *Milwaukee Brewery*, 513 U.S. at 417-418 (emphasis omitted). The court below cited the same provision in observing that “withdrawal liability is calculated based on the plan’s UVBs ‘as of’ the measurement date.” Pet. App. 12a-13a. And the government also cites Section 1391(b)(2)(E)(i) in characterizing withdrawal liability as the employer’s “share of the

plan's unfunded vested benefits 'as of' the last day of the preceding plan year." Br. 11.

Until their latest filing, respondents similarly conceded that, with the presumptive method as with the others, "liability is based on a plan's UVBs 'as of' the last day of the plan year prior to the plan year in which the employer withdraws." Br. in Opp. 5. Their eleventh-hour claim that the presumptive method "does not even mention calculating UVBs 'as of' the valuation date" (Br. 22) is as mistaken as it is surprising. This belated retreat from the "as of" requirement can only be understood as implicit recognition that calculating unfunded vested benefits with assumptions from *after* the valuation date does not yield the unfunded vested benefits *as of* the valuation date.

B. Section 1393 shows that freezing the amount of unfunded vested benefits entails freezing the assumptions.

By basing withdrawal liability on the unfunded vested benefits "as of" the valuation date, the statute requires using actuarial assumptions endorsed before that date. Applying conflicting assumptions chosen later cannot yield "the underfunding as calculated on December 31," which is what Section 1391 requires. *Milwaukee Brewery*, 513 U.S. at 418. This conclusion follows from the text of Section 1393, which articulates what it means to have unfunded vested benefits at a particular point in time.

By definition, "unfunded vested benefits" are "an amount equal to" "(A) the value of nonforfeitable benefits under the plan, less (B) the value of the assets of

the plan.” 29 U.S.C. 1393(c). Because plans pay pension benefits in the future, the value of those benefits depends on assumptions about, among other things, the time value of money and the likelihood that the promised benefits will in fact be paid. Pet. Br. 23-24. So, the first component of the unfunded vested benefits is a function of the plan actuary’s assumptions. As a leading treatise explains, pension benefits’ “actuarial present value as of a specific date” equals the amount of the benefits adjusted by assumptions about whether the benefits will come due (including assumptions about retirees’ life expectancy) and assumptions about the time value of money (including assumptions about the plan’s long-term investment performance). Dan M. McGill et al., *Fundamentals of Private Pensions* 599 (8th ed. 2005); see also *Sofco Erectors, Inc. v. Trs. of Ohio Operating Eng’s Pension Fund*, 15 F.4th 407, 418-419 (6th Cir. 2021). Neither respondents nor the government suggests otherwise. See Resp. Br. 6, 8; Gov’t Br. 4.

This undisputed point about the nature of unfunded vested benefits, combined with the timing rule created by Section 1391’s “as of” directive, answers the question presented. The amount of unfunded vested benefits as things stood on the valuation date is a function of the actuary’s assumptions on that date. Using different actuarial assumptions first adopted on a later date yields an amount of unfunded vested benefits that departs from the way things stood on the valuation date. No one suggests that the “as of” directive would permit plans to calculate underfunding based on a depletion in plan assets after the valuation date, or on promises after that date to pay retirees additional benefits. The same conclusion

holds for new actuarial assumptions. In all these scenarios, the amount of unfunded vested benefits is changed based on an event that happens after the valuation date: in one scenario, a reduction in assets, in the second, the acceptance of new pension obligations, and in the third, the adoption of new assumptions. None of these scenarios involves the unfunded vested benefits as of the valuation date.

Section 1393(a)(1) drives home the point. It recognizes that actuarial assumptions are adopted at a discrete point in time. Although that provision does not address when the assumptions should be selected, it does say that the assumptions should reflect the “actuary’s best estimate of *anticipated experience* under the plan.” 29 U.S.C. 1393(a)(1) (emphasis added). This provision’s use of a past participle, “anticipated,” shows that Congress understood that adopting actuarial assumptions should reflect the actuary’s state of mind—what he or she anticipated for the future—at the moment the assumptions are adopted.

The statute’s detailed language thus provides all the ingredients needed to resolve the question presented. Section 1391 says that withdrawal liability depends on unfunded vested benefits as of the valuation date. Section 1393(c) says that unfunded vested benefits depend on the present value of the future benefits, which in turn depends on the actuary’s assumptions. And Section 1393(a)(1) says that those assumptions depend on what the actuary has anticipated for the future. If the actuary adopts a new assumption based on something he or she first anticipates about the plan’s future after the valuation date, the amount of unfunded vested benefits changes from the way

things stood on that date. Section 1391’s “as of” directive does not permit such a change.

C. Respondents’ counterarguments all lack merit.

Respondents and the government advance three main objections to petitioners’ reading of Sections 1391 and 1393. Each objection fails.

1. Respondents misinterpret “best estimate.”

Respondents advance almost no affirmative argument from the statutory language. At most, they purport to support their position (Br. 18-20, 26-28) through one word: Section 1393(a)(1)’s requirement that assumptions offer the actuary’s “best” estimate. The government echoes the point (Br. 22-23) but puts less weight on it.

Respondents contend (Br. 18-19) that by referring to the actuary’s “best,” “the MPPAA prioritizes accuracy” and requires actuaries to “calculate withdrawal liability in the manner that most accurately reflects the plan’s financial condition on the valuation date.” From there, they infer (Br. 27) that “an actuary must calculate withdrawal liability using his *current* best estimate of a plan’s anticipated experience as of the valuation date, not his best estimate from months ago or longer.” But ERISA does not use “best estimate” this way—as the statute’s multiple other uses of that phrase make plain.

Consider ERISA’s reporting requirements. Required annual reports depend upon, and disclose, the actuarial assumptions of the plan’s enrolled actuary.

See 29 U.S.C. 1023. From the beginning, ERISA has required an actuarial statement, which must sometimes include the present value of the plan's nonforfeitable benefits. 29 U.S.C. 1023(d)(6); see also Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, § 103(d)(6), 88 Stat. 829, 846. The actuary's assumptions for this statement must represent his or her "best estimate of anticipated experience under the plan." 29 U.S.C. 1023(a)(4)(B)(ii). This reporting provision thus addresses the same subject (assumptions used to value future benefits) under the same standard ("best estimate of anticipated experience") as the withdrawal-liability provision added six years later in Section 1393. If respondents' accuracy-maximizing interpretation of "best estimate" were correct, the reporting provision would similarly demand a fully up-to-date estimate and foreclose a "best estimate from months ago or longer." Resp. Br. 27.

But the reporting provision says otherwise. It instructs that an "actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a)(4) of this section." 29 U.S.C. 1023(d). Together, Section 1023(d) and Section 1023(a)(4)(B)(ii) *presume* that an actuary's assumptions can be his "best estimate" for up to *three years*, unless particular circumstances convince the actuary that a new valuation is needed before then.

Nor is Section 1023's reporting provision ERISA's only other use of "best estimate" that contravenes respondents' interpretation. The phrase also appeared in a Tax Code provision requiring a valuation of the

plan’s liability, which similarly set the temporal benchmark for a “best estimate” through a valuation that (subject to potential regulations) did not need to be performed more than once every three years. § 1013(a), 88 Stat. at 916 (codified at 26 U.S.C. 412(c)(3), (9)).

“This Court does not lightly assume that Congress silently attaches different meanings to the same term in the same or related statutes.” *Azar v. Allina Health Servs.*, 587 U.S. 566, 574 (2019). So when a “best estimate” can last for up to three years under these other ERISA provisions, Congress’s use of that phrase in Section 1393(a)(1) cannot reasonably be read to require maximally up-to-date assumptions. Yet that is respondents’ view. To them (Br. 27), an estimate is not “best” if assumptions are “even a few months out of date.”

That interpretation has no limiting principle. It would compel actuaries to reselect their assumptions for every employer that withdraws “even a few months” after the last one—even if the withdrawals occur in the same plan year. But any interpretation that would require new actuarial assumptions, and thus new underfunding valuations, for each withdrawal cannot be right. Congress wrote the statute to “avoid[] the need to generate new figures tied to the date of actual withdrawal.” *Milwaukee Brewery*, 513 U.S. at 418.

Respondents’ extreme understanding of “best estimate” also conflicts with how courts of appeals understand that phrase. These courts have widely rejected the idea that a “best estimate” must “excel[] all others.” Resp. Br. 18 (citation omitted). After all, “if

the Best Estimate Requirement meant an actuary had to pick the single point assumption that he thought was ‘the most likely result,’ then the requirement that the assumptions be ‘reasonable’ would be ‘superfluous.’” *United Mine Workers of Am. 1974 Pension Plan v. Energy W. Mining Co.*, 39 F.4th 730, 739 (D.C. Cir. 2022) (citation omitted). Respondents’ understanding of the phrase would also threaten settled precedent outside the withdrawal-liability context. See *ibid.* (collecting tax cases addressing the meaning of “best estimate”).

Read in its full context, Section 1393(a)(1) creates no tension for petitioners’ view. Congress did not “aim[] to make withdrawing employers pay an actuarially perfect fair share.” *Milwaukee Brewery*, 513 U.S. at 426. Had perfection been the goal, Congress would not have expressly permitted using the most recent complete valuation, with only “reasonable estimates for the interim years.” 29 U.S.C. 1393(b)(1). As the government admits (Br. 23), when this provision was enacted the most recent complete valuation could be up to three years old. Respondents’ only theory about this provision (Br. 37) is that using “reasonable estimates” for interim years somehow requires “best estimates” for each of those years. But “reasonable” does not mean “best”—and neither term means “perfect”—as respondents’ view implies.

2. Respondents’ analogies to other valuations miss the mark.

Respondents also challenge petitioners’ understanding of Section 1391 by comparing valuations of unfunded vested benefits as of the valuation date to

other types of valuations as of a particular date. Respondents insist (Br. 22-23) that the phrase “as of” “denotes a reconstruction on a later date of how things stood on an earlier date.” The government similarly argues (Br. 12) that the phrase “simply asks what the state of the world was on the designated date.”

Petitioners agree. But this understanding of “as of” supports petitioners, not respondents. Petitioners do not argue that the calculation must actually be performed by the valuation date. It does, however, need to be based on the “state of” underfunding on that date. And as the government explains (Br. 12), “actuarial assumptions are not facts about the world,” but “predictive judgments * * * used to estimate the inherently uncertain present value of an asset or liability.” Because, as discussed, Congress defined unfunded vested benefits in Section 1393 to incorporate actuaries’ predictive judgments as a constituent part, the calculation must be based on the predictions the actuary has made by that date. By their nature, predictions may ultimately prove incorrect. Yet the risk of error does not change what the prediction was at the time it was made. See *Ithaca Tr. Co. v. United States*, 279 U.S. 151, 155 (1929) (“Tempting as it is to correct uncertain probabilities by the now certain fact, we are of opinion that it cannot be done.”).

Given the nature of actuarial valuations and the assumptions on which they rely, the analogies drawn by respondents (Br. 25-26) and the government (Br. 12-13) are not on point. Unlike unfunded vested benefits, their examples do not involve values that inherently depend on predictions about the future—let

alone predictions by a particular person like a plan actuary. A parcel of real estate in fee simple, for instance, has a market value at any given time—an amount that a willing buyer would pay for the property on that day. A factfinder can assess what that market value would have been objectively, without consulting someone’s subjective expectations. A better analogy would be the value of a *life estate* on a given date, which does depend on prospective expectations about the life tenant’s life expectancy. And, as this Court explained in *Ithaca Trust*, to value a life estate at a particular historical moment, one should use “mortality tables showing the probabilities as they stood on [that] day.” 279 U.S. at 155. A valuation based on such historical probabilities—like actuarial assumptions here—“is no less real at that time if later the prophecy turns out false.” *Ibid.* So too here, the value of unfunded vested benefits on a date depends on what the actuary anticipated back then, regardless of whether the prediction comes true.

Respondents’ cited case (Br. 26) illustrates the difference. *Utah Dep’t of Transp. v. Boggess-Draper Co.*, 467 P.3d 840, 846 (Utah 2020). There, in holding that a factfinder deciding a property’s fair market value at the time of a government taking may consider evidence of later developments, the court reasoned that those developments may provide “probative” *evidence* of the property’s objective worth before those developments occurred. Nobody’s subjective expectations were necessary to that value.

Here, a better comparison than property’s fair market value would be its *estimated* market value—a

value that, like plan underfunding, turns on the estimator’s predictive judgment. Consider popular real-estate website Zillow, which offers a “Zestimate®” as an “estimated market value for a home, computed using a proprietary formula including public and user-submitted data, such as details about a home (bedrooms, bathrooms, home age, etc.), location, property tax assessment information and sales histories of the subject home as well as other homes that have recently sold in the area.”¹ If one needed to know a home’s Zestimate “as of” December 31, one would look for historical evidence of what the website actually stated as the Zestimate for that house on that date or, if that were unavailable, leading up to that date. Failing that, one might try to recreate the Zestimate by plugging the historical facts into the proprietary formula that Zillow used on December 31. But if Zillow updated its formula on January 1 to weigh facts differently, plugging the historical facts into that new formula would not produce the Zestimate “as of” December 31. So too here: applying later-adopted assumptions to the same facts does not value the benefits “as of” the valuation date.

3. Respondents’ belief that actuarial assumptions are ephemeral does not bolster their argument.

Respondents argue (Br. 28-29), more abstractly, that actuarial assumptions do not have ongoing force after they are selected. Respondents cite no statutory

¹ Zillow.com, *How Much Is My House Worth?* (2025), <https://www.zillow.com/how-much-is-my-home-worth/>.

text, interpretive authority, or anything else to support the notion that actuarial assumptions are so fleeting. The government offers no support, either. It cites (Br. 27) its own prior brief, Gov't Cert. Amicus Br. 19, which in turn cites respondents' brief in opposition, Br. in Opp. 25-26, which cites nothing for this claim. This Matryoshka-doll argument has no firm basis.

If anything, the weight of authority supports the Second Circuit's view that actuarial assumptions are the actuary's best estimate until they are changed. *Nat'l Ret. Fund v. Metz Culinary Mgmt., Inc.*, 946 F.3d 146, 152 (2d Cir. 2020). That view is consonant with ERISA's reporting and minimum-funding requirements, which as discussed have always required periodic consideration of actuarial assumptions while allowing actuaries to rely on previously selected assumptions for stretches of months, and even years. Pet. Br. 6-8. The implication of this scheme is that actuarial assumptions remain in place until changed. And both before and after *Metz*, MPPAA arbitrators (who see many withdrawal-liability disputes) have consistently rejected the theory that actuarial assumptions evaporate as soon as they are applied. J.A. 111-112 (Jaffe, Arb.); J.A. 136 (Jaffe, Arb.); J.A. 23-32 (Scheinman, Arb.); J.A. 49-53 (Cohen, Arb.); J.A. 71-75 (Irving, Arb.); J.A. 293-297 (Aiges, Arb.).

Even respondents' own actuary viewed his actuarial assumptions as having continuing effect until changed. The actuary described the 7.5% interest rate used in November 2017 as the "current" policy in January 2018, before the rate was reduced. J.A. 176. That is hardly surprising. A professional's considered

prediction about the long-term future does not disappear just because he is not actively thinking about it.

But to resolve this case, the Court need not decide abstract questions over the status of actuarial assumptions. Respondents' actuary undisputedly did not select a 6.5% interest rate before the valuation date. And an actuary who never endorsed a 6.5% interest-rate assumption until January was not predicting 6.5% returns on December 31. That rate does not reflect the actuary's estimate of anticipated experience or the state of plan underfunding as of December 31. That conclusion is only made clearer by the actuary's endorsement of a 7.5% interest-rate assumption in November, so shortly before January.

II. Statutory context and purpose further support petitioners' view.

Petitioners identified (Br. 29-38) other features of the statute that reinforce our interpretation of how Section 1391's timing rule applies to underfunding and thus to actuarial assumptions. Respondents dismiss these as "policy arguments." While petitioners do have the far better argument on policy, the key consideration here is the policy that Congress itself embraced in the MPPAA. Particularly with intricate statutes like this one, courts should interpret the statute "as a symmetrical and coherent regulatory scheme." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation omitted). Petitioners' reading of Sections 1391 and 1393 harmonizes those provisions with the rest of the statute. The alternative readings defended by the other side and the court below, on the other hand, unjustifiably deprive other statutory features of a meaningful purpose.

A. Respondents fail to answer the unfairness concerns.

As petitioners have described (Br. 30-37), multiple provisions in ERISA and the MPPAA protect against unfair retroactivity in withdrawal liability, facilitate informed decisions and planning over multiemployer pension plans, and make it hard for plan sponsors to surprise employers with massive unforeseen liabilities resulting from sponsors' undue influence over actuaries. This statutory context drives home the superiority of petitioners' reading of Sections 1391 and 1393, and respondents and the government offer no persuasive rebuttals.

1. Respondents agree (Br. 35) that Section 1394 "prohibits plan sponsors from applying to a withdrawing employer certain plan rules and amendments adopted after the employer withdraws." The government, too, does not dispute (Br. 20) that Section 1394 was included "to prevent pension-plan trustees from changing a plan's rules to retroactively inflate withdrawing employers' liability." The basic fairness concern animating Section 1394 strongly supports petitioners' reading of Sections 1391 and 1393, especially when no one questions petitioners' point (Br. 30) that after-the-fact changes in actuarial assumptions would often have far more dramatic effect on an employer's liability than a switch between allocation methods barred by Section 1394.

Even so, respondents (Br. 35-37) and the government (Br. 19-21) try to flip Section 1394 on its head as proof that Congress was unconcerned with the danger posed by retroactive changes in actuarial assumptions. The government thus contends (Br. 20) that

“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.” This contention mischaracterizes petitioners’ argument, which is that Section 1391 *explicitly* freezes unfunded vested benefits through the “as of” directive. This express (and much-repeated) timing requirement separates this case from the government’s citations, which rejected arguments lacking a textual anchor. See *Gallardo v. Marsteller*, 596 U.S. 420, 429 (2022); *Sandoz Inc. v. Amgen Inc.*, 582 U.S. 1, 20 (2017).

Respondents and the government largely ignore petitioners’ explanation of why *Russello v. United States*, 464 U.S. 16 (1983), does not extend to these circumstances. As petitioners explained (Br. 31-32), Congress structured Section 1391 to prohibit any post-valuation date changes in underfunding, while it structured Section 1394 to prohibit only post-*withdrawal* changes in rules and methods. That difference makes sense: “By instructing plans to use the amount of unfunded vested benefits at year-end, Congress has spared actuaries the need to revalue plan assets and liabilities every time an employer withdraws during the year.” *Joseph Schlitz Brewing Co. v. Milwaukee Brewery Workers’ Pension Plan*, 3 F.3d 994, 1004 (7th Cir. 1993), *aff’d*, 513 U.S. 414 (1995). Had Congress prohibited only post-withdrawal changes in unfunded vested benefits, plans would need to make multiple underfunding calculations within a single plan year whenever one employer withdrew before the change and another employer withdrew after it. In contrast, because all four statutory methods of computing withdrawal liability rely on that same amount of year-end

underfunding, no comparable burden arises from a midyear switch between methods. Such a switch would mainly affect how to ascertain the withdrawing employer's *share* of an amount of underfunding that is fixed as of the valuation date. It would not require multiple calculations of total plan underfunding as of multiple dates, which would be far more onerous.

Because of these differences in the withdrawal-liability mechanics, Section 1394 sensibly adopts a less restrictive temporal limitation for rules and methods than Section 1391 does for unfunded vested benefits. But both provisions still guarantee that employers cannot be blindsided with liability increases after they withdraw. As the amici supporting petitioners attest, the risk of such unfair and unpredictable increases in liability is an enormous concern for employers contemplating joining or withdrawing from a multiemployer pension plan. Chamber of Commerce Amicus Br. 16-19; HR Policy Association Amicus Br. 17-20; Professor Naughton Amicus Br. 14-15.

Congress's choice of the valuation date reinforces that it shared these fairness concerns. Any fixed date would have equally promoted the administrative convenience of tying all withdrawals within a plan year to a single valuation of the plan's unfunded vested benefits. But Congress's deliberate selection of a single valuation date in the *prior* year also ensures that no employer's liability turns on post-withdrawal underfunding changes.

2. Statutory disclosure provisions provide additional contextual support for petitioners' reading of Sections 1391 and 1393. Pet. Br. 32-34. Respondents object (Br. 32) that the statute does not guarantee that

employers will “know before withdrawing which assumptions will be used in calculating their liability.” True enough. But this objection talks past petitioners’ argument. Petitioners simply argue (Br. 32) that respondents’ view would eliminate the degree of predictability that ERISA does provide.

Here, as elsewhere, Congress struck a balance. Employers contemplating withdrawal are entitled to some information about their potential liability, including actuarial assumptions. Yet respondents’ view makes that information useless because the actuary can change the assumption inputs after the employer makes and announces its decision to withdraw—even if the employer’s decision to withdraw relied on what that employer knew about the actuarial assumptions, and thus the unfunded vested benefits, as things stood on the valuation date for that withdrawal.

3. Section 1393’s “best estimate” requirement provides still more contextual support for petitioners’ reading of Section 1391. As petitioners argued (Br. 34-35), this provision fosters actuarial independence, which respondents’ position undermines by giving plans an incentive to pressure or even replace an actuary who selected assumptions the plan disfavors for a withdrawal. Respondents admit (Br. 36-37) that trustees “could have an incentive to increase the liability of withdrawing employers,” but they insist that “actuaries are independent, unbiased professionals.” The problem, though, is not that actuaries will engage in unprofessional conduct but that *plans* may try to manipulate withdrawal liability by replacing or improperly influencing an actuary. As Professor Naughton explains (Amicus Br. 11-12), actuaries typically do

operate in good faith, but they are not “immune from client pressure.”

Respondents dismiss this possibility (Br. 32 n.12) as a “concoct[ed] hypothetical.” Not so. This Court itself has recognized “one case in which a plan sponsor exercised decisive influence over an actuary whose initial assumptions it disliked.” *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 633 n.19 (1993). And the troubling scenario petitioners describe fits the facts of *Metz*, where the trustees hired a new actuary who, a month after the employer withdrew, adopted new assumptions tripling the employer’s liability. 946 F.3d at 148-149.

Respondents deny (Br. 36) that this case implicates such concerns because here “the actuary selected his assumptions *before* each of the Petitioners withdrew from the Fund.” That is indeed a fact about this case, but it is not a legal argument about how to read the statute. Respondents cannot deny that their position equally allows actuaries to change their assumptions after an employer withdrawal, just as in *Metz*, and even in response to that withdrawal, even when the withdrawal decision relied on the known facts about the actuarial assumptions on the valuation date. Respondents’ rule greatly increases the risk of improper trustee influence over withdrawing employers’ liability even though Congress designed the statute to avoid such influence.

B. The alternatives to petitioners’ view have nothing to recommend them.

Respondents (Br. 39-42) and the government (Br. 31-34) scarcely defend the reasoning and line-drawing

of the court below. Petitioners explained (Br. 38-39) how the D.C. Circuit’s requirement to select assumptions “based on the body of knowledge available up to the measurement date,” Pet. App. 13a, has no grounding in the statutory language. The text does not support a distinction based on what information the actuary considered or had available. The government does note (Br. 32) that, compared to respondents’ view, the D.C. Circuit line gives “fuller effect to Section 1391’s requirement that withdrawal liability be determined ‘as of’ the measurement date.” The government does not explain exactly what it means. But the Court should not settle for giving “fuller” effect to the statute’s language. It should give the language its *full* effect. It should “enforce plain and unambiguous statutory language in ERISA, as in any statute, according to its terms.” *Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 589 U.S. 178, 184 (2020) (quotation marks and citation omitted).

Nor do respondents or the government defend the D.C. Circuit’s heavy reliance on ERISA’s general purpose. Amici supporting respondents do emphasize that greater actuarial discretion can result in higher withdrawal-liability payments to plans, as happened here. But respondents and the government do not contest petitioners’ point (Br. 44-45) that courts should not assume that Congress chose whichever approach helps plans the most.

Instead, respondents (Br. 23-26) and the government (Br. 15-18) lean on a theory that their position aligns with actuarial customs. Indeed, the government’s main affirmative argument in support of its position is that it is “common practice” for actuaries to

change their assumptions after the valuation date. But this discussion of professional norms is legally irrelevant and factually dubious.

To start, neither respondents nor the government credibly ties their theory of actuarial practice to the original meaning of the statutory language. They offer no evidence, for instance, that when the statute was enacted in 1980, actuaries or plans (or anyone) understood “unfunded vested benefits as of” a particular date to refer to an amount based on assumptions chosen after that date. On the contrary, their main asserted support for their characterization of actuarial practice comes from 2020 onward—after the *Metz* arbitration and much of the *Metz* litigation. Resp. Br. 24-26; Gov’t Br. 17-18. This argument says nothing about the meaning of the statutory provisions “at the time Congress enacted the statute.” *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (citation omitted).

But this invocation of actuarial practice is also faulty on its own terms. For starters, there is little evidence that common practice really is what they claim. Respondents invoke (Br. 24-25) *Actuarial Standard of Practice No. 27*, § 3.4.6 (Dec. 2023), plus certain other documents that rely on it. But *Actuarial Standard of Practice No. 27* does not even mention withdrawal liability. As Professor Naughton explains, it “was not written to address specific issues that arise in the determination of withdrawal liability.” Amicus Br. 10-11. Rather, it “was developed primarily for defined benefit pension plan estimates generated for funding valuations, accounting disclosures, and cash flow projections for ongoing plans.” *Id.* at 11. Such “measurements are inherently forward-looking,”

in contrast to the “backward-looking liability determination” codified in Section 1391. *Ibid.* In any event, actuarial practice must conform to ERISA, not the other way around: “ERISA does not yield to the Actuarial Standards of Practice.” *Sofco*, 15 F.4th at 423.

Importantly, neither respondents nor anyone else on their side seriously doubts that actuaries can comply with petitioners’ understanding of Section 1391. Despite their worries about outdated assumptions, respondents recognize (Br. 19, 27) that ERISA now obligates actuaries to rethink their assumptions annually. So it is not surprising that, in opposing certiorari, respondents told the Court that in the “mine run” of cases, the actuary uses “assumptions that it first selected before the measurement date.” Br. in Opp. 16. Not only that, respondents represented that in recent years, “actuaries of multiemployer plans have acceded to *Metz*’s timing rule by formally selecting their assumptions before the measurement date.” *Ibid.* That makes sense. Petitioners’ brightline rule promotes not just fairness, but predictability and transparency too. Professor Naughton Amicus Br. 21-22.

Petitioners’ interpretation is most faithful to the language, structure, and purposes of the statute. It is workable. And at the end of the day, very little stands against it. Perhaps “Congress might have been more specific.” *Milwaukee Brewery*, 513 U.S. at 428. But the only satisfactory way to understand what Congress did say is what petitioners propose: plans may not assess liability based on an amount of unfunded vested benefits that incorporates post-valuation date developments, including changes in actuarial assumptions.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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