

No. 25-701

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**In the Supreme Court of the United States**

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PENSION BENEFIT GUARANTY CORPORATION,  
PETITIONER

*v.*

BOARD OF TRUSTEES OF THE BAKERY DRIVERS  
LOCAL 550 AND INDUSTRY PENSION FUND

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT*

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**REPLY BRIEF FOR THE PETITIONER**

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Congress created the Special Financial Assistance (SFA) program in 2021 to help “struggling” multi-employer pension plans, Br. in Opp. 5, not plans that had already terminated through the mass withdrawal of all contributing employers. The eligibility criteria for SFA set forth in the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, make that conclusion clear. One category of eligible plans expressly excludes plans that terminated on or before the day that the SFA provision was enacted. 29 U.S.C. 1432(b)(1)(D).<sup>\*</sup> And the other three categories include only certain plans covered by 29 U.S.C. 1085, a section

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<sup>\*</sup> All citations of 29 U.S.C. 1432 in this brief refer to the statute as set forth in Supplement III (2021) of the United States Code.

of ERISA that ceases to apply, per 29 U.S.C. 1081(c), to a plan that terminates through mass withdrawal. 29 U.S.C. 1432(b)(1)(A)-(C). If ERISA “is to be interpreted as a symmetrical and coherent regulatory scheme,” *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995), a pension plan like respondent’s—which terminated through mass withdrawal in 2016, Pet. App. 2a-3a—cannot be eligible for SFA.

The Second Circuit nevertheless held that respondent’s plan is eligible under 29 U.S.C. 1432(b)(1)(A), which covers plans that were “in critical and declining status (within the meaning of section 1085(b)(6) of [Title 29])” between 2020 and 2022. The court reasoned that the statute’s reference to Section 1085(b)(6) encompasses the latter’s “text and nothing else,” so it is irrelevant that, given the operation of Section 1081(c), Section 1085(b)(6) never applied to respondent’s plan during the relevant time period. Pet. App. 8a.

As we have explained (Pet. 10-22), the decision below conflicts with fundamental principles of statutory interpretation. Furthermore, absent the Court’s intervention in this case, the probable result of the decision below—contrary to respondent’s assurances—will be to compel the Pension Benefit Guaranty Corporation (PBGC) in the near future to disburse billions of dollars in taxpayer-funded SFA that will be difficult or impossible for the government to recover even if other circuits (and this Court) later disagree with the decision below. The Court should grant a writ of certiorari and reverse.

#### **A. The Court Of Appeals’ Decision Is Incorrect**

Respondent fails to rehabilitate the Second Circuit’s flawed interpretation of ERISA’s SFA provisions.

1. The critical step in the court of appeals' analysis was its holding that a “statute that refers to another statute by specific title or section number,” as Section 1432(b)(1)(A) refers to Section 1085(b)(6), “in effect cuts and pastes the referenced statute,” meaning that it incorporates its text and nothing else.” Pet. App. 8a (quoting *Jam v. International Fin. Corp.*, 586 U.S. 199, 209 (2019)). Respondent endorses (Br. in Opp. 30) that legal premise only in passing, and for good reason. This Court has used the cut-and-paste metaphor to describe the *temporal* scope of a statutory cross-reference, in explaining how to interpret a cross-reference when the referenced provision is amended. See *Jam*, 586 U.S. at 209; see also *Brown v. United States*, 602 U.S. 101, 116 (2024). But that is not the issue here, which is “whether a reference to a specific statutory provision also incorporates a related limitation on the scope or applicability of the referenced provision.” Pet. 13. This Court’s precedents show that, contrary to the court of appeals’ view, specific cross-references can and do incorporate such limitations on the referenced provisions. See, e.g., *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 103 (2012); *United States Dep’t of Energy v. Ohio*, 503 U.S. 607, 617 (1992).

Respondent’s effort (Br. in Opp. 32-33) to downplay those cases is mistaken. It tries to distinguish *Roberts*, for example, on the ground that the relevant provisions there “were in the same statutory section” and “applied to the same benefit program,” whereas here, “Section 1432(b)(1)(A) and Section 1085(b)(6) are part of distinct statutory schemes.” *Ibid.* A statute’s mere location in the U.S. Code, however, does not control its meaning in relation to other statutes. Cf. *Smith v. Doe*, 538 U.S. 84, 94 (2003). In any event, Sections 1432 and 1085, as well as Section 1081, are *not* part of “distinct” statutory

schemes: Each of them is part of ERISA, a “‘comprehensive and reticulated statute’” known for its “interlocking, interrelated, and interdependent” constituent parts. *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985) (citation omitted). While the 2021 Congress could have established the SFA program in a standalone law, it instead deliberately integrated the statute into the architecture of ERISA itself. See American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9704(b), 135 Stat. 190 (adding the SFA provision to Title IV of ERISA).

Respondent attempts (Br. in Opp. 32-33) to distinguish *Department of Energy* and other cases on the ground that they “involved the application of statutory definitions to terms used in the cross-reference.” But it cites no authority for a special rule for definitional provisions. Moreover, Section 1081(c) substantively operates like a definitional provision. It means that, after the year of termination, a plan terminated through mass withdrawal falls outside of Section 1085(b)(6)’s definition of “critical and declining status.” See 29 U.S.C. 1081(c), 1085(b)(6).

2. a. As this Court recently reaffirmed in *Bowe v. United States*, 607 U.S. 13 (2026), the scope of a statutory cross-reference depends on the particular text and context of the statute. *Id.* at 24; see Pet. 16. Sometimes, the language of a cross-reference will indicate that it incorporates only parts of the referenced provision. In *Bowe*, for instance, the Court construed 28 U.S.C. 2255(h), which requires a federal prisoner’s second or successive Section 2255 motion to “be certified as provided in [28 U.S.C.] 2244 by a panel of the appropriate court of appeals to contain” certain showings. 607 U.S. at 23. The Court held that Section 2255(h) does not clearly incorporate a provision of Section 2244 that

limits this Court’s certiorari jurisdiction, 28 U.S.C. 2244(b)(3)(E), because the latter provision does not concern the evident subject of Section 2255(h)’s cross-reference to Section 2244: the manner in which a court of appeals authorizes a state prisoner to file a second or successive habeas petition. See *Bowe*, 607 U.S. at 25-36. For similar statute-specific reasons, the Court eschewed broad readings of cross-references in the other cases that respondent invokes (Br. in Opp. 31-32). See *Azar v. Allina Health Servs.*, 587 U.S. 566, 576-577 (2019); *Sebelius v. Cloer*, 569 U.S. 369, 376-380 (2013); *Hui v. Castaneda*, 559 U.S. 799, 809 (2010).

Here, by contrast, nothing in Section 1432(b)(1)(A)’s text suggests that it incorporates Section 1085(b)(6) in isolation from Section 1081(c). Section 1432(b)(1)(A) covers a plan that was “in critical and declining status (within the meaning of section 1085(b)(6) of [Title 29]).” 29 U.S.C. 1432(b)(1)(A). A statute’s “meaning,” *ibid.*, depends not only on its own text in isolation, but also on the content of its “related provisions.” *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 221 (2024). Therefore, Section 1432(b)(1)(A)’s cross-reference is naturally read to account for other provisions that directly affect Section 1085(b)(6)’s scope, such as Section 1081(c). Respondent’s and the court of appeals’ suggestion (see Br. in Opp. 27; Pet. App. 9a) that the outcome would be different if Section 1432(b)(1)(A) referred, for example, to a plan in critical and declining status “for purposes of section 1085(b)(6)” confirms that their reading of the statute is untenable. That hypothetical phrasing is substantively equivalent to the statute’s actual text. See, e.g., *International Longshoremen’s & Warehousemen’s Union v. Juneau Spruce Corp.*, 342 U.S. 237, 242 (1952) (“Even if [a court] were not a ‘district court’ within the

meaning of § 303(b), it plainly would be ‘any other court’ for purposes of that section.”).

Indeed, respondent accepts (Br. in Opp. 30-31) that the cross-reference to Section 1085(b)(6) must be read in light of other provisions that are themselves referenced in that paragraph, such as “subparagraphs (A), (B), (C), and (D) of paragraph (2).” 29 U.S.C. 1085(b)(6); see 29 U.S.C. 1085(b)(2). Thus, even for respondent, the court of appeals’ cut-and-paste analogy does not hold. Respondent tries to convert that into a one-way street, such that the reader must follow cross-references that lead out of Section 1085(b)(6), but is barred from obeying provisions like Section 1081(c) that delimit or act upon Section 1085(b)(6). But respondent offers no logical reason why such provisions do not equally bear on the meaning of Section 1432(b)(1)(A)’s cross-reference.

b. As we have explained (Pet. 16-20), various aspects of Section 1432(b)(1)(A)’s context point to the same conclusion. For instance, extending that provision to a terminated plan like respondent’s would effectively negate the final clause of subparagraph (D)—which covers insolvent plans that had “not been terminated as of” the date of the statute’s enactment, 29 U.S.C. 1432(b)(1)(D)—since any insolvent plan would also satisfy the criteria for critical and declining status set forth in Section 1085(b)(6). Respondent’s rejoinder (Br. in Opp. 35) that a plan can be in critical and declining status without being insolvent does not resolve that anomaly.

Respondent likewise errs in drawing (Br. in Opp. 25) a negative inference from subparagraph (D)’s explicit reference to terminated pension plans. See 29 U.S.C. 1432(b)(1)(D). Because subparagraphs (A), (B), and (C) all cross-reference Section 1085, which ceases to apply to plans terminated via mass withdrawal per Section 1081(c), Congress had no need to expressly exclude such

plans in those subparagraphs. See 29 U.S.C. 1081(c), 1432(b)(1)(A)-(C). A negative implication does not arise when “one can readily comprehend why Congress might have found it appropriate” to include certain language in one provision but not another. *Clay v. United States*, 537 U.S. 522, 530 (2003).

Respondent’s interpretation also fails to make sense of Section 1432(e), which requires a plan’s SFA application to employ actuarial assumptions used in a prior certification of zone status. 29 U.S.C. 1432(e). Respondent appears to agree (Br. in Opp. 34) that subsection (e) would be inoperative for plans that terminated before 2008, when ERISA’s zone-status provisions were enacted, see Pet. 18. Respondent thus suggests that the timing of their termination (before 2008 rather than before 2020) makes them ineligible for SFA under Section 1432(b). But that would be an oddly oblique way for Congress to bar plans from the SFA program. As a matter of text and context, Section 1432(b)(1)(A) is far more sensibly read to exclude all plans that terminated by mass withdrawal before 2020, as the PBGC has consistently maintained. See 86 Fed. Reg. 36,598, 36,600 (July 12, 2021).

#### **B. Certiorari Should Be Granted**

The Second Circuit’s decision warrants this Court’s review. The question presented implicates billions of dollars in federal funds. See Pet. 24-25. Absent the Court’s intervention in this case, the PBGC will likely soon be forced to pay billions of dollars in SFA to ineligible pension plans—taxpayer money that, as respondent never disputes, would be difficult or impossible for the government to recover. See Pet. 23.

1. Respondent’s own plan seeks more than \$100 million in SFA. Gov’t C.A. Br. 1. The PBGC has stipulated

that it has “‘no additional grounds for denial’ of respondent’s application besides the Fund’s status as a plan terminated through mass withdrawal.” Pet. 23 (citation omitted). Although it has not yet granted respondent’s pending application because the application inaccurately describes the plan as active, respondent can correct and resubmit the application. See Pet. 23 n.2. And respondent will have every incentive to do so if the Second Circuit’s decision—which holds that a plan can be eligible for SFA under Section 1432(b)(1)(A) irrespective of its prior termination—becomes final. It has presumably not already done so only to preserve, in the event that certiorari is granted and this Court reverses, its alternative theory that the plan has been lawfully restored and is no longer terminated at all.

That purported alternative basis for SFA eligibility is not a reason for this Court to deny review, *contra* Br. in Opp. 17-18. Respondent’s restoration theory is irreconcilable with ERISA’s text and structure—as the court of appeals may have signaled, by inviting supplemental briefing on (and ultimately adopting) the different theory of eligibility at issue here. See Pet. 9, 24. In any event, respondent could reassert the restoration theory on remand if this Court were to grant review and reverse. This Court’s resolution of the question presented would have broad significance regardless. As respondent acknowledges (Br. in Opp. 2, 12, 15), almost none of the other terminated plans that have applied for SFA since the Second Circuit’s decision have purported to restore themselves to active status. For all of those plans, the answer to the question presented here would likely be controlling.

2. Furthermore, the number of such plans has increased since the petition for a writ of certiorari was filed. See Pet. 25. The PBGC now informs this Office

that it has received 94 SFA applications from terminated plans, and it estimates that those plans could collectively seek about \$6.6 billion in SFA. It appears that 30 of the 94 plans claim to be based in the Second Circuit. The PBGC estimates that those 30 plans could seek a total of about \$3 billion in assistance.

Although respondent notes (Br. in Opp. 13) that the PBGC has not granted those pending applications and has “indicated that it will deny most or all of them,” the PBGC would do so for the legal reason that the Second Circuit rejected below (*i.e.*, because the plans are ineligible for SFA under Section 1432 by virtue of their prior terminations through mass withdrawal). The criteria for SFA eligibility are limited to the requirements set forth in Section 1432(b), and payment of SFA to eligible applicants is mandatory. See 29 U.S.C. 1432(a)(1) (“The [PBGC] *shall* provide special financial assistance to an eligible multiemployer plan under this section, upon the application of a plan sponsor of such a plan for such assistance.”) (emphasis added). Respondent’s suggestion that the PBGC might deny some applications for other reasons—such as “disagreements about the assumptions plans use in calculating their SFA amount,” Br. in Opp. 14—is speculative and irrelevant. Even if certain applications contained some irregularities or mistakes, the plans would be entitled to revise and resubmit those applications. See 29 U.S.C. 1432(g).

The PBGC is required to grant or deny the pending SFA applications within 120 days of their filing. See 29 U.S.C. 1432(g). If the PBGC denies the terminated plans’ applications based on its view that those plans are ineligible, the plans located in the Second Circuit could quickly challenge the denials in district court under the precedent set by the decision below. Litigation outside the Second Circuit would result in either mounting fi-

nancial liability for the PBGC (if other courts agreed with the decision below), a circuit conflict (if they did not), or both. This Court's review would be necessary in any event. But the longer it waits, the more potentially unequal will be the treatment of a closed universe of terminated plans that have applied for SFA.

To be sure, this Court often benefits from percolation of legal issues in the lower courts, and it thus generally awaits the development of a circuit conflict before granting review. But that course is unwarranted here. The government should not be required to disburse billions of dollars in likely unrecoverable taxpayer funds in order to accommodate further percolation on a straightforward matter of statutory interpretation. Conversely, even if this Court were to reject the government's position, plans like respondent's would likely obtain an earlier resolution of the question whether they are entitled to receive SFA. In these circumstances, this Court's review is warranted without delay.

3. Respondent's other reasons for opposing certiorari are unsound. Citing a Congressional Budget Office (CBO) report, respondent suggests (Br. in Opp. 16) that this case is unimportant because even if plans like respondent's receive SFA, the total cost of the program will be lower than the CBO's estimate in 2021. Respondent elsewhere discounts the same CBO report (Br. in Opp. 30); as we have noted (Pet. 22), the report strongly suggests that Congress did not anticipate that terminated plans like respondent's would be eligible for SFA. More to the point, however, the mere fact that a government program comes in under budget does not excuse or justify unlawful expenditures of taxpayer funds. The large scale of the SFA program only underscores the fiscal importance of this case.

The case is also legally important. This Court’s recent decision in *Bowe, supra*, confirms that the proper interpretation of statutory cross-references is an important and recurring issue of federal law. See Pet. 26. The Court could provide further guidance to lower courts in this case by correcting the Second Circuit’s misinterpretation of this Court’s precedents (*e.g., Jam, supra*) to mean that a specific statutory cross-reference incorporates the referenced statute’s “text and nothing else.” Pet. App. 8a.

That combination of fiscal and legal importance makes this case similar to *PBGC v. LTV Corp.*, 496 U.S. 633 (1990), in which the Court granted certiorari, despite the absence of a circuit conflict, “[b]ecause of the significant administrative law questions raised by th[e] case, and the importance of the PBGC’s insurance program.” *Id.* at 644. The issues of statutory interpretation here are likewise broadly significant. And respondent’s contention that the “PBGC’s insurance program is not at issue in this case” (Br. in Opp. 20) is incorrect. One of the main purposes of the SFA program in Section 1432 is to supplement and extend the solvency of that insurance program, which provides “traditional” financial assistance to pension plans under an adjacent section of ERISA, 29 U.S.C. 1431. See 87 Fed. Reg. 40,968, 40,969 (July 8, 2022). This Court’s review is needed to ensure that the PBGC is able to administer the SFA program in accordance with Congress’s design and the interests of the public fisc.

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For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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