

No.

In the Supreme Court of the United States

FEDEx CORPORATION, ET AL., PETITIONERS

v.

ROBERT A. WATT, ET AL.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Employee Retirement Income Security Act (ERISA) requires defined benefit pension plans to offer participants' accrued benefit in the form of a joint and survivor annuity, 29 U.S.C. 1055(a), a form of benefit that provides a stream of retirement income for the participant's lifetime and that of the participant's surviving spouse. This joint and survivor annuity must be the "actuarial equivalent" of a single annuity for the life of the participant. 29 U.S.C. 1055(d).

The question presented is:

Whether the reference to actuarially equivalent benefits in 29 U.S.C. 1055(d) places a substantive constraint on the reasonableness of the actuarial assumptions used to determine that benefit, even though Section 1055(d) does not use the word "reasonable" or mention actuarial assumptions.

PARTIES TO THE PROCEEDING

Petitioners FedEx Corporation, the FedEx Corporation Employees' Pension Plan, the Retirement Plan Investment Board of FedEx Corporation, and John/Jane Does 1-10 were defendants in the district court and appellees in the court of appeals.

Respondents Robert A. Watt, Gary J. Friesen, Michael H. McKenna, Geoffrey B. Coe, and Craig A. Covic were plaintiffs in the district court and appellants in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

FedEx Corporation Employees' Pension Plan is an ERISA Benefit Plan administered by FedEx Corporation. The Retirement Plan Investment Board is a board of FedEx Corporation. FedEx Corporation is a publicly traded company that trades under the stock ticker symbol FDX. No publicly held company owns 10% or more of FedEx Corporation's stock.

RELATED PROCEEDINGS

United States District Court (W.D. Tenn.):

Covic v. FedEx Corp., Nos. 23-cv-2593, 23-cv-2516
(Sept. 18, 2024)

United States Court of Appeals (6th Cir.):

Watt v. FedEx Corp., No. 24-5945 (Mar. 16, 2026)

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INTRODUCTION

The Employee Retirement Income Security Act (ERISA) is a comprehensive statute imposing a calibrated set of requirements on employee benefit plans and those who administer them. Ordinarily, ERISA requires plan administrators to pay benefits in accordance with the plan’s written terms. The question in this case is whether the statute imposes substantive constraints that override written pension plan terms specifying the assumptions about life expectancy and the time value of money—referred to as actuarial assumptions—that the plan uses to convert one type of retirement benefit (a single life annuity) into another (a joint and survivor annuity).

The statutory provision at issue here, 29 U.S.C. 1055, contains no express limitation on the actuarial assumptions that may be used for this conversion. But in recent years, the ERISA plaintiffs’ bar has filed dozens of class action lawsuits arguing that by referring to the annuities as the “actuarial equivalent” of one another, Section 1055(d) *implicitly* requires using “reasonable” actuarial assumptions when calculating participants’ benefits. By a divided vote, the Sixth Circuit adopted that interpretation below.

The majority based its interpretation on the idea that when ERISA was enacted, “actuarial equivalent” was a term of art that connoted using reasonable actuarial assumptions. But as Judge Nalbandian’s dissent pointed out, no dictionaries define “actuarial equivalent” that way. The majority purported to derive support for its definition not from dictionaries but from its reading of “an eclectic collection of academic and legal sources.” App., *infra*, 39a (Nalbandian, J.,

dissenting). This unusual reliance on a “motley crew” of secondary sources harkens back to the famous critique of legislative history: “the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one’s friends.” *Id.* at 39a-40a (quoting *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment)).

At the same time, the majority ignored the statutory context that refutes its interpretation of “actuarial equivalent.” In numerous provisions, although not Section 1055(d), ERISA explicitly requires the use of reasonable actuarial assumptions. And in another provision, ERISA explicitly requires the use of specified actuarial assumptions to calculate a different actuarially equivalent form of benefit. Congress could have similarly imposed a reasonableness limitation—or a more concrete substantive limitation—on actuarial assumptions in Section 1055(d). But Congress did not do so. Courts have no authority to supply a constraint that Congress omitted.

The Sixth Circuit majority was troubled by a policy concern. Unless the statute is read in plaintiffs’ favor, employers could theoretically calculate benefits using actuarial assumptions tied to sixteenth-century life expectancy. App., *infra*, 23a. The majority found this possibility an “absurd” outcome. But there is no evidence this possibility arises in practice. And in all events, the absurdity canon is not a license “to blue-pencil a federal statute to match [judges’] policy preferences.” *Id.* at 30a (Nalbandian, J., dissenting).

The majority’s misinterpretation of ERISA warrants this Court’s review. By adding an atextual reasonableness requirement, the majority opened the

floodgates for new challenges to the benefits promised by defined benefit pension plans. These plans are an attractive target for class action lawyers because they hold trillions of dollars in assets and each year pay hundreds of billions of dollars to retirees. Under the Sixth Circuit’s ruling, all it takes to state a claim is an allegation that the plan’s complex actuarial calculations rely on “unreasonable” assumptions about life expectancy or anticipated investment returns, or that using different “reasonable” assumptions would have yielded a higher benefit. Such a rule will subject countless plans to costly discovery and uncertain litigation risk. And, ultimately, it could deter employers from offering defined benefit pension plans in the first place.

Federal law must be governed by the statutory text, not policy concerns tied to unrealistic hypotheticals. The Court should grant review here and correct the Sixth Circuit’s misinterpretation of ERISA.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-52a) is reported at 170 F.4th 473. The opinion of the district court (App., *infra*, 53a-63a) is reported at 774 F. Supp. 3d 954.

JURISDICTION

The judgment of the court of appeals was entered on March 16, 2026. A petition for rehearing en banc was denied on May 15, 2026 (App., *infra*, 64a-65a). On August 5, 2026, Justice Kavanaugh extended the

time within which to file a petition for a writ of certiorari to and including September 14, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this petition. App., *infra*, 66a-69a.

STATEMENT

A. Legal background

ERISA is “a comprehensive statute for the regulation of employee benefit plans.” *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004). It reflects a “careful balancing” of occasionally competing goals. *Id.* at 215 (citation omitted). On the one hand, Congress sought to ensure that employees receive the benefits they earned. *Conkright v. Frommert*, 559 U.S. 506, 516 (2010). But nothing in the statute obligates employers to offer benefits in the first place. So, to avoid deterring employers from offering employee benefits, Congress took care not to create a statute “so complex that administrative costs, or litigation expenses, unduly discourage employers from offering ERISA plans.” *Id.* at 517 (citation and brackets omitted).

Benefits must be set forth in a written plan document. 29 U.S.C. 1102(a)(1). Plan participants may sue in federal court “to recover benefits due to [them] under the terms of [their] plan.” 29 U.S.C. 1132(a)(1)(B). And they are entitled to a copy of the plan document so they can determine the amount of

their benefits. 29 U.S.C. 1024(b)(2). Plan fiduciaries, meanwhile, have a duty to act in accordance with the plan’s lawful terms. 29 U.S.C. 1104(a)(1)(D). “The plan, in short, is at the center of ERISA.” *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 101 (2013). And “[t]his focus on the written terms of the plan is the linchpin” of the carefully calibrated system Congress designed, which balances the safeguarding of promised benefits with predictability and administrability. *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 108 (2013).

The statutory provision at the center of this case requires defined benefit pension plans to provide a participant’s “accrued benefit” “in the form of a qualified joint and survivor annuity.” 29 U.S.C. 1055(a)(1). An *annuity* is one of the two main forms of retirement benefits. When defined benefit plan participants become eligible to start receiving retirement benefits, they often have a choice between receiving (a) a one-time, lump-sum payment or (b) an annuity, which is a stream of recurring payments for life. See, e.g., Pension Ben. Guar. Corp., *Annuity or Lump Sum* (Mar. 13, 2026), <https://www.pbgc.gov/workers-retirees/learn/annuity-lump-sum>. Because a lifetime annuity provides benefits years into the future, calculating the lump sum value of an annuity depends on assumptions about interest rates and life expectancy. See, e.g., *CIGNA Corp. v. Amara*, 563 U.S. 421, 427-428 (2011).

The “qualified joint and survivor annuity” required by Section 1055(a)(1) is given a specific definition. See 29 U.S.C. 1055(d). In simple terms, such an annuity guarantees the participant an annuity for the

duration of his or her life and then guarantees a survivor annuity for the remaining lifetime of the participant's spouse, if the spouse lives longer. More specifically, the plan must provide an annuity:

(A) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

29 U.S.C. 1055(d). For example, with a 50% joint and survivor annuity, the participant's surviving spouse will receive regular payments that are half the amount that the participant received while still alive. The statute further requires plans to enable participants to waive the qualified joint and survivor annuity and elect a "qualified optional survivor annuity" or other optional forms instead. 29 U.S.C. 1055(c)(1)(A)(i)-(ii).

B. Facts and procedural history

1. Respondents are retired participants in the FedEx Corporation Employees' Pension Plan, a defined benefit pension plan. App., *infra*, 10a. They receive benefits as set forth in the appendices of the Plan. Consolidated Compl. ¶ 50.

While the Plan's normal form of payment is a single life annuity payable to the participant during his lifetime, the Plan allows participants to elect various joint and survivor annuities, among other options. Consolidated Compl. ¶¶ 52, 56. The default form of

benefit for married participants is the 50% joint and survivor annuity, which makes that form the qualified joint and survivor annuity under Section 1055. Consolidated Compl. ¶ 58. The Plan prescribes a definition of actuarial equivalence for converting the normal form of payment to an optional form of payment. D. Ct. Doc. 46-3, at I-3 (Dec. 21, 2023).

Respondents filed this action alleging that by using the actuarial assumptions specified in its terms, the Plan violates Section 1055. More specifically, respondents say that the Plan’s qualified joint and survivor annuity is less than the actuarial equivalent of the single life annuity. This claim rests on respondents’ assertion that the mortality tables underlying the Plan’s life expectancy assumptions are “outdated.” App., *infra*, 10a-11a. Respondents argue that mortality rates have improved over the last several decades and that Section 1055(d)’s use of the phrase “actuarial equivalent” implicitly requires the Plan to use newer mortality tables. Consolidated Compl. ¶¶ 6, 10-11.

2. The district court dismissed the complaint. App., *infra*, 53a-63a. It held that Section 1055(d)’s use of the phrase “actuarial equivalent” does not implicitly require plans to calculate the amount of survivor annuities using up-to-date assumptions.

In doing so, the district court emphasized that ERISA is a carefully crafted legislative scheme. App., *infra*, 58a. When Congress wanted to prescribe particular actuarial assumptions for calculating retirement benefits, it did so expressly. *Id.* at 59a (citing 29 U.S.C. 1055(g)). Likewise, when Congress wanted to require plans to use “reasonable” actuarial assump-

tions, it did so explicitly. *Ibid.* Section 1055(d), however, contains no such requirement. *Ibid.* So, under settled principles of statutory interpretation, courts should recognize that the omission of language in one provision that Congress used elsewhere in the same statute was deliberate. *Ibid.*

3. A divided panel of the Sixth Circuit reversed. App., *infra*, 1a-52a. The majority began by recognizing that “[t]he critical interpretive issue is the meaning of the term ‘actuarial equivalent’ at the time of ERISA’s enactment in 1974.” *Id.* at 13a-14a. Finding that “actuarial equivalent” was a term of art used by professional actuaries, the majority determined that in 1974 actuarial professionals would have “understood the term * * * to describe a situation in which one benefit has an equal present value to another benefit after accounting for certain actuarial assumptions, such as mortality rates.” *Id.* at 14a (citing Walter J. Couper & Roger Vaughan, *Pension Planning: Experience and Trends* 189 (1954)).

From there, however, the majority shifted focus. Moving beyond the contemporaneous understanding of the term “actuarial equivalent,” the majority looked to pre-ERISA secondary sources discussing actuarial practice and recognizing, in general terms, that actuaries commonly use “appropriate” or “suitable” mortality tables. App., *infra*, 15a. The majority also discussed pre-ERISA decisions from a Pennsylvania state trial court and the Washington and California Supreme Courts, which applied various requirements of state law. *Id.* at 16a-17a. The majority claimed support, too, from a 1977 tax regulation issued by the U.S. Department of the Treasury. *Id.* at 18a-19a. All

these sources persuaded the majority that Section 1055(d)'s "actuarial equivalence requirement prohibits the use of unreasonably outdated mortality tables or other unreasonable, inappropriate actuarial assumptions." *Id.* at 19a.

Pervading the majority's analysis was the idea that it would make more "sense" to recognize substantive restrictions on the assumptions used to calculate joint and survivor annuities. App., *infra*, 17a. In its view, any other interpretation of "actuarial equivalent" would leave Section 1055(d) "meaningless" because employers would have discretion in determining the amount of benefits. *Id.* at 22a-23a. The majority also objected that petitioners' interpretation "would allow employers to use dramatically outdated mortality data, including a mortality table from the sixteenth century." *Id.* at 23a. In the majority's view, this would violate the principle that statutes should not be construed "in a manner that could result in 'absurd' outcomes." *Id.* at 23a (citation omitted).

Judge Nalbandian dissented. App., *infra*, 30a-52a. In his view, the majority's "collection of academic sources and state-court caselaw" failed to overcome the fact that "reasonable" appears nowhere in the text of Section 1055(d). *Id.* at 30a. Dictionaries, for example, do not define "actuarial equivalent" or its component concepts in terms of reasonable actuarial assumptions. *Id.* at 31a-35a. As a result, it was appropriate to use the statutory context to construe Section 1055(d). In many other provisions, but not Section 1055(d) itself, Congress specified the use of "reasonable" actuarial assumptions. *Id.* at 35a-36a. Had "Con-

gress ‘intended to restrict’ pension plans to * * * using reasonable actuarial assumptions under § 1055(d), ‘it presumably would have done so expressly,’ as it did under” the other provisions. *Id.* at 36a (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). As a result, the phrase “actuarial equivalent” “doesn’t connote reasonableness on its face or in context.” *Ibid.*

Turning to the majority’s contrary reasoning, Judge Nalbandian protested using the view that “actuarial equivalent” has a “technical meaning” as a “license to consult exclusively an eclectic collection of academic and legal sources.” App., *infra*, 39a. Such a “motley crew of citations looks a lot like ‘the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one’s friends.’” *Id.* at 39a-40a (quoting *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment)). The reliance on a few state court decisions was particularly problematic, Judge Nalbandian argued, because those cases dealt with unique features of state statutes, and in all events other state court decisions cut the other direction. *Id.* at 40a-41a & n.3. Judge Nalbandian also rejected the majority’s use of the absurdity canon, finding nothing absurd about petitioners’ interpretation of Section 1055(d). *Id.* at 45a. Judge Nalbandian noted that tax law imposes its own limitations on the actuarial assumptions used by ERISA plans, which make it unlikely that plans will manipulate those assumptions. *Ibid.* And, in any case, courts “should leave policy considerations to Congress as the people’s elected representatives.” *Id.* at 52a.

4. Petitioners sought rehearing en banc. The Sixth Circuit denied the petition for rehearing, with two judges recused. App., *infra*, 64a-65a. Judge Nalbandian would have granted rehearing for the reasons stated in his dissent. *Id.* at 65a.

REASONS FOR GRANTING THE PETITION

A. The Sixth Circuit’s decision incorrectly adopts an atextual and amorphous reasonableness standard for calculating ERISA benefits.

As this Court recently stressed in another ERISA case, the Court “generally do[es] not read limitations into statutes that do not appear in their text.” *M&K Emp. Sols., LLC v. Trs. of IAM Nat’l Pension Fund*, 608 U.S. 264, 274 (2026). Yet that is exactly what the Sixth Circuit majority did below. The majority acknowledged that 29 U.S.C. 1055(d) “does not expressly mandate that plans use ‘reasonable’ actuarial assumptions or delineate particular actuarial factors that plans must follow.” App., *infra*, 22a. Even so, it interpreted Section 1055(d)’s use of the phrase “actuarial equivalent” to “prohibit[] the use of unreasonably outdated mortality tables or other unreasonable, inappropriate actuarial assumptions.” *Id.* at 19a.

That interpretation strays from the term’s recognized meaning and cannot be harmonized with the statute as a whole. The majority’s overarching policy concerns fail even on their terms and, in all events, cannot overcome the statutory text.

1. Section 1055(a) requires plans to offer the participant’s accrued benefit “in the form of a qualified

joint and survivor annuity.” 29 U.S.C. 1055(a)(1). By definition, a qualified joint and survivor annuity must be “the actuarial equivalent of a single annuity for the life of the participant.” 29 U.S.C. 1055(d)(1)(B).

As Judge Nalbandian observed in dissent, “[t]he word ‘reasonable’ doesn’t appear” in Section 1055(d). App., *infra*, 30a. Nor does the term—or a similar concept—appear in dictionary definitions. The leading legal dictionary today defines “actuarial equivalent” as “[t]he amount of accrued pension benefits to be paid monthly or at some other interval so that the total amount of benefits will be paid over the expected remaining lifetime of the recipient.” *Id.* at 31a-32a (quoting *Black’s Law Dictionary* (12th ed. 2024)).

This definition recognizes that actuarial equivalence is aimed at calculating retirement benefits to stretch out over the recipients’ lifetime. When such a calculation is made, several key variables are uncertain. The uncertainty includes (a) how long the recipients will live and (b) how much a dollar today will be worth months, years, or decades from now. Actuaries therefore must rely on assumptions about life expectancy and the time value of money to calculate actuarially equivalent benefits.

But the concept of actuarial equivalence does not imply substantive limitations on the assumptions that may be used. Actuarial equivalence refers to the ultimate objective of the calculation, but does not tell one how to arrive there. As one court explained it, “[t]wo modes of payment are actuarially equivalent when their present values are equal under a given set of actuarial assumptions.” *Stephens v. U.S. Airways Grp., Inc.*, 644 F.3d 437, 440 (D.C. Cir. 2011). But the

set of actuarial assumptions must come from elsewhere, not from the concept of actuarial equivalence itself.

Although the Sixth Circuit majority quoted *Stephens*, App., *infra*, 15a, it departed from the D.C. Circuit’s definition in favor of one of its own creation. The majority looked to contemporaneous usage when ERISA was enacted in 1974. That was an appropriate starting point. See, e.g., *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018) (“[W]ords generally should be ‘interpreted as taking their ordinary, contemporary, common meaning * * * at the time Congress enacted the statute.’” (citation omitted)). The problem, however, is that the majority could not identify any definition from 1974 (or even later) that includes the use of reasonable assumptions in the very concept of actuarial equivalence.

Instead, the majority looked first to non-dictionary secondary sources, none of which even purport to define “actuarial equivalent.” These sources simply discuss pension-plan practice before ERISA existed. Some commented on actuaries’ “general practice” of using “appropriate” or “suitable” assumptions. App., *infra*, 15a (emphasis and citations omitted). Those comments, however, say nothing about what makes assumptions “appropriate” or “suitable.” Still less do such comments provide guidance that would necessarily be relevant once Congress, having carefully studied the American private employee benefit system for a decade, adopted ERISA to be a “comprehensive and reticulated statute” for the regulation of employee benefit plans. *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251 (1993) (citation omitted).

In fact, the understanding of actuarial equivalence when ERISA was enacted showed no substantive limitation on the assumptions to be used. One prominent source defined “Actuarial Equivalent” in a glossary of terms as “[a] rate of pension of equal value to another after giving consideration to altered incidence of mortality and interest caused by optional age or form of pension.” Michael Puchek, *Pension Plan Policies and Practices: Recent Experience of Eleven Pension Plans* 58 (1952). And a prominent professional organization—as part of an effort to standardize terminology in the immediate wake of ERISA’s enactment—defined “actuarial equivalence” as “[t]he situation where two or more items have an equal actuarial present value under a selected set of actuarial assumptions.” Soc’y of Actuaries, Committee on Pensions, *Report on Actuarial Terminology for Pension Plans*, 28 Transactions Soc’y Actuaries 327, 329 (1976). These definitions align with the D.C. Circuit’s definition in *Stephens*—definitions that are agnostic as to the substance of the assumptions used in calculating the actuarially equivalent benefits. See *Berkeley v. Intel Corp.*, No. 23-cv-343, 2026 WL 948725, at *4 (N.D. Cal. Apr. 8, 2026) (citing the 1976 Society of Actuaries Report to conclude, in express disagreement with the Sixth Circuit’s decision here, that “‘actuarial equivalence’ merely reflects a mathematical principle, devoid of an implied ‘reasonableness’ requirement”).

The only pre-ERISA sources that the majority identified that addressed what “actuarial equivalent” means are two decisions by a state trial court and state supreme court applying Pennsylvania and Washington statutes, respectively. *O’Dea v. Pub. Sch. Emp. Ret. Bd.*, 88 Pa. D. & C. 593, 604 (Pa. Com. Pl.

1954); *King Cnty. Emp. Ass’n v. State Emp. Ret. Bd.*, 336 P.2d 387, 391 (Wash. 1959). These decisions, however, cannot bear the weight that the majority put on them.

Rather than analyze the general meaning of the phrase “actuarial equivalent,” these two state courts construed specific features of applicable state statutes. The statute in *King County*, for example, had its own express definition of “actuarial equivalent”: a benefit “computed upon the basis of such mortality and other tables as may be adopted by the [state] retirement board.” 336 P.2d at 391 (citation omitted). The statute in *O’Dea*, meanwhile, expressly required the state retirement board to adopt new actuarial assumptions every five years and required calculating the benefits “[o]n retirement.” 88 Pa. D. & C. at 603-605. The court held that this combination of features supported using the assumptions in effect when the individual retired rather than those in effect when the person started participating in the plan. *Id.* at 607-608. And even if the state statutes had more similarity to ERISA, a pair of obscure state court decisions would not provide reliable insight into the meaning of federal legislation. Cf. *BP P.L.C. v. Mayor of Balt.*, 593 U.S. 230, 244 (2021) (“It seems most unlikely to us that a smattering of lower court opinions could ever represent the sort of ‘judicial consensus so broad and unquestioned that we must presume Congress knew of and endorsed it.’” (citation omitted)).

2. Instead of trying to divine ERISA’s meaning from a hodgepodge of secondary sources and state court cases, the Sixth Circuit should have construed the words of Section 1055(d) “in their context and with

a view to their place in the overall statutory scheme.” *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (citation omitted). The statutory context provides overwhelming support for the dissent’s interpretation.

To start, Congress showed very clearly that it understood how to place substantive limits on the actuarial assumptions used by ERISA plans when it wished to do so. In numerous provisions—but not in Section 1055—Congress expressly required the use of “reasonable” actuarial assumptions for certain purposes. For example, calculating minimum levels of plan funding requires “actuarial assumptions and methods * * * *each of which is reasonable.*” 29 U.S.C. 1083(h)(1)(A) (emphasis added). Congress adopted a slightly different reasonableness standard for calculating an employer’s liability for withdrawing from an underfunded plan, which requires “actuarial assumptions and methods which, *in the aggregate, are reasonable.*” 29 U.S.C. 1393(a)(1) (emphasis added). The express inclusion of not just one but two different reasonableness requirements in neighboring ERISA provisions contrasts sharply with the lack of either type of explicit reasonableness requirement in Section 1055(d).

And that contrast indicates that Section 1055(d) does not contain a reasonableness requirement. “[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely[.]” *Russello v. United States*, 464 U.S. 16, 23 (1983) (citation omitted). As this Court recently confirmed, the *Russello* principle applies with full force to ERISA, including

one of the same provisions that petitioners highlight here. See *M&K Emp. Sols.*, 608 U.S. at 274 (“The omission of any deadline in § 1393 is significant given Congress’s inclusion of a similar deadline in a different section of the statute.”).

Indeed, the contrast here is particularly striking because Sections 1083(h)(1)(A) and 1393(a)(1) incorporate slightly different reasonableness requirements—the former requiring individually reasonable assumptions and the latter requiring only that the assumptions be reasonable in the aggregate, or collectively. That distinction may seem a fine one, but Congress found it important to draw such a distinction in ERISA’s text. The Sixth Circuit below, on the other hand, never addressed the distinction. Nor did the court explain which version of reasonableness it was choosing to incorporate into Section 1055(d).

In another neighboring provision—even nearer by—Congress chose to impose more precise limits on the actuarial assumptions used to calculate a particular form of pension benefit. Rather than require “reasonable” actuarial assumptions, Congress prescribed specific actuarial assumptions—an “applicable mortality table” and “applicable interest rate,” which were given express statutory definitions—when computing defined pension benefit amounts in the form of a lump sum. 29 U.S.C. 1055(g)(3)(A), (B). And Congress has changed those requirements several times since ERISA’s enactment. Yet Congress has imposed no such limitation for other forms of benefits, including joint and survivor annuities, and it is hard to believe that this was an oversight. Particularly when ERISA is such a “comprehensive and reticulated statute,”

such omissions should be presumed deliberate. App., *infra*, 44a n.5 (Nalbandian, J., dissenting) (citation omitted).

The majority viewed Section 1055(g) as insignificant because, unlike Section 1055(d), it does not use the term “actuarial equivalent.” App., *infra*, 26a. But that ground for distinguishing Section 1055(g) fails. Although the majority may have overlooked it, another nearby ERISA provision does expressly require the lump sums calculated under Section 1055(g) to be the “actuarial equivalent” of the participant’s accrued benefit. 29 U.S.C. 1054(c)(3); see, *e.g.*, *Stephens*, 644 F.3d at 442 (Kavanaugh, J., concurring in the judgment) (“[I]f a pension plan allows retirees to select a lump sum payment in lieu of an annuity, the lump sum payment ‘shall be the actuarial equivalent’ of the annuity.” (quoting 29 U.S.C. 1054(c)(3))). If “actuarial equivalent” implied that actuarial assumptions must be reasonable, it would have been unnecessary to prohibit unreasonable actuarial assumptions for lump sums in Section 1055(g). That provision’s express substantive limitation for actuarial assumptions shows that “actuarial equivalent” does not have the loaded meaning that the Sixth Circuit majority believed. See, *e.g.*, *Landel v. Olin Corp.*, No. 25-cv-96, 2026 WL 785044, at *5 (E.D. Mo. Mar. 20, 2026) (“Congress knew how to add substantive requirements to ERISA, including a reasonableness requirement, and it did not do so in Section[] 1055(d)[.]”).

Another important contextual point underscores why the majority should not have read Section 1055(d) as it did. One of ERISA’s baseline principles is that employee benefits are governed by the plan’s

terms. The “statutory scheme * * * is built around reliance on the face of written plan documents.” *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 100-101 (2013) (citation omitted). And for defined benefit pension plans, the amount of benefits must be “definitely determinable.” 26 U.S.C. 401(a)(25). That requires, among other things, that “whenever the amount of any benefit is to be determined on the basis of actuarial assumptions,” such assumptions must be “specified in the plan in a way which precludes employer discretion.” *Ibid.*

The result of the majority’s holding, however, is that plan administrators should jettison the actuarial assumptions specified in the plan terms if they believe that those assumptions are outdated or otherwise insufficiently reasonable. Given the central importance of relying on the face of ERISA plan documents, Congress would not have overridden that fundamental ERISA principle in Section 1055(d) without saying so. Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). And Congress did not do so in Section 1055(d). See, e.g., *Adams v. U.S. Bancorp*, No. 22-cv-509, 2026 WL 151825, at *8 (D. Minn. Jan. 16, 2026) (“Because there is no one set of correct assumptions for calculating present value, a plan’s actuarial equivalence is properly assessed in reference to those assumptions and conversion factors stated in the plan document.”).

3. The majority worried that Section 1055(d) would lack “meaning and significance” without a reasonableness limitation. App., *infra*, 23a. In particular, pension plans could “use dramatically outdated mortality data, including a mortality table from the sixteenth century.” *Ibid.* In the majority’s view, that interpretation would impermissibly allow the statute to produce “‘absurd’ outcomes.” *Ibid.* (citation omitted); see also *Drummond v. S. Co. Servs., Inc.*, 177 F.4th 1076, 1080, 1087 (11th Cir. 2026) (similarly worrying that a reasonableness requirement is necessary to prevent employers from “assuming people’s lifespans will be as short as they were back in 1789”).

This reasoning illustrates the “slippery slope” of using the absurdity doctrine as a license for “judicial revision of [statutory] texts to make them (in the judges’ view) more reasonable.” Antonin Scalia & Bryan A. Garner, *Reading Law* 237 (2012). As Judge Nalbandian pointed out in dissent, there is nothing absurd about petitioners’ interpretation of the statute. App., *infra*, 45a. For one thing, that interpretation simply requires plans to use the actuarial assumptions that, as just discussed, must be set down in writing in the plan document to preclude employer discretion. 26 U.S.C. 401(a)(25). And it is far from obvious that the Tax Code would permit pension plans to adopt wildly unrealistic actuarial assumptions. In Judge Nalbandian’s view, the Tax Code and implementing regulations independently condition a pension plan’s tax-exempt status on the use of reasonable actuarial assumptions. App., *infra*, 45a; see 26 C.F.R. 1.401(a)-11(b)(2). “So to the extent the majority worrie[d] that a faithful reading of ERISA would allow pension plans to toy with their beneficiaries’ benefits,

the [Tax Code]’s much weightier penalties already address that concern.” *Ibid.*

In any event, the statutory text—not judges’ sense of sound policy—is what controls. “It is ‘quite mistaken to assume,’” as the Court often explains, “that any interpretation of a law that does more to advance a statute’s putative goal ‘must be the law.’” *Luna Perez v. Sturgis Pub. Schs.*, 598 U.S. 142, 150 (2023) (citation omitted). That assumption is particularly dangerous for statutes like ERISA that have multiple objectives. “ERISA represents ‘a careful balancing’ of competing interests and seeks to avoid generating excessive “administrative costs, or litigation expenses,” that would deter employers from offering ERISA plans. *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (citation omitted). That is one reason why being able to rely on the plan documents is so important to the statutory scheme. “This focus on the written terms of the plan is the linchpin of ‘a system that is [not] so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place.’” *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 571 U.S. 99, 108 (2013) (citation omitted). The Sixth Circuit’s decision to force plan administrators to disregard plan terms based on an ill-defined “reasonableness” requirement does not serve Congress’s carefully calibrated set of goals; it undermines them.

B. The question presented is important and warrants review in this case.

1. The Sixth Circuit’s erroneous interpretation of ERISA is an important issue that deserves this Court’s review. As the amicus briefs in the court of

appeals detail, this case is part of a new “wave of costly and disruptive litigation attacking established practices of U.S. pension plans.” Chamber of Commerce C.A. Amicus Br. 1. The majority’s murky reasonableness standard overrides plan terms with “unwritten, judge-made standards for actuarial assumptions where the Congress elected not to specify any.” ERISA Industry Committee C.A. Amicus Br. 4.

That outcome would be unprecedented. The majority’s interpretation makes Section 1055(d) the only provision in ERISA that requires calculating participants’ benefits using an amorphous “reasonableness” standard. Everywhere else, Congress either stuck to the usual rule requiring that benefits be calculated and paid in accordance with the plan’s written terms, see 29 U.S.C. 1104(a)(1)(D), or imposed explicit and specific requirements for calculating the benefits (as with lump-sum benefits under Section 1055(g)).

A reasonableness standard invites countless future disputes any time someone believes her annuity benefit amount is not “reasonable.” Because the majority fashioned its reasonableness standard from non-statutory materials, it left numerous questions unanswered. As noted already, the majority never said whether Section 1055(d) requires that “each” assumption be reasonable individually or that the assumptions simply be reasonable collectively, “in the aggregate.” Nor did the majority describe how “up to date” actuarial assumptions must be to qualify as “reasonable,” or how often an employer must revise the plan’s terms to keep up with trends in life expectancy (thereby also changing participants’ benefit amounts). And while this case turns on assumptions

about life expectancy, its rule applies to other assumptions as well, like the assumption about the time value of money, which can be much more consequential in valuing lifelong retirement benefits. Cf. *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr.*, 508 U.S. 602, 633 (1993) (explaining, in a related ERISA context, how the interest rate assumption used in valuing pension benefits is “arguably the most important assumption”). The majority gave no indication of how courts can assess the reasonableness of those types of assumptions. None of these questions generated by the majority’s interpretation can be resolved by the statutory text, and they should be left to Congress.

Instead, such questions will generate a flood of litigation. And it will be easy for plaintiffs to pursue claims of unreasonableness past the pleading stage and into costly discovery. The majority’s observation that reasonableness is a “range, not a precise prescription,” App., *infra*, 20a, simply highlights the problem. A plaintiff need only allege that her benefit would be higher by \$10 per month, or \$1 per month, or 10 cents per month, using different assumptions she claims are more “reasonable,” because claims of unreasonableness are not readily susceptible to scrutiny at the pleading stage. In the majority’s words, “[w]hether the mortality assumptions selected by Defendants indeed fail to produce actuarially equivalent benefits is a question of fact that cannot be conclusively determined on a motion to dismiss.” *Id.* at 21a n.7.

This Court has highlighted the importance of using a motion to dismiss to “divide the plausible sheep from the meritless goats” in ERISA class action cases.

Fifth Third Bancorp v. Dudenhoeffer, 573 U.S. 409, 425 (2014). And the Court has acknowledged “serious concerns” that some ERISA claims may “too easily get past the motion-to-dismiss stage.” *Cunningham v. Cornell Univ.*, 604 U.S. 693, 708 (2025). Three Justices in *Cunningham* wrote separately to stress how in ERISA cases, “getting by a motion to dismiss is often the whole ball game because of the cost of discovery.” *Id.* at 710 (Alito, J., concurring). Rather than bear discovery costs, economically rational defendants may prefer to settle ERISA claims that survive dismissal even if the claims would ultimately fail. *Ibid.*

There is ample reason to fear that the majority’s decision will invite more litigation. Nationwide, defined benefit plans hold nearly \$3 trillion in assets. Employee Benefits Sec. Admin., U.S. Dep’t of Labor, *Private Pension Plan Bulletin: Abstract of 2023 Form 5500 Annual Reports* 3 (Jan. 2026), <https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf>. And defined benefit plans disburse over \$250 billion in benefits annually. Employee Benefits Sec. Admin., U.S. Dep’t of Labor, *Private Pension Plan Bulletin Historical Tables and Graphs 1975-2023*, Tbl. E16, at 21 (Sept. 2025), <https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf>. These plans are prime targets for new class-action lawsuits based solely on the amount of money at stake, not to mention a massive part of the national economy.

2. On top of the important ERISA issues it raises, the Sixth Circuit majority’s approach to statutory interpretation further calls for review. There was nothing wrong with the majority’s starting point—the statute’s “ordinary public meaning * * * at the time of its enactment.” App., *infra*, 13a (citation omitted). But that inquiry calls for reliable indicia of public meaning, like historical dictionaries. See, e.g., *Wis. Cent.*, 585 U.S. at 277; *New Prime Inc. v. Oliveira*, 586 U.S. 105, 114 & n.1 (2019). And as discussed above, the majority did not ground its interpretation of the statute in dictionary definitions. No dictionary adopts the majority’s definition of “actuarial equivalent.” Instead, the majority sought support in an eclectic assortment of pre-ERISA professional guidance.

In doing so, the majority untethered itself from the objectivity that dictionary definitions help provide. The point of looking to other sources like a dictionary is to figure out what a particular word or phrase ordinarily meant at the time, not what some individual writer may have believed. As Judge Nalbandian’s dissent observed, the majority’s use of assorted non-statutory sources is more reminiscent of oft-criticized uses of legislative history. App., *infra*, 39a-40a. Such an approach just encourages lawyers, laypeople, and experts to publish articles or books in the hopes of changing the meaning of statutes. And not just that, the majority’s heavy reliance on the statute’s potential for allegedly absurd results further departs from sound principles of interpretation. See, e.g., Scalia & Garner, *supra*, at 237; John F. Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2392 (2003) (arguing that “the absurdity doctrine is particularly problematic” for textualists).

3. This case is a good vehicle to take up these questions. The case presents a single question of pure statutory interpretation, without any need to wade into the record or ancillary issues. And the Sixth Circuit majority addressed only the question presented in this petition, without wading into alternative grounds for affirmance, and that single question is dispositive. If petitioners are correct that Section 1055(d) does not impose an unwritten reasonableness limitation, this case will be over.

Moreover, there is no reason to invite further percolation over this question in the lower courts. The competing interpretations of Section 1055(d) have been fully developed through extensive briefing, including supplemental post-argument briefing, as well as through the dueling majority and dissenting opinions. The line between the two sides is clearly drawn, and this Court should decide which reading of this important federal statute is correct.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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SEPTEMBER 2026

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1442

THOMAS N. REICHERT; STUART R. BUCK; KENNETH A.
HENRICH, ON BEHALF OF THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED, PLAINTIFFS-APPELLANTS

v.

KELLOGG COMPANY, ET AL., DEFENDANTS
BAKERY, CONFECTIONARY, TOBACCO WORKERS AND
GRAIN MILLERS PENSION COMMITTEE; KELLANOVA,
FKA KELLOGG COMPANY; WK KELLOGG COMPANY; THE
ADMINISTRATIVE COMMITTEE OF KELLANOVA PENSION
PLAN; JOHN DOES 1–20, DEFENDANTS-APPELLEES

No. 24-5945

ROBERT A. WATT; GARY J. FRIESEN; MICHAEL H.
MCKENNA; GEOFFREY B. COE; CRAIG A. COVIC,
PLAINTIFFS-APPELLANTS

v.

FEDEx CORPORATION; FEDEx CORPORATION
EMPLOYEES' PENSION PLAN; RETIREMENT PLAN
INVESTMENT BOARD OF FEDEx CORPORATION;
JOHN/JANE DOES 1–10, DEFENDANTS-APPELLEES

Argued: May 8, 2025
Decided and Filed: March 16, 2026

No. 24-1442 On Appeal from the United States
District Court for the Eastern District of Michigan at
Detroit

No. 2:23-cv-12343—Stephen J. Murphy III, District
Judge

No. 24-5945 On Appeal from the United States
District Court for the Western District of Tennessee
at Memphis

Nos. 2:23-cv-02593; 2:23-cv-02516—John Phipps
McCalla, District Judge

OPINION

Before: STRANCH, BUSH, and NALBANDIAN, Circuit
Judges.

STRANCH, Circuit Judge. Retired employees of the Kellogg Company and FedEx Corporation sued their respective employers and pension plans for violating the Employee Retirement Income Security Act (ERISA). Plaintiffs, each of whom are married participants in employee pension plans, alleged that their plans used outdated mortality data to calculate their benefits, which improperly decreased those benefits in violation of ERISA’s actuarial equivalence requirement. The district courts dismissed the actions on the ground that ERISA does not require pension plans to use particular mortality tables or actuarial assumptions when calculating benefits for married participants. We **REVERSE** and **REMAND** for further proceedings.

I. BACKGROUND

A. Statutory and Regulatory Background

Congress enacted ERISA in 1974 to “protect . . . the interests of participants in employee benefit plans and their beneficiaries” by establishing substantive requirements for employee benefit plans and “by providing for appropriate remedies” in federal court. 29 U.S.C. § 1001(b); *see* Pub. L. No. 93-406, 88 Stat. 829. Although ERISA does not “require[] employers to establish” benefit plans or “mandate what kind of benefits employers must provide,” it ensures that “employees will not be left empty-handed once employers have guaranteed them certain benefits.” *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). ERISA’s requirements arise, in large part, from the common law of trusts—a body of law that courts have long utilized to impose and enforce obligations on fiduciaries of private welfare and pension plans. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110–11 (1989).

Under ERISA, as in trust law, fiduciaries are charged with protecting the interests of, and managing the money owed to, plan participants and their beneficiaries. *See Akers v. Palmer*, 71 F.3d 226, 229 (6th Cir. 1995). Such fiduciaries are named by the plan instrument, 29 U.S.C. § 1102(a)(2), and they must “discharge [their] duties” with “the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use,” *id.* § 1104(a)(1).

A key aspect of ERISA is its regulation of traditional, private pension plans. Under ERISA, a pension plan may be either a defined contribution plan,

such as a 401(k), or a defined benefit plan, in which the plan guarantees a certain pension benefit upon retirement. See *West v. AK Steel Corp.*, 484 F.3d 395, 398–99 (6th Cir. 2007); *Smith v. CommonSpirit Health*, 37 F.4th 1160, 1162 (6th Cir. 2022). This case deals with the latter type, defined benefit plans. Once an employer has promised a defined pension benefit to an employee, ERISA requires, among other things, that the employer adhere to specific vesting requirements and timely pay the promised, vested benefit to the employee. See, e.g., 29 U.S.C. § 1053 (imposing vesting requirements on private pension plans).

Relevant to this case, ERISA provides for different types of defined pension benefits depending on whether an employee is single or married. The Act requires that pension plans offer unmarried participants a single life annuity (SLA), in which a participant receives a defined benefit payment for the duration of his or her own life. See *Spirit v. Tchrs. Ins. & Annuity Ass’n*, 691 F.2d 1054, 1058 n.1 (2d Cir. 1982); *Esden v. Bank of Boston*, 229 F.3d 154, 159 (2d Cir. 2000). For married participants, however, ERISA requires plans to offer as an option a joint and survivor annuity (JSA). A JSA ensures that, should a married participant predecease his or her spouse, the spouse will continue to receive benefits for the remainder of his or her life. See *Shields v. Reader’s Digest Ass’n, Inc.*, 331 F.3d 536, 539 (6th Cir. 2003). A participant receiving a JSA is likely to receive a lower monthly payment than a participant receiving an SLA because, under a JSA, “the payments are likely to continue for a longer period of time because of the survivor benefits component.” *Id.* at 539 n.2.

ERISA also places requirements on the JSAs offered to plan participants. Employers providing employee pension plans must offer married participants an “accrued benefit” in the form of a “qualified joint and survivor annuity” (QJSA). 29 U.S.C. § 1055(a)(1). Section 1055(d) defines a QJSA as:

an annuity . . . for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse.

Id. § 1055(d)(1)(A). In other words, a QJSA is a statutorily prescribed form of JSA that, like all JSAs, consists of an annuity (i.e., a fixed monthly payment) starting at the participant’s retirement and continuing through the “joint” lives of the participant and his or her spouse, followed by a “survivor annuity” (i.e., another fixed monthly payment) to the participant’s spouse for the remainder of the spouse’s life. That survivor annuity must be no less than 50% and no greater than 100% of the annuity paid during the participant’s lifetime.¹ Critically, § 1055(d) specifies that a QJSA must be the “actuarial equivalent of a single annuity for the life of the participant.” *Id.* § 1055(d)(1)(B).

¹ For example, a 75% QJSA will provide the surviving spouse with a fixed monthly payment that is equal to 75% of the monthly payment received during the participant’s life. See 29 U.S.C. § 1055(d)(1)(A).

Though the QJSA is the default benefit option for a married participant, *see id.* § 1055(c)(1)(A), § 1055 requires employers to permit a participant, with the consent of his or her spouse, to waive the QJSA, *id.* The plan must then offer, as a minimum alternative, a “qualified optional survivor annuity” (QOSA). *Id.* § 1055(c)(1)(A). The statute defines a QOSA as:

an annuity . . . for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

Id. § 1055(d)(2)(A). A QOSA functions in the same way as the QJSA, except that it is required to provide a survivor annuity with a different percentage than that of the default QJSA.² *Id.* § 1055(d)(2)(B)(i). Section 1055(d) requires that a QOSA, like a QJSA, be the “actuarial equivalent” of an SLA “for the life of the participant.” *Id.* § 1055(d)(2)(A)(ii).

ERISA does not define or elaborate on the term “actuarial equivalent.” Congress, however, has conferred on the Department of the Treasury the authority to interpret certain provisions of ERISA, including § 1055. *See* § 1055 (authorizing the Secretary of the Treasury to prescribe regulations under § 1055). The Department also has interpretive authority over the parallel provision to § 1055 in the Internal Revenue

² Specifically, if the default QJSA pays less than 75% to the surviving spouse, the QOSA must pay 75%, and if the default QJSA pays 75% or more, the QOSA must pay 50%.

Code, 26 U.S.C. § 401, which establishes the requirements for defined benefit plans to maintain their tax-qualified status. The Treasury Department has issued regulations interpreting § 401, 26 C.F.R. § 1.401(a)-11, which provide, among other things:

A qualified joint and survivor annuity must be at least the actuarial equivalent of the normal form of life annuity or, if greater, of any optional form of life annuity offered under the plan. Equivalence may be determined, on the basis of consistently applied reasonable actuarial factors, for each participant or for all participants or reasonable groupings of participants, if such determination does not result in discrimination in favor of employees who are officers, shareholders, or highly compensated.

Id. at § 1.401(a)-11(b)(2).

B. Factual Background and Procedural History

1. Kellogg Plaintiffs

Plaintiffs Thomas N. Reichert, Stuart R. Buck, and Kenneth A. Henrich are retired employees of the Kellogg Company. Each is a married participant of one of two defined benefit pension plans, (1) the Kellanova Pension Plan and (2) the Bakery, Confectionary, Tobacco Workers and Grain Millers (BCTGM) Pension Plan (together, the “Kellogg Plans”).³ Both

³ In 2023, Kellogg split into two entities: Kellanova and WK Kellogg Co. The Kellanova and BCTGM Pension Plans, which were previously both sponsored by Kellogg, are now sponsored by Kellanova and WK Kellogg, respectively.

Plans offer married participants three JSAs that purportedly meet the criteria for QJSAs—a 50% default JSA, a 75% JSA, and a 100% JSA. Reichert and Buck are participants in the BCTGM Plan and elected to receive a 50% JSA. Henrich is a participant in the Kellanova Plan, through which he opted into a 100% JSA.

To convert an SLA to a QJSA, the Kellogg Plans use an interest rate and mortality table. Interest rates account for the time value of money by “discount[ing] the value of expected future payments to the date of the calculation.” R. 22, Am. Compl., PageID 122. Mortality tables estimate expected longevity of the participant by “predict[ing] the rate at which retirees will die at any given age.” *Id.* Both variables are combined to generate a “conversion factor,” which is used to determine the benefit that would be actuarially equivalent to the SLA for a given participant. Assume, for example, a married participant with a 50% QJSA, who, if single, would receive a monthly SLA benefit of \$1,000. Applying a conversion factor of .90, the joint annuity would be \$900 per month, and after the participant’s death, his spouse would receive \$450.

To determine the applicable conversion factor, the Kellogg Plans use the Uninsured Pensioners (UP) 1984 Mortality Table, which is based on mortality data from the 1960s and 1970s. Because mortality rates have improved over the last several decades, the use of this decades-old mortality table produces higher mortality rates that assume fewer total payments for the single-life comparator SLA, resulting in

a lower conversion factor for the JSAs. The lower conversion factor decreases the monthly payment that Plaintiffs receive. If the Kellogg Plans were to use contemporary mortality data, each Plaintiff would receive a higher monthly payment.

On September 14, 2023, Reichert, Buck, and Henrich, on behalf of themselves and others similarly situated, filed a class action suit in federal court. On December 15, 2023, Plaintiffs filed an amended class action complaint against the Kellogg Plans and their administrators (collectively, “Kellogg”). Plaintiffs alleged violation of 29 U.S.C. § 1055 on the ground that the Kellogg Plans’ use of outdated mortality tables and actuarial assumptions failed to provide them with QJSAs that were actuarially equivalent to SLAs as required by § 1055(d), which resulted in the systematic underpayment of benefits. Plaintiffs also alleged that the Kellogg Plans’ failure to comply with § 1055(d) constituted a breach of fiduciary duty under 29 U.S.C. § 1104. Kellogg moved to dismiss Plaintiffs’ complaint for failure to state a claim. The district court dismissed the complaint in full, holding that Plaintiffs’ claims failed as a matter of law because § 1055 does not require the use of particular mortality tables or actuarial assumptions.

Congress enacted ERISA in 1974 to “protect . . . the interests of participants in employee benefit plans and their beneficiaries” by establishing substantive requirements for employee benefit plans and “by providing for appropriate remedies” in federal court. 29 U.S.C. § 1001(b); *see* Pub. L. No. 93-406, 88 Stat. 829. Although ERISA does not “require[] employers to establish” benefit plans or “mandate what kind of

benefits employers must provide,” it ensures that “employees will not be left empty-handed once employers have guaranteed them certain benefits.” *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). ERISA’s requirements arise, in large part, from the common law of trusts—a body of law that courts have long utilized to impose and enforce obligations on fiduciaries of private welfare and pension plans. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110–11 (1989).

2. FedEx Plaintiffs

Plaintiffs Robert A. Watt, Gary J. Friesen, Michael H. McKenna, Geoffrey B. Coe, and Craig A. Covic are former employees of the FedEx Corporation and married participants in the FedEx Corporation Employees’ Pension Plan (FedEx Plan), a defined benefit pension plan. The FedEx Plan offers married participants three JSAs that, it asserts, meet the criteria for QJSAs: a 50% default JSA, a 75% JSA, and a 100% JSA. Pursuant to the FedEx Plan, Watt, Friesen, and Coe receive the Plan’s 100% JSA, while Covic and McKenna receive the 50% JSA.

Like the Kellogg Plans, the FedEx Plan uses an interest rate and a mortality table to generate a conversion factor, which is then used to calculate the QJSA that would be actuarially equivalent to a participant’s payments under an SLA. The FedEx Plan uses the UP 1984 Mortality Table (the same one Kellogg uses) and the 1971 GAM Mortality Table, which is based on mortality data from the 1960s. As with the Kellogg Plans, the FedEx Plan’s use of outdated

mortality tables results in a lower monthly payment of benefits to each Plaintiff.⁴

On September 19, 2023, Watt, Friesen, McKenna, Coe, and Covic, on behalf of themselves and others similarly situated, filed a class action suit in federal court. On November 6, 2023, Plaintiffs filed an amended complaint against the FedEx Plan and its administrators (collectively, “FedEx”). The amended complaint alleged violation of § 1055 based on FedEx’s use of outdated mortality data and consequent failure to offer Plaintiffs QJSAs within the meaning of § 1055(d). And it alleged breach of fiduciary duty under § 1104 based on the violation of § 1055(d). FedEx moved to dismiss the complaint for failure to state a claim. The district court concluded that § 1055 does not require the use of particular actuarial assumptions and dismissed Plaintiffs’ complaint.

II. ANALYSIS

Both district courts had federal question jurisdiction under 28 U.S.C. § 1331. Plaintiffs, in turn, timely

⁴ The FedEx Plan also applies “setbacks” that further diminish the amount of benefits each Plaintiff receives. Specifically, the Plan applies a three-year “setback” for beneficiary spouses under the UP 84 Mortality Table and a six-year “setback” for beneficiary spouses under the 1971 GAM Mortality Table. A “setback” “subtracts a specified number of years from a standard mortality table for purposes of calculating benefits”—for example, “if there is a 65-year old retiree who has a spouse that is also 65, but the plan states that there is a [three]-year setback for beneficiaries, then, for purposes of calculating benefits, the plan uses age 62 for the beneficiary’s age.” Using a younger age for the spouse overestimates the likelihood that the spouse will outlive the participant, which further reduces the conversion factor and, in turn, the participant’s monthly payments.

appeal the district courts' final judgments, conferring this court with jurisdiction to hear the appeals under 28 U.S.C. § 1291.

A district court's order of dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is reviewed de novo. *Jones v. City of Cincinnati*, 521 F.3d 555, 559 (6th Cir. 2008). We must "construe the complaint in the light most favorable to the plaintiff, accept all well-pleaded factual allegations as true, and examine whether the complaint contains 'sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Ohio Pub. Emps. Ret. Sys. v. Fed. Home Loan Mortg. Corp.*, 830 F.3d 376, 382–83 (6th Cir. 2016) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

The core issue in these appeals is whether Plaintiffs sufficiently pleaded claims that Defendants' use of outdated mortality tables violated § 1055(d)'s actuarial equivalence requirement. FedEx also raises two alternative bases for dismissal of the claims against it, neither of which were decided by the district court. We address each issue in turn.

A. Section 1055(d)'s Actuarial Equivalence Requirement

Plaintiffs assert that their employers' use of unreasonably outdated mortality data to calculate their benefits violates ERISA. Specifically, they allege that the use of such data fails to produce JSAs that are actuarially equivalent to the SLAs they would otherwise receive, thereby denying them the QJSAs to which they are entitled under § 1055. Defendants argue that Plaintiffs' claim fails as a matter of law because § 1055(d)(1)(B)'s actuarial equivalence requirement

places no restrictions on the actuarial assumptions that a pension plan may use when calculating QJSAs. The viability of Plaintiffs’ claims, therefore, hinges on whether § 1055(d)(1)(B) prohibits the use of unreasonably outdated actuarial assumptions.

As always, our analysis begins with the “statutory text.” *United States ex rel. Felten v. William Beaumont Hosp.*, 993 F.3d 428, 431 (6th Cir. 2021). We “interpret[] a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). To do so, we must look to “the language itself” and “the specific context in which that language is used.” *Felten*, 993 F.3d at 431 (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340–41 (1997)). Should the text prove “unclear,” we may look to the statute’s broader context, structure, and purpose to resolve the ambiguity. *Felten*, 993 F.3d at 431.

1. Section 1055(d) Prohibits the Use of Unreasonably Outdated Actuarial Assumptions

Section 1055(d) specifies that a QJSA must be the “actuarial equivalent of a single annuity for the life of the participant.” 29 U.S.C. § 1055(d)(1)(B). As all parties recognize, the term “single annuity” refers to the SLA benefits that a participant would receive in lieu of a QJSA. Section 1055 also makes clear that the relevant SLA must be “for the life of the participant.” *Id.* In other words, the QJSA must be actuarially equivalent to the amount of SLA benefits that a participant—here, each Plaintiff—would have received over the course of his or her life, from retirement to death.

The critical interpretive issue is the meaning of the term “actuarial equivalent” at the time of ERISA’s

enactment in 1974. *See Bostock*, 590 U.S. at 655. The term “actuarial equivalent” has long been utilized in actuarial practice. *See* Walter J. Couper & Roger Vaughan, *Pension Planning: Experience and Trends* 189 (1954). We therefore evaluate this “term of art” as it was understood by actuarial scientists when ERISA was enacted. *See Corning Glass Works v. Brennan*, 417 U.S. 188, 201 (1974); *see also Stephens v. U.S. Airways Grp.*, 644 F.3d 437, 440 (D.C. Cir. 2011) (treating “actuarial equivalence,” as used in 29 U.S.C. § 1054(c), as a “term of art”); *United States v. Hansen*, 599 U.S. 762, 774 (2023) (“[W]hen Congress ‘borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word.’”).⁵

Before ERISA’s passage in 1974, actuarial scientists understood the term “actuarial equivalent” to describe a situation in which one benefit has an equal present value to another benefit after accounting for certain actuarial assumptions, such as mortality rates. *See* Couper & Vaughan, *supra*, at 189; *accord* Michael Puchek, *Pension Plan Policies and Practices*

⁵ This is, at its core, the primary problem with the dissent’s theory of this case. The dissent considers all of the terms in § 1055(d) in the sense that a layperson might. But technical terms carry their technical meanings, so we need to consider how an actuary in 1974 would have understood these terms, not how a layperson might have understood them. *See NLRB v. Coca-Cola Bottling Co.*, 350 U.S. 264, 269 (1956) (“But if the word be deemed to have a peculiar connotation for those intimate with [actuarial sciences], it is incumbent upon us to give the word its technical meaning[.]”).

30 (1952) (explaining that two benefits are the “actuarial equivalent” of one another when one benefit is “equal to the value” of the other “discounted for death and interest”). That “established meaning” persists in the modern era—as the D.C. Circuit explained in 2011, “[t]wo modes of payment are actuarially equivalent when their present values are equal under a given set of actuarial assumptions.” *Stephens*, 644 F.3d at 440 (citing Jeff L. Schwartzmann & Ralph Garfield, Educ. & Exam. Comm. of the Soc’y of Actuaries, *Actuarially Equivalent Benefits* 1, EA1-24-91).

Well before 1974, actuarial scientists recognized that ensuring equal present value between or among benefits requires mortality data that appropriately reflects the expected lives of the recipients of the benefits. For example, Plaintiffs point to a 1964 book on the actuarial science of pensions, which explained that, to convert single life annuities into “reduced pensions” such as “joint and survivor annuit[ies],” “[i]t is general practice to determine the reduced pensions on the basis of actuarial equivalence calculated on *appropriate mortality tables*.” William F. Marples, *Actuarial Aspects of Pension Security* 40 (1964) (emphasis added). Similarly, in a 1964 article, a prominent actuarial scientist explained that one of the key starting points for determining actuarial equivalence is a “suitable” mortality table. Hilary L. Seal, “*Actuarial Equivalence*”: *An Exposition*, 101 Tr. & Est. 836, 836 (1962).

In the pension context, a mortality table was understood to be “appropriate” or “suitable” when it aligned with the life expectancy of the relevant participant population. See Dorrance C. Bronson, *Concepts*

of Actuarial Soundness in Pension Plans 36–37 (1957). As mortality rates change, so too must the mortality data that actuaries select. See Wilmer A. Jenkins & Edward A. Lew, *A New Mortality Basis for Annuities*, 1 Transactions of Soc’y of Actuaries 369, 369 (1949). That understanding has persisted in the decades after ERISA’s enactment. See, e.g., Schwartzmann & Garfield, *supra*, at 11 (explaining that “interest and mortality assumptions play a key role” in determining actuarial equivalence, and that the assumptions used must be “reviewed and modified” so that they “continue to fairly assess the cost of the optional basis of payment”).

Pre-1974 judicial decisions evinced the same understanding of actuarial equivalence. For example, in 1954, a Pennsylvania court held that “the term ‘actuarial equivalent’ . . . means calculations made at retirement according to the best actuarial information and tables then available to the actuary.” *O’Dea v. Pub. Sch. Emp. Ret. Bd.*, 88 Pa. D. & C. 593, 604 (Pa. Ct. C.P. 1954). A Washington court similarly held in 1959 that actuarial equivalence “reasonably requires the most accurate tables available.” *King Cnty. Emp. Ass’n v. State Ret. Bd.*, 336 P.2d 387, 391 (Wash. 1959) (en banc); see also *id.* (explaining that a pension fund could only be “self-sufficient,” as was required by the relevant statute, if “the mortality tables in use . . . accurately reflect the life expectancy of members when they retire”). A California court echoed this understanding two years before ERISA’s passage, explaining that an “actuarial[ly] equivalent” retirement benefit is one that is “reasonably expected to be paid to” the participant “based upon the actuarial expectancy of the lives of” the participant and his spouse. *Berry*

v. Bd. of Ret., 23 Cal. App. 3d 757, 759 (1972). The actuarial literature and historical caselaw point in the same direction—actuarial equivalence requires mortality assumptions that reasonably reflect the lives of the applicable benefit recipients. That means using up-to-date mortality data, not data from half a century ago.

This makes good sense. Actuaries are professionals, and a core part of their job is to perform calculations and make predictions based on real-world conditions. See Dan M. McGill, *Fundamentals of Private Pensions* 218–19 (2d ed. 1964). Competent performance of this professional obligation demands that actuaries “base [their] forecasts on assumptions which at the time of the valuation seem to be the most appropriate for the case at hand.” *Id.* Recognition of these basic concepts is part of our duty to evaluate the term “actuarial equivalent” “by reference to the art or science to which [it is] appropriate.” *Corning Glass Works*, 417 U.S. at 201 (quotation omitted). Defendants’ position that pension plans can use whatever assumptions they wish, including outdated and inapplicable mortality data, does not accord with these core concepts. Actuarial equivalence, in the context of lifetime pension benefits, cannot be attained if the mortality assumptions used to calculate such benefits fail to align with the life expectancy of the benefit recipients.

The remaining text of § 1055(d)(1)(B) illustrates why reasonably accurate mortality data is necessary to achieve actuarial equivalence. Consider, again, the requirement that pension plans offer each married participant a QJSA that is the “actuarial equivalent

of a single annuity *for the life of the participant*.” 29 U.S.C. § 1055(d)(1)(B) (emphasis added). This means that the present value of the QJSA must be equal to the present value of the SLA that such participant would otherwise receive over the course of his or her lifetime. *See, e.g.,* Couper & Vaughan, *supra*, at 189. Equivalence in present value can only be achieved if the mortality assumptions used to convert the payment under the SLA to the payment under the QJSA reasonably reflect the “life of the participant” who would otherwise receive the SLA. *See, e.g.,* Berry, 23 Cal. App. 3d at 759; Marples, *supra*, at 40; Seal, *supra*, at 836; Schwartzmann & Garfield, *supra*, at 11. In this context, “the participant” is not some hypothetical, abstract individual; it is a modern-day retiree. Accurately estimating the lifespan of the relevant participant, therefore, necessarily requires the use of mortality data reasonably reflecting the life expectancy of a retiree living in the present day. Accordingly, to provide a QJSA within the meaning of § 1055(d), a plan must provide a joint and survivor annuity with an equivalent value to the single life annuity the participant would otherwise receive, and that equivalence requires reasonably accurate mortality data.

This conclusion aligns with the longstanding view of the Treasury Department, the federal agency with interpretive authority over both § 1055(d) and its parallel provision in the Internal Revenue Code, 26 U.S.C. § 401(a)(13)(D)(ii), which delineates tax-qualification requirements for defined benefit plans and contains the same actuarial equivalence requirement. In 1977, shortly after ERISA’s enactment, the Treas-

ury Department promulgated a regulation interpreting § 401 of the IRC, including the actuarial equivalence requirement. *See* 26 C.F.R. § 1.401(a)-11(b)(2). That regulation, which remains operative, provides that actuarial equivalence “may be determined, *on the basis of consistently applied reasonable actuarial factors*, for each participant or for all participants or reasonable groupings of participants, if such determination does not result in discrimination in favor of” certain employees.⁶ *Id.* (emphasis added). Although this interpretation of the actuarial equivalence requirement arises out of the IRC, rather than § 1055(d), it remains instructive. The Treasury Department, as the agency charged with interpreting and enforcing much of ERISA, has extensive experience with and expertise over its substantive requirements, and its “roughly contemporaneous” and “consistent” understanding of the actuarial equivalence requirement is entitled to great respect. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). This regulatory backdrop reaffirms what is clear from the statutory text—§ 1055(d)’s actuarial equivalence requirement prohibits the use of unreasonably outdated mortality tables or other unreasonable, inappropriate actuarial assumptions.

⁶ FedEx argues that the use of the term “may” in the regulation renders it “permissive” as to the use of reasonable actuarial assumptions. But that misreads the text of the regulation. The term “may,” as used in the regulation, refers not to the “reasonable actuarial factors” requirement, but to the subsequent clause permitting employers to determine actuarial equivalence with respect to either each participant individually or reasonable groupings of participants.

In concluding that § 1055(d) prohibits the use of unreasonable assumptions, we note that reasonableness is a range, not a precise prescription. Actuarial science requires reasonable estimates, and different actuaries can come to different conclusions on what the exact best estimates are in each situation. See McGill, *supra*, at 218–19. Recognizing this reality, courts have long afforded deference to the determinations of plan actuaries when assessing reasonableness under other ERISA provisions, upholding actuaries’ chosen assumptions if they are “within the scope of professional acceptability.” *Concrete Pipe & Prods. of Cali., Inc. v. Constr. Laborers Pension Tr. for S. Cali.*, 508 U.S. 602, 635 (1993) (discussing the express reasonableness requirement in § 1393’s withdrawal provision); accord *Sofco Erectors, Inc. v. Trs. of Ohio Operating Eng’rs Pension Fund*, 15 F.4th 407, 421 (6th Cir. 2021) (applying § 1393(a) and noting that an actuary’s estimates “deserve deference”). The same principle applies here. An employer would not violate § 1055 were it to use actuarial assumptions that are “within the scope of professional acceptability” in the field of actuarial science, i.e., reasonable. *Concrete Pipe & Prods.*, 15 F.4th at 421. But if the assumptions selected by an employer do not *reasonably* reflect the life expectancy of its plan participants, that employer has exceeded the scope of actuarial acceptability and failed to adhere to § 1055(d)’s actuarial equivalence requirement.

With this statutory backdrop in mind, we turn back to Plaintiffs’ complaints. Plaintiffs allege that Defendants used mortality data from the 1960s and 1970s to calculate their benefits. This decades-old mortality data, they assert, is seriously outdated, and

therefore does not reasonably accord with the life expectancy of a modern-day plan participant, in contravention of basic actuarial standards. As a result, the JSAs offered by Defendants to married participants have lower present values than the SLAs that these participants would otherwise receive, meaning none of the JSAs offered by Defendants meet § 1055(d)'s actuarial equivalence requirement. These allegations, accepted as true, plausibly allege that Plaintiffs were denied a QJSA within the meaning of § 1055(d)(1).⁷ Plaintiffs have thus stated plausible claims for violation of § 1055 and breach of fiduciary duty under ERISA.

The dissent's proposed dictionary definitions of "actuarial equivalent" support our interpretation. It says that actuarial equivalence requires looking at "the expected remaining lifetime of the recipient" and "giving adequate consideration to actuarial factors such as . . . incidence of mortality[.]" Dissent at 22 & n.1 (citations omitted). The dissent fails to explain how a plan administrator can adequately consider the mortality rates of, and the remaining lifetime of, the recipient population using data from over half a century ago. The conclusion that plan administrators must use mortality data that reasonably reflects the mortality rates of the current recipient population is the only interpretation that makes sense given those definitions. Plaintiffs have adequately

⁷ Whether the mortality assumptions selected by Defendants indeed fail to produce actuarially equivalent benefits is a question of fact that cannot be conclusively determined on a motion to dismiss. At this stage, we simply determine that Plaintiffs have stated a plausible claim for relief under ERISA. See *Ohio Pub. Emps. Ret. Sys.*, 830 F.3d at 382–83.

stated a claim that the plan administrators violated ERISA by using the unreasonably outdated mortality data.

2. Defendants' Arguments to the Contrary Are Unavailing

Defendants resist this conclusion, largely on the ground that § 1055(d) does not expressly mandate that plans use “reasonable” actuarial assumptions or delineate particular actuarial factors that plans must follow. Defendants, like both courts below, contend that the absence of such language is notable, given that other sections of ERISA either expressly impose a “reasonableness” requirement or identify particular actuarial factors that plans should use when calculating other forms of payment. *See* 29 U.S.C. §§ 1393(a)(1), 1432(e), 1055(g), 1083(h)(1), 1085a(c)(3)(A). Because § 1055(d) lacks any such language, they assert, it cannot be read to impose any substantive limits on the actuarial assumptions selected by employer plans. As the district court in *Reichert* summarized, under this construction, an employer may “use[] any mortality table” it chooses without running afoul of § 1055(d). Docket No. 2:23-CV-12343, R. 36, Op. & Order, PageID 883.

Adopting this view of the statute would render the text of § 1055(d)(1)(B) meaningless. When a court interprets a statute, it “must give effect to each clause and word.” *Tiger Lily, LLC v. U.S. Dep’t of Hous. & Urban Dev.*, 5 F.4th 666, 669 (6th Cir. 2021). Under Defendants’ interpretation of § 1055(d), employers would have full discretion in determining the actuarial assumptions used to calculate each QJSA and, by extension, full discretion in determining the amount

of benefits provided by each QJSA. That would authorize employers to select data that allows the conversion between an SLA and a QJSA to work any way the employer wants, without regard to whether the two forms of benefits have a present value that is in fact equivalent. The section's substantive requirements would thus remain the same regardless of whether the "actuarial equivalent" statutory language is present, depriving § 1055(d)(1)(B) of meaning and significance.

Indeed, as the district court in *Reichert* acknowledged, Defendants' construction would allow employers to use dramatically outdated mortality data, including a mortality table from the sixteenth century, without running afoul of ERISA. Lacking any real response to this argument, Defendants simply note that they do not currently use such outlandish and outdated data. But that does not address the core interpretive problem, which is that their construction would allow an employer to use mortality rates that are completely out of step with the mortality rate of modern-day plan participants and would, therefore, result in a QJSA significantly lower than the SLA that a participant would otherwise receive. Generally, courts should avoid interpreting statutes in a manner that could result in "absurd" outcomes. *Dodd v. United States*, 545 U.S. 353, 359 (2005) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000)). Defendants' position does precisely that by impermissibly reading § 1055(d)(1)(B) out of the statute.

Perhaps recognizing this quandary, Defendants attempt to imbue substantive meaning into

§ 1055(d)(1)(B) by arguing that it effectively acts as a disclosure mandate, requiring employers to disclose their actuarial assumptions in their plan documents and to adhere to those disclosed assumptions when calculating the QJSA. But that interpretation makes little sense. ERISA already requires employers to disclose plan terms in writing. *See* 29 U.S.C. § 1102(a)(1) (providing that employee benefit plans must be “established and maintained pursuant to a written instrument”); *id.* § 1104(a)(1)(D) (requiring that fiduciaries discharge their duties “in accordance with the documents and instruments governing the plan”). And the Internal Revenue Code, which determines whether pension plans receive favorable tax treatment, provides that “whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions” must be “specified in the plan in a way which precludes employer discretion.” 26 U.S.C. § 401(a)(25). Given this preexisting disclosure regime, Defendants’ attempt to construe § 1055(d)(1)(B) as a mere disclosure requirement would impermissibly render the provision entirely superfluous. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (noting that courts should construe a statute “so that no part will be inoperative or superfluous”).⁸

⁸ FedEx, attempting to take this disclosure argument one step further, argues that reading § 1055(d)(1)(B) to require reasonable actuarial assumptions would contravene ERISA’s disclosure requirements by permitting employers to depart from the specified assumptions “whenever, in their judgment, alternative assumptions are more reasonable.” FedEx Appellee Br. 18. That is simply wrong. Requiring employers to use reasonable actuarial assumptions does not permit them to depart from the requirement that actuarial assumptions be specified in a written plan

Defendants' alternative theory of § 1055(d)(1)(B), moreover, is incongruous with the provision's basic text and function. Section 1055(d)(1) is a definition provision that sets forth the substantive criteria a JSA must meet to constitute a QJSA, and those criteria include the actuarial equivalence requirement in § 1055(d)(1)(B). Interpreting § 1055(d)(1)(B) as an implicit mandate to disclose assumptions and to adhere to those disclosed assumptions imposes no substantive limitations on the nature of the benefit itself. Defendants' construction, in short, fails to add any "mean[ing]" to the term QJSA in § 1055(d)(1).

Defendants' reliance on other ERISA sections, which expressly include a reasonableness requirement or delineate particular actuarial factors, is similarly unavailing. It is true that "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)). The problem for Defendants, however, is that this presumption does not apply when the sections are dissimilar, with different language and different formulations addressing different circumstances. See *City of Columbus v. Ours Garage & Wreckage Serv., Inc.*, 536 U.S. 424, 435–36 (2002) ("The *Russello* presumption that the presence of a

document. It simply ensures that, when employers set forth their actuarial assumptions in a written plan, they must select assumptions that produce a QJSA that is in fact actuarially equivalent to the SLA the participant would otherwise receive.

phrase in one provision and its absence in another reveals Congress' design . . . grows weaker with each difference in the formulation of the provisions under inspection.”).

Here, each section relied upon by the district courts and Defendants is dissimilar to § 1055(d). Defendants point specifically to §§ 1393(a)(1), 1432(e), 1083(h)(1), 1085a(c)(3)(A), and 1055(g), each of which express some sort of reasonableness requirement or require the use of certain actuarial factors. But §§ 1393(a)(1), 1083(h)(1), and 1085a(c)(3) appear in different provisions with different formulations. Rather than governing benefit conversion, these sections seek to ensure that plans remain funded throughout the lives of the plan participants by setting minimum funding standards for employer plans and imposing liability on employers who seek to withdraw from multi-employer pension plans. Section 1432(e) also falls under a different provision and focuses on determining eligibility for special financial assistance. Most notably, none of these five sections, including § 1055(g), contain the term “actuarial equivalent” or the clause “for the life of the participant.” Given the absence of such language, it makes sense that Congress found it necessary to impose a reasonableness requirement in other ERISA provisions, but not § 1055(d), the text of which inherently requires mortality assumptions that reasonably reflect the life of a modern-day plan participant. And, as discussed, that actuarial equivalence requirement confers on plan actuaries reasonable discretion in their selection of mortality data, which differentiates § 1055(d) from provisions like § 1055(g) that mandate the use of particular interest rates and mortality tables.

Defendants also point to the Supreme Court’s admonition that ERISA is a “comprehensive and reticulated statute,” and that its “carefully crafted and detailed enforcement scheme provides strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly.” *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251, 254 (1993) (quotations omitted). Plaintiffs are not asking this court to read unwritten requirements into the statutory text. Rather, they rely on § 1055’s express statutory mandate that defined benefit plans offer married participants actuarially equivalent QJSAs within the meaning of § 1055(d)(1). ERISA, in accordance with its derivation from the common law of trusts and imposition of fiduciary duties to protect plan participants and their spouses, confers the right to sue to enforce that statutory mandate. 29 U.S.C. § 1132(a)(3). Indeed, “[t]he statutory object of the qualified joint and survivor annuity provisions, along with the rest of § 1055, is to ensure a stream of income to surviving spouses.” *Boggs v. Boggs*, 520 U.S. 833, 843 (1997). Recognizing that § 1055(d)(1)(B) imposes substantive obligations regarding the actuarial assumptions used by employers and their pension plans helps satisfy the statutory obligation of the fiduciaries to protect the pension payments promised to married couples by providing “a stream of income to surviving spouses.” *Id.*

Finally, FedEx raises various policy concerns—namely, the ostensible difficulty of judicially determining what constitutes a “reasonable” set of actuarial assumptions and the claimed prospect of increased litigation that substantially interferes with employers’ pension plans. Pure policy considerations, of

course, do not constitute a proper method of statutory interpretation. *See Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 779 (2018). And they certainly cannot override a statute’s unambiguous text. *See Helix Energy Sols. Grp., Inc v. Hewitt*, 598 U.S. 39, 59 (2023). Even so, these concerns do not accord with core ERISA concepts or routine ERISA litigation. ERISA is heavily derived from the common law of trusts, a body of law that has long been used to impose responsibilities and obligations on fiduciaries of private pension plans. *See Firestone*, 489 U.S. at 110–11. Courts, particularly in the ERISA context, have frequently been, and continue to be, called upon to evaluate reasonableness, which often requires careful assessment of whether a fiduciary has acted with reasonable care in performing his or her obligations to protect the interests of, and manage the money owed to, plan participants and their beneficiaries. *See id.* In short, this type of litigation is well within the wheelhouse of ERISA. And, as discussed, courts have long afforded a degree of deference to the determinations of plan actuaries when assessing reasonableness. *See, e.g., Concrete Pipe & Prods.*, 508 U.S. at 635; *Sofco Erectors*, 15 F.4th at 421. That reasonable deference should apply with equal force to § 1055(d).

We therefore hold that § 1055(d) prohibits employers from using unreasonable, inappropriate actuarial assumptions when calculating QJSAs. Because Plaintiffs have plausibly alleged that Defendants used unreasonable actuarial assumptions in calculating their benefits, thereby denying them QJSAs within the meaning of § 1055(d)(1)(B), their claims survive.

B. FedEx’s Alternative Grounds for Dismissal

On appeal, FedEx offers two additional grounds for dismissal of the claims against it, neither of which were addressed by the district court. Absent “exceptional circumstances,” this court “will not address issues on appeal that were not ruled upon below.” *Maldonado v. Nat’l Acme Co.*, 73 F.3d 642, 648 (6th Cir. 1996); *see also Stoudemire v. Mich. Dep’t of Corr.*, 705 F.3d 560, 576 (6th Cir. 2013) (same); *Christian Healthcare Ctrs., Inc. v. Nessel*, 117 F.4th 826, 856–57 (6th Cir. 2024) (noting that because this court is a “court of review, not first view,” it generally “cannot consider an issue not passed on below” (quotations omitted)). FedEx points to no exceptional circumstance, and we can think of none, that might warrant our consideration of either of these alternative grounds for dismissal. We thus leave it to the district court to address these issues in the first instance, and we express no view on the merits of either argument.

III. CONCLUSION

For the foregoing reasons, we **REVERSE** the judgments of the district courts and **REMAND** for further proceedings consistent with this opinion.

DISSENT

NALBANDIAN, Circuit Judge, dissenting. The majority and I agree that, under 29 U.S.C § 1055(d), “[t]wo modes of payment are actuarially equivalent when the present values are equal under a given set of actuarial assumptions.” Maj. Op. p.10 (quoting *Stephens v. U.S. Airways Grp.*, 644 F.3d 437, 440 (D.C. Cir. 2011)). But that’s the extent of our agreement. The majority relies on a collection of academic sources and state-court caselaw to read into the statute an atextual requirement that the given set of actuarial assumptions be “reasonable.” Nothing in Article III permits us to blue-pencil a federal statute to match our policy preferences, so I respectfully dissent. And I write separately to explain why the statute’s text can’t support the majority’s holding.

I.

This inquiry should begin, and end, with the ordinary meaning of the statute’s text. Recall that § 1055(d) requires pension plans to offer qualified joint and survivor annuities that are “the actuarial equivalent of a single annuity for the life of the participant.” 29 U.S.C. § 1055(d)(1)(B), (d)(2)(A)(ii). The word “reasonable” doesn’t appear in that command. And yet the plaintiffs advocate for a standard that reads “actuarial equivalent” to mean “reasonable actuarial equivalent.” That doesn’t persuade.

Start with first principles. We look initially to Congress’s definitions to determine a statutory term’s meaning. If Congress supplied its own definition, it’s

“virtually conclusive.” *Dep’t of Agriculture Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 59 (2024) (quotation omitted). But when it hasn’t troubled itself to define its words, we generally give statutory terms their ordinary meaning. *United States v. Santos*, 553 U.S. 507, 511 (2008); *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012). And the “best place to start” the ordinary-meaning inquiry is with dictionaries in effect at the time of enactment. *See J. B-K. ex rel. E.B. v. Sec’y of Ky. Cabinet for Health & Fam. Servs.*, 48 F.4th 721, 726 (6th Cir. 2022) (quoting *Keen v. Helson*, 930 F.3d 799, 802 (6th Cir. 2019)). Still, that’s just the start. We don’t lift words out of place and muse upon them in a sterile vacuum. *See Salazar v. Paramount Glob.*, 133 F.4th 642, 650 (6th Cir. 2025). Rather, “it remains ‘a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’” *Id.* (quoting *West Virginia v. EPA*, 597 U.S. 697, 721 (2022)).

Those principles lead to only one conclusion: Congress used the term “actuarial equivalent” unencumbered by a latent connotation of “reasonableness,” as appellants and the majority would have it.

A.

Right off the bat, “reasonableness” is conspicuously absent from contemporary dictionary definitions of actuarial equivalence. Black’s Law Dictionary defines an “actuarial equivalent” as “[t]he amount of accrued pension benefits to be paid monthly or at some other interval so that the total amount of benefits will be paid over the expected remaining lifetime of the re-

recipient.” Actuarial Equivalent, *Black’s Law Dictionary* (12th ed. 2024).¹ So for benefit stream A to be actuarially equivalent to benefit stream B, both must pay out the same “total amount” over the “expected remaining lifetime of the recipient.” *Id.* Here’s how that definition plays out in translating an SLA into an actuarially equivalent QJSA. Under the appellants’ benefit plans, the SLAs are regular streams of pre-defined, periodic payments that the employee receives for the rest of his life upon retirement. And a QJSA is the same thing, with a modification: it’s a stream of periodic payments that the employee and his spouse receive for the rest of both their lives. So a QJSA that’s actuarially equivalent to an SLA pays out the same “total amount,” but distributed over a different “expected remaining lifetime”—that of both spouses, instead of just the one. *Id.*

Failing to find any hints of “reasonableness” in the first-order definition, let’s dig deeper into some downstream terminology. As the majority recognizes, calculating actuarial equivalence requires a process. *See*

¹ To be sure, Black’s Law Dictionary’s 1968 edition—which most closely predates Congress’s enactment of ERISA—doesn’t include “actuarial equivalence” at all. That dictionary didn’t include the term until 1999. But each edition since 2014 notes that the term’s earliest usage was 1920 and gives no indication that the definition has changed over time. In addition, the Black’s definition is consistent with other, contemporaneous dictionary definitions. *See, e.g.,* Actuarial Equivalent, *Dictionary of Labor-Management Relations* 9 (1957) (“A pension of equivalent value from an actuarial standpoint—i.e., giving adequate consideration to actuarial factors such as interest, form of pension, incidence of mortality, etc.”).

Maj. Op. p.12 (explaining that “to convert the payment under the SLA to the payment under the QJSA,” “the present value of the QJSA must be equal to the present value of the SLA”). That process brings more terminology. And those terms carry their own meanings. But none of those meanings involve reasonableness.

Take the first step, which involves calculating the SLA’s “present value,” or “[t]he expected value of a contingent cash-flow stream, such as payments from an annuity.” Actuarial Value, *Black’s Law Dictionary* (12th ed. 2024). More specifically, the first step calculates a single figure, in today’s dollars, that encapsulates the value of all the fixed monthly payments the retiree would receive over his or her remaining lifetime. See Actuarial Present Value, *Black’s Law Dictionary* (12th ed. 2024); see Present Worth, *Ballentine’s Law Dictionary* (3d ed. 1969). How does a pension plan accomplish that task without knowing (1) the precise value of the dollars received at each point in the retiree’s life compared to today’s money and (2) how long the retiree will live? It uses two actuarial tools: interest rates and mortality tables, respectively. Examine both in turn.

Neither tool necessary to compute the total present value of an SLA—interest rates and mortality tables—need be “reasonable” as a definitional matter. To start, an interest rate is just a “fixed ratio” by which money grows over time. Interest Rate, *Oxford English Dictionary* (1st ed. 1933) (senses 10 and 11); see Interest Rate, *Black’s Law Dictionary* (12th ed. 2024). To be sure, prevailing interest rates fluctuate. See *Monetary Policy: What Are Its Goals? How Does It*

Work?, Bd. of Govs. of the Fed. Reserve Sys. (last visited Nov. 17, 2025). But that doesn't mean that an actuary's election to use an outdated figure makes it any less of an "interest rate," definitionally speaking.

Mortality tables follow the same principle—although different tables suit different populations, they aren't inherently reasonable or unreasonable. Mortality tables set out an "organized chart" of data "indicating life expectancies for people in various categories (such as age, family history, and chemical exposure)." Mortality Table, *Black's Law Dictionary* (12th ed. 2024); see Life Table, *Black's Law Dictionary* (12th ed. 2024). So a mortality table is a purely statistical creature—it describes, based on an underlying dataset, how likely a given person is to die within a given timeframe. See Mortality Tables, *Ballentine's Law Dictionary* (3d ed. 1969) ("[s]tatistical tables which show the probable expectancy . . . of life of a normal person according to sex and age"); Mortality Table, *Webster's Seventh New Collegiate Dictionary* (7th ed. 1970) ("an actuarial table based on mortality statistics over a number of years"). There's nothing inherently reasonable or unreasonable about it; sure, a mortality table using data from the 1620s will paint different life-expectancy probabilities than one derived from this year's data. But applying the former table to people born in the latter era doesn't make the table itself any less valid, as a definitional matter.

Now move to the second step of the SLA-to-QJSA calculation. It's just the reverse of the first. It starts with the first step's result—the SLA's present value. Then, it uses the same actuarial methods to distribute

that present value, but now over the expected remaining lifetimes of *both* the employee and his or her spouse. That yields—roughly speaking—a revised monthly-payment figure that’ll approximate the same total payout to *both* spouses as the SLA would pay out to the retiree alone.

So none of the concepts or terms that go into calculating an actuarial equivalent entail a reasonableness requirement, as defined by dictionaries of the time. The term “actuarial equivalent” doesn’t itself include that requirement. And neither do terms that apply downstream—that is, throughout the process of calculating an actuarially equivalent benefit—like “present value,” “interest rate,” or “mortality table.”

B.

With the dictionaries in place, we should also look to ERISA’s “overall statutory scheme,” since we “don’t scrutinize a statute atomistically.” *Salazar*, 133 F.4th at 650. The overall scheme points to the same conclusion: that actuarial equivalence doesn’t connote reasonableness. To start with, Congress used the word “reasonable” when it meant to. In ERISA, it specified that pension plans must select “reasonable” actuarial assumptions to calculate present values in a couple of other scenarios. See 29 U.S.C. §§ 1055(g), 1083(h)(1)(A), 1085a(c)(3)(A), 1393(a)(1), and 1432(e)(1). Rather than canvas them all, I’ll stick to one example: § 1083(h). That provision, enacted by Congress as part of the Pension Protection Act of

2006, Pub. L. No. 109-280, 120 Stat. 780,² sets minimum funding standards for certain kinds of pension plans. Applying those standards entails actuarial computations that, much like the SLA-to-QJSA conversion, require calculating present values. To that end, Congress specified that any “actuarial assumptions” used to determine “any present value or other computation under” § 1083 must be “reasonable (taking into account the experience of the plan and reasonable expectations).” 29 U.S.C. § 1083(h)(1). So because Congress took pains to specify that plans’ “actuarial assumptions” in funding calculations must be “reasonable,” it must be the case that Congress doesn’t understand actuarial assumptions as inherently necessitating reasonableness—if it did, it would’ve had no reason to say so out loud. Indeed, if Congress “intended to restrict” pension plans to calculate QJSAs using reasonable actuarial assumptions under § 1055(d), “it presumably would have done so expressly,” as it did under § 1083(h). *See Russello v. United States*, 464 U.S. 16, 23 (1983).

So “actuarial equivalent” doesn’t connote reasonableness on its face or in context. Neither its direct definition, nor the definitions of any associated terminology, inject a fuzzy reasonableness requirement into upright math. And the rest of ERISA’s provisions show that Congress shared that understanding.

² The Pension Protection Act thoroughly amended § 1083 as originally enacted. *See* Pub. L. No. 109-280, § 102, 120 Stat. 780, 789 (2006). But the previous version also included the reasonableness language quoted below. *See* Pub. L. No. 93-406, § 302, 88 Stat. 829, 871 (1974). So from the moment Congress first passed ERISA, it spoke explicitly when it wanted to specify reasonableness as part of actuarial calculations.

When Congress wants to modify actuarial mathematics to include a reasonableness component, it knows how to do so. *See* 29 U.S.C. §§ 1055(g), 1083(h)(1)(A), 1085a(c)(3)(A), 1393(a)(1), and 1432(e)(1).

C.

The majority reaches a contrary conclusion by stepping twice off the beaten path. First, it concludes (in just two sentences) that actuarial equivalence is a term of art. Standing alone, I don't think that conclusion is necessarily wrong—contrary to the majority's charge that the “primary problem” with my view of this case is my failure to approach “actuarial equivalence” as a term of art. Maj. Op. p.10 n.5. Although I'll explain why I wouldn't rush to describe the phrase as a term of art as hastily, the crux of my problem with the majority's technical-meaning analysis is its second, more serious misstep: resorting exclusively to non-binding sources to establish that the term's meaning definitively includes a reasonableness requirement. On both fronts, our precedents demand more.

1.

Start with error number one: the majority's haste to deem “actuarial equivalent” a technical term of art. Typically, we hew to ordinary meaning “until and unless someone points to evidence suggesting” that Congress used a term in its technical sense. *Niz-Chavez v. Garland*, 593 U.S. 155, 163 (2021); *see Feliciano v. Dep't of Transp.*, 145 S.Ct. 1284, 1291 (2025). For example, when Congress “transplant[s]” a well-worn term from “another legal source, whether the common law or other legislation, it brings the old soil”—the term's “accumulated” meaning—“with it.” *Sekhar v.*

United States, 570 U.S. 729, 733 (2013) (quoting *Morrisette v. United States*, 342 U.S. 246, 263 (1952), and Felix J. Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)). The Supreme Court has applied that standard to ERISA. See *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322–23 (1992). And in doing so, it instructed us to assess the Act’s use of the term “employee” under that term’s “accumulated settled meaning under . . . the common law.” *Id.* (quoting *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 739–40 (1989)). But it reached that conclusion only after looking first to the statutory definition and other ERISA provisions. Because the former was “completely circular and explain[ed] nothing,” and the latter failed to provide “specific guidance on the term’s meaning,” the common law controlled. *Id.* As I explained above, that’s not the case here. Congress left us generous material from which to conclude that actuarial assumptions mustn’t be inherently reasonable. See 29 U.S.C. §§ 1393(a)(1), 1432(e), 1083(h)(1), 1085a(c)(3)(A), and 1055(g). So it doesn’t seem entirely correct to conclude that the term is “technical” in any way that’d change how we search for its meaning.

In any case, and as I mentioned before, the majority’s sprint toward technical meaning doesn’t trouble me much because I “do not see much daylight” between actuarial equivalent’s technical meaning and its ordinary meaning. *United States v. Tate*, 999 F.3d 374, 389 (6th Cir. 2021) (Murphy, J., concurring in the judgment). Instead, the technical meaning *aligns* with the ordinary meaning derived from the sources I explored above. That’s because courts often resort to

standard dictionaries and statutory context to determine the meaning of even “technical” terms—just as I did above, and as the majority fails to do. *See, e.g., United States v. Hansen*, 599 U.S. 762, 775 (2023) (explaining that “context differentiates” between competing meanings of a term, including “when the choice is between ordinary and specialized meanings”); *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 501 n.18 (1982) (citing a standard dictionary for a “technical term . . . in the drug paraphernalia industry”); *United States v. Wilkes*, 78 F.4th 272, 283 n.4 (6th Cir. 2023) (citing three standard dictionaries for the meaning of “stereoisomer”); *Tate*, 999 F.3d at 389 (Murphy, J., concurring in the judgment) (quoting Black’s Law Dictionary for the meaning of “dangerous weapon” in the United States Sentencing Guidelines); *United States v. Easter*, 981 F.2d 1549, 1558 (10th Cir. 1992) (citing *Webster’s Third New International Dictionary* for the meaning of “base” in the federal drug-trafficking statutes); *cf. United States v. Caseer*, 399 F.3d 828, 838 (6th Cir. 2005) (surveying standard dictionaries to determine whether a “scientific or technical term” was sufficiently discernible to the public).

2.

Rather than survey the full field of sources available to us, the majority uses its “technical meaning” conclusion as a license to consult exclusively an eclectic collection of academic and legal sources. But this motley crew of citations looks a lot like “the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one’s friends.” *Cf. Conroy*

v. Aniskoff, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment).

And the majority’s sources aren’t on-point. For example, it reads mid-twentieth century Washington state caselaw (among others) to hold that actuarial equivalence requires the use of reasonable or “accurate” actuarial assumptions. Maj. Op. p.11 (quoting *King Cnty. Emp. Ass’n v. State Ret. Bd.*, 336 P.2d 387, 391 (Wash. 1959)). That approach has several problems. At the outset, the Washington Supreme Court’s decision in *King County* wasn’t about whether actuarial assumptions used in benefits calculations must be reasonable per se. Instead, as the same court later explained, it was about whether state employees had a “contractual right to . . . a benefit calculated based on any particular set of mortality tables adopted by the [state retirement board].” *Lenander v. Wash. State Dep’t of Ret. Sys.*, 377 P.3d 199, 212 (Wash. 2016). *King County* didn’t hold that outdated actuarial assumptions “would be actuarially unsound” because of their *outdatedness*. Instead, the court said that it would be improper to apply “mortality tables rejected by” the state retirement board because “the statutes carve out and retain for [the state board] the authority to periodically update actuarial regulations.” *Id.* In other words, *King County* decided that it would be “actuarially unsound” for the state retirement system to use actuarial assumptions that it had abridged by subsequent regulation—not because the old actuarial assumptions were “unreasonable” in some technical sense.³

³ The other state cases the majority cites falter for similar reasons. Start with the Pennsylvania trial court’s decision in

Aside from its inapplicability, the majority's cited state caselaw doesn't represent the universal view. Indeed, a quick survey yields *other* state caselaw that holds just the opposite. Take Alaska as an example. That state's public-employee retirement system adopted a new actuarial table in 1982, "based on then-current mortality and interest earnings data, which superseded the table in effect since 1972." *Sheffield v. Alaska Public Employees' Ass'n, Inc.*, 732 P.2d 1083, 1084 (Alaska 1987). The Alaska Supreme Court held that the state pension plan was *obligated* to use the outdated actuarial assumptions for retirees hired before the switch. *See id.* at 1089. To do otherwise

O'Dea v. Public School Employes' [sic] Retirement Board, 88 Pa. D. & C. 593 (Ct. C.P. Pa. 1954). There, the court held that the state's retirement board could exercise its statutory authority to apply new actuarial assumptions retroactively, not that the state's retirement board had to use reasonable actuarial assumptions. *Id.* at 602–03 (explaining the state's statutory scheme, allowing the retirement board to adopt new mortality tables and apply them even to retirees who entered the system when older tables were in effect). Although the court opined that "actuarial equivalent . . . means calculations made at retirement according to the best actuarial information and tables . . . available to the actuary" at that point in time, it went on to uphold the state system's use of a 1934 table to a woman who retired in 1947—not because it was the best or most reasonable table in a mathematical sense, but because it was the most up-to-date table issued by the board. *See id.* at 604 (internal quotation marks omitted). And the California case the majority cites falls even further afield. There, the intermediate appeals court resolved a question of family law—whether an ex-wife could claim her deceased ex-husband's retirement benefits under their divorce decree despite the decedent's remarriage—and only in passing mentioned the concept of actuarial equivalence. *Berry v. Bd. of Ret.*, 23 Cal. App. 3d 757, 758–59 (Cal. Ct. App. 1972).

would “vitiate” their contractual expectations (enshrined in a provision of the state’s constitution) to receive not just any pension, but a “particular amount” based on the actuarial factors specified by the plan at the time they signed up. *Id.* In so holding, the Alaska Supreme Court expressly rejected its Washington-state counterpart’s reasoning in *King County*—the case the majority believes establishes that actuarial assumptions must be reasonable.

So I think the majority overemphasizes marginal sources.⁴ And at the same time, it discounts the best information we’ve got—the other ERISA provisions (discussed above) that *do* mention reasonableness in actuarial assumptions. The majority discards those provisions by reasoning that the “*Russello* presumption”—that is, the common-sense notion that Congress really means it when it omits a term from one provision while including it elsewhere—doesn’t apply

⁴ Alongside the caselaw, the majority quotes a few academic sources that advise actuaries to use “appropriate mortality tables” and to “review[] and modify[]” their assumptions to “continue to fairly assess” prevailing conditions. Maj. Op. p.11 (first quoting William F. Marples, *Actuarial Aspects of Pension Security* 40 (1964); and then quoting Jeff L. Schwartzmann & Ralph Garfield, Educ. & Exam. Comm. of the Soc’y of Actuaries, *Actuarially Equivalent Benefits* 11, EA1-24-91). But professionals’ views about their responsibilities don’t give independent meaning to Congress’s words. And even crediting the cited works at face value, they don’t speak for all contemporaneous actuarial academics—just like *King County* didn’t speak for all state supreme courts—and no one has given us good reason to privilege one set of academics’ views over others. Indeed, as the appellees explain in their supplemental briefing, other academics “were agnostic about the selection of actuarial assumptions to calculate an ‘actuarial equivalent’ benefit.” Suppl. Appellee Br., pp.3–8 (collecting examples).

here. In so doing, it reads § 1055(d) to say something that Congress itself opted not to express.

The majority’s reasoning doesn’t support such a departure from our customary role to interpret, not legislate. It claims the power to import reasonableness into § 1055(d) because that provision is sufficiently “dissimilar” from the other ERISA sections to overcome the *Russello* presumption. Maj. Op. pp.17–18. But the single case the majority cites for support doesn’t help. Although the majority is right that the Supreme Court discarded the *Russello* presumption in a case where “difference[s] in the formulation of the provisions under inspection” made it a poor fit, *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 436 (2002), we’ve explained elsewhere that the *type* of difference matters. Specifically, the presumption applies “when two provisions are sufficiently distinct that they do not—either explicitly or implicitly—incorporate language from the other provision.” *Grand Trunk W. R.R. Co. v. United States Dep’t of Lab.*, 875 F.3d 821, 825 (6th Cir. 2017) (quoting *Port Auth. Trans-Hudson Corp. v. Sec’y, U.S. Dep’t of Lab.*, 776 F.3d 157, 164 (3d Cir. 2015)). But it weakens “with each difference in the formulation of the provisions under inspection.” *Ours Garage*, 536 U.S. at 435–36. Said differently, the provisions must be distinct enough that they don’t presumptively incorporate each other’s words, but they must not be so different that a comparison would be inapt.

Given that standard, §§ 1055(d) and 1083(h) should receive the *Russello* presumption. As the majority points out, the two provisions appear in different parts of ERISA that handle different problems.

Maj. Op. p.18. So they wouldn't presumptively incorporate each other's commands. At the same time, both sections substantially involve the same issue: actuarial decisionmaking. Section 1083(h) concerns the actuarial assumptions used to calculate "any present value or other computation" (including actuarial equivalence) for plan-funding purposes while § 1055(d) homes in on one such computation—actuarial equivalence—for benefit-translation purposes. *Cf. FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (explaining that the "meaning of [a] statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand"). So for our purposes, any differences in formulation are merely superficial. Both sections involve the same mathematical concept—actuarial calculation. And although Congress opted in one section to specify that the assumptions used in those calculations should be reasonable, it omitted that requirement in another section about substantially the same thing. We should take Congress at its word.⁵

⁵ Another one of *Russello*'s underlying rationales also weighs in favor of applying the presumption here. As then-Judge Alito explained, "[t]he *Russello* canon is based upon a hypothesis of careful draftsmanship." *Kapral v. United States*, 166 F.3d 565, 579 (3d Cir. 1999) (Alito, J., concurring). That makes sense—the more carefully drafted a document, the more likely an omission can't be "ascribe[d] to a simple mistake in draftsmanship." *Id.* (quoting *Russello*, 464 U.S. at 23). We've recognized that rationale in this circuit, too. *Grand Trunk*, 875 F.3d at 826 n.5 (quotation omitted). And if there's any statute that can be described as "carefully drafted," it's ERISA. See *Sprague v. General Motors Corp.*, 133 F.3d 388, 401–02 (6th Cir. 1998) (finding that an omission in one ERISA provision of a requirement stated in

Ultimately, both the ordinary and technical meanings of actuarial equivalence require only that a QJSA calculated under § 1055(d) have “present values . . . equal” to that of the employee’s SLA “under a given set of actuarial assumptions.” *Stevens*, 644 F.3d at 440; see Actuarial Equivalent, *Black’s Law Dictionary* (12th ed. 2024). Our traditional tools of statutory interpretation show that those actuarial assumptions need not be “reasonable” under § 1055(d). By concluding otherwise, the majority departs from our typical statutory analysis and, indeed, from the constitutional confines of our judicial role into the legislative.

II.

The majority perhaps bends the text because of its concern that “Defendants’ construction would allow employers to use dramatically outdated mortality data,” an allegedly “absurd” outcome. Maj. Op. p.16 (quoting *Dodd v. United States*, 545 U.S. 353, 359 (2005)). But “[t]he disposition required by the text here, though strict, is not absurd.” *Dodd*, 545 U.S. at 359. That’s because a distinct body of law—the Internal Revenue Code (IRC) and its implementing regulations—requires pension plans to use “reasonable” actuarial factors to calculate QJSAs or risk losing their tax-exempt status. So to the extent the majority worries that a faithful reading of ERISA would allow pension plans to toy with their beneficiaries’ benefits, the IRC’s much weightier penalties already address that concern.

another provision “was no mistake” because “ERISA, after all, is a ‘comprehensive and reticulated statute’” (quoting *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 361 (1980))).

First, a word on the law. Many of ERISA’s requirements have “nearly verbatim replication” in the Internal Revenue Code. *Thornton v. Graphic Commcns. Conf. of Int’l Broth. of Teamsters*, 566 F.3d 597, 602 n.4 (6th Cir. 2009) (quoting *Cent. Laborers’ Pension Fund v. Heinz*, 541 U.S. 739, 746 (2004)). So when a pension plan violates one of ERISA’s substantive requirements, it can also “lose[] its tax-exempt status” under the IRC. *Id.* Section 1055 follows that mold, finding its IRC parallel in 26 U.S.C. § 401. Both sections require defined-benefit pension plans to offer QJSAs. The ERISA version “impose[s] [the] substantive” requirement, while the IRC version “condition[s] the eligibility of pension plans for preferential tax treatment on compliance” with that substantive requirement. *Cent. Laborers’*, 541 U.S. at 746. And both provisions provide that a qualified QJSA must be actuarially equivalent to the participant’s SLA, without further defining what constitutes actuarial equivalence. 29 U.S.C. § 1055(d); 26 U.S.C. § 401(a)(13)(D).

Of course, we have no occasion to definitively interpret the IRC or its implementing regulations here. But those provisions counter the majority’s contention that ERISA’s most natural reading would “allow an employer to use mortality rates that are completely out of step with the mortality rate of modern-day plan participants.” Maj. Op. p.16. Sure, a plan wouldn’t violate ERISA (properly understood) by using outdated rates. But that’s not much to grieve. Using those rates could violate the IRC and its implementing regulations, which would bring a far worse fate for the pension plans. *See Tax Consequences of Plan Disqualification*, Internal Revenue Serv. (last visited Nov. 17, 2025).

So because the specter of a massive tax burden probably provides a greater incentive than ERISA's private remedies, the majority needn't rush in to do the work of the legislature. After all, ERISA's penalties are standard fare: per-day fines, damages necessary to make up shortfalls in benefit distributions, and the like. *See* 29 U.S.C. § 1132. The IRC's penalties differ in degree and in kind. Among other benefits, plans in compliance with § 401 qualify for tax-free growth on plan assets and immediate deductibility of employer contributions. *See* 26 U.S.C. §§ 404, 501. Upon disqualification, those benefits vanish. And that deprivation is retroactive—meaning that the plan doesn't just lose its deductions and tax-exemptions going forward, but also stretching back to the time it breached § 401's requirements. *See Martin Fireproofing Profit Sharing Plan & Tr. v. Comm'r*, 92 T.C. 1173, 1184–89 (T.C. 1989). For plans as large as the ones at issue here,⁶ the value of those tax exemptions and deductions likely dwarf any plausible liability under ERISA.

⁶ According to forms filed with the federal government, the FedEx Corporation Employees' Pension Plan's assets had a market value of nearly \$26 billion as of June 2024. FedEx Corporation, Form 5500 (filed Mar. 11, 2025). The Kellanova Pension Plan accounted for just shy of \$1.25 billion as of January 2024. Kellanova, Form 5500 (filed Oct. 15, 2025). And the BCTGM Plan had about \$450 million by December 2024. WK Kellogg Co., Form 5500 (filed Oct. 21, 2025). All those figures are matters of public record, obtainable via the Department of Labor's Form 5500 search tool.

To put a finer point on it all: the planes won't fall from the sky if we give § 1055(d) its most natural reading. The IRC imposes a reasonableness requirement on pension plans' actuarial assumptions when calculating QJSAs. And avoiding the IRC's penalties is probably a far greater impetus for the pension plans in this case than worrying about ERISA's private remedies. So putting aside whether such considerations should ever weigh into our textual analysis (they shouldn't), I struggle to credit the majority's concern that pension plans will start using "dramatically outdated mortality data" like "a mortality table from the sixteenth century" as a consequence of our fidelity to the statutory text.⁷ Maj. Op. p.16.

In all fairness, the majority recognizes that § 401 and its implementing regulations have a role in this analysis—it just goes about it the wrong way. Rather than see those sources as an independent check on pension plans' selection of actuarial assumptions, the majority takes the Treasury's definition of an IRC term and uses it to overwrite Congress's definition of the same term under ERISA.

That approach is problematic. At the outset, the fact that the Treasury deemed it necessary to specify a reasonableness requirement by regulation shows that the plain meaning of the statute doesn't convey that requirement. In other words, and in keeping with the *Russello* presumption explained above, the

⁷ In addition, as I note below, if companies play games with ERISA, Congress can address it, which it's done before.

Treasury’s inclusion of reasonableness in its regulation shows that Congress meant it when it left reasonableness out of its definitions.

More importantly, the majority misapplies the Supreme Court’s recent opinion in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), to argue that the Treasury’s regulatory definition of QJSA is entitled to “great respect”—great enough to effectively amend Congress’s own definition of the same term. Maj. Op. p.13. *Loper Bright* did recognize the “due respect” courts can accord to “roughly contemporaneous[]” agency interpretations of statutory terms. *Loper Bright*, 603 U.S. at 386. At the same time, though, the Court emphasized that “[s]uch deferential review [is] cabined.” *Id.* at 389. It extends only when “a particular statute empowered an agency to decide how a broad statutory term applied to specific facts found by the agency.” *Id.* at 388. This isn’t such a case. As the majority recognizes, the Treasury promulgated its QJSA definition in 1977—one year before the Reorganization Plan of 1978 gave it interpretive authority over ERISA. *See* 43 Fed. Reg. 47713, 92 Stat. 3790 (1978). That fact alone undermines the majority’s focus on contemporaneity.

And even after it received authority over ERISA, the Treasury twice amended the relevant regulation without extending its interpretation of “QJSA” under the IRC to ERISA’s shores. Both amendments mentioned the Treasury’s authority to interpret ERISA, but neither exercised it over § 1055(d) (the provision at issue in this case). *See* 53 Fed. Reg. 31837, 31838–39 (Aug. 22, 1988) (providing that the updated regulation’s “requirements also apply to employee plans

subject to Title I of ERISA,” but not that the regulation interprets ERISA’s text); 68 Fed. Reg. 70141, 70141–42 (Dec. 17, 2003) (providing that the updated regulation applies to ERISA § 205(c)(3), codified at 29 U.S.C. § 1055(c)(3), but no more broadly). That history shows that the Treasury established a reasonableness requirement only for QJSAs under the IRC, not ERISA. And so it wouldn’t make much sense to follow an agency’s interpretation of a statutory term—no matter how close in time to the statute’s enactment—if the interpretation isn’t oriented toward *the* statute at issue, but *a* statute that happens to contain the same language.

III.

Finally, I’d be remiss not to point out that the majority’s intrusion into the legislative role carries consequences of its own. ERISA, like all legislative enactments, represents a delicate balancing of competing interests hashed out by the people’s democratically elected representatives. And we disturb Congress’s judgment at our own peril.

In crafting ERISA, Congress took care to not make the statute “so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place.” *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (alteration in original) (quoting *Variety Corp. v. Howe*, 516 U.S. 489, 497 (1996)). It would be one thing if the text of the statute required such an outcome. But here we face—at most—congressional silence. And because the plain language of the statute doesn’t contemplate a reasonableness requirement for a plan’s

actuarial assumptions, I see no reason to impose one by judicial fiat.

The most likely result of the majority's decision is even more litigation and higher administrative costs. These costs will be passed on and will ultimately injure the continued viability of the plans. So it's hard to see how this standard will benefit anyone besides the attorneys who litigate these cases.

Moreover, Congress has repeatedly shown that it's willing and able to amend ERISA to respond to new developments in the world of retirement benefits security. For example, a House committee report on the Pension Protection Act of 2005 (which didn't itself become law, but largely mirrored the act of the same name passed the following year) noted that Congress wanted to amend part of ERISA to address the use of "outdated" mortality tables in plan-funding calculations. H.R. Rep. No. 109-232, pt. 1, at 61 (2005). And Congress addressed that concern in the Pension Protection Act of 2006 by requiring pension plans to use mortality tables promulgated "at least every 10 years" by the Secretary of the Treasury to "reflect the actual experience of pension plans and projected trends in such experience." Pub. L. No. 109-280, § 102, 120 Stat. 780, 800 (2006) (codified at 29 U.S.C. § 1083(h)). Similarly, a House committee report on the Retirement Protection Act of 1994 described why Congress adopted a cap on interest-rate assumptions in some actuarial calculations: "to prevent plans from using unreasonably high interest rates to determine the present value of participants' benefits," which "could lower the single sum paid to participants." H.R. Rep. No. 103-632, pt. 2, at 57 (1994).

All this is not to say that we should make any decision about what the text means based on policy considerations or predictions of congressional priorities. Indeed, my point is just the opposite: we should leave policy considerations to Congress as the people's elected representatives. We judges, on the other hand, should focus our energies only on interpreting Congress's words as written. We pierce the veil of Congress's underlying policy rationales at our own peril, limited as our sightlines are by the nature of litigation as opposed to legislation. So because "ERISA is a 'comprehensive and reticulated statute,'" we should be "reluctant to tamper with [the] enforcement scheme' embodied in the statute by extending remedies not specifically authorized by its text." *Great-W. Life & Annuity Ins. v. Knudson*, 534 U.S. 204, 209 (2002) (alteration in original) (first quoting *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251 (1993); and then quoting *Mass. Mut. Life Ins. v. Russell*, 473 U.S. 134, 147 (1985)).

* * *

Because the plain meaning of the statute doesn't support the majority's interpretation, I respectfully dissent.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Case No. 2:23-cv-02593-JPM-atc

CRAIG A. COVIC, MARK J. ABBOTT, ROBERT A. WATT,
GARY J. FRIESEN, MICHAEL H. MCKENNA, AND
GEOFFREY B. COE, ON BEHALF OF THEMSELVES AND ALL
OTHERS SIMILARLY SITUATED,
PLAINTIFFS,

v.

FEDEx CORPORATION, THE FEDEx CORPORATION
EMPLOYEES' PENSION PLAN, THE RETIREMENT PLAN
INVESTMENT BOARD OF FEDEx CORPORATION, AND
JOHN/JANE DOES 1–10,
DEFENDANTS.

Filed: Sept. 18, 2024

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFFS'
CONSOLIDATED COMPLAINT**

Before the Court is Defendants' Motion to Dismiss Plaintiffs' Consolidated Complaint. (ECF No. 46.) Plaintiffs' claims under the Employee Retirement Income Security Act ("ERISA" or "the Act") appear to hinge on the meaning of "actuarial equivalent" under

§ 1505 of the Act. (See ECF No. 50 at PageID 727, 743); 29 U.S.C. §§ 1055(d)(1)(B), (d)(2)(A)(ii) (imposing the “actuarial equivalent” requirement for a qualifying joint and survivor annuity and a qualifying optional survivor annuity, respectively). Plaintiffs allege that there is a reasonableness requirement for actuarial equivalence implicit in the statutory language and incorporated through federal regulations and industry customs. (ECF No. 50 at PageID 738–39.) Defendants counter that no such requirement exists given the statutory text and Congress’s express inclusion of reasonableness requirements elsewhere in the Act. (ECF No. 46-1 at PageID 363–65.) For the reasons discussed below, Defendants’ Motion is **GRANTED**.

I. BACKGROUND

The issue at hand is the calculation of joint and survivor benefits under the Retirement Plan (“the Plan”) sponsored and executed by Defendants. (See ECF No. 33 at PageID 183–86.) In addition to single life annuities (“SLAs”), the Plan offers joint and survivor annuities (“JSAs”), or annuities for “the participant’s life with a contingent annuity payable to the participant’s beneficiary (usually a spouse) for the life of the beneficiary.” (ECF No. 33 at PageID 166.) Regardless of the selected percentage, the monthly amount payable on a JSA will be less than that on an SLA due to the calculated possibility that the participant will predecease the beneficiary, who will continue to receive benefits. (*Id.*) However, ERISA § 205(d), codified at 29 U.S.C. § 1055(d), requires that qualifying JSAs (“QJSAs”) be the “actuarial equiva-

lent of the participant's SLA.” (*Id.*) “Actuarial equivalence is determined by applying a ‘conversion factor,’ which is the number generated by the combination of mortality and interest rate assumptions.” (ECF No. 54 at PageID 777.) The Plan uses the UP-1984 mortality table (“UP-84”), based on data from the 1970s, in calculating most of the named Plaintiffs’ benefits.¹ (ECF No. 33 at PageID 167–68.)

Plaintiffs are pilots who worked for Defendant FedEx Corporation and participated in the Plan. (ECF No. 33 at PageID 165, 169–70.) Plaintiffs filed their Consolidated Complaint on November 6, 2023. (ECF No. 33.) Plaintiffs submitted two claims for relief alleging Defendants’ mortality methodology constitutes: (i) a violation of ERISA’s mandate for actuarial equivalence between the Plan’s QJSAs and the SLA (“Claim I”); and (ii) a breach of Defendants’ fiduciary duty under ERISA (“Claim II”). (ECF No. 33 at PageID 195–99.)

Defendants filed the present Motion to Dismiss on December 21, 2023. (ECF No. 46.) Plaintiffs filed their Memorandum in Opposition to the Motion (“Opposition”) on January 23, 2024, and Defendants filed their Reply in Support on February 13, 2024. (ECF Nos. 50, 51).

¹ The Plan also uses the 1971 Group Annuity Mortality Table (“1971 GAM”), based on data from the 1960s, for one named Plaintiff, Robert Watt. (ECF No. 33 at PageID 168-69.) The UP-84 is thus the primary mortality table at issue and was the only one covered in Plaintiffs’ Opposition to this Motion. (See ECF No. 50.)

II. PARTIES' ARGUMENTS

Plaintiffs allege that Defendants failed to provide actuarial equivalent retirement benefits to its pilots in violation of § 1055. (See ECF No. 33 at PageID 193–94.) Plaintiffs allege that Defendants' use of mortality tables based on fifty- and sixty-year-old data in calculating the pilots' QJSAs under the Plan was unreasonable because the chosen tables did not reflect modern mortality data. (See ECF No. 33 at PageID 183–86.) Defendants' use of these tables thus allegedly violated ERISA's requirement of actual equivalence between QJSAs and SLAs offered under the Plan by “material[ly] reducing the monthly benefits that [Plaintiffs] receive[d] in comparison to the monthly benefits they would receive if Defendants used factors based on updated, reasonable actuarial assumptions.” (ECF No. 33 at PageID 193–94.)

On the other hand, Defendants argue that the Plan follows ERISA's mandates regarding QJSAs because the Act does not require reasonable or other specific assumptions for actuarial equivalence under § 1055(d). (See ECF No. 46-1 at PageID 363–64.) Defendants point to other areas of the Act, including within § 1055, which require a reasonableness factor or specific mortality tables and actuarial assumptions. (Id. at PageID 364–65, 367.) Defendants assert that the lack of additional requirements beyond actuarial equivalence under § 1055(d) means the Plan's use of the UP-84 and 1971 GAM are not in violation of ERISA. (See id. at PageID 362.) Accordingly, Defendants allege that Plaintiffs fail to state a claim for relief under the law, thus requiring the dismissal of the case at hand. (See id. at PageID 369.)

III. LEGAL STANDARD

Under the Federal Rule of Civil Procedure 12(b)(6), a plaintiff must allege enough facts to state a claim to relief under the law that is “plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). When reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept the complaint’s factual allegations as true. See id. at 555–56. However, the Court should not accept “legal conclusions” or “[t]hreadbare recitals of the elements of a cause of action.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). If the Court’s context-specific review of the plaintiff’s factual allegations does not permit the Court to “infer more than the mere possibility of misconduct,” the plaintiff has failed to show that they are entitled to relief. Id. at 679 (citing Fed. R. Civ. P. 8(a)(2)).

In a Rule 12(b)(6) motion, courts can only consider the complaint, the attached exhibits, and any “items appearing in the record . . . and exhibits attached to [the] defendant’s motion to dismiss so long as they are referred to in the [c]omplaint and are central to the claims contained therein.” Reichert v. Bakery, Confectionary, Tobacco Workers & Grain Millers Pension Comm., No. 2:23-cv-12343, 2024 U.S. Dist. LEXIS 113803 at *3 (E.D. Mich. Apr. 17, 2024) (quoting Bassett v. Nat’l Collegiate Athletic Ass’n, 528 F.3d 426, 430 (6th Cir. 2008)).

IV. ANALYSIS

While courts in other circuits have tackled some of the questions central to Plaintiffs’ claims, see Hern-
don v. Huntington Ingalls Indus., Inc., No. 4:19-CV-

52, 2020 WL 3053465, *2 (E.D. Va. Feb. 20, 2020) (district court case in the Fourth Circuit holding that actuarial equivalence requires “‘reasonable’ data”) (collecting cases), there do not appear to be cases within this circuit directly addressing such questions. See Reichert, 2024 U.S. Dist. LEXIS 113803 (district court case within the Sixth Circuit cited in the reviewable record regarding the instant issue). Accordingly, there is no apparent Sixth Circuit precedent compelling a particular outcome as to this Motion. The Court, however, finds persuasive the arguments proffered by Defendants and the Eastern District of Michigan in Reichert regarding the plain reading of the Act and so dismisses both of Plaintiffs’ claims.

a. Claim I – Failure to Use “Reasonable” Assumptions for QJSAs

Plaintiffs argue that ERISA requires that Defendants use mortality tables based on reasonable assumptions to meet the actuarial equivalence requirement of § 1055(d). (ECF No. 33 at PageID 193–94.) They point to Department of Treasury regulations; out-of-circuit case law, see, e.g., Urlaub v. CITGO Petroleum Corp., No. 21 C 4133, 2022 WL 523129 (N.D. Ill. Feb. 22, 2022) (Seventh Circuit); and their interpretation of the plain meaning of the Act. (ECF Nos. 33, 50.)

ERISA is a carefully crafted legislative scheme governing retirement pensions. See Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 510 (1981). Congress listed the metrics and definitions that retirement pension plans should use for calculating benefits, including designating which regulation or Secre-

tary would define such. For example, § 1055(g) specifies the applicable mortality tables that plans must utilize when calculating lump sum benefits. See 29 U.S.C. § 1055(g)(3)(B) (“a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under [§ 1083(h)(3)(A)]”). Under established doctrines of statutory interpretation, courts should generally find that the omission of specific language that Congress uses elsewhere in a statute was intentional. See Russello v. United States, 464 U.S. 16, 23 (1983) (“Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”) (citation omitted); Stalley ex rel. United States v. Methodist Healthcare, 2006 WL 8452338, at *3 (W.D. Tenn. Dec. 22, 2006) (McCalla, J.) (applying the same principle in interpreting the False Claims Act).

Section 1055(d), which governs the issue at hand, requires that QJSAs be the “actuarial equivalent” of the offered SLA. Section 1055(d), however, does not require a specific set of assumptions, reasonable or not, for actuarial equivalence for QJSAs. Other sections of ERISA do require the use of certain assumptions and/or reasonableness criteria. See 29 U.S.C. § 1055(g)(3)(B); 29 U.S.C. § 1393(a)(1) (requiring that withdrawal liability be calculated using “actuarial assumptions and methods which, in the aggregate are reasonable”); 29 U.S.C. § 1085 (requiring that plan funding rely on “reasonable” “actuarial assumptions and methods”). If Congress intended to include a reasonableness requirement for § 1055(d), it could have—

but it did not. See Russello, 464 U.S. at 23; Stalley, 2006 WL 8452338, at *3; see also Whitman v. Am. Trucking Ass’n, 531 U.S. 457, 468 (2001) (Congress “does not alter the fundamental details . . . in vague terms of ancillary provisions.”). Furthermore, courts disagree as to whether calculating actuarial equivalence requires the use of reasonable assumptions. See Adams v. U.S. Bancorp, 635 F. Supp. 3d 742, 749–50 (D. Minn. 2022) (summarizing recent conflicting court rulings on the meaning of “actuarial equivalence” under § 1054(c)(3) regarding accrued benefits); see also Stephens v. U.S. Airways Grp., Inc., 644 F.3d 437, 440 (D.C. Cir. 2011) (providing the established meaning of “actuarial equivalent” as when the present values of two benefits payments “are equal under a given set of assumptions”) (emphasis added).

Plaintiffs argue that authority beyond the statutory text incorporate the reasonable assumptions requirement into the actuarial equivalence requirement under § 1055. Plaintiffs state that actuarial equivalence is a “term of art” defined elsewhere which this Court must follow. (ECF No. 50 at PageID 737.) In support of that definition, Plaintiffs point to certain professional Actuarial Standards of Practice (“ASOPs”), on which ERISA’s regulations allegedly rely, as mandating reasonable actuarial assumptions. (Id. at PageID 738.) However, the cited ASOPs only use the suggestive “should” rather than the mandatory “shall” present in other parts of ERISA and § 1055. (See id.); see also, e.g., § 1055(a) (dictating “[r]equired contents for applicable plans” with multiple “shall” statements). Moreover, Plaintiffs cite certain regulations as mandating reasonable assumptions in actuarial equivalence calculations, (see ECF

No. 50 at PageID 738 & n.9); however, none is enforceable or applicable to § 1055(d) and, consequently, its actuarial equivalence requirement. See Belknap v. Partners Healthcare Sys., Inc., 588 F.Supp.3d 161, 171–73 (D. Mass 2022) (finding that §§ 401 and 417 of the Code of Federal Regulations are unenforceable under ERISA and § 411 applies to lump sum benefits, not annuities). Accordingly, there is no extra-statutory reasonableness requirement for Defendants to follow when determining the QJSAs. Thus, the Plan’s mortality methodology does not violate ERISA or give rise to an actionable claim against Defendants.

Defendants raise other arguments regarding Plaintiffs’ failure to state a claim which provides a basis for this Court to grant relief as to Claim I. First, Defendants claim that some of the Plaintiffs are not covered by § 1055(d) based on their selected 100% QJSAs. (ECF No. 46-1 at PageID 16.) Defendants also assert that the relationship between the Plan and the collective bargaining agreement (“CBA”) demonstrates that the challenged QJSAs at issue and the underlying assumptions were the subject of collective bargaining. (Id. at PageID 22–23.) Plaintiffs correctly state that parties cannot simply contract around the mandates of ERISA. (ECF No. 50 at PageID 730–31); see also Esden v. Bank of Boston, 229 F.3d 154, 172–73 (2d Cir. 2000). While ERISA creates a floor for bargaining, there is no sign that the Plan argued in accordance with and incorporated into the CBA did not meet or exceed that floor since there was no explicit or otherwise applicable reasonableness requirement for the mortality assumptions. (See ECF No. 51 at PageID 753.) Regardless, since this Court can decide

this Motion on the grounds discussed above, no determination of these additional arguments is necessary here.

The meaning of actuarial equivalence is a matter of law, not fact. It is a key element of Plaintiffs' claim against Defendants for a violation of ERISA. (See ECF No. 33.) Plaintiffs concede that the contested benefits were calculated in accordance with the Plan's terms. (ECF No. 46-1 at PageID 23.) Plaintiffs have failed to allege facts that Defendants' use of the UP-84 under the Plan's terms violated the actuarial equivalence requirement of § 1055(d) for the reasons discussed above. Thus, this Court **GRANTS** Defendants' Motion to Dismiss as to Claim I.

b. Claim II – Breach of Fiduciary Duty

Plaintiffs' claim for breach of fiduciary duty is dependent on the alleged violation of ERISA. See Reichert, 2024 U.S. Dist. LEXIS 113803, at *6–7. Regardless of whether Defendants are fiduciaries under ERISA,² there was no breach of fiduciary duty by Defendants' mortality methodology since, as established above, such methodology did not violate ERISA. Since there is no violation, Plaintiffs have failed to state a claim upon which this Court can grant relief under Claim II. Accordingly, the Defendants' Motion to Dismiss as related to Claim II is **GRANTED**.

² Defendants argue that they are not fiduciaries, and therefore do not owe fiduciary duties to Plaintiffs in the administration of the Plan. (ECF No. 46-1 at PageID 23–24.)

V. CONCLUSION

For the reasons stated above, Plaintiffs failed to state a claim upon which this Court can grant relief. Moreover, Plaintiffs' argument in their Response in Opposition requesting leave to amend their complaint is insufficient as a Motion for Leave to Amend. (ECF No. 50 at PageID 746); see LR 15.1 (listing the required filings and format for a motion to amend). Accordingly, Defendants' Motion to Dismiss is **GRANTED** and Plaintiffs' Motion for Leave to Amend is **DENIED**. This case is **DISMISSED** with prejudice.

SO ORDERED, this 18th day of September, 2024.

/s/ Jon P. McCalla
JON P. McCALLA
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-5945

ROBERT A. WATT; GARY J. FRIESEN; MICHAEL H.
MCKENNA; GEOFFREY B. COE; CRAIG A. COVIC,
PLAINTIFFS-APPELLANTS

v.

FEDEx CORPORATION, FEDEx CORPORATION
EMPLOYEES' PENSION PLAN; RETIREMENT PLAN
INVESTMENT BOARD OF FEDEx CORPORATION;
JOHN/JANE DOES 1–10,
DEFENDANTS-APPELLEES

Entered: May 15, 2026

ORDER

Before: STRANCH, BUSH, and NALBANDIAN, Circuit
Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then

was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied. Judge Nalbandian would grant rehearing for the reasons stated in his dissent.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

* Judges Davis and Mathis are recused in this case.

APPENDIX D

1. 29 U.S.C. 1055(a) provides:

(a) Required contents for applicable plans

Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

2. 29 U.S.C. 1055(d) provides:

(d) “Qualified joint and survivor annuity” and “qualified optional survivor annuity” defined

(1) For purposes of this section, the term “qualified joint and survivor annuity” means an annuity—

(A) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(2)(A) For purposes of this section, the term “qualified optional survivor annuity” means an annuity—

(i) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(ii) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(B)(i) For purposes of subparagraph (A), if the survivor annuity percentage—

(I) is less than 75 percent, the applicable percentage is 75 percent, and

(II) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

(ii) For purposes of clause (i), the term “survivor annuity percentage” means the percentage which the survivor annuity under the plan’s qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.

3. 29 U.S.C. 1055(g) provides:

**(g) Distribution of present value of annuity;
written consent; determination of present value**

(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed the amount that can be distributed without the participant's consent under section 1053(e) of this title. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2) If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 1053(e) of this title, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3)(A) For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(B) For purposes of subparagraph (A)—

(i) The term “applicable mortality table” means a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under subparagraph (A) of section 1083(h)(3) of this title (without regard to subparagraph (C) or (D) of such section).

(ii) The term “applicable interest rate” means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 1083(h)(2)(C) of this title (determined by not taking into account any adjustment under clause (iv) thereof) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 1083(h)(2)(C) of this title (determined by not taking into account any adjustment under clause (iv) thereof) if section 1083(h)(2)(D) of this title were applied by substituting the average yields for the month described in clause (ii) for the average yields for the 24-month period described in such section.