

No. 26-\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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BAKERY, CONFECTIONERY, TOBACCO WORKERS AND  
GRAIN MILLERS PENSION COMMITTEE et al.,  
*Petitioners,*

v.

THOMAS N. REICHERT et al.,  
*Respondents.*

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On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Sixth Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

ERISA provides that pension plans must offer certain joint and survivor annuities that are the “actuarial equivalent” of single life annuities. 29 U.S.C. § 1055(d). In the decision below, a divided panel of the Sixth Circuit held that this language implicitly permits courts to require plan administrators to use “reasonable” actuarial assumptions, even when the assumptions used to calculate equivalence are specified in the plan document. The question presented is:

Whether § 1055(d)’s requirement that certain annuities be “actuarial[ly] equivalen[t]” permits courts to impose an unwritten “reasonableness” requirement on a plan’s actuarial assumptions, or instead requires only mathematical equivalence under the assumptions specified in the plan document.

## LIST OF PARTIES AND PROCEEDINGS

Petitioners are Bakery, Confectionery, Tobacco Workers and Grain Millers Pension Committee; Kellanova f/k/a Kellogg Company; WK Kellogg Company; the Administrative Committee of Kellanova Pension Plan; and John/Jane Does 1-20.

Respondents are Thomas N. Reichert; Stuart R. Buck; and Kenneth A. Henrich, on behalf of themselves and others similarly situated.

This petition arises from the same consolidated judgment as the petition in *FedEx Corporation v. Watt*, No. 26-\_\_\_\_. There are no other related proceedings.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Court Rule 29.6, Petitioners provide the following disclosures:

Bakery, Confectionery, Tobacco Workers and Grain Millers Pension Committee states that no parent corporation or publicly held company owns 10% or more of its stock.

Kellanova f/k/a Kellogg Company states that Kellanova is 100% owned by Acquiror 10VB8, LLC, a Delaware LLC; and Acquiror 10VB8 is 100% owned by Mars, Incorporated, a Delaware corporation and the ultimate parent of the Mars group of companies.

WK Kellogg Company (stock ticker: KLG) states that no parent corporation or publicly held company owns 10% or more of its stock.

The Administrative Committee of Kellanova Pension Plan states that no parent corporation or publicly held company owns 10% or more of its stock.

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## PETITION FOR A WRIT OF CERTIORARI

The Bakery, Confectionery, Tobacco Workers and Grain Millers Pension Committee; Kellanova f/k/a Kellogg Company; WK Kellogg Company; the Administrative Committee of the Kellanova Pension Plan; and John/Jane Does 1-20 respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

### INTRODUCTION

This case presents an important and recurring ERISA question on which the lower courts are divided: whether courts may add an unwritten “reasonableness” requirement to § 1055(d)’s command that joint and survivor annuities be “actuarial[ly] equivalen[t]” to single life annuities. *See* 29 U.S.C. § 1055(d). The Sixth Circuit answered yes. When it did, it converted a requirement based on plan documents and mathematical equivalence into an open-ended judicial inquiry into whether the plan’s stated actuarial assumptions are sufficiently “reasonable”—a standard Congress did not enact and ERISA does not supply. The stakes are enormous. The decision below undermines national uniformity, destroys the predictability on which ERISA is built, encourages a growing wave of class action litigation, and—indeed—threatens the continued viability of defined benefit plans.

ERISA requires defined-benefit plans to offer unmarried participants a single life annuity (“SLA”), which pays benefits for the participant’s life. For married participants, ERISA requires plans to offer a qualified joint and survivor annuity (“QJSA”), which

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pays benefits over the couple's joint lives and then continues a survivor annuity for the spouse. *Id.* § 1055(d)(1)(A). Section 1055(d) requires the QJSA to be the "actuarial equivalent" of the SLA. *Id.* § 1055(d)(1)(B).

That calculation depends on actuarial assumptions—principally interest rates and mortality tables—that determine whether the two benefit forms have equal present value. Congress could have required those assumptions to be "reasonable," current, or periodically updated. It did not. Section 1055(d) says only "actuarial equivalent," even as other ERISA provisions expressly impose reasonableness requirements or prescribe specific actuarial assumptions.

Nonetheless, a divided Sixth Circuit panel held that § 1055(d) implicitly includes a requirement that plan administrators' actuarial assumptions be "reasonable." Relying on a hodge-podge of academic sources, state-court cases, and concededly inapplicable Treasury regulations, App. 13a-19a, the panel majority held that § 1055(d) prohibits "employers from using unreasonable, inappropriate actuarial assumptions when calculating QJSAs," and that plan administrators must use "reasonably accurate mortality data" reflecting the life of a "modern-day plan participant." App. 17a, 26a, 28a. Compounding the problem, the majority provided no guidance as to how a plan administrator could know whether the plan's actuarial assumptions are reasonable or how often plan administrators must update their assumptions to comply with this amorphous standard. Instead, the majority vaguely held only that "reasonableness is a range, not a precise prescription."

App. 19a. Dissenting, Judge Nalbandian explained that the majority had “blue-pencil[ed] a federal statute to match [its] policy preferences,” and warned that its decision “inject[ed] a fuzzy reasonableness requirement into upright math.” App. 30a, 36a (Nalbandian, J., dissenting). In his view, the “most likely result” of the majority’s decision will be “even more litigation and higher administrative costs” that “will be passed on and will ultimately injure the continued viability of the plans.” App. 51a (Nalbandian, J., dissenting).

This Court should grant review. The courts of appeals are divided. The Sixth and Eleventh Circuits read § 1055(d) to require “reasonable” assumptions. *See Drummond v. Southern Co. Servs., Inc.*, 177 F.4th 1076, 1080–81 (11th Cir. 2026). The D.C. Circuit, by contrast, has recognized in a different setting that “[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.*, 644 F.3d 437, 440 (D.C. Cir. 2011) (citation omitted). This correct approach—defining “actuarial equivalen[ce]” as a mathematical calculation based on “given” assumptions—cannot be squared with the Sixth Circuit’s free-floating reasonableness inquiry. Disagreement, moreover, is poised to proliferate, as the issue is recurring frequently in district courts, with many cases on both sides of the divide.

The question presented is also important, with enormous impacts looming for both employers and employees. ERISA encourages, but does not require, employers to offer pension plans. ERISA provides that encouragement in part by ensuring predictability and

specifying that plan sponsors have fixed obligations based on written plan documents. The Sixth Circuit’s standard—requiring that assumptions fall within a judicially administered “range” that is expressly “not a precise prescription”—is the very opposite and encourages nothing but litigation. Litigation-driven uncertainty, moreover, is especially damaging here. Via putative ERISA class actions, small differences in actuarial assumptions can be multiplied across thousands of participants and decades of payments. With such litigation looming, employers may be deterred from maintaining defined benefit plans at all.

The decision below is wrong, too. Section 1055(d) includes no reasonableness requirement. More than that: Congress omitted the word “reasonable” from § 1055(d), even as it included reasonableness requirements elsewhere in ERISA and prescribed specific actuarial assumptions in other provisions. Such contrasting drafting choices always carry great weight, and especially in a statute this Court has repeatedly described as comprehensive, reticulated, and plan-based. Courts in ERISA cases may enforce the plan terms Congress made controlling, but they may not add obligations Congress declined to enact. And that is especially so where a judicially created reasonableness standard is not needed to guard against the use of centuries-old mortality tables: as the dissent below explained, any plan that did so risks the severe penalty of losing its tax-qualified status, so the “majority needn’t rush in to do the work of the legislature.” App. 47a (Nalbandian, J., dissenting).

Finally, this case is an ideal vehicle. The panel below split on precisely the question presented and set forth the competing arguments, in a motion-to-dismiss posture presenting the issue as a pure question of law. Because the relevant arguments have crystallized and uncertainty is already pervasive in the lower courts, no further percolation is warranted.

### **OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Sixth Circuit (App. 1a-52a) is published at 170 F.4th 473. The opinion and order of the District Court for the Eastern District of Michigan (App. 53a-58a) is not reported but is available at 2024 WL 5410419 (E.D. Mich. Apr. 17, 2024). The order of the United States Court of Appeals for the Sixth Circuit denying the petition for panel rehearing and rehearing en banc (App. 59a-60a) is unpublished but available at 2026 WL 1642633 (6th Cir. May 15, 2026).

### **JURISDICTIONAL STATEMENT**

The Sixth Circuit entered its decision on March 16, 2026. On March 30, 2026, Petitioners sought panel rehearing and rehearing en banc. On May 15, 2026, the Sixth Circuit issued an order denying panel rehearing and rehearing en banc. App. 59a-60a. On July 27, 2026, Justice Kavanaugh extended the deadline to file a petition for certiorari until September 15, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## RELEVANT STATUTORY PROVISIONS

Relevant statutory provisions are reproduced at App. 61a-75a.

### STATEMENT OF THE CASE

#### A. Statutory and Regulatory Background

1. The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, is a “comprehensive and reticulated statute” that was the “product of a decade of congressional study of the Nation’s private employee benefit system.” *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251 (1993) (citing *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 361 (1980)).

ERISA rests on voluntariness. “Nothing in ERISA requires employers to establish employee benefits plans.” *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996); *see also Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 91 (1983) (noting ERISA “does not mandate that employers provide any particular benefits”). Rather, ERISA induces the creation of pension plans by “assuring a predictable set of liabilities, under uniform standards of primary conduct,” *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (quotation marks omitted), and by avoiding a “system that is so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place,” *Varsity Corp. v. Howe*, 516 U.S. 489, 497 (1996).

Congress carefully specified the particular obligations it imposed on plans and the remedies it intended for plan participants. And where Congress has

not so specifically legislated, this Court has repeatedly refused to supplement ERISA’s “carefully crafted and detailed” enforcement scheme with obligations that Congress “simply forgot to incorporate expressly.” *Mertens*, 508 U.S. at 254; accord *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985). Thus, this Court has been “especially ‘reluctant to tamper with [the] enforcement scheme’ embodied in the statute by extending remedies not specifically authorized by its text.” *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204, 209 (2002) (quoting *Russell*, 473 U.S. at 147) (alteration in original), and has repeatedly declined invitations to supplement the statute’s “interlocking, interrelated, and interdependent remedial scheme” with judge-made obligations Congress nowhere enacted, *Russell*, 473 U.S. at 146.

2. ERISA covers two types of retirement plans: defined benefit plans and defined contribution plans. This case concerns defined benefit plans, in which employees receive a specified monthly benefit at retirement.

When an employer sponsors a defined benefit plan, ERISA attaches specific conditions to that choice. For unmarried participants, ERISA requires that pension plans offer an SLA. 29 U.S.C. § 1055(a). An SLA provides the participant with a defined benefit payment for the duration of his or her own life. 26 C.F.R. § 1.401(a)-20, Q&A-3. For married participants, ERISA requires the default benefit form to be a QJSA. 29 U.S.C. § 1055(a)–(b); see *Boggs v. Boggs*, 520 U.S. 833, 843 (1997). A QJSA pays an annuity not just for the life of the participant, but also for the life of the surviving

spouse. ERISA 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.” 29 U.S.C. § 1055(d)(1)(A).

3. As relevant here, ERISA 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).<sup>1</sup> Calculating actuarial equivalence requires using an interest rate and a mortality table. *Id.* § 1055(g)(3); Am. Compl. ¶ 36, ECF No. 22 (“Am. Compl.”). The interest rate discounts the value of expected future payments to the date of the calculation. Am. Compl. ¶ 10. The mortality table estimates expected longevity by predicting the rate at which retirees will die at a given age. *Id.* Combined, the interest rate and mortality table create a conversion factor, which is used to determine the QJSA benefit amount that is actuarially equivalent to a single life annuity. *Id.* ¶ 39.

Section 1055(d) does not define the term “actuarial equivalent.” Nor does it otherwise impose requirements or conditions on what actuarial assumptions a plan may use. That silence is in marked contrast to other provisions of ERISA that do impose limitations on the actuarial assumptions that may be used. For example,

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<sup>1</sup> Employers must also permit participants to waive the QJSA and opt for a qualified optional survivor annuity (“QOSA”) in which the surviving spouse receives a chosen percentage of the amount of the annuity payable during the participant’s life. *See id.* § 1055(d)(2)(A). ERISA provides that a QOSA, too, must be “actuarially equivalent” to an SLA. *See id.* § 1055(d)(2)(A)(ii).

ERISA prescribes an “applicable mortality table” and “applicable interest rate” for valuing immediate lump-sum distributions. 29 U.S.C. § 1055(g)(3). ERISA elsewhere requires that multiemployer-plan funding determinations rest on actuarial assumptions, “each of which is reasonable,” *id.* § 1084(c)(3). And ERISA mandates specified interest rates and mortality tables for single-employer funding. *See id.* § 1083(h). Congress used the word “reasonable” dozens of times throughout ERISA, but it did not impose any such express requirement in Section 1055(d).

### **B. Factual Background and Procedural History**

1. Kellanova and WK Kellogg each offer a defined benefit pension plan: the Kellanova Pension Plan and the Bakery, Confectionery, Tobacco Workers and Grain Millers Pension Plan (the “Plans”). Both Plans offer QJSAs to married participants. Am. Compl. ¶¶ 58-72. The Plan documents list the actuarial factors and assumptions applied to perform the actuarial-equivalence conversion. Ex. A, § 2.2, ECF No. 24-1; Ex. O, § 2.2, ECF No. 25-1. Both Plans use the Uninsured Pensioners (“UP”) 1984 Mortality Table, which relies on mortality data from the 1960s and 1970s. *Id.*

2. Respondents are retired, married employees of the former Kellogg Company who receive QJSAs under the Plans. App. 7a-8a. In December 2023, they filed an amended class action complaint alleging that both Plans used outdated mortality tables and improper interest rates to calculate certain pension payments. As relevant here, Respondents claimed that the Plans violated 29 U.S.C. § 1055(d) by failing to provide them with QJSAs that were “actuarially equivalent” to SLAs. In

particular, they alleged that because mortality rates have improved, the UP 1984 Mortality Table assumes fewer total payments for the comparator single life annuity, resulting in a lower conversion factor for the QJSA and an underpayment of benefits.

3. The district court granted Petitioners’ motion to dismiss. App. 53a-58a. The court held that the Plans did not violate the “actuarial equivalence” requirement in § 1055(d) because the “text of 29 U.S.C. § 1055(d) does not require that Plans employ certain assumptions or mortality tables,” nor does it “impute a ‘reasonableness’ requirement on the actuarial equivalence computation.” App. 56a. The court reasoned that, elsewhere in ERISA, Congress had included “reasonableness” requirements and mandated “specific actuarial factors that should be used when calculating other payments,” but did not do so in § 1055(d). App. 56a-57a.

4. A divided Sixth Circuit panel reversed.<sup>2</sup> The majority concluded that 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.” App. 18a. The majority reached that conclusion by interpreting “actuarial equivalence” as a “term of art.” App. 13a. Based on a handful of actuarial secondary sources and mid-twentieth-century state-

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<sup>2</sup> The Sixth Circuit issued a consolidated opinion resolving both the *Reichert* case and the *Watt* case (No. 24-5945), which involved similar allegations raised by married participants in FedEx Corporation’s plans in a suit filed in the Western District of Tennessee.

court decisions—and not a single federal-court case—the majority concluded that “actuarial equivalence” necessarily required the use of “reasonable” actuarial assumptions. App. 13a-17a.

The panel majority did not explain what “reasonableness” requires. The panel said only that reasonableness is a “range, not a precise prescription.” App. 19a. It further suggested that actuarial equivalence required “appropriate” or “suitable” mortality data to align with participants’ life expectancy, App. 15a, such that the mortality data “reasonably reflect[s] the life expectancy of a retiree living in the present day,” App. 18a. Hence, in the panel’s view, mortality tables must be continually “reviewed and modified” to ensure actuarial equivalence. App. 15a (citation omitted).

5. Judge Nalbandian dissented. Relying on the D.C. Circuit’s interpretation of “actuarial equivalence,” Judge Nalbandian concluded that “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.’” App. 45a (Nalbandian, J., dissenting) (quoting *Stephens*, 644 F.3d at 440). Judge Nalbandian examined the meaning of actuarial equivalence, along with related terms from the pension equation—present value, interest rate, mortality table—and concluded that “none of the concepts or terms that go into calculating an actuarial equivalent entail a reasonableness requirement as defined by dictionaries of the time.” App. 35a (Nalbandian, J., dissenting). He further examined

ERISA’s “overall statutory scheme” and concluded that Congress’s omission of any reasonableness requirement was intentional, given that it used the word “reasonable” elsewhere “when it meant to.” *Id.*

Judge Nalbandian observed that the panel relied on a “motley crew” of “non-binding sources,” including an “eclectic collection of academic and legal sources.” App. 37a, 39a (Nalbandian, J., dissenting) (citing *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment)). Judge Nalbandian further showed how the majority cited state-court cases that were plainly distinguishable and “inapplicabl[e],” and did not represent a “universal view,” given that a “quick survey yields *other* state caselaw that holds just the opposite.” App. 40a-41a & n.3 (Nalbandian, J., dissenting).

Judge Nalbandian warned that requiring “reasonable” mortality tables invites costly litigation and higher administrative burdens, the costs of which “will be passed on and will ultimately injure the continued viability of the plans.” App. 51a (Nalbandian, J., dissenting). Congress specifically tried to avoid that result when crafting ERISA. *See id.* And given that Congress “has repeatedly shown that it’s willing and able to amend ERISA to respond to new developments,” making judicial intervention unnecessary, Judge Nalbandian emphasized that “judges[] ... should focus [their] energies only on interpreting Congress’s words as written.” App. 51a-52a (Nalbandian, J., dissenting).

## REASONS FOR GRANTING THE PETITION

### I. THE QUESTION PRESENTED IMPLICATES A GROWING DIVISION OF AUTHORITY.

The lower federal courts are sharply divided as to whether ERISA’s “actuarial equivalence” requirement contains an implicit reasonableness component. That division extends across three courts of appeals and numerous district courts, and judges on both sides of the split have acknowledged the divide. Only this Court can restore the uniformity that ERISA’s “comprehensive and reticulated” scheme requires.

#### A. The Courts of Appeals Are Divided.

The courts of appeals are divided 2-1 as to whether the term “actuarial equivalent” incorporates a reasonableness requirement. In the decision below, the Sixth Circuit held that when Congress required “actuarial equivalence,” it silently meant to require the use of “reasonable” actuarial assumptions. The Eleventh Circuit has since agreed with that interpretation. It held that a “plan converting one form of annuity to its ‘actuarial equivalent’ must base that calculation on the kind of actuarial assumptions a reasonable actuary would use.” *Drummond*, 177 F.4th at 1081; *see also id.* at 1087 (expressly “join[ing] the view of the Sixth Circuit”). Construing “actuarial equivalent” as a term of art, the Eleventh Circuit concluded—based on actuarial publications, the “plain meaning of [the statute’s] component words,” and the “canon against insignificance”—that a reasonableness requirement should be imputed. *Id.* at 1087–88, 1095–96. Under actuarial norms, the Eleventh Circuit reasoned,

“actuarial equivalence connotes a degree of connection to empirical grounding and realistic expectations about the future.” *Id.* at 1090.

The D.C. Circuit has taken the opposite view in considering the definition of “actuarially equivalent” for purposes of calculating lump-sum payments under 29 U.S.C. § 1054(c)(3). It held that the term “actuarially equivalent” requires only a mathematical equivalence of the present value of the two benefits being compared based on the plan’s stated actuarial assumptions. *See Stephens*, 644 F.3d at 440. Because “ERISA does not further define actuarial equivalence,” the court “assume[d] Congress intended that term of art to have its established meaning.” *Id.* And that “established meaning,” the court held, was that “[t]wo modes of payment are actuarially equivalent when their present values are equal *under a given set of actuarial assumptions.*” *Id.* (emphasis added) (citing Jeff L. Schwartzmann & Ralph Garfield, Education & Examination Comm. of the Society of Actuaries, *Actuarially Equivalent Benefits* 1, EA1-24-91 (1991)). Under the D.C. Circuit’s approach—unlike that of the Sixth and Eleventh Circuits—annuities are “actuarially equivalent” simply if their present values are mathematically equal based on actuarial assumptions identified in the plan documents. No other substantive requirement applies.

The circuit conflict is direct, acknowledged, and outcome-determinative. The Eleventh Circuit expressly aligned itself with the decision below. Meanwhile, Judge Nalbandian’s dissent followed the D.C. Circuit’s *Stephens* decision, which he read to

foreclose the majority’s atextual gloss. App. 57a (Nalbandian, J., dissenting). In other words, a plan using the very same mortality table would likely win dismissal in the D.C. Circuit and lose in the Sixth and Eleventh Circuits under governing precedent. This Court’s intervention is required to restore uniformity.

**B. The District Courts Are Also Intractably Divided.**

The federal district courts are also deeply and openly split on the question presented.

Several courts have followed ERISA’s text and declined to line-edit the statute to include an implied “reasonableness requirement”—including by expressly disagreeing with the decision below. In *Berkeley v. Intel Corp.*, the Northern District of California held that “‘actuarial equivalence’ merely reflects a mathematical principle, devoid of an implied ‘reasonableness’ requirement.” *Berkeley v. Intel Corp.*, 2026 WL 948725, at \*4 (N.D. Cal. Apr. 8, 2026). The court reached that conclusion after examining the ordinary meaning of the text (which nowhere mentions “reasonableness”), the “purpose of ERISA,” the “structure of ERISA,” and “congressional history”—repeatedly identifying and rejecting the contrary reasoning of the decision below. *See id.* at \*4–8; *see, e.g., id.* at \*5 (identifying a point “not ... considered by the Sixth Circuit in *Reichert*”). Notably, *Berkeley* relied on a 1976 Society of Actuaries Report on Actuarial Terminology—published just two years after ERISA—which defines “actuarial equivalence” as “[t]he situation where two or more items have an equal actuarial present value under a *selected*

*set of actuarial assumptions,*” with no mention of reasonableness. *Id.* at \*3 (quotation marks omitted).

The District of Massachusetts reached the same result at summary judgment. In *Belknap v. Partners Healthcare System, Inc.*, that court held that “actuarial equivalent” does not incorporate a reasonableness requirement because no such requirement appears “[o]n its face,” and “[g]enerally, courts must assume that any such omission from the text of ERISA is deliberate.” *Belknap v. Partners Healthcare Sys., Inc.*, 588 F. Supp. 3d 161, 170 (D. Mass. 2022); *see also id.* at 170–71 (citing three decisions from this Court emphasizing that courts should not “tamper” with ERISA by authorizing remedies nowhere provided for). Even more to the point, the court explained that “it appears that it is industry practice to refer to plan documents to determine the actuarial assumptions used to calculate an actuarially equivalent benefit,” and that no “reasonableness” requirement exists beyond the plan documents themselves. *Id.* at 174–75. And the court squarely rejected the analysis on the other side of the split, explaining that it rests on regulations and precedents addressed to lump-sum benefits—not annuities. *Id.* at 173.

Finally, the Eastern District of Missouri reached the same conclusion in *Landel v. Olin Corp.*, holding that the plaintiff’s “interpretation is not supported by a plain reading of the text of 29 U.S.C. § 1055.” 2026 WL 785044, at \*4 (E.D. Mo. Mar. 20, 2026). Applying the D.C. Circuit’s definition from *Stephens*, the court found that the plan at issue was “actuarial[ly] equivalen[t]” because it “explicitly stat[ed] which actuarial assumptions it

uses, namely a default interest rate of 9.2% and the 1983 Group Annuity Mortality Table.” *Id.* Though the plaintiffs there contended that the “Plan’s chosen interest rate and mortality table are ‘unreasonable,’” the court disagreed and held that ERISA “does not impose a substantive standard beyond actuarial equivalence.” *Id.* at \*4–5. That conclusion followed from the fact that “ERISA is a carefully worded statute, and every omission is given force,” and because Congress “knew how to add substantive requirements to ERISA, including a reasonableness requirement, and it did not do so in Section 1055(d).” *Id.* at \*5.

Conversely, in line with the decision below, the Southern District of New York held that “ERISA requires that Plan administrators use reasonable actuarial assumptions when converting SLAs into alternative benefits.” *Masten v. Metro. Life Ins. Co.*, 543 F. Supp. 3d 25, 34–35 (S.D.N.Y. 2021).

The Eastern District of Wisconsin has reached the same conclusion in a published decision. *Smith v. Rockwell Automation, Inc.*, 438 F. Supp. 3d 912, 915–16 (E.D. Wis. 2020); *see also Duffy v. Anheuser-Busch Cos., LLC*, 449 F. Supp. 3d 882, 887–92 (E.D. Mo. 2020) (published decision denying dismissal); *Cruz v. Raytheon Co.*, 435 F. Supp. 3d 350, 352–53 (D. Mass. 2020) (same).

Several other decisions have reached the same conclusion as well. For example, the Northern District of Illinois has held that “[o]nly accurate and reasonable actuarial assumptions can convert benefits from one form to another in a way that results in equal value between the two.” *Urlaub v. CITGO Petroleum Corp.*,

2022 WL 523129, at \*6 (N.D. Ill. Feb. 22, 2022); *see also*, e.g., *Paieri v. W. Conf. of Teamsters Pension Tr.*, 2024 WL 3455269, at \*10 (W.D. Wash. June 21, 2024); *Franklin v. Duke Univ.*, 2024 WL 1740479, at \*3–4 (M.D.N.C. Apr. 23, 2024); *Torres v. Am. Airlines, Inc.*, 416 F. Supp. 3d 640, 650 (N.D. Tex. 2019); *Smith v. U.S. Bancorp*, 2019 WL 2644204, at \*3 (D. Minn. June 27, 2019).

### **C. Courts and Commentators Have Acknowledged the Growing Split.**

Judges and commentators have recognized that this conflict is deep and expected to proliferate further absent this Court’s intervention. One court has observed that “[d]istrict courts across the country are split on this issue.” *Berkeley*, 2026 WL 948725, at \*4. Another noted that “[o]ther district courts[] ... have also denied motions to dismiss based on claims that challenge the use of purportedly unreasonable actuarial assumptions.” *Belknap*, 588 F. Supp. 3d at 173; *see also Paieri*, 2024 WL 3455269, at \*9 (similarly noting the split among district courts on the meaning of “actuarial equivalent”). Indeed, the lower courts are split on every aspect of the analysis—not only with respect to the ordinary meaning of the text itself, but also as to the structure and purpose of ERISA in relation to the question presented. *See Berkeley*, 2026 WL 948725, at \*4 (noting split on text); *id.* at \*6 (noting split on structure).

Commentators agree. They report that “[l]arge pension plans have been facing a wave of lawsuits from participants since 2018 relating to whether the qualified joint and survivor annuities (QJSA) and other forms of

annuities provided by the plan are the ‘actuarial equivalent’ of the single life annuities (SLA) offered under the plans.”<sup>3</sup> Other commentators have warned that the “reasonableness” cases “do not offer clear guidance for plan sponsors or plan actuaries as to the legal requirements for actuarial equivalence assumptions.”<sup>4</sup>

Resolving the conflict now is particularly important because the division otherwise threatens to fracture further. At least one court has held that whether to imply reasonableness is a factual question that cannot be resolved even at summary judgment—a third approach that would consign the meaning of a federal statute to case-by-case resolution following a battle of experts. *See Scott v. AT&T, Inc.*, 790 F. Supp. 3d 781, 789-90 (N.D. Cal. 2025).

This Court has not hesitated to grant certiorari to resolve ERISA conflicts of comparable dimension. Given the importance of uniformity and predictability under ERISA, *see* Part II, this Court has not waited for splits to deepen before granting certiorari. For example, last Term, this Court heard *M & K Employee Solutions v. Trustees of the IAM National Pension*

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<sup>3</sup> Chelsea Ashbrook McCarthy & Allison Richter, *The Current Trends in Actuarial Equivalent Suits*, Holland & Knight Alert (Oct. 28, 2025), <https://www.hklaw.com/en/insights/publications/2025/10/the-current-trends-in-actuarial-equivalent-suits>

<sup>4</sup> Katherine B. Kohn et al., *What Is Reasonable? Lessons in Pension Plan Actuarial Equivalence from Three Recent Cases*, ERISA Litigation Blog (July 16, 2026), <https://www.erisa-litigation.com/2026/07/what-is-reasonable-lessons-in-pension-plan-actuarial-equivalence-from-three-recent-cases/>

*Fund*, in which the petition alleged a 1-1 split between the D.C. Circuit and the Second Circuit.<sup>5</sup> The need for uniformity is at least as pressing here.

## II. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT.

The question presented is also important. It affects the retirement security of tens of millions of Americans, the liabilities of hundreds of thousands of employers, and the continued viability of the defined benefit system that ERISA was enacted to encourage.

1. The scope of the affected population is immense. Actuarial equivalence requirements reach many private pension plans, since all traditional pension plans and defined benefit plans that offer annuity payouts are required by ERISA to allow for a joint and survivor annuity. 29 U.S.C. § 1055(a), (b)(1). And defined benefit plans hold nearly \$3 trillion in assets, and disburse over \$250 billion in benefits annually.<sup>6</sup>

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<sup>5</sup> See Petition for a Writ of Certiorari at 10-15, *M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, 608 U.S. 264 (2026) (No. 23-1209), 2024 WL 2159338.

<sup>6</sup> 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>; 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>.

The Sixth Circuit’s decision allows any one of those millions of participants and beneficiaries to sue any time they believe an assumption is not reasonable. Litigation is already exploding. *Cf. Bennett v. Ecolab, Inc.*, 2026 WL 810758, at \*2 (D. Minn. Mar. 24, 2026) (noting that “ERISA’s ‘actuarial equivalence’ requirements ha[ve] been the subject of a wave of litigation in recent years”). And it will only continue to grow—as will the attendant costs—absent prompt resolution of the question presented. App. 51a (Nalbandian, J., dissenting) (warning of “even more litigation and higher administrative costs”).

2. A reasonableness standard also undermines the predictability on which employers rely in offering benefits to employees and may in fact harm some plan participants. Predictable benefit liabilities are essential to encourage employers to adopt benefit plans in the first place. *See, e.g., Conkright*, 559 U.S. at 517. Yet one consequence of the decision below is that administrators would need to perpetually assess whether their plans’ actuarial assumptions remain “reasonable.” Even if they attempted to do so, the task would impose severe costs because continual revisions make it impossible for anyone (either the plan sponsor or the participants) to know what pension payments to expect. And the problems would compound, as an administrator may need to maintain multiple sets of past actuarial assumptions to avoid reducing benefits for participants whose pension payments would actually decrease under the updated assumptions.

In addition, a reasonableness standard risks harming some plan participants. The use of an older mortality

table with shorter life expectancies can *increase* the benefits for individuals who retire after the normal retirement age. *See Belknap*, 588 F. Supp. 3d at 176. Those individuals would be worse off under the standard adopted by the decision below. Recognizing this possibility, some courts have denied class certification where some plan participants are not in fact harmed by the plan’s use of “unreasonable” assumptions. *See, e.g., Torres v. Am. Airlines, Inc.*, 2020 WL 3485580, at \*11 (N.D. Tex. May 22, 2020) (denying class certification because Plaintiffs’ requested relief of “reforming the definition of ‘Actuarial Equivalent’ in the Plans ... would harm some class members [Plaintiffs] seek to represent”); *Thorne v. U.S. Bancorp*, 2021 WL 1977126, at \*2 (D. Minn. May 18, 2021) (similar).

Nor can employers, no matter how hard they try, avoid lawsuits if reasonableness is the governing test. A standard that is a “range, not a precise prescription,” App. 19a, will spur litigation, and more litigation. The decision below provides no meaningful guidance, vaguely requiring adherence to mortality tables reflecting the “modern-day plan participant,” whoever that may be. App. 20a. But it is unclear what this means. Mortality is constantly changing based on numerous factors (geography, health, lifestyle, race, gender, etc.). The Eleventh Circuit’s formulation—requiring “a *degree of connection* to empirical grounding and *realistic* expectations about the future,” *Drummond*, 177 F.4th at 1090—is, if anything, worse. How strong must the connection be? How realistic the expectations? What sort of empirical grounding? As one analyst has observed, with no small understatement, “there has

been no clear pattern nationwide on how federal district courts assess employers' using mortality tables and interest rates to calculate pensions.”<sup>7</sup>

3. If a reasonableness standard becomes widespread, virtually every case will survive at least to summary judgment, as that standard often requires fact or expert discovery. *See, e.g., Rockwell Automation*, 438 F. Supp. 3d at 916 (concluding that “[w]hether the tables are in fact outside the range of reasonableness is a matter to be resolved after discovery”). That in turn produces two consequences, both of which confirm the importance of granting the petition.

First, the pressure to settle will be enormous. As Justice Alito observed, “in modern civil litigation, getting by a motion to dismiss is often the whole ball game because of the cost of discovery,” so “[d]efendants facing those costs often calculate that it is efficient to settle a case even though they are convinced that they would win if the litigation continued.” *Cunningham v. Cornell Univ.*, 604 U.S. 693, 710–11 (2025) (Alito, J., concurring) (citing, *inter alia*, Chubb, *Excessive Litigation Over Excessive Plan Fees in 2023*, pp. 2–3 (Apr. 2023) (ERISA excessive plan fee cases settlement increased six-fold since 2016 and can “cost more to defend than to settle”)).

Such settlements are not hypothetical; they have occurred. Raytheon (now RTX) settled a suit in

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<sup>7</sup> Robert Steyer, *Mortality Table ERISA Lawsuits Face New Legal Landscape – What it Means for Sponsors, Pensions & Invs.* (July 2, 2026), <https://www.pionline.com/rules-regulations/erisa/pi-erisa-retirees-mortality-table-interest-rate-fedex-kellogg/>.

February 2021 for \$59.2 million. MetLife settled a suit in June 2026 for \$23 million. And CITGO Petroleum settled a suit for \$10 million in October 2024.<sup>8</sup> Future settlements are likely to be of a similar magnitude, given that minor differences in mortality tables or interest rates, compounded over decades and across thousands of plan participants, can give rise to massive liabilities.

Second, employers may respond by curtailing or abandoning pension plans altogether, making everyone worse off. As the dissent below explained, in enacting 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.’” App. 50a (Nalbandian, J., dissenting) (citing *Conkright*, 559 U.S. at 517). This Court has recognized that “[n]othing in ERISA requires employers to establish employee benefits plans,” nor does it “mandate what kind of benefits employers must provide if they choose to have such a plan.” *Lockheed*, 517 U.S. at 887; *see also Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 511–12 (1981) (noting that “private parties[] ... control the level of benefits”). That flexibility is best honored by allowing plan sponsors to determine which mortality tables and interest rates to use in calculating actuarial equivalence in this context. The alternative under the Sixth Circuit’s approach is to shift that discretionary choice that Congress intended to place in the plan sponsor’s hands to the courts under an indeterminate “reasonableness” standard.

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<sup>8</sup> Steyer, *supra*.

In the dissent’s words, the “most likely result of the majority’s decision is even more litigation and higher administrative costs,” which will “be passed on and will ultimately injure the continued viability of the plans.” App. 51a (Nalbandian, J., dissenting). That is precisely the outcome ERISA was designed to avoid, and precisely why this Court’s intervention is needed now.

### **III. THE DECISION BELOW IS WRONG.**

Certiorari is also warranted because the decision below is wrong. As Judge Nalbandian explained in dissent, the majority’s reading cannot be squared with the statute’s text, its structure, the relevant precedents and secondary sources, or the Treasury regulation on which the majority relied—and it reflects a form of statutory interpretation this Court long ago abandoned.

#### **A. The Decision Below Is Contrary to ERISA’s Text.**

The decision below violates the bedrock principle of statutory interpretation that Congress “says in a statute what it means and means in a statute what it says there.” *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). The text of § 1055(d) includes no reasonableness requirement. All it requires is “actuarial equivalence.” 29 U.S.C. § 1055(d)(1)(B). The word “reasonable” appears nowhere in that command. *See* App. 30a (Nalbandian, J., dissenting).

Though the decision below claimed not to “read unwritten requirements into the statutory text,” App. 28a, that statement cannot be squared with its holding that § 1055(d) “*inherently* requires mortality

assumptions that reasonably reflect the life of a modern-day plan participant,” despite the absence of any *express* reasonableness requirement in the clear and unambiguous text of § 1055(d). App. 26a. As the dissent put it, the majority “blue-pencil[ed] a federal statute to match [its] policy preferences.” App. 30a (Nalbandian, J., dissenting).

Nor can a reasonableness requirement be derived from looking at the statutory terms themselves. Judge Nalbandian examined the dictionary definitions of “actuarial equivalent” and of the “downstream” terminology it entails—“present value,” “interest rate,” and “mortality table”—and found that “none of the concepts or terms that go into calculating an actuarial equivalent entail a reasonableness requirement, as defined by dictionaries of the time.” App. 35a (Nalbandian, J., dissenting). Rather, a mortality table is “a purely statistical creature.” App. 34a (Nalbandian, J., dissenting).

#### **B. ERISA’s Structure Confirms That Congress Omitted Any Reasonableness Requirement.**

ERISA’s structure, purpose, and history confirm this conclusion. Other provisions in ERISA *do* include a reasonableness requirement with respect to actuarial assumptions, but § 1055(d) conspicuously does not. “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.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (quotation marks omitted). That presumption applies here: ERISA expressly mandates “reasonable”

or specified actuarial assumptions in at least four other places and uses the word “reasonable” dozens of times throughout the statute. But Congress did not include that term here.

The panel majority sought to avoid the force of *Russello*’s presumption by claiming that the other ERISA provisions were “dissimilar.” App. 25a. But all the cited provisions show that Congress used the word “reasonable” with respect to actuarial assumptions when it wanted to so specify, and did not do so in § 1055(d). *See* 29 U.S.C. § 1393(a)(1) (requiring reasonable actuarial assumptions to calculate a multiemployer pension plan’s unfunded vested benefits for withdrawal liability); *id.* § 1432(e)(1) (specifying actuarial assumptions for multiemployer plans receiving Special Financial Assistance under the American Rescue Plan Act); *id.* § 1083(h)(1) (requiring that the actuarial assumptions used to compute present values for minimum-funding purposes be “reasonable”); *id.* § 1085a(c)(3)(A) (requiring a similar reasonable-assumptions requirement for Cooperative and Small Employer Charity pension plans). Here, as the dissent explains, the provisions “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.” App. 44a-45a.

Moreover, the majority incorrectly rejected Petitioners’ reliance on other ERISA provisions because none “contain[s] the term ‘actuarial equivalent.’” App. 26a. In fact, 29 U.S.C. § 1054(c)(3), which governs lump-

sum calculations under 29 U.S.C. § 1055(g), *does* use that term. That provision therefore proves that the majority’s reading is incorrect. In the majority’s view, the reference to “actuarial equivalence” necessarily required reasonable actuarial assumptions, yet Congress has amended § 1055(g) several times to specify the assumptions that plans may use. *See, e.g.*, Retirement Equity Act of 1984, Pub. L. No. 98-397, 98 Stat. 1426, 1432-33; Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809, 5039-40 (1994). Those amendments would be wholly superfluous on the majority’s view.

ERISA’s embedded-in-text purpose further confirms that courts should not imply reasonableness requirements where Congress did not require them. The “principal function” of ERISA is to “protect contractually defined benefits.” *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 100 (2013) (internal quotation marks omitted). For defined-benefit ERISA plans, the contractually defined benefits are determined by the plan’s written terms. *See, e.g., Thole v. U.S. Bank N.A.*, 590 U.S. 538, 542-43 (2020). ERISA’s enforcement scheme is “built around reliance on the face of written plan documents.” *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 109 (2013) (quotation marks omitted). The panel majority transformed ERISA into something entirely different, rewriting the text so that plan sponsors must provide whatever benefits a reviewing court deems reasonable. That is not the statute Congress wrote.

Nor was there any reason for the majority to “rush in to do the work of the legislature” here. App. 47a

(Nalbandian, J., dissenting). As Judge Nalbandian explained, when a plan violates one of ERISA’s substantive requirements, it can lose its tax-qualified status under the Internal Revenue Code, which “imposes a reasonableness requirement on pension plans’ actuarial assumptions when calculating QJSAs.” App. 48a-49a (Nalbandian, J., dissenting); *see also* 26 U.S.C. § 401(a)(13)(D). Thus, while a “plan wouldn’t violate ERISA (properly understood) by using outdated rates, ... [u]sing those rates could violate the IRC and its implementing regulations, which would bring a far worse fate for the pension plans.” App. 50a (Nalbandian, J., dissenting).

Finally, ERISA’s legislative history, for those who take it into account, confirms that Congress did not intend to adopt a reasonableness standard. Senator Mondale tried and failed to pass an amendment to ERISA that would have required JSAs to be determined using “reasonable actuarial methods approved by” the Secretary of Labor. *Berkeley*, 2026 WL 948725, at \*7 (citing authority omitted). And a report from the Society of Actuaries titled “Report on Actuarial Terminology for Pension Plans in 1976” sought to “standardize and clarify actuarial terms to achiev[e] compliance with ERISA, and [that report] defines actuarial equivalence to mean the situation where two or more items have an equal actuarial present value *under a selected set of actuarial assumptions*.” *Id.* at \*3 (internal quotation marks to citing authority omitted).

**C. The Decision Below Reflects a Discredited  
Method of Statutory Interpretation.**

The Sixth Circuit’s decision also embraces an approach to statutory interpretation that this Court long ago discarded. The majority rummaged around in old state court decisions and secondary sources for out-of-context passages that it believed supported its approach—ignoring that these sources addressed different issues entirely and that other sources rejected its views. *Cf. Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment) (describing this approach as “the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one’s friends”). Resting one’s conclusion on a decision from the Washington Supreme Court, a California intermediate court, and a Pennsylvania trial court is not a sound basis for construing a federal statute—and, in any event, each of those cases is distinguishable. *See* App. 41a-42a & n.3 (Nalbandian, J., dissenting). And as the dissent noted, the “majority’s cited state caselaw doesn’t represent the universal view,” as a “quick survey yields *other* state caselaw that holds just the opposite.” App. 41a (Nalbandian, J., dissenting) (discussing *Sheffield v. Alaska Pub. Emps.’ Ass’n*, 732 P.2d 1083 (Alaska 1987)). The majority likewise cherry-picked among academic sources, elevating a “few academic sources” while ignoring that other “contemporaneous actuarial academics” were “agnostic about the selection of actuarial assumptions.” App. 42a & n.4 (Nalbandian, J., dissenting).

Along similar lines, the majority improperly relied on inapposite Treasury regulations to buttress its reading

of § 1055(d). App. 6a-7a, 18a-19a. In particular, the majority identified a Treasury regulation that interpreted a provision of the tax code establishing what defined benefit plans must do to maintain their tax-qualified status. *See* 26 U.S.C. § 401; 26 C.F.R. § 1.401(a)-11(b)(2). The majority found it significant that this regulation provided that “[e]quivalence may be determined, on the basis of consistently applied *reasonable* actuarial factors.” 26 C.F.R. § 1.401(a)-11(b)(2) (emphasis added). But the majority’s reliance on this regulation is again out-of-step with this Court’s approach to statutory interpretation in several respects.

To begin, as the majority concedes, App. 18a-19a, the cited Treasury regulation does not even interpret § 1055(d) but instead interprets a provision of the tax code. The regulations governing tax-qualified status do not control what ERISA’s statutory text means, nor could they. *Cf. Belknap*, 588 F. Supp. 3d at 171; *Berkeley*, 2026 WL 948725, at \*8.

In addition, the majority’s reliance on the regulation to shed light on the meaning of the statute contravenes *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The majority reasoned that the Treasury regulation was entitled to “great respect” because it was “roughly contemporaneous” and reflected a “consistent” understanding of the actuarial-equivalence requirement. App. 19a. But such respect is due only to “those who were called upon to act under the law, and were appointed to carry its provisions into effect.” *Loper Bright*, 603 U.S. at 386. Here, as the dissent explained, the Treasury Department had no interpretive authority over ERISA when it promulgated the

regulation in 1977—one year before the Reorganization Plan of 1978 conferred that authority. App. 49a (Nalbandian, J., dissenting). And even after receiving authority over ERISA, Treasury twice amended the regulation without extending its reasonableness gloss to § 1055(d). App. 51a (Nalbandian, J., dissenting). As the dissent explained, 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.” App. 50a (Nalbandian, J., dissenting).

In fact, to the extent the Treasury regulations speak to this issue at all, they favor Petitioners’ interpretation of § 1055(d). As the dissent observed, “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.” App. 48a-49a (Nalbandian, J., dissenting). The regulation confirms only that reasonableness must be *added*—by an agency exercising delegated authority under a different statute—precisely because the term “actuarial equivalent” does not supply it.

#### IV. THIS CASE IS A GOOD VEHICLE.

Finally, this case is a good vehicle to address the important question presented.

First, the panel squarely and decisively resolved the precise question presented, in a published opinion, over an on-point dissent. Because the case arises on a motion to dismiss, it presents a pure question of law, with no

facts to resolve and no antecedent grounds obstructing this Court's review.

Second, the parties and the panel joined issue on exactly the question of statutory interpretation this Court would decide, and the majority and dissent set out the strongest form of each position across text, structure, precedent, secondary sources, and related regulations.

Finally, further percolation is unnecessary to resolve this pure question of statutory interpretation. That is especially so in light of the ongoing uncertainty and massive liabilities the decision below has engendered. *See supra* Part II. The competing positions are clearly defined, and the stakes are mounting. Waiting for additional courts of appeals to weigh in would only multiply the liabilities and settlements already incurred, while doing nothing to clarify the question presented.<sup>9</sup>

### CONCLUSION

This Court should grant the petition for a writ of certiorari.

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<sup>9</sup> At a minimum, given the deep uncertainty as to the meaning of this landmark federal statute, the Court should call for the views of the Solicitor General.

Respectfully submitted,

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September 14, 2026

## **APPENDIX**

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**Appendix A**

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 Kella-nova Pension Plan; John Does 1–20,

*Defendants - Appellees.*

Robert S. 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.*

No. 24-1442, No. 24-5945

2a

United States Court of Appeals,  
Sixth Circuit.

Argued: May 8, 2025

Decided and Filed: March 16, 2026

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

STRANCH, J., delivered the opinion of the court in which BUSH, J., concurred. NALBANDIAN, J. (pp. 488–98), delivered a separate dissenting opinion.

### OPINION

JANE B. 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, 116 S.Ct. 1783, 135 L.Ed.2d 153 (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, 109 S.Ct. 948, 103 L.Ed.2d 80 (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 circum-stances 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 Spirt 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 life-time.<sup>1</sup> 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).

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

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<sup>1</sup> 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).

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.<sup>2</sup> *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 Code, 26 U.S.C. § 401, which establishes the requirements for defined benefit plans to maintain their tax-qualified status. The Treasury Department has

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<sup>2</sup> 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%.

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”).<sup>3</sup> Both 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.

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<sup>3</sup> 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.

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.

## 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.<sup>4</sup>

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

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<sup>4</sup> 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 "set-back" "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.

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 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, 129 S.Ct. 1937, 173 L.Ed.2d 868 (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, 140 S.Ct. 1731, 207 L.Ed.2d 218 (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, 117 S.Ct. 843, 136 L.Ed.2d 808 (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, 140 S.Ct. 1731. 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, 94 S.Ct. 2223, 41 L.Ed.2d 1 (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, 143 S.Ct. 1932, 216 L.Ed.2d 692 (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.”).<sup>5</sup>

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 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, <https://perma.cc/XKD8-FDLW>).

Well before 1974, actuarial scientists recognized that ensuring equal present value between or among benefits requires mortality data that appropriately reflects the

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<sup>5</sup> 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, 76 S.Ct. 383, 100 L.Ed. 285 (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[.]”).

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’ TTT 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.*, 54 Wash.2d 1, 336 P.2d 387, 391 (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, 100 Cal. Rptr. 549 (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 pre-dictions 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, 94 S.Ct. 2223 (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, 100 Cal.Rptr. 549; *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 re-quires reasonably accurate mortality data.

This conclusion aligns with the long-standing 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 Treasury 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 dis-crimination in favor of” certain employees.<sup>6</sup>

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<sup>6</sup> 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

*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, 144 S.Ct. 2244, 219 L.Ed.2d 832 (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.

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, 113 S.Ct. 2264, 124 L.Ed.2d 539 (1993) (discussing

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respect to either each participant individually or reasonable groupings of participants.

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).<sup>7</sup>

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<sup>7</sup> 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

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 TTT incidence of mortality[.]” Dissent at 488–89 & 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 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

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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.

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) meaning-less. 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, 125 S.Ct. 2478, 162 L.Ed.2d 343 (2005) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6, 120 S.Ct. 1942, 147 L.Ed.2d 1 (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, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004) (noting that courts should construe a statute “so that no part will be inoperative or superfluous”).<sup>8</sup>

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

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<sup>8</sup> 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 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.

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, 104 S.Ct. 296, 78 L.Ed.2d 17 (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 & Wrecker Serv., Inc.*, 536 U.S. 424, 435–36, 122 S.Ct. 2226, 153 L.Ed.2d 430 (2002) (“The *Russello* presumption that the presence of a 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, 113 S.Ct. 2063, 124 L.Ed.2d 161 (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, 117 S.Ct. 1754, 138 L.Ed.2d 45 (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, 138 S.Ct. 1833, 201 L.Ed.2d 141 (2018). And they certainly cannot override a statute’s unambiguous text. *See Helix Energy Sols. Grp., Inc v. Hewitt*, 598 U.S. 39, 59, 143 S.Ct. 677, 214 L.Ed.2d 409 (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, 109 S.Ct. 948. 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, 113 S.Ct. 2264; *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, in-appropriate 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. 481 (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, 144 S.Ct. 457, 217 L.Ed.2d 361 (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, 128 S.Ct. 2020, 170 L.Ed.2d 912 (2008); *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566, 132 S.Ct. 1997, 182 L.Ed.2d 903 (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, 142 S.Ct. 2587, 213 L.Ed.2d 896 (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 recipient.” Actuarial Equivalent, *Black’s Law Dictionary* (12th ed. 2024).<sup>1</sup> 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* Maj. Op. p. 482 (explaining that “to convert the payment

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<sup>1</sup> 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.”).

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. [<https://perma.cc/YD7A-XECB>] (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,<sup>2</sup> sets minimum funding standards for certain kinds

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<sup>2</sup> 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,

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, 104 S.Ct. 296, 78 L.Ed.2d 17 (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. 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).

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871 (1974). So from the moment Congress first passed ERISA, it spoke explicitly when it wanted to specify reasonableness as part of actuarial calculations.

## 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. 481 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, 141 S.Ct. 1474, 209 L.Ed.2d 433 (2021); see *Feliciano v. Dep't of Transp.*, 605 U.S. 38, 145 S.Ct. 1284, 1291, 221 L.Ed.2d 712 (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, 133 S.Ct. 2720, 186 L.Ed.2d 794 (2013) (quoting *Morissette v. United States*, 342 U.S. 246, 263, 72 S.Ct. 240, 96 L.Ed. 288 (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, 112 S.Ct. 1344, 117 L.Ed.2d 581 (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, 109 S.Ct. 2166, 104 L.Ed.2d 811 (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, 143 S.Ct. 1932, 216 L.Ed.2d 692 (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. Flip-side, Hoffman Estates, Inc.*, 455 U.S. 489, 501 n.18, 102 S.Ct. 1186, 71 L.Ed.2d 362 (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, 113 S.Ct. 1562, 123 L.Ed.2d 229 (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. pp. 481–82 (quoting *King Cnty. Emp. Ass'n v. State Ret. Bd.*, 54 Wash.2d 1, 336 P.2d 387, 391 (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.*, 186 Wash.2d 393, 377 P.3d 199, 212 (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.<sup>3</sup>

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

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<sup>3</sup> The other state cases the majority cites falter for similar reasons. Start with the Pennsylvania trial court’s decision in *O’Dea v. Public School Employees’ [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, 100 Cal.Rptr. 549 (Cal. Ct. App. 1972).

pension plan was *obligated* to use the outdated actuarial assumptions for retirees hired before the switch. *See id.* at 1089. To do otherwise 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.<sup>4</sup> 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*

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<sup>4</sup> 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. 481 (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, <https://perma.cc/XKD8-FDLW>). 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).

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 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. 485–86. 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, 122 S.Ct. 2226, 153 L.Ed.2d 430 (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, 122 S.Ct. 2226. 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. pp. 486–87. 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, 120 S.Ct. 1291, 146 L.Ed.2d 121 (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.<sup>5</sup>

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<sup>5</sup> 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, 104 S.Ct. 296). We’ve recognized that rationale in this circuit, too. *Grand Trunk*, 875 F.3d at 826 n.5

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. 485 (quoting *Dodd v. United States*, 545 U.S. 353, 359, 125 S.Ct. 2478, 162 L.Ed.2d 343 (2005)). But “[t]he disposition required by the text here, though strict, is not absurd.” *Dodd*, 545 U.S. at 359, 125 S.Ct. 2478. 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

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(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 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, 100 S.Ct. 1723, 64 L.Ed.2d 354 (1980))).

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.

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, 124 S.Ct. 2230, 159 L.Ed.2d 46 (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, 124 S.Ct. 2230. 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. 485. 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. [<https://perma.cc/6PQB-T3 ZA>] (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,<sup>6</sup> the value of those tax

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<sup>6</sup> 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) [<https://perma.cc/F754-EUXV>]. The Kellanova Pension Plan accounted for just shy of \$1.25 billion as of January 2024. Kellanova, Form 5500 (filed Oct. 15, 2025) [<https://perma.cc/Q5 FQ-9Y5M>]. And the BCTGM Plan had about \$450 million by December 2024. WK Kellogg Co., Form 5500 (filed Oct. 21, 2025) [<https://perma.cc/J5FE-S9YS>]. All those figures are matters of

exemptions and deductions likely dwarf any plausible liability under ERISA.

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.<sup>7</sup> Maj. Op. p. 485.

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

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public record, obtainable via the Department of Labor's Form 5500 search tool available at <https://www.efast.dol.gov/>.

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

requirement. In other words, and in keeping with the *Russello* presumption explained above, the 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, 144 S.Ct. 2244, 219 L.Ed.2d 832 (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. pp. 482–83. *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, 144 S.Ct. 2244. At the same time, though, the Court emphasized that “[s]uch deferential review [is] cabined.” *Id.* at 389, 144 S.Ct. 2244. 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, 144 S.Ct. 2244. 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, 130 S.Ct. 1640, 176 L.Ed.2d 469 (2010) (alteration in original) (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 497, 116 S.Ct. 1065, 134 L.Ed.2d 130 (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 state,’” 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, 122 S.Ct. 708, 151 L.Ed.2d 635 (2002) (alteration in original) (first quoting *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251, 113 S.Ct. 2063, 124 L.Ed.2d 161 (1993); and then quoting *Mass. Mut. Life Ins. v. Russell*, 473 U.S. 134, 147, 105 S.Ct. 3085, 87 L.Ed.2d 96 (1985)).

\* \* \*

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

**Appendix B**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

|                     |   |                   |
|---------------------|---|-------------------|
| THOMAS N. REICHERT, | ) |                   |
| et al.,             | ) | Case No. 2:23-cv- |
|                     | ) | 12343             |
| Plaintiff,          | ) |                   |
|                     | ) |                   |
| v.                  | ) |                   |
|                     | ) |                   |
| BAKERY,             | ) | HONORABLE         |
| CONFECTIONARY,      | ) | STEPHEN J.        |
| TOBACCO WORKERS     | ) | MURPHY, III       |
| and GRAIN MILLERS   | ) |                   |
| PENSION COMMITTEE,  | ) |                   |
| et al.,             | ) |                   |
|                     | ) |                   |
| Defendants,         | ) |                   |

**OPINION AND ORDER GRANTING MOTION TO  
DISMISS [23]**

Plaintiffs Thomas Reichert, Stuart Buck, and Kenneth Henrich, on behalf of themselves and others similarly situated, sued Defendants Bakery, Confectionary, Tobacco Workers and Grain Millers Pension Committee, Kellanova, WK Kellogg Company, Kellanova Pension Plan, and John Doe and alleged that Defendants' pension plans violated the Employee Retirement Income Security Act (ERISA). ECF 22. Specifically, Plaintiffs alleged that Defendants used outdated mortality tables and outdated assumptions

when they converted Plaintiffs' single life annuities (SLAs) to joint survivor annuities (JSAs) and thereby violated ERISA's actuarial equivalence requirements. *Id.* at 120; *see* 29 U.S.C. § 1055(d). Plaintiffs also alleged that the ERISA violation constituted a breach of fiduciary duty. ECF 22, PgID 119. Defendants moved to dismiss the complaint and the Court held a hearing. ECF 23, 32.

### LEGAL STANDARD

The Court may grant a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) if the complaint fails to allege facts "sufficient 'to raise a right to relief above the speculative level,' and to 'state a claim to relief that is plausible on its face.'" *Hensley Mfg. v. ProPride, Inc.*, 579 F.3d 603, 609 (6th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)). The Court views the complaint in the light most favorable to the plaintiff, presumes the truth of all well-pleaded factual assertions, and draws every reasonable inference in the nonmoving party's favor. *Bassett*, 528 F.3d at 430. But the Court will not presume the truth of legal conclusions in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If "a cause of action fails as a matter of law, regardless of whether the plaintiff's factual allegations are true or not," then the Court must dismiss. *Winnett v. Caterpillar, Inc.*, 553 F.3d 1000, 1005 (6th Cir. 2009).

In a Rule 12(b)(6) motion, courts can only "consider the [c]omplaint and any exhibits attached thereto . . . [and] items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the [c]omplaint and are

central to the claims contained therein.” *Bassett*, 528 F.3d at 430 (citation omitted); *see also Decoration Design Sols., Inc. v. Amcor Rigid Plastics USA, Inc.*, 553 F. Supp. 3d 424, 427 (E.D. Mich. 2021) (Murphy, J.).

### DISCUSSION

Defendants raised several arguments in their motion to dismiss, but the Court need only address one dispositive issue: whether ERISA requires Plan administrators to regularly update the assumptions and mortality tables used in the actuarial equivalence calculation so that the assumptions are “reasonable.” Plaintiffs’ complaint challenged decades-old formulas based on fifty-year-old mortality data. ECF 22, PgID 120. Plaintiffs argued that reliance on the outdated data was unreasonable and violated ERISA’s actuarial equivalent requirement. *Id.* Defendants countered that the statute does not contain any reasonableness requirement, and there is no requirement in ERISA that Defendants regularly update their tables. ECF 23, PgID 191. The Defendants are correct, and the Court agrees with their statutory interpretation analysis.

ERISA requires qualified JSAs to be actuarially equivalent to the SLA offered. *See* 29 U.S.C. § 1055(d). In other words, when converting a SLA into a JSA, ERISA requires the resulting JSA to be the “actuarial equivalent” of the SLA. *Id.* Although ERISA does not define actuarial equivalence, Plaintiffs argued that achieving actuarial equivalence requires equal present values for both types of benefits. ECF 29, PgID 812 (*citing Stephens v. U.S. Airways Grp., Inc.*, 644 F.3d 437, 440 (D.C. Cir. 2011)). Plaintiff then argued that present value must “reflect anticipated events” and “conform”

with Treasury regulations that mandate assumptions realistically projecting future events. *Id.* (citing 29 U.S.C. § 1002(27)). But Plaintiffs’ argument, case law, and supporting regulations apply to actuarial equivalence calculations that deal only with lump sum payments. The text of 29 U.S.C. § 1055(d) does not require that Plans employ certain assumptions or mortality tables. Similarly, § 1055 does not impute a “reasonableness” requirement on the actuarial equivalence computation, and unlike the law applicable to a lump sum payment, there is no federal regulation to impute a reasonableness requirement. *See* C.F.R. § 1401(a)–20.

Although no binding case law addresses the precise issue, the Sixth Circuit and the United States Supreme Court clearly established applicable principles of statutory construction that require the Court to grant the motion to dismiss. Indeed, the Supreme Court warned that “ERISA’s 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.” *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209 (2002) (quotation marks and quotations omitted) (emphasis in original). Courts should therefore be “reluctant to tamper with the enforcement scheme embodied in the statute by extending remedies not specifically authorized by its text.” *Id.* (cleaned up); *see also United States v. Edington*, 992 F.3d 554, 556 (6th Cir. 2021) (“The plain language of a statute is the starting point for its interpretation.”).

Tellingly, Congress included “reasonableness” requirements in other ERISA provisions and identified

specific actuarial factors that should be used when calculating other payments. *See Belknap v. Partners Healthcare Sys., Inc.*, 588 F. Supp. 3d 161, 171 (D. Mass. 2022) (citing 29 U.S.C. § 1393(a)(1) (withdrawal liability calculations); 29 U.S.C. § 1085a(c)(3)(A) (plan funding requirements); and 29 U.S.C. § 1055(g) (calculation of lump sum benefits)). If Congress intended to include a reasonableness requirement in § 1055, it would have done so. And the Court must assume the omission was intentional under applicable Supreme Court precedent. *See Knudson*, 534 U.S. at 209.

The Court sympathizes with Plaintiffs’ position and agrees that “[t]aken to the extreme, the [D]efendants’ argument suggests that they could have used any mortality table—presumably, even one from the sixteenth century—to calculate the plaintiffs’ JSAs. If this were true, the actuarial equivalence requirement would be rendered meaningless.” *Urlaub v. CITGO Petro. Corp.*, No. 21 C 4133, 2022 WL 523129, at \*19 (N.D. Ill. Feb. 22, 2022). But the Court must apply the law that Congress passed and does not have the authority to make new policy. *See Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 330 (2006) (noting that “a court cannot “use its remedial powers to circumvent the intent of the legislature”). It would appear that a Congressional remedy would provide a path to address reasonable concerns about extreme application of mortality data.

Plaintiffs brought their claim under 29 U.S.C. § 1132(a)(3). That section provides a remedy for a violation of “any provision of this subchapter.” But for the reasons stated above, the use of outdated mortality tables and assumptions does not violate the statute. The Court will

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therefore dismiss Plaintiffs' claim that Defendants violated § 1055 of ERISA. And because Plaintiffs failed to plead an ERISA violation, they cannot sustain a claim for breach of fiduciary duty based on an ERISA violation. The Court will accordingly dismiss Plaintiffs' claim that Defendants breached their fiduciary duty.

**ORDER**

**WHEREFORE**, it is hereby **ORDERED** that the motion to dismiss [23] is **GRANTED**.

**IT IS FURTHER ORDERED** that the case is **DISMISSED WITH PREJUDICE**.

This is a final order that closes the case.

**SO ORDERED.**

s/ Stephen J. Murphy, III  
STEPHEN J. MURPHY, III  
United States District Judge

Dated: April 17, 2024

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**Appendix C**

No. 24-1442/5945

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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. )

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

ORDER

FILED  
May 15,  
2026

|                          |   |
|--------------------------|---|
| Plaintiffs-Appellants,   | ) |
|                          | ) |
| v.                       | ) |
| FEDEX CORPORATION; FEDEX | ) |
| CORPORATION EMPLOYEES'   | ) |
| PENSION PLAN; RETIREMENT | ) |
| PLAN INVESTMENT BOARD OF | ) |
| FEDEX CORPORATION;       | ) |
| JOHN/JANE DOES 1-10,     | ) |
|                          | ) |
| Defendants-Appellees.    | ) |

**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**

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Kelly L. Stephens, Clerk

## Appendix D

### Relevant Statutory Provisions

#### 29 U.S.C. § 1055

#### § 1055. Requirement of joint and survivor annuity and preretirement survivor annuity

##### (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.

##### (b) Applicable plans

(1) This section shall apply to--

(A) any defined benefit plan,

(B) any individual account plan which is subject to the funding standards of section 1082 of this title, and

(C) any participant under any other individual account plan unless--

(i) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a

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loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under subsection (c)(2), to a designated beneficiary),

(ii) such participant does not elect the payment of benefits in the form of a life annuity, and

(iii) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in subparagraph (A) or (B) or to which this clause applied with respect to the participant.

Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(2)(A) In the case of--

(i) a tax credit employee stock ownership plan (as defined in section 409(a) of Title 26), or

(ii) an employee stock ownership plan (as defined in section 4975(e)(7) of Title 26),

subsection (a) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) of Title 26 apply.

(B) Subparagraph (A) shall not apply with respect to any participant unless the requirements of

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clause1 (i), (ii), and (iii) of paragraph (1)(C) are met with respect to such participant.

(4) This section shall not apply to a plan which the Secretary of the Treasury or his delegate has determined is a plan described in section 404(c) of Title 26 (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(4) A plan shall not be treated as failing to meet the requirements of paragraph (1)(C) or (2) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(c) Plans meeting requirements of section

(1) A plan meets the requirements of this section only if--

(A) under the plan, each participant--

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both),

(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and

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(iii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4).

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless--

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3)(A) Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as

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the Secretary of the Treasury may prescribe) a written explanation of--

- (i) the terms and conditions of the qualified joint and survivor annuity and of the qualified optional survivor annuity,
- (ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,
- (iii) the rights of the participant's spouse under paragraph (2), and
- (iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B)(i) Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) For purposes of clause (i), the term "applicable period" means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

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(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after this section applies to the participant.

In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

(4) Each plan shall provide that, if this section applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless--

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5)(A) The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant

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would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) If a plan fiduciary acts in accordance with part 4 of this subtitle in--

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such Act.

(7) For purposes of this subsection, the term “applicable election period” means--

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant’s death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(8) Notwithstanding any other provision of this subsection--

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(A)(i) A plan may provide the written explanation described in paragraph (3)(A) after the annuity starting date. In any case to which this subparagraph applies, the applicable election period under paragraph (7) shall not end before the 30th day after the date on which such explanation is provided.

(ii) The Secretary of the Treasury may by regulations limit the application of clause (i), except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

(B) A plan may permit a participant to elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement under subparagraph (A)) if the distribution commences more than 7 days after such explanation is provided.

(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

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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

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qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.

(e) “Qualified preretirement survivor annuity” defined

For purposes of this section--

(1) Except as provided in paragraph (2), the term “qualified preretirement survivor annuity” means a survivor annuity for the life of the surviving spouse of the participant if--

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if--

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant’s date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had--

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

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(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1), the term "qualified preretirement survivor annuity" means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 1053 of this title).

(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(f) Marriage requirements for plan

(1) Except as provided in paragraph (2), a plan may provide that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had

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been married throughout the 1-year period ending on the earlier of--

- (A) the participant's annuity starting date, or
- (B) the date of the participant's death.

(2) For purposes of paragraph (1), if--

- (A) a participant marries within 1 year before the annuity starting date, and
- (B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(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--

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(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.

(h) Definitions

For purposes of this section--

(1) The term “vested participant” means any participant who has a nonforfeitable right (within the meaning of section 1002(19) of this title) to any portion of such participant’s accrued benefit.

(2)(A) The term “annuity starting date” means--

(i) the first day of the first period for which an amount is payable as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

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(3) The term “earliest retirement age” means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(i) Increased costs from providing annuity

A plan may take into account in any equitable manner (as determined by the Secretary of the Treasury) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(j) Use of participant’s accrued benefit as security for loan as not preventing distribution

If the use of any participant’s accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (c)(4), nothing in this section shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(k) Spousal consent

No consent of a spouse shall be effective for purposes of subsection (g)(1) or (g)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (c)(1)(A) are met.

(l) Regulations; consultation of Secretary of the Treasury with Secretary of Labor

In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.