SUPREME COURT OF THE UNITED STATES

Nos. 01–705 and 01–715

JO ANNE B. BARNHART, COMMISSIONER OF SOCIAL SECURITY, PETITIONER

01–705 *v.*

PEABODY COAL COMPANY ET AL.

JO ANNE B. BARNHART, COMMISSIONER OF SOCIAL SECURITY, PETITIONER *v.* BELLAIRE CORPORATION ET AL.

MICHAEL H. HOLLAND, ET AL., PETITIONERS

01–715 *v.*

BELLAIRE CORPORATION ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[January 15, 2003]

JUSTICE SOUTER delivered the opinion of the Court.

The Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act) includes the present 26 U. S. C. §9706(a), providing generally that the Commissioner of Social Security "shall, before October 1, 1993," assign each coal industry retiree eligible for benefits to an extant operating company or a "related" entity, which shall then be responsible for funding the assigned beneficiary's benefits. The question is whether an initial assignment made after that date is valid despite its untimeliness. We hold that it is.

I

We have spoken about portions of the Coal Act in two recent cases, *Barnhart* v. *Sigmon Coal Co.,* 534 U. S. 438 (2002), and *Eastern Enterprises* v. *Apfel,* 524 U. S. 498 (1998), the first of which sketches the Act's history, 534 U. S., at 442–447. Here, it is enough to recall that in its current form the Act requires the Commissioner to assign, where possible, every coal industry retiree to a "signatory operator," defined as a signatory of a coal wage agreement specified in §9701(b)(1). §§9701(c)(1), 9706(a). An assignment should turn on a retiree's employment history with a particular operator, §9706(a), unless an appropriate signatory is no longer in business, in which case the proper assignee is a "related person" of that operator, defined in terms of corporate associations and relationships not in issue here, §9701(c)(2).[1] The Act recognizes that some retirees will be "unassigned." §9704(d).

Assignment to a signatory operator binds the operator to pay an annual premium to the United Mine Workers of America Combined Benefit Fund, established under the Act to administer benefits. §9702. The premium has up to three components, starting with a "health benefit premium," computed by multiplying the number of assigned retirees by the year's "per beneficiary" premium, set by the Commissioner and based on the Combined Fund's health benefit expenses for the prior year, adjusted for changes in the Consumer Price Index. §9704(b). The second element is a "death benefit premium" for projected benefits to the retirees' survivors, the premium being the operator's share of "the amount, actuarially determined, which the Com-

[1] The Coal Act's definition of "related persons" was the subject of our opinion last Term in *Barnhart* v. *Sigmon Coal Co.*, 534 U. S. 438 (2002). For simplicity, we will not refer to related persons separately in the balance of this opinion.

bined Fund will be required to pay during the plan year for death benefits coverage." §9704(c).

A possible third constituent of the premium is for retirees who are not assigned to a particular operator, whose health and death benefits are nonetheless paid from the Combined Fund as if they were assigned beneficiaries. Before passage of the Coal Act, many operators withdrew from coal wage agreements, shifting the costs of paying for their retirees' benefits to the remaining signatories, *Sigmon Coal Co.*, *supra,* at 444, and an important object of the Coal Act was providing stable funding for the health benefits of these "orphan retirees," House Committee on Ways and Means, Development and Implementation of the Coal Industry Retiree Health Benefit Act of 1992, 104th Cong., 1st Sess., 1 (Comm. Print 1995) (hereinafter Coal Act Implementation). See Energy Policy Act of 1992, Pub. L. 102–486, §19142, 106 Stat. 3037 (intent to "stabilize plan funding" and "provide for the continuation of a privately financed self-sufficient program").

Before signatory operators may be compelled to contribute for the benefit of unassigned beneficiaries, however, funding from two other sources must run out. The United Mine Workers of America 1950 Pension Plan (UMWA Pension Plan) was required to make three substantial payments to the Combined Fund for this purpose on February 1, 1993, October 1, 1993, and October 1, 1994. §9705(a)(1). The Act also calls for yearly payments to the Combined Fund from the Abandoned Mine Land Reclamation Fund (AML Fund), established for reclamation and restoration of land and water resources degraded by coal mining. 30 U. S. C. §1231(c). Annual transfers from this AML Fund are limited to the greater of $70 million and the annual interest earned by the fund, and are subject to an aggregate limit equal to the amount of interest earned on the AML Fund between September 30, 1992, and October 1, 1995. §§1232(h)(2), (3)(B).

So far, these transfers from the UMWA Pension Plan and the AML Fund have covered the benefits of all unassigned beneficiaries. If they fall short, however, the third source comes into play (and the third element of an operator's Combined Fund premium becomes actual): all assignee operators (that is, operators with assigned retirees) will have to pay an "unassigned beneficiaries premium," being their applicable percentage portion of the amount needed to pay annual benefits for the unassigned. An operator's "applicable percentage" is defined as "the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993)." 26 U. S. C. §9704(f)(1). The signatory with the most assigned retirees thus would cover the greatest share of the benefits payable to the unassigned (as well as their spouses and certain dependants).[2]

II

Although §9706 provides that the Commissioner "shall" complete all assignments before October 1, 1993, the Commissioner did not, and she now estimates that some 10,000 beneficiaries were first assigned to signatory operators after the statutory date. The parties disagree on the reason the Commissioner failed to meet the deadline,

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[2] According to a 1995 congressional Report, the total premium for a single beneficiary was $2,349.38 for the 1995 fiscal year. This figure includes only the health and death benefit premiums, since no unassigned beneficiaries premium has yet been charged. Coal Act Implementation 32–33. The 2002 per-beneficiary premium was approximately $2,725. General Accounting Office Report No. 02–243, Retired Coal Miners' Health Benefit Funds: Financial Challenges Continue 8 (Apr. 2002).

but that dispute need not be resolved here.[3]

After October 1, 1993, the Commissioner assigned 330 beneficiaries to respondents Peabody Coal Company and Eastern Associated Coal Corp., and a total of 270 beneficiaries to respondents Bellaire Corporation, NACCO Industries, Inc., and The North American Coal Corporation. These companies challenged the assignments in two separate actions before different District Courts, claiming that the statutory date sets a time limit on the Commissioner's power to assign, so that a beneficiary not assigned on October 1, 1993 (and the beneficiary's eligible dependants) must be left unassigned for life. If the respondent companies are right, the challenged assignments are void and the corresponding benefits must be financed not by them, but by the transfers from the UMWA Pension Plan and the AML Fund and, if necessary, by unassigned benefici-

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[3] The Commissioner's proffered reason for the delay is that the Social Security Administration (SSA) was not permitted to expend appropriated funds to commence work on assignments until July 13, 1993, when Congress enacted the Supplemental Appropriations Act of 1993, Pub. L. 103–50, 107 Stat. 254. The Commissioner also states that the task of researching employment records for approximately 80,000 coal industry workers in order to determine the appropriate signatory operators was monumental and could not have been completed by October 1, 1993, without additional resources. The respondent companies counter that the Acting Commissioner assured Congress less than a month before the statutory date that SSA would meet its "statutory responsibility" to complete the assignments on time. Hearing on Provisions Relating to the Health Benefits of Retired Coal Miners before the House Ways and Means Committee, 103d Cong., 1st Sess., 26 (1993) (hereinafter 1993 Coal Act Hearing), Ser. No. 103–59, p. 26 (Comm. Print 1994) (statement of Acting Commissioner Thompson). The same representative informed Congress in 1995 that SSA had "completed the process of making the initial assignment decisions by October 1, 1993, as required by law." Hearing on the Coal Industry Retiree Health Benefit Act of 1992 before the Subcommittee on Oversight of the House Committee on Ways and Means, 104th Cong., 1st Sess., 23 (1995), Ser. No. 104–67, p. 23 (1997) (statement of Principal Deputy Commissioner Thompson).

ary premiums paid by other signatory operators to whom timely assignments were made.

The Commissioner denied that Congress intended the Commissioner's tardiness in assignments to impose a permanent charge on the public AML Fund, otherwise earmarked for reclamation, or to raise the threat of permanently heavier financial burdens on companies that happened to get assignments before October 1, 1993. The Commissioner argued that Congress primarily intended coal operators to pay for their own retirees. The trustees of the Combined Fund intervened in one of the cases and took the Commissioner's view that initial assignments made after September 30, 1993, are valid.[4]

The companies obtained summary judgments in each case, on the authority of *Dixie Fuel Co.* v. *Commissioner of Social Security*, 171 F. 3d 1052 (CA6 1999), which went against the Commissioner on the issue here. The United States Court of Appeals for the Sixth Circuit affirmed in two opinions likewise following *Dixie Fuel—Peabody Coal Co.* v. *Massanari*, 14 Fed. Appx. 393 (2001), and *Bellaire Corp.* v. *Massanari*, 14 Fed. Appx. 424 (2001)— but conflicting with the Fourth Circuit's holding in *Holland* v. *Pardee Coal Co.*, 269 F. 3d 424 (2001). We granted certiorari to resolve the conflict,[5] 534 U. S. 1112 (2002), and now reverse.

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[4] The General Accounting Office estimated in 2000 that invalidation of assignments made after September 30, 1993, could require the Combined Fund to refund $57 million in premium payments. Letter of Gloria L. Jarmon to Hon. William V. Roth, Jr., Senate Committee on Finance, 2 (Aug. 15, 2000), http://www.gao.gov/new.items/ai00267r.pdf (as visited Jan. 9, 2003) (available in Clerk of Court's case file).

[5] After the grant of certiorari, the United States Court of Appeals for the Third Circuit came down on the side of the Fourth Circuit. See *Shenango Inc.* v. *Apfel*, 307 F. 3d 174 (2002).

III

It misses the point simply to argue that the October 1, 1993, date was "mandatory," "imperative," or a "deadline," as of course it was, however unrealistic the mandate may have been. The Commissioner had no discretion to choose to leave assignments until after the prescribed date, and the assignments in issue here represent a default on a statutory duty, though it may well be a wholly blameless one. But the failure to act on schedule merely raises the real question, which is what the consequence of tardiness should be. The respondent companies call the failure "jurisdictional," such that the affected beneficiaries (like truly orphan beneficiaries) may never be assigned, but instead must be permanent wards of the UMWA Pension Plan, the AML Fund, and, potentially, of coal operators without prior relationship to these beneficiaries. The companies, in other words, say that as to tardily assigned beneficiaries who were, perhaps, formerly their own employees, they go scot free. We think the claim is as unsupportable as it is counterintuitive.

A

First there is the companies' position that couching the duty in terms of the mandatory "shall" together with a specific deadline leaves the Commissioner with no authority to make an initial assignment on or after October 1, 1993. We rejected a comparable argument in *Brock* v. *Pierce County,* 476 U. S. 253 (1986), dealing with the power of the Secretary of Labor to audit a grant recipient under a provision that he "'shall' issue a final determination . . . within 120 days" of receiving a complaint alleging misuse of federal grant funds. *Id.,* at 255. Like the Court of Appeals here, the Ninth Circuit in *Brock* thought the mandate and deadline together implied that Congress "had intended to prevent the Secretary from acting" after the statutory period, *id.*, at 257. We, on the contrary,

expressed reluctance "to conclude that every failure of an agency to observe a procedural requirement voids subsequent agency action, especially when important public rights are at stake," *id.*, at 260, and reversed. As in this litigation, the Secretary's responsibility in *Brock* was "substantial," the "ability to complete it within 120 days [was] subject to factors beyond [the Secretary's] control," and "the Secretary's delay, under respondent's theory, would prejudice the rights of the taxpaying public." *Id.*, at 261. We accordingly read the 120-day provision as meant "to spur the Secretary to action, not to limit the scope of his authority," so that untimely action was still valid. *Id.*, at 265.

Nor, since *Brock*, have we ever construed a provision that the Government "shall" act within a specified time, without more, as a jurisdictional limit precluding action later. Thus, a provision that a detention hearing "'shall be held immediately upon the [detainee's] first appearance before the judicial officer'" did not bar detention after a tardy hearing, *United States* v. *Montalvo-Murillo,* 495 U. S. 711, 714 (1990) (quoting 18 U. S. C. §3142(f)), and a mandate that the Secretary of Health and Human Services "'shall report'" within a certain time did "not mean that [the] official lacked power to act beyond it," *Regions Hospital* v. *Shalala,* 522 U. S. 448, 459, n. 3 (1998).

We have summed up this way: "if a statute does not specify a consequence for noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction." *United States* v. *James Daniel Good Real Property,* 510 U. S. 43, 63 (1993).[6]

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[6] No one could disagree with JUSTICE SCALIA that "[w]hen a power is conferred for a limited time, the *automatic* consequence of the expiration of that time is the expiration of the power," *post*, at 4 (dissenting opinion), but his assumption that the Commissioner's power to assign

retirees was "conferred for a limited time" assumes away the very question to be decided. JUSTICE SCALIA's dissent is an elaboration on this circularity, forever returning as it must to his postulate that §9706(a) constitutes a "time-limited mandate" that "expired" on the statutory date. *Post*, at 6–7.

JUSTICE SCALIA's closest approach to a nonconclusory justification for his position is the assertion of an entirely formal interpretive rule that a date figuring in the same statutory subsection as the creation of a mandatory obligation *ipso facto* negates any power of tardy performance. *Post*, at 5–7. JUSTICE SCALIA cites no authority for his formalism, which is contradicted by *United States* v. *Montalvo-Murillo*, 495 U. S. 711 (1990), where a single statutory subsection provided that a judicial officer "shall hold a hearing" and that "[t]he hearing shall be held immediately upon the person's first appearance before the judicial officer." *Id.*, at 714 (quoting 18 U. S. C. §3142(f)). Conversely, *Brock* v. *Pierce County,* 476 U. S. 253 (1986), *United States* v. *James Daniel Good Real Property,* 510 U. S. 43 (1993), and *Regions Hospital* v. *Shalala,* 522 U. S. 448 (1998), ascribed no significance to the formal placement of the time limitation. One can only ask why a statute providing that "The obligor shall perform its duty before October 1, 1993," should be thought to differ fundamentally from one providing that "(i) The obligor shall perform its duty. (ii) The obligor's duty shall be performed before October 1, 1993." The accepted fact is that some time limits are jurisdictional even though expressed in a separate statutory section from jurisdictional grants, see, *e. g.*, 28 U. S. C. §1291 (providing that the courts of appeals "shall have jurisdiction of appeals from all final decisions of the district courts of the United States"); §2107 (providing that notice of appeal in civil cases must be filed "within thirty days after the entry of such judgment"); *Browder* v. *Director, Dept. of Corrections of Ill.,* 434 U. S. 257, 264 (1978) (stating that the limitation in §2107 is "'mandatory and jurisdictional'" (citation omitted)), while others are not, even when incorporated into the jurisdictional provision, see, *e. g.*, *Montalvo-Murillo*, *supra.* Formalistic rules do not account for the difference, which is explained by contextual and historical indications of what Congress meant to accomplish. Here that intent is revealed in several obvious ways: in rules that define an operator's liability in terms of employment history, see §9706(a), in appellate rights to test the appropriateness of an initial assignment, see *infra*, at 16–17, and in the expressed understanding that the companies that got the benefit of a worker's labor should pay for the worker's benefits, see *infra*, at 14–16. What else, after all, would anyone naturally expect? As opposed to the sensible indications that the initial assignment deadline was not

Hence the oddity at this date of a claim that late official action should shift financial burdens from otherwise responsible private purses to the public fisc, let alone siphon money from funds set aside expressly for a different public purpose, like the AML Fund for land reclamation. The point would be the same, however, even if *Brock* were the only case on the subject. The Coal Act was adopted six years after *Brock* came down, when Congress was presumably aware that we do not readily infer congressional intent to limit an agency's power to get a mandatory job done merely from a specification to act by a certain time. See *United States* v. *Wells,* 519 U. S. 482, 495 (1997).[7] The *Brock* example consequently has to mean that a statute directing official action needs more than a mandatory "shall" before the grant of power can sensibly be read to expire when the job is supposed to be done. Nothing so limiting, however, is to be found in the Coal Act: no express language supports the companies, while structure,

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meant to be jurisdictional, JUSTICE SCALIA's new formal rule would thwart the statute's object and relieve the respondent companies of all responsibility, which other, less lucky operators might be required to shoulder. There undoubtedly was much political compromise in the development of the Coal Act, but politics does not justify turning the process of initial assignment into a game of chance.

[7] The respondent companies attempt to distinguish *Brock* because we noted in that case that an aggrieved party could sue under the Administrative Procedure Act to "'compel agency action unlawfully withheld or unreasonably delayed,'" 476 U. S., at 260, n. 7 (quoting 5 U. S. C. §706(1)). The companies assert that no such remedy would have applied to the Commissioner's duty under §9706(a). Whether or not this is the case, the companies do not argue that they were aggrieved by the failure to assign retirees by the statutory date. On the contrary, they temporarily avoided payment of premium amounts for which they would indisputably have been liable had the assignments been timely made. It therefore does not appear that there was a need to provide operators "with any remedy at all—much less the drastic remedy respondent[s] see[k] in this case—for the [Commissioner's] failure to meet the [October 1, 1993] deadline." 476 U. S., at 260, n. 7.

purpose, and legislative history go against them.

Structural clues support the Commissioner in the Coal Act's other instances of combining the word "shall" with a specific date that could not possibly be read to prohibit action outside the statutory period. Congress, for example, provided that the UMWA Pension Plan "shall transfer to the Combined Fund" installments of $70 million on February 1, 1993, on October 1, 1993, and on October 1, 1994. §9705(a)(1). It could not be that a failure to make a transfer on one of those precise dates, for whatever reason, would have left the UMWA Pension Plan with no authority to make the payment; October 1, 1994, was not even a business day. Or consider the Act's mandatory provisions that the trustees of the Combined Fund "shall" be designated no later than 60 days from the enactment date, §9702(a)(1), and that the designated trustees "shall, not later than 60 days after the enactment date," give the Commissioner certain information about benefits, §9704(h). No one could seriously argue that the entire scheme would have been nullified if appointments had been left to the 61st day, or that trustees (whose appointments could properly have been left to the 60th day) were powerless to divulge information to the SSA after the 60-day period had expired.[8]

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[8] JUSTICE SCALIA concedes that his theory should not extend so far as to limit the UMWA Pension Plan's duty to transfer funds to the Combined Fund to the particular dates in §9705(a)(1). JUSTICE SCALIA attempts to avoid such an outcome by assuming, without basis, that the "UMWA Pension Plan has the power to transfer funds" to the Combined Fund in the absence of the authorization in §9705(a)(1). *Post*, at 5 (dissenting opinion). JUSTICE SCALIA's confidence is misplaced. Prior to the Coal Act's enactment, the Vice Chairman of the Secretary of Labor's Coal Commission testified before Congress that legislative authorization was needed for such a transfer to occur: "One of the things that concerned the Commission was, first of all, our understanding of the present state of law under the Employee Retirement

In each of these instances, we draw a conclusion on grounds of plausibility: if Congress had meant to set a counterintuitive limit on authority to act, it would have said more than it did, and would surely not have couched its intent in language *Brock* had already held to lack any clear jurisdictional significance. The same may be said here.

B

Nor do we think the result of appealing to plausibility is affected by either of two other textual features that the

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Income Security Act. Under that Act it is not within the power of any of the participants or signatories to transfer a pension surplus to a benefit fund. That is one of the reasons for the recommendation that a transfer be authorized." Hearing before the Subcommittee on Medicare and Long-Term Care of the Senate Committee on Finance, 102d Cong., 1st Sess., 13 (1991) (statement of Coal Commission Vice Chairman Perritt). It appears, then, that §9705(a)(1) provides both the UMWA Pension Plan's power to act and a time limit, which according to JUSTICE SCALIA would render action on any other date ultra vires, a result that even the dissent does not embrace.

JUSTICE SCALIA thinks it "debatable" that the power to appoint initial trustees survives the deadline in §9702(a)(1). *Post*, at 7. In order to avoid the embarrassment of concluding that tardiness would remove all authority to appoint the initial trustees, which would render the Act a dead letter, he suggests that an initial trustee could be appointed under §9702(b)(2), even though that provision applies only to appointment of a "successor trustee" to be made "in the same manner as the trustee being succeeded," whereas an initial trustee does not "succeed" anyone. The extreme implausibility of JUSTICE SCALIA's suggested reading of §9702(b)(2) points up the unreasonableness of placing a jurisdictional gloss on the §9706(a) time limitation. It is impossible to believe that Congress meant its Herculean effort to resolve the coal industry benefit crisis to come to absolutely nothing if trustees were designated late.

There is a basic lesson to be learned from JUSTICE SCALIA's contortions to avoid the untoward results flowing from his formalistic theory that time limits on mandatory official action are always jurisdictional when they occur in an authorizing provision. The lesson is that something is very wrong with the theory.

companies take as indicating inability to assign beneficiaries after the statutory date: the provision for unassigned beneficiary status itself, and the provision that an operator's contribution for the benefit of the unassigned shall be calculated "on the basis of assignments as of October 1, 1993." §§9704(f)(1), (2).

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The companies characterize the provision for unassigned beneficiaries as the specification of a "consequence" for failure to assign a beneficiary to an operator or related person. Cf. *Brock*, 476 U. S., at 259. Specifying this consequence of failure, they say, shows that the failure must be governed by the consequence provided, not corrected by a tardy assignment corresponding to one that should have been made earlier. The specified consequence, in other words, reflects a legislative preference for finality over accurate initial assignments and creates a right on the part of the companies to rely permanently on the state of affairs as they were on October 1, 1993. We think this line of reasoning is unsound at every step.

To begin with, whatever might be inferable from the fact that a specific provision addressed the failure to make a timely assignment, the part of the Act referring to "unassigned" beneficiaries is not any such provision. The Act speaks of the beneficiaries not in terms of the Commissioner's failure to assign them in time, but simply as "beneficiaries who are not assigned." §9704(d). The most obvious reason for beneficiaries' being unassigned, in fact, is the disappearance of a beneficiary's former employer, leaving no signatory operator for assignment under §9706(a). This is not to say that failure of timely assignment does not also leave a beneficiary "unassigned" under the Act. It simply means that unassigned status has no significance peculiar to failure of timely assignment.

Second, to the extent that "unassigned" status is a

consequence of mere untimeliness, there would be a far more obvious reason for specifying that consequence than a supposed desire for finality.[9] On its face, the provision for a beneficiary left out through tardiness functions simply as a default rule to provide coverage under the new regime required to be in place by October 1, 1993; there had to be some source of funding for every beneficiary by then, and provisions for the "unassigned" employees tell the SSA what the source will be in the absence of any other. But we do not read a provision apparently made for want of something better as an absolute command to forgo something better for all time.

In fact, it is unrealistic to think that Congress understood unassigned status as an enduring "consequence" of uncompleted work, for nothing indicates that Congress even foresaw that some beneficiaries matchable with operators still in business might not be assigned before October 1, 1993. As the companies themselves point out, the Commissioner led Congress to believe as late as 1995 that all possible assignments had been made on time, see n. 3, *supra*, and such little legislative history as there is on the point tends to show that Congress assumed that any assignments that could be made at all (say, to an operator still in business) would be made on time. On October 8, 1992, on the heels of the Conference Committee Report on the Act and just before the vote in the Senate adopting the Act, Senator Wallop gave a detailed explanation of the

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[9] Many "consequences," of course, are intended to induce an obligated person to take untimely action rather than bar that action altogether. Section 9704(i)(1)(C), for example, denies certain tax deductions to operators who fail to make contributions during specified periods, and §9707(a) provides a penalty for operators who fail to pay premiums on time. The first consequence is eliminated when the operator takes action that is necessarily untimely, and the second penalty ceases to run when the premiums are paid, albeit out of time.

Coal Act's provisions for unassigned beneficiaries, which assumed that the "unassigned" would be true orphans:

> "As a practical matter, not all beneficiaries can be assigned to a specific last signatory operator, related person or assigned operator for payment purposes. This is because in some instances, none of those persons remain in business, even as defined to include non-mining related businesses. Thus, provisions are made for unassigned beneficiary premiums." 138 Cong. Rec. 34003 (1992).

The Senator's report says that the transfer to the Combined Fund from the UMWA Pension Plan and AML Fund would be made because "unassigned beneficiaries were not employed by the assigned operators at the time of their retirement . . . . [I]f no operator remains in business under the formulations described above, that retiree becomes an unassigned beneficiary. . . . [The Coal Act's] purpose is to assure that any beneficiary, once assigned, remains the responsibility of a particular operator, and that the number of unassigned beneficiaries is kept to an absolute minimum." *Ibid.*[10] It seems not to have crossed

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[10] Postenactment statements, though entitled to less weight, are to the same effect. At a hearing before the House Committee of Ways and Means on September 9, 1993, one member asked whether SSA had established procedures "to assure that beneficiaries are not improperly designated as unassigned." The Acting Commissioner of Social Security responded that employee training "emphasized that the intent of the Coal Act was to assign miners to mine operators if at all possible." 1993 Coal Act Hearing 46 (statements of Rep. Johnson and Acting Commissioner Thompson). The record of the hearing also contains a statement by the committee chairman that the Act required operators to "pay for their own retirees, and to assume a proportionate share of the liability for true 'orphans'—retirees whose companies are no longer in existence and cannot pay for the benefits." *Id.*, at 85. At no point did any witness suggest that the unassigned beneficiary system was intended for miners who could be assigned but were not assigned before

Congress's mind that the category of the "unassigned" would include beneficiaries, let alone a lot of beneficiaries, who could be connected with an operator, albeit late. Providing a consequence of default was apparently just happenstance.[11]

Congress plainly did, however, weigh finality on October 1, 1993, against accuracy of initial assignments in one circumstance, and accuracy won. Section 9704(d) speaks of "beneficiaries who are not assigned . . . for [any] plan year," suggesting that assignment status may change from year to year. One way it may change is by correcting an erroneous assignment. Under the Act, an operator getting notice of an assignment has 30 days to request information regarding the basis of the assignment and then 30 days from receipt of that information to ask for reconsideration. §§9706(f)(1)–(2). If the Commissioner finds error, the Combined Fund trustees will fix it by reducing premiums and refunding any overpayments. §9706(f)(3)(A)(i);

October 1, 1993, or that such miners would remain unassigned in perpetuity in order to protect the status quo on that date.

[11] The respondent companies cite a postenactment statement by Representative Johnson that Congress had an obligation to "make sure that companies . . . have time to figure out their liability and prepare to deal with it." *Id.,* at 42. The Representative's comment did not purport to interpret the Coal Act as adopted, however, but was made in discussing whether "there should be some resolution passed" to give coal operators more time to prepare for their Coal Act obligations. *Ibid.*

One statement in Senator Wallop's preenactment report, which the companies do not cite, indicates an understanding that assignments would be fixed after October 1, 1993. See 138 Cong. Rec. 34003 (1992) ("[T]he percentage of the unassigned beneficiary premiums allocable to each assigned operator on October 1, 1993 will remain fixed in future years"). As discussed, however, there is no indication that Congress foresaw that the Commissioner would be unable to complete assignments by the statutory date. A general statement made on the assumption that all assignments that could ever be made would be made before October 1, 1993, does not show a legislative preference for finality over accuracy now that that assumption has proven incorrect.

see also §9706(f)(3)(A)(ii). Nothing is said about finality on October 1, 1993, and no time limit whatever is imposed on the Commissioner's authority to reassign. The companies concede, as they must, that the statute permits reassignment after October 1, 1993.

The companies do, however, try to limit the apparent preference for accuracy by arguing that one feature of this provision for reconsideration in §9706(f) implicitly supports them; this specific and isolated exception to an otherwise unequivocal bar to assignments after the statutory date suggests, they say, that the bar is otherwise absolute. Again, we think no such conclusion follows.

First, the argument is circular; it assumes that the availability of the §9706(f) reconsideration process with no time limit is an exception to a bar on all assignment activity imposed by the October 1, 1993, time limit of §9706(a). But the question, after all, is whether the October 1, 1993, mandate is in fact a bar. Section 9706(f) does not say it is, and nothing in that provision suggests it was enacted as an exception to the October 1, 1993, date. It has no language about operating notwithstanding the date specified in §9706(a); on the contrary, it states that reassignment will be made "under subsection (a)," §9706(f)(3)(A)(ii). But if the authority to reassign is contained in §9706(a), then §9706(f) is reasonably read not as lifting a jurisdictional time bar but simply as specifying a procedure for an aggrieved operator to follow in requesting the Commissioner to exercise the assignment power contained in §9706(a) all along. In the combined operation of the two subsections, there is thus no implication that the Commissioner is powerless to make an initial assignment to an operator after the specified date; any suggestion goes the other way.

Second, there is no reason to read the provision in §9706(f) for correction of erroneous assignments as implying that the Commissioner should not employ her

§9706(a) authority to make a tardy initial assignment in a situation like this. We do not read the enumeration of one case to exclude another unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it. *United Dominion Industries, Inc.* v. *United States,* 532 U. S. 822, 836 (2001). As we have held repeatedly, the canon *expressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an "associated group or series," justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence. *United States* v. *Vonn*, 535 U. S 55, 65 (2002). We explained this point as recently as last Term's unanimous opinion in *Chevron U. S. A. Inc.* v. *Echazabal*, 536 U. S. 73, 81 (2002):

> "Just as statutory language suggesting exclusiveness is missing, so is that essential extrastatutory ingredient of an expression-exclusion demonstration, the series of terms from which an omission bespeaks a negative implication. The canon depends on identifying a series of two or more terms or things that should be understood to go hand in hand, which [is] abridged in circumstances supporting a sensible inference that the term left out must have been meant to be excluded. E. Crawford, Construction of Statutes 337 (1940) (*expressio unius* "'properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference'" (quoting *State ex rel. Curtis* v. *De Corps*, 134 Ohio St. 295, 299, 16 N. E. 2d 459, 462 (1938))); *United States* v. *Vonn*, *supra*."

As in *Echazabal*, respondents here fail to show any reason that Congress would have considered reassignments after

appeal "to go hand in hand" with tardy initial assignments. Since Congress apparently never thought that initial assignments would be late, see *supra,* at 14–16, the better inference is that what we face here is nothing more than a case unprovided for.[12]

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The remaining textual argument for the companies' side rests on the definition of an operator's "applicable per-

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[12] There is, of course, no "'case unprovided for' exception" to the *expressio unius* canon, *post*, at 11 (SCALIA, J., dissenting). It is merely that the canon does not tell us that a case was provided for by negative implication unless an item unmentioned would normally be associated with items listed.

The companies emphasize that §9704(f)(2)(B) requires that beneficiaries whose operator goes out of business must be treated as unassigned and cannot be reassigned. Even assuming that a provision that goes to the definition of "applicable percentage" and does not directly implicate assignments has the effect the companies suggest, the most that could be said is that Congress wished to identify the first, most responsible operator for a given retiree, and not to follow that with a second assignment to a less responsible operator if the initial assigned operator left the business. This interest does not indicate an object of date-specific finality over accuracy in the first assignment; on the contrary, it opts for finality only once an accurate initial assignment has been made. In the absence of a more exact explanation for this arrangement, we suppose the explanation is good political horse trading. But provisions that by their terms govern after the initial assignment is made tell us nothing about the period in which an initial assignment may be made. In fact, the permissibility under §9706(f) of postappeal reassignment after October 1, 1993, makes plain that Congress was not "insisting upon as perfect a match-up as possible *up to October 1, 1993*, and then prohibiting future changes, both by way of initial assignment or otherwise," *post*, at 13 (SCALIA, J., dissenting), as JUSTICE SCALIA himself agrees. On the contrary, the reassignment provision indicates that a system of accuracy "in *initial* assignments, whether made *before* the deadline *or afterward*," is precisely what the Act envisions. *Ibid.* Here, as throughout this opinion, "accuracy" refers not to an elusive system of "perfect fairness," *ibid.*, but to assignments by the Commissioner following the scheme set out in §§9706(a)(1)–(3).

centage" of the overall obligation of all assignee operators (or related persons) to fund benefits for the unassigned. Under §9704(f)(1), it is defined as the percentage of the operator's own assigned beneficiaries among all assigned beneficiaries "determined on the basis of assignments as of October 1, 1993" (parenthesis omitted). The companies argue that the specification "as of" October 1, 1993, means that an assigned operator's percentage of potential liability for the benefit of the unassigned is fixed according to the assignments made at that date, subject only to specific exceptions set out in §9704(f)(2), requiring a change in the percentage when erroneously assigned retirees are reassigned or assignee operators go out of business. The companies contend that their position rests on plain meaning: "as of" the date means "as assignments actually stand" on the date. Yet the words "as of," as used in the statute, can be read another way: since Congress required that all possible assignments be complete on October 1, 1993, see §9706(a), it is equally fair to read assignments "as of" that date to mean "assignments as they shall be on that date, assuming the Commissioner complies with our command." The companies' reading is hospitable to early finality of assignments, while the alternative favors completeness and accuracy before finality prevails.

Once it is seen that there is no "plain" reading, however, there is nothing left of the "as of" argument except its stress that the applicable percentage can be modified only in accordance with the two exceptions recognizing changes for initial error or the demise of an assignee operator. The answer to this point, of course, has already been given. The enunciation of two exceptions does not imply an exclusion of a third unless there is reason to think the third was at least considered, whereas there is good reason to conclude that when Congress adopted the language in question it did not foresee a failure to make timely assignments. See *supra,* at 17–19. The phrase "as of" can-

not be read to govern a situation that Congress clearly did not contemplate,[13] nor does it require the absolute finality of assignments urged by the companies.

IV

This much is certain: the Coal Act rests on Congress's stated finding that it was necessary to "identify persons most responsible for plan liabilities," and on its express desire to "provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits," Energy Policy Act of 1992, Pub. L. 102–486, §19142, 106 Stat. 3037.[14] In the words of Senator Wallop's report delivered shortly before enactment, the statute is "designed to allocate the greatest number of beneficiaries

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[13] The same may be said of the provision for an initial trustee to serve until November 1, 1993, §9702(b)(3)(B), contrary to JUSTICE SCALIA's view. *Post*, at 11–12 (dissenting opinion).

[14] Under the respondent companies' view, if the transfers from the AML Fund prove insufficient to cover the benefits of all unassigned beneficiaries, an operator that received no assignments prior to October 1, 1993, would not have to contribute a penny to the unassigned beneficiary pool—solely due to the Commissioner's fortuitous failure to make all assignments by the statutory deadline. At the same time, operators that received full assignments prior to October 1, 1993, would be forced to cover more than their fair share of unassigned beneficiaries' premiums.

Although JUSTICE SCALIA sees the Act as rife with "seemingly unfair and inequitable provisions," *post*, at 12 (dissenting opinion), even his view is no reason to assume that Congress meant contested provisions to be construed in the most unfair and inequitable manner possible. In any event, JUSTICE SCALIA's citation of §9704(f)(2)(B) does not help his position. It provides a clear statutory solution to a problem Congress anticipated: the end of an assigned operator's business. Had Congress propounded a response to the issue now before us as clear as §9704(f)(2)(B), there would doubtless have been no split in the Courts of Appeals and no cases for us to review. Given the absence of an express provision, the statute's goals are best served by treating operators the way Congress intended them to be treated, that is, by allowing the Commissioner to identify the operators most responsible.

in the Plans to a prior responsible operator. For this reason, definitions are intended by the drafters to be given broad interpretation to accomplish this goal." 138 Cong. Rec. 34001 (1992).[15] To accept the companies' argument that the specified date for action is jurisdictional would be to read the Act so as to allocate not the greatest, but the least, number of beneficiaries to a responsible operator. The way to reach the congressional objective, however, is to read the statutory date as a spur to prompt action, not as a bar to tardy completion of the business of ensuring that benefits are funded, as much as possible, by those identified by Congress as principally responsible.

The judgments of the Court of Appeals in both cases are accordingly

Reversed.

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[15] A Congressional Research Service report dated shortly before the enactment likewise states that the Act envisioned that "[w]herever possible, responsibility for individual beneficiaries would be assigned . . . to a previous employer still in business." Coal Industry: Use of Abandoned Mine Reclamation Fund Monies for UMWA "Orphan Retiree" Health Benefits (Sept. 10, 1992), reprinted in 138 Cong. Rec., at 34005.