

MEMO# 35685

April 17, 2024

DOL Proposes Collecting Information from Plan Administrators for New Lost and Found Database

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Proposes Collecting Information from Plan Administrators for New Lost and Found Database

On April 16, 2024, the Department of Labor (DOL) published a proposed Information Collection Request (ICR)[\[1\]](#) proposing to collect information from plan administrators voluntarily in order to establish the Retirement Savings Lost and Found online searchable database as directed under §303 of the SECURE 2.0 Act.[\[2\]](#) DOL is soliciting comments on the proposed ICR, with comments due by June 17, 2024.

SECURE 2.0 Act Provision

Section 303 of the SECURE 2.0 Act directs DOL, within two years of enactment, to create a national online, searchable database to be managed by DOL, containing information on tax-qualified retirement plans to enable retirement savers to search for the contact information of their plan administrator and locate the benefits they have earned. The Act also requires plans to report certain information to DOL (in a manner and form prescribed by regulations), effective with respect to plan years beginning after the second December 31 occurring after the date of enactment.

Proposed Information Collection

DOL explains in the ICR that it had planned to populate the database with data that plan administrators submit to the IRS on Form 8955-SSA;[\[3\]](#) however, the IRS now indicates that it will not release this information to DOL, citing concerns regarding IRS compliance with Code section 6103's privacy and disclosure restrictions. Because DOL cannot obtain this information directly from IRS, DOL is now hoping that plan administrators (or their authorized representatives, such as recordkeepers) will voluntarily furnish information to DOL to initially populate the database.[\[4\]](#)

Under the proposal, DOL would collect information from plans that fall into the following

three categories: (1) plans with separated vested participants, (2) plans that distributed small balances into a rollover IRA, and (3) plans that distributed benefits pursuant to an annuity contract. The proposal further specifies the data elements requested within each category. DOL indicates that it would like to receive information dating back to the date a covered plan became subject to ERISA, though it recognizes that some plans may not have retained such historical data.

DOL suggests that plan administrators will be able to electronically submit the data as an attachment filed with their Form 5500 through EFAST2. DOL is also considering establishing a portal to allow plan administrators to submit the information directly into the Lost and Found database. DOL states that multiple security measures will be in place to protect the data in the database, including encryption and logging and monitoring mechanisms.^[5]

In both the ICR and the news release, DOL takes the opportunity to tout the enforcement effort that it began several years ago regarding missing participants (the Terminated Vested Participants Project).^[6] DOL ties this request to that initiative, stating:

By collecting this data, the Department is optimistic that it can work together with plan administrators to further reduce the number of missing participants and promote the payment of promised benefits, thus, helping plan administrators and other fiduciaries resolve issues and inaccuracies in the plans' books and records, and better comply with their fiduciary obligations. ^[7]

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Notes

^[1] The ICR was published at 89 Fed. Reg. 26932 (April 16, 2024), and is available at <https://www.govinfo.gov/content/pkg/FR-2024-04-16/pdf/2024-07968.pdf>. DOL's news release, dated April 15, 2024, is available at <https://www.dol.gov/newsroom/releases/ebsa/ebsa20240415>.

^[2] For a summary of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>.

^[3] Much of the information DOL is requesting is currently reported by plans to the IRS on Form 8955-SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits). The IRS provides this information to the Social Security Administration, who then provides it to separated vested participants when they file for Social Security benefits.

^[4] Section 303 of the SECURE 2.0 Act includes new ERISA section 523(e), which authorizes DOL to collect certain information from plan administrators, for information starting with plan years beginning on or after January 1, 2024. DOL is requesting information in addition to the data explicitly cited by the statute, including, for example, mailing addresses, email addresses, and telephone numbers; and "identification of any separated vested participant of normal retirement age or older owed a vested benefit, and who has been unresponsive to plan communications about their vested benefits or whose contact information the plan has reason to believe is no longer accurate."

[5] 89 Fed. Reg. at page 26935. New ERISA section 523(c) explicitly requires that DOL take all necessary and proper precautions to protect the data. Note that ICI, together with the joint trades, has previously expressed concern regarding DOL's collection and protection of participants' personally identifiable information in connection with DOL subpoenas. See ICI Memorandum No. 34367, dated November 16, 2022, available at <https://www.ici.org/memo34367>.

[6] For several years, ICI has engaged DOL on these issues (including DOL's investigative efforts) jointly with a group of other retirement industry trade organizations. See ICI memorandum No. 31288, dated July 16, 2018, available at <https://www.ici.org/memo31288>. For an overview of DOL's subsequent guidance on missing participants of ERISA plans, see ICI Memorandum No. 33043, dated January 14, 2021, available at <https://www.ici.org/memo33043>.

[7] 89 Fed. Reg. at page 26933.

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