

MEMO# 35745

June 18, 2024

ICI Submits Response to DOL's Proposed Information Collection Request on Collecting Information from Plans for New Lost and Found Database

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Submits Response to DOL's Proposed Information Collection Request on Collecting Information from Plans for New Lost and Found Database

On June 17, 2024, ICI submitted the attached letter to the Department of Labor (DOL) in response to a proposed information collection request ("Proposed ICR") issued in April.[\[1\]](#) In the Proposed ICR, DOL proposes to collect information from plan administrators on a voluntary basis in order to establish the Retirement Savings Lost and Found online searchable database as directed under §303 of the SECURE 2.0 Act.[\[2\]](#)

Background

Section 303 of the SECURE 2.0 Act directs DOL, by December 29, 2024, 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 that begin after December 31, 2023.

In the Proposed ICR, DOL proposes to request that plan administrators (or their authorized representative, such as a recordkeeper) voluntarily furnish specified information to establish the database. DOL requests, to the extent possible, the information listed in the statute (data elements detailed in ERISA section 523(e)), as well as several additional data elements, all dating back to the date a plan became subject to ERISA.

ICI Response to the Proposed ICR

Our letter expresses support for efforts to help individuals keep track of the assets they

have accumulated to ensure that individuals have access to use those benefits to fund their retirement, including support for the goal of Section 303. The letter explains, however, that several aspects of the Proposed ICR raise concerns for our members.

The Proposed ICR requests significantly more information about participants and their beneficiaries beyond the data elements listed in the statute.^[3] Further, the Proposed ICR requests data dating back to the date a plan became covered by ERISA, while the statute specifically authorizes collection of information with respect to plan years beginning in 2024.

In addition to the overly broad scope of information requested, the voluntary nature of the Proposed ICR itself raises concerns for service providers. Service providers generally do not disclose employees' personally identifiable information (PII) except as required by law, and their service agreements generally include restrictions on sharing plan and participant information to third parties. Therefore, it would be difficult for a service provider to justify voluntarily providing the information requested, even to a federal agency.

Our letter makes the following suggestions:

- The letter urges DOL to require no more than the information specified by the statute. We believe that Congress carefully considered the information DOL would need to carry out the mandate of establishing and maintaining the database, which are the data elements listed in the statute.
- The letter suggests including a carve-out for information on cashouts in connection with an automatic portability transaction.^[4] Plans should not report information with respect to cashouts that are made for the purpose of transferring the assets to an employee's new employer plan through an auto-portability network. The auto-portability system is, at its core, designed to reunite participants with their accounts (or prevent participants from losing track of them). Because the auto-portability system includes ongoing searches of its database, including those accounts in DOL's Lost and Found database would be largely duplicative.
- To encourage plans to voluntarily provide the data, the letter suggests that DOL consider providing an incentive. For example, DOL could provide a fiduciary safe harbor on steps fiduciaries of defined contribution plans can take to fulfill their obligations under ERISA to locate missing participants.^[5] Providing the information voluntarily could be part of satisfying such safe harbor. DOL at the very least should indicate that a plan fiduciary will not violate any of its fiduciary duties, such as its obligation to "ensure proper mitigation of cybersecurity risks" by voluntarily reporting information to the Lost and Found database.
- Finally, if DOL eventually determines to use a mandatory scheme, any mandatory reporting should not apply earlier than the 2025 filing year (or later depending on when requirements are finalized). Building a reporting system to enable this information to be provided will require a significant effort. DOL should keep in mind that the industry needs time to build out processes to properly support any such reporting.

In sum, DOL should take more time to consider and evaluate other approaches to populating the Lost and Found database. It is imperative that DOL not implement a solution before all options are thoroughly vetted.

Notes

[1] For an overview of the Proposed ICR, see ICI Memorandum No. 35685, dated April 17, 2024, available at <https://www.ici.org/memo35685>.

[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] The letter points out that the statute gives DOL the authority to determine the form and manner in which plan administrators should submit the specified information, but it does not include language authorizing DOL to collect any information it deems necessary to administer the Lost and Found database.

[4] "Auto-portability" is designed to facilitate the consolidation of small accounts in plans and IRAs when individuals change jobs. When a retirement plan participant terminates employment with a vested benefit of \$7,000 or less, the plan can automatically roll over their account to an IRA (a "Default IRA" or "Safe Harbor IRA"), if the participant does not take action after receiving the required notices. Section 120 of the SECURE 2.0 Act created a new statutory exemption for auto-portability and directed DOL to issue such guidance or regulations "as may be necessary" to carry out the purposes of section 120. For a summary of DOL's proposal to implement Section 120, see ICI Memorandum No. 35609, dated February 1, 2024, available at <https://www.ici.org/memo35609>.

[5] For several years, retirement industry trade organizations (including those representing plan sponsors and service providers) has encouraged DOL to provide such a safe harbor. See ICI memorandum No. 31288, dated July 16, 2018, available at <https://www.ici.org/memo31288>. For an overview of DOL's guidance on missing participants of ERISA plans, see ICI Memorandum No. 33043, dated January 14, 2021, available at <https://www.ici.org/memo33043>.