

MEMO# 35866

September 27, 2024

DOL Publishes Revised Information Collection Request on Collecting Information from Plans for New Lost and Found Database

[35866]

September 26, 2024

TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Publishes Revised Information Collection Request on Collecting Information from Plans for New Lost and Found Database

On September 12, 2024, the Department of Labor (DOL) published a revised Information Collection Request (ICR)[\[1\]](#) modifying its earlier proposed ICR,[\[2\]](#) which proposed 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.[\[3\]](#) In response to comments it received, DOL has significantly reduced the scope of the information it requests.

The Office of Management and Budget (OMB), charged with reviewing and approving ICRs, is accepting comments on the revised ICR until October 15, 2024.

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 April 2024, DOL submitted a proposed ICR to OMB, proposing to request that plan administrators (or their authorized representative, such as a recordkeeper) voluntarily furnish specified information to establish the database. DOL requested, 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.

On June 17, 2024, ICI submitted a letter in response to the proposed ICR, explaining that several aspects of the proposal raised concerns for our members.[\[4\]](#) We explained that the proposed ICR requested significantly more information about participants and their beneficiaries beyond the data elements listed in the statute.[\[5\]](#) Further, the proposed ICR requested 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, our letter explained that 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.

Revised ICR

DOL recently submitted a revised ICR to OMB for review and approval. DOL provided OMB a Supporting Statement in support of the ICR.[\[6\]](#) In the Supporting Statement, DOL summarizes the thirteen comment letters it received on the proposed ICR, explaining that the main concern expressed was with respect to the breadth of the proposed collection request. DOL acknowledges that commenters urged DOL to work with IRS, the Social Security Administration, or both, to obtain the needed information by gaining access to the Form 8955-SSA.[\[7\]](#) Due to "the uncertainties involved and the statutory deadline," DOL is moving forward with the voluntary information collection request, although it notes it continues its discussions with both agencies.

In response to the comments objecting to the breadth of the proposed ICR, DOL explains that it has significantly narrowed the scope of the voluntary information request. "This final information collection request generally is limited to the name and social security number of any participant who separated from service, is owed a benefit, and is age 65 or older, as well as current contact information for the plan."[\[8\]](#) Along with the Supporting Statement, DOL submitted to OMB a "galley mockup" that shows the reduced scope of the final ICR compared to the proposed ICR.[\[9\]](#)

DOL also provides the following information about its plans in the Supporting Statement:

- DOL has "established a direct electronic portal for plan administrators or their recordkeepers to submit the information directly into the [database]" which will allow recordkeepers to file on behalf of multiple plans simultaneously.[\[10\]](#)
- DOL has created a template to assist filers with the submission, which the plan administrator or recordkeeper can download, populate and then upload into the database.[\[11\]](#)
- DOL provides a brief explanation of the multiple security measures it will put in place to protect plan participant and beneficiary data in the database.[\[12\]](#)
- In DOL's explanation of its estimate of the time burden associated with submitting information, DOL acknowledges that recordkeepers must obtain authorization from plan administrators prior to filing. DOL states that it "does not assume that this consent will take any particular form, but that it will be done prudently," and that plan administrators and recordkeepers should maintain documentation of the authorization

in their records.^[13]

In the revised ICR, OMB invites comments on the following items:

- 1) whether the collection of information is necessary for the proper performance of the functions of DOL, including whether the information will have practical utility;
- 2) the accuracy of DOL's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used;^[14]
- 3) ways to enhance the quality, utility and clarity of the information collection; and
- 4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Shannon Salinas
Associate General Counsel - Retirement Policy

Notes

^[1] 89 Fed. Reg. 74291 (September 12, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-09-12/pdf/2024-20684.pdf>.

^[2] For an overview of the Proposed ICR, see ICI Memorandum No. 35685, dated April 17, 2024, available at <https://www.ici.org/memo35685>.

^[3] 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>.

^[4] For a summary of the letter, see ICI Memorandum No. 35745, dated June 18, 2024, available at <https://www.ici.org/memo35745>. The letter also 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.

^[5] 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.

^[6] OMB has posted documents in support of the ICR on its website, available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202403-1210-001. See "Lost and Found Supporting Statement," posted under Supporting Statement A. Also see "Gallery Mockup Data Elements Compare Proposed ICR with Final ICR" posted under Supplementary Documents.

^[7] 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. In the proposed ICR, DOL explained that it had planned to populate

the database with data that plan administrators submit to the IRS on Form 8955-SSA; however, the IRS indicated that it would not release this information to DOL, citing concerns regarding IRS compliance with Internal Revenue Code ("Code") section 6103's privacy and disclosure restrictions.

[\[8\]](#) 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. The revised ICR better aligns with this authorization. Section 523(e) requires plan administrators to submit listed information to DOL, including, at subsection (3), the name and taxpayer identifying number of each participant or former participant in the plan—

- A. who, during the current plan year or any previous plan year, was reported under section 6057(a)(2)(C) of the Code, and with respect to whom the benefits described in clause (ii) thereof were fully paid during the plan year;
- B. with respect to whom any amount was distributed under section 401(a)(31)(B) of the Code during the plan year; or
- C. with respect to whom a deferred annuity contract was distributed during the plan year.

[\[9\]](#) See link at footnote 6.

[\[10\]](#) Page 2-3 of Supporting Statement.

[\[11\]](#) Id.

[\[12\]](#) Page 4 of Supporting Statement.

[\[13\]](#) Page 10 of Supporting Statement. Note that new ERISA section 523(c) explicitly requires that DOL take all necessary and proper precautions to protect the data.

[\[14\]](#) DOL's estimates of the time and cost burden of the ICR are included at pages 8 through 14 of the Supporting Statement.