

MEMO# 35883

October 16, 2024

ICI Submits Comments to OMB Regarding DOL's Revised Request to Collect Data 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 Comments to OMB Regarding DOL's Revised Request to Collect Data from Plans for New Lost and Found Database

On October 15, 2024, ICI submitted the attached letter to the Office of Management and Budget (OMB) in response to a revised information collection request (ICR) submitted to OMB by the Department of Labor (DOL).[\[1\]](#) In the ICR, like the earlier proposed version of the ICR,[\[2\]](#) DOL requests approval 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.[\[3\]](#)

On June 17, 2024, ICI submitted a letter to DOL in response to the proposed ICR, explaining that several aspects of the proposal raised concerns for our members.[\[4\]](#)

In the October letter to OMB, we applaud DOL for addressing the primary concern cited in our letter, relating to the breadth of data requested. The proposed ICR requested significantly more information about participants and their beneficiaries beyond the data elements listed in the statute, and our June letter to DOL had urged DOL to request no more than the information specified by ERISA section 523(e). In response to comments, DOL significantly narrowed the scope of the voluntary information request.

The October letter to OMB then reiterates the remaining concerns and suggestions from our June letter to DOL that have not been addressed:

- The voluntary nature of the ICR raises concerns for plan service providers—even those who may support the establishment of the Lost and Found database. Service providers generally do not disclose employees' personally identifiable information (PII)

except as required by law. Service providers' agreements with plans generally include restrictions on sharing plan and participant information to third parties. Further, we have heard concerns that disclosing such information without the employees' consent may implicate state privacy laws. Therefore, it would be difficult for a service provider to justify voluntarily providing the information requested, even to a federal agency.

- Given the problems presented by a voluntary reporting approach and, on the other hand, the significant mandatory reporting obligations already faced by plans, we suggested that DOL should take more time to consider and evaluate other approaches to populating the database. It is imperative not to implement a solution before all options are thoroughly vetted.
- Our letter also suggested that to encourage plans to voluntarily provide the data, DOL should 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. 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.

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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>. 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.

[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.