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Submitted electronically via ebsa.opr@dol.gov

Mr. James Butikofer
U.S. Department of Labor
Employee Benefits Security Administration
Office of Research and Analysis
200 Constitution Avenue NW, N-5718
Washington, DC 20210

Dear Mr. Butikofer:

Re: *Information Collection Request Submitted for
Public Comment: Retirement Savings Lost
and Found*

We are writing on behalf of the following multiemployer retirement plans:

- Wisconsin NECA-IBEW Retirement Plan;
- Electrical Workers Local 159 Retirement Plan;
- Green Bay Electrical Workers Pension Plan; and
- Western Wisconsin Electrical Workers Retirement Plan (collectively, the "Plans").

Thank you for the opportunity to provide comments on the *Information Collection Request Submitted for Public Comment: Retirement Savings Lost and Found* (the "ICR"). The Plans recognize and appreciate the importance of reuniting participants and beneficiaries with lost retirement benefits. However, as further explained below, the Plans have significant concerns related to the provision of information requested in the ICR.

BACKGROUND

SECURE 2.0 Act of 2022 required plan sponsors to submit the plan name, information related to the plan administrator and the name and social security number of any individual formerly reported on the Form 8895-SSA who received payment of benefits through a complete distribution from the plan, an automatic rollover to an individual retirement account or the purchase of an annuity from an insurance company.

The ICR significantly expands the information requested by the DOL to also include:

- a complete history of all plan names (including merged plans) and plan administrators;
- the mailing address, telephone number, email address and birthdate of all terminated vested participants and beneficiaries;
- the amount of benefits owed to all terminated vested participants and beneficiaries;
- the benefit commencement date, form of payment elected, and payment amount for all participants and beneficiaries;
- if payment to a participant or beneficiary was completed, the date of the final benefit payment.

The ICR also asks plan sponsors to provide this information back to the date the Plans became subject to ERISA or as far back as possible, if shorter.

PRIVACY AND CYBERSECURITY

The ICR requests plan sponsors to voluntarily disclose to the DOL certain personal information of participants and beneficiaries, including Social Security numbers ("Participant Data"). We are concerned about the privacy and cybersecurity implications of the ICR.

With respect to privacy, numerous states have enacted comprehensive data privacy statutes governing the use and disclosure of personal information, which also often include heightened restrictions on Social Security numbers. These statutes, to the extent they apply to a plan sponsor, generally prohibit using and disclosing personal information except as otherwise required or permitted by the statute. We are concerned that plan sponsors risk violating data privacy statutes if they disclose Participant Data to the DOL. For example, one type of disclosure commonly permitted is a disclosure "required by law." However, a plan sponsor's compliance with the ICR is currently voluntary. We request clarification or further guidance from the DOL on this issue.

With respect to cybersecurity, the DOL has made clear that ERISA requires plan fiduciaries to take appropriate precautions to mitigate cybersecurity risks. The DOL's cybersecurity guidance lists detailed standards that entities receiving or maintaining Participant Data should implement. However, the ICR provides only cursory information regarding the security controls the DOL will employ to safeguard Participant Data. Thus, we are concerned that the DOL has not provided sufficient information to enable plan fiduciaries to appropriately assess how Participant Data will be protected and how cybersecurity risks will be mitigated. Will the DOL find that plan sponsors have

acted prudently under ERISA when disclosing Participant Data under the ICR? Will the DOL be offering an ERISA "safe harbor" to plan fiduciaries who voluntarily comply with the ICR?

Last, we have concerns about the consequences potentially arising from the lengthy retention period of Participant Data suggested in the ICR. Specifically, a plan sponsor's retention of Participant Data for periods beyond the later of those prescribed by law or reasonable record retention policies unduly increases the risk of loss and liability arising from a data breach, cyber-attack, or similar incident. Cyber insurance premiums may also increase, as many carriers factor in the number of records maintained by the insured when underwriting their policies. We request clarification or further guidance from the DOL on this issue.

ADMINISTRATIVE BURDEN

In addition to being beyond the scope of the requirements of SECURE 2.0, the ICR creates an undue administrative burden on the Plans and the respective Plan administrators. In an effort to minimize administrative costs for participants, the Plans' administrators generally operate with only the personnel and other resources needed to administer the Plans in accordance with current expectations. The information requested, to the extent available and maintained by the Plans and their service providers, is not easily compiled in the way suggested in the ICR. Instead, the Plans will be required to manually review participant data and census reports to compile the information included in the Request.

Additionally, over the last decade, the Plans have transitioned to electronic records, but have not digitized all paper records. Requesting information such as annuity starting dates, benefit payment amounts or final dates of payment for individuals no longer receiving benefits from the Plans would require the Plan administrators to spend a significant amount of time reviewing files and entering data.

This devotion of resources to review both electronic and paper files would likely require the Plan administrators to hire additional staff to prepare the submission of information included in the Request resulting in an increase of administrative expenses for all participants and beneficiaries, including those who do not and will not benefit from the Retirement Savings Database. Instead, the Plans request that the DOL consider issuing a more limited request for information in order to populate the database.

PROTECTION FOR UNKNOWN OR INCOMPLETE INFORMATION

While the DOL has not released the model template and suggested format for submission of information detailed in the ICR, the ICR does not suggest that the Plans will be able to contextualize the annual submission. Additionally, the ICR does not provide any guidance as to how to address information that is not maintained by the Plans. As an example, because the Plans do not rely on electronic delivery of documents (electronic delivery is generally not an option for construction industry plans such as the Plans), the Plans do not maintain email addresses or telephone numbers for participants and beneficiaries. Further, historical records may be incomplete and may not include all data fields being requested.

Additionally, as noted above, the Plans maintain record retention policies that require destruction of documents after satisfying record retention requirements and statutes of limitations under ERISA and State contract law. Accordingly, in compliance with the Plans' record retention policies, some of the information requested in the ICR is no longer maintained by the Plans.


Further, the Plans maintain missing participant procedures that require regular review of participant and beneficiary information to ensure the Plans maintain correct contact information for individuals entitled to benefits under the Plan. However, the Plans may not always have accurate information for each participant or beneficiary (*e.g.*, if a participant moves without notifying the Plan). Accordingly, it is possible that the information submitted to the DOL in response to the Request may not be accurate.

Please provide additional clarity regarding any protection available to the Plans or a safe harbor related to the provision of inaccurate or incomplete information.

CONCLUSION

Thank you again for the opportunity to comment regarding this important matter. If you have questions regarding the content of this comment or would like to discuss the Plans' concerns in more detail, please contact me at mmohs@reinhardtllp.com or (414) 298-8365.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Martha J. Mohs', written in a cursive style.

Martha J. Mohs