

June 17, 2024

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
ebsa.opr@dol.gov

Dear Mr. Butikofer:

Subject: Comments on Proposed Information Collection Request — Retirement Savings Lost and Found;
OMB Control Number: 1210-NEW

Aon appreciates the opportunity to submit comments to the Department of Labor (DOL) regarding its Proposed Information Collection Request (ICR) on the Retirement Savings Lost and Found online searchable database as described in section 523 of the Employee Retirement Income Security Act of 1974 (ERISA). Section 523 of ERISA was enacted as part of the SECURE 2.0 Act of 2022 and requires the establishment of such a database within two years of enactment.

This letter includes comments relating to the volume and type of data the DOL proposes to collect, the security of data, and the cost associated with collecting and maintaining this data for both the DOL and plan administrators.

We understand the need and challenge to connect individuals with retirement benefits owed from past employment. However, we believe the type and volume of information the DOL proposes to collect would be excessive. We recommend the DOL limit data collection to include only those individuals still owed a benefit and limit the individual data to only the information necessary to alert the individual to a potential benefit and plan administrator contact information. We also encourage the DOL to delay collecting data until a process outside of the EFAST2 filing system is identified.

Who We Are

Aon (NYSE: AON) is the leading global professional services firm providing a broad range of risk, retirement, and health solutions. Our 50,000 colleagues provide clients in over 120 countries and sovereignties with the clarity and confidence to make better risk and people decisions that help protect and grow their businesses. We serve as the recordkeeper for over 700 defined benefit plans and more than 50 employers providing 401(k) benefits through participation in the Aon Pooled Employer Plan.

Data Requested by the DOL Exceeds Authority and Need

The DOL requests that plan administrators voluntarily provide a significant amount of information to meet the need of the Retirement Savings Lost and Found. The ICR states, “In an effort to establish the most effective Retirement Savings Lost and Found online searchable database possible, this proposed ICR asks for specific information dating back to the date a covered plan became subject to ERISA.” We believe that collecting data from every qualified plan for the past 50 years would be neither practical nor an efficient use of plan sponsor or government resources. The DOL would undertake a significant cost to maintain such a database which would contain incomplete and duplicate records. The issues associated with such a massive database would grow rapidly, resulting in data that would not be helpful to participants and would cause significant effort in the long term to respond to individual inquiries.

The DOL states that additional data “may increase the efficiency and effectiveness of locating missing participants.” Importantly, Section 523 of ERISA does not provide the DOL authority to use the database to locate missing participants. It only provides that the DOL must create a database to “allow an individual to search for information” and “assist such an individual in locating any such plan..... in order to make a claim for benefits owing to the individual.” It does not provide that the DOL separately perform searches on data they receive. Retirement plan administrators have the data necessary to perform diligent searches for missing participants, and there is no statutory requirement or need to provide extensive data to the DOL to perform searches. The DOL’s authority to investigate and collect information under ERISA does not anticipate that the DOL would create a comprehensive database of all qualified plan data across the United States.

The DOL recognizes in the ICR that it has a “separate” program to ensure plans maintain records and procedures to pay out benefits. While that separate program has resulted in connecting participants to benefits of former employers, ERISA section 523 does not stipulate that data must be provided to the DOL to conduct a similar program across all qualified plans with data supplied by each plan sponsor. Like state unclaimed property databases, the Retirement Savings Lost and Found is simply intended to connect individuals to benefits they may be owed. It is neither a research database nor a database to be used to perform missing participant searches, address searches, relative searches, etc.

Participant Classification Collected will be Ineffective and Inefficient

The ICR proposes to collect data on former participants previously paid out, which would include participants who received a lump sum payment or who are currently receiving a payment from the plan. Such participants do not need to be connected to the plan administrator to make a claim for benefits owed, as they either have already received, or are already receiving, benefits. Providing this information will cause significant confusion to participants who may incorrectly assume they are due additional benefits from a plan. The plan administrator would undertake significant time and effort to respond to inquiries that are completely unnecessary. The DOL has not proposed a method for how such information would be shared with individuals or updated on an ongoing basis. Further, this data will necessarily be incomplete. Plan sponsors do not maintain a 50-year history of data for participants who are no longer owed a benefit.

Amount of Individual Data Requested is Excessive

The data the DOL proposes to collect (on a voluntary basis) for each individual participant is excessive and unnecessary to connect an individual to a plan sponsor. It is not needed to allow the DOL to “assist such an individual in locating any such plan of the individual.” For example:

- The amount of an individual’s benefit is not needed to alert the individual to the fact that a benefit is payable. The benefit amount may be confusing to an individual who is in the database with benefits from both a defined benefit plan and a defined contribution plan. Further, benefit amounts may change over time (e.g., defined contribution plan balances will change due to investment earnings). Once the individual contacts the plan administrator and provides the necessary information to be authenticated by the plan administrator, benefit amounts can be shared. The information serves no useful purpose for the DOL.
- The individual’s date of birth is one of several data elements (along with Social Security number) used by plan administrators to authenticate an individual. This information is not needed in the Retirement Savings Lost and Found database and could increase fraudulent requests if shared by the DOL in response to general inquiries. It may also be inaccurate and could result in an individual not “matching” the database, thereby not getting connected to plan administrator who could authenticate, research, and correct any inaccurate data. The plan administrator is in the best position to determine if a benefit is owed once contact is made.

- While historic plan detail can be helpful to trigger an individual to respond to written requests to start a benefit, it is not needed for a database which tells an individual, who proactively accessed the database, that a benefit is owed. When an individual learns that a benefit is owed and contacts the appropriate plan administrator, they may or may not identify the former employer from which the benefit was earned. However, connecting the individual to the appropriate plan administrator is the most important action, rather than learning how a benefit was transitioned from prior employers.
- If plan administrators have an address, email, and phone number for an individual, the individual is likely not missing. Such data is not needed for an individual to locate a plan administrator to make a claim for benefits owed. Moreover, it would be unwieldy for a plan administrator to provide annual updates and for the DOL to invest in annual data changes. This data would quickly grow stale and result in unusable data or inaccurate information.
- The account number for an individual is not needed to connect a participant to the trustee of any benefits automatically rolled over and should not be collected even though section 523 of ERISA provides for it. Trustees would be reluctant to share information with plan administrators who would then provide it on files to the DOL. A database with complete participant information and the actual account number needed to access benefits would be open to risk of fraud. Any participant who finds themselves on the Retirement Savings Lost and Found Database would be able to get the contact information of the trustee holding the benefit. That trustee can then authenticate the individual. The data is not needed in the actual lost and found database. As noted above, the amount of the benefit should also not be collected; it could be confusing to participants and, for a defined contribution plan, will not reflect the current balance due to income and fees charged to the account. Finally, the email address, mailing address, and phone number of individuals who were automatically rolled over would not be maintained by a plan administrator and would quickly grow out of date. Such information may be useful to perform a missing participant search, but the Retirement Savings Lost and Found database was not intended to be used to perform searches.
- Similarly, the individual certificate number for participants for whom an annuity was purchased should not be collected. Individuals who reach out to the appropriate insurance company will be authenticated by the insurer. However, the database should maintain information on the plan from which the purchase was made to assist the individual and insurer in locating the benefit that is owed. In addition, information on participants for whom an annuity was purchased will become out of date over time as those individuals commence benefits with the insurer. The DOL has not proposed any means to update the data for these individuals.

Data Collected Increases Risk of Fraud

The excessive amount of data proposed to be collected and stored by the DOL increases the risk of fraudulent claims of benefits and may put individual data at risk. The ICR does not specify or restrict how the DOL will share the information with individuals who reach out based on information provided publicly via the searchable database. As previously mentioned, certain data elements are necessary to authenticate an individual making a claim for a benefit. If such data is available via the Retirement Savings Lost and Found database, an individual's benefit may be at risk of being stolen.

The ICR proposes that plan administrators provide 50 years of data, including significant personally identifiable information (PII), via the EFAST2 filing system without providing any detail on the security of the system. The current IRS Form 8955-SSA was removed from the EFAST2 filing system for the Form 5500 specifically due to the PII it contained. Prior to collecting information, the DOL should identify the ultimate and secure manner, in which data will be collected.



Moreover, the California Privacy Rights Act (CPRA) requires third parties to collect and retain only the personal information necessary to fulfill the specified purpose. Since the data requested by the DOL is voluntary and not required by ERISA, providing excessive amounts of data could be a concern under the CPRA. Other states have also begun to enact specific data privacy rights. Given the voluntary nature of the data collection and inherent risks in providing a substantial amount of PII, plan fiduciaries may be reluctant to provide most of the information requested.

Participant Ability to be Removed from Database

The ICR does not address how a participant can request to be removed from the searchable Retirement Savings Lost and Found database as required by ERISA section 523. The DOL must establish a process to allow for participants to request to be removed, including how to maintain that election as additional data is provided year after year.

Closing

Aon appreciates the opportunity to submit these comments regarding the Proposed ICR. While we recognize the importance of a Retirement Savings Lost and Found database that will enable participants to find retirement benefits to which they may be entitled from prior employment, we believe the DOL's proposed data collection should be limited to include only participants who are currently due a benefit and plan administrator contact information. Collecting additional information would require significant cost and effort, result in confusion for participants, and pose significant risks with respect to the inappropriate dissemination and use of PII.

If you have any questions or would like to discuss these comments further, please contact the undersigned at the telephone numbers or email addresses below.

Sincerely,

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