

October 15, 2024

Filed Electronically

Office of Management and Budget
725 17th St NW
Washington, DC 20503

Re: Information Collection Request; Department of Labor Retirement Savings Lost and Found (ICR Reference Number: 202403-1210-001)

To Whom It May Concern:

The Investment Company Institute¹ appreciates the opportunity to submit comments to the Office of Management and Budget (OMB) in conjunction with its review of the Information Collection Request (ICR)² submitted by the Department of Labor (the “Department”), which requests approval to collect information voluntarily in order to establish the Retirement Savings Lost and Found database, as directed by Section 303 of the SECURE 2.0 Act of 2022 (“SECURE 2.0 Act”).³ The ICR is a revised version of the proposed Information Collection Request

¹ The [Investment Company Institute](https://www.ici.org) (ICI) is the leading association representing the asset management industry in service of individual investors. ICI’s members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$37.1 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional \$8.7 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

² The ICR’s notice of availability and request for comments was published at 89 Fed. Reg. 74291 (September 12, 2024).

³ The SECURE 2.0 Act made several changes to ERISA and was enacted under the Consolidated Appropriations Act, 2023 (CAA). Section 303 of the SECURE 2.0 Act adds new Section 523 to ERISA and directs the Department, by December 29, 2024, to create a national online, searchable database to be managed by the Department, 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.

(“Proposed ICR”) issued by the Department earlier this year.⁴ ICI submitted comments in response to the Proposed ICR.⁵

Along with the ICR, OMB also made available the Department’s “Supporting Statement for Paperwork Reduction Act 1995: Retirement Savings Lost and Found,” (“Supporting Statement”), in which the Department provides justification for the ICR, including a review of the comments it received in response to the Proposed ICR and the changes accordingly made to the ICR.

We applaud the Department 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 letter urged the Department 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.

In the Supporting Statement, the Department states that it “believes the reduction in scope of this final information collection request both responds to and addresses the material concerns of the commenters.”⁶ While we appreciate the reduction in scope, concerns remain regarding the ICR.

As we explained in our letter, the voluntary nature of the Proposed 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,⁷ we suggested that the

⁴ The Proposed ICR was published at 89 Fed. Reg. 26932 (April 16, 2024).

⁵ See letter from Elena Barone Chism, Deputy General Counsel Associate—Retirement Policy and Shannon Salinas, Associate General Counsel—Retirement Policy, to James Butikofer, Office of Research and Analysis Employee Benefits Security Administration, dated June 17, 2024, available at <https://www.ici.org/letters/23-cl-dol-info-collection-request>.

⁶ See page 7 of the Supporting Statement.

⁷ Section 319 of the SECURE 2.0 Act directed the Department, along with Treasury and the PBGC, to examine the reporting and disclosure requirements in ERISA and the Code applicable to pension and retirement plans and provide a joint report to Congress with recommendations to “consolidate, simplify, standardize, and improve” the requirements. The Department should ensure that the reporting to implement the Lost and Found database does not go against this goal, increasing reporting burdens. See the request for information issued jointly by the agencies to develop a public record for purposes of the directive in section 319 of the SECURE 2.0 Act. 89 Fed. Reg. 4215 (January 23, 2024).

Department should take more time to consider and evaluate other approaches to populating the database. We recognize that the Department is under a statutory deadline for creating the Lost and Found database, but believe 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, the Department should consider providing an incentive. For example, the Department 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. The Department 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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ICI looks forward to continuing to work with the Department to implement the Retirement Savings Lost and Found database and would be happy to provide additional information to OMB to aid in its review of the ICR. If we can provide you with any additional information regarding these issues, please do not hesitate to contact Elena Chism at 202/326-5821 (elena.chism@ici.org) or Shannon Salinas at 202/326-5809 (shannon.salinas@ici.org).

Sincerely,

/s/ Elena Chism

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