



VIA Electronic Delivery

October 15, 2024

Hon. Richard Revesz, Administrator
Office of Information and Regulatory Affairs
U.S. Office of Management and Budget
Washington, D.C. 20503

Re: **“Retirement Savings Lost and Found,” ICR Reference Number: [202403-1210-001](#)**

Dear Mr. Revesz:

The U.S. Chamber of Commerce (Chamber) appreciates the opportunity to comment on the proposed voluntary information collection request (ICR) from the Department of Labor (DOL) relating to the Retirement Savings Lost and Found under Section 303 of the SECURE 2.0 Act (SECURE 2.0). The Chamber supports a system that allows participants to locate the plan administrator of a plan where an individual has a deferred vested benefit. However, we are concerned with the burden on plan administrators in providing the information in the ICR. As discussed below, plan administrators currently are required to provide this information to the Internal Revenue Service (IRS), and the IRS provides this information to the Social Security Administration (SSA). We urge the IRS, SSA and DOL to coordinate with each other to obtain this information for the database.

Background

Section 303 of SECURE 2.0 added a new section 523 to the Employee Retirement Income Security Act (ERISA), entitled the Retirement Savings Lost and Found.¹ Section 523(a) directs the Secretary of Labor to establish an online searchable database no later than December 29, 2024 (Lost and Found Database). The purpose of the database is:

- To allow individuals to obtain the contact information of the administrator of a plan in which they may have participated;
- To allow the Secretary of Labor to assist participants in locating an individual’s plan; and
- To allow the Secretary to make any necessary changes to the administrator’s contact information because of certain events.²

Section 523(c) of ERISA provides that for plan years beginning after December 31, 2023, the administrator of a plan to which the vesting standards of ERISA section 203 apply, “shall submit to the Secretary, at such time and in such form and manner as is prescribed in regulations” the following:

- The information in subparagraphs (A) and (B) of Code section 6057(a)(2), which is:
 - The name of the plan;

¹ Codified at 29 U.S.C. § 1153.

² ERISA § 523(a); 29 U.S.C. § 1153(a).

- The name and address of the plan administrator
- The information required under paragraphs 1-4 of Code section 6057(b), which is:
 - Any change in the name of the plan;
 - Any change in the name or address of the plan administrator;
 - If the plan was terminated; and
 - If the plan merged or consolidated with any other plan or was divided into two or more plans.
- The name and taxpayer identification of each participant or former participant in the plan:
 - Who during the current plan year or any previous plan year was reported under Code section 6057(a)(2)(C) (separated from service with a deferred vested benefit and the deferred vested benefit was not paid) and with respect to whom benefits were fully paid during the plan year;³
 - Who was cashed out into a default IRA during the plan year (and the name and address of the designated trustee and the account number of the IRA);
 - Was distributed a deferred annuity contract during the plan year (and the name and address of the issuer of the annuity contract and the contract or certificate number).

On April 16, 2024, DOL issued an initial ICR in which it sought to collect information on a voluntary basis to establish the Lost and Found Database.⁴ In the ICR, DOL noted that the IRS has much of the information needed for the database from the Forms 8955 (Forms SSA), but the IRS will not provide this information based on concerns with Code Section 6103.⁵

DOL requested voluntary participation through the ICR not only for the information listed in the statute, but also for additional significant information not listed in ERISA Section 523, such as: the date of birth, mailing addresses, email addresses, telephone numbers, the amount of each and nature of the benefit of separated vested participants and beneficiaries and the identification of a separated, vested participants of normal retirement age or older who have been unresponsive to plan communications or whose contact information the plan has reason to believe is no longer accurate. In addition, DOL requested the statutory and other information retroactive to the date the plan became subject to ERISA, which for many plans would be 1975.

Section 303 of SECURE 2.0 did not amend ERISA to provide a penalty for not providing the information in Section 523. In the initial ICR, DOL insinuated that if plans did not voluntarily provide this information, DOL has the authority to obtain this information

³ The legislative text appears to assume that the IRS would have provided DOL the information in the Forms SSA and this information would be used to remove anyone from the data base who had received their deferred vested benefit.

⁴ 89 Fed. Reg. 26934.

⁵ In our May 9, 2023 [letter](#) to DOL, the Chamber stated that because much of this information is already required to be provided to the IRS, DOL should coordinate with the IRS to obtain the information. This information should not fall within [26 U.S.C. Section 6103](#), and, therefore, IRS should be able to disclose it and coordinate with DOL because the Form SSA and the information on it should not be considered a tax return or return information. Even if some information is within Section 6103, arguably IRS could redact such information, such as the tax identification number.

through audits. Specifically, DOL “notes that, in addition to the specific grant of authority in section 523(e) of ERISA ... the Department has general authority to investigate and collect information under other sections of ERISA, including sections 504 and 505 of ERISA, as well as to verify participants’ and beneficiaries’ identities under the Retirement Savings Lost and Found online searchable database.”

DOL submitted a revised ICR to OMB in which it proposes to request the following:

For any plan with a participant or former participant described in 26 U.S.C. 6057(a)(2)(C)(i) and (ii) (“separated vested participant”), provide the following information with respect to the plan in accordance with DOL’s filing instructions:

1. The name and plan number of plan as reflected on the most recent Form 5500 Annual Return/Report of Employee Benefit Plan or Form 5500-SF Short Form Annual Return/Report of Employee Benefit Plan (individually and collectively “Form 5500”).
2. The name, employer identification number (EIN), mailing address, and telephone number of the plan administrator as reflected on the most recent Form 5500.
3. The name, EIN, and telephone number of the plan sponsor as reflected on the most recent Form 5500.
4. The name and SSN of any separated vested participant aged 65 (or older) who is owed a vested benefit.

The instructions expand on who should be included by specifying that the plan administrator should include the following individuals:

- Deceased participants who would have been age 65 or older if they had survived and whose beneficiary is entitled to a benefit,
- Separated vested participants aged 65 or older whose benefits were conditionally forfeited under Treasury Regulation section 1.411(a)-4(b)(6), and
- Separated vested participants aged 65 or older who are in pay status.⁶

Discussion

The purpose of the Lost and Found Database is to allow individuals to obtain the contact information of the administrator of a plan in which they have a deferred vested benefit, to allow the Secretary to assist in this, and to allow the Secretary to make changes to the administrators’ contact information. There is relatively little information DOL needs to build a database that fulfills this purpose. Specifically, the only information needed is the participant’s name, the plan name and the plan’s contact information, and any updates to the latter two. Any additional information for verification could be obtained when the participant contacts the plan.

With respect to the ICR, OMB asked, in part, on comments on the following:

⁶ “FILING INSTRUCTIONS For Retirement Savings Lost and Found Database (RSLF) Upload Template, <https://www.reginfo.gov/public/do/DownloadDocument?objectID=145705900> (footnote omitted).

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Ways to enhance the quality, utility and clarity of the information collection; and
- 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.⁷

Although we appreciate the DOL's changes to the initial ICR and limiting the amount of information requested, we remained concerned with the agencies not providing the information they already have to populate the database and DOL's insinuation that it will audit entities to obtain this information. Finally, we are also concerned that certain aspects of the new ICR are not within the scope of Section 523.

Although most of the information (but not all) is necessary for the Lost and Found Database to function, most of this information already is with the IRS and the SSA. From an efficiency standpoint and to minimize the burden on plan administrators and recordkeepers, the agencies should work together to provide the information to DOL. Congress intended this would occur so that that plan administrators would not need to incur significant costs as DOL builds and populates the Lost and Found Database. Plan administrators do not have this information, and they will need to go to their recordkeepers for this. The recordkeepers do not have this information in the format DOL provided in the ICR, and they will need to compile the information in the format DOL requires. This is not automatic, and systems will need to be created to do this. This will cost recordkeepers money, which will be passed onto plans, which can then be passed onto participants.⁸

In our prior comments, we expressed concern that releasing this information without the participant's consent may implicate state privacy laws or could subject the plan administrator or recordkeeper to a breach of fiduciary duty claim. DOL has not explained the interaction between state privacy laws and an administrator or its delegate divulging this information without a participant's consent. In addition, DOL has not discussed the fiduciary implications of divulging personally identifiable information without a participant's consent or provided a safe harbor for doing so, especially if the information is compromised or incomplete. This would be mitigated if the agencies were to share the information they have with DOL.

In the prior ICR, DOL indicates that even though providing this information is voluntary, if a plan does not provide the information, DOL "has general authority to investigate and collect information under other sections of ERISA, including sections 504 and 505⁹ of

⁷ 89 Fed. Reg. 74291 (Sept. 12, 2024).

⁸ DOL has stated that reasonable administrative expenses can be paid from the plan, including required disclosures. See "Guidance on Settlor v. Plan Expenses" available at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/settlor-expense-guidance>.

⁹ ERISA Section 505 allows the Secretary of Labor to "prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this subchapter. Among other things, such regulations may define accounting, technical and trade terms used in such provisions; may prescribe forms; and may

ERISA, as well as to verify participants' and beneficiaries' identities under the Retirement Savings Lost and Found online searchable database." There is nothing in Section 523 that would require DOL to verify participants' and beneficiaries' identities. The database merely is a tool for participants to search to see if they may be eligible for a deferred vested benefit and then subsequently contact the administrator for further details.

ERISA Section 504 gives the Secretary of Labor the authority to make an investigation to determine whether any person has violated or is about to violate any provision of ERISA or any regulation and, in connection with the investigation, require the "submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary." Nothing in SECURE 2.0 added a penalty or other enforcement against plan administrators for not providing information to DOL for the Lost and Found Database, and the ICR is voluntary. As such, it is unclear how DOL would have authority to investigate whether an administrator is violating a voluntary provision.

Finally, we have concerns with some of the data elements in the revised ICR. First, with respect to deceased participants, the statute does not require that plan administrators provide a list of beneficiaries, but it appears that the ICR would require this. Secondly, the statute does not require plan administrators to provide DOL a list of individuals whose benefits have been escheated under state law. Finally, it is unclear what the purpose is of providing information on separated vested participants who are in pay status because such individuals presumably know how to contact the plan administrator and are not technically "lost"; and, therefore, there is no need for DOL to obtain this information to carry out the purpose of the Lost and Found Database.

Conclusion

We appreciate the need to create an online database where individuals could determine whether they may have deferred vested benefit, and we appreciate DOL's paring down the data request. However, we believe that this can be accomplished more efficiently and cost effectively were the agencies to share the information with the DOL that they already have and which plan administrators are currently required to provide to the IRS.

Sincerely



Chantel Sheaks
Vice President, Retirement Policy
U.S. Chamber of Commerce

provide for the keeping of books and records, and for the inspection of such books and records (subject to section 1134(a) and (b) of this title)." Nothing in this section appears to give DOL authority to demand the information in ERISA Section 523.