



# DOL proposes “voluntary” Retirement Savings Lost and Found information collection rules

The Department of Labor published a “proposal [that] solicits specific information from administrators of retirement plans subject to ERISA” and “solicit[ed] comments on [that] proposed information collection request (ICR),” on April 16, 2024, in support of establishing the Retirement Savings Lost and Found (RSLF) online searchable database required under SECURE 2.0. Throughout this document, we will go through the background as well as a summary of the requested information and then review the more unique aspects of DOL’s proposal.

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The DOL describes the RSLF as an “online searchable database to reunite workers with retirement benefits earned over their working lives and to help the Department assist them in that effort.” The simplest way to define this proposal is as a new set of plan reporting obligations of data that will populate the RSLF.

This proposal is seen to be unusual and unique in various aspects, one being that reporting is technically “voluntary” and is meant to be included as an attachment to the mandatory 2023 Form 5500, however, it “would not be considered part of the Form 5500.”

In the following sections, we begin by discussing background information and then a summarized review of the unusual features of the DOL’s proposal and the requested information.

## **Background**

Within 2 years of enactment, SECURE 2.0 has directed the Secretary of Labor to create the RSLF, in consultation with the Secretary of the Treasury. This would allow individuals to search the RSLF database for plan contact information. DOL could use the database to assist participant searches and would update the database’s plan contact information for, e.g., plan/corporate mergers.

## **DOL proposed ICR**

Under the proposed ICR, plan administrators would “voluntarily” report to DOL data concerning:

- *Separated Vested Participants*: e.g., plan and employer identifying information, participant and beneficiary identifying information (including Social Security Number), and benefit information (e.g., if and how the benefit has been paid). If any of this information has changed since the most recent Form 5500 (e.g., if the employer’s name has changed because of a corporate merger), then the prior data (e.g., the prior corporate name) and the date of change should also be provided. Finally, the administrator should identify “missing participants,” defined as “any separated vested participant of normal retirement age or older that is owed a vested benefit, and who has been unresponsive to plan communications about their benefits or whose contact information ... the plan has reason to believe is no longer accurate.”

- *Plans That Distributed Benefits Under Section 401(a)(31)(B) (small benefit mandatory cash-outs):* e.g., plan, employer, participant, and benefit information (as above) and, where the benefit was, e.g., distributed to a designated IRA, identifying information for the IRA issuer/designated trustee.
- *Plans That Distributed Annuities:* e.g., plan, employer, participant, and benefit information (as above) and identifying information for the annuity issuer.

### ***Unusual features of DOL’s proposal***

*Format:* DOL had hoped to get much of this information directly from Form 8955– SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits), but the IRS refused to allow the release of that data to DOL. So, instead, DOL is asking that plan administrators attach that data (plus certain additional information as described above) to the 2023 Form 5500 Annual Return/Report “using the all-electronic ERISA Filing Acceptance System (EFAST2).” In this regard, DOL “clarifies” that “[a]lthough the information would be submitted through EFAST2 along with the plan’s Form 5500, the attachment itself would not be considered part of the Form 5500 annual report filing.”

*Compliance is voluntary, sort of:* DOL explicitly states that compliance with the ICR is voluntary, but also states that:

Although this proposed ICR is voluntary, the Department notes that, in addition to the specific grant of authority in [the RSLF provision of SECURE 2.0] ..., the Department has general authority to investigate and collect information under other sections of ERISA, ... as well as to verify participants’ and beneficiaries’ identities under the Retirement Savings Lost and Found online searchable database. The Department further notes that, although this proposed ICR does not impose any new recordkeeping requirements, the Department expects plans that follow best practices will already have much of this additional information on file.

Sponsors’ experience with DOL audits focusing on missing participants may be excused for taking that language as implying that noncompliance may result in further action by DOL.

*DOL also has its own missing participant project:* The ICR proposal also describes a separate DOL Terminated Vested Participants Project (TVPP or missing participant program), as follows:

The TVPP has three key objectives for defined-benefit pension plans. First, to ensure these plans maintain adequate census and other records necessary to determine (a) the identity and address of participants and beneficiaries’ due benefits under the plan, (b) the amount of benefits due under the plan, and (c) when participants and beneficiaries are eligible to commence benefits. Second, to ensure these plans have appropriate procedures for advising participants with vested accrued benefits of their eligibility to apply for benefits as they near normal retirement age and the date they must start required minimum distributions under federal tax law. Third, to ensure these plans implement appropriate search procedures for terminated participants and beneficiaries for whom they have incorrect or incomplete information. Since 2017, the Department has recovered more than \$6.7 billion for such “missing” participants and beneficiaries.

This may be understood as DOL’s sub-regulatory, audit-driven enforcement of what it views as plan “best practices” concerning “missing participants.”

Obviously, connecting “missing participants” with their “missing benefits” is a good thing. IRS’s refusal to release Form 8955 seems like a solvable problem. Thus, this proposal is probably best viewed as a stopgap solution for 2023 data. In that regard, DOL states that “As the agency moves forward with the program, it is looking into providing other simple and efficient means of furnishing the data to the Retirement Savings Lost and Found online searchable database.”

The burden this proposal will impose will differ from sponsor to sponsor and administrator to administrator. As will the sponsor’s/administrator’s views of their compliance obligation. For what it is worth, DOL estimates the “Total Burden Hours” as 239,579 and the “Total Burden Cost” as \$0.

Comments are due by June 17, 2024.

For more information on the DOL’s proposal, visit [\[WEBSITE\]](#) or call [\[PHONE NUMBER\]](#).

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