

November 21, 2024

DOL Announces Voluntary Information Collection via Retirement Savings Lost and Found Database

On November 18, 2024, the Department of Labor (“DOL”) announced it is now collecting information from plan administrators of retirement plans subject to ERISA on a voluntary basis to establish the Retirement Savings Lost and Found online database (“Database”). This effort is directly related to Section 303 of the SECURE 2.0 Act (“SECURE 2.0”), which directed the DOL to establish the Database by December 29, 2024, to help unite ERISA plan participants and other individuals with their lost retirement accounts.

Background

Section 523 of the Employee Income Security Act (“ERISA”), as added by SECURE 2.0, directs the DOL to consult with other government agencies such as the Internal Revenue Service (“IRS”) and Social Security Administration (“SSA”) to gather necessary participant data needed to establish the online Database. The DOL originally anticipated that it could utilize data gathered by the IRS on Form 8955-SAA to populate the Database but encountered some hurdles in working with the IRS regarding confidentiality and disclosure rules. Although the DOL believes those issues are now resolved, the DOL has remaining concerns about the completeness and accuracy of data gathered by IRS Form 8955-SAA. Accordingly, the DOL has moved forward with its own intake process to gather the necessary data directly from plan administrators within the required timeframe.

As a reminder, a retirement plan is subject to Title I of ERISA unless it meets one of the following exceptions:

- A 401(a), 401(k), 403(b) or 457(b) plan of a governmental employer (including a public school);
- A top hat 457(b) plan of a nonprofit organization;
- A 401(a), 401(k), or 403(b) plan of a church or church-related entity unless the plan administrator has irrevocably elected to have ERISA apply to that plan; or
- A 403(b) plan of a nongovernmental/non-church 501(c)(3) organization that meets the non-ERISA regulatory safe harbor rules.

Voluntary Information Collection Request

Who:

The DOL is asking plan administrators of ERISA-covered retirement plans to voluntarily submit data for certain participants who are owed benefits from the retirement plan or to authorize their recordkeeper or third-party administrator to do so on their behalf. A third-party that submits information on behalf of a plan administrator must keep the plan administrator’s authorization on file for a period of at least 6 years.

What:

For plan administrators that choose to voluntarily submit data, the DOL is requesting the following plan-level information as reflected on the Plan’s most recent Form 5500 or Form 5500-SF:

- Plan name and plan number,
- Plan administrator name, EIN, mailing address, and phone number,
- Plan sponsor name, EIN, and phone number.

The following participant-level information is requested for plan years beginning after December 31, 2023:

- Name and Social Security number of any vested participant who is:
 - separated from service,
 - owed a benefit from the plan, and
 - age 65 or older.

- Include:
 - 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, and
 - separated vested participants aged 65 or older who are in pay status.
- Report participants who are no longer owed a benefit from the plan and the date of payment if previously reported.

When:

The DOL is asking for the first voluntary submissions of the requested data prior to December 29, 2024, and then at least annually thereafter. They also encourage more frequent submissions as necessary to keep the Database up to date.

How:

Users must first create a Login.gov account and profile found at <https://lostandfound-intake.dol.gov> for access to the template and instructions. Then proceed with the following two steps.

Step 1: Use the DOL's Lost and Found Database Microsoft Excel/CSV template to populate the requested data.

Step 2: Upload the completed template directly to the DOL.

User Protections

The DOL includes assurances to plan administrators who voluntarily participate in their information request, specifically addressing the following fiduciary and privacy issues.

Fiduciary duty to mitigate cybersecurity risk – if plan administrators themselves or through an authorized third-party prudently and loyally follow the DOL's data transmittal instructions, they will be deemed to have satisfied their fiduciary duty under ERISA Section 404 to ensure proper mitigation of cybersecurity risks related to such act. The DOL also states that such plan fiduciaries will not be subject to liability under ERISA for the DOL's conduct in the event of a future security failure involving the Lost and Found Database.

Fiduciary duty and state privacy laws – if a plan fiduciary, recordkeeper, or other party acting on behalf of the plan acts reasonably and in good faith in submitting the requested information prudently and loyally following the DOL's instructions, the DOL indicates it will not bring an enforcement action under ERISA against them for providing such information to the Lost and Found Database without first obtaining participant consent when required by state law.

User authentication to protect privacy – the DOL states it has incorporated design features to address the risk of personal information disclosure to unintended audiences such as requiring an identity-authenticated account for each Lost and Found Database user and producing search results related only to that account holder.

Individual Participant Opt-Out Rights

An individual participant may opt out online by submitting a request directly to the DOL at <https://www.dol.gov/agencies/ebsa/about-ebsa/ask-a-question/ask-ebsa>. The participant's decision to opt-out will be documented and referred to the DOL's Lost and Found Database administrators to suppress the participant's data from appearing in any Database searches.

Use of Plan Assets

The DOL has confirmed the plan administrator can use plan assets to pay for the reasonable cost of collecting, formatting, and transmitting the requested data to the DOL since it is for the purpose of connecting separated vested participants with benefits owed to them under the plan.

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