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Retirement Lost & Found: DOL Proposes Voluntary Reporting

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The [SECURE 2.0 Act of 2022](#) directed the Department of Labor (“DOL”) to establish a database that individuals can search to help locate their retirement benefits. The database – referred to as the Retirement Savings Lost and Found (the “Lost & Found”) – was originally intended to leverage existing filing requirements, but the Internal Revenue Service (“IRS”) determined it could not legally share Form 8955-SSA data with DOL. Consequently, DOL has issued a proposed procedure (the “Proposal”) to collect data directly from plan administrators on a voluntary basis via a new filing made along with, but not as part of, the Form 5500. DOL has requested comments on the Proposal by June 17, 2024.

I. Background

In 2016, Senator Elizabeth Warren (D-MA) and Senator Steve Daines (R-MT) introduced the *Retirement Savings Lost and Found Act* (S. 3078, 114th Cong.). This bipartisan legislation was intended to address concerns that individuals sometimes lose track of their retirement accounts as they change jobs. The legislation called for establishing a centralized database of account information and allowing the general public to search the database to locate retirement benefits. As initially introduced, Treasury and the Social Security Administration (“SSA”) would have created the database using the information already reported on the Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*. Some versions of the legislation also clarified plans’ obligations when trying to locate terminated vested participants and required plans to transfer unclaimed mandatory distributions of under \$1,000 to a federal agency.

Approximately six years after its introduction, a revised version of the *Retirement Savings Lost and Found Act* passed as section 303 of the SECURE 2.0 Act. Section 303 is similar to the original bill introduced by Senators Warren and Daines, but it moved the responsibility for the Lost & Found from Treasury to DOL. This change meant that the agency running the Lost & Found (*i.e.*, DOL) would be different from the agency currently receiving the Form 8955-SSA filings (*i.e.*, IRS). Section 303

includes authority for DOL to issue regulations to require reporting of data similar to that on the Form 8955-SSA, but the law did not expressly permit IRS to share Form 8955-SSA filings with DOL. Section 303 also did not include the provisions related to unclaimed mandatory distributions or the safe harbor for missing participants.

DOL put the Lost & Found on its regulatory agenda beginning in 2023 (RIN: 1210-AC 19), and administration officials have highlighted the Lost & Found as a priority. DOL has repeatedly raised the need for additional funding to create the Lost & Found, and Congress has not yet provided an appropriation specifically for the project. However, in November 2023, DOL received a \$3.5 million grant from the Technology Modernization Fund to establish the Lost & Found.

On April 15, 2024, DOL released the Proposal to solicit comments on DOL's proposed process for collecting information to populate the Lost & Found database. Many expected DOL to rely on IRS and SSA data, but IRS determined that it was not able to release Form 8955-SSA data to DOL because of statutory requirements related to confidentiality and the disclosure of tax returns under Internal Revenue Code of 1986, as amended (the "Code") section 6103. Consequently, DOL developed and proposed a process to collect information on a voluntary basis directly from plan administrators.

II. Proposal

Under the Proposal, the administrators of plans subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), would be permitted – but not required – to submit information to the Lost & Found for the following three classes of current and former participants:

- separated vested participants (as defined in Code section 6057(a)(2)(C));
- former participants who were subject to involuntary distributions (under Code section 401(a)(31)(B)); and
- former participants for whom the plan purchased annuities (*e.g.*, a terminal annuity or pension risk transfer annuity).

DOL would collect the following types of information:

- employer information (*i.e.*, EIN, address, telephone number);
- plan information (*e.g.*, plan name, administrator name);
- participant information (*e.g.*, name, date of birth, address, email, telephone number, Social Security number);
- benefit information (*e.g.*, nature, form, amount, whether and how paid, beneficiary information); and
- location of benefit if not with the plan (*e.g.*, insurer information if an annuity was distributed, trustee information for transfers to an IRA).

Plan administrators electing to participate would provide information for the Lost & Found via a report filed through the EFAST2 system along with the plan's annual Form 5500 (or Form 5500-SF). DOL states that the submission would not be considered part of the Form 5500, presumably to protect the information from public disclosure. Plan administrators could file their first Lost & Found report along with the Form 5500 for the 2023 plan year. DOL has requested that plan administrators provide historic data dating back to when the plan first became subject to ERISA, to the extent such information is available.

The Proposal acknowledges that DOL is subject to statutory requirements related to safeguarding Lost & Found data. DOL does not go into detail but states more generally that "[m]ultiple security measures will be in place to protect plan participant and beneficiary data," including access controls, masking techniques, and encryption.

III. Observations & Next Steps

The Proposal is an effort by DOL to establish the Lost & Found on the timetable set by Congress (*i.e.*, by December 29, 2024) despite material implementation challenges. Although Congress provided DOL with authority to create the Lost & Found (under new ERISA section 523), there was an expectation that DOL would be able to leverage the existing Form 8955-SSA filing requirements. IRS's determination that the agency cannot share the data with DOL complicates the project and may lead to further regulatory action. For example, the Proposal implies that DOL may, in the future, compel plans to provide information through regulations or as part of the agency's enforcement efforts.

It remains to be seen whether DOL will be in a position to accept data with the Form 5500 filings for the 2023 plan year, but assuming they are, plan administrators will have to determine whether or not to provide data to the Lost & Found voluntarily. DOL has not yet attempted to incentivize participation by, for example, providing a fiduciary safe harbor or clarifying whether the costs for voluntarily providing data can be paid out of plan assets. Some administrators may determine that there is value in participating because it could assist terminated vested participants in locating their benefit at some point in the future. Administrators will need to weigh the benefits of participating against any costs and risks. For example, they may need to consider whether DOL can demonstrate that the Lost & Found has cybersecurity practices consistent with the agency's [cybersecurity guidance](#).

DOL will likely need to work through a number of complex issues before finalizing the Proposal, and the agency has requested that interested parties submit ideas on how to improve the Proposal and the Lost & Found. Comments are due on June 17, 2024.