

PROCEDURES FOR COMPUTER MATCHING PROGRAMS

- 1. REASON FOR ISSUE:** This Handbook revises Department of Veterans Affairs (VA) procedures that implement the policies contained in VA Directive 6300, Records and Information Management, relating to computer matching programs.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This Handbook updates procedures for conducting computer matching programs as authorized by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Act of 1988 and the Computer Matching and Privacy Protection Amendments of 1990. It identifies the responsibilities of the parties in drafting a computer matching agreement (CMA), the role of VA's Data Integrity Board (DIB) and includes procedures for submitting a biennial computer matching activities report to the Office of Management and Budget (OMB).
- 3. RESPONSIBLE OFFICE:** The Privacy Service (005R1A), Office of the Associate Deputy Assistant Secretary for Privacy and Records Management, is responsible for the material contained in this Handbook.
- 4. RELATED DIRECTIVE AND HANDBOOKS:** VA Directive 6300, Records and Information Management; VA Handbooks 6300.1, Records Management Procedures; 6300.4, Procedures for Processing Requests for Records Subject to the Privacy Act; and 6300.5, Procedures for Establishing and Managing Privacy Act Systems of Records.
- 5. RESCISSION:** VA Handbook 6300.7, Procedures for Computer Matching Programs, dated January 12, 1998, and VA Handbook 6300.7/1, Procedures for Computer Matching Programs, dated October 5, 2000.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
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PROCEDURES FOR COMPUTER MATCHING PROGRAMS

1. PURPOSE

This Handbook sets forth procedures for conducting computer matching programs. Computer matching programs were initially authorized by the Computer Matching and Privacy Protection Act of 1988 (CMPPA), Public Law 100-503, which amended the Privacy Act of 1974, 5 U.S.C. § 552a. CMPPA was amended in 1990 to increase the protection of records covered. Additional references will be to the Privacy Act, which incorporates the CMPPA. Administrations and Staff Offices will provide additional guidance to their staffs because they are the owners and participants in the computer matching agreements (CMA).

2. DEFINITIONS

This Handbook incorporates all terms defined in the Privacy Act and VA Handbook 6300.4, Procedures for Processing Requests for Records Subject to the Privacy Act. The Privacy Act uses the following terms governing matching programs, also known as computer matching agreements (CMA).

a. **Matching Program.** A matching program is any computerized comparison of two or more automated systems of records. A matching program covers the actual computerized comparison and any investigative follow-up and ultimate action. Only matching programs involving Federal benefits programs and matches using records from Federal personnel or payroll systems of records are applicable to the procedures in this Handbook. Legal questions regarding whether a proposed computer data exchange meets the standards for a matching program should be referred to the Office of the General Counsel (OGC) Professional Staff Group (PSG) IV (024).

(1) **Federal Benefit Matches.** Federal benefit matches are computerized analyses to either establish or verify the eligibility of or continuing compliance with statutory and regulatory requirements by:

- (a) Applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to cash,
- (b) In-kind assistance or payments under Federal benefit programs, or
- (c) Recoup payments or delinquent debts under Federal benefit programs.

(2) **Federal Personnel or Payroll Systems.** Two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records are also covered by this Handbook.

(a) **Computerized Comparison of Data.** The record comparison must involve records from:

1. Two or more automated systems of records maintained by Federal agencies that are subject to the Privacy Act; or,

2. A Federal agency's automated system of records and automated records maintained by a non-Federal agency or agent thereof.

(b) **Categories of Subjects Covered.** The following categories of record subjects are subject to matching programs:

1. Applicants (individuals initially applying for benefits) for Federal benefit programs;

2. Program beneficiaries or recipients (individual program participants who are currently receiving or formerly received benefits); and

3. Participants in or providers of services to support such programs.

(c) **Types of Programs Covered.** Federal benefit programs providing cash or in-kind assistance to individuals.

(d) **Matching Purpose.** The match must have as its purpose one or more of the following:

1. Establish or verify initial or continuing eligibility for Federal benefit programs;

2. Verify compliance with the statutory or regulatory requirements of such programs; or

3. Recoup payments or delinquent debts under such Federal benefit programs.

(3) **Federal Personnel Matches.** These are matches comparing records from automated Federal personnel or payroll systems of records, or such records with automated records of State and local governments. Matches in this category must be for other than "routine administrative purposes" as defined in paragraph 2a(3)(f) of this Handbook.

(4) **Excluded Matches.** A match may meet the criteria of paragraphs 2a(1) or 2a(2) of this Handbook but may be excluded if it falls under one of the Privacy Act's exclusionary clauses. Legal questions concerning whether a match falls under one of the exclusions should be referred to OGC, PSG IV, prior to submission to the Data Integrity Board (DIB). The following may be considered exclusions:

(a) Statistical matches for which the purpose is solely to produce aggregate data stripped of personal identifiers.

(b) Statistical matches for which the purpose is to support a research or statistical project, the data from which may not be used to make decisions that affect the rights, benefits or privileges of specific individuals.

(c) Pilot matches, such as small-scale matches to gather benefit/cost data on which to premise a decision about engaging in a full-fledged matching program. A pilot match is

prohibited unless it is expressly approved by the DIB. Data developed during a pilot match may not be used to make decisions affecting the rights, benefits, or privileges of specific individuals.

(d) Law enforcement investigative matches by an agency or component whose principal statutory function involves the enforcement of criminal laws, the purpose of which is to gather evidence against a named person or persons in an existing investigation. The match must flow from a civil or criminal law enforcement investigation already underway.

(e) Tax administration matches that are tax refund offset matches, provided that the due process provisions of those statutes are substantially similar to those of the Deficit Reduction Act of 1984.

(f) Routine administrative matches using predominantly Federal personnel records, provided the purpose is not to take any adverse action against Federal personnel, as defined in the Privacy Act.

(g) Internal matches using only records from the VA's system of records; however, an internal match whose purpose is to take any adverse financial, personnel, disciplinary or other adverse action against Federal personnel is covered.

(h) Background investigations and foreign counterintelligence matches.

b. **Recipient Agency.** These are Federal agencies (or their contractors) that receive automated records from Privacy Act systems of records of other Federal agencies or from State and local governments to be used in matching programs. Recipient agencies are generally assumed to be the beneficiary of a matching program and are, therefore, ordinarily responsible for the reporting and publishing requirements of the Privacy Act.

(1) When VA is the recipient agency and the beneficiary of a match with another Federal agency, the component proposing the match will:

(a) Perform a benefit/cost analysis and share that analysis with the source agency;

(b) Negotiate and draft the CMA; and

(c) Publish the required notice in the *Federal Register* and report the matching program to OMB and specified Congressional Committees.

(2) When VA is the recipient agency but not the beneficiary of a match with another Federal agency, the component proposing the match will:

(a) Negotiate with the beneficiary agency for reimbursement of the costs incurred in publishing a notice in the *Federal Register*; and

(b) Negotiate with the beneficiary agency the responsibility for performing the benefit/cost analysis.

c. **Source Agency.** The source agency is a Federal agency that discloses automated records from a system of records to another Federal agency or to a State or local governmental agency to be used in a matching program; or a State or local governmental agency that discloses records to a Federal agency to be used in a matching program.

(1) When VA is the source agency and the beneficiary of a match with another Federal agency, the component proposing the match will:

(a) Perform a benefit/cost analysis and share that analysis with the recipient agency;

(b) Negotiate and draft the CMA; and

(c) Negotiate reimbursement to the recipient agency for the costs incurred in publishing notice of the match in the *Federal Register*.

(2) When VA is the source agency but not the beneficiary of the match, the component proposing the match will:

(a) Participate in negotiating the CMA; and

(b) Review the recipient agency's benefit/cost analysis and supplement the analysis with VA data, as appropriate, for DIB review.

d. **Non-Federal Agency.** A State or local governmental agency that receives records contained in a system of records from a Federal agency to be used in a matching program. When VA is a source agency for a match with a non-Federal agency:

(1) The VA component proposing the match will be responsible for publishing the notice in the *Federal Register* and reporting the match to OMB and Congress.

(2) The non-Federal agency will provide the data needed for VA to carry out its reporting responsibilities, including benefit/cost analysis.

e. **Federal Benefit Program.** Any program funded or administered by the Federal or by any agent or State on behalf of the Federal government which provides cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to U.S. citizens or aliens lawfully admitted for permanent residence.

3. VA DATA INTEGRITY BOARD (DIB)

The DIB oversees and coordinates the VA computer matching program. The board reviews and approves ongoing matching programs, proposed matches, pilot matches, exclusions, extensions, and renewals.

a. **Composition and Operation**

(1) Membership includes the VA Chief Information Officer (CIO), the Under Secretary for Benefits, the Under Secretary for Health, and the Inspector General. The VA CIO is the Chairperson of the DIB. The Director, Privacy Service (Privacy Officer designee), serves as the Executive Secretary of the DIB and provides staff support. OGC provides legal advice and assistance to the DIB.

(2) The DIB meets to review and approve CMAs, pilot matches, and requests for exclusion, and perform other duties. Meetings are scheduled when the head of the component proposing a match submits a written request to the Chairperson identifying the match to be reviewed. The approval of CMAs is by vote of the DIB. While each principal DIB member may delegate his or her voting authority, or proxy, the actual decision on whether to approve a CMA is made by the DIB member.

b. **Responsibilities.** The DIB reviews, approves or disapproves, and maintains a copy of the CMAs or, in the case of internal matches subject to the Privacy Act, Memorandums of Understanding (MOUs) for each matching program in which VA will be a participant. DIB action is based upon assessment of the adequacy of a CMA to ensure compliance with Privacy Act subsection (o), and all relevant statutes, regulations and guidelines. The reasons for approving or disapproving a match must be documented.

(1) **Review of Proposals.** The DIB will ensure (based on information supplied by the VA component participating in the match) that CMAs and programs are in conformance with provisions of the Privacy Act as well as other relevant statutes, regulations, or guidelines, and will assess the benefits and costs of such programs. CMAs should remain in force only as long as necessary to accomplish the specific purpose of the match. CMAs automatically expire after 18 months unless:

(a) the agreement or the DIB specifies a shorter period, or

(b) if within three months prior to the actual expiration date, the DIB approves an extension not to exceed one year.

(2) **Extensions.** The component participating in the match must provide the DIB with certification from each party to the CMA that the program has been conducted in compliance with the CMA and that it will be conducted without change during the extension. Additional information should include the reasons that the match should be extended, including any updated benefit/cost information. OGC concurrence will be obtained. The DIB must make its decision to extend a match within three months prior to the expiration date.

(3) **Renewals.** Renewals are treated as initial CMAs and require the same documentation. Each benefit/cost analysis must contain updated information based on the actual experience of the match. All documentation must be submitted to the DIB at least two full months prior to expiration of the match.

(4) **Compression of Processing Steps.** Should a proposal be made that a match compress the due process steps of verification, notice and waiting (paragraphs 4f(1) and 4f(2)

of this Handbook) into a single step, the component seeking such compression must provide supporting documentation to justify compression when submitting the CMA for DIB review. The DIB will determine whether compression of these steps is appropriate. Justifying documentation must include data as to the degree of reliability of the matched data elements. These DIB decisions will be reported to OMB as part of the reporting process.

(5) **Annual Review.** All matching programs in which the Department has participated as either a source or recipient are reviewed annually. The DIB determines if matches have been properly conducted, assesses the utility of the programs in terms of their benefits and costs, and reviews Departmental recordkeeping and records disposal policies and practices for conformance with the provisions of the Privacy Act.

c. **Benefit/Cost Analysis**

(1) **Waivers.** The DIB may waive (when requested by component participating in the match with appropriate justification) the benefit/cost requirement if it determines that such an analysis is not required and the waiver is consistent with OMB guidance. If a matching program is required by statute, the DIB may waive the benefit/cost analysis requirement in its initial review.

(2) **Annual Review.** A benefit/cost analysis is a requirement of the annual review and is also required when a CMA is renegotiated. The analysis is required even if the analysis was waived by the DIB in its initial review. The Privacy Act does not require a favorable benefit/cost ratio for a match to be continued if:

(a) A statute specifically requires the match to be performed; or

(b) The consequences of abandoning the match, or the public purpose to be served in continuing or establishing the match, are so significant as to merit undertaking the match or its extension or renewal, and the subsequent consumption of VA's resources, despite an unfavorable or marginal benefit/cost ratio.

d. **Denials.** Although CMPPA states that any party to the CMA may appeal DIB disapproval of that CMA to the Director, OMB, the OMB guidance states that they will only entertain appeals from senior agency officials who are parties to a proposed CMA that has been disapproved by the agency's own DIB. Nothing in the appeal process is intended to permit one agency to force another to participate unwillingly in a matching program. Except for the Inspector General in cases in which the Inspector General is a party to a proposed CMA, the senior official of the VA component involved in the proposed match shall appeal to the Secretary of Veterans Affairs prior to appeal to OMB. An appeal may be submitted to OMB, subject to the approval of the Secretary of Veterans Affairs, and shall be routed through VA's DIB for comment prior to submission to the Secretary.

e. **Information Maintenance and Dissemination Responsibilities.** The DIB Executive Secretary provides administrative support and serves as the DIB Chairperson's primary point-of-contact for the oversight and coordination of VA's computer matching program, and maintains the DIB's administrative files (official files for the CMAs will be maintained by the

Administration/Program Office participating in the CMA). Proposed CMAs and pilot matches, as well as requests for exclusion, extension, or waiver from benefit/cost analysis, and annual reviews should be submitted to the DIB through the Office of Privacy and Records Management, Privacy Service (005R1A).

f. **OGC Concurrence.** The concurrence of OGC, prior to submission to the DIB, is required in all proposed CMAs and requests for exclusion, exemption, extension or renewal.

4. CONDUCTING MATCHING PROGRAMS

The Privacy Act requires:

a. **Prior Notice to Records Subjects.** Records subjects are to receive direct, constructive, and periodic notices that their records may be matched. The custodian of the subject records provides this notice. Notification will be provided by individual identified in the CMA and/or Privacy Officer.

(1) **Direct Notice.** Recipients, beneficiaries of, or providers of services with respect to cash or in-kind payment under a VA benefit program are provided with direct notice on the application form that any information provided by them may be subject to verification through matching programs.

(2) **Constructive Notice.** Constructive notices are published in the *Federal Register* as part of system notices, routine use disclosures, and matching program announcements. Constructive notices are not to become an administratively convenient substitute for direct notice; however, in some cases, constructive notice may be warranted. For example, disclosure of records to a State or local government in support of a non-Federal matching program does not require actual notice to each record subject.

(3) **Periodic Notice.** Recipients receiving continuous payments are provided with periodic notices about matching activities.

b. **Federal Register Notices.** Notice must be published in the *Federal Register* at least 30 days prior to conducting a matching program. The notice will contain the names of participating agencies, the purpose of the match, the authority for conducting the match. The Privacy Act does not provide independent authority for carrying out any matching program), categories of records and individuals covered (to include identifying the systems of records from which records will be matched), inclusive dates of the matching program, and the address for receipt of public comments or inquiries.

(1) Copies of proposed matching program notices must accompany reports of proposed matches submitted pursuant to subsection (r) of the Privacy Act (see OMB Circular No. A-130, Appendix I).

(2) The transmittal letters for the reports and other related documents will be prepared by the component participating in the match for the signature of the Assistant Secretary for Information and Technology (see VA Handbook 6300.5, Procedures for Establishing and Managing Privacy Act Systems of Records).

c. **Matching Agreements.** An MOU or CMA required for a computer matching program must contain the following:

(1) **Purpose and Legal Authority.** The Federal or State statutory or regulatory basis for undertaking the proposed match will be cited (CMPPA does not provide such authority). Where the match is undertaken for the benefit of a non-Federal entity, the VA component participating in the match should consult with OGC to ensure that the component has the legal authority to participate in the proposed matching program.

(2) **Justification and Expected Results.** An explanation of why computer matching is being proposed, as opposed to some other administrative activity, and the expected results including a specific estimate of any savings will be described. A description of follow-up and ultimate actions, if any, such as criminal prosecution or benefit termination or reduction, should be included.

(3) **Records Description.** The systems of records or non-Federal records to be used in the match, the number of records, and each data element that will be included in the match, and the routine use that permits disclosing the records will be identified. Projected starting and completion dates for the program will also be provided.

(4) **Notice Procedures.** The direct, constructive, and periodic notice procedures for individuals whose records are to be used in the match will be described.

(5) **Verification Procedures.** Methods to be used to independently verify the information obtained through the matching program will be described.

(6) **Disposition of Matched Items.** A statement that identifiable information generated through the match will be destroyed as soon as it has served the matching program's purpose. Any legal retention requirements VA establishes in conjunction with the National Archives and Records Administration (NARA) will be included.

(7) **Security Procedures.** Administrative, physical, and technical safeguards to be used in protecting the information will be commensurate with the level of sensitivity of the data and will be fully described.

(8) **Records Usage, Duplication, and Redisclosure Restrictions.** Any restrictions imposed by either the source agency or by statute or regulation on collateral uses of the records used in the matching program will be described, including the length of time an agency may keep records provided for a match, and when the records will be returned or destroyed. Results of a match may be disclosed for follow-up and verification or for civil or criminal law enforcement investigation and prosecution, assuming there is legal authority for the disclosure if the match results warrant such action. Results may be used to make other determinations of the type covered by the Privacy Act only if:

(a) Such use is included as part of the overall matching program as described in the CMA, *Federal Register* Notice, and reporting requirements; and

(b) The Privacy Act due process requirements at subsection (p) apply to the subsequent adjustments.

(9) **Records Accuracy Assessments.** Information on assessments that have been made on the accuracy of the records to be used in the match should be provided.

(10) **Comptroller General Access.** A statement will be included that the Comptroller General may have access to all records of the recipient agency or non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(11) **Notice Responsibilities.** The agreement will specify which agencies are source agencies and which are recipient agencies, and which agencies are responsible for meeting the requirements of subsections (e)(12), (o)(2), and (r) of the Privacy Act, in accordance with OMB Circular No. A-130, Appendix I.

d. **Submission to Congressional Committees and OMB.** When a match is approved by the DIBs of all Federal agencies participating, the participating VA component shall transmit two copies of the approved agreement and two copies of the *Federal Register* Notice through the AS/OI&T to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and OMB:

(1) If VA is the recipient agency or the CMA stipulates that VA is responsible for the reporting and publishing requirements of the Privacy Act; or

(2) If the match is with a non-Federal agency.

e. **Availability of Copies.** The participating VA component shall make the agreement publicly available and shall provide to the Office of Privacy and Records Management, Privacy Service (005R1A), information copies of all transmittal documents sent to Congress concerning approved agreements as set forth in this paragraph.

f. **Due Process for Matching Subjects.** Subjects will be afforded the following due process requirements when matches uncover adverse information about them:

(1) **Verification**

(a) VA will not take any adverse action based on information produced by a matching program until:

1. A reasonable verification process yields confirmation data that includes, where applicable, the amounts of the individual's assets or income, whether the individual actually had access to the assets or income, and the period during which the individual had access to the assets or income, provides a basis for action, or

2. The DIB determines that the information is limited to identification and the amount of benefits paid by the source agency under a Federal benefits program and that there is a high degree of confidence in the accuracy of the information.

(b) For Veterans applying for VA programs whose initial eligibility is being verified through a matching program, VA will not make a final determination until the due process steps have been completed; however, benefits need not be paid until after such final determination is made.

(c) For matching subjects receiving benefits, VA will not suspend or reduce payments until the due process steps have been completed.

(2) **Notice and Opportunity to Contest Findings.** VA will notify matching subjects of adverse information uncovered and give them an opportunity to contest such findings prior to making a final determination.

(a) If a Federal benefit program providing the records matched has established by statute or regulation its own substantially similar due process requirements, these requirements suffice for the purpose of the Privacy Act.

(b) In any case of programs for which no time period is established, individuals will have at least 30 days from the date of the notice to respond to a notice of adverse action. However, where greater time is provided by another statute, individuals will have the longer period of time to respond. **NOTE:** *Under 38 U.S.C. 3684A(a), recipients of benefits under chapters 30 and 32 of this title and chapter 1606 of title 10 have only 10 workdays to contest adverse actions.*

(c) VA may take action if the notice period expires without response from the subject. Immediate action to deny or terminate benefits may be taken if a subject individual contacts VA within the notice period and indicates acceptance of the validity of the adverse information.

(d) If VA determines there may be a potentially significant effect on public health or safety, the Department may take appropriate action notwithstanding these due process provisions.

5. SANCTIONS

If a record subject can demonstrate that he/she has been harmed by an agency's violation of matching provisions, CMPPA, the civil remedies of the Privacy Act may be available to that record subject. If the VA DIB determines that a recipient agency is not meeting any requirements of the matching, the DIB may request that the participating VA component inform the recipient that VA will no longer release records to the recipient until the recipient agency is in compliance with the applicable requirements.

6. RECURRING REPORTING REQUIREMENTS

Recurring reports must be submitted by the DIB to the Secretary of Veterans Affairs and OMB summarizing the computer matches in which VA has participated. Copies of the reports may be made available to the public.

a. A biennial report will be submitted, covering a two-year period. The report must be submitted to OMB by June 30 of the calendar year following the end of the two-year reporting period (June 30, 2012 covers 2010 and 2011, etc.).

b. The DIB Executive Secretary is responsible for preparing the reports for the DIB. VA components will be requested by separate memorandum to submit a report of computer matching activity for incorporation into Departmental Reports. RCN 72-0833 is assigned to this recurring report.