HHS DATA INTEGRITY BOARD
GUIDELINES FOR COMPUTER MATCHING AGREEMENTS

PREPARING COMPUTER MATCHING AGREEMENTS

HHS components (i.e., Operating Divisions or Staff Divisions) receiving records from Federal or non-Federal agencies or disclosing records to Federal or non-Federal agencies for use in matching programs will prepare or assure the preparation of the matching agreements and will solicit relevant data from the Federal or non-Federal agencies (i.e., State or local governments) where necessary. Agreements submitted to the HHS Data Integrity Board (DIB) must contain the following information and must be accompanied by a transmittal memorandum or email providing useful background information to the DIB and indicating whether, or to what extent, the submitting HHS office recommends the agreement for approval. Further details are discussed on subsequent pages.

COMPUTER MATCHING AGREEMENT BETWEEN
THE [OPDIV NAME]
AND
THE [AGREEMENT PARTNER]
[AGREEMENT TITLE]

I. PURPOSE, LEGAL AUTHORITY, and DEFINITIONS

A. Purpose of the Matching Agreement

1. Provide any necessary background and describe all purposes and uses for the match data, even if some of them are not covered by the Computer Matching and Privacy Protection Act of 1988. If the agreement covers several matching activities between the same agencies, the purpose of each matching activity should be stated in separate sections to insure that all elements are clearly understood.

   Complete descriptions of all purposes/uses could prevent the need for later amendments to the matching agreement. If new uses for the match data develop after the agreement, then an amendment to the agreement and a new approval from the Data Integrity Board may be required. Discuss such occurrences with either your component's Privacy Act Officer or your staff representative to the Data Integrity Board.

2. List all agencies involved in the matching activity and their acronyms. Specify which agency is the source agency and which is the recipient agency (as defined below in 3. and 4.).

3. Identify the Source Agency. As defined by the Privacy Act (5 U.S.C. 552a (a)(11)), "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program.

4. Identify the Recipient Agency. As defined by the Privacy Act (5 U.S.C. 552a (a)(9)), "recipient agency" means any agency, or contractor thereof, receiving records from a source agency for use in a matching program. The recipient agency is the agency that physically conducts the computer match (i.e., runs the automated matching process on its computers).

5. Identify which agency is actually using the results of the matching activity in its programs. The agency that makes use of the information from a matching program might not always be the agency that actually receives the records from the source agency and conducts the computer match. Sometimes for convenience or because of agency policy, the recipient agency merely conducts the physical

matching of the records for the source agency that, in actuality, is primarily responsible for the matching program.

6. Identify which agency will publish the notice in the Federal Register. When one of the parties to a matching program is a non-Federal agency, the Federal agency will publish a notice of the matching program in the Federal Register. When the match involves two Federal agencies, the recipient Federal agency typically is assigned responsibility for publishing the notice. However, if both parties agree, the source agency may publish the notice.

7. Identify the name/designation and/or component(s) responsible for the matching activity. For example: "The responsible NIH component for the match is the National Cancer Institute (NCI)."

B. Legal Authority

This section of the matching agreement should cite any specific federal or state statute or regulatory basis for the operation of the matching program. In the absence of a specific statute or regulation addressing the use of the information to be obtained from the match, parties to the agreement should cite general program authorities that permit the matching activity. This section should not include citations to the Act, as it provides no independent authority to conduct a match. The routine use section of the Privacy Act, 5 U.S.C. 552a(b)(3), however, can be cited as authority where appropriate. Questions on appropriateness of selected legal authority should be directed to DIB counsel in OGC during CMA development.

For example:

> *This agreement provides for information matching necessary to implements the information provisions of section 6103(l)(12) of the Internal Revenue Code (IRC) (25 U.S.C. § 6103(l)(12)) and section 1862(b)(5) of the Social Security Act (42 U.S.C.§ 1395y(b)(5)). The legal authority for the disclosure of IRS and SSA data under this agreement is found at section 1106 of the Social Security Act (42 U.S.C. § 1306 and in routine uses published in relevant IRS and SSA SORNs pursuant to 5 U.S.C. § 552a(b)(3).*

C. Definitions

Define those terms applicable to the proposed match.

1. …

2. …

II. JUSTIFICATION AND ANTICIPATED RESULTS

In this section, provide a complete explanation of the reasons that the agencies involved have decided that a matching program is necessary. Indicate why a computer matching program is preferable to other means of obtaining the same information. State if the matching program, or the information needed from the match, is specifically required by statute or regulation.

A. Cost Benefit Analysis

If the agreement includes a cost benefit analysis (CBA), summarize and reference the CBA in this subsection, and include the CBA as an attachment or addendum to the agreement. Guidelines and specific instructions for preparing the cost-benefit analysis, and a cost-benefit analysis template, are provided at the end of this matching agreement template.

If the agreement does not include a CBA, indicate in this subsection whether preparation of a CBA is statutorily excepted or if the DIB is requested to waive preparation of the CBA. If a statutory exception applies, provide the complete United States Code citation(s). For example, 5 U.S.C. § 552a(u)(4)(C) provides that no CBA is required prior to the initial approval of a written agreement for a matching program that is "specifically required by statute." If this is the case, cite 5 U.S.C. § 552a(u)(4)(C) and the statute that specifically requires the match.

Note that the HHS DIB is not inclined to waive preparation of a CBA that HHS is assigned responsibility for preparing, for the reasons explained in the "Guidelines and Specific Instructions for Preparing the Cost Benefit Analysis" at the end of this matching agreement template. In the event that another federal agency is assigned responsibility for preparing the CBA and its DIB waives preparation of the CBA, this subsection may request that the HHS DIB waive preparation of the CBA on the same basis, or the agreement may include a limited CBA prepared by HHS based on data available to HHS (for example, providing data about costs and benefits to HHS, descriptions of any applicable qualitative benefits, and explanations of the status of the other federal agency's plans to develop further data).

B. Other Supporting Justifications

The CBA is only one of several factors affecting the decision to conduct a matching program; consequently, the DIB can approve a matching program that is not cost effective, or that has not been demonstrated to be likely to be cost-effective, based on other supporting justifications or mitigating factors, as explained below:

- If no CBA has been prepared (i.e., if Section II.A. states a statutory exception or requests that the DIB waive preparation of the CBA), this subsection must request that the DIB determine, in writing, that a CBA is not required, and this subsection

must describe other justifications or mitigating factors that support approval of the agreement.

- If the CBA, as prepared, does not demonstrate that the matching program is likely to be cost effective (e.g., because the CBA yields an unfavorable ratio or is too incomplete, qualitative, or speculative to produce a reliable ratio), this subsection must request that the DIB determine, in writing, that a CBA is not required, and this subsection must describe other justifications or mitigating factors that support approval of the agreement.

Following are sample requests for a written determination that a CBA is not required:

- *No cost benefit analysis has been prepared, but the matching program is supported by other justifications and mitigating factors. The DIB therefore is requested to waive preparation of the cost benefit analysis, make a written determination that the cost benefit analysis is not required, and approve the agreement based on the justifications and mitigating factors described in this subsection.*

- *Although the cost benefit analysis does not demonstrate that this matching program is likely to be cost effective, the program is justified for other reasons, as explained in this subsection. The DIB therefore is requested to make a determination, in writing, that the cost benefit analysis is not required, in accordance with 5 U.S.C. § 552a(u)(4)(B), and to approve the agreement based on the factors explained in this section.*

- *The cost-benefit data is incomplete and speculative and arguably fails to demonstrate that the matching program is likely to be cost-effective. The DIB is requested to make a written determination, in accordance with 5 U.S.C. § 552a(u)(4)(B), that a cost-benefit analysis is not required, and to base its approval on the additional justifications and mitigating factors described in this subsection.*

Following are sample descriptions of other justifications or mitigating factors:

- *The cost-benefit analysis data available at this time is limited because the matching program is new and lacks an operational history. However, the analysis includes reasonable estimates of anticipated benefits that support conducting the matching program, and the program has been designed to collect data during the term of this agreement that will permit a more accurate assessment of the costs and benefit to be made for purposes of evaluating any future agreement.*

- *The purpose of this matching program is to detect and deter fraudulent applications. Because this program has been conducted on a regular basis (with attendant publicity) since 2000, its deterrent effect results in a much less*

favorable benefit/cost ratio now than when the program was new. However, eliminating the program could result in a return to the pre-match benefit/cost ratio. The program is therefore justified based on the anticipated cost of abandoning it, rather than on the basis of any actual savings attributable to conducting it."

- *The purpose of this matching program is to verify the eligibility of Medicare-eligible individuals to receive TRICARE benefits. By statute, such benefits may be provided only if the individual is entitled to Medicare Part A and enrolled in Medicare Part B. Because Medicare eligibility information can only be obtained from CMS, and without this information a TRICARE eligibility determination cannot be made, matching must occur irrespective of the associated costs or anticipated benefits, if DoD is to provide the federal benefit that Congress mandated.*

C. Specific Estimate of Any Savings

Include in this subsection a specific estimate of any savings as required by 5 U.S.C. § 552a(o)(1)(B), unless the estimate is statutorily excepted. For example, the Improper Payments Elimination and Recovery Improvement Act (IPERIA), codified at 31 U.S.C. § 3321 (note), provides at Sec. 5(e)(2)(E) that the justification for computer matching by federal agencies for purposes of investigation and prevention of improper payments and fraud "is not required to contain a specific estimate of any savings."

III. RECORDS DESCRIPTION

A. Systems of Records

The matching agreement must identify the system(s) of records used in the match. "System of records" means a group of records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some other identifying particular. The identification should include a complete Federal Register description of the system(s) of records (name, number, component acronym, FR publication date, volume, page number) used by both the source agency and the recipient agency. If the source agency is not subject to the statutes that require such publication (e.g., State and local governments), describe the records from that agency as thoroughly as possible. Before a record may be released from a system of records for purposes of a matching agreement, there must be an appropriate "routine use" covering the release of the records identified. For more information on this, consult your component's Privacy Act Contact or the Departmental Privacy Act Officer within OS/ASPA.

B. Number of Records Involved

Include information concerning the volume of data provided; e.g., 200,000 cases or 1,420,000 individual records. If the agencies involved are exchanging data, provide volumes for both agencies.

C. Specified Data Elements Used in the Match

Include information about the specific data elements that are used to conduct the match; i.e., the fields that are used in the comparison of the two systems of records to determine whether the same individual occurs on both systems of records. A listing of the appropriate elements will suffice; e.g., social security number, name, and date of birth.

D. Frequency of Data Exchanges

Include the projected starting and completion dates of the matching program. Also include information regarding the frequency of the data exchanges within the starting and completion dates; e.g., "the matching program is expected to begin on July 1, 1989, and end on December 31, 1990. Data will be exchanged every six months on the 15th of the month".

E. Projected Start and Completion Dates

Provide these projected dates. See Section XII for duration guidelines.

IV. NOTICE PROCEDURES

This section of the matching agreement must include a description of all individual and general notice procedures required by the Computer Matching and Privacy Protection Act. The Act provides that individuals receive direct notice that their records will be used in a computer matching activity. In typical benefit matching activities, such notices would be added to application and other benefit forms routinely supplied to the individuals whose records will be matched.

The Act also requires agencies to set out the procedures for providing individuals periodic notices of matching activities after the initial notice. This could occur when an application is renewed or during the period when the match is authorized to take place. Each agreement must address the issue of periodic notice. In a few cases, it may be prohibitively expensive to assure that all individuals receive the periodic notice. In those cases, the notice should explain the procedures that will be followed to assure that as many individuals as possible receive the notice.

The Act is silent as to how often notices should be sent and agencies should use a reasonableness standard in determining when to provide them. Please note that normally a one-time match would not require follow-up notice since all matching activity should be completed prior to providing the follow-up.

In addition to the direct notice procedures, the agreement should describe the constructive notice provided through Federal Register publication. Notice of all matches must be published in the

Federal Register, and the agency publishing the notice should be identified. As previously noted, when a State is one of the parties to the agreement, the Federal agency must publish the notice.

In rare cases, agencies will only provide constructive notice of a match. Where an agency will only be providing constructive notice, the agreement should explain why this is the only logical or feasible method of providing notice. Agencies should not base a decision to use constructive notice on the grounds of cost or administrative burden unless they can demonstrate serious financial or logistical difficulties. One example would be a one-time only match where the cost of individual notice would not be justified. Individual notice would be provided if the match results justify further matching activity. It may also not be appropriate to provide notice of matches conducted in the course of criminal or civil investigations.

V. VERIFICATION PROCEDURES AND OPPORTUNITY TO CONTEST FINDINGS

A. Verification Procedures

The Act requires that information generated through a matching activity covered by the Act must be independently verified prior to taking any adverse action based on the match results. The procedures for independent verification must be set out in this section. The procedures should be determined by identifying the best sources of verification. In some circumstances, it would be the individual to whom the record pertains. Where the individual can verify the information, the same document to the individual may serve as a request for verification and a notice of findings and opportunity to contest. However, the Data Integrity Board would have to make a formal determination as to whether such a compressed notice is appropriate.

Amendments to the Act permit agencies to request its Data Integrity Board to waive the verification procedure. The basis of the waiver is the high degree of confidence in the accuracy of the data. The waiver may only be requested for information identifying the individual or the amount of benefits paid to individuals under Federal benefit programs.

B. Opportunity to Contest Findings

When agencies intend to take an adverse action based on computer matching results, the Act requires that the individual receive a notice with a statement of findings and a description of procedures for contesting those findings in advance of the action. The Act provides that agencies may rely on existing statutory or regulatory due process procedures for determining the time period for receiving these notices. Most programs have such procedures and should cite them in this section.

In those cases where no procedures exist, the agreement must set out procedures for providing individuals with notice at least 30 days prior to taking an adverse action based on matching results.

VI. DISPOSITION OF MATCHED ITEMS

Computer matching agreements must include a statement that information generated through the match will be destroyed as soon as the information has served the matching program's purpose, and all legal retention requirements the agency establishes in conjunction with the National Archives and Records Administration (NARA) have been met. To establish the retention schedule (should an existing schedule not be applicable), the HHS component Records Management Official should prepare and submit a "Request for Records Disposition Authority" (SF-115) to the Department's Records Management Officer for ultimate submittal and approval by the Archivist of the United States. Once a job number is obtained, the number should be noted in the matching file.

For example:

> *DEERS will retain records received from CMS for a period not to exceed one year. After that time, the tapes will be demagnetized or degaussed and returned to stock.*
>
> *CMS will retain the DMDC information for approximately 180 days. After that time, the tapes will be demagnetized or degaussed and returned to stock.*

VII. SECURITY PROCEDURES

In this section, the parties to the agreement must specify the procedures to insure appropriate administrative, technical and physical safeguards of the records used in the match, commensurate with the level of data sensitivity, and the records created as a result of the match. The signatories must acknowledge their responsibility to assure that the specified safeguards are taken.

"Administrative safeguards" refers to procedures that assure the subject match records and records created will only be accessible to persons authorized to perform official duties in connection with the use of the information. "Technical safeguards" refers to safeguards during the processing of the records to prevent unauthorized access. "Physical safeguards" refers to the place, method, or means to assure that records matched or created will be physically safe from access by unauthorized persons during duty hours and non-duty hours.

The agreement must include the following minimum safeguards.

* Access to the records matched and to records created by the match will be restricted to only those authorized employees and officials who need it to perform their official duties in connection with the intended use of the data.

* Records matched and the records created by the match will be stored in an area that is physically safeguarded; e.g., determine whether personal information is so sensitive that it should be kept in an approved security container or whether access to where the information is located should be limited.

* The records matched and records created by the match will be transported under appropriate safeguards.

* The records matched and the records created by the match will be processed under the immediate supervision and control of authorized personnel in a manner that will protect the confidentiality of the records, and in such a way that unauthorized persons cannot retrieve the records by means of computer, remote terminal, or other means.

* All personnel who will have access to the records matched and records created by the match will be advised of the confidential nature of the records, the safeguards required to protect the records, and the sanctions for noncompliance contained in the appropriate Federal statutes.

* Each agency reserves the right to make onsite inspections or may make other provisions for auditing compliance with the terms of the agreement/memorandum of understanding, e.g., recurring self-audits by the recipient agency to ensure that adequate safeguards are being maintained.

By mutual agreement, each agency may require an appropriately responsible authority (e.g., the Information Systems Security Officer (ISSO)) to certify in writing that all security measures have been taken and that each agency is in or will be in compliance with the other's security requirements.

The agreement should indicate that the Data Integrity Board of each agency reserves the right to monitor compliance of systems security requirements during the lifetime of the agreement or its 12-month extension period.

NOTE: In addition, the agreement should include reference to any unique authority that applies to the safeguarding of the particular data provided (e.g., "Section 6103 of the Internal Revenue Code as amended by the Tax Reform Act of 1974"). Please note that any agreement or memorandum of understanding made where tax return information is included in the information to be disclosed should contain provisions under which agencies receiving data are informed of, and agree to be bound by, the Internal Revenue Service requirements for the use of and safeguards for such data.

VIII. RECORDS USAGE, DUPLICATION AND REDISCLOSURE RESTRICTIONS

This is a description of any specific restrictions imposed by either the source agency or by statute or regulation on collateral uses of the records used in the matching program. Include minimum limitations on the use of the data as follows.

* The matching file remains the property of the agency providing it and will be returned or destroyed when the match has been completed. If the file is to be destroyed, state the means to be used (e.g., incineration) and the time period within which this will be

accomplished (note legal retention requirements discussed in Section VI. and in the Privacy Act at 5 U.S.C. § 552a(o)(1)(F)).

* The file will be used and accessed only for the agreed purpose(s) of the matching program. Therefore, it is important to determine all the principal and secondary purposes for which the matching data will be used and to ensure that the matching agreement initially details such purposes. Otherwise, subsequent uses of the data could require another matching agreement, approval by the Data Integrity Board, matching report, and Federal Register notice.

* Other than for purposes of a particular match, no file will be created that consists of information concerning only match individuals. All files created will be eliminated upon completion of the matching program (in conformance with legal retention requirements discussed in Section VI. and in the Privacy Act at 5 U.S.C. § 552a(o)(1)(F)).

* The file will not be duplicated or disseminated within or outside the agency to which it was provided without the written authority of the agency providing it. No agency shall give such permission unless the redisclosure is required by law or is essential to the conduct of the matching program. In such cases, the agency redisclosing the records must specify in writing what records are being redisclosed and to whom, and the reasons that justify such redisclosure.

Include a complete description of any additional limitations on the use of the data provided.

IX. RECORDS ACCURACY ASSESSMENTS

This section must include accuracy assessments (information relating to the quality of the records to be used in the matching program) for all source and recipient agencies' records used in the match. Summarize any assessments (e.g., by internal quality control mechanisms, Office of Inspector General, Government Accountability Office or other) that have been made on the accuracy of the records to be used in the matching program, particularly on the accuracy of the identifying information (e.g., Social Security number, date of birth, etc,) and those data elements that are material to eligibility, payment amount or potential adverse action. If such specific information is not available, but general quality data is available for the record file(s) as a whole, describe this information, including accuracy rates, source and date of the assessment. Also consider the timeliness of those data elements which are subject to change (e.g., income, address, etc.) and include a statement about how often such data is reexamined (e.g., annual redetermination, routine address change notifications from post office, etc.).

A statement such as "no accuracy assessment information is available" will <u>not</u> be acceptable to the Data Integrity Board. If no accuracy assessments are available, provide an assurance statement as to the agency's best knowledge available about the accuracy of its records (e.g., reversals on appeal, certifications that the records are an accurate representation of the information submitted to the agency, etc.) and any plans for future assessments.

NOTE: The results of accuracy assessments should be taken into account when developing verification procedures.

X. COMPTROLLER GENERAL ACCESS

A statement must be included to indicate that the Government Accountability Office (Comptroller General) may have access to any records necessary to monitor and verify compliance with this agreement.

XI. REIMBURSEMENT/FUNDING

Complete this, as appropriate. For example:

> *All work performed by CMS for all costs that CMS charges DMDC to perform the match in accordance with this agreement will be performed on a reimbursable basis. DoD will allocate sufficient funds annually for this project. The legal authority for transfer of funds is the Economy Act, 31 U.S.C., Section 1535. Reimbursement will be transacted by means of a separate reimbursement instrument in accordance with the established procedures that apply to funding reimbursement actions.*

XII. DURATION OF AGREEMENT

The duration of a matching agreement, agreed to by the parties to the agreement, should be a period necessary to accomplish the specific matching purpose. Where there are multiparty agreements and the agency has approved a model agreement, each agreement based on the model will be effective for the specified period. A model agreement is one that specifies the terms for multiple, identical unsigned agreements subject to signature between an official from the Department and officials from many states.

A. A matching agreement, as signed by representatives of both agencies and approved by the respective agency's Data Integrity Boards, shall be valid for a period not to exceed 18 months from its effective date.

B. When an agreement is approved and signed by the chairpersons of the respective Data Integrity Boards, the HHS component, as the matching agency, shall submit the agreement and the proposed public notice of the match in duplicate via a transmittal letter to OMB and Congress for review. The review time period begins on submission.

C. The HHS component will forward the public notice of the proposed matching program for publication in the Federal Register, as required by subsection (e)(12) of the Privacy Act, the same time the transmittal letter is forwarded to OMB and Congress. The matching notice will clearly identify the record systems and

category of records being used and state that the program is subject to review by OMB and Congress.

D. The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the Federal Register, whichever is later. The parties to this agreement may assume OMB and Congressional concurrence if no comments are received within 40 days of the date of the transmittal letter. The 40-day OMB and Congressional review period and mandatory 30-day public comment period for the Federal Register publication of the notice will run concurrently.

E. An agreement may be renewed for up to 12 months provided the renewal request is submitted to the DIB three months prior to the expiration date of the original agreement. Renewal is subject to the requirements of the Privacy Act, including certification by the participating agencies to the responsible Data Integrity Boards that:

1. The matching program will be conducted without change, and
2. The matching program has been conducted in compliance with the original agreement.

F. Any proposed modification to an agreement must satisfy both parties, be reviewed by DIB counsel in OGC to determine if the change requires a new agreement, and be approved by the Data Integrity Board of each Agency if OGC concludes that the change can be made by modifying the agreement.

G. An agreement may be terminated at any time with the consent of both parties. If either party does not want to continue a matching program, it should notify the other party of its intention not to continue at least 90 days before the end of the agreement. Either party may unilaterally terminate this agreement upon written notice to the other party, in which case the termination date shall be effective 90 days after the date of the notice or at a later date specified in the notice provided this date does not exceed the approved duration for the agreement. A copy of this notification should be submitted to the Secretary, HHS DIB.

XIII. PERSONS TO CONTACT

A. The contacts on behalf of [HHS] are:

B. The contacts on behalf of [NON-HHS PARTNER AGENCY] are:

XIV. APPROVALS

A. [HHS] Program Officials

The authorized program officials, whose signatures appear below, accept and expressly agree to the terms and conditions expressed herein, confirm that no verbal agreements of any kind shall be binding or recognized, and hereby commit their respective organizations to the terms of this agreement.

_____ Date: _____
[NAME AND TITLE]
[OFFICE , ETC.]

_____ Date: _____
[OTHER]

B. [NON-HHS PARTNER AGENCY]

_____ Date: _____
[NAME AND TITLE]
[OFFICE, ETC.]

_____ Date: _____
[OTHER]

C. Data Integrity Boards

The respective Data Integrity Boards having reviewed this agreement and finding that it complies with applicable statutory and regulatory guidelines signify their respective approval thereof by the signature of the officials appearing below.

_____ Date: _____
[NAME OF ASA]
Chairperson
Data Integrity Board
Department of Health and Human Services

_____ Date: _____
[NAME]
Chairperson
Data Integrity Board
[AGREEMENT PARTNER AGENCY]

Guidelines and Specific Instructions for Preparing the Cost Benefit Analysis

I. Guidelines

Prior to approving a computer matching agreement (CMA) for which a cost-benefit analysis (CBA) must be prepared (i.e., when preparation of a CBA is not statutorily excepted and has not been waived by the DIB), the DIB will review the CBA to ensure that it addresses all four key elements identified in Government Accountability Office (GAO) report GAO-14-44 issued January 2014. The four key elements of a CBA include sub-elements as shown below, which are explained in detail in GAO/PEMD-87-2 issued November 1986 (see also GAO/PEMD-94-2 issued October 1993).

Four Key Elements and Sub-Elements

Costs:

1. Personnel Costs
for all stages and all major activities, for Agencies (recipient, source, and Justice agencies), Clients, Third Parties, and the General Public

2. Computer Costs
for all stages and all major activities, for Agencies

Benefits:

3. Avoidance of Future Improper Payments
to Agencies, Clients, and the General Public

4. Recovery of Improper Payments and Debts
to Agencies, Clients, and the General Public

As illustrated by GAO/PEMD-87-2, a rigorous CBA involves developing extensive cost-benefit information using estimates, sampling, studies, information collections, tracking systems, and other methods. However, limited information may be all that is available when the matching program is new, or all that is within the agency's power to develop (e.g., due to resource constraints or dependence on other parties to track and report the information), or all that makes sense to develop based on the circumstances of the particular program.

The Privacy Act at 5 U.S.C. § 552a(u)(4)(B) permits an agency's DIB to waive the CBA for a CMA (meaning, waive the requirements that a CBA be prepared and/or that it demonstrate that the matching program is likely to be cost effective) "if the DIB determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required."

Available OMB guidance stresses the importance of the cost-benefit analysis, but confirms that an agency should determine the extent to which it makes sense to develop information for a CBA based on the circumstances of each program, and acknowledges that not all matching programs are appropriate candidates for cost-benefit analysis (see *"Privacy Act of 1974: Final Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988"* published June 19, 1989 at 54 FR 25818, at pages 25821 and 25828-25829). Specifically, OMB guidance, and the preamble to the guidance, contain these statements:

Preamble Statements (not binding on agencies):

- "OMB has not adopted [the approach that waivers be granted only where the analysis is impossible to do or would be unhelpful], finding this standard to be too subjective to provide a solid basis on which to waive the requirement. [Congressional intent reflects] that waivers should be granted sparingly if at all."

- "The Act requires a benefit-cost determination in subsequent years in order to provide information to Congress about required matches that are not achieving a cost-benefit result."

Guidance Statements (binding on agencies):

- "[T]here will be a range of data available to agencies in performing benefit-cost analysis, some of which will be helpful and some of which will be merely speculative. Where data in an agency's hands clearly indicates an unfavorable ratio, prudent management dictates abandoning the match. Where the reverse is true, agencies should conduct the match. Where the data is unclear, agencies should gather data to permit a better analysis. This may mean conducting a program on the basis of data that, while speculative, suggest that the result will be favorable, and then subjecting the results of the match to careful analysis to determine if that is the case. OMB expects that for the first year, benefit-cost analysis will be a less rigorous process than for subsequent years."

- "The intent [of the requirement in the Computer Matching Act that a cost-benefit analysis be a part of an agency decision to conduct or participate in a matching program] is not to create a presumption that when agencies balance individual rights and cost savings, the latter should inevitably prevail [but] to ensure that sound management practices are followed when agencies use records from Privacy Act systems of records in matching program. Particularly in a time when competition for scarce resources is especially intense, it is not in the government's interests to engage in matching activities that drain agency resources that could be better spent elsewhere. Agencies should use the benefit/cost requirement as an opportunity to reexamine programs and weed out those that produce only marginal results."

- "While the Act appears to require a favorable benefit/cost ratio as an element of approval of a matching program, agencies should be cautious about applying this interpretation in too literal a fashion. For example, the first year in which a matching program is conducted may show a dramatic benefit/cost ratio. However, after it has been conducted on a regular basis (with attendant publicity), its deterrent effect may result in much less favorable ratios. Elimination of such a program, however, may well result in a return to the pre-match benefit/cost ratio. The agency should consider not only the actual savings attributable to such a program, but the consequences of abandoning it."

- "For proposed matches without an operational history, benefit/cost analyses will of necessity be speculative. While they should be based upon the best data available,

reasonable estimates are acceptable at this stage. Nevertheless, agencies should design their programs so as to ensure the collection of data that will permit more accurate assessments to be made. As more and more data become available, it should be possible to make more informed assumptions about the benefits and costs of the matching. One source of information about conducting benefit-cost analysis as it relates to matching programs is the GAO Report, "Computer Matching, Assessing its Costs and Benefits," GAO/PEMD-87-2, November 1986. Agencies may wish to consult this report as they develop methodologies for performing this analysis."

- "Because matching is done for a variety of reasons, not all matching programs are appropriate candidates for benefit/cost analysis. The Computer Matching Act tacitly recognizes this point by permitting Data Integrity Boards to waive the benefit/cost requirement if they determine in writing that such an analysis is not required. It should be noted, however, that the Congress expected that such waivers would be used sparingly. The Act itself supplies one such waiver: if a match is specifically required by statute, the initial review by the Board need not consider the benefits and costs of the match. Note that this exclusion does not extend to matches undertaken at the discretion of the agency. However, the Act goes on to require that when the matching agreement is renegotiated, a benefit/cost analysis covering the preceding matches must be done. Note that the Act does not require the showing of a favorable ratio for the match to be continued, only that an analysis be done. The intention is to provide Congress with information to help it evaluate the effectiveness of statutory matching requirements with a view to revising or eliminating them where appropriate."

Cost-benefit information is essential to enabling the agency and Congress to know whether a program—even a statutorily-mandated program—is and remains a wise use of resources. A waiver of the requirement to prepare a CBA should not be necessary, because each sub-element of the four key elements of a CBA can be addressed by *providing* or *justifying not providing* pertinent cost-benefit information. Consistent with the exception stated in 5 U.S.C. § 552a(u)(4)(C), the DIB will not require preparation of a cost-benefit analysis prior to the initial approval of a computer matching agreement that is specifically required by statute. However, the DIB is not inclined to waive preparation of a CBA that HHS is assigned responsibility for preparing. The DIB will consider waiving preparation of a CBA under 5 U.S.C. § 552a(u)(4)(B) in instances in which another federal agency has been assigned the responsibility for preparing the CBA and its DIB has waived preparation of the CBA.

Specific Instructions

Any CBA that is prepared must address the four key elements identified in GAO-14-44 to the extent to which it makes sense for the particular matching program. All four key elements must be addressed, even if only to note that certain types of entities, costs, or benefits have been considered and found non-applicable in the specific circumstances of the program. "Addressing the four key elements to the extent to which it makes sense" means the CBA must:

- Mention each of the four key elements and sub-elements by name;

- Provide information about the four key elements and each relevant sub-element to the extent of available information; and
- Explain the status of plans for developing more extensive or better quality information for the next matching agreement, and/or the reason(s) for not developing more extensive or better quality information.

The federal matching parties may, to the extent legally permissible, negotiate and decide between them, in a fair and reasonable way, which federal party should be assigned the responsibility for preparing the CBA, and which data the parties should develop for inclusion in the CBA. OMB guidance suggests, but does not mandate, that the federal agency receiving the greatest benefits from the matching program bear the administrative costs of the match. (See *"The Computer Matching and Privacy Protection Amendments of 1990 and the Privacy Act of 1974"* published April 23, 1991 at 56 FR 18599, at page 18601; *"Privacy Act of 1974: Final Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988"* published June 19, 1989 at 54 FR 25818, at pages 25821 and 25828-25829; and *"Privacy Act of 1974; Revised Supplemental Guidance for Conducting Matching Programs"* published May 19, 1982 at 47 FR 21656, at page 21657.) The CBA should be prepared by staff who know the details of the matching program and are familiar with the contents of GAO/PEMD-87-2.

To better ensure that preparers and reviewers are aware of the four key elements and sub-elements, CBAs prepared by HHS must be formatted to correspond to the template. A sample CBA completed based on this template can be obtained from the HHS Privacy Act Officer within OS/ASPA.

-CBA Template-
COST-BENEFIT ANALYSIS FOR
[TITLE OF MATCHING PROGRAM**]**

BACKGROUND:

[explain what is being measured and compared]

COSTS

[for all stages and all major activities]

Key Element 1: Personnel Costs
For Agencies –

- **Source Agency**
- **Recipient Agencies**
- **Justice Agencies**

For Clients
For Third Parties
For the General Public

Key Element 2: Agencies' Computer Costs
For Agencies -

- **Source Agency**
- **Recipient Agencies**
- **Justice Agencies**

BENEFITS

Key Element 3: Avoidance of Future Improper Payments
To Agencies –

- **Source Agency**
- **Recipient Agencies**
- **Justice Agencies**

To Clients
To the General Public

Key Element 4: Recovery of Improper Payments and Debts
To Agencies –

- **Source Agency**
- **Recipient Agencies**
- **Justice Agencies**

To Clients
To the General Public