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100TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 100-802

COMPUTER MATCHING AND PRIVACY PROTECTION ACT OF 1988

JULY 27, 1988.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations, submitted the following

REPORT

[To accompany H.R. 4699]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Operations, to whom was referred the bill (H.R. 4699) to amend title 5, United States Code, to ensure privacy, integrity, and verification of data disclosed for computer matching, to establish Data Integrity Boards within Federal agencies, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY AND PURPOSE

The purpose of H.R. 4699, the Computer Matching and Privacy Protection Act of 1988, is to regulate the use of computer matching conducted by Federal agencies or using Federal records subject to the Privacy Act of 1974.

Computer matching is the computerized comparison of records for the purpose of (i) establishing or verifying eligibility for a Federal benefit program, or (ii) recouping payments or delinquent debts under such programs. Matches performed for statistical, research, law enforcement, tax, and certain other purposes are not subject to the act.

H.R. 4699 provides that computer matching involving Federal data can be conducted only pursuant to matching agreements entered into by the agency providing the data to be matched and the agency receiving the data. Matching agreements must specify the purpose and legal authority for the matching program, describe the nature of the match and the expected results, include procedures

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for notifying individuals affected by the match and for verifying information, and describe how the records will be protected.

Information resulting from computer matching programs must be independently verified before any adverse action can be taken. Individuals must be given notice and an opportunity to contest any findings resulting from a computer match.

The act requires each Federal agency involved in a matching program to establish a Data Integrity Board composed of senior agency officials. The Board will review and approve matching agreements, programs, and activities; evaluate compliance of matching programs with applicable requirements; review the continued justification for matching; provide guidance; and file an annual report with OMB.

The Privacy Act responsibilities of the Office of Management and Budget are consolidated and codified. OMB is required to issue guidelines and regulations for computer matching; hear appeals from Data Integrity Board disapprovals of matching program; and file a consolidated report on computer matching with the Congress.

Existing Privacy Act system reporting requirements are modified to include computer matching. The reporting requirements for new and changed system notices are revised. Current requirements for a report by the President and publication of a compilation by the Office of Federal Register are changed from annual to biennial.

Committee Action and Vote

H.R. 4699 was introduced by Representative Glenn English on May 26, 1988. The Committee on Government Operations ordered the bill reported on June 9, 1988, by voice vote.

Hearings

On June 23, 1987, the Government Information, Justice, and Agriculture Subcommittee held a hearing on S. 496, a computer matching bill that passed the Senate on May 21, 1987. Witnesses were Joseph R. Wright, Jr., Deputy Director, Office of Management and Budget; Eleanor Chelimsky, Director, Program Evaluation and Methodology Division, General Accounting Office; Ronald L. Plesser, Nash, Railsback & Plesser, representing the American Bar Association; and Janlori Goldman, staff attorney, American Civil Liberties Union.

Background

Computer matching has been a controversial matter for more than 10 years.[1] Computer matching using Federal agency records

[1] The most recent hearing on computer matching legislation was held in 1987. *Computer Matching and Privacy Protection Act of 1987,* Hearing before a Subcommittee of the House Committee on Government Operations, 100th Cong., 1st Sess. (1987) [hereinafter cited as *"1987 House Matching Hearing"*].

Other hearings, reports, and documents about computer matching cited throughout this report are:

House Committee on Government Operations, *Who Cares About Privacy? Oversight of the Privacy Act of 1974 by the Office of Management and Budget and by the Congress,* H.R. Rept. No. 98-455, 98th Cong., 1st Sess. (1983) [hereinafter cited as *"1983 House Privacy Act Oversight Report"*].

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began in 1977 at the Department of Health and Human Services with a program called Project Match.[2] Secretary Joseph Califano announced a program to compare welfare rolls in selected jurisdictions with Federal payroll records for the same areas. The assumption behind the program was that people on the Federal payroll would not be eligible to receive welfare payments. The identification of these people through computer matching was intended to reduce fraud, waste, and abuse.[3]

Matching has been highly touted by inspectors general, the President's Council on Integrity and Efficiency [PCIE], and the Congress as an effective weapon in the battle against fraud. The goals of computer matching programs are admirable. The results are less certain. Matching has been criticized as unproven and ineffective, as well as illegal and violative of privacy rights.

The purpose of H.R. 4699 is to regulate the use of computer matching by Federal agencies. H.R. 4699 also applies when Federal records maintained in a system of records as defined in the Privacy Act of 1974 are used for matching State and local governments. H.R. 4699 primarily addresses due process, administrative controls, and cost-effectiveness issues. Other concerns about computer matching are beyond the scope of this bill.

Oversight of the Privacy Act of 1974: Hearings before a Subcommittee of the House Committee on Government Operations, 98th Cong., 1st Sess. (1983) [hereinafter cited as *"1983 House Privacy Hearings"*].

Kirchner, "Privacy: A History of Computer Matching in Federal Government," *Computerworld* (December 14, 1981), reprinted in *1983 Privacy Hearings* at Appendix 2 [hereinafter cited as *"Kirchner"*].

Oversight of Computer Matching to Detect Fraud and Mismanagement in Government Programs: Hearings before the Subcommittee on Oversight of Government Management of the Senate Committee on Governmental Affairs, 97th Congress, 2d Sess. (1982) [hereinafter cited as *"1982 Senate Hearings"*].

Computer Matching and Privacy Protection Act of 1986, Hearing before the Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, 99th Cong., 2d Sess. (1986) [hereinafter cited as *"1986 Senate Hearings"*].

Office of Management and Budget, "Guidelines for the Conduct of Matching Programs," 44 Federal Register 23138 (April 18, 1979), reprinted in *1983 House Privacy Hearings,* Appendix 1 [hereinafter cited as *"1979 OMB Matching Guidelines"*].

Office of Management and Budget, "Revised Supplemental Guidance for Conducting Matching Programs," 47 Federal Register 21656 (May 19, 1982), reprinted in *1983 House Privacy Hearings,* Appendix 1 [hereinafter cited as *"1982 OMB Matching Guidelines"*].

Office of Technology Assessment, *Electronic Record Systems and Individual Privacy* (1986) [hereinafter cited as *"OTA Report"*].

General Accounting Office, *Computer Matching: Assessing Its Costs and Benefits* (1986) (GAO/PEMD-87-2) [hereinafter cited as *"GAO Cost Benefit Report"*].

General Accounting Office, *Computer Matching: Factors Influencing the Agency Decision-Making Process* (1986) (GAO/PEMD-87-3BR) [hereinafter cited as *"GAO Decision-Making Report"*].

General Accounting Office, *Eligiblity Verification and Privacy in Federal Benefit Programs: A Delicate Balance* (1985) (GAO/HRD-85-22) [hereinafter cited as *"GAO Eligibility Verification Report"*].

[2] There may have been some earlier computer matching. GAO refers generally to two pre-1976 computer matches, but provides no description. See *GAO Eligibility Verification Report* at 11. See also *1982 Senate Hearings* at 47 (testimony of Richard Kusserow, Inspector General, Department of Health and Human Services). It appears likely that there was some use of computer matching before HEW's Project Match. However, the discussion of matching as a policy issue begins with the HEW announcement.

For an excellent review of the early history of computer matching, see *Kirchner.*

[3] For a review of some of the results of the HEW matching program, see Hendricks, "How Not to Catch Welfare Cheaters," Washington Post (July 1, 1979). Henricks concluded that Project Match cost more than it saved and that it subjected innocent welfare recipients to harassment and coercion.

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A. WHAT IS COMPUTER MATCHING?

Typically, Federal agencies use computer matching to locate an individual, verify eligibility for benefits, or to develop investigatory leads. There are several different computer-assisted techniques for identifying similarities and differences between records. With "classic" computer matching, a computer compares the records of two separate data bases looking for individuals (or organizations) that appear in both files. Typically, the data bases contain information on beneficiaries under two different Government programs. Government records can also be matched against nongovernmental records.[4]

Matching may be used to identify people enrolled in two programs. For example, a match might attempt to find all Federal employees who are receiving food stamps. Matching might also be focused more narrowly. It can identify people in one program who are also involved in a second program *and* who have a specific characteristic. For example, matching was used to compare welfare records with bank records in order to identify welfare recipients with bank acounts that exceeded specified amounts.[5]

The result of a match is a list of so-called raw hits. Anyone identified as meeting the criteria set for the match will normally be the subject of additional investigation.[6] However, an individual whose name appears on such a list cannot automatically be assumed to be in violation of law. There are many reasons the initial results of a match must be used with caution. For example, the data may be incorrect, social security numbers may be inaccurate, the records may cover inconsistent time periods, or the match may be based on invalid or improbable assumptions.[7]

Another type of computer matching is "front-end verification." This technique compares information provided by a program applicant with data in other Government files. This procedure allows verification of the accuracy of the applicant's information at the time of application.[8]

A major difference between front-end verification and classic matching is in the number of records involved. Classic matching involves all the records in one record system with all the records in a second system. All records are reviewed without any selectivity or targeting. Front-end matching is more narrowly focused because it compares a single record with the contents of a separate record system.[9]

B. COMPUTER MATCHING AND THE PRIVACY ACT OF 1974

The Privacy Act of 1974 [10] establishes rules governing the collection, maintenance, use, and disclosure of personal information

[4] See *OTA Report* at 37–66 (1986); *GAO Cost Benefit Report* at 16.
[5] See, for example, *1982 Senate Hearings* (testimony of William T. Hogan, Secretary, Executive Office of Human Services, State of Massachusetts).
[6] *GAO Cost Benefit Report* at 20–21.
[7] Id.
[8] *OTA Report* at 67–86. *GAO Cost Benefit Report* at 16.
[9] There are other related computer-based techniques that are not generally within the scope of H.R. 4699. See the discussions of computer profiling and computer screening in *OTA Report* at 87–98 and *GAO Cost Benefit Report* at 16.
[10] 5 U.S.C. § 552a (1982).

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maintained by Federal agencies. The act has no specific provisions addressing computer matching,[11] but the rules governing systems of records [12] may apply to matching operations. The rules requiring public notice and restricting disclosure of information are the most relevant. In 1979 and 1982, the Office of Management and Budget issued guidance on the conduct of matching programs incorporating the Privacy Act requirements.[13]

Under current law, an agency must provide public notice of matching activities in two circumstances. First, if a new system of records is established to support a computer match, the agency must publish a description of the system in the Federal Register.[14] Second, if the disclosure of information from a system of records is required to support a matching activity, the agency must publish a description of the "routine use" authorizing the disclosure.[15]

The disclosure limitations of the Privacy Act have not restricted disclosures for computer matching. There was considerable controversy over the legality of disclosures for matching purposes during the first few years following HEW's Project Match.[16] These legal issues are discussed elsewhere.[17] However, it is fair to state that the disclosure restrictions of the Privacy Act have been interpreted by OMB and other agencies to permit disclosures necessary to support computer matching.[18]

As a result, the Privacy Act presents only a few procedural barriers to matching, and those barriers are easily overcome. The committee is not aware of any computer match that could not be conducted because of Privacy Act disclosure rules.[19] The Office of Technology Assessment found that "the Privacy Act as interpreted by the courts and OMB guidelines offers little protection to individuals who are the subjects of computer matching." [20]

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[11] The congressional findings in the Privacy Act state that "the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information." Public Law 93-579, § 2(a)(2).

[12] A "system of records" is a defined term that means a group of records from which identifiable information is retrieved by the name or other individual identifier assigned to an individual. 5 U.S.C. § 552a(a)(5) (1982). Most personal information maintained by Federal agencies is kept in systems of records subject to the Privacy Act.

[13] The 1979 guidelines included a requirement for the preparation of a cost-benefit analysis. The 1982 revision eliminated the cost-benefit requirement. This issue is discussed below in the general discussion of the costs and benefits of computer matching. See text accompanying notes 55-98.

[14] 5 U.S.C. § 552a(e)(4).

[15] A "routine use" is a disclosure of information from a system of records that is compatible with the purpose for which the information was collected. 5 U.S.C. § 552a(a)(7). An agency may establish routine uses for each system of records in order to authorize necessary disclosures. 5 U.S.C. § 552a(b)(3). Routine uses must be published to allow for public comment. 5 U.S.C. § 552a(e)(11).

The Privacy Act also requires that an agency inform each individual asked to supply information about the routine uses that will be made of the information. 5 U.S.C. § 552a(e)(3). The disclosure is supposed to be made on the form used to collect the data or on a separate form that can be retained. Compliance with this requirement is an unresolved problem with matching. No personal notice is likely to be provided if a match is conducted after the "source" information has been collected.

[16] See generally *Kirchner.*

[17] See text accompanying notes 109-116.

[18] See *1987 Housing Matching Hearings* at 31 (statement of Joseph Wright, Deputy Director, Office of Management and Budget) (the Privacy Act is not interfering with the fight against fraud, waste, and abuse).

[19] See also *1987 House Matching Hearing* at 123 (testimony of Ronald L. Plesser, American Bar Association).

[20] *OTA Report* at 57. Other Privacy Act provisions requiring accounting for disclosures, maintenance of accurate records, and safeguarding of information are applicable to information used in matching activities.

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C. DUE PROCESS

The need for due process procedures in computer matching was highlighted by a match conducted in Massachusetts in 1982. The State matched welfare records against the account records of private banks. The purpose was to identify welfare recipients who had more assets than allowed by law.[21]

Over 1,600 welfare recipients found to have excess assets were automatically sent immediate termination notices. The Massachusetts Welfare Department did not take any action to verify or confirm the information used in the match nor did it seek an explanation from the affected individuals before sending the termination notices.[22]

The appeal rate of those who received the termination notices was six times higher than the usual rate. Of those who appealed, half of the errors involved mistakes in social security numbers. In other words, 15 percent of all those sent termination notices received them because of social security number errors.[23] In some cases, money was in joint accounts and did not belong entirely to the welfare recipient. Money was sometimes held in trust for others. Other funds were held for legal purposes such as paying funeral expenses.[24]

This episode illustrates a problem with relying on raw results from computer matches. Computer data cannot automatically be assumed to be accurate, complete, or timely. Data should be verified before a Government agency takes any adverse action against an individual. Due process also requires that the individual receive notice of any proposed action and an opportunity to contest the action.

Providing due process for people who become targets of investigation as a result of computer matching is not generally controversial. For example, matching programs authorized under the Deficit Reduction Act of 1984 must provide for verification of data and for notice to individuals and an opportunity to contest adverse actions.[25]

OTA found that front-end verification raises similar due process issues. OTA questioned whether applicants were receiving useful notice of what types of records will be searched.[26] OTA also questioned whether front-end verification conflicts with the requirement of the Privacy Act that information should be collected directly from the individual.[27]

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[21] The Massachusetts bank match is discussed in *1982 Senate Hearings*, passim. See also *OTA Report* at 43.

[22] See *1982 Senate Hearings* at 129–139 (Affidavit of Allan G. Rogers, Director, Massachusetts Law Reform Institute). There is also evidence that the termination notices were sent in violation of the agency's standard practices. Id.

[23] Id.

[24] Id. See also *1982 Senate Hearings* at 117–120 (testimony of John Shattuck, National Legislative Director, American Civil Liberties Union).

[25] 42 U.S.C.A. § 1320b–7(c)(2) (Supp. 1987). For a more detailed description of the mechanics of verification and notification, see also the conference report on the Deficit Reduction Act, H.R. Rept. No. 98–861, 98th Cong., 2d Sess. at 1411–12, reprinted in 1984 *U.S. Code Cong & Adm. News* at 1445, 2099–2100.

[26] *OTA Report* at 78–80.

[27] *OTA Report* at 80. See also 5 U.S.C. § 552a(e)(2) (Each agency shall "collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs").

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There is broad support for statutory due process standards. In testimony about S. 496, Deputy OMB Director Joseph Wright said:

> The provisions of this bill, especially those that provide due process steps to ensure citizen rights, are the keys to creating the kind of balance that is necessary to keep important government programs working efficiently and to reassure a sometimes skeptical public that the government is sensitive to their concerns about automation.[28]

The American Bar Association [29] and the American Civil Liberties Union [30] also support statutory due process procedures for computer matching.

D. NEED FOR ADMINISTRATIVE CONTROLS

1. *Extent of Computer Matching.*—No one know how much computer matching is being done by Federal agencies. According to the Office of Technology Assessment:

> It is difficult to determine how much computer matching is being done by Federal agencies, for what purposes, and with what results. However, OTA estimates that, in the five years from 1980 to 1984, the number of computer matches nearly tripled.[31]

Any attempt to compile a list of computer matches will face several complex problems. First, there are no clear definitions of what constitutes a "computer match." [32] Second, there has been no accurate accounting of the number of Federal matches.[33] Third, documentation for past matching activities is hard to find.[34]

The exact number of matches taking place is not significant. The limited information available shows clearly that computer matching has been a growth industry during the 1980's. If counted, the number of matches would be in the thousands; the number of records matched would be in the billions.[35]

There is a similar lack of information about front-end verification. There has been an increase in the use of front-end verification in Federal and State programs. But OTA found that there is no comprehensive information on the use of front-end verification by Federal agencies.[36]

2. *Legally Required Matching.*—Some matching is mandated by law. A 1986 OTA report identifies seven Federal statutes that authorize the use of computer matching.[37] Other laws support front-

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[28] *1987 House Matching Hearings* at 23.
[29] Id. at 117–139 (testimony of Ronald Plesser).
[30] Id. at 94–113 (testimony of Janlori Goldman, staff attorney, American Civil Liberties Union).
[31] *OTA Report* at 46.
[32] Id.
[33] Id.
[34] Id. See generally *GAO Decisionmaking Report* at 5–6 (limited documentation available for many computer matches reviewed).
[35] *OTA Report* at 49 ("the total number of records matched was reported to be over 7 billion due to multiple matches of the same records.").
[36] *OTA Report at 74–75.*
[37] Tax Reform Act of 1976 (Public Law 94–455); Social Security Amendments of 1977 (Public Law 95–216); Food Stamp Act Amendments of 1977 (Public Law 96–58); Food Stamp Amendments of 1980 (Public Law 96–249); Food Stamp and Commodity Distribution Amendments of

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end verification and other matching-like and data sharing activities.[38]

OTA concluded that congressional actions "appear to be contradictory." [39] While Congress has directed or acquiesced in computer matching by Federal agencies, OTA found that Congress also imposed restrictions on agency disclosure of personal information. The most important restrictions are in the Privacy Act of 1974,[40] which establishes controls on the collection, maintenance, and disclosure of personal information.

But it would be more accurate to describe Federal law in this area as disjointed rather than contradictory. The Privacy Act predates the computer matching era, and some of its substantive disclosure restrictions have been ignored or avoided by the agencies.[41]

3. *Agency Initiated Matching.*—Much computer matching has been undertaken without specific legislative direction. The PCIE has encouraged agencies to use computer matching. PCIE programs included a long-term matching project; Project Clean Data (standardization of data elements; improved data accuracy and reliability); and an inventory of State matching software packages.[42] Computer matching has also been promoted by the General Accounting Office.[43]

But despite some central direction within the executive branch in later years, a considerable amount of computer matching was undertaken by agencies without any criteria, planning, or documentation. A 1986 GAO report prepared at the request of Representative Ted Weiss described the shortcomings in the decisionmaking process:

> In general, for many of the matches we discussed with agency officials, little written documentation was available on the development of a match between its initial conception and its actual implementation. Written descriptions of the criteria or factors considered in the decision to perform a match were lacking.[44]

In testimony before the Subcommittee on Government Information, Justice, and Agriculture, Eleanor Chelimsky, Director of GAO's Program Evaluation and Methodology Division, elaborated on the informality of the process by which decisions to conduct computer matches were made:

> [I]n examining how decisions about computer matches have been made in federal agencies, we noted a generally

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1981 (Public Law 97-98); Department of Defense Authorization Act of 1983 (Public Law 97-252); Deficit Reduction Act of 1984 (Public Law 98-369). *OTA Report* at 46. This list is not necessarily current or complete. Additional matching may have been authorized in later legislation.

[38] *OTA Report* at 43-46, 74-78.

[39] Id. at 43.

[40] 5 U.S.C. § 552a (1982).

[41] See text accompanying notes 109-116.

[42] *OTA Report* at 43. See also *1986 Senate Hearings* at 56-61 (testimony of Joseph R. Wright, Jr., Deputy Director, Office of Management and Budget).

[43] See, for example, *1982 Senate Hearings* at 176 (testimony of Wilbur D. Campbell, Director, Accounting and Financial Management Division, General Accounting Office) ("[W]e believe that computer matching can be a very cost-effective tool for detecting error and fraud in Government entitlement programs and for identifying actions needed to strengthen program controls."). But see note 64.

[44] *GAO Decisionmaking Report* at 6.

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> informal approach. The agencies presently have only general guidance for documentation and for what should be considered and how it should be considered in the match decision process. We found no specific written criteria for determining whether or not a proposed match should be implemented, little documentation of what has been considered, and wide variation in the use of systematic planning procedures for developing and implementing matches. We found that the existence of improved technological capacity, legislative requirements, the extent and magnitude of the problems that were experienced (for example, overpayments being made because of unreported deaths), and concern for detecting and preventing waste, fraud, and abuse were more prominent in the agency decisionmaking than the quantification of costs or benefits. Indeed, our work clearly shows that decisions to perform or continue a computer match are often made without systematic consideration of those costs and benefits.[45]

Another GAO report discussed the lack of an effective compliance enforcement mechanism for the Privacy Act:

> The Office of Management and Budget [OMB] has issued matching guidelines applicable to all Federal agencies under the Privacy Act who are doing matches or providing data for nonfederal matches and a checklist to help agencies comply with the guidelines. OMB also has issued a "Model Control System and Resource Document" for computer matching. Moreover, HHS' inspector general has published guidelines for State managers of the AFDC, Food Stamp, and Medicaid programs to aid in decisions on state matches. *However, existing Federal guidance appears to lack an effective compliance enforcement mechanism.*[46]

OTA also found that, despite procedural guidelines for matching, there is little oversight or followup:

> Program personnel appear to have substantial discretion in deciding whether or not to use computer matching as an audit technique or means to detect fraud, waste, and abuse. There are few internal agency checks. The Inspector General's Office may be involved in planning a computer match; and the General Counsel's Office and the Privacy Act officer may be involved. *But it appears that there are no agency or general policy guidelines regarding what types of information should be matched, against which records of what other agencies, and for what purposes. These substantive issues are rarely addressed.*[47]

A 1983 oversight report on the Privacy Act of 1974 by this committee reviewed OMB's oversight of matching activities.[48] The

[45] *1987 House Matching Hearing* at 70.
[46] *GAO Eligibility Verification Report* at 12. (Footnote omitted.) (Emphasis supplied.)
[47] *OTA Report* at 53. (Emphasis supplied.)
[48] *1983 House Privacy Act Oversight Report* at 36.

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committee concluded that OMB does not monitor agency compliance with its own matching guidelines:

> OMB's oversight record for computer matching operations also leaves something to be desired. Under the 1979 matching guidelines, agencies conducting matches were obliged to file matching reports with OMB in advance of the conduct of a matching operation. In the 1982 revisions, this was changed to require the filing with OMB of a brief description of a match and the publication of the description . . . in the Federal Register "as close to the initiation of the matching program as possible."
>
> It is not apparent what OMB did with the notices or matching reports that it required agencies to file. Although hundreds of matches have been conducted, the Senate Subcommittee on Oversight of Government Management was unable to find any record of OMB ever rejecting any matching proposal.
>
> OMB has made no effort to enforce the minimal notice and publication requirements of its 1982 guidelines. In August, 1982, the Department of Education initiated a computer match of records for purposes of identifying federal employees who had defaulted on student loans. Under the applicable guidelines, the Department was required to publish a Federal Register notice before starting the match. The notice was not published until December 7, 1982.
>
> When questioned about the Education Department's disregard of the matching guidelines, OMB responded by stating that its guidance is not binding on agencies, that OMB does not routinely monitor the operation of matching programs to ensure compliance with the guidelines, that the OMB did not correspond with the Education Department regarding this incident.[49]

The lack of OMB oversight and enforcement of its own guidelines is well illustrated by a problem encountered by the GAO during a study of matching. GAO needed to select a scientific sample of matches for its study. But GAO was unable to draw its sample using the OMB matching reports because OMB did not receive reports on all matches.[50]

Similar problems exist for front-end verification as well. OTA found that there are no general Federal guidelines, statutory or administrative, governing the use of front-end verification. The OMB matching guidelines specifically exclude record searches that are conducted at the application stage.[51]

Finally, even OMB has recognized that there are shortcomings with existing administrative controls. In testifying before the House on S. 496, Joseph Wright, Deputy Director of OMB, said:

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[49] *1983 House Privacy Act Oversight Report* at 23-4 (footnotes omitted). The reference in the quote to the conclusions of the Senate Subcommittee can be found in *1982 Senate Hearings* at 81 (Statement of Senator William Cohen).

[50] *1987 GAO Cost Benefit Report* at 13.

[51] *OTA Report* at 81.

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But, even with this kind of public support, the problem remains that citizens are worried that the power the Government has over their lives can be amplified in possibly harmful ways by computers. After all, that concern was one of the forces that brought about the Privacy Act of 1984. Matching contributes to this perception, and administrative procedures like those prescribed by OMB guidelines, can only go so far to allay public concern. Although we think that the Matching Guidelines have worked very well to control the problem, we in the Administration have supported the development of a comprehensive legislative solution that will ensure that the government's legitimate need to use this technology and the privacy and other rights of record subjects are put in balance.[52]

It is apparent from these studies and reports that, over the course of a few years, computer matching has burgeoned into a major Federal activity. Both the executive and legislative branches have encouraged the growth of matching. However, few administrative controls, procedures, or guidelines are in place.[53] Guidance issued by OMB has been largely ignored by agencies and unenforced by OMB. There is no meaningful oversight of computer matching in the Executive Branch.[54]

E. THE COSTS AND BENEFITS OF COMPUTER MATCHING

1. *The Importance of Cost-Benefit Analysis.*—Those who promote the use of computer matching contend that a principal is savings to the Government through reductions in fraud, waste, and abuse in Government benefit programs.[55] There is little doubt that matching is one of several management techniques that can be useful in identifying and limiting program losses.

However, it is equally apparent that computer matching raises serious concerns about fourth amendment rights, privacy rights, and computer linkage.[56] Given the existence of these substantial concerns, matching should be restricted to those circumstances where it is demonstrably beneficial and where less intrusive techniques are clearly inadequate.

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[52] *1987 House Matching Hearing* at 22.

[53] The committee is aware that OMB and the PCIE have developed a model control system for conducting computer matching projects. See, for example, *1987 House Matching Hearings* at 31 (testimony of Joseph Wright, Deputy Director, Office of Management and Budget); *OTA Report at 54–55. See also 1986 Senate Hearings* at 154–176. There is some evidence that more recent computer matches have been more formally planned. See *GAO Decisionmaking Report.* Nevertheless, there is no evidence that there is any oversight or followup any of the procedural guidelines issued by OMB. See, e.g., *OTA Report* at 53.

[54] Computer matching has become a public policy concern in Canada in recent years. A March 1987 report by a committee of the Canadian Parliament found shortcomings in the Canadian privacy laws similar to those in American law. The committee recommended increased oversight and controls as a response to computer matching. See Standing Committee on Justice and Solicitor General, *Open and Shut: Enhancing the Right to Know and the Right to Privacy,* 33rd Parl., 2d Sess. 43-4 (1987) (Report on the Review of the Access to Information Act and the Privacy Act) [hereinafter cited as *"Canadian Parliament Report"*].

[55] See, for example, *OTA Report* 50–51.

[56] See, for example, American Bar Association, Section of Individual Rights and Responsibilities, *Report to the House of Delegates* (1986), reprinted in *1987 House Matching Hearing* at 130. For a discussion of computer linkage, see text accompanying notes 99–109.

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One useful measure of the value of an audit and management technique like computer matching is its cost effectiveness. The GAO elaborated on the purpose and value of cost-benefit analysis:

> One purpose of cost-benefit analysis is to provide decisionmakers with information that will help them determine whether to implement or continue a program. The most apparent value of the cost-benefit analysis is that it summarizes a variety of information in a single number that gives a clear message, as long as the measurement assumptions underlying the analysis are satisfactory. It also has some secondary benefits, one of which is that it provides information on the magnitude of individual cost and benefit elements that can, in turn, provide insights concerning correctable process inefficiencies.
>
> Cost-benefit analyses, if conducted properly, can determine the value of matching operations for achieving efficiency improvements and cost savings in programs whose beneficiaries are being matched. Information about the magnitude of match benefits may be especially relevant in consideration of the costs that matching might pose to individual privacy and the right to due process. Also, the very process of examining match activities carefully and measuring their costs and benefits may indicate areas in which changes should be considered in match operations.[57]

An emphasis on cost effectiveness for matching is important because resources for programs to detect fraud, waste, and abuse are limited. If scarce dollars are spent on programs that are more visible but less effective, then the results will be a smaller reduction in Government expenditures than might otherwise occur.

A recent OTA report expands on the value of determining cost effectiveness:

> Computer matching is a technique that has been used primarily to detect client fraud, which is only one component of fraud, waste, and abuse. In order to accurately determine the cost effectiveness of computer matching, the extent of client fraud must first be documented. If client fraud accounts for only a small percentage of total fraud, waste, and abuse, then other techniques to detect other types of fraud, waste, and abuse may be more cost effective overall. In this respect, one author cited the 1978 Annual Report of the HEW inspector general, which estimated that the Department lost between $5.5 and $6.5 billion through management inefficiencies, program misuse, and fraud. In this instance, management inefficiencies and program misuse accounted for 97 percent of the inspector general's estimate of losses, while client fraud accounted for only 3 percent.[58]

[57] *GAO Cost Benefit Report* at 22.
[58] *OTA Report* at 40. (Footnote omitted.)

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The OTA report suggests that an undue emphasis on computer matching may allow larger program losses to go undetected while relatively smaller amounts of fraud are pursued vigorously.

2. *Is Computer Matching Cost Effective?*—The cost effectiveness of computer matching has yet to be clearly demonstrated. This is the conclusion that can be drawn from recent studies by GAO and OTA.

OTA found no firm evidence on the costs and benefits of matching:

> As yet, no firm evidence is available to determine the costs and benefits of computer matching and to document claims made by OMB, the inspectors general, and others that computer matching is cost effective.[59]

A GAO study requested by Representative Ted Weiss took a broad look at the problem of determining the cost effectiveness of computer matching. GAO was not asked to determine if matching was cost effective.[60]

GAO found that there was no well-developed methodology for assessing cost effectiveness of computer matching:

> [W]e did not discover a well established methodology for performing cost-benefit analysis of computer matching. Instead, although cost-benefit analysis has had a venerable development and application in other areas, we found this has not been the case in the particular area of computer matching, rather research in this field is still quite immature.[61]

In other words, despite a 10-year history of matching and despite repeated reference to the importance of cost-benefit analysis by OMB, the PCIE, and inspectors general, no one has developed a realistic methodology for conducting a cost-benefit analysis of matching. It is apparent that the physical matching of records can be done more efficiently by computer rather than manually. The purpose of cost-benefit analysis of computer matching is to determine if the entire matching operation is cost effective.

GAO selected for detailed examination a sample of matches, including a few for which some type of cost-benefit information was available.[62] GAO found serious deficiencies in all cost-benefit reports that had been done. The deficiencies included:

Reports varied considerably in terms of when and how they were prepared.

Most reports were incomplete or not reported in monetary terms or both.

Reports included analyses of benefits much more often than costs.

Deterrence was often claimed as a benefit but not measured.

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[59] *OTA Report* at 50.

[60] *GAO Cost Benefit Report* at appendix 1.

[61] *1987 House Matching Hearing* at 65 (testimony of Eleanor Chelimsky, Director, Program Evaluation and Methodology Division, General Accounting Office).

[62] GAO was unable to draw a statistically valid sample of computer matches. "We did not use a rigorous sampling approach to select matches, because we could not for sampling purposes confidently delineate a population of matches for which some form of cost-benefit analysis had been performed." *1987 GAO Cost Benefit Report* at 13.

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Some benefits measurements were inadequately or inappropriately presented. For example, overpayments were often reported as the maximum amount possible rather than the actual or expected amount.

None of the match analyses made use of discounting the present value of future revenues, a technique GAO described as the "most hallowed and conventional of cost benefit techniques." [63]

Based on GAO's work, it is apparent that none of the few cost-benefit analyses done by Federal agencies is significant or useful.[64] This supports the conclusion of OTA that the cost effectiveness of matching has not been established.

There is a similar lack of information on the cost of front-end verification. OTA found that there has been no comprehensive study of how to conduct front-end verification in the most cost-effective manner. Front-end verification may be cheaper than computer matching, but there are some high initial overhead costs. Also, costs are directly tied to data quality.[65]

3. *The Need for Legislation.*—H.R. 4699 makes the preparation of a cost-benefit analysis a requirement in the approval process for a computer match. A Data Integrity Board may not approve any matching agreement unless a cost-benefit analysis demonstrates that the match is likely to be cost effective. The requirement may be waived pursuant to guidelines issued by the Director of OMB.

The history of the OMB matching guidelines shows why legislation is needed. In 1979, OMB issued the first computer matching guidelines.[66] The guidelines specifically required that agencies conducting matching prepare estimates of the costs and benefits. OMB's instructions on preparing these estimates, although incomplete, were detailed. Agencies were directed to undertake only those matches for which a "demonstrable financial benefit can be realized which significantly outweighs the cost of the match." [67]

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[63] *1987 House Matching Hearing* at 65–6 (testimony of Eleanor Chelimsky, Director, Program Evaluation and Methodology Division, General Accounting Office).

[64] Some divisions of GAO have been major proponents of computer matching. See, e.g., *1982 Senate Hearings* at 176 (testimony of Wilbur D. Campbell, Director, Accounting and Financial Management Division, General Accounting Office). But the divisions of GAO that supported matching did not develop a cost-benefit methodology. Since the development of guidance on the conduct of cost-benefit analyses of matching was only undertaken at the request of a Member of Congress, the basis for GAO's earlier assertions is unclear. The lack of a preexisting cost-benefit methodology at GAO calls into question much of GAO's earlier work on computer matching.

In fact, the objectivity of that earlier GAO work has already been questioned. See the letter from Glenn English, Chairmam, Subcommittee on Government Information, Justice, and Agriculture, to Charles Bowsher, Comptroller General (March 13, 1985) (criticizing *GAO Eligibility Verification Report*).

At the hearing, the Director of the GAO division that developed the cost-benefit guidance was asked whether GAO would routinely use the guidance in the future. She was unable to provide a positive response. She did state that she had "noticed a great deal more interest in costs in recent publications that I had seen before, and I think our work will probably have some effect, but I can't say anything firm on that score." *1987 House Matching Hearings* at 90 (testimony of Eleanor Chelimsky, Director, Program Evaluation and Methodology Division, General Accounting Office).

Thus, even after the development of the cost-benefit methodology by GAO, its use during GAO audit work remains uncertain.

[65] *OTA Report* at 80–81.

[66] *1979 OMB Matching Guidelines,*

[67] Id at 5.a.

The entire subparagraph reads:

Development of matching programs.—A matching program should be undertaken only if a demonstrable financial benefit can be realized which significantly outweights the costs of the

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The 1979 guidelines included requirements for the conduct of the required cost-benefit study. Although these requirements did not encompass all the important elements of cost-benefit analysis—for example, discounting of savings to reflect the time value of money—the guidelines were a step in the proper direction.

The major problem with the 1979 guidance was that it was generally ignored by the agencies. There is no evidence that agencies took the cost-benefit requirement seriously. Few, if any, thorough cost-benefit studies were conducted.[68]

In 1982, OMB revised the matching guidelines and dropped the cost-benefit requirement.[69] According to an analysis by the Congressional Research Service, the elimination of the cost-benefit language was one of the principal changes in the revisions.[70]

The changes in the OMB guidelines were made at the urging of the PCIE and the inspectors general who promoted the use of matching.[71] According to Richard Kusserow, HHS inspector general and former co-chair of the PCIE's long-term computer matching project, the paperwork burdens were the most substantial problem with the guidelines.[72] Mr. Kusserow stated that the PCIE supported undertaking cost-benefit analysis but preferred to use pilot matches to develop estimates.[73]

The support for cost-benefit analyses expressed by Mr. Kusserow at the hearings is difficult to assess. Despite his support, the requirement was dropped entirely from the 1982 revised guidelines, and nothing comparable was put in its place. If realistic cost-bene-

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match and any potential harm to individuals that could be caused by the matching program, e.g., public disclosure of information about an individual or improper termination of a benefit. The matching agency should consider alternative means of detecting or curtailing fraud and abuse or collecting debts owed to the Federal Government, and should undertake a matching program only if the alternative are less effective, more expensive or would present a greater threat to personal privacy. An analysis of the benefits, costs, potential harm, and alternatives considered should be prepared and documented by the agency proposing to conduct the match. The analysis should, as a minimum, include:

(1) Estimated losses resulting from fraud, abuse, error, or loan defaults.

(2) Estimates of the number of individuals who are receiving or have received benefits for which they are ineligible, or who have defaulted on loans.

(3) The amount which could potentially be recovered or saved by identification of those individuals and the termination of improper payments or the collection of delinquent debts.

(4) Potential savings which could be achieved through deterrence of ineligible applicants or through other improvements in the program management (e.g., reduced error rates), based on the matching program.

(5) Estimates of the reimbursement costs to be paid to the matching source for the acquisition of records for the matching programs.

(6) Estimates of any cost involved in the actual matching itself, including costs of planning the match, time or effort necessary to make the sets of personal records compatible and the computer time required for the match.

(7) Estimates costs of follow-up on individual "hits," including verification of individuals' records, locating the individuals, any planned counseling of those individuals, collection efforts, and litigation.

(8) An assessment of the extent to which the conduct of the matching program could discourage individuals from exercising their rights.

(9) An analysis of alternative means for curtailing fraud that were considered and rejected, including a full description of the reasons why they were not considered viable alternatives to conducting a matching program.

[68] See, for example, *OTA Report* at 50 (Only three out of 37 agencies did cost-benefit analyses prior to computer matching).

[69] *1982 OMB Computer Matching Guidelines.*

[70] The CRS analysis is reprinted in *1982 Senate Hearings* at 273.

[71] See, for example, *1986 Senate Hearing* at 57–58 (testimony of Joseph Wright, Deputy Director, Office of Management and Budget).

[72] *1987 House Matching Hearings* at 51-52. Mr. Kusserow's concerns are difficult to evaluate in so far as they applied to cost-benefit requirements because there is so little evidence that agencies followed the guidelines and conducted meaningful cost-benefit analyses.

[73] Id. at 52.

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fit studies were conducted in the absence of the OMB requirement, GAO was unable to find them.

Second, Mr. Kusserow was asked to provide a copy of the most comprehensive cost-benefit analysis done by his office.[74] He provided only one very sketchy report.[75] This was apparently the only cost-benefit analysis done in the HHS Inspector General's office. Mr. Kusserow's response continued the standard practice of citing matches that generated large savings. But he offered no documentation of the savings or the costs of the matches.[76]

The history of computer matching shows that legislation requiring cost-benefit studies is needed. Without a specific legislative directive and enforcement mechanism, the matching bureaucracy will not conduct satisfactory cost-benefit studies. Joseph Wright, Deputy Director of OMB, testified in favor of the Senate bill (S. 496) and in favor of using cost-benefit analysis to measure the value of at least some matching activity.[77]

4. *Elements of a Cost-Benefit Analysis*—Without the use of a consistent and complete method of assessing cost and benefits, it is difficult to assess fairly the cost effectiveness of computer matching.

The problem is best illustrated by specific example. In 1982, HHS Inspector General Richard Kusserow testified about a New York State match of welfare recipient records with employer supplied wage data. He stated that for the period from 1979 through 1983, savings would total $114 million and costs would be $28.1 million.[78] Mr. Kusserow provided no figures to document the costs or benefits, nor did he describe how the estimates were calculated.

At the same hearing, Norma Rollins, director of the Privacy Project of the New York Civil Liberties Union, offered the committee a detailed analysis of the same match. The analysis showed that: (1) the actual costs of operating the wage reporting system used in the match were far greater than the State admitted; (2) there were hidden costs to employers that were not included in the calculation; (3) estimates of savings included millions of dollars that cannot or will not actually be saved; and (4) losses to public assistance and unemployment programs due to deliberate fraud and abuse could be detected by less cumbersome and less wasteful means.[79]

Without an objective method of assessing the cost effectiveness of computer matches, it is impossible to resolve the differences between the points of view expressed by Mr. Kusserow and Ms. Rollins. Without a realistic yardstick, resources may be wasted on ineffectual matches while other more effective fraud, waste, and abuse reduction techniques remain unfunded. Undocumented and possibly exaggerated claims of the returns from computer matching may have encouraged the Congress to include matching requirements in legislation.

The complexity of cost-benefit analysis for matching is shown by the history of quarterly wage reporting. In the past, all employers

[74] Id. at 47 (question 2).
[75] Id. at 64.
[76] Id. at 50-51.
[77] Id. at 31-5.
[78] *1982 Senate Hearings* at 11.
[79] Id. at 428.

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were required to file quarterly reports with the Treasury on wages paid to employees. The 1976 law made the requirement annual.[80] The Senate report explained that the savings to employers could be as much as $235 million annually:

> The preparation and filing of this quarterly report involves considerable effort and expense on the part of employers particularly in the case of small- and medium-sized companies which do not have the advantage of computerized payroll systems. An April 17, 1973 report issued by the Select Committee on Small Business stated that its Subcommittee on Government Regulation had found studies indicating that the annual cost to small employers of submitting this form might total as much as $235 million.[81]

In 1982, it was estimated that quarterly wage reporting in New York State alone could be costing employers as much as $30 million annually.[82] The savings to employers in current dollars could be much higher.

The problem with annual wage reporting is that the data is too old to be useful for matching.[83] As a result, pressures arose to restore quarterly reporting. For example, New York reinstituted quarterly reporting in 1978.[84] By 1985, 41 States required quarterly wage reporting.[85] In the Deficit Reduction Act of 1984, Congress reimposed a form of quarterly wage reporting on employers.[86] Thus, the reform of 1976 was entirely reversed.

As a result, employers once again faced millions of dollars of additional costs—and probably hundreds of millions of dollars—in order to fuel the computer matching system. While these costs are impossible to allocate when calculating the costs and benefits of any particular computer match, the costs are just as real as they are hidden.[87]

Another example illustrates a different aspect of the cost-benefit issue. In support of the proposition that computer matching is cost effective, proponents sometimes cite a study conducted by researchers David Greenberg and Douglas Wolf.[88] For the matching projects, Greenberg and Wolf concluded that the benefits outweighed the costs by "substantial amounts." For the four projects studied, the ratio of benefits to costs ranging from a low of 1.19 to a high of 2.67.[89]

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[80] Act of January 2, 1976, Public Law 94-202, 89 Stat. 1135.

[81] Senate Rept. No. 94-550, 94th Cong., 1st Sess. (1975), reprinted in 1975 *U.S. Code Cong. & Ad. News* 2347, 2355.

[82] NYCLU Foundation, *An Evaluation of New York State's Wage Reporting System: The Real Cost of Computer Matching* 14 (1982) [hereinafter cited as "*NYCLU Matching Report*"], reprinted in *1982 Senate Hearings* at 421, 434.

[83] See General Accounting Office, *A Central Wage File for Use by Federal Agencies: Benefits and Concerns* 3 (1985) (GAO/HRD-85-31) [hereinafter cited as "*GAO Central Wage File Report*"].

[84] *NYCLU Matching Report* at 7.

[85] *GAO Central Wage File Report* at 5.

[86] Public Law No. 98-369, 98 Stat. 1147-8 (1984).

[87] Since the quarterly wage reporting was being done at the State level, it was inevitable that a proposal would be made to create a national data bank containing the shared information. See *GAO Central Wage File Report*. For a discussion of concerns about the establishment of national data banks in general, see text accompanying notes 99-109.

[88] "Is Wage Matching Worth All the Trouble?", 43 *Public Welfare* 13 (1985) [hereinafter cited as "*Greenberg/Wolf*"].

[89] Id at 18.

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This study is the most professional and complete of all existing cost-benefit analyses of matching. But even this study has shortcomings. For example, the stream of future benefits from matching was not discounted to reflect the time value of money. This is a standard technique in cost-benefit studies.[90]

Regardless of the importance of discounting to the study's conclusions, it is difficult to extrapolate from the study to other matching activities. The authors recognized that they only reviewed programs that were functioning well:

> For example, the employer-reported data used by these systems clearly were adequate in terms of coverage, content, and timeliness. Equally important: follow-up procedures were well-structured, adequate resources were available for follow-up, and supervisors were genuinely committed to the program. Without such conditions, it certainly is possible that wage matching could prove ineffective.[91]

Thus, it is possible that a computer match found to be cost effective in one jurisdiction or agency might not be cost effective in another. Only a separate evaluation will tell.

The ratios reported in the Greenberg/Wolf study raise another issue. All four matching programs were found to be cost effective. The margin in one was very narrow (1.19). The best had a ratio of only 2.67. Even accepting these numbers as wholly accurate, the return on the computer matching investment is not necessarily as impressive as it appears at first glance.[92]

A particular computer match may be cost-effective when evaluated independently. But this does not mean that the match is the best investment of Government money. For example, every dollar spent by the Internal Revenue Service yields a return of $14.[93] This compares with the highest return found by Greenberg and Wolf of less than $3.

Given the large amount of management inefficiency in many Government programs,[94] a high return can be expected from any investment in improved management. The impressive yield from an investment in IRS enforcement may not be unusual. Based on the Greenberg and Wolf study, a dollar spent on matching returns only a quarter as much.

The real issue is what is the best use of scarce management dollars. Matching is not the only alternative. The Government cannot always fund every activity, even if the net return will be positive. Only the most productive activities should be funded. Cost-benefit analysis is an objective way to make choices.

There is a special need for a more formal evaluation of computer matching. GAO has demonstrated that decisions to conduct matches have been made casually in the past.[95] More careful selec-

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[90] *1987 House Matching Hearing* at 66 (testimony of Eleanor Chelimsky, Director, Program Evaluation and Methodology Division, General Accounting Office).
[91] *Greenberg/Wolf.*
[92] The subtitle of the Greenberg/Wolf article is "The Results are Not Spectacular But . . .".
[93] Frank Malanga, Director, Research Division, Internal Revenue Service.
[94] See text accompanying note 58.
[95] *GAO Decisionmaking Report.*

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tion of matching programs should increase the overall efficiency of Government.

The GAO study done for Representative Ted Weiss contains the most comprehensive approach to determining the costs and benefits of computer matching.[96] GAO was asked to develop a methodology. Eleanor Chelimsky, Director of the GAO Division that produced the report, declined to call the results a formal methodology.[97] Nevertheless, the GAO guidelines are a thorough and consistent approach to calculating a cost-benefit ratio. They allow a systematic analysis of many costs and benefits relevant to the different purposes of computer matching.[98]

F. OTHER ISSUES

There are other concerns about computer matching that are not addressed in the legislation except in the rules of construction in section 9. The rules of construction provide that nothing in the amendments made by H.R. 4699 shall be construed to authorize the establishment of a national data bank or the direct linking of computer systems. In addition, the bill should not be construed to authorize the computer matching of records not otherwise authorized by law, or the disclosure of records for computer matching except to a Federal, State, or local agency.

1. *Establishment of a National Data Bank and Computer Linkage.*—Public opinion polls have consistently found that privacy is a significant and enduring concern of Americans.[99] About half of the public views computers as a threat to privacy.[100] Americans have a more negative view of centralized files and data banks: 78 percent believe that a master computer file would violate their privacy.[101]

These poll results are relevant because an underlying issue with computer matching is the linkage of computers and the de facto creation of a national data bank.[102] Much matching involves the regular exchange of large computerized files by Government agencies. But for the match, these records would remain entirely separate.

The maintenance of separate records systems is an important element in the protection of privacy. The Privacy Act of 1974 was passed in part in order to maintain the separation of disparate records. Because personal information is necessary to the operation of government programs, the separation of systems of records pro-

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[96] *GAO Cost Benefit Report.*

[97] *1987 House Matching Hearings* at 66.

[98] H.R. 4699 recognizes that cost-benefit analysis may not be necessary before every computer match. The bill authorizes the Director of OMB to issue guidelines on the issue. See new subsection (u)(4) of the bill.

[99] See, for example, *Privacy and 1984: Public Opinions of Privacy Issues:* Hearing before a Subcommittee of the House Committee on Government Operations, 98th Cong., 1st Sess. (1984); *OTA Report*, at 26–29; *Public Reaction to Privacy Issues:* Hearing before a Subcommittee of the House Committee on Government Operations, 96th Cong., 1st Sess. (1979).

[100] A summary of recent polls can be found in *OTA Report* at 27.

[101] Id. at 28.

[102] An earlier proposal for the establishment of a national data bank—a centralized government-wide computer and communications network—was killed in the mid-1970s as a result of strong congressional and other opposition. The project was known as FEDNET, and the opposition was principally based on privacy grounds. See General Accounting Office, *Improved Planning—A Must Before A Department-wide Automatic Data Processing System is Acquired for the Department of Agriculture* (1975) (LCD-75-108).

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vides some protection against the accumulation of excessive and unnecessary amounts of personal data.

The Privacy Protection Study Commission pointed out in 1977 the consequences of the establishment of personal profiles of individuals:

> The possession of such profiles invites the use of them for marketing, research, and law enforcement, and, in an electronic funds transfer environment, could provide a way of tracking an individual's current movements. The dramatic shift in the balance of power between government and the rest of society that such a development could portend has persuaded the Commission of the compelling need to single it out for special public-policy attention and action.[103]

Opponents of matching have also objected because matching violates the Fourth Amendment protections against unreasonable searches and seizures and the presumption of innocence.[104] Ironically, one of the responses to these concerns—front-end verification—has exacerbated the problems of computer linkage. Front-end verification involves checking the eligibility of a particular individual at the time of application for a benefit program rather than a general search of computer records.[105]

Since fewer records are involved, front-end verification appears less intrusive. But front-end verification can result in the direct, on-line linking of computers and record systems that might otherwise be unconnected. A witness from the American Civil Liberties Union elaborated:

> The current Government trend is to increase frontend verification of applicant information for all government benefit programs. Frontend verification reduces benefit payment "errors" by detecting noneligibility before rather than after a citizen receives benefits. Although some argue that it also constitutes a lesser intrusion on citizen privacy because the procedure involves a search through a particular citizen's file rather than a "general search" through all files, the ACLU believes that the unchecked growth of verification systems linking various data bases of personal information on every citizen poses a serious danger to individual autonomy and privacy.[106]

OTA's recent report on computers and privacy included several specific findings about front-end verification. The most striking finding is that use of front-end verification is creating a *de facto* national data base covering nearly all Americans.[107]

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[103] Privacy Protection Study Commission, *Personal Privacy in an Information Society* 9 (1977).

[104] See, for example, *1982 Senate Hearings* at 100–102 (testimony of John Shattuck, national legislative director, American Civil Liberties Union).

[105] *OTA Report* at 67–8.

[106] *1987 House Matching Hearings* at 110 (statement of Janlori Goldman, staff attorney, American Civil Liberties Union).

[107] *OTA Report* at 68. A more recent OTA background paper raises similar issues. See Office of Technology Assessment, *Electronic Delivery of Public Assistance Benefits: Technology Options and Policy Issues* 28–30 (1988) (OTA–BP–CIT–47).

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The committee agrees that concerns about increased linkage of Government computers are legitimate. However, verifying the eligibility of program applicants at the front end is a reasonable approach and one that the committee is not prepared to discourage. The issues raised by computer linkage are much broader than are encompassed in computer matching. Restricting or prohibiting front-end verification is not practical, and no one has formally proposed such limitations. The concerns are real, but other solutions to computer linkage problems will have to be found.

The problem of computer and record linkage was very well stated in a report recently issued by a committee of the Canadian Parliament. In a discussion of computer matching, the committee stated:

> The process of government would indeed be more efficient if we were all watched and monitored; the problem is to establish acceptable and tolerable limits to computer matching. There is an especially strong resistance to far-flung matching operations that involve access to a broad array of personal data from various government institutions. The current mechanisms to regulate such practices are inadequate. In particular, a balance must be achieved between the privacy interests of individuals and other societal values, such as the reduction of fraud and waste.[108]

H.R. 4699 is not intended to create any specific barriers to computer linkage. But the committee does not want the bill to be construed as supporting, encouraging, or directing the linkage of computers or the establishment of any type of national data bank that combines, merges, or links information on individuals maintained in systems of records. H.R. 4699 is intended to leave the law and policy in this area alone. The policies, procedures, and provisions of the Privacy Act that prevent the establishment of interagency data banks in the name of efficiency and that prevent unwarranted sharing of personal information remain in force.

2. *Legal Questions.*—The legality of some disclosures that are necessary to support computer matching has been questioned since 1977. A primary question revolves around the "routine use" provision of the Privacy Act.[109] Where records are disclosed by one agency to another for use in matching, the normal legal authority for the disclosure comes from a routine use.[110]

A routine use may only be established if the disclosure is compatible with the purpose for which the information was collected.[111] For example, if a match proposes to use records about Federal employees to identify welfare recipients, is the disclosure of the personnel records compatible with the purpose for which the personnel records were collected?

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[108] *Canadian Parliament Report* at 43.

[109] See text accompany notes 15.

[110] See, for example, *1982 OMB Matching Guidelines* at 5.a.(1) ("If disclosure is to be made pursuant to a 'routine use' (section (b)(3) of the Privacy Act), [the agency] should ensure that the system of records contains such a use, or [the agency] should publish a routine use notice in the Federal Register.")

[111] 5 U.S.C. §552a(a)(7).

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In 1977, the general counsel to the Civil Service Commission answered this question in the negative.[112] While this matter was debated and reconsidered within the executive branch, the pressures to undertake matching projects intensified. These pressures may have been fueled in part by the undocumented claims of savings resulting from computer matching.[113] Eventually, with OMB's approval and 1979 Guidelines, any legal barriers placed in the way of matching by the Privacy Act were overridden.[114] Later legislation authorizing or requiring specific matching programs resolved questions of the legality of routine uses by providing a legislative purpose for the disclosures. However, there has been no formal legal resolution of the Privacy Act issue in other areas, and some dispute remains.[115]

The Senate bill (S. 496) proposed to add new language to the Privacy Act that would authorize all disclosures made pursuant to a written matching agreement. This language may have been included because of the Senate perception that there is some doubt about the legality of disclosures needed for some computer matches that do not have specific statutory authorization.

H.R. 4699 does not include this language. The committee believes that the compatibility standard of the Privacy Act still has meaning and purpose, and the committee does not wish to give blanket authorization to all disclosures for all computer matches regardless of purpose, scope, agency, or level of government involved. In order to make it clear that H.R. 4699 does not provide independent authority for disclosures necessary to support matching, section 9 provides that nothing in the act shall be construed to authorize the computer matching of records not otherwise authorized by law. In other words, H.R. 4699 leaves the legal questions surrounding matching and the Privacy Act alone. Provided that the new procedures in H.R. 4699 have been complied with, any computer match that was lawful before passage of the bill will continue to be lawful after passage.[116]

Discussion

There are three key concepts in the regulation of computer matching under H.R. 4699. *Matching programs* must be established by means of *matching agreements,* and the agreements must be approved by agency *Data Integrity Boards.* The bill has other provisions, but the understanding of these concepts is central to understanding how the legislation should be implemented.

Matching Programs.—"Matching programs" are defined in section 5 of the bill to include a broad range of agency matching activities. The scope of the bill is then narrowed by the exclusion of six specific types of matches.

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[112] Letter from Carl F. Goodman, General Counsel, United States Civil Service Commission, to Charles Ruff, Acting Deputy Inspector General, Department of Health, Education and Welfare (July 27, 1977), reprinted in *1982 Senate Hearings* at 122 ("[I]t is evident that this information on employees was not collected with a view toward detecting welfare abuses.")

[113] See, for example, text accompanying notes 78–79.

[114] See note 18.

[115] See, for example, *1987 House Matching Hearing* at 97–101 (statement of Janlori Goldman, staff attorney, American Civil Liberties Union).

[116] For another Privacy Act legal issue raised by computer matching, see text accompanying note 27.

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A matching program must involve a Privacy Act system of records as a source of records used in matching. Under the Privacy Act of 1974, a "system of records" is defined as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. § 552a(5). Most records about individuals maintained by Federal agencies are kept in systems of records.

Except for a relatively small number of systems of records maintained by Federal agency contractors, systems of records are maintained only by Federal agencies. This means that matching programs will generally not include any matching activities that do not involve a Federal agency as a source or recipient of information.

As a result, H.R. 4699 does not affect matching activities that are conducted by State or local governments using State, local records, or private records. A matching activity becomes a matching program within the meaning of H.R. 4699 only when Federal records from a Privacy Act system of records are involved.

There are two basic types of computerized comparisons of records that fall within the general definition of matching programs. First, a matching program includes the computerized comparison of any automated systems of records for the purpose of establishing or verifying eligibility of, or continuing compliance with statutory and regulatory compliance by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs. Federal employees are intended to be treated as recipients of payments under a Federal benefit program. The comparison of records for the purpose of recouping payments or delinquent debts under Federal benefit programs also qualifies as a matching program. A matching program includes matches between two Federal systems of records as well as matches between a Federal system of records and non-Federal records.

Matches conducted by the Federal Parent Locator Service do not fall under this definition because the matches are performed for the purpose of locating absent parents who are not paying child support in order to take action against them to secure such child support payments. The committee does not intend the bill to be construed to apply to matches performed by the Federal Parent Locator Service to locate absent parents even though such payments may result in a recoupment of payments made by a Federal benefit program such as Aid to Families with Dependent Children. The Federal benefit recoupment is not the principal purpose of the matching activity.

For a matching program that meets the primary definition, the applicability of H.R. 4699 is determined by the purpose of the match. A matching activity conducted for a nonqualifying purpose will not be subject to H.R. 4699.

Second, all computerized comparisons using Federal personnel or payroll systems of records are matching programs. When Federal payroll or personnel records are used in a matching activity, the activity falls within the general definition of matching programs regardless of purpose. This includes matches between two Federal

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systems of records as well as matches between a Federal system of records and non-Federal records.

There are six categories of matching activities that are specifically excluded from the scope of the bill. First, a match performed to produce aggregate statistical data without any personal identifiers is excluded from the definition of matching programs. To qualify under this exclusion, no information resulting from the match may be produced or retained in individually identifiable form or may be used in any way to affect the rights, benefits, or privileges of any individual.

Second, a match performed to support any research or statistical project is excluded if no information resulting from the matching activity is used to make decisions concerning the rights, benefits, or privileges of specific individuals. The difference between research or statistical matching (the first exclusion category) and aggregate statistical matching (the second exclusion category) is that identifiable information may be produced and retained during a research or statistical match. No identifiable information may result from aggregate statistical matches. In neither case may any information be used in any adverse or other way to affect an individual. Disclosure of any identifiable information produced during a research or statistical match may be made otherwise in accordance with the conditions of disclosure in the Privacy Act.

The third exclusion can only be invoked by an agency or component which performs as its principal function any activity pertaining to the enforcement of criminal laws. The exclusion covers matches conducted by such an agency or component subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons.

This exclusion is intended to be narrowly construed. First, not every agency is eligible to use the exclusion. The agency's (or component's) *principal* function must pertain to the enforcement of criminal laws. The Federal Bureau of Investigation is an example of such an agency.

However, if an agency has a number of different functions, one of which is a criminal law enforcement activity, the agency does not qualify unless the criminal law enforcement activity has been clearly identified by statute or otherwise as the principal function of the agency. A regulatory agency that spends most of its time and resources implementing a scheme of regulation will not qualify just because the law it oversees has criminal penalties. The criminal law enforcement function must be the principal function for the agency to qualify.

An agency that is not principally a law enforcement agency may still have a component that can utilize the third exclusion. For example, an audit office will typically have a number of functions, one of which is the initiation of criminal law enforcement investigations. The office as a whole will normally not qualify because the criminal law enforcement activity is not its principal activity. However, a clearly identifiable investigation subunit that performs as its principal function investigations that may lead to criminal referrals can qualify. Investigative offices do not know at the commencement of an investigation whether the matter under investi-

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gation will result in civil or criminal charges. This uncertainty does not make the law enforcement exclusion unavailable to criminal investigative units. As long as criminal referrals or indictments may result from the investigative activity, and the investigative activity is the principal function of the office, the exclusion will be available. An example is the Criminal Investigations Division of the Internal Revenue Service which will qualify even though the IRS as a whole does not.

An office that is eligible to use the third exclusion can only use it subsequent to the initiation of a specific criminal or civil investigation of a named person or persons for the purpose of gathering evidence against such person or persons. In order to rely on the third exclusion, an agency or component must be gathering evidence for an existing, ongoing investigation whose targets must already be identified.

This requirement is intended to distinguish computer matching—which is typically initiated without any evidence or suspicion about specific individuals—from the later stages of a law enforcement investigation where specific, named suspects have already been identified. Once the specific targets of an investigation have been identified, the protections of H.R. 4699 may no longer be appropriate. The bill is intended to regulate general records searches rather than to interfere with well-defined law enforcement operations.

The phrase "named person or persons" is intended to mean that the investigation sponsoring the excluded matching activity has already identified the specfic individual or individuals who are the targets of the investigation. A generic description of the targets (such as "program beneficiaries" or "program beneficiaries who are also on the Federal payroll") is not adequate. In addition, there must be a reasonable basis for believing that each of the identified targets of the investigation has engaged in improper conduct that is subject to investigation by the agency or component. These limitations are intended to assure that the law enforcement exclusion will not be a loophole which will allow general matching operations to be transferred to criminal law enforcement agencies or components in order to evade the procedural requirements for computer matching. At the same time, the exclusion is intended to allow matching to be done without undue procedural interference for legitimate law enforcement purposes.

The fourth exclusion covers several matching activities conducted by the Internal Revenue Service. Disclosures of tax returns and tax return information to State officials pursuant to 26 U.S.C. § 6103(d) are excluded from the requirements of H.R. 4699.

Also excluded are matches of tax information for purposes of tax administration as defined in 26 U.S.C. § 6103(b)(4). This exclusion will permit IRS to continue without interference the matching of tax returns with notices of interest, dividend, and similar payments.

Finally, the fourth exclusion also covers matches of tax information for the purpose of intercepting a tax refund due to an individual under authority granted by the Deficit Reduction Act of 1984. The tax refund offset programs authorized by DEFRA already contain due process procedures. To subject these offset programs to the

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computer matching bill would only result in duplicative notice to affected individuals and duplicative hearings.

The fifth exclusion is designed to allow most internal agency matching activities to be conducted without following the matching procedures. The purpose is twofold. First, the general scheme of the Privacy Act allows agencies to make reasonable *internal* uses of information without unnecessary complexity. See, for example, 5 U.S.C. § 552a(b)(1). The fifth exclusion continues that policy. Second, the broad definition of matching programs includes some routine agency operations that do not warrant the additional controls imposed by the bill.

Two different types of matches can qualify under the fifth exclusion. First, the exclusion covers matches performed for routine administrative purposes that use records predominantly relating to Federal personnel. A routine administrative purpose includes activities such as: (a) a computer search for an agency employee with specific skills who can carry out a specific assignment; (b) matching of agency payroll records with Treasury Department records for the purpose of preparing payroll checks; and (c) standard internal auditing of agency travel records. The Director of the Office of Management and Budget is required to issue guidance to clarify and standardize the concept of "routine administrative purpose."

Second, the exclusion also covers matches that are performed using only records from systems of records maintained by an agency. The term "agency" is defined term under the Privacy Act, and the committee intends that it be interpreted in accordance with the OMB Privacy Act Guidelines, 40 Federal Register 28950 (July 9, 1975), and the Justice Department letter quoted therein.

An internal or administrative match does not necessarily qualify for the fifth exclusion. The match only qualifies if the purpose is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel. Thus, a match of Federal employees for waste, fraud, abuse, or debt collection purposes does not qualify for exclusion. Such matches are identical in purpose to matches involving non-Federal employee populations, and Federal employees are entitled to the same protections that H.R. 4699 affords to others. However, routine administrative matches conducted as part of normal accounting or auditing controls and that are not specifically intended to result in adverse action against Federal personnel can qualify for exclusion.

The sixth and final exclusion for the matches is performed to produce background checks for security clearances of Federal personnel or for foreign counterintelligence purposes. This is intended to allow all required security clearance investigations without application of the matching procedures.

Matching Agreements.—H.R. 4699 requires that most computer matching involving Federal data be conducted pursuant to matching agreements. The bill enforces this requirement by prohibiting the disclosure by a Federal agency of any record contained in a system of records to another Federal agency or to a non-Federal agency for use in a computer matching program except pursuant to a written matching agreement.

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There are eleven required elements in a matching agreement. First, the agreement must specify the purpose and legal authority for conducting the matching program.

Second, the agreement must specify the justification for the program and the anticipated results, including a specific estimate of any savings. This information is required because of a concern by the committee that some computer matching may not be cost effective. Data Integrity Boards are required to disapprove a matching program unless a cost-benefit analysis has been completed and the analysis demonstrates that the program is likely to be cost effective.

The General Accounting Office has developed guidelines for assessing the costs and benefits of computer matching. The report was issued in November 1986 (GAO/PEMD-87-2). The GAO guidelines are the first attempt to set out a comprehensive, realistic, and objective approach to the assessment of the costs and benefits of matching.

When an agency prepares estimated results of matching and estimates of savings, the committee intends that the elements relating to cost-benefit assessment identified in the GAO report be employed to the greatest extent practical. All identifiable cost elements should be included in the analysis, and a realistic assessment of the benefits—suitably discounted to reflect the time value of money—is also required.

Third, a matching agreement must include a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program.

Fourth, an agreement must describe the procedures for providing individualized notice to applicants for and recipients of financial assistance or payments under federal benefit programs and to applicants for and holders of positions as Federal personnel. Individualized notice means that each individual affected by the match must receive a notice. Notice through publication in the Federal Register will not meet the requirement of individualized notice. Individualized notice must be provided at the time of application and periodically thereafter that any information provided by applicants, recipients, and others may be subject to verification through matching programs.

The Data Integrity Board may direct procedures for periodic notice for each matching program. The Director of the Office of Management and Budget is required to issue guidance on periodic notice for the use of the Boards. In general, the committee intends that all individuals receive meaningful notice. Agencies will normally be able to accomplish this by providing matching notices to individuals at the same time that other information is conveyed. Unless determined by OMB to be necessary in some circumstances, the committee does not expect that agencies will be required to keep a receipt for the notice from each individual receiving the notice. Each agency need only take reasonable steps to assure that affected individuals have been notified.

In the case of the initial notice, matching information can be included on an application form or with other notices provided to ap-

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plicants. The periodic notice requirements can be met in a similar way. The mailing of separate periodic notices is not required as a matter of law, but could be required in specific instances either by a Data Integrity Board or under OMB guidance.

Fifth, a matching agreement must specify procedures for verifying information produced in the matching program. Verification requirements are discussed elsewhere in this report.

Sixth, a matching agreement must specify procedures for the timely destruction of identifiable records created by a recipient agency or non-Federal agency during the course of a matching program. All records generated during the course of a matching program should be destroyed as soon as the records are no longer needed. The timely destruction of unnecessary personal information provides an important privacy protection.

Seventh, a matching agreement must specify procedures for ensuring the administrative, technical, and physical security of the records matched and the results of the matching program. This requirement is similar to an existing Privacy Act provision in subsection (e)(10). The existing requirement is for *appropriate* safeguards for protecting the security and confidentiality. The committee intends that a standard of appropriateness also be applied to the protection of matching records. The degree of protection should be commensurate with the sensitivity of the records. Matching records will normally not require the same degree of protection as classified information.

Eighth, a matching agreement must specify applicable prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program.

The prohibition on duplication and redisclosure is another important privacy protection. Records made available for a matching program may be used only for the program and may not be duplicated or redisclosed for any other purpose. This will be the prohibition on duplication and redisclosure normally specified in the matching agreement.

There are two exceptions to the general prohibition. Records may be duplicated or redisclosed for a purpose that is required by law. An example is the law requiring disclosure of records to the Comptroller General. Records may also be duplicated or redisclosed where duplication or redisclosure is essential to the conduct of the matching program. The "essential" standard is a strict test, and the committee intends it to be much more restrictive than the "campatibility" standard for routine uses under the Privacy Act. See 5 U.S.C. § 552a(7). In general, the stricter restrictions on duplication and redisclosure reflect a concern that records used in matching programs be tightly controlled.

A disclosure is essential only when a matching program cannot be carried out without it. The results of a match may be disclosed for followup and verification as an essential part of the program. Also, when a matching program uncovers activity that warrants civil or criminal investigation or prosecution, the disclosure or duplication of information to support the investigation or prosecution is an essential purpose.

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Ninth, a matching agreement must specify procedures governing the use by a recipient agency or non-Federal agency of records provided by a source agency, including procedures governing return of the records to the source agency or destruction of records used in the matching program. Records should be destroyed or returned to the source agency at the earliest possible opportunity.

Tenth, a matching agreement must include information on assessments that have been made on the accuracy of the records that will be used in the matching program. The accuracy of data is important in any matching activity, and there have been serious problems in the past when inaccurate information has been used.

Finally, matching agreements must provide that the Comptroller General may have access to all records of a recipient agency or non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement. Since the Comptroller General already has a statutory right to access to Federal agency records, this provision is primarily intended to allow the Comptroller General to have access to records of state or local governments.

A copy of each matching agreement must be provided to the Senate Committee on Governmental Affairs and to the House Committee on Government Operations, and the agreement will not become effective until 30 days after copies are sent to the Committees.

A copy of a matching agreement must be made available to the public on request. The committee intends that copies of matching agreements should be provided upon request, without charge, and without the necessity for the filing of a formal request under the Freedom of Information Act. No agency may hide its matching activities from public view by holding requests for matching agreements in a lengthy FOIA queue.

Matching agreements may remain in effect for the period determined to be appropriate by the Data Integrity Board. The Board will make its determination in light of the purpose and length of time necessary for the conduct of the matching program. The maximum length of time for a matching agreement is 18 months. However, the Board may renew an existing matching agreement for up to an additional year if the program will be conducted without any change for the additional period and if each party to the agreement certifies in writing that the program has been conducted in compliance with the agreement.

The vast majority of matching programs subject to H.R. 4699 will involve two different Federal agencies or one Federal agency and a non-Federal agency. This is because the fifth exclusion of the definition of matching programs excludes most internal agency matches.

However, there will be some matches wholly internal to an agency that will be subject to the requirements of H.R. 4699. In these instances, the same agency will be both the source and the recipient agency, and the agency will have to effectuate a matching agreement with itself. If the source and recipient agencies are different components with the agency, an agreement can be signed by the two components. If the same component is both the source and the recipient of the matching information, the head of the compo-

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nent or agency should prepare and submit to the agency's Data Integrity Board a memorandum which can serve as the equivalent of a matching agreement.

Data Integrity Boards.—Each Federal agency conducting or participating in a matching program is required to establish a Data Integrity Board to oversee and coordinate implementation of H.R. 4699. A Federal agency must have a Data Integrity Board if the agency is a source agency or a recipient agency. No non-Federal agency is required to establish a Data Integrity Board.

Each agency's Data Integrity Board must be composed of senior officials designated by the head of the agency. The only members of the Board designated by law are the senior agency official designated by the head of the agency as responsible for implementation of the Privacy Act of 1974, and the inspector general of the agency, if any. The agency head can determine how many additional members to appoint to the Board. A small agency with limited matching activities may have only a few members on its board. A larger agency with active matching programs may have a need to have a large number of agency components represented on its board.

The bill specifically provides that no inspector general may serve as chairman of the Data Integrity Board. The agency head may select another member as chairman or may allow the Board to select its own chairman. The reason for the limitation on inspectors general is because of the prominent role played by inspectors general and the President's Council on Integrity and Efficiency in promoting the use of computer matching. The committee is concerned that a Board chaired by an inspector general may not exercise sufficiently detached judgment regarding computer matching. The committee intends that neither an agency inspector general nor any employee of an inspector general serve as chairman of the Board, chair meetings of the Board, or provide staff to the Board.

Membership on the Board should not be a full-time job for anyone. In fact, except at a large agency with a considerable amount of matching activities, the Board may not neet to have any permanent, full-time staff. However, during the initial implementation period for H.R. 4699, there is likely to be more effort required than will be necessary for continuing operations, and some full-time staff may be assigned initially. It is likely that the members of the Board will contribute staff as needed to carry out the Board's functions or that the agency's Privacy Act officer may be assigned additional matching-related activities. The Committee envisions that most agency Data Integrity Boards will meet several times each year to consider matching agreements and to review ongoing matches.

The bill sets out eight specific functions for Data Integrity Boards. First, each Board will review, approve, and maintain all written agreements for receipt or disclosure of agency matching programs. Each Board will also maintain copies of all relevant statutes, regulations, and guidelines as a resource for the agency.

Second, each Board must review all matching program in which the agency has participated during the year, either as a source agency or recipient agency. The purpose of the review is to determine compliance with applicable laws, regulations, guidelines, and

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agency agreements, and to assess the cost and benefits of such programs.

The committee does not envision that Boards will routinely undertake active investigations of matching programs. When there are reports or other indications of problems with a matching program's operations or of a lack of compliance with law or the matching agreement, an active investigation may be warranted. Otherwise, the Board's role will normally be more limited and may include collection and review of information about matching programs and occasional spot audits. The Boards will have to take positive action to ensure that the assessement of costs and benefits for each matching program is fairly and accurately presented.

Third, each Board must review all recurring matching programs in which the agency has participated during the year, whether as a source agency or recipient agency, for continued justification. This requirement has been included in order to make sure that special attention will be paid to matching programs that are done on a continuing basis. The Committee is concerned that these matches may be renewed automatically long after the need for the match has passed. This is most likely to be a problem with front-end verification matches.

Fourth, each Board must prepare an annual report on matching for submission to the head of the agency and to Office of Management and Budget. The report of each Board must also be made available to the public upon request. OMB will consolidate the reports for the various Boards and file a single report with the Congress.

Reports by the Boards must describe the matching activities of the agency and must include: (i) a description of all matching programs in which the agency participated as a source or recipient agency; (ii) a description of any matching agreements that were proposed but disapproved by the Board; (iii) a description of any changes in the membership or structure of the Board in the preceding year; (iv) the reasons for any waiver of the requirement for the completion and submission of a cost-benefit analysis prior to the approval of a matching program; (v) information about any violations of matching agreements that have been alleged or identified and any corrective action taken; (vi) any other information required by the Director of OMB to be included in the report.

Fifth, each Board is required to serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs.

Sixth, each Board is required to provide interpretation and guidance to agency components and personnel on the Privacy Act's matching requirements.

Seventh, each Board is required to review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with the Privacy Act.

Finally, each Board may review and report on any agency matching activities that are not matching programs. This authority allows the Boards to consider any aspect of agency matching operations that fall outside of the definition of matching programs because of the exclusions.

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The Senate bill assigned the Data Integrity Boards responsibility for reviewing and coordinating privacy training programs. This has been left out of the House bill because the responsibilities of the Boards are specifically focused on computer matching rather than the whole Privacy Act or broader privacy issues. This change from the Senate bill should not be taken as any indication of lack of interest in or support for privacy training. The Committee strongly supports Privacy Act training but believes that the responsibility should not rest with Data Integrity Boards. Existing training programs—such as those sponsored by the Defense Privacy Board—should continue to be utilized.

One of the major elements of H.R. 4699 is the focus on the cost-effectiveness of computer matching. The Data Integrity Boards have been given a central assignment in this area. In general, no Board may approve any matching agreement unless the agency has completed and submitted a cost-benefit analysis of the proposed matching program *and* the analysis demonstrates that the program is likely to be cost-effective.

The General Accounting Office has developed guidelines for assessing the costs and benefits of computer matching. The report was issued in November 1986 (GAO/PEMD-87-2). The GAO guidelines are the first attempt to set out a comprehensive, realistic, and objective approach to the assessment of the costs and benefits of matching.

When an agency prepares estimated results of matching and estimates of savings, the committee intends that the elements relating to cost-benefit assessment identified in the GAO report be employed to the greatest extent practical. All identifiable cost elements should be included in the analysis, and a realistic assessment of the benefits—suitably discounted to reflect the time value of money—is also required. The Board will enforce this requirement by reviewing the cost-benefit analysis submitted along with each proposed matching agreement.

The committee is aware that an exact cost-benefit analysis cannot be prepared for every proposed match. H.R. 4699 reflects this uncertainty by requiring only that the analysis demonstrate that a matching program is likely to be cost-effective. The committee expects that a good faith effort will be made to be as realistic as possible.

A considerable amount of matching has been done, and information from past matches should be consulted whenever possible in the preparation of cost-benefit analyses. For recurring matches, specific evidence can be collected during the first year of operation and then used to prepare a realistic cost-benefit analysis for the future.

As experience with developing cost-benefit analyses increases, estimates should rapidly improve in quality over time. The requirement that an actual assessment of costs and benefits be included in annual reports will permit a comparison of estimates with actual results. The committee will review the annual reports to determine how good a job the Boards are doing in overseeing the cost-benefit analysis provisions of H.R. 4699.

The preparation of a cost-benefit analysis will not be possible for every proposed matching program. While most matches done to

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reduce fraud, abuse, or waste can be measured on a cost-effectiveness scale, other matches have objectives that cannot effectively be measured in monetary terms. For example, it may not be possible to prepare a complete cost-benefit analysis for a match that is conducted to improve the quality of health care. For other matches—particularly front-end verification matches—cost-benefit criteria are not sufficiently developed to permit a cost-effectiveness evaluation at this time.

The committee recognizes that there are some limitations on cost-benefit analysis, and H.R. 4699 allows Data Integrity Boards to waive the requirement for the preparation of a cost-benefit analysis. In order to grant a waiver, the Board must make a determination in writing that a cost-benefit analysis is not required. The determination must be made in accordance with guidelines prescribed by the Director of OMB.

It is the committee's intent that waiver be granted sparingly and only where the preparation of a cost-benefit analysis is impossible or would be completely fruitless. The flexibility included by granting authority to waive the cost-benefit requirement should not be abused. For example, Data Integrity Boards may not grant routine waivers on the excuse that the purpose of a matching program is "deterrence of fraud and abuse" and that deterrence is difficult to measure. The experience with computer matching during the last ten years should provide a basis for realistically estimating any benefits attributable to "deterrence". The requirement that Boards annually assess the costs and benefits of matching programs will rapidly provide a more precise basis for determining whether estimates of deterrence benefits have been accurate.

When one Federal agency is the source agency and another Federal agency is the recipient agency for a matching program, the Data Integrity Boards of both agencies will have the responsibility to review and approve the program. Both boards will have to be satisfied that the proposed matching program meets the standards of the law. Any disagreements will have to be resolved before the matching program can proceed.

Appeals.—If a matching agreement is disapproved by a Data Integrity Board, any party to the agreement may appeal the disapproval to the Director of OMB. The appeal has been added to the Senate bill because of the possibility that some of the members of the Data Integrity Board considering a matching agreement might have a conflict of interest. It is possible, for example, that an agency operating a benefit program might resist a proposed matching project because of concern that the results might show that the program was being poorly run. An appeal allows for an independent review of the decision of the Board. The committee anticipates that appeals will be rare and primarily because of conflicts of interest.

When an appeal is filed with OMB, notice must be provided by OMB to the Senate Committee on Governmental Affairs and the House Committee on Government Operations. OMB may prescribe whatever procedural rules for appeals that it finds necessary.

OMB will have limited authority to overrule a Data Integrity Board and approve a matching agreement. An appeal may be granted only if the Director of OMB determines that: (i) the match-

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ing program will be consistent with all applicable legal, regulatory, and policy requirements; (ii) there is adequate evidence that the matching agreement will be cost effective; and (iii) the matching program is in the public interest.

The public interest standard does not grant OMB any authority to approve a matching program that is not in full compliance with statutory requirements. Instead, it is an additional standard that gives OMB authority to disapprove a matching program that complies with the law but that is not an appropriate use of federal funds or information.

When OMB approves a matching agreement, the decision must be reported to the Senate Committee on Governmental Affairs and to the House Committee on Government Operations. The notice to the committees should include a detailed statement of the reasons for granting the appeal. Any matching agreement so approved may not take effect until 30 days after the committees are notified.

If a matching program proposed by the inspector general of an agency is disapproved by the Data Integrity Board and by the Director of OMB, the inspector general may report the disapproval to the head of the agency and to the Congress. If the Congress determines that the matching program was improperly disapproved, the Congress can take appropriate action.

Verification.—Before a recipient agency, non-Federal agency, or source agency can suspend, terminate, reduce, or make a final denial of any financial assistance under a Federal benefit program or take other adverse action against an individual as a result of information produced by a matching program, an officer or employee of the agency must independently verify the information.

Independent verification may be satisfied in either of two ways. First, information may be verified in accordance with the requirements governing the Federal benefit program. This assumes that the benefit program has specific verification requirements.

Alternatively, information about an individual uncovered through a matching program can be independently verified through independent investigation and confirmation of: (A) the amount of the asset or income involved; (B) whether the individual actually has or had access to the asset or income for the individual's own use; (C) the period or periods when the individual actually had the asset or income; and (D) any other information used as a basis for an adverse action against an individual.

The purpose of the independent verification requirement is to assure that the rights of individuals are not determined automatically by computers without human involvement and without checking that the information relied upon is accurate, complete, and timely. No one should be denied any right, benefit, or privilege simply because his or her name was identified in a match as a "raw hit". There can be no presumption that information obtained from a computer is necessarily correct or that correct data has been correctly interpreted. Computerized data is just as likely to be incorrect as information that comes from other sources.

The confirmation that is required means that the underlying data elements used in the computer match have been found to be correct. It is not enough to confirm that the specific data on the computer tape used in the matching operation is the same as the

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data contained in the source computer for the tape. Confirmation means that the data is, in fact, correct. This may be determined by asking the individual involved for confirmation of the information or by checking the data with another data source that obtained the information independently of the first source.

In most instances, the individual will be the best source of confirmation and explanation. An existing Privacy Act provision already requires that Federal agencies collect information to the greatest extent practicable directly from the subject individual when the information may be used in a way that results in an adverse determination about an individual's rights, benefits, or privileges. See 5 U.S.C. § 552a(e)(2).

Contacting the individual for an explanation of the information in question is important because there may be more than one interpretation of the facts. The 1982 Massachusetts bank match, which is discussed elsewhere in this report, demonstrates why. Some welfare recipients were found to have bank accounts with assets in excess of the legal amounts. But while the basic information was correct, further investigation revealed that in some cases, the money in the account did not belong to the welfare recipient or was being held for a legal purpose.

The independent verification requirement is not intended to erect a complex or rigid barrier to the use of the results of computer matching. It should be interpreted using a rule of reason. If there is a reasonable independent confirmation that the information from a computer match is correct and a reasonable basis for taking action, then an agency may act upon that information.

Due Process.—H.R. 4699 also requires that due process be afforded to individuals before any action can be taken on the results of computer matching. No recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under the Federal benefit program to any individual as a result of information produced by a computer match until 60 days after the individual receives a notice from the agency. The notice must contain a statement of the findings and must inform the individual of the opportunity to contest the findings. The opportunity may be satisfied by notice, hearing, and appeal rights governing the Federal benefit program. The exercise of any such rights shall not affect any rights available under the Privacy Act of 1974.

These due process procedures are similar in purpose and design to existing requirement for computer matching that is authorized under the Deficit Reduction Act of 1984. As a result, the procedures should not be difficult or expensive for any agency to follow. Most, if not all, affected agencies will already have in place similar procedures. For these agencies, the additional costs of complying with the due process requirements of H.R. 4699 will be minimal.

Notwithstanding the due process procedures required under H.R. 4699, an agency may take any appropriate action that might otherwise be prohibited if the agency determines that the public health or public safety may be adversely affected or significantly threatened during the 60-day notice period. For example, an agency might discover as a result of a computer match that a person not licensed to practice medicine was working as a physician. Under

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the public health or safety exception, the agency could take immediate action to prevent the unauthorized person from continuing to practice medicine. Due process should still have to be provided, but in such a case it could be provided after rather than before the fact. While it is not anticipated that the public health or safety exception will be used often, it will prevent H.R. 4699 from restricting Government action needed to protect human life or limb.

Report to Congress.—The Director of OMB will file a report with the Congress on matching activity. The report must be filed annually during the first 3 years after the date of enactment and biennially thereafter. The report will consolidate the information contained in the reports from the Data Integrity Boards. The report must include detailed information about the costs and benefits of matching programs and must identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver. The OMB report may contain such other information about matching programs and matching activities as the Director determines to be relevant to executive or congressional oversight.

Reports to OMB from the Data Integrity Boards are required to include information about matching activities that are not matching programs under the definition in H.R. 4699. Some of these matching activities are matches conducted for law enforcement purposes. In order to protect any sensitive, ongoing matching activities connected with law enforcement investigations that might be jeopardized by premature publicity, the reports by the Boards and by OMB may present information about such matching activities on an aggregate basis.

Other Privacy Act Amendments.—H.R. 4699 makes several minor amendments to the Privacy Act. First, the uncodified provisions of section 6 of the Privacy Act of 1974, Public Law 93–579, relating to the responsibilities of the Director of OMB to provide guidelines, assistance, and oversight of the Privacy Act are codified in new subsection (v) of the Privacy Act. This is a technical amendment, and no change in the function of OMB is made or intended by the codification of this authority. Existing OMB Privacy Act guidance remains in effect. A conforming amendment repeals section 6 of the Privacy Act of 1974.

Second, the requirement in subsection (f) of the Privacy Act that the Office of Federal Register annually publish a compilation of Privacy Act rules and system notices is changed to a biennial requirement. In making this change, the committee notes that the current form of the compilation may not be the most effective means of informing the public about government records about individuals. The committee urges the Office of Federal Register to develop indexes and other tools that will make the publication more useful to a broader community. Alternative publication formats should also be studied by the Office of Federal Register and by OMB.

Third, H.R. 4699 modifies the requirement that the President submit to the Congress an annual report on the administration of the Privacy Act of 1974. The report will be required biennially in the future rather than annually. The current requirement is in

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subsection (p) of the Act which becomes subsection (s) as redesignated by H.R. 4699.

Fourth, existing subsection (o) of the Privacy Act (subsection (r) as redesignated) requires agencies to file a report on new systems of records with OMB and with the Congress. This requirement is revised in several ways:

(a) Not all changes to existing system notices must be reported. The new language requires reports only for *significant* changes. The purpose of this amendment is to eliminate the suggestion in the law that reports must be filed to reflect changes that are insignificant and have no effect on the exercise of rights by individuals.

Any change in the categories of individuals on whom records are maintained, the categories of records maintained, access procedures, exemptions, or the routine uses for a system will always constitute a significant change that requires a report. Nonsignificant changes include a change in the name or title of the system manager and minor procedural changes that will not affect an individual's exercise of rights granted by the Privacy Act in any way. The committee is aware that OMB has issued guidance to agencies on when an agency is required to file reports on changes in system notices. The OMB guidance reflects the intent of this change in the reporting requirement. See OMB Circular A-130, 50 Fed. Reg. 52740 (December 29, 1987).

(b) Current law requires that reports be provided to the Congress. The new language requires instead that two copies of the reports be provided directly to the Senate Committee on Governmental Affairs and to the House Committee on Government Operations.

(c) Current law requires that the report proposing new or changed systems include information about the effect of the proposal on "personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers." This language is eliminated in the revised subsection. Instead, the reports are simply required to provide information in order to permit an evaluation of the probable or potential effect of the proposal on the privacy or other rights of individuals.

The committee has determined that the information required under the existing provision is only occasionally relevant to the evaluation of a new or changed system of records. The new language gives OMB and the agencies broader discretion to determine what information is necessary to assist in the evaluation of the proposal. The change does not reflect any lessened interest in the content of the system reports, and the committee intends that agencies provide a full and fair evaluation of the consequences of the establishment or alteration of any system of record. This includes, but only where appropriate, information on the effect of any Privacy Act systems on preservation of the constitutional principles of federalism and separation of powers.

Fifth, a new paragraph 12 is added to subsection (e) of the Privacy Act. The new paragraph requires source and recipient agencies to publish notices of the establishment or revision of matching programs in the Federal Register at least 30 days prior to conducting such programs.

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Effective Date.—Most of the provisions of the bill affecting matching activities take effect 9 months after the date of enactment. The minor changes to the Privacy Act made by sections 6, 7, and 8 are effective upon enactment. The Director of OMB is directed to develop guidelines and regulations for the use of agencies in implementing the amendments made by H.R. 4699 not later than 8 months after the date of enactment. This should allow sufficient time for agencies to establish Data Integrity Boards and to bring existing and proposed matching activities into compliance with the new law.

Section-by-Section Analysis

SECTION 1—SHORT TITLE

This section provides that the act may be cited as the "Computer Matching and Privacy Protection Act of 1988."

SECTION 2—MATCHING AGREEMENTS

This section adds three new subsections to the Privacy Act of 1974, 5 U.S.C. § 552a. The new subsections are designated as subsection (o), (p), and (q), and existing subsections (o), (p), and (q) are redesignated as subsections (r), (s), and (t).

Subsection (o)—Matching Agreements

Matching Agreements (Paragraph 1).—No record contained in a Privacy Act system of records may be disclosed to a recipient agency or a non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency. The matching agreement must specify:

(A) the purpose and legal authority for conducting the program.

(B) the justification for the program and the anticipated results, including a specific estimate of any savings.

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matching, and the projected starting and completion dates of the matching program.

(D) procedures for providing individualized notice at the time of application, and periodically thereafter as directed by the agency's Data Integrity Board, to (i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and (ii) applicants for and holders of positions as Federal personnel. The notice must indicate that any information provided by the applicants, recipients, holders, and individuals may be subject to verification through matching programs. Procedures for providing notice must be established subject to guidance from the Director of OMB.

(E) procedures for verifying information produced in such matching program as required by subsection (p) [verification and opportunity to contest findings].

(F) procedures for the timely destruction of identifiable records created by a recipient agency or non-Federal agency.

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(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of the matching programs.

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where duplication or redisclosure is required by law or is essential to the conduct of the matching program.

(I) procedures governing the use by a recipient agency or a non-Federal agency of records provided in a matching program by a source agency. These procedures must include rules governing return of the records to the source agency or the destruction of records used in the matching program.

(J) information on assessments that have been made on the accuracy of the records that will be used in matching programs.

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

Transmittal of Copies and Effective Date (Paragraph 2).—A copy of each matching agreement must be sent to the Senate Committee on Governmental Affairs and the House Committee on Government Operations. Matching agreements must be available upon request to the public.

No matching agreement shall be effective until 30 days after a copy is transmitted to the House and Senate committees.

Matching agreements shall remain effective for a period not to exceed 18 months. The Data Integrity Board shall determine an appropriate period for an agreement in light of the purposes and length of time necessary for the conduct of the matching program.

The Data Integrity Board may, without additional review, renew a matching agreement for a current, ongoing matching program for up to a year if the program will be conducted without any change and each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

Subsection (p)—Verification and Opportunity to Contest Findings

Verfication Requirements (Paragraph 1).—No recipient agency, no Federal agency, or source agency may suspend, terminate, reduce, or make a final denial or any financial assistance under a federal benefit program to any individual, or take any other adverse action against an individual as a result of information produced by a matching program, until an office or employee of the agency has independently verified the information. The independent verification requirement may be satisfied either by verification in accordance with requirements governing the federal benefit program or by verification in accordance with paragraph (2) of this subsection.

Independent Verification (Paragraph 1).—Independent verification shall include independent investigation and confirmation of—

(A) the amount of the asset or income involved;

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(B) whether the individual actually has or had access to such asset or income for the individual's own use;

(C) the period or periods when the individual actually had such asset or income; and

(D) any other information used as a basis for an adverse action against an individual.

Notice (Paragraph 3).—No recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to any individual whose records are used in a matching program, or may take other adverse action against the individual as a result of information produced by a matching program, until 60 days after the individual receives notice from the agency. The notice must include a statement of the agency's findings and must inform the individual of the opportunity to contest such findings. The opportunity to contest may be satisfied by notice, hearing, and appeal rights governing the Federal benefit program. The exercise of any such rights shall not affect any rights available under this section.

Health and Safety (Paragraph 4).—Notwithstanding the limitation in paragraph (3), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during the 60-day notice period otherwise required.

Subsection (q)—Sanctions

Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if the source agency has reason to believe that the verification requirements of subsection (p) or any matching agreement entered into pursuant to subsection (o) are not being met by the recipient agency. No source agency may renew a matching agreement unless (1) the recipient agency or non-Federal agency has certified that it has complied with the provisions of the agreement; and (2) the source agency has no reason to believe that the certification is inaccurate.

SECTION 3—NOTICE OF MATCHING PROGRAMS

Subsection (a) amends subsection (e) of the Privacy Act by adding new paragraph (12). The new paragraph requires source and recipient agencies to publish in the Federal Register notice of the establishment or revision of a matching program at least 30 days prior to conducting the program.

Subsection (b) amends subsection (r) (as redesignated) of the Privacy Act regarding reporting on new or changed systems of records. The new language (1) extends the existing reporting requirement to matching programs; (2) eliminates reporting for minor changes; (3) provides that reports go directly to congressional committees; and (4) eliminates several less important report elements.

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SECTION 4—DATA INTEGRITY BOARD

This section adds a new subsection (u) regarding Data Integrity Boards to the Privacy Act.

Establishment (Paragraph 1).—Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate the agency's implementation of the Privacy Act.

Membership (Paragraph 2).—Each Data Integrity Board shall consist of senior officals designated by the head of the agency and shall include any senior official designated by the head of the agency as responsible for implementation of the Privacy Act. The inspector general of the agency, if any, shall be a member of the Board, but the inspector general shall not serve as chairman of the Board.

Functions (Paragraph 3).—Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with the Privacy Act and all relevant statutes, regulations, and guidelines.

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency; determine compliance with applicable laws, regulations, guidelines, and agency agreements; and assess the costs and benefits of such programs.

(C) shall review all recurring matching program in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures.

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including: (i) matching programs in which the agency participated as a source or recipient agency; (ii) matching agreements that were disapproved; (iii) any changes in the membership or structure of the Board in the preceding year; (iv) the reasons for any waiver of the requirement for completion and submission of a cost-benefit analysis prior to the approval of a matching program; (v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and (vi) any other information required by the Director of OMB to be included.

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of the Privacy Act for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with the Privacy Act.

(H) may review and report on any agency matching activities that are not matching programs.

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Cost-Benefit Analysis (Paragraph 4).—A Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted a cost-benefit analysis of the proposed program and the analysis demonstrates that the program is likely to be cost effective. The Board may waive the requirements of this paragraph if it determines, in writing and in accordance with guidelines prescribed by the Director of OMB, that a cost-benefit analysis is not required.

Appeals (Paragraph 5).—If a matching agreement is disapproved by a Data Integrity Board, any party to the agreement may appeal the disapproval to the Director of OMB. Notice of the appeal must be provided to the House Committee on Government Operations and to the Senate Committee on Governmental Affairs. The Director of OMB may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that (i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements; (ii) there is adequate evidence that the matching agreement will be cost effective; and (iii) the matching program is in the public interest. The decision of the OMB Director to approve a matching agreement shall not take effect until 30 days after it is reported to the House Committee on Government Operations and the Senate Committee on Governmental Affairs. If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by an inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

OMB Report (Paragraph 6).—The Director of OMB shall consolidate in a report to Congress the information contained in the reports from the Data Integrity Boards. The OMB report shall be made annually during the first 3 years after the data of enactment of the Computer Matching and Privacy Protection Act of 1988, and biennially thereafter. The OMB report shall include detailed information about costs and benefits of matching programs and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis as well as the reasons for granting the waiver.

Aggregate Reporting (Paragraph 7).—Agency matching activities that are not matching programs may be reported on an aggregate basis if necessary to protect ongoing law enforcement investigations.

SECTION 5—DEFINITIONS

This section adds new definitions to the Privacy Act.

"Matching program" means any computerized comparison of (i) two or more automated systems of records or a system of records with non-Federal records for the purpose of (I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or (II) recouping payments or delinquent debts under Federal benefit programs, or (ii) two or more automated Federal person-

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nel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records.

A matching program does not include: (i) matches performed to produce aggregate statistical data without any personal identifiers; (ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals; (iii) matches performed, by an agency or component which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons; (iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986 (pertaining to disclosures to State and local officials); (II) for purposes of tax administration as defined in section 6103(b)(4), or (III) for the purpose of intercepting a tax refund due an individual under authority granted by the Deficit Reduction Act of 1984; (v) matches whose purpose is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel, (I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of OMB); or (II) conducted by an agency using only records from systems of records maintained by that agency; or (vi) matches performed to produce background checks for security clearance of Federal personnel or for foreign counterintelligence purposes.

The term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program.

The term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program.

The term "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.

The term "Federal benefit program" means any program administered or funded by the Federal Government or any agent thereof, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals.

The term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve components), individuals entitled to received immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

SECTION 6—FUNCTIONS OF THE DIRECTOR OF OMB

This section adds a new subsection (v) to the Privacy Act to consolidate and codify the functions of the Director of OMB under the Privacy Act.

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Subsection (v) requires the Director of OMB to (1) develop and (after notice and opportunity for public comment) prescribe guidelines and regulations for the use of agencies in implementing the provisions of the Privacy Act; and (2) provide continuing assistance to and oversight of the implementation of the Privacy Act by agencies.

Section 6 of the Privacy Act of 1974, which is codified in subsection (v), is repealed.

SECTION 7—COMPILATION OF RULES AND NOTICES

The requirement for publication of a compilation of Privacy Act system notices is changed from annual to biennial publication.

SECTION 8—ANNUAL REPORT

The current requirement in the Privacy Act for a report by OMB is changed to from annual to biennial.

SECTION 9—RULES OF CONSTRUCTION

This section provides that nothing in the amendments made by the Computer Matching and Privacy Protection Act of 1988 shall be construed to authorize: (1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies; (2) the direct linking of computerized systems of records maintained by Federal agencies; (3) the computer matching of records not otherwise authorized by law; or (4) the disclosure of records for computer matching except to a Federal, State, or local agency.

SECTION 10—EFFECTIVE DATES

The amendments made by this act shall take effect 9 months after the date of enactment, except that the amendments made by sections 6, 7, and 8 shall take effect upon enactment.

ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

The following estimate prepared by the Congressional Budget Office is submitted as required by clause (2)(l)(3)(C) of House Rule XI.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 6, 1988.

Hon. JACK BROOKS,
Chairman, Committee on Government Operations,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4699, the Computer Matching and Privacy Protection Act of 1988, as ordered reported by the House Committee on Government Operations, June 9, 1988.

Based on information provided by the Department of Health and Human Services (HHS), the Department of Defense and a number of other agencies, CBO estimates that enacting this bill would result in costs to the federal government of up to $2 million during

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the first year after enactment, and less than $1 million annually thereafter. A greater budget impact would occur if matching programs operated by the Office of Child Support Enforcement (OCSE) and the Federal Parent Locator Service (FPLS) are affected by the bill, in which case the federal government and state governments could lose substantial collection.

H.R. 4699 would establish procedures to regulate the use of computer matching by federal agencies or by nonfederal agencies with federal records. These procedures would include preparing matching agreements with agencies when sharing data, providing the right to appeal to individuals affected by information obtained in a match, and establishing data integrity boards to oversee matching activities.

Most of the costs associated the bill would result from preparing matching agreements required by section 2 of the bill. Although agencies currently have agreements covering some matching activities, H.R. 4699 would require more extensive agreements, and would require them for all matches. The agreements would specify the purpose and legal authority of the match, the methodology to be used, and expected results; they would also include notification and verification procedures for individuals affected by a match.

The magnitude of the first-year costs is difficult to predict. If existing matching agreements would satisfy the requirements of the bill, then there would be little additional cost to the government. However, if the existing agreements would need substantial additional work, CBO estimates that costs would be around $1 million during the first year after enactment. Costs in future years would be much lower, because the agreements would problably need only minor updating.

Another potential cost associated with enacting H.R. 4699 would be establishing data integrity boards required by Section 4. These boards would oversee an agency's matching activities, and would review the matching agreements required by Section 2. Many agencies already have some type of formal or informal group similar to a data integrity board. Nevertheless, because many agencies would probably devote more time to these activities, there would be some additional cost to the government, probably less than $1 million annually.

Section 4 would also require agencies to prepare cost/benefit analyses for all proposed matches, which would be reviewed by the data integrity boards. Preparing these analyses would probably result in some additional costs, but they would also discourage agencies from attempting some matches that would not be cost effective. CBO expects that these two effects would probably offset each other and, therefore, would result in no significant costs or savings to the government.

CBO does not expect other sections of H.R. 4699 to have a significant effect on the federal budget. These sections would, among other things, require federal agencies to publish in the Federal Register notice of matching programs with nonfederal entities and require that an Office of Management and Budget report on computer matching be submitted biennially instead of annually.

The enactment of H.R. 4699 would also result in additional costs both to the federal government and to state governments if the

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FPLS and the Federal Income Tax Refund Offset Program of the OCSE would receive fewer collections through their enforcement activities. These programs use computer matching to locate or establish the identity of non-custodial parents who are failing to make child support payments. In fiscal year 1987, the federal share of these collections was $400 million and the state government share was $202 million. Although the committee staff has indicated that the bill is not intended to cover these programs, information provided by HHS indicates that these programs might be subject to H.R. 4699 because of their involvement with Aid to Families with Dependent Children and tax refunds. The issue may be resolved in the courts.

The reduction in collections could occur in two ways. First, the verification and appeal procedures mandated by H.R. 4699 could result in less computer matching, and therefore fewer collections, because some agencies could elect not to let OCSE use their records for matching rather than institute the new procedures. Second, notifying parents found through FPLS of court actions to be taken against them may give such parents an opportunity to evade legal proceedings, and to continue to avoid making child support payments. Either of these outcomes would result in fewer collections, but we cannot predict the likelihood of either or the amount by which the collections might decrease.

Estimated Cost to State and Local Governments. CBO expects that enacting H.R. 4699 would require state and local agencies involved in computer matching with federal agencies to adopt some new procedures to comply with the verification and notification requirements of the bill, and to expand matching agreements with federal agencies. Based on information provided by the American Public Welfare Association and the National Association of State Information Systems, CBO estimates that the costs associated with these activities would not be significant.

Previous CBO Estimate. On September 17, 1987, CBO prepared an estimate for S. 496, the Computer Matching and Privacy Protection Act of 1987, as passed by the Senate on May 21, 1987. In that earlier analysis, CBO estimated that enacting S. 496 would result in recurring costs to the federal government of $2 million to $3 million annually, and in non-recurring costs of $2 million during the first year after enactment. The difference between this estimate and the earlier one reflects new information provided by several agencies and a reexamination of our earlier findings.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

COMMITTEE ESTIMATE OF COST

The committee accepts the cost estimate of the Congressional Budget Office.

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INFLATIONARY IMPACT

In accordance with clause (2)(l)(4) of House Rule XI, it is the opinion of the committee that the provisions of this bill will have no inflationary impact on prices and costs in the operations of the national economy.

OVERSIGHT FINDINGS

The committee has made no detailed findings or recommendations other than those contained elsewhere in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

No new budget authority or tax expenditures are required by this legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

PART I—THE AGENCIES GENERALLY

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CHAPTER 5—ADMINISTRATIVE PROCEDURE

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SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

* * * * * * *

§ 552a. Records maintained on individuals

(a) DEFINITIONS.—For purposes of this section—

(1) * * *

* * * * * * *

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; **[**and**]**

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected**[**.**]***;*

(8) the term "matching program"—

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—

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(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirments by, applicants for, recipients or beneficiaries of, paticipants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, or (III) for the purpose of intercepting a tax refund due an individual under authority granted by the Deficit Reduction Act of 1984;

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(vi) matches performed to produce background checks for security clearances of Federal personnel or for foreign counterintelligence purposes;

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a

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matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or any agent thereof, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

* * * * * * *

(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall [annually] *biennially* compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

* * * * * * *

(o) MATCHING AGREEMENTS.—(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

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(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

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(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determine is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—(1) In order to protect any individual whose records are used in matching programs, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assitance under a Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching programs, until an officer or employee of such agency has independently verified such information. Such independent verification may be satisfied either (A) by verification in accordance with the requirements governing such Federal benefit program, or (B) by verification in accordance with the requirements of paragraph (2).

(2) Independent verification required by paragraph (1)(B) shall include independent investigation and confirmation of—

(A) the amount of the asset or income involved,

(B) whether such individual actually has or had access to such asset or income for such individual's own use,

(C) the period or periods when the individual actually had such asset or income, and

(D) any other information used as a basis for an adverse action against an individual.

(3) No recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make final denial or any financial assistance or payment under a Federal benefit program to any individual described in paragraph (1), or take other adverse action against such individual as a result of information produced by a matching program, until 60 days after such individual receives a notice from such agency containing a statement of its findings and informing the individuals of the opportunity to contest such findings. Such opportunity may be satisfied by notice, hearing, and appeal rights governing such Federal benefit program. The exercise of any such rights shall not affect any rights available under this section.

(4) Notwithstanding paragraph (3), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during the 60-day notice period required by such paragraph.

(q) SANCTIONS.—(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a

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matching program if such source agency has reason to believe that the requirements of subection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

[(o) REPORT ON NEW SYSTEMS.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.]

(r) REPORT ON NEW SYSTEMS AND MATCHING PROGRAMS.—Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

[(p) ANNUAL] *(s) BIENNIAL* REPORT.—The President shall [annually] *biennially* submit to the Speaker of the House of Repesentatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding [year] *2 years;*

(2) describing the exercise of individual rights of access and amendment under this section during such [year;] *years;*

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as many be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

[(q)] *(t)*(1) EFFECT OF OTHER LAWS.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) DATA INTEGRITY BOARDS.—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of his section, and the inspector general of the agency, if

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any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4) A Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective. The Board may waive the requirements of this paragraph if it 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.

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(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Notice of the appeal must be provided to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement investigations.

(v) OFFICE OF MANAGEMENT AND BUDGET RESPONSIBILITIES.—The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

* * * * * * *

SECTION 6 OF THE PRIVACY ACT OF 1974

[SEC. 6. The Office of Management and Budget shall—

[(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code, as added by section 3 of this Act; and

[(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies.]

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